No. 26-1442

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LUCINDA LC and JUNE WHEATLEY,
on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,
v.

JAY SOM, et al.,
in their official capacities,
Defendants-Appellees

On Appeal from the United States District Court
for the Eastern District of Virginia, Alexandria Division
Case No. 1:26-cv-00252-MSN-WBP

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

Ilya Shapiro
Manhattan Institute
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute

Reilly Stephens
Counsel of Record
Ángel J. Valencia
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(512) 481-4400
rstephens@ljc.org
avalencia@ljc.org

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae Liberty Justice Center and Manhattan Institute have no parent corporations, and no publicly held corporation owns ten percent or more of either's stock, as they are nonprofit, tax-exempt organizations. No party's counsel authored this brief in whole or in part, and no person other than amici, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

INTEREST OF *AMICI CURIAE*[1]

The Liberty Justice Center is a national nonpartisan public-interest litigation firm that pursues strategic precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.

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. It has historically sponsored scholarship and filed briefs supporting property rights and due process.

The Liberty Justice Center and the Manhattan Institute have a strong interest in the issues presented in this appeal. This case sits at the intersection of three foundational constitutional principles that the Liberty Justice Center and the Manhattan Institute regularly defend: the right of private property owners to exclude government and third parties from their premises; the freedom to contract—or to decline to contract—without state coercion; and the right to meaningful, timely judicial

[1] Pursuant to Fed. R. App. P. Rule 29, no parties nor parties' counsel authored or consulted on this brief in whole or in part. No person, parties, nor parties' counsel contributed money intended to fund preparation or submission of this brief.

review before government enforcement machinery inflicts irreversible harm on small businesses. The Liberty Justice Center and the Manhattan Institute submit this brief to assist the Court in understanding how state regulatory investigations independently inflict irreparable hardship on small property owners, satisfying ripeness requirements and militating in favor of preliminary relief.

SUMMARY OF ARGUMENT

The Commonwealth of Virginia's source-of-funds enforcement machinery inflicts concrete, irreparable hardship on small property owners like Plaintiff-Appellant June Wheatley ("Wheatley") independent of any future enforcement action. The district court erred in dismissing Wheatley's and Plaintiff-Appellant Lucinda LC's ("Lucinda") (collectively, "Small Landlord") claims as unripe. The ongoing state investigation itself constitutes the hardship that the ripeness doctrine is designed to address.

For a family-run operation managing nine apartments on behalf of an aging father's trust (JA67), the costs of defending a state fair-housing investigation—attorneys' fees, management disruption, professional-license jeopardy, and reputational stigma—are immediate, palpable, and irreparable. These are not speculative future harms contingent on some final agency action—they are present injuries the investigation inflicts every day it remains open. Courts do not need to wait for the government to complete its enforcement work before affording relief. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). The process itself is the punishment.

The hardship falls with unique severity on small, mom-and-pop landlords. Institutional property owners—real estate investment trusts and national management companies—are more likely to be able to absorb investigation costs as overhead. But for Wheatley, who manages nine units personally for a family trust (JA67), legal fees and management disruption consume resources that would otherwise sustain the business itself. Virginia's enforcement apparatus is a sledgehammer deployed against a small-business owner exercising her constitutional right to decline participation in a federal program that compels warrantless government access to her property and records. The structural asymmetry between the state's enforcement resources and the small landlord's capacity to resist is itself the hardship that the ripeness doctrine addresses.

The district court's ripeness ruling also creates an illusory catch-22 that effectively bars federal judicial review of Wheatley's constitutional claims. If the case is "unripe" now—during the investigation stage—it will be subject to *Younger* abstention once formal enforcement proceedings begin. The result: there is no moment at which a small landlord can vindicate federal constitutional rights in a federal forum.

This is precisely the structural injustice that pre-enforcement review doctrine was designed to prevent.

This Court should reverse the district court's ripeness determination, hold that the ongoing investigation independently satisfies the hardship prong, and remand for consideration of the Small Landlord's preliminary injunction motion on the merits. Individuals exercising constitutional rights deserve pre-enforcement judicial review—not relegation to a procedural twilight zone where federal claims can never be heard.

ARGUMENT

I. The State Investigation Itself Imposes Immediate and Irreparable Hardship on Small Landlords, Satisfying the Ripeness Requirement.

A. The ripeness doctrine permits pre-enforcement review when hardship is certain and immediate.

The ripeness doctrine serves "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. . ." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). But a finding of ripeness does not require a litigant to await actual punishment before seeking relief. A controversy is ripe when the issues presented are "fit for judicial decision" and when withholding review would impose "hardship to the parties." *Id.* at 149, 153. Both conditions are satisfied here.

Virginia has not merely threatened future enforcement—it has commenced it. The complaint was filed and an investigation initiated, resulting in an ongoing conciliation process. JA71. The matter remains within the jurisdiction of the Real Estate Board. JA70-71, JA91-92. More importantly for the hardship inquiry, this active investigation is not merely evidence of a credible threat satisfying the fitness prong. For a nine-unit family operation managed by a sole proprietor, the

investigation is not a precursor of future harm—it is the harm. Every day the investigation remains open, the costs mount—and the Small Landlord bears the brunt.

The Supreme Court has made clear that a plaintiff "need not expose himself to actual arrest or prosecution to be entitled to challenge a statute" where a credible threat of enforcement exists. *Susan B. Anthony List*, 573 U.S. at 159. This standard is met here. But the hardship here goes well beyond the forced choice between constitutional rights and state penalties. For small property owners, the investigation itself—irrespective of its outcome—inflicts escalating, irreparable harm that the district court failed to consider.

The Fourth Circuit applies a "credible threat" standard that is plainly satisfied here. *Bryant v. Woodall*, 1 F.4th 280, 285 (4th Cir. 2021). While the Small Landlord demonstrates it faces a credible threat of enforcement, the investigation itself—independent of any future enforcement action—inflicts some concrete, escalating, and irreparable harm on small property owners. Even under the traditional *Abbott Laboratories* framework, the hardship showing here is overwhelming. Such hardship is not speculative or contingent on future agency action.

It is concrete, present, and mounting every day the investigation remains open.

The district court's conclusion that "the burden associated with the proceedings" is not "undue" reflects a fundamental misunderstanding of what state enforcement proceedings do to small, family-run businesses. JA37. The district court appeared to conflate the hardship inquiry with a requirement of final agency action—reasoning that because the investigation has not yet produced a reasonable cause determination or formal charges, the burden is not yet sufficient. JA36–37. But the Supreme Court has never required that hardship reach the level of a final enforcement action. To the contrary, the entire point of the hardship inquiry is to assess whether the litigant will suffer meaningful harm while waiting for enforcement to ripen into a final action.

B. The "process is the punishment" for small, mom-and-pop landlords.

The "process is the punishment" principle—a doctrine this Court should recognize as independently satisfying the hardship prong—holds that a government investigation inflicts cognizable injury from the moment it begins, not merely when it concludes. *Abbott v. Pastides*, 900 F.3d 160, 179 (4th Cir. 2018). For a nine-unit family operation managed

by a single individual on behalf of her aging father's marital trust (JA67), the hardship of a state investigation is not a way station toward some future injury. The investigation itself is the injury. "The value of a sword of Damocles is that it hangs—not that it drops." *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting). This principle, though arising in the due-process context, applies with particular force to the ripeness hardship inquiry: where the process of investigation itself imposes irreparable costs, requiring the subject to await the process's conclusion before seeking relief is to deny relief altogether.

The real-life effects of fair-housing investigations can be devastating for small mom-and-pop landlords. The financial burden associated with defending a fair-housing investigation weighs heavily. Legal counsel is retained to respond to agency inquiries, review evidentiary demands, attend conciliation proceedings, and, if necessary, contest any charge at an administrative hearing. JA71, JA91–92. The stark contrast between the government's enforcement resources and the Small Landlord's ability to sustain a defense is itself a constitutional harm: it coerces compliance not because the law is right, but because defending is financially burdensome.

Management time diverted from a small business's operations is another harm present here. As Lucinda's sole manager (JA67), Wheatley wears every hat—leasing agent, maintenance coordinator, tenant liaison, bookkeeper, etc. Every hour she spends responding to government inquiries, reviewing legal correspondence, or attending conciliation sessions is an hour not spent maintaining the property, communicating with tenants, or managing her family's investment.

The open investigation also constitutes a chilling effect on Wheatley's constitutional rights. Courts have recognized the "chilling effect of governmental investigation on ordinary individuals." *See Abbott*, 900 F.3d at 167; *see also Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (the threat of enforcement need not be "imaginary or speculative" to justify relief). For Wheatley, the investigation is a personal burden borne by a family member managing property on behalf of her aging father. The stress of potential penalties, license sanctions, and ongoing legal exposure compounds daily. The open investigation does not merely threaten future injury—it is presently chilling Wheatley's exercise of constitutionally protected decisions about her own property. The Small Landlord faces an impermissible choice between its Fourth Amendment

rights and state penalties. *See* Opening Br. at 36. Every new inquiry from a voucher-holder forces the Small Landlord to weigh the risk of another complaint and another investigation. This multiplier effect—where the investigation itself makes future enforcement more likely—independently satisfies the hardship prong. *See Steffel*, 415 U.S. at 459 (threat of enforcement need not be "imaginary or speculative" to justify relief).

Taken together, these harms are concrete, present-tense, and mounting. The district court's conclusion that the investigation's burdens are not "undue" (JA37) is one befitting institutional landlords with resources to absorb prolonged government proceedings—not to the mom-and-pop operators who actually bear the burden of source-of-funds enforcement.

C. Professional licensing jeopardy creates immediate, irreparable harm.

The threat to Wheatley's professional real estate license warrants particular attention as a category of hardship that is, by its nature, irreparable. Wheatley is a licensed Virginia real estate salesperson. JA67. Virginia law authorizes the Real Estate Board to initiate administrative proceedings and impose license sanctions—including

suspension or revocation—following a fair-housing violation finding or referral. Va. Code § 36-96.20; Va. Code § 54.1-2109. No amount of subsequent monetary relief can restore a professional license once it is revoked, nor can it reconstruct the client relationships, referral networks, and professional standing that evaporate with it.

A professional license is a constitutionally protected property interest. *See Barry v. Barchi*, 443 U.S. 55, 64 (1979). It is not an interest that can be made whole by money damages after the fact. Once a license is suspended or revoked, clients are lost, referral networks dissolve, and professional reputation suffers harm that is, by its nature, irreparable. The threat to Wheatley's license is not speculative—it is a direct, foreseeable consequence of the investigation Virginia is conducting. If the Real Estate Board finds a fair-housing violation, the matter may be referred for license discipline proceedings. Va. Code § 36-96.20. For a small landlord whose livelihood depends on her real estate license, this is not merely a financial risk—it can be career-ending.

II. The District Court's Ruling Creates an Illusory Catch-22 Barring Federal Review of Constitutional Claims.

The district court's *Younger* ruling has an additional, independent consequence for the ripeness analysis that warrants this Court's

attention: combined with the ripeness determination, it creates a procedural catch-22 that itself demonstrates the hardship of withholding review. This structural trap effectively bars the Small Landlord from ever vindicating their federal constitutional claims in a federal forum.

The logic is straightforward. The district court held that the Small Landlord's claims are "unripe" because the investigation has not yet produced a final agency action—no reasonable cause determination (JA92), formal charges, or civil penalties. JA36–37. But if the Small Landlord waits for formal enforcement proceedings to begin, the district court's *Younger* abstention analysis would require federal courts to abstain in deference to ongoing state proceedings. JA33–34. The result: The Small Landlord's federal constitutional claims are perpetually too early or too late for federal adjudication.

This is precisely the kind of structural injustice that pre-enforcement review doctrine was designed to prevent. The Supreme Court has recognized that "[w]here threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *Susan B. Anthony List,* 573 U.S. at 158–59 (quoting *MedImmune, Inc. v.*

Genentech, Inc., 549 U.S. 118, 128–29 (2007)). Forcing the Small Landlord to sit in the gap between "unripe" and "abstention" is not a principled application of justiciability doctrine—it is a denial of the federal judicial review that Article III courts exist to provide. Every day that passes without judicial review deepens the hardship that a small family operation cannot absorb.

The Fourth Circuit has recognized that there must be daylight between ripeness and *Younger* abstention—a window during which federal plaintiffs can seek pre-enforcement review. *See Telco Communications, Inc. v. Carbaugh*, 885 F.2d 1225, 1229 (4th Cir. 1989) ("the period between the threat of enforcement and the onset of formal enforcement proceedings may be an appropriate time for a litigant to bring its First Amendment challenges in federal court.") If the investigation stage—after a complaint has been filed, conciliation takes place (JA71, JA91–92), and the Board retains jurisdiction—does not fall within that window, then the window does not exist for small landlords facing Virginia's enforcement machinery. That cannot be the law.

CONCLUSION

The district court's ripeness determination rests on a fundamental error: it treats the burden of an ongoing state investigation as a mere inconvenience rather than the concrete, irreparable hardship that it is for small, family-run businesses. For Wheatley—managing nine apartments on behalf of an aging father's trust (JA67)—the investigation is not a way station to some future harm—it is the harm. The legal bills, the management disruption, the professional-license jeopardy, and the chilling effect on constitutionally protected decisions about the property are all present injuries that no subsequent remedy can undo.

The district court's ruling also creates an untenable catch-22: The Small Landlord's claims are too early for ripeness and too late for *Younger*, leaving no moment at which federal constitutional claims can be heard in a federal forum. This is not a principled application of justiciability doctrine—it is a denial of the judicial review that Article III courts exist to provide. Small businesses exercising constitutional rights deserve pre-enforcement review, not relegation to a procedural no-man's-land where the government's enforcement machinery grinds forward unchecked.

For these reasons, this Court should reverse the district court's ripeness determination, hold that the ongoing state investigation independently satisfies the hardship prong, and remand for consideration of the Small Landlord's motion for preliminary injunctive relief on the merits. The Constitution does not require small landlords to bleed out in administrative proceedings before seeking the federal relief that Article III courts are empowered—and obligated—to provide.

Respectfully submitted, Date: June 22, 2026

/s/ Reilly Stephens

Reilly Stephens
Counsel of Record
Ángel J. Valencia
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(512) 481-4400
rstephens@ljc.org
avalencia@ljc.org

Ilya Shapiro
Manhattan Institute
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(g)(1) because it contains 2,607 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a 14-point proportionally spaced Century Schoolbook typeface using Microsoft Word.

Dated: June 22, 2026

/s/ Reilly Stephens

Reilly Stephens
Counsel of Record
Ángel J. Valencia
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(512) 481-4400
rstephens@ljc.org
avalencia@ljc.org

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I electronically filed the foregoing brief using the Court's CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the Court's CM/ECF system.

/s/ Reilly Stephens

Reilly Stephens
Counsel of Record
Ángel J. Valencia
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(512) 481-4400
rstephens@ljc.org
avalencia@ljc.org