

No. 25-965

IN THE
Supreme Court of the United States

DANIEL GRAND

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Respondents.

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

**AMICUS CURIAE BRIEF OF
NC VALUES INSTITUTE
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae respectfully urges this Court to reverse the Sixth Circuit ruling.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and freedom, including parental rights. See <https://ncvi.org>.

**INTRODUCTION AND
SUMMARY OF THE ARGUMENT**

Grand is a devout Orthodox Jew who merely wanted to invite a few other men into his home for prayer according to the requirements of their shared religious tradition. Not a loud, raucous assembly, not a large gathering that would generate traffic congestion—but simply peaceful prayer in the privacy of his home. Grand’s personal residence is not a public forum where the government might impose reasonable time-place-manner restrictions. Grand did not propose structural changes to his home, nor did he seek to construct a building or other structure. Under these circumstances, the First Amendment does not allow the government to require a “special use permit”

¹ *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

or any other prior authorization for this type of private meeting.

It is shocking to observe the City's outright hostility to the peaceful religious exercise of one of its citizens. The City used its "cease-and-desist" order (CADO) as a hammer to stamp out Grand's religious expression, even after he withdrew the SUP application they had demanded he pursue. Neighbors were encouraged to watch and report violations of the patently unconstitutional CADO.

Grand's claims fall well within the criteria this court has established for First Amendment pre-enforcement challenges. *See Susan B. Anthony List v. Driehaus* ("SBA"), 573 U.S. 149, 159 (2014); *Babbitt v. Farm Workers*, 442 U. S. 289, 298 (1979). Nevertheless, the Sixth Circuit found Grand's claims unripe by borrowing precedent from *Fifth* Amendment land-use cases. This Court recently set aside, for another day, "the question whether a Takings Clause rule might be properly transposed into the First Amendment context." *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1128 (2026). That question is the primary focus of this *amicus curiae* brief.

ARGUMENT

I. GRAND IS ENTITLED TO A FEDERAL FORUM WITHOUT FURTHER DELAY.

The City and the lower courts transport holdings from this Court's *Fifth* Amendment land-use cases into the radically different context of religious

expression protected by the *First* Amendment. Under some circumstances, land-use regulations apply to religious gatherings. "[A] church has no constitutional right to be free from reasonable zoning regulations nor does a church have a constitutional right to build its house of worship where it pleases." *Grand v. City of University Heights*, 159 F.4th 507, 516 (6th Cir. 2025) (quoting *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 652 (10th Cir. 2006)). But this case does not fit that mold. Grand is not building a church or any other structure. Personal religious expression inside a private home does not require a "special use permit" or any other government authorization. On the contrary, the government may not infringe the Free Exercise of religion.

This is not a land-use case.

The Sixth Circuit relied on *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). *Williamson* created a nightmarish maze that trapped *Fifth* Amendment Takings claimants and ultimately slammed the federal courthouse door in their faces. In navigating the complex interplay among procedural rules—including removal, res judicata, and collateral estoppel—the befuddled claimant was like a dog chasing its own tail but never catching it. Meanwhile the ripened claim, like a rotten tomato, fell to the ground.

Williamson, overruled in part by this Court's decision in *Knick v. Twp. of Scott*, 588 U.S. 180 (2019), is inappropriate in a *First* Amendment case. Even though *Knick* did not disturb *Williamson*'s finality

requirement, this Court's rejection of its state-exhaustion requirement supports Grand's position. The City has already violated his Free Exercise rights and he has an immediate right to seek remedies in federal court.

This is not a Fifth Amendment Takings case.

"A property owner may bring a takings claim under 42 U.S.C.S. § 1983 upon the taking of his property without just compensation by a local government." *Knick*, 588 U.S. at 206. If a *Fifth* Amendment Takings claimant has an immediate cause of action when the government takes his property without just compensation, then surely a *First* Amendment Free Exercise claimant has a similar right that ripens the moment the government "takes" his right to personal religious expression. Grand must not be required to wade through the City's procedural maze pursuing a special use permit while his religious expression lays dormant. The City has already violated his rights and his claims are as ripe as a rotten tomato.

A. Congressional intent to guarantee a federal forum for the vindication of federal constitutional rights is evident in § 1983 and predecessor statutes dating back to the Civil Rights Act of 1871.

Congress enacted § 1983 "with the express goal of ensuring a federal forum to citizens who claim that state actors have violated their constitutional rights. See Enforcement Act of Apr. 20, 1871, §1, 17 Stat. 13."

First Choice Women's, 146 S. Ct. at 1129. *Williamson County* undermines this fundamental principle. The federal government's role as "a guarantor of the basic federal rights of individuals against incursions by state power" was firmly established during the post-Civil War era when Congress enacted the Civil Rights Act of 1871, the predecessor to 42 U.S.C. § 1983. *Patsy v. Florida Board of Regents*, 457 U.S. 496, 503 (1982). "Section 1983 opened the federal courts to private citizens, offering them a uniquely *federal* remedy" when states trampled their rights under the U.S. Constitution. *Mitchum v. Foster*, 407 U.S. 225, 239 (1972) (emphasis added). This early civil rights legislation was enacted not only for those who were previously enslaved, "but also to all people where, under color of State law, they or any of them may be deprived of rights to which they are entitled under the Constitution by reason and virtue of their national citizenship." *Id.* at 239 n. 30, quoting Representative Shellabarger, Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871). The "very purpose of § 1983" was to protect the people from *state* intrusions on their *federal* constitutional rights. *Mitchum*, 407 U.S. at 242, quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1880). "*Williamson County* stands this doctrine on its head by asserting that state courts not only *may* . . . but indeed *must* be interposed" between the people and the federal courts charged with guarding their rights. Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y 99, 126-127 (2000). In this case it is the City, rather than the state, that is "interposed" between Grand and the federal courts that should be available to vindicate his First Amendment rights.

This Court’s decision in *Knick* confirmed that “[t]he Civil Rights Act of 1871, after all,” guarantees “a federal forum for claims of unconstitutional treatment at the hands of state officials,” with no requirement to exhaust state remedies. *Knick*, 588 U.S. at 185, quoting *Heck v. Humphrey*, 512 U. S. 477, 480 (1994) (quoting *Patsy v. Board of Regents of Fla.*, 457 U. S. 496, 501 (1982)). *Williamson*—in the entirely different context of the Takings Clause—replaced the right to just compensation with “a right to a state law procedure that will eventually result in just compensation.” *Knick*, 58 U.S. at 191. The Sixth Circuit engaged in a similar error by demanding that Grand pursue a final, enforceable decision “about the application of the zoning rules to his home” from the City. *Grand v. City of University Heights*, 159 F.4th 507, 515 (6th Cir. 2025). Erroneously treating the case as a *land-use* challenge instead of a *Free Exercise* challenge, the court reasoned that such cases are not ripe until the “relevant administrative agency resolve[s] the appropriate application of the zoning ordinance to the property in dispute.” *Id.* at 512 (quoting *Miles Christi Religious Ord. v. Township of Northville*, 629 F.3d 533, 537 (6th Cir. 2010)).

As a “general rule,” constitutional claims under §1983 may be litigated “without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available.” *Knick*, 588 U.S. at 194, quoting D. Dana & T. Merrill, *Property: Takings* 262 (2002). It would defeat the purpose of §1983 if asserting “a federal claim in a *federal* court must await an attempt to vindicate the same claim in a *state* court.” *McNeese v. Board of Ed.*

for *Community Unit School Dist. 187*, 373 U. S. 668, 672 (1963) (emphasis added). See also *Monroe v. Pape*, 365 U. S. 167, 183 (1961) (“The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.”). As *Knick* noted, “[t]his is as true for takings claims as for *any other claim grounded in the Bill of Rights*.” *Knick*, 588 U.S. at 194 (emphasis added). Grand’s Free Exercise claim is one of those “other claim[s] grounded in the Bill of Rights.”

B. This Court’s opinion in *Knick* warrants a ruling in Grand’s favor.

It is now “the settled rule . . . that exhaustion of state remedies is *not* a prerequisite to an action under 42 U. S. C. §1983” in a Fifth Amendment takings case. *Pakdel v. City of San Francisco*, 594 U.S. 474 (2021); see *Knick*, 588 U.S. 180.

This is not a Fifth Amendment land-use case, but the Sixth Circuit improperly treated it as if it were and held Grand’s claims unripe because he had withdrawn his Special Use Permit application and therefore had no “final” decision to substantiate his claims. Although the court admits that “Grand did not need to exhaust his local remedies” (*Grand*, 159 F.4th at 513), the court and the City effectively resurrect *Williamson*’s exhaustion prong by demanding that he pursue the SUP application. *Knick*’s rationale, overruling *Williamson* on that point, supports the conclusion that Grand’s Free Exercise rights have already been violated without the need for further proceedings to determine “finality.”

“In the land-use context” finality is required—“a concrete and final decision by the local authorities.” *Grand v. City of University Heights*, 159 F.4th 507, 511 (6th Cir. 2025), citing *Williamson County*, 473 U.S. at 193, *overruled in part on other grounds by Knick*, 588 U.S. at 188. The “relevant administrative agency” must rule on “the appropriate application of the zoning ordinance to the property in dispute” before a land-use challenge ripens. *Grand*, 159 F.4th at 512 (quoting *Miles Christi*, 629 F.3d at 537). But even in the absence of a “final” ruling, the City has “committed itself to a position” by making clear that the CADO will be applied to squelch his religious practice. *First Choice Women's*, 146 S. Ct. at 1128 (2026), citing *Pakdel*, 594 U. S. at 478-479.

Knick overruled *Williamson's* state-exhaustion requirement, which “impose[d] an unjustifiable burden on takings plaintiffs,” explaining that a plaintiff’s Fifth Amendment rights are violated “when the government takes his property without just compensation” (*Knick*, 588 U.S. at 186), i.e., “at the time of the taking” (*id.* at 194). At that point, “contrary to *Williamson County*,” the property owner has a viable federal claim. *Id.* at 189. Indeed, shortly after the *Williamson* ruling, this Court “returned to the understanding that the Fifth Amendment right to compensation *automatically arises* at the time the government takes property without paying for it.” *Id.* at 191-192 (emphasis added), citing *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304 (1987). Similarly, *Grand's* Free Exercise claim automatically arose the moment the City ordered him to “cease and desist” the prayer

meetings in his home, “[n]o matter what sort of procedures” (*Knick*, 588 U.S. at 190) the City had in place for Grand to continue seeking a special use permit. The violation was complete at that point. “A bank robber might give the loot back, but he still robbed the bank.” *Knick*, 588 U.S. at 193. At the very least, Grand is entitled to nominal damages on the merits of his claim for a past, completed Free Exercise violation. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021).

Just as “[f]idelity to the Takings Clause” required this Court to “restor[e] takings claims to the full-fledged constitutional status the Framers envisioned” (*Knick*, 588 U.S. at 189), fidelity to the First Amendment demands that religious liberty claims maintain their prime constitutional status. Even pre-enforcement challenges are viable in cases of immediate, credible threat (Sect. II). The City has demoted the First Amendment to an inferior status among other constitutional rights, including the Fifth Amendment Takings Clause examined in *Knick*.

II. GRAND’S FIRST AMENDMENT CLAIMS ARE RIPE.

The City, with a little help from the federal courts, has taken a straightforward Free Exercise claim and twisted it into a land-use mold where it simply doesn’t fit. This case is about personal, constitutionally protected religious expression, *not* land use. Grand should not be required to risk criminal prosecution to hold a prayer meeting in his home that causes no disruption in the community and involves no

structural changes to his residence. Grand has already suffered losses of his ability to engage in the religious practices required by his faith, and the City's hostility is itself sufficient to constitute a Free Exercise violation.

A. Grand satisfies the ripeness requirements for a pre-enforcement challenge.

Williamson's "finality" prong, which *Knick* did not overrule, was clarified in *Pakdel* as "nothing more than *de facto* finality," to ensure there has been an actual "injur[y] by the Government's action" and the claimant "is not prematurely suing over a hypothetical harm." 594 U.S. at 479. In a First Amendment context involving personal expression, this Court has set forth criteria for pre-enforcement claims. *See SBA*, 573 U.S. at 159; *Babbitt*, 442 U. S. at 298. Placed in the appropriate analytical framework, Grand easily satisfies these criteria. The CADO has already caused harm that is not "hypothetical."

First, Grand has alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Id.* at 298; *SBA*, 573 U.S. at 159. A small gathering for prayer in a private home is the epitome of religious activity protected by the Free Exercise Clause. Grand's "fear of prosecution," based on the City's cease-and-desist order ("CADO") and additional threats that followed, is not "imaginary or wholly

speculative.” *Babbitt*, 442 U.S. at 298; *SBA*, 573 U.S. at 159.

Second, Grand’s prayer meeting was allegedly proscribed by the applicable City ordinance, as cited and explained in the CADO. Pet. 3-4; *Babbitt*, 442 U.S. at 298; *SBA*, 573 U.S. at 159.

Third, “there exists a credible threat of prosecution thereunder” (*Babbitt*, 442 U.S. at 298; *SBA*, 573 U.S. at 159). The Mayor’s coercive CADO ordered Grand to cease the prayer meetings in his home until he obtained a special use permit. Pet. 3. As in *Virginia v. Am. Booksellers Ass’n*, the “pre-enforcement nature” of the suit is not “troubl[ing]” because Grand has “alleged an actual and well-founded fear that the law will be enforced against [hi]m.” 484 U.S. 383, 393 (1988). The “administrative cease-and-desist order . . . against [his] prohibited conduct,” which Grand has already received, demonstrates an impending creditable threat. *SBA*, 573 U.S. at 166; *Babbitt*, 442 U.S. at 302, n. 13; Pet. 3-4 (describing the CADO).

In *SBA*, “any person with knowledge” could file a complaint with the Ohio Elections Commission. 573 U.S. at 152. In this case, a neighbor’s complaint to the City initiated the dispute (Pet. 9), and the Mayor later encouraged residents to report violations of the CADO (Pet. 4). Litigants in *SBA* faced potential criminal penalties (misdemeanor charges). 573 U.S. at 153. Criminal prosecution against Grand is a real threat if he resumes the prayer meetings. Pet. 7. Under these circumstances, “where threatened action by

government is concerned,” Grand need not “expose himself to liability before bringing suit to challenge the basis for the threat.” *SBA*, 573 U.S. at 158-159, quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128-129 (2007). This is particularly true where the challenged statute (or ordinance) “deters the exercise of his constitutional rights”—as it clearly does here. *Steffel v. Thompson*, 415 U. S. 452, 459 (1974).

The Sixth Circuit makes the astounding claim that “Grand will not be prejudiced by any delay” (*Grand*, 159 F.4th at 512) even though the City has already infringed his religious liberty. The court insists that Grand has not been unfairly harmed by the denial of pre-enforcement review, that “his actions, not anyone else’s,” created the ripeness problem, and that because the “dismissal on ripeness grounds is *without prejudice*, . . . Grand remains free to file a new action if the City applies the ordinance to him in a way that violates his statutory or constitutional rights.” *Grand*, 159 F.4th at 514. This conclusion blinks the reality of the constitutional harm already done and the looming threat of criminal prosecution against Grand for holding a small prayer meeting in the privacy of his own home. “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). The CADO and lower court rulings have combined to “forc[e] [Grand] to choose between refraining from core [Free Exercise activity] on the one hand or engaging in that [activity—prayer] and risking costly

[City] proceedings and criminal prosecution on the other.” *SBA*, 573 U.S. at 167-168.

B. Grand can establish a Free Exercise violation based on the City’s transparent hostility to his religious exercise.

Grand can readily demonstrate a Free Exercise violation based on the City’s transparent hostility in shutting down his small prayer meeting, threatening punishment or even criminal enforcement, and encouraging neighbors to report violations of its cease-and-desist order. See Pet. 3-4, 8; Reply 2-3. “[E]ven more disturbing” than the City’s conduct is “the tone” of its correspondence, which “bristles with hostility” toward religion. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 318 (2000) (Rehnquist, C.J., dissenting). In such cases, where “laws or policies burdening religious exercise” are accompanied by “official expressions of hostility,” this Court has not hesitated to “set [them] aside . . . without further inquiry.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 n. 1 (2022), citing *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 639 (2018). In *Masterpiece*, the Civil Rights Commission had demonstrated “impermissible hostility” (*id.* at 634) that was “inconsistent with the First Amendment’s guarantee” that the law be “applied in a manner neutral toward religion” (*id.* at 640). The same is true here. The City has demonstrated “impermissible hostility” toward Grand’s religious practices.

Hostility toward religion, which may be “masked as well as overt” (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)), defies our nation’s history and this Court’s Free Exercise jurisprudence. The City’s “callous indifference to [a] religious group[]” sharply departs from “the best of our traditions” rather than following them. *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952). Indeed, the City has already “dug in its heels.” *Grand*, 159 F.4th at 513 (citing *Murphy*, 402 F.3d at 349), such that further pursuit of a special use permit would be futile.

The City’s heavy-handed, hostile approach is particularly alarming in the context of a personal residence. Grand’s religious exercise occurs in the privacy of his own home with personal friends. It involves none of the structural changes or signage or amplification or disruption or traffic congestion that would normally be factors in a special use permit application. Pet. 1. This does not mean that *every* use of a home is automatically exempted from zoning restrictions. *Murphy* is an example where—under very different circumstances—restrictions potentially applied to prayer gatherings in a residence. In *Murphy*, the cease-and-desist order applied by its own terms only to regularly scheduled gatherings of 25 or more non-family members (*id.* at 345) and it would have been stayed during an appeal. There were also legitimate concerns about noise and traffic congestion (“thirteen to twenty cars lined the Murphys’ driveway, their rear yard and the cul-de-sac,” *id.* at 345)—factors that are absent in Grand’s case. Even under the specific facts in *Murphy*, the Second Circuit

warned that “*Williamson County* should be cautiously applied to these claims.” 402 F.3d at 350.

As this Court has repeatedly explained: “The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.” *Frisby v. Schultz*, 487 U.S. 474, 484 (1988), quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980). The home is uniquely “the last citadel of the tired, the weary, and the sick.” *Gregory v. Chicago*, 394 U.S. 111, 125 (1969) (Black, J., concurring); *Frisby*, 487 U.S. at 484. It is “the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits,” and thus “[p]reserving [its] sanctity . . . is surely an important value.” *Ibid.*, citing *Carey*, 447 U.S. at 471. This Court should consider the sanctity of Grand’s home and protect his right to religious expression in that personal space.

CONCLUSION

This Court should reverse the Sixth Circuit ruling.

Respectfully submitted,

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