No. 25-965

IN THE

Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE MANHATTAN INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

EDWARD J. LONGOSZ, II
MICHAEL W. THOMAS
ECKERT SEAMANS CHERIN & MELLOTT, LLC
1717 Pennsylvania Avenue NW, 12th Floor
Washington, DC 20006

ILYA SHAPIRO
TREVOR BURRUS
MANHATTAN INSTITUTE
52 Vanderbilt Avenue
New York, NY 10017

WILLIAM H. HURD
Counsel of Record
ECKERT SEAMANS CHERIN & MELLOTT, LLC
901 East Byrd Street, Suite 1105
Richmond, VA 23219
(804) 788-9638
whurd@eckertseamans.com

Counsel for Amicus Curiae

392201

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Page

Statutes and Other Authorities

INTEREST OF AMICUS CURIAE[1]

The Manhattan Institute ("MI") is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. MI has a strong interest in ensuring that courts safeguard the freedoms that enable individuals and organizations to live out their convictions without undue government interference. Robust protection of religious liberty is essential to a free and vibrant society, and MI believes this case presents issues of significant importance to its mission and to the broader public.

SUMMARY OF THE ARGUMENT

This case involves yet another example of government discrimination against religious speech. The petitioner, Daniel Grand, has been told by the City of University Heights (the "City") that he cannot bring others into his home for religious study and worship without first obtaining a permit, because holding such meetings would turn his home into a "house of worship" in violation of local zoning laws. Yet there are apparently no such restrictions on the use of residences for secular meetings.

The requirement that Grand obtain a permit for his contemplated religious gatherings has caused—and is causing—irreparable harm. Neither the text nor the

1. Rule 37 statement: *Amicus Curiae* affirms that no counsel for any party authored any part of this brief and that nobody but *amicus* and its counsel funded its preparation and submission. Further, *amicus* gave timely notice to all parties of its intent to file this brief.

purpose of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") require him to exhaust the administrative procedures of the City's zoning laws before filing his case in federal court. The Sixth Circuit—and three other circuits—have relied on *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,* 473 U.S. 172 (1986), to justify imposing such an exhaustion requirement, That reliance is misplaced. Indeed, the rationale of *Williamson County* counsels in favor of Grand having immediate access to federal court without delay.

New and minority religious groups are especially vulnerable to the use of zoning codes to stifle religious gatherings. The Court should take this case to clarify RLUIPA's full sweep and uphold the religious liberties it was enacted to protect.

ARGUMENT

I. The City Violates the First Amendment by Giving Religious Speech Second-Class Status.

The petitioner, Daniel Grand, is a devoted Orthodox Jew who invites others of his faith into his home for religious study and worship. But suppose it were someone else:

- an ardent football fan who brings friends into his basement every weekend to watch games and talk sports.

- an avid reader who hosts weekly book club discussions about the latest *New York Times* bestsellers.

- a political activist—Democrat, Republican, or anything else—who holds kitchen-table meetings to organize the next door-to-door campaign.

There is no suggestion that *any* of these *secular* activities would be subject to any licensing requirement by the City (nor should they be). But because Grand was using his home for *religious* speech, the City told him he had to stop because he did not have official permission to do so. Such discrimination against religious speech is patently unconstitutional. This Court has repeatedly said so.

In *Widmar v. Vincent*, 454 U.S. 263 (1981), the University of Missouri would not allow a group of Christian students access to the meeting halls regularly used by secular student groups. In an 8–1 decision, this Court ruled that such discrimination is unconstitutional. In his lone dissent, Justice White *rejected* "the proposition that because religious worship uses speech, it is protected by the Free Speech Clause of the First Amendment." *Id.* at 284 (White, J., dissenting). Instead, the dissent contended that, because the Christian group wanted to use the meeting hall for religious *worship*, the University could refuse without violating free *speech* rights.

Labeling the dissent's theory a "novel argument," the majority explained that the distinction between religious worship and other speech lacked "intelligible content," was not "within the judicial competence to administer,"

and had no "relevance" to the university's treatment of the Christian group. *Id.* at 269, n. 6. Indeed, far from being disfavored by the Constitution, religious speech—including religious worship—is doubly protected, guarded by both the Free Speech Clause and the Free Exercise Clause. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) ("Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities.") (citations omitted).

Widmar should have put an end to the theory that government officials can impose discriminatory restrictions on private religious speech. But governments can be slow to learn, and the Court has needed to repeat the lesson. For example:

- In *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 392 (1993), a school district prohibited a religious film from being shown on public school property "solely because" the film featured religious subject matter. *Id.* at 393–94. In striking down the restriction, the Court reminded the nation that "the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Id.* at 394.

- In *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), a school district prohibited a religious group from using a school-created limited public forum "for the purpose of conducting religious instruction

and Bible study." *Id.* at 105. The Court held that the prohibition against religious speech constituted viewpoint discrimination and struck it down. *Id.* at 112.

- In *Tandon v. Newsom*, 593 U.S. 61, 64 (2021), the Court entered an injunction against California COVID-19 restrictions that "treat[ed] some comparable secular activities [including movie theaters and concerts] more favorably than at-home religious exercise." *See also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020) (striking down restrictions that "single[d] out houses of worship for especially harsh treatment" when compared to secular gatherings and facilities).

- In *Kennedy*, a high school football coach was punished by his school district for saying private prayers midfield after a football game. In ruling for the coach, the Court again explained that private religious speech cannot be relegated to second-class status: "The Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, *for religious and nonreligious views alike*." *Id.* at 514 (emphasis added).

- In *Carson v. Makin*, 596 U.S. 767 (2022), the government of Maine operated a tuition assistance program for parents in rural

> school districts lacking access to a public secondary school. Parents could use the funds to pay for tuition at accredited private schools, and those schools had wide latitude in designing their own courses of study. But in order for a school to participate in the funding program, its curriculum had to be "nonsectarian." The Court struck down the "nonsectarian" requirement on the grounds that it is "discrimination against religion." *Id.* at 781.

Despite such repeated lessons, some governments—including the City of University Heights—continue to treat religious speech as an inferior form of First Amendment activity. In *Widmar*, *Lamb's Chapel*, *Good News Club*, and *Carson*, government officials at least had the argument (wrong though it was) that the Establishment Clause compelled them to discriminate. And, in *Tandon* and *Cuomo*, the novelty of the pandemic may have led some officials to slip from their normal constitutional moorings. But neither the Establishment Clause nor the pandemic are at issue in this case. There is no excuse for the City's discrimination against in-home religious gatherings.

The City's permit requirement is reminiscent of the old religious establishments, which prohibited unlicensed religious meetings. *See* Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2113 (2003). Moreover, "[t]he ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality." *Rowan v. U.S. Post Off. Dep't*, 397 U.S. 728, 737 (1970). A home

represents the most private space, and an "individual's interest in protecting the privacy of his home is of the highest order." *United States v. Weaver*, 808 F. 3d 26, 37 (D.C. Cir. 2015). Government has no business prying into a home to see whether the owner and his guests are saying prayers or playing gin rummy.[2]

But prying is exactly what the City has been doing, starting with the cease-and-desist letter that told Grand he could not use his home as a place of "religious assembly" (*e.g.,* group prayer and worship) and that doing so could result in "building code citations" (*i.e.*, punishment). *Grand*, 159 F.4th at 510. The Mayor also "emphasized that Grand could not operate a 'house of worship' without a permit" and he "asked community members to report any violations" of the zoning laws. *Id.* a 510. In addition, the City's police "directed patrol units to drive past Grand's house and check for code violations," and "a housing inspector searched the house for violations." *Id.* at 511.

It is no answer for the City to say that it would apply its requirement equally to all religions. First, it is probably not true. These are Orthodox Jews, whose men typically wear beards and distinctive black garb, and who do not drive on their Sabbath. The prospect of such strangers walking through the neighborhood once a week to reach the Grand home was likely a factor in the displeased neighbor's complaint to the City. *See Grand,* 159 F.4th at 509 (explaining that the City's action against

2. The City could, perhaps, adopt a content-neutral regulation limiting the number of vehicles that could be parked on the street in connection with a residential event. But such a regulation would not do the job of curtailing events at Grand's home, a venue to which participants typically *walk* on their Sabbath.

Grand began with a neighbor's complaint). If they had been Presbyterians wearing polo shirts and driving their SUV's to an evening Bible study, probably no one would have cared. Second, in this context, "evenhandedness" does not matter. The City cannot avoid a constitutional violation against one religion by touting its disfavorable treatment of all religions.

The Court should hear this case to explain to the City and other local governments that they cannot treat in-home religious speech and assembly, including prayer and worship, less favorably than other forms of in-home speech and assembly.

II. There Is No Need to Wait and See If the City Will Issue a Permit.

Grand filed his complaint under RLUIPA. In response, the City argued —and the lower courts agreed—that he filed his complaint prematurely. He must wait, they say, until he has applied for a special-use permit and, if denied, wait some more until he has obtained a final decision from the Board of Zoning Appeals. Only then, they say, may he come to court. *Grand*, 159 F.4th at 513. But such a theory disregards the harm inflicted on Grand by the City through its demands, threats, and investigations—all of which were clearly calculated to chill Grand in the exercise of his First Amendment rights.

As this Court has explained, "informal sanctions," including "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation," are sufficient to cause a First Amendment injury. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 71–72 (1963). Moreover, "[t]he loss of First Amendment freedoms, for

even minimal periods of time, unquestionably constitutes irreparable injury." *Cuomo*, 592 U.S. at 19 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)) (emphasis added). These are basic principles of First Amendment law. But the Sixth Circuit overlooked them, mistakenly concluding instead that "Grand will not be prejudiced by any delay." *Grand*, 159 F.4th at 513.

Every day when citizens are forbidden to meet with others for prayer in their homes is another day of injury. And this is especially true for Grand, whose faith requires an assembly of ten men—a *minyan*—for certain rituals and prayers. "The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty." *Cuomo*, 592 U.S. at 19. Thus, it would not remedy the constitutional violation even if we could know for sure that, at the end of the process, the permit demanded by the City would be granted. And, of course, there is no such assurance.

A. RLUIPA Allows Immediate Access to Court When First Amendment Liberties Are Harmed.

Congress enacted RLUIPA to vindicate religious liberties (and, in some cases, to expand such liberties beyond those available under prevailing constitutional jurisprudence).[3] The protections of the Act clearly

3. *See Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990) (limiting constitutional free exercise rights when asserted against a neutral statute of general applicability) and *Madison v. Riter*, 355 F. 3d 310, 315 (4th Cir. 2003) (noting that the *Smith* court invited Congress to "provide greater protection to religious exercise through legislative action.")

encompass the prayer meetings that Grand wishes to hold in his home. *See* 146 Cong. Rec. S7774-01 at *S7776 (explaining that RLUIPA was intended to "provide critical protection for houses of worship *and other religious assemblies* from restrictive land-use regulation that all too often thwarts the practice of faith in our nation.") (emphasis added).

It would be odd, to say the least, if in enacting a statute designed to vindicate religious liberties, Congress intended plaintiffs to endure protracted deprivations of those liberties before seeking such vindication. Nothing in RLUIPA's text says that Grand must wait. Indeed, it points in the opposite direction. RLUIPA says:

> A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by ***the general rules of standing*** under Article III of the Constitution.

42 U.S.C. § 2000cc-2(a) (emphasis added). Those general rules of standing require a plaintiff to show three elements:

> ***First,*** the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical,

> ***Second,*** there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.
>
> ***Third,*** it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (emphasis added) (cleaned up).

All three *Lujan* elements are present here. First, because the injury is the deprivation of First Amendment rights, the injury has already occurred and continues to occur every day that Grand is not allowed to conduct his preferred form of religious worship in his home. Second, the cause of the injury is the City's demand that he cease holding such worship services unless and until he obtains a special-use permit. Third, the injunction against the City sought by Grand would vindicate his rights and allow his in-home worship to resume.

RLUIPA also states: "This chapter shall 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 (emphasis added). To impose the procedural hurdle of administrative exhaustion would narrow rather than broaden the protection of religious exercise. Thus, where, as here, there is Article III standing, the exhaustion requirement is inconsistent with RLUIPA and should be rejected.

B. *Williamson County* Does Not Require the Petitioner to Wait.

In holding that Grand must wait, the Sixth Circuit improperly applied the finality standard articulated in *Williamson County. Regional Planning Commission v. Hamilton Bank of Johnson City,* 473 U.S. 172, 186 (1986). To begin, *Williamson County* did not involve any free exercise or free speech issues. Instead, the case involved the ripeness of a real estate developer's Fifth Amendment claim that his property was being taken without just compensation. The Court found that the claim was not ripe because (1) the developer still had an opportunity to seek a variance from the appeals board and (2) the developer had not sought compensation through "the [inverse condemnation] procedures the State ha[d] provided" for seeking just compensation. *See Knick v. Twp. of Scott,* 588 U.S. 180, 187–88 (2019) (citing *Williamson Cnty*, 473 U.S. at 186-94).

The Sixth Circuit applied this finality standard to Grand's RLUIPA claim, finding that his claim was unripe because he withdrew his application for a special use permit before the application process was completed. *Grand*, 159 F. 4th at 512. The Sixth Circuit reasoned that "[i]n the land use context, one important factor in a dispute's fitness for judicial decision is a 'finality' requirement—a concrete and final decision by local authorities." *Id.* at 511 (citing *Williamson Cnty.*, 473 U.S. at 193). Thus, it held that "land-use challenges are generally unripe until the 'relevant administrative agency resolve[s] the appropriate application of the zoning ordinance to the property in dispute.'" *Id.* at 512 (quoting *Miles Christi Religious Ord. v. Township of Northville*, 629 F.3d 533, 537 (6th Cir. 2010)).

This reasoning, while applicable in other factual contexts, was improperly applied to Grand's RLUIPA claim. First, Grand is asserting injuries to his First Amendment rights—injuries of the sort this Court has repeated said are "irreparable." *See., e.g., Cuomo*, *supra.* By contrast, counsel are unaware of any case where this Court has said that injuries to property rights are irreparable. Thus, this case presents an urgency not present in *Williamson County.*

Second, this Court has explained that the *Williamson County* finality requirement is "relatively modest" and is only meant to show "that a plaintiff has actually 'been injured by the Government's action' and is not prematurely suing over a hypothetical harm." *Pakdel v. City & Cnty. of San Francisco, Cal.*, 594 U.S. 474, 479 (2021) (quoting *Horne v. Dep't of Agric.*, 569 U.S. 513, 525 (2013)).[4] There is nothing hypothetical about the harm suffered by Grand. He is suing over injuries that have already occurred and that are continuing to occur. Thus, even under the rationale of *Williamson County,* this case is ripe. There is no need for Grand to wait.

The Court should hear this case to correct the misunderstanding about *Williamson County* and explain that plaintiffs suffering harm to the First Amendment liberties need not wait for their local government to make a final decision on zoning issues before seeking judicial relief.

---

4. *See Pakdel*, 594 U.S. at 479 (finding a 5th Amendment claim ripe when there was "no question that government's 'definitive position on the issue [has] inflict[ed] an actual concrete injury.'") (quoting *Williamson Cnty.*, 473 U.S. at 193).

III. The Court Should Use This Case to Promote Religious Tolerance and Protect Religious Liberty.

Congress adopted the land use provisions of RLUIPA to curb the widespread use of zoning laws to restrict the free exercise of religion. But the mistreatment of Grand by his city government shows that the practice continues. And there is no reason to believe that this is an isolated case. Unfortunately, four circuit courts—including the Sixth Circuit—have debilitated the statute by refusing to allow RLUIPA-based free exercise lawsuits until the plaintiff has exhausted the local zoning process—a process that can be complicated, costly and time-consuming.[5]

Thus, there is a double blow: first, the locality requires a special-use permit for in-home prayer meetings; then, the courts refuse to hear the homeowner's RLUIPA claim until long after the damages pile up. These blows are likely to fall especially hard on religious groups that are minority faiths or new within their communities. These groups are less likely to have formal houses of worship

5. *See Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957 (9th Cir. 2011); *Congregation Anshei Roosevelt v. Plan. & Zoning Bd. of Borough of Roosevelt*, 338 F. App'x 214 (3d Cir. 2009); *Grace Cmty. Church v. Lenox Twp.*, 544 F.3d 609 (6th Cir. 2008); *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342 (2d Cir. 2005). Fortunately, three other circuits have taken the opposite approach. *See Church of Our Lord & Savior Jesus Christ v. City of Markham, Illinois*, 913 F.3d 670 (7th Cir. 2019); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach, Fla.*, 727 F.3d 1349 (11th Cir. 2013); *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78 (1st Cir. 2013). This split in the circuits is, of course, another reason for the Court to hear this case, as Grand's petition for certiorari has explained.

and, thus, more likely to need a member's living room for study and worship. These groups are also more likely to have intolerant neighbors looking at them askance and calling upon their city to "do something."[6] And, often, these groups will not have the resources to "fight city hall" that larger and more well-established groups would enjoy.

Here, it is Orthodox Jews who need the protection of RLUIPA. In a future case, it might be Roman Catholics, or Baptists, or Mormons, or Muslims, or Sikhs, or Buddhists. Whatever the faith, "[r]espect for religious expressions is indispensable to life in a free and diverse Republic." *Kennedy*, 597 U.S. at 543. The best way for the Court to foreclose such future violations of religious liberty is to vindicate religious liberty in the case now before it.

Requiring a license to practice a faith in the privacy of one's home runs afoul of the "mutual respect and tolerance . . . for religious and nonreligious views alike" that is the bedrock of the First Amendment. *Id.* at 514. And requiring administrative delay before seeking judicial protection of religious liberties runs afoul of the great purposes for which the First and Fourteenth Amendments were created. This case provides the Court with a much-needed opportunity to insist upon such respect and to give full sweep to RLUIPA and the religious liberties it was enacted to protect. For this reason, too, c*ertiorari* should be granted.

---

6. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004) (noting that RLUIPA was intended to target "zoning codes which use individualized and discretionary processes to exclude churches, especially 'new small or unfamiliar churches . . . [like] black churches and *Jewish shuls and synagogues*.'") (citing 146 Cong. Rec. S7774-01 at *S7774) (emphasis added).

CONCLUSION

The Court should grant the petition for certiorari and reverse the judgment of the Sixth Circuit.

Respectfully submitted,

Edward J. Longosz, II
Michael W. Thomas
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue NW, 12th Floor
Washington, DC 20006

William H. Hurd
Counsel of Record
Eckert Seamans Cherin & Mellott, LLC
901 East Byrd Street, Suite 1105
Richmond, VA 23219
(804) 788-9638
whurd@eckertseamans.com

Ilya Shapiro
Trevor Burrus
Manhattan Institute
52 Vanderbilt Avenue
New York, NY 10017

Counsel for Amicus Curiae

April 10, 2026