``

THE BECKET FUND
FOR RELIGIOUS LIBERTY

March 28, 2006

By Facsimile and First Class Mail

Mayor Robert L. Walker
Members of the Sand Springs Development Authority
P.O. Box 338
100 East Broadway Street
Sand Springs OK 74063-0338
Facsimile: (918) 245-7101

Dear Mayor Walker and Members of the Sand Springs Development Authority:

As counsel for Centennial Baptist Church ("Church"), 125 West Morrow Road, Sand Springs, Oklahoma 74063, we contact you now to officially reject your January 18, 2006 offer to purchase the Church's property.1

To put it simply, the Church property is not for sale, and any attempt by the City to seize the Church's property through eminent domain will be challenged by immediate legal action. As explained in more detail below, the Church's right to engage in religious exercise on its property, free from government burden and interference, is fully protected by the First and Fourteenth Amendments of the United States Constitution, the Oklahoma Religious Freedom Act, 51 Okl. St. §§ 251 *et seq*. ("ORFA"), and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq*. ("RLUIPA").

We request that you immediately cease and desist from any further efforts to acquire the Church's property. You should regard this correspondence as official notice of the federal and state law claims that will be brought against you should you take any further steps to seize the Church's home in defiance of its constitutional and statutory rights.

1350 Connecticut Avenue, NW
Suite 605
Washington, DC 20036-1735
202-955-0095 Fax: 202-955-0090
www.becketfund.org

1 The property at issue consists of Parcel 4459 (located at 123 West Morrow Road), Parcel 4463, and Parcel 4461 (collectively, the "Property"). The Church owns all three parcels, and the City offered to purchase Parcel 4459 for $132,000, Parcel 4463 for $5,000, and Parcel 4461 for $5,000.

By way of further introduction, The Becket Fund for Religious Liberty is a nonpartisan, interfaith, public interest law firm dedicated to protecting the free expression of all religious traditions. The Becket Fund litigates in support of this principle in state and federal courts throughout the United States, both as primary counsel and as amicus curiae.

In particular, we have been intensely involved in litigation under federal and state constitutional and statutory laws that protect religious institutions from substantial burdens, discrimination, and arbitrary action in the land use context. For instance, we successfully represented the church in *Cottonwood Christian Center* v. *Cypress*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002), where the court held that the First Amendment prohibited the city from seizing the church's land through eminent domain in order to resell it to a Costco for commercial development.

In light of our experience in this and similar cases, we have concluded, as set forth in more detail below, that the City's seizure of the Church's Property through eminent domain would violate the First and Fourteenth Amendments of the U.S. Constitution, ORFA, and RLUIPA.

I. Operative Facts

The Sand Springs Development Authority, on behalf of the City of Sand Springs, recently commenced an urban renewal project to advance the City's economic and commercial interests. Regarded by the City as the "Keystone Corridor Redevelopment" Project (the "Project"), the Project calls on the City to acquire select parcels of property in a designated redevelopment area, demolish existing structures on those parcels, and redevelop the area by replacing the structures with commercial entities, such as a Home Depot.

After designating the redevelopment area, the City then determined, in its discretion, which parcels of property within that redevelopment area would be pursued and/or seized for resale. Some properties (such as a McDonald's and O'Reilly's Auto Parts) were spared and will remain unaffected by the City's redevelopment scheme, while others will be acquired by any means necessary, including seizure through eminent domain.

On January 18, 2006, Mayor Walker sent a letter to the Church informing Church officials of the Project. Mayor Walker informed the Church that the City intended to purchase and demolish the Church's recently renovated property so that it could be redeveloped as part of the City's commercial and economic development plan.2 The letter further informed the Church that it had at least ninety (90) days from the date the letter was mailed to vacate the property. The Development Authority has further indicated that it will

2 The City offered $132,000 for the Church's home and place of worship and an additional $10,000 for the Church's other parcels (Nos. 4463 and 4461), which the Church has designated for parking and further expansion of its ministry.

use eminent domain to forcibly seize properties whose property owners are unwilling to accept its purchase offers or otherwise enter into a purchase agreement with the City.

At the core of the Church's mission is the belief that it is called to serve the Sand Springs community. It has selected and maintained its present location on a major roadway so that its evangelical ministry would be known and visible. This visibility enables the Church to better serve the needs of the community and attract new members to the congregation. A home for the Church for decades, the Church's property on West Morrow Road has been the site for thousands of Sunday worship services, Sunday school classes, evening prayer meetings, Bible study sessions, baptisms, weddings, funerals, and many other religious events in the life of this small, but vibrant, community of faith.

The Church recently renovated its place of worship in 1999 to fully accommodate the Church's congregation for prayer, worship services, outreach ministry, and other religious social gatherings. Only six years old, the house of worship is structurally sound and not in need of restoration or repair.

The Church is committed to serving the Sand Springs community as it has done for decades. Its mission and ministry would be irreversibly damaged if it were forced to relocate either within the City or to a neighboring city. The Church is unaware of an acceptable alternative parcel *anywhere* in Sand Springs where the Church could relocate. On West Morrow Road is where the Church must remain in order to fulfill its religious mission and obligation.

II. The Free Exercise Clause of the First Amendment Protects the Church's Property from Seizure by Eminent Domain.

A. Seizing and Demolishing the Church's Property Would Substantially Burden the Church's Religious Exercise.

Seizing and demolishing the Church's home and principal place of worship by eminent domain would substantially burden the Church's ability to engage in fundamental religious practices, such as prayer and worship.

Courts routinely hold that denying the members of a religious body the ability to use their property to conduct core religious practices of prayer and worship constitutes a substantial burden on religious exercise. See, e.g., *Westchester Day School* v. *Village of Mamaroneck*, 2006 WL 538248 at *61 (S.D.N.Y. Mar. 2, 2006) (preventing religious school from expanding its facilities to engage in religious education substantially burdened its religious exercise); *Guru Nanak Sikh Soc'y of Yuba City* v. *County of Sutter*, 326 F. Supp. 2d 1140 (E.D. Cal. 2003) (county's denial of permit to build temple substantially burdened Sikh believers' religious exercise); *DiLaura* v. *Ann Arbor Charter Tp.*, 30 Fed. Appx. 501, 510 (6th Cir. 2002) (denial of zoning variance preventing individuals from assembling on land

for religious purposes constituted substantial burden).

Demonstrating the existence of a substantial burden "is not a particularly onerous task." *McEachin* v. *McGuiness*, 357 F.3d 197, 202 (2d Cir. 2004). Moreover, the fact that a church could hypothetically relocate and worship elsewhere does not mean that a government has not substantially burdened the church's religious exercise by preventing the church from using its own property. As a federal appeals court recently explained, the fact that a "burden would not be insuperable" does "not make it insubstantial." *Sts. Constantine and Helen Greek Orthodox Church* v. *City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005) (Posner, J.) (holding that delay, uncertainty, and expense associated with relocating to another property for worship was a substantial burden).

Accordingly, courts routinely find that condemning property used for religious exercise imposes a "substantial burden" on religious exercise that triggers strict scrutiny under the Free Exercise Clause of the First Amendment. See *Yonkers Racing Corp. & St. Joseph's Seminary* v. *City of Yonkers*, 858 F.2d 855 (2d Cir. 1988), cert. denied, 489 U.S. 1077 (1989) (applying strict scrutiny to City's condemnation of seminary's property); *Keeler* v. *Mayor & City Council of Cumberland*, 940 F. Supp. 879 (D. Md. 1996) (applying strict scrutiny under Free Exercise Clause to regulatory taking of property used for religious exercise); *Order of Friars Minor of the Province of the Most Holy Name* v. *Denver Urban Renewal Auth.*, 527 P.2d 804, 805 (Colo. 1974) (vacating trial court's order of immediate possession because City could not meet strict scrutiny standard). These courts have emphasized that seizing a congregation's house of worship unlawfully burdens its ability to worship, pray, and gather as the faith requires. See 80 A.L.R.3d 833 § 7(a) ("[t]he taking, under an eminent domain power, of property belonging to a religious organization has been considered . . . as an interference with the free exercise of religion when the property is unique or essential to the religious activities of the organization.").

In a case we have litigated that is ultimately indistinguishable from the one at bar, a federal district court ruled that because "[c]hurches are central to the religious exercise of most religions," "[p]reventing a church from building [or maintaining] a worship site fundamentally inhibits its ability to practice its religion." *Cottonwood Christian Center* v. *Cypress*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002).

In *Cottonwood*, the Redevelopment Agency of Cypress, California attempted to use its eminent domain power to take land that the church had recently purchased to build a new worship center. The court rejected Cypress's contention that it did not create a substantial burden on the congregation's religious exercise by taking the church's property: "a substantial burden on a person's religious freedom is placed on him or her when the government's action 'prevent[s] him or her from engaging in conduct or having a religious experience which the faith mandates.'" *Id.* at 1227 (quoting *Bryant* v. *Gomez*, 46 F.3d 948, 949 (9th Cir. 1995)). The court went on to hold that because gathering for prayer and worship was an essential element of the church's faith, Cypress could not take the property

intended by the church to be used for such prayer and worship. See *Cottonwood*, 218 F. Supp. 2d at 1226 ("[i]f Cottonwood could not build a church, it could not exist."). Similarly, if Centennial Baptist Church members cannot keep their church, they cannot exist. Seizing and demolishing the Church's home and place of worship is a substantial burden on the Church's religious exercise.

Moreover, the relationship between Centennial Baptist Church and the Property is unique. Unlike the church in Cottonwood, which acquired vacant property to construct a new church building, Centennial Baptist Church has been worshipping on the Property for years. Compelling Church members to abandon their own, long-standing location of religious exercise, land that has become sacred to the congregation, would render the burden even more severe than the one imposed in *Cottonwood*. See *United Church of the Medical Center* v. *Medical Ctr. Comm'n*, 689 F.2d 693, 701 (7th Cir. 1982) ("It is settled beyond the need for citation . . . that a given piece of property is considered to be unique, and its loss is always an irreparable injury.").

B. The Substantial Burden Would Be Applied Pursuant to a System of Individualized Assessments.

Although Free Exercise jurisprudence has undergone many refinements over the years, the U.S. Supreme Court has consistently held that "substantial burdens" on religious exercise trigger strict scrutiny when they are imposed pursuant to systems of "individualized assessments." See *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963) (applying strict scrutiny where government imposed "substantial burden" by declining to grant discretionary "good cause" exception); *Employment Div.* v. *Smith*, 494 U.S. 872, 884 (1990) (limiting *Sherbert's* strict scrutiny to "substantial burdens" imposed through systems of "individualized assessments"); *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 537 (1993) (applying "individualized assessments" doctrine outside unemployment context). See also *Blackhawk* v. *Pennsylvania*, 381 F.3d 202, 209-10 (3d Cir. 2004) (Alito, J.) (holding that "a regime of individualized, discretionary exemptions . . . triggers strict scrutiny" under the Free Exercise Clause).

In other words, under the Free Exercise Clause of the First Amendment, strict scrutiny applies where burdens are applied on a discretionary, case-by-case basis, as is so often true with respect to land use decisions, including redevelopment plans. See, e.g., *Cottonwood*, 218 F. Supp. 2d at 1223; *Keeler*, 940 F. Supp. at 885.

Here, the manner in which the City determined which parcels of property to seize for redevelopment is a classic example of a system of "individualized assessments." Not every parcel in the redevelopment area has been slated for seizure. Instead, the City was free to pick and choose among the properties in the redevelopment area, dooming some and preserving others. So, for example, the City decided that the existing McDonald's restaurant and O'Reilly's Auto Parts located within the redevelopment area would survive the Project,

but that the Church's recently renovated property and site of ongoing religious exercise would be demolished. This highly discretionary decision-making process represents at least as much a "system of individualized assessments" as in Cottonwood.

C. The City's Desire and Intent to Advance Its Economic and Commercial Interests Fails Strict Scrutiny.

As discussed above, the Free Exercise Clause of the First Amendment requires the government to satisfy strict scrutiny when it substantially burdens religious exercise through a system of individualized assessments. The Supreme Court has repeatedly held that "in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963) (emphasis added). See also *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.") (emphasis added); *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 546 (1993) ("a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests."). In other words, strict scrutiny requires the City to prove that substantially burdening the Church's religious exercise is the "least restrictive means" of achieving a "compelling government interest." *Id.*

In this case, we understand that the City has identified economic, commercial development (and the related goals of reducing blight and generating tax revenue) as the primary interest in seizing and redeveloping the Church's property. But numerous courts have made clear that redevelopment for economic purposes, though perhaps a legitimate concern, does not meet the high threshold of a compelling government interest. See, e.g., *Long Beach City Employees Ass'n* v. *City of Long Beach*, 719 P.2d 660, 672 (Cal. 1986) (preventing economic loss not a compelling state interest because there was no "imminent threat to the health or safety of the state's citizens"); *Hebert* v. *Los Angeles Raiders, Ltd.*, 29 Cal. Rptr. 2d 540, 545 (Cal. Ct. App. 1991) (litigant's economic interest did not advance "the compelling state interest of promoting the health or safety" of California's citizens); *First Covenant Church of Seattle* v. *City of Seattle*, 840 P.2d 174, 222-23 (Wash. 1992) (land use regulations that further cultural and esthetic interests, but do not protect public health or safety, are not compelling); *Keeler* v. *Mayor & City Council of Cumberland*, 940 F. Supp. 879, 886 (D. Md. 1996) ("stabilizing and improving property values"; "fostering civic beauty"; and "strengthening the local economy" are not compelling government interests) (emphasis added).

Once again, Cottonwood is instructive. There, the City similarly sought to justify its attempted seizure of church property by arguing that the taking would eliminate blight and generate economic development and tax revenue. But the court soundly rejected both arguments. First, the court held that blight is an "esthetic harm" that government has a "substantial" but not "compelling" interest in avoiding. *Cottonwood*, 218 F. Supp. 2d at

1228. The court also rejected the City's economic interests, reasoning that "[i]f revenue generation were a compelling state interest, municipalities could exclude all religious institutions from their cities." *Id.* Thus, none of the government's proffered interests were "compelling." Similarly, the City's economic and commercial interests at issue here are not "compelling."

Furthermore, there is no basis for concluding that the Church's recently renovated property is blighted. The Church is structurally sound and in no need of restoration or repair. Simply being located within a redevelopment area does not render the Church's Property blighted or susceptible to redevelopment. As the Supreme Court recently held, "the compelling interest test is satisfied through application of the challenged law [or government action] 'to the person' – the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales* v. *O Centro Espirita Beneficente Uniao Do Vegetal*, 126 S.Ct. 1211, 1213 (2006). Thus, even if economic development were a compelling government interest in the abstract, which it is not, the City would have to demonstrate that the specific Church Property at issue is in need of redevelopment, which it cannot.

In sum, any attempt by the City to seize the Church's home and place of worship through eminent domain would violate the First Amendment, giving rise to liability for declaratory, injunctive, and compensatory relief, as well as attorney fees. See 42 U.S.C. §§ 1983, 1988; *Buckhannon Bd. and Care Home, Inc.* v. *West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 600 (2001) ("prevailing party" entitled to attorney fees). Furthermore, damages are available against government officials in their individual capacities when they deprive a person or group of people of rights secured by the U.S. Constitution. See *Kentucky* v. *Graham*, 473 U.S. 159, 166 (1985) ("an award of damages against an official in his personal capacity can be executed . . . against the official's personal assets.").

III. ORFA Protects the Church's Property from Seizure by Eminent Domain.

Echoing the language of its federal counterpart, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq*. ("RFRA"), ORFA provides in pertinent part as follows:

> No governmental entity shall substantially burden a person's [or institution's] free exercise of religion unless it demonstrates that application of the burden to the person [or institution] is:
> 1. Essential to further a compelling governmental interest; and
> 2. The least restrictive means of furthering that compelling governmental interest.

51 Okl. St. § 253(B). As discussed above, seizing and demolishing the Church's long-standing home and place of worship would substantially burden its religious exercise.

Because the City's actions and interests cannot satisfy the strict scrutiny test imposed by ORFA, any attempt by the City to seize the Church's property would also give rise to liability under ORFA.

IV. RLUIPA's Substantial Burdens Provision Protects the Church's Property from Seizure by Eminent Domain.

RLUIPA's "Substantial Burden" provision provides in pertinent part as follows:

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

42 U.S.C. § 2000cc(a)(1).3 Just as under the First Amendment and ORFA, seizing the Church's home and place of worship would substantially burden the Church's religious exercise. And just as under the First Amendment, the burden is applied pursuant to a system of "individualized assessments." *Id.* § 2000cc(a)(2)(C). Finally, because the City's actions and interests cannot satisfy RLUIPA's strict scrutiny test, any effort to seize the Church's property would also give rise to liability under RLUIPA.

V. RLUIPA's Equal Terms Provision and the Equal Protection Clause of the Fourteenth Amendment Protect the Church's Property from Seizure by Eminent Domain.

Section 2(b)(1) of RLUIPA provides that:

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

42 U.S.C. § 2000cc(b)(1) (emphasis added). "The purpose of this section is to forbid governments from prohibiting religious assembly uses while allowing equivalent, and often more intensive, non-religious assembly uses." *Ventura County Christian High School* v. *City of San Buenaventura*, 233 F. Supp. 2d 1241, 1246 (C.D. Cal. 2002).

---

3 RLUIPA defines the term "religious exercise" to "include[] *any* exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7) (emphasis added). Moreover, "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id.*

This statutory protection, moreover, is designed to codify, and even enhance, the most basic command of the Equal Protection Clause of the Fourteenth Amendment that "all persons [and entities] similarly situated should be treated alike." *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 432, 439 (1985). See Allegheny Pittsburgh Coal Co. v. Webster County, 488 U.S. 336, 345-46 (1989) ("The equal protection clause . . . protects the individual from state action which selects him out for discriminatory treatment by subjecting him to [burdens] not imposed on others of the same class" (quoting *Hillsborough* v. *Cromwell*, 326 U.S. 620, 623 (1946)).

Even more precisely, the Equal Protection Clause generally forbids differential treatment across religious lines. *City of New Orleans* v. *Dukes*, 427 U.S. 297 (1976) (identifying "race, religion, or alienage" as "inherently suspect distinctions" that trigger strict scrutiny under the Equal Protection Clause). This protection, in turn, overlaps with similar anti-discrimination protections of the Religion Clauses. See *Lukumi*, 508 U.S. at 532 ("the First Amendment forbids" government from "disapprov[ing] of a particular religion or of religion in general."). See also *Ventura County Christian*, 233 F. Supp. 2d at 1246 (Section 2(b)(1) codifies "existing Supreme Court decisions under the Free Exercise and Establishment Clauses of the First Amendment as well as under the Equal Protection Clause of the Fourteenth Amendment.") (emphasis added); *Freedom Baptist Church*, 204 F. Supp. 2d at 869 (same).

Ensuring equal treatment is especially important in the eminent domain context where revenue-hungry municipalities have targeted tax-exempt religious institutions for seizure. Absent this kind of protection, commercial entities that generate tax revenues, all of which are secular, would invariably be preferred over tax-exempt religious institutions.

The Sand Springs Development Authority, however, failed to recognize this fundamental principle when it singled out the Church's Property for seizure within the redevelopment area, but left undisturbed two secular, commercial properties. Thus, that seizure would violate both RLUIPA's Equal Terms provision and the multiple, overlapping constitutional protections that inspired it.

VI. Conclusion

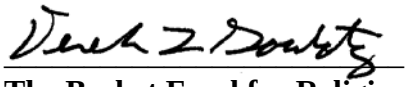
We recognize that prior to this correspondence, the City and its officials may not have been fully aware of the scope and application of the U.S. Constitution, ORFA, and RLUIPA to Centennial Baptist Church's situation. Let this correspondence be due notice, however, that seizing the Property threatens the Church's fundamental civil rights and is actionable under constitutional, federal, and state laws.

Accordingly, the City of Sand Springs should immediately cease and desist from all efforts to acquire the Church's Property, whether through eminent domain or otherwise. Should the City nevertheless persist in its efforts to acquire the Property, we will act

promptly to vindicate the Church's rights in court under the First and Fourteenth Amendments, ORFA, and RLUIPA, and pursue damages, attorney fees, and other expenses.

Thank you for your attention to this matter.

Sincerely,



The Becket Fund for Religious Liberty
Derek L. Gaubatz, Esquire
Jared N. Leland, Esquire
1350 Connecticut Avenue NW
Suite 605
Washington DC 20036
Phone: (202) 955-0098
Facsimile: (202) 955-0090

James Dunn and Associates PLLC
James Dunn, Esquire (O. B. No. 15222)
116 S. Walker
Oklahoma City OK 73102
Phone: (405) 239-1000
Facsimile: (405) 528-2295

cc: Reverend Roosevelt Gildon
Pastor
Centennial Baptist Church