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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The City's ripeness argument is a paradox. Daniel Grand claims it was unconstitutional to require him to seek a permit to host a small prayer group in his home. The City concedes that "no provision of City law" imposed that requirement. Resp.Br.2. Yet the City still insists Grand cannot sue to vindicate his right to pray without a permit—unless he first seeks a permit and zoning authorities decide whether City law imposes a permit requirement.

The City compounds this paradox with a retreat from the position it successfully pressed below. Previously, the City insisted that "[r]ipeness emerges from constitutional limitations … *and prudential concerns*." BIO 11-12 (emphasis added); *accord* C.A.Appellees.Br.11. Now, the City drops any prudential-ripeness defense and concedes that, even in the land-use context, religious-liberty claims are ripe the moment a municipality "inflict[s] concrete injuries." Resp.Br.39. So this case boils down to a single question: whether Grand suffered Article III injury in fact.

He did. When a mayor threatens prosecution for praying with friends at home, and the threat silences the prayer, the homeowner has suffered an injury in fact. The City admits that it would be enough for Grand to show that the City took "coercive action" that inflicted an "actual" and "concrete" injury. Resp.Br.38. It just pretends Grand failed to frame his claims that way.

That pretense is the foundation of a misguided strategy to avoid the question presented by asserting

mootness. The City feigns shock that Grand has moved—even though it has known throughout the litigation that he was trying to move to escape the City's hostility. Since there is no priority among threshold jurisdictional issues, this Court need not even decide the City's mootness challenge. But it is easy to reject. The only way the City can claim mootness is by insisting that Grand "failed to advance a claim for damages." Resp.Br.33. Yet Grand has sought damages since day one. And the City litigated damages throughout, including in a summary-judgment motion invoking qualified immunity.

The Court granted certiorari to resolve an important circuit conflict over whether *Williamson County* alters the ordinary ripeness rules that apply to religious-liberty claims. The Court should resolve that conflict and reject the Court of Appeals' categorical finality requirement for claims arising in "the land-use context." Pet.App.7a. That's the only way to defeat the playbook that officials across the country have used to suppress religious exercise.

ARGUMENT

I. The City's Ripeness And Mootness Arguments Artificially Truncate Grand's Claims.

The City's ripeness and mootness arguments both depend on a gerrymandered depiction of Grand's claims. The City says Grand's case is limited to "[1] preenforcement challenges to the City's zoning ordinance [2] seeking prospective relief [3] to allow him to host prayer groups in his home." Resp.Br.25. The City never argues that Grand's claims beyond that truncated description are unripe—and concedes

several *are* ripe. The City's mootness argument depends on ignoring Grand's damages claims and the range of injunctive relief sought. Without those erroneous premises, both arguments collapse.

1. To start, Grand's lawsuit was not only—or even primarily—a challenge to the zoning ordinance. *Contra* Resp.Br.25, 28. His claims revolved principally around "Defendants' actions," D.Ct.Dkt.89 at 24, that "targeted any religious 'assembly' in a private home" and "chilled Grand's exercise of his First Amendment rights," D.Ct.Dkt.81 at 13-18: the cease-and-desist order, accompanying threats, and the subsequent surveillance, harassment, and discrimination that inflicted an "objectively reasonable chill" on Grand's free-exercise rights. *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 191 (2026); *see, e.g.*, D.Ct.Dkt.89 at 18, 23-26 (City "chill[ed]" prayer and invited "Soviet-style citizen spying and reporting").

The ordinance was a cudgel the City wielded to chill Grand's religious liberty. But Grand did not need to challenge the ordinance to sue over the City's conduct. As the record cites above confirm, Grand's primary position was that the ordinance did not cover his planned prayer groups. But if the City maintained that the ordinance required Grand to secure a permit, he had a backup: Any such application of the ordinance is unconstitutional. D.Ct.Dkt.81 at 14-18.

That backup argument is what the City calls a "preenforcement challenge[] to [its] zoning ordinance." Resp.Br.25. By summary judgment, Grand no longer needed this challenge. The City conceded that

"if Grand kept the Shabbos prayer at his house to ten or so people, … it would not be the business of the City." J.A.361. This meant that the City's threats to enforce the ordinance were legally baseless. And Grand could have limited his claims just to those threats and accompanying conduct.

Notably, the City does not say Grand abandoned his challenge to the City's conduct. Nor could it: The briefing below focused on all the City's conduct that chilled Grand's free exercise, insisting that "the CADO [cease-and-desist order], the March 23 Edict, and Grand's cancellation of religious activities under threat of criminal sanctions all constitute actionable harm." C.A.Reply.Br.2; *see* C.A.Appellant.Br.1-2, 29, 33-35. The City cannot negate that preserved argument by noting that Grand's appeal brief *also* preserved his challenges to the ordinance "facially and as applied." Resp.Br.28 (quoting C.A.Appellant.Br.2-3). Same for the assertion that Grand "cited the ordinance over 140 times in his briefing before the lower courts." Resp.Br.28. Many of the cites were in the context of challenging the City's threats, because the City invoked the ordinance as the basis for its threats. *E.g.*, J.A.199-200, 338-39.

2. A keystone of the City's argument is the repeated assertion that Grand "failed to advance a claim for damages throughout the litigation." Resp.Br.33. The record proves otherwise.

As the City concedes, Resp.Br.32, Grand's complaint sought "compensatory damages, emotional damages, and punitive damages." J.A.81, 83, 96-97. Indeed, damages were the *only* relief Grand could

seek—and the only relief he did seek—when he sued the Mayor and Law Director in their individual capacities. J.A.1-2, 96-97. Damages had to be central, because—as the City has known since the start of this case—Grand was trying to move to escape the City's intolerance and harassment. J.A.79 (complaint); J.A.180-81 (Grand's 2023 deposition testimony). He repeatedly put his home on the market during the litigation, J.A.180-81; Ex.1 ¶¶ 3-4[1]—not just last summer. *Contra* Resp.Br.24. One of Grand's damages claims was that the City's religious hostility made "nobody want[] to touch" his home. J.A.79-80, 180.

Responding to these claims, the City litigated damages intensely: Its answer pleaded "[q]ualified good faith immunity"; invoked Ohio's "damage limitations" and "damage set offs"; asserted "immun[ity] from any award of punitive damages"; and blamed Grand for "any injuries or damages" he suffered. D.Ct.Dkt.68 ¶¶ 474-77.

The City also conducted extensive discovery on damages. Under the heading "Calculation of Damages," Grand's initial disclosures stated that he "seeks economic, noneconomic, nominal, statutory, and punitive damages." Ex.2 at 3. When the City directed Grand to "list in detail all … damages," he listed constitutional, emotional, punitive, nominal, and statutory damages, plus "[d]amages related to needless fines and fees," and identified a potential

[1] This brief is accompanied by a Rule 32.3 letter requesting leave to lodge a declaration from Grand and discovery materials. The proposed exhibits to the letter are cited as "Ex."

expert on "psychological damages." Ex.3 at 6-8. In opposition, the City designated its own damages expert, D.Ct.Dkt.51 at 1, and questioned Grand in his deposition about "damages in this matter," J.A.180-81.

Ignoring all this, the City argues that Grand waived or forfeited his damages claims, either at summary judgment (before the district court raised ripeness sua sponte) or on appeal. But the City points to nothing that comes close to an "intentional relinquishment" of damages claims so central to the litigation. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 20 n.1 (2017) (waiver); *see id.* (forfeiture occurs with a "failure to … timely assert[]").

Quite the opposite: The City's motion for summary judgment *acknowledged* the "generalized damages sought by [Grand] here" and invoked qualified immunity. D.Ct.Dkt.79 at 20-21, 23; D.Ct.Dkt.90 at 21-22. Why? As the City explained, to shield officials "from liability for civil damages." D.Ct.Dkt.79 at 20. Grand kept damages in play by opposing that motion. D.Ct.Dkt.89 at 28-29.

So the City's forfeiture argument reduces to the assertion that Grand did not use the word "damages" in *his* summary-judgment motion. Resp.Br.18, 32. He didn't need to; he moved for partial summary judgment only as to liability. D.Ct.Dkt.81 at 30; D.Ct.Dkt.91 at 15. Nor did Grand need to mention the obvious point that he would be entitled to a trial on damages, as he would be on any fact issue not addressed on summary judgment. *Contra* Resp.Br.18.

Summary judgment routinely resolves liability while leaving "the precise amount of recovery" for trial. Fed. R. Civ. P. 56 advisory committee's note to 1946 amendment.

Until the City filed its merits brief in this Court, no one saw Grand's motion as an intentional relinquishment. The City's summary-judgment opposition and the district court's opinion acknowledged that Grand sought "an award of compensatory damages." Pet.App.38a; *see* D.Ct.Dkt.88 at 21.

As to the appeal, the City repeats that Grand's briefs do not use the word "damages." Resp.Br.32-33. But the City ignores that the briefs were replete with equivalent assertions that Grand "suffered a direct and immediate injury as a result of [the City's] conduct." C.A.Appellant.Br.4. Grand also insisted that "the jury … must decide" "credibility"; there would be no jury unless Grand had damages claims. C.A.Reply.Br.10-11 (citation omitted). And he argued that the cease-and-desist order, the Mayor's "March 23 Edict" declaring the order still operative, and "Grand's cancellation of religious activities under threat of criminal sanctions all constitute actionable harm." C.A.Reply.Br.2; *see* C.A.Appellant.Br.29, 33. For the years of forgone prayer gatherings, there is only one effective remedy: damages.

The City ends with the tepid suggestion that the Court of Appeals "*appears* to have understood [Grand] to pursue only prospective relief, as the court understood him to be challenging application of the ordinance." Resp.Br.30 (emphasis added). *If* that is what the court understood, it was wrong for all the

reasons just recited. But the court never indicated that. It never distinguished damages from prospective relief, and its analysis never once used the words "prospective" or "injunction." Pet.App.8a.

To the contrary, the court's discussion of "hardship to Grand" suggests the court understood Grand to be seeking damages. Pet.App.11a-13a. The court recounted Grand's argument that the City "chill[ed] [his] First Amendment" rights and presented a "forced choice" inflicting an immediate injury, Pet.App.12a-13a—a classic basis for damages.

3. The opening brief catalogued numerous additional injuries, distinct from Grand's cancelled prayer gatherings. Grand sought damages and injunctive relief for discriminatory surveillance, pretextual enforcement of regulations, suspended trash collection, and stigmatizing injury. Petr.Br.31-33.

Without even suggesting "intentional relinquishment," the City says Grand "did not mention some of these injuries" on appeal. Resp.Br.48-50. But he did mention "surveillance of [his] property," being "subjected to ethnically-based discrimination," and the indignity of "blatant anti-semitism" at the Planning Commission, which "effectively put [him] on trial in front of his neighbors [and the] public." C.A.Appellant.Br.33-35. The Court of Appeals, too, recounted many of the related facts in its opinion, Pet.App.5a, without explaining why remedying these injuries would run afoul of the finality rule.

II. Grand's Challenges To The City's Actions Are Ripe Because Those Actions Inflicted Article III Injuries.

The City does not defend the categorical rule the Court of Appeals adopted, which imposes a finality requirement on every as-applied religious-liberty claim "[i]n the land-use context." Pet.App.7a. The City now concedes, as it must, that "*Williamson County* does *not* apply to every religious-liberty claim in the land-use context." Resp.Br.4 (emphasis added). "*Williamson County* is not implicated when plaintiffs challenge action by government officers to restrict land use apart from land-use regulations," the City continues. Resp.Br.53. The City further concedes that a "concrete" and "actual" or "imminent" injury gives rise to a ripe claim, *First Choice*, 608 U.S. at 183, and "may be remedied through either prospective or retroactive relief," Resp.Br.38.

So all agree that, even in the land-use context, "claims for retrospective relief" for injuries already inflicted "are clearly justiciable." U.S.Br.21; *see* Petr.Br.47. As the United States puts it, for such "backwards-looking claims," no "'further factual development'" is "possible much less necessary." U.S.Br.31 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014)).

With those concessions, it is obvious why the City tries to truncate Grand's claims: It cannot defend the dismissal of his entire case.

A. Prohibiting Grand from hosting small group prayer inflicted an Article III injury.

Apart from any challenge to the zoning ordinance, the City's threats and conduct preventing Grand from hosting group prayers inflicted classic completed and ongoing harms.

To summarize, the City directed Grand to "immediately cease and desist" any use of his home as "a place of religious assembly," threatening to "criminally indict[] [Grand] for violating a cease-and-desist order," J.A.154, 199, and to seek "additional remedies," J.A.199-200; *see* UHCO § 1242.99. The Mayor admits Grand told him "he was just trying to get some people together at his house to pray." J.A.321. Yet the Mayor instructed Grand he needed a permit to gather "10 Jews in a room" for prayer. J.A.153-54.

Grand confirmed in writing to the whole community what he had told the Mayor: He wanted to host "periodic religious gatherings" in a recreation room with "21 chairs," and did not want to establish "a shul or a synagogue." J.A.201-02, 288. None of that mattered. The Mayor told Grand "you will be in violation of this cease-and-desist order and the city will use all of its … powers necessary even as far as criminally indicting you," even for that limited prayer gathering. J.A.153-54. Even after Grand withdrew his application, the Mayor announced that the cease-and-desist order "remains in effect" and that "congregating" in any home for "activities consistent with those in a

house of assembly" "without a special-use permit" violated "city law." J.A.337-38.

Those threats inflicted immediate injury: Grand cancelled that Sabbath's gathering. J.A.190-91. With the prohibition in place, the City did not even schedule the first hearing until six weeks after Grand submitted his application. J.A.201, 205. Grand hired a lawyer and endured a hostile three-hour hearing in an unprecedented quasi-judicial format. Petr.Br.12-14, 31-32. "[P]etrified" of prosecution, Grand never again organized a prayer gathering in his home. J.A.161; *see* Petr.Br.16.

The City spins the facts. It posits that the Mayor understood the invitation as "the formal opening of a synagogue." Resp.Br.8. But the Mayor admitted that Grand clarified his intentions—not just "[a]s the permitting process played out," *contra* Resp.Br.2, but from the very first conversation, D.Ct.Dkt.83-1 at 163. And the Mayor testified that he understood a "shul" can be "a small gathering for a small group." Pet.App.156a-157a; D.Ct.Dkt.83-1 at 55; *see* U.S.Br.5. Regardless, all that matters is that the summary-judgment record (the only source cited in the paragraphs above) supports Grand's account. *Cf.* Resp.Br.16 (protesting citations to the complaint).

As the United States agrees, all these harms qualify as immediately redressable Article III injuries. U.S.Br.3, 21-28; *see* Petr.Br.30-33. "When the suit is one challenging the legality of government *action*" and "the plaintiff is himself an object of the action …, there is ordinarily little question that the action … has caused him [an Article III] injury."

Lujan v. Defs. of Wildlife, 504 U.S. 555, 561-62 (1992) (emphasis added). The City's actions here are comparable to "the Attorney General's demand for private donor information [that] injure[d] the [plaintiff's] First Amendment associational rights" in *First Choice*, 608 U.S. at 190.

In addressing the ordinance challenge discussed below, *infra* § III, the City asserts that the Mayor and Law Director lacked "authority" to decide whether the zoning ordinance covered Grand's gatherings. Resp.Br.46. But the City does not make that argument about their threats. Nor could it. *First Choice* rejected the argument that a demand inflicts no injury simply because it is not "self-executing." 608 U.S. at 192. An Article III injury arises "when [a demand] is made and for as long as it remains outstanding," "[w]hether that command and those penalties were immediately enforceable or depended on subsequent court action," *id.* at 189, 193—or, here, subsequent Commission action. No matter whether these high-level officials had the final word, "[p]eople do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963). All the more so here, because there was nothing veiled about a threat of "criminal[] indict[ment]." J.A.154.

Nor does it matter to the claims' ripeness that the Mayor and Law Director accompanied their threat with a citation to UHCO § 1274. The City confirms the point by featuring *Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021), as a case where a threat of enforcement yields a damages claim. Resp.Br.38.

There, a campus police officer's threat of disciplinary action for religious speech constituted "a completed violation of [the plaintiff's] constitutional rights"; citing a college policy did not make the claim any less ripe. *Uzuegbunam*, 592 U.S. at 283-84, 293. So too here. To adapt the City's hypothetical: "[I]f … officers deter mosque attendance" with the pretextual assertion that attendance would violate UHCO § 1274, that "inflict[s] a concrete injury immediately giving rise to a lawsuit." Resp.Br.53.

B. Grand suffered Article III injury beyond the prohibition on hosting prayer groups.

The City concedes the ripeness of Grand's claims for discriminatory surveillance, pretextual enforcement of regulations, and suspended trash collection. *Supra* 8. It cites these injuries as examples of "non-regulatory actions" where "*Williamson County* is not implicated." Resp.Br.53. Grand's stigmatizing injury is in the same vein. Disposition of the permit application could not have undone any of these injuries or protected Grand from further injury. Yet the courts below dismissed them all.

III. Grand's Challenge To The Ordinance Was Also Ripe.

That leaves the only aspect of the ruling below that the City defends: what the City calls "preenforcement challenges to the City's zoning ordinance." *E.g.*, Resp.Br.25, 33. Even there, the Court of Appeals' categorical rule—barring all as-applied, land-use challenges without a final decision—has no grounding in ordinary Article III

principles. The court never even asked if Grand suffered injury in fact. Instead, it situated the finality rule in the two-prong prudential-ripeness framework that this Court once announced for challenges to administrative regulations. Pet.App.8a-15a (applying fitness and hardship prongs).

1. This is not your typical preenforcement ripeness issue. Grand's main challenge is that the City could not require him to seek a permit at all—not that a permit should be granted based on "discretionary, fact-dependent" considerations, Resp.Br.39. As the United States explains, that claim "does not target the *outcome* of the zoning process"; it asserts that Grand should not be subjected to "the process in the first place." U.S.Br.25.

The City says Grand could not challenge the permit requirement until he applied, paid the filing fee, hired a lawyer, subjected himself to hostile hearings, and secured a ruling. Resp.Br.33-34, 45-46. But Article III ripeness is not an exercise in fatuity. By the City's own account, "a preenforcement challenge to … zoning ordinances" requires only a "credible threat of enforcement" inflicting a "concrete injury." Resp.Br.39. The question is whether Grand's fear of enforcement was "actual and well-founded." *SBA List*, 573 U.S. at 160 (citations omitted). A credible threat can take many forms, including threatening arrest for distributing handbills protesting a war, *Steffel v. Thompson*, 415 U.S. 452, 455-56, 459 (1974), or threatening prosecution for publishing disfavored books, *Bantam Books*, 372 U.S. at 66-68.

Grand easily satisfied the standard, whether or not the Mayor and Law Director had the final say. *Supra* 9-13. If ever there were a credible threat of enforcement, it is where the Mayor, armed with a cease-and-desist order from the Law Director, declared that gathering "10 Jews in a room" "will be in violation of this cease-and-desist order and the city will use all of its … powers necessary even as far as criminally indicting you." J.A.153-54.

The principal injury resulting from the permit requirement is the same Article III injury underlying Grand's other ripe challenges—namely, the objective chill of Grand's religious exercise. *Supra* 9-13. Applying a permit requirement to group prayer, and not comparable secular gatherings, is itself actionable. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). And discrimination aside, requiring a permit to pray is sure to chill group prayer, even if it was issued "promptly and at no cost to the applicant." *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165-66 (2002). Grand's permit was costlier still: It came with a $400 filing fee, a demand for architectural plans and fire and building-code inspections, J.A.188, 275-84, 296-97, a direction to hire a lawyer, and an unprecedented quasi-judicial hearing that devolved into an antisemitic free-for-all.

The City ignores these burdens and the resulting chill on religious exercise. It recasts "credible threat" as effectively requiring absolute certainty: a final agency determination that leaves "'no question … about how the regulations … apply.'" Resp.Br.37. The City cites no Article III case supporting that standard.

Nor does it reconcile its standard with *First Choice* and *SBA List*, both of which definitively reject it.

The City's heightened standard is also inconsistent with cases allowing plaintiffs to bring preenforcement challenges to permit requirements "without the necessity of first applying for, and being denied, a license." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755-56 (1988); Petr.Br.25-26. The City admits some of these cases involved "preenforcement challenge[s]," including *Lakewood* and *Watchtower*. Resp.Br.51. It tries to distinguish them as "facial challenges." *Id.* But *Steffel* rejected that distinction. There, the plaintiff argued that the trespass statute "was being applied in violation of" his rights. 415 U.S. at 454-55. And this Court held declaratory relief available "whether an attack is made on the constitutionality of the statute on its face or as applied." *Id.* at 473-75.

That makes sense. Article III ripeness depends on when an injury occurs, not on how a constitutional challenge is framed. *See Lakewood*, 486 U.S. at 757 (licensing power "intimidates parties into censoring their own speech, even if the discretion and power are never actually abused").

The City fails to explain why a doctrine rooted in Article III would apply only to "challenges [to] a land-use regulation." Resp.Br.53. If finality were an Article III requirement, one would expect to see courts applying it to block constitutional claims in every context. Finality would have carried the day, for example, in *First Choice*, *Lakewood*, *Watchtower*, and *Steffel*. It did not, because Article III does not

categorically require finality or elevate the policy considerations on which the finality rule is based. Land use is not so different from all other police powers as to justify a special Article III rule.

Even if land use were special, the City does not try to defend finality as a categorical rule. The most the City can offer is the generalization that "*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." Resp.Br.35 (emphasis altered). When a plaintiff cannot even frame a constitutional challenge without knowing the extent of any limitations the agency will impose, the defendant will have a strong argument that injury in fact is lacking. *See also* Petr.Br.51. The result in *Williamson County* itself could be justified on that basis. But this is not such a case: Grand's position was that the City could not constitutionally demand a permit for his small prayer group regardless of whether or not the ordinance required one.

2. This Court has repeatedly called *Williamson County* finality "prudential." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1011-13 (1992); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 733-34 (1997). The City embraced that characterization below and to this Court, and it defended the doctrine on prudential grounds. *Supra* 1. Now it dismisses that description as a "misnomer." Resp.Br.39-40.

Since the City now concedes that Article III sets the outer limit on any finality requirement, Resp.Br.35-40, 53, the outcome of this appeal does not

depend on whether the doctrine was originally grounded in prudential considerations, as this Court has said. But this Court's "prudential" descriptor is at least instructive. If accurate, then (as the City no longer denies) applying the doctrine flouts a federal court's "virtually unflagging" "'obligation to hear and decide' cases within its jurisdiction." *SBA List*, 573 U.S. at 167 (citation omitted); Petr.Br.42. At a minimum, the description cautions against transplanting either the finality rule or its underlying rationale into this new context.

This Court's "prudential" characterization was accurate; it did real work. In *Lucas*, the zoning body argued that the plaintiff's "takings claim" was "unripe" under *Williamson County* because he "may yet be able to secure permission to build on his property." 505 U.S. at 1011. This Court observed that the plaintiff had "properly alleged Article III injury in fact" based on land-use restrictions, even without a "final decision" on a permit. *Id.* at 1011-12. But that lack of finality was not dispositive of the jurisdictional inquiry, because finality "goes only to the *prudential* 'ripeness' of [the plaintiff's] challenge." *Id.* at 1012-13 (emphasis added). Concluding it would not be "prudent to apply that prudential requirement," this Court decided the merits of the takings claim. *Id.* at 1013. The Court could not have done so if the finality requirement were grounded in Article III.

The City does not prove the "prudential" label inapt by cobbling together scattered phrases that sound like "Article III language" from *Williamson County* and *Pakdel v. City & County of San Francisco*, 594 U.S. 474 (2021). Resp.Br.37-38. Saying that the

finality rule furthers some of the same objectives as Article III does not mean it's constitutionally required.

Tellingly, the City's arguments justifying *Williamson County* finality all rely on "prudential purposes," including federalism, record-building, and constitutional avoidance. Resp.Br.40-41. Those are policy choices for Congress, and Congress made them in RLUIPA and § 1983. Those statutes "reflect a congressional judgment that land-use policy should *not* remain in local hands when it violates individuals' statutory and constitutional rights." U.S.Br.30; *accord* Petr.Br.48-51.

IV. Extending *Williamson County* Finality Endangers Religious Liberty.

The opening brief explained—and a chorus of amici have confirmed—how extending the finality requirement to religious-liberty claims supplies a roadmap for systematic suppression, subjecting free exercise and equal treatment to the whims and machinations of local bureaucrats. Petr.Br.52-56.

The finality requirement may be "relatively modest" in the *takings* context. Resp.Br.56 (quoting *Pakdel*, 594 U.S. at 478). But that does nothing to mitigate the impact of extending the requirement to religious-liberty claims. None of the City's proposed limitations offers comfort.

A finality exemption for facial challenges, Resp.Br.51-52, offers no protection to most religious-discrimination claims, which involve discriminatory application of facially neutral codes. Congress

recognized that religious land-use discrimination was concentrated "in the highly individualized and discretionary processes of land use regulation," which "make it difficult to prove discrimination in any individual case." 146 Cong. Rec. S7774-76 (daily ed. July 27, 2000).

The City also says a futility exception overcomes finality in the face of "pretextual or unduly dilatory administrative processes." Resp.Br.56. Real-life cases show the futility exception to be toothless. In one case, which Congress cited in enacting RLUIPA, a small Hasidic shul that sought to convene a minyan in a residential building was denied a permit. *See* Becket Br. 10-11. After 12 years of litigation and a consent decree, a court held that the congregation's claims were *still* unripe under *Williamson County*, as it was still possible to secure a permit. *Congregation Etz Chaim v. City of Los Angeles*, No. 97-cv-5042, 2009 WL 1293257, at *7-9 (C.D. Cal. May 5, 2009). It took the congregation another *four years* to finally obtain a permanent injunction. Becket Br. 12; *see also Congregation Rabbinical Inst. of Tartikov, Inc. v. Vill. of Pomona*, No. 25-cv-1471, 2026 WL 2907672, at *1, *7, *14-15 (S.D.N.Y. Sept. 28, 2026) (20 years of litigation and nine successive permit applications before as-applied claims deemed ripe).

Grand's case likewise illustrates the limits of the futility exception. Requiring him to secure a permit when the City now admits none was required is the height of pretext. And the "quasi-judicial" hearing was designed to yield a "very hostile, confrontational approach" that would deter any ordinary applicant. J.A.261; *see* Bahá'í Br. 23 (burdens on minority faiths

often appear as "coercive pressure to abandon the proposed use before any formal denial is issued").

Also unavailing is the City's purported distinction between "application[s] of land-use regulations" and "action by government officers to restrict land use apart from land-use regulations." Resp.Br.53-55. That impermissibly makes judicial review contingent on whether officials invoke a zoning ordinance. *See NAACP v. Button*, 371 U.S. 415, 429 (1963) ("[A] State cannot foreclose the exercise of constitutional rights by mere labels."). Again, if invoking UHCO § 1274 was enough to trigger the finality requirement even though the City now admits it did not apply, that is no limitation at all. "People necessarily exercise liberty somewhere—that is, on land." I.J. Br. 5. Bureaucrats can easily cite some tangentially related land-use regulation to shut down disfavored speech or religious exercise.

The many examples of *Williamson County* finality blocking religious-liberty claims documented in the opening brief and amicus briefs show that the City's proffered limits fail to protect religious liberty. Collectively, those examples represent troubling incursions on religious liberty with no effective judicial remedy. Yet the City dismisses them as presenting only "traffic, environmental, [and] safety" concerns at the core of "zoning laws." Resp.Br.55.

Consider *Guatay Christian Fellowship v. County of San Diego*, where a church worshipped in the same building for 22 years before the county suddenly ordered the church to cease all religious assembly on the property under threat of prosecution. 670 F.3d

957, 959-65 (9th Cir. 2011); Members of Congress Br. 14-15. A court dismissed the church's claims as unripe because it had not completed a permit process that could cost $314,250 and would take between 14 months and three years. 670 F.3d at 967-68; *see* Becket Br. 16-17.

The City treats such delays—or the nine-week pendency of the application here—as costless. But delay often *is* the injury, as "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam). Religious liberty cannot await the outcome of often interminable zoning processes, especially when so many religious practices are time-sensitive. Justice delayed is worship denied.

V. The City's Mootness Arguments Are Meritless.

This Court is free to bypass what has now become the City's lead argument, asserting mootness. The City defends the judgment below solely on Article III grounds. "[T]here is no unyielding jurisdictional hierarchy" among threshold jurisdictional issues. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999). The Court thus can decide the ripeness issue on which it granted review and remand the factbound mootness arguments, which no court below has addressed.

That said, this Court can easily reject the City's mootness arguments because, like its ripeness arguments, they depend on improperly truncating Grand's claims. *Supra* 2-8. And we urge the Court to

take that extra step so Grand can finally pursue his long-delayed claims on the merits.

A case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) (citation omitted). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* at 307-08 (cleaned up). The City's three mootness arguments all fail this standard.

1. Although it never raised this in its brief in opposition, the City argues that this case is moot because it conceded in litigation that Grand did not need a permit to host "small, informal" prayer gatherings. Resp.Br.30 (quoting Pet.App.38a-39a). But that concession admitted liability and established Grand's right to damages for all the group prayer on Sabbaths and holidays forever lost for lack of a permit and all the costs incurred in connection with the unnecessary permitting proceeding.[2] And the City never explains how its confession of error could moot claims that were independent of the permitting decision, like discriminatory surveillance, pretextual enforcement of regulations, suspended trash

[2] The City faults the opening brief for tallying 292 Sabbaths. Resp.Br.24. It asserts that Grand "moved … nearly two months before filing his opening brief" on August 31, 2026. Resp.Br.31. But under a lease with the buyer, Grand did not move until August 11. Ex.1 ¶ 5. The correct number is 290. We apologize for the inaccuracy.

collection, and stigmatizing injury. Petr.Br.30-33; J.A.32-34, 42-53, 174, 177.

Grand's damages claims, alone, demolish this mootness argument. As explained (at 4-8), the City cannot avoid those claims by wrongly recasting them as forfeited.

Nor would the litigation concession moot a claim for injunctive relief. The City does not try to meet the "formidable burden" required to show that a case is moot based on voluntary cessation. *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (citation omitted). Nothing stopped the City from changing course. (The City elsewhere mentions a "propos[ed] … memorandum of understanding," Resp.Br.15, but rightly does not invoke it for mootness: It was a rejected settlement offer that retained multiple restrictions on group prayer and offered Grand no compensation for his past injuries.)

The City's litigation conduct confirms that it never thought its concession mooted the whole case. In opposing certiorari, the City never suggested any such jurisdictional problem. Nor did it argue below that the entire case—or even any of Grand's as-applied claims—was moot. True, the City raised *a* mootness argument, Resp.Br.30, but, tellingly, only as to Grand's *facial* challenges, C.A.Appellees.Br.31-32 & n.8.

2. The City's two-sentence argument about Brennan vacating the mayoralty—also absent from the cert. opposition—does not explain how that could possibly moot the whole case, including damages

against him and all relief against his co-defendants. Resp.Br.31.

3. The City's remaining argument is that Grand's claims for injunctive relief are moot because he recently moved out of University Heights. Resp.Br.31-33. The City treats this move as some seismic revelation. But the City has known from the start of this case that the Grand family was trying to escape the City's hostility. *Supra* 2, 5. Crucially, the move does not moot Grand's preserved damages claims—in fact, his effort to move was a *component* of his damages. *Supra* 5 (noting stigma that deterred prospective buyers).

In addition, Grand still has several grounds for injunctive relief, documented in his declaration, all arising from the common factual baseline that he moved only 0.6 miles beyond the City's border, still attends synagogue in the City three times daily, and many of his Orthodox Jewish friends still live there. Ex.1 ¶¶ 7-12; *see supra* 5 n.1.

To take one example, Grand has access to a University Heights home in a residential area, where he wants to host Sabbath prayer groups. Ex.1 ¶ 9. But he cannot do it for fear of prosecution. *Id.* The City's threat of prosecution was never limited to Grand's Miramar residence: The Mayor declared that "congregating" at Miramar "or *any other address* located in a residence zoned U-1 without a special-use permit is a violation of city law." J.A.338 (emphasis added).

Grand also has friends in the City who wish to host in-home prayer groups and to invite Grand to attend. Ex.1 ¶ 11. But the City's threats have tempered their willingness to do so and his willingness to attend, absent an injunction. *Id.* The record reflects community-wide fear of the City prosecuting "a minyan of any size." J.A.367. All this impairs Grand's free-exercise and associational rights to pray with others. *See Roberts v. Neace*, 958 F.3d 409, 413-16 (6th Cir. 2020).

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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