

No. 25-965

In the Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

**BRIEF OF THE NATIONAL JEWISH
ADVOCACY CENTER, THE NATIONAL
COUNCIL OF YOUNG ISRAEL, AND THE
COALITION FOR JEWISH VALUES (“CJV”) AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICI*¹

The National Jewish Advocacy Center, Inc. (NJAC) is a non-profit legal organization dedicated to combating antisemitism and advocating for the rights of Jewish people through legal and public policy initiatives. Led by Rabbi Dr. Mark Goldfeder, a legal scholar and educator, NJAC addresses the rising tide of antisemitism through litigation, advocacy, and education. NJAC works to streamline legal efforts to protect the civil rights of Jewish individuals and communities across the United States.

The National Council of Young Israel (“Young Israel”) is a Jewish synagogue organization that provides resources and services to more than 100 synagogues and their more than 25,000 member families throughout the United States. Young Israel was founded in 1912 as an attempt to address some of the difficulties facing American Orthodox Jews at the time, including mandatory Saturday labor at the workplace. Young Israel seeks to advance Torah-true Judaism and promote the values of Judaism, believing that traditional faith is compatible with good citizenship.

For Orthodox Jews, faithful adherence to Jewish law (*halacha*) is critical. This adherence includes observing the Sabbath by refraining from work from

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

sunset on Friday until night begins on Saturday. Because faithful Sabbath observance made it difficult for many Jews to find employment, Young Israel created its Employment Bureau specifically for Sabbath observers.

The Coalition for Jewish Values (“CJV”), is the largest rabbinic public policy organization in the United States, representing over 2,500 traditional rabbinic leaders. Led by a board of traditional Orthodox rabbis, CJV articulates and advocates for public policy positions based on traditional Jewish thought through education and mobilization. Its work includes legal advocacy in defense of equality and freedom for religious institutions and individuals.

Amici filed a brief in support of the cert petition in this case. They file this brief at the merits stage to offer the Court a specifically Jewish religious, historical, and communal context and to explain why the rule adopted below cannot be reconciled with either this Court's precedents or the statute Congress enacted to protect religious exercise from discretionary local land-use power.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case turns on a simple question: When a city orders a man to stop praying with his neighbors and threatens him with citations if he disobeys, has he suffered an injury the courts may address? The Sixth Circuit said no, not until the zoning bureaucracy has rendered a final determination. That answer is wrong as a matter of doctrine. It is devastating as a matter of

religious liberty. And it is dangerous as a matter of history.

First, the decision below misunderstands how Petitioner Daniel Grand was burdened. For Orthodox Jews, communal prayer with a quorum of ten adult Jewish males is a religious obligation. Certain fundamental portions of a Jewish prayer service, including the Kaddish, the Kedushah, and the public reading from the Torah scroll, may be recited only with that quorum of ten men, called a minyan.² Praying with a minyan is a commandment. Because Mr. Grand's Orthodox religious practice prohibits driving on the Sabbath, and reaching a synagogue on foot was difficult, he began inviting friends to pray with him at his home. After the City of University Heights (the "City") issued its cease-and-desist order prohibiting this prayer service, every Sabbath that passed was a Sabbath lost and a commandment not fulfilled. A taking can be compensated with money. A lost Sabbath prayer cannot. That is a constitutional injury, and this Court has held for half a century that the loss of First Amendment freedoms, for even minimal periods of time, is irreparable. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).

Second, Mr. Grand's claim is ripe now. The finality requirement invoked below was borrowed from regulatory-takings law, where the harm is calculable and compensable. This Court has since cut that

² There are certain sects of Judaism that interpret this to mean "Ten people" rather than "Ten men," but the traditional Orthodox practice of Mr. Grand mandates ten men.

doctrine down. *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 478-80 (2021) (per curiam), held that the finality requirement is “relatively modest,” and that “nothing more than *de facto* finality is necessary” and that administrative exhaustion is not a prerequisite where the government has reached a conclusive position. Under that standard, the City’s definitive, coercive order is more than enough to establish finality. *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) measures the maturation of an economic injury in the context of a regulatory taking. Since *Williamson*, this Court has held that when First Amendment rights are at stake, a claimant “need not wait for the damage to occur before filing suit.” *Mahmoud v. Taylor*, 606 U.S. 522, 559-60 (2025).

Third, what happened here fits a pattern the courts know well. Municipalities have long used facially neutral zoning to suppress Orthodox Jewish worship. *See, e.g., LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995) (holding that the incorporation of a municipality and its zoning code may violate the Fair Housing Act if motivated by religious discrimination against Orthodox Jews). They use the zoning code as a weapon, while attempting to cover themselves with the administrative process.

Fourth, the post-hearing call by the City’s mayor for neighbors to watch Mr. Grand’s home and report activities “consistent with” a house of worship is an independent and immediate First Amendment chilling-effect injury that the court below brushed aside in a single paragraph.

The judgment should be reversed.

ARGUMENT

I. A MINYAN IS A RELIGIOUS COMMANDMENT, AND THE ORDER SILENCING IT INFLICTED AN IMMEDIATE AND IRREPARABLE INJURY.

To understand what the City took from Daniel Grand, the Court must first understand what a minyan is and the significant role a minyan plays in Jewish life.

A. Communal prayer with a quorum is a religious obligation, not a social preference.

A minyan is a quorum of ten adult Jewish males, and it is the threshold requirement for the most sacred acts of Jewish communal worship. Mishnah, Megillah 4:3 (Babylonian Talmud, Megillah 23b); Babylonian Talmud, Berakhot 21b. Without a minyan, a congregation cannot recite the Kaddish, the doxology that mourners recite for the dead and that is among the most solemn obligations in Jewish life. Without a minyan, a congregation cannot recite the Kedushah, the prayer that sanctifies God's name. Without a minyan, the Torah scroll cannot be read publicly. Without a minyan, the priestly blessing cannot be given.

These are constitutive elements of Jewish communal worship that cannot be performed without

a minyan. For an Orthodox Jew, the difference between praying with a minyan and praying alone is the difference between fulfilling a commandment and failing to fulfill it.

The City's cease-and-desist order prevented Grand and his congregants from fulfilling their religious commandments. The city's order makes it impossible for Grand to recite the prayer for his passed loved ones in his own home. It did not prevent a land use that generates traffic, noise, or disruption. Rather, the order prevented Mr. Grand from fulfilling a divine commandment. The Religious Land Use and Institutionalized Persons Act (RLUIPA) forecloses any suggestion that this is too fine a religious distinction for a court to credit: the statute protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and directs that the term be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted" *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (quoting 42 U.S.C. §§ 2000cc-3(g), 2000cc-5(7)(A)).

B. The Sabbath driving prohibition compounded the burden, and the burden does not turn on whether other options existed.

The injury here was compounded, and made uniquely irreparable, by a second pillar of Orthodox Jewish law: the prohibition on driving during the Sabbath and many of the most important religious

holidays in Judaism. Orthodox Jewish law forbids working, which includes the use of electronics, the operation of motor vehicles or even using public transportation, including taxis, from Friday sundown to nightfall on Saturday, and on the High Holidays of Rosh Hashanah and Yom Kippur, among others. For Mr. Grand, that prohibition made traveling to and from a synagogue on the Sabbath difficult, as the court below recognized, Pet. App. 2a, and Jewish law forbade attending a service remotely by electronic means.

The intersection of these two obligations – the requirement to pray with a minyan and Mr. Grand’s Sabbath observance – made the home gathering particularly important. Mr. Grand could not drive to another synagogue or participate remotely without violating his sincerely held religious practice. RLUIPA protects “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” 42 U.S.C. § 2000cc-5(7)(A), and under that statute, the burden is measured by what the government forbade, not by whether the claimant could have practiced his faith in some other way. *Holt*, 574 U.S. at 361-62. The City burdened Mr. Grand by ordering his sincerely held religious practice to stop. That is the relevant burden here.

This Court has already recognized precisely this feature of Orthodox Jewish practice. In enjoining occupancy caps on houses of worship, the Court observed that under the challenged limits, “the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred,” and that “there are important religious

traditions in the Orthodox Jewish faith that require personal attendance.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam). The Court further recognized the unforgiving nature of religious time, noting that if relief were delayed, “there may not be time for applicants to seek and obtain relief from this Court before another Sabbath passes.” *Id.* at 20.

C. The harm was complete at issuance and cannot be undone.

The order issued by the City directed that Mr. Grand’s residence could not be used as a “place of religious assembly” or as a “shul or synagogue” without a special use permit. Joint Appendix (“J.A.”) 199-200. It contained no safe harbor and no minimum number of participants below which the prohibition would not apply. It provided no mechanism for a stay pending administrative review. And it was backed by the threat of building code citations and additional remedies. *Id.* Mr. Grand cancelled his next Sabbath gathering in response. *Grand v. City of University Heights*, 159 F.4th 507 (6th Cir. 2025); Pet. App. 3a.

Therefore, the harm suffered by Mr. Grand was not contingent on what the City’s Planning Commission might eventually decide. It was concrete, immediate, and, for every Sabbath that passed, permanent. In the takings context, the premise of deferral makes sense: the economic impact of a zoning regulation depends on what the government ultimately permits; the harm can be calculated later

and can be compensated with money. None of that is true here. Each Sabbath that Mr. Grand spent unable to fulfill his obligation to pray with a minyan was a Sabbath lost forever. No subsequent permit, however favorable, can give those Sabbaths back.

For this very reason, this Court's irreparable-injury rule governs. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373 (plurality opinion). The Court reaffirmed that principle in the religious-exercise context in *Roman Catholic Diocese*, 592 U.S. at 19, holding that “[t]here can be no question that the challenged restrictions, if enforced, will cause irreparable harm,” and again in *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam), where applicants challenging limits on at-home religious gatherings were “irreparably harmed by the loss of free exercise rights ‘for even minimal periods of time.’” Most recently, in *Mahmoud*, 606 U.S. at 559-60, the Court held that a plaintiff facing a deprivation of First Amendment rights “need not wait for the damage to occur before filing suit.”

Tandon also supplies the comparative principle that governs this record. Government regulations “are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62. A city may not assume the worst of ten men praying while assuming the best of ten neighbors gathered for any secular purpose in the same living

room. The believer, not the permitting office, defines what counts as religious exercise. The City's process unlawfully assumed that municipal officials could decide when ten Jewish men praying together become a "house of worship." The commissioners' own emails show them trying to draw that line, one asking when "a social gathering become[s] a house of worship." Pet. App. 4a.

That line must be left to the worshipper. The rule traces back to *United States v. Ballard*, 322 U.S. 78 (1944), where the Court held that although a civil authority may inquire into the sincerity of a religious claim, it may not sit in judgment of its truth. "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs." *Id.* at 86. "Man's relation to his God was made no concern of the state." *Id.* at 87. The Court carried the principle forward in *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707 (1981), holding that when a believer draws a religious line, "it is not for us to say that the line he drew was an unreasonable one," *id.* at 715-16, and that "[c]ourts should not undertake to dissect religious beliefs[.]" *Id.*

The prohibition is categorical as to centrality and significance. "Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Employment Division v. Smith*, 494 U.S. 872, 887 (1990) (collecting cases). A court may not "question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations

of those creeds.” *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989); accord *Smith*, 494 U.S. at 887. Congress wrote that principle into RLUIPA, which protects “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A).

This Court has applied the rule to forbid official second-guessing of what a claimant's faith requires. “[I]t is not for us to say that their religious beliefs are mistaken or insubstantial.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014). If a court may not perform that evaluation, then, all the more so, a zoning administrator plainly must not. A municipality that takes it upon itself to decide whether a minyan is worship, or how much worship it takes to matter, does what *Ballard*, *Thomas*, *Smith*, and *Hobby Lobby* forbid. The characterization of the religious act belongs to the believer who performs it, and Daniel Grand's faith, not the City's zoning office, defines the purpose of his minyan.

II. THE CLAIM IS RIPE; WILLIAMSON COUNTY'S FINALITY RULE DOES NOT DISPLACE GRAND'S COMPLETED FIRST AMENDMENT INJURY.

A. *Williamson County* arose in the takings context and does not establish a categorical finality rule for First Amendment claims.

The finality concept invoked below originates in *Williamson County*. There, the Court held that “a claim that the application of government regulations

effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” *Williamson County*, 473 U.S. at 186. The rationale was expressly valuation-driven: the “economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations ... simply cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question.” *Id.* at 191. *Williamson County* also announced a second, separate holding: a takings plaintiff must first “seek compensation through the procedures the State has provided for doing so.” *Id.* at 194.

That second holding has not survived. In *Knick v. Township of Scott*, 588 U.S. 180, 185 (2019), the Court overruled it, concluding that “the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled.” The Court called *Williamson County* “not just wrong”; its reasoning “was exceptionally ill-founded and conflicted with much of our takings jurisprudence.” *Id.* at 203. *Knick* left the finality holding untouched, and said so. *Id.* at 188. But this Court has not held that the takings finality requirement is a categorical prerequisite to First Amendment review. Moreover, the Court’s recent decision in *First Choice Women’s Res. Centers, Inc. v. Davenport*, 608 U.S. 174, 146 S. Ct. 1114 (2026), reinforces the distinction. There, the

State invoked *Pakdel* to argue that a religious nonprofit could not challenge a subpoena until later state-court proceedings. *Id.*, 146 S.Ct. at ___, *citing Pakdel*, 594 U.S. at ___. The Court rejected that application on the facts before it, explaining that the government had committed to its position when it issued the subpoena and that the resulting First Amendment injury existed immediately. The Court expressly said that, “even setting aside the question whether a Takings Clause rule might be properly transposed into the First Amendment context,” the asserted finality rule had “little purchase” there. 146 S. Ct. at 1128. Although *First Choice* does not decide the broader question presented here, it counsels against transplanting a takings rule where the asserted injury is an immediate burden on First Amendment rights.

B. Pakdel confirms that administrative exhaustion is not required once the government has adopted a conclusive position.

Two years after *Knick*, the Court addressed finality in *Pakdel* and left no ambiguity. “The finality requirement is relatively modest. All a plaintiff must show is that ‘there [is] no question . . . about how the ‘regulations at issue apply to the particular land in question.’” *Pakdel*, 594 U.S. at 478. The Court added that “nothing more than de facto finality is necessary,” *id.* at 479, and squarely rejected the notion that a claimant must also navigate the agency's procedures: “administrative ‘exhaustion of state remedies’ is not a prerequisite” once “the government has reached a

conclusive position.” *Id.* at 480. Most directly on point here, the Court held that “administrative missteps do not defeat ripeness once the government has adopted its final position.” *Id.*

Pakdel added a caveat: a plaintiff’s “failure to properly pursue administrative procedures may render a claim unripe if avenues still remain for the government to clarify or change its decision.” *Id.* at 480. That sentence is the principle on which the Sixth Circuit’s reasoning rests, and it does not reach this case. The caveat presupposes an injury that the remaining avenue can still prevent. Mr. Grand’s injury was complete when the cease-and-desist order arrived and the Sabbath passed, and no later clarification could reach back and restore it.

Measured against that standard, this case is not even close. The City reached a conclusive position: Mr. Grand’s residence could not be used as a place of religious assembly, a shul, or a synagogue without a permit, on pain of citations and further remedies. J.A. 199. As in *Pakdel*, “the government’s ‘definitive position on the issue [has] inflict[ed] an actual, concrete injury’” by requiring the claimant to choose between surrendering the exercise of his rights and “facing the wrath of the government.” *Pakdel*, 594 U.S. at 478-79 (*quoting Williamson County*, 473 U.S. at 193).

C. Courts of appeals, including the Sixth Circuit, have applied that modest standard faithfully in religious land-use cases.

The Second Circuit applied *Pakdel* in a case materially like this one. In *Ateres Bais Yaakov Academy of Rockland v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023), an Orthodox Jewish girls' school alleged that a town had manipulated its zoning process to block the school's purchase of a church property. Reversing a dismissal for want of jurisdiction, the Second Circuit held that the zoning board's refusal to entertain an appeal supplied sufficient *de facto* finality, reiterating that “the finality requirement is relatively modest” and that “nothing more than *de facto* finality is necessary.” *Id.* at 351 (*quoting Pakdel*, 594 U.S. at 478-79).

The Sixth Circuit itself, two years before the decision below, reached the same holding. In *Catholic Healthcare International, Inc. v. Genoa Charter Township*, 82 F.4th 442 (6th Cir. 2023), the court held ripe RLUIPA claims that the district court had dismissed as unripe, explaining that in land-use cases the necessary showing is simply that “the government has adopted a ‘definitive position’ as to ‘how the regulations at issue apply to the particular land in question.’” *Id.* at 448 (*quoting Pakdel*, 594 U.S. at 478).

The *Catholic Healthcare* court identified the error repeated below: “The district court’s mistake was to conflate ripeness (sometimes called ‘finality’ in this context) and exhaustion.” *Id.* Ripeness “does not require a showing that ‘the plaintiff *also* complied with administrative process in obtaining that decision.’” *Id.* (*quoting Pakdel*, 594 U.S. at 479-80). The township there had “insisted that the plaintiffs obtain a special land-use permit,” had twice refused to grant one, and

had forced removal of the religious displays; those events had “inflicted an actual, concrete injury.” *Id.* (citation omitted). So too here.

Catholic Healthcare also disposes of the authority on which the courts below principally relied. The Sixth Circuit expressly distinguished *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533 (6th Cir. 2010), observing that the case “bears no similarity” because there “the plaintiffs brought suit before they even asked Northville Township to take anything like a formal position as to their proposed land use.” *Catholic Healthcare*, 82 F.4th at 448. By contrast, the case before the court came “after Genoa Township has taken a definitive position, again and again, to the plaintiffs’ concrete injury.” *Id.*

Mr. Grand’s case is on the *Catholic Healthcare* side of that line, not the *Miles Christi* side. The City did not remain silent while a claimant rushed to court. It issued a coercive order in response to a single neighbor’s complaint, Pet. App. 3a, and then, through its Mayor, publicly promised enforcement and invited neighbors to report. J.A. 23 (Second Am. Compl. ¶ 111).

D. Pre-enforcement review is available precisely because a claimant need not risk punishment first.

Independent of land-use finality, this Court’s justiciability doctrine permits suit here. “[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the

threat.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007)). Nor is it “necessary that petitioner 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.” *Id.* at 159 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)). The *Susan B. Anthony List* Court emphasized that “past enforcement against the same conduct is good evidence that the threat of enforcement is not ‘chimerical,’” and that even administrative proceedings “may give rise to harm sufficient to justify pre-enforcement review.” *Id.* at 164, 165 (citation omitted). The Court found it unnecessary to decide whether administrative proceedings alone would suffice, because Ohio’s scheme carried a criminal backstop. *Id.* at 166. Here, the citations threatened by the City and the court action promised by the its Mayor likewise demonstrate that the threat of enforcement is not chimerical.

Past enforcement is present too. The City’s Mayor referenced a prior suit against “another residential shul, one on Churchill Boulevard,” in which the City had obtained a permanent injunction. J.A. 23 (Second Am. Compl. ¶ 111). That is a track record rather than a chimerical threat.

This Court reaffirmed the point in 2025 in the free-exercise setting: “when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit.” *Mahmoud*, 606 U.S. at 559-60 (citation omitted). The *Mahmoud*

Court rejected the demand for a fuller factual record regarding how the challenged books were “actually being used,” explaining that where the government “has clearly stated how it intends to proceed,” a court “need only decide whether . . . a burden on religious exercise will occur.” *Id.* Here the City stated in writing how it intended to proceed and Mr. Grand complied by cancelling his Sabbath gathering.

E. The City’s litigation-posture concessions do not undo a completed injury.

The City has maintained in litigation that the ordinance does not apply to Mr. Grand and that small, informal religious gatherings require no special use permit. The City also emphasizes that Mr. Grand withdrew his permit application. Neither point carries the weight placed on it.

First, a representation made in briefing years later does not retroactively dissolve the injury the City inflicted when it issued its cease-and-desist order. The order was in force. It was backed by the threat of citations. J.A. 199. Mr. Grand obeyed it and cancelled his gathering. Pet. App. 3a. Under *Elrod* and *Roman Catholic Diocese*, that loss was complete and irreparable when it occurred. *Roman Catholic Diocese*, 592 U.S. at 19 (*quoting Elrod*, 427 U.S. at 373).

A city cannot silence worship, watch the Sabbaths pass, and then defeat review by announcing in court that it never meant the order to reach this claimant. *Pakdel* holds that the relevant question is

whether the government reached a conclusive position that inflicted concrete injury, 594 U.S. at 478–79.

Second, Mr. Grand’s withdrawal of the permit application followed the City’s coercive position; it did not precede it. Mr. Grand applied for a permit only because the City ordered him to do so. The Sixth Circuit put the withdrawal at the center of its holding: “It was his actions, not anyone else’s, that created the ripeness problem.” Pet. App. 11a-12a. That sentence assumes an injury still waiting on a permit decision. The City’s letter, the cancelled Sabbath prayer service, and the Mayor’s public warning all preceded the withdrawal, and a claimant’s later failure to complete a discretionary process does not unwind an injury the government has already inflicted.

That is the teaching of *Pakdel*, 594 U.S. at 480, *Ateres Bais Yaakov*, 88 F.4th at 351, and the Sixth Circuit’s own decision in *Catholic Healthcare*, 82 F.4th at 448. Indeed, the danger of the contrary rule is acute in this setting: the more hostile the administrative process, the less likely a religious adherent is to see it through, and the less likely he is to see it through, the less likely a court is ever to hear his claim. The process the City demanded proves this very point. The special-use category applicable to Mr. Grand’s home provides that “no use permitted herein shall include sleeping or residential use accommodations on any part of the site.” Univ. Heights Codified Ordinances § 1274.02(f)(4); see Second Am. Compl. ¶ 377. Two subsections earlier, the same chapter provides that “[t]he conversion of a residence . . . for a use defined in Section 1274.01 is prohibited.” *Id.* § 1274.02(f)(2).

Neither bar can be lifted except by a variance approved by both the Planning Commission and City Council after public hearings at which the applicant shows “a clear benefit to the community” and “unnecessary hardship.” *Id.* § 1274.02(f)(5). The process the City demanded therefore could not have granted Mr. Grand a permit unless two separate bodies first excused him from two rules that forbid the very thing he asked for: living in the house and praying in it. A remedy that makes a man move out of his house so that he may worship inside it is not a lawful remedy.

Third, the Sixth Circuit's characterization of the order as neither a final decision nor an enforcement action cannot survive *Pakdel* and *Catholic Healthcare*. Finality does not require a formal adjudication, only de facto finality. And the injury for First Amendment purposes is not the eventual citation; it is the command, backed by threatened sanction, that worship must stop.

The court below drew that characterization from *Murphy v. New Milford Zoning Commission*, 402 F.3d 342 (2d Cir. 2005), which held unripe a couple's challenge to a cease-and-desist order aimed at the weekly prayer meetings in their home. Pet. App. 13a. *Murphy* is the City's best case, and it does not survive comparison with this record. The Second Circuit found no immediate injury there for two reasons that are absent here: First, Connecticut law automatically stayed the order the moment it was appealed, and the town had no power to fine anyone without first suing in state court. *Murphy*, 402 F.3d at 351. Second, the

Murphys never appealed the order and never sought a variance, which the court said “forecloses any contention that requiring *Williamson County* finality would be futile.” *Id.* at 353 n.7. University Heights has no comparable stay, as Mr. Grand argued below and the court did not dispute. Pet. App. 13a. Its letter threatened “building code citations.” Pet. App. 3a. Moreover, unlike the Murphys, Mr. Grand actually applied to a process that could not grant what he sought without two variances. *Murphy* also predates *Pakdel* by sixteen years and *First Choice* by twenty-one years, and it extended the finality rule to First Amendment claims only after warning that the rule “should be cautiously applied to these claims,” because for the First Amendment, “the ripeness doctrine is somewhat relaxed.” *Id.* at 350-51 (*quoting Dougherty v. Town of North Hempstead Board of Zoning Appeals*, 282 F.3d 83, 90 (2d Cir. 2002)).

III. THIS CASE FITS A DOCUMENTED PATTERN OF FACIALLY NEUTRAL ZONING USED TO EXCLUDE ORTHODOX AND HASIDIC JEWISH WORSHIP, WHICH IS THE BACKDROP AGAINST WHICH CONGRESS ENACTED RLUIPA.

A. The pattern of exclusion is long, documented, and rarely subtle.

The use of facially neutral zoning laws to target Orthodox Jewish communities is not new. In the 1980s, residents of an unincorporated area of Rockland County, New York, organized a civic association to seek incorporation and control of zoning,

and one of its leaders stated the purpose plainly: “the only reason we formed this village is to keep those Jews from Williamsburg [a Hasidic community in Brooklyn, New York] out of here.” *LeBlanc-Sternberg*, 67 F.3d at 419. The association spearheaded the incorporation of the Village of Airmont in 1991, and the adoption of a zoning code designed to restrict home synagogues, the very kind of gathering at issue in this case. The Second Circuit reinstated a jury verdict, finding “ample support for the jury’s implicit finding that Airmont’s zoning code would be interpreted to restrict the use of home synagogues, that the motivation behind the enactment was discriminatory animus toward Orthodox and Hasidic Jews[.]” *Id.* at 431.

Two features of *LeBlanc-Sternberg* resonate here with uncomfortable precision. The Village appointed to its Planning Board an association leader who “had conducted surveillances of Orthodox Jewish homes at prayer times.” *Id.* at 421. And the Second Circuit found selective enforcement: opponents invoked traffic and noise concerns against home synagogues while tolerating “existing traffic and noise caused by secular uses.” The court added that noise and traffic from a country club “were deliberately ignored for the stated reason that if they were challenged, the owner might sell the property to Orthodox Jews.” *Id.* at 431.

This pattern continued. In *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 945 F.3d 83 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 578 (2020), the Second Circuit affirmed findings

that two 2007 village zoning amendments were enacted with discriminatory purpose, while reversing as to two earlier amendments for want of proof. These findings rested in part on villager comments at a public hearing and on community statements “express[ing] animus against Orthodox/Hasidic Jews,” *Id.* at 119-20.

These cases demonstrate a recurring risk: facially neutral zoning laws, applied through ostensibly neutral administrative processes, can become instruments of religious exclusion. The Complaint here alleges that a neighbor wrote to the Planning Commission opposing Mr. Grand’s application on grounds unrelated to traffic, parking, or noise: “I am not Jewish and I do not want our neighborhood labeled as Jewish.” J.A. 28-29 (Second Am. Compl. ¶ 138). Others told the Commission that if Mr. Grand did not want to walk far to a synagogue, he should have bought a house near Green Road, where the City permits synagogues. J.A. 28 (Second Am. Compl. ¶ 136). Those allegations provide relevant context for the Court’s understanding of why religious land-use claims can be especially vulnerable to discretionary delay.

B. Congress legislated against exactly this backdrop.

This Court has described RLUIPA as “the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens, consistent with this Court’s precedents.” *Cutter v. Wilkinson*, 544 U.S. 709,

714 (2005). In upholding the Act's institutionalized-persons provision, the Court quoted the joint statement of the Act's sponsors, Senators Hatch and Kennedy: "Whether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *Id.* at 716 (*quoting* 146 Cong. Rec. 16698, 16699 (2000) (joint statement of Sens. Hatch and Kennedy)). Congress wrote the same distrust of discretionary process into the land-use provisions themselves, which reach burdens imposed through "formal or informal procedures or practices that permit the government to make . . . individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C).

A finality rule that defers judicial review until a discretionary process concludes hands the discretionary process back to the very officials whose discretion Congress distrusted. Under the approach taken below, a municipality may issue a vague order targeting Jewish prayer, threaten citations, and encourage neighbors to report, all without judicial oversight, so long as the matter remains nominally pending. By the time the process concludes, the gatherings have been cancelled, the community has been chilled, and the Sabbaths have been lost.

IV. THE MAYOR'S PUBLIC CALL FOR NEIGHBORS TO WATCH THE HOME AND REPORT WORSHIP IS AN INDEPENDENT AND IMMEDIATE FIRST AMENDMENT INJURY.

The City’s order was not the only government action that chilled Mr. Grand’s religious exercise. At the Planning Commission’s March 23, 2021 meeting, the Mayor declared that “[t]here is no permission granted here to operate . . . a house of assembly or conduct activities consistent with one,” and continued: “If you observe such activities – and I hope you do not – but if you do, you may report them to the city, and the city will enforce its laws which exist for the benefit of the entire community, and we will seek all appropriate remedies in court.” J.A. 23 (Second Am. Compl. ¶ 111).

That pronouncement went beyond the cease-and-desist letter. The letter forbade operating a place of religious assembly; the Mayor forbade conducting any “activities consistent with one,” and he enlisted Mr. Grand’s the neighbors as the observation mechanism.

A. Government-generated chill of protected activity is itself an injury.

This Court has long recognized that “[t]he chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure.” *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965) (collecting cases). The Sixth Circuit answered that “it is specific objective harm, not ‘subjective chill,’ that counts.” Pet. App. 13a. The phrase comes from *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972), and *Laird* is the case that shows why the judgment should be reversed.

Plaintiffs in *Laird* complained of Army surveillance that regulated nothing and commanded no one, and the Court held 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.* It then distinguished the cases in which chill had counted: in each, “the challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging.” *Id.* at 11. A cease-and-desist letter is proscriptive by definition. Mr. Grand was presently subject to it. He obeyed it, at the cost of a Sabbath without a minyan, and the Mayor then announced enforcement and asked the neighborhood to watch.

The court below found no chill because Mr. Grand “has convened a minyan on the Sabbath at least once after the end of the Planning Commission meetings.” Pet. App. 13a. That finding gets the doctrine backwards. A man who risks one gathering under a standing threat of citation has been chilled, not cured, and the rule set forth in *Elrod* measures the loss of “even minimal periods of time,” 427 U.S. at 373, not the survival of a remnant. The court below also called Mr. Grand “the author of any chilling effect on his First Amendment interests” because he withdrew his application. Pet. App. 14a. The chronology answers that assertion: the letter, the cancelled Sabbath prayer service, and the Mayor’s call all preceded the withdrawal. The opinion below also recites that a

police lieutenant “directed patrol units to drive past Grand’s house and check for code violations.” Pet. App. 5a. Patrol cars sent to circle a home in search of code violations are the specific present objective harm *Laird* requires, not a subjective chill.

B. Requiring citizens to seek official leave before communing with neighbors offends the First Amendment.

In *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002), the Court struck down a permit requirement for door-to-door religious canvassing, declaring it “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 and then obtain a permit to do so.” *Id.* at 165-66. The Court further recognized that a permit condition “imposes an objective burden on some speech of citizens holding religious or patriotic views.” *Id.* at 167.

The comparison should not be overstated: *Watchtower* involved a direct permit requirement imposed on the speaker, while this case involves a Mayor encouraging neighbors to monitor and report private worship. But the constitutional concern is closely related. If the First Amendment forbids requiring a citizen to obtain governmental permission before going door to door to share a religious message, it strongly counsels against a municipality enlisting

neighbors to report a citizen for praying inside his own home.

C. Officially encouraged monitoring of religious association objectively chills it.

This Court has repeatedly held that exposure of protected association to scrutiny raises a cognizable First Amendment harm. “[C]ompelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 606 (2021) (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)). The chill does not depend on publication: “disclosure requirements can chill association ‘[e]ven if there [is] no disclosure to the general public.’” *Id.* at 616 (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)).

Here, the call to disclose was not sent to the worshippers themselves, but rather to deputized watchmen. Nevertheless, the Mayor's call created a targeted regime of official scrutiny over who gathered to worship in Mr. Grand's home, creating an official atmosphere of scrutiny that can deter protected religious association. *Americans for Prosperity Foundation* makes clear that such government-imposed scrutiny can burden association even without public disclosure.

CONCLUSION

Daniel Grand wanted to do what Jews have done for thousands of years: gather ten men and pray. He wanted to do so in his own home, on the Sabbath, because his faith forbade him from driving to a synagogue. For this, the City of University Heights ordered him to stop, threatened him with citations, and asked his neighbors to watch his home and report what they saw. When Mr. Grand sought relief in federal court, he was told his injury was not yet ripe, and that he must return to the administrative process and await a final determination before the Constitution could help him.

That is not what the First Amendment requires and it is not what this Court's precedents permit. A right should not be placed beyond judicial protection merely because the government has left the challenged burden embedded in a pending administrative process. And the Sabbaths spent waiting do not come back.

The judgment of the United States Court of Appeals for the Sixth Circuit should be reversed.

Respectfully submitted.

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