No. _____

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

PETITION FOR A WRIT OF CERTIORARI

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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 Cnty.*'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.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Daniel Grand

Respondents and Defendants- Appellees below

- City of University Heights, Ohio;
- Michael Dylan Brennan, Mayor, in his official and individual capacity;
- Luke McConville, City Law Director, in his individual capacity; and
- Paul Siemborski, City Planning Commission Member, in his individual capacity

LIST OF PROCEEDINGS

- *Grand v. City of University Heights*, No. 24-3876 (6th Cir.): Opinion affirming dismissal (Nov. 13, 2025) (Sutton, C.J.; Batchelder & Larsen, JJ.).
- *Grand v. City of University Heights*, No. 1:22-cv-01594 (N.D. Ohio) (Brennan, J.): Memorandum Opinion and Order granting summary judgment to defendants in part and dismissing claims for lack of ripeness (Sept. 30, 2024); Amended Memorandum Opinion and Order (Oct. 1, 2024).

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The opinion of the United States Court of Appeals for the Sixth Circuit (App., *infra*, 1a-19a) is reported at 159 F.4th 507 (6th Cir. 2025). The district court's amended memorandum opinion and order (App.21a) is unreported but available at 2024 WL 4403700.

JURISDICTION

The Sixth Circuit entered judgment on November 13, 2025. (App.19a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (App.69a)

U.S. Const. amend. XIV

> No State shall make or enforce any law which shall abridge the privileges or immunities of

> citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This clause has been interpreted to incorporate the First Amendment against the states and to prohibit vague laws that chill protected activities.

42 U.S.C. § 2000cc(a)(1)
The Religious Land Use and Institutionalized Persons Act (RLUIPA)

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.

This provision applies where the burden is imposed in a program receiving federal financial assistance, affects commerce, or involves individualized assessments in zoning or landmarking. 42 U.S.C. § 2000cc(a)(2).

42 U.S.C. § 2000cc(b)(1)

> No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

42 U.S.C. § 2000cc(b)(2)

> No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

INTRODUCTION

This petition presents a critical opportunity for this Court to clarify the doctrinal framework and resulting scope of individual liberty applicable to municipal orders chilling the free exercise of religion both before and after an administrative process governing the use of the home for certain religious activities. Petitioner Daniel Grand, a devout Orthodox Jew, sought to engage prayer with a minyanim, or gathering of at least ten adult males, in a single room of his residence in University Heights, Ohio on the Jewish Sabath and High Holidays. These gatherings were entirely non-commercial, involved no structural changes to the home, no signage, no amplification, and no disruption to the neighborhood beyond ordinary residential activity. Notably, because Orthodox Jews do not drive on the Sabath or High Holidays, Grand's plan involved no possible traffic issues.

Yet, when Grand sought to begin this practice in January 2021—without even providing him an opportunity to keep his proposed prayer group to a certain maximum size pending a regulatory ruling—Respondent Mayor Michael Dylan Brennan responded with swift and coercive action: a cease-and-desist order (CADO) drafted by the City's Law Director and thus bearing

the imprimatur of an official legal order. The CADO explicitly branded Grand's religious exercise as creating an illegal "religious place of assembly" under the City's zoning ordinance and demanded that Grand cease any use of his home for group religious activities until he had received a special use permit from the City's planning commission. When Grand attempted to comply, he was confronted with a rigged process using an adversarial "quasi-judicial" approach apparently for the first time in the City's history. In the face of this hostility and the mayor's refusal to provide Grand with an opportunity to supplement his materials, Grand withdrew his application for an SUP. But when Grand withdrew his application, he faced further and even more extreme chilling of his free exercise rights: Mayor Brennan doubled down, pronouncing that the private conduct of any activities "consistent with" those conducted in a house of worship would be met with punishment. Further, Mayor Brennan warned Grand that the City was on alert and encouraged neighbors to report any conduct (obviously Grand's) in violation of this pronouncement to the authorities for punishment.

The doctrinal issue—on which the Circuit courts are split—is whether the regulatory takings "finality" doctrine articulated in *Williamson Cnty. Planning v. Hamilton Bank*, 473 U.S. 172 (1985) and clarified in more recent cases of *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019) and *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 479 (2021) applies at all to First Amendment free exercise cases, or whether First Amendment free exercise claims of the type encountered by Grand are more appropriately decided under the time-honored framework of

Steffel v. Thompson, 415 U.S. 452 (1974); *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014), under which the courts do not look even to a relaxed "de facto" administrative finality, but ask whether the governmental threat is substantial, credible and immediately harmful if not complied with.

The approach of the Sixth Circuit presents the doctrinal issue in the sharpest possible manner: for the Sixth Circuit, because Grand had available a zoning process to determine his rights, the Mayor's action, both before and after the planning council hearing—which contained no "safe harbor" for a maximum number of worshippers, as in the leading Second Circuit case of *Murphy v. New Milford Zoning Commission*, 402 F.3d 342 (2005); prohibited the creation of a "shul" (App.116), a term not defined in the relevant statute (App.74a); and contained no suspensive procedure pending administrative review—his Free Exercise claims were never "ripe" for review. The Sixth Circuit's position not only sharpens a split between the circuit but creates a profound rift with this Court's long-standing jurisprudence that the restriction of First Amendment rights, even for a "minimal" period, *see Elrod*, 427 at 373, constitutes an irreparable injury.

The underpinning of this jurisprudence is a foundational concept of individual liberty alien to the regulatory takings context. While a taking can be met with "just" compensation, any attack on individual liberty can only be remedied, if at all, with injunctive relief and money damages. Damages and "just" compensation do not collapse into each other but represent profoundly divergent responses to fundamentally

different situations. By confusing *Williamson Cnty.* administrative "ripeness" with traditional notions of the immediacy and actuality of harm, the Sixth Circuit impermissibly blessed a direct assault on Grand's freedom of exercise. This case, with its simple, stark facts, represents the perfect vehicle for this Court to clarify the doctrinal issues surrounding ripeness in a context involving both individual liberties and municipal zoning—an issue that is likely to grow in importance as more and more associative activities move to private homes in the wake of the Covid pandemic and broader demographic trends.[1]

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[1] The intersection of home-based worship and municipal zoning is likely to become only more pressing as the American population ages. The United Nations projects that persons aged 65 and older will nearly double worldwide—from 703 million to 1.5 billion—by 2050. U.N. Dep't of Econ. & Soc. Affs., Population Div., *World Population Ageing 2019: Highlights* 5, U.N. Doc. ST/ESA/SER. A/430 (2019) (https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2019-Highlights.pdf). Domestically, AARP surveys consistently find that approximately 75% of adults over 50 wish to remain in their homes as they age. *See* Joanne Binette, *2024 Home and Community Preferences Among Adults 18 and Older* 15, AARP (https://doi.org/10.26419/res.00831.001). At the same time, the nation faces a projected shortage of 151,000 paid direct care workers by 2030, rising to 355,000 by 2040. Paul Osterman, *Who Will Care for Us? Long-Term Care and the Long-Term Workforce* 42 (2017). As more elderly and infirm Americans age in place—unable to travel to a house of worship but retaining, as one study of homebound ministry found, "a desire to be included and remain an integral part of their faith community"—small home-based prayer groups, Bible studies, and worship gatherings led by or for such individuals will inevitably proliferate. *See* C. Adebayo and A. Bishop, *Exploring Application of Smart Companion Robots to Facilitate Faith-Based Ministries for Older Homebound Adults*, INNOVATION IN AGING, December 16, 2020 315–6 (https://academic.oup.com/innovateage/article/4/Supplement_1/315/

In reversing the Sixth Circuit and clarifying the scope of *Williamson Cnty*. finality, this Court will also ensure that the right to engage in religious activities in the home cannot be arbitrarily restricted without consequences by overly zealous municipal authorities. *See, e.g.*, Tracy A. Thomas, *Ubi Jus, Ibi Remedium: The Fundamental Right to A Remedy Under Due Process*, 41 SAN DIEGO L. REV. 1633, 1640 (2004). Rights come not from "drawing arbitrary lines but rather from careful respect for the teachings of history (and), solid recognition of the basic values that underlie our society." *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503 (1977).

Here, once the CADO was issued by the City's Law Director, with a credible threat of criminal enforcement if not respected, the violation of Grand's rights matured. The existence of an administrative process did not excuse the violation of these rights, as there was no appeal or suspensive procedure under local law. That Grand pursued an administrative remedy to avoid criminal penalties for praying in his home does not undo the constitutional harm he suffered when the Mayor issued the CADO. *Koontz v. St. Johns River Water Management Dist.*, 570 U.S.

6036235). This trend will be further accelerated by the ongoing contraction of brick-and-mortar houses of worship: in 2023, political science professor and religion researcher Ryan Burge said about a third of the country's 350,000 churches are "on the brink of extinction." *See* Scott Neuman, *The faithful see both crisis and opportunity as churches close across the country*, *NPR*, May 17, 2023 (https://www.npr.org/2023/05/17/1175452002/church-closings-religious-affiliation). When the church cannot come to the congregant, the congregant's home becomes the church—and municipal zoning regimes that treat such gatherings as impermissible land uses will face recurring constitutional challenge.

595, 604 (2013) (individuals may not be coerced into giving up constitutional rights); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012 (1992) (existence of special permit procedure does not render constitutional claim unripe). Nor does Grand's withdrawal of his application in the face of community and council hostility and outright antisemitism cure the municipality's threatening punishment for the conduct of protected religious activity in the home. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (where individual is subjected to threat of penalties for the exercise of constitutional rights, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenge).

STATEMENT OF THE CASE

A. Factual Background

University Heights, Ohio, a small suburb east of Cleveland with a population of approximately 13,000, has seen significant demographic shifts in recent years, including a burgeoning Orthodox Jewish community concentrated along its eastern border adjacent to neighboring cities with established synagogues. Petitioner Daniel Grand, an observant Orthodox Jew, acquired a single-family residence at 2434 Miramar Boulevard in University Heights in 2019. App.23a. Because driving is prohibited on the Sabbath and High Holidays, traveling to and from synagogues is difficult Grand and his family. App.2a.

Central to Orthodox Jewish practice is the requirement for adult males to pray three times daily—

preferably with a minyan, a quorum of at least ten adult males. *Id.* In January 2021, Grand circulated an email to approximately 12 people in the community, proposing the hosting of a minyan in a room in his home, which he referred to as a "shul." App.2a. A neighbor complained to City Mayor Michael Brennan about Grand's intended use of his home, and Brennan, in turn, notified City Law Director Luke McConville. App.3a. Hours after Brennan and McConville spoke, McConville issued the CADO to Grand ordering Grand to cease any use of his home as a "place of religious assembly" for us "synagogue" or "shul" without a special use permit. *Id.*

The CADO did not define what was meant by either a "shul" or a "place of religious assembly," neither of which is defined by in the relevant statute;[2] did not have any "safe harbor" for the number of individuals who could congregate at the Grand home; and did not provide any guidance for a stay of the CADO pending administrative review. The CADO threatened legal action in the event of non-compliance, App.116a, a threat made even more credible by the known actions that had been taken against home-based or "pop-up" synagogues that had not resulted in any clear rules regarding the hosting of minyanim in private homes. App.144a. Specifically, Mr. McConville wrote:

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[2] UHCO 1274 refers to "Houses of Assembly," "Houses of Worship," and "Synagogues," but not "places of religious assembly" (which could be a room in a house, but not the house itself) or "shuls," which are synonymous with "synagogues" in most, but not all, usages. *See* App.161a (Brennan Dep., admitting that a shul could mean a "small gathering" or a large place of assembly, and could mean either a school or a synagogue).

> The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future, the City hereby demands that you immediately cease and desist and any all such operation. Violation of the City ordinances in this manner may result in building code citations against you and in the pursuit of additional remedies.

App.116a.

Then, when Grand applied for a special use permit, the City unexpectedly switched the hearing format to "quasi-judicial" without prior notice, apparently a departure from standard administrative procedures. App.29a. This format "locked the record" at the outset, preventing Grand from submitting additional evidence or amending his application mid-process, ensuring any appeal would be limited and likely unsuccessful. App.32a. In the face of the inability to supplement his application, Grand withdrew his application. *Id*. Mayor Brennan, however, did not leave matters there, but doubled-down on the earlier ban pronounced by Mr. McConville:

> 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. As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and

> ultimately obtained a permanent injunction in court. To the community members who are here, let there be no question, there is no permission granted here to operate—there is no permission granted here to operate a house of assembly or conduct activities consistent with one at 2343 Miramar Boulevard. If 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. And we will seek all appropriate remedies in court.

App.144a.

This pronouncement was even more chilling than the original CADO, which remained in place. Mayor Brennan underscored that activities "consistent with those" of a house of worship were banned absent an SUP, that engaging in such conduct could result in penalties, and that citizens should report any suspicious behavior inconsistent with the order. Viewed through the lens of classic First Amendment doctrine, it is hard to imagine a more immediate and direct threat to an individual's personal liberty than this vague, sweeping, limitless ban encouraging citizen spying and threatening punishment for private activities "consistent" with those of a house of worship. Applying *Williamson Cnty.* "finality" in this context is not simply doctrinally wrong as a theoretical matter, it is practically devastating to individual liberty.

B. Proceedings Below

Grand filed his initial complaint on September 8, 2022, in the U.S. District Court for the Northern Dis-

trict of Ohio, App.35a, alleging violations of RLUIPA's substantial burden (42 U.S.C. § 2000cc(a)), equal terms (*id.* § 2000cc(b)(1)), and nondiscrimination (*id.* § 2000cc(b)(2)) provisions; the First Amendment's Free Exercise, Free Speech, and Assembly Clauses; the Fourteenth Amendment's Due Process Clause (for vagueness); the FACE Act (18 U.S.C. § 248); and state law claims. App.36a. The parties cross-moved for summary judgment. Grand sought partial judgment on his core constitutional claims, emphasizing the coercive nature of the CADO and hostility evidence as establishing ripeness and merits. App.38a. Respondents opposed Grand's motion in full. *Id.*

The district court dismissed the RLUIPA and core constitutional claims without prejudice for lack of ripeness. App.50a. On appeal, Grand pressed that the CADO and the Mayor's March 23 pronouncement constituted independently actionable harm with sufficient directness and immediacy to meet traditional ripeness standards. App.9a. Grand also argued that he had established futility and preserved his facial claims. App.10a. The DOJ filed an amicus curiae brief supporting reversal, arguing RLUIPA's "impose or implement" language covers pre-final determination conduct, and that categorical finality ignores the nuances of individual claims. App.94a-113a. The Sixth Circuit affirmed in an opinion approved for publication, holding the Grand "misapprehended" the nature of the CADO, essentially disregarding its coercive effect. App.9a. Without analysis, the Court assumed its conclusion: the CADO was not final, Mayor Brennan and the Law Director had no say in the ultimate zoning issue, and what they had to say was, in essence, irrelevant. *Id.* The Court did not address Grand's

arguments about the chilling effect of the March 23 pronouncement. It minimized the harm to Grand, stating that the dismissal had been without prejudice, but failing to address the harm caused by the self-censoring impact of the CADO and the March 23 pronouncement. The Court also noted that Grand had held at least one minyan in his home in the years since the withdrawal of his application, presumably intending to show that Grand's First Amendment rights had not been chilled. App.13a. However, the Circuit Court did not indicate when this minyan occurred and the District Court noted that the City now takes the position that a small prayer gathering would not require special use permit. App.38a-39a. However, like the Sixth Circuit, the District Court collapses the time from the March 23, pronouncement to the present. The District Court thus glosses over whether Grand suffered a restriction in his rights from the time of the pronouncement to the unspecified date on which the City changed its position.

No rehearing of the Sixth Circuit's decision was sought, bringing the case here.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve a circuit split and affirm the applicability of traditional First Amendment principles to questions of individual liberty notwithstanding an overall zoning context. *Williamson Cnty*. finality should not be used as a shield to protect government officials from the consequences of assaults on interim expressive or associative activity or on such activity that occurs after an individual withdraws from a zoning process. This issue is of fundamental doctrinal and societal importance.

I. The Courts of Appeals Are Divided on What Constitutes a "Final Decision" in First Amendment/RLUIPA Cases.

The lower courts are irreconcilably divided on the threshold ripeness inquiry in RLUIPA and Free Exercise challenges to municipal action that "chills" First Amendment rights in the broader context of land use regulations. The result is doctrinal incoherence and inconsistent protection of individual religious liberty.

Several circuit courts recognize that Williamson finality should not apply at all in the First Amendment/RLUIPA context. *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 91 (1st Cir. 2013) ("In reaching this conclusion, we rely on traditional notions of ripeness. We do not rely, as did the district court, on specialized Takings Clause ripeness doctrine. In regulatory takings cases, a property owner must follow the procedures for requesting the applicable zoning relief, and have its request denied, before

bringing a claim in court . . . Here, by contrast, the Ordinance's effect on RCB's free exercise rights may well become clear at a different point than that contemplated by takings law"); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1357 (11th Cir. 2013) (refusing to apply *Williamson Cnty.* finality doctrine).

Other Circuit courts, however, rigidly apply *Williamson County*. See *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 976–77 (9th Cir. 2011) (following *Williamson Cnty.* in detail). *See Congregation Anshei Roosevelt v. Plan. & Zoning Bd. of Borough of Roosevelt*, 338 F. App'x 214, 217 (3d Cir. 2009) (adopting strict *Williamson Cnty.* finality and rejecting the claims of religious institutions on ripeness grounds.).

Most obviously, of course, the Sixth Circuit has whole-heartedly adopted *Williamson Cnty.* and deployed its ripeness analysis to dismiss claims before a final administrative ruling on the allegedly controlling land-use issue. *See Grace Community Church v. Lenox Township*, 544 F.3d 609, 618 (6th Cir. 2008) (the argument that *Williamson Cnty.* should be confined to regulatory takings cases was "conclusively rejected"); *Insomnia Inc. v. City of Memphis, Tennessee*, 278 F. App'x 609, 613 (6th Cir. 2008) (citing "long-standing rule that local government entities first issue final decisions regarding the land at issue before any challenge to such decision is mature for federal review"). In the case at bar, the Sixth Circuit upheld the dismissal of petitioner's claims as unripe because he had not waited for a final determination from the planning

commission, notwithstanding the independent harms from the CADO and the March 23 pronouncement.[3]

The split stems from the tensions between First Amendment harm and administrative finality. As the First Circuit has correctly observed, the timing of preliminary or interim First Amendment harms and final zoning injury does not necessarily overlap. *See supra* at 13. But the fact that an individual harm is "preliminary" or "interim" does not make it less of a harm. If a police officer punches a citizen in the face as she waits to be heard on a traffic violation, it is no answer to the harm suffered to say that it is preliminary or interim and that the citizen must wait for a final determination before she alleges injury. The difficulty in the present case, of course, is that the punch in the face and the final determination are related, in the sense that the municipal authority chilling First Amendment activity is doing so in the name of an ultimate zoning process. But this does not make the harm any less immediate and real.

Consider a large Jewish family during Passover in a non-Jewish (and potentially antisemitic) neighborhood. Every year the children in the family enact the ten plagues of Egypt with a volubility that can be heard outside the home. Some neighbors complain and after the family's first Seder, the Mayor issues a cease-and-desist order prohibiting any home theatrical

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[3] The Second Circuit appears to be moving in this direction of the First and Eleventh Circuits, but has not yet abandoned the use of *Williamson Cnty*. finality altogether. *See Ateres Bais Yaakov Academy of Rockland v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023) (applying *Williamson Cnty* and *Pakdel* but finding that the finality requirement under this line of cases is "relatively modest" and requires only "de facto" finality).

productions without a theater permit and threatening prosecution for any violations. Surely the family should not be put to the Hobbesian choice of facing family official sanctions or sacrificing their religious traditions simply because the activity in some sense involves land use, and there is no "final" determination as to the application of the zoning statute to home theaters.

Or consider a second hypothetical: imagine that since the election of Donald Trump, every July 4, a couple burns the American flag on their front lawn to protest what they view to be Trump's assault on democracy. The couple lives in a generally pro-Trump neighborhood and the neighbors complain to the Mayor, who on July 3 issues a cease-and-desist order, citing an obscure fire code provision relating to the outside lighting of fires and threatening prosecution if the couple proceeds without going through the fire department review and approval process. Surely, the couple has an immediate claim that should not have to wait for an administrative body to resolve with "finality" the applicability of the local statute—particularly if the Mayor has not used the least restrictive means to constrain the activity, such as requiring the use of a windbreaker or enclosure to prevent the spread of fire.

In the general First Amendment context, the law is settled that a plaintiff need not wait to be prosecuted if a coercive law chills the exercise the plaintiff's rights. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974) "it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights"); *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988) ("the mere existence

of the licensor's unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused"); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (reversing Sixth Circuit where threat of future enforcement was "substantial"). There is no principled reason general First Amendment principles should be abandoned simply because an activity in some sense concerns municipal zoning authority. Traditional justiciability should govern an alleged violation of constitutional rights by a municipal actor in the course of a proceeding otherwise subject to final agency approval. For example, in *Virginia v. Am. Booksellers Ass'n, Inc.,* 484 U.S. 383, 393*, certified question answered sub nom. Commonwealth v. Am. Booksellers Ass'n, Inc.*, 236 Va. 168 (1988), in finding that the plaintiffs had established standing, the Court stated:

> We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution).

More recently, again applying Article III standing test to determine whether pre-enforcement challenges were ripe, the court articulated the standard clearly:

> Specifically, we have held that a plaintiff satisfies the injury-in-fact requirement where

> he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.

Susan B. Anthony, 573 U.S. at 159.

This language applies almost verbatim to Grand: he had clearly expressed an intention to engage in a course of conduct affected with a constitutional interest (free exercise of religion, freedom of association); the Mayor had indicated the proposed activity was proscribed by statute; and the Law Director had threatened prosecution in the form of "additional remedies". There is no principled reason not to apply these principles simply because there is an administrative review process that may ultimately permit the challenged activities. From the time of the CADO threat to the ultimate Planning Commission determination, Grand is in precisely the same situation as the *Am. Booksellers Ass'n* or *Susan B. Anthony List* plaintiffs. The doctrinal incoherence produced by extending *Williamson Cnty.* and enshrined in the starkest fashion by the Sixth Circuit in the case at bar should be addressed and rectified now, not only for uniformity of law, as important as that is, but to affirm core principles that are otherwise buried in the nuances of the effect of *Knick* and *Pakdel* on *Williamson Cnty.*

Here, the crucial issue is to disentangle First Amendment and property rights. First Amendment rights are intrinsic to the individual herself and constitute a key component of personhood. *See* David S. Han, *Autobiographical Lies and the First Amendment's Protection of Self-Defining Speech*, 87 N.Y.U. L. REV. 70, 92 (2012) ("freedom of speech . . . is an essen-

tial attribute of individual personhood"); Steven D. Smith, *Meyer, Pierce, and the Formation of Persons*, 26 J. CONTEMP. LEGAL ISSUES 55, 59 (2025) ("the point of the most solid and celebrated of constitutional rights—freedom of speech, freedom of religion, and such—is to protect persons in the exercise or manifestation of their personhood"); Lucien J. Dhooge, *The Equivalence of Religion and Conscience*, 31 NOTRE DAME J.L. ETHICS & PUB. POL'Y 253, 292 (2017) (*citing* Yossi Nehushtan*, Secular and Religious Conscientious Exemptions: Between Tolerance and Equality, in Law and Religion in Theoretical and Historical Context* 243, 245 (Peter Cane et al. eds., 2008) (describing accommodation of an individual's conscience as "always reflect[ing] respect for his autonomy and personhood"); Steven D. Smith, *What Does Religion Have to Do with Freedom of Conscience?*, 76 U. COLO. L. REV. 911, 935 (2005), Martha C. Nussbaum, LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA'S TRADITION OF RELIGIOUS EQUALITY 79 (2008).

In contrast, a "taking" involves a dispossession or near dispossession of an interest in some external object that is replaceable with "just compensation." A deprivation of the right to speak, think or believe, involves a circumscription or limitation of the individual in her "person-ness" and can never be taken for "just compensation." An individual whose rights are harmed may be entitled to money damages, but the Government cannot lawfully pay individuals to believe or to renounce their beliefs. A taking occurs as the logical end to some process, whereas a constitutional deprivation of free speech or religion can occur anywhere in a continuum leading to an ultimate end result.

This is why, in the First Amendment context, the harm to individual rights from cease-and-desist orders or similar pronouncements is almost always sufficiently immediate and actual to confer standing. *See Steffel*, 415 U.S. at 459; *Susan B. Anthony*, 573 U.S. 164; *Ballen v. City of Redmond*, 466 F.3d 736, 740 (9th Cir. 2006) (implicitly finding that hand delivery of cease and desist letter provided sufficient concrete injury for plaintiff to proceed); *Def. Distributed v. Grewal*, 971 F.3d 485, 494 (5th Cir. 2020) (issuance of cease-and-desist letter formed basis for substantive liability and personal jurisdiction); *see also* Department of Justice Statement of Interest, *Grace New England, et al., v. Town of Weare, New Hampshire, et al.*, 24-cv-0041, at 13-14 (noting harm imposed by cease and desist letter and cataloguing cases in which cease-and-desist letters conferred standing);[4] *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007) ("[o]ur analysis must begin with the recognition that, where 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 . . . [t]he plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution but nonetheless does not eliminate Article III jurisdiction.").

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[4] Cease and desist letters are frequently analyzed under the rubric of standing because there is generally no doubt as to their "finality," at least with respect to themselves. The letters command immediate compliance even if they order the parties to take some future action. Ripeness and standing, in any event, are kindred concepts in that both aim to ensure that there is an Article III case or controversy before the court.

This is not to say it is *impossible* to reconcile *Williamson Cnty.* with First Amendment solicitude. For example, in *Murphy*, the Court found that the issuance of a cease-and-desist order was not ripe for review *because of the guardrails built into the order itself*. Far from categorically banning religious activity, the order expressly stated that religious activities involving fewer than 25 persons would *not* require any special use permit or variance. *See Murphy*, 402 F.3d 342 ("By its very terms, the cease-and-desist order did not apply to all meetings at the Murphys' residence, but only those that were regularly scheduled and included twenty-five or more non-family participants."). In addition, the Court noted that the Murphy's did not pursue an available suspensive appellate procedure but filed suit immediately in federal court. *Id.*

The court left no doubt that *had* the cease-and-desist order been completely open-ended, with no maximum number of attendees at regularly scheduled meetings and no suspensive appellate procedure, it would have constituted a justiciable, final act. Thus, the correct interpretation of interim orders such as cease-and-desist letters is *possible* within the *Williamson Cnty.* framework, just as a limitation on First Amendment rights using the least restrictive means possible is in some cases permissible. *See United States v. Alvarez*, 567 U.S. 709, 729 (2012) (when the Government seeks to regulate protected speech, the restriction must be the "least restrictive means among available, effective alternatives").

The point is that Courts are more easily led astray by *Williamson Cnty.* finality because "interim" action in the land use context is generally preliminary to a final determination of property rights, whereas

"interim" action in the First Amendment areas is the quintessentially justiciable action: it is the credible threat of enforcement that itself constitutes the constitutional harm. By looking at the First Amendment through the lens of takings jurisprudence, courts can get the result patently wrong—even when the answer itself appears easy: the threat of fines and "additional remedies," App.116a, specifically directed at a defined individual, from a municipal law director acting on behalf of a mayor who acknowledged having taking legal action against other "shuls" in the past, App.144a, clearly meets the Court's standards for an objective "chill." *See supra* at 15-16. Grand's exercise of this first amendment rights and itself constitutes the constitutional harm for which 42 U.S.C. § 1983 provides the appropriate remedial vehicle. The *Elrod v. Burns* framing of Constitutional harm (which need only last for a "minimal period) is fundamentally inconsistent with the Sixth Circuit's view that Grand could be made to suffer for weeks or months while the interpretation of a vague statue is kept in abeyance by a vague order—with the only certain thing being that Grand could not pray with a minyan of his coreligionists in the privacy of his home for fear of punishment.

Part of the problem stems also from Congressional action in the face of the Courts now decades old decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), which has led to RLUIPA, a statute intended to protect religious institutions but that stresses "land use regulations" and thus tilts analysis towards Williamson and away from Steffel. Professor Lisa Matthews provides an excellent summary of the background to RLUIPA

The history of RLUIPA reveals multiple hurdles that Congress overcame to protect, among other things, religious land use. RLUIPA is a culmination of years of effort by Congress to overturn [*Smith*]. In *Smith*, the Supreme Court overrode the precedent it established in *Sherbert v. Verne*, 374 U.S. 398 (1963), which required strict scrutiny analysis when a law created a substantial burden on religion. In *Smith,* the Supreme Court refused to apply the strict scrutiny analysis if the law was "facially neutral," of general applicability, and did not specifically target religion. The Court ruled that Oregon did not substantially burden religion when it denied unemployment compensation to members of the Native American Church who were fired after using peyote. Congress strongly opposed the *Smith* ruling[53] and in 1993 enacted the Religious Freedom Restoration Act ("RFRA"), re-instating the rule that any government action that imposes a substantial burden on religious free exercise is subject to strict scrutiny analysis requiring the government to demonstrate a compelling interest. However, a few years later, in *City of Boerne v. Flores*, 521 U.S. 507 (1997) the Supreme Court declared RFRA unconstitutional as applied to state law on the grounds that it exceeded Congress's power under Article V of the Fourteenth Amendment. In response, Congress passed RLUIPA in 2000, aiming to protect prisoners' religious freedom and religious land use . . . In passing RLUIPA and specifically applying it

> to land use, Congress established a connection between religious worship and a church's ability to construct or rent buildings to exercise its faith. . . . After Congress passed RLUIPA, a joint statement by Senator Ted Kennedy and Senator Orrin Hatch declared: "The right to assemble for worship is at the very core of the free exercise of religion." This declaration expressed the law's intent to restore the connection between church practice and land use that many state courts had recognized for much of the twentieth century before federal courts got involved with the issue.

Lisa Mathews, *Hobby Lobby and Hobbs to the Rescue: Clarifying Rluipa's Confusing Substantial Burden Test for Land-Use Cases*, 24 GEO. MASON L. REV. 1025, 1030–33 (2017)

Thus, RLUIPA is concerned in the first instance with land use, which somewhat misleadingly seems to invite the applications of regulatory takings principles. But that religious activity occurs on "land" and implicates "land use," does not mean that the takings-based concept of finality should automatically apply. This was the import of the DOJ's amicus brief in support of Grand's appeal. App.106a-107a ("RLUIPA claims may arise from harms that occur before a governmental entity applies its zoning code to a particular property or from harms otherwise inflicted in an underlying land-use dispute within the statute's scope.").

However, the DOJ did not take the next logical and limited its argument to the position that *Williamson Cnty*. finality should not be "categorically" applied but should only apply on a claim-by-claim basis. *Id*. The

Sixth Circuit effectively conceded as much, finding that Grand's facial attacks on the relevant ordinance had been forfeited, App.14a, not that they were barred by *Williamson Cnty* finality (as modified by *Knicks* and *Pakbel*). The Sixth Circuit could conduct a claim-by-claim analysis of Grand's position through the regulatory land use lens and find that Grand's claims were barred because he voluntarily sought and then voluntarily withdrew from (according to the Sixth Circuit) the Planning Commission process. As discussed, this way of viewing Grand's claims leads directly to profound error and conflicts with one of this Court's core First Amendment principles, that a party need not wait for enforcement if the party intends to take action arguably prohibited by statute and there is a substantial likelihood of adverse action. *See supra* at 13.

The only sure way to avoid the morass into which the Sixth (and sister) Circuit's analysis leads is to state clearly that *Williamson Cnty*. finality does not apply in the First Amendment and RLUIPA context at all. Traditional justiciability principles could still be used to limit claims that are truly speculative or safeguarded by adequate interim protective measures. *See Trump v. New York*, 592 U.S. 125, 131 (2020) (dismissing case because two "related doctrines of justiciability," standing and ripeness, rendered plaintiff's claims overtly speculative). But Courts would not be tempted to analyze interim acts as necessarily part of the finality inquiry, whether "de facto" or not, because some claims, such as Grand's arise independently of any final determination. Because Grand reasonably feared prosecution, which the mayor's office credibly threatened, given its past enforcement action against other home-based gathering of Jews, and

without any guidance as to a permissible interim scope, Grand First Amendment rights were chilled, he self-censored, and irrevocably lost the ability to bring back any foregone Sabath prayer sessions. The City has now admitted that small gatherings would *not* require an SUP. App.49a-50a. But Grand did not know this *at the time* he self-censored. Thus, his damages are clearly ascertainable and correspond to the harm from self-censorship during a period of overly broad and vague enforcement. To say that Grand would not suffer *future* harm does not retrospectively cure *past* harm from the chilling effect of the City's overbroad, but credible, threats of punishment.

Since the Mayor and the Council had never been clear about the number of people (if any) who could lawfully congregate for prayer, it is not at all fanciful to think that a group of five or six Orthodox Jews dressed in their distinctive suits and black hats entering the Grand home might appear to be an illegal "congregation" of Jews performing illicit activities consistent with those of a house of worship, triggering the worst possible stereotypes and biases and leading to police reports and harassment of peaceful prayer goers. For the Sixth Circuit, the fact pattern resulting from the Mayor's post-hearing pronouncement only raised an issue of futility and one that Grand would lose: if Grand were so unhappy he had only to reapply for an SUP and the mixed messages from the Council members made it far from certain that a reapplication would be doomed. But as with administrative ripeness, administrative "futility" is the wrong concept. Regardless of whether Grand could not make out a showing of futility, even if he had renewed his application, he would still be under the chilling threat of municipal

punishment and spying neighbors egged on by an overly zealous mayor. As the First Circuit has emphasized, the timing of First Amendment harm differs from the timing of harm in the regulatory takings context. *See supra* at 10. This crucial distinction gets lost in the shuffle if *Williamson Cnty*. finality and futility concepts are the analytical framework, rather than the traditional justiciability test.

To consider one last example: if a citizen in the 1950's south wanted to publish an op-ed critical of an apparently racist local official, the citizen (at least from the perspective of the Constitution) did not have to consider whether it would be "futile" to resist a prosecution for defamation. Although social pressures or political calculations may have dissuaded the op-ed writer, at least she would (or should) have known that the Constitution was on her side, not arrayed against her with the very forces she was challenging.

And this knowledge is critical to the functioning of a free society. If citizens know the state cannot arbitrarily chill their freedom of speech and exercise—even for the shortest of periods—the system, albeit in fits and starts, can self-correct. Take away this protection and the doors open to the worst forms of bigotry and authoritarianism. As Lord Acton put it, slightly differently, and more eloquently: "Liberty is not a means to a higher political end. It is itself the highest political end." Acton, John. *The History of Freedom and Other Essays*, Macmillan, 1907, at 23-24.

Doctrine matters. Viewed improperly, the First Amendment—ostensibly at issue—almost vanishes into the administrative background. Viewed properly, the individual's fundamental right to exercise his religion according to conscience comes sharply into focus.

Viewed incorrectly, the First Amendment can almost be shrugged off as an unfortunate side issue in a bureaucratic process. Viewed correctly, the First Amendment emerges as the central, unavoidable issue. The stakes in getting the issue right could not be higher.

II. This Case Presents Important, Recurring Questions Affecting Religious Freedom Nationwide.

The questions here—the tension between First Amendment protection and zoning process, immediate harm and regulatory finality, *Steffel* and *Williamson Cnty*. (and their respective progeny)—are of fundamental national importance. Every indication is that the home will be an increasing focal point for potential conflict between individual religious liberty and municipal zoning authority. *See supra* at 6 and Note 1. As society embarks on one of the most transformative periods in history with the rise of artificial intelligence, the need for fixed guideposts is greater than ever. This clean vehicle—with DOJ support—warrants review.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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February 11, 2026

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OPINION, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 13, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL GRAND,

Plaintiff-Appellant,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO; MICHAEL DYLAN BRENNAN, Mayor, in his official and individual capacity; LUKE MCCONVILLE, City Law Director, in his individual capacity; PAUL SIEMBORSKI, City Planning Commission member, in his individual capacity,

Defendants-Appellees.

No. 24-3876

Appeal from the United States District Court for the Northern District of Ohio at Cleveland. No. 1:22-cv-01594—Bridget Meehan Brennan, District Judge.

Argued: October 21, 2025
Decided and Filed: November 13, 2025

Before: SUTTON, Chief Judge; BATCHELDER and LARSEN, Circuit Judges.

OPINION

SUTTON, Chief Judge.

Daniel Grand lives in University Heights, Ohio. In 2021, he applied for a special use permit to use his home as "a place of religious assembly" under the local zoning laws. R.81-6 at 4. Before City officials could finally resolve his petition, however, Grand withdrew the request, stating that he did not "wish to operate a house of worship as is defined under the zoning ordinance." R.88-4 at 1. He nonetheless filed this federal lawsuit against the City and several officials, raising an assortment of statutory and constitutional claims. The district court granted summary judgment for the City and its officials on the ground that some of Grand's challenges were unripe and the rest failed on the merits. We affirm.

I.

Daniel Grand and his family live in University Heights. Grand's Orthodox Jewish faith requires him to pray thrice daily with a group of ten men, what's known as a "minyan" in Hebrew. R.81 at 7. His faith also forbids him from driving on the Sabbath, which makes traveling to and from synagogues difficult. To more easily, and more "seriously," pray on the Sabbath, Grand began inviting friends to pray with him on the holy day. R.82-1 at 7; *see* R.81-1 at 3. To that end, he emailed around twelve of his neighbors, inviting them to three prayer sessions "for the inauguration of the Shomayah Tefilah Beis Hakeneset" at "[t]he Daniel J. Grand Residence." R.88-2. The invitation referred to the event as a "shul," which in Hebrew refers to a synagogue or a house where prayer groups are held. R.88. Grand introduced the Rabbi, Rabbi Rosskam, for

the event and asked guests to "spread the word" and "consider bring[ing] someone with you." R.88-2.

A displeased neighbor forwarded Grand's email to University Heights Mayor Michael Brennan, who forwarded it to University Heights Law Director Luke McConville. On January 21, 2021, McConville emailed Grand a cease-and-desist letter and told him to stop violating the City's zoning laws. The letter informed Grand that the City "has been made aware that [he] intend[s] to use" his house as "a place of religious assembly." R.81-6 at 4. Grand's house is zoned U-1, the letter continued, which prohibits the "use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue." R.81-6 at 4. Violations of local ordinances, the letter added, could result in "building code citations against you." R.81-6 at 4. After Grand received the letter, he told Brennan over the phone that he wanted to host only a small, informal prayer group. Brennan, who claimed to have observed at least 120 people in the basement of another residential shul, expressed skepticism. Grand cancelled the next prayer meeting.

A day later, Grand applied to the City's Planning Commission for a Special Use Permit. In a U-1 zone, the Code of Ordinances permits only single-family dwellings, municipal or library buildings, and buildings owned by a board of education. UHCO § 1250.02. If a property owner obtains a Special Use Permit, however, he may operate a "[h]ouse[] of worship" within a U-1 zone. UHCO § 1274.01(b)(1); *see* UHCO § 1250.02(g). The City's Planning Commission issues the permits, and unsuccessful applicants may appeal to the City Council. UHCO § 1274.01(d)(2). A separate body, the Board of Zoning Appeals, "decide[s] any question involv-

ing the interpretation of any provision" in the zoning code. UHCO § 1244.03. In his application, Grand indicated that he had "11 tables" and "21 chairs" in his recreation room, and that he wanted to use the room "for periodic religious gatherings." R.81-8 at 2.

On March 4, 2021, the Planning Commission held a public hearing on Grand's application. Through counsel, Grand described his plans for a men's only prayer group, to meet "once a week and on certain high holidays." R.82-1 at 140. Grand did "not disput[e]" that his proposed use would render his home "a place of religious assembly" within the meaning of UHCO § 1274.01(b)(1). R.82-1 at 140. But he distinguished his proposal from the "usual image[] of a formal synagogue." R.82-1 at 140. Some of Grand's neighbors spoke against the proposal on the grounds that Grand understated the size of his proposed gatherings, that he had advertised the meetings on the internet, and that his proposed use would create traffic, fire, and parking issues in the area. Grand pointed out that the prayer group could not be the source of parking problems, as members of his religion "can't drive" on the "Sabbath and high holidays." R.81-11 at 9. The Planning Commission tabled the discussion, requesting more details from Grand. It scheduled another hearing on Grand's application for a few days later.

In emails exchanged after the first meeting, some members of the five-member Commission doubted whether Grand's use would constitute a "[h]ouse of worship" and thus wondered whether he needed a permit at all. R.82-1 at 192–96. It is not clear, as one commissioner put it, when "a social gathering become[s] a house of worship." R.82-1 at 192.

Just before the Commission's second hearing, Grand withdrew his application. "I do not wish to operate a house of worship," he stated, as it is "defined under the zoning ordinance." R.88-4 at 1. The Commission still held the meeting as planned, and Mayor Brennan emphasized that Grand could not operate a "house of worship" without a permit. He also asked community members to report any violations to the City. The Commission never acted further on Grand's application.

The Planning Commission was not the only arm of City government that interacted with Grand during the spring of 2021. A Lieutenant in the University Heights Police Department directed patrol units to drive past Grand's house and check for code violations. A City prosecutor sought to investigate housing code violations inside the Grand residence. With the permission of Grand's wife, a housing inspector searched the house for violations. He apparently did not find any.

Around 18 months after withdrawing his application for a zoning variance, Grand filed this lawsuit in federal court against the City and several of its officials. He raised claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Freedom of Access to Clinic Entrances Act (FACE Act), the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, the Ohio Constitution, and other state laws. After the parties filed motions for summary judgment, the district court dismissed Grand's RLUIPA, Ohio Constitution, First Amendment, and Fourteenth Amendment claims as unripe. It then rejected as a matter of law his FACE Act, Fourth Amendment, and several state law claims on the merits. The district

court declined supplemental jurisdiction over Grand's Ohio Public Records Act claim.

II.

Article III confines the jurisdiction of the federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. Certain "landmarks"—ripeness, mootness, and standing—distinguish the disputes amenable to the judicial process from those over which we have no power. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The judicial power of the United States does not extend to a claim when "it is filed too early (making it unripe), when it is filed too late (making it moot) or when the claimant lacks a sufficiently concrete and redressable interest in the dispute (depriving the plaintiff of standing)." *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc). Several of Grand's claims face ripeness problems.

A.

Ripeness emerges from constitutional limitations on the authority of the federal judiciary and prudential concerns about how and when we exercise that power. *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). The doctrine disciplines the exercise of our jurisdiction, requiring us to stay our hand until a dispute comes into focus. *Warshak*, 532 F.3d at 525. To that end, we consider (1) whether the claim is fit for judicial decision in that it arises out of a concrete factual context and an actual or likely dispute, *Trump v. New York*, 592 U.S. 125, 131 (2020) (per curiam), and (2) whether withholding adjudication would do hardship to the parties, *id.* at 134; *accord Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149 (1967).

In 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 the local authorities. *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), *overruled in part on other grounds by Knick v. Township of Scott*, 588 U.S. 180, 188 (2019). State and local regulators often have authority to grant variances, waivers, rezoning, and other forms of relief. *See Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 738 (1997). Challenges to land policy often allege that a given regulation breaks this law or that one because it "goes too far." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). But "a court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986). For that reason, 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." *Miles Christi Religious Ord. v. Township of Northville*, 629 F.3d 533, 537 (6th Cir. 2010); *see Knick*, 588 U.S. at 197 (describing this "settled" finality requirement).

This approach ensures that municipal land-use policy begins in local, politically accountable hands. And it prevents us from swinging at a moving target. *See Miles Christi*, 629 F.3d at 537–38. We have applied this requirement to a variety of constitutional and statutory challenges to land-use policy. *See id.* at 536–37 (RLUIPA); *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1362 (6th Cir. 1992) (Equal Protection Clause); *Insomnia Inc. v. City of Memphis*, 278 F. App'x 609, 613 (6th Cir. 2008) (Speech Clause).

Gauged by these requirements, most of Grand's challenges to the ordinance are unripe. Grand does not point to a final decision implementing the challenged ordinance, and he does not show that delayed adjudication will harm him. As a result, his First Amendment, Fourteenth Amendment, Ohio Constitution, and RLUIPA claims are unripe, both because they are not fit for review and because Grand will not be prejudiced by any delay.

Unfit for review in the absence of a final decision. The relevant local agencies never reached a final decision about the application of the City's zoning rules to Grand. The Planning Commission implements the City's zoning ordinances, including any decisions about special use permits, and its decisions may be appealed to the City Council. Meanwhile, the Board of Zoning Appeals hears challenges to the Commission's interpretation of the zoning code. UHCO § 1244.03. As Grand concedes, neither the Planning Commission nor the City Council nor the Board of Zoning Appeals has ever determined whether UHCO § 1274.01 applies to the kinds of gatherings he has in mind. And because Grand withdrew his application, the zoning board has never issued a final decision—or for that matter any decision—about his eligibility for a special use permit. The government body "charged with implementing the regulations," in short, has not "reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186–87. Grand's claims thus never ripened into a dispute suitable for federal review.

Grace Community Church v. Lenox Township illustrates the point. 544 F.3d 609 (6th Cir. 2008). A town revoked a special use permit that it had previously

granted to a church after learning that the church violated the permit's conditions. *Id.* at 611. The church offered "no comment" at the revocation hearing, declined to appeal the decision, and failed to apply for reinstatement. *Id.* at 616. It instead sued the town in federal court. *Id.* at 612. Although the local planning commission revoked the permit, the church's silence meant that the commission rested the revocation on an "inconclusive but essentially unrebutted" finding that the church violated the permit. *Id.* at 616. That unappealed and inconclusive decision, we held, failed to ripen into a cognizable claim. *Id.* at 616–17.

Just so here. The University Heights Planning Commission never determined whether the ordinance applied to Grand's gatherings and never determined his eligibility for a special use permit. Nor was this the City's fault. Grand 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. Grand's claims, in truth, are further from maturity than Grace Community Church's claims.

Grand offers a few rejoinders. He contends that the cease-and-desist letter counts as a final decision. The problem with the argument is that it misapprehends the finality requirement. To ripen his claims, Grand needed a final decision from the agency with authority over the challenged regulations. That final decision would come from the Board of Zoning Appeals. McConville, the University Heights Law Director who sent the zoning-violation letter, has no role in the relevant agencies. And Mayor Brennan neither controls the Planning Commission nor sits on the Board of Zoning Appeals. Grand's case, at bottom,

turns on whether his proposed gatherings would render his home a "house[] of worship" under the ordinance. UHCO § 1274.01(b)(1). Only the zoning board, not Brennan or McConville, can answer that question. Due to Grand's decision to withdraw his special use application, the zoning board had no application to act on, leaving us with "no idea" how the ordinance works in this setting. *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 163 (1967).

Even though Grand did not need to exhaust his local remedies, he did need to obtain a final decision. The point of this requirement is not to channel disputes through elaborate local procedures or three layers of state-court review. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 624 (2001). Its purpose is simply to determine the government's position, which is why "nothing more than *de facto* finality is necessary." *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021) (per curiam). No such finality exists.

Grand claims that any effort to obtain a final decision would have been futile, insisting that further proceedings before the Planning Commission had nowhere to go. Local authorities, it is true, may not hide behind "repetitive or unfair land-use procedures in order to avoid a final decision." *Palazzolo*, 533 U.S. at 621. Ripeness, it is also true, does not require further proceedings after the government has already "dug in its heels." *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349 (2d Cir. 2005). But "futility" is not an exception to finality; it's another way to state the rule. *See Bannum*, 958 F.2d at 1363. A government's position is final when it has adopted a settled position or refused to answer a complaint. *See id.*

While the legal premise of this argument has merit, its application here does not. These zoning proceedings had not become an empty affair. The Commission tabled Grand's application before it could act on it. Then, after the Commissioners went back and forth by email about the merits of the application, the Commission scheduled a second hearing to consider Grand's position in greater detail. When Grand withdrew his application on the eve of the second hearing, he said that he was doing so because the ordinance did not apply to his planned use, and he therefore did not need a permit. Nothing about this sequence of events demonstrates prejudgment of Grand's claim. Quite the opposite. The emails between the Commissioners suggest that they found the issue complicated, and some viewed his use of his house for small prayer meetings as consistent with the ordinance. In the last analysis, we cannot say whether the City has "dug in its heels" because we still do not know where it stands on this application of the ordinance. *Murphy*, 402 F.3d at 349.

Grand insists that, at a minimum, his due process claim ripened immediately after the first Commission hearing. But 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. *See Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000) ("In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her. . . . "); *Dusanek v. Hannon*, 677 F.2d 538, 543 (7th Cir. 1982).

No hardship to Grand. This approach does not unfairly harm Grand. It was his actions, not anyone

else's, that created the ripeness problem. A dismissal on ripeness grounds is *without prejudice*, and Grand remains free to file a new action if the City applies the ordinance to him in a way that violates his statutory or constitutional rights. Hardship from the denial of pre-enforcement review ordinarily emerges from a forced choice. Unable to assert his rights judicially, the plaintiff is left to pick between (1) compliance with a burdensome and potentially unlawful policy or (2) refusal to comply and the risk of sanctions that comes with it. *See, e.g.*, *Abbott Lab'ys*, 387 U.S. at 153; *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 68 (2014); *Columbia Broadcasting Sys., Inc. v. United States*, 316 U.S. 407, 417–19 (1942). Not every claimant faces that dilemma, however. Some challenged policies do not "force" the plaintiff "to modify [his] behavior in order to avoid future adverse consequences." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 734 (1998).

The ordinance is such a policy, and Grand is such a plaintiff. If Grand wants clarity about the challenged policies, the local agencies remain available to provide it. Grand retains the right to apply for a permit, "complete the factual record," "more fully explain [his] position," or appeal any adverse determination by the Planning Commission. *Grace Community*, 544 F.3d at 616; *see Miles Christi*, 629 F.3d at 539. Any gate to relief is locked from within. Grand may open the door whenever he wishes. Until then, it is not for us to permit "litigation by hypothetical" when local authorities stand ready to provide whatever clarity or permission the claimant needs. *Warshak*, 532 F.3d at 529.

Grand returns to the cease-and-desist letter as a ground for distinguishing *Miles Christi*. He notes that,

in *Miles Christi*, local rules suspended enforcement of zoning rules during an appeal to the zoning board. *See* 629 F.3d at 542. Because University Heights lacks a similar suspension process during an appeal, he reasons, he cannot delay enforcement of the City's policy during an appeal and thus will suffer greater hardship from the denial of judicial review. But that distinction highlights the difference between the letter he received and the ticket issued in *Miles Christi*. The letter is not an enforcement action, and the City may not enforce it. During a proceeding before the Planning Commission or Board of Zoning Appeals, in other words, the letter would not impose a hardship. Grand needs no relief from a document that does not harm him. *Murphy*, 402 F.3d at 349 ("[T]he cease and desist order did not inflict an immediate injury.").

As a final riposte, Grand urges us to conclude that the City's zoning rules chill First Amendment expression. Potential infringement of free-speech rights no doubt deserves weight in the hardship analysis. *See, e.g.*, *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2358 (2025); *Driehaus*, 573 U.S. at 168. Yet it is specific objective harm, not "subjective 'chill,'" that counts. *Laird v. Tatum*, 408 U.S. 1, 14–15 (1972). For that reason, we "look at each case to determine the consequences of staying our hand." *Miles Christi*, 629 F.3d at 540. Grand admits, as an initial matter, that he has convened a minyan on the Sabbath at least once after the end of the Planning Commission meetings. That does not sound like chill. *See Laird*, 408 U.S. at 14 n.7. Grand, at all events, still holds the keys to resolving any uncertainty about the zoning policy. Having chosen not to obtain a final decision, indeed any enforceable decision, about the application of the

zoning rules to his home, he is the author of any chilling effect on his First Amendment interests, not the City.

Grand and the United States as amicus curiae argue that, even if the finality imperative applies to as-applied claims, it does not apply to facial challenges to zoning ordinances. We agree. Facial challenges assert that "no set of circumstances exists under which" the challenged enactment or action would be lawful. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Waiting for the government to "reach[] a final decision regarding the application of the regulations," *Williamson Cnty.*, 473 U.S. at 538, does not make sense if the regulations are unlawful no matter how the government applies them, *see Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 287 (5th Cir. 2012). A zoning policy that permitted special use requests only by people of one faith, as an example, would be facially unconstitutional and could be challenged with, or without, a final decision by the relevant agency. In that setting, the claim is "generally ripe the moment the challenged regulation or ordinance is passed." *Suitum*, 520 U.S. at 736 n.10; *accord Yee v. City of Escondido*, 503 U.S. 519, 532–35 (1992); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 494 (1987).

While Grand's facial claims do not have a finality problem, they fail for two independent reasons. For one, Grand forfeited these claims, as the district court correctly held. Parties forfeit arguments at the summary judgment stage by failing to adequately address them in response to a motion for summary judgment. *Bennett v. Hurley Med. Ctr.*, 86 F.4th 314, 324 (6th Cir. 2023). That is what happened. When the parties

cross-moved for summary judgment, Grand failed to provide any sustained argument in support of his facial arguments. He instead simply asserted, sporadically and without development, that the ordinance is unlawful on its face. Those conclusory references do not preserve his claims for appeal.

For another reason, any such claim fails as a matter of law. Facial challenges require a showing that the challenged action would violate the law under any set of circumstances. *Salerno*, 481 U.S. at 745. These kinds of claims face an "uphill battle" in the land-use setting. *Keystone Bituminous*, 480 U.S. at 494. This case shows why. To prevail, Grand would have to show that the city's zoning policy—requiring permission for a place of religious assembly— could never be lawfully applied in any context. *See Bucklew v. Precythe*, 587 U.S. 119, 138 (2019); *Yee*, 503 U.S. at 532–35. He cannot make that showing, and he has not even tried. Surely, as one obvious example, the City could prohibit a 3,000 person worship hall from being placed in a residential part of University Heights. *See Mount Elliott Cemetery Ass'n v. City of Troy*, 171 F.3d 398, 405 (6th Cir. 1999). "[A] church has no constitutional right to be free from reasonable zoning regulations nor does a church have a constitutional right to build its house of worship where it pleases." *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 652 (10th Cir. 2006). This example suffices to show that Grand cannot meet the *Salerno* standard.

III.

The district court correctly dismissed Grand's Fourth Amendment and FACE Act claims on the merits.

Fourth Amendment. Grand argues that the City violated his Fourth Amendment rights by sending a housing inspector into his home without a warrant. The Fourth Amendment provides, in relevant part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. Home inspections are "searches" within the meaning of the guarantee. *Camara v. Mun. Ct. of City & Cnty. of S.F.*, 387 U.S. 523, 528 (1967). And the Fourth Amendment ordinarily prohibits warrantless searches of a home. *See, e.g.*, *Lange v. California*, 594 U.S. 295, 298 (2021).

Consent, however, creates an exception to the ordinary rule. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). That consent, moreover, need not come from the property owner himself. *See, e.g.*, *United States v. Ayoub*, 498 F.3d 532, 537 (6th Cir. 2007). So long as the consenting party had "apparent or actual authority over the premises," the consent is valid. *United States v. Sheckles*, 996 F.3d 330, 346 (6th Cir. 2021).

In this instance, Grand's wife gave the inspector permission to search the house. Nothing about their exchange would lead an officer to think Grand's wife lacked authority over the house. Her consent forecloses her husband's argument.

FACE Act. Grand contends that the City violated the Freedom of Access to Clinic Entrances Act by ordering police officers to drive by his home and by asking his neighbors to file reports if they saw people congregating at his house. The FACE Act creates civil remedies against "[w]hoever . . . by force or threat of force or by physical obstruction . . . interferes with or

attempts to . . . interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship." 18 U.S.C. § 248(a)(2). We interpret the phrase "threat of force" as referring to a serious expression of intent to inflict bodily harm. *Cf. United States v. Doggart*, 906 F.3d 506, 510 (6th Cir. 2018) (interpreting statutes with similar language).

The district court held that the City's actions do not constitute "force," "threat of force," or "physical obstruction" within the meaning of the Act. 18 U.S.C § 248(a)(2). Grand's reply brief, and only his reply brief, suggests that Brennan's statement at the second Commission hearing amounted to a "threat of force." 18 U.S.C. § 248(a)(2). To start (and to repeat), arguments made for the first time in a reply brief are forfeited. *Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010). To finish, Grand's argument would fail even if he had properly raised it. Brennan's only threat was to ticket Grand for violating the housing code. Few among us enjoy receiving a code citation. But Brennan's reference to "appropriate remedies in court," R.83-1 at 247, does not remotely express "intent to inflict bodily harm." *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1077 (9th Cir. 2002) (en banc).

Dismissal with prejudice. Grand objects to the district court's dismissal of his unripe claims with prejudice. He articulates a perfectly sound legal argument but misconceives the situation. Federal courts indeed dismiss cases for lack of ripeness without prejudice. *Peters v. Fair*, 427 F.3d 1035, 1038 (6th Cir. 2005). And that is precisely what the district court did.

Supplemental jurisdiction. Grand contends that the district court erred by declining supplemental jurisdiction over his Ohio Public Records Act claim. We review this argument for abuse of discretion. *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993). "[A] federal court that has dismissed a plaintiff's federal-law claims should not ordinarily reach the plaintiff's state-law claims." *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006); *see* 28 U.S.C. § 1367(c)(3). That is just what happened. No abuse of discretion occurred.

We affirm.

JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (NOVEMBER 13, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL GRAND,

Plaintiff-Appellant,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO; MICHAEL DYLAN BRENNAN, Mayor, in his official and individual capacity; LUKE MCCONVILLE, City Law Director, in his individual capacity; PAUL SIEMBORSKI, City Planning Commission member, in his individual capacity,

Defendants-Appellees.

No. 24-3876

On Appeal from the United States District Court for the Northern District of Ohio at Cleveland.

Before: SUTTON, Chief Judge; BATCHELDER and LARSEN, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

AMENDED MEMORANDUM OPINION AND ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION (OCTOBER 1, 2024)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL GRAND,

Plaintiff,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants.

Case No. 1:22-cv-1594

Before: Bridget MEEHAN BRENNAN,
U.S. District Judge.

AMENDED MEMORANDUM OPINION AND ORDER

Before the Court are the parties' cross-motions for summary judgment. Plaintiff Daniel Grand moved for partial summary judgment on Counts One through Three, Five, Six, Eight through Twelve, and Fourteen, and only as asserted against University Heights and Mayor Michael Brennan. (Doc. 81.) Defendants opposed

that motion (Doc. 88), and Grand replied (Doc. 91). For the reasons explained below, Grand's partial motion for summary judgment is DENIED in its entirety.

All Defendants moved for summary judgment on all counts. (Doc. 79.) Grand partially opposed Defendant's motion (Doc. 89), and Defendants replied (Doc. 90). Defendants' motion for summary judgment is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen.

I. Background

A. Factual Background

This case arises from a land-use and zoning dispute between Plaintiff Daniel Grand ("Grand") and certain University Heights officials. The facts of this case are largely undisputed. Grand is an Orthodox Jew. (Doc. 79 at 1011; Doc. 79-1 at 1063; Doc. 81 at 1334.)[1] As such, Grand is required to pray (or "daven") three times daily with a group of ten men ("minyan"). (*Id.*) Typically, Grand does so at a synagogue or a shul. (Doc. 79 at 1011; Doc. 79-1 at 1063–64.) A shul is a place where davening occurs, which may or may not be a synagogue. (Doc. 81 at 1334; Doc. 81-1 at 1367.) Grand and practicing members of his faith do not

[1] For ease and consistency, record citations are to the electronically stamped CM/ECF document and PageID# rather than any internal pagination.

drive on the Sabbath (or "Shabbos"), a Jewish day of rest that runs from Friday evening to Saturday evening. (*Id.*) To pray with a minyan on the Sabbath, then, Grand and his fellow adherents must walk. (*Id.*)

Grand moved to University Heights, Ohio ("University Heights" or the "City") in 2017. (Doc. 79 at 1010; Doc. 79-1 at 1041.) Previously, he lived in New York City and worked in real estate, including owning a property violation company where he was involved with local administrative departments. (Doc. 79-1 at 1041, 1053–55.) When Grand moved to University Heights, he initially lived on Silsby Road, but relocated to Miramar Boulevard in 2019. (Doc. 79 at 1011; Doc. 79-1 at 1040.) From his Miramar residence, Grand frequently attended prayers at various nearby synagogues. (Doc. 81-16 at 1530–31.) On the Sabbath, Grand and his family walked to the synagogue. (Doc. 81 at 1334.) To avoid having to walk to and from a synagogue on the Sabbath multiple times a day, Grand decided to host prayers at his home on Miramar—one prayer on Friday evening, one on Saturday morning, and one on Saturday evening. (*Id.*) Grand planned to host these meetings in a recreation room in his home. (Doc. 81-8 at 1459.) Grand constructed the recreation room when he moved to Miramar as an addition to his home for use as a computer room or a place to play music. (*Id.*)

On January 19, 2021, Grand sent an email inviting approximately twelve neighbors—and any others those invitees wanted to bring—to join him for a minyan prayer session at his home. (Doc. 88-2.) The invitation read, in pertinent part:

You are cordially invited to join us this Shabbos for the inauguration of the Shomayah Tefillah Beis

Hakeneset located at 2343 Miramar Blvd. (The Daniel J. Grand Residence)

> We would also like to take this opportunity to introduce to you our Rabbi – Rabbi Rosskam – a smicha recipient from Rabbi Rueven Feinstein, and Rabbi Heinemann from Star-K
>
> The Davening Times will be:
>
> Friday Erev Shabbos Mincha 5:20 p.m. [Friday evening]
>
> Shabbos Shacharis followed by Kiddush 9:45 a.m. [Saturday morning]
>
> Mincha Followed by Seudah Shlishit 5:00 p.m. [Saturday evening]
>
> You will see the shul entrance-keep a look out for the Orange Windows-
>
> And Please spread the word to whomever you feel might be interested in coming –
>
> The shul is being put together for two reasons, one has always been to expand the community, so we can spread out and open up more houses on the other side of belvoir, and the other is to have a place where people come to really, seriously daven to Hashem-we want to have a place that doesn't have talking during the davening, a powerful place to have your prays heard and answered Bezrat Hashem.

(*Id.*)

On January 21, 2021, a local resident forwarded Grand's January 19th email invitation to University Heights Mayor Michael Brennan ("Brennan"). (Doc.

81 at 1334; Doc. 81-3.) That same day, Brennan forwarded the message to University Heights Law Director Luke McConville ("McConville"). (Doc. 81-5.) Around two hours later, McConville emailed Grand a cease-and-desist letter. (Doc. 81-6.) The email subject line referred to "Use of Premises as a Shul," and the body of the cover email referred to "proposed use of said premises for religious assembly." (*Id.* at 1452.) The letter stated:

> I am writing to you in my capacity as Law Director for the City of University Heights (the "City"). The City has been made aware that you intend to use the premises at 2343 Miramar Boulevard (the "Premises") as a place of religious assembly and in operation of a shul. Pursuant to the zoning map and codified ordinances of the City, the premises are zoned U-1 for residential use. The use or operation of the Premises as a religious place of assembly and/or in operation as a shul or synagogue is not permitted under the City's ordinances.
>
> The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent that the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future, the City hereby demands that you immediately cease and desist any and all such operations. Violation of the City's ordinances in this manner may result in building code citations against you and in the pursuit of additional remedies.

> The City is particularly disturbed to learn of the proposed use of the Premises as a place of religious assembly given that you recently appeared before the City's Board of Zoning Appeals in connection with your application for variances. The City is exploring whether variances granted for the Premises may be voidable based upon a subsequent illegal use of the Premises, or due to material omissions during the hearing process relating to your intent to utilize the Premises as a place of religious assembly.
>
> Allow me to refer you to City Codified Ordinance Chapter 1274 entitled "Houses of Assembly and Social Service Uses." Under Chapter 1274, you may make application to the City's Planning Commission for a Special Use Permit.

(*Id.* at 1454–55.) After McConville issued the letter, Brennan and Grand spoke about Grand's proposed activities. (Doc. 81 at 1335.) Grand explained that he wanted to host a small informal prayer group. (*Id.*) However, Brennan felt that Grand was being dishonest about his characterization of the small informal prayer group. (Doc. 88-3 at 2476.) This was based, in part, on (1) the content of the invite, which Grand allegedly contradicted in the phone call with Brennan, and (2) the City's prior experiences with "pop-up" synagogues and shuls.[2] (*Id.* at 2479–80.) To Brennan,

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[2] Prior to the dispute here, University Heights shut down a separate residential shul after the City determined approximately 120 to 130 individuals were meeting in the basement. (Doc. 90 at 2569.)

Grand should be required to go through the necessary permitting process, which he told Grand during the call: "I made clear to him that we have requirements in the City of University Heights, that one seek and obtain a special-use permit before operating a house of worship . . . in our city." (*Id.* at 2476.)

Grand's residence is zoned U-1. (Doc. 79 at 1013.) According to the University Heights Code of Ordinances ("UHCO"), only permitted uses in U-1 zones are one-family dwellings, buildings owned by a board of education, buildings owned by the municipality, and buildings owned by a library board. UHCO § 1250.02. Churches are not permitted as a matter of right in U-1 districts. UHCO § 1256.01.

Pursuant to § 1250.02(g), a person may apply for a Special Use Permit ("SUP"). UHCO § 1250.02(g). If granted, a SUP allows certain buildings or uses in U-1, U-2, and U-4 districts where those buildings or uses would otherwise be prohibited. UHCO § 1250.02. The SUP process is found in UHCO § 1274. Among those buildings or uses that may qualify for a SUP are: "(1) Houses of worship . . . including . . . synagogues[.]" UHCO § 1274.01(b)(1). UHCO does not define houses of worship. Other buildings and uses qualify as well, such as physical or behavioral health care facilities, educational institutions, nurseries, day care centers, senior housing, and office space, among others. UHCO § 1274.01(b)(2)–(7). SUPs are issued by the University Heights Planning Commission ("Planning Commission") if the applicant shows by "clear and convincing evidence" the special use "will not impair surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others or other applicable criteria in the

Planning and Zoning Code, and will not be otherwise contrary to the public health, safety and welfare." UHCO § 1274.01(a), (d).

Upon receiving an application, the Planning Commission may hold a public hearing, to occur within 90 days. UHCO § 1274.01(d)(1). Approval by the Planning Commission is subject to approval by City Council, and any denial of a SUP by the Planning Commission can be appealed to the City Council. UHCO § 1274.01 (d)(2). At the time of the dispute here, the members of the Planning Commission were Brennan, Paul Siemborski ("Siemborski"), Michael Fine, John Rach, and April Urban. (Doc. 81 at 1338.)

After receiving the letter from McConville, and after his conversation with Brennan, Grand cancelled the prayer group scheduled for that weekend. (Doc. 81 at 1335; Doc. 81-2 at 1372.) In the early hours of the next day, at approximately 1:00 a.m., Grand emailed the Clerk for City Council so he could apply for a SUP, stating "unbeknownst to me, I will need to file for a special use permit with the city planning commission to have friends come over to pray at my house." (Doc. 81 at 1335–36; Doc. 81-7 at 1457.) He applied for a SUP that same day, stating it was his intention to "utilize my current recreation room for periodic religious gatherings." (Doc. 81 at 1336; Doc. 81-8 at 1459.) Grand provided information relating to the room, including that it is about 700 square feet, he has 11 tables and 21 chairs set up, the room is on slab with no basement below it, there are three means of egress, and there would be no traffic since prayers will only be held on the Sabbath when no driving is permitted. (Doc. 81-8 at 1459.) The Planning Commission sched-

uled a meeting for March 4, 2021, to address Grand's application. (Doc. 81-9 at 1463.)

On March 3, 2021, Grand submitted a "Letter of Clarity" to the Planning Commission, which stated he only seeks to "have an informal prayer group for services in my home on the Jewish Sabbath and High Holidays" and is not seeking to establish a formal house of worship, whether called a "shul" or "synagogue." (Doc. 81-16 at 1530–31.) The letter explained Grand was only seeking the SUP because University Heights officials told him to do so. (*Id.*)

The March 4 hearing lasted approximately three hours. (Doc. 79 at 1012; Doc. 81-11.) Before the hearing, McConville stated it would be conducted as a quasi-judicial hearing (Doc. 81-11 at 1476), allegedly the first time a Planning Commission hearing was held in this manner (Doc. 81 at 1339). Grand presented his application to the Planning Commission, through counsel, stating "this hearing is about whether a residence of University Heights may host prayer services in a designated, modest space in the resident's house and in a manner that is respectful of an unintrusive upon the resident's neighbors." (Doc. 81-11 at 1478–80.) Grand explained he wanted "to use the space in his house to host men's only prayer services for a prayer group once a week and on certain high holidays." (*Id.* at 1479.) After hearing from citizens, a Planning Commissioner made a motion:

> I would then make a motion to table that the applicant come back with a more thorough presentation as to site plan with the review from the fire department, inspection of the building, what needs to be done, whether it's a realistic option from . . . and if he's going to

> ask for a special use permit. Then it should be what the applicant has articulated, what the applicant wants to do.

(*Id.* at 1511–12.) Another Commissioner voted for the motion and requested for the next meeting "more drawings of the building and the site plans so we have a clearer understanding of how the space is to be used." (*Id.* at 1512.) The motion to table passed three to two. (*Id.*) Essentially, the meeting adjourned so Grand could present a more thorough application, if he was going to present one at all, which included specific site plans.

Immediately following the meeting, members of the Planning Commission exchanged emails on Grand's position. (Doc. 81-15 at 1523–28.) Commissioner Siemborski expressed his opposition to Grand's SUP application. (*Id.* at 1527.) Commissioner Fine, in addition to articulating his thoughts on the hearing generally, stated:

> As an aside, I do not know why anyone would need a special use permit to invited 10 friends to pray with them Friday night and Saturday morning in their living room. I also do not see how this would be different then my having friends over regularly for parties. There is no restriction on how much I can entertain. However, if I reconfigure my house for 10 or more people to come over regularly, give my group a name, and hire a prayer leader, that may be qualitatively different. It also raises suspicions that I am not really intending to limit my parties/meetings to Fri night and Sat day. However, there is a spectrum here, and I think that needs to be clarified.

> Mr. Grand's problem is that he testified that all he wanted to accomplish was the former, but his actions speak to something further along the spectrum toward a real house of prayer.

(*Id.* at 1526.) Commissioner Urban replied to Commissioner Fine, stating:

> I do think the application should be dismissed. I think the reason for dismissal should be that the use presented (the applicant proposed gathing [sic] 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. We don't require other social gatherings occurring in a private home to have a special use permit. If the applicant's intentions are truly within the bounds they describe, why would he need a special use permit?
>
> I believe we were to take the applicant at his word as he was under oath, and he maintained a smaller group size. If the application is dismissed, and it is stated that reasonably sized gatherings can occur in private homes what is the mechanism for enforcement if gatherings get out-of-hand in size or frequency? My guess is the cease and desist order and other nuisance property mechanisms. Given he is an owner-occupant, I think these could be reasonably effective if the situation worsened. But how can we tell when activity is truly a nuisance to neighbors from when neighbors are being unneighborly because of their differences?

(*Id.* at 1525.) Commissioner Fine replied, "[a]s I wrote previously, a tension exists regarding at what point does a social gathering become a house of worship." (*Id.* at 1524.)

On March 12, 2021, the Planning Commission scheduled a second meeting for March 23, 2021. (Doc. 81-18.) When scheduling that meeting, Brennan explained in an email to a resident the first meeting was held as a quasi-judicial hearing so that if a decision of the Planning Commission was appealed, the record would be limited to what was presented to the Commission and nothing more. (*Id.* at 1539.) In this way, it would prevent Grand, or anyone else, from presenting new evidence to a reviewing body. (*Id.*) Brennan also stated: "To be clear, the administration does not endorse or support the application. Instead, this application was made only after the City sent a cease and desist letter to applicant in response to his widely circulated invitation announcing the opening of a shul." (*Id.*)

On March 16, Grand emailed the Planning Commission, requesting to be put in touch with City officials so he could supplement the SUP application with a site plan. (Doc. 81 at 1341; Doc. 81-17 at 1534–35.) Brennan responded to Grand, stating that he closed his application after Grand presented his application in the first meeting and explained no additional presentation would be necessary. (Doc. 81-17 at 1533.) Brennan explained that "[s]ince the meeting, individual members [of the Planning Commission] have expressed their desire to discuss what has been presented. This discussion is not to be done as a group outside of the confines of a public meeting." (*Id.*) Brennan was referring to the post-meeting email

exchange between the Planning Commissioners. (Doc. 81-15.) Those emails were not made part of the record in the underlying proceeding.

On March 23, 2021, hours before the second meeting, Grand withdrew his SUP application. His email read:

> Mayor Brennan and Planning Commission,
>
> Please be advised that I'm withdrawing my application for a special use permit. I do not wish to operate a house of worship as is defined under the zoning ordinance, in the privacy of my home.

(Doc. 88-4 at 2482.) The Planning Commission held the March 23 meeting as scheduled. During that meeting, Brennan stated the second meeting was called because members of the Planning Commission had "demonstrated a desire to discuss this matter, in essence to deliberate, in the form of e-mails" after the first meeting. (Doc. 81 at 1342.) Brennan then read Grand's withdrawal into the record. (*Id.*) Brennan then stated:

> I therefore note for the record that the application is withdrawn. There is no special use permit for 2343 Miramar Boulevard. And I will remind the applicant that the cease-and-desist order of the City, dated January 21, 2021 remains in effect. Let there be no confusion, congregating at 2343 Miramar Boulevard or any other address located in a residence zoned U-1 without a special permit is a violation of city law.
>
> I'm hopeful that the wording of the with-

> drawal 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. As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and ultimately obtained a permanent injunction in court.
>
> To the community members who are here, let there be no question, there is no permission granted here to operate . . . a house of assembly or conduct activities consistent with one at 2343 Miramar Boulevard. If 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. And we will seek all appropriate remedies in court. With that I move to adjourn.

(Doc. 81 at 1342–43.)

Between the submission of the SUP until immediately after it was withdrawn, certain events occurred. In February 2021, after Grand submitted his SUP application, Grand noticed a neighbor had set up multiple cameras pointing directly at and into his home. (Doc 89-1 at 2541.) Grand filed two police reports. (*Id.*) The City declined to act. (*Id.*) Grand hung a landscaping mesh sheet to block the cameras, but the City instructed him to remove it. (*Id.*)

On March 23, 2021, UHPD Lieutenant Mark McArtor sent an email to patrol units advising they make frequent "drive-bys" of Grand's residence to ensure

compliance with certain city laws. (Doc. 82-1 at 1772.) Also in March 2021, Grand's neighbors reported to the City and Brennan that Grand laid gravel for additional parking at his residence. (Doc. 82-1 at 1775.) Grand was previously denied a permit to pour concrete and so the neighbors wanted the City to intervene. (*Id.*) After UHPD officers told the neighbors the UHPD would not intervene, the neighbors contacted Brennan. (*Id.*) Brennan reached out to the UHPD, who reported back that "it would be my recommendation for the Building Department to take the lead on this matter going forward. . . . However, the PD will assist in any way we can to resolve the matter, to include patrol officers responding after hours to photograph/video possible evidence of a complaint/infraction." (*Id.*)

On March 28, 2021, after further complaints from a neighbor about building code violations at Grand's residence, the City Prosecutor raised conducting a full inspection of Grand's home. (*Id.* at 1779.) The City Prosecutor explained such an inspection would require either the property owner's permission or a search warrant. (*Id.*) Afterwards, a city inspector went to Grand's home to conduct an inspection. Grand's wife consented to the City's inspection of the house. (Doc. 79 at 1019; Doc. 79-9 at 1224; Doc. 90 at 2575.) The record does not reflect whether citations were issued.

B. Procedural History

Grand initiated this action on September 8, 2022, approximately a year and a half after the events giving rise to the dispute. (Doc. 1.) Since then, Grand amended his complaint twice (Docs. 25, 67) and dismissed several named defendants (Docs. 49, 50, 59,

60, 61). The remaining defendants are University Heights, Michael Brennan, Luke McConville, and Paul Siemborski.[3] (Doc. 67.) Grand sued Brennan in his official capacity as Mayor of University Heights and in his individual capacity. (*Id.* at 573.) Grand's claims against McConville and Siemborski are brought in their individual capacities. (*Id.*) The operative complaint, the second amended complaint, asserts twenty claims. (*Id.* at 633–39.) Some claims are asserted against all Defendants, while others are asserted against a subset. (*Id.*)

The twenty claims are: First Amendment, Free Exercise Clause (Count One); First Amendment, Freedom of Assembly (Count Two); First Amendment, Prior Restraint (Count Three); Fourth Amendment, Unreasonable Search (Count Four); Fourteenth Amendment, Procedural Due Process (Count Five); Fourteenth Amendment, Equal Protection (Count Six); Fourteenth Amendment, Equal Protection (Class of One) (Count Seven); Religious Land Use and Institutionalized Persons Act ("RLUIPA"), Substantial Burdens (Count Eight); RLUIPA, Equal Terms (Count Nine); RLUIPA, Non-Discrimination (Count Ten); RLUIPA, Unreasonable Limitation (Count Eleven); Ohio Constitution, Freedom of Religious Exercise (Count Twelve); Common Law Right to Worship (Count Thirteen); Ohio Public Records Law (Count Fourteen); Invasion of Privacy (Count Fifteen); Freedom of Access to Clinic Entrances Act ("FACE Act") (Count Sixteen); Intentional Infliction

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[3] The Court will use "Defendants" to mean all Defendants collectively. The Court will use "individual Defendants" to refer to Brennan, McConville, and Siemborski collectively. Otherwise, the Court will refer to each Defendant separately by name.

of Emotional Distress (Count Seventeen); Civil Conspiracy (Count Eighteen); Abuse of Process (Count Nineteen); and Malicious Prosecution (Count Twenty). (*Id.*) Grand asserts his federal claims pursuant to 42 U.S.C. § 1983.

Counts One through Thirteen are asserted against all Defendants. (*Id.* at 633–37.) Count Fourteen is brought against University Heights only. (*Id.* at 637.) Counts Fifteen and Seventeen are brought against Brennan only. (*Id.* at 637–38.) Count Sixteen is asserted against University Heights and Brennan. (*Id.* at 638.) Counts Eighteen and Nineteen are asserted against the individual Defendants. (*Id.* at 638–39.) Count Twenty is asserted against Brennan and McConville. (*Id.* at 639.)

Grand's second amended complaint seeks the following extensive relief: a permanent injunction permitting him to pray in his home with others without obtaining a SUP; a declaration that the City's conduct was unlawful; an order enjoining the City from treating Grand differently than other residents; an order enjoining the City from revoking permits previously provided to him; a declaration that the City discriminated against Grand for his religious beliefs; an order that the City's discriminatory actions are void; a declaration that Grand is entitled to a certificate of occupancy for his home; a writ of mandamus compelling the City to issue a certificate of occupancy; a writ of mandamus compelling the City to comply with the Ohio Public Records Act and an award of statutory fees, court costs, and attorneys' fees relating to the Ohio Public Records Act; damages relating to FACE Act violations; a declaration that the City's land-use ordinances are unconstitutional because they violate

the First Amendment, RLUIPA, and the Ohio Constitution; a permanent injunction barring the City from enforcing the ordinances; and an award of compensatory damages. (*Id.* at 639–40.)

The parties filed cross-motions for summary judgment. Defendants' motion for summary judgment seeks judgment on all claims and as to all Defendants. (Doc. 79.) Grand moved for partial summary judgment, seeking judgment only on certain claims and against only certain Defendants. (Doc. 81.) Specifically, Grand moved for partial summary judgment on Counts One through Three, Counts Five and Six, Counts Eight through Twelve, and Count Fourteen against University Heights. (*Id.* at 1328.) Grand moved for partial summary judgment on Counts One through Three, Counts Five and Six, and Count Twelve against Brennan. (*Id.*) Grand did not move for summary judgment on any claims he asserts against McConville or Siemborski. (*Id.*)

Grand only partially opposed Defendants' motion for summary judgment. (Doc. 89.) Specifically, Grand stated no opposition to summary judgment on Count Seventeen and Counts Nineteen and Twenty. (*Id.*) He further did not provide any opposition as it relates to Siemborksi or McConville, except for Count Eighteen. (*Id.*) Defendants' opposed Grand's partial motion for summary judgment in full. (Doc. 88.) The motions are fully briefed. (Doc. 90, 91.)

In Grand's summary judgment papers, he affirmatively disclaims seeking to operate a house of worship at his home. (Doc. 81 at 1345.) Instead, he wants only to host a small informal prayer group. (*Id.*) Defendants, in their summary judgment papers, have 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. (Doc. 88 at 2419–20.) Thus, to the extent Grand's activities are consistent with this type of gatherings, the City will not take any action.

II. Analysis

A. Summary Judgment Standard

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). "Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and affidavits show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The moving party bears the burden of showing that no genuine issues of material fact exist." *Williams v. Maurer*, 9 F.4th 416, 430 (6th Cir. 2021) (quotation and citations omitted).

A "material" fact is one that "might affect the outcome of the suit under the governing law[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "And a genuine dispute of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Abu-Joudeh v. Schneider*, 954 F.3d 842, 849–50 (6th Cir. 2020) (quotation and citations omitted).

"Once the moving party satisfies its burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact." *Queen v. City of Bowling Green*, 956 F.3d 893, 898 (6th

Cir. 2020) (quotation and citations omitted). On summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Kalamazoo Acquisitions, L.L.C. v. Westfield Ins. Co.*, 395 F.3d 338, 342 (6th Cir. 2005). A party asserting or disputing a fact must cite evidence in the record or show that the record establishes either the absence or the presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c) & (e). Rule 56 further provides that "[t]he court need consider only" the materials cited in the parties' briefs. Fed. R. Civ. P. 56(c)(2); *see also Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479–80 (6th Cir. 1989) ("The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.").

"Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quotation and citation omitted). The Court's role is not to make credibility determinations or weigh conflicting evidence. *Payne v. Novartis Pharms. Corp.*, 767 F.3d 526, 530 (6th Cir. 2014) (citation omitted). "The ultimate question is whether the evidence presents a sufficient factual disagreement to require submission of the case to the jury, or whether the evidence is so one-sided that the moving parties should prevail as a matter of law." *Id.* (citation omitted).

"[A] plaintiff is deemed to have abandoned a claim when [he] fails to address it in response to a motion for summary judgment." *Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 372 (6th Cir. 2013) (collecting cases). However, the party moving for summary judgment

"always bears the burden of demonstrating the absence of a genuine issue as to material facts" and this burden applies "regardless if an adverse party fails to respond." *Carver v. Bunch*, 946 F.2d 451, 454–55 (6th Cir. 1991) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). A district court "cannot grant summary judgment in favor of a movant simply because the adverse party has not responded." *Id.* Instead, "[t]he court is required, at a minimum, to examine the movant's motion for summary judgment to ensure that he has discharged that burden." *Id.*; *see also Delphi Auto. Sys., LLC v. United Plastics, Inc.*, 418 F. App'x 374, 381 (6th Cir. 2011) (holding a movant was not entitled to summary judgment simply because the other party failed to respond).

B. Ripeness

Before considering the merits, the Court must first resolve whether Grand's claims are ripe for federal judicial review.[4]

"The ripeness doctrine encompasses 'Article III limitations on judicial power' and 'prudential reasons' that lead federal courts to 'refuse to exercise jurisdiction' in certain cases." *Miles Christi Religious Ord. v. Twp.*

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[4] Defendants raise ripeness in their opposition to Grand's motion for partial summary judgment, but only as to procedural due process (Count Five). Because the doctrine applies to all claims arising from a land-use dispute, and because it goes to whether the Court has subject matter jurisdiction, the Court considers ripeness *sua sponte* for all land-use related claims at issue here. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (a court has an "independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.").

of Northville, 629 F.3d 533, 537 (6th Cir. 2010) (quoting *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003)). Federal court jurisdiction is limited to justiciable cases and controversies, thereby eliminating from their judicial review abstract, unresolved, or premature matters. *Id.*; *see also Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008); *Nat'l Park*, 538 U.S. at 807–08.

In assessing ripeness, courts must resolve two questions: "(1) is the dispute 'fit' for a court decision in the sense that it arises in 'a concrete factual context' and involves 'a dispute that is likely to come to pass'? and (2) what are the risks to the claimant if the federal courts stay their hand?" *Miles Christi*, 629 F.3d at 537 (quoting *Warshak*, 532 F.3d at 525).

In the land-use context, the concepts of "a concrete factual context" and "a dispute that will likely come to pass" hinge on whether there has been a final determination by the appropriate local or administrative body. *Id.* (citing *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985)). Meaning, has the disputed issue been presented to local authorities and, if so, has the local or administrative body "adopted a 'definitive position' as to 'how the regulations at issue apply to the particular land in question.'" *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 448 (6th Cir. 2023) (quoting *Pakdel v. City & Cnty. of San Fran.*, 594 U.S. 474, 478–79 (2021)); *see also Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1363–64 (6th Cir. 1992) ("By finality we mean that the actions of the city were such that further administrative action by [the plaintiff] would not be produc-

tive."). Final decisions in this context do not require exhaustion. *Miles Christi*, 629 F.3d at 541;

Catholic Healthcare, 82 F.4th at 448. That is, plaintiffs do not need to prove that their land-use request was reviewed by every applicable authority at the local level. Nor does a plaintiff need to exhaust appeals. Instead, finality is a "'relatively modest' showing that the 'government is committed to a position' as to the strictures its zoning ordinance imposes on a plaintiff's proposed land use." *Catholic Healthcare*, 82 F.4th at 448 (quoting *Pakdel*, 594 U.S. at 479); *see also McCausland v. Charter Twp. of Canton*, No. 23-1479, 2024 WL 3045525, at *6 n.6 (6th Cir. June 18, 2024) (explaining recent Supreme Court precedent does not require exhaustion but does still require finality).

The finality requirement has been applied to "constitutional and statutory challenges to local land-use requirements," including those at issue here. *See, e.g.*, *Grace Cmty. Church v. Lenox Twp.*, 544 F.3d 609, 615 (6th Cir. 2008) (RLUIPA claims); *Insomnia, Inc. v. City of Memphis*, 278 F. App'x 609, 616 (6th Cir. 2008) (First Amendment claim arising under the Free Speech Clause); *Bannum*, 958 F.2d at 1363–64 (Equal Protection Clause under Fourteenth Amendment); *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 350 (2d Cir. 2005) (First Amendment claim arising under the Free Exercise Clause). Procedural due process claims are also subject to the finality requirement unless the "denial of procedural due process itself creates an injury." *Bigelow v. Mich. Dept't of Nat. Res.*, 970 F.2d 154, 160 (6th Cir. 1992).[5]

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[5] Grand's denial of due process claim is subject to the same

Absent a showing the City expressed a final or definitive position, this Court does not have subject matter jurisdiction. *See, e.g.*, *Insomnia*, 278 F. App'x at 610 (affirming dismissal of constitutional claims on ripeness grounds where interim order instructed applicant to reapply under different code provisions); *Grace Cmty. Church*, 544 F.3d at 611 (affirming dismissal of RLUIPA and Equal Protection claims as unripe where planning commission's revocation of SUP to operate a church in a residential area was not appealed to the local body's reviewing authority); *Miles Christi*, 629 F.3d at 53 (affirming dismissal of RLUIPA and constitutional claims on ripeness grounds where city officials initially determined plaintiff's at-home religious activities required a permit and cited plaintiff for failing to obtain a SUP, but where the zoning board had not yet stated whether the local ordinance applied to plaintiff's stated use); *but see Catholic Healthcare*, 82 F.4th at 448 (finding First Amendment and RLUIPA claims ripe where township insisted on and then denied (twice) plaintiff's application for SUP to put up religious displays and appeal to zoning board of appeals was unsuccessful).

Following the Sixth Circuit, district courts have required finality as a condition precedent for ripeness. *See, e.g.*, *Yetto v. City of Jackson*, No. 17-cv-1205, 2019 WL 2715545, at *9–10 (W.D. Tenn. June 28, 2019)

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ripeness inquiry because it is indisputably ancillary to these constitutional and statutory challenges. *See Bigelow*, 970 F.2d at 160. And, even if it was not, Grand was afforded due process. Grand submitted a SUP application and presented it to the Planning Commission, but later withdrew it because, as he stated at the time of withdrawal, the local ordinance did not apply to small religious assemblies.

(dismissing case as unripe where plaintiff withdrew application for special use permit before final determination was made regarding whether ordinances applied to religious gatherings in home even though city issued a cease-and-desist order); *Oliver v. Etna Twp.*, No. 22-cv-2029, 2024 WL 1804993, at *5–6 (S.D. Ohio Apr. 24, 2024) (dismissing as unripe claims relating to rezoning application that was withdrawn before the city's decision on the application); *Daisy Invest. Corp. v. City of Seven Hills*, No. 22-cv-1276, 2024 WL 3759648, at *6 (N.D. Ohio Aug. 12, 2024) (finding claim ripe where the city denied variance and sent a letter to applicant that the "mayor, administration, and city council" reviewed regarding proposed special use permit).

So, what types of statements or decisions can be considered final for ripeness purposes?

In *Miles Christi*, plaintiff began using his residential home for religious activity, including religious gatherings of increasing size. 629 F.3d at 535. After an investigation and discussion with the plaintiff, the city official with authority to interpret and apply local ordinances told plaintiff they needed to request a variance from the board of zoning appeals or submit a site plan to the city planning commission. *Id.* at 536. After no action from plaintiff, the city issued a citation, and a lawsuit followed. *Id.* at 537. The Sixth Circuit rejected the argument that the city official's insistence that plaintiff file for a variance or file a site plan was "the kind of decision necessary to overcome . . . ripeness concerns." *Id.* at 538. Further, the city's ordinances provided that the zoning board of appeals was responsible for interpretation of the ordinances and that any matter before the planning

commission could be tabled until the board could weigh in. *Id.* Thus, the remaining open questions were: "(1) Has Miles Christi put its house to a 'more intensive use' within the meaning of § 170–33.2 of the Northville Code? (2) Is the Miles Christi house a 'church' within the meaning of § 170–26.2 of the Code? and (3) Does Miles Christi have an obligation to submit a site plan in the first instance in view of the meaning of these ordinances and its request for a variance?" *Id.* Since none of these were answered, finality was not demonstrated.

Also instructive is the district court's holding in *Yetto*. In *Yetto*, plaintiffs hosted at their residence approximately twenty to thirty gatherings each year with members of their faith led by a priest. 2019 WL 2715545 at *3–4. After an initial investigation, the city planner sent a zoning violation letter to plaintiffs, indicating a church might be operating at the residence and places of worship required a special exception since the residence was in a residential only zone. *Id.* The letter stated an application must be made to the Board of Zoning for approval and any further use of the property will result in a fine or an injunction. *Id.* In discussions with the city, plaintiffs referred to the residence as a church, but later, plaintiffs explained they were only holding informal prayer gatherings. *Id.* The city still then required plaintiffs to apply for a SUP. City representatives testified if plaintiffs demonstrated they were not using their property as a church, and instead, were only using it for small gatherings akin to bible studies, the ordinance would not apply, and a special permit would be unnecessary. *Id.* Without a definitive answer at that time, the city assumed the

ordinances applied to plaintiffs' activities, and so, plaintiffs filed for a permit. *Id.* at *4–5.

Prior to a decision on the permit, plaintiffs withdrew their application and sued in federal court alleging, as relevant here, violations of RLUIPA. *Id.* During litigation, both parties agreed that if plaintiffs were using the property akin to a bible study or other small gathering the ordinance would not apply in the first place. *Id.* The court found the cease-and-desist letter was not sufficient to meet the finality requirement. *Id.* at *8. Instead, the court found the letter put plaintiffs on notice about the purported violation and potential penalties, but that no enforcement action was taken at that time. *Id.* The court rejected plaintiffs' argument the letter "enjoined" them from future activities because plaintiffs could engage in the process to either get a permit or receive a determination that a permit was not necessary. *Id.* Since plaintiffs withdrew their application before that could be done, the claims were not ripe.

On the other hand, the Sixth Circuit in *Catholic Healthcare* found the plaintiff's claims to be sufficiently ripe, but the plaintiff there identified prior denials of SUP applications, citations issued to him for failing to have a SUP, and the zoning board's denial of his appeal. 82 F.4th at 448.

Moving to the facts of this case, the City neither reached nor stated a "definitive position" such that the finality requirement has been met. Grand received a cease-and-desist letter stating he needed to submit a SUP application for a "religious place of assembly." Grand promptly contacted city officials to obtain information on how to submit his application (within hours of receiving the City's letter and speaking with

Brennan), applied the day after receiving the letter, and the Planning Commission held a hearing on March 4, 2021. Brennan, one voting member of the Planning Commission, expressed his views during and after that meeting. But the Planning Commission tabled Grand's petition so members could receive more information and determine the ordinance's applicability.

Grand insisted the ordinance did not apply. After the meeting, certain members of the Planning Commission appeared to agree, with one member stating "I do not know why anyone would need a special use permit to invite 10 friends to pray with them Friday night and Saturday morning in their living room. I also do not see how this would be different then my having friends over regularly for parties." (Doc. 81-15 at 1526.) No vote was taken and no pronouncement from the Planning Commission was ever stated. Thus, like in *Insomnia*, *Grace Cmty. Church*, *Miles Christi*, and *Yetto*, the Planning Commission had not yet reached a final decision on the ordinance's applicability to Grand's small, religious gatherings. Grand also asserts Brennan's comments after Grand withdrew his application are evidence of First Amendment violations, but (1) there was no longer an application pending with the city, and (2) even as Mayor, Brennan was only one member to the Planning Commission, and he is not a member of the Board of Zoning Appeals—the entity who interprets the UHCO. *Cf. Miles Christi*, 629 F.3d at 538 (finding no finality where entity charged with interpretation of ordinances had not yet rendered a decision on the application of the zoning code to dispute).

The Sixth Circuit has long recognized land-use disputes like the one presented here may "be satisfac-

torily resolved at the local level," thereby obviating the need for any litigation, let alone federal judicial review. *Miles Christi*, 629 F.3d at 537. This is why finality is a critical component of the court's ripeness assessment.[6] Grand withdrew his application after the hearing. In so doing, he advised City officials withdrawal was appropriate because the ordinance did not apply, and no SUP was required for his small, religious gatherings. Notably, this is where the factual record ends. There is no evidence that Grand was denied the ability to engage in small religious gatherings in his home after withdrawing the SUP application. There is no evidence the City insisted he obtain a SUP for these small religious gatherings or that it interfered with Grand's religious gatherings after he withdrew the application. While Brennan stated the cease-and-desist order was still in effect, Grand's withdrawal of his application indicated he believed his conduct was not subject to the prohibitions in the letter.

Simply put, the factual record before the Court is that the ordinance did not apply, Grand withdrew his application, and the City did nothing further. And while not "factual," the City's stated position in

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[6] This Court recognizes that finality is required for as-applied challenges. *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Twp.*, 836 F.Supp.2d 504, 517–18 (E.D. Mich. 2011) (distinguishing ripeness doctrine between as-applied and facial challenges). Some of Grand's statements suggest a possible facial challenge, but such a challenge is neither stated nor developed in argument. Moreover, the parties' agreement that the ordinance does not apply eliminates a facial challenge altogether. *See Yetto*, 2019 WL 2715545, at *7 (dismissing facial challenges to Ordinances where parties agreed that plaintiffs' conduct did not qualify as operating a place of worship, and therefore, did not come within the bounds of the city's ordinances).

briefings before this Court is that the ordinance does not apply to Grand and that it agrees that small, religious gatherings do not require a SUP. Thus, to the extent a "definitive" statement was made, it appears such a statement was made in Grand's favor.[7]

For the reasons stated above, the Court dismisses Counts One through Three and Five through Twelve for lack of subject matter jurisdiction.[8]

C. Fourth Amendment (Count Four, all Defendants)

Grand's Fourth Amendment claim alleges Defendants conducted an unreasonable search of his house by "engaging in unwarranted, indiscriminate, and intrusive video surveillance and surveillance by other means." (Doc. 67 at 634.) Defendants moved for summary judgment. (Doc. 79 at 1018.) Grand opposed that motion but did not move for summary judgment himself. (Doc. 89 at 2527.)

Grand's Fourth Amendment claim involves three fact patterns. One, neighbors directed video cameras at his home. (*Id.* at 2527.) Two, police officers drove by the house. (*Id.*) Three, University Heights' conducted an "illegal" inspection of his home. (*Id.*) In their papers, Defendants argue the neighbors' conduct lacked government action and was not a search, the monitoring

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[7] This raises a mootness issue for some of claims and requested relief. Mootness was not raised by the parties, and that the Court need not address it after having determined Grand's claims are not ripe for federal judicial review.

[8] As it relates to Grand's RLUIPA claims, the Court notes Grand affirmatively disavowed any intention to hold religious gatherings of the sort subject to the UHCO.

of Grand's home was not a search, and the inspection of Grand's home was consensual. (Doc. 79 at 1019–20; Doc. 90 at 2574–75.)

The Fourth Amendment to the United States Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. "The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Mun. Ct. of City & Cnty. of S.F.*, 387 U.S. 523, 528 (1967). "To determine whether a Fourth Amendment violation has occurred, we ask two primary questions: first, whether the alleged government conduct constitutes a search within the meaning of the Fourth Amendment; and second, whether the search was reasonable." *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019).

Neighbors' Surveillance. "[T]he Fourth Amendment proscribes only governmental action and does not apply to a search or seizure, even an unreasonable one, conducted by a private individual not acting as an agent of the government or with the participation or knowledge of any governmental official." *United States v. Lambert*, 771 F.2d 83, 89 (6th Cir. 1985) (citing *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). "[T]o trigger Fourth Amendment protection under an agency theory, the police must have instigated, encouraged, or participated in the search,' and 'the individual must have engaged in the search with the intent of assisting the police in their investigative efforts.'" *United States v. Robinson*, 390 F.3d 853, 872 (6th Cir. 2004) (quoting *Lambert*, 771 F.2d at 89).

Grand argues the cameras pointed at his residence were set up by his neighbor in February 2021 shortly after he submitted his application for a SUP. (Doc. 89 at 2528.) However, Grand does not provide the Court with any facts that indicate any Defendant requested or ordered the neighbor to set up such surveillance. Grand cites to a March 2021 meeting where Brennan stated that Grand's neighbor had cameras focused on his property and reported such material to Brennan "at all hours of the night." (*Id.*) But in his deposition, *Grand* explained that Brennan was frustrated by the neighbor sending such "evidence" to him "at all hours of the night." (Doc. 79-1 at 1105.) That is, Brennan was not asking for the neighbors' surveillance footage, but instead, was angered by the neighbors sending that footage and reporting other sorts of evidence throughout the evening. Grand therefore concedes Brennan did not instigate, encourage, or participate in the monitoring of his home. Further, if the neighbors set up cameras in February 2021, and Grand relies on Brennan's statements in a March 2021 meeting, Brennan's statements could not have been the source of the neighbor's conduct.

Monitoring of Home. A "search" within the meaning of the Fourth Amendment occurs when "a government official invades an area in which a person has a constitutionally protected reasonable expectation of privacy." *United States v. May-Shaw*, 955 F.3d 563, 567 (6th Cir. 2020) (quotation and citation omitted). A person must "exhibit 'an actual (subjective) expectation of privacy'" and that "expectation is one 'that society is prepared to recognize as reasonable.'" *Id.* (quoting *Katz v. United States*, 389 U.S. 347, 361 (1967)). Under well-settled law, the Fourth Amendment does

not "preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible." *California v. Ciraolo*, 476 U.S 207, 213 (1986). A person has no reasonable expectation of privacy where the "same views enjoyed by passersby on public roads" were used by police. *United States v. Houston*, 813 F.3d 282, 287–88 (6th Cir. 2016).

Grand presents no evidence police officers conducted a "search" within the meaning of the Fourth Amendment. Instead, in his opposition, Grand cites an email from the University Heights Police Department instructing officers to "please make frequent drive-bys at [Grand's residence] for violations to 452.03 PROHIBITED STANDING OR PARKING PLACES of parking on landscaped surfaces." (Doc. 82-1 at 1772.) But merely driving by Grand's residence is not a "search." In fact, the Sixth Circuit has rejected Fourth Amendment claims involving far more intrusive conduct. *See, e.g.*, *Houston*, 813 F.3d at 289 (with respect to a front porch, holding that the government "could have staffed an agent disguised as a construction worker to sit atop the pole or perhaps dressed an agent in camouflage to observe the farm from the ground level for ten weeks"); *May-Shaw*, 955 F.3d at (long-term surveillance of carport next to home through video did not violate Fourth Amendment because area recorded was "was readily accessible from a public vantage point"). In short, Grand has presented no evidence driving by his home constituted a search.

Home Inspection. Home inspections conducted by municipal governments are a "search" within the meaning of the Fourth Amendment. *Camara*, 387 U.S.

at 534 (holding that housing code inspections are subject to Fourth Amendment). Typically, the municipality either needs a warrant or probable cause to conduct the inspection. Consent is an exception to the warrant or probable cause requirement. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) ("one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent"); *United States v. Jenkins*, 92 F.3d 430, 436 (6th Cir. 1996) (same).

Defendants assert the inspection was consensual. (Doc. 79 at 1019; Doc. 90 at 2575.) Grand's wife gave consent for the inspection. (Doc. 79 at 1019; Doc. 90 at 2575.) She testified to this fact. (Doc. 79-9 at 1224.) There is no dispute about her consent and no evidence from which the Court could infer that her permission was not freely given. Consensual searches do not violate the Fourth Amendment.

None of Grand's Fourth Amendment theories survive Defendants' motion for summary judgment. Count Four is dismissed with prejudice.

D. Common Law Right to Worship (Count Thirteen, all Defendants)

Grand alleges all Defendants violated his common law right to worship. (Doc. 67 at 637.) Grand did not move for summary judgment on this claim. All Defendants did. (Doc. 79 at 1030.) Grand did not oppose Defendants' motion. In their motion, Defendants argue Ohio has not recognized a common law right to worship as pleaded in Grand's second amended complaint. (*Id.*) Grand has not supplied this Court with any authority to suggest Ohio recognizes such a cause of action, and this Court has found none. Accordingly,

Defendants' motion for summary judgment on this claim is granted. Count Thirteen is dismissed with prejudice.

E. Ohio Public Records Law (Count Fourteen, University Heights only)

Grand moved for summary judgment on his claim that University Heights violated R.C. § 149.43(C)(1)(b), the Ohio Public Records Act. (Doc. 81 at 1361–62.) University Heights also moved for summary judgment on this claim. (Doc. 79 at 1030.) Both parties opposed the other's motion. (Doc. 88, 89.)

R.C. § 149.43 allows an individual to request documents from public entities. R.C. § 149.43(B)(1). If the government entity does not "promptly" provide those documents, the aggrieved person may bring an action to seek those documents, and additionally seek statutory damages, costs, and reasonable attorneys' fees. R.C. § 149.43(C)(1).

Grand argues University Heights violated the Act when the City failed to timely respond to his records request relating to documents in the City's possession about him. (Doc. 81 at 1362.) Grand sent a document request to the City on July 28, 2021 which was not responded to until after this lawsuit was filed on September 8, 2022. (*Id.*) For its part, University Heights argues only that this Court is the improper venue and jurisdiction to bring a claim under R.C. § 149.43. (Doc. 79 at 1030.) Section 149.43(C)(1)(b) allows an aggrieved person to commence a mandamus action which may be initiated in the court of common pleas, the Ohio Supreme Court if it has original jurisdiction, or the court of appeals if it has original jurisdiction. Because the statute specifically requires a party

to file in one of those three courts, the City argues this Court is the improper venue and jurisdiction. (Doc. 79 at 1030–31.)

The City's argument is misplaced. State statutes cannot divest a federal court of jurisdiction. *See Superior Beverages Co., Inc. v. Schieffelin & Co.*, 448 F.3d 910, 917 (6th Cir. 2006) (citing *Ry. Co. v. Whitton*, 80 U.S. 270, 286 (1871)). Instead, "[i]n determining its own jurisdiction, a District Court of the United States must look to the sources of its power and not to acts of states which have no power to enlarge or to contract the federal jurisdiction." *Id.* (quoting *Grand Bahama Petrol. Co., Ltd. v. Asiatic Petrol. Corp.*, 550 F.2d 1320, 1325 (2d Cir. 1977)). This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) because the facts giving rise to this claim involve the "same case or controversy" as the federal claims also asserted in this case. Thus, R.C. § 149.43(C)(1)(b) does not deprive this Court of jurisdiction. *See First Response Metering, LLC v. City of Wilmington*, No. 20-cv-329, 2021 WL 1172070, at *3 (S.D. Ohio Mar. 29, 2021) (rejecting argument that statute in the Ohio Revised Code deprived federal court jurisdiction where statute required filing in court of common pleas).

However, supplemental jurisdiction pursuant to § 1367 is discretionary, not mandatory. *See Charvat v. NMP, LLC*, 656 F.3d 440, 446 (6th Cir. 2011) ("Although the district court may exercise supplemental jurisdiction over these state-law claims pursuant to 28 U.S.C. § 1367, supplemental jurisdiction is discretionary, not mandatory."). Accordingly, while the Court may exercise jurisdiction to reach the merits of this claim, it need not do so. In this case, the Court exercises its discretion to deny supplemental jurisdiction so

that a state court can evaluate the claim and the reasonableness of any damages sought. Therefore, the claim is dismissed.

F. Invasion of Privacy (Count Fifteen, Brennan only)

Brennan moved for summary judgment on Grand's invasion of privacy claim. (Doc. 79 at 1031.) Grand did not move for summary judgment on this claim but did oppose Brennan's motion. (Doc. 89 at 2536.)

In Ohio, invasion of privacy involves four distinct torts: "(1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness." *Devore v. Rolls-Royce Energy Sys., Inc.*, 373 F.Supp.2d 750, 769 (S.D. Ohio 2005) (quoting *Hamrick v. Wellman Prods. Grp.*, No. 03CA0146–M, 2004 WL 2243168, at *7 (Ohio Ct. App. Sept. 29, 2004)). Grand asserts an intrusion upon seclusion invasion of privacy claim. (Doc. 67 at 637.) Under this type of claim, a person "who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." *Retuerto v. Berea Moving Storage & Logistics*, 38 N.E.3d 392, 406 (Ohio Ct. App. 2015) (quoting *Hamrick*, 2004 WL 2243168, at *8). The intrusion must be "done in a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities."

Strutner v. Dispatch Printing Co., 442 N.E.2d 129, 132 (Ohio Ct. App. 1982).

Grand's claim is premised on various alleged activities surrounding his home, including surveillance by neighbors and police. (Doc. 67 at 596–97, 599, 605–11.) Grand's second amended complaint alleges Brennan ordered the surveillance or was at least aware of it. (*Id.*) Brennan argues any monitoring does not constitute invasion of privacy because it involved public observation not rising to the level of invasion of privacy. (Doc. 79 at 1031–32.) Grand's opposition does not address this argument, and instead, only asserts Brennan was at least aware that neighbors were surveilling his property. (Doc. 89 at 2536.)

Ohio courts consistently reject invasion of privacy claims where a party observes another's movements in a public place. *See Moran v. Lewis*, 114 N.E.3d 1254, 1259 (Ohio App. Ct. 2018) ("liability for intrusion into another's seclusion or private affairs does not exist where the defendant observes or records a person in a public place"). While surveillance of another's home may amount to a nuisance, observations of another's home from public places does not— in itself—amount to invasion of privacy. *See Blevins v. Sorrell*, 589 N.E.2d 438, 441 (Ohio Ct. App. 1990) (defendant's conduct, while found to be a nuisance, did not constitute invasion of privacy where surveillance cameras were set up by defendant neighbor to observe conduct that might amount to city ordinance violations); *Branan v. Mac Tools*, No. 03AP-1096, 2004 WL 2361568, at *10 (Ohio Ct. App. Oct. 21, 2004) ("Photographing of appellant's house or vehicles parked in front of the house would not constitute an invasion of privacy under these conditions. Since appellant has

not alleged any photography of the interior of his house, these actions alone would not sustain the tort of wrongful invasion of privacy."). Thus, to the extent this claim involves alleged surveillance of areas in which anyone passing by could see, the claim must be dismissed.

Moreover, Grand has not put forth any evidence in his opposition that creates a dispute of material fact as to whether *Brennan* intruded upon his private activities in a place that was not public. Brennan's mere awareness of such activities by Grand's neighbors is insufficient to establish Brennan's liability. This claim is dismissed with prejudice.

G. FACE Act (Count Sixteen, University Heights and Brennan)

Count Sixteen alleges a violation of the FACE Act against University Heights and Brennan. (Doc. 67 at 638.) University Heights and Brennan moved for summary judgment on this claim. (Doc. 79 at 1026.) Grand did not move for summary judgment on this claim but did oppose University Heights' and Brennan's motion. (Doc. 89 at 2534.)

The FACE Act, codified at 18 U.S.C. § 248, protects individuals from being intimidated or prohibited from entering a place of worship. Specifically, the Act imposes civil liability on those who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempt to injure intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship." 18 U.S.C. § 248(a)(2).

University Heights and Brennan first argue the FACE Act claim fails because Grand has not presented evidence either University Heights or Brennan used force, a threat of force, or physically obstructed Grand from seeking to exercise his First Amendment right at a place of worship. (Doc. 79 at 1026.) Grand argues the police presence around his home and Brennan's statements about resident reporting is "sufficient to support the reasonable inference that Grand and his friends would be intimidated by the threat of arrest if they congregated at his home to pray." (Doc. 89 at 2534.)

Grand presented no evidence University Heights or Brennan used force or a threat of force within the meaning of the FACE Act. A "threat of force" under the FACE Act means "a statement which, in the entire context and under all the circumstances, a reasonable person would foresee would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person." *Planned Parenthood of Columbia/ Willametter, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1077 (9th Cir. 2002); *United States v. Hart*, 212 F.3d 1067, 1071 (8th Cir. 2000) (same). There is no indication that Grand, or his friends, would be subject to arrest for any violations of any order by University Heights or Brennan. Grand makes no effort to explain why a police presence or resident reporting would result in an arrest. In fact, in the cease-and-desist letter, University Heights communicated to Grand that violations of the City's ordinance "may result in building code citations against you and . . . the pursuit of additional remedies." (Doc. 79-3 at 1205.) Grand presents no evidence he or others were ever at risk of arrest.

University Heights and Brennan also argue the FACE Act claim fails because Grand's house is not a "place of worship" under the meaning of the Act. (Doc. 90 at 2583.) Grand, without citing any authority, argues the Act "does not distinguish between a formal place of worship like a synagogue, or a private prayer group held in a residential home." (Doc. 89 at 2534.) In a recent case, the Second Circuit concluded the FACE Act only applies to "a place recognized or dedicated as one primarily used for religious worship." *Jingrong v. Chinese Anti-Cult World All. Inc.*, 16 F.4th 47, 58–59 (2d Cir. 2021). In *Jingrong*, the Second Circuit found the phrase "place of worship" in the FACE Act ambiguous. *Id.* at 58. For instance, a "place of worship" could mean a specific building used only for religious purposes, or it could feasibly mean places "such as a public-school classroom where a religious student group meets at lunchtime or a café where believers gather to study and discuss religious texts." *Id.* However, in analyzing the legislative history, the Second Circuit concluded "Congress did not intend all locations where incidental worship activities occur to qualify as 'places of religious worship.'" *Id.* at 59. The court explained:

> "Places of religious worship" may be fixed or moveable, enduring or temporary, bounded within a structure or structureless. But the basic feature of "a place of religious worship," as recognized by Congress, is that religious adherents collectively recognize or religious leadership designates the place as one primarily for religious worship.

Id. Under that reading of the statute, plaintiffs could not maintain a cause of action where the alleged

"place of worship" were tables set up on a sidewalk. *Id.* at 60.

The holding in *Jingrong* is persuasive here. Grand unequivocally disavowed using his home as a "place of worship." For his FACE Act claim to survive, Grand would have to present facts that his home was "primarily used for religious worship," which he cannot do.

For these reasons, the FACE Act claim is dismissed with prejudice.

H. Intentional Infliction of Emotional Distress (Count Seventeen, Brennan only)

Brennan moved for summary judgment on Grand's claim of intentional infliction of emotional distress (Count Seventeen). (Doc. 79 at 1032.) Grand did not oppose summary judgment on this claim.

Under Ohio law, to "establish a *prima facie* claim for intentional infliction of emotional distress . . . a plaintiff must prove (1) that the defendant intended to cause the plaintiff serious emotional distress, (2) that the defendant's conduct was extreme and outrageous, and (3) that the defendant's conduct was the proximate cause of the plaintiff's serious emotional distress." *Burgess v. Fischer*, 735 F.3d 462, 480 (6th Cir. 2013) (quoting *Phung v. Waste Mgmt., Inc.*, 644 N.E.2d 286, 289 (Ohio 1994)). "Liability can only be found where conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* (citations omitted).

Brennan argues his conduct was not "extreme and outrageous," and Grand did not suffer "severe emotional distress." (Doc. 79 at 1032–33.) Having not

opposed summary judgment, Grand failed to present evidence of "extreme and outrageous conduct" or that he suffered "severe emotional distress," and the record reflects none. Thus, there is no evidence of "extreme" or "outrageous" conduct, or that Grand suffered severe emotional distress. *See Colston v. Cleveland Pub. Libr.*, 522 F. App'x 332, 340 (6th Cir. 2013) (affirming summary judgment on Ohio intentional infliction of emotional distress claim where plaintiff failed to produce evidence of extreme and outrageous conduct or serious emotional distress). Count Seventeen is dismissed with prejudice.

I. Civil Conspiracy (Count Eighteen, Individual Defendants)

Count Eighteen asserts a claim for civil conspiracy under § 1983 against the individual Defendants. (Doc. 67 at 638.) All three moved for summary judgment. (Doc. 79 at 1027.) Grand did not move for summary judgment on this claim but did oppose summary judgment. (Doc. 89 at 2535.)

To succeed on a civil conspiracy claim, a plaintiff must show "'that (1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed' in furtherance of the conspiracy that caused the injury." *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) (quoting *Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007)).

The individual Defendants argue, as members of the same organization, they cannot be liable for conspiracy under the intra-corporate doctrine. (Doc. 79 at 1028.) Grand argues the individual Defendants engaged in a conspiracy to require Grand to apply for

a SUP when they knew no permit was necessary to host small informal prayer groups in his home. (Doc. 89 at 2535.) He relies on emails between the individual Defendants and a map which identified city residents who opposed Grand's use of his home as a shul. (*Id.*) Grand does not address the intra-corporate doctrine. (*Id.*)

"The intra-corporate conspiracy doctrine provides that employees of a corporation or governmental entity cannot conspire among themselves because they are treated as one entity." *Nuovo v. The Ohio State Univ.*, 726 F.Supp.2d 829, 845 (S.D. Ohio 2010) (citing *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 509 (6th Cir. 1991)). In *Hull*, the Sixth Circuit held:

> In the present case, plaintiff is alleging a conspiracy between a school district superintendent, the executive director of the district, and a school administrator, all of whom are employees or agents of the Board. Since all of the defendants are members of the same collective entity, there are not two separate "people" to form a conspiracy.

Hull, 926 F.2d at 510. The same is true here. The individual Defendants are all members of the University Heights government and were acting as such. Grand does not dispute this fact and he offers no argument in response. The Court finds the intra-corporate doctrine applies and dismisses this claim with prejudice.

J. Abuse of Process (Count Nineteen, Individual Defendants) and Malicious Prosecution (Count Twenty, Brennan and McConville only)

The individual Defendants moved for summary judgment on Grand's abuse of process claim. (Doc. 79 at 1033.) Brennan and McConville also moved for summary judgment on Grand's malicious prosecution claim. (*Id.*) Grand has not opposed summary judgment on either count.

In Ohio, abuse of process requires a plaintiff to show: "(1) that a legal proceeding has been set in motion in proper form and with probable cause; (2) that the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed; and (3) that direct damage has resulted from the wrongful use of process." *Voyticky v. Vill. of Timberlake*, 412 F.3d 669, 677 (6th Cir. 2005) (quoting *Yaklevich v. Kemp, Schaeffer, & Rowe Co.*, 626 N.E.2d 115, 116 (Ohio 1994)).

To state a claim for malicious prosecution, a plaintiff must show: "(1) malice in instituting or continuing the prosecution, (2) lack of probable cause, and (3) termination of the prosecution in favor of the accused." *Id.* at 675–76 (quoting *Trussell v. Gen. Motors Corp.*, 559 N.E.2d 732, 736 (Ohio 1990)).

The individual Defendants argue no criminal or other legal proceedings were initiated against Grand, and therefore, these claims fail as a matter of law. (Doc. 79 at 1033–34.) Grand does not argue there was any legal proceeding, and there is no record evidence of any legal proceeding initiated against Grand. Because both torts under Ohio law require such a pro-

ceeding, his claims fail as a matter of law and are dismissed with prejudice.

III. Conclusion

For the reasons stated above, Grand's partial motion for summary judgment is DENIED in its entirety. Defendants' motion for summary judgment is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen.

IT IS SO ORDERED.

/s/ Bridget Meehan Brennan
U.S. District Judge

Date: October 1, 2024

AMENDED JUDGMENT ENTRY, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION (OCTOBER 1, 2024)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL GRAND,

Plaintiff,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants.

Case No. 1:22-cv-1594

Before: Bridget MEEHAN BRENNAN,
U.S. District Judge.

AMENDED JUDGMENT ENTRY

For the reasons stated in the Court's contemporaneously filed Amended Memorandum Opinion and Order, Plaintiff's motion for partial summary judgment (Doc. 81) is DENIED in its entirety. Defendant's motion for summary judgment (Doc. 79) is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is

GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen. Accordingly, the Court terminates this case pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

/s/ Bridget Meehan Brennan
U.S. District Judge

Date: October 1, 2024

CONSTITUTIONAL AND STATUTORY PROVISIONS AND ORDINANCES INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 USC § 2000cc
Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal

financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. (Pub. L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

§ 2000cc–2. Judicial relief

(a) Cause of action

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.

§ 2000cc-3(g) — Broad Protection

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.

UHCO § 1250.02
Purposes of the Zoning Code

Permitted uses in One-Family Residence Districts are:

(a) One-family dwellings.

(b) Buildings, structures and grounds owned and operated by a board of education, municipality or by a library board.

(Ord. 56-53. Passed 10-1-1956.)

(c) Home occupations solely to the extent defined in Section 1240.15 or permitted under Section 1280.12.

(Ord. 85-6. Passed 5-6-85.)

(d) The following signs are permitted in any residential district, providing such signs are back from the street line at least ten feet:

(1) Bulletin boards aggregating not over twelve square feet in area for schools or churches;

(2) A sign not over two square feet in area, containing the name or address of any occupant of the premises, or both the name and address;

(3) One sign, not over 12 square feet in area on the site of a building under construction in conformity to this Zoning Code and only while such building is under construction, bearing the names of any contractor or contractors in such construction;

(4) Such signs as shall be authorized by Section 808.06(h) of the Codified Ordinances and Section 1266.11.

(Ord. 97-64. Passed 12-15-1997; Ord. 2009-10. Passed 3-16-2009.)

(e) Planned multi-family residential areas, when contiguous to U-4, U-6, U-7, U-8, or U-9 Districts, subject to the standards and criteria of Section 1280.07.

(f) Planned one-family residential areas, subject to the standards and criteria of Section 1280.08.

(g) Public, semi-public and other uses permitted upon special permits subject to the standards and criteria of Chapter 1274.

(h) Accessory buildings and accessory uses, including space on the premises for the keeping of two cars in the accessary building, and may have three cars, provided space does not exceed more than 35% of the rear yard area. A greater number of car spaces may be provided in such accessory building, if the area of the lot contains at least 3,000 square feet for each car space and does not exceed 35% of the rear yard.

(i) Keeping of chickens and chicken coops or chicken runs in a U-1 District, upon issuance by the Building Department of a special use permit subject to the criteria of Codified Ordinance Section 1478.251. The keeping of chickens and/or chicken coops or chicken runs shall be prohibited in any zoning district other than U-1.

(1982 Code, § 1109.02) (Ord. 99-45. Passed 12-20-1999; Ord. 2007-28. Passed 6-26-2007; Ord. 2018-14. Passed 4-2-2018.)

UHCO § 1256.01
Permitted Uses in Residential Districts

Permitted uses include one-family dwellings and accessory uses customary to residential occupancy. Uses not listed, or not substantially similar in

character, require a Special Use Permit pursuant to Chapter 1274.

UHCO § 1274 –
Houses of Assembly and Social Service Uses

1274.01 Intent and Permitted Uses.

(a) This chapter is established in order to permit, under special circumstances and conditions, uses which foster the most desirable use of the land in the City; which insure compatibility and stability with existing and proposed adjacent uses; and which harmonize and integrate into the existing zoning and use plans those special uses authorized under special permit recommended by the Planning Commission as approved by Council in the U-1, U-2 and U-4 residential districts.

(b) The following are hereby declared to be special uses to which this chapter shall apply:

(1) Houses of worship or religious education, including churches, temples, synagogues, religious organizations, parish houses and parochial schools;

(2) Facilities for the physical, behavioral or mental health care and/or education of children through the twelfth-grade level only, including nurseries, day care centers, orphanages and treatment institutions and dormitories or cottages necessarily related thereto. Individuals not receiving such services may reside on the premises so long as they provide support services;

(3) Senior housing and care facilities, including independent congregate living, assisted living,

nursing, rest or convalescent homes, and other facilities for similar care and treatment;

(4) residential behavioral health care facilities;

(5) Conversions to condominiums to the extent otherwise governed by ordinance;

(6) Office, research and high-tech production facilities which are:

A. Specifically designed and intended for occupancy by a single user;

B. Accessible only from either Fairmount Boulevard or Belvoir Road.

(7) Any other use not otherwise specified or authorized in this Planning and Zoning Code, to the extent that the requirements hereinafter set forth can reasonably be effectuated.

(c) This chapter shall not apply to dwelling units used for child care or as foster homes which are otherwise approved by the Board of Zoning Appeals in compliance with Section 1478.01.

(Ord. 99-45. Passed 12-20-1999.)

(d) A Special Use Permit for any use described in this section shall be applied for and shall be issued on the recommendation of the Planning Commission, subject to any reasonable conditions the Planning Commission may impose uniformly in similar circumstances, for any permitted location, after the applicant demonstrates to the Planning Commission by clear and convincing evidence that the provisions of this chapter will be met and that the special use will not impair

surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others or other applicable criteria in the Planning and Zoning Code, and will not be otherwise contrary to the public health, safety and welfare.

(1) The Planning Commission may hold public hearings on any such application to the extent it deems reasonable, but not more than ninety days after the filing of the application and after compliance with all submissions or revisions thereof required under Section 1274.04.

(2) The recommendation of the Planning Commission shall be subject to the approval of a majority of Council. A denial by the Planning Commission may be appealed to Council by applicant's filing a written appeal within 15 days of such denial. The appeal shall be heard by Council within 45 days of the filing thereof.

(3) Upon approval by Council, a certificate of occupancy should be issued.

(Ord. 82-26. Passed 7-6-1982.)

(e) Group Homes.

(1) Definition of "group home".

A. A "group home" means a residence which is occupied by and provides residential services to unrelated individuals who do not otherwise qualify as a family and who have physical handicaps and/or moderate mental and/or social limitations

and who live or propose to live together and function in the manner of a family, while monitored by State licensed professional caregivers.

B. "Group home" does not include cooperative residences for any other individuals or entities, or fraternities, sororities, social or business lodges, or any other combination of voluntary living arrangements.

C. "Group home" does not include any court ordered rehabilitation or maintenance living arrangements and/or care and/or treatment and/or rehabilitation services for severely mentally retarded or psychotic individuals, releasees from federal, state or county treatment or penal institutions, juvenile offenders, drug or alcohol offenders or wards of the court or welfare system.

(2) Criteria for group homes. In the event that the premises are occupied or proposed to be occupied by persons otherwise excluded by definition or if refusal to allow the proposed occupancy conflicts with State and Federal law, not otherwise superseded by the University Heights Charter and ordinances under Article XVIII Section 3 of the Ohio Constitution, then the issue of occupancy shall further be determined only upon appeal to the Board of Zoning Appeals which may grant a non-transferable special or conditional use permit, if the applicant qualifies

the use as a "group home", and if the following conditions also apply:

A. Such site previously shall have been zoned or permitted for use and occupancy or legally occupied by two or more families and the number of occupants would otherwise be permitted upon the application of all other ordinances dealing with "occupancy," (*e.g.*, 1478.03).

B. No change in the exterior appearance of the premises shall occur. There will be no additional garage space.

C. Traffic or traffic congestion is not likely to increase or be adversely affected, and

   1. No parking in addition to the parking (1240.20(a), 1280.03) for which the premises were designed will be available for residents and/or staff.

   2. No trucks will be parked outside of the premises as governed by Section 452.18.

D. If the persons occupying the premises require care and attention, there will be at least one person identified to the City on site as a caregiver twenty-four hours, seven days a week. Such caregiver will be included in calculating the occupancy of the premises, if there are sleeping facilities needed or provided on the site for such caregiver.

E. Excluding students at John Carroll University and residents on the Bellefaire

campus, otherwise as governed by these ordinances, the total number of units, and the housing and the total number of occupants housed and residing in the City in space for six or more residents per housing unit regulated by the Ohio Building Code, shall be limited to ten housing units and 60 residents, in the absence of credible evidence demonstrating a lack of additional equivalent space legally available for the same use in each and all abutting and contiguous municipalities.

F. Residences owned or occupied or operated as a group home or as a permitted facility described in Section 1274.01 (b)(2)(3)(4) or (6) shall not be permitted on any part of a lot located within a radius of 2000 feet from any part of any lot occupied by any other such facility.

G. The Board may also take into consideration walking distance to public transportation and that such distance is reasonably likely to cause a safety risk to aged (over seventy years), handicapped or disabled residents.

H. Applicant must represent that the granting of a special permit herein is not likely to place any citizen in physical danger or jeopardy allowing the proposed occupancy, *e.g.* felons on parole or release programs, who have been convicted of violent crimes such as murder, assault, rape, intimidation and/or hard

drug addiction; or profoundly or severely mentally retarded or known psychotic individuals who cannot function an society without being a risk to themselves or others, or any similar demonstrable likely danger.

(1982 Code, § 1124.01) (Ord. 91-11. Passed 5-6-1990.)

1274.02 Area, Yard and Height Regulations.

(a) Area Usage and Frontage Regulations. The ground area shall be a separately owned lot as platted or replated on City and County maps and occupied by buildings which shall not exceed 25% of the total area of the lot. Not less than 50% of the total lot area shall be developed as planted areas.

(1) Minimum area of the lot shall be:

- Senior housing and care facilities 4 acres
- Office, research and hightech production facilities 10 acres
- All other permitted uses 3 acres

(2) Minimum lot frontage shall be 150 feet.

(3) The portion of the site which is not covered with buildings and parking shall be developed as planted areas and landscaped as specified by Section 1274.03.

(b) Yard Regulations.

(1) Front. The front yard shall be not less than 75 feet in depth or not less in depth than the setback building line designated for the district on the zoning map and shall remain

unoccupied except for a driveway for ingress and egress.

(2) Side and rear. Each lot shall have side and rear yards unoccupied by buildings, equal to the height of the main building except adjacent to a U-1, U-2 or U-4 District where such yards of not less than 50 feet shall be required. Rear and side yards may include accessory uses as permitted in division (c)(2) hereof.

(c) Use of Yards for Accessory Off-Street Parking and Loading.

(1) Front. No off-street parking or loading shall be permitted in the required front yard setback except for passenger loading and unloading. Where offstreet parking is behind the setback line and is buffered from view according to Section 1274.03, the Planning Commission may permit not more than 10% of the required parking spaces in front of the main building.

(2) Side and rear. Accessory off-street parking, loading or driveways shall be permitted no closer than ten feet from a side or rear property line or 30 feet from a U-1, U-2 or U-4 District. This area shall be a landscaped buffer, with screening provided according to Section 1274.03.

(d) Height Regulations. Height of buildings (exclusive of towers, steeples, cornices, antennas, or similar features as approved by Council) shall not exceed the following:

(1) Thirty-five feet when set back 50 feet from side or rear property lines.

(2) Forty-five feet when set back 100 feet from side or rear property lines.

(e) Frontage and Location Regulations.

(1) Subject to all other provisions of this chapter, special use permits may be permitted only on land fronting on the following streets: Cedar Road, Warrensville Center Road, South Taylor Road, Fairmount Boulevard, North Park Boulevard, Green Road.

(2) A special use permit may be issued by the Planning Commission for land fronting on other streets where the applicant demonstrates by clear and convincing evidence that the use will benefit and not impair surrounding property values or uses, vehicular parking and pedestrian congestion or traffic conditions, noise pollution and will not be otherwise contrary to the public health, safety or welfare, subject to the approval of a majority of Council.

(f) Prohibitions. Except for existing approved uses,

(1) No building may be used for the uses defined in this chapter unless originally designed and approved for such use.

(2) The conversion of a residence, store or other building, for a use defined in Section 1274.01 is prohibited.

(3) All uses defined in Section 1274.01 must have frontage on one of the streets referred to in division (e) hereof.

(4) No use permitted herein shall include sleeping or residential use accommodations on any part of the site.

(5) No variance from any of the requirements or prohibitions under Chapter 1274 may be granted without the approval of the Planning Commission and the approval of Council, each following public hearings at which the applicant demonstrates a clear benefit to the community and that denial will result in an unnecessary hardship to the applicant.

(1982 Code, § 1124.02) (Ord. 99-45. Passed 12-20-1999.)

1274.03 Landscaping and Screening Requirements.

(a) All portions of the site not devoted to buildings and pavement shall be landscaped and screening shall be provided in order to: remove, reduce, lessen or absorb the impact between one use or zone and another; reduce the impact of parking areas; and obscure the view of waste receptacles, parking areas and loading areas.

(b) Required Open Space. A minimum of 50% of the site shall be devoted to open space and shall be landscaped according to the requirements of this section.

(1) Landscaped areas having a width of ten feet or more, including but not limited to areas devoted to required setbacks and interior

parking lot landscaping, shall be included as satisfying the open space requirement.

(2) Landscaped areas having a width of less than ten feet, but not less than five feet, which are located adjacent to buildings may be included as meeting the open space requirement when the Planning Commission determines that the area is of sufficient size and shape to provide for a suitable landscaped area.

(3) Landscaped areas having a width of less than five feet shall not be included as satisfying the open space requirement.

(c) Landscaping Along Street Frontage. All areas within the required building and parking setback, excluding driveway openings, shall be landscaped. The following minimum plant materials shall be provided and maintained:

(1) One major shade tree, for every 50 linear feet of the lot frontage or fraction thereof, not including drive entrances. Each tree, at the time of installation, shall have a clear trunk height of at least six feet and a minimum caliper of two inches.

(2) One shrub for every ten linear feet of lot frontage or fraction thereof, not including drive entrances.

(3) Grass, ground covers or other live landscape treatment, excluding paving or gravel.

(d) Screening of Parking Lots Along Public Streets. Whenever parking areas consisting of five spaces or more are located such that the parked cars will

be visible from a public street, screening shall be provided and maintained between the parking area and the street right-of-way. To the extent that the provisions of Section 1274.03(b) have not satisfied the provisions of this section, additional screening shall have a minimum height of three feet and shall be placed along the perimeter of the parking area to effectively obscure a minimum of 50% of the view of the parking area.

(e) Landscaping on the Interior of Parking Lots. For any parking area that is designed to accommodate 40 or more vehicles, a minimum of 10% of the parking lot area shall be planted as landscaped island areas, developed and reasonably distributed throughout the parking lot so as to provide visual and climatic relief from broad expanses of pavement.

(1) Each landscaped island shall be a minimum of ten feet in any horizontal dimension.

(2) Within the landscaped islands, there shall be provided one major shade tree for every ten parking spaces. Each tree, at the time of installation, shall have a clear trunk height of at least six feet and a minimum caliper of two inches.

(3) Landscaped areas adjacent to the perimeter of the parking area shall not be counted as interior parking lot landscaped areas.

(f) Screening Adjacent to residential Districts. Screening shall be provided within the required setback areas adjacent to residential districts in compliance with the following:

(1) Screening shall consist of one or a combination of the following:

A. A dense vegetative planting incorporating trees and/or shrubs of a variety which shall be equally effective in winter and summer.

B. A solid non-living opaque structure such as a masonry wall or a solid fence constructed of materials approved by the Architectural Review Board.

C. A fence with openings through which light and air may pass together with a landscaped area at least 20 feet wide.

D. A landscaped mound or bean at least 20 feet wide with a maximum height of three feet.

(2) The height of screening shall be in accordance with the following:

A. Visual screening walls, fences, or mounds and fences in combination shall be a minimum of six feet high measured from the natural grade.

B. Vegetation at the time of installation shall be a minimum of six feet high measured from the natural grade.

(g) Screening of Waste Receptacles. Waste receptacles shall be screened from view on all sides by building walls and by supplemental opaque fences, walls, or landscaping having a minimum height of six feet.

(h) Screening of Loading Areas. Loading areas shall be screened from view from public streets, parking areas, and adjacent lots by a wall or dense vegetative planting incorporating trees and/or shrubs of a variety which shall be equally effective in winter and summer, having a minimum height of eight feet.

(i) Flexibility in the Arrangement and Placement of Landscaping and Screening. The standards and criteria in divisions "(a)" through "(f)" establish the City's objectives and levels of landscaping intensity expected. However, in applying these standards, the Planning Commission may exercise discretion and flexibility with respect to the placement and arrangement of the required elements to assure that the objectives of this district and the proposed development or redevelopment are best satisfied.

1982 Code, § 1124.03) (Ord. 99-45. Passed 12-20-1999.)

1274.04 Parking Facilities.

(a) Parking facilities shall be planned and developed for total off-street use with adequate ingress and egress in such manner as to interfere as little as possible with the use and enjoyment of neighboring residential properties and with pedestrian and vehicular traffic on neighboring streets.

(b) Parking facilities shall be located on the same lot as the main building or use served.

(c) In addition to ingress and egress driveways, parking spaces shall be provided by applying the greater of divisions (1), (2) and (3) hereof.

(1) One parking space for each 200 square feet of gross floor area of the entire building or use, but not less than 30 parking spaces.

(2) One parking space for each two seats provided or to be provided within any and all rooms used for assembly such as auditorium, chapel, meeting rooms, dining rooms, cafeteria or lunch room.

(3) One parking space for each two persons allowed as the maximum occupancy under applicable State fire laws, rules or regulations.

(4) For exceptional circumstances or in cases of clear hardship, the Planning Commission, may, after consideration of the proposed building or use, recommend a parking variance subject to the approval, modification or rejection of Council, and provided that such variance will not violate the spirit or intent of this chapter and provided further that a more harmonious and beneficial use of the property will result.

(d) The gross floor area of a building shall be the total area of all the floors, including the basement, measured from the exterior faces of the building.

(Ord. 89-26. Passed 7-6-1982.)

(e) The City of University Heights requires that parking spaces are not less than the dimensional guidelines published in the latest edition of the Institute of Transportation Engineer's, Traffic Engineering Handbook, chapter on "Parking and Terminals", exclusive of drives and turning spaces which shall be added parking area.

(Ord. 2001-14. Passed 3-19-2001.)

(f) All parking areas and driveways shall be provided with an asphalt, concrete or other similar hard surface as shall be approved by the Building Commissioner. All parking areas and driveways shall provide adequate grading and drainage so that all water is drained within the lot on which the parking area or driveway is located in such manner that water shall not drain across public or private property. Concrete or stone curbs at least six inches above the level of the surface of the parking area and at least 18 inches below the surface shall be provided to define the limits of the parking area except at exits and entrances. Such curbs shall be at least six inches thick.

(g) The location and width of entrance and exit driveways to parking facilities shall be planned to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the nearest streets. Whenever possible, the centerline of the access driveways on the frontage street shall be at least 40 feet from the right-of-way line of the nearest intersecting street and spaced at not less than 120 feet intervals measured from the centerline of the driveways. Parking areas of 15 spaces or less shall have at least one single lane driveway and shall be designed so that vehicles can be driven forward into the street. Those having 16 or more spaces shall have two single-lane driveways, if possible, or at least one two-lane driveway.

(h) Entrances and exits shall be limited to three lanes. The width of such entrances and exits,

measured at the setback line, shall conform to the following schedule:

Lanes	Width (in feet)	
	Min.	Max.
One	10	12
Two	18	24
Three	27	33

In all cases, the radius of the edge of the apron shall be at least 12 feet so that a car entering from the curb lane shall be perpendicular to the setback line at the driveway without obstructing vehicles in other traffic lanes.

(i) Sources of light for illumination of buildings or grounds shall be shielded so as not to be objectionable or hazardous to owners or users of adjacent property or public streets.

(1982 Code, § 1124.04) (Ord. 82-26. Passed 7-6-1982; Ord. 99-45. Passed 12-20-1999.)

1274.05 Development Plans.

(a) Submission of Plans. Preliminary and final site plans shall be prepared for all types of proposed uses governed by this chapter and submitted to the Planning Commission. The plans include:

(1) Survey. A property line and topographic survey, showing the land owned and the proposed development and use.

(2) Buildings. The locations, size, heights and use of all main and accessory buildings and their general design and color, together with estimated maximum occupancy during usage.

(3) Traffic. The proposed system of circulation of vehicular traffic, including delivery trucks; details for connections to present streets; type of pavement; estimates of traffic volume; plans for control of traffic in and around the development.

(4) Utilities. The plans for all utility installations and connections and estimates required.

(5) Parking areas. A layout and estimate of the number of spaces, design features, type of pavement, locations and type of lighting fixtures.

(6) Site developments. Other site developments, including grading and drainage, designs of landscaped yards, planting areas and strips adjoining residential areas.

(7) Signs. The size, location, direction and nature of outdoor signs, subject to standards provided in other sign regulations contained in the Planning and Zoning Code.

(8) Occupancy requirements for applicant's maximum use, including usual time in use, number of occupants, number of grants and number of invitees.

(9) Fees and copies. A fee of one hundred dollars ($100.00) shall be paid to the Division of Building Engineering and Inspection and six copies of all plans and other documents shall be filed.

(b) Approval of Plans. If the Planning Commission finds the plans are in accord with this chapter and with the Planning and Zoning Code and other

ordinances of the City, the final development plan shall be referred to the City Architect for study and approval. The plan may be modified by the same procedure. No building permits shall be issued by the Building Inspector until such development plan has been approved as provided herein and until all other City and State requirements have been met.

(c) Time Limit. Failure to begin the construction of all or any independent component of the plan within six months after the issuance of a permit shall void the plan as approved unless an extension of time is granted by Council.

(1982 Code, § 1124.05) (Ord. 82-26. Passed 7-6-1982; Ord. 99-45. Passed 12-20-1999.)

1274.06 Occupancy.

No use or occupancy shall be permitted until the plan as originally submitted and approved is completed and a certificate of occupancy is obtained from the Building Inspector as provided in the Building Code.

(Ord. 82-26. Passed 7-6-1982; Ord. 99-45. Passed 12-20-1999.)

1274.07 Renewal; Fee.

(a) Use permits granted under this chapter shall be renewed annually upon payment of a renewal fee and certification by the Building Commissioner to the Planning Commission that there has been no material change in the use or conditions upon which the use permit was granted. No permit granted hereunder shall be transferable or assignable.

(b) The renewal fee for annual inspections required herein shall be $50.00.

(1982 Code, § 1124.07) (Ord. 82-26. Passed 7-6-1982; Ord. 99-45. Passed 12-20-1999.)

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPELLANT DANIEL GRAND AND URGING REVERSAL (MARCH 31, 2025)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL GRAND,

Plaintiff-Appellant,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants-Appellees.

No. 24-3876

On Appeal from the United States District Court
for the Northern District of Ohio

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INTEREST OF THE UNITED STATES

Plaintiff-appellant Daniel Grand, who is Orthodox Jewish, alleges that the City of University Heights violated the land-use protections in the Religious Land Use and Institutionalized Persons Act (RLUIPA or the Act), 42 U.S.C. 2000cc *et seq.*, by attempting to use zoning codes to prevent Grand from hosting small prayer gatherings in his home. Grand alleges that the City incorrectly told him that he needed a special permit to host a small, informal prayer group in his home, held a hearing on his application that departed from normal zoning board practices, and when he withdrew his special use permit application, embarked on a harassment campaign against him. RLUIPA's land-use provisions safeguard the religious freedom of persons, places of worship, religious schools, and other religious assemblies or institutions. The fundamental premise of these land-use protections is that religious individuals should have a place to gather for worship and to carry out other religious activities.

Among other issues, this appeal concerns how to assess whether RLUIPA land-use claims are ripe for adjudication. The Attorney General has statutory authority to enforce RLUIPA, 42 U.S.C. 2000cc-2(f), and the United States therefore has a substantial interest in the resolution of that issue on appeal. Additionally, the United States has an interest in this case based on the President's declared policy to combat anti-Semitism "vigorously, using all available and appropriate legal tools," including "employ[ing] appropriate civil-rights enforcement authorities." Exec. Order No. 14,118, 90 Fed. Reg. 8847 (Jan. 29, 2025).[1]

The United States offers its views pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE

RLUIPA prohibits local governments from adopting and enforcing land-use regulations that discriminate against religious entities and individuals or unjustifiably burden religious exercise. Plaintiff-appellant Daniel Grand brought four distinct RLUIPA claims arising out of his efforts to host a small weekly prayer gathering in his home. The district court categorically dismissed these RLUIPA claims as unripe based on its finding that the City had not

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[1] The United States routinely files amicus briefs in RLUIPA land-use cases. *See, e.g.*, U.S. Amicus Br., *Thai Meditation Ass'n of Ala., Inc. v. City of Mobile*, 980 F.3d 821 (11th Cir. 2020) (No. 19-12418); U.S. Amicus Br., *Jesus Christ is the Answer Ministries, Inc. v. Baltimore Cnty.*, 915 F.3d 256 (4th Cir. 2019) (No. 18-1450). The United States has also before filed a statement of interest addressing ripeness issues under the Act. *See* Statement of Interest, *Gethsemani Baptist Church v. City of San Luis*, No. 2:24cv00534 (D. Ariz. July 29, 2024).

issued a final determination regarding the application of the City's zoning laws to Grand's attempts to hold prayer gatherings in his home. The United States addresses the following question and takes no position on any other issues presented in this appeal:

Whether the district court erred by categorically applying the finality requirement articulated in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *overruled on other grounds by Knick v. Township of Scott*, 588 U.S. 180 (2019), to dismiss all of Grand's RLUIPA claims without examining whether the specific claims he asserted depend on the application of zoning laws to a specific property.

STATEMENT OF THE CASE

A. Statutory Background

RLUIPA's land-use protections include four provisions that safeguard the right to use land for worship and religious exercise. The four provisions apply to a state or local government's enforcement of land-use regulations and guard against (1) substantial burdens on religious exercise; (2) treatment on less than equal terms; (3) discrimination based on religion; and (4) the exclusion or substantial limitation of religious assemblies in a particular area. 42 U.S.C. 2000cc(a)(1) and (b)(1)-(3).

First, RLUIPA prohibits States and local governments from imposing or implementing land-use regulations "in a manner that imposes a *substantial burden* on the religious exercise of a person" unless the burden serves a compelling governmental interest and is the least restrictive means for serving that interest.

42 U.S.C. 2000cc(a)(1) (emphasis added). For example, a city's denial of zoning approval for a house of worship may create a substantial burden on the religious practice of its congregation.

Second, RLUIPA prohibits a government from imposing or implementing land-use regulations in a manner that treats "religious assembl[ies] or institution[s] on less than *equal terms* with a nonreligious assembly or institution." 42 U.S.C. 2000cc(b)(1) (emphasis added). Establishing an equal-terms violation requires showing that a house of worship is treated worse than a similarly situated nonreligious institution, such as being subjected to more onerous zoning restrictions.

Third, RLUIPA prohibits a government from imposing or implementing land-use regulations that "discriminate[] against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. 2000cc(b)(2). A typical set of circumstances to which this prohibition would apply is when a local government adopts zoning ordinances targeting specific religious communities or treats applicants of one faith differently than another.

Finally, RLUIPA prohibits land-use regulations that "totally *exclude[]*" religious assemblies from, or "*unreasonably limit[]*" religious assemblies within, a particular jurisdiction. 42 U.S.C. 2000cc(b)(3)(A) and (B) (emphases added). For example, changes to a zoning code that significantly reduce the number of districts or sites available to a house of worship may violate RLUIPA's unreasonable limitation prohibition.

B. Factual and Procedural Background

1. This RLUIPA case arises from a zoning dispute between plaintiff-appellant Daniel Grand and the

City of University Heights, Ohio. Mem. Op., R. 93, PageID# 2768. As an Orthodox Jew, Grand's religious practice requires him to "daven" (or pray) three times daily with a group of ten men. *Ibid.* He must daven in either a synagogue or a "shul," which is a place where davening occurs but is not necessarily a synagogue. *Ibid.* Because Grand is permitted to walk, but not drive, on the Sabbath, and because the three davenings he attended per day were at local synagogues far from his home, he decided to host a group at his home for the three davenings required on the Sabbath. *Id.* at PageID# 2768-2769.

A neighbor complained to City Mayor Michael Brennan about Grand's intended use of his home, and Brennan, in turn, notified City Law Director Luke McConville. Mem. Op., R. 93, PageID# 2769-2770. Hours after Brennan and McConville spoke, McConville issued a cease-and-desist letter to Grand explaining that Grand's home was zoned for residential use and that the City's land-use regulations did not permit Grand to use his home to operate a house of worship including "a shul or synagogue." *Id.* at PageID# 2770 (quoting McConville email with cease-and-desist letter attached, R. 81-6, PageID# 1454-1455). Grand told Brennan he planned to host only a small informal prayer group, but Brennan thought Grand was dishonest about his intentions. *Ibid.* As a result, Brennan told Grand he must pursue a special use permit. Mem. Op., R. 93, PageID# 2771.

In University Heights, houses of worship are not permitted as of right in the residential district in which Grand's home was located—*i.e.*, a U-1 district. Mem. Op., R. 93, PageID# 2771. However, a person may apply for a special use permit, which, if granted,

allows certain special uses of properties in a U-1 district, including use as a house of worship or synagogue. *Ibid.* The City's Planning Commission issues these permits if the applicant can show by clear and convincing evidence that the proposed use will not negatively impact the surrounding properties based on several factors. *Id.* at PageID# 2771-2772.

Grand applied for a special use permit seeking to "utilize [his] current recreation room for periodic religious gatherings." Mem. Op., R. 93, PageID# 2772 (quoting Pl.'s Mot. for Partial Summ. J., R. 81, PageID# 1336; Grand's SUP Application, R. 81-8, PageID# 1459). The Planning Commission scheduled a meeting to discuss Grand's application. Mem. Op., R. 93, PageID# 2772. Before the meeting, Grand submitted a letter explaining his intent to "have an informal prayer group for services in his home on the Jewish Sabbath and High Holidays." *Id.* at PageID# 2772-2773 (quoting Cease-and-Desist Letter, R. 81-16, PageID# 1530-1531). The Planning Commission conducted the three-hour meeting as a "quasi-judicial" hearing, which Grand alleges deviated from normal practice. Mem. Op., R. 93, PageID# 2773. The Planning Commission did not reach a determination; rather, it adjourned the meeting with a request that Grand provide more information and schematics in support of his application. *Ibid.* Shortly after the meeting, the Planning Commissioners exchanged emails suggesting some resistance to Grand's request and intimating that Grand was not transparent or forthcoming. *Id.* at PageID# 2773-2774. Other aspects of the email discussion, however, questioned whether Grand should have to obtain a special use permit for small social gatherings (of 10-15 people) in a private home. *Ibid.*

A second Planning Commission meeting was scheduled; Brennan represented it would be limited to the record from the previous meeting. Mem. Op., R. 93, PageID# 2774. Grand withdrew his application before the meeting, however, stating that he did not intend to operate a house of worship requiring a special use permit. *Id.* at PageID# 2775. While discussing Grand's withdrawal of his application at this second meeting, Brennan encouraged community members who observed Grand using his residence as a house of worship, or people congregating there for religious reasons, to report such activity. *Id.* at PageID# 2776.

During the pendency of his application for a special use permit and shortly after its withdrawal, the conflict surrounding Grand's use of his home escalated. Mem. Op., R. 93, PageID# 2776. For instance, a neighbor set up "multiple cameras pointing directly at and into his home." *Ibid.* But the City refused to act when Grand filed police reports and subsequently required Grand to remove a landscaping sheet he used to block the cameras. *Ibid.* Grand also alleges that neighbors complained repeatedly to the City about cars parking at his residence, and that the City's police Department advised patrol units to frequently drive by his home. *Id.* at PageID# 2776-2777.

2. Grand sued the City and several City officials in the United States District Court for the Northern District of Ohio. Mem. Op., R. 93, PageID# 2777. As relevant here, Grand asserted claims against defendants based on all four of RLUIPA's religious land-use protections. Grand challenged the zoning code because it "permits[,] as of right[,] . . . [b]uildings, structures[,] and grounds owned and operated by a board of education, municipality[,] or by a library board," while a

special use permit is required to operate houses of worship. Second Am. Compl., R. 67, PageID# 621. He thus alleged that the code, "on its face," treats houses of worship less favorably than other nonreligious buildings, and thereby, regulates religious groups on less than equal terms. *Id.* at PageID# 621-622, 635-636. He also advanced substantial burden and unreasonable limitation claims based on the same differential treatment. *Id.* at PageID# 618, 620, 635-636. Grand further asserted that defendants discriminated against him based on religion by using the zoning code to "wage[] a zealous campaign of capricious enforcement . . . specifically targeting Grand and several other Orthodox Jews." *Id.* at PageID# 576. Grand sought declaratory and injunctive relief, compensatory damages, and attorney's fees for the alleged RLUIPA violations. *Id.* at PageID# 639-640.

Defendants moved for summary judgment. Defs.' Summ. J. Mot., R. 79, PageID# 1023-1026. In their filings in connection with this motion, Grand stated that he sought to host only a small informal prayer group, and the City acknowledged that such gatherings are "not subject to any of the City's ordinances or permitting requirements." Mem. Op., R. 93, PageID# 2780.

The district court granted Defendants' Motion for Summary Judgment on each RLUIPA claim. *See* Mem. Op., R. 93, PageID# 2789, 2803. Although defendants had raised ripeness challenges only as to Grand's non-RLUIPA claims, the district court concluded that "the [ripeness] doctrine applies to all claims arising from a land-use dispute" and "goes to whether the Court has subject matter jurisdiction." *Id.* at PageID# 2782 n.4. Accordingly, the court sua sponte analyzed whether

Grand's RLUIPA claims were ripe (*id.* at PageID# 2783). The court ruled that "[i]n the land-use context," the concreteness of the dispute "hinge[s] on whether there has been a final determination by the appropriate local or administrative body." *Ibid.* The court held that the City did not make a final determination with respect to Grand's property because Grand withdrew his special-use permit application in light of the parties' shared understanding that no such permit was necessary for Grand's stated purpose. *Id.* at PageID# 2789. As a result, the court dismissed Grand's RLUIPA claims for lack of subject-matter jurisdiction. *Ibid.*

Grand appealed the district court's decision. Notice of Appeal, R. 97, PageID# 2843.

SUMMARY OF ARGUMENT

The district court wrongly dismissed Grand's RLUIPA claims as categorically unripe. The court believed that the finality requirement articulated in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *overruled on other grounds by Knick v. Township of Scott*, 588 U.S. 180 (2019) (*Williamson County*), applies to all land-use claims. But that finality requirement—which asks whether "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 Cnty.*, 473 U.S. at 186—applies *only* to land-use disputes where the plaintiff's claim depends on the ultimate application of zoning laws to a particular property. That requirement does not govern land-use disputes that turn on other conduct that inflicts injury.

Because not all RLUIPA claims turn on a regulation's application to a particular property, a court cannot automatically apply *Williamson County*'s finality requirement to all RLUIPA claims. This Court should thus reverse the district court's decision dismissing Grand's RLUIPA claims and remand the case to the district court for further proceedings to analyze the ripeness of each claim.

ARGUMENT

The district court erred by categorically applying a finality requirement to dismiss Grand's RLUIPA claims as unripe.

The district court erred when it dismissed Grand's RLUIPA claims as unripe on the ground that the City never made a final determination applying its zoning code to Grand's request to host religious prayer gatherings in his home. Mem. Op., R. 93, PageID# 2788-2789. The court wrongly assumed that the finality requirement articulated in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *overruled on other grounds by Knick v. Township of Scott*, 588 U.S. 180 (2019), applies to all RLUIPA claims. But that requirement applies only when the RLUIPA claim depends on the defendant's application of zoning laws to a specific property. RLUIPA, however, does not limit actionable claims to those where a defendant applies its zoning laws to the detriment of a property. The court should have instead engaged in a claim-by-claim inquiry to determine whether *Williamson County*'s finality requirement applied and whether Grand's specific RLUIPA claims were ripe for adjudication.

A. The finality requirement applies in land-use disputes only when the legal claim depends on the ultimate application of zoning laws to a particular property.

In *Williamson County*, the Supreme Court addressed the ripeness of a Fifth Amendment taking-without-just-compensation claim, which focuses on the "*effect*" of government regulations on a particular property. 473 U.S. at 186 (emphasis added). The Court held that the "effect"—in that case, the "diminution in property value"—could not "be assessed with any degree of certainty until the municipality arrives at a final decision as to how the property owner will be permitted to develop his property." *Nasiewrowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991); *see also Williamson Cnty.*, 473 U.S. at 191 (noting that a zoning regulation's "economic impact" on, or interference with, a particular property "cannot be evaluated" without a "final, definitive position" on the regulation's application to the property). For this reason, the Court held that a takings claim 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*." *Williamson Cnty.*, 474 U.S. at 186 (emphases added). As the Supreme Court observed, use of this finality requirement to assess ripeness "is compelled by the very nature of the inquiry" in a takings case. *Id.* at 190.

A plaintiff can satisfy *Williamson County*'s finality requirement with the "relatively modest" showing that "no question [remains] about how the regulations at issue apply to the particular land in question." *Pakdel v. City of San Francisco*, 594 U.S. 474, 478

(2021) (per curiam) (alterations and internal quotations marks omitted) (quoting *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997)). Having this type of final determination guarantees that the "elements of the case are [not] uncertain" and that any "delay" in adjudication will not result in an intervening administrative resolution to the dispute. *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 89 (1st Cir. 2013) (citation omitted) (*Roman Cath. Bishop*). Accordingly, the finality requirement can ensure that certain land-use disputes—those involving the ultimate application of zoning laws to a particular property—are ripe for adjudication. *See Suitum*, 520 U.S. at 733-734 (describing finality requirement as a "prudential hurdle[]" for establishing ripeness); *Miles Christi Religious Ord. v. Township of Northville*, 629 F.3d 533, 541 (6th Cir. 2010) (concluding that the "finality rule . . . is a prudential requirement" that a court "need not follow when its application 'would not accord with sound process'" (alteration and internal quotation marks omitted) (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1012 (1992))).

B. The finality requirement does not apply categorically to all RLUIPA claims.

Williamson County's finality requirement applies to a RLUIPA claim only if that claim depends on the application of a land-use regulation to specific property. Because many RLUIPA claims do not turn on whether and how a regulation will apply to a specific property, a court cannot reflexively apply the finality requirement to all RLUIPA claims.

1. RLUIPA claims may arise from harms that occur before a governmental entity applies its zoning code to a particular property or from harms otherwise

inflicted in an underlying land-use dispute within the statute's scope. This conclusion flows directly from the statutory text. RLUIPA's coverage extends beyond the ultimate "effect" of land-use regulations on specific property, which is the relevant focal point for the finality requirement. *Williamson Cnty.*, 473 U.S. at 186. Each RLUIPA land-use prohibition explicitly reaches a state or local government's "impos[ition]" of land-use regulations *and* their "implement[ation]." 42 U.S.C. 2000cc(a)(1) and (b)(1)-(3). RLUIPA's "substantial burden" and "equal terms" prohibitions further cover the "manner" in which the governmental entity imposes or implements land-use regulations. Thus, RLUIPA covers conduct extending beyond final determinations, including any intervening measures taken to achieve those final determinations.

In other words, RLUIPA claims may be predicated on conduct that occurs *during* the administrative process before a final determination is reached. *See* 42 U.S.C. 2000cc(a)(1) and (b)(1)-(3). Local decisionmakers can discriminate based on religion or religious practice well before (or even without) any final determination applying a zoning ordinance to a specific property. For example, Grand alleges that the City discriminated against him based on his religion with "a zealous campaign of capricious enforcement" of its ordinances, including by deviating from normal practices during the planning commission hearing on his application for a special use permit. Second Am. Compl., R. 67, PageID# 576.

Applying the finality requirement to Grand's discrimination claim makes no sense. Grand will not get any formal determination on his special use permit request as he subsequently withdrew his application.

More significantly, a final determination of how the zoning ordinance would have been applied to Grand's property would not change the ultimate harm that Grand alleged: discrimination. In such cases, the finality requirement cannot meaningfully determine whether a claim is ripe for adjudication. And a court "staying [its] hand" to await a final determination in such circumstances would serve no purpose other than to "perpetuate the [injury]." *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1357 (11th Cir. 2013).

2. *Williamson County*'s finality requirement is similarly inapplicable to RLUIPA cases involving a facial violation of the statute's land-use protections. "[B]y its nature," a facial challenge "does not involve a decision applying the statute or regulation." *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003). For example, "[i]f a locality wrote a zoning law that explicitly gave worse terms to religious assemblies than other assemblies—museums get sewers by the river, but churches don't—that would violate the Equal Terms provision *facially*." *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 200 (4th Cir. 2022) (Richardson, J., concurring) (emphasis added). For facial claims, the "mere enactment of a regulation" is the type of harm inflicted in violation of the statute. *County Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 164 (3d Cir. 2006).

Facial challenges thus ripen "the moment the challenged regulation or ordinance is passed." *Suitum*, 520 U.S. at 736 n.10. Consequently, courts have routinely concluded that the finality requirement "presents no barrier" to facial RLUIPA claims. *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 287

(5th Cir. 2012); *Temple B'Nai Zion, Inc.*, 727 F.3d at 1359 n.6; *Christian Fellowship Ctrs. of N.Y., Inc. v. Village of Canton*, 377 F. Supp. 3d 146, 154-155 (N.D.N.Y. 2019); *Redemption Cmty. Church v. City of Laurel*, 333 F. Supp. 3d 521, 530 (D. Md. 2018) (citing *Beacon Hill Farm Assocs. II Ltd. v. Loudon Cnty. Bd.*, 875 F.2d 1081, 1084-1085 (4th Cir. 1989)); *Sisters of St. Francis Health Servs., Inc. v. Morgan Cnty.*, 397 F. Supp. 2d 1032, 1047-1048 (S.D. Ind. 2005).

3. Accordingly, courts must assess the ripeness of RLUIPA claims on an individual basis by looking to the "nature of the [statutory] inquiry" and whether that inquiry "compel[s]" a final decision about the application of a regulation to a specific property to fully adjudicate the claim. *Williamson Cnty.*, 473 U.S. at 190-191. The First and the Eleventh Circuits—the two courts of appeals that have decided whether the finality requirement applies to RLUIPA claims that do not involve a final application of zoning law to a particular property—have taken this claim-based approach. *See Temple B'Nai Zion, Inc.*, 727 F.3d at 1357; *Roman Cath. Bishop*, 724 F.3d at 91-92; *see also Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 123 (2d Cir. 2014) (recognizing with respect to an ADA claim that "discrimination in the context of a land-use dispute is subject to the final-decision requirement unless" there is "some injury independent of the challenged land-use decision"). A claim-by-claim approach ensures the "broad protection of religious exercise, to the maximum extent permitted" by the statute "and the Constitution," 42 U.S.C. 2000cc-3(g). This Court should embrace that approach.

C. The district court's dismissal of Grand's RLUIPA claims should be reversed, and his claims remanded for a proper analysis of ripeness.

Because the district court categorically applied the finality requirement to all of Grand's RLUIPA claims, this Court should reverse the district court's decision and remand for further proceedings to assess whether the finality requirement applies to each of Grand's claims.

On remand, the district court should begin by assessing each of Grand's RLUIPA claims individually to determine, first, whether they involve a facial RLUIPA challenge to a land-use regulation. If the claim alleged is facial in nature, then the finality requirement does not apply. If the claim is not a facial challenge, the court then must determine whether it alleges an injury that depends on a final land-use decision. This inquiry requires consideration of both the theory of each individual claim (*i.e.*, the specific RLUIPA protection at issue) and the facts supporting the claim:

Substantial burden. A substantial burden claim requires a plaintiff to identify an imposition on "religious exercise" of "some degree of severity" and "more than an inconvenience." *Catholic Healthcare Int'l, Inc. v. Genoa Charter Township*, 82 F.4th 442, 449 (6th Cir. 2023) (*Catholic Healthcare*) (citation omitted). A substantial burden is one that "places significant pressure on a . . . plaintiff to modify its behavior." *Livingston Christian Schs. v. Genoa Charter Township*, 858 F.3d 996, 1004 (6th Cir. 2017). One factor relevant to such pressure includes whether the plaintiff "will

suffer substantial delay, uncertainty, and expense." *Catholic Healthcare*, 82 F.4th at 449.

To assess ripeness of a substantial-burden claim, a district court should ask what aspect of the government's "impos[ition] or implement[ation]" of its land-use regulations caused the plaintiff's burden (*i.e.*, the significant delay, uncertainty, or expense). 42 U.S.C. 2000cc(a)(1). A court should apply *Williamson County*'s finality requirement to such claims only if those burdens result from the challenged regulations' ultimate effect on a particular property rather than, for example, from the government's conduct in the administrative process leading up to enforcement (or, in this case, nonenforcement). *See Catholic Healthcare*, 82 F.4th at 449 (finding two years of administrative process and considerable expense imposed a substantial burden).

Equal terms. A prima facie case establishing an equal terms claim "requires proof that (1) the plaintiff is a religious assembly or institution, (2) subject to a land use regulation," which is imposed or implemented in a way that "(3) treats the plaintiff on less than equal terms, compared with (4) a nonreligious assembly or institution." *Tree of Life Christian Schs. v. City of Upper Arlington*, 905 F.3d 357, 367 (6th Cir. 2018) (citation, internal quotation marks, and alterations omitted). These unequal terms may result from the application of a land-use regulation to a specific property, but also from the procedural and other enforcement mechanisms applied to religious and nonreligious entities.

Nondiscrimination. Nondiscrimination claims differ from substantial burden and equal terms protections because they "require[] evidence of dis-

criminatory intent." *Alive Church of the Nazarene, Inc. v. Prince William Cnty.*, 59 F.4th 92, 104 (4th Cir. 2023). To establish a prima facie case for such claims, a plaintiff must demonstrate "facts sufficient to show that the challenged government decision was motivated at least in part by discriminatory intent." *Ibid.* (internal quotation marks and citation omitted). In RLUIPA cases, plaintiffs can accomplish this using the factors in *Village of Arlington Heights v. Metropolitan Heights Housing Development Corp.*, 429 U.S. 252, 266 (1977), which assesses, among other things, "the series of events leading up to a land use decision" and "the context in which the decision was made." *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 199 (2d Cir. 2014). Thus, a RLUIPA plaintiff can challenge any government decision within RLUIPA's scope, including both the government's final determination of a land-use regulation's applicability to a property *and* decisions taken under local authority to implement or impose such regulation. The district court should therefore analyze the scope of the alleged discriminatory conduct to determine whether the finality requirement applies.

Exclusion/Unreasonable Limits. As with the other RLUIPA claims, an exclusion or unreasonable limitation on religious entities within a jurisdiction may arise from any source within the statute's coverage. For example, a government's "unbridled" or "standardless" discretion to reject special use permits for religious entities may provide the basis for such a claim, regardless of whether that discretion is ultimately applied to a specific property. *Vision Church v. Village of Long Grove*, 468 F.3d 975, 990-991 (7th Cir. 2006).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision dismissing Grand's RLUIPA claims and remand to the district court for further proceedings.

Respectfully submitted,

MAC WARNER
Deputy Assistant Attorney General

MICHAEL E. GATES
Deputy Assistant Attorneys General

s/ Barbara A. Schwabauer
ELIZABETH PARR HECKER
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CHAD MIZELLE
Acting Associate Attorney General

JASON MANION
Counselor to the Associate
Attorney General

Date: March 31, 2025

CEASE AND DESIST LETTER FROM LAW DIRECTOR FOR THE CITY OF UNIVERSITY HEIGHTS (JANUARY 21, 2021)

Nicola, Gudbranson & Cooper, LLC
Attorney at Law

Landmark Office Towers
Republic Building Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115
Phone: 216-621-7227
Fax: 216-621-3999
www.nicola.com

Direct Email: mcconville@nicola.com

VIA EMAIL: talk@dannygrand.com;
danieljoshua@me.com; daniel@violationremoval.com
AND VIA CERTIFIED AND REGULAR U.S. MAIL

Mr. Daniel Grand
Ms. Rakhel Davidoff
2343 Miramar Boulevard
University Heights, OH 44118

Shomayah Tefillah Beis Hekeneset
2343 Miramar Boulevard
University Heights, OH 44118

Re: 2343 Miramar, University Heights, OH 44113
Planned Operation of Shul/Place of Religious Assembly

Dear Mr. Grand and Ms. Davidoff:

I am Writing to you in my capacity as Law Director for the City of University Heights (the

"City"). The City has been made aware that you intend to use the premises at 2343 Miramar Boulevard (the "Premises") as a place of religious Assembly and in operation of a shul. Pursuant to the zoning map and codified ordinances of the City. the premises are zoned U-1 for residential use. The use or operation of the Premises as a religious place of assembly and/or in operation as a shul or synagogue is not permitted under the City's ordinances.

The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent that the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future. the City hereby demands that you immediately cease and desist any and all such operations. Violation of the City's ordinances in this. manner may result in building code citations against you and in the pursuit of additional remedies.

The City is particularly disturbed to learn of the proposed use of the Premises as a place of religious assembly given that you recently appeared before the City's Board of Zoning Appeals in connection with your application for variances. The City is exploring whether variances granted for the Premises may be voidable based upon a subsequent illegal use of the Premises, or due to material omissions during the bearing process relating to your intent to utilize the Premises as a place of religious assembly.

Allow me to refer you to City Codified Ordinance Chapter 1274 entitled "Houses of Assembly and Social Service Uses." Under Chapter 1274, you may make

application to the City's Planning Commission for a Special Use Permit.

Sincerely.

NICOLA, GUDBRANSON & COOPER, LLC

/s/ Luke P. McConville

LFM/cdwj

cc: Mayor Michael Dylan Brennan

DANIEL J. GRAND
SPECIAL USE PERMIT APPLICATION
(JANUARY 22, 2021)

Kelly Thomas

From: Daniel J. Grand <danieljoshua@me.com>
Sent Friday, January 22, 2021 10:46 AM
To: Kelly Thomas
Cc Michael Brennan
Subject: 2343 Miramar request for special use permit
Attachments Scan.pdf

Dear University Heights Clerk of Council, Ms. Thomas,

Daniel Grand
2343 Miramar Blvd
Home: 216-772-7384

google voice: 347-254-4779

I have been advised to apply for a special use permit for a place of religious assembly in my home at 2343 Miramar Blvd.

My Intention is as follows:

I wish to utilize my current recreation room for periodic religious gatherings.

I can share the following details; This room was used as my computer room music room, it was built with the idea that it would be my music room and is soundproofed, via sound attenuation insulation, I have played my drum set very late in the evening and no one has heard it Since I wasn't playing music all that much, the idea dawned on me about 2 weeks ago to use the space as a place for people to come and pray

with me in my home. I am a religious man and am a Rabbinic student.

The total room size is a tinge over 700 square feet.

I have 11 tables set up and 21 chairs set up-there is plenty of walking space between the tables and chairs as well.

This is the ground floor, it is on slab as well, so there is not a weight issue to contend with, there is no basement below it.

There are 3 means of egress In this Parler/ recreation room-one that leads to the center of the house, one that leads to the garage, and on that leads to the back yard. The windows are egress windows too.

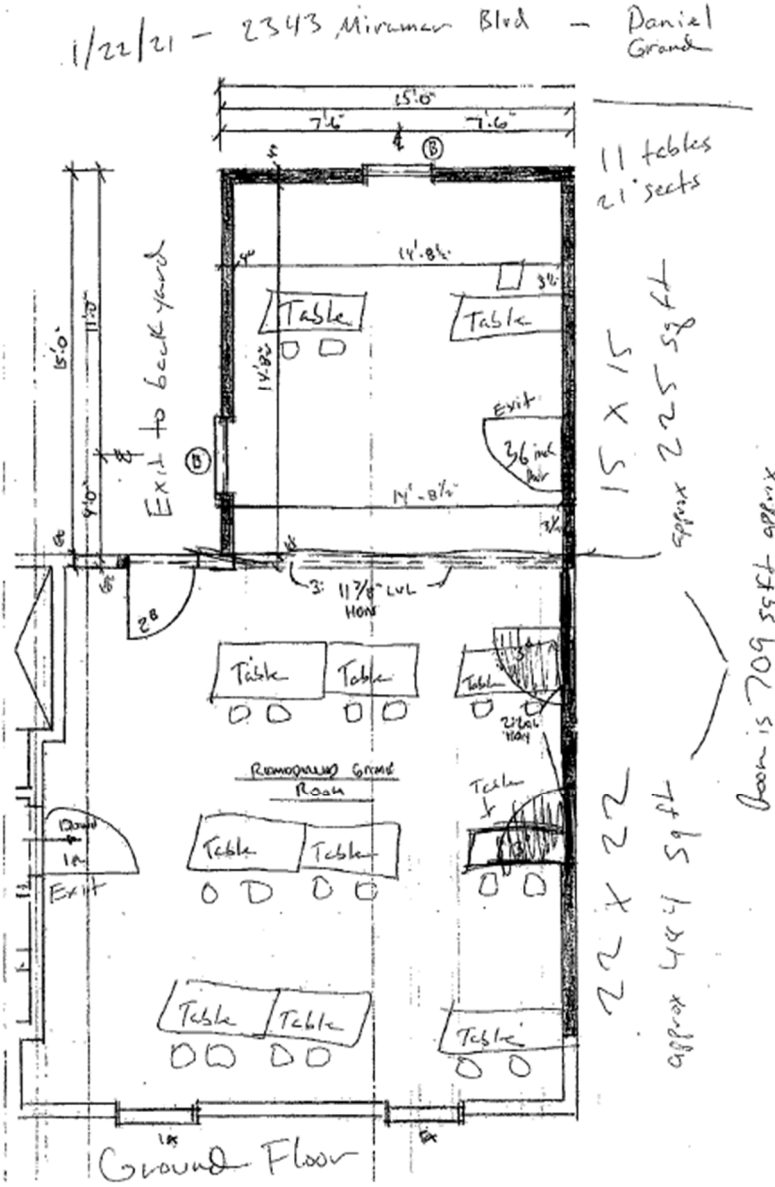
No one will be parking in my driveway-except my wife and myself-and on Sabbath people can not bring car either . . .

Please consider this my formal request for a special use permit and a meeting before the planning commission. Thank you.

If there is any other information you need prior to my request for a special use permit please let me know if I have not satisfied any of the requirements, and again after our discussion I understand that I would miss this upcoming meeting, and could be on the "docket" for the next one.

Thank you,

Daniel Grand


1/22/21 – 2343 Miramar Blvd – Daniel Grande
15'-0"
7'-6"
7'-6"
11 tables
21 seats
14'-8½"
Table
Table
Exit
36" min Pair
Exit to back yard
15'-0"
11'-0"
9'-0"
14'-8½"
3: 11⅞" LVL Hdrs
28"
Table
Table
Table
Table
Table
Table
Table
Table
Table
Table
Remodeled Grand Room
Exit
Exit
Ground Floor
15 x 15
225 sqft approx
22 x 22
484 sqft approx
Room is 709 sqft approx

PAUL SIEMBORSKI MASSIVE ADMISSION(S) - ILLEGAL DISCUSSION
(MARCH 5, 2021)

From: Paul Siemborski
<psiemborski@DLRGROUP.com>
Sent time: 03/05/2021 07:33:07 AM
To: April Urban <april.h.urban@gmail.com>
Cc: Michael Brennan <MDB@universityheights.com>;
Kelly Thomas <kthomas@universityheights.com>;
John Rach <jrach@universityheights.com>;
Michael Fine <mfine@ohioconsumerlawyer.com>;
Luke McConville
Subject: Re: Planning Commission Meeting tonight (March 4, 2021)

I felt we handled the meeting last night poorly. Never had we allowed such a format. And I was appalled at the Grand standing and showmanship we allowed between the applicant and his attorney. I am just an Architect That we turned this into a court proceeding was wrong in my opinion. Luke, you should put time limits on presentations. 195 petitions against this and we treated those against this request with lip service and we subjected them to cross examination. Unbelievable.

As I said, I am disappointed that this even came to us. In my opinion we need to cut back on all the legal wrangling citing code section by code section and simply say up front: this is not allowed on Miramar. If you want to consider such a place of assembly there are streets where you can petition for special use.

We must change the format of what happened last otherwise, otherwise I will not be involved.

Paul

Sent from my iPhone

On Mar 5, 2021, at 7:10 AM, April Urban <april.h.urban@gmail.com> wrote:

-257 ?

I would be happy to meet again as soon as possible to expedite resolution to this matter. Most of my questions are for Mr. McConville. If appropriate, I'm happy to email or call.

On Fri, Mar 5, 2021, 12:21 AM Michael Brennan <MDB@universityheights.com> wrote:

This message was sent from the City of University Heights.

Regards,

Mayor Michael Dylan Brennan

sent from my mobile device

---------Forwarded message---------

From: Josiah Sell <josiahsell@gmail.com>
Date: Mar 4, 2021 11:30 PM
Subject: Planning Commission Meeting tonight (March 4, 2021)
To: Michael Brennan MDB@universityheights.com, Michele Weiss <mweiss@universityheights.com>, Saundra Berry <sberry@universityheights.com>, Barbara Blankfeld <bblankfeld@universityheights.com>, Phillip Ertel <pertel@universityheights.com>,

Justin Gould <jgould@universityheights.com>,
Susan Pardee
<spardee@universityheights.com>,
John Rach <jrach@universityheights.com>,
Luke McConville
<mcconville@universityheights.com>,
Brendan Zak <bzakAuniversityheights.com>,
Mike Cook <mcook@universityheights.com>,
Susan Drucker <sdrucker@universityheights.com>,
Dennis Kennedy <DKennedy(duniversityheights.com>,
Rita Drew <rdrew@universityheights.com>,
Denise Balint <dbalint@universityheights.com>

Cc:

Mr. Mayor, et al:

The adjournment of tonight's meeting is only causing more angst in the community. The applicant (Mr. Grand) clearly failed on all standards to justify the need for approval of the special use permit. The applicant, his attorney, and everyone attending the meeting could easily understand the applicant failed and should be denied the special use permit. Mr. Cooney and Mr. Kluznik's arguments were spot on. Mr. Grand failed on all fronts.

In the interest of time, I didn't speak tonight However, I am 100% opposed to granting the special use permit and I would have said: I liketo walk to church also, which is why my first house in University Heights was at 2466 Glendon Road (directly across from Gesu). My family outgrew that house, so I moved over to Carroll Boulevard. Now, I have a little bit of a longer walk. However, I'm not about to hire a priest and open a church in my house on Carroll Blvd., that would be ridiculous as it would anger my neighbors to

the hilt. If Mr. Grand would like a shorter walk, then I advise him to buy a house closer to a shul or synagogue, not disrupt the fabric of the community. Please just deny this special use permit and he can continue to play his drums in his "sound proof' room. I have no sympathy for him putting the cart before the horse-building and planning for this before he received permission. Residents testified under oath tonight that Mr. Grand has been dishonest about his intentions for years. Those facts should not be overlooked.

Please forward to all planning commission members since their emails are not readily available on the city's website.

Sincerely,

Josiah Sell
4148 Carroll Blvd
University Heights, OH 44118
216-632-0238
Josiahsell@gmail.com

LARGE ILLEGAL CONVERSATION ABOUT SPECIAL USE PERMIT (MARCH 9, 2021)

From: Michael Brennar <MDB@universityheights.com>
Send time: 03/09/2021 10:30:10 AM
To: Luke McConville <mcconville@universityheights.com>; Michael Fine <mfine@ohioconsumerlawyer.com>; April Urban <april.h.urban@gmail.com>
Cc: Paul Siemborski <psiemborski@dlgroups.com>; Kelly Thomas <kthomas@universityheights.com>; John Rach <jrach@universityheights.com>; Rachel Mullen <rmullen@ universityheights.com>;
Subject RE: Planning Commission Meeting tonight (March 4, 2021)

I suggest we schedule a public meeting at everyone's next availability to deliberate over what we have heard thus far, and what we might do from here. Also, April 1 is during Passover, so that cannot be our next meeting date.

Kelly, please poll the commission for dates for the week of March 22. I'm booked every night week already

Michael Dylan Brennan | Mayor
City of University Heights
2300 Warrensville Center Road, University Heights, Ohio 44118-3895
(216) 932-7800 x222 | Mobile (216) 906-0383
Fax: (216) 932-8531

From: Luke McConville <mcconville@nicole.com>
Sent: Tuesday, March 9, 2021 9:56AM
To: Michael Fine <mfine@ohioconsumerlawyer.com>; April Urban <april.h.urban@gmail.com>
Cc: Paul Siemborski <psiemborski@dlgroups.com>; Michael Brennen <MDB@universityheights.com>; Kelly Thomas <kthomas@universityheights.com>; John Rach <jrach@universityheights.com>;
Subject RE: Plan, Commission Meeting tonight (March 4, 2021)

Attorney Client

From: Michael Fine <mfine@ohioconsumerlawyer.com>;

Sent: Tuesday, March 9, 2021 9:40 AM

To: April Urban <april.h.urban@gmail.com>

Cc: Paul Siemborski <psiemborski@dlgroups.com>; Michael Brennen <MDB@universityheights.com>; Kelly Thomas <kthomas@universityheights.com>; John Rach <jrach@universityheights.com>; Luke McConville <mcconville@nicole.com>
Subject RE: Plan, Commission Meeting tonight (March 4, 2021)

Dear All,

Thank you, April, for your thoughts. I concur.

As wrote previously, a tension exists regarding at what point does a social gathering become a house of worship.

If someone is going to come to planning for a special use permit, I believe that they must come with architectural plans a fire with maximum capacity findings; the result of a police review with findings regarding traffic patterns and parking; and the results of an

inspection for compliance with state building codes that evidences whether the intended use is even feasible. If an applicant cannot get past these hurdles, which exist for Denciger, Grand, and other existing/ planned situation, then zoning, use permits, and fair use considerations are the least of their issues–and the City can avoid to the resulting political storm.

If a house is going to be a place of assembly, then applicant needs to fairly address parking, traffic, capacity, fire & safety, as well as consideration of the neighbors and character of the neighborhood. If a person is just going to have a social gathering, this is unnecessary.

The Grand application is problematic because he seems to want to have it both ways, which is untenable– from all perspectives.

Again, I think that Grand and the community would be best served if he voluntarily withdraws his application, and takes sometime to reconcile with his neighbors and to clarify his intentions. In the meantime, he would be wise to avoid the appearance of proceeding with a "shul" as a opposed to a social gathering–lest he cause further neighbors angst his neighbors and have the Police called to address a nuisance.

Michael Fine

From: April Urban <april.h.urban@gmail.com>
Sent: Tuesday, March 9, 2021 8:47 AM
Cc: Paul Siemborski <psiemborski@dIrgroup.com,
Michael Brennen MDB@universityheights.com>;
Kelly Thomas <kthomas@universityheights.com>;
John Rach <jrech@universityheights.com>;
Luke McConville Forward <mcconville@nicole.com>

Subject: Re Planning Commission Meeting tonight (March 4, 2021)

I hope it is productive to continue our discussion through email. I humbly present my thoughts on the Issue. This email is longer than is desirable, but it is a complicated issue. Please know my intentions are merely to help bring about resolution to the issue.

I believe it would have been imprudent to dismiss the application presented and give the reason for dismissal as the public testimony only. I firmly believe that course of action would have toed the line of violating fair housing law, and would have put the city in bad position.

However, at this moment, I do think the application should be dismissed. I think the reason for dismissal should be that the use presented (the applicant proposed gathering 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. We don't require other social gatherings occurring in a private home to have a special use permit. If the applicant's intentions are truly within the bounds they describe, why would he need a special use permit? If the application is dismissed, and there's no mention of how the proposed use would not require a special permit, do neighbors interpret this action on as a right to police every guest and goings on at Mr. Grand's home? If it is mentioned, does Mr. Grand interpret it as a right to do whatever he wants? Can It 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?

The community outlines a long list of wrong-doings of the applicant regarding additions to his home, which seem to have generated considerable ill-will toward him and the house. In addition, it has raised suspicions, perhaps correctly, that the addition was built for the purpose of becoming a Shul. The community Expresses that, because of these negative experiences, that Mr. Grand can not be trusted at his word, and though he says only 10-15 people will be attending worship at his house, he can not be trusted and the crowd will grow to a disruptive size.

In regards to the addition, it seems to me that we do not have any authority to impose any changes. This is unfortunate and I hope the appropriate Department at the city is working with the group on the issues and concerns, but I am uncertain what we can do about it. Before the meeting, I drove by the house and I wondered if in this case there could be anything like a "clean hands" docket applied. The applicant could not apply for a special use permit while having outstanding code issues. Is this the case? Are the issues with the house open code violations? Ultimately, even if this was relevant, it seems like it would open the door to him applying again once issues were remedied.

The concerns about gathering growing to a disruptive size seem to be at the heart of this issue. I am uncertain what to do with these concerns given they are concerns about a future problem. I believe we were to take the applicant at his word as he was under oath, and he maintained a smaller group size. If the application is dismissed, and it is stated that reasonably sized gatherings can occur in private homes, what is the mechanism for enforcement if gatherings

get out-of-hand in size or frequency? My guess is the cease and desist order and other nuisance property mechanisms. Given he is an owner-occupant, I think these could be reasonably effective if the situation worsened. But how can we tell when activity is truly a nuisance to neighbours from when neighbours are being unneighbourly because of their differences?

I am not certain whether dismissal for this reason (no need for special use permit) would ease community tensions or concerns, and I do recognize that it is important to do so. At this point, I think it's important to recognize the discord between the current state of the issue (the applicant maintains the space has not been used as a shul to-date, and we heard no testimony otherwise), the proposed use, and community concerns expressed in materials shared and during our meeting. It is also important to recognize and call-out anti-semetic rhetoric and sentiment that goes against fair housing laws. I feel like that's the fist step in moving towards a more productive conversation and ultimately easing community concerns. I could be wrong about that, but in the least, it helped me separate the sets of concerns into useful categories.

Problematic community rhetoric:

"I am not Jewish and I do not want our neighborhood labelled as Jewish" – Letter from Maureen Lanza

Repeated stated concerns about property tax exemption, especially after it has been explained these concerns are irrelevant

Repeated concerns about the Shul being a profit-making commercial business

Concerns about community "change"

Claims of long-standing community ownership

Statement that the applicant should "move somewhere else" if inconvenienced

Discordant community concerns:

Don't want parking cluttering up neighborhood – applicant maintains parking isn't an issue because of Jewish Practice

Concerns about increased foot traffic—honestly I just can't imagine finding 10 more people walking through my neighbourhood to be disruptive to my life

It seemed to me that most of the legitimate concerns are only relevant to a scenario in the future where the Shul is closer to a house of assembly than a small private gathering. Again, I'm not sure how to rectify that community concerns are relevant only in a future scenario where the applicant is being intentionally misleading.

Here is additional information from the Department of Justice and HUD on how local land use and zoning code relate to fair Housing Laws. https://www.justice.gov/opa/file/912366/download

I hope this helpful to our discussion Does the city have other resources it can employ in bringing this conflict to an amicable resolution? A savvy council person willing to meet Mr. Grand and other noticeable leaders of the opposition?

April

On Fri, Mar 5, 2021 at 2:01 PM Michael Fine <mfine@ohioconsumerlawyer.com> wrote:

Mayor Brenan and Attorney McConville,

I respectfully disagree with colleague Mr. Siemborski, who I respect tremendously.

While I was not particularly happy with last night's format, and I felt that the matter could have been handled differently, I understand why the format was used. I think, however, that everyone should be clear that some matter, especially heated proposals, may take more than 3 hours to address, and it is not fair to the Commission or the Applicant to force a resolution more quickly. Some issues may need to be split over a number of days. For example, when we addressed the CH-UH high school temporary use of land in UH, we needed 3 (or 4) meetings to review the project.

I would say, however, that the applicant last night was not properly prepared to come before the board. His proposal was not clear, and he did not have the proper supporting materials. This happened with Denziger as well, and this situation should be avoided, if possible, in the future. Still, all citizens have the right to present their petitions, and we as Commissioners have an obligation to give each a proper hearing.

I also disagree that the number of Petitions is any way dispositive of this or any other proposal. Petitions are simply one piece of evidence to consider and to be given due weight.

Re. last night, the more significant issue seems to be that Mr. Grand has created a tremendous amount Ill-Will in the community. As a result, I do not think that Community members believe that he is speaking truthfully, and they do not trust his intentions. For this reason, I believe that he would be better served

by withdrawing his application and formulating a new strategy and with clearly articulated goals.

As an aside, I do not know why anyone would need a special use permit to invite 10 friends to pray with them Friday night and Saturday morning in their living room. I also do not see how this would be different then my having friends over regularly for parties. There is no restriction on how much I can entertain. However, if I reconfigure my house for 10 or more people to come over regularly, I give my group a name, and I hire a prayer leader, that may be qualitatively different. is also raises suspicions that I am not really intending to limit my parties/ meetings to Fri night and Sat day. However, there is a spectrum here, and I think that needs to be clarified.

Mr. Grand's problem is that he testified that all he wanted to accomplish was the former, but his actions speak to something further along the spectrum toward a real house of Prayer. A real house of prayer does have many of the Issues and concerns raised by the objectors last night, such. as lighting, traffic, and parking, which Mr. Grand sought to avoid addressing. Hence, the tension leading to last night.

My thought and observations, ,

Respectfully,

Michael

From: Paul Siemborski <psiemborski@dIrgroup.com,
Sent: Friday, March 5, 2021 7:33 AM
To: April Urban <april.h.urban@gmail.com>
Cc: Michael Brennen MDB@universityheights.com>;
Kelly Thomas <kthomas@universityheights.com>;
John Rach <jrech@universityheights.com>;

Michael Fine <mfine@ohioconsumerlawyer.com>
Luke McConville Forward <mcconville@nicole.com>
Subject: Re Planning Commission Meeting tonight (March 4, 2021)

I felt we handled the meeting last night poorly. Never had we allowed such a format And I was appalled at the Grand standing and showmanship we allowed between the applicant and his attorney. I am Just an Architect. That we turned this into a court proceeding was wrong in my opinion. Luke, you should put time limits on presentations 195 petitions against this and we treated those against this request With lip service and we subjected them to cross examination. Unbelievable.

As I said, I am disappointed that this even came to us. In my opinion we need to cut back on all the legal wrangling citing code section by code section and simply say up front: this is not allowed on Miramar. If you want to consider such a place of assembly there are streets where you can petition for special use.

We must change the format of what happened last otherwise, otherwise I will not be involved.

Paul

Sent from my iphone

On Mar 5, 2021, at 7:10 AM,
April Urban <april.h.urban@gmail.com> wrote:

I would be happy to meet again as soon as possible to expedite resolution to this matter. Most of my questions are for Mr. McConville. If appropriate, I'm happy to email or call.

On Fri, Mar 5, 2021, 12:21 AM Michael Brennan <MDB@universityheights.com> wrote:

This message was sent from the City of University Heights.

Regards,

Mayor Michael Dylan Brennan

sent from my mobile device

---------Forwarded message---------

From: Josiah Sell <josiahsell@gmail.com>
Date: Mar 4, 2021 11:30 PM
Subject: Planning Commission Meeting tonight (March 4, 2021)
To: Michael Brennan MDB@universityheights.com, Michele Weiss <mweiss@universityheights.com>, Saundra Berry <sberry@universityheights.com>, Barbara Blankfeld <bblankfeld@universityheights.com>, Phillip Ertel <pertel@universityheights.com>, Justin Gould <jgould@universityheights.com>, Susan Pardee <spardee@universityheights.com>, John Rach <jrach@universityheights.com>, Luke McConville <mcconville@universityheights.com>, Brendan Zak <bzakAuniversityheights.com>, Mike Cook <mcook@universityheights.com>, Susan Drucker <sdrucker@universityheights.com>, Dennis Kennedy <DKennedy(duniversityheights.com>, Rita Drew <rdrew@universityheights.com>,

Denise Balint <dbalint@universityheights.com>

Cc:

Mr. Mayor, et al:

The adjournment of tonight's meeting is only causing more angst in the community. The applicant (Mr. Grand) clearly failed on all standards to justify the need for approval of the special use permit. The applicant his attorney, and everyone attending the meeting could easily understand the applicant failed and should be denied the special use permit. Mr. Cooney and Mr. Kluznik's arguments were spot on. Mr. Grand failed on all fronts.

In the interest of time, I didn't speak tonight However, I am 100% opposed to granting the special use permit and I would have said: I to walk to church also, which is why my first house in University Heights was at 2466 Glendon Road (directly across from Gesu). My family outgrew that house, so I moved over to Carroll Boulevard. Now, I have a little bit of a longer walk. However, I'm not about to hire a priest and open a church in my house on Carroll Blvd., that would be ridiculous as it would anger my neighbors to the hilt. If Mr. Grand would like a shorter walk, then I advise him to buy a house closer to a shul or synagogue, not disrupt the fabric of the community. Please just deny this special use permit and he can continue to play his drums in his "sound proof" room. I have no sympathy for him putting the cart before the horse-building and planning for this before he received permission. Residents testified under oath tonight that Mr. Grand has been dishonest about his intentions for years. Those facts should not be overlooked.

Please forward to all planning commission members since their emails are not readily available on the city's website.

Sincerely,

Josiah Sell
4148 Carroll Blvd
University Heights, OH 44118
216-632-0238
Josiahsell@gmail.com

DEPOSITION OF MICHAEL DYLAN BRENNAN
RELEVANT EXCERPTS
(OCTOBER 31, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL GRAND,

Plaintiff,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants.

Case No. 1:22-cv-01594

[October 31, 2023 Transcript, p.243]

. . . meeting no 2506, no Bates stamps, was marked for the purposes of identification.)

Q. So PB22 is going to be a video that I would just like to play. Hopefully this will work. So I'm just going to put this on. It's a YouTube video—

(Cross-talking.)

(Discussion held off the record.)

MR. QUAINTON: I think the way we do it, that's good. It's too difficult for you to try to write down.

Just say that the video was played or however you want to do that.

MR. CLIMER: I would request that you guys send me a copy of that video by Dropbox or however.

MR. QUAINTON: Okay. It should be. It's in the folder.

MR. CLIMER: Is it? Okay. I'm sorry.

MR. QUAINTON: I'll tell you where it is in the folder, so you can see.

This is the only Word document in the folder. It's a Word document, it says 21.03.23.

MR. CLIMER: I've got it here, it's a link?

MR. QUAINTON: It's a link, yeah. So I'm going to try to play this. This is a video of the March 28th meeting.

MR. GROSS: 23rd, March 23rd.

MR. QUAINTON: Okay. This should work.

THE WITNESS: Debi, can you hear me? I just want to test my speakers.

COURT REPORTER: Yes, I can hear you.

MR. QUAINTON: Can everybody on the call hear and see this video?

MR. CLIMER: Yes.

THE WITNESS: Yes.

MR. GROSS: Yes.

COURT REPORTER: I can see it.

(Following is the transcription of the BP22 video link recording:)

"Yeah, I think that's (inaudible) using that."

"Oh, let's see. Okay. Cool. Michael, John's here. Yeah, there's John's, okay. Yeah, and Luke and you, me, yes, a few others, too. Okay. Sure. I think we can Go ahead.

"Okay. so Let me let everybody in and I'll mute everybody.

"Thanks, Kelly.

"A lot of people waiting.

(Inaudible.)

"All the committee members should be able to unmute themselves.

"I would like to call this special meeting of the planning commission to order.

"Mrs. Thomas, will you please call the roll?

"Mrs. Thomas, Mr. (Inaudible)?

"Here.

"Mrs. Urban?

"Here.

"Mr. Zimborski?

"Here.

"Mr. Fine?

"Here.

"Mr. Rach?

"Here.

"We have a quorum.

"The meeting of March 4, 2021, though a long meeting, it went well over three hours, ended in a tabling that might have been hasty, as there was no deliberation on the testimony we heard. Even though the applicant, Daniel Grand, had presented, offered rebuttal testimony in opposition and then rested.

"In the days following that meeting, individual commission members demonstrated their desire to discuss this matter, in essence to deliberate, in the form of e-mails sent in that regard.

"Our law director reminded all commission members of our obligations under the Sunshine Law to deliberate by way of a publically noticed meeting.

"Therefore, I called this special meeting of the University Heights Planning Commission to afford our commission members the opportunity to take this matter from the table and deliberate. At 5:50 this evening, I received the following e-mail from the applicant.

"Mayor Brennan and Planning Commission, please be advised that I'm withdrawing my application for a special-use permit. I do not wish to operate a house of worship as is defined under the zoning ordinance, in the privacy of my home.

"Mr. Daniel J. Grand."

"I therefore note for the record that the application is withdrawn. There is no special-use permit for 2343 Miramar Boulevard.

"And I will remind the applicant that the cease-and-desist order of the City, dated January 21, 2021 remains in effect.

"Let there be no confusion, 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.

"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.

"As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and ultimately obtained a permanent injunction in court.

"To the community members who are here, let there be no question, there is no permission granted here to operate—there is no permission granted here to operate a house of assembly or conduct activities consistent with one at 2343 Miramar Boulevard.

"If 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. And we will seek all appropriate remedies in court.

"With that I move to adjourn.

"Is there a second?

"Second.

"Second by Mr. Zimborski.

"Mrs. Thomas, will you call the roll?

"Mayor Brennan?

"Yes.

"Mrs. Urban?

"Yes.

"Mr. Zimborski?

"Yes.

"Mr. Fine?

"Yes.

"Mr. Rach?

"Yes.

"We are adjourned. Thank you.

(End of video link recording playback.)

BY MR. QUAINTON:

Q. Mayor Brennan, we just heard your statement at the March 23rd hearing on Mr. Grand's special-use permit. Did we—

(Zoom interference.)

Q. Opps, get rid of that.

My first question, Mr. Mayor, is: Was that a prepared statement that you read to the community, that we just heard?

A. Yes, yes, I prepared my remarks shortly before the meeting, wrote them out so that I could just, you know, read them into the record.

Q. Did you share those written remarks with anybody on the commission before you read them into the record?

A. No, I don't believe I did.

Q. And I'm not asking you for any privileged communications, but did you show the remarks to Mr. McConville?

A. I don't recall now whether I did or not, I would have to go back.

(Court reporter clarification.)

Q. And in these prepared remarks, is it fair to say you had thought carefully about these remarks before you delivered them?

A. No, because there wasn't very much time. And, you know, Mr. Grand had only withdrawn his application just a little more than an hour before the meeting, and I wasn't—I don't think I even saw that he'd withdrew, except until a few minutes before the meeting.

I was looking over other materials preparing to deliberate, and then I realized he had withdrawn his application. So I quickly wrote down a few words to be ready to be prepared to say something. That's—I think that's how that went. I don't think I saw it as soon as he said it. Even if I did, that's only an hour.

So, you know, there wasn't a lot of careful deliberation here over exactly what my statement would be. I just prepared a few words that I thought would be, you know, appropriate and prepared to read them on the record.

Q. But I think the message came through loud and clear, you said let there be no mistake congregating at a residence violates the Ohio law. Do you recall that?

A. That's not what I said. I believe you played twice what I said.

Q. You did say that. Let's go back.

A. And I made, I think, a rather complete statement, that together states accurately what I was intending to say.

Q. So is it your testimony today that you were not saying that congregating in a home violates Ohio law?

A. I think the statement I made, rather than you cherry-picking one line and then changing city law to Ohio law—I think you're mischaracterizing what I said.

Q. Okay.

MR. QUAINTON: Can we do this, Debi? Can you go back to what you wrote down, because it's quite short? And I believe what Mr. Brennan said was that—if you could find this—let there be no mistake, congregating or conducting activities consistent with those of a house of assembly are not permitted.

Could you just find that phase, so we read it back for the Mayor?

(Record read.)

Q. There are three prohibitions that you've announced, that were just read back.

The first is there is no permission to congregate.

Do you stand by that today as your—as a message to the citizens of University Heights, that there is no permission to congregate in residential homes?

A. I stand by that no permission had been granted as a result of the application that had since been withdrawn. You know, we granted nothing here.

Q. But you are making a forward-looking statement. You're warning the citizens that there is no permission to congregate.

I guess the question I've got, and maybe it goes without saying: What did you mean by "congregate"? What were you—

(Cross-talking.)

A. I meant operating a shul or a house of worship or house of assembly, which, you know, that had never really been determined. We never got to that point.

I just know that from the beginning Mr. Grand had announced that he was opening the shul, and then he changed that. That got modulated in a couple different ways. And we didn't have any, you know, final determination here. I was not afforded the opportunity to—to congregate, ask further questions of the applicant or anything of the sort. And, you know, so we were back to the status quo and the status quo was what was in the cease-and-desist letter, and the cease-and-desist letter was based upon his announcement to the community that he was opening a shul, a house of worship, with davening times and with an invitation that had been spread far and wide.

And that since this time, hundreds of people had signed petitions pro and con. So lots of people knew about it.

Q. Okay. We're not going back to the—that.

But I'm talking right now about your announcement, official announcement as the mayor of the City of University Heights, telling the community, you know, three things: Number one, there's no permission to congregate; number two, no permission to operate a house of assembly or a house of worship; and number three, no permission to conduct activities consistent with those of a house of assembly.

And I think, just to put the cards on the table, I think it's number one and number three that really pose the problem.

I guess, let's go back to my -- the example that we had at the very beginning, when my father had a priest come and some friends came to celebrate a service, so he could take communion.

That taking communion with a priest would be an activity consistent with activities in a house of assembly, would it not?

A. It may.

Q. If my mother had heard that, she would have reasonably thought that's not permitted because that is conduct consistent with that in a house of assembly, right?

A. Only if your mother had filed an application and then withdrawn it after a cease-and-desist letter had gone out.

Your example is not on all fours of what happened here, sir.

Q. I guess the issue here is: This prohibition is forward-looking.

And then I think you say, towards the end, if you see anybody conducting activities, you know, consistent with—that are a violation of the prohibitions I just layed out, you should report that.

MR. CLIMER: I'm going to object to the form of that one.

MR. QUAINTON: Okay. Can we -- let's go back to, if you could, Debi, if you could find where the mayor mentions reporting of conduct. It's towards the end.

(Record read.)

Q. So let's bring it back to Mr. Grand and what he has said his intent is.

He has said, in no uncertain terms, his intent is to have a group of people pray at his home on shabbos. Praying is an activity in a group setting—is an activity consistent with that you would find in a house of assembly, is it not, Mr. Mayor.

A. I don't. There was so much said here, I don't know what your question is now. What is your question?

Q. Okay. I'll try again.

Mr. Grand has said that his intent was to have a group of men form a minyan and pray in his house. You remember that, right, that he said that that was his intent?

A. He has said a lot of things, that was a variation of it.

Q. Okay. And you are aware that at a synagogue—

(Zoom interference.)

Q. —congregate in a minyan and pray. That is something that happens in a synagogue, right?

A. Your words got garbled there. I heard something that sounded like addison and gog.

Q. That's correct or in a synagogue, in other words—

A. In a synagogue, okay.

Q. It's correct that a minyan would be present in a synagogue and that I would pray in a synagogue, right?

A. I don't know that a minyan of men praying is necessarily—has to happen in a synagogue. I don't believe that's the case.

Q. Well, that's exactly the point.

But in a synagogue, is it not the case that a minyan of men do gather and pray? That's something that happens in a synagogue, right?

A. I think that is one of the things that can happen in a synagogue.

Q. So if that same minyan of men, as you said, doesn't have to happen in a synagogue, happens in a private home, that's activity consistent with activity in a house of assembly, right?

A. It may.

Q. It would be prohibitive by your order of March 23rd?

A. If it violates the law. I mean, I did put a qualifier.

Q. Well, what you said was conduct consistent with that in a house of assembly is prohibited, right?

And so a minyan of men praying is activity that happens in a synagogue. It's one of the main things that happens in a synagogue. In fact, it doesn't have to happen in synagogue. It can happen at Yankee Stadium, it can happen in JFK, it can happen anywhere.

What you're saying is, if you do that; that is, gathering as a minyan to pray in a home, that's prohibited, right?

A. No. I think it's exactly as you just said. Because a minyan could pray in any number of places, that that doesn't, by itself, determine what a synagogue is.

You brought up Yankee Stadium earlier, and Yankee Stadium is not a synagogue, although there are, you know, apparently some organized events that happen.

And, in fact, we would have later discussion, you know, after this hearing, where the city was prepared to—you know, once Mr. Grand made clear that all he was talking was doing that, and no longer talking about trying to get a special-use permit to open a shul, we were prepared to stipulate that he could do exactly that.

Q. I'm not talking about what happened afterwards. I'm really just talking about the prohibitions that you announced and the effects that they would reasonably have on a reasonable person.

Again, going back, just the language that you said is, let there be no mistake that it is not permitted to conduct activities consistent with those of a house of assembly in a residential setting, a residential home, and that—I'm not talking about what happened afterwards.

You talked about Mr. Grand being all over the place. I think the same thing could be said of the city.

That particular prohibition, would that not stop Mr. Grand from gathering a minyan of people in his home and doing what Jews do in synagogue, which is to gather in a minyan and pray—

MR. CLIMER: Objection.

Q. Prohibited under your order.

A. Well, no, I don't think it does, because, you know—and you've been back and forth on this, too—you don't need to be in a synagogue to gather a minyan of Jewish men to pray.

But what I spoke about at that evening, in that meeting, was performing activities consistent with operating a house of assembly. And praying is only one of several things that occurs in order to make a building a house of assembly.

Q. Well, it may be that your words, as you said, were prepared in haste. But the words you chose were that it was prohibited to conduct activities consistent with those in a house of assembly. Those were the words you used.

And, I guess, maybe looking back on it now, do you wish you had been more—that you would have used different words?

MR. CLIMER: Objection.

THE WITNESS: I stand by the words that I used.

It wasn't intended to be a treatise on religious use of properties. It was intending to inform the public that the city did not grant anything here, because the application had been withdrawn and that we were back to the status quo, which was the cease-and-desist letter. That didn't preclude future discussion. In fact, future discussion was had, which you know.

Q. I'm not talking about the future discussion. I want to focus on this, you may report this to the city.

So if somebody had seen activity consistent with that in a house of assembly, i.e. if somebody had seen men, Jewish men in traditional orthodox clothing, going into Mr. Grand's house, let's say four or five men going into the house, that somebody might think, wow, they are going in to conduct activities consistent with those in a house of worship, and I can report them.

Do you see how somebody could think that, listening to your words?

A. Somebody could.

Q. And do you regret that, that somebody could take your words and think they should be reporting on Jews who are seeking to pray in a private home?

A. I wouldn't put it the way you did, but I don't regret letting our citizenry know that if they see something that they don't—that may be inappropriate, that they go ahead and report that.

There seems to be a lot of confusion among members of our community on an array of things that they happen to observe, that the city also observes.

You know, they are welcome to report something that they think may be out of order. And we're happy to look into it. And, you know, if there is something that is, in fact, out of order, we can address it, and if not, we can let the resident know there's nothing here.

Q. Wouldn't this have been a perfect opportunity to call out the antisemitism that Ms. Urban had brought to your attention and was on display, in part, at the hearing of March 4th?

A. It could have been. But at the same time there was really no business before the committee at this point, okay? So I would have been more likely to have brought it up if we had actually been able to deliberate.

Q. So let's stop really quickly right now. I'm sorry, I didn't mean to cut you off. Did you have anything more to—

A. What I'm saying is there's a lot more I would have said on the record if Mr. Grand hadn't withdrawn his application, including the fact that there were a lot of comments that were made, that have been, as you rightly, I think, observed, are or sounded antisemitism.

And had we had an opportunity to deliberate, I think we would have addressed that.

But that's a hypothetical at this point. Mr. Grand withdrew his application. We didn't get an opportunity to deliberate. There were a lot of things I was going to say on the record about his application, but I didn't.

Q. But you didn't use that opportunity to call out antisemitism, right?

A. I didn't use that opportunity to talk about the merits of his application either.

MR. QUAINTON: We're going to stop right now for one sec. I want to confer with Jonathan, see if there are any last few questions.

(Discussion held off the record.)

(Recess taken from 6:25 p.m. to 6:33 p.m.)

THE VIDEOGRAPHER: Back on the record, 6:33 p.m. Go ahead.

(Exhibit 23 PB, Community News article, updated 9-16-21, no Bates stamps, was marked for the purposes of identification.)

Q. Let's go off. I'm having the same problem.

THE VIDEOGRAPHER: Going off the record at 6:33 p.m.)

(Recess taken from 6:33 p.m. to 6:39 p.m.)

THE VIDEOGRAPHER: Back on the record 6:36 p.m. Go ahead.

BY MR. QUAINTON:

Q. Mayor Brennan, this will be real quick. I'm just going to briefly show you an article that was published in—I think this is a Cleveland times, and the title here is "Jewish community decries presence of private investigator outside University Heights shul on a holy day," dated September 16th 2021. There's a whole article about this.

Jonathan just briefly scroll through. You don't have to actually read it. It goes on for several pages.

There was, apparently, an investigator hired on Rosh Hashanah.

[. . .]

[October 31, 2023 Transcript, p.55]

. . . discovery.

Q. I want to ask you a question, though, what—do you know what—what is a shul to you?

A. Well, a—it's any number of things. You know, it can be a small gathering place, yes, you know. But it can also be, you know, in the case of like Aleksander Shul, they've called it a shul, but they've also called it the great shtetl. And, you know, it's much larger than a shul or a shtetl.

You know, in the case of Aleksander Shul, I was in the basement of that building at one time with at least hundred 120 or 130 other people.

And, you know, so—so in my experience, a shul has come to mean, you know, that which is a small gathering for a small group of folks or it can be a very large group. And a shul is interchange-

able with a school and/or a synagogue, depending on context.

Q. So if a shul can be a small gathering, what was it that made you think that Mr. Grand's use of the word shul was anything other than a small gathering?

A. Well, because he built out his home on a . . .

[. . .]