

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 UNION OF ORTHODOX
JEWISH CONGREGATIONS OF AMERICA
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The Union of Orthodox Jewish Congregations of America (Orthodox Union, or OU) is the nation's largest Orthodox Jewish synagogue organization, representing nearly 2,000 congregations as well as hundreds of Jewish K-12 schools across the United States. The Orthodox Union, through its OU Advocacy Center, advocates for the interests of the Orthodox Jewish community before all three branches of the federal government and in state and local forums nationwide, and has participated as an *amicus curiae* in many cases before the Court that, like this one, raise issues of importance to the Orthodox Jewish community, including, for example, in *Groff v. DeJoy*, 600 U.S. 447 (2023), and *Carson v. Makin*, 596 U.S. 767 (2022). The Orthodox Union is concerned that existing precedent especially perpetuates discrimination against members of minority faiths who, like Orthodox Jews, observe religious rules and rituals in nearly every facet of life.

The OU's interest in this case is both historical and immediate. The OU helped build the legislative record that produced the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc–2000cc-5 (RLUIPA). The director of public policy for the OU testified before the Senate Judiciary Committee while the statute was being drafted and identified the precise practice at issue

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and that no person or entity other than *amicus curiae*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

here: the use of facially neutral land-use processes to suppress religious worship. In the decades since, the OU has documented that practice in jurisdictions across the country, and its member congregations and their members continue to experience it.

That experience gives the OU a distinct perspective on the question presented. Much of Orthodox Jewish observance occurs inside the home and is bound to fixed times that cannot be deferred to await the conclusion of a municipal proceeding. A rule that withholds judicial review until a locality issues a final decision therefore falls with distinctive force on Orthodox Jewish practice—and rewards the locality that declines to issue one.

SUMMARY OF ARGUMENT

University Heights ordered Daniel Grand to stop praying with others in his home, but never gave him a decision he could appeal. Though a cease-and-desist order prevented his religious exercise, the Sixth Circuit held that he must wait for a final decision on a permit application or a similar request before his claim can be ripe. Under that rule, a municipality can keep a First Amendment claim out of federal court indefinitely, despite the harm inflicted.

The Orthodox Union offers the Court perspective and context on three primary aspects of this case: *First*, the OU can provide the religious context for the observances that the Sixth Circuit’s rule burdens. The injury here is present and time-bound, not speculative. Much of religious life occurs in the home, and often is required to be so. And because the underlying religious obligations are fixed in time, a plaintiff cannot wait out a multi-stage permit process without

losing the exercise altogether. *Second*, the OU is no stranger to the very fact pattern at issue here. The OU has seen facially neutral zoning processes used to stifle religious practice of Jewish communities across the country over the past three decades. In the late 1990s, the OU helped build RLUIPA’s legislative record, as Part II describes. *Third*, the OU explains why the rule Petitioner proposes is narrow and administrable: it reaches only definitive government commands, backed by a credible threat of enforcement, that halt religious exercise while review is withheld.

The OU submits that these points, taken together, demonstrate why this Court should hold that a plaintiff need not obtain a “final decision” from a body that will never issue one in order to challenge an ongoing burden on constitutionally protected religious exercise.

ARGUMENT

I. RELIGIOUS LIFE HAPPENS INSIDE THE HOME AND IS OFTEN TIME-BOUND.

For Orthodox Jews, the home is not only an alternative venue for worship, but can also be a required one. Certain obligations performed in the home occur on a calendar fixed by religious law. The Torah commands: “You shall teach them [the commandments] diligently to your children, and you shall speak of them when you are in your home and when you walk by the way.” Deuteronomy 6:7. This instruction is part of the *Shema*, Judaism’s foundational declaration of faith, and its command is unmistakable: the transmission of the faith from one generation to the next occurs in the home. For many

observances, the home is the primary site where core religious obligations can be met. When a municipality treats religious gatherings in a private home as presumptively requiring a special permit, it regulates religious observance. The examples below are illustrative of the types of time-bound religious observances that occur in the home.

A. Shiva (Mourner's Home)

When a close relative dies, Jewish law requires the immediate family to observe “*shiva*.” *Shiva* is the seven-day mourning period observed after the burial of a close relative, during which the mourner generally may not leave the house. Because the mourner cannot go to the synagogue, the synagogue comes to the mourner: the community brings a *minyan*—a quorum of ten adult Jewish males required for communal prayer—into the home for daily prayers, and to comfort the bereaved. A *shiva* typically commands an outpouring of communal support, where friends and neighbors of the deceased or their loved ones visit the home of the mourners and provide comfort to the grieving family. The daily gathering at a *shiva* home is, in this respect, comparable to the periods of receiving visitors that follow a funeral in other traditions.

Under Jewish law, *shiva* begins on the day of burial and ends on the morning of the seventh day. There is no extension, no continuance, and no rescheduling (except in specific circumstances in which the seven days overlap with a Jewish holiday); a mourner cannot delay sitting *shiva* to file a special-use permit application, attend or participate in a public hearing, or wait out a multi-week municipal

process. *Shiva* occurs, by definition, in response to an unpredictable event, death.

Under an order like the Cease and Desist Order (the “CADO”) issued to Daniel Grand, a mourning family that invited ten neighbors to pray would have been exposed to potential municipal action as soon as *shiva* began, forcing a choice between violating *halacha* (Jewish law) and violating the City’s open-ended order. Mourners cannot pause their mourning for the pendency of a permitting process, and must be able to petition the court for immediate relief. Where a religious obligation is fixed in time and the administrative process cannot conclude within that window, the harm is concrete and can compound long before a final decision is rendered.

B. The Passover Seder

The Passover Seder is a home-centered, commanded ritual meal conducted on the first two nights of Passover in the Diaspora. It is among the most widely observed rituals in Jewish life, and is commonly a multi-family, multi-generational gathering that takes place at the dining table, not in a synagogue.² Scripture designates the home as the setting for the Seder and for three thousand years Jews have gathered there to fulfill it. *See* Exodus 12:46 (“It [the Passover Offering] shall be eaten in one house and should not be brought outside the house.”). Many

² Pew Rsch. Ctr., *Jewish Americans in 2020*, at 70] (May 11, 2021), https://www.pewresearch.org/wp-content/uploads/sites/20/2021/05/PF_05.11.21_Jewish.Americans.pdf (finding that 62% of U.S. Jewish adults held or attended a Seder in the year before the survey).

households host gatherings well beyond the immediate family, including extended relatives and guests who would otherwise have no Seder of their own.

The Seder is a home ritual fixed to a specific date on the calendar that cannot be moved to accommodate a government process. It is observed every year on the nights of the 15th and 16th of the Jewish month of *Nisan*, and cannot be held any other night. The Passover Seder is analogous in some respects to a Thanksgiving or Christmas dinner: annual, home-based gatherings centered on a ritual meal with extended family and guests. Under the Sixth Circuit’s rule, a homeowner subject to a CADO could not bring a First Amendment challenge until the Planning Commission acted on a permit application, a process the City controls and can extend indefinitely.

C. Daf Yomi

Daf Yomi (literally, “a page a day”) is a global program of Talmud study in which participants study one folio of the Babylonian Talmud each day, completing the entire work, 2,711 folio pages in all, over a cycle of roughly seven and a half years. *Daf Yomi* is observed today by hundreds of thousands of Jews worldwide, all studying the same page on the same day. The completion of the thirteenth cycle in January 2020 drew tens of thousands of participants to celebrations in the United States alone.³ It is commonly conducted in small, informal groups that meet

³ Joseph Berger, *90,000 Jews Gather to Pray and Defy a Wave of Hate*, N.Y. Times (Jan. 1, 2020), <https://www.nytimes.com/2020/01/01/nyregion/jewish-attacks-monsey-Daf-Yomi.html>.

wherever is convenient: homes, offices, synagogue side rooms, and elsewhere. In practice, *Daf Yomi* study is comparable to a Bible study group or a book club. In University Heights, a book club of the same size, meeting in the same living room, would require no permit at all. But an identical gathering requires municipal permission where religious exercise is implicated.

Daf Yomi follows a fixed, uninterruptible global calendar. A study group that pauses or halts for permitting or zoning disputes falls permanently behind the worldwide cycle. Because participants in the *Daf Yomi* cycle study every day without exception over a cycle spanning more than seven years, no municipal permitting timeline, typically measured in weeks or months, could ever conclude before the daily study has already recurred hundreds of times.

D. Minyan

A *minyan* is a quorum of ten adult Jewish males, and it is the threshold requirement for the central acts of Jewish communal worship.⁴ Without a *minyan*, for example, *Kaddish* (the mourner's prayer) cannot be recited, the *Kedushah* (a responsive prayer recited during the prayer service) cannot be said, the Torah scroll cannot be read publicly, and the priestly blessing cannot be given. A prayer service without a *minyan* is a fundamentally different act from communal worship and carries different rules and

⁴ Certain denominations of Judaism interpret this requirement to mean ten people rather than ten men. The traditional Orthodox practice described here mandates ten men.

guidelines. Many central obligations inherent to communal worship therefore go unfulfilled.

In some instances, the home *minyan* is irreplaceable rather than merely convenient. Because of the prohibition on operating a motor vehicle from Friday sundown to Saturday nightfall and on certain Jewish holidays, an observant Jew whose synagogue lies beyond walking distance cannot reach a synagogue *minyan* on those days. For those unable to travel to a synagogue because of age, illness, or disability, a home *minyan* is therefore not a convenience but the only realistic way to fulfill communal prayer obligations at all.

Yet under the rule applied below, if faced with any religious discrimination, each of those individuals would need to obtain his or her own “final decision” from the Board of Zoning Appeals before any court would hear their claim. The finality rule in this context does not postpone an uncertain injury pending further proceedings. The injury arises when the obligation elapses, and continues to accumulate until action can be taken.

II. DECADES OF ZONING BURDENS ON JEWISH WORSHIP AND CONGRESS’S RESPONSE THROUGH RLUIPA SHOW WHY WILLIAMSON COUNTY FINALITY IS ILL-SUITED TO CLAIMS INVOLVING RELIGIOUS EXERCISE.

Municipalities’ use of zoning laws to disproportionately burden religious exercise is nothing new. Since the 1990s, the Orthodox Union has documented municipalities across the country employing zoning processes to burden Jewish worship in private homes,

synagogues, and religious schools—the very behavior that RLUIPA was designed to counteract. Municipalities typically achieve this through facially neutral classifications, enforcement threats, shifting demands, and successive proceedings that consume time and resources. This is a pattern the OU has documented and continues to monitor in jurisdictions across the country, affecting Jewish and other faith communities alike.

The finality rule at issue comes from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), which held that a regulatory-takings claim is not ripe until the government reaches a final decision applying its regulations to the property at issue. That rule was built for disputes over property values. The record below shows why it cannot be transplanted to disputes over worship. The delay the rule tolerates for economic burden is here itself perpetuating the harm.

A. Congress enacted RLUIPA to protect religious exercise from burdens imposed through zoning procedures and practices.

Congress enacted RLUIPA in 2000 to address this very pattern. Congress cannot have intended that a claimant burdened by that pattern must first extract a final decision—whatever that may be—from the municipality inflicting it. The OU does not infer that intent from the statute alone. The OU was among the organizations that “played a central role in crafting this legislation.” 146 Cong. Rec. S7778 (daily ed. July 27, 2000) (statement of Sen. Kennedy).

In 1999, representatives from the Orthodox Union testified before Congress on this same matter,

explaining that traditional Jewish law prohibits driving on the Sabbath and that the need to pray with a quorum “makes living within walking distance of a synagogue a religious necessity.” Religious Liberty: Hearing Before the S. Comm. on the Judiciary, 106th Cong. 24 (1999) (prepared statement of Nathan J. Diament, Union of Orthodox Jewish Congregations of Am.). Based on its own firsthand experiences, the OU testified that the zoning board had become the “method of choice for those who seek to thwart the growth of the Orthodox community.” *Id.*

In considering RLUIPA, Congress held nine hearings over three years. On that record it found “massive evidence” of widespread discrimination against religious institutions by state and local officials in land-use decisions, and found that minority faiths bear it disproportionately: although Jews accounted for only two percent of the population, they accounted for twenty percent of the reported land-use cases Congress reviewed. See H.R. Rep. No. 106-219, at 21 (1999); 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch & Kennedy). Congress also heard that municipalities could “wait [] out” religious claimants. H.R. Rep. No. 106-219, at 20. It was against this backdrop that RLUIPA was enacted. By definition, it reaches burdens imposed on religion through “formal or informal procedures or practices” and commands construction favoring “broad protection of religious exercise.” 42 U.S.C. §§ 2000cc(a)(2)(C), 2000cc-3(g). Reading *Williamson County* finality into RLUIPA would supply municipalities with the defense Congress set out to take away, and would do so in a category of cases Congress singled out for heightened protection.

B. Municipal land-use procedures can and do burden religious exercise long before a final decision is rendered.

Together, the judicial and legislative records establish that a zoning dispute involving religious exercise cannot be treated as an ordinary property dispute. In *Williamson County*, this Court held that a regulatory-takings claim is not ripe until the relevant government entity reaches a final decision concerning the application of the challenged regulations to the property. 473 U.S. at 186. The *Williamson County* finality rule was designed for disputes over the economic value of property. It cannot be extended to permit a municipality to halt or chill religious exercise while placing judicial redress indefinitely out of reach.

Congress enacted RLUIPA against a demonstrated record of municipalities exploiting zoning codes and prolonging permitting processes to exclude or outlast religious communities. See 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sens. Hatch & Kennedy); H.R. Rep. No. 106-219, at 20 n.84 (1999). The pattern reflected in reported cases spans decades and continues today: municipalities invoke facially neutral land-use law to disproportionately burden religion, drag the ensuing legal process out without rendering any final decisions, and when faced with legal action, argue the case is unripe. Municipalities across the country have turned ordinary land-use tools like use classifications, variance procedures, parking rules, and historic designations into successive hurdles for members of the Orthodox Jewish community seeking to practice their religion, and ripeness requirements have made it nearly

impossible for any suit to be decided on its merits. This pattern of government-driven religious discrimination immune from suit is evidenced by the cases outlined below.

1. Clarkstown, New York

Ateres Bais Yaakov Academy of Rockland (“ABY”) provides secular and Orthodox Jewish religious instruction to girls in prekindergarten through twelfth grade. In October 2018, ABY contracted for \$4.3 million to purchase property owned by Grace Baptist Church. The property included a sanctuary, a nursery, and an educational wing containing approximately fifty classrooms that had been used as a school for several decades. *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 347 (2d Cir. 2023).

ABY’s contracted-for acquisition and planned relocation of its Orthodox Jewish girls’ school met anti-Orthodox opposition. Community members called the school’s planned relocation a “hostile invasion.” At public meetings, opponents shouted, “go away, we don’t want you, go back to Ramapo”—a neighboring Rockland County town that has a large Hasidic and Orthodox Jewish community. Am. Compl. ¶ 55, *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, No. 7:20-cv-01399-NSR (S.D.N.Y. July 20, 2020), ECF No. 30. Public Facebook posts circulating in local community forums warned that Hasidic Jews “infiltrate our local governments.” *Id.* ¶ 70 & Ex. O.

Clarkstown joined the effort to block ABY’s relocation and publicly prejudged ABY’s application. *See Ateres Bais Yaakov*, 88 F.4th at 346, 348. At a

November 2018 Town Board meeting—before ABY had submitted a building-permit application to make planned improvements to the property—Clarkstown’s Town Supervisor announced that the “Town [would] strongly enforce [its] zoning laws and [] building code within the entire Town,” that ABY’s plan to purchase and operate the property would “NOT occur in the Town . . . without ALL approvals,” and that the Town would “issue search warrants if necessary” to enforce its code. He also stated that the Town itself was interested in the property. Am. Compl. ¶ 59 & Ex. G. Residents at the same meeting called the transaction a “God-awful deal” and objected to Nanuet “turn[ing] into Ramapo.” Am. Compl. ¶ 61.

ABY had previously received authorization for tax-exempt bonds for a different school project. After entering the Grace Church contract, it asked the county financing agency to transfer that authorization to the new property. The agency informally approved the transfer, subject to a public hearing at which the bond funding would receive formal approval. Am. Compl. ¶¶ 52–53; *Ateres Bais Yaakov*, 88 F.4th at 347–48. After ABY’s founder and dean disclosed that ABY’s tax-exempt financing would be considered at an upcoming public hearing, the Town Supervisor urged audience members to research and “reach out” to the county financing authorities and legislature to prevent financing the deal. Am. Compl. ¶ 59 & Ex. G, at 22; *Ateres Bais Yaakov*, 88 F.4th at 348. On December 18, 2018, the agency canceled the hearing and stated that it would not reschedule it until ABY first received preliminary permits and approvals from Clarkstown. Am. Compl. ¶ 64. To meet that newly imposed condition, ABY submitted a building-permit application to Clarkstown on December

26. The application described the proposed use and included an affidavit from Grace Church’s pastor concerning the property’s history and an opinion letter from ABY’s land-use counsel. Am. Compl. ¶ 65 & Ex. N.

At a January 10, 2019 meeting, Town officials and leaders of the opposition group met. ABY alleged that the group’s counsel instructed its members and Town representatives how to keep their opposition “facially neutral.” Counsel told attendees that, if they could not “get that hate out of [their] heart,” they should “keep [their] mouth shut”; according to the complaint, he advised them to emphasize subjects such as traffic rather than voice overt objections to Orthodox Jews. Am. Compl. ¶ 68. The Building Inspector denied the application the next day, reasoning that the property’s prior school use had lapsed and that it lacked the frontage and road access required for a school, so a variance was necessary. Am. Compl. ¶ 71 & Ex. P; *Ateres Bais Yaakov*, 88 F.4th at 348.

ABY appealed the denial to the Zoning Board of Appeals (“ZBA”) and, in the alternative, sought an area variance. Am. Compl. ¶ 100. The Building Inspector informed ABY that its appeal could not be processed without a property survey. The requirement appeared in neither the Town Code nor the ZBA’s rules and bore no practical relationship to the legal question presented, but ABY commissioned and submitted the survey. *Id.* ¶¶ 101, 103–07. After completing it, ABY repeatedly asked the ZBA to schedule a hearing. The ZBA ignored at least five such requests. *Ateres Bais Yaakov*, 88 F.4th at 349, 351.

As a direct result of the permit denial and the delay in scheduling ABY’s appeal, ABY lost its financing, and by the closing deadline, still lacked the

municipal approvals necessary to purchase and use the property. Am. Compl. ¶ 108. Grace Church then terminated the contract and revoked its consent for ABY to pursue land-use applications concerning the property. *Id.* ¶¶ 109, 111. ABY objected, informed the ZBA that Clarkstown’s interference had caused the loss of its financing, and continued requesting a hearing. *Id.* ¶¶ 116, 123. On July 9, Town counsel responded that the ZBA “will not entertain any appeal” concerning the property. *Id.* ¶ 124 & Ex. KK; *Ateres Bais Yaakov*, 88 F.4th at 349–50. On October 3, after ABY’s purchase had collapsed, the Town announced that it would purchase the property itself. *Ateres Bais Yaakov*, 88 F.4th at 350.

ABY then sued Clarkstown, the Town Supervisor, and two citizen groups that lobbied to keep the Orthodox Jewish school out of the community, asserting claims under RLUIPA, 42 U.S.C. §§ 1983 and 1985, the New York Constitution, and state tort law. *Ateres Bais Yaakov*, 88 F.4th at 347, 349. Clarkstown turned the absence of a decision from the zoning board into a bar to judicial review. Invoking *Williamson County*, Clarkstown argued that “because ABY never received a final determination on its land use application, its claims are not ripe for judicial review.” Mem. of Law in Supp. of Town Defs.’ Mot. to Dismiss Am. Compl. 22, *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, No. 7:20-cv-01399-NSR (S.D.N.Y. Dec. 11, 2020), ECF No. 44. The district court accepted the finality argument and dismissed ABY’s RLUIPA and constitutional claims. *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, No. 20-CV-1399 (NSR), 2022 WL 2702447, at *14–15 (S.D.N.Y. July 12, 2022).

The Second Circuit ultimately reversed the district court’s decision on appeal, holding that the ZBA could not defeat judicial review by refusing to decide. *Ateres Bais Yaakov*, 88 F.4th at 351–53 (holding RLUIPA and constitutional claims ripe where the zoning board’s refusal to schedule a hearing made a final decision unobtainable). But the reversal came nearly five years after the Building Inspector’s denial, and it was too late. By the time the court of appeals ruled, ABY’s financing was gone, its contract had been terminated, and the Town had bought the property for itself.

2. Sunny Isles Beach, Florida

Temple B’Nai Zion of Sunny Isles Beach, Florida (the “Temple”) had operated its synagogue on the same property since 1977. *See Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1351 (11th Cir. 2013). In 2004, the congregation transitioned from Conservative to Orthodox Judaism and decided to replace its existing building with a larger synagogue. *Id.* The existing sanctuary was poorly suited to Orthodox practice: it faced west rather than east toward Jerusalem (as required for Orthodox Jewish prayer), had a cruciform floor plan and a triangular exterior symbolizing the Holy Trinity from its prior use as a Lutheran church, and lacked separate seating areas for men and women. *Id.* In 2006, the Temple hired an architect to develop plans for demolition and reconstruction. *Id.*

In an initial meeting to go over those plans, the City of Sunny Isles Beach (the “City”) vehemently opposed the plans, with Mayor Norman Edelcup allegedly referring to parts of the Jewish community

intending to renovate the building as a “bunch of pigs.” Am. Compl. ¶¶ 60–61, *Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, No. 1:10-cv-24549-KMW (S.D. Fla. Nov. 4, 2013), ECF No. 97. After the Temple rejected the City’s attempt to purchase the property, which was adjacent to city hall, Edelcup turned to zoning laws and allegedly directed code-enforcement officers to inspect the Temple, resulting in twelve violation notices from September 2007 through February 2009. *Temple B’Nai Zion*, 727 F.3d at 1352.

Soon after the Temple made its plans known, the City made multiple failed attempts to give the Temple a historic designation, which would have prevented any modification of the structure. Am. Compl. ¶¶ 67–82, *Temple B’Nai Zion*, ECF No. 97. In 2009, the Temple applied for a building permit and a demolition permit to begin construction on the property, both of which were denied. *Id.* ¶ 87. The City then redoubled its efforts and retained a professional consultant to evaluate a possible historic designation, the first time the City had ever hired such a person. *Id.* ¶¶ 88–89. The consultant produced a report recommending designation largely because of a gathering of approximately 200 Holocaust survivors at the Temple in 2004—even though the gathering occurred in the social hall, which was excluded from the designation. *Temple B’Nai Zion*, 727 F.3d at 1351, 1353 & n.3. At a public meeting, the City’s Historic Preservation Board, tasked with designating certain sites as historical, approved the report in March 2010 and scheduled another public meeting regarding designating the Temple as a historic site. Am. Compl. ¶¶ 35, 92–93, *Temple B’Nai Zion*, ECF No. 97. While these designation proceedings were pending, the City denied

another demolition permit and imposed a moratorium on applications to demolish nonresidential structures “pending the City’s study of ‘potential additions’ to the City’s register of historic sites.” *Id.* ¶¶ 93–94. The Temple was then the City’s only pending candidate for historic designation. *Id.*

Following a public hearing, the Preservation Board designated the Temple’s main sanctuary, portico, and memorial tower as historic in June 2010, preventing “modification in [the Temple’s] exterior appearance, including alternation [sic] and/or demolition” and stating that “no building permits shall be issued to alter and/or demolish the aforementioned portions of Temple B’Nai Zion.” *Id.* ¶¶ 107–08. As permitted under the City’s Code of Ordinances, the Temple timely appealed the designation. *Temple B’Nai Zion*, 727 F.3d at 1354. The Commission ultimately affirmed the designation. *Id.* at 1355. The Temple then sued the City in the Southern District of Florida under RLUIPA, the Florida Religious Freedom Restoration Act (“FRFRA”), and state and federal constitutional provisions. *Id.*

In moving to dismiss, the City argued that the dispute was unripe, citing *Williamson County*, because the Temple had not submitted a concrete expansion proposal after the designation. *See* Defs.’ Mot. to Dismiss Compl. at 3, 6–9, *Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach*, No. 1:10-cv-24549-KMW (S.D. Fla. Feb. 22, 2011), ECF No. 12. The City further maintained that the Preservation Board could authorize alterations or demolition through a certificate of appropriateness and that the Commission could grant a variance, making the Temple’s claim of impossibility speculative until it pursued those procedures. *See* Order at 12–13, *Temple B’Nai Zion, Inc. v. City of*

Sunny Isles Beach, No. 10-24549-CIV-WILLIAMS (S.D. Fla. May 8, 2012), ECF No. 76.

The district court dismissed the claims as unripe under *Williamson County* because the Temple had not submitted plans or sought a waiver or variance. *Temple B’Nai Zion*, 727 F.3d at 1355–56. The Eleventh Circuit reversed, concluding that the complaint challenged the allegedly discriminatory designation, not its effect on a future construction proposal. *Id.* at 1357–58 (holding *Williamson County* finality inapplicable where the claim attacks the designation itself rather than the denial of a particular development application). That reversal came in 2013—seven years after the Temple commissioned its plans and nine years after the congregation became Orthodox. Every Sabbath and every holiday observed in that building during the pendency of the ripeness fight was observed under the conditions the Temple went to court to change.

3. Bettendorf, Iowa

In January 2017, Rabbi Shneur Cadaner and his wife acquired a home in Bettendorf, Iowa, where they lived with their six children and where Rabbi Cadaner conducted a small weekly Shabbat service and Torah reading and discussion. The property was in a single-family residential district. The governing ordinance permitted a “[p]arish house and convent, in conjunction with schools” and a “[p]ublic and parochial school” as of right, but permitted “[c]hurches and other places of worship” only by special-use permit—and only if the property fronted a designated primary or secondary thoroughfare. After a neighbor complained that she was opposed to a

“fundamentalist Hasidic Jewish sect” holding prayer gatherings, the City Administrator notified Rabbi Cadaner that using the home as a house of worship required formal approval from the Board of Adjustment pursuant to the ordinance. *See* Am. Compl. 1, ¶¶ 26–29 & Exs. B–C, *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf*, No. 3:18-cv-00071-RP-HCA (S.D. Iowa Nov. 2, 2018), ECF No. 20. The City had not targeted any other mainstream religious organizations in the last ten years, despite multiple Catholic institutions in the same zone. *See id.* ¶¶ 94–95.

Rabbi Cadaner did not apply for the special-use permit because no application could have succeeded: the home did not front a designated primary or secondary thoroughfare, a threshold the ordinance made a precondition to any permit. Six months after the City Administrator’s letter, on July 24, 2017, the City Planner relied on a printout of Rabbi Cadaner’s Chabad website advertising Shabbat services as proof that Rabbi Cadaner was operating the home as an unauthorized place of worship. The resulting notice ordered that “[a]ll activity related to shabbat services on the property must cease immediately” and warned that, if the activity recurred, the City would take “immediate action without additional notification.” *Id.* Ex. D-2. Facing that threat and a permit he could not obtain, Rabbi Cadaner had no choice but to halt services in response to the City’s letter, for fear of the City’s threatened action.

Later that year, the City adopted a new zoning scheme that permitted houses of worship in residential districts as of right, which should have had the effect of absolving Rabbi Cadaner of any potential zoning violation. But a few months after the ordinance changes went into effect, the City sent Rabbi

Cadaner another letter, this time asserting that he was “running a business” from his home and directing him to obtain home-occupation approval and a business license. *Id.* Ex. D-1; *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf*, 389 F. Supp. 3d 590, 594 (S.D. Iowa 2019). Again, the City sent no comparable letter to any other religious institution in the area.

In July 2018, Chabad and Rabbi Cadaner, frustrated by their inability to operate under zoning regulations that appeared to apply only to them, sued the City of Bettendorf and three City officials, claiming violations of RLUIPA and the Free Exercise, Equal Protection, and Due Process Clauses. They sought declarations that the notices were unlawful, injunctions barring the defendants from interfering with prayer gatherings or enforcing the notices, and compensatory and punitive damages. Am. Compl. at 19–21. In moving to dismiss the claims, the City raised ripeness, arguing that the claims could not be reviewed because Chabad had never applied for a special-use permit, variance, or business license and therefore had not obtained a final municipal decision. *Chabad Lubavitch*, 389 F. Supp. 3d at 595, 597.

The district court accepted the City’s position, applied *Williamson County* finality to Chabad’s RLUIPA and related constitutional claims, and dismissed the action without prejudice as unripe. It held that even the alleged suspension of religious activities, economic injury, public embarrassment, and continuing enforcement uncertainty did not permit review without further municipal proceedings. *Id.* at 595–600. Absent appellate correction, the finality requirement left the suspension of services in place with no decision to review.

4. Kingston, Pennsylvania

The Borough of Kingston, Pennsylvania, permitted “public uses,” such as public schools, and semi-public uses, defined as “[c]hurches, Sunday schools, parochial schools, colleges, hospitals and other institutions of an educational, religious, charitable or philanthropic nature,” in its Community Commercial zones according to an ordinance that had been in effect since 1977. *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214, 225 (3d Cir. 2026). In 2019 and 2020, under that ordinance Rabbi Shimon Hellinger acquired two properties in Kingston, for the Wyoming Valley Yeshiva, a not-for-profit corporation representing his Orthodox Jewish congregation, that were in “Community Commercial” zones under Kingston’s zoning ordinances. Compl. ¶¶ 7, 35–48, *Anash, Inc. v. Borough of Kingston*, No. 3:24-cv-01955 (M.D. Pa. Nov. 13, 2024), ECF No. 1. Indeed, Rabbi Hellinger’s first property housed about ten Orthodox Jewish congregants who lived and prayed together; the other served as his rabbinical office and as a yeshiva for prayer, study, and religious instruction. Br. for Pls.-Appellants, *Anash, Inc. et al.*, at 4–5, *Anash, Inc. v. Borough of Kingston*, No. 25-1097 (3d Cir. June 23, 2025), ECF No. 18-1; *Anash*, 184 F.4th at 225. Both of these properties operated for many years without any objection from Kingston. Br. for Pls., ECF No. 18-1, at 7.

In 2023, Kingston rewrote the ordinance and replaced the inclusive scheme with a use table “that indicated, for each zone, whether a use would be permitted by right, by special exception, as a conditional use” or not permitted at all. *Anash*, 184 F.4th at 226. The new ordinance also included more specifically defined

land uses including: “rooming and/or boarding house” defined as “[a] residential structure . . . contain[ing] rooms which are rented or leased, with the occupants of said units being non-transient, and utilizing said location as a legal place of residence”; and “school” defined as “[a] facility that provides a curriculum of elementary and secondary academic instruction, including . . . schools that are licensed by the State and including schools which provide trade or vocational training.” *Id.*

After these new ordinances were enacted, a neighbor began to repeatedly complain that the property was being used as a dormitory, violating the amended zoning ordinance. *Id.* at 227. In ensuing meetings on the subject, it became clear to Rabbi Hellinger that “there was no interest on [Kingston’s] part to try to work something out” and that Kingston was “just trying to get [the yeshiva] to stop and shut down.” *Id.*

Rabbi Hellinger received multiple zoning violations in April 2023. *Id.* at 227–28. These violations described the first property as a non-permitted “rooming/boarding house” and the other as a “school.” *Id.* While the 2023 zoning ordinance outlined a process to grandfather in previous zoning uses via a Certificate of Nonconformance, Kingston’s zoning officer in charge of issuing such certificates sent a letter to Rabbi Hellinger, forecasting that he would deny the application upon receiving it and directing Rabbi Hellinger instead to seek a special exception from the Zoning Hearing Board. *Id.* Rabbi Hellinger did not follow this process to seek a special exception and continued using the properties as he always had. *Id.* at 228.

The following year, Kingston sent subsequent violations to Rabbi Hellinger for both properties, but

reframed the violation for the first property—now classified as a non-approved “dormitory,” despite that term appearing nowhere in Kingston’s zoning ordinances. *Id.* These later notices asserted that citations had already been filed with the district magistrate’s office and threatened new \$500 citations every day. *Id.* But when Rabbi Hellinger contacted the magistrate, he learned that Kingston had never filed any citations, and thus the magistrate could not hear an appeal of the citations. *Id.*

On October 1, 2024, the day before Rosh Hashanah, Kingston obtained warrants, searched both properties, and posted no-occupancy orders. *Id.* at 228–29. Kingston’s action disrupted not only Rosh Hashanah services but the entire Jewish community in the area as “[t]here was no other location in [Kingston] that [Rabbi Hellinger’s] congregation could use, then or now, without fear that the location could also be arbitrarily shut down . . . without tremendous hardship.” Br. for Pls., ECF No. 18-1, at 18–19. Indeed, the congregation “‘can’t practice Judaism’ in the same ways.” *Id.* at 20.

Following the searches of the properties, Rabbi Hellinger and the Yeshiva filed suit in federal district court, asserting claims under RLUIPA and the Constitution, among others, and moved for a preliminary injunction. Kingston opposed preliminary relief and argued that Plaintiffs were unlikely to prevail on the merits because their claims were not ripe. Kingston emphasized that Rabbi Hellinger had “not even [made] an attempt either under the available zoning laws to seek a variance from the ZHB, much less proven any of the necessary elements for a variance.” Defs.’ Br. Opp’n Pls.’ Mot. Prelim. Inj., at 13, *Anash, Inc. v. Borough of Kingston*, No. 3:24-cv-01955 (M.D.

Pa. Dec. 12, 2024), ECF No. 16. After the district court denied preliminary relief, a divided Third Circuit held that the congregation’s RLUIPA substantial-burden claim was ripe, reversed the denial, and remanded with instructions to enter a preliminary injunction. *Anash*, 184 F.4th at 245–46, 248–49. This reversal came well over a year later, after the congregation had passed through another cycle of the High Holidays, and every Sabbath in between, without the properties.

The pattern in the above cases is clear. A facially neutral law is applied disproportionately to a religious institution, and the municipality shifts the goal posts until it is too late. Even where courts heard the claims, the injury was already beyond repair. In practice, the Sixth Circuit’s ripeness rule offers review only after the harm is irrevocably inflicted, and denies review altogether to claimants who cannot outlast the municipality.

III. PETITIONER’S RULE IS NARROW AND ADMINISTRABLE: ORDINARY ARTICLE III PRINCIPLES GOVERN WHEN RELIGIOUS-LIBERTY CLAIMS ARE RIPE.

The rule Petitioner advances is neither novel nor difficult to administer. A religious-liberty claim is ripe when government action has caused a concrete, particularized, and actual or imminent Article III injury. *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1122 (2026). A credible threat of enforcement that objectively chills protected religious exercise is one familiar way that standard is satisfied. An “actual . . . enforcement action is not a prerequisite to challenging the law.” *Susan B.*

Anthony List v. Driehaus, 573 U.S. 149, 158 (2014). And government action may inflict a present First Amendment injury even when further proceedings could affect whether or how the government ultimately compels compliance. See *First Choice*, 146 S. Ct. at 1125–27 (holding that a government demand burdened First Amendment rights “when it [was] made and for as long as it remain[ed] outstanding”); *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (finding injury where plaintiffs faced an “actual and well-founded fear” of enforcement). Those principles do not change because the government acts through its land-use authority.

Grand’s case illustrates the idea that injury in these cases is present and immediate. Faced with the CADO and the Mayor’s threat, Grand canceled the prayer gathering planned for that Sabbath, telling his invitees that “the city of University Heights has directed me to halt any gatherings that could be seen as a ‘Place of Religious Assembly’” and that, “[a]s a result,” “we will have to cancel the prayer group at this time.” J.A. 190–91. Whatever a planning commission might later have concluded, no decision it could render would restore a single one of the missed prayer services.

In the context of religious worship, the injury from a credible enforcement threat can be immediate: *shiva* begins upon burial, a Seder occurs on a fixed night, and communal Sabbath prayer cannot be transferred to a later date. See *supra* Part I. Those obligations do not wait for the land-use process to become “final.” A missed period of *shiva* cannot be recovered; the Seder cannot be adjourned until the municipality acts; and a Sabbath that passes under an enforcement threat is lost outright. Where the

religious obligation is fixed in time, requiring *Williamson County* finality prolongs an injury that no later permit decision can cure. *Cf. Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” (citation omitted)).

The ordinary Article III inquiry thus supplies the administrable line: whether government action has already caused a concrete injury, not whether the plaintiff has reached the end of the municipality’s land-use process.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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