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 OF MANHATTAN INSTITUTE AND NAPA LEGAL INSTITUTE AS *AMICI CURIAE* SUPPORTING PETITIONER

Frank DeVito
NAPA LEGAL INSTITUTE
1730 M Street NW
Suite 930
Washington, D.C. 20036
frank.devito@
napalegalinstitute.org

Ilya Shapiro
Counsel of Record
John Ketcham
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan
.institute

November 23, 2026

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 (RLUIPA), 42 U.S.C. § 2000cc(a).

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF AUTHORITIES iii
INTEREST OF *AMICI CURIAE* 1
BACKGROUND AND SUMMARY OF ARGUMENT 1
ARGUMENT 3
I. RLUIPA's Text, Structure, and Purpose Stop Zoning Ordinances That Allow Opposed Neighbors to Exercise De Facto Control Over Religious Organizations' Land Use 3
A. Congress Intended RLUIPA To Protect Religious Uses of Property from Unduly Burdensome Land-Use Regulations 3
B. A Substantial Burden Cannot Be Avoided by Proposing Smaller or Alternative Uses 6
C. The Kentucky Supreme Court Misread RLUIPA by Treating a Government-Imposed Burden as "Self-Imposed" 7
II. The *Livingston* "Substantial Burden" Test Guts RLUIPA 8
A. The Lower Court Adopted An Unduly Narrow "Substantial Burden" Test 9
B. Circuit Courts Offer Tests Other Than *Livingston* That Better Preserve the Statute's Meaning and Purpose 11
C. The Third Circuit's Recent Decision in *Anash* Presents the Best Alternative "Substantial Burden" Test 13
CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004) 11

Anash, Inc. v. Borough of Kingston,
184 F.4th 214 (3d Cir. 2026) 2, 13, 14

Bethel World Outreach Ministries v. Montgomery Cnty. Council,
706 F.3d 548 (4th Cir. 2013) 11, 12, 17

Cedar Point Nursery v. Hassid,
594 U.S. 139 (2021) 4

Holt v. Hobbs, 574 U.S. 352 (2015) 6, 8

Livingston Christian Schools v. Genoa Charter Twp., 858 F.3d 996 (6th Cir. 2017) 2, 10

Missionaries of St. John the Baptist, Inc. v. Frederic, 727 S.W.3d 400 (Ky. 2025) 9

Murr v. Wisconsin, 582 U.S. 383 (2017)..... 4

Roman Cath. Bishop of Springfield v. City of Springfield, 724 F.3d 78 (1st Cir. 2013) 12, 13

Statutes

42 U.S.C. § 2000cc(a)(1)..... 9

42 U.S.C. § 2000cc(a)(2)(C)..... 3

42 U.S.C. § 2000cc-5(7)(A)–(B)..... 6

42 U.S.C. § 2000cc-5(7)(B)..... 4

Other Authorities

1 Alexis de Tocqueville, Democracy in America (Eduardo Nolla ed., James T. Schleifer trans., Indianapolis: Liberty Fund, Inc. 2010) (1840) .. 5, 6

146 Cong. Rec. S7774 (daily ed. July 27, 2000)..... 5

INTEREST OF *AMICI CURIAE*[1]

Manhattan Institute (MI) is a nonprofit policy research foundation whose mission is to develop and disseminate ideas that foster individual responsibility and agency. It has sponsored scholarship and filed briefs supporting economic freedom and property rights against government overreach.

The Napa Legal Institute is a religious nonprofit organization dedicated to providing legal education to religious organizations. The organization's mission is to protect the freedom and the missions of faith-based nonprofit organizations.

Amici file this brief because burdensome zoning restrictions threaten religious institutions as pillars of American civil society.

BACKGROUND AND SUMMARY OF ARGUMENT

The Religious Land Use and Institutionalized Persons Act (RLUIPA) was enacted to prevent discretionary zoning regimes from excluding or burdening religious land use, particularly because local opposition can function as a de facto veto over how religious institutions use their property. The Kentucky Supreme Court departed from that purpose by allowing neighbors to block a modest religious structure that the local board found would cause no harm to health, safety, or general welfare.

The Kentucky Supreme Court's decision further misinterprets RLUIPA by relying on the availability of

---

[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

smaller or alternative projects, and by characterizing the religious organization's burden as "self-imposed." RLUIPA focuses on the effect of government action on religious exercise, not on the availability of alternative projects or on a religious organization's prior awareness of zoning restrictions.

The Kentucky courts' approach is part of a broader doctrinal problem. The state supreme court adopted and applied a test drawn from *Livingston Christian Schools v. Genoa Charter Twp.*, 858 F.3d 996 (6th Cir. 2017), to determine what land-use restrictions constitute a "substantial burden" on religious exercise. That test allows governments to defeat claims by pointing to alternative sites or calling the burden "self-imposed"—neither of which appears in RLUIPA's text. Such an unduly narrow framework leaves RLUIPA with little practical force in land-use disputes.

The Third Circuit's decision in *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026), offers a standard better grounded in the statute's text, structure, and purpose. It measures substantiality by how far a regulation prevents, limits, or significantly impairs property used or otherwise available for religious exercise. *Anash* rightly rejects inquiries into alternative locations and self-imposed burdens as foreign to RLUIPA.

The Court should reject the *Livingston* standard and hold that barring a religious structure on a religious institution's own property constitutes a substantial burden under RLUIPA.

ARGUMENT

I. RLUIPA's Text, Structure, and Purpose Stop Zoning Ordinances That Allow Opposed Neighbors to Exercise De Facto Control Over Religious Organizations' Land Use

Under the rule below, a small group of neighbors who have no property rights in a religious organization's land can function as if they do. That is exactly the sort of local overreach Congress had in mind when it enacted RLUIPA. Although many kinds of religious discrimination exist, RLUIPA specifically targets land-use ordinances that require "individualized assessments" of proposed uses. 42 U.S.C. § 2000cc(a)(2)(C). Congress recognized that discretionary zoning regimes are unusually susceptible to covert discrimination, particularly from organized not-in-my-backyard ("NIMBY") opponents. Complaints about traffic, noise, parking, and neighborhood character frequently arise in zoning processes and disputes. Sometimes they reflect legitimate concerns, but in situations like this one, they empower litigious opponents. Neighbors like Respondents leverage land-use laws and processes to complain about anticipated externalities, downplaying or ignoring the potential benefits of development.

A. Congress Intended RLUIPA To Protect Religious Uses of Property from Unduly Burdensome Land-Use Regulations

Section 2 of RLUIPA ensures that objections from community members do not prevent the free exercise of religion by inhibiting the construction of facilities by religious assemblies or institutions. Congress imposed strict scrutiny on zoning regimes that burden religious institutions' use of their private property, particularly

where such burdens arise through discretionary permitting systems. It also defined religious exercise to include "the use, building, or conversion of real property for the purpose of religious exercise," making clear that the ability to develop land is itself at the core of protected free exercise. 42 U.S.C. § 2000cc-5(7)(B). Congress thus ensured that religious institutions would not be subjected to exclusion through ostensibly neutral land-use processes shaped by local opposition and administrative discretion.

As this Court recognized in *Cedar Point Nursery v. Hassid*, the "protection of property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.'" 594 U.S. 139, 147 (2021) (quoting *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017)). That protection matters for houses of worship no less than for other property owners. Indeed, it matters more because religious land uses have historically faced a mix of NIMBY opposition and discretionary obstruction.

RLUIPA does not afford religious groups immunity from reasonable zoning regulations applied neutrally, but their application must be faithful to the statute's substantial-burden standard. Here, there can be little doubt that prohibiting construction of a Marian grotto—with a plaza measuring approximately 17 by 39 feet, Pet. App. 4a—imposes a substantial burden.

The local board itself found that the grotto would not harm the surrounding neighborhood. Pet. App. 8a–9a. Yet two opposed neighbors managed to overturn Petitioner's approval, and the court below rejected Petitioner's defense under RLUIPA. If that approach

stands, it will invite neighborhood objectors to wield zoning rules as a private veto over religious land use.

Congress recognized that religious institutions, as pillars of their communities, needed protection against zoning regimes that had frequently empowered local opposition to religious exercise. The hearing record "compiled massive evidence" that the right to freedom of worship was "frequently violated" through land-use regulations. 146 Cong. Rec. S7774, S7774 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). Congress identified that "[c]hurches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation." *Id.* at S7774–75.

When land-use restrictions let local opposition block the expansion of religious facilities, the costs fall not only on the congregation, but on the broader public. Communities lose the diffuse benefits that religious institutions provide, such as charitable and civic activities, youth programming, addiction services, and counseling. Religious institutions are among the most important sources of social capital, moral formation, and community cohesion that ultimately enable effective local self-government.

Two centuries ago, Alexis de Tocqueville observed the centrality of religion in the nascent United States, describing religion as the "first of their political institutions" and crediting it with teaching Americans "the art of being free." 1 Alexis de Tocqueville, Democracy in America 472, 475 (Eduardo Nolla ed., James T. Schleifer trans., 2010) (1840). In his account, faith did not merely coexist with liberty, but was

"necessary for maintaining republican institutions," furnishing the moral habits and civic virtues upon which democratic self-government depends. *Id.* at 475.

The right to use one's property for religious exercise cannot depend on satisfying local opponents who can recast exclusion in the language and processes of ordinary zoning decision-making. Such an approach would render religious exercise contingent on neighbors' approval—precisely the dynamic Congress sought to correct in enacting RLUIPA.

B. A Substantial Burden Cannot Be Avoided by Proposing Smaller or Alternative Uses

RLUIPA defines "religious exercise" broadly and expressly includes the "use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7)(A)–(B). The question is whether Park Hills's zoning ordinance, as interpreted by state courts, substantially burdens Petitioner's religious use of its property. The statute does not ask whether a court can imagine some alternative project; this Court said as much in *Holt v. Hobbs*, 574 U.S. 352 (2015). The question is whether government has substantially burdened the claimant's religious exercise, "not whether the RLUIPA claimant is able to engage in other forms of religious exercise." *Id.* at 361–62.

Here, the Kentucky Supreme Court nonetheless held that there was no substantial burden—in part because Petitioner might construct "a smaller grotto or shrine" somewhere else on its lot. Pet. App. 25a. That logic cannot be reconciled with *Holt*. If the possibility of a downsized substitute defeats a claim, then nearly every land-use burden can be minimized by having the religious organization build ever smaller structures.

That approach is also inconsistent with basic property rights. Ownership carries a presumptive right to use and improve land, subject to lawful and reasonable regulation directed to actual public harms. Once a court tells an owner that a project is not burdened because a hypothetical alternative might still be possible, control effectively shifts from the owner to the regulator, who, in practice, responds to the most organized objectors.

The point is especially important for religious institutions, whose property decisions often reflect pastoral, liturgical, and theological judgments that courts are poorly situated to second-guess. A church may believe that a shrine belongs in one place and at one scale because that configuration best serves its religious mission. Even if a smaller or relocated version might be permitted, when courts require such changes, they collapse the distinction between ordinary land-use regulation and active management of religious design choices. RLUIPA does not authorize courts to redraw religious projects until they no longer impose a perceived burden.

C. The Kentucky Supreme Court Misread RLUIPA by Treating a Government-Imposed Burden as "Self-Imposed"

The Kentucky Supreme Court misreads RLUIPA through its contention that Petitioner's burden was "self-imposed," because, in the court's view, the Petitioner knew of the ordinance and acknowledged that the ordinance posed a problem. The statute contains no notice-based exception allowing land-use regulations to impose a substantial burden on religious exercise simply because the regulated party was aware of the restriction in advance. Congress did

not intend to condition or favor protection for religious land use on ignorance of local law.

If anything, importing such an exception would nullify RLUIPA in most cases, because zoning burdens typically arise from preexisting ordinances. As here, longstanding religious organizations—including those with grandfathered-in structures—that wish to adapt their worship to the needs of their congregations seek to build or adapt structures in ways that would violate zoning laws. Under the rule below, local governments could entrench discriminatory or unduly burdensome regulations simply by enacting them and mailing a notice to every religious organization in town. That cannot be what Congress intended.

The inquiry remains whether land-use regulations have imposed a substantial burden on Petitioner's religious exercise in the circumstances presented. The zoning ordinance, as interpreted and enforced by the state courts, prevents the proposed religious use. If this constitutes a substantial burden, the government must show that its imposition furthers a compelling interest and is the least restrictive means of furthering that interest under RLUIPA's "exceptionally demanding" standard. *Holt*, 574 U.S. at 364.

II. The *Livingston* "Substantial Burden" Test Guts RLUIPA

RLUIPA states that:

> 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)(1). That text makes RLUIPA's purpose clear. RLUIPA exists to mitigate the interference of land-use regulations with religious exercise. Even when facially neutral and generally applicable, such rules must achieve a compelling government interest through the least restrictive means to survive judicial scrutiny.

A. The Lower Court Adopted An Unduly Narrow "Substantial Burden" Test

The Kentucky Court of Appeals was correct to note that "RLUIPA's history demonstrates that Congress intended to leave intact the traditional 'substantial burden' test, as defined by the Supreme Court's free exercise jurisprudence." *Missionaries of St. John the Baptist, Inc. v. Frederic*, 727 S.W.3d 400, 410 (Ky. 2025) (citations omitted). A workable "substantial burden" test must not do away with the substantiality threshold. Eliminating it would render the word "substantial" superfluous.

But that intermediate court articulated a narrow view for determining when a burden is substantial: "courts have been far more reluctant to find a violation where compliance with the challenged regulation makes the practice of one's religion more difficult or expensive, but the regulation is not inherently inconsistent with the litigant's beliefs." *Id.* (quoting *Episcopal Student Found v. City of Ann Arbor*, 341 F. Supp. 2d 691,701–02 (E.D. Mich. 2004)).

The Kentucky Supreme Court disagreed with that rationale, Pet. App. 30a, but nonetheless affirmed the decision after adopting a four-factor test drawn from *Livingston Christian Schools v. Genoa Charter Twp*. to determine whether the "substantial burden" threshold had been met. 858 F.3d 996 (6th Cir. 2017).

The first factor "is whether the religious institution has a feasible alternative location from which it can carry on its mission." *Id.* at 1004. The second is "[w]hether the religious institution will suffer substantial 'delay, uncertainty, and expense' due to the imposition of the regulation . . . ." *Id.* The third is whether a plaintiff has imposed a 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 . . . ." *Id.* And the fourth factor is "whether there is evidence that the municipality's decisionmaking process was arbitrary, capricious, or discriminatory." *Id.* The Sixth Circuit itself declined to adopt this fourth factor. *Id.* at 1005.

Kentucky's standard robs RLUIPA of nearly all of its efficacy. Interference with religious freedom via land-use regulations often appears subtly, through facially neutral zoning laws applied to religious organizations that prevent them from using their property for worship or other religious activities. Such instances could be acceptable under the state's test because its first prong allows municipalities to reject a land use application and claim that religious organizations can use an alternative location.

The Kentucky Supreme Court's reasoning presents a false dichotomy between the *Livingston* test on the one hand and an interpretation of RLUIPA that does

away entirely with the substantiality threshold. There is ample room for a middle way that upholds the proper meaning of RLUIPA while also maintaining a real substantiality threshold. Such a course has been charted in other circuits, some of which have explicitly rejected the *Livingston* test.

B. Circuit Courts Offer Tests Other Than *Livingston* That Better Preserve the Statute's Meaning and Purpose

Multiple circuits have treated the "substantial burden" question differently than the Sixth Circuit in *Livingston*. As the Fifth Circuit noted in *Adkins v. Kaspar*, "RLUIPA does not contain a definition of 'substantial burden,' and the courts that have assayed it are not in agreement." 393 F.3d 559, 568 (5th Cir. 2004). Some circuits follow the substantial burden jurisprudence created in Religious Freedom Restoration Act cases; others do not. The Fifth Circuit acknowledges that there is wide variation among the circuits on the substantial burden test. The court then cites an important piece of legislative history surrounding the passage of RLUIPA and notes that "RLUIPA's legislative history, although sparse, affords some guidance: '[Substantial burden] as used in the Act should be interpreted by reference to Supreme Court jurisprudence.'" *Id.* at 569.

But some circuits offer better alternative tests than *Livingston* that focus on the degree of the burden on religious exercise. The Fourth Circuit has recognized that pressure to modify religious behavior can rise to the level of a substantial burden. *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 555 (4th Cir. 2013). It explained, "every one of our sister circuits to have considered the question

has held that, in the land use context, a plaintiff can succeed on a substantial burden claim by establishing that a government regulation puts substantial pressure on it to modify its behavior." *Id.* at 556. Although the Fourth Circuit is correct that RLUIPA is not simply a tool to exempt religious organizations from neutral zoning laws, in a case where the current use of land must adapt to serve a congregation's needs, some land-use regulations can rise to the level of a substantial burden. *Id.* at 557 n.4. The question is whether the regulation puts substantial pressure on the religious institution to modify its behavior, rather than its beliefs. This approach protects against both discriminatory and non-discriminatory conduct that imposes a substantial burden.

The First Circuit, meanwhile, has refused to adopt an abstract formula to determine whether a substantial burden exists under RLUIPA. *See Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96–97 (1st Cir. 2013). That court looks at factors such as whether religion or religious practice is targeted by a land-use regulation, "whether local regulators have subjected the religious organization to a process that may appear neutral on its face but in practice is designed to reach a predetermined outcome contrary to the group's requests," or whether "the land use restriction was 'imposed on the religious institution arbitrarily, capriciously, or unlawfully.'" *Id.* at 96–97. The result is that, in the First Circuit, under "the substantial burden framework, a court may block application of a land use regulation under RLUIPA's subsection (a) where the context raises an 'inference' of hostility to a religious organization, even when the evidence does not necessarily show the

explicit discrimination 'on the basis of religion' contemplated by subsection (b)." *Id.* at 97.

C. The Third Circuit's Recent Decision in *Anash* Presents the Best Alternative "Substantial Burden" Test

Since Petitioner sought certiorari, the Third Circuit issued an important opinion that can help guide this Court's articulation of a proper substantial burden test under RLUIPA. *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026). In *Anash*, an Orthodox Jewish rabbi and his congregation used two properties located in a commercial zoning district respectively as a residential property for students and members of the congregation and as a place of religious study. *Id.* at 225. After the borough adopted a new zoning ordinance, it cited both properties for zoning violations. *Id.* at 227. When the rabbi did not comply, the borough obtained administrative warrants, inspected the buildings, and condemned them the day before Rosh Hashanah, citing building-code violations. *Id.* at 228–30. It then refused to lift the condemnations until the properties complied with the zoning ordinance and threatened daily fines of $500. *Id.*

The Jewish congregation filed suit in federal district court. When the district court denied the injunction, the congregation appealed the decision to the Third Circuit. *Id.* at 231.

The Third Circuit held that the building-code provisions underlying the condemnations were not "land use regulation[s]" under RLUIPA, *id.* at 235, but concluded that the zoning ordinance likely qualified as a land-use regulation, implemented by the borough's keeping both properties closed and threatening daily fines, *id.* at 236. Given that determination, the Third

Circuit reached the question of what constitutes a substantial burden under RLUIPA, which "presents a novel question for this Circuit." *Id.* at 236. After concluding that "RLUIPA's substantial-burden provision is considerably broader for land use regulation than for institutionalized persons," the court turns to the proper scope of "substantial burden" analysis in a land use case and finds that, because RLUIPA protects a "capacious definition of religious exercise . . . the greater the nexus between a land use regulation and religious exercise, the greater the likelihood that the land use regulation will substantially burden religious exercise." *Id.* at 239. Therefore, substantiality turns primarily on the degree of the burden on religious exercise, as assessed against RLUIPA's broad definition of that exercise.

Applying these high-level principles, the Third Circuit identified the following three scenarios in which the "substantial burden" threshold would be met. First, a land-use regulation imposes a substantial burden when it "restricts *access* to real property that is otherwise available for the proposed exercise of religion." *Id.* Second, a regulation, "even one of general applicability," imposes a substantial burden when it limits the *use* of such property "so as to prevent the proposed exercise of religion on the property." *Id.* at 240. Third, a regulation that "does not directly impede religious exercise" may still impose a substantial burden if it has "*a significant adverse effect* on real property that is used or otherwise available for the proposed exercise of religion." *Id.*

There are at least two important distinctions between this framework and *Livingston*'s. First, the substantive content of the *Anash* test is more faithful to the meaning of RLUIPA. *Anash*'s three scenarios

represent broad categories of government interference with land use that commonly impede the religious use of property. *Livingston*, by contrast, creates exceptions even when one of the *Anash* scenarios applies. For example, a court can rule against the religious institution because the institution could have used its land differently or carried out its religious exercise elsewhere. These considerations do not appear in the text of RLUIPA. The result is that burdens that are substantial by any ordinary, reasonable measure fail to meet the statutory threshold because of *Livingston*'s court-imposed criteria.

Second, as a practical matter, the *Anash* framework gives clearer guidance to religious institutions, their neighbors, and local officials. It identifies three categories of regulation, any one of which can impose a substantial burden. Each category turns on the regulation's effect on religious use of the property, which the parties can assess from how the regulation operates. By contrast, the four-factor test the Kentucky Supreme Court applied contains no guidance on how the factors interact or which one controls. An institution therefore cannot know whether its burden qualifies until a court has balanced the factors after the fact.

This Court granted cert. to decide 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 RLUIPA. While the Court should answer in the affirmative, it should also reject the Sixth Circuit's test on the ground that it sets an excessively high substantial-burden threshold. To apply RLUIPA according to its plain meaning, "substantial burden" must not be reduced to mean

"any burden," but the test courts apply cannot leave religious organizations powerless to invoke RLUIPA's protections. By adopting the *Livingston* test, the court below failed the second requirement.

The Third Circuit's framework in *Anash* offers an ideal starting point. It does not eliminate the substantiality requirement—and it clearly articulates the situations that satisfy it. A land-use regulation substantially burdens religious exercise when it restricts access to property otherwise available for that exercise or limits the use of that property so as to prevent the proposed religious exercise. A regulation that does not directly impede religious exercise may nonetheless constitute a substantial burden if it has a significant adverse effect on real property used or otherwise available for the exercise of religion.

Under that framework, the resolution of this case becomes readily apparent. The Kentucky courts' barred Petitioner from building its grotto on the hillside parcel it acquired for that purpose. That is a government action that "limits the use of real property that is otherwise available for the proposed exercise of religion so as to prevent the proposed exercise of religion on the property." *Id.* at 240. The Kentucky Supreme Court's reliance on the possibility that Petitioner could build a smaller shrine on its lot does not affect the *Anash* analysis. In fact, the decision explicitly rejects such a substitution inquiry. *Id.* at 244–45 ("[I]n all but the most dire circumstances, a land use regulation that prevents access to or use of real property for religious exercise will contravene RLUIPA—regardless of the presence of feasible alternative locations for the religious exercise.").

Finally, the Court should also confirm, as the Fourth Circuit has held, that a land-use plaintiff "can succeed on a substantial burden claim by establishing that a government regulation puts substantial pressure on it to modify its behavior." *Bethel World Outreach Ministries*, 706 F.3d at 556. That standard broadens substantial burden to encompass government pressure, not only outright prohibition.

The multi-circuit split shows that alternatives to the *Livingston* test already exist that acknowledge "substantial burden" as a real threshold. The Court should restore RLUIPA's protections by setting that threshold where Congress intended it, so that court-imposed standards no longer screen out claims that warrant strict scrutiny.

CONCLUSION

For these reasons, the Court should vacate the judgment below and remand for further proceedings.

Respectfully submitted,

Frank DeVito
NAPA LEGAL INSTITUTE
1730 M Street NW
Suite 930
Washington, D.C. 20036
frank.devito@
napalegalinstitute.org

Ilya Shapiro
Counsel of Record
John Ketcham
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.
institute

November 23, 2026