

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* LOUIS D. BRANDEIS
CENTER FOR HUMAN RIGHTS UNDER LAW
IN SUPPORT OF PETITIONER**

RICHARD A. ROSEN

Counsel of Record

L. RACHEL LERMAN

RAFAELA FISCHMAN

LOUIS D. BRANDEIS CENTER FOR

HUMAN RIGHTS UNDER LAW

1675 Broadway

Fl. 13

New York, NY 10019

(917) 863-3018

rrosen@brandeiscenter.com

September 8, 2026

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	3
I. The Facts of this Case and Others Illustrate the Danger to Free Exercise Posed by Discretionary Rulemaking Regimes that Allow Government Officials to Mask the Discriminatory Intent of Their Decisions.....	3
A. The Facts of this Case Palpably Demonstrate Antisemitic Animus Driving University Heights Officials Who Charged Petitioner with Violating A City Ordinance.....	4
B. The Free Exercise Rights of Minority Religious Groups Are Often Trampled Under Cover of Laws Granting Officials Broad Discretion to Apply Them.	8
CONCLUSION	12

TABLE OF AUTHORITIES

CASES

<i>Guru Nanak Sikh Soc’y v. County of Sutter</i> , 46 F.3d 978 (9th Cir. 2006)	11
<i>Islamic Soc’y of Basking Ridge v. Twp. of Bernards</i> , 226 F. Supp. 3d 320 (D.N.J. 2016)	12
<i>Konikov v. Orange Cnty., Fla.</i> , 410 F.3d 1317, 1320 (11th Cir. 2005)	11
<i>Mhany Mgmt., Inc. v. Cnty. of Nassau</i> , 819 F.3d 581 (2d Cir. 2016).....	11
<i>Spirit of Aloha Temple v. County of Maui</i> , 673 F.3d 1059 (9th Cir. 2022).....	12

STATUTES

Religious Land Use and Institutionalized Persons Act, Pub. L. 106–274.....	3, 8, 10, 11
---	--------------

OTHER AUTHORITIES

146 Cong. Rec. S774	11
146 Congr. Rec. 1565	9, 10
146 Congr. Rec. E1564	3, 8

A. Ostrow, Judicial Review of Local Land Use Decisions: Lessons from RLUIPA, 31 Harv. J.L. Pub. Pol’y 717, 740-42 (2008)	8
H.REP. 106-219	9
Lucien J. Dhoog, RLUIPA at 20: A Quantitative Study of Its Impact on Land Use and Religious Minorities, Journal of Legislation (2020).....	10, 11
Not in This Neighborhood! Zoning Battles, Harvard Univ. Pluralism Project, at https://pluralism.org/not-in-this-neighborhood- zoning-battles	10
Rabbi Shmuel Kogan, <i>Why are Ten Men Needed for a Minyan</i> , Chabad.org (last visited Sept. 4, 2026) https://www.chabad.org/library/article_cdo/aid/543 104/jewish/Why-Are-Ten-Men-Needed-for-a- Minyan.html	4, 5

ORDINANCE

University Heights City Ordinance (UHCO) 1274	5, 6
---	------

RELIGIOUS TEXTS

Shulchan Aruch, Orach Chaim	4
Tractate Berakhot (Blessings)	4

INTEREST OF *AMICUS CURIAE*¹

The Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center) is an independent, non-partisan institution for public interest advocacy, research, and education that seeks to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center has an interest in this case because it presents a factual and legal scenario whereby city officials, acting on behalf of biased members of the community, used zoning laws affording them broad discretion to threaten a Jewish individual and stymie his right to practice his religion in his own home.

¹ Pursuant to this Court's Rule 37.6, counsel for amici curiae the Brandeis Center certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amici curiae or their counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioner Daniel Grand is an Orthodox Jew whose religion requires him to pray several times a day with a minyan—a group of ten qualified Jews. Ordinarily he attends the synagogue across town for this purpose, but on Shabbat and holy days when he is forbidden to drive, he hoped to gather a minyan in his home. But before the very first meeting, neighbors complained to the Mayor, who immediately and forcefully clamped down, telling Grand that even ten people was too many and that he could serve jail time if he went ahead without obtaining a special use permit to operate his home as a formal “house of worship.” Unbeknownst to Grand, if such a permit were granted, he would be forced to move his young family elsewhere because the permitting ordinance does not allow persons to reside in a house of worship.

Once the City threatened him, Grand was forced to abandon his plan to pray in his home with a minyan, substantially burdening his right to free exercise.

The lower courts refused to grant Grand any relief, finding his complaint was unripe because he had withdrawn the permit application once it became clear that he could not meet its requirements. He did not, in any event, want to operate a house of worship. He wanted only to pray with a small group of coreligionists in his home, like so many Americans of different faiths do all of the time.

Amicus The Brandeis Center writes to address a point that is relevant but separate from the ripeness argument presented by Petitioner.

Religious groups that are out of the mainstream, including Orthodox Jews, Muslims, Sikhs, Mormons and small Christian groups among others, often find themselves at the mercy of city officials using the broad discretion afforded them by zoning laws to stifle free exercise. Congress observed as much in enacting the Religious Land Use and Institutionalized Persons Act (RLUIPA) over 25 years ago, noting that officials often take cover behind pretexts such as “public safety” to “mask the actual goal of prohibiting constitutionally protected religious activity.” 146 Congr. Record E1564. Studies and caselaw show that RLUIPA has ameliorated but far from eliminated the problem.

This case clearly demonstrates how zoning laws were called in to mask anti-Semitic animus among Grand’s neighbors and certain city officials, including the Mayor, who later acknowledged that Grand needed no permit to pray in his home with a small group of others. This Court should reverse the Sixth Circuit Court of Appeals’ decision rejecting Grand’s plea on ripeness grounds under these circumstances.

ARGUMENT

I. The Facts of this Case and Others Illustrate the Danger to Free Exercise Posed by Discretionary Rulemaking Regimes that Allow Government Officials to Mask the Discriminatory Intent of Their Decisions.

Land use regulations, zoning ordinances, and similar regulatory regimes that lack objective criteria to constrain government decision-making leave local officials with broad and effectively unreviewable discretion to grant, deny, or condition permits. As Petitioner's experience starkly illustrates, such regimes readily lend themselves to abuse, enabling local officials, who are often subject to pressure from community members hostile to ethnic and religious minority groups, to exercise their discretion to ignore or trample on free exercise rights.

A. The Facts of this Case Palpably Demonstrate Antisemitic Animus Driving University Heights Officials Who Charged Petitioner with Violating A City Ordinance.

As the evidentiary record in this case amply demonstrates, broad discretionary regulations can be used to weaponize and mask discriminatory intent against Jewish and other minority religious groups.

As discussed in Petitioner's Opening Brief on the Merits (OBOM), Orthodox Jews like Daniel Grand are required by Jewish law to pray three times a day with a minyan—ten adult members of their faith. (OBOM, page 5). Many Jewish prayers, including the mourner's prayer (Kaddish), can only be recited by a minyan. Tractate Berakhot (Blessings) 21b; *codified in* Shulchan Arukh, Orach Chaim, Chapter 55, Para 1; *see also* Rabbi Shmuel Kogan, *Why are Ten Men Needed for a Minyan*, Chabad.org (last visited Sept. 4, 2026)

https://www.chabad.org/library/article_cdo/aid/543104/jewish/Why-Are-Ten-Men-Needed-for-a-Minyan.html.

Because the nearest Orthodox temple was too far to walk, and Jewish law prohibits driving (or being driven) on Shabbat or holy days, Grand invited 12 of his Jewish neighbors to walk over and join him in his home to recite prayers with him on these occasions.

When one of Grand's neighbors became aware of his plan, they complained to the Mayor and asked him to "put a stop to this" religious exercise. The very same day, the Mayor had the City issue a cease-and-desist order, which threatened Grand with jail time on the ground he could not pray with others in his home without a permit to operate his home as a synagogue. The City cited University Heights City Ordinance (UHCO) 1274, which grants the City Planning Commission broad authority to deny a permit for houses of worship and other ventures if officials decide they are contrary to "public health, safety and welfare." UHCO 1274.01.

The Mayor upped the pressure on Grand with a vengeance as soon as the City issued the cease-and-desist order he'd requested. He threatened Grand over the phone on the same day and enlisted police to watch Grand's home for signs that his Jewish neighbors might be gathering to pray with him. He also encouraged Grand's neighbors, one of whom openly objected to Grand convening a minyan lest the neighborhood be "labeled as Jewish," to keep an eye on Grand and his family, to make sure no "unauthorized"

prayer activity was under way, and even condoned a neighbor's placement of cameras to see into Grand's home. The Mayor himself reviewed the unlawfully procured tapes. (OBOM at 16-17).

The record demonstrates the City's demand that Grand apply for a permit was a cynical subterfuge, designed to be unsuccessful. For starters, although the ordinance explicitly made it unlawful to sleep or reside in a synagogue or other house of worship, UHCO 1274.02(f)(4), no one ever told Grand this critical fact.

What is more, nothing in the language of UHCO 1274, cited by the City and the Mayor, which requires a special permit for the construction of "houses of worship" actually dictates or even suggests that praying in one's own home with neighbors is prohibited.

And, indeed, the Mayor later conceded that Grand did not need a permit to pray with fellow Jews in his home. (OBOM at 10). The record shows that city commissioners wondered among themselves whether a permit was really needed to pray with a small group of people in one's home (*id.* at 14), but they continued to follow the Mayor's lead in preventing Grand from praying in his home with a minyan. And the City persisted in trying to enforce the cease-and-desist order while it looked for new ways to harass Grand and his family.

Because Grand did not want to turn his home into a synagogue, let alone move out of it, and because the hostility exhibited by University Heights officials

showed him that they were dangling the permit option with no intention of granting it, he withdrew his application. (OBOM at 15-16).

This case starkly reveals the defendants' antisemitic motive in weaponizing an ordinance that granted them unbridled discretion to disfavor Jews under pressure from their constituents. According to Grand's Second Amended Complaint ("SAC"), Grand alleged that neighbors told him "we don't want your kind here" and that his appearance made them "suspicious." (SAC at paras. 151, 154).

Grand also alleged how one of the city officials acknowledged the "'anti-semetic [sic] rhetoric and sentiment that goes against fair housing laws', including 'repeated concerns about...the Shul being a profit-making commercial business, concerns about community 'change,' claims of long-standing community ownership, statements that the applicant should 'move somewhere else' if inconvenienced." (SAC at 142-145). Defendants presented no evidence that members of the majority Christian faiths in the community had ever been told that they needed a special permit to join together with neighbors in their homes to pray, study scripture, or celebrate Christmas or Easter or other significant religious holidays. From the moment the City threatened Grand with sanctions, including jail time, for praying with a small group of Jews in his home, it violated his constitutional right to free exercise. The additional months of harassment were imposed to ensure Grand did not exercise that right.

B. The Free Exercise Rights of Minority Religious Groups Are Often Trampled Under Cover of Laws Granting Officials Broad Discretion to Apply Them.

Grand's experience is by no means unique. Many minority communities have had their First Amendment rights undermined or negated by local government officials invoking discretionary permitting regimes to deny them permits to build or inhabit older buildings to provide a place for members to gather. In enacting RLUIPA, Congress observed that officials have long taken cover behind pretexts such as "public safety" to "mask the actual goal of prohibiting constitutionally protected religious activity." 146 Congr. Record E1564.

The Record reflects zoning disputes over "expansion of church facilities, parking squeezes on Sunday, breaches of noise ordinances or disagreements on what kind of meetings the zoning permits." *Id.* (citation and quotations omitted). "Growing churches that seek new land to relocate often cannot win zoning approvals in the face of [things like] public protest over traffic[.]" *Id.*; see also A. Ostrow, Judicial Review of Local Land Use Decisions: Lessons from RLUIPA, 31 Harv. J.L. Pub. Pol'y 717, 740-42 (2008); see *id.* at 741 ("In analyzing the evidence, Congress determined that land use decision making processes are particularly susceptible to religious discrimination because land use regulations lack objective and generally applicable standards, leaving zoning officials with 'virtually unlimited discretion in granting or denying permits

for land use” and related matters) (quoting H.REP. 106-219, 20-21).

The Record also cites at length from a study compiled by the Center for Law and Religious Freedom, providing examples of difficulties encountered by various religious groups when cities or towns deploy permitting laws to disfavor minorities. 146 Congr. Record at 1565-67.

In Belmont, Massachusetts, for example, neighbors sought to demolish a Latter Day Saints (LDS) temple that was under construction. The state court allowed construction to proceed, noting that towns should be prevented from “us[ing] zoning power to exercise their preferences to what kind of religious denominations they will welcome.” *Id.* at 1565. Another court nonetheless ruled that the town could deny the LDS a permit for a proposed steeple. *Id.*

The same study shows that Seventh Day Adventists throughout California faced similar push back from neighbors, with city officials using discretionary zoning laws to prevent them from building temples or administrative offices. 146 Congr. Record at 1565-67. In San Francisco, the City issued new parking regulations that would have effectively closed the City’s Seventh Day Adventist Church by making it impossible for congregants to park during Saturday services. *Id.*

And neighbors succeeded in blocking a congregation of elderly and disabled Orthodox Jews from establishing a synagogue in their upscale Los Angeles neighborhood so that they could walk to

services on the Sabbath. The City applied a zoning law to bar the synagogue from operating in a residential zone, although it had no problem allowing a drinking establishment to be built in the same zone. *Id.* at E1566. The Record includes many more examples.

Other studies have flagged the difficulties faced by Muslim, Sikh, Hindu, and Buddhist groups seeking to build places of worship in inhospitable neighborhoods. *See Not in This Neighborhood! Zoning Battles*, Harvard Univ. Pluralism Project, pluralism.org (last visited Sept. 8, 2026) <https://pluralism.org/not-in-this-neighborhoodzoning-battles>. In a few cases, the study notes, rapprochement with neighbors was successful. But not in all cases. After a Hindu community in New Jersey purchased a former YMCA to use as a temple, for example, the building was defaced by slogans reading “Get out Hindoos” and “KKK.” The congregation was forced to go to court to obtain permits to restore and use the empty building for worship. *Id.*

A survey of RLUIPA conducted twenty years after its enactment found that the statute is not a full-blown panacea. “Discrimination claims had a federal success rate of 9.1%, which represents four cases out of forty-four reported opinions.” Lucien J. Dhoo, RLUIPA at 20: A Quantitative Study of Its Impact on Land Use and Religious Minorities, *Journal of Legislation* (2020) at 239. “Twenty-seven of these opinions, representing 61.4% of such opinions, concerned minority religions—three of which resulted in a successful outcome for the claimant.” *Id.* “The 18.2% success rate for Islamic claimants, and the fact

that 50% of all discrimination opinions and 81.5% of opinions relating to religious minorities concerned Islamic and Jewish claimants, supports a conclusion of governmental bias against these two minorities,” if not against minorities in general. *Id.*

To be sure, evidence of discriminatory animus is not always as blatant and obvious as that found in the record in this case. See, e.g., *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 610 (2d Cir. 2016) (“A victim of discrimination is ... seldom able to prove his or her claim by direct evidence and is usually constrained to rely on the cumulative weight of circumstantial evidence.”) (citation omitted). Nevertheless, courts have inferred that bias is at work when religious groups, especially minority ones, are denied leave to practice their religion or build their houses of worship.

In *Guru Nanak Sikh Soc’y v. County of Sutter*, 46 F.3d 978, 996 (9th Cir. 2006), for example, the court of appeals held that a local government’s denial of a Sikh Society’s application for a permit to build a temple was unlawful under RLUIPA. The court cited no overt evidence of discriminatory intent but observed that “new small, or unfamiliar churches in particular[] are frequently discriminated against on the face of zoning codes and also in the *highly individualized and discretionary processes of land use regulation.*” *Id.* n. 9 (citing 146 Cong. Rec. S774-01 daily ed. July 27, 2000) (court’s own emphasis). See also, e.g., *Konikov v. Orange Cnty., Fla.*, 410 F.3d 1317, 1320, 1330 (11th Cir. 2005) (reversing summary judgment in favor of city that charged Chabad

rabbi with violating a city ordinance because he held prayer groups in his home because, *inter alia*, he “presented evidence that tends to show that the law does in fact delegate too much authority to those charged with enforcing it”); *Spirit of Aloha Temple v. County of Maui*, 673 F.3d 1059, 1192-1193 (9th Cir. 2022) (ordinance used by officials to deny a permit to non-mainstream religious group seeking to hold religious services on agricultural land on the ground the services would “adversely affect surrounding property” was “general, flimsy and ephemeral as ‘health or welfare’ or ‘aesthetic quality’” and could not withstand strict scrutiny); *Islamic Soc’y of Basking Ridge v. Twp. of Bernards*, 226 F. Supp. 3d 320, 349 (D.N.J. 2016) (city official relied on broadly-worded Parking Ordinance to support its decision to disallow construction of a mosque failed to explain why favorable treatment was granted “exclusively to Christian churches.”).

This Court should issue a ruling that ensures that biased officials cannot use the power of office to wield discretionary laws against community members who seek to practice a religion that is unpopular or foreign to their neighbors. Free exercise rights should be safeguarded to the same degree as free-speech rights.

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

RICHARD A. ROSEN
Counsel of Record

RACHEL LERMAN

RAFAELA FISCHMAN

LOUIS D. BRANDEIS CENTER FOR
HUMAN RIGHTS UNDER LAW

1675 Broadway

Fl. 13

New York, NY 10019

(917) 863-3018

rrosen@brandeiscenter.com

September 8, 2026

Counsel for Amicus Curiae