No. 25-1131

In the Supreme Court of the United States

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

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF KENTUCKY

BRIEF FOR THE BUCKEYE INSTITUTE AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a land-use regulation that prohibits a religious institution from building a religious structure on its own property constitutes a "substantial burden" on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act.

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INTEREST OF AMICUS CURIAE[1]

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

SUMMARY OF THE ARGUMENT

The Religious Land Use and Institutionalized Persons Act (RLUIPA) is Congress's attempt to defend Americans' free religious exercise at a time when such rights faced substantial headwinds. See H.R. Rep. No. 106-219, at 18–24 (1999). State and local governments' intransigence in accommodating religious exercise was compounded by *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1990), a decision that lowered the showing that public officials need to make to justify burdens on free religious exercise.

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[1] As required by Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae made any monetary contribution toward the preparation or submission of this brief.

But nearly three decades after its passage, much about RLUIPA remains unclear. Courts still reach divergent conclusions on what constitutes an impermissible burden on religious practice under the Act. Contrast, *e.g.*, *Sts. Constantine and Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005) (suggesting that the delay, uncertainty, and expense associated with finding a different church location can create an impermissible burden) with *Church of Our Savior* v. *City of Jacksonville Beach*, 69 F.Supp.3d 1299, 1316 (M.D. Fla. 2014) (suggesting that the economic infeasibility of alternate church locations does not create a substantial burden); *Int'l Church of the Foursquare Gospel* v. *City of San Leandro*, 673 F.3d 1059, 1068 (9th Cir. 2011) (suggesting lack of feasible land for religious exercise should have been considered in substantial burden analysis) with *Church of Our Savior*, 69 F.Supp.3d at 1316 (stating "that other suitable land is not available in Jacksonville Beach at a price the Church can afford" is just a burden imposed by the market and RLUIPA should not apply). Moreover, this ambiguity is having human consequences, as religious entities and parishioners continue to be on the losing side of religious liberty battles. See Bram Alden, Comment, *Reconsidering RLUIPA: Do Religious Land Use Protections Really Benefit Religious Land Users?*, 57 UCLA L. Rev. 1779, 1788 (2010).

Kentucky's highest court held below that the Missionaries of St. John the Baptist were not substantially burdened when neighbors blocked it from building a grotto to honor the Virgin Mary on property its church controlled. The Kentucky Supreme

Court held that the Missionaries could simply tailor its devotion to Mary by building a smaller grotto or moving it to different land to conform to Kentucky law. See Pet. App. 25a. Using a legal standard that evaluated whether a burden was substantial based on the level of difficulty experienced by an institution in fulfilling its mission, rather than whether parishioners could freely practice their faith, the decision below categorized the restraint on the Missionaries' religious activity as "more [of] a mere inconvenience" than something RLUIPA is concerned with. Pet. App. 25a.

The Kentucky Supreme Court's focus on institutional issues, however, leaves out a vital part of the story. Individuals—whose religious practice RLUIPA protects just as forcefully as congregations'—also face serious barriers to free religious practice because of the lack of definitive guidance regarding RLUIPA. In the instant case, individual Catholics who are parishioners or visitors at the Missionaries' church (Our Lady of Lourdes) are being restricted from performing time-honored devotions to Mary at a place of beauty, silence, and peace. RLUIPA protects the practice of both the Missionaries and individuals equally.

But comparing recent lower-court rulings in *institution-based* free exercise cases (such as the decision below) with this Court's decisions concerning *individuals' religious exercise* reveals a startling discrepancy. In *Sherbert* v. *Verner*, 374 U.S. 398, 403–04 (1963), and *Thomas* v. *Review Board of Indiana Employment Security Division*, 450 U.S. 707, 717–18 (1981), this Court, interpreting the Free Exercise

Clause, unambiguously applied a strict level of scrutiny to governments that forced individual workers to violate their religious precepts to receive unemployment benefits. After RLUIPA's passage, this Court's decision in *Holt* v. *Hobbs*, 574 U.S. 352, 357 (2015), recognized that RLUIPA had displaced *Smith's* laxer standard in the pertinent legal areas. But as the decision below shows, the law regarding institutional free religious practice is difficult to square with that tradition. For that reason, religious institutions still struggle to defend their freedom against discriminatory application of land-use rules. The resulting pressure on institutions' religious exercise invariably bleeds over, burdening individuals as well.

This case, in posing the Court the question of what constitutes a "substantial burden" under RLUIPA, has a chance not only to affirm RLUIPA's broad protection of religious exercise, but to harmonize the law regarding RLUIPA's protections for religious institutions with the law regarding its protections for individuals. As the following will show, such equality is demanded by RLUIPA's text and Congress' intent behind passing the law. The meaningful religious practices at issue in this case demonstrate all the more what is at stake.

ARGUMENT

I. Prayer at Marian grottos is an important part of Catholic religious practice.

Catholics view devotion to the Virgin Mary as an indispensable way of leading people to genuine worship and love for her son, Jesus Christ. *Catechism of the Catholic Church* ¶¶ 963, 971 (1992), https://tinyurl.com/yjrabtt7. While clarifying that Marian devotion is categorically different from the worship given to the Holy Trinity, the *Catechism of the Catholic Church* emphatically describes such devotion as a key aspect of any Christian life and a fixture of Catholic tradition:

> "The Church's devotion to the Blessed Virgin is *intrinsic* to Christian worship." The Church rightly honors "the Blessed Virgin with special devotion. From the most ancient times the Blessed Virgin has been honored with the title of 'Mother of God,' to whose protection the faithful fly in all their dangers and needs. . . . The liturgical feasts dedicated to the Mother of God and Marian prayer, such as the rosary, an "epitome of the whole Gospel," express this devotion to the Virgin Mary.

Id. at ¶ 971 (emphasis added) (citations omitted). Beyond just prayer and devotion, individual Catholics and the Church as a whole look to Mary's motherhood as an example of many Christian virtues, namely obedience and charity. Second Vatican Council, *Lumen Gentium, Dogmatic Constitution on the*

Church ¶¶ 64–65 (1964), https://tinyurl.com/muzb8w56.

But for many practicing Catholics, devotion to Mary extends far beyond reflection on her earthly life. Some Catholics believe Mary has appeared several times to the faithful around the world centuries after the events of the gospels. Catholics look to Marian apparitions as manifestations of God's grace and love, especially amid turbulent world situations like the rise of communism. See Chris Maunder, *Our Lady of the Nations: Apparitions of Mary in 20th-Century Catholic Europe* 194–200 (2016).

To commemorate these Marian apparitions or to honor Mary more generally, many Catholics and Catholic institutions build Marian shrines, which include statues, altars, benches, and other elements to facilitate prayer and reflection. Some even contain "relics"—physical elements taken from the sites of apparitions. See Eve Campbell, *"To Thee Do We Send Up Our Sighs": Documenting Twentieth-Century Marian Shrines in the Republic of Ireland*, 7 J. Contemp. Archaeology 95, 97–101 (2020); Annie Joy, *The Ultimate List of Marian Shrines in the United States*, Catholic Travel U.S.A. (May 2, 2026), https://www.catholictravelusa.com/blog/american-marian-shrines.

Although Marian veneration has a long history in the Catholic Church, the trend of constructing stone shrines (or "grottos") arose from the story of Mary's apparition to St. Bernadette Soubirous in Lourdes, France, in 1858. *Historical links between Lourdes and the United States*, Lourdes Sanctuaire, https://www.lourdes-france.com/en/usa/ (last visited

Nov. 16, 2026). During that apparition, Mary appeared in a cave to Bernadette amid her poverty and chronic illness. Ruth Harris, *Lourdes: Body and Spirit in the Secular Age* 3 (1999). It was to this humble woman that Mary gave a message of hope and declared that Mary was "the Immaculate Conception," which had recently been proclaimed as infallible Church teaching by Pope Pius IX. *Id.* at 8; Judith Dupre, *Full of Grace: Encountering Mary in Faith, Art, and Life* 247 (2010). Bernadette faced opposition from the local authorities over the commotion her proclamation of the apparition was causing, and even church leaders were skeptical. Harris, *supra*, at 9; Dupre, *supra*, at 247. But she remained undeterred, and today, estimates suggest there may be over 1,000 shrines dedicated to the Lourdes apparition across the United States. *Historical links between Lourdes and the United States, supra*. For her devotion, Bernadette was canonized. *Bernadette Soubirous*, Dicastero delle Cause dei Santi, https://www.causesanti.va/it/santi-e-beati/bernadette-soubirous.html (last visited Nov. 20, 2026).

Although many Catholics look to the apparition at Lourdes as a source of wonder and joy, it means all that and more to the Missionaries, which desires to build its grotto next to its church—Our Lady of Lourdes—which is dedicated to the apparition. Much like the civil authorities who scorned Bernadette for heralding the apparition, Kentucky law and hostile neighbors have opposed the Missionaries for its devotion. This is precisely the kind of meaningful religious devotions and exercises that RLUIPA is intended to protect.

II. RLUIPA protects the religious exercise of individuals and institutions equally.

RLUIPA's text is inclusive, defining the "persons" it protects to include religious assemblies and institutions as well as individuals:

> 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 demonstrates that imposition of the burden on that person, assembly, or institution--
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a) (emphasis added). Such a reading comports with RLUIPA's own guidance on statutory 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) (emphasis added).

RLUIPA is the product of Congress' reaction to two decisions it believed limited the free exercise of religion. See *Holt*, 574 U.S. at 356–57. First, in the wake of *Employment Division* v. *Smith*, Congress enacted the Restoration of Religious Freedom Act

(RFRA), which was Congress' attempt to restore a strict-scrutiny level of analysis to statutes or regulations that impeded "a *person's* exercise of religion." *Id.* at 357 (emphasis added) (citing 42 U.S.C. § 2000bb-1(a)). Second, when *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), invalidated RFRA as an improper use of Congress's power under Section 5 of the Fourteenth Amendment, Congress enacted RLUIPA under its spending and commerce powers. *Holt*, 574 U.S. at 357. Congress reworked the legislation to focus on specific areas where Congress had control and the legal issues (zoning and treatment of institutionalized persons) where the congressional record was thickest with examples of governments burdening religious practice. See 146 Cong. Rec. S7774 (2000) (joint statement of Sen. Orrin Hatch and Sen. Ted Kennedy); Cong. Rsch. Serv., RS20638, The Religious Land Use and Institutionalized Persons Act of 2000 5–6 (2000).

The congressional record shows why the statutory language protecting individual religious practice survived. In the wake of the *Boerne* decision, the House Subcommittee on the Judiciary held extensive hearings on whether Congress needed to pass new legislation to defend religious freedom. H.R. Rep. No. 106-219, at 9. Copious testimony revealed that government regulatory burdens were affecting individual religious practice just as much as, if not more than, institutional religious practice. School districts forcing children to disobey their religious precepts, coroners' violations of religious families' wishes for their deceased relatives, and prisons refusing to accommodate inmates' faith-based dietary restrictions were all recurring themes. *Id.* at 9–12.

Although much of the testimony showed how land-use restrictions burdened churches, there were plenty of examples of how they also affected individual religious practice. See *id.* at 22–23. For example, the House Subcommittee on the Judiciary heard testimony detailing that Orthodox Jews could be banned from living (let alone practicing their religion) in certain areas simply by forbidding the construction of synagogues, as Sabbath restrictions prevent Orthodox Jews from driving elsewhere to worship. *Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure: Hearing Before the Subcomm. on the Judiciary*, 106th Cong. 88 (2000). In a similar vein, a rabbi who testified before the House noted that the city of Los Angeles "refused to let fifty elderly Jews meet for prayer in a house in the Hancock Park neighborhood" because there was no house of worship in Hancock Park already and "the City did not want to make a precedent for one." *Id.* at 87. Although Los Angeles' rationale for banning prayer among these individuals is a masterclass in circular reasoning, it was likely pretextual as well, since the presence of a busy law school nearby would have cast serious doubt on any concern that prayer would noticeably increase foot traffic in the area. *Id.* at 87–88.

In sum, it is clear that RLUIPA protects religious individuals and institutions on the same basis. This makes sense in light of the law's text and history. But it's also worth noting that land-use restrictions imposed on a religious institution or congregation invariably affect the religious exercise of individuals as well. Individual Catholics who take the Church's teachings regarding Mary seriously and practice

Marian devotion have just as much at stake in this case as the Missionaries: They will be barred from performing sincere and meaningful spiritual practices as the result of Park Hills, Kentucky's land-use restrictions.

III. The Court should apply the same "substantial burden" analysis it has historically used for cases involving individual religious practice.

Congress' notes on what "substantial burden" means in a land-use context indicate that Congress was not looking to reinvent the wheel:

> The Act does not include a definition of the term "substantial burden" because it is not the intent of this Act to create a new standard for the definition of "substantial burden" on religious exercise. Instead, that term as used in the Act should be interpreted by reference to Supreme Court jurisprudence. Nothing in this Act, including the requirement in Section 5(g) that its terms be broadly construed, is intended to change that principle. The term "substantial burden" as used in this Act is not intended to be given any broader interpretation than the Supreme Court's articulation of the concept of substantial burden or religious exercise.

146 Cong. Rec. S7776 (2000). In short, Congress wants RLUIPA's definition of "substantial burden" to mesh with this Court's historical definition of the same.

This Court has not yet considered a RLUIPA case relating to the law's land use provisions. U.S. Dep't of Just., *Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act* 7 (Sep. 22, 2020). See also *Tree of Life Christian Sch.* v. *City of Upper Arlington*, 905 F.3d 357 (6th Cir. 2018) (dealing with RLUIPA's equal terms provision in a land-use context). But that does not mean that this Court's precedents contain no guidance on what is a "substantial burden" on religious exercise. Indeed, this Court has considered these burdens extensively in Free Exercise Clause cases, which are instructive in interpreting RLUIPA. See, *e.g.*, *Midrash Sephardi, Inc.* v. *Town of Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004) (applying multiple Supreme Court free exercise cases to a RLUIPA land-use case); *Vision Church* v. *Vill. of Long Grove*, 468 F.3d 975, 997 (7th Cir. 2006) (explaining how RLUIPA's legislative history points to the First Amendment as a guide).

An early example is *Sherbert* v. *Verner*, 374 U.S. 398 (1963), the Court's canonical consideration of whether denial of unemployment benefits because of religious conduct violates the Free Exercise Clause. The petitioner was an Adventist whose unemployment benefits were denied by South Carolina because she refused to be hired by employers who required Saturday (Sabbath) work. *Id.* at 399. In determining whether South Carolina had imposed a "substantial infringement" of her religious practice, the Court determined that

> it is clear that it does. . . . The ruling forces her to choose between following the precepts of her religion and forfeiting

> benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Id. at 403–04 (emphasis added).

This Court followed a similar analytical path in *Thomas* v. *Review Board of Indiana Employment Security Division*, 450 U.S. 707 (1981). In that case, Indiana turned down a Jehovah's Witness' request for unemployment benefits after he declined to be moved to a department at his foundry that produced military weapons—a violation of his religion's pacifism. *Id.* at 709. Recognizing that the facts indicated a burden similar to the one at issue in *Sherbert*—a choice between a claimant's faith and accepting work—the Court reaffirmed that

> [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. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Id. at 717–18 (emphasis added).

Importantly, this line of reasoning has received a recent affirmation in *Holt*, which dealt directly with RLUIPA, albeit in an institutionalized-persons context. In *Holt*, this Court, as it did in *Sherbert* and *Thomas*, showed how the looming threat of prison discipline was enough to make a Muslim inmate abandon his faith-based desire to grow a half-inch beard:

> The Department's grooming policy requires petitioner to shave his beard and thus to "engage in conduct that seriously violates [his] religious beliefs." If petitioner contravenes that policy and grows his beard, he will face serious disciplinary action. Because the grooming policy puts petitioner to this choice, it substantially burdens his religious exercise.

Holt, 574 U.S. at 361 (citations omitted).

The *Holt* Court's RLUIPA discussion also highlights two other important areas of the statute that are relevant to the current predicament. First, that "RLUIPA protects 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief,'" and that sincerity is the true test for determining the presence of a religious belief. *Id.* at 360–61 (quoting 42 U.S.C. § 2000cc-5(7)(A)). So the fact that the Catholic faith does not necessarily compel the Missionaries to pray at or construct Marian grottos does not alter the protections that RLUIPA provides for the practice. Second, the *Holt* Court had no sympathy for the Arkansas Department of Corrections' assertion that it had not substantially

burdened the inmate's religious practice because it had accommodated his Muslim faith in other ways (providing him a prayer rug, respecting dietary restrictions, etc.). Instead, this Court clarified that "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. Thus, it should not matter that the Missionaries could simply tailor its religious practices to comply with the government's land-use restrictions, for example, by building a smaller Marian grotto or using other land. RLUIPA asks whether the *particular religious practice at issue* is being substantially burdened by the government, not whether a claimant has alternatives available to him. See *id.*

The line of reasoning present in *Sherbert*, *Thomas*, and *Holt* is simple: If a government is exerting enough pressure to make an adherent abandon a religious practice, then a substantial burden exists. "As a matter of ordinary meaning, after all, an action that prevents a religious exercise does not just burden that exercise substantially, it burdens it completely." *Apache Stronghold* v. *United States*, 145 S. Ct. 1480, 1486 (2025) (Gorsuch, J., dissenting from the denial of certiorari). And as "[then-]Chief Judge Sutton has succinctly put it, '[t]he greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice).'" *Id.* at 1488 (Gorsuch, J., dissenting from the denial of certiorari) (quoting *Haight* v. *Thompson*, 763 F.3d 554, 565 (6th Cir. 2014)). The facts of the instant case seem to fit well into this framework: The Missionaries have a

strong religious dedication to the veneration of Mary, especially her apparition at Lourdes, an event for which its church is named. This is the impetus behind its desire to build a grotto commemorating that Marian apparition. Park Hills' land-use restrictions prevent the Missionaries from building its grotto. And if it chooses to build the grotto, the law imposes coercive measures, specifically, the threat of legal action. See Pet. App. 70a–73a (containing a reproduction of the Park Hills Zoning Ordinance).

Contra *Sherbert, Thomas,* and *Holt*, the decision below adhered to a "substantial burden" standard with an outsized focus on institutional issues. This standard, which originated in *Livingston Christian Schools* v. *Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017), has four factors:

> The first factor is "whether the religious institution has a feasible alternative location from which it can carry on its mission." The second is "[w]hether the religious institution will suffer substantial delay, uncertainty, and expense due to the imposition of the regulation[.]" The third is whether "a plaintiff has imposed a substantial burden upon itself . . . [f]or example when an institutional plaintiff has obtained an interest in land without a reasonable expectation of being able to use that land for religious purposes[.]" And the fourth factor was "whether there is evidence that the municipality's

> decisionmaking (sic) process was arbitrary, capricious, or discriminatory."

Pet. App. 24a–25a (citations omitted).

Kentucky's highest court strayed from both RLUIPA's words and the simplified substantial burden test used in the precedents of this Court. It also perpetuated the disharmony between RLUIPA cases involving individuals and those involving congregations. Particularly, the decision below relies heavily on the fact that the Missionaries should have reasonably been aware that the construction of the grotto would violate land-use restrictions (*Livingston*'s third factor) in determining that there was no substantial burden. See Pet. App. 27a. Nothing in *Sherbert*, *Thomas*, or *Holt* suggests that a religious claimant's "reasonable expectations" of encountering governmental headwinds makes any difference in a RLUIPA analysis. The predisposition of the Kentucky Supreme Court and other courts to consider RLUIPA land-use cases appears to be not the Nation's historical commitment to religious rights, but instead the misguided idea that "municipal regulation [is] a value independently worthy of equitable protection." *Holy Trinity Ukrainian Cath. Church* v. *Twp. of Collier*, No. 26-2072, 2026 WL 3521163, at *1, *4 (3d Cir. 2026) (Phipps, C.J., dissenting from denial of en banc hearing) (regarding a refusal to grant a preliminary injunction to a Ukrainian Catholic church that was blocked by land-use regulations from building a similar Marian shrine on its property).

CONCLUSION

RLUIPA's protections do not vary depending on whether a claimant is an institution or an individual. Although the Missionaries' institutional religious freedom is at issue in this case, it is clear that the religious liberty of many individual Catholics is also at stake. The Court now has an opportunity to harmonize religious liberty law so both exercises are protected. This Court signaled in *Holt* that it would apply the "substantial burden" analysis present in its free exercise cases (like *Sherbert* and *Thomas*) to a RLUIPA context. The Court now has a golden opportunity to extend that to the land-use context and ensure that RLUIPA achieves its lofty goal of defending religious practice—both individual and institutional—equally from government hostility.

Respectfully submitted,

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