

No. 25-965

In the
Supreme Court of the United States

DANIEL GRAND,
Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,
Respondents.

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

**BRIEF FOR THE BUCKEYE INSTITUTE
AS AMICUS CURIAE SUPPORTING PETITIONER**

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QUESTION PRESENTED

Whether *Williamson County's* takings-based finality requirement displaces the rules that ordinarily determine when First Amendment and associated religious-liberty claims are ripe for judicial review, just because those claims arise in a land-use context.

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INTEREST OF AMICUS CURIAE¹

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

The Buckeye Institute is dedicated to protecting individual liberties, and especially those liberties guaranteed by the Constitution of the United States, against government interference. The Buckeye Institute has a particular interest in this case because it arises in the State of Ohio and raises issues of individual religious liberty and the right to use and enjoy private property without government interference.

¹ As required by Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Private property and religious liberty have historically served as twin bulwarks against tyranny. Private property—in the form of real property—establishes a zone into which, absent a warrant or exigent circumstances, the government cannot physically reach. The freedom of conscience guaranteed by the First Amendment and the Ohio Constitution similarly establishes a spiritual curtilage that the government cannot invade.

Both practically and legally, these two rights support and rely upon one another. The historical and philosophical tie between religious observance—especially heterodox religious observance—is at the heart of America’s founding, and the protection of private property runs deep in our law and history. From the Pilgrims secret meetings in Scrooby Manor, to John Locke’s theories of linking property and religious liberty, to Madison’s belief that the free exercise of one’s religion is itself a property right, American history and the legal philosophy—property and freedom of conscience have flowed together. When it enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA), Congress recognized this confluence and how private property helps to guarantee religious freedom. RLUIPA thus warrants the broadest possible interpretation in favor of those who use private property to engage in religious conduct.

That the government action limiting religious practice in a private home has occurred in Ohio is anomalous with the State’s rich tradition of respecting the rights of religious minorities to worship as they

please on their own land. Carved out of the Northwest Territory and settled under the Northwest Ordinance, protection of property rights and freedom of conscience is part of the State's DNA. Heterodox sects, from the Shakers to the Church of Jesus Christ to the Amish, helped build Ohio. The freedom to meet and worship on private property was essential to those early Ohioans living free and full lives. It remains essential today.

Because RLUIPA affirms those dual freedoms, courts should read it broadly. Such a reading is consistent with the statute's text and is in keeping with our Nation's recognition that the physical freedom to do what one wants on one's own property affirms the spiritual freedom to worship as one chooses. The two are inextricably linked. And as Madison wrote, a government which "prides itself in maintaining the inviolability of [physical] property . . . yet directly violates the property which individuals have in their opinions, their religions, their persons and their faculties, . . . such government is not a pattern for the United States." James Madison, *Property* (1792), reprinted in 6 *The Writings of James Madison* 103 (1906).

ARGUMENT

I. **The privacy afforded by private property supports religious freedom.**

The English mansion known as Scrooby Manor is likely less familiar to Americans than the name of its caretaker, William Brewster. But it occupies an infeasible space in the history of religious liberty and this Nation's Founding. Brewster was a prominent Brownist—a member of the Puritan Separatist sect that eventually boarded the Mayflower. Along with William Bradford, Brewster helped establish the Separatist church at Scrooby Manor, holding clandestine meetings and worship services there, in relative safety from the prying eyes of the Church of England. James Truslow Adams, *The Founding of New England* 86 (1921); see also Francis J. Bremer, *The Religion of the Pilgrims*, in William Bradford, *Of Plymouth Plantation* 3–6 (Colonial Society of Massachusetts ed. 2020) (1856).

Brewster was “Master of The Postes,” a position that included not only the delivery of the mail but also the upkeep of the manor house, which belonged to the Archbishop of York. As the resident caretaker of Scrooby Manor, and with the Archbishop away, Brewster offered the Puritans a place to worship away from the English establishment, which had outlawed the sect in 1604. *Id.*

Religious experience for the Separatists, like many other faiths, exists where spiritual belief joins a ritual performed in the physical world, typically with fellow believers. As William James noted in his 1896 lecture and essay *The Will to Believe*, “[t]he whole defence of

religious faith hinges upon action.” William James, *The Will to Believe* (1896), reprinted in *Essays in Popular Philosophy* 29 n.1 (1912). James observed that the action required was, like Grand’s practice of group prayer, an action that was out of the ordinary enough to connect the spiritual world to the physical. Thus, “if the action required or inspired by the religious hypothesis is in no way different from that dictated by the naturalistic hypothesis, then religious faith is a pure superfluity, better pruned away, and controversy about its legitimacy is of piece of idle trifling, unworthy of serious minds.” *Id.* at 29–30 n.1. Or as the apostle James put it, “[f]aith by itself, if it have not works, is dead.” James 2:17 (New King James).

Faith needs a physical space in which to operate, and private property provides that space. This was true for the Pilgrims because no public space was open to them. Indeed, their voyage and the founding of the Plymouth Colony were attempts to find a safe place to practice their faith. If not for the privacy of Scrooby Manor, Americans like Mr. Grand might have little hope of observing the rites in the physical world that they believe link them to the eternal. The Court can honor this tradition by reading RLUIPA broadly and allowing Mr. Grand to protect his safe place to manifest his faith in a world that seems increasingly hostile to it.

II. Our Nation's intellectual history links private property and religious freedom.

This Court has famously held that

in this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.

Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 446 (1969) (quoting *Watson v. Jones*, 89 U.S. (13 Wall.) 679, 728 (1872)).

These ideas did not spring full-formed from the heads of earlier Justices. They are a result of the intellectual groundwork laid by the eighteenth-century Enlightenment. Historians and this Court routinely credit John Locke—along with Montesquieu—with laying the intellectual cornerstone in the mansion of American liberty. See, e.g., Randall P. Bezanson, *Institutional Speech*, 80 Iowa L. Rev. 735, 775 (1995); *Obergefell v. Hodges*, 576 U.S. 644, 726 n.4 (2015) (Thomas, J., dissenting). Locke's experience living through the religiously fueled political upheaval of seventeenth-century England taught both a distrust of state power and a concomitant embrace of religious tolerance. His views, in turn, influenced Madison, who expanded, refined, and embedded them in our Constitution.

In his essay *A Letter Concerning Toleration*, Locke posited that private property precedes religious observance. If a man has a right to perform a secular act on his property, the government has no basis for prescribing the same act when done for religious reasons:

Melibaeus, whose calf it is, may lawfully kill his calf at home, and burn any part of it that he thinks fit. For no injury is thereby done to any one, no prejudice to another man's goods.

John Locke, *A Letter Concerning Toleration* (1689) reprinted in 5 *The Works of John Locke, in Nine Volumes* 34 (12th ed. 1824). It then followed for Locke that Melibaeus could therefore also “kill his calf also in a religious meeting.” *Id.*

In his words, “[w]hatsoever is permitted unto any of his subjects for their ordinary use, neither can nor ought to be forbidden by him to any sect of people for their religious uses.” *Id.* Thus, according to Locke, if Mr. Grand can host a gathering of ten men at his home on Saturday afternoon to watch football, he should have the same right to host a gathering of ten men to engage in prayer:

If any man may lawfully take bread or wine, either sitting or kneeling in his

² Lest Mr. Grand take inspiration from Locke, the City of University Heights makes it illegal to “keep, harbor or maintain any horse, mule, cattle, sheep, goat, swine, rabbit, goose or other fowl or animal within 500 feet of the inhabited dwelling.” University Heights Codified Ordinance § 618.20. The City also prohibits open burning. *Id.* at § 660.08.

own house, the law ought not to abridge him of the same liberty in his religious worship; though in the church the use of bread and wine be very different, and be there applied to the mysteries of faith and rites of divine worship.

Id.

Under the ordinance that the City seeks to enforce and the mayor's warning to Mr. Grand, it seems that a resident could lawfully use his or her home to host a secular book club, but not a Bible study group. See Pet'r's Br. 8 (citing J.A. 12–13, 24 and 30) (noting that the city has not threatened larger secular gatherings). Or, to put a finer point on it, a resident could lawfully host a book club to read and discuss a religious text, so long as the attendees did not ascribe any religious significance to it.

As this court has recognized, a component of a free and religiously diverse society is that regardless of one's faith, a common respect for secular law governs. Thus, while Melibeaus is presumptively free to slaughter his own calves for any reason he sees fit, he is still subject to laws of general application. Locke explains that "if peradventure such were the state of things that the interest of the commonwealth required all slaughter of beasts should be forborne for some while, in order to the increasing of the stock of cattle that had been destroyed by some extraordinary murrain," the government is perfectly in its rights to enact a complete ban. Locke, *supra*, at 34.

But reliance on a law of general application does not help the City. The connection between private

property and religious liberty fits comfortably with the notion of civil authority. A prohibition on slaughtering certain animals at home, if enacted for the common good and enforced regardless of whether that slaughter was commercially or religiously motivated is unobjectionable. But Locke added an important caveat, “the magistrate ought always to be very careful that he do not misuse his authority to the oppression of any church, under pretence of public good.” *Id.* at 35; see also *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 566 (1993) (Souter, J., concurring in part and concurring in the judgment) (“[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.” (cleaned up) (citation omitted)).

Locke’s view condemning government action taken with religious animus is not merely a point of historical interest. This Court has frequently looked to Locke, because his political philosophy “permeated the 18th-century political scene in America.” *Carpenter v. United States*, 585 U.S. 296, 348 (2018) (Thomas, J., dissenting) (quoting *Obergefell*, 576 U.S. at 727 (Thomas, J., dissenting)). His intellectual heir, James Madison, who imprinted his views directly on the First Amendment, takes the argument two steps further. Indeed, Locke’s views on toleration were merely a precursor to Madison’s more expansive beliefs.

First, while Locke advocated for toleration of those of different faiths, he found atheists intolerable. See Locke, *supra*, at 47. Second, Locke’s notion of toleration, which was endemic to his time, was that freedom of conscience was not a fundamental right,

but rather an act of legislative grace. Kellen R. Funk, *Propertied Rites*, 36 Const. Comment. 175, 179 (2021).

The idea of toleration in the seventeenth century carried more than a whiff of religious bigotry. “To be tolerated was to be simultaneously marked as odious.” *Id.*

Madison elevated free exercise of religion to the status of a fundamental right. *Id.* at 180–181. The First Amendment protects heterodox sects and nonbelievers alike through the Establishment Clause. Just as important, Madison was a champion of private property. In his 1792 essay *Property*, he argued that religious freedom was itself a form of property and as deserving of protection as any chattel or piece of real estate. Man, he said, “has a property of peculiar value in his religious opinions and in the profession and practice dictated by them.” Madison, *supra*, at 101. To Madison, “as a man is said to have a right to his property, he may be equally said to have a property in his rights.” *Id.* Importantly, Madison did not limit his view of property to the right to hold private religious opinions, but to the “profession and practice dictated by them.” *Id.* He ties the property right of religious freedom to its exercise in the physical world.

But it was not only Madison who saw private property and freedom to worship as intertwined. John Adams famously observed that “[p]roperty must be secured, or liberty cannot exist.” John Adams, *Discourses on Davilla* (1790), reprinted in 6 *The Works of John Adams, Second President of the United States* 280 (1851).

III. The free exercise of religion has been protected in Ohio since the Northwest Ordinance.

That Mr. Grand should find his religious practice in his own home restricted in the State of Ohio is an historical irony. Although Ohio cannot claim to have been founded by religious separatists, its roots as part of the Northwest Territory, which expressly protected property rights and encouraged religious practice in the territory, made it a home for people who believed and worshipped differently.

The Northwest Ordinance of 1787 was drafted in part and championed by Reverend Manasseh Cutler, one of the founders of Ohio's first settlement at Marietta. It touted "extending the fundamental principles of civil and religious liberty" to the territory as one of its purposes. Confederation Cong., An Ordinance for the Government of the Territory of the United States North-West of the River Ohio, § 13 (1787). It included a bill of rights—or as the document calls them, "articles of compact"—for the new territory, the first national expression in carving out affirmative rights. The first article of this statutory bill of rights guarantees that "[n]o person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory." *Id.* at art. 1. The Ordinance is unusual in that it not only protects religion, it positively promotes it, stating, "[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be ever encouraged." *Id.* at art. 3.

The Ordinance also included the first national expression of the need to protect private property, providing that “[n]o man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person’s property, or to demand his particular services, full compensation shall be made for the same.” *Id.* at art. 2. While these guarantees may ring as mere patriotic boilerplate to modern ears, in 1787, they were necessary marketing tools for inducing settlement. Cutler reportedly stated that “he was acting for associates, friends, and neighbors, who would not embark in the enterprise, unless these principles were unalterably fixed.” David Scott, *The Ohio Constitution of 1803, Jefferson’s Danbury Letter, and Religion in Education*, 121 Ohio Hist. J. 73, 77 (2014).

These guarantees promoted the settlement that the Continental Congress wanted on terms that those taking the risks of settlement demanded. It is impossible to know how the settlement of Ohio and the rest of the Northwest Territory might have been different without these guarantees, but Cutler’s statements, and the religious minorities and heterodox sects that did, in fact, settle in Ohio, indicate that the ability to hold one’s own property secure and worship according to one’s conscience mattered to these men and women.

Scholars have noted that the property protections set forth in the Northwest Ordinance were of the holistic Madison sort, including the free exercise of religion. See, e.g., Matthew J. Festa, *Property and*

Republicanism in the Northwest Ordinance, 45 Ariz. St. L.J. 409, 440 (2013). Settlers, assured that their liberties would be respected, streamed into Ohio and, in 1803, it became a state. The guarantee of free exercise of religion is prominently included in Ohio's Constitution. In language broader than the First Amendment's, it provides

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. . . . Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Ohio Const. art. I, § 7.

The word “indefeasible” carries particular weight, connoting the Madisonian view of rights as property. And the text repeats nearly verbatim the Northwest Ordinance's words regarding the benefits of religion to good government and the protection of *every religious denomination* in its own mode of worship that follows from it. In a State with such guarantees in its DNA, the actions of the City of University Heights are ironic.

It is also no small irony that University Heights borders Shaker Heights, a community named for the minority sect that settled there in the early 1800s.

Shakers had moved into southwestern Ohio and established the community of Union Village, near Lebanon, but expanded to northeast Ohio and what would become Shaker Heights in the 1820s. Richard D. Klyver, *North Union Shaker Community*, Case Western Reserve University, <https://case.edu/ech/articles/n/north-union-shaker-community> (last visited Sep. 3, 2026). The North Union Shaker community was made possible by “Jacob Russell, a Revolutionary War veteran who had purchased 475 acres” of land in the Western Reserve. *Id.* Russell’s son Ralph visited the South Union community and returned a believer. At the urging of an elder, he established a Shaker colony on the Russell property in 1822, which he called “the Valley of God’s Pleasure.” *Id.*

The North Union Shaker community eventually grew to “some 60 buildings” on “1,366 acres” owned by the Russell family. *Id.* The Shakers’ beliefs were well outside the mainstream, most notably, their requirement that believers take a vow of celibacy and their contention that Jesus Christ had visited the North Union community for several months in 1843. *Id.* But living on their own land in their own community, they were insulated from whatever prejudices more prevalent religions might hold against them. While the sect eventually died out, as one might expect of a religion committed to celibacy, they left an indelible mark on northeast Ohio. More importantly, while they lived, they worshipped God as they saw fit, without interference, on their own land.

Northeast Ohio also plays an important role in the story of The Church of Jesus Christ of Latter-day

Saints, which founded a community in Kirtland, Ohio. Newall and Elizabeth Whitney were early settlers in Kirtland, who, after hearing several leaders of The Church of Jesus Christ preach, were baptized into the church in 1830. *Newel and Elizabeth Whitney Home*, The Church of Jesus Christ of Latter-day Saints (Mar. 7, 2025), <https://tinyurl.com/Whitney-Home>. In 1831, Joseph Smith and his wife Emma came to Kirtland and lived with the Whitneys. With no Temple or other public worship space, “the Whitney home became a place of meeting and revelation” for church members. *Id.* For members who faced official and unofficial persecution in many places, the Whitney House served as a refuge and a safe place to practice their faith with other believers. The house still stands in Kirtland, about a half hour’s drive from Mr. Grand’s home in University Heights. The Whitneys did not have the benefit of RLUIPA, or any official avenue to protect their worship space and had to rely on the fact that they met and worshipped in a private home. Like the Separatists at Scrooby Manor, private property in Ohio served as a lifeline for the faithful members of The Church of Jesus Christ in Kirtland before they built their Temple, and before they eventually moved west.

Another example of minority religions using their homes for worship is Ohio’s Amish community. The first Amish families to call Ohio home arrived from Somerset County in 1808. Alvin J. Beachy, *The Amish Settlement in Somerset County, Pennsylvania*, 28 *Mennonite Quarterly Rev.* 263, 284–85 (1954).

The Young Center for Anabaptist and Pietist Studies at Elizabethtown College estimates that there

were approximately 84,000 Amish residents in Ohio in 2023, and their number is growing. Erin Gottsacker, *Your new neighbors may drive a buggy-Ohio's Amish population is growing*, Ohio Newsroom (May 28, 2024), <https://www.statenews.org/section/the-ohio-newsroom/2024-05-28/your-new-neighbors-may-drive-a-buggy-ohios-amish-population-is-growing>.

The Sixth Circuit's decision requiring the "finality" of a rejected permit application before one can seek relief under RLUIPA threatens their form of worship because the Amish faith requires them to meet for worship services in one another's homes. Donald B. Kraybill, Steven M. Nolt & David L. Weaver-Zercher, *The Amish Way* 25 (2010).

Driving through an Amish area, you won't see any Amish churches. That's because there aren't any. In fact, the Amish rarely use the German word *Kirche*, which suggests a church building. Instead they use the Pennsylvania German word *Gmay*, a short form of *Gemeinde* or community, for both the local congregation and its worship services.

Id.

Amish worshippers gather with their *Gmay* on "every other Sunday morning, and households take turns hosting the services, which rotate around to all the homes with sufficient space." *Id.* A *Gmay* district, which is usually only a few square miles, "typically includes twenty-five to forty households, usually 130 to 175 people." *Id.*

The hyper-locality of the *Gmay* is not just a convenience for people who do not use motorized transportation, it is a core component of their faith. “[B]ecause members live near one another, the *Gmay* includes kin and close neighbors who often see one another through the week. This is a body to which Amish people commit themselves. Here they hold membership, and here they are held accountable for their conduct.” *Id.*

Mr. Grand’s *miniyan* mirrors the Amish *gmay* in its goal that group worship in a home carries more intimacy and thus more accountability between members than worship in a public church. It is symbolic of the worshippers’ belief that their God’s existence is not limited to a church building but that He is present as a part of their home life and their immediate community. This is a powerful and important theological point for these believers and the type of practice RLUIPA was enacted to protect.

IV. This case exemplifies a resurgence of religious discrimination and persecution of minority religions in Ohio that the Court should reject.

While Ohio has often allowed in-house religious worship, it has not always been, and—in some situations like this—still is not, very hospitable to religious minorities. The Court can give clear direction that governments must accommodate and protect minority religions.

Members of The Church of Jesus Christ of Latter-day Saints. The early history of The Church of Jesus Christ in Ohio provides an early example of religious

persecution. Kirtland became the principal center of the church during the 1830s, but growing religious, political, and economic tensions produced intense opposition. Historical scholarship documents the increasingly hostile environment surrounding the Church and its members. See W. J. McNiff, *The Kirtland Phase of Mormonism*, 50 Ohio Hist. J. 261, 263–68 (1941).

The hostility was not merely rhetorical. In 1832, an Ohio mob attacked Joseph Smith at Hiram, Ohio, beating, tar-and-feathering, and attempting to forcibly administer poison to him. See Church News Archives, *This week in Church history*, Church News (Mar. 24, 2007), <https://www.thechurchnews.com/2007/3/24/23233467/this-week-in-church-history-122/>; see also *About Hiram*, Village of Hiram, Ohio, <https://hiramohio.org/community/index.php> (last visited Aug. 31, 2026).

Eventually, financial difficulties within the church and continued hostilities from local residents led to the departure of Joseph Smith and other church leaders from Ohio in 1838. Harry F. Lupold & Robert Psuik, *Mormons*, Case Western Reserve Univ., <https://case.edu/ech/articles/m/mormons> (last visited Sept. 1, 2026). McNiff’s account of the Kirtland period in the Ohio History Journal is particularly useful because it identifies the broader social conflict surrounding the church.

Catholics. Catholics likewise encountered organized religious and political hostility in nineteenth-century Ohio. Historian Jed Dannenbaum concluded that anti-Catholicism, nativism, and

temperance were among the principal “ethnocultural” issues that disrupted Cincinnati’s political system during the 1850s. Protestant Cincinnatians and other anti-Catholic factions particularly scorned efforts by Catholic immigrants to gain state support for Catholic schools, playing on nativist fears of undermining American values. These attacks also extended to attempts to portray Catholics as living hedonistic lifestyles. See Jed Dannenbaum, *Immigrants and Temperance: Ethnocultural Conflict in Cincinnati, 1845–1860*, 87 *Ohio Hist. J.* 125, 125, 128–30 (1978).

In 1875, Rutherford B. Hayes harnessed suspicion of Catholics to win the Ohio governor’s mansion. He noticed that concerns over increased Catholic immigration to Ohio and the resultant propagation of Catholic schools were fueling support for the embattled Republican Party in Ohio. Thomas E. Buckley, *A Mandate for Anti-Catholicism: The Blaine Amendment*, *America* (Sep. 27, 2004), <https://www.americamagazine.org/politics-society/2004/09/27/mandate-anti-catholicism-blaine-amendment/>. Hayes’s gubernatorial victory was followed by then-President Ulysses S. Grant’s proposal of a “Blaine Amendment” that would have cut off any public financial support for Catholic schools in America and urged a broader “separation” of church and state, though this was couched in anti-Catholic terms. See Philip Hamburger, *Separation of Church and State* 322–23 (2002).

Jews. The experience of Jewish Ohioans illustrates a different form of religious discrimination—exclusion from residential communities. In the 1920s, developers of Shaker Heights adopted restrictive measures designed to prevent Jews and African Americans from purchasing property in the community. In 1925, the Van Sweringen Company developed a restriction that, although it did not expressly identify Jews or African Americans, was deliberately designed to achieve a discriminatory objective. See *Ludlow Community Association, Cleveland Civil Rights Trail*, <https://clevelandcivilrightstrail.org/explore-the-trail/ludlow-community-association/> (last visited Sep. 1, 2026).

The 1927 Sixth Circuit Court of Appeals case *Village of University Heights v. Cleveland Jewish Orphans' Home*, 20 F.2d 743 (6th Cir. 1927), is indicative of the kind of property-related discrimination that Jews were subjected to in Ohio at the time. In that case, the Village of University Heights denied (on zoning grounds) the relocation of a Jewish orphan's home from Cleveland to University Heights. The Sixth Circuit determined that the reasons the Village had cited for denying the relocation had nothing to do with the specific parcel of land the orphan's home was interested in, and that it "cannot be said that the police power of a city extends to the exclusion of an orphanage therefrom because the children in the orphanage are of the same religious belief or nationality." *Id.* at 746. Even so, the Village opposed the relocation after losing the federal case. See Stuart Meck, *Zoning and Anti-Semitism in the 1920s: The Case of Cleveland Jewish Orphan Home v.*

Village of University Heights *and Its Aftermath*, 4 J. of Planning Hist. 91 (2005).

Similarly, in 1943, the Rabbinical College of Telshe asked to have a mansion they planned to purchase in Cleveland Heights (for worship/ministry purposes) rezoned. While the owner had no problem conveying the property to the College, there existed housing restrictions intended to discriminate against Jews, and the wider community was hostile. The Cleveland Heights government rejected the College's request for rezoning—but only a decade later approved plans by a Baptist church to relocate to that exact site. Sue Hoffman, *Lecture addresses historic housing discrimination*, Cleveland Jewish News (Feb. 11, 2014), <https://tinyurl.com/2uxyvu4w>.

Shakers: In 1811, Ohio passed a law permitting courts to deprive Shaker fathers of the custody of their children and order property settlements to families that they had once lived with. In one related case, the Cincinnati Superior Court opined that a Shaker father who sought custody over his 6- and 8-year-old daughters after their mother had already died was “not seek[ing] that he may rebuild his family altar” but was instead planting his children in “the cold ascetic bosoms of the ‘female care-takers.’” Ralph Michael Stein, *A Sect Apart: A History of the Legal Troubles of the Shakers*, 23 Ariz. L. Rev. 735, 743 (1981) (quoting *State ex rel. Ball v. Hand*, 5 West.L.J. 361 (Super. Ct., Cincinnati, Ohio 1848)). Shakers perpetuate themselves by finding young converts, as they do not believe in sexual reproduction, so this could be construed as an attack on the ability of the sect to even survive.

Religious minorities have repeatedly encountered pressure to conform to the beliefs, practices, and expectations of the majority. Religious liberty requires more than a formal prohibition on establishing a state religion. It requires protection for the ability of minority faiths to worship, speak, work, live, and participate in civic life—with other members of their faith—without being compelled to conform to the religious practices or preferences of the majority.

V. RLUIPA should be broadly construed based on its plain language and its intent of protecting the intersection of private property and religious exercise.

Under federal statutory law and interpreting jurisprudence, statutes designed to facilitate constitutional protections, such as RLUIPA, must be construed broadly in favor of the constitutional rights they are designed to implement. See *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (citing 42 U.S.C. § 2000cc-3(g)). This is not a case where the Court must divine Congressional intent from speeches or legislative history. Congress codified its instructions within the text of RLUIPA itself. *Id.* Specifically, 42 U.S.C. § 2000cc-3 mandates that the Act “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” 42 U.S.C. § 2000cc-3(g).

Federal courts consistently apply this rule of broad construction, noting that RLUIPA was enacted to provide heightened protection for religious exercise from government-imposed burdens, and in certain contexts, provides protections greater than the First

Amendment itself. *Fox v. Washington*, 949 F.3d 270, 277 (6th Cir. 2020).

Here, the Sixth Circuit applied a narrow view of RLUIPA and what constitutes finality. In light of Congress’s directive to construe the Act to the “maximum extent permitted by its terms” in favor of a broad protection of religious liberty, the Sixth Circuit erred.

RLUIPA’s history—it was enacted to narrow but strengthen the Religious Freedom Restoration Act (“RFRA”) after some of its provisions were struck down—further supports a broad reading consistent with its stated purpose and the historical importance of the rights it protects. Members of this Court have noted that RLUIPA “practically mirrors RFRA, its ‘sister statute.’” *Landor v. La. Dept. of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1951 (2026) (Jackson, J., dissenting). And that “[i]mportantly, RFRA was not meant to be merely advisory; like the constitutional rights it sought to imitate, RFRA needed bite.” *Id.*

Thus, while RLUIPA’s drafters anticipated that the most likely problem that congregations would face was local government’s denial of permits for houses of worship, they did not limit the statute to permit denials. Governments might insist on permits when they are not required and threaten and cajole citizens to limit religious exercise in their own homes. When legislating to protect a right as well-established as the freedom to worship on one’s own property, Congress should not be required to foresee every possible way in which a government might violate that right. The statute, as its own text instructs and as history counsels, should be construed broadly in favor of

religious liberty. To the extent that the Sixth Circuit focused on whether a deprivation of a right occurred because Mr. Grand withdrew his permit, it erred by allowing its inquiry to turn on a single tree in the forest. Applying Madison's view of rights as property, the deprivation occurred—and continues to occur—when Mr. Grand cannot worship freely in his home without fear of government harassment.

The free exercise of religion, particularly on one's own property, was important enough to the worshippers at Scrooby Manor that they were willing to risk their lives for it. Two hundred years after they sailed from Leyden, this time supported by the ideas of the Enlightenment transferred into law in the Northwest Ordinance and First Amendment, other pilgrims sought the freedom to live and worship according to their own consciences in "the Ohio Country." Another two hundred years have passed, and Congress has given the protection of property and religious practice more bite. Mr. Grand is heir to this heritage, which warrants a broad construction of RLUIPA to protect his freedom to worship as he pleases in his own home.

CONCLUSION

For all the foregoing reasons, the Sixth Circuit's decision should be overruled.

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