

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 FOR RESPONDENTS

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QUESTION PRESENTED

The Court granted review of the following question presented*:

Whether the First Amendment’s established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by *Williamson County*’s land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

* In his opening brief, petitioner alters the question presented. Br. i; *see infra* pp.24, 54.

II

PARTIES TO THE PROCEEDING

Petitioner Daniel Grand was Appellant in the U.S. Court of Appeals for the Sixth Circuit, and Plaintiff in the U.S. District Court for the Northern District of Ohio below.

Respondents, City of University Heights, Ohio; Michele Weiss, Mayor, in her official capacity; Michael Dylan Brennan, former Mayor, in his individual capacity; and Luke McConville, former City Law Director, in his individual capacity,[†] were Appellees in the U.S. Court of Appeals for the Sixth Circuit, and Defendants in the U.S. District Court for the Northern District of Ohio below.

[†] Petitioner did not appeal the dismissal of his claims against Paul Siemborski. C.A. Appellant Br. 2 n.1.

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BRIEF FOR RESPONDENTS

STATEMENT

Respondent City of University Heights respects the right of its citizens to pray in their homes. The City also welcomes the establishment of formal houses of religious assembly. The City’s zoning code recognizes houses of assembly as among the “most desirable use[s] of the land in the City.” UHCO § 1274.01(a), Pet.App.74a. Accordingly, the Code authorizes the City’s Planning Commission to

grant special-use permits to establish houses of assembly in residential areas.

This case is not about whether petitioner Daniel Grand can host small prayer groups in his home. When petitioner lived in University Heights (until he moved in July 2026), no provision of City law barred small prayer groups. The zoning authorities never told him he could not host small prayer groups without a permit, and the City expressly reaffirmed in the district-court proceedings that he could.

The case arises from a series of events triggered by petitioner’s January 2021 invitation announcing the inauguration of a “Beis Hakeneset” (Hebrew for “House of Assembly”) in his home. That invitation prompted concerns about application of the City’s zoning laws, which require special-use permits for “houses of assembly” in residential districts. As the permitting process played out, petitioner clarified that he did not intend to establish a house of assembly and instead wished only to host a small prayer group. But before the City could decide that he did not need a permit, he withdrew his application and terminated the process. He nevertheless sued to challenge the City’s zoning law eighteen months later.

That challenge is moot. Petitioner sold his home, no longer lives in University Heights, and is no longer subject to the challenged ordinance. Even before he moved, respondents affirmed in the district-court proceedings that there was no ongoing controversy: the City’s laws do not require a special-use permit to host small prayer groups in one’s home. Pet.App.38a-39a.

To avoid mootness, petitioner now claims to be pursuing claims for damages or retrospective relief. But

petitioner affirmatively moved for entry of summary judgment in the district court and did not say anything about seeking damages. Nor did he say he was pursuing damages in the Sixth Circuit—even after respondents argued mootness. Rather, the Sixth Circuit understood petitioner to assert a preenforcement challenge to the ordinance’s application. Petitioner cannot obtain relief from an ordinance that no longer applies to him or his property.

In all events, the federal courts lacked jurisdiction over petitioner’s challenge to the ordinance from the outset. The district court and the Sixth Circuit—in a unanimous decision by then-Chief Judge Sutton—correctly dismissed petitioner’s claims as unripe under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

Williamson County recognizes that when it comes to application of discretionary zoning laws like this one, courts ordinarily cannot determine whether a law “inflicts an actual, concrete injury”—*i.e.*, whether the plaintiff has suffered Article III injury—until zoning authorities have applied the law to the plaintiff’s intended land use. *Id.* at 193. Petitioner’s summary-judgment and appellate briefs described his claims as challenging application of the City’s special-use permit ordinance to his desired prayer groups. But the Planning Commission had not determined that the ordinance applied. The Sixth Circuit correctly concluded that petitioner’s as-applied “challenges to the ordinance are unripe” because he “withdrew his application for a special use permit before anyone had a chance to adopt an interpretation of the ordinance or even to determine whether Grand needed a special use permit in the first place.” Pet.App.8a-9a.

To be sure, *Williamson County* does not apply to every religious-liberty claim in the land-use context. For example, as the Sixth Circuit observed, it does not govern ripeness of facial challenges to zoning laws. Pet.App.14a. Petitioner abandoned a facial challenge below. Pet.App.14a. To the extent petitioner now attempts to assert other claims—for example, that the City discriminated against him by refusing to collect his trash—he abandoned those claims as well. The Sixth Circuit reasonably understood petitioner to be asserting a preenforcement, as-applied challenge to the *ordinance* and correctly applied *Williamson County* to hold that challenge unripe.

The Court should either affirm or dismiss the petition.

A. Factual Background

1. University Heights is a Cleveland suburb with a population of about 14,000. About 20-25% of the City’s population is Orthodox Jewish.¹

The Cleveland area does not have a perfect record when it comes to welcoming Orthodox Jews. University Heights has tried to improve its record. In 2023, the City amended its charter to prohibit discrimination by the City on the basis of religion, among other grounds. University Heights Charter art. 8, § 12. In 2025, the City adopted a resolution, introduced by respondent and former-Mayor Michael Brennan, expressing the City’s “commitment to keep members of the City’s Jewish community safe from expressions of hate and physical harm.” Res. No. 2025-31 (University Heights 2025), <https://perma.cc/XWT4->

¹ Grace Gilson, *Michele Weiss and Justin Brasch Mark Milestones as First Orthodox Jewish Mayors in Their Cities*, Jewish Telegraphic Agency (Jan. 2, 2026), <https://perma.cc/46TJ-FTEY>.

YD6B. Also in 2025, the City’s voters elected as mayor Michele Weiss, a longtime councilmember and Vice Mayor. Weiss is reportedly the first practicing Orthodox Jewish woman to be elected mayor in the Nation.² Weiss is a respondent in these proceedings in her official capacity.

Recently, the City’s growing Orthodox population has outpaced its existing religious infrastructure. Some City residents have responded by opening “shuls” in buildings zoned for residential purposes. The word “shul” in Yiddish typically means “synagogue,”³ and the Jewish community regularly uses “shul” to refer to synagogues, including in the University Heights area.⁴

Several home shuls in the City have functioned as traditional synagogues, operated by boards and generally open to members of the community. One home shul featured a sanctuary, children’s classroom, nursery, kitchen, offices, and a social hall.⁵ Another home shul once hosted 120 to 130 worshippers in the basement. D. Ct. Dkt. 83-1 at 55 (Brennan Dep.). And, on another occasion, a house was purchased specifically for hosting religious services. *Id.* at 58.

² Gilson, *supra*, n.1.

³ Shul, American Heritage Dictionary of the English Language (5th ed. 2018).

⁴ See, e.g., Congregation Zichron Chaim, *About Us*, <https://perma.cc/9QVC-DA33> (“Congregation Zichron Chaim ... is an orthodox synagogue. ... The roots of our shul date back to 1975.”); Khal Yereim, <https://perma.cc/6TSW-6KBU> (synagogue describing itself as a “full-service shul serving the Cleveland Heights community”).

⁵ Abigail Preiszig, *University Heights OKs Special-Use Permit for Synagogue on University Parkway*, Cleveland Jewish News (Mar. 21, 2025), <https://perma.cc/PB4K-YMZD>.

Many of these home shuls were originally created without permits allowing them to operate as houses of worship in residential areas.⁶ *Id.* at 36, 94. In University Heights, as in many cities, residential zoning districts are designed only to contain residential structures. University Heights’ U-1 residential districts permit only single-family dwellings, buildings owned by a board of education or municipality (like public schools), and libraries. UHCO § 1250.02, Pet.App.71a.

The general provisions governing U-1 residential districts, however, are just the default rules. The Code also allows property uses within U-1 districts that “foster the most desirable use of the land in the City,” identified in a Code section titled “Houses of Assembly and Social Service Uses.” *Id.* § 1274.01(a), Pet.App.74a. The City’s Planning Commission must approve special-use permits for these uses, which include “[h]ouses of worship or religious education, including churches, temples, synagogues, religious organizations, parish houses and parochial schools.” *Id.* § 1274.01(b)(1), Pet.App.74a. The permit requirement ensures that the special use does not “impair surrounding property values or uses, vehicular parking and pedestrian or traffic conditions,” and is not “otherwise contrary to the public health, safety and welfare.” *Id.* § 1274.01(d), Pet.App.75a-76a.

Special uses are subject to additional rules like structure height requirements. But applicants can obtain variances from those requirements from the Planning Commission. Once the Commission approves special-use permits and variances, the City Council must also sign off.

⁶ Jimmy Oswald, *University Heights Approves Permit for Home Shul*, Cleveland Jewish News (June 17, 2026), <https://perma.cc/VF8N-5SG9>.

Id. §§ 1274.01(a), 1274.02(f)(5), Pet.App.74a, 83a. The record contains no evidence that the City Council or Commission has ever denied an application for a special-use permit for a house of assembly.

The Planning Commission and City Council granted the Aleksander Shul—the home shul that had hosted 120-plus worshippers, D. Ct. Dkt. 83-1 at 55—a special-use permit and the ten variances it needed to operate a synagogue in a house.⁷ The City Council also unanimously approved the Planning Commission’s recommendation of a special-use permit and five variances to another home shul, Zichron Asher Zelig, to provide daily services for up to 150 worshippers.⁸ The Heichal Hakadosh Synagogue—the home shul that submitted plans for a sanctuary, social hall, and offices—also received the permits and variances it needed to operate in a residential district.⁹ And the City authorized the Congregation Zichron Chaim synagogue to demolish six homes and build a new synagogue in a residential area.¹⁰

2. On January 19, 2021, petitioner Daniel Grand emailed friends announcing “the inauguration of the Shomayah Tefillah Beis Hakeneset located at 2343 Miramar Blvd. (The Daniel J. Grand Residence).” J.A.344. As petitioner admitted below, the Hebrew phrase

⁷ Jane Kaufman, *Council OKs Permit, Variances for Aleksander Shul to Operate as Synagogue*, Cleveland Jewish News (Dec. 7, 2021), <https://perma.cc/3X9M-7ME5>.

⁸ Oswald, *supra*, n.6.

⁹ Preiszig, *supra*, n.5.

¹⁰ Jane Kaufman, *University Heights Signs Development Agreement for Zichron Chaim*, Cleveland Jewish News (Oct. 20, 2021), <https://perma.cc/KQ42-GKX8>.

“Beis Hakeneset” means “House of Assembly.” C.A. Appellant Br. 2.¹¹ The invitation introduced “our Rabbi—Rabbi Roskam” and directed recipients to “the shul entrance.” J.A.344. The invitation also urged recipients to “spread the word to whomever you feel might be interested in coming” and “bring someone with you.” J.A.344-345. Petitioner’s attorney later admitted “that [petitioner] publicly phrased his contemplated use more loftily than he actually imagined his use would be.” J.A.295.

Word about petitioner’s shul spread. Ben Feldman, a City resident and member of a local synagogue, became concerned that someone was “opening a synagogue in their house on Miramar.” J.A.193. On January 21, Feldman sent a Facebook message to then-Mayor Brennan with the invitation’s text, noted “a number of these pop up synagogues in the neighborhood,” questioned whether they were adhering to “Covid protocols,” and asked if Brennan could “put a stop to this.” J.A.193-194.

Brennan reviewed the invitation and (as he later explained) interpreted it as Feldman did: the invitation was “consistent with the formal opening of a synagogue with a name.” D. Ct. Dkt. 83-1 at 85. Brennan testified in a deposition that he wanted to clarify that use of a home as a synagogue in a residential area required a permit. *Id.*; see UHCO § 1274.01, Pet.App.74a. Later that day, Brennan tried to reach petitioner to clear up “whatever ... misunderstanding” existed about whether a house of worship could be opened without a special-use permit. D. Ct. Dkt. 83-1 at 73; *see also* J.A.322.

¹¹ Petitioner registered the name Shomayah Tefillah as a not-for-profit organization sometime earlier in New York. J.A.187; D. Ct. Dkt. 83-1 at 79.

Petitioner did not answer Brennan's call, J.A.197, so that same day, January 21, then-City Law Director Luke McConville emailed petitioner a letter. The letter explained that petitioner's home was "zoned U-1 for residential use" and that "use or operation of the Premises as a religious place of assembly and/or in operation as a shul or synagogue is not permitted" without a special-use permit. J.A.199. The letter advised that, "[t]o the extent" petitioner's home was "currently being used for said purposes or [is] intended to be used for such purposes in the immediate or near future," petitioner should "immediately cease and desist any and all such operations." J.A.199. The letter stated that violations "may result in building code citations" and noted the option to apply for a special-use permit. J.A.199-200.

Petitioner and Brennan then spoke by phone, also on January 21. In his deposition, petitioner said he thought Brennan told him that he needed a permit to gather ten men to pray in his home, although he "c[ould] only paraphrase" and "c[ouldn]t speak for" the Mayor. J.A.152-154.

Petitioner shared with Brennan that day a copy of the invitation, but that version differed from the original one that Feldman forwarded to Brennan. The version from Feldman referred to the intended gathering as a "shul" and encouraged recipients to spread the word and invite others. J.A.194-195. The invitation petitioner shared with Brennan, however, replaced "shul" with "prayer session" and omitted statements about the rabbi, spreading the word, and bringing additional guests. J.A.190-192.

3. On January 22, 2021, petitioner applied for a special-use permit. J.A.201. The City scheduled petitioner's application for a virtual Zoom hearing before the five-member Planning Commission on March 4, 2021. D. Ct.

Dkt. 81-9. Mayor Brennan was one of the five members. University Heights Charter art. 7, § 2.

Before the hearing, petitioner acknowledged the confusion his invitation had created. In a March 2 letter to neighbors, petitioner stated that he did not intend to open a “synagogue’ or ‘shul’ (same word in Yiddish).” J.A.287. He explained that “[a] bonafide shul is a community facility that is always open to the public” and that his home, by contrast, would not be open to the public. J.A.288. He emphasized: “We have no desire to operate a bonafide Synagogue (English) Shul (in Yiddish) or Beit Hakeneset (Hebrew) out of our home.” J.A.290.

At the March 4 hearing, the City’s Law Director advised petitioner that he could present evidence supporting his application and that anyone testifying would be sworn in and could be cross-examined. J.A.226, 262. Although petitioner (at 32) claims the Planning Commission employed an “unprecedented quasi-judicial format,” it used that format here due to a “quirk[]” in the City’s zoning code, as the Law Director explained at the hearing. J.A.225-226, 262. Applications for special-use permits under Chapter 1274 are deviations from the zoning code. Most other matters before the Planning Commission involve applications for property uses consistent with the zoning code. *See, e.g.*, UHCO §§ 1264.01(b), 1280.07(a) & 08(a). Applications that deviate from the zoning code, meanwhile, generally fall under the purview of the Board of Zoning Appeals. Accordingly, on the occasions when the Planning Commission fulfills this typical Zoning Board function, it uses the quasi-judicial procedures employed by the Board of Zoning Appeals under Chapter 2506 of the Ohio Revised Code. J.A.262. While the procedures in Chapter 2506 are not strictly required by Ohio

law, “they are strongly recommended” to avoid “infring[ing] on a party’s right to a fair hearing.” Michael R. Moran, *Ohio Admin. Law Handbook & Agency Directory* § 7:6 (2025-26 ed.).

Petitioner appeared with counsel¹² at the hearing, and petitioner and Rabbi Rosskamm testified. J.A.231-232. Petitioner’s counsel explained that “this hearing is about whether a residence of University Heights may host prayer services in a designated, modest space” that would be “respectful of and unintrusive upon” neighbors, and described a men’s prayer group meeting once a week and on certain high holidays. J.A.232. Petitioner’s counsel also stated that petitioner was “not disputing that [Section 1274.01(b)] applies” to his “Shabbos Shul.” J.A.232-233.

Residents testified for and against the application. One neighbor testified that he was “initially concerned that [petitioner] was going to try and turn [his] house into a synagogue” but now favored granting the permit because petitioner had “assured [him] that’s not going to be the case.” D. Ct. Dkt. 81-11 at 70-71.

Neighbors opposing the permit raised concerns about traffic, parking, and the frequency of the property’s use. J.A.248-257. Other neighbors went further. One resident suggested that petitioner’s shul was an attempt to obtain a tax exemption, J.A.247, and another stated that if petitioner wanted to “avoid a walk to [his] existing temple” he “should have picked somewhere else” to live, J.A.253. Still another wrote that she did “not want our neighborhood labeled as Jewish.” J.A.280.

¹² According to petitioner, a City representative (possibly now-Mayor Weiss) had told him by phone to hire an attorney. D. Ct. Dkt. 80 at 267-268 (Grand Dep.).

Hours into the Zoom hearing, the five-member Commission discussed whether to grant, deny, or table the application for more discussion. It was after 10:00 p.m., and members of the public repeatedly interrupted the Commission's attempts to deliberate. J.A.260, 264-269.

Commissioner Michael Fine moved to table the application until the next hearing. He stated that because he was unsure how the property would be used, petitioner should "c[o]me back with a more specific request as to what he wanted." J.A.264, 266. Commissioner April Urban seconded the motion, observing that "there was a noticeable difference from what [she] heard was the intended use" (*i.e.*, a small prayer group) and what residents were concerned about (*i.e.*, a synagogue). J.A.267-268.

The Commission voted 3-2 to table the application for further discussion at the next public hearing. J.A.269-270. Commissioners Siemborski and Brennan opposed tabling. J.A.269. Brennan later explained that he voted "no" because he thought the Commission should deliberate without delay, so that it could "have told Mr. Grand, ... here are some items we would like to have, that would help us make our decision." D. Ct. Dkt. 83-1 at 212.

The day after the hearing, the commissioners corresponded by email with each other about petitioner's application. *See* J.A.275-284. Multiple commissioners expressed discomfort about the "[p]roblematic ... rhetoric" of some members of the public. J.A.275-284.

On the merits of petitioner's application, Commissioner Fine wrote that he found petitioner's proposal "not clear." J.A.281. He "d[id] not know why anyone would need a special use permit to invite[] 10 friends to pray with them," or "how this would be different th[a]n my having friends over regularly for parties." J.A.282. In the same

email chain, Commissioner Urban recommended dismissing the application because “the use presented (the applicant proposed gath[er]ing 10-15 friends at his house once a week, as well as three times a year on the high holidays, for prayer) does not require a special use permit.” J.A.277. She asked if it could “be made clear that private gatherings in one’s home are permissible, but if they occur at a frequency or size that is disruptive to the neighbors, more akin to a house of assembly than a private residence, actions would need to be taken.” J.A.278.

Before the Commission could discuss the application further by email, Law Director McConville reminded the commissioners that deliberation had to occur at a publicly noticed hearing, as the Mayor explained at the next hearing. J.A.337. The Commission thus postponed further discussion until the next hearing. J.A.337.

On March 16, a week before the next scheduled hearing on March 23, petitioner emailed the Commission to ask what additional information he should provide. J.A.296-297. Because the commissioners had ceased email communications, they had not yet settled on what materials they wanted to receive, although one commissioner responded by asking for floorplans and a site plan so that the Commission could “ensure” the space is “safe for the inhabitants.” J.A.296.

The next morning, Mayor Brennan responded that “[t]he Planning Commission may discuss whether additional materials are needed to make the decision on the merits,” and that “[i]f such materials are deemed necessary, [petitioner] will be given sufficient time to provide them.” J.A.294.

On March 23, an hour before the next hearing, petitioner emailed the Commission to withdraw his

application for a special-use permit because he “d[id] not wish to operate a house of worship as is defined under the zoning ordinance in the privacy of [his] home.” J.A.138. At that time, petitioner understood that he “did not need to seek a permit for a small prayer group.” Pet. Br. 15.

Petitioner’s opening brief in this Court states that he withdrew his application because Chapter 1274 prohibits “sleeping or residential use accommodations” as part of special-use permits. Pet. Br. 15 (quoting UHCO § 1274.02(f)(4), Pet.App.83a). The Code’s prohibition on “sleeping or residential use accommodations” is, however, qualified by the language “[e]xcept for existing approved uses,” which may have covered petitioner’s existing use of his home to sleep. UHCO § 1274.02(f), Pet.App.82a. In any event, petitioner never raised that concern when withdrawing his application. J.A.138. And because petitioner withdrew his application, the Commission never addressed whether sleeping in a house of worship was permitted or whether to grant a variance to allow such use.

The Commission met as scheduled on March 23. Brennan read petitioner’s withdrawal into the record and reminded attendees that “congregating at 2343 Miramar Boulevard or any other address located in a residence zoned U-1 without a special-use permit is a violation of city law.” J.A.337-338. He continued, “I’m hopeful that the wording of the withdrawal is not intended to suggest that congregating weekly at a residence to conduct activities consistent with those in *a house of assembly* does not require a special-use permit” and clarified that “there is no permission granted here *to operate a house of assembly* or conduct activities consistent with one at 2343 Miramar Boulevard.” J.A.338-339 (emphases added). Brennan added, “[i]f you observe such activities, and I hope you do

not, but if you do, you may report them to the city, and the city will enforce its laws, which exist for the benefit of the entire community.” J.A.339.

The following year, on February 18, 2022, the City sent petitioner a letter proposing a memorandum of understanding confirming that regular private prayer gatherings limited to invited guests did not require a special-use permit. D. Ct. Dkt. 79-1 at 151-153. The memorandum would preserve ordinary enforcement of neutral parking, noise, and other property rules. *Id.* The record contains no response from petitioner.

4. In 2021, both before and after petitioner withdrew his application, his next-door neighbors Jeff and Vivienne Porter lodged complaints with the City concerning parking, his property’s condition, and possible building-code violations. The City referred each complaint to appropriate departments. In response to the parking complaints, the City coordinated with the police and building departments to ensure that zoning rules were appropriately enforced. J.A.302-313. City police instructed patrol units to look for parking violations and to log responses to parking or noise complaints, but apparently never issued any citations except for one parking ticket to a visiting friend of petitioner’s. J.A.169-170, 302-308. In late March or early April, the building inspector investigated the complaint regarding possible building-code violations, with petitioner’s wife’s permission. No violations were cited. J.A.314-318, Pet.App.35a.

At some point, the Porters installed cameras directed toward and into petitioner’s home. D. Ct. Dkt. 80 at 199. After petitioner hung a sheet or mesh barrier, the City informed him that the barrier violated the City’s zoning rules and offered to discuss privacy alternatives. *Id.* at 205. Petitioner did not take the City up on the offer. *Id.*

Contrary to petitioner's assertion (at 17), Mayor Brennan did not "condone[]" the Porters' activities. Petitioner's contrary assertion in his brief cites only to allegations in his second amended complaint. Because the district court decided this case on summary judgment, petitioner "can no longer rest on such mere allegations." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (citation omitted). The summary-judgment record demonstrates that, far from condoning their actions, Mayor Brennan called Mr. Porter an "asshole." J.A.171.

Petitioner similarly cites in his brief his second amended complaint to support other allegations while citing no substantiating evidence. (So does the United States. *See, e.g.*, U.S. Br. 4-6, 8-9, 24-25.) For example, he claims that the City issued "a citation about a fence the City had *already* inspected and approved," Pet. Br. 18 (citing J.A.56-57), and that the City "referred [him] for potential 'criminal charges' for *other* purported violations," Pet. Br. 18 (citing J.A.48-53, 55). Petitioner adduced no supporting evidence at summary judgment and cites none in his brief. This Court should disregard any allegation unsupported in the summary-judgment record.

Elsewhere, petitioner cuts short his quotations from the summary-judgment record. He claims "the City prosecutor devised a strategy to 'lay[] a foundation for a successful prosecution' of Grand." Pet. Br. 18 (citing J.A.44-46, 315-316; Pet.App.35a). The quoted email, however, merely states that a housing inspector will conduct an inspection and issue a notice "for all violations he sees," which "notice is the first step in laying a foundation for a successful prosecution *if it becomes necessary*." J.A.315 (emphasis added). Petitioner cites no evidence that anyone was planning to prosecute him or threatened to do so.

Petitioner also claims that from late May to early July 2021, the City refused to collect his trash. Pet. Br. 18; J.A.174. In reality, the City requested that petitioner put his garbage at the end of his driveway because the City’s garbage trucks had difficulty navigating petitioner’s driveway, J.A.176, which petitioner himself characterized as “winding” and “very long,” J.A.167. Petitioner refused to place his trash at the end of his driveway. J.A.176. After petitioner’s complaints about missed pickups, the City restored service without insisting that he move his trash to the end of the driveway. J.A.177.

B. Procedural Background

1. A year and a half after abandoning his permit application, in September 2022, petitioner sued the City, Mayor Brennan (in his official and personal capacities), Law Director McConville, and several commissioners (among others, including his neighbor, Porter) in the U.S. District Court for the Northern District of Ohio.

Petitioner’s 69-page operative second amended complaint asserted twenty counts, including claims under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). J.A.83-93. His complaint requested injunctive and declaratory relief, a writ of mandamus, compensatory and punitive damages, and costs and fees. J.A.93-97.

After discovery, the parties cross-moved for summary judgment. Petitioner moved for summary judgment against two defendants—the City and the Mayor—on eleven counts, including all of the counts he addresses in his brief in this Court. As relevant here, petitioner focused his argument under the First Amendment on “the City’s policies,” claiming that “City policy forbids protected conduct in Grand’s private home without a [special-

use permit].” D. Ct. Dkt. 81 at 17, 19. Petitioner relatedly argued that the January 21 cease-and-desist letter and Brennan’s comments at the second hearing enforced that policy. *Id.* at 14-15, 18. As for his RLUIPA counts, petitioner asserted that “Chapter 1274 ... violates [RLUIPA’s] substantial burden, equal terms, nondiscrimination, and unreasonable limitations clauses.” *Id.* at 1, 29 (“Section 1274(f) violates RLUIPA as a matter of law.”).

Petitioner opposed the City’s motion for summary judgment on the same grounds. *See, e.g.*, D. Ct. Dkt. 89 at 18 (“UHCO 1274 violates Grand’s First Amendment rights of free religion and free assembly ... and RLUIPA’s substantial burden provision.”); *id.* (the City’s “laws and policies constitute an impermissible prior restraint”). He did not oppose summary judgment on the claims against the other defendants except for his civil conspiracy claim. Pet.App.38a.

Even though petitioner affirmatively moved for entry of “summary judgment” against the City and the Mayor, D. Ct. Dkt. 81 at 19, 26, 27, 30, his motion never requested or even mentioned damages, much less demonstrated an absence of a genuine dispute of material fact over damages. He did not ask the district court to enter judgment solely as to liability and hold a trial on damages. *See* Fed. R. Civ. P. 56(a).

Petitioner’s briefing also failed to mention some of the facts that he now emphasizes. For example, his district-court briefing never mentioned that Mayor Brennan purportedly told him by phone he would need a permit to host a prayer gathering of just ten people—an allegation that is now a central focus of petitioner’s briefing in this Court. *See* Pet. Br. 1, 8, 9, 30, 52. And he never mentioned his allegations that the City issued fencing or parking citations or refused to pick up his trash. *See* Pet. Br. 18.

Respondents made clear in the summary-judgment briefing that if petitioner “kept the Shabbos prayer at his house to ten or so people ... it would not be the business of the City and would not require [a special-use permit].” D. Ct. Dkt. 90 at 4. As Mayor Brennan stated in his deposition: “a small prayer gathering, even a small regular prayer gathering is not the same as a shul or a synagogue, and not the city’s business.” J.A.324. The district court thus understood that respondents had “stipulated that Grand, and anyone else in the City, can hold small, informal religious (or non-religious) gatherings on a regular basis and such activity is not subject to any of the City’s ordinances or permitting requirements.” Pet.App.38a-39a.

The district court granted summary judgment to respondents. Pet.App.22a. The court dismissed petitioner’s RLUIPA, First Amendment, procedural due process, and equal protection claims as unripe, citing the “finality requirement” in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).¹³ Pet.App.42a-50a. In *Williamson County*, this Court held that a claim challenging “application of government [land-use] regulations” is “not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” 473 U.S. at 185-86.

Although *Williamson County* addressed a takings claim, the district court noted that the finality requirement applied to any as-applied “constitutional and statutory challenges to local land-use requirements.”

¹³ The district court dismissed the other counts for other reasons. See Pet.App.22a.

Pet.App.43a (citation omitted). Here, petitioner claimed the City’s ordinance prohibited him from hosting prayer gatherings before the City had “determine[d] the ordinance’s applicability” to that use. Pet.App.48a.

The court observed that the record suggested the ordinance did not cover petitioner’s proposed use. Pet.App.49a-50a. The January 21 cease-and-desist letter told petitioner to seek a special-use permit *if* he was operating a “religious place of assembly.” Pet.App.47a. The Planning Commission “appeared to agree” that “the ordinance did not apply” to petitioner’s prayer gatherings. Pet.App.48a. And petitioner himself withdrew his application “because the ordinance did not apply.” Pet.App.49a.

The district court noted that *Williamson County*’s finality requirement only applies to as-applied challenges. Pet.App.49a n.6. But it held that petitioner forfeited a facial challenge to the ordinance by “neither stat[ing] nor develop[ing] in argument” any such challenge. Pet.App.49a n.6.

Although the district court granted summary judgment on the procedural due process claim on ripeness grounds, it alternatively held that “Grand was afforded due process.” Pet.App.43a n.5.

2. Petitioner appealed. In his Sixth Circuit briefing, petitioner did not mention damages or retrospective relief, or argue that, “[a]t a minimum, he had a ripe damages claim for each of his past injuries.” Pet. Br. 2. Petitioner instead told the Sixth Circuit that his “complaint challenged UHCO 1274, facially and as applied, under the First Amendment, the Equal Protection clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act (RLUIPA).” C.A. Appellant

Br. 2-3. Similarly, in the very first sentence of his reply brief, petitioner explained that he was “challeng[ing] a zoning decision by the City.” C.A. Reply Br. 1.

Petitioner sought reversal on several grounds. First, petitioner argued that his First Amendment and RLUIPA claims were ripe because the January 21 cease-and-desist letter was a “final” decision that the ordinance barred his prayer gatherings. C.A. Appellant Br. 23; C.A. Reply Br. 8-10. Likewise, petitioner argued, the Mayor’s comments at the second hearing constituted a final decision that “any religious activity in a private home, no matter how modest ... was unlawful and would be subject to prosecution.” C.A. Reply Br. 13; *see* C.A. Appellant Br. 33.

Second, petitioner maintained that the “district court wrongly ignored [his] facial challenges to the City’s ordinances.” C.A. Appellant Br. 37 (capitalization omitted). Petitioner insisted that he “remains subject to UHCO 1274 and cannot freely exercise his religion by assembling in his home to pray,” thus establishing “standing to challenge the Ordinance.” C.A. Appellant Br. 44-45.

Third, petitioner argued that the district court wrongly dismissed his due process claim as unripe. C.A. Appellant Br. 30-33. Petitioner explained that this claim stemmed from “the unfairness of the quasi-judicial hearing” and thus ripened immediately. C.A. Appellant Br. 33; C.A. Reply Br. 18-19.

Fourth, petitioner argued that his discrimination claims (under the Equal Protection Clause and RLUIPA) were ripe under *Williamson County* because it would have been “futile” to pursue his special-use permit application in light of the Commission’s tolerance of his neighbors’ antisemitism. C.A. Appellant Br. 34-37.

The Sixth Circuit affirmed. Consistent with petitioner’s briefing, the Sixth Circuit understood petitioner to challenge the City’s special-use-permit “ordinance.” Pet.App.8a. Judge Sutton, writing for a unanimous panel, explained that “most of Grand’s challenges to the ordinance are unripe”—specifically, his as-applied challenges. Pet.App.8a. Petitioner’s as-applied challenges to Chapter 1274 “turn[ed] on whether [petitioner’s] proposed gatherings would render his home a ‘house[] of worship’ under the ordinance.” Pet.App.9a-10a. But, the court noted, the “Planning Commission never determined whether the ordinance applied to Grand’s gatherings.” Pet.App.9a. That meant that petitioner “filed too early,” and the court thus lacked “jurisdiction” under “Article III.” Pet.App.6a (citation omitted).

Williamson County, the court explained, bars courts from hearing “[c]hallenges to land policy” until there is “a concrete and final decision by the local authorities” that the “zoning ordinance [applies] to the property in dispute.” Pet.App.7a (citation omitted). That rule applies to “a variety of constitutional and statutory challenges to land-use policy” and “prevents [courts] from swinging at a moving target.” Pet.App.7a. In this case, the court had “no idea” how the ordinance would apply to petitioner’s prayer group. Pet.App.10a (citation omitted). Until petitioner requested clarification from the City, “it [was] not for [the court] to permit litigation by hypothetical when local authorities stand ready to provide whatever clarity or permission the claimant needs.” Pet.App.12a (citation omitted).

The court rejected petitioner’s argument that the January 21 cease-and-desist letter was a “final decision” because neither the Law Director nor the Mayor had “authority over the challenged regulations.” Pet.App.9a.

Neither the Law Director nor the Mayor could “answer” the question “whether his proposed gatherings would render his home a ‘house[] of worship’ under the ordinance.” Pet.App.9a-10a. The Planning Commission “implements ... any decisions about special use permits” and, the court noted, that body had never “determined whether UHCO § 1274.01 applies to the kinds of gatherings [petitioner] has in mind.” Pet.App.8a. The court also noted that the letter was “not an enforcement action, and the City may not enforce it.” Pet.App.13a.

The court noted that “[a] government’s position is final” for ripeness purposes if further proceedings would be “futile.” Pet.App.10a. But the court rejected petitioner’s argument that the proceedings had become futile. The Planning Commission’s review “had not become an empty affair”; “the Commission scheduled a second hearing to consider [petitioner]’s position in greater detail” because they “found the issue complicated.” Pet.App.11a.

The court next rejected petitioner’s procedural due process argument. According to the court, “it’s difficult to see how Grand can have a cognizable due process claim when his actions—dropping any effort to obtain relief—brought to an end whatever process is due.” Pet.App.11a.

Finally, the court affirmed the district court’s decision regarding petitioner’s facial challenges. Although *Williamson County* does not apply to facial claims, petitioner “forfeited these claims.” Pet.App.14a.

3. Petitioner petitioned for a writ of certiorari, asking the Court to consider “[w]hether the First Amendment’s established chilling-effect doctrine ... is displaced by *Williamson Cnty.*’s land-use finality requirement when a plaintiff alleges that government threatens both before and

after a Planning Commission meeting chilled religious exercise, worship, and assembly.” Pet. i. This Court granted certiorari on that question.

Petitioner’s opening brief (at i) reformulates the question to ask “whether *Williamson County*’s takings-based finality requirement displaces the rules that ordinarily determine when First Amendment and associated religious-liberty claims are ripe for judicial review, just because those claims arise in a land-use context.” The brief (at 3 n.1), in turn, defines “religious-liberty claims” to include petitioner’s “equal-protection and due-process claims arising from the same discriminatory conduct.”

On September 16, 2026, respondents discovered that petitioner had moved out of University Heights. According to county records and Zillow, on May 25, 2026, four days after filing his certiorari-stage reply brief, petitioner listed his home at 2343 Miramar Boulevard for sale.¹⁴ By June 15, he had signed a sale contract.¹⁵ This Court granted certiorari on June 30. On July 9, petitioner transferred his deed to new owners.

Petitioner’s opening brief did not disclose the sale. To the contrary, he asserted (at 16) that “[h]e has lost 292 weeks’ worth of Sabbaths—and dozens of High Holidays—where he could have prayed with others in his own home.” *See also, e.g.*, Pet. Br. 1, 32, 52. That assertion corresponds to the number of weeks between the January 2021 cease-and-desist letter and the filing of petitioner’s opening brief on August 31, 2026, after he had already

¹⁴ *See* 2343 Miramar Blvd, University Heights, OH 44118, Zillow, <https://perma.cc/5LME-DD5Y>.

¹⁵ *See id.*

moved. On September 18, 2026, after respondents inquired about the sale, petitioner informed this Court by letter that he no longer resides in University Heights.

SUMMARY OF ARGUMENT

I. The Court need not decide whether this moot case was once ripe. This Court may affirm or dismiss the petition without reaching ripeness because petitioner's challenges to UHCO § 1274 are moot. The Sixth Circuit understood petitioner to bring preenforcement challenges to the City's zoning ordinance, seeking prospective relief to allow him to host prayer groups in his home. Those challenges became moot early in the litigation when all parties agreed that UHCO § 1274 does not require a special-use permit for small prayer groups. Subsequent events have only underscored petitioner's mootness problem. Mayor Brennan left office last year, mooted any claim premised on fear that Brennan would enforce the ordinance against him. And then petitioner sold his home and left University Heights, eliminating any possibility of enforcement. Petitioner cannot avoid mootness by belatedly reframing this case as a damages lawsuit.

II. If the Court addresses ripeness, it should affirm the Sixth Circuit's conclusion that the district court lacked Article III jurisdiction to decide whether UHCO § 1274 was unlawfully applied to petitioner's property. The Sixth Circuit correctly held that petitioner's as-applied land-use claims are unripe under the finality requirement adopted in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

A. The finality requirement governs ripeness for claims challenging land-use regulations. Like standing, ripeness prevents federal courts from adjudicating hypothetical or abstract disputes. Because of the flexibility

built into land-use regulations, a court ordinarily cannot know from the face of a regulation what uses of property will be permitted. The finality requirement accordingly recognizes that land-use disputes will not be ripe for adjudication until the “permissible uses of the property are known to a reasonable degree of certainty.” *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001). Finality is typically satisfied by a decision from local authorities applying a regulation to the at-issue property, but claims also may be ripe when a plaintiff can show that local authorities have reached a de facto final position, such that proceedings before the relevant authorities would be futile.

B. The finality requirement has always been an Article III rule. *Williamson County* explained—and other cases confirm—that the finality requirement ensures that the challenged regulations have caused the plaintiff an actual, concrete injury. In the preenforcement context, *Williamson County* implements Article III’s requirement that plaintiffs show a credible threat of enforcement. No credible threat—*i.e.*, no concrete injury—exists until plaintiffs can show that their proposed use is “arguably proscribed” by the land-use regulation and “the threat of future enforcement ... is substantial.” *Susan B. Anthony List (SBA) v. Driehaus*, 573 U.S. 149, 161-64 (2014). In other words, courts lack jurisdiction until it is reasonably clear how a land-use regulation applies to a proposed use of property, which is all *Williamson County* requires.

No principled reason exists to confine this Article III rule to takings cases. First Amendment and RLUIPA challenges to land-use ordinances present the same problem *Williamson County* addressed in the takings context: courts cannot determine if a regulation unlawfully interferes with a property use until it is reasonably clear how

the regulation applies. RLUIPA’s text confirms that Congress contemplated that religious-liberty claims would be subject to ordinary rules governing justiciability in the land-use context.

C. Petitioner’s challenges to the application of UHCO § 1274 are unripe. The ordinance was never enforced against petitioner. And no credible threat of enforcement existed because the Planning Commission never decided how, or if, the ordinance applied to petitioner’s proposed use. Neither the cease-and-desist letter nor the Mayor’s comments at the second Planning Commission hearing—which both addressed use as a house of assembly—constituted credible threats of enforcement.

Petitioner’s attacks on the Sixth Circuit’s analysis are unfounded. He criticizes the court of appeals for failing to address his “key” cases. But petitioner cited almost none of those cases to the Sixth Circuit. He also criticizes the court of appeals for failing to address his various claimed injuries. The Sixth Circuit, however, expressly addressed his claimed First Amendment chill and found it insufficient, on this evidentiary record, to confer jurisdiction. Pet.App.13a-14a. Petitioner cites other supposed injuries, but he did not explain below how these injuries are traceable to application of the ordinance and did not even mention some of them at all.

III. Applying *Williamson County*’s finality requirement to First Amendment and RLUIPA claims does not burden religious liberty.

A. The finality requirement does not apply to allegations that a land-use regulation infringes religious liberty on its face. Those claims ripen as soon as the challenged regulation is enacted.

B. Because the finality requirement is necessarily context-specific, it will not apply to some religious-liberty claims that do not turn on application of a land-use regulation. To the extent petitioner now tries to fit some of his alleged injuries into this category, those arguments are forfeited or beyond the scope of the question presented.

C. When the finality requirement does apply, it is a relatively modest requirement. Plaintiffs need only show that ambiguities about the permissible uses of property have been resolved to a reasonable degree of certainty. And if a plaintiff can show that proceedings before local regulators would be futile, no further engagement with the administrative process is required for a land-use claim to ripen.

ARGUMENT

The Sixth Circuit understood this case as a preenforcement challenge to the City’s zoning ordinance, UHCO § 1274. *E.g.*, Pet.App.8a, 12a-13a. Petitioner described the case in those very terms to the Sixth Circuit, stating that his “complaint challenged UHCO 1274, facially and as applied, under the First Amendment, the Equal Protection clause of the Fourteenth Amendment, and [RLUIPA].” C.A. Appellant Br. 2-3. He cited the ordinance over 140 times in his briefing before the lower courts. The Sixth Circuit therefore applied the ordinary rules that govern justiciability of preenforcement “challenges to land-use policy.” Pet.App.7a. Under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), Article III requires plaintiffs who assert as-applied “constitutional and statutory challenges to land-use policy” to show a “concrete and final decision by the local authorities” that the ordinance applies to the at-issue property.

Pet.App.6a-7a. No such decision occurred here, so petitioner’s claims are unripe.

As an initial matter, this Court lacks jurisdiction two times over: petitioner’s challenges to the ordinance are both unripe and moot. But, even if petitioner’s claims are not moot, the Sixth Circuit correctly determined that “most of Grand’s challenges to the ordinance are unripe” under *Williamson County*. Pet.App.7a-8a. *Williamson County*’s test identifies when “the reach of a challenged [land-use] regulation” is sufficiently defined that a federal court can address a real—not hypothetical—Article III controversy over whether the regulations impose burdens that violate federal statutes or the Constitution. *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001). That question cannot be answered here, where petitioner withdrew his application for a special-use permit and the City never enforced the challenged ordinance against him.

Petitioner’s arguments about when plaintiffs can sue to remedy injuries caused by *other* government actions distort what the Sixth Circuit held below. No court—including the Sixth Circuit—has held that *Williamson County* extends to claims alleging “City-run and City-encouraged surveillance, trumped up citations, bogus criminal investigations, and the suspension of trash collection,” or the like. *Contra* Pet. Br. 31-32, 48. The Sixth Circuit did not address those allegations below because petitioner failed to develop or assert them.

Correctly understood, *Williamson County* barred petitioner’s claims and poses no threat to religious-liberty claims.

I. Petitioner’s Challenges to the Ordinance Are Moot

Article III limits federal courts to deciding “actual and concrete disputes, the resolutions of which have direct

consequences on the parties involved.” *United States v. Sanchez-Gomez*, 584 U.S. 381, 385 (2018) (citation omitted). If the dispute disappears and “becomes moot at any point during the proceedings,” there is “no longer a ‘Case’ or ‘Controversy’ for purposes of Article III.” *Id.* at 385-86 (citation omitted).

The Sixth Circuit appears to have understood petitioner to pursue only prospective relief, as the court understood him to be challenging application of the ordinance. *See, e.g.*, Pet.App.8a (“most of Grand’s challenges *to the ordinance* are unripe” (emphasis added)). But petitioner’s claims for prospective declaratory and injunctive relief are triply moot. The Court thus should affirm or dismiss the petition because it lacks Article III jurisdiction even if petitioner’s claims are ripe. *See Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 4 (2023) (“we can address jurisdictional issues in any order we choose”).

First, petitioner’s claims are moot because all parties agree that UHCO § 1274 does not prohibit him from hosting small prayer gatherings without a permit. Respondents made clear at summary judgment that “[i]nsofar as Grand just wants to pray in his home with other Orthodox Jews, he is free to do so without interruption by the City.” D. Ct. Dkt. 90 at 14; *see also id.* at 4; D. Ct. Dkt. 79 at 9, 17; D. Ct. Dkt. 88 at 3, 5, 20. The district court found that respondents had “stipulated that Grand, and anyone else in the City, can hold small, informal religious (or non-religious) gatherings on a regular basis and such activity is not subject to any of the City’s ordinances or permitting requirements.” Pet.App.38a-39a. Respondents maintained before the Sixth Circuit that the ordinance “d[oes] not apply to prohibit small religious gatherings at [petitioner’s] house,” and expressly argued mootness. C.A. Appellees Br. 19, 31-32 & n.8.

Critically, petitioner did not argue in reply that his case was not moot because he was seeking damages.

Second, petitioner’s claim (at 30) that Mayor Brennan is chilling his conduct is moot now that Brennan is no longer in office. *See supra* p.5. Petitioner never explains why his fear that former-Mayor Brennan would enforce the challenged ordinance against him justifies his suit now that Mayor Weiss serves as mayor.

Finally, petitioner mooted his claims for prospective relief when he moved out of University Heights nearly two months before filing his opening brief in this Court. There is no risk that the City’s ordinance will interfere with his desired religious activity. A decision from this Court can have no direct consequences for petitioner’s claims challenging prospective application of the ordinance to property petitioner no longer owns.

In a letter to this Court, petitioner resists the straightforward conclusion that his claims for prospective relief are moot. He argues that whether his claims are ripe “does not depend on what remedies Mr. Grand will seek,” and, curiously, that remedies have never been relevant to the litigation because “the City has never disputed his standing.” Pet. Ltr. 2 (Sep. 23, 2026).

Both parts of that argument are wrong. First, mootness—like other justiciability doctrines—invariably turns on the requested relief. Mootness doctrine, no less than standing, requires a plaintiff to show a live controversy “for each form of relief sought.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (discussing standing); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (“plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek”). Whether petitioner’s

claims are moot (or ripe) necessarily turns on the relief he seeks.

Second, petitioner is wrong to assert that the City has never challenged his standing. *See also* Pet. Br. 24, 30 (making similar assertion). In many cases, including this one, standing and ripeness “boil down to the same question.” *Susan B. Anthony List (SBA) v. Driehaus*, 573 U.S. 149, 157 n.5 (2014) (citation omitted). The City premised its ripeness argument in the Sixth Circuit on Article III. C.A. Appellees Br. 11; *see also id.* at 16-17 (disputing assertion petitioner suffered “immediate harm”); BIO 16-17 (same). And the Sixth Circuit likewise invoked Article III in holding petitioner’s claims unripe. Pet.App.6a; *see also infra* Part II.B.

Petitioner tries to avoid mootness by asserting that his lawsuit is about damages. Pet. Ltr. (Sep. 18, 2026); *see also* Pet. Br. 2, 22, 33. But although petitioner’s complaint requested “compensatory damages,” J.A.96, and respondents thus moved for summary judgment on qualified-immunity grounds, *see* D. Ct. Dkt. 79 at 20-21, petitioner never mentioned damages when he affirmatively sought entry of judgment in his favor, *see supra* p.18.

Likewise, petitioner said nothing about damages before the Sixth Circuit, even after respondents argued mootness. *See supra* pp.20-21. Petitioner never argued that a credible threat of enforcement confers standing to seek not only prospective relief but also damages.¹⁶ Petitioner instead emphasized that his claims required judicial

¹⁶ A “plaintiff’s standing to seek injunctive relief does not necessarily mean that the plaintiff has standing to seek retrospective damages.” *TransUnion*, 594 U.S. at 436. Petitioner assumes, without any analysis, that a “credible threat of enforcement” confers standing for damages claims where the threatened enforcement never materializes. Pet. Br. 22-23, 33. This Court has determined that credible

resolution because he “remains subject to UHCO 1274 and cannot freely exercise his religion” and “has no guidance as to what is permitted under the law.” C.A. Appellant Br. 44-45; *see also* C.A. Reply Br. 14. It is no wonder that the Sixth Circuit understood this case as involving “pre-enforcement review” of the ordinance. Pet.App.12a. And the usual remedy for preenforcement challenges is declaratory or injunctive relief. *See, e.g., SBA*, 573 U.S. at 154. Having failed to advance a claim for damages throughout the litigation, petitioner cannot now invoke damages to save his claims from mootness.

II. The Sixth Circuit Correctly Held That Petitioner’s Land-Use Claims Are Unripe Under *Williamson County*’s Finality Requirement

Because petitioner’s claims challenging the ordinance are moot, this Court need not proceed to consider ripeness. But the Sixth Circuit correctly held that petitioner’s as-applied preenforcement challenges to University Heights’ zoning ordinance were nonjusticiable from the start—whether petitioner was seeking prospective relief or damages. A federal court could not consider the lawfulness of the ordinance as applied to petitioner until the Planning Commission determined whether the ordinance would bar petitioner from hosting prayer groups in his

threats of enforcement supply standing to seek *prospective* relief. *See, e.g., First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 183 (2026) (“a litigant may bring a pre-enforcement suit seeking prospective relief against government officials so long as it faces ‘a credible threat of enforcement’”); *Chiles v. Salazar*, 607 U.S. 627, 637 & n.* (2026) (plaintiff had standing to pursue as-applied preenforcement challenge seeking injunctive relief based on “credible threat that the State will enforce its law”); *SBA*, 573 U.S. at 154, 161 (plaintiffs demonstrated standing for preenforcement suit seeking injunctive and declaratory relief based on “credible threat of enforcement”).

home. Without the Planning Commission’s decision, adjudicating petitioner’s claims would “require[] a prediction not only about *whether*” the ordinance would burden petitioner’s religious exercise, “but also about the shape that any such [burden] might ultimately take.” *Trump v. California*, 609 U.S. ----, 2026 WL 2473573, at *2 (U.S. Aug. 24, 2026) (emphasis added). “Article III demands more certainty.” *Id.*

A. The Finality Requirement Determines When Challenges to Land-Use Regulations Are Unripe

“Under Article III, federal courts do not adjudicate hypothetical or abstract disputes ... [and] do not issue advisory opinions.” *TransUnion*, 594 U.S. at 423-24. Two justiciability doctrines, both “originating in the case-or-controversy requirement of Article III,” work in tandem to ensure that cases present disputes that are “appropriately resolved through the judicial process.” *Trump v. New York*, 592 U.S. 125, 131 (2020) (citation omitted). Standing requires plaintiffs to demonstrate they have suffered “an injury that is concrete, particularized, and imminent rather than conjectural or hypothetical” that arises from the defendant’s actions or, when challenging a policy, “from the challenged policy itself.” *Id.* at 131, 134 (citation omitted). And ripeness requires plaintiffs to demonstrate that their claims do not depend on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* at 131 (citation omitted). Standing and ripeness often “boil down to the same question,” *SBA*, 573 U.S. at 157 n.5, namely whether “judicial resolution of th[e] dispute is premature,” *New York*, 592 U.S. at 134.

Justiciability doctrines like standing and ripeness are grounded in separation-of-powers principles. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024). The

line between the lawful exercise of legislative and judicial power often turns on “*when and at whose instance* [the branches] are permitted to address” legal questions. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 892 (1983). Courts must wait to decide legal questions presented in “a concrete factual context.” *FDA*, 602 U.S. at 379 (citation omitted). That means that “federal courts decide some contested legal questions later rather than sooner,” while federal or local government actors consider those issues through the political process. *Id.* at 380; *see* LGLC Amicus Br. 21.

In preenforcement lawsuits like this one, standing and ripeness ensure that courts do not opine on the lawfulness of hypothetical government action until plaintiffs show a law will be enforced against them and how that law will be applied. *California*, 2026 WL 2473573, at *2. Sometimes the justiciability inquiry is clear-cut. But as-applied preenforcement challenges to land-use policies are different. Zoning codes comprise a web of general rules and individualized exemptions. Although zoning codes outline how property generally may be used, provisions for special-use permits or variances supersede general guidelines. Thus, unlike challenged statutes that facially compel or prohibit conduct, ordinarily a court cannot know whether a zoning ordinance *as applied* to specific property will limit any particular use, or the extent of any limitations, until local authorities implement the ordinance. As the United States explains (at 16), “[u]ntil authorities reach a final decision, the contours of local zoning requirements—and whether those requirements injure the plaintiff—will often be unclear.”

This Court has announced a rule specifying when claims “challenging the application of land-use regulations” to specific property present justiciable, concrete disputes in recognition of the flexible and discretionary nature of land-use ordinances. *Palazzolo*, 533 U.S. at 618, 620. A claim challenging the application of a land-use regulation is not ripe until “a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation,” such that the “permissible uses of the property are known to a reasonable degree of certainty.” *Id.* at 620. This rule—which the Court adopted in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985)—has become known as the “finality requirement.” See *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 478 (2021).

The finality requirement ensures that zoning disputes do not come to federal court prematurely, before there is reasonable certainty that the challenged ordinance will do what the plaintiff alleges it will. When a plaintiff challenges the lawfulness of a land-use ordinance, this Court’s cases “uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it.” *MacDonald, Sommer & Frates v. Cnty. of Yolo*, 477 U.S. 340, 351 (1986). But finality does not require exhaustion or “multiple layers of agency proceedings” before challenges to zoning ordinances are ripe. *Contra* Pet. Br. 45, 50. Finality requires only a “reasonable degree of certainty” about how the at-issue property may be used under the challenged regulations. *Palazzolo*, 533 U.S. at 620.

Most often, that certainty arises from land-use authorities (like planning commissions) actually applying the

zoning code—including any variance provisions—to the at-issue property. But a challenge to a zoning code may also be ripe when there is “no question ... about how the regulations at issue apply to the particular land in question.” *Pakdel*, 594 U.S. at 478 (citation omitted). For example, in *Suitum v. Tahoe Regional Planning Agency*, the plaintiff could sue immediately because there was no dispute that a regulation barred any “permanent land disturbance” on the plaintiff’s property and the land-use agency had no discretion to allow the plaintiff to develop her land. 520 U.S. 725, 739 (1997) (citation omitted).

B. The Finality Requirement Is Rooted in Article III

Williamson County’s finality requirement is an Article III rule. Although petitioner (at 39) claims it is “a judge-made rule of ‘prudential ripeness,’” the requirement from the start has been grounded in Article III’s case-or-controversy requirement, as the United States agrees (at 15-17). An as-applied challenge to a zoning ordinance does not present a concrete controversy—that is, there exists no injury traceable to the ordinance’s application—without “a reasonable degree of certainty” regarding whether and how the zoning ordinance applies to the plaintiff’s desired land use. *Palazzolo*, 533 U.S. at 620. In cases like this one, the finality requirement is a context-specific application of the ordinary rule that plaintiffs show a “credible threat of enforcement” to mount a preenforcement challenge. *SBA*, 573 U.S. at 161.

1. *Williamson County* announced that the finality requirement addresses “whether the initial decisionmaker has arrived at a definitive position on the issue that *inflicts an actual, concrete injury*.” 473 U.S. at 193 (emphasis added). That is indisputably Article III language. See *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220-21 (1974) (“Concrete injury, whether actual or

threatened, is that indispensable element of a dispute ... capable of judicial resolution.”); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (“Article III standing requires a concrete injury.”).

This Court also has justified the finality requirement in Article III terms both before and after *Williamson County*. Just a few years ago in *Pakdel*, this Court reaffirmed that the finality requirement “ensures that a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm.” 594 U.S. at 479 (citation omitted). In *Horne v. Department of Agriculture*, the Court explained that “the plaintiff’s takings claim in *Williamson County* failed because the plaintiff could not show that it had been injured by the Government’s action” until the county applied the zoning ordinance to the at-issue property. 569 U.S. 513, 525 (2013). And in *Agins v. City of Tiburon*—on which *Williamson County* relied, *see* 473 U.S. at 187—the Court noted that because the plaintiffs “ha[d] not submitted a plan for development,” there was “as yet no concrete controversy regarding the application of the specific zoning provisions.” 447 U.S. 255, 260 (1980).

Williamson County aligns with this Court’s Article III precedent addressing when plaintiffs have standing to challenge laws. Plaintiffs challenging laws may come to court in two different ways. They can “wait for the government to take coercive action” against them. *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 183 (2026). Once the government takes action, the injury from the law is “actual” and “concrete,” and may be remedied through either prospective or retroactive relief. *See id.*; *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021) (retroactive relief possible when “officials enforced

[university's] speech policies against [plaintiff]" (citations omitted)).

Alternatively, plaintiffs "may bring a pre-enforcement suit seeking prospective relief against government officials" if they "face[] 'a credible threat of enforcement'" that renders injury from the statute "concrete" and "imminent." *First Choice*, 608 U.S. at 183 (citing *SBA*, 573 U.S. at 161, 164-67). A "credible threat of enforcement" requires plaintiffs to show they (1) intend to engage in "conduct arguably affected with a constitutional interest," that (2) is "arguably proscribed by the statute they wish to challenge," where (3) the "threat of future enforcement ... is substantial." *SBA*, 573 U.S. at 161-64 (alterations and citations omitted).

When plaintiffs bring a preenforcement challenge to discretionary, fact-dependent zoning ordinances, *Williamson County* finality implements the requirement that plaintiffs show a credible threat of enforcement. The finality requirement recognizes that no credible threat (and, therefore, no concrete injury) arises from application of zoning ordinances until "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson County*, 473 U.S. at 186. Put simply, plaintiffs cannot show that a proposed use of their property is "arguably proscribed by the statute they wish to challenge" until it is clear what the ordinance proscribes. *See SBA*, 573 U.S. at 162 (citation and alteration omitted).

Because *Williamson County* pinpoints when land-use regulations inflict concrete injuries, the finality requirement is not, as petitioner (at 39) calls it, a "prudential" relic. This Court's occasional reference to *Williamson County* as a "prudential" decision is "a misnomer," U.S.

Br. 15, and is inconsistent with how *Williamson County* described the requirement, 473 U.S. at 193. “At its core, *Williamson County* implements Article III.” U.S. Br. 16.

And Article III itself serves prudential purposes. As the Sixth Circuit explained, finality “ensures that municipal land-use policy begins in local, politically accountable hands.” Pet.App.7a. This is a core function of Article III, which promotes the separation of powers by ensuring that political decisions stay with political bodies. *See supra* p.34-35. Finality, like other Article III doctrines, also promotes constitutional avoidance by ensuring that courts do not decide constitutional questions when challenged laws may never be applied to the plaintiff. *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 348 (2d Cir. 2005); *see also Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (Article III courts do not have “unconditioned authority to determine the constitutionality of legislative or executive acts,” but may do so as “a necessity in the determination of real, earnest and vital controversy” (citation omitted)). And finality promotes judicial economy by staving off lawsuits that may be resolved in one zoning commission meeting. *See Laidlaw*, 528 U.S. at 191 (“Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake.”); *see also* LGLC Amicus Br. 21-25 & n.6 (collecting examples of “decision-making and adjudication of various regulatory issues” by local land-use authorities).

Finality also ensures that municipalities have an appropriate amount of time to gather the facts and weigh a “wide variety of interests and views” when making important land-use decisions. *See FDA*, 602 U.S. at 380.

Without a finality requirement, a megachurch could announce its intention to use a building in a residential zone on Saturday and sue over a missed service on Sunday. Localities cannot reasonably determine how zoning laws apply to a proposed land use in hours or even days—especially where, as here, the relevant facts are unclear. *See* LGLC Amicus Br. 11 (finality “ensur[es] that there is an adequate factual record permitting meaningful judicial review”).

Petitioner (at 51) maintains that courts do not need *Williamson County* to root out frivolous challenges to zoning laws because the “claims will fail either for lack of Article III standing or on dispositive motions on the merits for lack of any actual burden.” But, as explained above, *Williamson County* is how courts know whether a plaintiff has suffered an actual or imminent Article III injury. And that a plaintiff’s claims also may fail on the merits is no answer. That is true of many cases where courts lack jurisdiction—yet Article III plays an important gatekeeping role in ensuring that courts do not stray outside their constitutionally assigned role in the first place.

2. None of petitioner’s attacks on *Williamson County* hold water.

a. Petitioner (at 47) seeks to limit the finality requirement to the takings context because *Williamson County* described the requirement as “compelled by the very nature of the inquiry required by the Just Compensation Clause.” 473 U.S. at 190. But *Williamson County* itself applied its ripeness test to alleged violations of substantive due process. *Id.* at 185, 199-200. The Court explained that under either a takings or due process theory, courts could not determine the extent to which a regulation interferes with expected property uses until the relevant agency “arrived at a final, definitive position regarding

how it will apply the regulations at issue to the particular land in question.” *Id.* at 191; *see also id.* at 199-200 (same regarding due process).

First Amendment and RLUIPA as-applied challenges to land-use regulations present the same issue. RLUIPA protects religious land use by prohibiting local governments from using land-use regulations to discriminate against religious assemblies or institutions or to substantially burden religious exercise absent a compelling government interest. *See* 42 U.S.C. § 2000cc(a)(1), (b). Courts “simply cannot ... evaluate[]” what burden a regulation places on plaintiffs until it is clear whether and how the regulation restricts the plaintiffs’ religious activity. *See Williamson Cnty.*, 473 U.S. at 191.

Petitioner (at 39) asserts that this Court has “*never* applied [*Williamson County* finality] outside of a takings case.” As just noted, however, *Williamson County* itself applied its requirement in the due process context. Article III requires a concrete injury no matter what rights the plaintiff claims have been violated. And because *Williamson County* identifies when land-use ordinances “inflict[] an actual, concrete injury,” 473 U.S. at 193, no principled reason exists for confining it to the takings context. This Court has never rejected its application outside that context.

b. Petitioner (at 45-46) and his amici are also wrong that RLUIPA claims are exempt from *Williamson County*’s finality requirement. Congress’ directive that RLUIPA be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution,” 42 U.S.C. § 2000cc-3(g), anticipates that courts will enforce constitutional limits when adjudicating RLUIPA claims. So does Congress’ instruction that “[s]tanding to assert a claim or

defense under [RLUIPA] shall be governed by the general rules of standing under article III of the Constitution.” *Id.* § 2000cc-2(a). The finality requirement is such a “general rule[]” that implements Article III’s limitation on federal-court jurisdiction. *See supra* pp.37-41. And this Court has a “practice” of using the term “standing” when discussing the related concepts of “standing” and “ripeness.” *SBA*, 573 U.S. at 157 n.5 (citing *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 392 (1988); *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 299 n.11 (1979)).

Amici suggest that because RLUIPA applies when a government “impose[s] or implement[s] a land use regulation” in a way that creates a substantial burden or disfavors religious land use, *see* 42 U.S.C. § 2000cc(a)(1), (b)(1), plaintiffs cannot be required to pursue a final decision before RLUIPA claims are ripe, *see* Members of Cong. Amicus Br. 9-10; ACLJ Amicus Br. 6-7. This concern misunderstands the “relatively modest” finality requirement. *Pakdel*, 594 U.S. at 478. Finality requires that the government have “committed to a position” that has harmed the plaintiff, which may occur before a variance request reaches the last decisionmaker. *Id.* at 479; *see infra* pp.56-57.

Reading “impose or implement” to foreclose the finality requirement also ignores that Congress contemplated that the availability of special-use permits and variances could negate potential RLUIPA claims. Congress permitted local governments to avoid RLUIPA’s preemptive force “by providing exemptions from the [challenged] policy or practice for applications that substantially burden religious exercise.” 42 U.S.C. § 2000cc-3(e); *see also* 146

Cong. Rec. S7774, S7776 (daily ed. July 27, 2000) (statement of Sen. Hatch and Sen. Kennedy) (RLUIPA does not “relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay”).

C. Petitioner’s Challenges to the City’s Land-Use Ordinance Are Unripe

The Sixth Circuit correctly applied the finality requirement and dismissed petitioner’s challenges to the ordinance as unripe. Petitioner’s claims never ripened into a concrete controversy under Article III.

1. Petitioner’s claims challenged UHCO § 1274, alleging that the ordinance, as applied to his property, burdened his religious exercise in violation of RLUIPA and the First Amendment by “prohibit[ing]” him from hosting “any prayer gathering in his home.” C.A. Appellant Br. 2-3, 29-30. Under UHCO § 1250.02, the only “[p]ermitted uses” of land in residential districts are “[o]ne-family dwellings” and buildings “owned and operated by a board of education, municipality or by a library board.” Pet.App.71a. But UHCO § 1274.01, the challenged ordinance, authorizes the Planning Commission “to permit” through “Special Use Permit[s]” “uses which foster the most desirable use of the land in the City ... [in] residential districts,” including “[h]ouses of worship.” See UHCO § 1274.01(a), (b)(1), (d), Pet.App.74a-75a.

Thus, the challenged ordinance could bar petitioner’s proposed land use only if (1) his proposed prayer gathering rendered his house a “house of worship,” and (2) the Planning Commission denied the special-use permit application.

Petitioner sued several steps before the challenged ordinance could interfere with his ability to host prayer gatherings in his home and inflict an Article III injury. To start, the City never enforced the ordinance against petitioner. As the Sixth Circuit explained, petitioner’s “case ... turns on whether his proposed gatherings would render his home a ‘house[] of worship’” under UHCO § 1274.01. Pet.App.9a-10a. When petitioner sued, neither the Planning Commission nor any other body authorized to apply the City’s zoning code had “determined whether UHCO § 1274.01 applies to the kinds of gatherings [petitioner] has in mind.” Pet.App.8a. Accordingly, there exists no application or interpretation of the ordinance for petitioner to challenge.

Even if petitioner had proposed a use covered by UHCO § 1274.01 like operating a synagogue in his home—which he denies—the Planning Commission never enforced the ordinance to petitioner’s detriment. Petitioner (at 34) emphasizes “the City gave Grand no indication that it would grant a permit, much less withdraw the permit requirement,” but as the Sixth Circuit observed, that is because petitioner withdrew his application before the Planning Commission “determined [petitioner’s] eligibility for a special use permit.” Pet.App.9a. And while petitioner claimed below that the application process was “futile,” the Sixth Circuit correctly rejected that argument: “Nothing about this sequence of events demonstrates prejudgment of Grand’s claim.” Pet.App.10a-11a.

The City never credibly threatened to enforce its ordinance against petitioner through the January 21 cease-and-desist letter or the Mayor’s statements at the second Planning Commission hearing. The “credible threat” standard requires petitioner to show that the ordinance

“arguably proscribed” his prayer group and that the “threat of future enforcement ... is substantial,” not merely hypothetical. *SBA*, 573 U.S. at 161-64. *Williamson County* explains why petitioner cannot make that showing: the agency charged with implementing the ordinance never determined whether it applied. As the Sixth Circuit explained, neither the Law Director nor the Mayor had authority to decide whether petitioner’s desired gatherings transformed his home into a “house of worship.” Pet.App.8a-10a. And they had no unilateral authority to authorize or bar petitioner’s gatherings by issuing or denying petitioner a special-use permit. Pet.App.8a-10a. In other words, the cease-and-desist letter and Mayor’s statements did not, and could not, answer the question whether the ordinance could or would restrict petitioner’s gatherings. Pet.App.9a-10a.

What is more, neither the letter nor the Mayor’s statements demonstrate a substantial threat that the City would enforce the ordinance against a small prayer gathering. Neither even addressed whether a prayer gathering was a “permissible use[] of [petitioner’s] property.” *Palazzolo*, 533 U.S. at 620. Both instead explained the law regarding operating houses of assembly, the activity governed by UHCO § 1274.01. The letter said that “[t]o the extent” petitioner’s home was “currently being used” as “a place of religious assembly and/or in operation of a shul or synagogue,” petitioner needed a special-use permit. J.A.199-200. The letter neither concluded that petitioner was operating a house of assembly, nor determined whether operating a house of assembly would be allowed with a special-use permit.

The same is true of the Mayor’s comments at the second hearing. Those comments never addressed whether

petitioner could host a prayer group without a permit. Rather, after stating that petitioner had withdrawn his application, the Mayor clarified that the Planning Commission had not decided whether to grant a permit to allow petitioner to operate a “house of assembly.” J.A.338-339. The Mayor said that if petitioner “operate[d] a *house of assembly* or conduct[ed] activities consistent with one” without a permit, the City would “enforce its laws.” J.A.339 (emphasis added). Hosting small prayer groups is not consistent with operating a house of assembly—as petitioner himself acknowledged when he withdrew his application. *See supra* p.10.

At bottom, when petitioner asked a federal court to decide whether UHCO § 1274.01’s application to his property was lawful, there was no reasonable certainty regarding whether the ordinance would “apply to the particular land in question,” or, if it applied, whether it would prevent petitioner from using his home for prayer groups. *Pakdel*, 594 U.S. at 478 (citation omitted). Petitioner’s lawsuit asked the court to “swing[] at a moving target,” Pet.App.7a, and to resolve constitutional questions that may never require an answer.

2. Petitioner (at 38) chides the Sixth Circuit for not addressing “the key cases” cited in Part I of his brief in this Court. That is both wrong and hardly the Sixth Circuit’s fault. Petitioner’s “key” cases (at least by number of times cited) are *SBA* and *First Choice*. Notably, both involve prospective relief and not damages. Petitioner did not even cite *SBA* to the Sixth Circuit; nonetheless, the Sixth Circuit considered and distinguished it. Pet.App.12a-13a. And this Court decided *First Choice* in April 2026, five months *after* the Sixth Circuit’s decision.

Of the remaining twenty-nine cases petitioner cites in Part I (putting aside *Williamson County*), he cited only

three in his Sixth Circuit briefing: *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969); and *Steffel v. Thompson*, 415 U.S. 452 (1974). As discussed below, *Lakewood* involved a facial challenge to an ordinance, 486 U.S. at 760-61, and petitioner does not challenge the Sixth Circuit’s conclusion that he waived a facial challenge, *see infra* p.53. Petitioner’s lone reference to *Shuttlesworth* below was a citing parenthetical from *Lakewood*. C.A. Reply Br. 5. And while the Sixth Circuit did not cite *Steffel*, it did cite *SBA*, which repeatedly invokes *Steffel*. *See* Pet.App.12a-13a (citing *SBA*); *SBA*, 573 U.S. at 158, 159, 160, 164, 167 (citing *Steffel*). It is not the Sixth Circuit’s fault that it failed to address the other twenty-six cases that petitioner never cited below.

3. Petitioner (at 38) likewise chides the Sixth Circuit for ignoring various supposedly “undisputed injuries” addressed in his brief in this Court. *See* Pet. Br. 31-33 (listing various alleged injuries). The Sixth Circuit, however, expressly considered petitioner’s argument that “the City’s zoning rules chill First Amendment expression,” and held that, on this evidentiary record, petitioner “is the author of any chilling effect on his First Amendment interests, not the City.” Pet.App.13a-14a. To the extent petitioner now points to other supposed injuries, he appears to be repurposing injuries that he invoked to pursue *other* claims—like his abandoned malicious prosecution, abuse of process, and Fourth Amendment claims.

Petitioner never argued below that these asserted injuries arise “from the challenged policy” and confer standing to challenge the ordinance. *New York*, 592 U.S. at 134. In fact, he did not mention some of these injuries at all in the Sixth Circuit. The court of appeals did not commit reversible error by failing to address arguments

and allegations never brought to its attention or only mentioned in passing:

- Petitioner (at 31) invokes the “burden” of seeking a permit and the “pocketbook” injuries of hiring a lawyer and paying the permit fee. He did not point to any of those facts as establishing ripeness in his Sixth Circuit briefing.
- Petitioner (at 31) claims the hearing caused him “stigmatizing injury.” Petitioner did not claim he had suffered “stigmatizing injury” in the Sixth Circuit. Insofar as he pointed to community members’ rhetoric at the hearing, he argued only that it made proceeding with his application futile. *See* C.A. Appellant Br. 34-37 (“Grand’s Discrimination Claims Come Within the Futility Exception to the Ripeness Doctrine”); *see infra* p.57. The Sixth Circuit considered and rejected petitioner’s futility argument. Pet.App.11a.
- Petitioner (at 32) argues the City subjected him to uniquely burdensome hearing procedures, citing an equal protection case. Petitioner’s equal protection claims are beyond the scope of the question on which certiorari was granted. *See infra* pp.54-55. In any event, as just noted, petitioner argued below that his “discrimination claims” were ripe under *Williamson County*’s “futility exception”—not that they were not subject to *Williamson County* at all. C.A. Appellant Br. 34, 36-37.
- Petitioner (at 32) claims that “City-directed surveillance by police and neighbors” chilled his religious exercise. In the Sixth Circuit,

however, petitioner did not argue that alleged surveillance independently chilled his religious exercise; in addressing ripeness, he invoked that allegation only in passing and claimed it improperly “delegated” enforcement of the Mayor’s comments to the community. *See* C.A. Appellant Br. 33-34.

- Petitioner (at 32) claims (without citation) that the “City retaliated against Grand’s religious exercise by trumping up citations, devising a cross-department strategy to prosecute Grand, and interrupting trash collection.” But petitioner’s Sixth Circuit briefing contained no allegation that he was prosecuted or issued any citation. Nor did he mention even a word about trash collection.

III. *Williamson County*’s Finality Requirement Does Not Threaten Religious Liberty

Petitioner (at 52-56) and his amici present a parade of horrors that will supposedly follow if *Williamson County* applies outside the takings context. But the finality requirement will only bar claims for which no Article III jurisdiction exists. The requirement applies only to claims, like petitioner’s, where the court cannot know if a land-use regulation violates the plaintiff’s rights because it is uncertain how a specific property can be used. And where the finality requirement applies, it demands only that a plaintiff wait to file suit until the government’s position is clear enough for the court to know that the challenged regulation injures the plaintiff.

A. The Finality Requirement Does Not Apply to Facial Challenges

Many religious-liberty claims are facial challenges to laws, and the finality requirement does not apply to those challenges. *See Yee v. City of Escondido*, 503 U.S. 519, 534 (1992); *Suitum*, 520 U.S. at 736 & n.10. A facial challenge does not turn on how the government will ultimately apply the regulation to a particular property. *See* Pet.App.14a.

Notably, petitioner’s argument (at 25-26) that *Williamson County* should not govern his as-applied challenges relies heavily on First Amendment cases involving facial challenges. Take *City of Lakewood*, which petitioner (at 36) cites as an example of how “ordinary rules” of standing apply “in the land-use context.” *Lakewood* involved a facial preenforcement challenge to an ordinance that gave a mayor unconstrained discretion to issue permits for news racks on public land. 486 U.S. at 753-55. Similarly, *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002), involved a facial preenforcement challenge to an ordinance prohibiting door-to-door canvassing without the mayor’s prior approval. *Id.* at 153.

In *Freedman v. Maryland*, 380 U.S. 51 (1965), the defendant facially challenged a film censorship statute after he was criminally convicted for violating it. *Id.* at 52-53, 56. The case presented no ripeness question. While *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), involved facial and as-applied challenges to an ordinance requiring permits for public demonstrations, the defendant’s conviction likewise left no doubts about whether and how the ordinance would apply to him. *See id.* at 150-51, 156-58.

The distinction between facial and as-applied challenges also explains why the circuit split that petitioner invoked in the petition is illusory. *See* Pet. 14-15. Petitioner identified two cases declining to apply *Williamson County*'s finality requirement to religious-liberty claims. Both challenged a regulation's existence.

In *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349 (11th Cir. 2013), a Jewish congregation challenged a resolution designating its temple as a historic landmark. *Id.* at 1350. The Eleventh Circuit declined to apply *Williamson County*, explaining that the temple claimed "an injury stemming from the City's initial act of designating it to be a historic site, not from the *application* of any land use regulation to its property." *Id.* at 1357-58.

The First Circuit in *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78 (1st Cir. 2013), similarly declined to apply *Williamson County* to a challenge to "the mere enactment of [an] ordinance." *Id.* at 83. There, a Roman Catholic diocese challenged an ordinance designating a church as a historic district. *Id.* at 88. The First Circuit held that the diocese's challenge to the ordinance was ripe, but not its claims alleging the diocese might be prohibited from making specific changes to the building. *See id.* at 91-92. While the First Circuit did not rely on *Williamson County* in reaching the latter holding, the court's reasoning—that "[w]ithout knowing what [the diocese] can or cannot do with the Church under the Ordinance, we cannot know to what extent, if any, [it] will suffer from a burden on its religious practice"—closely parallels the finality requirement. *Id.* at 91.

The Sixth Circuit correctly acknowledged that petitioner's "facial claims do not have a finality problem."

Pet.App.14a. The Sixth Circuit did not consider petitioner’s facial claims because he failed to preserve them. Pet.App.14a-15a. Petitioner does not challenge that holding.

B. The Finality Requirement Applies Only to Claims That Turn on Application of Land-Use Regulations

The finality requirement applies when a plaintiff challenges application of a land-use regulation. It does not apply to other religious-liberty challenges to government action.

1. *Williamson County* is not implicated when plaintiffs challenge action by government officers to restrict land use apart from land-use regulations. In those cases, the court can evaluate the plaintiff’s claim without answering “how far” a land-use regulation goes. *Palazzolo*, 533 U.S. at 622 (citation omitted). For example, if rogue police officers deter mosque attendance by threatening to arrest worshippers who park on the street, that threat may inflict a concrete injury immediately giving rise to a lawsuit.

Petitioner (at 32) emphasizes various non-regulatory actions he claims deterred him from praying in his home, namely “surveillance by police and neighbors” and “retal[iat]ion” in the form of citations, prosecution, and interrupted trash collection. Those alleged actions do not support his challenge to the ordinance. *See supra* p.50.

2. The United States (at 20) contends that *Williamson County* does not apply to claims where “the permitting process itself inflicts the asserted injury.” To be sure, the finality requirement does not apply to claims asserting that procedures for obtaining permits or variances are unduly burdensome or discriminatory on their face. *See supra* pp.51-52. And the finality requirement would not apply to claims alleging that an unconstitutional

procedure caused the deprivation of a protected property or liberty interest. *See Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 894-95 (6th Cir. 1991) (plaintiff did not need to request variance to assert procedural due process claim based on re-zoning of plaintiff's property without notice or opportunity to be heard). But the finality requirement applies to challenges to permitting processes where the plaintiff's injury is bound up in the question of what use he may make of his property.

Petitioner (at 2, 32) points to various "procedural burdens" imposed by the "quasi-judicial [hearing] format." As noted, petitioner did not argue in his briefing below that these alleged burdens establish ripeness for his First Amendment or RLUIPA claims. *See supra* p.49. In any event, the Sixth Circuit alternatively dismissed petitioner's due process claim on the merits because he failed to pursue available procedures. *See* Pet.App.11a. Petitioner has not challenged that merits ruling, nor does he explain how such a claim could be ripe when any deprivation of a liberty or property interest by UHCO § 1274's application is speculative.

Moreover, the question presented that this Court agreed to review says nothing about due process claims (or equal protection claims, for that matter). *See supra* pp.23-24. Petitioner's original question presented asked only whether *Williamson County* displaces "the First Amendment's established chilling-effect doctrine." Pet. i. This Court only considers "the questions set out in the petition, or fairly included therein," and "a brief may not raise additional questions or change the substance of the questions" on which review is granted. S. Ct. Rule 14.1(a), 24.1(a). Whether and how *Williamson County* applies to due process and equal protection claims is distinct from its

application to petitioner’s First Amendment and RLUIPA claims and is not properly before the Court.

3. To support his parade of horrors, petitioner (at 53-54) cites instances where municipalities allegedly invoked land-use regulations to inhibit religious gatherings. Of course, municipalities may not use land-use regulations as a “fig leaf” to suppress religious liberty. Pet. Br. 53. Yet petitioner’s examples highlight how religious land uses may present the very traffic, environmental, safety, and other concerns that zoning laws are intended to mitigate. See APA Amicus Br. 5-10.

For example, *Miles Christi Religious Order v. Township of Northville* involved a Catholic order hosting so many people for gatherings in a house that attendees were parking on the grass, raising the question whether they needed to submit a site plan for a parking area. 629 F.3d 533, 535-36 (6th Cir. 2010). The religious services in a trailer park recreation building in *Guatay Christian Fellowship v. County of San Diego* involved a church with a 200-person capacity that knew it needed a permit but never applied for one. 670 F.3d 957, 964 (9th Cir. 2011). The prayer groups in *Murphy v. New Milford Zoning Commission* involved “as many as sixty participants.” 402 F.3d at 345. And the rabbi who conducted prayer sessions in *Chabad Lubavitch of the Quad Cities, Inc. v. City of Bettendorf* quit-claimed the deed to his house to a § 501(c)(3) religious organization that conducted religious “services” there. Am. Compl., No. 3:18-cv-00071 (S.D. Iowa Nov. 2, 2018), Dkt. 20 at 5. Petitioner makes no effort to show that *Williamson County*’s finality requirement—more so than any other Article III requirement—restricted religious liberty in his examples.

C. The Finality Requirement Is Modest

In as-applied land-use challenges where *Williamson County*'s finality requirement applies, finality is a “relatively modest” requirement. *Pakdel*, 594 U.S. at 478. Once the “potential ambiguities” about whether the imposition or implementation of a land-use regulation will cause a plaintiff concrete harm have “evaporate[d],” the claim will be ripe for review. *Id.* at 479.

The finality requirement does not demand that plaintiffs pursue exceptions from local zoning authorities if those efforts would be futile. As the Sixth Circuit put it, “‘futility’ is not an exception to finality; it’s another way to state the rule.” Pet.App.10a. Futility can arise if the local land-use authority has, as a practical matter, “dug in its heels and made clear that [any] applications will be denied.” *Murphy*, 402 F.3d at 349. At that point, the government has “committed to a position” and no further engagement is necessary for the dispute to ripen. *Pakdel*, 594 U.S. at 479.

Futility also occurs where regulators have “no discretion” over the permitted uses of a plaintiff’s land. *Suitum*, 520 U.S. at 739. Accordingly, the finality requirement will not necessarily apply to government policies restricting land use through means other than zoning ordinances. See, e.g., *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15-16 (2020) (as-applied challenge to an emergency executive order limiting religious gatherings during the COVID-19 pandemic).

Nor does finality require continued engagement with pretextual or unduly dilatory administrative processes. Contrary to petitioner’s claim (at 53) that *Williamson County* allows regulators to “insulate their conduct from

review” by endlessly “postpon[ing] a final decision,” *Williamson County* does not give government license to “burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision.” *Palazzolo*, 533 U.S. at 621.

Petitioner’s land-use claims are unripe because he sued before the ambiguity surrounding the ordinance’s application to his gatherings had dissipated—not because *Williamson County* set the bar for finality too high. The Sixth Circuit properly rejected petitioner’s futility argument because proceedings on petitioner’s permit application “had not become an empty affair.” Pet.App.11a. And petitioner has never claimed that the City imposed procedural requirements to avoid reaching a final decision on his permit application.

* * *

Williamson County’s finality requirement does not empower municipalities to prohibit prayer. It enforces Article III by preventing federal courts from prematurely adjudicating disputes that have yet to solidify into concrete cases. This is one such case: petitioner’s challenges to the application of the City’s ordinance never crystallized into a concrete dispute.

CONCLUSION

The Court should either dismiss the petition or affirm the judgment of the court of appeals.

Respectfully submitted,

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