

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
U.S. Court of Appeals for the Sixth Circuit**

**BRIEF OF MEMBERS OF CONGRESS
AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE**

Amici curiae are members of Congress with a vital interest in the proper interpretation and application of federal statutes. That interest is particularly acute for a statute like the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which Congress passed without a single dissenting vote to protect Americans from precisely the kind of local action at issue here. Congress worded RLUIPA broadly, mandated broad construction, and afforded religious claimants the right to seek judicial relief from government conduct burdening their religious exercise. When Congress writes a statute like RLUIPA that opens the courthouse doors, it's not for courts to slam them shut by imposing judge-made requirements Congress never enacted. That impermissibly replaces a legislative choice with a judicial one. *Amici* ask the Court to give effect to the statute Congress enacted, according to its own terms.

Amici are:

- | | |
|-------------------------------------|---------------------------------|
| • Rep. Jim Jordan
(R-OH) | • Sen. Chuck Grassley
(R-IA) |
| • Rep. Mike Johnson
(R-LA) | • Sen. Jim Banks
(R-IN) |
| • Rep. Robert B. Aderholt
(R-AL) | • Sen. Bill Cassidy
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* Pursuant to Supreme Court Rule 37.6, *amici* represent that this brief wasn't authored in whole or in part by any party or counsel for any party. No person or party other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief.

- Rep. Brian Babin (R-TX)
- Rep. Michael Baumgartner (R-WA)
- Rep. Andy Biggs (R-AZ)
- Rep. Sheri Biggs (R-SC)
- Rep. Gus M. Bilirakis (R-FL)
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STATEMENT

More than a quarter of a century ago, Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) not only to strengthen Free Exercise protections, but also to make it easier to vindicate Free Exercise rights. No Member of Congress voted against it.

That's not surprising. RLUIPA was Congress's direct response to this Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997)—which curtailed the religious protections Congress had afforded in the Religious Freedom Restoration Act (RFRA) after *Employment Division v. Smith*, 494 U.S. 872 (1990). As Senator Hatch put it, RLUIPA rested on an uncontroversial premise: “In America, the ability of citizens to hold private Bible studies in their own homes or the freedom of synagogues and churches to locate near their members should not be left entirely to the whims of local zoning boards.” 144 Cong. Rec. S5791 (daily ed. June 9, 1998).

That's exactly what happened below. Daniel Grand's claim was constitutionally ripe the moment the City of University Heights ordered him to stop holding private prayer in his own home. Yet the courts below closed the courthouse doors simply because he hadn't satisfied a judge-made, prudential requirement to obtain a final decision from the local zoning board before filing suit. But RLUIPA opened those doors to anyone whose religious exercise is burdened by the government—not just those willing to endure continuing violations of their Free Exercise rights while pursuing a final zoning decision.

This case shows just how far local governments are willing to go in riding roughshod over Free Exercise rights—including putting Mr. Grand, an observant Orthodox Jew, to the choice of being punished for praying in his home without a permit or moving out of his home entirely to obtain the required permit. No American should ever be forced to make such a choice. But when they are, RLUIPA opens the courthouse doors to vindicate their Free Exercise rights. The Court should reverse and restore the promise of RLUIPA to safeguard the religious liberty of all Americans.

1. More than thirty-five years ago this Court decided *Smith*. The Court displaced the prevailing Free Exercise framework—which asked whether a law substantially burdened religious exercise in furtherance of a compelling governmental interest—with a rule more deferential to government. Under *Smith*, the government could burden religious exercise so long as the challenged law was neutral and generally applicable. 494 U.S. at 878–79. So if a law applies to all comers and doesn’t target religion, it ordinarily survives Free Exercise scrutiny under *Smith* even if it substantially burdens religious practice. *Id.* at 879–80.

Congress has been trying to restore stronger protections ever since. It first enacted RFRA in 1993, which prohibited state and federal actors from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the government “demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that

compelling governmental interest.” 42 U.S.C. §§ 2000bb-1(a)–(b).

But this Court cut RFRA’s reach in half just four years later. In *City of Boerne*, the Court held that Congress exceeded its enforcement power under Section 5 of the Fourteenth Amendment by applying RFRA to the States. 521 U.S. at 532–36. Congress, the Court concluded, could enforce the Fourteenth Amendment’s guarantees, but it couldn’t redefine or expand the substance of those guarantees. *Id.* at 519–20. Because *Smith* had defined the constitutional protection for religious exercise more narrowly, Congress couldn’t use Section 5 to impose RFRA’s broader standard on the States.

But Congress wasn’t deterred. It swiftly and unanimously passed RLUIPA, which subjects certain state and local actions affecting religious land use and prisoners’ religious exercise to strict scrutiny. Congress made its directive explicit in the statutory text it enacted: RLUIPA must be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g). Local governments can’t impose land use regulations that substantially burden religious exercise; treat religious assemblies on less than equal terms with secular ones; discriminate on the basis of religion; or totally exclude or unreasonably limit religious assemblies. 42 U.S.C. § 2000cc. If government violates those protections, RLUIPA gives the injured person the right to “assert a violation * * * as a claim or defense in a judicial proceeding and obtain appropriate relief against [the] government.” *Id.* § 2000cc-2(a).

That text matters here. RLUIPA makes the government’s prohibited conduct the violation and expressly authorizes an injured person to seek judicial relief from that violation. Congress specified Article III standing as the rule governing who may sue; it didn’t impose an additional, judge-made prudential requirement that a claimant first obtain a final zoning decision. 42 U.S.C. § 2000cc-2(a).

2. A finality requirement—transposed from this Court’s takings decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985)—isn’t just incompatible with RLUIPA’s text and history. It threatens to strip Americans of the statutory protections Congress afforded them.

Administrative processes can be long and costly—not to mention futile. Requiring religious claimants not just to initiate the process but to obtain a final decision delays their access to court while forcing them to endure the ongoing burdens on their religious exercise. This Court has said that the loss of First Amendment freedoms even for a brief period of time is irreparable harm. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). If claimants must endure that harm for weeks, months, or years depending on the whims of the local zoning board, RLUIPA’s protections are nothing but parchment promises. Accord *First Choice Women’s Resource Centers, Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026) (“[T]he value of a sword of Damocles is that it hangs—not that it drops.”) (internal quotation marks omitted).

The Sixth Circuit’s version of RLUIPA would be unrecognizable to the Congress that enacted it. This

Court should reject the finality rule and restore RLUIPA to its textual and historical moorings.

ARGUMENT

I. RLUIPA’S TEXT AND HISTORY FORECLOSE A JUDGE-MADE FINALITY REQUIREMENT.

The plain text of RLUIPA doesn’t authorize courts to demand a final decision from a local zoning board before a victim can sue. And its history confirms why.

A. RLUIPA flatly bans the conduct at issue here—substantially burdening religious exercise, treating religious gatherings worse than secular ones, and excluding or limiting religious assemblies. 42 U.S.C. § 2000cc. Government violates RLUIPA when it engages in that conduct—even if the conduct precedes, and may never produce, a final zoning decision.

The text confirms the point. Government violates RLUIPA by “*impos[ing] or implement[ing]* a land use regulation” that substantially burdens religious exercise—long before any final decision is even on the horizon. 42 U.S.C. § 2000cc(a)(1) (emphasis added). Congress reinforced that focus on the underlying government conduct twice over. It defined a “land use regulation” to include not just “a zoning or landmarking law” but “the application of such a law.” 42 U.S.C. § 2000cc-5(5). And it specified that the substantial-burden provision “applies” when “the substantial burden is imposed in the *implementation* of a land use regulation.” 42 U.S.C. § 2000cc(a)(2)(C) (emphasis added).

So the violation occurs when the burden is imposed—whether or not a zoning board has issued a final decision. 42 U.S.C. §§ 2000cc(a)(1), 2000cc-5(5).

Once the burden is imposed, a claim under RLUIPA ripens and the injured “person may assert a violation of this chapter as a claim or defense *in a judicial proceeding* and obtain appropriate relief against a government.” 42 U.S.C. § 2000cc-2(a) (emphasis added). Period. Nothing in RLUIPA suggests that a claimant must first submit to further local zoning proceedings in the hope that government may someday alleviate the burden. That’s what the courts are for. Cf. *First Choice*, 146 S. Ct. at 1128 (rejecting a “Takings Clause rule” the state sought to “transpo[se] into the First Amendment context” because the “‘inevitable’ injury” was already occurring).

RLUIPA’s standing provision points in the same direction. Congress directed that standing under the statute is “governed by the general rules of standing under article III of the Constitution.” 42 U.S.C. § 2000cc-2(a). Congress thus anchored access to courts in ordinary constitutional principles—not in an atextual prudential finality requirement borrowed from takings law. See *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 733–34 (1997) (describing *Williamson County*’s finality rule in the takings context as a “prudential hurdle[]”). And this Court has rebuked courts for “limit[ing] a cause of action that Congress has created merely because ‘prudence’ dictates.” *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). Once “Congress has authorized” a litigant to be heard and Article III’s requirements are satisfied, a court can’t tack an additional prudential barrier onto the cause of action Congress created. *Ibid.*

That conclusion is reinforced by RLUIPA’s rule of construction. Congress didn’t just write the statute in

broad, protective terms; it commanded courts to read it that way. RLUIPA must be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g). That command resolves any possible doubt and requires reversal.

B. The statutory history reinforces that conclusion. See *Truck Insurance Exchange v. Kaiser Gypsum Co.*, 602 U.S. 268, 279–80 (2024) (relying on the “historical context and purpose” of a statute to support the Court’s textual “interpretation” of that statute). RLUIPA was enacted in response to *Smith*, which Congress believed had weakened protection for religious exercise, and *City of Boerne*, which rejected Congress’s attempt to strengthen religious protections against state and local governments through Section 5 of the Fourteenth Amendment. 146 Cong. Rec. S7778 (daily ed. July 27, 2000) (statement of Sen. Reid); *Holt v. Hobbs*, 574 U.S. 352, 357 (2015).

Indeed, Congress designed RLUIPA to “enforce the Free Exercise Clause” and—as Senators Hatch and Kennedy explained—to combat discrimination that “frequently” occurs “on the face of zoning codes,” and particularly “in the highly individualized and discretionary processes of land use regulation.” 146 Cong. Rec. at S7774–76. In-home Bible studies and minyans like Mr. Grand’s are exactly the kind of religious exercise Congress sought to protect from “the whims of local zoning boards.” 144 Cong. Rec. at S5791 (statement of Sen. Hatch).¹

¹ *Accord* 146 Cong. Rec. at S7775 (describing the “widespread practice of individualized decisions to grant or refuse permission

Congress' concerns weren't theoretical, but real. Consider Congregation Etz Chaim in Los Angeles. The congregation "was meeting in a rented house" in Hancock Park, a residential neighborhood. 146 Cong. Rec. S6689 (daily ed. July 13, 2000) (statement of Sen. Kennedy) (citing Testimony of Rabbi Chaim Baruch Rubin before the House Subcommittee on the Constitution (Feb. 26, 1998)). "[T]en to fifteen men would typically visit the house for daily meetings, and forty or fifty people (many elderly and disabled) would attend on the Sabbath or holidays to engage in quiet prayer and study." *Ibid.*

After "neighbors complained about the effect on property values, the congregation requested a special use permit from the City Council to remain in the residential zone." 146 Cong. Rec. at S6689. But the Council "unanimously rejected the request," and because "Orthodox Jews must walk to services on the Sabbath and on most holidays," the rejection "pu[t] the neighborhood effectively off-limits for Orthodox Jews." *Ibid.* "The same Council, however, allowed other places of assembly in Hancock Park, including schools, book clubs, recreational uses and embassy parties." *Ibid.*

Congregation Etz Chaim was hardly alone in the discrimination it faced. In 1997, Richmond required places of worship feeding more than thirty hungry and homeless people to obtain a conditional-use permit

to use property for religious purposes" which "readily lend themselves to discrimination, and they also make it difficult to prove discrimination in any individual case").

costing \$1,000 plus \$100 per acre, while imposing no comparable requirement on other institutions. 146 Cong. Rec. at S6689.

Against that backdrop, “RLUIPA passed both Houses of Congress without a single negative vote.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 563 (2021) (Alito, J., concurring in the judgment). And when President Clinton signed the Act into law, he emphasized that it would protect religious exercise where state and local governments “impose or implement” zoning laws in ways that substantially burden religion. Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000, 36 Weekly Comp. Pres. Doc. 2168 (Sept. 22, 2000).²

In sum, Congress designed RLUIPA to “simplify the enforcement of constitutional” protections in land-use disputes. 146 Cong. Rec. at S7775. A takings-style finality rule does the opposite. It delays enforcement, increases the burden, and blocks access to courts.

II. THE JUDGE-MADE FINALITY REQUIREMENT SERIOUSLY UNDERMINES RLUIPA.

A finality requirement isn’t just atextual. It also has grave consequences that underscore its incompatibility with RLUIPA. Requiring claimants to obtain a

² Congress’s recognition that religious institutions ordinarily must use available permitting procedures provides the judge-made finality rule no quarter. Those procedures must be “available without discrimination or unfair delay.” 146 Cong. Rec. at S7776. That’s a far cry from requiring a claimant to endure the discriminatory burden RLUIPA prohibits until a zoning authority chooses to make its decision final.

final decision before seeking judicial relief forces them to endure prolonged and costly administrative proceedings *after* the government has substantially burdened their religious exercise. The result isn't merely delay. In some cases, delay means stifling religious exercise for months, years, or even indefinitely—and it makes vindicating rights protected by RLUIPA practically unattainable.

The experience in circuits that impose a finality requirement proves the point.

A. In the Ninth Circuit, members of Guatay Christian Fellowship worshipped in a 2,100-square-foot building in San Diego County for over two decades without issue—until the county threatened “to take legal action against the Church” unless it ceased all religious assembly on the property, citing a twenty-year-old use permit for a country-western bar. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 965 (9th Cir. 2011); see also *Guatay Christian Fellowship v. County of San Diego*, 2009 WL 10678645, at *3 (S.D. Cal. Sept. 16, 2009), *aff'd* 670 F.3d 957 (9th Cir. 2011). “[F]earing prosecution or suit by the County,” the church was effectively forced to comply and stop all religious services. 670 F.3d at 965. At that point, the injury was concrete: the government had ordered the church to stop worshipping or face prosecution. See *Roman Catholic Diocese of Brooklyn*, 592 U.S. at 19 (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *First Choice*, 146 S. Ct. at 1129 (distinguishing preemptive suits from ones where “a plaintiff suffers ongoing injuries from” government action).

But when the church sued the county, the district court and the Ninth Circuit held that the church’s claims weren’t ripe because *Williamson County* required a final decision. See *Guatay*, 2009 WL 10678645, at *8; *Guatay*, 670 F.3d at 976. Even though the church was forced to cease all religious assembly in the building it had called home for over twenty years, it couldn’t get through the courthouse doors.

Instead, the church had to wait while county officials reviewed its land-use application and considered “disagreements with staff interpretations of codes or ordinances, requests for additional information or studies, or disagreements regarding project related processing requirements.” *Guatay*, 670 F.3d at 982; see also *Guatay*, 2009 WL 10678645, at *4 (describing how the county took two months to respond to the church’s application and charged the church over \$50,000—in addition to a \$14,500 deposit—in regulatory fees). All the while, the church had to endure the loss of its First Amendment freedoms. That result can’t be squared with a statute Congress enacted to strengthen religious liberty and streamline its vindication. See *supra* 9–13. Nor can it be reconciled with this Court’s recognition that the loss of religious liberty even for a moment constitutes irreparable harm. *Roman Catholic Diocese of Brooklyn*, 592 U.S. at 19.

B. Other claimants within the Sixth Circuit share the same plight. For example, *Miles Christi*—an international religious order—regularly hosted Bible studies and private daily masses in its five-bedroom house in Northville, Michigan, before it became the town’s target for regulatory enforcement. *Miles Christi Religious Order v. Township of Northville*, 629

F.3d 533, 535–36 (6th Cir. 2010). After several run-ins with a town ordinance-enforcement officer, Miles Christi received a ticket for violating a site-plan ordinance, which triggered litigation in state court and led to extensive discovery. *Id.* at 536.

While the state proceedings were ongoing, Miles Christi sued the town in federal court for violating RLUIPA and the First Amendment. 629 F.3d at 536–537. Notwithstanding the town’s enforcement action in state court and the extensive record evidence available from the state proceedings, the district court dismissed the federal suit, and the Sixth Circuit affirmed. *Id.* at 537, 542. The courts reasoned that Miles Christi’s claims weren’t ripe because there was no “final decision” on the ordinance violation. *Id.* at 537–38. The Sixth Circuit acknowledged a potential “chilling effect” from the town’s enforcement, but still held that Miles Christi had to appeal its citation to the zoning board and await a final decision before pursuing its Free Exercise claim. *Id.* at 540; contra *First Choice*, 146 S. Ct. at 1126 (concluding that actions that may chill First Amendment activity “injures * * * First Amendment” rights).

Here again, a claimant who had already suffered an injury—being forced to curtail its religious exercise for fear of further enforcement—was prohibited from seeking relief in court until it submitted to a municipal zoning appeals process. That is precisely the practical barrier to Free Exercise that RLUIPA removed. Cf. *First Choice*, 146 S. Ct. at 1129 (“Requiring plaintiffs to exhaust state court remedies before they may avail themselves of § 1983’s promise, we have said, would ‘hollow’ out the statute.”).

* * *

Congress designed RLUIPA to enhance—not restrict—religious freedom. Courts that impose an atextual finality requirement turn that design on its head. Their wait-and-see approach forces claimants to shoulder ongoing burdens on religious exercise while local zoning processes run their course. This Court should restore what those courts have taken away and hold that claimants may seek relief under RLUIPA as soon as government action substantially burdens their religious exercise.

CONCLUSION

For these reasons, the judgment of the Sixth Circuit should be reversed.

Respectfully submitted,

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