No. 25-965

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

BRIEF FROM THE NATIONAL JEWISH ADVOCACY CENTER, THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, AND THE NATIONAL COUNCIL OF YOUNG ISRAEL AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI*[1]

The National Jewish Advocacy Center (NJAC) is a non-profit legal organization dedicated to combating antisemitism and advocating for the rights of Jewish people through legal and public policy initiatives. Led by Rabbi Dr. Mark Goldfeder, a legal scholar and educator, NJAC addresses the rising tide of antisemitism through litigation, advocacy, and education. NJAC works to streamline legal efforts to protect the civil rights of Jewish individuals and communities across the United States.

The Union of Orthodox Jewish Congregations of America (Orthodox Union) is the nation's largest Orthodox Jewish synagogue organization, representing nearly 1,000 congregations as well as more than 400 Jewish non-public K-12 schools across the United States. The Orthodox Union, through its OU Advocacy Center, has participated in many cases before the Court that, like this one, raise issues of importance to the Orthodox Jewish community. The Orthodox Union is concerned that existing precedent especially perpetuates discrimination against members of minority faiths who, like Orthodox Jews, observe religious rules and rituals in nearly every facet of life.

The National Council of Young Israel ("Young Israel") is a Jewish synagogue organization that provides resources and services to more than 100 synagogues and their more than 25,000 member families

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), *amici* provided timely notice of their intention to file this brief.

throughout the United States. Young Israel was founded in 1912 as an attempt to address some of the difficulties facing American Orthodox Jews at the time, including mandatory Saturday labor at the workplace. Young Israel seeks to advance Torah-true Judaism and promote the values of Judaism, believing that traditional faith is compatible with good citizenship.

For Orthodox Jews, faithful adherence to Jewish law (halacha) is critical. This adherence includes observing the Sabbath by refraining from work from sunset on Friday until night begins on Saturday. Because faithful Sabbath observance made it difficult for many Jews to find employment, Young Israel created its Employment Bureau specifically for Sabbath observers. Young Israel's constitution and bylaws further specify that only Sabbath observers can hold leadership positions in Young Israel-affiliated synagogues. Young Israel is committed to religious liberty and has filed amicus curiae briefs with this Court on the issue of religious liberty in the past.

We file this brief to offer the court a specifically Jewish religious, historical, and communal context.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case turns on a simple question: When a city orders a man to stop praying with his neighbors and threatens him with prosecution if he disobeys, has he suffered an injury the courts can address? The Sixth Circuit said "no" until the zoning bureaucracy has rendered a "final determination." That answer is wrong as a matter of doctrine. It is devastating as a

matter of religious liberty. And it is dangerous as a matter of history.

First, the Sixth Circuit's answer betrays a fundamental misunderstanding of what was taken from Daniel Grand. A minyan is not a meeting. It is a commandment. Jewish law requires communal prayer with a quorum of ten adult males.[2] Certain prayers like the Kaddish (the mourner's prayer), the Kedushah (the prayer of sanctification), and the public reading from the Torah scroll can only be recited with a minyan. And because Orthodox Jewish law forbids driving on the Sabbath, Grand could not get to a synagogue. The home minyan was not merely a preference. It was his only option. When the City ordered him to stop, it severed him from the fullest expression of his faith at the precise moments his faith demands it most. Every Sabbath that passed under the cease-and-desist order was a Sabbath lost. A taking can be compensated with money. A lost Sabbath prayer cannot. This is a Constitutional injury.

Second, what happened to Daniel Grand fits a pattern the courts know well. For decades, municipalities have used facially neutral zoning laws to suppress Orthodox Jewish religious practice. In *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995), a village was incorporated for the express purpose of keeping Orthodox Jews out. In *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352 (S.D.N.Y. 2015), zoning laws were enacted to block a Hasidic rabbinical college amid open hostility toward the community. The facts here, the

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[2] There are certain sects of Judaism that interpret this to mean "Ten people" rather than "Ten men," but the traditional Orthodox practice of Mr. Grand mandates ten men.

lightning-fast cease-and-desist, the undefined Yiddish term "shul" deployed as a legal weapon, the Mayor's public call for neighbors to surveil Grand's home and report any Jewish gathering, are not aberrations. Mr. Grand alleged that the City has only enforced the Special Use Permit requirement against Orthodox Jews. SAC ¶¶ 112-14; *see also id.* ¶¶ 56, 147, 341-42.[3]

They are the latest chapter in a long and ugly story. And the Mayor's post-hearing pronouncement, encouraging neighbors to report any "activities consistent with" a house of worship, constitutes an independent First Amendment injury that the Sixth Circuit never addressed.

Third, the Eleventh Circuit has already shown the way. In *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005), a rabbi was issued a cease-and-desist for hosting services at his home. The court found an RLUIPA violation. It did not require administrative finality. It recognized that the order itself was the injury. The Sixth Circuit's contrary holding deepens a circuit split and leaves Jewish communities in Ohio, Michigan, Kentucky, and Tennessee without the protection Congress gave them.

A government order that definitively prohibits religious exercise and is backed by the threat of en-

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[3] For details regarding a "systematic campaign to prevent the City's Orthodox Jewish community from expanding," see SAC ¶¶ 120-48, 371-76. As to Mr. Grand's application, several people who opposed made statements connected to Mr. Grand's religion, e.g., suggesting he should have purchased a home elsewhere. SAC ¶ 136; see also id. ¶ 138 (neighbor letter saying "I am not Jewish and I do not want our neighborhood labeled as Jewish"); App'x. ISO Pl.'s MSJ (Dkt. 82-1) at 261 (same letter); id. at 189-90 (hostile neighbor letter).

forcement inflicts an immediate First Amendment injury, which is immediately justiciable, regardless of whether administrative processes remain available. The Court should grant certiorari.

ARGUMENT

I. A MINYAN IS A COMMANDMENT.

A. The Minyan Requirement Under Jewish Law.

To understand what the City of University Heights took from Daniel Grand, the Court must understand what a minyan is and what it is not.

A minyan is not a social gathering. It is not like a book club, a poker night, or a neighborhood potluck. It is a quorum of ten adult Jewish males, and it is the threshold requirement for the most sacred acts of Jewish communal worship. Without a minyan, a congregation cannot recite the Kaddish, the prayer for the dead that is among the most solemn obligations in Jewish life. Without a minyan, a congregation cannot recite the Kedushah, the prayer that sanctifies God's name. Without a minyan, the Torah scroll cannot be read publicly. Without a minyan, the priestly blessing cannot be given.

These are not optional enhancements to an otherwise complete prayer service. They are constitutive elements of Jewish communal worship. A service without a minyan is not a lesser version of the real thing. It is a fundamentally different thing. The Talmud teaches that when ten Jews pray together, the Divine Presence dwells among them. When they pray alone, it does not. For an Orthodox Jew, the difference between praying with a minyan and praying alone is the

difference between fulfilling a commandment and failing to fulfill it.

This is what the City's cease-and-desist order prohibited. Not a party. Not a commercial enterprise. Not a land use that generates traffic, noise, or disruption. A divine commandment.

B. The Shabbat Driving Prohibition and the Irreplaceable Home Minyan.

The injury to Grand was compounded and made uniquely irreparable by a second pillar of Orthodox Jewish law: the prohibition on driving during the Sabbath and High Holidays.

Orthodox Jewish law forbids the operation of motor vehicles from Friday sundown to Saturday nightfall, and on the High Holidays of Rosh Hashanah and Yom Kippur (among others). This is a binding religious obligation observed by Orthodox Jews worldwide. For Grand, whose synagogue was located far from his home in University Heights, this prohibition meant that attending synagogue on the Sabbath was not a realistic option.

The intersection of these two obligations, the requirement to pray with a minyan and the prohibition on driving to reach one, created a situation with no secular analogue. A book club or poker game, for example, can be hosted anywhere within driving distance. There are also few religious analogous circumstances. A Christian homeowner ordered to stop hosting a Bible study can drive to church on Sunday. A Muslim homeowner ordered to stop hosting a prayer circle can drive to a mosque. But Daniel Grand could not drive anywhere. The home Sabbath minyan was his only method of worship. The CADO eliminated the only option he had.

Congress enacted RLUIPA to address precisely this kind of burden. The statute targets zoning regimes that subject religious exercise to "highly individualized and discretionary processes," because those processes are "uniquely susceptible to unequal treatment and suppression of minority religious practice." 146 Cong. Rec. S7774, S7775–76 (daily ed. July 27, 2000) (joint statement of Sens. Hatch and Kennedy). RLUIPA's substantial burden provision applies when a land-use regulation imposes a substantial burden on religious exercise, including through a "system of land use regulations, under which a government makes . . . individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(1), (a)(2)(C).

The CADO imposed precisely such a burden. It ordered Grand to cease any use of his home as a "place of religious assembly" or as a "shul or synagogue" without a special use permit. *Pet. App. 116a.* It contained no safe harbor, no minimum number of participants below which the prohibition would not apply. It provided no mechanism for a stay pending administrative review. And it was backed by the threat of "building code citations" and "additional remedies." *Id.* Grand cancelled his next Sabbath gathering in response. *Grand, 159 F.4th at 510.* The harm was not speculative. It was not contingent on a future administrative determination. It was concrete, immediate, and, for every Sabbath that passed, permanent.

C. The Harm That Cannot Be Undone.

The Sixth Circuit held that Grand's claims were not ripe because he had not obtained a "final determination" from the City's Planning Commission. *Grand v. City of University Heights*, 159 F.4th 507, 511–16

(6th Cir. 2025). That holding rests on a premise borrowed from regulatory takings law: that the harm cannot be assessed until the government has made a final decision about how the property may be used. *Williamson Cty. Reg'l Plan. Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985).

In the takings context, that premise makes sense. The economic impact of a zoning regulation depends on what the government ultimately permits the owner to do with the property. The harm is contingent. It can be calculated later. It can be compensated with money.

None of that is true here. The harm to Daniel Grand was not contingent on what the Planning Commission might eventually decide. Where, as here, the government issues a definitive, coercive order prohibiting religious exercise and requiring immediate compliance, the injury is complete at issuance. The harm was the CADO itself, the government's command that he stop praying with his neighbors, backed by the threat of prosecution. And that harm compounded with every passing week. The Sabbath comes every seven days. It does not wait for administrative proceedings. Each Sabbath that Grand spent unable to fulfill his obligation to pray with a minyan was a Sabbath lost forever. No subsequent permit, however favorable, can give those Sabbaths back.

This Court has long recognized that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And this Court has held that a plaintiff need not "expose himself to liability before bringing suit to challenge the basis for the threat" when the government has taken a definitive, coercive position. *Susan B. Anthony*

List v. Driehaus, 573 U.S. 149, 158 (2014). The finality requirement is "relatively modest" and does not authorize lower courts to impose an exhaustion requirement under another name. *Pakdel v. City & Cty. of San Francisco*, 594 U.S. 474, 478–80 (2021).

The CADO was not tentative. It was not preliminary. It was a definitive command: Stop praying with your neighbors or face prosecution. That is the kind of injury the First Amendment exists to redress immediately, not after the bureaucracy has had its say.

The *Murphy v. New Milford Zoning Commission*, 402 F.3d 342 (2d Cir. 2005), decision on which the Sixth Circuit relied only underscores the point. In *Murphy*, the cease-and-desist order contained a safe harbor: religious activities involving fewer than 25 persons required no permit. *Id.* at 345. The plaintiffs could continue worshipping at a reduced scale while pursuing administrative remedies. And they had access to a suspensive appellate procedure that would have stayed enforcement pending appeal. *Id.* at 348.

Grand had none of these protections. The CADO was absolute. It prohibited any use of his home for religious assembly without specifying any minimum number of participants. *Pet. App. 116a.*. There was no safe harbor. There was no stay. There was no way for Grand to fulfill his religious obligations while the administrative process ground forward. *Murphy* itself recognized that an order without such protections would constitute a justiciable, final act. 402 F.3d at 354.

The Second Circuit has separately recognized that individualized, discretionary zoning processes impose cognizable burdens on religious exercise under RLUIPA, even before a final determination is reached.

In *Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic District Commission*, 768 F.3d 183, 193–94 (2d Cir. 2014), the court held that a historic commission's review process, which involved applying "loosely defined and subjective standards," constituted an "individualized assessment" triggering RLUIPA's substantial burden provision. The court rejected the proposition that a neutral law of general applicability could not, as a matter of law, impose a substantial burden. *Id.* at 191. The same principle applies here.

The *Williamson County* finality doctrine was designed for disputes about property values. It was not designed for disputes about prayer. Extending it to a case like this does not promote judicial efficiency. It promotes the suppression of religious exercise one Sabbath at a time. *See Knick v. Township of Scott*, 588 U.S. 180, 185 (2019) (recognizing that the *Williamson County* framework imposed "an unjustifiable burden" even on takings plaintiffs). That burden is exponentially greater when imposed on a religious adherent whose obligations are measured not in dollars but in days.

II. THIS CASE FITS A PATTERN OF DISCRIMINATION THE COURTS KNOW WELL.

A. "The Only Reason We Formed This Village."

The use of facially neutral zoning laws to target Orthodox Jewish communities is not new, and it is rarely subtle.

In 1991, residents of an unincorporated area in Rockland County, New York, formed the Airmont Civic Association. Its purpose, as one leader explained,

was straightforward: "the only reason we formed this village is to keep those Jews . . . out of here." *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 419 (2d Cir. 1995). The Association spearheaded the incorporation of the Village of Airmont and the adoption of a zoning code designed to restrict home synagogues, the very kind of gathering at issue in this case. *Id.* at 418. A jury found that the village was incorporated for the express purpose of excluding Orthodox and Hasidic Jews through discriminatory zoning. The Second Circuit reinstated that verdict, holding that "the motivation behind the enactment [of the zoning code] was discriminatory animus toward Orthodox and Hasidic Jews." *Id.* at 431.

That was 1995. The pattern has continued.

In the Village of Pomona, New York, local officials enacted zoning laws that effectively prevented the construction of a rabbinical college. The timing was not coincidental: The laws were adopted just as proposals for Orthodox Jewish institutions were being discussed. Community members and village officials made numerous discriminatory comments expressing hostility toward the Hasidic community. The district court found "ample evidence in the record to make the question of discriminatory purpose a disputed fact" and that "a reasonable jury [could] conclude that the Challenged Laws were passed with a discriminatory purpose." *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 408, 413 (S.D.N.Y. 2015).

In the Town of Clarkstown, New York, an Orthodox Jewish school alleged that the town had manipulated an ostensibly neutral building permit and zoning appeals process to keep the school out of the community. The Second Circuit reversed the dismissal of the school's RLUIPA claims, holding that the town

had reached a position "sufficiently final for ripeness purposes" even though the Zoning Board of Appeals had never issued a formal decision on the merits. The court emphasized that "nothing more than de facto finality is necessary." *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023).

The thread connecting these cases is unmistakable: facially neutral zoning laws, applied through ostensibly neutral administrative processes, serving as instruments of antisemitic discrimination. The zoning code is the weapon. The administrative process is the cover. And the result is always the same: Jewish communities are told, in the polite language of land-use regulation, that they are not welcome.

B. What Happened to Daniel Grand.

The facts of this case bear every hallmark of the pattern described above. They deserve to be stated plainly.

The speed. Within hours of a single neighbor's complaint about Grand's *intended* use of his home, Mayor Brennan contacted the City's Law Director, who issued the CADO. *Pet. App. 3a.* There was no investigation. There was no hearing. There was no opportunity for Grand to explain that he was proposing a small, informal prayer group, and not a commercial enterprise, not a house of worship, nor anything that would generate traffic or noise or disruption. The City acted first and asked questions never.

The language. The CADO prohibited Grand from using his home as a "place of religious assembly" or as a "shul or synagogue." *Pet. App. 116a.* The term "shul" (a Yiddish word) appears nowhere in the City's zoning ordinance. It has no fixed legal meaning. As

Mayor Brennan himself admitted in his deposition, a "shul" could mean a "small gathering" or a large place of assembly, and could mean either a school or a synagogue. *Pet. App. 161a (Brennan Dep.).* By deploying this undefined, culturally specific term in a legal order backed by the threat of prosecution, the City created a prohibition so vague that it could encompass any gathering of Orthodox Jews in Grand's home, including two men studying Torah, five men reciting afternoon prayers, or a family Sabbath dinner with guests. The vagueness permits the prohibition to extend to virtually any form of Jewish communal worship, raising the same concerns courts have identified in prior zoning cases involving Orthodox communities.

The surveillance. When Grand withdrew his special use permit application, an application he had filed only because the City ordered him to, the Mayor did not let the matter rest. At a public meeting, Mayor Brennan issued a pronouncement that went further than the original CADO:

> [T]here 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 . . . . And we will seek all appropriate remedies in court.

Pet. App. 144a (statement of Mayor Brennan at Planning Commission meeting, Mar. 23, 2021).

The Mayor did not merely restate the CADO. He expanded it. He prohibited not just the operation of a "house of assembly" but any "activities consistent

with one." He then turned to Grand's neighbors, in a public forum, and asked them to watch Grand's home and report any suspicious religious activity to the authorities. This was a call to surveil a Jewish family for the crime of praying.

The neighbors obliged. One set up multiple cameras pointed directly at and into Grand's home. Mr. Grand also alleged that his neighbor set up surveillance to spy on him. *See* SAC. ¶¶ 160-70. The City refused to act when Grand filed police reports about the intrusion. The City's police department advised patrol units to frequently drive by his residence. *See*, SAC ¶¶ 158-59; id. ¶¶ 170-73. The police sought to find code violations and encouraged neighbors to report the same. *See id.* ¶¶ 201-17; *see also id.* ¶¶ 219-66 (laying the foundation for a potential prosecution for code violations).

This was not the City's first encounter with home-based Jewish worship. Mayor Brennan himself referenced a prior lawsuit against "another residential shul, one on Churchill Boulevard," in which the City had obtained a "permanent injunction in court." *Pet. App. 144a (statement of Mayor Brennan).* The City had a track record of using its zoning authority to suppress Orthodox Jewish home gatherings, and no track record of establishing clear rules about when such gatherings are permitted. The message to Grand, and to every Orthodox Jew in University Heights, was unmistakable: Pray at home and we will come for you.

C. The Finality Doctrine as Shield for Discrimination.

The Sixth Circuit's decision does not merely fail to address the antisemitism evident in this record. It rewards it.

Under the Sixth Circuit's approach, a municipality can issue a vague cease-and-desist order targeting Jewish prayer, encourage neighbors to report violations, threaten criminal prosecution, and direct police to surveil the home of a Jewish family, all without any judicial oversight, so long as the matter remains nominally "pending" before an administrative body. The more hostile the administrative process, the less likely the religious adherent is to see it through. And the less likely the adherent is to see it through, the less likely a court is to hear the claim. The doctrine designed to promote administrative efficiency becomes a doctrine that promotes administrative abuse.

The history of antisemitic zoning enforcement shows why this matters. In *LeBlanc-Sternberg*, the discriminatory intent was stated openly. 67 F.3d at 419. But open statements of animus are the exception.[4] In most cases, discrimination operates through the facially neutral application of zoning laws, through the speed of enforcement, the vagueness of the prohibitions, the selectivity of the targets, and the hostility of the process. The Sixth Circuit's categorical application of *Williamson County* finality immunizes all of these mechanisms from judicial review until the process has run its course. By then, the damage is done. The prayer gatherings have been cancelled. The community has been chilled. The Sabbaths have been lost.

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[4] Though there is evidence of open animus here. Several people who opposed Mr. Grand's application for a Special Use Permit made statements connected to Mr. Grand's religion, e.g., suggesting he should have purchased a home elsewhere. SAC ¶ 136; see also id. ¶ 138 (neighbor letter saying "I am not Jewish and I do not want our neighborhood labeled as Jewish"); App'x. ISO Pl.'s MSJ (Dkt. 82-1) at 261 (same letter); id. at 189-90 (hostile neighbor letter).

RLUIPA's text forecloses this result. Each of the statute's land-use prohibitions reaches a government's "impos[ition]" and "implement[ation]" of land-use regulations. 42 U.S.C. § 2000cc(a)(1), (b)(1)–(3). The substantial burden and equal terms provisions further cover the "manner" in which the government imposes or implements those regulations. These terms encompass conduct extending beyond final determinations, including the issuance of cease-and-desist orders, the conduct of hostile administrative proceedings, and the encouragement of neighbor surveillance. The Sixth Circuit's categorical application of *Williamson County* finality to all RLUIPA claims without examining whether the specific claims asserted depend on the application of zoning laws to a specific property is inconsistent with the statute Congress wrote.

D. The Mayor's Call for Citizen Surveillance Constitutes an Independent First Amendment Injury.

The CADO was not the only government action that chilled Grand's religious exercise. The Mayor's post-hearing pronouncement delivered in a public forum, directed at Grand's neighbors, and backed by the full weight of municipal authority constitutes an independent First Amendment injury that the Sixth Circuit never addressed.

Recall the Mayor's words: "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 . . . . And we will seek all appropriate remedies in court." *Pet. App. 144a*. This was not a neutral reminder of existing law. It was a public call to surveil a Jewish family's home for signs of religious worship

and a promise that the government would punish whatever the neighbors reported.

The constitutional infirmity of this pronouncement is established by two independent lines of this Court's precedent.

First, the pronouncement chills protected activity through the threat of government action. This Court has long held that the chilling effect of government action on First Amendment rights "may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). In *Dombrowski*, the Court held that where government officials invoke the machinery of the state to discourage the exercise of constitutional rights, the resulting chill constitutes irreparable injury justifying immediate federal intervention. *Id.* at 490. The Court emphasized that "[b]ecause of the sensitive nature of constitutionally protected expression, we have not required that all of those subject to overbroad regulations risk prosecution to test their rights." *Id.* at 486. The Mayor's pronouncement did not merely threaten prosecution. It expanded the scope of the prohibition from the operation of a "house of assembly" to any "activities consistent with one," *Pet. App. 144a.,* and enlisted Grand's neighbors as the observation mechanism. The result was a system of government-encouraged private surveillance directed at constitutionally protected religious activity in the home.

Second, the pronouncement offends the foundational principle that citizens may engage in religious expression without first obtaining government permission or, worse, under the watchful eye of government-deputized neighbors. In *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*,

536 U.S. 150 (2002), this Court struck down a municipal ordinance requiring a permit before engaging in door-to-door religious canvassing. The Court declared that "[i]t is offensive — not only to the values protected by the First Amendment, but to the very notion of a free society — that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so." *Id.* at 165–66. If the Constitution forbids a municipality from requiring a citizen to obtain a permit before knocking on a neighbor's door to share a religious message, it surely forbids a municipality from encouraging neighbors to report a citizen to the authorities for praying in his own home. Here, the Mayor's pronouncement turned the constitutional framework on its head: instead of the government requiring permission before the citizen could engage in religious activity, the government enlisted the citizenry to monitor and report religious activity and promised to punish whatever they found.

The Mayor's pronouncement also implicates the principle, recognized in *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 607 (2021), that government action exposing associational ties to public scrutiny can itself constitute a First Amendment injury because of the "risk of a chilling effect on association." Here, the Mayor actively encouraged Grand's neighbors to monitor his home and report any sign of Jewish communal worship, and the City's police department patrol units frequently drove past his home.

Respondents may argue that government-encouraged surveillance, standing alone, is insufficient to establish a cognizable injury relying on *Laird v. Tatum*, 408 U.S. 1 (1972), in which this Court held that

allegations of a "subjective 'chill'" from Army surveillance of lawful civilian activity did not, without more, confer standing. *Id.* at 13–14. But *Laird* does not help Respondents. The Court in *Laird* was careful to distinguish cases where the challenged exercise of governmental power was "regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging." *Id.* at 11. That is precisely this case. The CADO and the Mayor's pronouncement are active commands directed at a specific individual, targeting specific religious conduct, backed by the threat of prosecution, that caused Grand to cancel his prayer gatherings and forgo his religious obligations. The chilling effect here is concrete, immediate, and documented in the record.

The Sixth Circuit's failure to address this independent injury and indeed, its failure even to mention the Mayor's post-hearing pronouncement, is itself a reason to grant certiorari. The pronouncement is not a footnote to the CADO. It is a separate and more sweeping act of government coercion that chilled Grand's religious exercise independently of any administrative finality determination. No amount of administrative process can cure the constitutional harm inflicted by a mayor who stands before his constituents and tells them to watch a Jewish family's home and report any sign of prayer.

III. THE ELEVENTH CIRCUIT GOT IT RIGHT. THE SIXTH CIRCUIT GOT IT WRONG.

The Eleventh Circuit has already confronted a case virtually identical to this one. It reached the opposite result. And it was right.

In *Konikov v. Orange County, Florida*, 410 F.3d 1317 (11th Cir. 2005), a rabbi was issued a citation and cease-and-desist order for hosting religious services at his home. The county deemed his prayer gatherings a "church" or "synagogue" not permitted in a residential zone. Id. at 1321. The county's zoning code, meanwhile, allowed non-religious assemblies — family day care homes, social gatherings — in the same zone without any special permit. Id. at 1328.

The Eleventh Circuit did not tell the rabbi to go back to the zoning board and wait for a final determination. It proceeded directly to the merits. And it found a violation: "the County's zoning code treats Konikov's religious assembly on less than equal terms than it treats secular assemblies," in violation of RLUIPA's equal terms provision. Id. at 1329.

The parallels to this case are exact. Like the rabbi in *Konikov*, Grand was issued a cease-and-desist for hosting religious gatherings at his home. Like the county in *Konikov*, the City of University Heights allowed comparable secular gatherings in residential zones while prohibiting Grand's religious gatherings. Like the rabbi in *Konikov*, Grand's gatherings were small, non-commercial, and involved no structural changes to his home. Pet. 15.

The only difference is the circuit. In the Eleventh Circuit, the rabbi's claims were heard on the merits. In the Sixth Circuit, Grand's claims were dismissed as unripe. The same facts. The same statute. The same injury. Opposite results.

That divergence reflects a deeper doctrinal split. The Eleventh Circuit has squarely held that *Williamson County* finality does not apply to RLUIPA claims. In *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1357 (11th Cir. 2013), the

court refused to apply the finality doctrine, reasoning that a court "'staying [its] hand' to await a final determination in such circumstances would serve no purpose other than to 'perpetuate the [injury].'" Id. The First Circuit has reached the same conclusion. *See Roman Catholic 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."). The Sixth Circuit, by contrast, has "whole-heartedly adopted *Williamson Cty.*" and deployed its ripeness analysis to dismiss claims before a final administrative ruling. Pet. 15 (citing *Grace Community Church v. Lenox Township*, 544 F.3d 609, 618 (6th Cir. 2008)).

Konikov illustrates what happens when courts apply the correct framework: the merits are reached, and religious liberty is vindicated. The Sixth Circuit's contrary approach ensures that the merits are never reached at all — and that the religious adherent bears the full weight of the government's coercion while the bureaucracy deliberates.

The *Konikov* precedent also illuminates the equal terms dimension of this case. The City of University Heights did not apply neutral rules governing noise, parking, occupancy, or nuisance to all residential gatherings alike. It began with the religious character of Grand's activity — identifying the proposed use as a "place of religious assembly," a "shul," or a "synagogue" — and on that basis required Grand to seek discretionary approval before continuing prayer in his home. Pet. App. 116a. In substance, the gathering became a zoning problem because it was Jewish. That is precisely the kind of differential treatment

that RLUIPA's equal terms provision forbids. 42 U.S.C. § 2000cc(b)(1).

Congress did not enact RLUIPA to create a system in which the protection of religious exercise depends on geography. It enacted RLUIPA to ensure that religious exercise is protected everywhere — including, and especially, in the home.

CONCLUSION

Daniel Grand wanted to do what Jews have done for thousands of years: gather ten men and pray. He wanted to do it in his own home, on the Sabbath, because his faith forbade him from driving to a synagogue. For this, the City of University Heights ordered him to stop. It threatened him with prosecution. It encouraged his neighbors to watch his home and report any sign of Jewish worship. And when he sought relief in federal court, the Sixth Circuit told him his injury was not yet ripe that he must go back to the very administrative process that had been weaponized against him and wait for a "final determination" before the Constitution could help him.

That is not what the First Amendment requires. It is not what RLUIPA requires. And it is not what this Court's precedents permit.

The petition should be granted.

Respectfully submitted.

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