

No. _____

In the
Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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February 11, 2026

SUPREME COURT PRESS

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BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether the First Amendment's established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by *Williamson Cnty.*'s land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Daniel Grand

Respondents and Defendants- Appellees below

- City of University Heights, Ohio;
- Michael Dylan Brennan, Mayor,
in his official and individual capacity;
- Luke McConville, City Law Director,
in his individual capacity; and
- Paul Siemborski, City Planning Commission
Member, in his individual capacity

LIST OF PROCEEDINGS

- *Grand v. City of University Heights*, No. 24-3876 (6th Cir.): Opinion affirming dismissal (Nov. 13, 2025) (Sutton, C.J.; Batchelder & Larsen, JJ.).
- *Grand v. City of University Heights*, No. 1:22-cv-01594 (N.D. Ohio) (Brennan, J.): Memorandum Opinion and Order granting summary judgment to defendants in part and dismissing claims for lack of ripeness (Sept. 30, 2024); Amended Memorandum Opinion and Order (Oct. 1, 2024).

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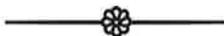
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JURISDICTION

The Sixth Circuit entered judgment on November 13, 2025. (App.19a). This Court has jurisdiction under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (App.69a)

U.S. Const. amend. XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This clause has been interpreted to incorporate the First Amendment against the states and to prohibit vague laws that chill protected activities.

42 U.S.C. § 2000cc(a)(1)

The Religious Land Use and Institutionalized Persons Act (RLUIPA)

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 is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.

This provision applies where the burden is imposed in a program receiving federal financial assistance, affects commerce, or involves individualized assessments in zoning or landmarking. 42 U.S.C. § 2000cc(a)(2).

42 U.S.C. § 2000cc(b)(1)

No government shall 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.

42 U.S.C. § 2000cc(b)(2)

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

**INTRODUCTION**

This petition presents a critical opportunity for this Court to clarify the doctrinal framework and resulting scope of individual liberty applicable to municipal orders chilling the free exercise of religion both before and after an administrative process governing the use of the home for certain religious activities. Petitioner Daniel Grand, a devout Orthodox Jew, sought to engage prayer with a minyanim, or gathering of at least ten adult males, in a single room of his residence in University Heights, Ohio on the Jewish Sabbath and High Holidays. These gatherings were entirely non-commercial, involved no structural changes to the home, no signage, no amplification, and no disruption to the neighborhood beyond ordinary residential activity. Notably, because Orthodox Jews do not drive on the Sabbath or High Holidays, Grand's plan involved no possible traffic issues.

Yet, when Grand sought to begin this practice in January 2021—without even providing him an opportunity to keep his proposed prayer group to a certain maximum size pending a regulatory ruling—Respondent Mayor Michael Dylan Brennan responded with swift and coercive action: a cease-and-desist order (CADO) drafted by the City's Law Director and thus bearing

the imprimatur of an official legal order. The CADO explicitly branded Grand’s religious exercise as creating an illegal “religious place of assembly” under the City’s zoning ordinance and demanded that Grand cease any use of his home for group religious activities until he had received a special use permit from the City’s planning commission. When Grand attempted to comply, he was confronted with a rigged process using an adversarial “quasi-judicial” approach apparently for the first time in the City’s history. In the face of this hostility and the mayor’s refusal to provide Grand with an opportunity to supplement his materials, Grand withdrew his application for an SUP. But when Grand withdrew his application, he faced further and even more extreme chilling of his free exercise rights: Mayor Brennan doubled down, pronouncing that the private conduct of any activities “consistent with” those conducted in a house of worship would be met with punishment. Further, Mayor Brennan warned Grand that the City was on alert and encouraged neighbors to report any conduct (obviously Grand’s) in violation of this pronouncement to the authorities for punishment.

The doctrinal issue—on which the Circuit courts are split—is whether the regulatory takings “finality” doctrine articulated in *Williamson Cnty. Planning v. Hamilton Bank*, 473 U.S. 172 (1985) and clarified in more recent cases of *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019) and *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 479 (2021) applies at all to First Amendment free exercise cases, or whether First Amendment free exercise claims of the type encountered by Grand are more appropriately decided under the time-honored framework of

Steffel v. Thompson, 415 U.S. 452 (1974); *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014), under which the courts do not look even to a relaxed “de facto” administrative finality, but ask whether the governmental threat is substantial, credible and immediately harmful if not complied with.

The approach of the Sixth Circuit presents the doctrinal issue in the sharpest possible manner: for the Sixth Circuit, because Grand had available a zoning process to determine his rights, the Mayor’s action, both before and after the planning council hearing—which contained no “safe harbor” for a maximum number of worshippers, as in the leading Second Circuit case of *Murphy v. New Milford Zoning Commission*, 402 F.3d 342 (2005); prohibited the creation of a “shul” (App.116), a term not defined in the relevant statute (App.74a); and contained no suspensive procedure pending administrative review—his Free Exercise claims were never “ripe” for review. The Sixth Circuit’s position not only sharpens a split between the circuit but creates a profound rift with this Court’s long-standing jurisprudence that the restriction of First Amendment rights, even for a “minimal” period, see *Elrod*, 427 at 373, constitutes an irreparable injury.

The underpinning of this jurisprudence is a foundational concept of individual liberty alien to the regulatory takings context. While a taking can be met with “just” compensation, any attack on individual liberty can only be remedied, if at all, with injunctive relief and money damages. Damages and “just” compensation do not collapse into each other but represent profoundly divergent responses to fundamentally

different situations. By confusing *Williamson Cnty.* administrative “ripeness” with traditional notions of the immediacy and actuality of harm, the Sixth Circuit impermissibly blessed a direct assault on Grand’s freedom of exercise. This case, with its simple, stark facts, represents the perfect vehicle for this Court to clarify the doctrinal issues surrounding ripeness in a context involving both individual liberties and municipal zoning—an issue that is likely to grow in importance as more and more associative activities move to private homes in the wake of the Covid pandemic and broader demographic trends.¹

¹ The intersection of home-based worship and municipal zoning is likely to become only more pressing as the American population ages. The United Nations projects that persons aged 65 and older will nearly double worldwide—from 703 million to 1.5 billion—by 2050. U.N. Dep’t of Econ. & Soc. Affs., Population Div., *World Population Ageing 2019: Highlights* 5, U.N. Doc. ST/ESA/SER.A/430 (2019) (<https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2019-Highlights.pdf>). Domestically, AARP surveys consistently find that approximately 75% of adults over 50 wish to remain in their homes as they age. See Joanne Binette, *2024 Home and Community Preferences Among Adults 18 and Older* 15, AARP (<https://doi.org/10.26419/res.00831.001>). At the same time, the nation faces a projected shortage of 151,000 paid direct care workers by 2030, rising to 355,000 by 2040. Paul Osterman, *Who Will Care for Us? Long-Term Care and the Long-Term Workforce* 42 (2017). As more elderly and infirm Americans age in place—unable to travel to a house of worship but retaining, as one study of homebound ministry found, “a desire to be included and remain an integral part of their faith community”—small home-based prayer groups, Bible studies, and worship gatherings led by or for such individuals will inevitably proliferate. See C. Adebayo and A. Bishop, *Exploring Application of Smart Companion Robots to Facilitate Faith-Based Ministries for Older Homebound Adults*, INNOVATION IN AGING, December 16, 2020 315–6 (https://academic.oup.com/innovateage/article/4/Supplement_1/315/

In reversing the Sixth Circuit and clarifying the scope of *Williamson Cnty.* finality, this Court will also ensure that the right to engage in religious activities in the home cannot be arbitrarily restricted without consequences by overly zealous municipal authorities. *See, e.g.,* Tracy A. Thomas, *Ubi Jus, Ibi Remedium: The Fundamental Right to A Remedy Under Due Process*, 41 SAN DIEGO L. REV. 1633, 1640 (2004). Rights come not from “drawing arbitrary lines but rather from careful respect for the teachings of history (and), solid recognition of the basic values that underlie our society.” *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503 (1977).

Here, once the CADO was issued by the City’s Law Director, with a credible threat of criminal enforcement if not respected, the violation of Grand’s rights matured. The existence of an administrative process did not excuse the violation of these rights, as there was no appeal or suspensive procedure under local law. That Grand pursued an administrative remedy to avoid criminal penalties for praying in his home does not undo the constitutional harm he suffered when the Mayor issued the CADO. *Koontz v. St. Johns River Water Management Dist.*, 570 U.S.

6036235). This trend will be further accelerated by the ongoing contraction of brick-and-mortar houses of worship: in 2023, political science professor and religion researcher Ryan Burge said about a third of the country’s 350,000 churches are “on the brink of extinction.” *See* Scott Neuman, *The faithful see both crisis and opportunity as churches close across the country*, NPR, May 17, 2023 (<https://www.npr.org/2023/05/17/1175452002/church-closings-religious-affiliation>). When the church cannot come to the congregant, the congregant’s home becomes the church—and municipal zoning regimes that treat such gatherings as impermissible land uses will face recurring constitutional challenge.

595, 604 (2013) (individuals may not be coerced into giving up constitutional rights); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012 (1992) (existence of special permit procedure does not render constitutional claim unripe). Nor does Grand’s withdrawal of his application in the face of community and council hostility and outright antisemitism cure the municipality’s threatening punishment for the conduct of protected religious activity in the home. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (where individual is subjected to threat of penalties for the exercise of constitutional rights, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenge).



STATEMENT OF THE CASE

A. Factual Background

University Heights, Ohio, a small suburb east of Cleveland with a population of approximately 13,000, has seen significant demographic shifts in recent years, including a burgeoning Orthodox Jewish community concentrated along its eastern border adjacent to neighboring cities with established synagogues. Petitioner Daniel Grand, an observant Orthodox Jew, acquired a single-family residence at 2434 Miramar Boulevard in University Heights in 2019. App.23a. Because driving is prohibited on the Sabbath and High Holidays, traveling to and from synagogues is difficult Grand and his family. App.2a.

Central to Orthodox Jewish practice is the requirement for adult males to pray three times daily—

preferably with a minyan, a quorum of at least ten adult males. *Id.* In January 2021, Grand circulated an email to approximately 12 people in the community, proposing the hosting of a minyan in a room in his home, which he referred to as a “shul.” App.2a. A neighbor complained to City Mayor Michael Brennan about Grand’s intended use of his home, and Brennan, in turn, notified City Law Director Luke McConville. App.3a. Hours after Brennan and McConville spoke, McConville issued the CADO to Grand ordering Grand to cease any use of his home as a “place of religious assembly” for us “synagogue” or “shul” without a special use permit. *Id.*

The CADO did not define what was meant by either a “shul” or a “place of religious assembly,” neither of which is defined by in the relevant statute;² did not have any “safe harbor” for the number of individuals who could congregate at the Grand home; and did not provide any guidance for a stay of the CADO pending administrative review. The CADO threatened legal action in the event of non-compliance, App.116a, a threat made even more credible by the known actions that had been taken against home-based or “pop-up” synagogues that had not resulted in any clear rules regarding the hosting of minyanim in private homes. App.144a. Specifically, Mr. McConville wrote:

² UHCO 1274 refers to “Houses of Assembly,” “Houses of Worship,” and “Synagogues,” but not “places of religious assembly” (which could be a room in a house, but not the house itself) or “shuls,” which are synonymous with “synagogues” in most, but not all, usages. *See* App.161a (Brennan Dep., admitting that a shul could mean a “small gathering” or a large place of assembly, and could mean either a school or a synagogue).

The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future, the City hereby demands that you immediately cease and desist and any all such operation. Violation of the City ordinances in this manner may result in building code citations against you and in the pursuit of additional remedies.

App.116a.

Then, when Grand applied for a special use permit, the City unexpectedly switched the hearing format to “quasi-judicial” without prior notice, apparently a departure from standard administrative procedures. App.29a. This format “locked the record” at the outset, preventing Grand from submitting additional evidence or amending his application mid-process, ensuring any appeal would be limited and likely unsuccessful. App.32a. In the face of the inability to supplement his application, Grand withdrew his application. *Id.* Mayor Brennan, however, did not leave matters there, but doubled-down on the earlier ban pronounced by Mr. McConville:

I’m hopeful that the wording of the withdrawal is not intended to suggest that congregating weekly at a residence to conduct activities consistent with those in a house of assembly does not require a special-use permit. As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and

ultimately obtained a permanent injunction in court. To the community members who are here, let there be no question, there is no permission granted here to operate—there is no permission granted here to operate a house of assembly or conduct activities consistent with one at 2343 Miramar Boulevard. If you observe such activities, and I hope you do not, but if you do, you may report them to the city, and the city will enforce its laws, which exist for the benefit of the entire community. And we will seek all appropriate remedies in court.

App.144a.

This pronouncement was even more chilling than the original CADO, which remained in place. Mayor Brennan underscored that activities “consistent with those” of a house of worship were banned absent an SUP, that engaging in such conduct could result in penalties, and that citizens should report any suspicious behavior inconsistent with the order. Viewed through the lens of classic First Amendment doctrine, it is hard to imagine a more immediate and direct threat to an individual’s personal liberty than this vague, sweeping, limitless ban encouraging citizen spying and threatening punishment for private activities “consistent” with those of a house of worship. Applying *Williamson Cnty.* “finality” in this context is not simply doctrinally wrong as a theoretical matter, it is practically devastating to individual liberty.

B. Proceedings Below

Grand filed his initial complaint on September 8, 2022, in the U.S. District Court for the Northern Dis-

trict of Ohio, App.35a, alleging violations of RLUIPA's substantial burden (42 U.S.C. § 2000cc(a)), equal terms (*id.* § 2000cc(b)(1)), and nondiscrimination (*id.* § 2000cc(b)(2)) provisions; the First Amendment's Free Exercise, Free Speech, and Assembly Clauses; the Fourteenth Amendment's Due Process Clause (for vagueness); the FACE Act (18 U.S.C. § 248); and state law claims. App.36a. The parties cross-moved for summary judgment. Grand sought partial judgment on his core constitutional claims, emphasizing the coercive nature of the CADO and hostility evidence as establishing ripeness and merits. App.38a. Respondents opposed Grand's motion in full. *Id.*

The district court dismissed the RLUIPA and core constitutional claims without prejudice for lack of ripeness. App.50a. On appeal, Grand pressed that the CADO and the Mayor's March 23 pronouncement constituted independently actionable harm with sufficient directness and immediacy to meet traditional ripeness standards. App.9a. Grand also argued that he had established futility and preserved his facial claims. App.10a. The DOJ filed an amicus curiae brief supporting reversal, arguing RLUIPA's "impose or implement" language covers pre-final determination conduct, and that categorical finality ignores the nuances of individual claims. App.94a-113a. The Sixth Circuit affirmed in an opinion approved for publication, holding the Grand "misapprehended" the nature of the CADO, essentially disregarding its coercive effect. App.9a. Without analysis, the Court assumed its conclusion: the CADO was not final, Mayor Brennan and the Law Director had no say in the ultimate zoning issue, and what they had to say was, in essence, irrelevant. *Id.* The Court did not address Grand's

arguments about the chilling effect of the March 23 pronouncement. It minimized the harm to Grand, stating that the dismissal had been without prejudice, but failing to address the harm caused by the self-censoring impact of the CADO and the March 23 pronouncement. The Court also noted that Grand had held at least one minyan in his home in the years since the withdrawal of his application, presumably intending to show that Grand's First Amendment rights had not been chilled. App.13a. However, the Circuit Court did not indicate when this minyan occurred and the District Court noted that the City now takes the position that a small prayer gathering would not require special use permit. App.38a-39a. However, like the Sixth Circuit, the District Court collapses the time from the March 23, pronouncement to the present. The District Court thus glosses over whether Grand suffered a restriction in his rights from the time of the pronouncement to the unspecified date on which the City changed its position.

No rehearing of the Sixth Circuit's decision was sought, bringing the case here.



REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve a circuit split and affirm the applicability of traditional First Amendment principles to questions of individual liberty notwithstanding an overall zoning context. *Williamson Cnty.* finality should not be used as a shield to protect government officials from the consequences of assaults on interim expressive or associative activity or on such activity that occurs after an individual withdraws from a zoning process. This issue is of fundamental doctrinal and societal importance.

I. The Courts of Appeals Are Divided on What Constitutes a “Final Decision” in First Amendment/RLUIPA Cases.

The lower courts are irreconcilably divided on the threshold ripeness inquiry in RLUIPA and Free Exercise challenges to municipal action that “chills” First Amendment rights in the broader context of land use regulations. The result is doctrinal incoherence and inconsistent protection of individual religious liberty.

Several circuit courts recognize that *Williamson* finality should not apply at all in the First Amendment/RLUIPA context. *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 91 (1st Cir. 2013) (“In reaching this conclusion, we rely on traditional notions of ripeness. We do not rely, as did the district court, on specialized Takings Clause ripeness doctrine. In regulatory takings cases, a property owner must follow the procedures for requesting the applicable zoning relief, and have its request denied, before

bringing a claim in court . . . Here, by contrast, the Ordinance’s effect on RCB’s free exercise rights may well become clear at a different point than that contemplated by takings law”); *Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1357 (11th Cir. 2013) (refusing to apply *Williamson Cnty.* finality doctrine).

Other Circuit courts, however, rigidly apply *Williamson County*. See *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 976–77 (9th Cir. 2011) (following *Williamson Cnty.* in detail). See *Congregation Anshei Roosevelt v. Plan. & Zoning Bd. of Borough of Roosevelt*, 338 F. App’x 214, 217 (3d Cir. 2009) (adopting strict *Williamson Cnty.* finality and rejecting the claims of religious institutions on ripeness grounds.).

Most obviously, of course, the Sixth Circuit has whole-heartedly adopted *Williamson Cnty.* and deployed its ripeness analysis to dismiss claims before a final administrative ruling on the allegedly controlling land-use issue. See *Grace Community Church v. Lenox Township*, 544 F.3d 609, 618 (6th Cir. 2008) (the argument that *Williamson Cnty.* should be confined to regulatory takings cases was “conclusively rejected”); *Insomnia Inc. v. City of Memphis, Tennessee*, 278 F. App’x 609, 613 (6th Cir. 2008) (citing “long-standing rule that local government entities first issue final decisions regarding the land at issue before any challenge to such decision is mature for federal review”). In the case at bar, the Sixth Circuit upheld the dismissal of petitioner’s claims as unripe because he had not waited for a final determination from the planning

commission, notwithstanding the independent harms from the CADO and the March 23 pronouncement.³

The split stems from the tensions between First Amendment harm and administrative finality. As the First Circuit has correctly observed, the timing of preliminary or interim First Amendment harms and final zoning injury does not necessarily overlap. *See supra* at 13. But the fact that an individual harm is “preliminary” or “interim” does not make it less of a harm. If a police officer punches a citizen in the face as she waits to be heard on a traffic violation, it is no answer to the harm suffered to say that it is preliminary or interim and that the citizen must wait for a final determination before she alleges injury. The difficulty in the present case, of course, is that the punch in the face and the final determination are related, in the sense that the municipal authority chilling First Amendment activity is doing so in the name of an ultimate zoning process. But this does not make the harm any less immediate and real.

Consider a large Jewish family during Passover in a non-Jewish (and potentially antisemitic) neighborhood. Every year the children in the family enact the ten plagues of Egypt with a volubility that can be heard outside the home. Some neighbors complain and after the family’s first Seder, the Mayor issues a cease-and-desist order prohibiting any home theatrical

³ The Second Circuit appears to be moving in this direction of the First and Eleventh Circuits, but has not yet abandoned the use of *Williamson Cnty.* finality altogether. *See Ateres Bais Yaakov Academy of Rockland v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023) (applying *Williamson Cnty* and *Pakdel* but finding that the finality requirement under this line of cases is “relatively modest” and requires only “de facto” finality).

productions without a theater permit and threatening prosecution for any violations. Surely the family should not be put to the Hobbesian choice of facing family official sanctions or sacrificing their religious traditions simply because the activity in some sense involves land use, and there is no “final” determination as to the application of the zoning statute to home theaters.

Or consider a second hypothetical: imagine that since the election of Donald Trump, every July 4, a couple burns the American flag on their front lawn to protest what they view to be Trump’s assault on democracy. The couple lives in a generally pro-Trump neighborhood and the neighbors complain to the Mayor, who on July 3 issues a cease-and-desist order, citing an obscure fire code provision relating to the outside lighting of fires and threatening prosecution if the couple proceeds without going through the fire department review and approval process. Surely, the couple has an immediate claim that should not have to wait for an administrative body to resolve with “finality” the applicability of the local statute—particularly if the Mayor has not used the least restrictive means to constrain the activity, such as requiring the use of a windbreaker or enclosure to prevent the spread of fire.

In the general First Amendment context, the law is settled that a plaintiff need not wait to be prosecuted if a coercive law chills the exercise the plaintiff’s rights. See *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (“it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights”); *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 757 (1988) (“the mere existence

of the licensor’s unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused”); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (reversing Sixth Circuit where threat of future enforcement was “substantial”). There is no principled reason general First Amendment principles should be abandoned simply because an activity in some sense concerns municipal zoning authority. Traditional justiciability should govern an alleged violation of constitutional rights by a municipal actor in the course of a proceeding otherwise subject to final agency approval. For example, in *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393, *certified question answered sub nom. Commonwealth v. Am. Booksellers Ass’n, Inc.*, 236 Va. 168 (1988), in finding that the plaintiffs had established standing, the Court stated:

We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution).

More recently, again applying Article III standing test to determine whether pre-enforcement challenges were ripe, the court articulated the standard clearly:

Specifically, we have held that a plaintiff satisfies the injury-in-fact requirement where

he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.

Susan B. Anthony, 573 U.S. at 159.

This language applies almost verbatim to Grand: he had clearly expressed an intention to engage in a course of conduct affected with a constitutional interest (free exercise of religion, freedom of association); the Mayor had indicated the proposed activity was proscribed by statute; and the Law Director had threatened prosecution in the form of “additional remedies”. There is no principled reason not to apply these principles simply because there is an administrative review process that may ultimately permit the challenged activities. From the time of the CADO threat to the ultimate Planning Commission determination, Grand is in precisely the same situation as the *Am. Booksellers Ass’n* or *Susan B. Anthony List* plaintiffs. The doctrinal incoherence produced by extending *Williamson Cnty.* and enshrined in the starkest fashion by the Sixth Circuit in the case at bar should be addressed and rectified now, not only for uniformity of law, as important as that is, but to affirm core principles that are otherwise buried in the nuances of the effect of *Knick* and *Pakdel* on *Williamson Cnty.*

Here, the crucial issue is to disentangle First Amendment and property rights. First Amendment rights are intrinsic to the individual herself and constitute a key component of personhood. See David S. Han, *Autobiographical Lies and the First Amendment’s Protection of Self-Defining Speech*, 87 N.Y.U. L. REV. 70, 92 (2012) (“freedom of speech . . . is an essen-

tial attribute of individual personhood”); Steven D. Smith, *Meyer, Pierce, and the Formation of Persons*, 26 J. CONTEMP. LEGAL ISSUES 55, 59 (2025) (“the point of the most solid and celebrated of constitutional rights—freedom of speech, freedom of religion, and such—is to protect persons in the exercise or manifestation of their personhood”); Lucien J. Dhooge, *The Equivalence of Religion and Conscience*, 31 NOTRE DAME J.L. ETHICS & PUB. POL’Y 253, 292 (2017) (citing Yossi Nehushtan, *Secular and Religious Conscientious Exemptions: Between Tolerance and Equality*, in *Law and Religion in Theoretical and Historical Context* 243, 245 (Peter Cane et al. eds., 2008) (describing accommodation of an individual’s conscience as “always reflect[ing] respect for his autonomy and personhood”); Steven D. Smith, *What Does Religion Have to Do with Freedom of Conscience?*, 76 U. COLO. L. REV. 911, 935 (2005), Martha C. Nussbaum, LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA’S TRADITION OF RELIGIOUS EQUALITY 79 (2008).

In contrast, a “taking” involves a dispossession or near dispossession of an interest in some external object that is replaceable with “just compensation.” A deprivation of the right to speak, think or believe, involves a circumscription or limitation of the individual in her “person-ness” and can never be taken for “just compensation.” An individual whose rights are harmed may be entitled to money damages, but the Government cannot lawfully pay individuals to believe or to renounce their beliefs. A taking occurs as the logical end to some process, whereas a constitutional deprivation of free speech or religion can occur anywhere in a continuum leading to an ultimate end result.

This is why, in the First Amendment context, the harm to individual rights from cease-and-desist orders or similar pronouncements is almost always sufficiently immediate and actual to confer standing. See *Steffel*, 415 U.S. at 459; *Susan B. Anthony*, 573 U.S. 164; *Ballen v. City of Redmond*, 466 F.3d 736, 740 (9th Cir. 2006) (implicitly finding that hand delivery of cease and desist letter provided sufficient concrete injury for plaintiff to proceed); *Def. Distributed v. Grewal*, 971 F.3d 485, 494 (5th Cir. 2020) (issuance of cease-and-desist letter formed basis for substantive liability and personal jurisdiction); see also Department of Justice Statement of Interest, *Grace New England, et al., v. Town of Weare, New Hampshire, et al.*, 24-cv-0041, at 13-14 (noting harm imposed by cease and desist letter and cataloguing cases in which cease-and-desist letters conferred standing);⁴ *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007) (“[o]ur analysis must begin with the recognition that, where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat . . . [t]he plaintiff’s own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution but nonetheless does not eliminate Article III jurisdiction.”).

⁴ Cease and desist letters are frequently analyzed under the rubric of standing because there is generally no doubt as to their “finality,” at least with respect to themselves. The letters command immediate compliance even if they order the parties to take some future action. Ripeness and standing, in any event, are kindred concepts in that both aim to ensure that there is an Article III case or controversy before the court.

This is not to say it is *impossible* to reconcile *Williamson Cnty.* with First Amendment solicitude. For example, in *Murphy*, the Court found that the issuance of a cease-and-desist order was not ripe for review *because of the guardrails built into the order itself*. Far from categorically banning religious activity, the order expressly stated that religious activities involving fewer than 25 persons would *not* require any special use permit or variance. *See Murphy*, 402 F.3d 342 (“By its very terms, the cease-and-desist order did not apply to all meetings at the Murphys’ residence, but only those that were regularly scheduled and included twenty-five or more non-family participants.”). In addition, the Court noted that the Murphys’ did not pursue an available suspensive appellate procedure but filed suit immediately in federal court. *Id.*

The court left no doubt that *had* the cease-and-desist order been completely open-ended, with no maximum number of attendees at regularly scheduled meetings and no suspensive appellate procedure, it would have constituted a justiciable, final act. Thus, the correct interpretation of interim orders such as cease-and-desist letters is *possible* within the *Williamson Cnty.* framework, just as a limitation on First Amendment rights using the least restrictive means possible is in some cases permissible. *See United States v. Alvarez*, 567 U.S. 709, 729 (2012) (when the Government seeks to regulate protected speech, the restriction must be the “least restrictive means among available, effective alternatives”).

The point is that Courts are more easily led astray by *Williamson Cnty.* finality because “interim” action in the land use context is generally preliminary to a final determination of property rights, whereas

“interim” action in the First Amendment areas is the quintessentially justiciable action: it is the credible threat of enforcement that itself constitutes the constitutional harm. By looking at the First Amendment through the lens of takings jurisprudence, courts can get the result patently wrong—even when the answer itself appears easy: the threat of fines and “additional remedies,” App.116a, specifically directed at a defined individual, from a municipal law director acting on behalf of a mayor who acknowledged having taking legal action against other “shuls” in the past, App.144a, clearly meets the Court’s standards for an objective “chill.” *See supra* at 15-16. Grand’s exercise of this first amendment rights and itself constitutes the constitutional harm for which 42 U.S.C. § 1983 provides the appropriate remedial vehicle. The *Elrod v. Burns* framing of Constitutional harm (which need only last for a “minimal period) is fundamentally inconsistent with the Sixth Circuit’s view that Grand could be made to suffer for weeks or months while the interpretation of a vague statue is kept in abeyance by a vague order—with the only certain thing being that Grand could not pray with a minyan of his coreligionists in the privacy of his home for fear of punishment.

Part of the problem stems also from Congressional action in the face of the Courts now decades old decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), which has led to RLUIPA, a statute intended to protect religious institutions but that stresses “land use regulations” and thus tilts analysis towards Williamson and away from Steffel. Professor Lisa Matthews provides an excellent summary of the background to RLUIPA

The history of RLUIPA reveals multiple hurdles that Congress overcame to protect, among other things, religious land use. RLUIPA is a culmination of years of effort by Congress to overturn [*Smith*]. In *Smith*, the Supreme Court overrode the precedent it established in *Sherbert v. Verne*, 374 U.S. 398 (1963), which required strict scrutiny analysis when a law created a substantial burden on religion. In *Smith*, the Supreme Court refused to apply the strict scrutiny analysis if the law was “facially neutral,” of general applicability, and did not specifically target religion. The Court ruled that Oregon did not substantially burden religion when it denied unemployment compensation to members of the Native American Church who were fired after using peyote. Congress strongly opposed the *Smith* ruling⁵³ and in 1993 enacted the Religious Freedom Restoration Act (“RFRA”), re-instating the rule that any government action that imposes a substantial burden on religious free exercise is subject to strict scrutiny analysis requiring the government to demonstrate a compelling interest. However, a few years later, in *City of Boerne v. Flores*, 521 U.S. 507 (1997) the Supreme Court declared RFRA unconstitutional as applied to state law on the grounds that it exceeded Congress’s power under Article V of the Fourteenth Amendment. In response, Congress passed RLUIPA in 2000, aiming to protect prisoners’ religious freedom and religious land use . . . In passing RLUIPA and specifically applying it

to land use, Congress established a connection between religious worship and a church's ability to construct or rent buildings to exercise its faith. . . . After Congress passed RLUIPA, a joint statement by Senator Ted Kennedy and Senator Orrin Hatch declared: "The right to assemble for worship is at the very core of the free exercise of religion." This declaration expressed the law's intent to restore the connection between church practice and land use that many state courts had recognized for much of the twentieth century before federal courts got involved with the issue.

Lisa Mathews, *Hobby Lobby and Hobbs to the Rescue: Clarifying Rluipa's Confusing Substantial Burden Test for Land-Use Cases*, 24 GEO. MASON L. REV. 1025, 1030–33 (2017)

Thus, RLUIPA is concerned in the first instance with land use, which somewhat misleadingly seems to invite the applications of regulatory takings principles. But that religious activity occurs on "land" and implicates "land use," does not mean that the takings-based concept of finality should automatically apply. This was the import of the DOJ's amicus brief in support of Grand's appeal. App.106a-107a ("RLUIPA claims may arise from harms that occur before a governmental entity applies its zoning code to a particular property or from harms otherwise inflicted in an underlying land-use dispute within the statute's scope.").

However, the DOJ did not take the next logical and limited its argument to the position that *Williamson Cnty.* finality should not be "categorically" applied but should only apply on a claim-by-claim basis. *Id.* The

Sixth Circuit effectively conceded as much, finding that Grand's facial attacks on the relevant ordinance had been forfeited, App.14a, not that they were barred by *Williamson Cnty* finality (as modified by *Knicks* and *Pakbel*). The Sixth Circuit could conduct a claim-by-claim analysis of Grand's position through the regulatory land use lens and find that Grand's claims were barred because he voluntarily sought and then voluntarily withdrew from (according to the Sixth Circuit) the Planning Commission process. As discussed, this way of viewing Grand's claims leads directly to profound error and conflicts with one of this Court's core First Amendment principles, that a party need not wait for enforcement if the party intends to take action arguably prohibited by statute and there is a substantial likelihood of adverse action. *See supra* at 13.

The only sure way to avoid the morass into which the Sixth (and sister) Circuit's analysis leads is to state clearly that *Williamson Cnty.* finality does not apply in the First Amendment and RLUIPA context at all. Traditional justiciability principles could still be used to limit claims that are truly speculative or safeguarded by adequate interim protective measures. *See Trump v. New York*, 592 U.S. 125, 131 (2020) (dismissing case because two "related doctrines of justiciability," standing and ripeness, rendered plaintiff's claims overtly speculative). But Courts would not be tempted to analyze interim acts as necessarily part of the finality inquiry, whether "de facto" or not, because some claims, such as Grand's arise independently of any final determination. Because Grand reasonably feared prosecution, which the mayor's office credibly threatened, given its past enforcement action against other home-based gathering of Jews, and

without any guidance as to a permissible interim scope, Grand First Amendment rights were chilled, he self-censored, and irrevocably lost the ability to bring back any foregone Sabbath prayer sessions. The City has now admitted that small gatherings would *not* require an SUP. App.49a-50a. But Grand did not know this *at the time* he self-censored. Thus, his damages are clearly ascertainable and correspond to the harm from self-censorship during a period of overly broad and vague enforcement. To say that Grand would not suffer *future* harm does not retrospectively cure *past* harm from the chilling effect of the City's overbroad, but credible, threats of punishment.

Since the Mayor and the Council had never been clear about the number of people (if any) who could lawfully congregate for prayer, it is not at all fanciful to think that a group of five or six Orthodox Jews dressed in their distinctive suits and black hats entering the Grand home might appear to be an illegal "congregation" of Jews performing illicit activities consistent with those of a house of worship, triggering the worst possible stereotypes and biases and leading to police reports and harassment of peaceful prayer goers. For the Sixth Circuit, the fact pattern resulting from the Mayor's post-hearing pronouncement only raised an issue of futility and one that Grand would lose: if Grand were so unhappy he had only to reapply for an SUP and the mixed messages from the Council members made it far from certain that a reapplication would be doomed. But as with administrative ripeness, administrative "futility" is the wrong concept. Regardless of whether Grand could not make out a showing of futility, even if he had renewed his application, he would still be under the chilling threat of municipal

punishment and spying neighbors egged on by an overly zealous mayor. As the First Circuit has emphasized, the timing of First Amendment harm differs from the timing of harm in the regulatory takings context. *See supra* at 10. This crucial distinction gets lost in the shuffle if *Williamson Cnty.* finality and futility concepts are the analytical framework, rather than the traditional justiciability test.

To consider one last example: if a citizen in the 1950's south wanted to publish an op-ed critical of an apparently racist local official, the citizen (at least from the perspective of the Constitution) did not have to consider whether it would be "futile" to resist a prosecution for defamation. Although social pressures or political calculations may have dissuaded the op-ed writer, at least she would (or should) have known that the Constitution was on her side, not arrayed against her with the very forces she was challenging.

And this knowledge is critical to the functioning of a free society. If citizens know the state cannot arbitrarily chill their freedom of speech and exercise—even for the shortest of periods—the system, albeit in fits and starts, can self-correct. Take away this protection and the doors open to the worst forms of bigotry and authoritarianism. As Lord Acton put it, slightly differently, and more eloquently: "Liberty is not a means to a higher political end. It is itself the highest political end." Acton, John. *The History of Freedom and Other Essays*, Macmillan, 1907, at 23-24.

Doctrine matters. Viewed improperly, the First Amendment—ostensibly at issue—almost vanishes into the administrative background. Viewed properly, the individual's fundamental right to exercise his religion according to conscience comes sharply into focus.

Viewed incorrectly, the First Amendment can almost be shrugged off as an unfortunate side issue in a bureaucratic process. Viewed correctly, the First Amendment emerges as the central, unavoidable issue. The stakes in getting the issue right could not be higher.

II. This Case Presents Important, Recurring Questions Affecting Religious Freedom Nationwide.

The questions here—the tension between First Amendment protection and zoning process, immediate harm and regulatory finality, *Steffel* and *Williamson Cnty.* (and their respective progeny)—are of fundamental national importance. Every indication is that the home will be an increasing focal point for potential conflict between individual religious liberty and municipal zoning authority. *See supra* at 6 and Note 1. As society embarks on one of the most transformative periods in history with the rise of artificial intelligence, the need for fixed guideposts is greater than ever. This clean vehicle—with DOJ support—warrants review.



CONCLUSION

The petition should be granted.

Respectfully submitted,

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