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

BRIEF OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; JEWISH COALITION FOR RELIGIOUS LIBERTY; NATIONAL ASSOCIATION OF EVANGELICALS; THE LUTHERAN CHURCH–MISSOURI SYNOD; GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS; AND ANGLICAN REFORMED CATHOLIC CHURCH AS *AMICI CURIAE* SUPPORTING PETITIONER

GENE C. SCHAERR
JAMES C. PHILLIPS
SCHAERR | JAFFE LLP
1717 K Street NW
Suite 900
Washington, DC 20006
(202) 787-1060

R. SHAWN GUNNARSON
Counsel of Record
CHRISTOPHER A. BATES
ALAN M. HURST
KRISTEN H. CLARKE
KIRTON | MCCONKIE
36 South State Street
Suite 1900
Salt Lake City, UT 84111
(801) 328-3600
sgunnarson@kmclaw.com

Counsel for Amici Curiae

August 31, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTERESTS OF *AMICI CURIAE*	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. GRAND'S FIRST AMENDMENT CLAIMS IMPLICATE IN-HOME RELIGIOUS PRACTICES CHERISHED BY DIVERSE FAITHS	3
A. Christians Have Worshipped at Home from the Beginning	4
B. Home Worship Is Important to Non-Christians Too	6
C. The City's Targeting of Grand for Worshiping at Home Threatens Many Religious Americans	9
II. TARGETING HOME-CENTERED RELIGIOUS EXERCISE VIOLATES THE FIRST AMENDMENT'S "NON-PERSECUTION" PRINCIPLE	10
A. The First Amendment Prohibits the Government from Targeting Religious Beliefs and Practices as Such	10
B. The City Violated the First Amendment's Non-Persecution Principle	12
III. *WILLIAMSON COUNTY* IS THE WRONG RIPENESS STANDARD FOR FIRST AMENDMENT CLAIMS—AND THIS COURT SHOULD SAY SO	15

TABLE OF CONTENTS—Continued

Page

A. The Ripeness Standard Applied Here Must Fit Grand's Constitutional Claims 15

B. Grand Satisfies the Correct Ripeness Standard for First Amendment Claims 18

C. *Williamson County* Cannot Apply to First Amendment Rights Without Condemning Them to Second-Class Status 24

CONCLUSION 26

TABLE OF AUTHORITIES

CASES Page(s)

Abbott Lab. v. *Gardner*,
387 U.S. 136 (1967)..... 16

Anderson v. *Liberty Lobby, Inc.*,
477 U.S. 242 (1986)..... 21

Babbitt v. *United Farm Workers Nat'l Union*,
442 U.S. 289 (1979)..... 19

Califano v. *Sanders*,
430 U.S. 99 (1977)..... 16

Carson v. *Makin*,
596 U.S. 767 (2022)..... 1

Church of the Lukumi Babalu Aye, Inc. v. *City of Hialeah*,
508 U.S. 520 (1993)..... 10, 11, 13, 14, 15

Colo. River Water Conservation Dist. v. *United States*,
424 U.S. 800 (1976)..... 16

DaimlerChrysler Corp. v. *Cuno*,
547 U.S. 332 (2006)..... 19

Dougherty v. *Town of N. Hempstead Bd. of Zoning Appeals*,
282 F.3d 83 (2d Cir. 2002)..... 25

Elrod v. *Burns*,
427 U.S. 347 (1976)..... 20, 26

Felmeister v. *Off. of Att'y Ethics*,
856 F.2d 529 (3d Cir. 1988)..... 25

TABLE OF AUTHORITIES—Continued

Page(s)

First Choice Women's Resource Centers, Inc. v. *Davenport*, 146 S. Ct. 1114 (2026)..... 1, 10, 14, 19, 20, 22

Fulton v. *City of Philadelphia*, 593 U.S. 522 (2021)..... 13

Kennedy v. *Bremerton Sch. Dist.*, 597 U.S. 507 (2022)..... 21

Mahmoud v. *Taylor*, 606 U.S. 522 (2025)..... 1, 20, 25

Marbury v. *Madison*, 5 U.S. (1 Cranch) 137 (1803) 26

Masterpiece Cakeshop v. *Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018)..... 11, 12, 13, 14

MedImmune, Inc. v. *Genentech, Inc.*, 549 U.S. 118 (2007)..... 16, 19

Murphy v. *New Milford Zoning Comm'n*, 402 F.3d 342 (2d Cir. 2005) 24, 25

NAACP v. *Button*, 371 U.S. 415 (1963)..... 20, 23

Pakdel v. *City & Cnty. of San Francisco*, 594 U.S. 474 (2021)..... 18

Reno v. *Cath. Soc. Servs.*, 509 U.S. 43 (1993)..... 16

Roman Cath. Diocese of Brooklyn v. *Cuomo*, 592 U.S. 14 (2020)..... 20, 25

TABLE OF AUTHORITIES—Continued

Page(s)

Steffel v. *Thompson*,
415 U.S. 452 (1974)..... 19

Susan B. Anthony List v. *Driehaus*,
573 U.S. 149 (2014)..... 16, 18, 19–20, 21, 22

Thomas v. *Union Carbide Agric. Prods. Co.*,
473 U.S. 568 (1985)..... 16, 17

Trinity Lutheran Church of Columbia, Inc. v. *Comer*,
582 U.S. 449 (2017)..... 14

Trump v. *New York*,
592 U.S. 125 (2020)..... 16

W. Va. State Bd. of Educ. v. *Barnette*,
319 U.S. 624 (1943)..... 9

Williamson Cnty. Reg'l Plan. Comm'n v. *Hamilton Bank of Johnson City*,
473 U.S. 172 (1985)..... 2, 17, 18

CONSTITUTION

U.S. Const. art. III..... 15

STATUTES

42 U.S.C. § 1983 15

Codified Ordinances of the City of University Heights (Ohio):

Building and Housing Code § 1420.99(a) ... 22

Building and Housing Code § 1420.99(b) ... 22

Planning and Zoning Code § 1242.99..... 23

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES Page(s)

Bradly S. Billings, *From House Church to Tenement Church: Domestic Space and the Development of Early Urban Christianity*, 62 J. Theological Stud. 541 (2011) 4

The Church of Jesus Christ of Latter-day Saints, *Come, Follow Me—For Home and Church: Old Testament 2026* (2026) 5

Clifford Grammich et al., *2020 U.S. Religion Census: Religious Congregations & Adherents Study* (2023) 8

George Washington, *Writings* (John Rhodehamel ed., 1997) 26, 27

The Holy Bible 4, 5

Kevin D. Dougherty & Andrew L. Whitehead, *A Place to Belong: Small Group Involvement in Religious Congregations*, 72 Socio. Relig. 91 (2011) .. 5

Kim Bowes, *Early Christian Archaeology: A State of the Field*, 2 Relig. Compass 575 (2008) 4

Mona Siddiqui, *Hospitality and Islam: Welcoming in God's Name* (2015) 7

On the Legacy and Responsibility of Women Fulfilling the Great Commission, S. Baptist Convention Res. 5 (June 14, 2023) 5

Pew Rsch. Ctr., *Religion Among Asian Americans* (2023) 7

TABLE OF AUTHORITIES—Continued

Page(s)

Pew Rsch. Ctr., *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream* (2017) 6

The Pluralism Project at Harvard Univ., *The Gurdwara* (2020) 8–9

Pyong Gap Min, *Preserving Ethnicity Through Religion in America: Korean Protestants and Indian Hindus Across Generations* (2010) 8

Quentin L. Cook, *Deep and Lasting Conversion to Heavenly Father and the Lord Jesus Christ*, Liahona (Nov. 2018) .. 5

Ramadan, Encyclopedia Britannica 7

Roger W. Gehring, *House Church and Mission* (2004) 6

Roger Thoman, *Simple / House Church Revolution* (rev. version 1.1 2008) 6

Scot E. Long & Richard Moore, *Amish Church District Fissioning and Watershed Boundaries Among Holmes County, Ohio, Amish*, 2 J. Amish & Plain Anabaptist Stud. 186 (2014) 6

Shampa Mazumdar & Sanjoy Mazumdar, *Religion, Immigration, and Home Making In Diaspora: Hindu Space in Southern California*, 29 J. Env't Psych. 256 (2009) 8

TABLE OF AUTHORITIES—Continued

Page(s)

Trevan G. Hatch et al., *Muslim Families in the United States*, *in* L.D. Marks & D.C. Dollahite, *Religion and Families: An Introduction* (2017) 7

Universal House of Justice, *Selected Guidance Concerning Devotional Gatherings*, Baha'i Libr. Online 8

William Shakespeare, *King Lear*, act 5, sc. 2, l. 12 15

INTERESTS OF *AMICI CURIAE*[1]

Amici are religious organizations with a profound interest in the robust application of the Constitution's guarantee of religious freedom. We are particularly concerned that the misapplication of ripeness doctrine in this case will inflict lasting damage to the principle that federal courts stand ready to vindicate First Amendment rights. Some *amici* have joined briefs defending related principles in *First Choice Women's Resource Centers, Inc.* v. *Davenport*, 146 S. Ct. 1114 (2026); *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025); and *Carson* v. *Makin*, 596 U.S. 767 (2022).

SUMMARY OF ARGUMENT

No American should have to get a permit before praying with ten fellow believers in his home. Yet when the City of University Heights learned that Daniel Grand had invited fellow Orthodox Jews to pray together on the Sabbath, the City Law Director sent him a cease-and-desist letter. Praying without a permit, the letter warned, would be a crime. The same mayor who commissioned the letter hired a private investigator to monitor Orthodox Jewish residents on Rosh Hashanah, to determine whether they worshipped at home with other Jews. See Reply App. 35–37. But when Grand challenged the City's actions as a violation of his freedom to exercise religion and freedom of assembly, his claims were dismissed as unripe. That remarkable conclusion misapprehends ripeness doctrine, which welcomes substantial First Amendment claims rather than thwarting them.

---

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

The City's suppression of Grand's religious exercise is hardly the exclusive concern of Orthodox Jewish communities. Christians, Muslims, and other faiths also gather with the faithful at home to celebrate, to worship, and to join in religious ritual together. All would face the irreparable loss of First Amendment rights if other local governments choose, like the City, to single out religious minorities for unprecedented administrative burdens and the threat of criminal prosecution.

The question presented frames the City's First Amendment violations under the constitutional chill doctrine. The record bolsters that claim by attesting to the City's violation of the Free Exercise Clause's principle of non-persecution. Under that principle, no government official may target religious belief or practice for special penalties or burdens. City officials crossed that line by threatening Grand with administrative penalties and criminal prosecution for practicing his religion.

Yet the Sixth Circuit affirmed the dismissal of Grand's complaint as unripe. The court of appeals accepted the City's contentions that *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), requires Grand to produce a "final decision" and that he cannot meet that test because he withdrew his permit application after concluding that "the permit would require him to convert his home into a house of worship" where he could no longer live. Reply at 2.

But this is a First Amendment case—not a land use dispute. Grand's complaint alleges that the City violated his rights to the free exercise of religion and to peaceable assembly in his home. Properly categorized under the First Amendment, this case is

unquestionably ripe. Grand can show that he intends to engage in constitutionally protected activity allegedly proscribed by law and that he faces a credible threat of enforcement. The City's issuance of a cease-and-desist letter and the mayor's personal threat of criminal prosecution amply satisfy that test.

Reviving Grand's complaint is necessary but insufficient to protect religious people and institutions. *Williamson County* must be strictly limited to claims under the Fifth Amendment Takings Clause. Allowing its finality requirement to drift out of its doctrinal lane condemns First Amendment claims to second-class status when they bear a superficial nexus to land use. Grand is not the first litigant with First Amendment claims to be denied judicial review because of *Williamson County*'s misapplication—but let him be the last. The Sixth Circuit's judgment should be reversed and Grand's complaint heard on the merits.

ARGUMENT

I. GRAND'S FIRST AMENDMENT CLAIMS IMPLICATE IN-HOME RELIGIOUS PRACTICES CHERISHED BY DIVERSE FAITHS.

The City's suppression of Grand's religious exercise is hardly the exclusive concern of the Orthodox Jewish community. Many religions require or encourage the faithful to study, celebrate, worship, and observe sacred rituals at home—at times with others. Declaring Grand's claims unripe, as the Sixth Circuit did, risks making a widely held religious practice unprotected under the First Amendment.

A. Christians Have Worshipped at Home from the Beginning.

For Christians, the practice of worshiping with others in private homes traces its roots to Jesus Christ himself, who promised his disciples that "where two or three are gathered in my name, there I am among them." *Matthew* 18:20 (English Standard Version). After Pentecost, Christians were "day by day, attending the temple together and breaking bread in their homes"—likely referring to the ritual of the Lord's Supper or Eucharist. *Acts* 2:46 (English Standard Version). The Apostles preached the Gospel "every day, in the temple *and from house to house*." *Acts* 5:42 (English Standard Version) (emphasis added). And Paul's letters mention a "church" or "assembly" in the "house" of prominent Christians such as Philemon in Colossae, Nympha in Laodicea, or Prisca and Aquila in Rome. *Philemon* 1:2; *Colossians* 4:15; *Romans* 16:3–5 (English Standard Version).

Scholars generally agree that "[d]uring the first and second centuries [A.D.] Christians * * * met in homes and continued to meet primarily in domestic space until at least such time as the first buildings dedicated to Christian use begin to appear in the archaeological record during the course of the third century [A.D.]." Bradly S. Billings, *From House Church to Tenement Church: Domestic Space and the Development of Early Urban Christianity*, 62 J. Theological Stud. 541, 543 (2011). As late as the third and fourth centuries, "Christians may not have modified their buildings for meeting purposes, but simply continued to meet in the homes of their wealthiest members." Kim Bowes, *Early Christian Archaeology: A State of the Field*, 2 Relig. Compass 575, 581 (2008).

This tradition of worshiping at home persists in America today. The Church of Jesus Christ of Latter-day Saints teaches that "[t]he ideal place to learn the gospel is the home" and encourages members to study scripture "with your family, or with friends." *Come, Follow Me—For Home and Church: Old Testament 2026*, at 2 (2026). "[Y]oung singles, single adults, single parents, part-member families, [and] new members" are encouraged "to gather in groups outside the normal Sunday worship services to enjoy gospel sociality and be strengthened by studying together."[2]

For Southern Baptists, religious exercise has never been confined to the church sanctuary. Following the example of the early church, which gathered publicly and "from house to house," *Acts* 5:42, Southern Baptists routinely open their homes for Bible studies and small groups, prayer meetings, church planting, youth gatherings, discipleship groups, missionary gatherings, hymn singing and worship, and the potluck meals and fellowship that have long been a hallmark of Baptist community. See *On the Legacy and Responsibility of Women Fulfilling the Great Commission*, S. Baptist Convention Res. 5, at 73–75 (June 14, 2023).

Certain large Protestant congregations also encourage believers to meet as small groups in private homes for prayer and Bible study. See, *e.g.*, Kevin D. Dougherty & Andrew L. Whitehead, *A Place to Belong: Small Group Involvement in Religious Congregations*, 72 Socio. Relig. 91, 93, 99 (2011) (small groups are "a prevalent

---

[2] Quentin L. Cook, *Deep and Lasting Conversion to Heavenly Father and the Lord Jesus Christ*, Liahona (Nov. 2018), https://www.churchofjesuschrist.org/study/liahona/2018/11/saturday-morning-session/deep-and-lasting-conversion-to-heavenly-father-and-the-lord-jesus-christ?lang=eng.

feature of the Protestant megachurch movement"; some small groups meet in members' homes).

Millions of Americans participate in the "house-church movement." These Christians eschew dedicated worship spaces and formal church organizations, believing that informal home gatherings reflect the New Testament's ecclesiology. See Roger W. Gehring, *House Church and Mission* 295 (2004) (explaining how in early Christian history, "the house served as the basic foundation for all church life"). According to the movement's advocates, "House churches make room for the spiritual gifts of all believers to operate on a regular basis. * * * By gathering simply and naturally in home-sized groups, everyone becomes a participant and every person's gift is needed." Roger Thoman, *Simple / House Church Revolution* 6–7 (rev. version 1.1 2008).

And most Amish groups do not build church buildings. Instead, Amish families take turns hosting services for their church districts, typically in "private homes, shops, and barns." Scot E. Long & Richard Moore, *Amish Church District Fissioning and Watershed Boundaries Among Holmes County, Ohio, Amish*, 2 J. Amish & Plain Anabaptist Stud. 186, 187 (2014).

B. Home Worship Is Important to Non-Christians Too.

Nor is home-centered worship limited to Christians. Ninety-seven percent of American Muslims say they have a mosque nearby, but only 27% say their mosque is central to their spiritual life. Pew Rsch. Ctr., *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream* 109–10 (2017). Some of the most important Muslim religious practices take place in the home—in particular, most

of their five daily prayers (*salat*). Trevan G. Hatch et al., *Muslim Families in the United States*, *in* L.D. Marks & D.C. Dollahite, *Religion and Families: An Introduction* 157, 165–67 (2017).

American Muslims' annual celebration of Ramadan is also centered on the home. One follower of Islam reports what appears to be a common experience for members of his faith community. "[W]e get up early, very early in the morning to have a meal together, like a breakfast. We have a meal together, and then after the meal, we read Qu'ran, our scripture. And after we do that, it's time for prayer." *Id.* at 169. Ramadan also includes "a festive evening meal, called iftār, after sundown."[3] For that meal, "Muslims gather in their homes or mosques to break their fast, often joyfully shared with friends and extended family."[4] One scholar describes her own growing-up experience, with "the food, copious amounts of food cooked during Ramadan, *iftars* for so many friends and relatives." Mona Siddiqui, *Hospitality and Islam: Welcoming in God's Name* 98 (2015).

Hindus likewise worship at home. Seventy-nine percent of American Hindus "say they use an altar, shrine, or religious symbol for worship in their home." Pew Rsch. Ctr., *Religion Among Asian Americans* 38 (2023). "For a Hindu, home, besides being a place to live, is a repository of devotional icons, objects, and artifacts for which the family altar is the most notable location. * * * It is in front of the home altar that a Hindu sits cross-legged on the bare/carpeted floor or on a prayer mat and seeks communion with his/her

---

[3] *Ramadan*, Encyclopedia Britannica, https://www.britannica.com/topic/Ramadan (last visited Aug. 26, 2026).

[4] *Ibid.*

deity, engages in prayer, or in quiet meditation." Shampa Mazumdar & Sanjoy Mazumdar, *Religion, Immigration, and Home Making in Diaspora: Hindu Space in Southern California*, 29 J. Env't Psych. 256, 259 (2009). Such home-based worship often involves non-family members. "When Indian Hindus [in the U.S.] celebrate major religious holidays or perform important family life-cycle rituals at home, they usually invite relatives and friends, which is one of the ways that Indian Hindu immigrants maintain kin and friendship networks." Pyong Gap Min, *Preserving Ethnicity Through Religion in America: Korean Protestants and Indian Hindus Across Generations* 119 (2010).

Some religious minorities must worship at home because a religious building is unavailable. When there is no Baha'i center nearby, Baha'is are encouraged to "hold regular devotional meetings * * * elsewhere, including the homes of believers."[5] In a country with fewer than 180,000 Baha'is, the absence of a local Baha'i center will often prompt home worship. Clifford Grammich et al., *2020 U.S. Religion Census: Religious Congregations & Adherents Study* 88 (2023). Similarly, when a Sikh community lacks enough followers to build a gurdwara—the equivalent of a chapel or synagogue—believers may gather to worship in a gurdwara set up in a local family's home.[6]

---

[5] Universal House of Justice, *Selected Guidance Concerning Devotional Gatherings*, ¶ 3, Baha'i Libr. Online, https://bahai-library.com/uhj_devotional_meetings_compilation (last visited Aug. 26, 2026).

[6] The Pluralism Project at Harvard Univ., *The Gurdwara* 1 (2020),

C. The City's Targeting of Grand for Worshiping at Home Threatens Many Religious Americans.

Exercising religion at home with fellow believers is thus a religious practice shared by Orthodox Jews, Christians, Muslims, Hindus, Sikhs, and Baha'is. All pray, worship, celebrate, and gather with fellow believers in homes. The injuries Grand has suffered for attempting to pray without a permit could be imposed on many other religious Americans. They too could face the irreparable loss of First Amendment rights if another local government chooses, like the City, to single out an unpopular religion for unprecedented administrative burdens and the threat of criminal prosecution.

That prospect defies the Constitution.

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. *One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.*

W. Va. State Bd. of Educ. v. *Barnette*, 319 U.S. 624, 638 (1943) (emphasis added).

Grand's central claims—that the City chilled his rights to the free exercise of religion and freedom of

---

https://pluralism.org/sites/g/files/omnuum10836/files/pluralism/files/the_gurdwara.pdf.

assembly—should have received prompt judicial review. That his claims were dismissed as unripe is inconsistent with the City's pronounced animus against him because of his faith.

II. TARGETING HOME-CENTERED RELIGIOUS EXERCISE VIOLATES THE FIRST AMENDMENT'S "NON-PERSECUTION" PRINCIPLE.

A. The First Amendment Prohibits the Government from Targeting Religious Beliefs and Practices as Such.

The record shows that the City targeted Grand for distinctive burdens and penalties because of his religion—a violation of the Free Exercise Clause that also "objectively chill[ed]" his First Amendment rights. *First Choice*, 146 S. Ct. at 1127. The demand that Grand apply for a Special Use Permit before conducting a prayer service in his home unquestionably singled him out. "If Grand's next-door neighbor invited nine friends over for a weekly poker night or a Tupperware party, the City would not require a special permit to operate a 'casino' or 'storefront.' The City targets only Grand's religious practice." Reply at 1–2 (citation omitted).

Government targeting of this kind plainly violates the Free Exercise Clause. "[A] law targeting religious beliefs as such is *never* permissible." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 533 (1993) (emphasis added). "If the object of a law is to infringe upon or restrict practices because of their religious motivation," the First Amendment imposes a clear bar. *Id.* "Official action that targets religious conduct" at home "for distinctive treatment" falls squarely within this rule. *Id.* at 534.

This anti-targeting principle "is so well understood that few violations are recorded in [this Court's] opinions." *Id.* at 523. Encompassed within "this fundamental nonpersecution principle of the First Amendment" is a prohibition on laws that "target religious beliefs" or practices "as such." *Id.* at 523, 533. "Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices." *Id.* at 547.

Lukumi illustrates the rule. There, city ordinances made animal sacrifice a crime despite its importance to a small religious minority. But the ordinances exempted animal slaughter for the purpose of kosher compliance and for food. *Id.* at 527–28. Although the ordinances did not discriminate against religion on their face, a closer look revealed that the law "singled out" the religious practices of religious adherents "for discriminatory treatment." *Id.* at 538. "[A]lmost the only conduct subject to" the ordinances was that religious exercise. *Id.* at 535. The city's purported rationale for the ordinances could be achieved by other means that did not impair those religious practices, and the ordinances were enacted "in direct response to the opening" of a local church. *Id.* at 535–40. From these facts, the Court concluded that the ordinances were "an impermissible attempt to target" the religious minority "and [its] religious practices" in violation of the First Amendment. *Id.* at 535.

Also consider *Masterpiece Cakeshop* v. *Colorado Civil Rights Commission*, 584 U.S. 617 (2018). There, a state commission sanctioned a baker who declined for religious reasons to create a custom artistic cake for a same-sex wedding. *Id*. at 629–31. This Court held that the commission violated the First Amendment's requirement of religious neutrality in two ways. First,

the commission demonstrated "clear and impermissible hostility" toward the baker's "sincere religious beliefs" by calling them "despicable" and comparing them to "defenses of slavery and the Holocaust." *Id.* at 635. Second, the commission did not sanction "other bakers who objected to a requested cake on the basis of conscience" but for non-religious reasons. *Id.* at 636. Glaring "disparity in treatment," the Court explained, was further "indication of hostility" by the commission. *Id.* at 636–37.

Lukumi and *Masterpiece Cakeshop* demonstrate the operation of the non-persecution principle. Government action that seeks to suppress religious exercise, or that grows out of religious animus, is void.

B. The City Violated the First Amendment's Non-Persecution Principle.

That non-persecution principle applies here. A close review of the record shows how the City, its Planning Commission, its mayor, and other residents acting at the mayor's behest all worked to suppress Grand's exercise of religion out of animus toward his beliefs and practices. A few facts stand out.

First, the City's hostile treatment of Grand's attempt to worship at home with fellow believers was unprecedented. One day after emailing 15 friends to invite them to pray at his home on the upcoming Sabbath, Grand received both a cease-and-desist letter from the City's attorney and a phone call from the mayor warning him that the City would take legal action if he went forward with his plans. Reply App. 9–11. "[C]ountless residents" had invited groups of friends to their homes before, but the City had "never before sent a cease-and-desist letter before the meeting took place, if at all." *Id.* at 12–13. The

Planning Commission then conducted the hearing on Grand's application in a novel "quasi-judicial" format that prevented Grand from submitting additional evidence in support of his application and ensured that any appeal would be unsuccessful. Pet. App. 29a, 32a; Reply App. 17–18, 21–22. This treatment reflected overt hostility toward Grand's religious exercise. See *Lukumi*, 508 U.S. at 540–42; *Masterpiece Cakeshop*, 584 U.S. at 636–38.

Second, the City has engaged in discriminatory treatment of Grand and other Jewish residents. Only Orthodox Jews are required to have Special Use Permits to hold gatherings at home. See Reply App. 30 (City official admitting that "[w]e don't require other social gatherings occurring in a private home to have a special use permit"). The mayor even hired a private investigator to surveil Orthodox Jewish residents on Rosh Hashanah to determine whether they were worshipping at home with other Jews. *Id.* at 35–37. That disparate treatment shows that the City has restricted Jewish practices "because of their religious nature." *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 533 (2021).

The City also discriminated at the hearing on Grand's application. The Planning Commission entered into the record a petition opposing Grand's application signed by 195 non-Jewish residents but refused to enter into the record petitions supporting Grand, including one signed by 240 Jewish residents. Reply App. 29. The Commission further described the opposition to Grand as the will of the "community" while ignoring the hundreds of Jewish residents who supported Grand. *Ibid.* This blatant religious discrimination was, to say the least, a "departure[]

from [the] neutrality" that the First Amendment commands. *Masterpiece Cakeshop*, 584 U.S. at 638.

Third, the City targeted Grand for seeking to exercise his religion. It threatened to invalidate an already approved variance for Grand's property if he held a prayer service at his home. Pet. App. 116a. The mayor encouraged neighbors to spy on Grand and report any potential violations to the City. *Id.* at 143a; Reply App. 23. The mayor also personally reviewed surveillance footage of Grand's home provided by neighbors and refused to halt the invasion of Grand's privacy. *Id.* at 33–34. The police department directed officers to "make frequent drive-bys" of Grand's house. *Id.* at 32. And the City Prosecutor coordinated with one of Grand's neighbors in an unsuccessful scheme to find housing violations inside Grand's home. *Id.* at 44–46. The prosecutor promised the neighbor that "[b]etween the mayor's office, the housing department, and my office, we are all pressing forward as urgently as we can." *Id.* at 45–46.

"[E]ven 'subtle departures from neutrality' on matters of religion" are forbidden, *Masterpiece Cakeshop*, 584 U.S. at 638 (quoting *Lukumi*, 508 U.S. at 534)—and there was nothing subtle about the City's conduct here. That conduct plainly breached the non-persecution principle and so is "odious to our Constitution, and cannot stand." *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 467 (2017).

Evidence that the City targeted Grand for unprecedented administrative burdens, coupled with the threat of criminal prosecution, unmistakably establishes that the City "objectively chill[ed]" Grand's First Amendment rights. *First Choice*, 146 S. Ct. at 1127. But the evidence does more than that. The extraordinary record of religious animus makes this

case one of the most glaring violations of the Constitution's non-persecution principle to appear before this Court. See *Lukumi*, 508 U.S. at 523. Vindicating Grand's claims to exercise his religion and assemble peaceably against hostile local officials is a fundamental duty of federal courts. See 42 U.S.C. § 1983. Yet the Sixth Circuit denied his claims as unripe—for reasons that do not withstand scrutiny.

III. *WILLIAMSON COUNTY* IS THE WRONG RIPENESS STANDARD FOR FIRST AMENDMENT CLAIMS—AND THIS COURT SHOULD SAY SO.

A. The Ripeness Standard Applied Here Must Fit Grand's Constitutional Claims.

The widespread practice of religious exercise at home with fellow believers and the official animus toward Grand establish the compelling constitutional stakes. But as the case comes to this Court, "[r]ipeness is all." William Shakespeare, *King Lear*, act 5, sc. 2, l. 12.

The question presented asks whether *Williamson County's* "land-use finality requirement" applies to Grand's First Amendment claims. Pet.i. The Sixth Circuit invoked *Williamson County*'s ripeness standard because, in the court's view, Grand's First Amendment claims arise in "the land-use context." Pet. App. 7a. Not so. Requiring First Amendment claims to satisfy a ripeness standard borrowed from the Fifth Amendment is a category mistake that should be corrected—not only for Grand's sake, but for all who raise claims under the First Amendment.

Ripeness doctrine arises from Article III's delegation of "[t]he judicial Power of the United States" to decide "Cases" and "Controversies." U.S. Const. art. III, §§ 1, 2. Suggestions that ripeness doctrine also derives from

prudential factors untethered from constitutional text are hard to square with federal courts' "virtually unflagging obligation * * * to exercise the jurisdiction given them." *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976); accord *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 167–68 (2014) (same).[7]

The "basic rationale" of ripeness doctrine "is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Lab.* v. *Gardner*, 387 U.S. 136, 148–49 (1967), *abrogated on other grounds*, *Califano* v. *Sanders*, 430 U.S. 99, 105 (1977). Ripeness is ordinarily measured by "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Id*. at 149. That framework prevails today unless a more specific standard applies. See *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007) (citing *Abbott Lab.*). "Fitness" and "hardship" must be judged by the nature of the substantive claim. *Abbott Lab.*, 387 U.S. at 149.

That understanding animated *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985). There, pesticide manufacturers challenged a statute requiring arbitration as a violation of Article III, while the EPA contended that the claim was unripe because

---

[7] Earlier decisions described ripeness as a function of both Article III and prudential considerations. See *Reno* v. *Cath. Soc. Servs*., 509 U.S. 43, 57 n.18 (1993). But recent decisions question the vitality of prudential ripeness or omit it. See *Driehaus*, 573 U.S. at 167; *Trump* v. *New York*, 592 U.S. 125, 131 (2020).

the companies had not yet been subjected to arbitration. *Id.* at 576, 579. This Court rejected that argument. The manufacturers' claim did not turn on "whether the tribunal awards reasonable compensation but [rather] the tribunal's authority to adjudicate the dispute." *Id.* at 580. And the Court held the Article III challenge ripe, given the "uncertainty and expense of depending for compensation on a process whose authority is undermined because its constitutionality is in question." *Id.* at 581.

Thomas teaches that ripeness depends on the nature of the asserted constitutional right. The Sixth Circuit neglected that lesson when characterizing this case as "a land use dispute." Pet. App. 7a. Grand's complaint says otherwise. Count I alleges that the City and other respondents "have deprived and continue to deprive [Grand] of his right to free exercise of religion, as secured by the First Amendment to the United States Constitution." Reply App. 83. Count II alleges that respondents "have deprived and continue[] to deprive [Grand] of his right to freedom of assembly, as secured by the First Amendment." *Id.* at 84. These are the claims mentioned in the question presented. See Pet.i (referencing "chilled religious exercise, worship, and assembly").

Because Grand framed his case under the First Amendment, *Williamson County*'s finality requirement is a misfit. It holds that "a claim that the application of government regulations effects a *taking of a property interest* is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." 473 U.S. at 186 (emphasis added). This finality test reflects the perceived requirements of the Fifth Amendment,

namely that the "economic impact of [a] challenged action * * * cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations * * * to the particular land in question." *Id.* at 191; see *id.* at 190 ("Our reluctance to examine taking claims until such a final decision has been made is compelled by the very nature of the inquiry required by the Just Compensation Clause."). To be sure, the finality requirement has been relaxed. See *Pakdel* v. *City & Cnty. of San Francisco*, 594 U.S. 474, 478, 480 (2021) (per curiam) (holding that finality requires evidence that the government has reached "a conclusive position"). No matter. The complaint does not seek to enlarge the permitted uses for Grand's home. It seeks redress for constitutional wrongs perpetrated by the City in prohibiting his religious practice. Reply App. 83. This is a First Amendment case—not a land use dispute. It follows that the ripeness standard for First Amendment claims governs.

B. Grand Satisfies the Correct Ripeness Standard for First Amendment Claims.

1. Settled case law confirms that a claimant alleging the violation of First Amendment rights may bring a pre-enforcement challenge under certain conditions.

The leading decision is *Driehaus*, 573 U.S. at 149. There, advocacy organizations challenged an Ohio statute criminalizing false statements about political candidates during an election. The Court held that "the threatened enforcement of law" can satisfy Article III's case-or-controversy requirement even without "an actual arrest, prosecution, or other enforcement action." *Id*. at 158. A claim is justiciable, the Court explained, when a plaintiff "alleges '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 159 (quoting *Babbitt* v. *United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). Although *Driehaus* was couched in terms of standing, the Court agreed that "[t]he doctrines of standing and ripeness 'originate' from the same Article III limitation" and "'boil down to the same question.'" *Id*. at 158 n.5 (quoting *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 335 (2006), and *MedImmune*, 549 U.S. at 128 n.8).

Other decisions likewise affirm that pre-enforcement challenges under the First Amendment can be ripe for adjudication. See, *e.g.*, *Babbitt*, 442 U.S. at 298; *Steffel* v. *Thompson*, 415 U.S. 452, 459 (1974).

2. This Court has repeatedly applied *Driehaus* to First Amendment claims.

Take a case decided last Term, *First Choice*, 146 S. Ct. 1114. There, the New Jersey Attorney General issued a subpoena demanding that a religious pro-life pregnancy center produce donor information. The center sued in federal court under 42 U.S.C. § 1983, asserting its First Amendment rights. Soon after, the Attorney General filed his own suit in state court, "accus[ing] First Choice of violating state law by failing to comply with his subpoena." *Id.* at 1120. The federal district court dismissed the complaint as non-justiciable, reasoning that First Choice had not yet been compelled in the state litigation to disclose constitutionally protected materials. The Third Circuit affirmed.

This Court reversed. "[A] litigant may bring a pre-enforcement suit seeking prospective relief against government officials so long as it faces 'a credible threat of enforcement.'" *Id.* at 1122 (citing *Driehaus*,

573 U.S. at 161, 164–67). First Choice satisfied that standard because the Attorney General's subpoena "caused it to suffer an actual and ongoing injury to its First Amendment rights by deterring donors from associating with it." *Ibid.* As the Court confirmed, a cognizable injury "can also arise when a defendant burdens a plaintiff's constitutional rights." *Id.* at 1125.

Other decisions have adjudicated pre-enforcement challenges under the same standard. See, *e.g.*, *Mahmoud*, 606 U.S. at 559–60 (invoking *Driehaus* in the context of a free exercise challenge to a controversial reading program for young children); *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14, 19–20 (2020) (per curiam) (granting pre-enforcement relief from an executive order restricting attendance at religious services).

None of these decisions involved a believer who was fined or arrested or jailed. But all faced the *threat* of government sanctions that deterred the exercise of First Amendment rights—and this Court found those claims justiciable.

No wonder. First Amendment freedoms are "delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *NAACP* v. *Button*, 371 U.S. 415, 433 (1963). Judicial review is indispensable because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976). Ripeness doctrine allows pre-enforcement claims to be promptly heard to avoid such irreparable injury.

3. Grand's First Amendment claims are ripe under *Driehaus*. That decision requires a claimant to

"allege[] 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute," and that there "exist[] a credible threat of prosecution thereunder.'" *Driehaus*, 573 U.S. at 159. Each element has support in the record, which must be construed in the light most favorable to Grand. See *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

First, Grand plainly expressed his "intention" to engage in constitutionally protected conduct. *Driehaus*, 573 U.S. at 159. He emailed "15 friends to pray at his home on the upcoming Shabbos." Reply App. 9. Grand's intention is further demonstrated by his plea for "[p]reliminary and permanent orders permitting [Grand] to pray with a minyan on Shabbos and Jewish holidays in his home without obtaining a [Special Use Permit] from the City." *Id.* at 94. Prayer is a quintessential religious practice secured by the Free Exercise Clause. See *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 512–14 (2022).

Second, Grand's religious practice is allegedly "proscribed" by City ordinances. *Driehaus*, 573 U.S. at 159. The City's cease-and-desist order says so, Pet. App. 116a, as did Mayor Brennan, who warned Grand: "You are under no circumstances allowed to have any type of religious gathering in your home without first obtaining a special use permit under Chapter 1274 of the University Heights Code." Reply App. 10–11. Failure to obey that edict, the mayor repeated, "will be in violation of * * * Chapter 1274 for operating an illegal synagogue." *Id.* at 11.

Third, Grand unquestionably faced "a credible threat of prosecution" for practicing his religion at

home. *Driehaus*, 573 U.S. at 159.[8] Mayor Brennan told Grand that inviting people to his home to pray "will be in violation of the cease-and-desist order and the City will take all legal means available to it." Reply App. 11. The Complaint explains that Grand "understood this as a threat of criminal prosecution if he were to invite ten friends over to his house to pray." *Ibid.*

The cease-and-desist letter issued by the City Law Director delivered the same threat. The letter accuses Grand of "intend[ing] to use [his home] as a place of religious Assembly" and threatens him with building code violations if he worships with others without a Special Use Permit. Pet. App. 116a. The letter says that "[v]iolation of the City's ordinances in this manner may result in building code violations against you and in the pursuit of additional remedies." *Ibid.* City ordinances make code violations "a misdemeanor of the first degree," punishable with imprisonment for up to six months and a fine of up to $1,000. Codified Ordinances of the City of University Heights, Building and Housing Code § 1420.99(a), (b).

What's more, Grand was singled out for administrative action. That, "like arrest or prosecution, may give rise to harm sufficient to justify pre-enforcement review." *Driehaus*, 573 U.S. at 165. A City property inspector, invoking section 1242.99 of the Planning and Zoning Code, issued Grand a citation alleging that a parking area near his garage violated City zoning

---

[8] Evidence that Grand confronted "a credible threat of prosecution" under *Driehaus*, 573 U.S. at 159, confirms that his pre-enforcement challenge is ripe. This same evidence likewise bolsters Grand's central merits claim—that the City's response to his attempt to gather with fellow believers to pray in his home "objectively chill[ed]" his First Amendment rights. *First Choice*, 146 S. Ct. at 1127.

ordinances. Reply App. 49, 51. This, although the Code nowhere forbids using gravel for a residential parking area. *Id.* at 52. The citation directed Grand to submit an appeal "within 15 days of the date of such notice"—but did not say how or where to present an appeal. *Id.* at 50. After getting no response from the City for two weeks, Grand submitted an appeal to the Board of Zoning Appeals the same day that he learned that that was the correct procedure. *Id.* at 52. The City denied his appeal. *Id.* at 52–53. This trumped-up administrative process burdened Grand's First Amendment rights. And worse, the citation carried the threat of criminal punishment. See Codified Ordinances of the City of University Heights, Planning and Zoning Code § 1242.99 (punishing a violation as a first-degree misdemeanor with a fine up to $1,000 and/or imprisonment up to six months).

4. To all this, the City blithely counters that "Grand could not establish finality and certainly no distinct harm." Br. Opp. 13. By its reckoning, "there was no enforcement action against him, he used the house in the manner he wished, and Grand remains free to file a new action if the City applied the ordinance to him in a way that violates his statutory or constitutional rights." *Id.* at i.

This rigid focus on compliance with local procedure misapprehends the Bill of Rights—a bulwark against "[the] threat of sanctions" specifically because such a threat "may deter the[] exercise" of rights "almost as potently as the actual application of sanctions." *Button*, 371 U.S. at 433. Grand's complaint amply satisfies *Driehaus*. His claims are ripe.

C. *Williamson County* Cannot Apply to First Amendment Rights Without Condemning Them to Second-Class Status.

Even so, the Sixth Circuit dismissed Grand's First Amendment claims as unripe, reasoning that "Grand does not point to a final decision implementing the challenged ordinance." Pet. App. 8a. The court added that requiring a final decision "does not unfairly harm Grand" since he "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." *Id.* at 11a–12a. Nor did the City's cease-and-desist letter matter when, in the court's view, "[t]he letter is not an enforcement action, and the City may not enforce it." *Id.* at 13a. And because Grand has "chosen not to obtain a final decision" regarding a Special Use Permit, "he is the author of any chilling effect on his First Amendment interests." *Id.* at 13a–14a.

But *Williamson County* does not control the ripeness of Grand's First Amendment claims—*Driehaus* does. It is therefore untrue—and cruel—to blame Grand for the City's chill on his freedom of religion and assembly.

The decision below falls into a troubling line of lower court decisions that apply *Williamson County* to First Amendment claims with any nexus to land use law. A leading case is *Murphy* v. *New Milford Zoning Comm'n*, 402 F.3d 342 (2d Cir. 2005). There, a Christian couple conducted "Sunday afternoon prayer group meetings" attended by "as many as sixty participants." *Id.* at 345. Neighbors complained about noise and traffic. *Ibid.* When the town zoning commission told the Murphys that the meetings violated zoning laws—and issued a cease-and-desist order—they brought a lawsuit asserting "First Amendment rights to assemble peaceably and to

exercise their religion freely" along with statutory claims. *Id.* at 345–46.

The Second Circuit characterized the case as a "zoning dispute" and held that the Murphys' claims were ripe only if they produced "a final, definitive position from a local authority to assess precisely how they can use their property." *Id.* at 347. Acknowledging that *Williamson County* originated "in the context of a regulatory takings challenge," *id.* at 349, the court still applied its finality requirement to the Murphys' First Amendment claims. In the court's view, they had not "experienced an immediate injury as a result of New Milford's actions," and the court directed the Murphys "to pursue additional administrative remedies [that] would further define their alleged injuries." *Id.* at 351 (citing *Dougherty* v. *Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 90 (2d Cir. 2002)).

The Third Circuit has similarly distorted ripeness doctrine by misapplying *Williamson County* to First Amendment claims. See, *e.g.*, *Felmeister* v. *Off. of Att'y Ethics*, 856 F.2d 529, 536–37 (3d Cir. 1988) (citing *Williamson County* when dismissing as unripe an attorney's free speech challenge to New Jersey restrictions on attorney advertising for lack of finality).

Misapplying *Williamson County* condemns First Amendment claims to second-class status merely because of some touchpoint with land use law. Where *Mahmoud* and *Cuomo* endorse pre-enforcement review to protect First Amendment rights, see *Mahmoud*, 606 U.S. at 559–60; *Cuomo*, 592 U.S. at 19–20, the decision below and *Murphy* deny it. See Pet. App. 8a; *Murphy*, 402 F.3d at 351. Access to judicial relief thus depends on the accident of whether a local government chooses to suppress First Amendment rights through land use law or through some other means. Second-class

treatment inflicts real-world costs. Losing the right to exercise one's religion or to assemble with others freely is not merely harmful—but irreparably so. See *Elrod*, 427 U.S. at 373.

This case demonstrates why *Williamson County* must be confined to Fifth Amendment claims. Allowing its casual doctrinal drift has transformed claims like Grand's into rights without a remedy. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (affirming "the right of every individual to claim the protection of the laws, whenever he receives an injury"). Ripeness doctrine exists to confine federal judicial power to cases and controversies, not to thwart valid claims. Grand is not the first litigant whose First Amendment claims have foundered on the shoals of *Williamson County*—but let him be the last.

CONCLUSION

Early in his administration, President Washington reassured a Jewish congregation that the United States government "gives to bigotry no sanction, to persecution no assistance." Letter from George Washington to the Hebrew Congregation in Newport, R.I. (Aug. 18, 1790), *reprinted in* George Washington, *Writings* 767 (John Rhodehamel ed., 1997). And he closed his letter with a blessing: "May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid." *Ibid.*

The City of University Heights strayed from Washington's generous conception of religious freedom by demanding a permit and threatening criminal prosecution merely because Grand sought to worship

with fellow believers in his own home. His claims are rooted in the Constitution's shelter for religious exercise in the home as a personal refuge—where "there shall be none to make him afraid." *Ibid.* The Sixth Circuit was wrong to deem his claims unripe. Its judgment should be reversed.

Respectfully submitted,

GENE C. SCHAERR
JAMES C. PHILLIPS
SCHAERR | JAFFE LLP
1717 K Street NW
Suite 900
Washington, DC 20006
(202) 787-1060

R. SHAWN GUNNARSON
Counsel of Record
CHRISTOPHER A. BATES
ALAN M. HURST
KRISTEN H. CLARKE
KIRTON | MCCONKIE
36 South State Street
Suite 1900
Salt Lake City, UT 84111
(801) 328-3600
sgunnarson@kmclaw.com

Counsel for Amici Curiae

August 31, 2026