

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 COMMONWEALTH OF
KENTUCKY AND 13 OTHER STATES AS AMICI
CURIAE SUPPORTING PETITIONER**

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INTERESTS OF AMICI CURIAE AND INTRODUCTION

The COVID-19 crisis taught the amici States valuable lessons about the interplay between ripeness and the First Amendment. After all, the pandemic led to possibly “the greatest intrusions on civil liberties in the peacetime history of this country.” *Arizona v. Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (statement of Gorsuch, J.). As the amici States know well, many “executive officials issued emergency decrees on a breathtaking scale,” often with little regard for the “freedoms” of our citizenry. *Id.* (citation modified).

Many of the amici States were at the forefront of the litigation to protect Americans from overbearing emergency orders. Sometimes the amici States were successful in court; other times they were not. But through it all, the States learned important lessons about our constitutional order.

One that has particular relevance here concerns the nature of First Amendment harms. In the amici States’ experience, those harms often hit hard and fast. And the government officials who cause those harms can moot litigation about them just as quickly. Once those harms have passed, moreover, nothing can fully make up for them. In short, First Amendment harms happen in real time and thus must be remedied in real time, lest they be lost. Prompt judicial attention to these harms is essential to ensure that one of the crown jewels of our Constitution does not turn into a mere “parchment barrier.” *THE FEDERALIST* NO. 48, at 343 (James Madison) (B. Wright ed., 1961) (citation modified).

Although many States could share their experiences from the pandemic, Kentucky's story in particular illustrates how quickly courts must act to vindicate First Amendment rights. In the early days of the pandemic, Kentucky's Governor shuttered churches for in-person worship while allowing, for example, liquor stores and laundromats to remain open. *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020) (per curiam) (*Roberts II*). By quickly challenging this executive order, several Kentucky churchgoers, with overnight amicus support from the Kentucky Attorney General, won injunctions. But the plaintiffs had to move at lightning speed to seek this relief. And the Sixth Circuit had to issue back-to-back weekend orders, mere hours before worship services began, to ensure that the First Amendment was followed.

Unfortunately, the pandemic-era intrusions on the First Amendment liberties of Kentuckians did not stop there. And Kentucky plaintiffs were not always as successful as the churchgoers in stopping these other abuses of power. Efforts to overturn the Kentucky Governor's orders banning protests and shutting down schools saw mixed results. But they nevertheless teach valuable lessons about how First Amendment harms are inflicted, become moot, and are remedied.

The amici States take no pleasure in dredging up unpleasant memories of the pandemic. But they do so knowing that "[t]hose who cannot remember the past are condemned to repeat it." 1 George Santayana, *The Life of Reason* 284 (1905). Although the pandemic is behind us, the Court should remember the speed with which First Amendment rights can be taken away. The amici States certainly will not forget.

The implications for this case are clear. Petitioner Daniel Grand’s Orthodox Jewish faith “requires him to pray thrice daily with a group of ten men, what’s known as a ‘minyan’ in Hebrew.” Pet. App. 2a. Yet the City of University Heights ordered him not to pray in his home with a minyan unless he obtained a special-use permit to use his home as a house of worship. *Id.* at 3a. The harm to Mr. Grand was immediate and irreparable. He missed out on praying with neighbors in his home, something that millions of Americans do every day.

The Sixth Circuit, however, required Mr. Grand to jump through regulatory hoops before he could sue to vindicate his First Amendment right to pray with neighbors in his home. *Id.* at 7a–8a. The court applied the onerous ripeness requirement that this Court developed for regulatory takings in *Williamson County* to shut the courthouse doors on Mr. Grand.

This regulatory-takings doctrine has no applicability in the First Amendment context, especially on matters of free exercise. First Amendment harms require prompt judicial attention when the violation occurs, not months or perhaps years later. Anything less would serve only to needlessly extend First Amendment violations or, even worse, insulate them from meaningful judicial review.

The amici States respectfully urge the Court to reverse the Sixth Circuit’s judgment.

SUMMARY OF THE ARGUMENT

I. The COVID-19 pandemic showed just how quickly First Amendment harms can come and go. Kentucky’s Governor responded to the public-health

crisis by closing churches, banning protests for disfavored causes, and closing religious schools. And he did this while liquor stores, laundromats, and law firms remained open for in-person services, albeit with capacity and social-distancing restrictions.

Although each of the Kentucky Governor's orders inflicted immediate and irreparable harm, Kentuckians' success in obtaining judicial relief was unfortunately mixed. Congregants of a Kentucky church won an injunction against the church-shutdown order, but only by moving at breakneck speed. Kentuckian Tony Ramsek's right to peaceably assemble was restricted for months before he won an injunction. Yet the Governor withdrew his protest-ban executive order before the Sixth Circuit could rule on it. Finally, Danville Christian Academy in central Kentucky could not get lasting relief from the Governor's school-shutdown order before it expired, despite its best efforts.

Although the results in these cases differ, they all show that First Amendment violations must be remedied when they occur. That is to say, to have real meaning, the First Amendment must be enforced in real time. After-the-fact judgments cannot restore an Easter Sunday service, a peaceful protest, or days of religious instruction that were lost due to obviously unconstitutional executive orders. Prompt judicial attention to these harms is needed for the First Amendment to have meaning.

II. *Williamson County's* ripeness requirement was tailor made for regulatory takings. Those harms take time to materialize and ripen. The injury, moreover, is remedied with money on the back end rather than an injunction in real time. In general, there is little

urgency to act quickly. The property doesn't go anywhere while a takings claim ripens. And the property owner can eventually be made whole with just compensation.

First Amendment violations are entirely different. They ripen the moment speech, religious exercise, or peaceable assembly is objectively chilled. And although these harms can become moot just as quickly as they ripen, even short-lived violations are irreparable. Accordingly, grafting *Williamson County*'s ripeness requirement onto the First Amendment would needlessly prolong some constitutional violations and completely insulate others from judicial review.

ARGUMENT

Kentucky's experience with First Amendment violations during the pandemic illustrates why *Williamson County*'s ripeness requirement is incompatible with the First Amendment.

I. COVID-19 lockdown orders taught the States just how quickly First Amendment harms can ripen and become moot.

During the pandemic, Americans learned the hard way that, depending on the whims of elected officials, the First Amendment can take a back seat in times of crisis. Kentucky's Governor responded to the pandemic by shutting down (all) churches, (some) protests, and (some) schools. The States discuss each in turn, with a particular focus on the lessons each episode teaches about how First Amendment harms ripen, become moot, and can be remedied.

A. The Kentucky Governor’s church shutdown.

Kentucky recorded its first case of COVID-19 on March 6, 2020. Two weeks later, Kentucky’s Governor banned in-person worship.

The Governor accomplished his church shutdown through two orders. The first, “issued on March 19, 2020, prohibited all ‘mass gatherings’ in the Commonwealth.” *Maryville Baptist Church v. Beshear*, 132 F.4th 453, 454 (6th Cir. 2025). The second, “issued on March 25, closed all organizations that were not ‘life-sustaining.’” *Id.* Religious organizations, however, were somehow not considered “life sustaining,” except when offering “food, shelter, and social services.” *Id.* But “laundromats, law firms, hardware stores, and several other businesses” were life sustaining. *Id.*

The Kentucky Governor’s orders landed with Easter just around the corner. Faced with the choice of following an unconstitutional order or their religious beliefs, some Kentuckians chose the latter. On April 12, 2020, “Maryville Baptist Church held an Easter service.” *Roberts II*, 958 F.3d at 412. Some parishioners “went into the church,” while “others parked their cars in the church’s parking lot and listened to the service over a loudspeaker.”¹ *Id.* (citation modified). The congregants “did so in accord with their sincerely held religious beliefs that in-person church

¹ One local official threatened to apply the Governor’s church ban on Easter Sunday to prohibit even drive-in worship services, where Kentuckians parked in a church’s parking lot and listened to a worship service over loudspeakers from their cars. See *On Fire Christian Ctr. v. Fischer*, 453 F. Supp. 3d 901, 908 (W.D. Ky. 2020).

attendance was required,” and “they observed appropriate social distancing and safety measures during the service.” *Roberts v. Neace*, 457 F. Supp. 3d 595, 599 (E.D. Ky. 2020) (*Roberts I*).

The Governor’s response was swift. Kentucky State Police converged on the church’s parking lot and “issued notices to the congregants that their attendance, whether in the church or outdoors, amounted to a criminal act.” *Roberts II*, 958 F.3d at 412. They also “recorded congregants’ license plate numbers and sent letters to vehicle owners requiring them to self-quarantine for 14 days or be subject to further sanction.” *Id.* Some congregants, later plaintiffs in a lawsuit challenging the order, alleged that this was done “at the behest of Governor Beshear, who had stated that he was going to target religious services for such notices.” *Roberts I*, 457 F. Supp. 3d at 599; *see also Mayorkas*, 143 S. Ct. at 1314 (statement of Gorsuch, J.) (noting that Kentucky officials “surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social-distancing and hygiene requirements could amount to criminal conduct”).

The attendees at Maryville Baptist and others affected by the church-shutdown order had mixed success obtaining emergency relief in district court. *Roberts I*, 457 F. Supp. 3d at 601 (denying preliminary injunction for the plaintiffs’ First Amendment claim); *Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-cv-278, 2020 WL 2393359, at *3 (W.D. Ky. May 8, 2020) (enjoining the church-shutdown order); *Tabernacle Baptist Church, Inc. of Nicholasville v. Beshear*, 459 F. Supp. 3d 847, 856 (E.D. Ky. 2020) (enjoining the church-shutdown order).

The Sixth Circuit quickly stepped in and restored Kentuckians' First Amendment rights. It did so by issuing Saturday rulings on back-to-back weekends, just before worship services. The court rightly recognized that the Governor's order unconstitutionally discriminated against religious exercise. The court highlighted that the order allowed "life-sustaining businesses" such as "laundromats, liquor stores, [and] gun shops" to remain open, but did "not permit soul-sustaining group services of faith organizations, even if the groups adhere to all the public health guidelines required of the other services." *Roberts II*, 958 F.3d at 414.

The court also recognized the unique harms imposed by First Amendment violations like this. In short, "lost time means lost rights." *Id.* at 413 (citation modified). Every day that the church-shutdown order was in place "inflicted irreparable harm by prohibiting [congregants] from worshiping how they wish." *Id.* at 416 (citation modified). The court therefore issued an injunction allowing the plaintiffs "to seek spiritual relief subject to the same precautions as when they seek employment, groceries, laundry, firearms, and liquor." *Id.*

* * *

The Kentucky Governor's shutdown order hit Kentuckians of faith like a hammer. It immediately stripped thousands of their First Amendment rights to congregate and exercise their religious beliefs. Such a sudden deprivation of rights necessitated swift legal action. Amid the chaos and confusion of the pandemic's early days, success was by no means guaranteed. But thankfully, the Sixth Circuit and several

Kentucky district judges did not tarry in protecting First Amendment rights.

As one of those Kentucky federal judges memorably stated in enjoining the church-shutdown order, “[i]t would be easy to put [the Constitution] on the shelf in times like this, to be pulled down and dusted off when more convenient. But that is not our tradition.” *Tabernacle Baptist Church*, 459 F. Supp. 3d at 856. Instead, our Constitution must “be respected even when it is hard.” *Id.*

The federal judiciary’s swift response to the Kentucky Governor’s church-shutdown order lived up to the promise of the First Amendment. But in the fog of the COVID-19 pandemic, not every intrusion on the First Amendment met such a quick end.

B. The Kentucky Governor’s protest ban.

The Kentucky Governor’s mass-gathering ban didn’t just infringe on Kentuckians’ free-exercise rights; it also restricted their First Amendment right to “peaceably . . . assemble.” U.S. Const. amend. I.

By mid-April 2020, many Kentuckians had understandably had enough of the Governor’s lockdown orders. To voice their concerns “about the Commonwealth’s economy” and their “opposition to the restrictions” imposed by the Governor, Kentuckian Tony Ramsek and many others engaged in a time-honored American tradition: peaceful protest at their seat of government. *Ramsek v. Beshear*, 468 F. Supp. 3d 904, 908 (E.D. Ky. 2020) (*Ramsek III*). On April 15, roughly “100 individuals” gathered “at the State Capitol during the Governor’s press conference” to “express their views through protesting.” *Id.*

The Governor took offense to this First Amendment activity. He promptly “took steps to minimize the impact of the protests,” including using “Kentucky State Police” to restrict “the public’s access to the area on the southeast side of the Capitol building where [his] briefings took place.” *Id.* (citation modified).

The next day, the Governor’s Health Commissioner announced that protest activity would be moved to the parking garage next to the Capitol. *Id.* Remarkably, participants were ordered to “remain in their vehicles” while protesting. *Id.* And in any event, the garage was “too far away from the Capitol to be seen or heard.” *Id.*

Things came to a head when the plaintiffs applied to hold a “Re-Open Kentucky Protest” on the Kentucky Capitol grounds on May 23. *Ramsek v. Beshear*, No. 20-5542, 2020 WL 14131066, at *1 (6th Cir. May 23, 2020) (*Ramsek II*). The plaintiffs were once again told that they could protest—but only in the parking garage or from parking lots near the Capitol. *Ramsek III*, 468 F. Supp. 3d at 909.

The district court initially denied relief on the ground that the plaintiffs lacked standing. *Ramsek v. Beshear*, No. 3:20-cv-36, 2020 WL 2614638, at *7 (E.D. Ky. May 21, 2020) (*Ramsek I*). But citing the Governor’s history of enforcing his mass-gathering order against Kentuckians, the Sixth Circuit promptly disagreed. *Ramsek II*, 2020 WL 14131066, at *2–3. In its view, the plaintiffs had established a credible threat that the Governor’s administration would restrict their First Amendment right to peaceably protest. *Id.* at *3–4. The court remanded to the district court for

further proceedings on the preliminary injunction. *Ramsek III*, 468 F. Supp. 3d at 910.

Before the district court could rule on remand, however, the Governor changed his tune about protests during the pandemic—or, rather, he changed his tune about *some* protests. Following George Floyd’s death in Minneapolis, “hundreds of individuals gathered on the Capitol lawn” for a “Black Lives Matter” protest. *Ramsek v. Beshear*, 989 F.3d 494, 498 (6th Cir. 2021) (*Ramsek IV*). But rather than cordon off the Capitol grounds and consign the protesters to the parking garage, the Governor “instead attended the rally, even going so far as to speak to the large crowd assembled at the Capitol.” *Id.* And “far from raising the specter of prosecution after the fact, Governor Beshear instead tweeted a picture of him standing before the large, nonsocially distanced crowd on the Capitol lawn.” *Id.* Another “picture showed him reaching over a column to sign an autograph.” *Id.*

The district court granted the plaintiffs a preliminary injunction, which the Governor appealed. *Ramsek III*, 468 F. Supp. 3d at 921. But the Governor rescinded the mass-gathering order before the case could be argued. *Ramsek IV*, 989 F.3d at 498. So, after infringing on Kentuckians’ right to peaceably assemble for months, the Governor mooted the challenge to his actions just as our courts were poised to deliver relief. *Id.* at 501 (“The appeal is now moot.” (citation modified)).

* * *

Mr. Ramsek and his co-plaintiffs “won” in some sense—the unconstitutional order was no more. But given the nature of First Amendment harms, that win

came too late. The Governor infringed their rights in April 2020. And this infringement continued until the district court entered a preliminary injunction in June 2020.

The plaintiffs moved with admirable speed. But the fact remains that during the height of COVID-era lockdowns, when the freedom of speech mattered the most, those plaintiffs were severely restricted in how they could express their views. And to add insult to injury, time would show that the plaintiffs could have exercised their First Amendment right with the blessing of the government—but only if they had advocated for a cause supported by the Governor.

C. The Kentucky Governor’s school shut-down.

When COVID-19 cases increased in the fall of 2020, Kentucky’s Governor once again responded with disregard for the First Amendment.

On November 18, 2020, the Governor issued an executive order that banned in-person instruction at K-12 schools. *Danville Christian Acad., Inc. v. Beshear*, 503 F. Supp. 3d 516, 520–21 (E.D. Ky. 2020). The order, however, left “preschools, colleges, and universities untouched.” *Danville Christian Acad., Inc. v. Beshear*, 592 U.S. 1156, 1158 (2020) (Gorsuch, J., dissenting). And another order issued at the same time “permitted virtually all other in-person activities,” including “movie theaters, indoor wedding venues, bowling alleys, and gaming halls,” to remain open “with only capacity restrictions.” *Id.* (citation modified).

Danville Christian Academy, a religious school located in central Kentucky, sued in federal court alongside the Kentucky Attorney General. *Danville Christian Acad.*, 503 F. Supp. 3d at 521. They argued that the Governor treated religious schools differently than non-religious organizations, such as bowling alleys and movie theaters, in obvious violation of the Free Exercise Clause.

The district court agreed. It “wonder[ed] why under this executive order, one would be free to attend a lecture, go to work, or attend a concert, but not attend socially distanced chapel in school or pray together in a classroom that is following strict safety procedures and social distancing.” *Id.* at 524.

This harm was also “irreparable.” *Id.* at 528. Every day the order was in effect “prevent[ed] the corporate nature of religious education which is [infused] with worship, prayer, and mentoring.” *Id.* at 520. The district court therefore enjoined the Governor from enforcing the school-shutdown order against religious schools across the Commonwealth.

Danville Christian’s victory, however, was short lived. The Governor moved to stay the injunction on Thanksgiving. And on an extraordinarily compressed timeline—with responses due at 10:00 a.m. the day after Thanksgiving—the Sixth Circuit granted the Governor’s motion. *Commonwealth v. Beshear*, 981 F.3d 505, 511 (6th Cir. 2020). The court disagreed with the district court on the merits of the First Amendment claim, which it found to be “determinative” in the preliminary-injunction context. *Id.* The Governor’s school-shutdown order was therefore back on the books.

Danville Christian immediately sought emergency relief from this Court. But by the time the Court ruled, the school-shutdown order was set to expire that “week or shortly thereafter.” *Danville Christian Acad.*, 592 U.S. at 1156. So, “under all of the circumstances,” but “especially the timing and the impending expiration of the Order,” the Court denied relief. *Id.* (citation modified). The First Amendment harm to Danville Christian therefore came and went before it could be remedied by the Court.²

Two Justices dissented, and in doing so made pointed observations about the nature of First Amendment harms. Justice Alito wrote that he would not “deny relief” based on the impending expiration of the order “since this timing is in no way the applicants’ fault.” *Id.* at 1157 (Alito, J., dissenting). He was hard pressed “to see how [Danville Christian] could have proceeded more expeditiously.” *Id.* So he would have granted relief.

Justice Gorsuch was likewise opposed to denying relief on timing grounds. In his view, the Governor’s orders “remained in force, the dispute over them remained live, and the decision allowing them to stand was flawed.” *Id.* at 1159 (citation modified). Justice Gorsuch recognized that constitutional rights had sometimes fallen by the wayside in the “struggle to respond to the current pandemic.” *Id.* at 1160. So he would err on the side of protecting constitutional rights and “not leave in place yet another potentially

² One small comfort is that the Sixth Circuit quickly marginalized the First Amendment reasoning in *Commonwealth v. Beshear*. See *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep’t*, 984 F.3d 477, 480–81 (6th Cir. 2020).

unconstitutional decree, even for the next few weeks.”
Id.

* * *

The *Danville Christian* case shows the often-fleeting nature of First Amendment harms. But just because an ongoing injury is short-lived doesn’t mean it isn’t irreparable. *Danville Christian*, and the families it serves, will never get back the days of in-person religious instruction that were taken in November and December of 2020—in the lead up to a major religious holiday. That harm was real, but the time to remedy it was in real time, when the harm was occurring, not after the fact.

II. The ripeness test developed for regulatory takings in *Williamson County* is incompatible with the First Amendment.

Kentucky’s pandemic experience offers a master class in how First Amendment harms can be inflicted, mooted, and remedied. To be sure, none of the cases discussed above strictly involved the application of zoning laws, as Mr. Grand experienced. But the comparison that matters is that Mr. Grand lost out on his First Amendment rights, similar to the Kentucky churchgoers who sued, just like Mr. Ramsek and his fellow protesters, and just like *Danville Christian Academy*. For this simple reason, Kentucky’s pandemic experience is instructive as a lens for considering how *Williamson County*’s ripeness test would apply in the First Amendment context. The answer: not well.

Start with some background on takings. The Fifth Amendment’s Takings Clause provides: “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V; *see also Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 241 (1897) (incorporating the Takings Clause against the States). The classic example of a taking is where “the government has physically taken property for itself.” *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 278 (2024) (citation omitted). But the Clause also applies when the government places “a restriction on the use of property that [goes] ‘too far.’” *Horne v. Dep’t of Agric.*, 576 U.S. 351, 360 (2015) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

This Court’s decision in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), sets out the test for determining how far is too far. The analysis involves “an ‘ad hoc’ factual inquiry” based on “factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action.” *Horne*, 576 U.S. at 360. Under this test, the government can cross the line and effectuate a regulatory taking even when it “falls short of eliminating all economically beneficial use” of the land. *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) (citation modified).

Multifactor tests like the *Penn Central* test do not always promote clarity. So this Court has developed procedural rules designed to determine when a regulatory taking has materialized and become ripe. In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the Court held that a regulatory-taking claim “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.” *Id.* at 186.

The Court unsurprisingly tailored this standard to “the very nature of the inquiry required by the Just Compensation Clause.” *Id.* at 190. Specifically, it held that the economic-impact and investment-backed-expectations factors “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. Similarly, a judge or jury cannot determine whether a party “will be unable to derive economic benefit’ from the land” without a final land-use decision. *Id.*

A regulatory taking, therefore, can be a slow-moving train. Consider how one might occur. A city council might propose a new zoning ordinance that restricts individuals’ use of their property. Public hearings and committee meetings would likely follow. Even if the council approves the ordinance, an affected property holder could still seek a variance or conditional-use permit. This process would likely involve several potential layers of administrative review and, all told, could take months or perhaps years. At some point in the process (exactly when may vary depending on the case), the government will have arrived at a “final, definitive position” on the ordinance. *Id.* at 191.

Such delay is more tolerable in this context, however, because the standard remedy for a regulatory taking is money, not an injunction. *Knick v. Twp. of Scott*, 588 U.S. 180, 201 (2019) (“As long as an ade-

quate provision for obtaining just compensation exists, there is no basis to enjoin the government’s action effecting a taking.”). The property does not go anywhere during this process, and the owner can be made whole, even years later, through just compensation for the government’s taking.

As discussed above, however, First Amendment harms are different in kind. Kentucky’s experience during the pandemic shows it. *Supra* § I. And this Court’s cases recognize it. In *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), for example, this Court recognized that the government can chill speech through “informal sanctions” short of “formal legal sanctions.” *Id.* at 66–67; *see also* *NRA v. Vullo*, 602 U.S. 175, 189 (2024). The same cannot be said for regulatory takings, where one’s property has not been taken for constitutional purposes until there is a “final, definitive position” on the regulation. *Williamson Cnty.*, 473 U.S. at 191.

Regulatory takings also cannot come and go like First Amendment violations. During the pandemic, this Court emphasized that 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) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). And more recently, the Court recognized that First Amendment violations produce continual harms that may necessitate an injunction. *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (“In the absence of an injunction, the parents will continue to be put to a choice: either risk their child’s exposure to burdensome instruction, or

pay substantial sums for alternative educational services.”).

Think of it this way: Even when a First Amendment violation burns quick, that doesn’t mean it didn’t burn hot. The fact that the fire is out by the time a court can consider the case doesn’t mean there was no harm. It just means that courts must act quickly to remedy such a harm. Or as the Sixth Circuit put it in enjoining the Kentucky Governor’s church shutdown, “[l]ost time means lost rights.” *Roberts II*, 958 F.3d at 413. Imposing *Williamson County*’s ripeness test on First Amendment claims like Mr. Grand’s would make it far more likely that harms stemming from zoning ordinances will either drag on longer than they should or never be remedied.

CONCLUSION

The amici States’ experience during the pandemic provides a valuable lesson for this case: Courts must be able to promptly address and remedy First Amendment claims when they arise. Imposing an onerous ripeness requirement on some such claims is inconsistent with this Court’s First Amendment jurisprudence and would serve only to prolong religious-liberty violations. The amici States respectfully urge the Court to consider their pandemic-era experience and reverse the judgment of the Sixth Circuit.

Respectfully submitted,

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