



advised that Defendants have agreed to allow the Plaintiff until November 13, 2008, to respond to Defendants' Motion to Dismiss. Accordingly, Plaintiff will not be prejudiced by the filing of this Memorandum. Defendants have consented to the filing of this motion; counsel for the National Trust and Committee of 100 has contacted counsel for Plaintiff to ascertain Plaintiff's position on this motion, but has not to date not received a response.

**I. Interests of *Amici Curiae*.**

The National Trust for Historic Preservation was chartered by Congress in 1949 as a private nonprofit organization to "facilitate public participation" in the preservation of our nation's heritage. 16 U.S.C. §§ 461, 468. The National Trust works to protect significant historic sites and revitalize the livability of our communities by advocating for historic preservation as a fundamental value in programs and policies of the public and private sectors. The National Trust has its headquarters in Washington, D.C., and also has nine regional and field offices throughout the country.

The National Trust has more than 283,000 members nationwide, including more than 6,800 members in the District of Columbia. These members have a substantial interest in upholding the effectiveness of local preservation laws in communities throughout the District and nationwide. The National Trust is also a core member and serves on the board of directors of Partners for Sacred Places, a national nonprofit organization that has helped congregations and their communities sustain and actively use older and historic religious properties.

The National Trust's expertise on historic preservation law is nationally recognized, particularly with respect to the constitutional validity of local historic preservation ordinances, and the National Trust has frequently participated as a plaintiff or *amicus curiae* in state and federal cases throughout the country to enforce preservation laws and protect historic resources.

More specifically, the National Trust has participated as *amicus curiae* in numerous cases involving the applicability of historic preservation laws to religious properties.<sup>2</sup> The National Trust has examined the issues in this case from a national perspective, and believes that historic preservation contributes fundamentally to the welfare and the vitality of this nation and the District of Columbia.

The Committee of 100 on the Federal City (Committee of 100), a nonprofit, tax exempt organization incorporated under the laws of the District of Columbia, is the District's oldest planning and advocacy organization. Its mission is to safeguard and advance the fundamental planning, environmental and aesthetic values inherited from the L'Enfant Plan and the McMillan Commission that give Washington its historic distinction, natural beauty and overall livability. The Committee of 100 prepared and filed the application for landmark designation of the Third Church in 1991, which was later co-sponsored by the DC Preservation League. The Committee of 100 also presented expert testimony in support of the landmark designation in a hearing before the DC Historic Preservation Review Board on November 1, 2007.

## **II. Desirability of *Amici Curiae's* Participation and Relevance of the *Amici Curiae's* Memorandum to the Issues before this Court.**

The National Trust and the Committee of 100 are deeply concerned that Plaintiff's challenge to the landmark designation of the Third Church of Christ, Scientist could have far-reaching implications on historic landmark and district designations throughout the country. Plaintiff contends that the mere designation of its property as an historic landmark by the D.C. Historic Preservation Review Board is a violation of the Free Exercise Clause of the First

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<sup>2</sup> See, e.g., *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Murphy v. Town of New Milford*, 402 F.3d 342 (2d Cir. 2005); *Rector, Wardens & Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2d Cir. 1990), *cert. denied*, 449 U.S. 905 (1991); *Alger v. City of Chicago*, 753 F. Supp. 228 (N.D. Ill. 1990) (Plaintiff); *Society of Jesus of New England v. Boston Landmarks Comm'n*, 564 N.E.2d 571 (Mass. 1990).

Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.*, and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.* *Amici* believe that the issues in this case could have a significant impact on the regulatory authority of local governments to protect historic religious properties.

Specifically, the National Trust and the Committee of 100 are concerned that wholesale exemptions from landmark designation for any category of historic properties, as distinct from case-by-case requests for relief in order to make specific changes in designated features of the property, would undermine the integrity of historic preservation laws without justification. Further, Plaintiff's contention could have a "chilling effect" on the designation of historic landmarks and districts by state and local governments around the country. Such an effect would substantially reduce the landmark designations of qualified properties and resources, and would undermine the public interest in identifying and preserving historic properties. It is important that the identification and designation of historic landmarks and districts at all levels of government occur based on the intrinsic architectural, historical, or cultural significance of a property, rather than in response to extraneous and unsubstantiated or hypothetical concerns.

The proffered *Amici Curiae* Memorandum in Support of Defendants' Motion to Dismiss will provide additional legal authority in support of the Defendants' motion to dismiss based on lack of ripeness. This *amici* memorandum will also focus on the importance of the District of Columbia's historic landmark and district designation process through the District of Columbia Historic Landmark and Historic District Preservation Act (D.C. Law 2-144), D.C. Code §§ 6-1101-6-1115, and provide a national perspective on the relevance of historic landmark and district designations.

For the foregoing reasons, the National Trust for Historic Preservation and Committee of

100 on the Federal City respectfully request that this Court grant our motion to participate as *Amici Curiae*, and accept for filing the accompanying Memorandum in Support of Defendants' Motion to Dismiss.

Dated this 6<sup>th</sup> day of October, 2008.

Respectfully submitted,

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