No. 25-965

In the Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Respondents.

On a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS AND THE ETHICS AND RELIGIOUS LIBERTY COMMISSION IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are nonprofit organizations dedicated to safeguarding religious liberty as a universal right. They submit this brief to urge the Court to clarify the pre-enforcement standing framework applicable to claims arising under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.*, and the First Amendment. The Sixth Circuit's decision, if left undisturbed, would hand government actors a blueprint for simultaneously burdening faith communities and insulating those burdens from judicial review.

The United States Conference of Catholic Bishops (USCCB) is a nonprofit corporation whose members are the active Cardinals, Archbishops, and Bishops of the United States and the U.S. Virgin Islands. On behalf of the Christian faithful, the USCCB advocates and promotes the pastoral teaching of the Catholic Church in a broad range of areas, from the free expression of ideas and the rights of religious organizations and their adherents, to fair employment and equal opportunity for the underprivileged, protection of the rights of parents and children, the value of human life from conception to natural death, and care for immigrants and refugees. When lawsuits touch upon important tenets of Catholic teaching, the Conference has filed amicus curiae briefs to assert its view, most often in this Court. In so doing, the Conference seeks to further the common good for the

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than amici curiae, their counsel, or their members made a monetary contribution intended to fund the brief's preparation or submission.

benefit of all. It has frequently participated as an amicus in this Court to further its particular interest in the right of individuals and communities to freely practice their faith.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and ethics entity of the Southern Baptist Convention (SBC). The SBC is the nation's largest Protestant denomination, with approximately 13 million members in more than 45,000 churches across the U.S. The SBC charged the ERLC with addressing moral, ethical, and cultural issues of importance to Southern Baptists, such as religious freedom, marriage and family, the sanctity of human life, and human dignity. Specifically here, Southern Baptists believe that the freedom to worship—whether in houses of worship or in your own home—is a divinely endowed right, enshrined in the First Amendment, and must be protected from government interference.

SUMMARY OF ARGUMENT

Religious freedom is not a privilege to be rationed by administrative gatekeepers. It is a constitutional right that federal courts are obliged to protect as soon as the government threatens to burden it. This case presents the Court with an opportunity to reaffirm that principle and to foreclose a growing practice by which government actors simultaneously burden religious exercise and attempt to insulate that burden from judicial review.

Daniel Grand is a Jewish man who opened his home for prayer. The City of University Heights responded by ordering him to stop in a cease-and-desist letter. That cease-and-desist letter was not an invitation to negotiate; it was a credible threat of enforcement against constitutionally and statutorily protected religious exercise. Yet the Sixth Circuit held Mr. Grand's claims were unripe because he had not first applied to the City for permission to practice his faith, permission the City had given itself the power to grant or deny.

That holding rests on a foundational error. The Sixth Circuit imported *Williamson County Regional Planning Commission v. Hamilton Bank*, a finality doctrine developed for Fifth Amendment takings claims, into a case arising under the Religious Land Use and Institutionalized Persons Act and the First Amendment. *Williamson County* is ill-suited for RLUIPA and First Amendment cases. The doctrine ensures that courts do not adjudicate the economic impact of a regulation before the government's final position is known. RLUIPA and the First Amendment, by contrast, are violated the moment a credible governmental threat chills protected religious exercise, regardless of whether an exemption process remains available. Forcing a religious plaintiff to exhaust an administrative process before vindicating his rights does not prevent premature adjudication; it imposes the very burden the Constitution forbids.

Amici are large religious bodies whose members encounter land-use ordinances, federal agency rules, and other regulatory regimes that restrict religious exercise while offering individual exemption processes designed to forestall judicial challenge. The Sixth Circuit's reasoning, if left undisturbed, would hand government actors a template for burdening faith communities while keeping the courthouse door closed. The Court should reverse the Sixth Circuit and clarify that *Susan B. Anthony List v. Driehaus*, not *Williamson County*, governs pre-enforcement standing in religious freedom cases, and that a plaintiff's failure to seek an optional exemption does not extinguish a credible threat of enforcement.

ARGUMENT

I. Under *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), Mr. Grand has suffered a justiciable injury.

The Sixth Circuit erred by evaluating Mr. Grand's injury under the prudential ripeness exception to standing from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985). *Williamson County* is a Fifth Amendment takings case that held a takings claim is not ripe until the land-use "decisionmaker has arrived at a definitive position on" whether the requested land-use will be allowed. *Id.* Mr. Grand's case, by contrast, raises questions of religious speech and religious exercise. That his claim challenges the City of University Heights's zoning code is of no moment, because Mr. Grand does not contend the code has affected his property value or infringed on any property right. He contends the code burdens his right to speech and the free exercise of religion.

Mr. Grand's standing thus should not be judged by case law interpreting the Takings Clause of the Fifth Amendment. It should be judged by this Court's and the lower courts' pre-enforcement precedents arising from cases pressing First Amendment arguments similar to Mr. Grand's. Those precedents demonstrate that Mr. Grand brings a justiciable pre-enforcement claim and has already suffered a cognizable injury.

A. *Susan B. Anthony List* is the framework for measuring whether there is a justiciable controversy in this case.

Mr. Grand's suit is a pre-enforcement challenge to the City of University Heights's zoning ordinances to the extent those ordinances prohibit use of his home for Jewish prayer meetings. The City's cease and desist letter, threatening to prohibit those prayer meetings, prevents or at least substantially chills Mr. Grand from using his home to practice his Jewish faith in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. In holding that Mr. Grand's case was not justiciable because he failed to exhaust an optional City-established exception process, the Sixth Circuit ignored pre-enforcement standing doctrine that establishes Mr. Grand's concrete constitutional injury.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) stated the modern three-part test for determining whether a plaintiff has standing to bring a claim. The plaintiff must show (1) an "injury in fact," (2) "a causal connection between the injury and the conduct complained of," and (3) that his injury is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Whether a plaintiff has standing to challenge a law on a pre-enforcement basis primarily concerns the injury-in-fact requirement. As a general matter, an injury in fact exists if the Plaintiff has a "personal stake in the outcome of the controversy," *Susan B. Anthony List*, 573 U.S. at 158, and his claims are "not conjectural or hypothetical," *Lujan*, 504 U.S. at 560.

Pre-enforcement cases present a question of timing: when does a threat of enforcement become sufficiently imminent to give rise to an injury in fact under Article III? On one hand, a plaintiff need not wait for an actual enforcement action before his claim is justiciable. Article III does "not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *Susan B. Anthony List*, 573 U.S. at 159 (quoting *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 128–129 (2007)). On the other hand, a plaintiff who presents a purely hypothetical threat of enforcement cannot invoke the jurisdiction of the federal courts. *Id.* at 158. To determine when a threat is sufficiently imminent to create a justiciable case under Article III, the Court has articulated three factors. Each of those factors is present in this case.

First, the plaintiff must allege "an intention to engage in a course of conduct arguably affected with a constitutional interest." *Susan B. Anthony List*, 573 U.S. at 160. Mr. Grand's prayer services easily exceed this threshold requirement. This Court has repeatedly ruled that prayer is core First Amendment speech and religious exercise. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). At-home religious services also are squarely protected First Amendment religious exercise. In *Tandon v. Newsom*, the Court enjoined California's Covid-19 regulations to the extent they prohibited in-home worship services. 593 U.S. 61 (2021).

Second, the plaintiff's conduct must be "*arguably* proscribed by the" law he challenges. *Susan B. Anthony List*, 573 U.S. at 162 (cleaned up and emphasis added). A statute or ordinance that "sweeps broadly" such that its prohibition "covers the subject matter of" the plaintiffs' conduct satisfies this element of pre-enforcement standing. *Id.* So does an official interpretation of the law that would prohibit the plaintiff's conduct. *Id.* Here, the University Heights Code of Ordinances § 1250.02 prohibits "[h]ouses of worship" in the U-1 zone where Mr. Grand's home is located. After he began his prayer meetings, the City informed Mr. Grand that he was operating his home as a "place of religious assembly" in violation of the City zoning code and ordered him to cease services. *Grand v. City of Univ. Heights, Ohio*, 159 F.4th 507, 510 (6th Cir. 2025). That is all that is required under Article III: Mr. Grand has been told by City officials that his conduct violates the law. While the Sixth Circuit's analysis turned on the possibility that the City would grant Mr. Grand an exception in the form of a special use permit, this potentiality does not alter the conclusion that the City's Code *arguably* proscribed Mr. Grand's conduct. The threat of enforcement from the City officials responsible for enforcing the Code is sufficient to hold that Mr. Grand's prayer meetings arguably fall within the Code's prohibition as an un-zoned use.

Third, the plaintiff must allege a "credible threat of enforcement." *Susan B. Anthony List*, 573 U.S. at 159. This is a light burden once a plaintiff has established that their conduct falls within a statute's prohibition; an actual threat of prosecution is not a requirement. A statute that arguably proscribes the plaintiff's conduct and portends significant penalties for its violation is sufficient to give rise to standing. *Id.* Indeed, in *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979), the State had taken no steps toward prosecution, but this Court found a credible threat because the State "had not disavowed" prosecuting the law and plaintiffs had "some reason" to fear prosecution. *Babbitt*, 442 U.S. at 302. In *Virginia v.*

American Booksellers Association, the Court found a credible threat for the simple reason that "[t]he State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988). In this case, not only does Mr. Grand's conduct fall within the statute's prohibition, he received a cease-and-desist letter from the City—a literal threat of enforcement. *Grand*, 159 F.4th at 509–10. That the threat came from the Mayor rather than the Planning Board is of no moment because it came from an official with enforcement authority. Indeed, not only was Mr. Grand served with a cease-and-desist letter, police units were ordered to drive by his house to search for violations, a local prosecutor began an investigation into him, and a city inspector actually searched his home. *See Grand*, 159 F.4th at 511. If any person has ever been credibly threatened with enforcement of a law, it is Daniel Grand.

1. Lower courts regularly find pre-enforcement standing in free exercise cases.

There is an extensive body of lower-court precedent finding completed, cognizable injury in pre-enforcement religious freedom cases analogous to Mr. Grand's.[2] Three are particularly relevant here.

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[2] Some recent examples include: *Braidwood Mgmt. Inc. v. EEOC*, 70 F.4th 914, 929 & n.27 (5th Cir. 2023) (holding plaintiffs had standing to bring pre-enforcement challenge where the EEOC previously brought an enforcement action under similar circumstances); *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 375 (5th Cir. 2022); *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 903

First, in *Anash, Inc. v. Borough of Kingston*, 184 F.4th 214 (3d Cir. 2026), the Third Circuit held that RLUIPA litigants suffer a cognizable injury sufficient to state a claim from a municipality's initial interpretation of its land-use regulations—well before any final administrative determination. *Anash* concerned the application of a municipality's zoning ordinance to two buildings owned by a Jewish rabbi and used for religious study, communal prayer, and religious group living. The municipality issued cease-and-desist letters citing zoning violations, and when the rabbi did not comply, it obtained administrative search warrants, inspected the properties, and condemned them on the day before Rosh Hashanah. *See Anash*, 184 F.4th at 227–30. The municipality then refused to allow occupancy until the buildings complied with both the building code and the zoning ordinance, even while acknowledging there was "no quick or easy way" to bring the properties into compliance. *Id.* at 229. The municipality further threatened daily fines of $500 for continued non-compliance. *Id.*

The Third Circuit held that the municipality's threats to fine the rabbi for violating the zoning ordinance and its condemnation orders were more than sufficient to establish a justiciable claim, even

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(W.D. La. 2025) (USCCB has standing to challenge PWFA final rule on pre-enforcement basis); *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1022 (D.N.D. 2024) (holding Catholic employers had standing to bring pre-enforcement challenge to Pregnant Workers Act Final Rule on pre-enforcement basis); *Christian Emps. All. v. EEOC*, 2022 WL 1573689, at *4 (D.N.D. May 16, 2022) (group of Christian employers had standing to challenge EEOC rule on pre-enforcement basis).

though the municipality had not made a final determination regarding the application of its zoning ordinances. *See Anash*, 184 F.4th at 245–46. The court articulated three scenarios in which a land-use regulation imposes a substantial burden on religious exercise: (1) when it restricts access to real property otherwise available for the proposed exercise of religion; (2) when it limits the use of real property so as to prevent the proposed religious exercise, even if the regulation is one of general applicability; or (3) when it has a significant adverse effect on real property used or available for religious exercise, even if it does not directly impede that exercise. *Id.* at 239–40. Applying this framework, the court found that the condemnation orders and threatened fines constituted a substantial burden under all three categories. *Id.* at 240–41. And it reached this conclusion over a dissent that invoked *Williamson County* finality doctrine, arguing that the claim was not ripe because the municipality had not issued a "final, definitive position" on the zoning ordinances' application. *See Anash*, 184 F.4th at 253–54 (Restrepo, J., dissenting). The majority rejected this takings-based approach, holding that "RLUIPA's substantial-burden provision is not contingent upon the formality of a final land-use determination." *Anash*, 184 F.4th at 245. This holding correctly interprets RLUIPA's interaction with standing doctrine and is consonant with this Court's recent decisions regarding justiciability of pre-enforcement First Amendment challenges.

The next two cases, *Franciscan Alliance, Inc. v. Becerra*, 47 F.4th 368, 375 (5th Cir. 2022) and *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022), illustrate the relatively low bar a litigant must clear to have pre-enforcement standing. Though they were not decided in the context of land use regulations, they demonstrate that litigants suffer real injuries before final enforcement of agency action.

Both cases were pre-enforcement challenges to final rules issued by the Department of Health and Human Services in 2016 interpreting Section 1557 of the Affordable Care Act and Title VII of the Civil Rights Act to require coverage and provision of gender-transition interventions for minors. In both cases, Catholic employers and medical providers challenged the 2016 Section 1557 rule shortly after its promulgation, arguing that the rule violated the First Amendment and the Religious Freedom Restoration Act. *Franciscan All.*, 47 F.4th at 372; *Religious Sisters of Mercy*, 55 F.4th at 592. Shortly after filing suit, however, presidential administrations changed, and HHS issued a notice stating that it was reconsidering the 2016 Section 1557 rule. *Religious Sisters of Mercy*, 55 F.4th at 592. In 2020, HHS substantially repealed and replaced the 2016 rule. *Id.* at 594. The 2020 Rule was then challenged by different plaintiffs arguing that the 2016 rule properly interpreted Section 1557, and district courts in New York and Massachusetts issued injunctions of the 2020 Rule. *Id.* at 596.

In both cases, the government argued that the repeal of the 2016 rule, and its replacement with the 2020 rule, made the plaintiffs' claims non-justiciable. In *Franciscan Alliance*, the government argued that plaintiffs' claims were made moot by the 2020 rule because it repealed and replaced the 2016 rule. *Franciscan All.*, 47 F.4th at 374–76. In *Religious Sisters of Mercy*, the government argued that there was an insufficiently credible threat of enforcement of the 2016 rule and thus plaintiffs lacked pre-enforcement standing to bring their claims. *Religious Sisters of Mercy*, 55 F.4th at 602–03.

The government further argued that it "'ha[d] not to date evaluated' whether it will enforce Section 1557 against [Catholic employers]" and thus the plaintiffs' alleged injury was merely conjectural. *Id.* The government also argued that its promise "to not enforce the challenged policies" to the extent they were contrary to the "Religious Freedom Restoration Act" and the First Amendment meant plaintiffs could not claim a credible threat of enforcement. *Id.*

The Fifth Circuit and Eighth Circuit rejected the government's arguments and held that the plaintiffs' claims were justiciable. Most notably, both courts held plaintiffs had pre-enforcement standing because the government refused to categorically disavow enforcement of the challenged interpretation of Section 1557 against Catholic employers and healthcare providers, including plaintiffs. *Religious Sisters of Mercy*, 55 F.4th at 603 (citing *Franciscan Alliance*, 47 F.4th at 376). In addressing the government's argument that it "had not…evaluated" enforcement against religious employers, the courts explained that "the government's assertion that it 'has not to date evaluated' whether it will enforce Section 1557 against the plaintiffs is actually a concession that it may do so." *Religious Sisters of Mercy*, 55 F.4th at 605 (citing *Franciscan Alliance*, 47 F.4th at 376) (cleaned up). The government's refusal to disavow enforcement coupled with its prior interpretation of Section 1557 to require coverage of gender transition interventions meant plaintiffs had standing. *Id.*

Franciscan Alliance and *Religious Sisters of Mercy* are helpful guides here for several reasons. First, they show that pre-enforcement standing is appropriate in cases asserting free exercise claims arising under statutes like RFRA and RLUIPA. Second, both cases show that Article III's standing requirement is not hard to meet in the pre-enforcement context. A past unconstitutional interpretation of a law coupled with a refusal to categorically disavow enforcement is sufficient to give rise to standing. And finally, as explained in Section II below, both cases show that the possibility of an exemption does not preclude standing.

2. *This Court's opinion in First Choice supports standing in this case.*

Not only is Mr. Grand's case justiciable because of his fear of enforcement, he has already suffered a completed injury sufficient to sustain his claim. Last term, this Court held that a cognizable injury can occur "not just when a [government] demand is enforced, but when it is made and for as long as it remains outstanding." *First Choice Women's Res. Centers, Inc. v. Davenport*, 146 S. Ct. 1114, 1125 (2026). The issues and arguments in this case strongly echo those in *First Choice*, and the Court's holding in that case should control its analysis here.

The facts of *First Choice* closely parallel those here. The Attorney General of New Jersey issued a subpoena to First Choice seeking, among other things, sensitive donor information—a demand that, like the cease-and-desist order here, targeted the exercise of constitutionally protected rights. First Choice responded by filing a federal suit seeking an order prohibiting enforcement of the subpoena. Both the district court and the Third Circuit held that First Choice had suffered no justiciable injury because no state court had yet compelled compliance with the subpoena. *First Choice*, 146 S. Ct. at 1121. In other words, they held that because no final decision had been made by the state tribunal, the plaintiff's injury was not yet ripe for judicial review.

The similarities between the two cases are striking, down to the arguments advanced by the government. In *First Choice*, the Attorney General repeatedly invoked Takings Clause jurisprudence to argue that First Choice had no standing because state proceedings were not yet final. *See* Br. on the Merits for Respondent 25, 36, 40, *First Choice Women's Res. Centers, Inc. v. Davenport* (2026) (No. 24-781); *First Choice*, 146 S. Ct. at 1128. That is precisely the argument University Heights advances here. And this Court squarely rejected it.

This Court saw through these procedural arguments and identified the concrete injury at the heart of *First Choice*; it should do the same here. The Court rejected the argument that no injury was manifested until state procedures were complete. That is because, the finality of the subpoena aside, "[a]n objectively reasonable recipient of a demand like that would be induced, as well, to trim its protected advocacy knowing it now stands in the government's crosshairs." *First Choice*, 146 S. Ct. at 1127. A completed formal process is not necessary for a cognizable First Amendment injury because "[t]he value of a sword of Damocles is that it hangs—not that it drops." *Id.* (quoting *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting)). The chilling effect on protected conduct is the injury; enforcement merely compounds it.

What was true for associational rights in *First Choice* is equally true for religious exercise rights here. Mr. Grand does not need to proceed through University Heights's administrative process before he is injured. The very existence of the looming proceedings and the already-issued orders is sufficient to harm his right to religious exercise. Indeed, Mr. Grand's injury is far more concrete than that in *First Choice*. There, the petitioner had received only an administrative subpoena, a demand for information that had not yet been enforced through judicial process. Here, Mr. Grand has received a direct order to cease his religious exercise. He has been subjected to inspections of his property. He has been threatened with daily fines for continued religious observance. He has, in short, been on the receiving end of an entire enforcement campaign. If the mere issuance of New Jersey's subpoena was enough to satisfy Article III, Mr. Grand's injuries more than clear that threshold.

B. Standing under *Susan B. Anthony List* cannot be overridden by *Williamson County*'s prudential ripeness exception to Article III.

The Sixth Circuit dismissed Mr. Grand's RLUIPA and First Amendment claims as unripe, relying on the finality requirement drawn from *Williamson County*, 473 U.S. 172, 193. That error was foundational because *Williamson County*'s finality rule is a doctrine of prudential ripeness, not a constitutional mandate. Rejecting a case for prudential, as opposed to constitutional reasons, is in substantial tension with the "virtually unflagging" "obligation" of "a federal court[] . . . to hear and decide a case" within its constitutional jurisdiction. Where a plaintiff independently satisfies the Article III test for pre-enforcement standing provided by *Susan B. Anthony List*, no prudential doctrine should close the courthouse door to adjudication of plaintiff's claims. Mr. Grand satisfies *Susan B. Anthony List* on this record and thus the Court should reverse the Sixth Circuit's decision.

The finality requirement of *Williamson County* was designed to serve a specific and narrow purpose: preventing federal courts from adjudicating takings claims before local authorities have determined the extent of the challenged regulation's application to the property at issue. As this Court explained, requiring absolute finality is "compelled by the very nature of the inquiry required by the Just Compensation Clause." 473 U.S. at 188–90. Specifically, whether a taking occurs turns on numerous "factors," including "the economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations." *Id.* at 191.

The rationale for finality in the takings context is straightforward. Whether a regulation affects a taking turns on the economic impact to the property owner—a fact-specific inquiry that is genuinely indeterminate until the regulatory agency has made all decisions affecting the land. *See MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 349 (1986) ("Until a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retains any reasonable beneficial use or whether existing expectation interests have been destroyed.”). The economic value of real property depends on contingencies—the availability of variances, waivers, and alternative uses—that may substantially alter the ultimate regulatory footprint. Until those contingencies are resolved, a court cannot know how far the regulation goes, and thus cannot assess whether it has “gone too far”' to affect a taking. *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

None of that logic applies here. Mr. Grand is not claiming that the City has taken his property without just compensation, and he does not ask this Court to calculate the economic diminution in the value of his land. The contingencies that make takings claims unsuitable for pre-final-decision adjudication are irrelevant to his claims. His claim turns on whether the City may constitutionally condition his religious exercise on that permit in the first place and whether the order to cease and desist is a credible threat of enforcement that chills his right to religious exercise. Nothing about Mr. Grand’s injury is indeterminate pending resolution of the administrative process. No state action can return the value of lost religious exercise to Mr. Grand or alter the value of his exercise going forward. His rights are priceless and he has already been prevented from praying and continues to be prevented from praying. The deprivation is complete and its scale is immediately knowable, meaning there is no reason to apply *Williamson County*.

Additionally, applying the prudential *Williamson County* inquiry to RLUIPA claims undermines its protection of religious exercise. RLUIPA, like RFRA, is a super-statute that displaces the ordinary operation of local ordinances in the service of robust protection for religious exercise. *See* 42 U.S.C. § 2000cc-3(e); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020). The Act imposes a demanding standard. A state actor that substantially burdens religious land use must demonstrate that the burden is the least restrictive means of advancing a compelling governmental interest. 42 U.S.C. § 2000cc(a). This Court has emphasized that RLUIPA should "be construed in favor of a broad protection of religious exercise." *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (quoting 42 U.S.C. § 2000cc-3(g)). And it should be considered at all stages of implementation of a land-use code, including, as here, responding to citizen complaints about an allegedly improper land use.

Applying *Williamson County*'s finality rule to RLUIPA claims inverts that command. It tells the religious plaintiff: before you can vindicate your statutory rights, you must complete a potentially years-long administrative process and wait for a final adverse decision even though the act of subjecting your religious practice to that process is itself the constitutional and statutory injury. The Sixth Circuit's rule actively increases the scope and scale of harm to religious exercise by forcing plaintiffs to suffer ongoing injury before they can seek the statute's protection. That result finds no support in RLUIPA's text, in this Court's precedents, or in the common understanding that the loss of religious liberty, even briefly, is irreparable. *See 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.”).

II. Unless the Court overturns the Sixth Circuit, its doctrinal confusion will recur.

The Court should overturn the decision below to clarify proper application of the finality doctrine and prevent state actors from abusing doctrinal confusion to burden religious freedom. Over recent decades, federal agencies and state governments have realized that they can manipulate ripeness doctrine by placing a categorical burden on religious exercise but offer an individualized accommodation process. Then, when religious groups sue based on the burden, the agencies invoke ripeness just like the City has done in this case. This argument is based on a misunderstanding of the federal courts’ jurisdiction, but it has proliferated in recent years. The Court should stop it.

A. There is a trend of state actors abusing ripeness to burden religion.

State actors who wish to deter robust religious exercise have realized that they can potentially manipulate the federal courts’ Article III jurisdiction by enacting a general policy that on its face burdens or prohibits religious exercise while allowing religious individuals and entities to seek an exemption from the policy on a case-by-case basis. Federal agencies, for example, promised in the *Religious Sisters of Mercy* and *Franciscan Alliance* litigation over the 2016 Section 1557 rule that they would determine whether RFRA and the First Amendment require specific exemptions on an individual basis. That individual exemption process, the agencies argued, meant the plaintiffs lacked Article III standing. And of course, the City in this case has argued that notwithstanding its blanket prohibition on houses of worship in Mr. Grand's zoning designation and its related cease-and-desist letter, Mr. Grand lacks standing because he has failed to apply for an exemption. But a state actor's "reliance on [a] case-by-case standard" for religious exemptions "constitutes 'a concession that it may' seek enforcement." *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1022 (D.N.D. 2024) (quoting *Religious Sisters of Mercy*, 55 F.4th at 605).

Several examples illuminate the trend.

1. The 2024 rule implementing the Pregnant Workers Fairness Act. A clear example of a policy gerrymandered in an attempt to evade federal court jurisdiction is EEOC's 2024 final rule implementing the Pregnant Workers Fairness Act. That rule required employers to accommodate, among other things, employee abortions and immoral fertility treatments. *See* 89 Fed. Reg. 29,183 (April 19, 2024). The EEOC expanded the definition of "pregnancy, childbirth, or related medical conditions" to include "termination of pregnancy, including . . . abortion" and "fertility treatment." *Id.* at 29,106, 29,183; 29 C.F.R. § 1636.3(b). "Fertility treatment" included fertility treatments like in vitro fertilization ("IVF") that are contrary to many employers' religious faith. *Id.* at 29,102, 29,190. Many religious employers, including amicus USCCB, oppose accommodation of abortion and certain forms of artificial reproductive technology,[3] and yet the PWFA rule applied to such employers on its face.

To evade federal court review of this policy, EEOC purported to adopt a "religious exemption" that EEOC would commit to determine whether an employer was entitled to a religious exemption through a "fact-sensitive, case-by-case analysis" conducted by the agency. *Id.* at 29,148–49. The government argued that this commitment—to consider a religious exemption on a claim-by-claim basis—rendered those religious employers who challenged the PWFA like *amici* USCCB without standing. "For Plaintiffs' or their members' injury to be credible, numerous contingencies would all have to occur," argued the government, including that "EEOC must reject all of the employer's potential defenses, [such as] the ministerial exception and RFRA." Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 14, *Catholic Benefits Ass'n v. Burrows*, No. 1:24-cv-00142-DMT-CRH (D.N.D. Aug. 22, 2024), ECF No. 22. Put another way, the EEOC enacted a rule that facially burdened religious employers but claimed that the rule could not be challenged in federal court unless and until the EEOC determined whether a specific employer was entitled to a religious exemption.

2. The 2016 and 2024 rules implementing Section 1557 of the Affordable Care Act. Another

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[3] USCCB challenged the PWFA final rule under RFRA on a pre-enforcement basis and ultimately won vacatur of the rule to the extent the Rule required USCCB to accommodate employee abortions. *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 911 (W.D. La. 2025).

example of a religious "exemption" strategically employed to evade federal court jurisdiction are HHS's 2024 and 2016 rules implementing Section 1557 of the Affordable Care Act. Both rules required healthcare providers, insurers, third-party administrators, and employers to provide and cover gender-transition interventions, including puberty blockers, cross-sex hormones, and surgical interventions. 81 Fed. Reg. 31,376, 31,376 (May 18, 2016); 89 Fed. Reg. 37,522, 37,699 (May 6, 2024).[4] And both rules announced a blanket policy for all covered entities within its scope, including Catholic healthcare providers, hospitals, and employers that hold sincere religious beliefs contradicted by the provision of gender transitions. Nor did the 2024 or 2016 Section 1557 rules contain a religious exemption for such employers and others who objected to the provision of gender transition interventions on religious grounds. *Religious Sisters of Mercy*, 55 F.4th at 590.

The 2024 Section 1557 rule instead stated, "[i]nsofar as the application of any requirement…would violate applicable Federal protections for religious freedom and conscience, such application shall not be required." 45 C.F.R. § 92.3(c); *see also* 89 Fed. Reg. at 37,532. The 2016 rule contained a similar statement. 45 C.F.R. § 92.2 (2016).

[4] HHS has published notice that the U.S. District Court for the Southern District of Mississippi vacated the gender-identity provisions of the 2024 Section 1557 final rule, rendering those provisions legally void and unenforceable while the remainder of the rule stays in force. Notice of Vacatur Regarding Certain Provisions of the 2024 Nondiscrimination in Health Programs and Activities Final Rule, 91 Fed. Reg. 32,887 (June 2, 2026).

The 2024 Section 1557 rule also adopted a procedure that allows a conscientiously objecting religious employer to "seek assurance" from HHS that it is exempt from one or more of the religiously objectionable mandates identified in this brief. 45 C.F.R. § 92.302. In subsequent litigation over the 2024 rule, the government argued that these provisions deprived aggrieved plaintiffs of standing. "The new assurance process under § 92.302 adds to an already attenuated chain of events that must occur before any CBA member might be injured and weighs heavily against finding that any future injury is sufficiently imminent to give rise to Article III jurisdiction."[5] HHS and EEOC made this argument even though they were actively enforcing Section 1557 and Title VII to require covered entities to provide and cover gender-transition interventions. *See, e.g.*, *Christian Emps. All. v. EEOC*, 2022 WL 1573689, at *5 (D.N.D. May 16, 2022) (noting that the government conceded that "there have been complaints that have likely gone through the conciliation process" concerning the challenged interpretations of Section 1557 and Title VII).

As with the PWFA rule, in the 2024 and 2016 Section 1557 rules HHS promulgated a blanket mandate that uniformly burdened the religious beliefs of thousands of healthcare providers and employers

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[5] Combined Opposition to Plaintiffs' Partial Motion for Summary Judgment and Memorandum in Support of Defendants' Cross-Motion to Dismiss Plaintiffs' RFRA Claims or, in the Alternative, for Summary Judgment on Those Claims at 23, C*atholic Benefits Ass'n v. Becerra*, No. 3:23-cv-00203-PDW-ARS (D.N.D. Sept. 11, 2024), ECF No. 57.

across the United States, while at the same time arguing that those providers and employers could not challenge the rule under RFRA or the First Amendment until each one of them had gone through the optional "assurance" process one-by-one over a course of years.

3. The 2023 Health and Human Services grant regulation. The Department of Health and Human Services employed the same device in its 2023 grant regulation. 88 Fed. Reg. 44750 (Jul. 13, 2023). That regulation governs grants across a wide swath of HHS programs, including preventative health services, health education, refugee assistance, assistance to low-income housing, and a host of other government programs.

The 2023 rule prohibited any recipient of HHS grant funds from discriminating on the basis of sexual orientation or gender identity. This interpretation placed an enormous burden on religious recipients, who would have been required to eliminate single-sex bathrooms, place foster children with same-sex couples, and begin addressing their employees by their preferred pronouns. *See* United States Conference of Catholic Bishops, comment on Health and Human Services Grants Regulation at 6–7 (September 5, 2023).

The grant regulation borrowed the exemption regime from HHS's Section 1557 rules. Thus, once again, HHS imposed a rule that facially burdened religious exercise. If a religious grant recipient failed to comply with the nondiscrimination requirements, they violated the rule. But an individual grant recipient could apply for its own religious exemption.

4. State agency administrative subpoenas. Following this Court's opinion in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 228 (2022), state attorneys general have begun leveraging ripeness doctrine to insulate onerous subpoenas from judicial review. The state officials will issue a subpoena to a religious organization and, when the subpoena is challenged in court, will argue that the challenge is unripe because the religious organization has not yet defied the subpoena and litigated its validity. This creates functionally the same result as the rules above: religious organizations cannot vindicate their rights until they've once litigated their individual case and lost.

Most notable of these cases is *First Choice v. Davenport*. This Court corrected New Jersey's error, but other attorneys general have deployed the same formula. In *Obria Group, Inc. v. Ferguson*, No. 3:23-CV-06093-TMC, 2025 WL 27691, at *2 (W.D. Wash. Jan. 3, 2025), the Washington Attorney General issued a civil investigative demand to a network of pro-life pregnancy resource centers, alleging violations of the state's Consumer Protection Act. The Obria Group filed suit in federal court, arguing that the subpoena violated its First Amendment rights to free speech and free exercise of religion. Like the Attorney General in *First Choice*, Washington argued that the challenge was premature because the organization had not yet defied the subpoena and litigated its validity in state enforcement proceedings. The district court rejected that argument, finding that the mere issuance of the investigative demand created a cognizable injury. *See also Judge rules attorney general cannot enforce subpoena against Seattle*

Archdiocese, National Catholic Reporter (July 18, 2024), https://www.ncronline.org/news/judge-rules-attorney-general-cannot-enforce-subpoena-against-seattle-archdiocese (reporting on a related case where a court blocked the Washington Attorney General from enforcing an administrative subpoena against the Seattle Archdiocese). These cases illustrate a broader pattern: state officials issuing administrative demands to religious organizations and then invoking ripeness doctrine to insulate those demands from judicial review. While the ruling in *First Choice* corrects the specific question at issue in that case, the case was only one part of a larger pattern that this Court's intervention can help arrest.

The lower courts have largely seen through these attempts to evade federal court review for what they are. Such exemption processes are not a disavowal of enforcement that deprives a plaintiff of standing. *See Religious Sisters*, 55 F.4th at 606 ("Although the government maintains that it 'will comply' with RFRA, its promise is 'so vague that the scope of liability is both unknown by the government and unknowable to the plaintiffs,'" (cleaned up)). And as for the case-by-case approach, one lower court aptly described the government's position of forcing religious organizations to "withstand a case-by-case analysis . . . of their religious preferences" as "[g]overnment harassment of religious organizations." *Christian Emps. All. v. EEOC*, 2022 WL 1573689, at *5 (D.N.D. May 16, 2022). The burden of investigation and possible litigation, at the very least, provides "a substantial likelihood of added regulatory burden and compliance costs." *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 664 (W.D. La. 2024).

B. The Court should clarify that the Sixth Circuit's finality rule is limited to the takings context.

The decision of the Sixth Circuit below approves the kind of jurisdictional skullduggery that has been on the rise at federal agencies. On one hand, the City of University Heights has promulgated a code that proscribes Mr. Grand's right to use his home for prayer services and warned him to cease and desist from doing so. *Grand v. City of Univ. Heights, Ohio*, 159 F.4th 507, 510 (6th Cir. 2025). On the other hand, the City and the Sixth Circuit claim Mr. Grand's claim is not justiciable until he applies for and is denied a special exemption from the rule. *Id.* The Sixth Circuit couched this as a "finality requirement—a concrete and final decision by the local authorities." *Id.* at 512. "This approach," the Sixth Circuit argues "prevents [courts] from swinging at a moving target." *Id.*

If allowed to stand, the Sixth Circuit's approach would invite government actors to double down on requiring religious objectors to jump through administrative hoops before invoking the jurisdiction of the federal courts. Religious plaintiffs will be required to suffer an injury and then sit on their hands while the very agency responsible for their injury considers and rejects a request for religious exemption. Only then will they be able to invoke the jurisdiction of the federal courts.

This incentive structure is perverse. A government actor wishing to burden religious practice may do so freely, so long as it pairs the burden with a discretionary exemption process. The more cumbersome and uncertain that process, the more effectively it deters religious exercise and the more it also postpones judicial review. In the interim, the believer must decide whether to submit to a potentially costly and years-long administrative process in hopes of obtaining permission to practice their faith or abandon that practice to avoid prosecution. Neither option is consistent with RLUIPA's command that religious exercise receive broad protection at all stages of land use regulation. *See* 42 U.S.C. § 2000cc-3(g).

To be sure, the Sixth Circuit attempted to cabin its reasoning to the land use context. But while a finality requirement might make sense of a takings claim, it makes no sense to apply it to First Amendment freedoms. Those freedoms are violated not just by absolute prohibitions on religious exercise, but also by temporary burdens or processes that make exercising those rights more difficult. *See N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."). Indeed, this Court has recognized 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). A finality rule that delays federal jurisdiction by months or years is therefore not a neutral timing mechanism. It is itself a constitutional harm.

To see the mischief that can result from importing *Williamson County* to First Amendment cases, the Court need look no farther than the dissent in *Anash* *v. Kingston*. As described above, *Anash* concerned a Jewish rabbi, Shimon Hellinger, who owned two properties in Kingston, Pennsylvania, one used for religious group living for Orthodox Jewish young men studying under his tutelage, and the other used as a rabbinical office and yeshiva for prayer, religious study, and religious instruction. *Anash*, 184 F.4th at 229.

Hellinger received cease-and-desist letters and letters from the municipality threatening fines of $500 a day if he used his properties. When that did not stop the community's religious gatherings, the municipality obtained search warrants for the buildings. They executed those warrants the day before Rosh Hashana, arriving at the first of Hellinger's buildings and threatening to break down the door of the house of worship. *Id.* When Hellinger admitted law enforcement, they inspected both buildings and condemned them the same day. *Id.* at 227–30. After the condemnation order, it was against the law for Hellinger or his congregation to even enter the buildings.

After all this—cease-and-desist orders, threatened $500 daily fines, administrative search warrants executed by police, and condemnation orders timed to the eve of the High Holy Days—Judge Restrepo invoked *Williamson County* finality doctrine to argue that Rabbi Hellinger's injury was *not yet ripe*. *See Anash*, 184 F.4th at 253–54 (Restrepo, J., dissenting). The dissent would have held that, although police arrived at Hellinger's building, threatened to break down the door, and then expelled the congregation from their place of worship on the eve of the High Holy Days, Hellinger needed to await a "final, definitive position" from the municipality before the judiciary could recognize that any religious exercise had been substantially burdened. *Id.* at 254. The majority rightly rejected this takings-based approach, holding that "RLUIPA's substantial-burden provision is not contingent upon the formality of a final land-use determination." *Id.* at 245.

The *Anash* dissent's analysis is untenable, but under the Sixth Circuit's reasoning in this case, it might well be correct. If *Williamson County* applies to RLUIPA and free exercise claims, a religious congregation could suffer months of government harassment, be threatened with ruinous daily fines, have its property condemned on the eve of its holiest days, and be expelled from its house of worship—all without suffering a cognizable injury. That cannot be the law.

The Court should reject that erroneous conclusion and clarify that pre-enforcement standing does not require a state actor to expressly reject an individual's request for religious exemption. Rather, a plaintiff has standing as soon as a credible threat arises, when a policy arguably proscribes the plaintiff's conduct, and the government threatens enforcement against him.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the court of appeals and clarify that S*usan B. Anthony List*, not *Williamson County*, governs pre-enforcement standing in religious freedom cases, and that a credible threat is not extinguished by an optional exemption process.

Respectfully submitted,

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