No. 25-965

In the Supreme Court of the United States

DANIEL GRAND, *Petitioner*,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.

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

BRIEF OF *AMICUS CURIAE* PROTECT THE FIRST FOUNDATION SUPPORTING PETITIONER

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amicus Curiae

APRIL 10, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Regulation

Other Authority

INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*[1]

The petition should be granted to clarify that land-use claims brought under the First Amendment and RLUIPA ripen once the government threatens enforcement in a way that could chill religious exercise—if not earlier. Petitioner Daniel Grand cancelled a prayer meeting at his home after government officials threatened him for violating zoning laws. Grand brought claims against the city alleging that its actions burdened his right to freely exercise his religion, but the district court and the Sixth Circuit held that his claims were unripe because Grant withdrew an exemption request before the city denied it. This was wrong. When a person seeks to worship in his home, threats of zoning enforcement can chill religious exercise. Here, they did. And since the "loss of First Amendment freedoms" is "irreparable injury," *Mahmoud* v. *Taylor*, 606 U.S. 522, 569 (2025) (citation omitted), federal courts should be open to prevent such harms even before the government actor has received or acted on an exemption request. In holding otherwise, the lower courts here furthered a split and left landowners in at least three circuits—the Third, Sixth, and Ninth—without redress even when zoning laws chill their free exercise rights.

In the speech context, this Court's precedents confirm that regimes that predicate a person's right to

---

[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus*' intent to file.

speak on his first seeking government permission are suspect since, if permission must be granted, permission can be denied. *E.g.*, *City of Lakewood* v. *Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). And some speakers, rather than facing the indignity of asking the government for permission to speak, will keep silent. Yet, as Justice Thomas has explained, government action leading to "self-censorship" violates "the First Amendment just as acutely as a direct bar on speech." *Speech First, Inc.* v. *Sands*, 144 S. Ct. 675, 676 (2024) (Thomas, J., dissenting) (citation omitted).

So too with religion. Because Grand stopped his planned religious activity after being threatened with government enforcement, his rights were violated "just as acutely" as if he had sought an exemption that was denied. Yet the Sixth Circuit erroneously found no cognizable final harm.

That error is particularly troubling to *amicus* Protect the First Foundation ("PT1"), a nonprofit, nonpartisan organization that advocates for protecting First Amendment rights in all applicable areas of law. *Amicus* agrees with Grand (at 14) that "traditional First Amendment principles," and not zoning law's traditional finality requirement, should apply in cases involving attempts to use land for religious purposes. *Amicus* writes separately to expand on Grand's showing (at 17-18) that discretionary licensing regimes are constitutionally invalid under this Court's precedents—yet another reason for this Court's review.

In short, the Sixth Circuit ignored that Grand's rights were burdened as soon as threats that the city

would enforce its zoning laws chilled his efforts to use his land for religious reasons. That was wrong, and this Court should grant review and reverse.

STATEMENT

Grand sought to follow his faith's command to "pray thrice daily with a group of ten men" on his Sabbath by inviting them to his home. App.2a. A neighbor complained, and the city sent Grand "a cease-and-desist letter" threatening "building code citations" for violating the city's zoning laws. App.3a. Grand cancelled the next meeting in response. *Ibid.*

Grand then sought a special-use permit from the city's planning commission that would allow him to use his home for "periodic religious gatherings." App.3a-4a. The planning commission considers various things when deciding whether to grant a special-use permit. App.27a-28a. Some are loosely defined. See *ibid.* (parking and traffic considerations, lighting, noise, etc.). But the ordinance has a catch-all allowing the commission to deny permits "contrary to the public health, safety and welfare." App.28a.

While Grand's application was pending, police "dr[o]ve past Grand's house" and an inspector searched inside checking for violations. App.5a. At an initial hearing, neighbors spoke against his application. App.4a. Before the second hearing, Grand withdrew his application because he did not want to operate a house of worship as the zoning ordinance defined it. App.5a (internal citations omitted).

After withdrawing his application, Grand sued. Relevant here, he claimed that the city violated the Religious Land Use and Institutionalized Persons Act

(RLUIPA) and the First Amendment. App.5a. But the lower courts found his claims unripe since the city never denied his exemption application. App.2a.

ADDITIONAL REASONS FOR GRANTING THE PETITION

I. Discretionary Licensing Regimes Lacking Clear Standards—Which This Court has Repeatedly Condemned in the Speech Context—Seriously Hinder Religious Free Exercise.

The free exercise of religion—like free speech—is a fundamental right protected by the First Amendment and RLUIPA. Requiring an individual to seek the government's permission before exercising his religion in his home seriously hinders this right. In the speech context, recent scholarship confirms that this "Court has long taken the view that discretionary permitting regimes" are "censorious and thus unconstitutional."[2] The free exercise of religion should be treated no differently.

1. In *Saia* v. *New York*, for example, this Court reviewed the constitutionality of an ordinance that allowed the public use of radio and loudspeakers to share "news and matters of public concern" only with "permission obtained from the Chief of Police." 334 U.S. 558, 558 n.1 (1948). There, a minister sought a permit to share his religion with the public. *Id.* at 559. He was denied the permit and convicted for using such

[2] Eli Nachmany, *Bill of Rights Nondelegation*, 49 BYU L. Rev. 513, 517 & n.13 (2023) (collecting cases).

equipment to spread his religious message anyway. *Ibid.*

In finding that the resulting conviction facially violated the First Amendment, the Court explained that the ordinance "establishe[d] a previous restraint on the right of free speech." *Id.* at 559-560. Worse, the ordinance lacked clear standards governing the Chief of Police's permitting decision and therefore placed "[t]he right to be heard * * * in [his] uncontrolled discretion." *Id.* at 560-561. The Court explained that such "uncontrolled discretion" essentially allowed officials to deny permits "because some people find the ideas annoying." *Id.* at 560-562.

Likewise, in *Largent* v. *Texas*, the Court reviewed an ordinance that made "it unlawful for any person to solicit orders or to sell books, wares or merchandise * * * without first filing an application and obtaining a permit." 318 U.S. 418, 418 (1943) (citation omitted). Such permits were available only if "the Mayor deem[ed] it proper or advisable[.]" *Id.* at 418-419 (citation omitted). Largent was convicted for violating this ordinance when she asked for voluntary contributions as she distributed religious materials. *Id.* at 419-420. This Court reversed because the "proper or advisable" standard left the "[d]issemination of ideas depend[ent] upon the" Mayor's approval, which the Court found to be "administrative censorship in an extreme form." *Id.* at 422.

The concerns with standardless discretionary regimes that were dispositive of the speech claims in *Saia* and *Largent* should be equally controlling here

with respect to Grand's statutory and constitutional free-exercise claims. *Cf. Fulton* v. *City of Philadelphia*, 593 U.S. 522, 533 (2021) (recognizing that laws that burden religion are subject to strict scrutiny if they contain a "mechanism for individualized exemptions" (citation omitted)). And just like in *Saia* and *Largent*, where this Court held that the government chilled speech by requiring would-be speakers to seek permission to speak from the government, here, Grand needed to apply for a special-use permit before he could exercise his religion in his home. App.2a-5a.

Just like in *Saia* and *Largent*, moreover, the city's ordinance lacks clear standards governing the planning commission's permitting decision. True, the ordinance requires the planning commission to consider traffic, lighting, and sound. App.27a. But it goes no further. How much traffic is too much? When would a religious building be too bright? When would it be too loud? The ordinance gives no answer to those questions. Instead, it places the authority to answer them in the planning commission's discretion.

Worse, even if an applicant happened to satisfy the commission on each of those listed factors, the application could still be denied for unspecified and hopelessly vague catch-all reasons such as the planning commission's view about whether granting the permit would harm the "public health, safety and welfare." App.76a (citation omitted). This broad language essentially gives the planning commission complete discretion to deny permits for any reason, including if neighbors dislike the means of religious exercise. See App.3a-4a. Under the principles this Court established in *Saia* and *Largent*, forcing an

individual to wait for the planning commission's discretionary permission before exercising his religion on private property seriously hinders the fundamental right protected by the First Amendment.

2. *Saia* and *Largent* are hardly outliers. In *Kunz* v. *New York*, this Court reviewed a city ordinance that made "it unlawful to hold public worship meetings on the streets without first obtaining a permit from the city police commissioner." 340 U.S. 290, 290-291 (1951). As in *Saia*, the petitioner—also a minister—was convicted for speaking after unsuccessfully trying to comply with the ordinance by obtaining a permit. *Id.* at 292-293. Here again, the Court held that the ordinance violated the First Amendment in part because it granted the police commissioner discretion to decide the "conduct condemned by the ordinance." *Id.* at 293. Without "appropriate standards" to guide an official's actions, the ordinance provided "an administrative official discretionary power to control in advance the right of citizens to speak[.]" *Id.* at 293, 295. That discretion made the ordinance "clearly invalid as a prior restraint on the exercise of First Amendment rights." *Id.* at 293.

As discussed, the ordinance at issue here similarly grants officials the discretionary power to control in advance a landowner's free-exercise rights. App.75a-76a (text of Univ. Heights, Ohio City Ord. §1274.01). But it goes even further than the ordinance in *Kunz*, which restricted only a *public* religious meeting. Here, of course, Grand needed a permit to hold even a *private* worship meeting within the privacy of his own home. App.2a-5a.

Also illustrative is *Niemotko* v. *Maryland*, 340 U.S. 268 (1951), a case this Court decided the same day as *Kunz*. In *Niemotko*, two Jehovah's Witnesses "scheduled Bible talks" at a public park. *Id.* at 269. Although no ordinance forbade using the park for such talks, "the custom for organizations and individuals desiring to use it for meetings and celebrations" was to first "obtain permits from the Park Commissioner." *Ibid*.

The Witnesses sought—and were refused—permission to use the park. *Id.* at 269-270. The story played out in a now familiar way. The Witnesses held their meeting anyway and, because they lacked a permit, they were arrested and convicted for engaging in "disorderly conduct." *Id.* at 270. In reversing, this Court concluded that it was "quite apparent that any disorderly conduct" that the Witnesses were accused of "must have been based on the fact that appellants were using the park without a permit[.]" *Id.* at 271. The Court then made quick work of the conviction, finding it invalid under the "many" cases in which the Court has "examined the licensing systems by which local bodies regulate the use of * * * public places." *Ibid.* (collecting cases). The Court expressed concern with the "limitless discretion" that informed the conviction, which necessarily turned on "the whims or personal opinions of a local governing body." *Id.* at 272. Because the unwritten practice lacked "standards" and "narrowly drawn limitations" to "circumscrib[e] * * * [the Park Commissioner's] absolute power" to deny a permit, it violated the First Amendment. *Id.* at 271-272.

To be sure, this Court has since established standards allowing "reasonable restrictions on the time, place, or manner of protected speech" in *public* places—such as those necessary to ensure equitable access to limited resources in, say, a public park. See *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989) (collecting cases). But even this Court's more recent cases acknowledge and reaffirm the fundamental unconstitutionality of regimes that "plac[e] unbridled discretion in the hands of a government official" to limit—or prevent altogether—a person's free expression. See *City of Lakewood* v. *Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988) (collecting cases); accord *City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 423 n.19 (1993).

Here, Grand faces a categorical prohibition on his religious exercise on his *private* property. App.2a-3a. And the city ordinance's lack of clear standards for its permitting system gives the planning commission complete discretion over Grand's planned exercise of religion. Under the precedents described above, such unbridled discretion imposes a First Amendment harm when speech is the subject of the license. When the subject of the license is an individual's free exercise of religion—whether that right is guaranteed by the First Amendment or RLUIPA—such broad administrative discretion should be just as unlawful.

II. Requiring Religious Believers Whose Free Exercise Rights Have Been Chilled to Prove More Than a Concrete Threat of Enforcement Threatens Irreparable Harm.

Moreover, because the harms to religious landowners are complete once the landowners are forced to either seek government permission to use their land for religious purposes or desist such efforts, they should be able to vindicate their rights even before the government decides whether to exempt them from its zoning laws. As Grand emphasizes, there is a split on this question. The First and Eleventh Circuits correctly recognize that the harm to free-exercise rights in land-use cases may "become clear at a different point than that contemplated by takings law." See Pet.14-15 (quoting *Roman Cath. Bishop of Springfield* v. *City of Springfield*, 724 F.3d 78, 92 (1st Cir. 2013)). But others, including the Third, Sixth, and Ninth Circuits, do not. See Pet.15 (collecting cases). This Court's review is necessary to resolve that split and provide a remedy to religious landowners living in those circuits that require a final decision from the government before the landowner can sue. For landowners in those circuits, the First Amendment and RLUIPA offer no protection—even if, as here, the landowner's free exercise of religion is chilled by government threats—until the landowner first seeks an exemption from zoning requirements and has it denied.

That narrow understanding of ripeness has gone on long enough. As explained above, when the government has the discretionary power to sanction a landowner for not first seeking permission before

using their land for religious reasons, that is a cognizable harm under the First Amendment and RLUIPA. As this Court recently reiterated, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud* v. *Taylor*, 606 U.S. 522, 569 (2025) (quoting *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14, 19 (2020) (per curiam)); accord *Mirabelli* v. *Bonta*, 146 S. Ct. 797, 803 (2026) (per curiam).

To prevent such irreparable harms to landowners in the Third, Sixth, and Ninth Circuits, this Court's intervention is necessary to resolve the split.

CONCLUSION

At the very latest, Grand's Free Exercise and RLUIPA claims accrued when he cancelled a prayer meeting after the government threatened to sanction him for violating its zoning rules. Once his free exercise was chilled, he should have been able to challenge even the momentary loss of his freedom to worship in his home. But the lower courts did not allow him to do so on the theory that zoning's unique finality rules rather than traditional First Amendment principles apply. The Court should grant review and fix that error to prevent irreparable harm to religious landowners in the Third, Sixth, and Ninth Circuits.

Respectfully submitted,

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amicus Curiae

April 10, 2026