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 OF AGUDATH ISRAEL OF AMERICA AND RATIO CHRISTI AS AMICI CURIAE IN SUPPORT OF PETITIONER

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APRIL 10, 2026

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INTEREST OF AMICI CURIAE

Agudath Israel of America, founded in 1922, is a national grassroots Orthodox Jewish organization. Among its other functions, Agudath Israel articulates the position of the Orthodox Jewish community on a broad range of legal issues affecting religious rights and religious liberty. Agudath Israel regularly engages all levels of government—including through the submission of amicus curiae briefs—to advocate for the interests of the Orthodox Jewish community throughout the United States. Agudath Israel was one of the organizations that advocated for passing the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.*, and its constituents are often plaintiffs in actions brought under that statute as well as its sister statute, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*

Ratio Christi is a campus ministry on 125 campuses nationwide that seeks to share the hope and explore the truth claims of Christianity within a welcoming, loving, and intellectually engaging environment. Ratio Christi examines vital questions about faith, reason, and life through panel discussions, lectures, discussion groups, and debates. Ratio Christi trains students who want to discuss their beliefs in a rational manner, hosts events, and fosters dialogue on campus. To fulfill this religious mission, Ratio Christi regularly meets in homes.

Although *amici* come from different religious traditions, they submit this brief jointly to urge the Court to grant review because the question presented here is

important to all faiths. Each *amicus* speaks only to the obligations and practices within its own tradition.[1]

[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amici curiae or their counsel contributed money intended to fund preparing or submitting this brief. All parties were timely notified of the intent to file this brief in accordance with Supreme Court Rule 37.2(a).

INTRODUCTION AND SUMMARY

The question presented here—whether *Williamson County* finality requirements apply to religious freedom claims brought under the First Amendment and RLUIPA—is worthy of this Court's review. The question has not only divided the courts of appeals but is also one of exceptional importance to religious people and groups from many traditions across the country.

This Court has repeatedly instructed that the loss of First Amendment freedoms for any time at all is, by definition, irreparable harm. So, the question of *when* a party can sue to vindicate those freedoms is nearly as important as whether the party has a right to sue at all. Ripeness requirements must allow plaintiffs to seek prompt enforcement of their federal rights in federal court. Without that ability, their precious rights will be violated and chilled by state and local officials who are all too often insensitive—if not outright hostile—to people of faith.

The troubling facts here are a case in point. An Orthodox Jew in Ohio is required by his faith to pray with ten men (a *minyan*) and, because adherents of his faith do not drive on the Sabbath, he wished to host this small group at his home. This practice is ancient, commonplace, and strikingly nondisruptive—after all, the inability to drive or use electricity on the Sabbath obviates any concerns about traffic or loud noise. Even so, the City issued a cease-and-desist order against holding this small gathering: because the gathering was religious, the City said, the home was operating as a "house of worship" and, so, needed a special use permit under local zoning ordinances. Worse still, it deployed police surveillance of the home and encouraged neighbors to report prayer gatherings. Petitioner

sought protection from the federal courts. Yet the Sixth Circuit, following its prior precedent, held that the religious liberty claims were not ripe because the local zoning board had not yet finally determined whether the zoning ordinance applied. That application of the finality doctrine (transplanted from the takings context) is wrong and should be corrected.

Review is especially warranted here because of the crucial constitutional interests at issue. The City's order to cease and desist a small prayer gathering in a private home is not a mere land-use dispute; it is a direct intrusion on religious exercise at the place where the First Amendment's protection should be at its apex. For centuries, both the Jewish and Christian traditions have centered core forms of worship in the home, and American law has consistently refused to treat such ordinary religious practice as an activity that exists only at the sufferance of local officials. By allowing a discretionary permitting regime to burden that practice—and then delaying judicial review until the religious plaintiff submits to it—the decision below entrenches the very system of permission-based religious exercise that the First Amendment was designed to eliminate.

The Court should grant review.

ARGUMENT

I. At-home prayer and worship are essential to both Jewish and Christian traditions.

The threshold question in both Free Exercise Clause and RLUIPA cases is whether the government has substantially burdened the plaintiff's religious exercise. Here, there is no question that the local government's stunning act—ordering Orthodox Jews to cease

and desist group prayer in a private home—constitutes such a burden. In Judaism, as in Christianity, at-home religious observance is not a mere matter of convenience, but a core practice rooted in millennia of teaching and tradition and often required by practical necessity.

For the Jewish faith, foundational teachings instruct that religious experience is not confined to the Temple in Jerusalem. The Talmud teaches that the Temple's altar atones for a person when the Temple is standing, but "[n]ow that it is destroyed, a person's table atones for his transgressions." Babylonian Talmud, Berakhot 55a.

Jewish religious practice also often occurs in the home. The practice of sitting *shiva* is illustrative. When a Jewish person dies, the immediate family enters a seven-day period of mourning, during which they must stay home (or at the home of the deceased) and sit on low stools in a reflection of their grief. See Hayim Halevy Donin, *To Be a Jew* 397–402 (2d ed. 2019). The family is comforted by members of the community, and prayer services are held three times a day. See *ibid.* The concept of a *minyan*—at issue here—is related. For Orthodox Jews, a quorum of ten males over the age of 13 is required for the saying of certain prayers and for the reading from the Torah on the Sabbath. See *id.* at 220–22. Such small gatherings often occur at a home. They happen at home on religious holidays or the Sabbath because Orthodox Jews do not drive or use electronics on those days. See *id.* at 121–23. During a *shiva*, they happen at home because the *shiva* necessarily takes place at home, where the *minyan* says required prayers like the Mourner's *Kaddish*. See *id.* at 220.

The home is the center of Jewish observance in many other ways. The *Shema*, Judaism's central prayer which is recited multiple times a day, enjoins believers to instruct their children in the faith "at home" and "when you sit in your house." *Devarim* (*Deuteronomy*) 6:7, 11:19. The *Seder* feast during Passover (*Pesach*) and the Sabbath meals (*Se'udot Shabbat*) are most often gatherings of family and community members at a home, where prayers and songs are offered. See Donin, *supra*, at 17. These rituals and gatherings, all rooted in the home, serve as the vital roots of tradition, preserving Jewish continuity and strengthening families.

So too in Christian tradition and spirituality. Christianity itself grew out of intimate house gatherings of Jesus' followers in the early years following His earthly ministry. See *Acts* 2:46 (English Standard Version) (describing the early disciples' practice of "breaking bread in their homes"). In the Apostle Paul's letters to burgeoning churches, he repeatedly greeted believers meeting in homes. See, *e.g.*, *Romans* 16:5; *1 Corinthians* 16:19; *Colossians* 4:15; *Philemon* 1:2.

These home gatherings were also practically necessary. During periods of state-sponsored persecution, private homes became indispensable refuges where Christians could faithfully observe their religious commands. Believers throughout the Roman Empire relied on private residences until the Edict of Milan granted legal toleration to Christian practice. *Western Architecture: Early Christian*, *Encyclopedia Britannica*, https://perma.cc/J8UW-24AJ (last visited Apr. 9, 2026).

Christians continue to rely on in-home gatherings to fulfill core religious obligations. Scripture expressly

commands believers to gather regularly for mutual exhortation, confession, and prayer. *Hebrews* 3:13; *1 Thessalonians* 5:11; *James* 5:16. Many modern Christians partake in these activities through small group meetings held in private homes. Chris Eyte, *Survey Shows Majority of Evangelical Churches in U.S. Offer Small Groups, but It Doesn't Always Mean the Same*, Christian Daily (Sept. 17, 2024), https://perma.cc/2YJ6-MMR5 (reporting that 31% of leaders said groups meet in homes). Not only is this setting conducive to personal confession and prayer, but to many Christians, gathering in the home is theologically significant; it echoes the practice of the early Church, which met "from house to house." *Acts* 2:46. And such gatherings provide essential opportunities for edification and pastoral care, reinforcing the understanding of the Church as a spiritual family.

II. At-home religious practice warrants robust First Amendment protection.

This Court should grant review and affirm that the Constitution's protection for religious exercise is at its height when worship occurs in the home. History teaches that persecution of home-based worship was a hallmark of the English system rejected by our nation's framers. And modern experience shows that religious groups are often the victims of discrimination and mistreatment at the hands of local officials wielding zoning rules for improper aims. Taken together, these considerations require vigilant judicial enforcement when government action intrudes on ordinary religious worship in a private residence.

A. The First Amendment was adopted against a backdrop of persecution and regulation of home-based worship.

Religious worship in the home is not just important to many faith traditions; it was also an important feature in the history and tradition of American religious freedom. By prohibiting the petitioner from holding a small prayer gathering in his home until he reaches a final determination of a permit request, the City's conduct here resembles one of the key evils of the English system that was flatly rejected by our nation's framers and historical practices.

Through licensing, supervision, and discretionary approval, England spent centuries subjecting religious minorities to the whims of the monarchy and political expediency, with periods of toleration followed by crackdowns. The 1552 Act of Uniformity, which criminalized religious meetings outside of the established church, 5 & 6 Edw. 6, c. 1, led to "widespread persecution of people like John Bunyan who persisted in holding 'unlawful (religious) meetings.'" See *Engel* v. *Vitale*, 370 U.S. 421, 432–33 & n.17 (1962) (detailing history and application of these prohibitions). Quakers and other minority religions were targeted for meeting and preaching in private homes. The Conventicle Act of 1664 escalated England's campaign against private worship by imposing a more specific prohibition: any gathering of more than five persons for unauthorized worship—even within a private home—was categorically illegal. 16 Chas. 2, c. 4.

When allowance was given, it came in the half-hearted form of a revocable permit. The Crown's 1672 Declaration of Indulgence provided licenses to dissenting preachers. The Declaration of Indulgence, 12 Chas.

2, *reprinted in* Frank Bate, *The Declaration of Indulgence 1672 a Study in the Rise of Organised Dissent* 78 (1908). And predictably, the on-off switch of permission-based religious exercise led to the cyclical arrests of once-licensed preachers, including Bunyan himself in 1676. Monica Furlong, *Puritan's Progress: A Study of John Bunyan* 88 (1975). Even after the Toleration Act of 1689, religious minorities were required to register their meeting houses with the civil government. 1 W. & M., c. 18. Meetings in unregistered homes remained forbidden. See *ibid.*

To the founders, such religious freedom conditioned on government permission was no freedom at all. And "[i]t was in large part to get completely away from [England's] sort of systematic religious persecution" that the founders adopted the Religion Clauses. *Engel*, 370 U.S. at 433. The First Amendment thus "contend[s] for . . . more than toleration," because toleration—administered through licensing or permitting—"supposes that some have a pre-eminence above the rest, to grant indulgence." John Leland, *The Virginia Chronicle with Judicious and Critical Remarks, Under XXIV Heads* 40 (T. Green 1790). And by replacing a permission-based system with the right of free exercise, American religion was intended to be "wholly exempt" from the cognizance of Civil Society. James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶ 1 (1785).

Nowhere should this be clearer than in the home. See *Minnesota* v. *Carter*, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring) ("[I]t is beyond dispute that the home is entitled to special protection as the center of the private lives of our people."). The constitutional design corresponded to a uniquely American religious

ecosystem in which in-home worship was common and robustly protected. That attitude toward home worship bore out in early American practice. During the 1730s, for instance, leaders of the First Great Awakening relied on small-group religious meetings in private homes to foster revival. See, *e.g.,* Thomas S. Kidd, *The Great Awakening: The Roots of Evangelical Christianity in Colonial America* 62, 162 (2007). Similarly, Methodist class meetings—small, regular gatherings of a dozen or so believers for prayer, Scripture reading, and mutual accountability—were typically held in private homes, even after the congregations acquired church properties. Elizabeth Sophia Fletcher, *The Methodist Class-Meeting: An Essay on Christian Fellowship* 43 (1873). And even beyond routine gatherings for prayer, study, and fellowship, much of the Second Great Awakening's revival activity took place in homes. Shelby M. Balik, *"Dear Christian Friends": Charity Bryant, Sylvia Drake, and the Making of a Spiritual Network*, 50 J. Soc. Hist. 630, 630 (2017). By the early nineteenth century, it was typical in "early republican New England for homes to function as a spiritual . . . gathering point for neighbors." *Ibid.*

In short, the American tradition reflects the historical importance of home worship. Unlike in the Old World, early American law and practice gave broad latitude for exactly the type of small prayerful gathering in the home that is at issue here. Instead of imposing preclusive procedural hurdles on those types of gatherings, the Founding generation embraced them as legally and culturally desirable.

B. Religious groups face routine mistreatment and discrimination in the zoning and land-use contexts.

Apart from the historical justification for protecting home-based worship, there is a strong practical need for protecting it too. As this case illustrates, local communities can weaponize zoning and land-use regulations to prohibit small, home-based religious assemblies, even without any genuine land-use concern. And such discrimination often evades detection because zoning regimes vest sweeping discretion in local officials or turn on vague and malleable standards—features that "provide ample opportunity for any biases to operate." Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 776 (1999). Though statutes like RLUIPA were crafted as a bulwark against such dangers, robust judicial enforcement is required to actually prevent them.

This Court has long guarded against the dangers inherent in systems that condition constitutional freedoms on a government official's discretion. It has recognized that a law that makes constitutional rights "contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." *Shuttlesworth* v. *City of Birmingham*, 394 U.S. 147, 151 (1969) (quoting *Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958)).

Experience confirms that the dangers of such broad discretion are not theoretical. Religious minorities, particularly Jewish communities, have historically faced exclusion from housing and other land uses. See Michael P. Seng, *The Fair Housing Act and Religious*

Freedom, 11 Tex. J. C.L. & C.R. 1, 5 (2005). For example, in New York, some municipalities were incorporated for the express purpose of excluding Orthodox and Hasidic Jewish communities. See, *e.g.*, *LeBlanc-Sternberg* v. *Fletcher*, 67 F.3d 412, 431 (2d Cir. 1995) (quoting community leader's statement that "the reason [for] forming this village is to keep people like you [i.e., Orthodox Jews] out of this neighborhood"). To carry out that purpose, localities have sought to keep Orthodox and Hasidic Jews out of town by adopting zoning rules restricting religious "services in their clergy's homes." *Id.* at 430–31.

Another recent example is *Congregation Rabbinical College of Tartikov, Inc.* v. *Village of Pomona*, where local officials enacted zoning restrictions to block an Orthodox congregation from building a rabbinical college. 945 F.3d 83, 119–21 (2d Cir. 2019). The record included multiple statements from residents expressing hostility toward Orthodox Jews and their religious practices—illustrating the ease with which discretionary land use processes can become vehicles for community opposition to minority faiths. See *id.* at 120–21 (citing residents' statements that Orthodox Jews intended to "take over this [V]illage," force villagers' tax dollars to finance the Jewish "lifestyle," and "destroy everything that everybody here worked for all their life").

But no faith is exempt from the dangers of discretionary zoning. In *Fortress Bible Church* v. *Feiner*, for example, local officials used a multi-year environmental review process to obstruct a Pentecostal congregation's efforts to build a church, ultimately denying the project. 694 F.3d 208, 213–15 (2d Cir. 2012). The court affirmed the holding that the purported

environmental concerns were pretextual and that the town had manipulated the land use process to discriminate against religious exercise, in violation of both RLUIPA and the First Amendment. *Id.* at 220–21. Similar patterns have emerged elsewhere, including in cases where officials have denied applications that satisfied zoning requirements. See, *e.g.*, *Guru Nanak Sikh Soc'y of Yuba City* v. *County of Sutter*, 456 F.3d 978, 991–92 (9th Cir. 2006) (Sikh group twice denied permit to build temple despite complying with local requirements).

III. Importing a finality requirement from the takings context further harms the crucial religious liberty rights at issue here.

The City's order here—that an Orthodox Jew cease and desist from having a small prayer group in his home—inflicted a constitutional harm of the highest order. But the Sixth Circuit compounded that constitutional injury by insulating it from timely judicial review.

The Sixth Circuit's finality requirement entrenches this unconstitutional permitting regime by requiring believers to submit to its burdensome process before they may challenge it—even after they have suffered a constitutional injury. The City imposed a permitting process on in-home worship, conscripting Mr. Grand into a process of government approval that delayed and disrupted his religious free exercise. That delay and disruption of his religious exercise itself warrants immediate relief, because "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality op.). By conditioning judicial review on completion

of that process, the Sixth Circuit's extension of the finality requirement to this context forces believers to endure substantial delay before exercising a core constitutional right. Requiring a citizen to "first inform the government of her desire to speak to her neighbors [or pray with them] and then obtain a permit to do so" is offensive not only to First Amendment values, "but to the very notion of a free society." *Watchtower Bible & Tract Soc'y of N.Y., Inc.* v. *Village of Stratton*, 536 U.S. 150, 166 (2002).

This Court has made clear that the "availability of a judicial remedy for abuses in the system of licensing" after the system has run its course "still leaves that system one of previous restraint." *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 (1940). And it has said that a person subjected to an unlawful regime need not "yield[] to its demands" before challenging it. *Shuttlesworth*, 394 U.S. at 151 (quoting *Jones* v. *City of Opelika*, 316 U.S. 584, 602 (1942), dissent adopted per curiam on rehearing, 319 U.S. 103 (1943)).

CONCLUSION

This Court should grant review.

Respectfully submitted,

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