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 Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, THE GENERAL COUNCIL OF THE ASSEMBLIES OF GOD, AND THE GENERAL CONFERENCE OF THE SEVENTH-DAY ADVENTISTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE[1]

Amici are nonprofit organizations dedicated to safeguarding religious liberty as a universal right. They submit this brief to urge the Court to clarify the pre-enforcement standing framework applicable to claims arising under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.*, and the First Amendment. The Sixth Circuit's decision, if left undisturbed, would hand government actors a blueprint for simultaneously burdening faith communities and insulating those burdens from judicial review.

The United States Conference of Catholic Bishops (USCCB) is a nonprofit corporation whose members are the active Cardinals, Archbishops, and Bishops of the United States and the U.S. Virgin Islands. On behalf of the Christian faithful, the USCCB advocates and promotes the pastoral teaching of the Catholic Church in a broad range of areas, from the free expression of ideas and the rights of religious organizations and their adherents, to fair employment and equal opportunity for the underprivileged, protection of the rights of parents and children, the value of human life from conception to natural death, and care for immigrants and refugees. When lawsuits touch upon important tenets of Catholic teaching, the Conference has filed amicus curiae briefs to assert its view, most often in this Court. In so doing, the

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than amici curiae, their counsel, or their members made a monetary contribution intended to fund the brief's preparation or submission. Amici provided timely written notice of this brief.

Conference seeks to further the common good for the benefit of all. It has frequently participated as an amicus in this Court to further its particular interest in the right of individuals and communities to freely practice their faith.

The General Council of the Assemblies of God (USA), together with Assemblies of God congregations around the world, is the world's largest Pentecostal denomination. The Assemblies of God has approximately 88 million members and adherents worldwide. A voluntary cooperative fellowship, it has nearly 13,000 churches voluntarily affiliated in the United States. Twenty-two colleges and universities are endorsed by the Assemblies of God in the United States. The Assemblies of God seeks to foster a society in which religious adherents of all faiths may peaceably live out the dictates of their conscience

The General Conference of the Seventh-day Adventists is the worldwide administrative body for the Seventh-day Adventist Church, a Protestant Christian denomination with more than 24 million members worldwide, 1.3 million members and over 5,400 congregations in the United States. It has a longstanding commitment to religious liberty and was one of the organizations that advocated for and worked to help pass RLUIPA it has a strong interest in plaintiffs being able to vindicate the rights it gives.

SUMMARY OF ARGUMENT

Religious freedom is not a privilege to be rationed by administrative gatekeepers. It is a constitutional right that federal courts are obliged to protect as soon as the government threatens to burden it. This case presents the Court with an opportunity to reaffirm that principle and to foreclose a growing practice by which government actors simultaneously burden religious exercise and attempt to insulate that burden from judicial review.

Daniel Grand is a Jewish man who opened his home for prayer. The City of University Heights responded by ordering him to stop in cease-and-desist letter. That cease-and-desist letter was not an invitation to negotiate; it was a credible threat of enforcement against constitutionally and statutorily protected religious exercise. Yet the Sixth Circuit held Mr. Grand's claims were unripe because he had not first applied to the City for permission to practice his faith, permission the City had given itself the power to grant or deny.

That holding rests on a foundational error. The Sixth Circuit imported *Williamson County Regional Planning Commission v. Hamilton Bank*, a finality doctrine developed for Fifth Amendment takings claims, into a case arising under the Religious Land Use and Institutionalized Persons Act and the First Amendment. *Williamson County* is ill-suited for RLUIPA and First Amendment cases. The doctrine ensures that courts do not adjudicate the economic impact of a regulation before the government's final position is known. RLUIPA and the First Amendment, by contrast, are violated the moment a credible governmental threat chills protected religious

exercise, regardless of whether an exemption process remains available. Forcing a religious plaintiff to exhaust an administrative process before vindicating his rights does not prevent premature adjudication; it imposes the very burden the Constitution forbids.

Amici are large religious bodies whose members encounter land-use ordinances, federal agency rules, and other regulatory regimes that restrict religious exercise while offering individual exemption processes designed to forestall judicial challenge. The Sixth Circuit's reasoning, if left undisturbed, would hand government actors a template for burdening faith communities while keeping the courthouse door closed. The Court should grant certiorari to make clear that *Susan B. Anthony List v. Driehaus*, not *Williamson County*, governs pre-enforcement standing in religious freedom cases, and that a plaintiff's failure to seek an optional exemption does not extinguish a credible threat of enforcement.

ARGUMENT

I. Under *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), Mr. Grand has suffered a justiciable injury.

The Sixth Circuit erred by evaluating Mr. Grand's injury under the prudential ripeness exception to standing from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985). *Williamson County* is a Fifth Amendment takings case that held a takings claim is not ripe until the land-use "decisionmaker has arrived at a definitive position on" whether the requested land-use will be allowed. *Id.* Mr. Grand's case, by contrast, raises questions of religious speech and religious exercise. That his claim challenges the City of University Heights's zoning code is of no moment, because Mr. Grand does not contend the code has affected his property value or infringed on any property right. He contends the code burdens his right to speech and the free exercise of religion. Mr. Grand's standing thus should not be judged by case law interpreting the Takings Clause of the Fifth Amendment. It should be judged by this Court's and the lower courts' pre-enforcement precedents arising from cases pressing First Amendment arguments similar to Mr. Grand's.

A. *Susan B. Anthony List* is the framework for measuring whether there is a justiciable controversy in this case.

Mr. Grand's suit is a pre-enforcement challenge to the City of University Heights's zoning ordinances to the extent those ordinances prohibit use of his home

for Jewish prayer meetings. The City's cease and desist letter, threatening to prohibit those prayer meetings, prevents or at least substantially chills Mr. Grand from using his home to practice his Jewish faith in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. In holding that Mr. Grand's case was not justiciable because he failed to exhaust an optional City-established exception process, the Sixth Circuit ignored pre-enforcement standing doctrine that establishes Mr. Grand's concrete constitutional injury.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) stated the modern three-part test for determining whether a plaintiff has standing to bring a claim. The plaintiff must show (1) an "injury in fact," (2) "a causal connection between the injury and the conduct complained of," and (3) that his injury is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Whether a plaintiff has standing to challenge a law on a pre-enforcement basis primarily concerns the injury-in-fact requirement. As a general matter, an injury in fact exists if the Plaintiff has a "personal stake in the outcome of the controversy," *Susan B. Anthony List*, 573 U.S. at 158, and his claims are "not conjectural or hypothetical," *Lujan*, 504 U.S. at 560.

Pre-enforcement cases present a question of timing: when does a threat of enforcement become sufficiently imminent to give rise to an injury in fact under Article III? On one hand, a plaintiff need not wait for an actual enforcement action before his claim is justiciable. Article III does "not require a plaintiff to expose himself to liability before bringing suit to

challenge the basis for the threat." *Susan B. Anthony List*, 573 U.S. at 159 (quoting *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 128–129 (2007)). On the other hand, a plaintiff who presents a purely hypothetical threat of enforcement cannot invoke the jurisdiction of the federal courts. *Id.* at 158. To determine when a threat is sufficiently imminent to create a justiciable case under Article III, the Court has articulated three factors. Each of those factors is present in this case.

First, the plaintiff must allege "an intention to engage in a course of conduct arguably affected with a constitutional interest." *Susan B. Anthony List*, 573 U.S. at 160. Mr. Grand's prayer services easily exceed this threshold requirement. This Court has repeatedly ruled that prayer is core First Amendment speech and religious exercise. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). At-home religious services also are squarely protected First Amendment religious exercise. In *Tandon v. Newsom*, the Court enjoined California's Covid-19 regulations to the extent they prohibited in-home worship services. 593 U.S. 61 (2021).

Second, the plaintiff's conduct must be "*arguably* proscribed by the" law he challenges. *Susan B. Anthony List*, 573 U.S. at 162 (cleaned up and emphasis added). A statute or ordinance that "sweeps broadly" such that its prohibition "covers the subject matter of" the plaintiffs' conduct satisfies this element of pre-enforcement standing. *Id.* So does an official interpretation of the law that would prohibit the plaintiff's conduct. *Id.* Here, the University Heights Code of Ordinances § 1250.02 prohibits "[h]ouses of worship" in the U-1 zone where Mr. Grand's home is

located. After he began his prayer meetings, the City informed Mr. Grand that he was operating his home as a "place of religious assembly" in violation of the City zoning code and ordered him to cease services. *Grand v. City of Univ. Heights, Ohio*, 159 F.4th 507, 510 (6th Cir. 2025). That is all that is required under Article III: Mr. Grand has been told by City officials that his conduct violates the law. While the Sixth Circuit's analysis turned on the possibility that the City would grant Mr. Grand an exception in the form of a special use permit, this potentiality does not alter the conclusion that the City's Code *arguably* proscribed Mr. Grand's conduct. The threat of enforcement from the City officials responsible for enforcing the Code is sufficient to hold that Mr. Grand's prayer meetings arguably fall within the Code's prohibition as an un-zoned use.

Third, the Plaintiff must allege a "credible threat of enforcement." *Susan B. Anthony List*, 573 U.S. at 159. This is a light burden once a plaintiff has established that their conduct falls within a statute's prohibition; an actual threat of prosecution is not a requirement. A statute that arguably proscribes the plaintiff's conduct and portends significant penalties for its violation is sufficient to give rise to standing. *Id.* Indeed, in *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979), the State had taken no steps toward prosecution, but this Court found a credible threat because the State "had not disavowed" prosecuting the law and plaintiffs had "some reason" to fear prosecution. *Babbitt*, 442 U.S. at 302. In *Virginia v. American Booksellers Association*, the Court found a credible threat for the simple reason that "[t]he State has not suggested that the newly enacted law will not

be enforced, and we see no reason to assume otherwise." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988). In this case, not only does Mr. Grand's conduct fall within the statute's prohibition, he received a cease-and-desist letter from the City—a literal threat of enforcement. *Grand*, 159 F.4th at 509–10. That the threat came from the Mayor rather than the Planning Board is of no moment because it came from an official with enforcement authority. Indeed, not only was Mr. Grand served with a cease-and-desist letter, police units were ordered to drive by his house to search for violations, a local prosecutor began an investigation into him, and a city inspector actually searched his home. *See Grand*, 159 F.4th at 511. If any person has ever been credibly threatened with enforcement of a law, it is Daniel Grand.

1. Lower courts regularly find pre-enforcement standing in free exercise cases.

There is an extensive body of lower-court precedent applying *SBA List* in pre-enforcement religious freedom cases analogous to Mr. Grand's.[2]

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[2] Some recent examples include: *Braidwood Mgmt. Inc. v. EEOC*, 70 F.4th 914, 929 & n.27 (5th Cir. 2023) (holding plaintiffs had standing to bring pre-enforcement challenge where the EEOC previously brought an enforcement action under similar circumstances); *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 375 (5th Cir. 2022); *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 903 (W.D. La. 2025) (USCCB has standing to challenge PWFA final rule on pre-enforcement basis); *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1022 (D.N.D. 2024) (holding Catholic employers had standing to bring pre-enforcement challenge to Pregnant Workers Act Final Rule on pre-enforcement basis); *Christian Emps. All. v. EEOC*, 2022 WL 1573689, at *4 (D.N.D.

Two of those decisions are worth highlighting because their serpentine procedural history illuminates the relatively low bar a litigant must clear to have pre-enforcement standing.

Franciscan Alliance, Inc. v. Becerra, 47 F.4th 368, 375 (5th Cir. 2022) and *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022) were pre-enforcement challenges to final rules issued by the Department of Health and Human Services in 2016 interpreting Section 1557 of the Affordable Care Act and Title VII of the Civil Rights Act to require coverage and provision of gender-transition interventions for minors. In both cases, Catholic employers and medical providers challenged the 2016 Section 1557 rule shortly after its promulgation, arguing that the rule violated the First Amendment and the Religious Freedom Restoration Act. *Franciscan All.*, 47 F.4th at 372; *Religious Sisters of Mercy*, 55 F.4th at 592. Shortly after filing suit, however, presidential administrations changed, and HHS issued a notice stating that it was reconsidering the 2016 Section 1557 rule. *Religious Sisters of Mercy*, 55 F.4th at 592. In 2020, HHS substantially repealed and replaced the 2016 rule. *Id.* at 594. The 2020 Rule was then challenged by different plaintiffs arguing that the 2016 rule properly interpreted Section 1557, and district courts in New York and Massachusetts issued injunctions of the 2020 Rule. *Id.* at 596.

In both cases, the government argued that the repeal of the 2016 rule, and its replacement with the

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May 16, 2022) (group of Christian employers had standing to challenge EEOC rule on pre-enforcement basis).

2020 rule, made the plaintiffs' claims non-justiciable. In *Franciscan Alliance*, the government argued that plaintiffs' claims were made moot by the 2020 rule because it repealed and replaced the 2016 rule. *Franciscan All.*, 47 F.4th at 374–76. In *Religious Sisters of Mercy*, the government argued that there was an insufficiently credible threat of enforcement of the 2016 rule and thus plaintiffs lacked pre-enforcement standing to bring their claims. *Religious Sisters of Mercy*, 55 F.4th at 602–03.

The government further argued that it "'ha[d] not to date evaluated' whether it will enforce Section 1557 against [Catholic employers]" and thus the plaintiffs' alleged injury was merely conjectural. *Id.* The government also argued that its promise "to not enforce the challenged policies" to the extent they were contrary to the "Religious Freedom Restoration Act" and the First Amendment meant plaintiffs could not claim a credible threat of enforcement. *Id.*

The Fifth Circuit and Eighth Circuit rejected the government's arguments and held that the plaintiffs' claims were justiciable. Most notably, both courts held plaintiffs had pre-enforcement standing because the government refused to categorically disavow enforcement of the challenged interpretation of Section 1557 against Catholic employers and healthcare providers, including plaintiffs. *Religious Sisters of Mercy*, 55 F.4th at 603 (citing *Franciscan Alliance*, 47 F.4th at 376). In addressing the government's argument that it "had not…evaluated" enforcement against religious employers, the courts explained that "the government's assertion that it has not to date evaluated' whether it will enforce Section 1557 against the plaintiffs is actually a concession

that it may do so." *Religious Sisters of Mercy v. Becerra*, 55 F.4th at 605 (citing *Franciscan Alliance*, 47 F.4th at 376) (cleaned up). The government's refusal to disavow enforcement coupled with its prior interpretation of Section 1557 to require coverage of gender transition interventions meant plaintiffs had standing. *Id.*

Franciscan Alliance and *Religious Sisters of Mercy* are helpful guides here for several reasons. First, they show that pre-enforcement standing is appropriate in cases asserting free exercise claims arising under statutes like RFRA and RLUIPA. Second, both cases show that Article III's standing requirement is not hard to meet in the pre-enforcement context. A past unconstitutional interpretation of a law coupled with a refusal to categorically disavow enforcement is sufficient to give rise to standing. And finally, as explained in Section II below, both cases show that the possibility of an exemption does not preclude standing.

B. Standing under *Susan B. Anthony List* cannot be overridden by *Williamson County*'s prudential ripeness exception to Article III.

The Sixth Circuit dismissed Mr. Grand's RLUIPA and First Amendment claims as unripe, relying on the finality requirement drawn from *Williamson County*, 473 U.S. 172, 193. That error was foundational because *Williamson County*'s finality rule is a doctrine of prudential ripeness, not a constitutional mandate. Rejecting a case for prudential, as opposed to constitutional reasons, is in substantial tension with the "virtually unflagging" "obligation" of "a federal court[] . . . to hear and decide a case" within its

constitutional jurisdiction. Where a plaintiff independently satisfies the Article III test for pre-enforcement standing provided by *Susan B. Anthony List*, no prudential doctrine should close the courthouse door to adjudication of plaintiff's claims. Mr. Grand satisfies *Susan B. Anthony List* on this record and thus the Court should reverse the Sixth Circuit's decision.

The finality requirement of *Williamson County* was designed to serve a specific and narrow purpose: preventing federal courts from adjudicating takings claims before local authorities have determined the extent of the challenged regulation's application to the property at issue. As this Court explained, requiring absolute finality is "compelled by the very nature of the inquiry required by the Just Compensation Clause." 473 U.S. at 188–90. Specifically, whether a taking occurs turns on numerous "factors," including "the economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations." *Id.* at 191.

The rationale for finality in the takings context is straightforward. Whether a regulation affects a taking turns on the economic impact to the property owner—a fact-specific inquiry that is genuinely indeterminate until the regulatory agency has made all decisions affecting the land. *See MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 349 (1986) ("Until a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retains any reasonable beneficial use or whether existing expectation interests have been destroyed."). The

economic value of real property depends on contingencies—the availability of variances, waivers, and alternative uses—that may substantially alter the ultimate regulatory footprint. Until those contingencies are resolved, a court cannot know how far the regulation goes, and thus cannot assess whether it has "gone too far'" to affect a taking. *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

None of that logic applies here. Mr. Grand is not claiming that the City has taken his property without just compensation, and he does not ask this Court to calculate the economic diminution in the value of his land. The contingencies that make takings claims unsuitable for pre-final-decision adjudication are irrelevant to his claims. His claim turns on whether the City may constitutionally condition his religious exercise on that permit in the first place and whether the order to cease and desist is a credible threat of enforcement that chills his right to religious exercise. Nothing about Mr. Grand's injury is indeterminate pending resolution of the administrative process: he has already been prevented from praying and continues to be prevented from praying.

Additionally, applying the prudential *Williamson County* inquiry to RLUIPA claims undermines its protection of religious exercise. RLUIPA, like RFRA, is a super-statute that displaces the ordinary operation of local ordinances in the service of robust protection for religious exercise. *See* 42 U.S.C. § 2000cc-3(e); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020). The Act imposes a demanding standard. A state actor that substantially burdens religious land use must demonstrate that the burden is the least restrictive means of advancing a compelling

governmental interest. 42 U.S.C. § 2000cc(a). This Court has emphasized that RLUIPA should "be construed in favor of a broad protection of religious exercise." *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (quoting 42 U.S.C. § 2000cc-3(g)). And it should be considered at all stages of implementation of a land-use code, including, as here, responding to citizen complaints about an allegedly improper land use.

Applying *Williamson County*'s finality rule to RLUIPA claims inverts that command. It tells the religious plaintiff: before you can vindicate your statutory rights, you must complete a potentially years-long administrative process and wait for a final adverse decision—even though the act of subjecting your religious practice to that process is itself the constitutional and statutory injury. That result finds no support in RLUIPA's text, in this Court's precedents, or in the common understanding that the loss of religious liberty, even briefly, is irreparable. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

II. Unless the Court grants review, the Sixth Circuit's broader doctrinal confusion will recur.

The Court should grant review to clarify proper application of the finality doctrine and prevent state actors from abusing doctrinal confusion to burden religious freedom. Over recent decades, federal agencies and state governments have realized that they can manipulate ripeness doctrine by placing a categorical burden on religious exercise but offer an individualized accommodation process. Then, when

religious groups sue based on the burden, the agencies invoke ripeness just like the City has done in this case. This argument is based on a misunderstanding of the federal courts' jurisdiction, but it has proliferated in recent years. The Court should stop it.

A. There is a trend of state actors abusing ripeness to burden religion.

State actors who wish to deter robust religious exercise have realized that they can potentially manipulate the federal courts' Article III jurisdiction by enacting a general policy that on its face burdens or prohibits religious exercise while allowing religious individuals and entities to seek an exemption from the policy on a case-by-case basis. Federal agencies, for example, promised in the *Religious Sisters of Mercy* and *Franciscan Alliance* litigation over the 2016 Section 1557 rule that they would determine whether RFRA and the First Amendment require specific exemptions on an individual basis. That individual exemption process, the agencies argued, meant the plaintiffs lacked Article III standing. And of course, the City in this case has argued that notwithstanding its blanket prohibition on houses of worship in Mr. Grand's zoning designation and its related cease-and-desist letter, Mr. Grand lacks standing because he has failed to apply for an exemption. But a state actor's "reliance on [a] case-by-case standard" for religious exemptions "constitutes 'a concession that it may' seek enforcement." *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1022 (D.N.D. 2024) (quoting *Religious Sisters of Mercy*, 55 F.4th at 605).

Several examples illuminate the trend.

1. The 2024 rule implementing the Pregnant Workers Fairness Act. A clear example of a policy gerrymandered in an attempt to evade federal court jurisdiction is EEOC's 2024 final rule implementing the Pregnant Workers Fairness Act. That rule required employers to accommodate, among other things, employee abortions and immoral fertility treatments. *See* 89 Fed. Reg. 29,183 (April 19, 2024). The EEOC expanded the definition of "pregnancy, childbirth, or related medical conditions" to include "termination of pregnancy, including . . . abortion" and "fertility treatment." *Id.* at 29,106, 29,183; 29 C.F.R. § 1636.3(b). "Fertility treatment" included fertility treatments like in vitro fertilization ("IVF") that are contrary to many employers' religious faith. *Id.* at 29,102, 29,190. Many religious employers, including amicus USCCB, oppose accommodation of abortion and certain forms of artificial reproductive technology,[3] and yet the PWFA rule applied to such employers on its face.

To evade federal court review of this policy, EEOC purported to adopt a "religious exemption" that EEOC would commit to determine whether an employer was entitled to a religious exemption through a "fact-sensitive, case-by-case analysis" conducted by the agency. *Id.* at 29,148-49. The government argued that this commitment—to consider a religious exemption on a claim-by-claim basis—rendered those religious

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[3] USCCB challenged the PWFA final rule under RFRA on a pre-enforcement basis and ultimately won vacatur of the rule to the extent the Rule required USCCB to accommodate employee abortions. *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 911 (W.D. La. 2025).

employers who challenged the PWFA like *amici* USCCB without standing. "For Plaintiffs' or their members' injury to be credible, numerous contingencies would all have to occur," argued the government, including that "EEOC must reject all of the employer's potential defenses, [such as] the ministerial exception and RFRA." Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 14, *Catholic Benefits Ass'n v. Burrows*, No. 1:24-cv-00142-DMT-CRH (D.N.D. Aug. 22, 2024), ECF No. 22. Put another way, the EEOC enacted a rule that facially burdened religious employers but claimed that the rule could not be challenged in federal court unless and until the EEOC determined whether a specific employer was entitled to a religious exemption.

2. The 2016 and 2024 rules implementing Section 1557 of the Affordable Care Act. Another example of a religious "exemption" strategically employed to evade federal court jurisdiction are HHS's 2024 and 2016 rules implementing Section 1557 of the Affordable Care Act. Both rules required healthcare providers, insurers, third-party administrators, and employers to provide and cover gender-transition interventions, including puberty blockers, cross-sex hormones, and surgical interventions. 81 Fed. Reg. 31,376, 31,376 (May 18, 2016); 89 Fed. Reg. 37,522, 37,699 (May 6, 2024). And both rules announced a blanket policy for all covered entities within its scope, including Catholic healthcare providers, hospitals, and employers that hold sincere religious beliefs contradicted by the provision of gender transitions. Nor did the 2024 or 2016 Section 1557 rules contain a religious exemption

for such employers and others who objected to the provision of gender transition interventions on religious grounds. *Religious Sisters of Mercy*, 55 F.4th at 590.

The 2024 Section 1557 rule instead stated, "[i]nsofar as the application of any requirement…would violate applicable Federal protections for religious freedom and conscience, such application shall not be required." 45 C.F.R. § 92.3(c); *see also* 89 Fed. Reg. at 37,532. The 2016 rule contained a similar statement. 45 C.F.R. § 92.2 (2016). The 2024 Section 1557 rule also adopted a procedure that allows a conscientiously objecting religious employer to "seek assurance" from HHS that it is exempt from one or more of the religiously objectionable mandates identified in this brief. 45 C.F.R. § 92.302. In subsequent litigation over the 2024 rule, the government argued that these provisions deprived aggrieved plaintiffs of standing. "The new assurance process under § 92.302 adds to an already attenuated chain of events that must occur before any CBA member might be injured and weighs heavily against finding that any future injury is sufficiently imminent to give rise to Article III jurisdiction."[4] HHS and EEOC made this argument even though they were actively enforcing Section 1557 and Title VII to require covered entities to provide and cover gender-transition interventions. *See, e.g.*, *Christian Emps.*

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[4] Combined Opposition to Plaintiffs' Partial Motion for Summary Judgment and Memorandum in Support of Defendants' Cross-Motion to Dismiss Plaintiffs' RFRA Claims or, in the Alternative, for Summary Judgment on Those Claims at 23, C*atholic Benefits Ass'n v. Becerra*, No. 3:23-cv-00203-PDW-ARS (D.N.D. Sept. 11, 2024), ECF No. 57.

All. v. EEOC, 2022 WL 1573689, at *5 (D.N.D. May 16, 2022) (noting that the government conceded that "there have been complaints that have likely gone through the conciliation process" concerning the challenged interpretations of Section 1557 and Title VII).

As with the PWFA rule, in the 2024 and 2016 Section 1557 rules HHS promulgated a blanket mandate that uniformly burdened the religious beliefs of thousands of healthcare providers and employers across the United States, while at the same time arguing that those providers and employers could not challenge the rule under RFRA or the First Amendment until each one of them had gone through the optional "assurance" process one-by-one over a course of years.

3. The 2023 Health and Human Services grant regulation. The Department of Health and Human Services employed the same device in its 2023 grant regulation. 88 Fed. Reg. 44750 (Jul. 13, 2023). That regulation governs grants across a wide swath of HHS programs, including preventative health services, health education, refugee assistance, assistance to low-income housing, and a host of other government programs.

The 2023 rule prohibited any recipient of HHS grant funds from discriminating on the basis of sexual orientation or gender identity. This interpretation placed an enormous burden on religious recipients, who would have been required to eliminate single-sex bathrooms, place foster children with same-sex couples, and begin addressing their employees by their preferred pronouns. *See* United States Conference of Catholic Bishops, comment on Health

and Human Services Grants Regulation at 6–7 (September 5, 2023).

The grant regulation borrowed the exemption regime from HHS's Section 1557 rules. Thus, once again, HHS imposed a rule that facially burdened religious exercise. If a religious grant recipient failed to comply with the nondiscrimination requirements, they violated the rule. But, an individual grant recipient could apply for its own religious exemption.

4. State agency administrative subpoenas. Following this Court's opinion in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 228 (2022), state attorneys general have begun leveraging ripeness doctrine to insulate onerous subpoenas from judicial review. The state officials will issue a subpoena to a religious organization and, when the subpoena is challenged in court, will argue that the challenge is unripe because the religious organization has not yet defied the subpoena and litigated its validity. This creates functionally the same result as the rules above: religious organizations cannot vindicate their rights until they've once litigated their individual case and lost.

Most notable of these cases is *First Choice Women's Res. Centers, Inc. v. Att'y Gen. of New Jersey*, No. 24-3124, 2024 WL 5088105, at *1 (3d Cir. Dec. 12, 2024), *cert. granted sub nom. First Choice Women's Res. Centers, Inc. v. Platkin*, 145 S. Ct. 2793, 222 L. Ed. 2d 1085 (2025). But other attorneys general have used the same formula. *See, e.g., Obria Grp., Inc. v. Ferguson*, No. 3:23-CV-06093-TMC, 2025 WL 27691, at *2 (W.D. Wash. Jan. 3, 2025); *Judge rules attorney general cannot enforce subpoena against Seattle Archdiocese*, National Catholic Reporter (July 18,

2024) https://www.ncronline.org/news/judge-rules-attorney-general-cannot-enforce-subpoena-against-seattle-archdiocese.

The lower courts have largely seen through these attempts to evade federal court review for what they are. Such exemption processes are not a disavowal of enforcement that deprives a plaintiff of standing. *See Religious Sisters*, 55 F.4th at 606 ("Although the government maintains that it 'will comply' with RFRA, its promise is 'so vague that the scope of liability is both unknown by the government and unknowable to the plaintiffs,'" (cleaned up)). And as for the case-by-case approach, one lower court aptly described the government's position of forcing religious organizations to "withstand a case-by-case analysis . . . of their religious preferences" as "[g]overnment harassment of religious organizations." *Christian Emps. All. v. EEOC*, 2022 WL 1573689, at *5 (D.N.D. May 16, 2022). The burden of investigation and possible litigation, at the very least, provides "a substantial likelihood of added regulatory burden and compliance costs." *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 664 (W.D. La. 2024)

B. Review is needed to clarify that the Sixth Circuit's finality rule is limited to the takings context.

The decision of the Sixth Circuit below approves the kind of jurisdictional skullduggery that has been on the rise at federal agencies. On one hand, the City of University Heights has promulgated a code that proscribes Mr. Grand's right to use his home for prayer services and warned him to cease and desist from doing so. *Grand v. City of Univ. Heights, Ohio*, 159 F.4th 507, 510 (6th Cir. 2025). On the other hand,

the City and the Sixth Circuit claim Mr. Grand has no standing until he applies for and is denied a special exemption from the rule. *Id.* The Sixth Circuit couched this as a "finality requirement—a concrete and final decision by the local authorities." *Id.* at 512. "This approach," the Sixth Circuit argues "prevents [courts] from swinging at a moving target." *Id.*

If allowed to stand, the Sixth Circuit's approach would invite government actors to double down on requiring religious objectors to jump through administrative hoops before invoking the jurisdiction of the federal courts. Religious plaintiffs will be required to suffer an injury and then sit on their hands while the very agency responsible for their injury considers and rejects a request for religious exemption. Only then will they be able to invoke the jurisdiction of the federal courts.

This incentive structure is perverse. A government actor wishing to burden religious practice may do so freely, so long as it pairs the burden with a discretionary exemption process. The more cumbersome and uncertain that process, the more effectively it deters religious exercise and the more it also postpones judicial review. In the interim, the believer must decide whether to submit to a potentially costly and years-long administrative process in hopes of obtaining permission to practice their faith or abandon that practice to avoid prosecution. Neither option is consistent with RLUIPA's command that religious exercise receive broad protection at all stages of land use regulation. *See* 42 U.S.C. § 2000cc-3(g).

To be sure, the Sixth Circuit attempted to cabin its reasoning to the land use context. But while a

finality requirement might make sense of a takings claim, it makes no sense to apply it to First Amendment freedoms. Those freedoms are violated not just by absolute prohibitions on religious exercise, but also by temporary burdens or processes that make exercising those rights more difficult. *See N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."). . Indeed, this Court has recognized that the loss of First Amendment freedoms "for even minimal periods of time, unquestionably constitutes irreparable injury."*Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). A finality rule that delays federal jurisdiction by months or years is therefore not a neutral timing mechanism. It is itself a constitutional harm.

The Court should grant certiorari to clarify that pre-enforcement standing does not require a state actor to expressly reject an individual's request for religious exemption. Rather, a plaintiff has standing as soon as a credible threat arises: when a policy arguably proscribes the plaintiff's conduct and the government threatens enforcement against him.

CONCLUSION

For the foregoing reasons, this Court should grant the petition. The Court should clarify that S*usan B. Anthony List*, not *Williamson County*, governs pre-enforcement standing in religious freedom cases, and that a credible threat is not extinguished by an optional exemption process.

Respectfully submitted,

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April 10, 2026