

No.

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**In the Supreme Court of the United States**

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BEIT HA KAVOD,  
Petitioner,

v.

CITY OF CANTON,  
Respondent.

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF OHIO

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**PETITION FOR WRIT OF CERTIORARI**

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Twenty-sixth day of September, MMXXV

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## **QUESTIONS PRESENTED**

The question presented is whether a municipality enforcing building codes violates the Free Exercise Clause of the First Amendment to the United States Constitution when it treats one religious organization differently from another.

## **RELATED PROCEEDINGS**

State of Ohio Court of Common Pleas (Stark County):

*City of Canton, Ohio, et al., v. Beit Ha Kavod*,  
No. 2023 CV 0448 (summary judgment for  
City of Canton, Ohio granted) (Feb. 29, 2024)

State of Ohio Court of Appeals (5th Dist.):

*City of Canton, Ohio, et al., v. Beit Ha Kavod*,  
No. 2024CA00040 (affirming court of common  
pleas) (Mar. 4, 2025)

Supreme Court of the State of Ohio:

*City of Canton, Ohio, et al., v. Beit Ha Kavod*,  
No. 2024-1774 (jurisdiction declined) (Mar. 4,  
2025)

## TABLE OF CONTENTS

Questions Presented .....	i
Related Proceedings .....	ii
Table of Authorities.....	v
Opinion Below .....	1
Jurisdiction.....	1
Constitutional Provisions.....	1
Statement of the Facts .....	1
Statement of the Case .....	4
Summary of the Argument .....	6
Reason for Granting the Petition .....	7
A.    City of Canton’s Animus towards Beit Ha Kavod .....	8
B.    Disparate Treatment of Petitioners .....	8
Conclusion .....	9

Appendix

Appendix A

Order declining jurisdiction, Supreme  
Court of the State of Ohio, *City of  
Canton, et al. v. Beit Ha Kavod*,  
No. 2024-1774 (Mar. 4, 2025) ..... App-1

Appendix B

Opinion, State of Ohio Court of Appeals,  
Fifth District, *City of Canton, et al. v.  
Beit Ha Kavod*,  
No. 2024CA00040 (Nov. 12, 2024) ..... App-2

## TABLE OF AUTHORITIES

### Cases

<i>Cantwell v. Connecticut</i> , 310 U. S. 296 (1940).....	7
<i>Employment Div., Dept. of Human Resources of Ore.</i> <i>v. Smith</i> , 494 U. S. 872 (1990).....	7
<i>Lukumi Babalu Aye, Inc. v. Hialeah</i> , 508 U. S. 520 (1993).....	7
<i>Prater v. City of Burnside, Ky.</i> , 289 F.3d. 417 (CA6 2002) .....	8
<i>Vandiver v. Hardin County Bd. Educ.</i> , 925 F.2d 927 (CA6 1991) .....	8

### Statutes

U.S. Const., Amdt. I .....	1, 7
28 U.S.C. § 1257 .....	1
42 U.S.C. § 1983.....	6

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Petitioner Beit Ha Kavod respectfully prays that a writ of certiorari be issued to review the judgment below.

### **OPINION BELOW**

The Opinion of the Ohio Supreme Court appears as Appendix A to this petition.

### **JURISDICTION**

The Ohio Supreme Court issued its decision on March 4, 2025. A copy is attached as Appendix A. The decision of the Ohio Fifth District Court of Appeals is attached as Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

### **CONSTITUTIONAL PROVISIONS**

U.S. Const., Amdt. I: The proceedings below violate the Petitioner's rights under the Federal Constitution.

### **STATEMENT OF THE FACTS**

Beit Ha Kavod, an individual doing business as Beit Ha Kavod Messianic Synagogue Ministries is a tax-exempt messianic congregation that purchased and has operated its ministry out of the historic Timken Stables, which was purchased at a foreclosure auction in 2013. The previous owners of the stables had allowed Appellants to hold services there before the sale. Beit Ha Kavod's Synagogue has been holding services at the property, even outdoors



on the patio, since 2019, after the City forbade the Appellant from holding services inside.

The congregation began making all necessary repairs to the property in 2018. While the congregation was making repairs, David Molnar and various officials from the City of Canton's Code Enforcement Department, Building Department, and Canton Fire Inspection Bureau inspected the Property. Even though the congregation was working on making the necessary repairs to the building, Mr. Molnar stated that the interior work on the building had to cease because the proper permits had not been obtained. Licensed contractors were not doing the work.

The congregation was also informed that continuing to make further improvements to the building could result in Mr. Lancaster's jail time. Even though the congregation wanted to make the necessary repairs to their place of worship in good faith, they complied with Mr. Molnar's orders and ceased all interior work on the building. A couple of months after this interaction, on October 10, 2018, Mark and Heidi Lancaster attended a meeting in the Canton City Prosecutor's Office with Assistant Prosecutor Kelly Parker, Chief Building Official David Molnar, and Code Officer Karla Heinzer regarding the status of the property. During the meeting, Mr. and Mrs. Lancaster presented a viable and feasible plan to complete repairs on the building within 12 months. The plan included an inspection report from Structural Engineer Phil Reed of Ohlin & Reed Consulting Engineers, NC, Architect Carlton Buck of Four Points Architectural Services, and a roofing contractor plan and cost analysis for

repairing the roof. The plan allowed for the repairs to be made in stages, beginning with roof sections and continuing for a calendar year until the entire roof had been adequately repaired and replaced. The cost of repairs and the funding for the project were presented during the meeting. Instead of acknowledging the well-formulated plan, the City rejected the plan and insisted that the roof must be repaired at once or not at all. Mr. Molnar told Mr. and Mrs. Lancaster that he wanted them to know that “faith will not fix your roof.”

In August 2019, Canton issued citations against the Synagogue for failure to make the repairs. The inspectors informed Mr. Lancaster that the Ohio Board of Appeals hearing would be in Columbus and was simply a formality. The inspectors also told Mr. Lancaster that the likely outcome would be granting an extension and that while he could attend, it was unnecessary because he would not be able to say anything at the hearing on behalf of the Synagogue. Because of these comments, Mark decided not to attend the hearing, but his wife, Heidi, chose to go instead. Unfortunately, based on the faulty information, Heidi went to Columbus instead of Ashland, where the meeting was held, and missed the hearing. Due to missing the hearing and failing to make a statement to the Board of Appeals, the Board of Appeals upheld the violations against the Synagogue and assessed a civil penalty against it. The City of Canton Law Department ordered the Synagogue to vacate the Property. The Synagogue is ready and willing to complete the repairs. Still, unfortunately, their hands have been tied by the litigation and exorbitant fees they faced for the

violations against the building they attempted to remedy.

The Synagogue has a strong desire to return the building to its former glory and has engaged several contractors interested in repairing it.

### **STATEMENT OF THE CASE**

This civil case originated in the Common Pleas Court of Stark County, Ohio, in Case No. 2023 CV 00448. Plaintiffs-Appellees, City of Canton, and the Ohio Department of Commerce Division of State Fire Marshal (“Plaintiffs” or “Appellees” or “the City”) brought this action under Civ. R. 65 and R.C. 3737.42-.46 against the Defendant-Appellant, Beit Ha Kavod (“Kavod” or “Appellant” or “the Synagogue”), requesting an order requiring Appellant to bring the property identified as 2317 13<sup>th</sup> Street, Canton, Ohio (“Property”) into compliance with the Ohio Fire Code, Fire Department Citation No. 19-001 (“Citation”), and the Final Decision of the Board of Appeals in Case No. GLD 19-0006, and absence compliance, ordering the Property sold under R.C. 3737.45.

On April 11, 2023, acting pro se, the Appellant filed an Answer and Counterclaim, alleging that the Appellees violated Kavod’s United States Constitutional right of freedom of exercise of their religion and requesting equitable relief (the “Counterclaim”). On April 20, 2023, Appellee responded to file a Motion to Strike and for Default Judgment. Kavod filed a Motion in Opposition to Appellee’s Motion to Strike and for

Default Judgment. The Judge granted Appellee's Motion and set a hearing for Default Judgment for May 25, 2023.

On May 23, 2023, Kavod retained the undersigned counsel, who filed a motion for leave to plead, which the Trial Court granted. An Answer and Counterclaim were filed on June 2, 2023, alleging the violation of Kavod's constitutional right of freedom of exercise.

Appellees filed their Motion for Summary Judgment on January 16, 2024, arguing that Canton was entitled to a mandatory injunction under R.C. 3737.45 and an order to pay fines under R.C. 3737.51. *See* Appellee's Motion for Summary Judgment. Appellees also alleged that Kavod's Counterclaims were without merit. t. Kavod responded on February 16, 2024, arguing that Appellee failed to meet its burden on summary judgment, that Appellee was unable to provide sufficient evidence, as required by a summary judgment proceeding, to demonstrate that it should prevail in its motion and that there are genuine issues of material fact surrounding Kavod's claim that Appellee's violated their constitutional right of freedom of exercise and acted to deprive them of their constitutional right. *See* Brief in Opposition to Appellee's Motion for Summary Judgment. On February 20, 2024, Appellee filed a Reply Brief to Kavod's Brief in Opposition to Motion for Summary Judgment.

On February 29, 2024, the Court issued an order granting Appellee's Motion for Summary Judgment, finding that no material issues were disputed. The order is attached hereto as Exhibit

A. The Trial Court also found that the Synagogue failed to meet its burden regarding its counterclaims based upon 42 U.S.C. § 1983.

The Synagogue filed this Notice of Appeal from the Trial Court's Orders on February 29, 2024. The Fifth District Court of Appeals affirmed the Stark County Common Pleas Court decision on November 11, 2024.

A notice of appeal and memorandum in support of jurisdiction were filed with the Ohio Supreme Court on December 24, 2024. The court declined jurisdiction on March 4, 2025. This timely petition for certiorari follows.

### **SUMMARY OF THE ARGUMENT**

Here, the Petitioners own a building that requires a new roof. Respondents are the municipality charged with enforcing building codes. They issued a violation to fix the roof. Other religious organizations within the city had similar violations but were not cited. Rather than allowing petitioners time to raise money and repair the roof, the respondents required the roof to be fixed immediately.

Respondents further made remarks indicating they were being treated differently because of their religious beliefs, including making remarks during meetings and threats to incarcerate the Petitioners for some time if the building is not brought up to code under their timeline.

## REASON FOR GRANTING THE PETITION

The Free Exercise Clause provides that “Congress shall make no law... prohibiting the free exercise” of religion. U.S. Const., Amdt. I. This Court has held the Clause applicable to the States under the terms of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940). The Clause protects not only the right to harbor religious beliefs inwardly and secretly. It does its most important work by preserving the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through “the performance of (or abstention from) physical acts.” *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872, 877 (1990).

Petitioner may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice under a policy that is not “neutral” or “generally applicable.” *Id.* at 879-881. Should a plaintiff make a showing like that, this Court will find a First Amendment violation unless the government can satisfy “strict scrutiny” by demonstrating its course was justified by a compelling state interest. It was narrowly tailored in pursuit of that interest. *Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 546 (1993).

Suppose a municipality’s action is not facially constitutional. In that case, the plaintiff must show that the city intentionally sought to burden religious activities, and there was a disparate impact to prove discriminatory animus on the part of the city. *Prater v. City of Burnside, Ky.*, 289 F.3d. 417, 428 (CA6

2002). Religious discrimination based on disparate impact “requires evidence that a party was treated differently than a similarly situated party with a different religious affiliation.” *Id.* (citing *Vandiver v. Hardin County Bd. Educ.*, 925 F.2d 927, 934 (CA6 1991)).

**A. City of Canton’s Animus towards Beit Ha Kavod**

Respondents here have infringed on the Petitioner’s free exercise of religion. The animus towards the Petitioners is evident and open. Petitioner presented during litigation below the affidavit of Synagogue Rabbi Mark Lancaster, who was told during a meeting with the Chief Building Official and other city officials, “*I want you to know that faith will not fix your roof.*”

Within the same meeting, city officials rejected a thoughtful and organized plan to renovate the building and bring it up to code, instead demanding that the building be fixed immediately. Evidence was also presented that the Respondents threatened to incarcerate the Petitioners regarding this building code violation.

**B. Disparate Treatment of Petitioners**

The Canton Fire Department has issued a notice of violations of the Fire Code to forty-eight properties owned by religious organizations since 2017. However, none of the organizations were officially cited for those violations while they were

being corrected. The Synagogue was “similarly situated” as to these other religious organizations. But, unlike these other organizations, the Appellant was cited and not allowed to work on the property.

The city only gave them 30 days to repair or replace the building’s roof. However, such a repair would take much longer than 30 days, with a budget of one to two million dollars. Instead of working with the Synagogue and allowing for the necessary maintenance, the city failed to provide them with leniency, as they have customarily done for other religious organizations.

### CONCLUSION

This Court should grant certiorari.

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Dated: September 26, 2025    *Attorney for Petitioner*