

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 *AMICUS CURIAE*
THE RIEDERS FOUNDATION
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*

This case presents a concern of particular importance to *amici*: Civil authorities should not be permitted to stifle religious observance within a private home by applying religious zoning classifications without meaningful constraint and threatening legal consequences based upon their own characterization of the religious practice at issue.

The Rieders Foundation, established more than thirty years ago as a non-profit organization, is dedicated to enhancing Jewish culture and the civil rights of the Jewish people. Its Hatzilu division provides financial aid directly to needy members of the Jewish community. The Rieders Foundation combats all forms of anti-Jewish discrimination through litigation, including when the discrimination is expressed as anti-Israelism¹.

The Rieders Foundation has previously filed litigation in United States federal courts and before government administrative agencies on behalf of members of the Jewish faith who have faced discrimination as a result of their beliefs, adherence and convictions. The Foundation is committed to the ability of Jewish citizens and others of any religious order to be able to pray publicly or privately, even if not in the formal setting of a religious institution. The right of prayer is part and parcel of the First Amendment's right to religious liberty. The Rieders

1. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, their respective members, or their counsel made a monetary contribution to the brief's preparation and submission.

Foundation has participated in a number of cases litigated with respect to religious rights and freedoms, including as *amicus curiae* in the United States Supreme Court. The Rieders Foundation filed an *amicus curiae* brief in support of Petitioners in the case of *Gerald E. Groff v. Louis DeJoy, Postmaster General*, United States Supreme Court².

SUMMARY OF ARGUMENT

The City of University Heights, Ohio (“City”) threatened Grand with legal consequences for proposing to organize prayer gatherings in his own home without a permit. The City anchored that threat to its stated position that those gatherings would make his home a “house of worship” or “synagogue” under the University Heights Code of Ordinances (“UHCO”). The UHCO neither defines those classifications nor supplies criteria governing their application. Yet the City applied those classifications to Grand, without pointing to any other basis supporting that determination. In doing so, the City burdened Grand’s protected religious exercise by issuing regulatory threats based on an unsubstantiated application of the UHCO.

The Supreme Court of Ohio has long held:

[i]f a zoning ordinance of a municipality does not contain sufficient criteria or standards to guide the administrative office or tribunal in the exercise of the discretion vested in it, such

2. Brief of the Rieders Foundation as *Amicus Curiae* in Support of Petitioner, *Groff v. DeJoy*, 600 U.S. 447 (2023).

enactment is unconstitutional and invalid. *State ex rel. Selected Properties, Inc. v. Gottfried*, 163 Ohio St. 469, 127 N.E.2d 371, syllabus ¶ 1 (1955).

That principle is paramount here – not because the facial validity of the UHCO is before the Court. It is not. Rather, *Gottfried* reflects a more fundamental concern with the proper exercise of zoning discretion³. Indeed, it strains credulity to suggest a municipality may arbitrarily apply an ordinance simply because it contains “sufficient criteria or standards.”⁴

The risk of arbitrary exercises of zoning discretion is reduced when an ordinance articulates sufficient standards and guardrails. Precisely for that reason, when an ordinance supplies insufficient criteria governing a particular determination, it becomes imperative that the regulatory body charged with enforcement adequately substantiate its decisions. Failure to do so invites arbitrary regulatory enforcement and raises constitutional concerns in the “as-applied” context.

In spite of the importance of guided zoning discretion, the City failed to provide any substantiation when it applied an undefined UHCO zoning classification to Grand and

3. See *Klein v. Leis*, 99 Ohio St. 3d 537, 541 (2003) (generally explaining that the purpose of sufficient standards is “to prevent arbitrary and discriminatory enforcement.”).

4. See *Outdoor Communications v. City of Murfreesboro*, 1995 U.S. App. LEXIS 16544, **10-11 (6th Cir. 1995) (rejecting void-for-vagueness challenge of city ordinance when “controlling case law” supplied “appropriate criteria” and provided “ample guidance” supporting zoning board decision).

proceeded to issue a cease-and-desist letter threatening regulatory penalties on that basis. That unsubstantiated zoning determination is particularly concerning because it was dispositive. As the Sixth Circuit acknowledged:

Grand’s case, at bottom, turns on whether his proposed gatherings would render his home a “house[] of worship” under the ordinance. 159 F.4th 507, 513.

The Sixth Circuit purported to put Grand in charge of answering that question, reasoning that he “still holds the keys to resolving any uncertainty about the zoning policy” and remains “the author of any chilling effect on his First Amendment interests.” *Id.*, 515. In concluding that “[o]nly the zoning board ... can answer that question,”⁵ the Court handed the master key to the City.

It was the City, not Grand, that first took pen to paper when it authored the cease-and-desist letter at the heart of this case. That letter affirmatively threatened legal consequences on the basis of a conclusion that the City reached from the outset.

The Sixth Circuit overlooked that the City had, in fact, answered the very question the court assumed remained unresolved. A single passage from its decision proves the point:

Due to Grand’s decision to withdraw his special use application, the zoning board had no application to act on, leaving us with “no idea” how the ordinance works in this setting. *Id.*, 513.

5. 159 F.4th 507, 513.

That striking observation exposes a foundational flaw: The City took regulatory action based on dispositive zoning classifications it applied, while operating in an informational void. By pointing to the permit application withdrawal as the reason why it could not be known how the UHCO should be applied, the Sixth Circuit insinuated that a permit application itself supplies the source of zoning standards. This turns the process on its head. A permit application may provide facts relevant for applying zoning standards. It cannot, however, supply the standards governing the exercise of zoning discretion in the first place.

The Sixth Circuit likewise overlooked an extensive record demonstrating: (1) the UHCO lacks sufficient criteria or standards to guide that classification determination; (2) the City failed to substantiate its determination by reference to any other discernible – *much less, sufficient* – criteria or standards; and (3) the applicability of the dispositive classification was genuinely disputed, even among City officials charged with administering the UHCO. For this reason alone, the Sixth Circuit erred by affirming an arbitrary and unsubstantiated application of the UHCO.

The present concern is not limited to the arbitrary exercise of “ordinary” zoning discretion. It assumes federal constitutional significance, and becomes compelling, when brought into focus by the nature of the zoning application. The classification is one bearing fundamental religious significance. The target of enforcement is not ordinary land use, but constitutionally protected religious activity. The Sixth Circuit expressly acknowledged the potential

“chilling effect on [Grand’s] First Amendment interests.”
159 F.4th 507, 515.

This case presents an opportunity for the Court to clarify the appropriate constitutional framework guiding the exercise of zoning discretion, where: (1) applicability of an ordinance turns on zoning classifications of an inherently religious character; (2) those religious classifications are disputed by the religious adherent; (3) the ordinance does not supply sufficient criteria or standards as to a particular zoning application; and (4) the regulatory body has taken a sufficiently concrete position and neither substantiated nor explained its position by reference to “ordinance-extrinsic” criteria or standards.

Amicus curiae submits that the Court’s religious-autonomy jurisprudence provides an appropriate framework to guide zoning discretion in these limited circumstances. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* and *Our Lady of Guadalupe School v. Morrissey-Berru*, although arising in the ministerial-exception context, reflect the constitutional principle protecting religious independence from governmental resolution of inherently religious questions. Ministerial exception jurisprudence is focused on determining who qualifies as a “minister.” This Court has been cautious concerning ministers lest it chill the First Amendment right to freedom of worship.

Here, the inquiry is what qualifies as a “synagogue.” Notably, even the District Court recognized, albeit in the discovery context, that Orthodox Jewish “practices, customs, and terms have been at issue since this case’s conception” and that expert testimony concerning Hebrew

and Yiddish terminology and Orthodox Jewish practice could assist the factfinder. 2023 U.S. Dist. LEXIS 206023, **4-5 (*citing* Doc. No. 1 at Page ID 3-4, [*5] ¶14). See Section 2.1 *infra*, the statement of Global Distinguished Professor Lawrence Schiffman.

This case presents an appropriate opportunity for applying the principles underlying ministerial exception jurisprudence to cases involving the application of zoning classifications that rely solely on religious terminology.

The suggested approach would not force the state into a binary choice between zoning anarchy and impermissible entanglement in questions of religious doctrine. Municipal authorities remain free to apply zoning regulations and other laws restricting the size, frequency, duration, and other objectively measurable aspects of activity occurring on private property through neutral criteria. What civil authorities should not be permitted to do is stifle religious freedom to pray by threatening legal consequences based on nothing more than their own unsubstantiated application of undefined religious classifications.

ARGUMENT

1. Introduction

Defying a royal decree prohibiting prayer to anyone other than King Darius, Daniel continued kneeling in prayer to the God of Abraham, Isaac, and Jacob three times each day in the upper chamber of his home, “as he had always done.” Daniel 6:11 (Hebrew Bible, JPS Tanakh); Daniel 6:10 (King James). For praying in his own home, Daniel was cast into a den of lions.

The Biblical narrative of Daniel portrays a powerful theme of adherence to conviction no matter the circumstances and has enduring significance in Jewish and Christian religious tradition. That theme resonates here, as it has throughout much of Jewish history: Religious observance does not cease at the threshold of the home. Heinrich Heine described the Bible preserved by the Jews in exile as a “**portable fatherland**,”⁶ capturing the idea that Jewish identity can be maintained despite territorial displacement.

Grand was not thrown to the lions or subjected to criminal prosecution for even proposing to organize minyans within the privacy of his home. Still, Grand remained the target of unrelenting efforts by the City of University Heights to employ ambiguous zoning requirements to restrict private prayer at Grand’s home. As a result, Grand’s constitutionally protected rights to religious assembly have been violated and remain under threat.

2. The City Misapplied the UHCO: The Sixth Circuit Committed Error in Affirming That Misapplication.

The most critical misapplication of the UHCO was that the City invented a special use that the UHCO does not even purport to restrict; “religious assembly.” The regulatory focus of Chapter 1274.01(b)(1) is the *physical structure* occupying the land: “[H]ouses of worship ... churches, temples, synagogues, religious organizations, parish houses and parochial schools.” UHCO, §1274.01(b)(1). This reading finds support in the

6. “Aus den Memoiren des Herren von Schnabelewopski,” in *Sämtliche Werke*, p. 600.

broader context: UHCO §1274.02 imposes detailed area, yardage, and height regulations for buildings identified as special uses in §1274.01. Additionally, §1274.02(f)(1) speaks to “original design,” while subsection (f)(2) generally prohibits “conversion of a residence, store, or other building.” These provisions leave little doubt that the particular form of land use governed by the UHCO concerns the physical attributes of the structure itself, not the nature of activity occurring on private property in the abstract.

Sixth Circuit precedent illustrates why religious classifications cannot be applied in response to the occurrence of religious activity. In *Conlon v. InterVarsity Christian Fellowship/USA*, the Court declared that “IVCF is not a church,” even while recognizing IVCF as, “a Christian organization, whose purpose is to advance the understanding and practice of Christianity in colleges and universities.” 777 F.3d 829, 833–34 (6th Cir. 2015). There, religious activity did not, on its own, establish the religious classification.

The present case is a sharp departure from *Conlon*. Based on far fewer indicia of a formal religious institution – weekly prayer gatherings in a private residence – the City took a concrete position that Grand must obtain a special-use permit, reasoning that convening “religious assemblies” in his home is qualitatively identical to transforming that home into a “*place of religious assembly*.” It proceeded on that conclusion by threatening Grand with regulatory penalties. On that record, the Sixth Circuit nevertheless entrusted the City with exclusive authority to determine whether Grand’s residence becomes a synagogue.

2.1 The Misapplication is Not Hypothetical: The City Took a Sufficiently Definite Position Against Grand on a Dispositive Religious Zoning Classification.

After acknowledging that, “Grand’s case, at bottom, turns on whether his proposed gatherings would render his home a ‘house[] of worship’ under the ordinance,”⁷ the Sixth Circuit concluded that “[O]nly the zoning board ... can answer that question.” *Id.* Conspicuously missing from that conclusion is any discussion of the standards guiding that determination.

By suggesting that the City had yet to make a determination, the Sixth Circuit overlooked the characterization the City had already made as to Grand’s home: as a “place of religious assembly and/or in operation of a shul or synagogue.”⁸ The City did not invite Grand to weigh in on that characterization, request further information before reaching a position, or otherwise qualify its “awareness” as tentative. On the contrary, the City treated the inquiry as sufficiently settled to back it with the force of law, warning Grand that proceeding without obtaining the required permit “could result in ‘building code citations against [Grand].’”⁹

The record before the Sixth Circuit thus showed that the City made a classification determination, communicated it to Grand, and used it to threaten

7. 159 F.4th 507, 513.

8. 159 F.4th 507, 510.

9. 159 F.4th 507, 510.

regulatory enforcement – even if, as the Sixth Circuit held, the administrative process had not yet produced a “final” decision¹⁰. Grand’s cancellation of the upcoming prayer gathering after he received the letter from the City demonstrates his common sense understanding of the restrictions imposed against private prayer in his home. Even after Grand withdrew his permit application, Mayor Brennan publicly stated that the cease-and-desist order “remains in effect,” declared that congregating at the residence without a permit violated City law, invited community members to report such activity, and stated that the City would seek appropriate remedies in court. It is hard to imagine more chilling conduct directed to private prayer in a residence.

The Sixth Circuit entrusted the classification question to the City as though the City had not adopted a position at all. This is clearly contradicted by the record and makes the underlying error affirming unguided application of the UHCO more significant.

2.2 The absence of definitions and criteria in the UHCO governing the dispositive religious classifications at issue, coupled with the City’s own uncertainty as to their applicability, demonstrates the importance of substantiation in the “as-applied” context.

The District Court expressly acknowledged that the UHCO “does not define houses of worship,”¹¹ as the

10. 159 F.4th 507, 512.

11. Grand v. City of Univ. Heights, 2024 U.S. Dist. LEXIS 176340, at *8 (N.D. Ohio, September 30, 2024).

term appears in the extensive catalogue of definitions in Chapter 1240. The term is likewise undefined in Chapter 1274, which houses the pivotal provision at issue here¹². Section 1274.01(b)(1) declares “[h]ouses of worship,” including “synagogues,” as special uses, without providing further definitional criteria or standards.

That omission is conspicuous, considering UHCO §1274.01 supplies detailed criteria for other special uses. UHCO §1274.01(e)(1) devotes an entire subsection to “group homes” and prescribes detailed criteria governing that classification. Yet no comparable criteria govern the classification upon which, according to the Sixth Circuit, Grand’s case “at bottom” turns. 159 F.4th 507, 513.

This textual uncertainty is only compounded by the record. The terms “religious assembly” and “synagogue” were used interchangeably in some instances but treated as distinct concepts in others. At the March 4 hearing Grand did not dispute the religious character of his proposed gatherings but distinguished that use from the “usual image[] of a formal synagogue.” 159 F.4th 507, 510 (*citing R.82-1 at 140*). Even the district court observed that “[a] shul is a place where davening occurs, which **may or may not be a synagogue**. (emphasis added)” 2024 U.S. Dist. LEXIS 176340, *2.

The significance of its silence is evident in the as-applied context: The City could not look to the UHCO to substantiate its classification determination. It had to find

12. “The following are hereby declared to be special uses to which this chapter shall apply ... (1) Houses of worship ... including ... synagogues ...” Section 1274.01(b)(1).

substantiation elsewhere. It did not. As further explained in Section 1.4, the City attempted to squeeze water from stone when the only information in its possession neither supplied, nor could have supplied, any reasonable basis for that determination.

The Sixth Circuit entrusted the City with exclusive discretion to utilize dispositive zoning classifications notwithstanding abundant “red flags” throughout the City’s decision-making process. 159 F.4th 507, 513 (concluding that “[o]nly the zoning board ... can answer [whether Grand’s ‘proposed gatherings would render his home a ‘house[] of worship’ under the ordinance.’]”). That conclusion ignores the absence of constitutionally mandated guideposts and is inconsistent with the reality of what occurred at the administrative level.

2.3 The City’s misapplication is particularly evident given that the classification was genuinely disputed.

This is not a case in which an undefined term has an obvious application. The record is illustrative of the opposite. Even officials charged with administering the UHCO questioned whether convening prayer gatherings in a private home makes it a “house of worship.” 159 F.4th 507, 510.

After the first Planning Commission hearing, Commissioner Fine wrote that he did not understand why someone would need a special-use permit “to invite 10 friends to pray with them Friday night and Saturday morning in their living room,” observing that he saw little difference between such gatherings and regularly

entertaining friends. 2024 U.S. Dist. LEXIS 176340, *33 (*citing Doc. 81-15 at 1526*). Fine also reasoned that reconfiguring a home, naming the group, and hiring a prayer leader “may be qualitatively different.” *Id.*, at **12-13. He concluded, “there is a spectrum here, and I think that needs to be clarified.” *Id.*, at *12.

Commissioner Urban went further, taking the position that Grand’s proposed use “does not require a special use permit.” *Id.*, at *13. She reasoned that the City did not require permits for other social gatherings in private homes and suggested that excessive size or frequency could instead be addressed through cease-and-desist or nuisance mechanisms. *Id.*, at **13-14. Fine then stated the problem flat-out: “[A] tension exists regarding at what point ... a social gathering become[s] a house of worship.” *Id.*, at *14 (*citing Doc. 81-15 at 1524*).

The irony is striking: The very officials whom the Sixth Circuit declared could alone resolve the zoning classification were themselves uncertain as to whether that classification applied to Grand’s proposed prayer gatherings. Acknowledging this uncertainty, the Sixth Circuit noted that certain officials, “doubted whether Grand’s use would constitute a ‘[h]ouse of worship’ and thus wondered whether he needed a permit at all,”¹³ and even recognized that some commissioners found Grand’s proposed use to be consistent with the UHCO. 159 F.4th 507, 514.

Given the ongoing confusion between City officials, it is no surprise that the City did not, and could not,

13. 159 F.4th 507, 510 (citing R.82-1 at 192-96).

substantiate its unrelenting position from the outset in its cease-and-desist letter to apply the zoning classifications at issue to Grand's proposed use. This context makes the absence of governing criteria and standards of greater significance. With the record before it, the Sixth Circuit nevertheless entrusted the City with exclusive decision-making authority.

2.4 The only “substantiation” offered by the City is not based on reasonable criteria or standards.

To the extent the City relied upon Grand's own description of his proposed gatherings as a “shul,” that subjective characterization does not alone supply the “sufficient criteria and standards” required in applying a zoning ordinance. *See Copley Twp. v. Lorenzetti*, 146 Ohio App.3d 450, 455 (9th Dist. Ohio Court of Appeals, Oct. 31, 2001) (finding zoning board decision arbitrary when decision based on unsupported opinion of citizen witness that land “did not ‘look like a recreational area,’” and holding that board failed to support decision “by a preponderance of substantial, reliable, and probative evidence”). Applying zoning classifications based on an individual homeowner's subjective choice of vocabulary would lead to the absurd result whereby materially identical conduct could receive different legal treatment. For this reason, “[L]egal matters are determined by facts, not by beliefs or desires.” *Libis v. Board of Zoning Appeals*, 33 Ohio App.2d 94, 100 (Ct. App. 1972).

The District Court explained that “[A] *shul* is a place where davening occurs, which *may or may not be a synagogue*. (emphasis added)” 2024 U.S. Dist. LEXIS 176340, *2 (*citing Doc. 81 at 1063-64*). This undermines

any inference that Grand’s characterization of a “shul” amounted to a concession that his residence legally became a “synagogue” for zoning purposes. Even if the City determined that a “shul” “may” be a “synagogue” under the UHCO, it never articulated the criteria supporting that position.

The record beyond peradventure rebuts any argument that Grand purported to concede the legal classification of his property under the UHCO by reference to a “shul.” Prior to the Planning Commission hearing, Grand submitted a “Letter of Clarity” explaining that he sought only “an informal prayer group for services in [his] home on the Jewish Sabbath and High Holidays” and did not seek to establish a formal house of worship, whether denominated a “shul” or “synagogue.” 2024 U.S. Dist. LEXIS 176340, *2 (*citing Doc. 81-16 at 1530-31*). At the hearing, Grand’s counsel distinguished the proposed use from the “usual image[] of a formal synagogue,” even while acknowledging its religious character. 159 F.4th 507, 510.

2.5 The absence of substantiation is particularly significant given the availability of standards fitting this precise factual matrix.

The constitutional ramifications of the City’s enforcement threats – burdening Grand’s protected religious activity – magnify its failure to substantiate the basis for those threats. That failure is puzzling, given readily available standards capable of guiding its determination. For decades, Ohio courts have confronted analogous classification problems under Ohio’s property tax laws: When does the use of property transform it into a house devoted to public worship?

Ohio Revised Code §5709.07(A)(2) exempts “[H]ouses used exclusively for public worship,” together with specified associated property. While this statute serves a different purpose than the special-use provisions of the UHCO, they deal with the same underlying question: At what point does the occurrence of religious activity on private property bring it within a legal classification subject to enforcement by the state?

In *In re Bond Hill-Roselawn Hebrew School*, the Supreme Court of Ohio construed “used exclusively for public worship” as focusing upon the property’s primary use. 151 Ohio St. 70, 77–78 (1949). Following that approach, *Moraine Heights Baptist Church v. Kinney* held that the statutory phrase “used exclusively for public worship” had been construed as equivalent to “primary use,” such that property qualifies when it is used primarily for purposes of public worship. 12 Ohio St. 3d 134, 465 (1984). *Moraine Heights* involved a forty-nine-acre church camp containing a chapel alongside dormitories, cabins, a cafeteria, recreational facilities, and other property. The Court did not reason that the entire property became a “house used exclusively for public worship” because it was church-owned, religiously motivated, and was used in furtherance of the church’s mission. Instead, it distinguished the chapel, which was primarily used for public worship, from lodging, dining, recreational, and other facilities whose primary uses remained secular or merely supportive of worship. *Id.* at 135–37. In other words, actual use, not religious purpose, was the deciding factor.

The Supreme Court of Ohio consistently applies that methodology. In *Grace Cathedral, Inc. v. Testa*, the Court reiterated that the public-worship exemption focuses upon

the “primary use of the premises” and that incidental uses do not destroy the exemption when public worship remains the property’s primary use. *Grace Cathedral, Inc. v. Testa*, 143 Ohio St. 3d 212, 216 (2015). Conversely, in *Church of God in Northern Ohio, Inc. v. Levin*, the court emphasized that property qualifying for the public-worship exemption must be used “in a principal, primary, and essential way to facilitate the public worship,”¹⁴ while uses “merely supportive of public worship” do not suffice.

These decisions serve as powerful gap-filling tools in the absence of sufficient criteria and standards supplied by the UHCO to determine the religious zoning classifications at issue. Their utility is also underscored by their neutrality: Rather than permit municipal officials to fill the Ordinance’s silence through intuition about what “looks like” a synagogue or house of worship, courts can look to those established principles for an objective benchmark.

The record makes the distinction particularly salient. Grand proposed conducting prayer gatherings within a room of his residence. 159 F.4th 507, 510 (*citing R.81-8 at 2*). His permit application described the contemplated activity as “periodic religious gatherings.” *Id.* Nothing about those facts, standing alone, establishes that public worship became the primary use of the residence itself.

That is essentially the analytical distinction the Supreme Court of Ohio applied in *Moraine Heights*. There,

14. *Church of God in N. Ohio, Inc. v. Levin*, 124 Ohio St. 3d 36, 43-44 (2009) (*quoting Faith Fellowship Ministries v. Limbach*, 32 Ohio St.3d 432, 436 (1987)).

property could contribute to an overarching religious mission without thereby becoming property primarily used for public worship. The cafeteria remained principally a place for eating; the lodging remained principally lodging; recreational areas remained principally recreational. Their connection to religious activity did not erase their primary physical use.

The same principle works in the inverse direction here. If a secular use occurring on church property does not necessarily strip the property of its religious classification, religious activity occurring within residential property does not necessarily strip the property of its residential classification. The inquiry turns on primary use, not the mere presence of one particular activity. That is a neutral principle capable of judicial administration.

2.6 Zoning jurisprudence confirms why the City’s failure to substantiate its dispositive zoning classification determinations amounts to a misapplication of the UHCO and is constitutionally concerning.

In *Anash, Inc. v. Borough of Kingston*, the Third Circuit recently confronted a concern strikingly similar to that of *amici*; imposition of legal consequences that burden protected constitutional liberties, based on unsubstantiated and undefined zoning classifications. Rejecting Kingston’s assertion of a compelling governmental interest based on alleged violations of the zoning ordinance at issue, the Court observed that the ordinance “[did] not even define the term ‘dormitory,’ much less provide any zoning regulations with respect to dormitories.” 2026 U.S. App. LEXIS 22727, **41-42 (3d Cir. 2026). The Third Circuit

accordingly characterized Kingston’s asserted rationales for threatening daily zoning citations as “precarious – much closer to illegitimate motives than compelling governmental interests.” *Id.*, at *42.

Anash arose under RLUIPA, but its reasoning is instructive here. The Third Circuit did not simply defer to Kingston’s asserted zoning classification. It tested that classification against both the ordinance and the established factual record. Here, however, the Sixth Circuit entrusted the City with exclusive authority to determine a dispositive zoning classification, when the City had already threatened legal consequences based on a factually unsubstantiated application of the UHCO.

The Sixth Circuit’s decision is more concerning precisely for the reason that the zoning classification at issue carries significant religious meaning. If the classification the Third Circuit rejected in *Anash* concerned a purely secular classification (i.e., dormitory), all the more should an unsubstantiated and undefined zoning classification with significant religious meaning warrant even greater scrutiny.

3. Religious Autonomy Jurisprudence Provides an Appropriate Framework When Municipalities Apply Religious Classifications to Inherently Religious Activity.

Providing an overview of the Sixth Circuit’s approach to the broader “church autonomy doctrine,” the court in *Middleton v. United Church of Christ Bd.* explained:

The ministerial exception is one branch of the ecclesiastical abstention doctrine, which

is also referred to as the church autonomy doctrine ... [w]hile the ministerial exception applies specifically to a religious institution's employment decisions, the ecclesiastical abstention doctrine applies more broadly and prohibits secular courts from adjudicating religious controversies involving 'questions of discipline, or of faith, or ecclesiastical rule, custom, or law.' *Middleton v. United Church of Christ Bd.*, 483 F. Supp.3d 489, 497 (N.D. Ohio. 2020).

One particular case is instructive. In *Ogle v. Hocker*, the Sixth Circuit held that whether a court may adjudicate a dispute in this context:

turns on the availability of secular standards and the ability of a court to resolve the controversy without reference to religious doctrine. *Ogle v. Hocker*, 279 Fed. App'x. 391, 395 (6th Cir. 2008).

The underlying constitutional principle applies with particular force in the case at bar. The City imposed its own characterization of inherently religious activity. It then attached a religious zoning classification to that characterization and proceeded to regulate on that basis. Given the unique significance of a *minyán* and its distinct characteristics as informed by age-old Jewish tradition, the City – and by extension, the Sixth Circuit – intruded on matters of religious significance.

None of this is to argue that municipal authorities must consult a particular religious doctrine to apply

zoning restrictions that regulate physical attributes (such as height, or yardage requirements) of a building already designated as a “house of worship” or “synagogue.” However, the City did not apply the UHCO in that limited context.

The City voluntarily waded into the waters of religious determination by expanding the UHCO’s scope to Grand’s proposed religious activity.

University Heights decided the qualitative nature and significance of Grand’s proposed Jewish religious activity. It then used that unsupported religious characterization as the predicate for applying religious zoning classifications (i.e., “house of worship” or “synagogue”). Most egregiously, the City proceeded to use those classifications as the ammunition to threaten regulatory enforcement measures against Grand. That is precisely the kind of governmental intrusion into religious autonomy that *Hosanna-Tabor* repudiated.

3.1 “Synagogue,” “house of worship,” and “religious assembly” are deeply rooted, distinct concepts that are central to Jewish thought.

The religious activity the City mischaracterized, and proceeded to regulate based on that mischaracterization, is not a generic “gathering” or “assembly” in the colloquial sense. It carries substantial religious meaning unique to Judaism. Had the City given appropriate consideration to authoritative sources concerning the religious character of that activity, it would have avoided the fundamental error of conflating the occurrence of Jewish communal prayer with the transformation of Grand’s residence into a

“synagogue.” An example of such a source is the esteemed and highly recognized scholar, Lawrence Schiffman.

As the statement of esteemed Global Distinguished Professor Lawrence Schiffman explains, the terminology for a Jewish religious gathering is deeply rooted within the religion as central to Jewish thought.

Jewish Prayer: Private, home (or anywhere),
Minyan, and Synagogue
 Lawrence H. Schiffman
 Global Distinguished Professor
 of Hebrew and Judaic Studies
 Skirball Department of Hebrew and Judaic Studies
 New York University¹⁵

Prayer to God, including prayers of praise, request, and thanks, is an essential part of Jewish religious practice. Prayer has been part of Judaism from the earliest days in the Hebrew Bible (Old Testament) until modern times. Some prayers recited today date to more than 2500 years ago, although some are modern texts. Jewish prayer may be divided into optional prayer and obligatory prayer.

Optional prayer can take place anywhere and anytime, either using specific texts, such as the Psalms or later compositions, or the words of the individual seeking to communicate with God. Generally, these kinds of prayer

15. This statement by Dr. Schiffman was explicitly written, without any charge or fee, for the Rieders Foundation to utilize in this *amicus brief* as an informative framework.

experiences are informal and usually involve the individual alone.

The second type of Jewish prayer is that which is obligatory, including daily prayers (morning, afternoon, and evening), Sabbath and festival prayers, High Holy Day prayers, and benedictions before and after eating. Obligatory prayers, depending on the circumstances, may be recited privately, for example at home or in a hotel room while on a trip--anywhere that is convenient.

However, obligatory prayers are best said in the presence of a *minyan*, meaning a quorum (literally a “counting”), of ten Jewish males for Orthodox Jews and some Conservative Jews, or ten Jewish people (men or women) for some Conservative and all Reform Jews. Such a quorum, known in Hebrew as a *minyan*, can occur anywhere or in a synagogue. When we say that a *minyan* can occur anywhere, it is common for *minyanim* (plural of “*minyan*”) to occur in homes during the week of mourning for relatives who have passed away, in hotels, business offices, airports, or homes in places where synagogue buildings are not available. Participation in such a *minyan* means that those who pray there have, for reasons permitted by Jewish tradition and law, decided to fulfill their obligations to pray to God without the special “sanctity of place” that a formal synagogue attains and the attendant higher level of spirituality possible in a holy place. Such *minyanim* do not require the leadership of professional Jewish clergy. In fact, most are temporary arrangements and do not become formal synagogues. The place where services take place is not considered to have attained any special sanctity and may again be used for its secular purpose as soon as prayers are concluded.

The formal atmosphere of a synagogue building is considered to be the best place to hold Jewish public prayer. This is because the synagogue building is seen as a miniature version of the ancient Jewish Temple that stood on the Temple Mount, the spiritual center of Jerusalem in ancient times and still Judaism's holiest place. Hence, designation of a facility as a synagogue instills in it a special sanctity that, in turn, means that the obligatory prayers have been recited in the best way. The synagogue atmosphere brings with it a feeling of awe and inspiration that elevates obligatory prayer undertaken communally beyond that of the *minyan*, often held *ad hoc*. It is usual for synagogues to be led by professional ordained clergy, rabbis and cantors, who are responsible for leading prayers and providing spiritual consultation.

Holding a *minyan* in a miscellaneous location is, therefore, a necessary activity, distinguished practically and religiously from establishing a synagogue. The utilization of an *ad hoc* location to hold a *minyan* does not in any way turn the venue into a synagogue. *Minyanim* are encouraged to be held and established anywhere and everywhere when Jews are together and offer their obligatory prayers at the required times. The synagogue is a permanent place of special sanctity, but in no way does that detract from the obligation of Jews to pray in a *minyan* thereby fulfilling their sacred duty.

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3.2 Ministerial-exception jurisprudence is an appropriate analogue when municipal authorities elect to regulate religious activity as such.

This Court’s ministerial-exception jurisprudence illustrates how religious-autonomy principles operate when the application of secular law turns on a classification carrying distinct religious significance. In *Hosanna-Tabor*, this Court recognized the ministerial exception in the context of employment discrimination claims against a religious institution. There, the question presented was

whether [the] freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012).

In answering that question, the Court held:

By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. *Id.*, 188-89.

Justice Thomas articulated the deference rationale still more explicitly, reasoning that courts should, “defer to a religious organization’s good-faith understanding of who qualifies as its minister.” 565 U.S. 171, 196 (Thomas, concurring).

Our Lady of Guadalupe subsequently reinforced the majority's functional approach. Rather than convert *Hosanna-Tabor*'s considerations into a mechanical checklist, the Court emphasized "what an employee does" and the religious functions entrusted to the employee. 591 U.S. 732, 734. The Court also recognized the danger of imposing criteria derived from one religious tradition upon another, observing that "[s]imply giving an employee the title of 'minister' is not enough," while the absence of such a title likewise cannot be dispositive. *Id.* at 752.

Hosanna-Tabor and *Our Lady of Guadalupe* are instructive here. There, the religious classification was "minister." Here, it is "synagogue." There, the object of scrutiny was ministerial status. Here, it is the "status" of Jewish prayer (*minyan*) and how that status is characterized as a matter of Jewish tradition and practice. There, ministerial status could not be divorced from the religious tradition within which its ministers operate. Here, inherently religious classifications (synagogue) cannot be applied to distinctly religious activity (*minyan*) without accounting for Jewish understanding as to how that activity is classified in a religious sense.

Ohio courts endorse the ministerial exception "in line with the Ninth Circuit's approach," which allows employment discrimination claims to survive if they "do not require interpretations of religious doctrine or scrutiny of ... ministerial choices." *Montgomery v. St. John's United Church of Christ*, 2022 Ohio Misc. LEXIS 4022, *22 (Ohio Ct. Com. Pl. Jan. 3, 2022) (quoting *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 964 (9th Cir. 2004)). One court found the plaintiff "satisfie[d] numerous factors deemed pertinent by the Supreme Court" to

qualify as an “ordained minister.” *Id.*, *18. The Court based that conclusion on the fact that she, “performed primarily religious functions ... and ***she regarded herself as*** being engaged in pastoral, ministerial work. (emphasis added)” *Id.*, at *17.

The Court’s reasoning in *Montgomery* illustrates the disconnect here. Grand disputed the City’s unsubstantiated characterization of inherently Jewish religious activity as a “synagogue.” Yet the City failed to give proper consideration to how that activity is treated as a matter of internal Jewish practice and how Grand himself regarded that activity. The Sixth Circuit appeared to disregard the importance of the religious determination at the heart of this case.

Amici thus urge the Court to apply the underpinnings of ministerial-exception jurisprudence to the limited context presented here: Application of a religious classification to an inherently religious activity.

The ministerial exception cases demonstrate that distinctions matter. Secular authorities may determine objective facts concerning religious activity. When secular law attaches consequences to a classification carrying distinct religious significance, this Court has resisted allowing government simply to impose its own rigid conception of the religious category.

Amici submit that the same principle should apply here. Where a zoning classification is undefined, genuinely ambiguous as applied, and its resolution depends upon the meaning of a concept developed within a particular religious tradition, civil authorities should not be free to

resolve that ambiguity through their own unsubstantiated conception of the religion's institutions. Just as ministerial exception cases are determined on a case-by-case basis this case must rely on a close examination of all the applicable circumstances in determining whether prayer at home constitutes a "house of worship" for zoning purposes.

4. Standardless Zoning Enforcement Invites Arbitrary and Asymmetric Treatment.

The practical danger of permitting municipalities to make unsubstantiated zoning classifications that lack sufficient criteria or standards is clear: If homeowners who want to pray in their residences are burdened by zoning regulations because a municipality determines that prayer gatherings transform their homes into "synagogues," "churches," or "houses of worship," would they also enjoy the tax benefits derived from that classification? If recurring prayer transforms Grand's home into a "synagogue" when the City seeks to regulate it, what does that property become when Grand seeks the benefits ordinarily associated with religious use?

A government cannot be permitted to invoke the religious character of property when doing so expands its regulatory authority, but disregard that same character when doing so benefits the property owner at the expense of the sovereign. The First Amendment demands greater neutrality than a "heads-I-win, tails-you-lose" approach to religious classification.

To be sure, the standards governing zoning and taxation are not identical, and classification under

one statutory scheme does not mechanically dictate classification under another.

That concern extends beyond *Grand*. Religious traditions differ substantially in where worship occurs, how communal prayer is organized, what institutions are called, and what religious significance attaches to particular places. Leaving those classifications to unguided governmental judgment therefore risks not merely inconsistency within a single case, but unequal treatment across faith traditions.

CONCLUSION

The zoning board does not have the constitutional right to determine when a *minyan* or Jewish prayer gathering becomes a synagogue. When government regulates religion, it must do so carefully and use clear, unambiguous guidelines in regulating religious activity. It takes no innate perspicacity to determine that Mr. Grand is entitled to all prayer services in his residence and should not be bound by unspecified, ambiguous zoning considerations absent clearly disqualifying criteria. It is suggested that this Court reverse the Sixth Circuit and remand the matter to permit Mr. Grand, on the current record, to hold a Jewish *minyan* within his home. Likewise, the Court may choose to suggest that the municipality consider a religiously neutral zoning ordinance based upon ordinary principles applicable to zoning considerations such as traffic flow and the like.

Respectfully submitted,

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