No. 25-2191

In the United States Court of Appeals for the Second Circuit

LOST LAKE HOLDINGS LLC, et al.,

Plaintiffs-Appellants,

v.

TOWN OF FORESTBURGH, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York
No. 7:22-cv-10656, Hon. Vincent L. Briccetti

BRIEF OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; NATIONAL ASSOCIATION OF EVANGELICALS; AND COALITION FOR JEWISH VALUES AS *AMICI CURIAE* SUPPORTING APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Amici are nonprofit corporations. They do not issue stock and are neither owned by nor are they the owner of any other corporate entity, in part or in whole. They have no parent companies, subsidiaries, affiliates, or members that have issued shares or debt securities to the public. *Amicus* National Association of Evangelicals wholly owns World Relief, a nonprofit religious corporation.

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INTEREST OF AMICI CURIAE[1]

Amici are religious organizations with a shared commitment to defending religious freedom under the Constitution. We have a surpassing interest in the correct interpretation and application of the Religion Clauses of the First Amendment. That interest necessarily includes opposing government actions that discriminate against religion—including actions by land use authorities. Some *amici* joined briefs supporting the religious claimants in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and *Carson v. Makin*, 596 U.S. 767 (2022).

SUMMARY OF ARGUMENT

This case asks whether the Town of Forestburgh may wield its land use power to keep out a religious minority—and then thwart judicial review by invoking ripeness. It cannot.

Record evidence of religious discrimination is undeniable. A Town official labeled Lost Lake and its Hasidic Jewish community "locusts"

[1] No counsel for any party authored this amicus brief in whole or in part and no entity or person, aside from amici, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel for all parties have consented to the filing of the brief.

that Forestburgh residents should repel at all costs.[2] That the victims of religious discrimination in this case "belong[] to the most vilified and persecuted minority in history" should have prompted heightened judicial concern. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 646 (1943) (Frankfurter, J., dissenting). Yet the district court dismissed Lost Lake's free exercise claim as unripe. That decision was wrong.

Religious discrimination is categorically barred by the First Amendment. History records that the Free Exercise Clause prohibits special burdens based on religion. Supreme Court precedent confirms that interpretation. Forestburgh's religious discrimination has inflicted irreparable injuries that the decision below leaves unremedied.

Yet the district court dismissed Lost Lake's free exercise claim based on a ripeness analysis that is flawed in two respects.

First, the court failed to account for the doctrinal revolution wrought by *Knick v. Township of Scott*, 588 U.S. 180 (2019), and *Pakdel v. City and County of San Francisco*, 594 U.S. 474 (2022) (per curiam).

[2] *See* Treene Decl. ¶ 13 & Ex. J (email from Justin Evans, Oct. 20, 2020), Dkt. No. 177, 177-10. Although Evans had been on the Town's Comprehensive Plan Review Committee, he was not a member at the time of the email.

Knick partly overruled *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), by removing state exhaustion as an element of ripeness for takings claims. *Pakdel* clarified that a claim is ripe when the government's decision is "conclusive." 594 U.S. at 480. Forestburgh's position is nothing less than "conclusive": It rejected plans the Town previously approved, denied building permits, ordered Lost Lake to restart an expensive and time-consuming environmental review process, and revalued Lost Lake's property to artificially inflate property taxes. *See* Am. Compl. 2–5, Dkt. No. 60.

Second, the district court applied the wrong ripeness standard to Lost Lake's free exercise claims. A Supreme Court decision issued earlier this year holds that "when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." *Mahmoud*, 606 U.S. at 526 (citation omitted); *see also 303 Creative LLC v. Elenis*, 600 U.S. 570, 597 (2023). Nothing in the Court's precedents justifies hobbling a free exercise claim with ripeness rules developed for regulatory takings.

Circuit precedent misled the district court into minimizing *Knick* and *Pakdel* while applying *Williamson County* after its exhaustion requirement was overruled. *See, e.g.*, *BMG Monroe I, LLC v. Vill. of Monroe*, 93 F.4th 595 (2d Cir. 2024). As in *Buller v. Commissioner*, 152 F.4th 84, 85–86 (2d Cir. 2025), this Court should modify or overrule circuit decisions where necessary to conform with binding Supreme Court precedent. The Constitution forbids what Forestburgh has done. The judgment below should be reversed.

ARGUMENT

I. THE FREE EXERCISE CLAUSE CATEGORICALLY BARS RELIGIOUS DISCRIMINATION BY LOCAL LAND USE AUTHORITIES.

A. Religious Discrimination Is Categorically Prohibited by the Free Exercise Clause.

The text of the First Amendment places an unqualified bar on religious discrimination: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. Laws that single out a person or group to bear special burdens because of religious belief or practice effectively prohibit "the free exercise of religion." *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

Founding-era evidence confirms that interpretation. State ratifying conventions proposed amendments to the original Constitution outlawing religious favoritism. Virginia's convention offered an amendment declaring that "no particular sect or society ought to be favored or established by Law in preference to others." Va. Ratifying Convention, Proposed Amendments, June 27, 1788, *reprinted in* COMPLETE BILL OF RIGHTS 13 (Neil H. Cogan ed., 2d ed. 2015). Other states proffered similar amendments. *See id.* at 12–13. James Madison borrowed from these proposals when introducing an amendment assuring that "[t]he civil rights of none shall be abridged on account of religious belief or worship" and that "the full and equal rights of conscience" would be secure. *See* 1 ANNALS OF CONG. 451 (Joseph Gales ed., 1834). From his proposal came the First Amendment's guarantee of "the free exercise of religion." U.S. CONST. amend. I.

Scholars during the early Republic understood that guarantee to prohibit religious discrimination. One commentator explained that the Constitution's commitment to "the equality of all our citizens" precludes "the denial of the smallest civic right" on the ground of "religious intolerance." WILLIAM RAWLE, A VIEW OF THE CONSTITUTION OF THE

UNITED STATES OF AMERICA 121 (2d ed. 1829). Justice Story added that the First Amendment "sought to cut off the means of religious persecution … and the power of subverting the rights of conscience in matters of religion." JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 701 (reprint ed. 1987) (1833).

The Founders' animosity toward religious discrimination owes its force to pre-Revolution experience. In England, failure to take an oath renouncing certain Catholic doctrines meant a person could not hold public office, sit in Parliament, or bring a lawsuit. *See, e.g.*, Second Test Act 1678, § III, 30 Car. II, stat. 2, cap. 1, *reprinted in* ENGLISH HISTORICAL DOCUMENTS 1660–1714, at 393 (Andrew Browning ed., 1953). Religious minorities faced civil disabilities in the colonies, too. "Roman Catholics as well as non-Christians, including Jews, were denied the franchise and other rights of citizenship even in Rhode Island." LAWRENCE HENRY GIPSON, THE COMING OF THE REVOLUTION: 1763–1775, at 13 (1954). Experience both personal and historical led the Founders to reject religious discrimination when adopting the First Amendment.[3]

[3] *See* Brief for The Church of Jesus Christ of Latter-day Saints, et al. as *Amici Curiae* Supporting Petitioners, *Carson*, 596 U.S. 767 (No. 20-1088),

B. Supreme Court Decisions Affirm a Categorical Bar on Religious Discrimination.

The Supreme Court has held that "a law targeting religious beliefs as such is never permissible." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). That categorical rule encompasses any law that "discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Id.* at 532.

Lukumi illustrates the practical application of this "fundamental nonpersecution principle of the First Amendment." *Id.* at 523. There, city ordinances criminalized animal sacrifice—an "an integral part" of Santeria religious practice—while exempting animal slaughter by kosher butchers and others operating for nonreligious purposes. *Id* at 527–28, 531, 536. Although the ordinances did not discriminate against religion on their face, "mere compliance with the requirement of facial neutrality" did not suffice. *Id.* at 534. A closer look revealed that the ordinances "singled out" Santeria adherents "for discriminatory treatment." *Id.* at 538. "[A]lmost the only conduct subject to" the ordinances was Santeria

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at 3–19 (detailing the historical and precedential support for a categorical bar on religious discrimination).

members' religious exercise, the city's asserted interests could be achieved by less restrictive means, and the ordinances were enacted "in direct response to the opening" of a Santeria church in the community. *Id.* at 535–40.

Although *Lukumi* invoked strict scrutiny, it effectively applied a categorical rule. The Court began and ended its opinion with an unqualified rule against laws that discriminate based on religion. *Id.* at 523, 547. Religious discrimination that singles out a particular set of beliefs or practices for special burdens or penalties is conclusively prohibited. *Id.* at 547.

Other Supreme Court decisions are equally unsparing in condemning religious discrimination. In *McDaniel v. Paty*, the Court invalidated a Tennessee statute that prohibited ministers from serving as delegates to a state constitutional convention. 435 U.S. 618, 620 (1978) (plurality opinion). In *Fowler v. Rhode Island*, the Court reversed the conviction of a Jehovah's Witness minister for preaching in a public park because the conviction amounted to "discrimination … barred by the First and Fourteenth Amendments." 345 U.S. 67, 69 (1953). More recently, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*

invalidated a state commission's determination that a baker's conscientious refusal to create a custom wedding cake for a same-sex couple violated a state civil rights law when the commissioners expressed "clear and impermissible hostility toward" the baker's religious beliefs. 584 U.S. 617, 634 (2018).

C. Local Land Use Authorities Are Bound by the First Amendment Bar on Religious Discrimination.

The First Amendment's bar on religious discrimination applies with full force to local land use authorities. Erecting places of worship, ministerial housing, religious college buildings, and other religiously significant structures is one of the basic preconditions for religious exercise. BORIS BITTKER ET AL., RELIGION AND THE STATE IN AMERICAN LAW 504 (2015). Our Nation has long fostered special solicitude toward religious organizations that seek to build and maintain sites for religious communities to gather, worship, and learn together. *See, e.g.*, *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 681–87 (1970) (Brennan, J., concurring) (describing history of property tax exemptions for religious land uses dating back to the 1700s).

This solicitude extends to land use decisions. Courts routinely adjudicate free exercise claims against land use authorities that allegedly

deny or restrict plaintiffs' ability to construct places for religious gathering. *See, e.g.*, *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548 (4th Cir. 2013) (county council); *Cornerstone Bible Church v. City of Hastings*, 948 F.2d 464 (8th Cir. 1991) (city planning commission). And when land use decisions are rooted in religious discrimination, courts have not hesitated to invalidate them under the Free Exercise Clause.

Take *Fortress Bible Church v. Feiner*, 694 F.3d 208 (2d Cir. 2012). There, this Court concluded that a New York town's "arbitrary, capricious, and discriminatory" efforts to stall construction of a church, including by "disingenuously misus[ing]" an environmental review process to delay and deny approval, violated the Free Exercise Clause. *Id.* at 219–20. Or consider *LeBlanc-Sternberg v. Fletcher*, where this Court sustained a jury verdict that a municipality conspired to violate the First Amendment rights of Orthodox rabbis by adopting zoning policies to prevent the rabbis from using their homes for prayer services. 67 F.3d 412, 429 (2d Cir. 1995).

Other circuits have likewise vindicated the free exercise rights of religious organizations in land use disputes. In *Tenafly Eruv Association,*

Inc. v. Tenafly, the Third Circuit held that a New Jersey borough's selective enforcement of an "often-dormant" ordinance prohibiting placement of signs and other materials on utility poles likely violated the Free Exercise Clause, where the borough "single[d] out" Orthodox Jews "for discriminatory treatment" by requiring them to remove wires they had placed on the poles to facilitate religious observance. 309 F.3d 144, 168 (3d Cir. 2002) (citation omitted). And in *Islamic Center of Mississippi, Inc. v. City of Starkville*, the Fifth Circuit held that a Mississippi city violated the Free Exercise Clause by denying a zoning exception for a mosque where the city's approval of exceptions for the neighboring churches "suggest[ed] that it did not treat all applicants alike." 840 F.2d 293, 302 (5th Cir. 1988).

The First Amendment bar on religious discrimination applies when a land use authority engages in "discriminatory … actions" to prevent the construction of a religious building, *Fortress Bible Church*, 694 F.3d at 219, or "single[s] out" a particular religious group for disfavor, *Tenafly Eruv Ass'n*, 309 F.3d at 168 (citation omitted); *see also Islamic Ctr. of Miss.*, 840 F.2d at 302–03 (failing to act in a "religiously neutral manner"

by "appl[ying] different standards" to different religious denominations seeking zoning exceptions violates free exercise).

D. Discriminatory Land Use Decisions Burden the Religious Exercise of Religious Organizations.

"For many individuals, religious activity derives meaning in large measure from participation in a larger religious community." *Corp. of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring). Religious communities need buildings for believers to gather, to worship, and to carry out other religious activities. Congress recognized that discriminatory land use authorities can impose real burdens on religious practice when it adopted the Religious Land Use and Institutionalized Persons Act, or RLUIPA. 42 U.S.C. § 2000cc *et seq*. RLUIPA's lead sponsors defended the necessity for federal legislation because "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements." 146 CONG. REC. S7774 (Jul. 27, 2000) (statement of Sens. Hatch & Kennedy). Yet Congress "compiled massive evidence" that the "right to assemble for religious purposes" is "frequently violated." *Id.* Religious groups are "frequently discriminated against on the face of

zoning codes," which "frequently exclude churches in places where they permit … large groups of people to assemble for secular purposes." *Id.*

Courts—including this one—likewise recognize the burdens that discriminatory land use decisions impose on religious organizations. *See, e.g.*, *Fortress Bible Church*, 694 F.3d at 220 (affirming district court finding that town "substantially burdened" church's religious exercise by "act[ing] in bad faith and disingenuously misus[ing]" environmental review process to block church's building application); *Islamic Ctr. of Miss.*, 840 F.2d at 299 (concluding that city burdened Muslim students' religious exercise by denying approval for mosque near campus and instead requiring them to seek approval for location that would be difficult for many to reach). Although "religious institutions do not have a constitutional right to build wherever they like," when local land use authorities engage in "disingenuous bad faith efforts to stall and frustrate" building plans, they unquestionably burden religious organizations' exercise of religion. *Fortress Bible Church*, 694 F.3d at 221; *see also LeBlanc-Sternberg v. Fletcher*, 781 F. Supp. 261, 269–70 (S.D.N.Y. 1991) (Free Exercise Clause is violated when "governmental

action has a chilling effect on the ability to associate for religious purposes"), *aff'd*, 67 F.3d at 425.

E. Forestburgh Has Unconstitutionally Discriminated Against Lost Lake Because of Religion.

Record evidence establishes that Forestburgh discriminated against Lost Lake out of religious bias toward the Hasidic Orthodox Jews who planned to live in the development Lost Lake is pursuing. By denying Lost Lake building permits for its "shovel-ready" housing project, the Town burdened its religious exercise and discriminated on religious grounds. *See* Am. Compl. 22, Dkt. No. 60.

To start, the Town's refusal to approve building permits has burdened Lost Lake's religious exercise. Living in close proximity to fellow congregants is a critical aspect of Hasidic religious practice. Hasidic Orthodox Jews "go to great lengths to avoid assimilation into" the larger community and its values. *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 691 (1994). They do this by living in tight-knit communities that "minimize contact with any influence that might distract them from fulfilling their religious obligations." Judith Lynn Failer, *The Draw and Drawbacks of Religious Enclaves in a Constitutional Democracy: Hasidic Public Schools in Kiryas Joel*, 72 IND.

L.J. 383, 387 (1997). Gathering in such communities "enables the kind of maximum religious immersion they value," Charis G. Orzechowski, *A Non-Intent Based Challenge to Exclusionary Zoning: Why RLUIPA Can Help One Religious Community When Constitutional Challenges Fail*, 40 RUTGERS L. REC. 1, 21, (2013), while at the same time "protect[ing] the community from contaminating influences," Failer, *supra*, at 387 (quoting JEROME R. MINTZ, HASIDIC PEOPLE: A PLACE IN THE NEW WORLD 2 (1992)).

Living in close proximity is also essential to Hasidic religious exercise because of the strict prohibition on traveling by vehicles on the Sabbath. Because Hasidic Orthodox Jews may not "[t]ravel by car, bus or train on Sabbaths and holidays," they must live within walking distance of synagogues, yeshivas, kosher food suppliers, and elderly family members. *Ungar v. N.Y. City Hous. Auth.*, No. 06-cv-1968, 2009 WL 125236, at *5 (S.D.N.Y. Jan. 14, 2009). Preventing Appellants from building homes prevents them and their co-religionists from practicing their religion.

Forestburgh's actions have also discriminated against Appellants because of their religion, in at least two ways.

First, Forestburgh's land use process brims with evidence of religious animus. *See Masterpiece Cakeshop*, 584 U.S. at 634, 638. As noted, a member of Forestburgh's Comprehensive Plan Review Committee compared Hasidic Orthodox Jews to "locusts" who "kill[] everything they encounter" and "drain[] every last resource." Treene Decl., Ex. J, Dkt. No. 177-10. That same official also said "their sect is notorious for mysogyny [sic] and child abuse," *id.*, and described their religious practices as "Transylvanian Hasidic brainwashing," *id.*, Ex. A, Dkt. No. 177-1. A member of the Town's Zoning Review Committee called Hasidic Orthodox Jews "beavers" who "just love to pack themselves into a house" and "take everything off the tax rolls." Am. Compl. 18, Dkt. No. 60. Forestburgh officials evidently forgot that "[i]n this country, the place of secular officials isn't to sit in judgment of religious beliefs, but only to protect their free exercise." *Masterpiece Cakeshop*, 584 U.S. at 640 (Gorsuch, J., concurring).

Second, the permit denials target Appellants for disfavor based on those same religious beliefs and practices. *See Lukumi*, 508 U.S. at 535, 538. When the Town Board thought Lost Lake would be constructed by a non–Orthodox Jewish developer, it "strongly supported" the project. Am.

Compl. 14–17, Dkt. No. 60. But after the development was sold and Forestburgh officials discovered the new owners' religious affiliation, officials threw up roadblocks left and right. Forestburgh retained special outside counsel, dramatically boosted development fees, demanded additional approvals, and reopened the expensive and time-consuming environmental review process. *Id.* at 26–30, 36–38, 69–72. The Town Supervisor told residents there would "be much more oversight" than the previous developers had. *Id.* at 24–25. Added to which, the Zoning Board of Appeals upheld the permit denials based on Lost Lake's proposal to offer "reasonably priced and affordable units to *Hasidic Jewish families*." *Id.* at 65–66 (emphasis added). A more blatant example of religious targeting is difficult to imagine.

In short, Forestburgh has subjected Lost Lake to a land use development process tainted by religious bias and capped by the Town's denial of necessary building permits. Both process and result have burdened Lost Lake's religious exercise and discriminated against Lost Lake and the other appellants because of their religious beliefs. In all these respects, Forestburgh has violated the Free Exercise Clause.

II. DISMISSING LOST LAKE'S FREE EXERCISE CLAIM AS UNRIPE CONTRADICTS SUPREME COURT PRECEDENT.

A. The Ripeness Standard Applied by the District Court Is Irreconcilable with Supreme Court Precedent.

Lost Lake's complaint catalogs Forestburgh's discriminatory treatment and asserts a claim under the Free Exercise Clause. *See* Am. Compl. 82, Dkt. No. 60 ("Defendants have deprived and continue to deprive Plaintiffs of their right to free exercise of religion … by implementing and imposing land use regulations as applied in a manner that discriminates against them on the basis of religion."). The decision below dismissed Lost Lake's free exercise claim along with other claims. *Lost Lake Holdings LLC v. Town of Forestburgh* ("*Lost Lake*"), No. 22-cv-10656, 2025 WL 1899026, at *12 (S.D.N.Y. July 9, 2025). Dismissal contradicts Supreme Court precedent.

1. *Williamson County* dominates the decision below. *See Lost Lake*, 2025 WL 1899026, at *5. That decision also guided the analysis in *BMG Monroe I*, on which the lower court relied. *See Lost Lake*, 2025 WL 1899026, at *12 n.1. Because the court deemed Lost Lake's claims as-applied rather than facial, it concluded that *Williamson County*'s final-

decision rule applied. *Id.* at *7–8. But succeeding Supreme Court decisions have sharply limited that rule.

2. *Williamson County*'s ripeness standard requires an owner to show that "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" and that the owner has sought "compensation through the procedures the State has provided for doing so." 473 U.S. at 186, 194. That standard no longer controls.

Knick revolutionized ripeness doctrine by overruling *Williamson County*'s exhaustion requirement. 588 U.S. at 206. In the Court's view, "[f]idelity to the Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights." *Id.* at 189. Because "a taking without compensation violates the self-executing Fifth Amendment at the time of the taking," *id.* at 194, *Knick* held that "[t]akings claims against local governments should be handled the same as other claims under the Bill of Rights." *Id.* at 202. Under *Knick*, an

owner whose property has been taken for public use may "proceed directly to federal court under [42 U.S.C.] § 1983." *Id.* at 191.

Knick left *Williamson County*'s final-decision requirement intact—a requirement the Court clarified in *Pakdel*. It reaffirmed that administrative exhaustion "is not a prerequisite for a takings claim" and added that "[t]he finality requirement is relatively modest." 594 U.S. at 478, 480. "For the limited purpose of ripeness," the Court explained, "ordinary finality is sufficient." *Id.* at 481. Or, in other words, "nothing more than *de facto* finality is necessary." *Id.* at 479. A regulatory takings claim is ripe when "the government has reached a conclusive position" about how it will restrict property. *Id.* at 480.

Knick and *Pakdel* rest on broad principles—not on fact-bound rulings. *See, e.g.*, *Knick*, 588 U.S. at 189 ("Fidelity to the Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights."); *id.* at 185 ("The Civil Rights Act of 1871, after all, guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials, and the settled rule is that

exhaustion of state remedies is not a prerequisite to an action under [42 U.S.C.] § 1983." (internal quotation marks omitted)); *Pakdel*, 594 U.S. at 481 ("Given that the Fifth Amendment enjoys 'full-fledged constitutional status,' the Ninth Circuit had no basis to relegate petitioners' claim 'to the status of a poor relation' among the provisions of the Bill of Rights.") (quoting *Knick*, 588 U.S. at 189).

3. Inexplicably, the decision below nowhere cites *Knick*. It fails to acknowledge the demise of the state exhaustion requirement or *Knick*'s emphasis on the availability of judicial relief under section 1983 when a violation of the Bill of Rights is evident. Omitting *Knick* fatally undermines the district court's decision.

The district court mentions *Pakdel*—but only to try distinguishing it. *Pakdel* makes no difference, the court says, because the owners there "made two requests for an exemption" and "the relevant zoning agency was later divested of authority over the variance application." *Lost Lake*, 2025 WL 1899026, at *8. Emphasizing those facts suggests that "a conclusive decision is not 'final' unless the plaintiff *also* complied with administrative processes in obtaining that decision." *Pakdel*, 594 U.S. at 479. Yet *Pakdel* rejected *precisely* that conception of ripeness. Deeming a

takings claim unripe until the plaintiff pursues relief through procedures available under state or local law "plainly requires exhaustion." *Id.* *Pakdel* held, to the contrary, that "administrative 'exhaustion of state remedies' is not a prerequisite … when the government has reached a conclusive position." *Id.* at 480 (quoting *Knick*, 588 U.S. at 185).

4. By ignoring *Knick* and misapplying *Pakdel*, the district court erred in dismissing Lost Lake's claims. In place of these controlling precedents, the court relied on special ripeness rules with the requirement that "a developer bringing a federal claim challenging a municipality's denial of a building permit 'must first appeal an adverse planning-board decision to a zoning board of appeals *and* submit at least one meaningful application for a variance.'" *Lost Lake*, 2025 WL 1899026, at *6 (emphasis in original) (quoting *BMG Monroe I*, 93 F.4th at 598).

Those rules defy *Knick's* repudiation of state exhaustion as "an unjustifiable burden" and its principle that "[a] property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it." 588 U.S. at 185. The district court's approach likewise contradicts *Pakdel*'s rejection of "administrative

'exhaustion of state remedies' … when the government has reached a conclusive position." 594 U.S. at 480.

The decision below reads as if *Knick* and *Pakdel* left *Williamson County* untouched. But the Supreme Court has twice held that ripeness no longer entails administrative exhaustion—a euphemism that for many owners means a Kafkaesque demand for compliance with local procedure even when it offers no substantive relief.

Nor does the Town Board's invitation "to apply for modifications to the permit applications" salvage the district court's faulty ripeness analysis. *Lost Lake*, 2025 WL 1899026, at *8. That invitation matters only if an owner must pursue all available avenues of administrative relief before bringing a claim to federal court. Since *Knick* and *Pakdel* rejected administrative exhaustion as an element of ripeness, the Town Board's invitation makes no difference. Lost Lake's free exercise claim is ripe for adjudication.

Supreme Court doctrine binds the district court. *See McAllister v. New Jersey,* 396 F.2d 776, 777 (3d Cir. 1968); *Stell v. Savannah-Chatham Cnty. Bd. of Ed.*, 318 F.2d 425, 427 (5th Cir. 1963). By dismissing Lost

Lake's free exercise claim based on incorrect ripeness doctrine, the decision below is fundamentally unsound.

B. Applying a Heightened Ripeness Standard to Lost Lake's Free Exercise Claim Conflicts with Supreme Court Precedent.

1. Claims under the Free Exercise Clause must satisfy Article III—but not more.

Federal courts ordinarily apply a two-part standard for determining ripeness. The claimant must demonstrate "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). This is the prevailing standard. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 146 n.8 (2007) (citing *Abbott Labs.*).

Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568 (1985), illustrates how *Abbott Labs* applies to constitutional claims. There, pesticide makers challenged the constitutionality of a federal law mandating arbitration of disputes over the valuation of research data that a manufacturer had to disclose to register a pesticide. Fitness for judicial decision was evident because "[t]he issue presented in this case is purely legal, and will not be clarified by further factual development." *Id.* at 581. Hardship would result because manufacturers "whose data

have been used pursuant to the challenged scheme" suffer "the continuing uncertainty and expense of depending for compensation on a process whose authority is undermined because its constitutionality is in question." *Id.* (citation omitted); *accord Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998) (hardship occurs when the government imposes "adverse effects of a strictly legal kind").

Lost Lake readily satisfies *Abbott Labs*. Its free exercise claim is fit for judicial decision because the question whether the Town's land use decisions, and the process leading up to them, were tainted by religious discrimination is "purely legal, and will not be clarified by further factual development." *Thomas*, 473 U.S. at 581. Delaying or denying judicial review also imposes real hardship on Lost Lake. According to the complaint,[4] the Town has blocked Lost Lake "from performing any work on the Project … and would unnecessarily delay the Project by years, causing significant harm to [Lost Lake]." Am. Compl. 5, Dkt. No. 60. This harm is directly traceable to the Town's "anti-Semitic religious and racial animus," which led Town officials to "intentionally discriminate[] against

[4] Allegations in the complaint must be accepted as true because this appeal arises from the district court's grant of a motion to dismiss. *See Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022).

Hasidic Orthodox Jews by prohibiting the development of housing within the Town." *Id.* at 5–6. Because Lost Lake's free exercise claim is fit for judicial resolution and already imposes hardship, that claim meets the *Abbott Labs* standard.

2. Free exercise claims demand prompt judicial review—not delays based on a non-existent requirement of administrative exhaustion.

The decision below erred not only by failing to apply *Abbott Labs*, but by neglecting the distinctive character of a First Amendment claim. Only earlier this year, *Mahmoud* held that "when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." 606 U.S. at 526 (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). A claimant facing the loss of First Amendment rights may bring a pre-enforcement challenge by demonstrating that "the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158 (internal quotation marks omitted).

303 Creative illustrates this principle. There, a web designer brought a pre-enforcement action challenging Colorado's determination to compel her to design custom websites celebrating marriages that

contradict her religious beliefs. 600 U.S. at 588. The Court did not hesitate to decide her pre-enforcement challenge on the merits because the web designer "face[d] a credible threat of sanctions unless she conforms her views to the State's." *Id.* at 597.

Repeatedly, the Supreme Court has affirmed that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The urgent need for judicial relief is exemplified by *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam). There, an executive order by New York's Governor "impos[ed] very severe restrictions on attendance at religious services" within particular areas. *Id.* at 15–16. Because the state could not justify those restrictions under strict scrutiny, the Court concluded that the churches' "First Amendment claims are likely to prevail." *Id.* at 16. Quoting *Elrod*, the Court discerned that "the challenged restrictions, if enforced, will cause irreparable harm." *Id.* at 19. The executive order, as the Court read it, would mean that "the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred." *Id.* So the Court granted the church's application for injunctive relief. *Id.* at 21.

Here, the complaint alleges that the Town has deprived it of rights under the Free Exercise Clause "by implementing and imposing land use regulations as applied in a manner that discriminates against them on the basis of religion." Am. Compl. 60, Dkt. No. 60. Yet the district court held that Lost Lake's free exercise claim—and other constitutional and statutory wrongs—are unripe "because [Lost Lake] did not seek a variance or otherwise apply to change or vary the Lost Lake project approvals." *Lost Lake*, 2025 WL 1899026, at *5. In this way, Lost Lake found the federal courthouse door shut even though Lost Lake readily satisfied *Abbott Labs* and demonstrated the loss of First Amendment freedoms deserving urgent judicial intervention.

3. The Supreme Court has recently signaled its concern with the misuse of ripeness doctrine.

A case recently heard by the Supreme Court demonstrates its concern with the misuse of ripeness doctrine. *First Choice Women's Resource Centers, Inc. v. Platkin*, No. 24-781 (2025), involves a collection of faith-based pregnancy centers that challenged a state-issued subpoena demanding donor names and contact information. Failure to produce the information would subject First Choice to state enforcement proceedings and contempt. First Choice brought a lawsuit in federal court under 42

U.S.C. § 1983, alleging that the subpoena violated its rights to free speech and freedom of association. But the district court twice held that those claims were unripe, and the Third Circuit affirmed. *First Choice*, Pet.App.4a.

First Choice filed a petition for a writ of certiorari asking the Supreme Court to decide this question: "Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court?" *First Choice*, Pet'r's Br.i. The Court granted certiorari. *First Choice Women's Res. Ctrs., Inc. v. Platkin*, 145 S. Ct. 2793 (2025) (mem.).

The grant of certiorari in *First Choice* should prompt serious second thoughts about the decision below, even if *First Choice* isn't a land use case. Assuming reversal—as usually happens—it appears likely that ripeness doctrine will be severely limited as an obstacle to relief under section 1983 when a party suffers the loss of federal constitutional rights at the hands of a state official. Applying that rule to this case would be natural.

III. CIRCUIT PRECEDENT REQUIRING FREE EXERCISE CLAIMANTS TO SATISFY A HEIGHTENED RIPENESS STANDARD SHOULD BE OVERRULED TO FIT SUPREME COURT DECISIONS.

Circuit precedents are "binding authority" from which a three-judge panel usually does not depart unless and until a precedent is "overruled either by an en banc panel of our Court or by the Supreme Court." *United States v. Peguero*, 34 F.4th 143, 158 (2d Cir. 2022) (internal quotation marks omitted). An exception occurs when "an intervening Supreme Court decision casts doubt on the prior ruling." *Id.* (cleaned up). This exception requires "a conflict, incompatibility, or inconsistency between this Circuit's precedent and the intervening Supreme Court decision." *United States v. Afriyie*, 27 F.4th 161, 168 (2d Cir. 2022) (cleaned up).

A decision from earlier this year illustrates how the Court applies that exception. *Buller* asked whether Section 6213(a) of the Internal Revenue Code is a jurisdictional bar or a non-jurisdictional claim-processing rule. 152 F.4th at 86. The three-judge panel acknowledged decades of precedent holding that Section 6213(a) is jurisdictional. *Id.*

Yet the *Buller* Court invoked the "narrow exception" for "an intervening Supreme Court decision that casts doubt on our controlling precedent." *Id.* (quoting *Lotes Co. v. Hon Hai Precision Indus. Co.*, 753

F.3d 395, 405 (2d Cir. 2014)). In particular, *Arbaugh v. Y&H Corp.* held that unless the statute evinces congressional intent to the contrary, courts should not interpret a statutory provision as *de facto* jurisdictional. 546 U.S. 500, 514–15 (2006). Based on that rule, *Buller* asked "whether our cases that described the filing deadline in section 6213(a) as jurisdictional—but offered no explanation for that conclusion—remain good law after *Arbaugh* and its progeny." 152 F.4th at 86. The answer was no. *Id.* at 87. "[S]ection 6213(a) is—quite clearly—a nonjurisdictional, claim-processing rule." *Id.* at 88.

Buller points the way here. The district court's conception of ripeness heavily relied on circuit decisions rooted in *Williamson County*. *See Lost Lake*, 2025 WL 1899026, at *6 (quoting *Vill. Green at Sayville, LLC v. Town of Islip*, 43 F.4th 287, 294 (2d Cir. 2022); *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 348 (2d Cir. 2005); *Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 123 (2d Cir. 2014); and *BMG Monroe I*, 93 F.4th at 601. Under these, a First Amendment claim is unripe without administrative exhaustion.

As in *Buller*, Supreme Court decisions undermine the premises animating that circuit precedent. *Knick* eliminated state exhaustion as

an element of ripeness. 588 U.S. at 206. *Pakdel* affirmed that point, adding that the final-decision requirement is a "relatively modest" condition that a claimant satisfies by showing that "the government has reached a conclusive position" about how it will restrict property. 594 U.S. at 478, 480. Where circuit precedent demands exhaustion and administrative compliance, *Knick* and *Pakdel* repudiate that understanding of ripeness. Those conflicts render *Village Green*, *Murphy*, *Sunrise Detox V*, and *BMG Monroe I* ripe for reconsideration. *See Buller*, 152 F.4th at 86.

Even worse, these precedents relied on by the district court extend a seriously mistaken account of regulatory takings law to First Amendment claims. *See Sunrise Detox V*, 769 F.3d at 122 (citing decisions that "extend[] the final-decision requirement to zoning challenges based on … First Amendment rights of assembly and free exercise"). Applying a heightened ripeness standard to Lost Lake's free exercise claim contradicts *Mahmoud*, which teaches that free exercise claims may be ripe even before the government inflicts an actual injury. 606 U.S. at 526. Ripeness should present no obstacle when, as here, a claimant

demonstrates irreparable harm from a local government's denial of religious freedom.

That's not all. This Circuit's reliance on *Williamson County* to assess the ripeness of First Amendment claims conflicts with other circuits that have rejected that approach. The First Circuit applied "traditional notions of ripeness" rather than "specialized Takings Clause ripeness doctrine" when determining the ripeness of a church's free exercise challenge to an historic preservation ordinance. *Roman Cath. Bishop v. City of Springfield*, 724 F.3d 78, 91 (1st Cir. 2013). The Eleventh Circuit took a similar approach in *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349 (11th Cir. 2013). In its view, when a plaintiff alleges that "the mere act of designating his or her property historic was motivated by discriminatory animus, *Williamson County* is inappropriate because the injury is complete upon the municipality's initial act, and staying our hand would do nothing but perpetuate the plaintiff's alleged injury." *Id.* at 1357. Applying "traditional notions of ripeness," the court found the Temple's free exercise claim ripe. *Id.* at 1357–58. Likewise, the Seventh Circuit rebuffed *Williamson County* as the relevant standard for "non-Takings

Clause challenges to local zoning codes." *Church of Our Lord & Savior Jesus Christ v. City of Markham*, 913 F.3d 670, 678 (7th Cir. 2019).

Buller got it right. Because circuit decisions on ripeness contradict Supreme Court precedent, those decisions must be overruled. Misguided by the wrong ripeness standard, the district court dismissed Lost Lake's free exercise claim as unripe even though its claim is fit for judicial resolution and the denial of the precious right of religious freedom inflicts irreparable harm. The decision below should be reversed and Lost Lake's free exercise claim heard on the merits.

CONCLUSION

The guarantee of religious equality means little if local government can exclude a community for its faith while courts look the other way. Lost Lake's free exercise claim amply satisfies that prevailing ripeness standard. Lost Lake suffered irreparable harm because of the Town's religious discrimination, and no further factual development is necessary to clarify whether that discrimination violates the Free Exercise Clause.

Federal courts exist to vindicate federal rights. As Chief Justice Marshall taught, "*We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given*." *Cohens*

v. Virginia, 19 U.S. (6 Wheat) 264, 404 (1821) (emphasis added). The district court neglected that principle when dismissing a free exercise claim that is entirely ripe under controlling Supreme Court precedent. The decision below should be reversed.

December 15, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, R. Shawn Gunnarson, hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6,575 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f);
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I hereby certify that on December 15, 2025, this document, which is filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

December 15, 2025

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