

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
CHRISTIAN LEGAL SOCIETY
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

Christian Legal Society (“CLS”) is a nonprofit, non-denominational association of Christian attorneys, law students, and law professors.¹ Founded in 1961, CLS has members in all 50 states and chapters on more than 150 law school campuses. Through its advocacy ministry, the Center for Law & Religious Freedom, CLS pursues a pluralistic vision of a free civil society in which all Americans—of every faith and of none—may worship, gather, and follow the dictates of conscience without government hostility. CLS is a national association of Christian attorneys filing in defense of a Jewish neighbor’s minyan because the freedom at stake—to have small-group worship or Scripture study in a private home—is universal.

CLS has appeared before this and the lower courts as party and amicus in defense of religious rights of people of all faiths. *See* Br. Amici Curiae of Christian Legal Society et al., *Chiles v. Salazar*, 146 S. Ct. 1010 (2026); *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Groff v. DeJoy*, 600 U.S. 447 (2023); *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (en banc).

¹ Per Rule 37.6, amicus states that no party’s counsel authored this brief in whole or part, and no person other than amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Imagine if you will a gathering of ten or so friends meeting on a Friday night to discuss the latest best-selling novel. They discuss the nuances of the plot, perhaps argue about what the author meant by some line or another, and have some laughs. Everyone meets for a few hours and goes home—a fun, if uneventful, Friday night with nary a permit required. How could there be? To be otherwise would mean every gathering—from birthday parties to football game watch parties—would now require government permission.

Now, trade the novel for a siddur and the plot discussion for prayer. Suddenly, as if by magic, the group needs government permission to meet, *or else*. If that sounds absurd, that's because it is. No American needs the government's permission to pray with friends in his own living room. And no American must seek, let alone finish, the government's permit process before a federal court may say so.

For sixty years, this Court has held that where the First Amendment is concerned, the credible threat is the injury. A citizen need not “first expose himself to actual arrest or prosecution” to challenge a law that deters his constitutional rights, *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), and he need not “await and undergo a criminal prosecution as the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat'l*

Union, 442 U.S. 289, 298 (1979) (citation omitted). The Court recently distilled this principle: “the value of a sword of Damocles is that it hangs—not that it drops.” *First Choice Women’s Res. Ctrs, Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026) (citation modified). Here, this sword hung on Daniel Grand’s dining room. In the city of University Heights (the “City”), just as Mr. Grand sought to continue his religious practice in his own home, the City’s law director ordered him to “immediately cease and desist” using his home as a “place of religious assembly,” on pain of citations and “additional remedies.” J.A.199. The City’s mayor then announced that the ban remained in force, invoked the permanent injunction the City had recently obtained against another residential prayer group, and urged Grand’s neighbors to “report” any “activities consistent with those in a house of assembly.” J.A.338-39; Pet.App.143a. *Laird v. Tatum* reserves the word “chill” for subjective unease, 408 U.S. 1, 13–14 (1972). In contrast, what happened here is an objective threat that would subjectively chill anyone (as it did Petitioner).

The Sixth Circuit never disputed any of this. Instead, it held that the land-use finality requirement in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), barred the courthouse door until Mr. Grand extracted a “final decision” from the zoning authorities. *Grand v. City of University Heights*, 159

F.4th 507, 512 (6th Cir. 2025). But that subjugated the first freedom of the First Amendment to a takings rule that was never built to govern it. In effect, the Sixth Circuit lost the forest for the trees.

Finality is “compelled by the very nature of the [takings] inquiry” because no one knows whether compensation is due until the government’s position is final. *Williamson Cnty.*, 473 U.S. at 190. Judged on its own terms, the only permit available to hold a minyan was for a commercial house of worship, and the ordinance forbids “sleeping or residential use accommodations” on any permitted site. J.A.229; UHCO § 1274.02(f)(4); Pet.App.83a.; Rep.App.23, 63. The process the City demanded could not, by its own terms, end in permission to pray in an occupied home.

That aside, the decision below answered the wrong questions. Petitioner’s property wasn’t taken, *his right to worship was*. This case hinges on the question *First Choice* “set[] aside”—Can “a Takings Clause rule . . . be properly transposed in the First Amendment Context[?]” 146 S. Ct. at 1128. The answer is as simple as it is obvious. It cannot because a free exercise injury turns on a different standard: “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (citation omitted).

The comparator evidence confirms both the merits and jurisdiction. Treating “any comparable

secular activity more favorably than religious exercise” triggers strict scrutiny, with comparability “judged against the asserted government interest”—traffic, noise, parking—not labels. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). University Heights residents may fill a living room for a graduation, a birthday, a book club, a Super Bowl party, a political fundraiser, or a gender reveal without a permit, a hearing, or a cease and desist order—basically without any significant issue whatsoever. Ten Jewish men praying drew all three. And they drew it with rather disturbing enthusiasm, with the mayor urging residents to “report” on their prayerful neighbors and requesting police monitoring of Mr. Grand’s home. J.A.339, 303; Pet.App.34a, 143a–44a; Pet.App.34a-35a. That asymmetry is what made the threat credible, and it is why the mere existence of a permit process was both injurious and futile. No planning commission vote is necessary before one may freely exercise his religious beliefs.

A doctrine this Court spent six decades building is not displaced by a finality rule built for another clause, another injury, and another remedy. The judgment of the court of appeals should be emphatically reversed.

ARGUMENT

I. A credible government threat that deters religious exercise is a complete constitutional injury the moment it issues, and no land-use finality rule displaces it.

Petitioner’s question presented calls the chilling-effect doctrine “established,” and it is. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), is a creature of takings law. Even on its own terms it forbids what the Sixth Circuit required, and finality could not remedy this injury in any event because the only remedy for a chilled Sabbath is damages, which are available now.

A. For six decades, this Court has located the First Amendment injury in the credible threat, not the consummated punishment.

The rule has been settled since the Warren Court: a credible official threat aimed at protected expression works its injury the day it issues because its whole office is to make the citizen stop. *Dombrowski v. Pfister*, 380 U.S. 479, 487, 490 (1965) (discussing chill that arises from threats of enforcement); *see also Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963) (threats by a Commission with power to only levy “informal sanctions” were sufficient threats of censorship). So, a plaintiff need not “first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters

the exercise of his constitutional rights.” *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). He need not “await and undergo a criminal prosecution as the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979). The Constitution does not price the right to pray at the cost of a summons.

The reason is self-censorship. The characteristic danger of a speech-restrictive regime “is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution.” *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988). Relatedly, a licensing scheme backed by discretion “intimidates parties into censoring their own speech, even if the discretion and power are never actually abused.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 757 (1988). In other words, the government rarely needs to cut the string holding the “sword of Damocles”; the fact that “it hangs” is enough. *First Choice Women’s Res. Ctrs, Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026). That is why, “where threatened action by *government* is concerned,” a court does not “require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007) (emphasis in original).

The modern cases restate the framework without softening it. A pre-enforcement plaintiff may sue the government when she intends to engage in

conduct “arguably affected with a constitutional interest” that faces “a credible threat” of enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (citation omitted). “Past enforcement against the same conduct is good evidence that the threat of enforcement is not ‘chimerical.’” *Id.* at 164 (citation omitted). The Court applied the same rule to a criminal statute and to a public accommodations law. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 15 (2010) (criminal); *303 Creative LLC v. Elenis*, 600 U.S. 570, 580 (2023) (public accommodations). Not once in sixty years has the Court demanded that the citizen absorb the punishment first. In fact, the Court’s most recent precedent points in the opposite direction.

A government order to desist “‘inevitably’ deters the exercise of First Amendment rights and can do so ‘as effectively’ as other ‘forms of governmental action’ might.” *First Choice*, 146 S. Ct. at 1125 (quoting *NAACP v. Alabama*, 357 U.S. 449, 462 (1958)). The moment the government “objectively chill[s]” protected exercise, a constitutional injury has occurred. *Id.* at 1129. That is what the question presented means when it calls this doctrine “established.” The only question is whether a zoning rule can repeal it. It cannot.

B. *Laird* polices the doctrine’s outer boundary, and a personally targeted cease and desist order backed by threatened penalties sits at its core.

The Court in *Laird v. Tatum*² drew a line between objective and subjective chill, characterizing objective chill as the threat of future and definite harm. 408 U.S. 1 (1972). *Laird* holds that “[a]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” *Id.* at 13–14. True enough, and true here for the City. But *Laird* does not cut against Petitioner. *Laird* involved generalized Army data gathering aimed at no one in particular; the plaintiffs’ fear was that surveillance might someday ripen into something worse in which the Army targeted the plaintiffs individually. *Id.* at 13. The Court asked for an objective threat particularized to the plaintiffs and found none. *Id.* at 16.

Here the threat has a specific name, address, and threatened penalty. The law director’s order,

² Similarly, *Clapper v. Amnesty International USA*, which is the modern progeny of *Laird*, found that the harms alleged were insufficient to maintain standing because “a subjective fear of surveillance does not give rise to standing.” 568 U.S. 398, 418 (2013). There was nothing subjective here about the law director’s cease and desist order, which was directed *at* Mr. Grand. J.A.199. There was similarly nothing subjective about Mr. Grand’s fear of surveillance that the mayor specifically called for against Mr. Grand. Pet.App.34a, 143a–44a; Pet.App.34a–35a.

issued within hours of a neighbor's complaint, identified Grand's home, declared its use as a prohibited "place of religious assembly," and demanded that he "immediately cease and desist," warning that violations "may result in building code citations" and "the pursuit of additional remedies." J.A.199. Two months later, with that order still in force, the mayor told a public meeting that the City had sued the organizers of another home prayer group "on Churchill Boulevard" and "ultimately obtained a permanent injunction in court." J.A.338. He then told the room to "let there be no question" that no permission existed for a "house of assembly" at Grand's address and urged residents to "report" any "activities consistent with those in a house of assembly." *Id.* at 338–39. Under *Susan B. Anthony List*, that history of past enforcement is "good evidence" the threat was real. 573 U.S. at 164. And the cease and desist order has never been lifted. J.A.156–57. A citizen ordered by the city's chief legal officer to stop praying with friends, in a city where the last gathering ended in an injunction, is not suffering from nerves. He is obeying.

The injury is complete "at the moment" of the government's directed act, *Dougherty v. Town of North Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 90 (2d Cir. 2002), not when some later body ratifies it. *Cf. Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (citation omitted) (compelled disclosure's "deterrent effect on the exercise of First Amendment

rights” is itself the harm that is subject to “exacting scrutiny”).

The panel saw the cease and desist order as harmless because its issuer lacked enforcement authority, but that is not a necessary condition to pre-enforcement injury. Below, the Sixth Circuit held that because the law director sits on no zoning board, “the letter would not impose a hardship,” and “Grand needs no relief from a document that does not harm him.” *Grand v. City of University Heights*, 159 F.4th 507, 514 (6th Cir. 2025). But a threat’s constitutional force has never depended on whether its author also holds the enforcement pen; it depends on whether the threat is credible. *Susan B. Anthony List*, 573 U.S. at 159. For Mr. Grand, the law director’s order stopped Mr. Grand *ex proprio vigore*. See *Bantam Books*, 372 U.S. at 68.

In *Steffel*, the warnings came from police officers, not the prosecutor who would try the case, and the Court did not pause over the org chart. 415 U.S. at 459. The City cannot send its chief attorney to deliver the threat, dispatch its mayor to renew it, and then disclaim both for Article III purposes. *Cf. NRA v. Vullo*, 602 U.S. 175, 190 (2024) (“A government official cannot do indirectly what she is barred from doing directly.”). Nor can it have it both ways: either the letter stated the City’s law, in which case it chilled Grand’s First Amendment rights, or it was a bluff, in which case the City menaced its residents’ worship for

nothing. A citizen is entitled to take the chief attorney of a city at his word.

Bantam Books proves the point. In *Bantam*, Rhode Island's Commission to Encourage Morality in Youth could not seize a book, ban a title, or prosecute anyone. It could only send notices. The notices advised distributors that a majority of the Commission had declared listed publications "objectionable for sale, distribution or display" to minors, thanked them in advance for their "cooperation," reminded them of the Commission's duty to recommend prosecution to the Attorney General, and informed them that the lists had gone to local police. 372 U.S. at 61–63 & n.5. The distributor was "free" to ignore all of it, in the sense that his refusal to cooperate "would have violated no law." *Id.* at 68. He complied anyway. The owner stopped filling orders, sent his men to collect unsold copies from retailers, and returned them to the publishers. *Id.* at 63.

This Court declined to call that arrangement mere advice. "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." *Id.* at 68. The notices were "phrased virtually as orders, reasonably understood to be such by the distributor," and they "in fact stopped the circulation of the listed publications *ex proprio vigore*." *Id.*

It would be "naive to credit the State's assertion that these blacklists are in the nature of mere legal

advice, when they plainly serve as instruments of regulation independent of the laws against obscenity.” *Id.* Whether the Commission had exceeded its own statutory authority in issuing them was “immaterial.” *Id.* at 69 n.9. And the publishers’ injury was “palpable” and legal rather than conjectural, though the notices went to distributors and never to them, and though no sanction ever issued against anyone. *Id.* at 64 n.6.

Grand’s case is *Bantam Books* with the particulars sharpened. The Sixth Circuit’s response, that the law director “sits on no zoning board” and so “the letter would not impose a hardship,” *Grand*, 159 F.4th at 514, is Rhode Island’s argument. The Commission had no real authority whatsoever: it could not seize a book, ban a title, or prosecute anyone. The state pressed that very point, and this Court called it “untenable.” *Bantam Books*, 372 U.S. at 66–67. What made the notices unconstitutional was not the authority the Commission possessed but the obedience it sought to coerce. As in *Bantam*, the law director “acted . . . not to advise but to suppress.” *Id.* at 72.

C. The right at stake is the one the Free Exercise Clause was written to secure, and the chilling doctrine protects it with full force.

If anything, the calculus tightens where religious freedom is deterred. “[T]he First Amendment doubly protects religious speech.” *Kennedy v.*

Bremerton Sch. Dist., 597 U.S. 507, 523 (2022). And the injury clock runs fast: “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (citation omitted); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). A Sabbath suppressed is not banked for later; it is gone.

Under the protective cloak of the Free Exercise Clause, this Court has twice condemned permission-first regimes for expression at the home’s threshold. “It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors [at their homes] and then obtain a permit to do so.” *Watchtower Bible & Tract Soc’y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002). This value exists because the home itself enjoys “special respect for individual liberty.” *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994). A rule that a believer must complete a permit process before a court may even hear his objection to a free exercise violation inverts both holdings, making the permission the price of the complaint.

The founding generation knew this regime by sight. Unpopular worship in America survived precisely because it did not depend on official leave, and often it did not get any. In eighteenth-century Virginia, “the most intolerant of the colonies,” the

authorities “blocked the Presbyterians’ ability to preach at every turn,” and Baptists were “horsewhipped and jailed for their preaching until the Revolution.” Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1423 (1990). Presbyterians had to struggle “for permission to hold religious meetings” at all. *Id.* at 1438 n.157. That grievance made the man who drafted the First Amendment. The sight of “5 or 6 well meaning men,” Baptist preachers jailed in Culpeper “for publishing their religious Sentiments which in the main are very orthodox,” sparked Madison’s concern for religious freedom; he called such persecution a “diabolical Hell conceived principle” that “vexes me the most of any thing whatsoever.” *Id.* at 1452–53. The First Congress understood the stakes. When told that a right of assembly was too trivial to enumerate, Representative John Page answered that “people have also been prevented from assembling together on their lawful occasions.” *Id.* at 1472 n.320 (quoting 1 Annals of Cong. 760 (Joseph Gales ed., 1834)).

The words of the Free Exercise Clause were chosen with this in mind. As dictionaries of the era defined it, “exercise” meant the “[a]ct of divine worship, whether public or private.” *Id.* at 1489 (quoting Samuel Johnson, *A Dictionary of the English Language* (Philadelphia 1805)). Private worship is not something the clause tolerates at the margin; it is what half of the operative word meant when it was

written. The clause protects “religion,” not “rights of conscience,” and the difference is not stylistic. “Religion binds believers together; conscience refers to the inner faculty of judgment.” *Id.* at 1490. A minyan is that distinction made concrete. It cannot be performed alone; ten Jews are the smallest unit in which this exercise exists at all. A city that permits a resident to fill his living room for any secular purpose, and forbids him to fill it for this one, has not regulated a land use. It has told him he may believe, but only alone.

This pre-enforcement principle is not confined to zoning, and the Sixth Circuit has said so in its own cases. A university’s bias-response apparatus objectively chilled speech before any student was disciplined. *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 764–65 (6th Cir. 2019). Other circuits agree: a sidewalk counselor had standing before ever testing the statute’s edge. *Vitagliano v. Cnty. of Westchester*, 71 F.4th 130, 135–40 (2d Cir. 2023). The doctrine does not merely tolerate cases like this one. It exists for them.

D. *Williamson County*’s finality requirement is a creature of takings law that does not extend to a First Amendment injury.

Williamson County answers a question this case does not ask: When does a regulatory taking exist? Because the Fifth Amendment forbids not regulation but uncompensated deprivation, a court

cannot know whether a taking has occurred or what compensation is due until “the government entity charged with implementing the regulations has reached a final decision.” 473 U.S. at 186. The requirement is “compelled by the very nature of the inquiry required by the Just Compensation Clause.” *Id.* at 190. Finality, in other words, is not a courthouse formality; it is how a takings injury comes into being. *See* 13B Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. § 3532.1.1 (noting that takings ripeness is a special category of ripeness distinct from the traditional ripeness rule). But Mr. Grand is not asking to operate a grand synagogue on his property; he is looking to gather with his fellows to pray. The fact that Jewish tradition gives the gathering the label “minyan”³ is of no moment.

The First Amendment works on the opposite principle of deterrence, not deprivation. The injury to one’s First Amendment rights is not the deprivation of a parcel’s value pending a final position, but rather the deterrence of protected exercise while the government threat hangs. The First Circuit drew

³ The word “minyan” means “count” or “number.” *Minyan*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/minyan> (last visited Aug. 27, 2026). In Orthodox practice, it consists of ten men, but in other traditions it is sufficient if any ten Jewish adults are present. *Minyan: Communal Prayer*, Sefaria, <https://www.sefaria.org/topics/minyan> (last visited Aug. 27, 2026). Its importance in Jewish tradition cannot be overstated, as some prayers, such as the Mourner’s Kaddish, can only be said with a minyan. *Id.* at *Call to Communal Prayer*.

precisely this line: free exercise effects “may well become clear at a different point than that contemplated by takings law” because takings analysis measures economic impact while free exercise analysis measures the burden on worship now. *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 92 (1st Cir. 2013). An improper taking, then, can be cured with compensation, but only once the deprivation is complete. In contrast, a chilled Sabbath is a Sabbath deterred, so the injury is complete, and therefore compensable, the day the government’s threats predictably cause its loss.

So, the transplant fails at the root. A rule built to detect when a taking ripens has nothing to say about an injury that is complete on arrival.

E. Even on its own terms, the modern finality rule is “relatively modest,” forbids exhaustion, and condemns procedural traps, yet the decision below rebuilt the trap inside the First Amendment in the very posture *First Choice* reserved.

Even in takings law, the doctrine the Sixth Circuit borrowed no longer resembles the doctrine the Sixth Circuit applied. At the outset, the finality requirement is “relatively modest”: “nothing more than *de facto* finality” is required because “[o]nce the government is committed to a position . . . the dispute is ripe for judicial resolution.” *Pakdel v. City & Cnty.*

of *San Francisco*, 594 U.S. 474, 478–79 (2021). Relatedly, exhaustion of state remedies has never been the price of a § 1983 action. *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982). And this Court has shown no patience for procedural architecture that strands constitutional claims. This Court noted the “Catch-22” its own state-litigation rule had created, condemning its effects on a plaintiff who “cannot go to federal court without going to state court first,” yet loses his federal claim by going. *Knick v. Township of Scott*, 588 U.S. 180, 184–85 (2019). The Second Circuit has already read these decisions to mean what they say in the religious land-use setting. *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 350–52 (2d Cir. 2023) (holding that de facto finality suffices to confer ripeness).

When the decision below is measured against that baseline, Grand’s pre-enforcement injury becomes clear. The panel paradoxically wrote that “[e]ven though Grand did not need to exhaust his local remedies, he did need to obtain a final decision,” and that “‘futility’ is not an exception to finality; it’s another way to state the rule.” *Grand*, 159 F.4th at 513. With respect, that is exhaustion wearing finality’s clothes. A rule that no injury exists until the citizen completes a discretionary local process, however plainly the government has dug in, demands the very administrative pilgrimage *Patsy* forbids and *Pakdel* renders unnecessary. The City’s position could not have been clearer: a cease and desist order, a

mayoral proclamation that the ban remained in effect, an invocation of a similar gathering's recent injunction, and a request for neighborhood surveillance. J.A.198–200 (CADO); J.A.338–39 (proclamation); J.A.303 (drive-by). De facto finality arrived by certified mail.

And this trap had a design flaw all its own: a double bind. The special use permit the City demanded is the permit for commercial houses of worship, and the ordinance governing every such site commands that “[n]o use permitted herein shall include sleeping or residential use accommodations on any part of the site.” J.A.229; UHCO § 1274.02(f)(4); Rep.App.23, 63. The process could therefore end in only two ways: denial, and Grand may not pray at home; or grant, and Grand may not live at home. Heads the City wins; tails Grand loses. A finality rule that requires completing a process incapable of granting the right is not a ripeness doctrine. It is a barricade.

First Choice expressly “set[] aside the question whether a Takings Clause rule might be properly transposed into the First Amendment context,” 146 S. Ct. at 1128, and this case centers that question and should answer it in the negative. The two doctrines protect different guarantees, redress different injuries, and run on different clocks. Transposing the one extinguishes the protections of the other. The Sixth Circuit said “futility” merely restates the finality rule. And that is the strongest reason the rule

cannot govern here. A doctrine that treats the pointlessness of process as proof that the process must continue has nothing to do with Article III and everything to do with attrition.

F. Finality can postpone a permit; it cannot remedy the chill. Damages for the lost Sabbaths are the only remedy, and they are available now.

To begin with first principles: “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). For a completed constitutional violation, damages, even nominal damages, supply that protection: they “provide the necessary redress for a completed violation of a legal right.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021). The Sabbaths Grand spent silent while the order stood are exactly such completed violations. No future permit restores them; no eventual “final decision” reaches back to un-silence a single one.

The Sixth Circuit panel offered two ripostes, neither of which comports with the ripeness doctrine under the First Amendment. Grand, said the panel, eventually convened one minyan, so the record “does not sound like chill”; and having withdrawn his permit application, Grand “is the author of any chilling effect on his First Amendment interests, not the City.” *Grand*, 159 F.4th at 513, 515. But deterrence need not

be total to be actionable—the loss of First Amendment freedoms “for even minimal periods” is irreparable injury, *Elrod*, 427 U.S. at 373, and a violation is not erased because its victim eventually risked defiance. On the panel’s logic, the more effective a threat, the less reviewable it becomes: perfect obedience would prove no injury at all. That inverts the doctrine, which treats self-censorship as “a harm that can be realized even without an actual prosecution.” *Am. Booksellers*, 484 U.S. at 393.

As for authorship, Grand withdrew from a proceeding the City had switched to a “quasi-judicial” format amid openly antisemitic opposition to seek a permit that, by the ordinance’s own text, would have forbidden him to live in the house in which he sought to pray. J.A.18, 226; UHCO § 1274.02(f)(4); Rep.App.23, 63. Declining to finish a process that cannot grant the right one seeks to vindicate is not authoring the injury; it is sanity. The author of the chill signed the cease and desist order.

The City’s later concession completes the picture by admitting that small gatherings are not the subject of the ordinance’s prohibition, thereby confirming that the finality rule is inapplicable here. Small gatherings, the City now says, never required a permit at all. J.A.323–24, 361. That confirms the injury rather than cures it⁴—it proves the order

⁴ The City’s concession also moots nothing. Damages for the completed chill survive any change of municipal heart.

should never have issued, and it does nothing for the Sabbaths lost while the order stood. Affirmance would hand every municipality a cost-free playbook: chill first, concede later, never answer for the months in between, and then rinse and repeat. The answer to the question presented is “no.” A doctrine this Court spent sixty years building is not displaced by a finality rule built for another clause, another injury, and another remedy.

Nor is the stake abstract because affirmance would not merely misread Article III; it would redraw the map of American religious life at its smallest scale. Congregations begin in living rooms—the house church, the Bible study, the prayer circle, the minyan that must sit within walking distance of its members. J.A.8; Pet.App.2a. Those gatherings have no building fund, no zoning counsel, and no capacity to litigate a permit through “quasi-judicial” hearings while their worship waits. A rule that the courthouse stays closed until the permit process ends is, for them, a rule that the courthouse stays closed. The government official who knows this need only write the chilling letter that reminds a citizen that their rights exist at the

Uzuegbunam, 592 U.S. at 292. And as to prospective relief, a litigating-position concession, with the ordinance unamended, does not approach the showing voluntary cessation requires. See *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *FBI v. Fikre*, 601 U.S. 234, 241 (2024). No court below passed on mootness, and this Court need not either: the question presented is whether the injury was ever justiciable, not whether it stayed so.

sufferance of the government’s permission. But the *Watchtower* Court called permission-first regimes for reaching one’s neighbors “offensive . . . to the very notion of a free society,” 536 U.S. at 165–66, and that offense compounds when the neighbors are praying.

II. The City may not forbid a resident to gather friends for worship while permitting comparable gatherings for every secular occasion.

Amicus asks the Court to see what the free exercise claim’s obviousness did to the justiciability analysis. The same asymmetry that condemns the City’s regime under *Tandon* is what made the law director’s threat credible and the permit process futile. The merits and the jurisdiction are the same fact seen twice.

A. Treating any comparable secular gathering more favorably than religious exercise triggers strict scrutiny.

The rule is categorical. Government regulations “are not neutral and generally applicable, and they therefore trigger strict scrutiny” whenever they “treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam) (*italics in original*). Comparability “must be judged against the asserted government interest that justifies the regulation”—for a residential-gathering rule, the traffic, the noise, the parking—not whether the activity is religious or

secular. *Id.* A law that is not neutral or not generally applicable “must undergo the most rigorous of scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).⁵

Fulton v. City of Philadelphia, 593 U.S. 522 (2021), adds the second rail to the comparator track. “The creation of a formal mechanism for granting exceptions renders a policy not generally applicable.” *Id.* at 537. A special-use permit regime—individualized, discretionary, case-by-case—is that mechanism to a T. A city that reserves to itself the discretion to decide which assemblies merit permission has already forfeited the claim of general applicability. What remains is strict scrutiny, which no interest in regulating living-room prayer survives.

⁵ Congress codified the same equal-treatment principle for land use: the Religious Land Use and Institutionalized Persons Act forbids any land-use regulation that treats religious assembly “on less than equal terms” with non-religious assembly, 42 U.S.C. § 2000cc(b)(1), or that discriminates on the basis of religion, *id.* § 2000cc(b)(2). “RLUIPA was enacted by Congress by unanimous consent in 2000, and was supported by a religiously and ideologically diverse coalition [your amicus among them], all seeking to expand religious freedom and prevent religious discrimination.” U.S. Dep’t of Just., *Update on the Justice Department’s Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010–2016* 3 (July 2016), <https://www.justice.gov/crt/file/877931/dl> [<https://perma.cc/627K-5782>] (last visited Aug. 27, 2026). A regime under which a birthday party proceeds as of right while a minyan draws a cease and desist order does not treat religious assembly on equal terms.

B. University Heights residents may host a houseful of guests for any secular occasion as of right; only prayer drew a cease and desist order, a potentially rigged hearing, and a surveillance request.

In University Heights, a resident may fill a living room for a graduation party, a birthday dinner, a book club, a Super Bowl party, a political fundraiser, a fraternity party, or a gender reveal. Pet.App.71a–83a. No permit. No hearing. No attorney. Ten men praying drew all three: a cease and desist order, J.A.198–200; a hearing the City switched to a “quasi-judicial” format that locked the record while antisemitic opposition filled it; and a mayoral request that neighbors “report” religious activity next door, J.A. 338–39; Pet.App.34a. The Constitution cannot mean that a keg party is lawful and Kaddish is not.

When the City’s asserted interests are measured against its own tolerances, the difference in treatment between secular and religious gatherings becomes apparent. Twelve guests for a birthday impose a burden on a street exactly as do ten guests for prayer—except that, here, guests in the latter group do not drive, so need for parking. Grand’s invitees are Orthodox Jews who walk to Sabbath prayer. J.A.8, 185; Pet.App.2a. If parking is the worry, why ban the only gathering whose guests are guaranteed to arrive on foot? Under *Tandon*, this comparison ends the case: the City treats *every* comparable secular use more favorably, and its regime

is a “formal mechanism for granting exceptions” besides. *Fulton*, 593 U.S. at 537. This is not a close call the Court must resolve; it is the backdrop that makes the justiciability holding untenable.

C. The comparator asymmetry is what made the threat credible and the permit process futile: the merits confirm justiciability.

First, a threat is credible when the government means it, and nothing proves meaning like selectivity. The City had never demanded a permit for a birthday party; its chief legal officer put Grand’s address on notice within hours of his emailing an invitation to his own home; and two months later, with that order still in force, the mayor invoked a permanent injunction the City had obtained against another home prayer group. J.A.198–200. Under *Susan B. Anthony List*, the past enforcement against a similar prayer group made the threat here anything but “chimerical.” 573 U.S. at 164. And the letter did not stand alone. A reasonable person of ordinary firmness—ordered by the City’s chief legal officer to cease, told by its mayor that the prohibition remained in force, watched by police who were instructed to make “frequent drive-bys” of his address, and facing a public hearing marked by overt hostility to Jews—does what the doctrine predicts: he stops. J.A.199, 279–80, 303, 338–39; Pet.App.34a–35a. The very asymmetry that violates *Tandon* is the voice Grand would have heard amidst all these government actions: *this rule is for you*.

Second, futility. Because every secular equivalent activity in a home proceeds as of right, the demand that Grand complete the special use process was itself the unequal term—a permission slip required of prayer alone, administered through discretionary, individualized review, *Fulton*, 593 U.S. at 537, toward a permit whose own terms would have evicted him. J.A.229; UHCO § 1274.02(f)(4). A process that exists only for the disfavored activity, and that cannot end in the permission sought, is not a ripeness checkpoint; it is the violation on an installment plan. A city that would never dream of licensing birthday parties cannot demand a license for prayer and cannot insist that a citizen finish begging for a license before a federal court may notice.

The consequences of the contrary rule would fall hardest on those least able to bear them, and that is why CLS enters this matter as an amicus. CLS speaks here with a particular voice: a national association of Christian attorneys filing in defense of an Orthodox Jewish neighbor’s minyan. The freedom to gather for worship at home is indivisible. Protect it for one tradition and it is protected for all; ration it behind a permit for one, and every small fellowship in the country holds its next meeting at the government’s sufferance.

CONCLUSION

A city may not order a man to stop praying in his home with ten guests and then tell him the

courthouse is closed until he finishes asking for permission to pray. No permission should be needed. When the order issued and the Sabbath passed without communal prayer, the injury was complete. Grand's free exercise was chilled, and nothing in a rule built to time the ripening of a takings claim changes it.

The freedom to gather for worship in one's own home does not belong to one faith, it belongs to all. A permit requirement that reaches a minyan today reaches a Bible study tomorrow. The judgment of the court of appeals should be reversed.

Respectfully submitted,

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