

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 Petition for Writ of Certiorari to
the Supreme Court of Kentucky

**BRIEF OF KENTUCKY, ALABAMA, ARKANSAS,
FLORIDA, GEORGIA, IDAHO, IOWA, KANSAS,
LOUISIANA, MISSISSIPPI, MISSOURI,
MONTANA, NEBRASKA, OKLAHOMA,
PENNSYLVANIA, SOUTH CAROLINA, SOUTH
DAKOTA, TENNESSEE, UTAH & WEST
VIRGINIA AS AMICI CURIAE
SUPPORTING PETITIONER**

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INTRODUCTION AND INTERESTS OF AMICI CURIAE¹

Regulating land use is one of the core powers of the States. *See City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 744 (1995) (Thomas, J., dissenting) (collecting cases). And most often, States task local governments with making the zoning decisions affecting local residents. *Id.* But when those land-use decisions concern religious organizations, States and local governments face a higher standard. That’s because Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to provide “expansive protection for religious liberty.” *Holt v. Hobbs*, 574 U.S. 352, 358 (2015). It makes plain that governments may not “impose[] a substantial burden” on religious organizations or treat them “on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C § 2000cc(a)(1), (b)(1).

A Kentucky city respected RLUIPA’s demands here. Petitioner Missionaries of Saint John the Baptist, Inc.—a religious organization—wants to build a relatively small outdoor shrine next to its church building so that its congregants can pray and meditate there when they attend Mass. And the city *wants to let that happen*. Its land-use board approved a conditional-use permit and zoning variance for the shrine. But Saint John’s neighbors appealed that decision. Despite Saint John’s argument that denying the variance would violate RLUIPA, the Kentucky Supreme

¹ The Amici States timely notified the parties’ counsel of their intent to file this brief under Rule 37.2.

Court ultimately acquiesced to the neighbors' heckler's veto of the proposed shrine. In the process, it gutted RLUIPA's protections in Kentucky state courts.

The Court should review the Kentucky Supreme Court's decision. Amici States² have a strong interest in regulating land use in a manner consistent with RLUIPA. With RLUIPA's straightforward text, Congress struck the correct balance between the needs of communities to make thoughtful land-use decisions and the needs of religious organizations for equal treatment. Indeed, "[g]overnments can avoid most problems under RLUIPA if they treat churches equally and ensure that there are adequate opportunities for them to locate within the jurisdiction." Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 *Fordham Urb. L.J.* 1021, 1041 (2012). They simply cannot "use [the zoning] power to discriminate or exclude." *Id.* at 1041–42.

Yet because of how lower courts have interpreted RLUIPA's land-use provisions, getting its balance right has been anything but straightforward. This case offers a prime example. The local government approved Saint John's zoning variance, but the Kentucky Supreme Court wielded its interpretation of a four-factor test to reject Saint John's claimed burden as a mere inconvenience that Saint John imposed on

² Amici States include the Commonwealth of Kentucky, State of Alabama, State of Arkansas, State of Florida, State of Georgia, State of Idaho, State of Iowa, State of Kansas, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of Oklahoma, Commonwealth of Pennsylvania, State of South Carolina, State of South Dakota, State of Tennessee, State of Utah, and State of West Virginia.

itself. That decision was wrong, but the Kentucky Supreme Court is far from the first court to misunderstand or overcomplicate what RLUIPA requires. Government decisionmakers and religious organizations face an array of multi-factor tests (among other glosses on the statutory text) in courts across the country. The bottom line is that many State and local governments are doing their level-best to respect RLUIPA's balance, but they need clarity that only this Court can provide.

SUMMARY OF THE ARGUMENT

Over a quarter century removed from its unanimous enactment, the time for this Court to give RLUIPA's land-use provisions their full force is now. Until now, the unfortunate truth is that RLUIPA has too often fallen short of protecting religious organizations. But the "fault lies not with Congress, but with the courts, which have added requirements into RLUIPA that prevent many religious groups from seeking the shelter that Congress sought to provide." *Tree of Life Christian Schs. v. City of Upper Arlington*, 905 F.3d 357, 378 (6th Cir. 2018) (Thapar, J., dissenting).

The Kentucky Supreme Court is the latest to do so. Faced with a neighbor's challenge to a city-level decision to grant a religious organization's variance, it raised the bar statewide for religious claimants seeking relief from burdensome land-use regulations. It likewise adopted an unprecedented reading of the equal-terms provision with no basis in the text. The decision leaves little hope for religious claimants in Kentucky state courts.

Yet Kentucky is not the only jurisdiction with a RLUIPA problem. That means that State and local governments have little and conflicting guidance on how to bring community-focused zoning decisions in line with an important federal law protecting religious organizations. Those zoning decisions are the bread-and-butter of local governments, and respecting the balance Congress struck—in addition to being mandatory—matters a great deal to Amici States. But doing so is made unnecessarily difficult when uncertainty is the order of the day in lower courts. Worse still, when even a correct local decision can be undone by a state court’s misunderstanding of RLUIPA, religious organizations are left confused about when to seek shelter in RLUIPA’s provisions. By granting review, the Court can right that course and provide much-needed guidance.

ARGUMENT

The Court should grant review to clarify RLUIPA’s substantial-burden and equal-terms provisions. By adding extra-textual requirements for religious groups seeking RLUIPA’s protection, lower courts have allowed RLUIPA to become unmoored from its plain text. The Kentucky Supreme Court’s decision is the latest data point in that troubling trend.

I. The Kentucky Supreme Court should not get the last word on federal protections for religious institutions in Kentucky.

A. Under RLUIPA, a government cannot “impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise” of a religious group, unless it satisfies strict scrutiny. 42 U.S.C. § 2000cc(a)(1). Nor can it “impose or

implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” *Id.* at (b)(1).

RLUIPA, like the Religious Freedom Restoration Act, was enacted in response to a decision from this Court. *See Ramirez v. Collier*, 595 U.S. 411, 424 (2022). The goal was “to ensure ‘greater protection for religious exercise than is available under the First Amendment’” as interpreted in *Employment Division v. Smith*, 494 U.S. 872 (1990). *Ramirez*, 595 U.S. at 424 (citation omitted). RLUIPA does so by subjecting States and local governments to strict scrutiny in “arenas in which Congress found the record of religious discrimination particularly clear and compelling.” *Yellowbear v. Lampert*, 741 F.3d 48, 52 (10th Cir. 2014) (Gorsuch, J.).

The zoning process is one such arena, for good reason. Zoning decisions are “individualized and highly discretionary.” Laycock & Goodrich, *supra*, 39 *Fordham Urb. L.J.* at 1053–54. And Congress “extensively documented” how that government discretion was “either overtly or covertly” used to “exclude[e] religious assemblies or institutions.” *Tree of Life*, 905 F.3d at 378 (Thapar, J., dissenting). The fact is that “churches are sometimes disfavored by local zoning boards because (among other things) church members are said to generate ‘too much’ traffic or congestion or noise when they gather for communal expressions of faith.” *Yellowbear*, 741 F.3d at 52. RLUIPA aims to remedy those instances of disfavor.

To that end, RLUIPA is “a judicial check and balance to local land-use regulation of churches.” Laycock

& Goodrich, *supra*, 39 Fordham Urb. L.J. at 1053–54. Put another way, “RLUIPA requires government to properly balance the needs of religious groups against community interests.” *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F.Supp.2d 477, 557 (S.D.N.Y. 2006).

B. Park Hills—a city in Northern Kentucky—did its best to strike the balance that RLUIPA requires.

Saint John runs a Catholic church in Park Hills. It was originally built in 1930 and was bought by Saint John in 2015. App. 59a. Like many Catholic churches, it is named after a patron saint: Our Lady of Lourdes. App. 56a. The name refers to a believed Marian apparition. Catholics believe that Mary, the mother of Jesus, miraculously appeared to Saint Bernadette in a grotto (or cave) in Lourdes, France. So to honor its church’s patron saint and provide a “quiet place for meditation and worship” for its “existing parishioners primarily before and after mass,” Saint John decided to build a modest shrine next to its church. App. 95a, 127a. The shrine would include a patio, walking path, retaining wall, and statues of Mother Mary and Saint Bernadette. App. 127a.

In 2021, Saint John sought a conditional-use permit and a variance from Park Hill’s zoning ordinance to build the shrine. App. 146a–147a. Park Hill granted both requests, over the objection of some neighbors—the Frederics. *Id.* The Frederics appealed that decision to Kentucky circuit court. There, Saint John and Park Hill argued that denying the variance would violate RLUIPA because the zoning law “substantially interfere[d] with religious exercise” and

there was “no compelling reason’ to prevent” construction of the shrine. App. 92a. The circuit court affirmed without reaching the RLUIPA issue. App. 61a.

The Fredrics appealed that loss, too. But the Court of Appeals reversed. It held that the city board lacked authority to grant the variance. App. 49a. And it held that RLUIPA did not change that. In the court’s view, there was no substantial burden on Saint John’s religious exercise because the zoning ordinance neither pressured Saint John to violate its religious beliefs nor was “inherently inconsistent” with those beliefs. App. 55a. This time, Saint John appealed and sought review in the Kentucky Supreme Court.

C. The Kentucky Supreme Court took Saint John’s case to answer whether RLUIPA protects the church’s proposed shrine. Until Saint John’s case, it “ha[d] not yet had occasion to address RLUIPA” in the land-use context. App. 21a. The Kentucky Supreme Court correctly rejected the intermediate court’s focus on the shrine’s perceived importance to Saint John’s beliefs. App. 30a. But Kentucky’s high court nevertheless arrived at the wrong answer under RLUIPA’s substantial-burden and equal-terms provisions.

1. Start with how the Kentucky Supreme Court rejected Saint John’s substantial-burden arguments.

In the prison context, a substantial burden under RLUIPA is often easy to spot. This Court has held that a prison policy prohibiting a Muslim inmate from growing a short beard “easily” qualifies as a substantial burden because the inmate cannot engage in the religious exercise without facing “serious disciplinary action.” *Holt*, 574 U.S. at 361. But the land-use context

can be different. For example, when a zoning ordinance prohibits a religious organization from building a church, “the organization can usually locate its church elsewhere.” *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 555 (4th Cir. 2013). So the substantial-burden inquiry is more nuanced in the land-use context. Prohibiting a particular religious exercise in a specific location does not by itself necessarily constitute a substantial burden.

Lower courts have considered different factors in determining whether a burden is substantial in the land-use context. The Kentucky Supreme Court adopted its version of the Sixth Circuit’s test as its “polestar” here. App. 22a. But when it put that test into practice, it rendered RLUIPA all but meaningless.

Two conclusions drove the court’s decision to reject Saint John’s substantial-burden claim. The first was that Saint John “ha[d] not asserted that it could not construct a smaller grotto or shrine on the property it already owned.” App. 25a. Based on that perceived omission, the court assumed that Saint John had the “ability to build a smaller shrine or grotto than what it desires” and thus that the burden of denying a variance is “a mere inconvenience.” *Id.*

That got the RLUIPA inquiry very wrong. The relevant question is the burden on the religious organization’s specific religious activity, not whether it has proven it cannot conduct a different activity elsewhere. It is on the government to satisfy strict scrutiny for substantially burdening Saint John’s religious activity, not on Saint John to self-select into religious

activities that avoid conflict with burdensome land-use regulations.

Properly framed, the RLUIPA inquiry is straightforward. Saint John desires to build its shrine so that its congregants can meditate and worship there “before and after mass.” App. 127a. The desired religious exercise depends on the proposed shrine being built near the existing church building. Otherwise, Saint John’s congregants cannot use the shrine along with going to Mass. So any feasible alternative location would have to be within a short walk of the church. Because of the existing historic church building that Saint John has used for six years and the purpose of the shrine, the ban imposed effectively operates as a complete prohibition on the church’s desired religious exercise.

The Kentucky court’s second conclusion fares no better. It held that “it cannot be said that St. John has not imposed a burden upon itself” because “St. John had every reason to know, and in fact explicitly acknowledged, that building the grotto was not permitted by the ordinance.” App. 27a. That conclusion, too, moved RLUIPA’s goalposts on Saint John.

For starters, the logical end of the Kentucky Supreme Court’s reasoning is that mere awareness of a preexisting burden—presumably by a potentially burdensome regulation existing in the statute books or code of ordinances—makes RLUIPA relief unavailable. But if that were right, a religious organization could hardly ever seek shelter from overtly burdensome regulations. RLUIPA contains no such exemption for regulations that a religious organization is aware of when it seeks a variance.

And even if asking whether a burden is self-imposed is appropriate in the substantial-burden analysis, it cannot cut against Saint John here. Saint John bought the 1930 historic church building in 2015. App. 59a. It used the church for six years before applying for the variance to build its outdoor shrine honoring its patron saint and providing its congregants space to meditate and worship along with going to Mass. So the Kentucky Supreme Court was simply wrong to treat this situation like one in which a religious organization bought land intending to use it for a specific purpose that it knew was prohibited.

But even putting that aside, there is no reason to think that Saint John should have known it could not get a variance to build the shrine. The city granted Saint John's requested variance, and the circuit court affirmed that decision. At a minimum, that means Saint John had a good-faith belief that it could build its shrine. So the burden imposed by the Kentucky Supreme Court's rejection of the variance under the zoning ordinance was not self-imposed.

One last point on the substantial-burden inquiry. The Kentucky Supreme Court claimed to simply apply the Sixth Circuit's test to the facts here. But that it could so easily bend those factors to reject Saint John's requested variance demonstrates the need for clear guidance on how to apply RLUIPA's plain text. The relevant question is whether a complete bar on building the proposed shrine is a substantial burden on Saint John's religious activity. Because it is, RLUIPA places the onus on the Frederics to demonstrate why that burden satisfies strict scrutiny.

2. The Kentucky Supreme Court spent less time rejecting Saint John’s equal-terms argument, but it got the outcome just as wrong.

The equal-terms provision prohibits treating “a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1). The provision is the subject of a deep circuit split. As Judge Thapar has noted, “[e]very circuit to address the issue has given its own gloss to the Equal Terms provision,” so a religious organization’s success “depends entirely on where it sues.” *Tree of Life*, 905 F.3d at 387 (Thapar, J., dissenting).

The Kentucky Supreme Court has all but guaranteed failure on an equal-terms claim in Kentucky state courts. Indeed, it engaged in none of those ongoing judicial debates. It instead rejected Saint John’s argument—that the ordinance exempts nonreligious entities from its arterial-street requirement—out of hand as “not correct.” App. 28a–29a. But in so doing, it block quoted the portion of the ordinance that lines up completely with Saint John’s basic point: cemeteries, schools, parks, playgrounds, golf courses, recreation centers, libraries, and country clubs are not subject to the requirement imposed on Saint John. *Id.* The Kentucky Supreme Court’s view, apparently, is that so long as an ordinance treats a religious organization on equal terms with some nonreligious entities, it need not treat them on equal terms with all.

That is no reason to justify the court’s failure to engage in any reasoning on whether Saint John should get relief under the equal-terms provision. If adding elements to an equal-terms claim has “neutralized the Equal Terms provision” in some courts, *Tree*

of Life, 905 F.3d at 387 (Thapar, J., dissenting), then giving the provision no meaning at all has surely done the same. The Court should step in to ensure that this provision is enforced.

II. This Court should clarify RLUIPA’s requirements for States and local governments.

The Kentucky Supreme Court is the latest court to stray from RLUIPA’s text. But it is far from the only one. The “key question going forward” thus remains “whether courts will fully enforce RLUIPA according to its terms—in particular, the key substantial-burden and equal-terms provisions.” Laycock & Goodrich, *supra*, 39 Fordham Urb. L.J. at 1071–72. Saint John’s petition gives this Court an ideal opportunity to make sure RLUIPA is fully enforced. Consider a few reasons why.

A. To start, no one can doubt the importance of getting RLUIPA right. It exists to provide “very broad protection for religious liberty.” *Holt*, 574 U.S. at 356. And it represents a rare instance of federal intervention in an “area[] traditionally regulated by the States.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). That “is an extraordinary power in a federalist system”; one this Court “must assume Congress does not exercise lightly.” *Id.*

That was the case with RLUIPA. “Congress found the record of religious discrimination particularly clear and compelling” in the land-use context. *Yellowbear*, 741 F.3d at 52. The “history of exclusionary zoning is sordid,” and practices “aimed at religious groups” are a key part of it. *Tree of Life*, 905 F.3d at 376–77 (Thapar, J., dissenting).

So States and local governments have a strong interest in giving religious groups the full protection they are due under RLUIPA. But because the last quarter century of caselaw has given RLUIPA different force in different jurisdictions, giving it full force can be a tall order for local decisionmakers mindful of local interests in zoning decisions. The point is not that local decisionmakers approach their task looking for ways to avoid RLUIPA and favor local interests. Far from it. The point is that they want to respect *both*, but they understandably struggle to do so as RLUIPA is currently interpreted. Clarity on what federal law demands lets local decisionmakers focus on what they do best: keep the community (including its religious organizations) in mind.

Amici States and their localities are the obvious beneficiaries of such clarity. But religious organizations would no doubt benefit from clarity too in deciding where to locate and how to manage an expansion. Decisions like these require long-term thinking and, often, fundraising. All in all, a clear understanding of RLUIPA would allow State and local governments to collaborate on zoning choices with religious organizations with a clear vision of what is both best for the community and consistent with RLUIPA.

B. Despite how much RLUIPA matters to both governments and religious groups, this Court has yet to interpret its land-use provisions.

The upshot has been few clear answers in lower courts across the country. Saint John is thus right (at 4–5 of its petition): both provisions in RLUIPA “have generated persistent, irreconcilable circuit conflicts.”

Amici States need not repeat Saint John’s accurate description of those conflicts here. But consider just a few examples of how this confusion has played out in state courts.

One example is from Michigan. In *Greater Bible Way Temple of Jackson v. City of Jackson*, a city denied a religious organization’s re-zoning request, so the organization sued the city and won in trial court under RLUIPA. 733 N.W.2d 734, 737–38 (Mich. 2007). The Michigan Supreme Court rejected the claim on appeal for several reasons (any of which could have been dispositive). In the process, it adopted a narrow definition of “substantial burden” applicable only “when one is forced to choose between violating a law (or forfeiting an important benefit) and violating one’s religious tenets.” *Id.* at 750. That raised the bar for relief much higher than RLUIPA dictates. As commentators describe it, “the effect has been to gut RLUIPA in Michigan state courts.” Laycock & Goodrich, *supra*, 39 *Fordham Urb. L.J.* at 1049.

Other examples of heightened RLUIPA tests abound. In Maryland, a claimant only faces a substantial burden if left “without a reasonable means to observe a particular religious precept,” and any “viable alternative mode”—no matter how difficult or expensive—dooms a claim. *Trinity Assembly of God of Balt. City, Inc. v. People’s Counsel for Balt. Cnty.*, 962 A.2d 404, 429 (Md. 2008). Oregon, for its part, finds a substantial burden “only” when a regulation “pressures or forces a choice between following religious precepts and forfeiting certain benefits, on the one hand, and abandoning one or more of those precepts in order to obtain the benefits, on the other.” *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day*

Saints v. City of West Linn, 111 P.3d 1123, 1130 (Or. 2005).

The list of state courts grappling with RLUIPA land-use claims goes on. *See, e.g., Cambodian Buddhist Soc. of Conn., Inc. v. Planning and Zoning Comm'n of Town of Netown*, 941 A.2d 868, 882 (Conn. 2008) (rejecting RLUIPA claim when a land-use regulation is “neutral and generally applicable,” despite statutory language stating otherwise); *Par. of Jefferson v. Daughters of St. Paul Inc.*, 113 So. 3d 371, 376 (La. Ct. App. 2013) (adopting the Ninth Circuit’s “‘oppressive’ to a ‘significantly great’ extent” test (citation omitted)); *Cnty. of San Bernardino v. Mancini*, 83 Cal. App. 5th 1095, 1104–05 (Cal. Ct. App. 2022) (same). In short, Kentucky is just one of many States with courts that give RLUIPA claims “a hostile reception.” Laycock & Goodrich, *supra*, 39 Fordham Urb. L.J. at 1048.

Amici States focus here on state courts with reason. In a case like this one, when a local government makes the right call on a religious organization’s zoning request, an appeal of that decision is bound for state court. And that’s how it should be. State courts are the best, and often only, forum for interpreting and applying state and local zoning laws. But because of the deep disagreement among federal courts on how to apply RLUIPA to those local laws, states courts face the far more difficult task of doing so in the first instance in a zoning appeal. The above examples show why States and local governments need clarity in those forums. This Court is the only one that can provide it.

C. Along those lines, this case is the right vehicle for the Court to offer guidance at last. It does not fit

the typical mold of a RLUIPA challenge: a religious group, spurned by a local zoning board or otherwise harmed by its decision, goes to federal court to enforce a federal statute. Instead, a Kentucky city agreed with Saint John that its proposed shrine warranted a conditional-use permit and variance. But the state courts—presented with a RLUIPA defense to complaints from the Saint John’s neighbors—deprived RLUIPA’s key land-use provisions of their force. So future disgruntled neighbors with state-court appeals are on notice: federal law applies in Kentucky state courts, but not with the bite its plain text demands. If RLUIPA is to be supreme in state courts, *see* U.S. Const. art. VI cl. 2, this Court needs to correct its misapplication in cases like this one.

Lower courts across the country have “failed to give RLUIPA the effect its written text demands.” *Tree of Life*, 905 F.3d at 376 (Thapar, J., dissenting). The Kentucky Supreme Court joined that group in the decision below. For States and localities striving to meet their citizens’ needs and prevent religious discrimination in zoning, that decision only adds to preexisting confusion in the lower courts over how RLUIPA applies. This issue is too important to go any longer without clear direction from this Court.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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