

## OVERVIEW

Third Church of Christ, Scientist seeks support for legislation to reverse a decision of the Historic Preservation Review Board ("HPRB") to landmark its property at 16th and I Streets, N.W., so Third Church can demolish the structure and build a new one that meets its religious worship needs.

**Issue:** Over the objection of the church membership, HPRB designated the 1971 Third Church of Christ, Scientist Complex, an historic landmark on December 6, 2007. Among other things, Third Church objected because of the substantial burden landmark status would impose on its religious practices, in violation of the federal Religious Freedom Restoration Act ("RFRA") and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The church argues that landmark designation now precludes total demolition of its building and, in turn, its ability to practice its religion in accordance with the tenets of its faith.

The Board claimed it could not consider these federal claims under its landmarking authority. (See HPRB Hearing Transcript, December 6, 2007, 146-47; see also Third Church of Christ, Scientist Landmark Decision, Case No. 91-05, December 13, 2007, at 14.) Yet, Congress enacted RFRA and RLUIPA for that very reason: to ensure that zoning and landmarking bodies did consider the burden their actions would impose on religious institutions, and to refrain from such action unless there was a compelling government interest. See H.R. Rep. No. 88, 103rd Cong. 1st Sess. 1993, 1993 WL 158058 (Leg. Hist.) ("All governmental actions which have a substantial external impact on the practice of religion would be subject to the restrictions in this bill...[T]he test applies whenever a law or an action taken by the government to implement a law burdens a person's exercise of religion"). *It is worth noting that historic preservation has never been held to be a "compelling government interest."* See *Keeler v. Cumberland*, 940 F.Supp. 879, 886 (D.Md. 1996); see also *Mount St. Scholastica v City of Atchison*, 482 F.Supp.2d 1281, 1295 (D.Kan. 2007).

Third Church has retained the Becket Fund, a public interest law firm specializing in religious freedom claims, to explore possible litigation against the city under RFRA and RLUIPA. The Church seeks legislative relief as an alternative solution that will benefit more than just itself.

**Proposed Legislation:** The proposed legislation would amend the historic preservation law to bring it into conformance with the federal RFRA and RLUIPA statutes. Any religious institution that was designated an historic building over its objection based on religious freedom grounds since the enactment of RFRA on November 16, 1993, could, if it chooses, be "un-designated" by filing a religious burden statement within 90 days after the effective date of the legislation. There are 5 churches that would be affected, but Third Church is the only one certain of filing. In the future the HPRB would be precluded from designating a religious institution an historic landmark or including it in an historic district if the institution objected, unless a compelling government interest was cited.