

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE SECOND BAPTIST CHURCH OF )  
HOMESTEAD, INC., et al. )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. \_\_\_\_\_  
 )  
BOROUGH OF WEST MIFFLIN, et al., )  
 )  
Defendants. )

**MEMORANDUM IN SUPPORT OF THE ISSUANCE OF A  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

**I. INTRODUCTORY STATEMENT**

Plaintiffs are The Second Baptist Church of Homestead, Inc. (hereinafter referred to as "Second Baptist"), a predominantly African-American Baptist congregation,<sup>1</sup> and several church members. Plaintiffs challenge the decision of the Defendants, Borough of West Mifflin and a West Mifflin municipal zoning official, to deny Second Baptist an occupancy permit that would allow it to purchase, occupy and use an existing church in the Borough as a church. Plaintiffs base their request for a temporary restraining order and/or a preliminary injunction upon the Religious Land Use and

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<sup>1</sup> **Verified Civil Action Complaint** (hereafter "**Complaint**")  
¶¶1, 21.

Institutionalized Persons Act (hereinafter referred to as "RLUIPA"), 42 U.S.C. §2000cc, et seq., as well as the free exercise clause of the First Amendment to the United States Constitution.

The church building and property Second Baptist wishes to purchase and occupy in West Mifflin is currently owned by Grace Christian Ministries, Inc.,<sup>2</sup> a church with a predominantly White congregation.<sup>3</sup> Although Defendants had previously issued a church-use occupancy permit to Grace Christian,<sup>4</sup> Second Baptist's application for an occupancy permit to use the property for a similar purpose was

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<sup>2</sup> **Complaint** at ¶41. Second Baptist and Grace Christian have executed an agreement for the sale of Grace Christian's property in West Mifflin. **Id.** ¶42. Second Baptist has secured the necessary financing for its purchase of the property. **Id.** ¶48. The real estate closing cannot occur, however, until Second Baptist obtains an occupancy permit for the property. **Id.** ¶62.

<sup>3</sup> **Complaint** ¶¶5, 49.

<sup>4</sup> Grace Christian was granted a conditional use occupancy permit in 1998 to use its West Mifflin property as a church. **Complaint** ¶¶49, 60. Conditional uses are permitted uses under Pennsylvania law. 53 P.S. §10107. According to the information available to Plaintiffs, Defendants attached no conditions to Grace Christian's use of its property. Conditions imposed upon the use of land, or in this case the lack of conditions, run with the land and are not dependant upon a particular owner or occupant. **See, Kulak v. ZHB of Bristol Twp.**, 563 A.2d 978, 980 (Pa. Cmmw. Ct. 1989).

peremptorily denied.<sup>5</sup> Defendants' denied Second Baptist's occupancy permit application without any explanation, despite the fact that controlling state law requires the municipality to provide reasons. 53 P.S. §4104 (a).

Defendants' refusal to issue Second Baptist an occupancy permit impermissibly burdens the exercise of Plaintiffs' religion. Without the Grace Christian property, Second Baptist cannot effectively conduct its religious activities in West Mifflin.<sup>6</sup> Because it has outgrown its current church building in Homestead, Second Baptist is unable to accommodate all of its members' religious needs and it has had to postpone and/or limit church programs and activities.<sup>7</sup> Furthermore, Defendants' refusal to issue an occupancy permit jeopardizes Second Baptist's purchase of the Grace Christian's Church.<sup>8</sup> Defendants have neither articulated a basis for treating Second Baptist differently than Grace Christian in the award of an occupancy permit nor offered a justification for the impediment they have erected to the exercise of Plaintiffs'

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<sup>5</sup> **Complaint** ¶¶54-55.

<sup>6</sup> **Complaint** ¶¶77-78.

<sup>7</sup> **Complaint** ¶¶77-83.

<sup>8</sup> **Complaint** ¶62.

religion.<sup>9</sup>

## II. THE STANDARDS FOR ISSUING PRELIMINARY EQUITABLE RELIEF

In considering a request for preliminary injunctive relief, the court is to be guided by four factors: (1) Plaintiffs must establish the likelihood that they will prevail on the merits of the underlying claim; (2) that they are suffering irreparable injury as a result of Defendants' conduct; (3) that any harm to Defendants through the issuance of an injunction is outweighed by the continuing harm to Plaintiffs; and (4) that entry of the injunction is in the public interest. *American Civil Liberties Union v. Reno*, 217 F.3d 162, 172 (3d Cir. 2000) (citations omitted); *Allegheny Energy, Inc. v. DQE, Inc.*, 171 F.3d 153, 158 (3d Cir. 1999). In the ensuing discussion, Plaintiffs demonstrate their entitlement to preliminary injunctive relief by applying the governing preliminary injunction standard to the issues and facts of this case.

## III. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR CLAIMS

While Plaintiffs have pled numerous claims, they limit argument to two causes of action for purposes of obtaining a

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<sup>9</sup> *Complaint* ¶¶54-55.

preliminary injunction: RLUIPA and the First Amendment's free exercise clause. The two claims are similar. Both prohibit discrimination based on religious beliefs, and the respective analytical processes are roughly equivalent. Differences are noted where appropriate. Under either claim, however, Plaintiffs are likely to prevail on the merits.

**A. Defendants' Refusal To Grant Second Baptist An Occupancy Permit Violates RLUIPA**

**1. Overview of RLUIPA**

After unanimous passage by both houses of Congress, President Clinton signed RLUIPA into law on September 22, 2000. ***Cottonwood Christian Center v. Cypress Redevelopment Agency***, 218 F.Supp.2d 1203, 2002 WL 1827845 \*12 (C.D. Cal. 2002). RLUIPA preserves the right to use land for religious purposes. It requires courts to subject land use regulations substantially burdening religious exercise to strict scrutiny. ***Id.*** RLUIPA's provisions apply to programs and activities receiving federal financial assistance and where local procedures permit the government to make "individualized assessments of the proposed uses for the property involved." 42 U.S.C. §2000cc (a) (2) (A) and (C).

Specifically, RLUIPA prohibits governments from regulating land use in such a way as to substantially burden

the exercise of religion unless the burden both furthers a compelling governmental interest and is the least restrictive means through which the governmental interest can be advanced:

No government shall impose or implement a land use regulation 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). Additionally, RLUIPA mandates that different religious groups be treated equally by government:

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

42 U.S.C. §2000cc (b) (2).

The connection between land use and the fundamental right to practice one's religion is central, as emphasized in the Joint Statement of Senators Hatch and Kennedy, RLUIPA's co-sponsors: "The right to build, buy or rent such a space (for churches and synagogues) is an indispensable adjunct to the core First Amendment right to assemble for religious

purposes." **Freedom Baptist Church of Delaware County v. Township of Middletown**, 204 F.Supp.2d 857, 862 (E.D. Pa. 2002); 146 Cong. Rec. S7774-01, Ex. 1. Thus, RLUIPA was enacted to prevent the impairment of religious freedom through government restrictions on the use of property for religious purposes.

RLUIPA plaintiffs bear the initial burden of demonstrating the existence of a substantial burden on the exercise of their religion. **Murphy v. Zoning Commission of Town of New Milford**, 148 F.Supp.2d 173, 187 (D. Conn. 2001); **aff'd**, \_\_\_ F.Supp.2d \_\_\_, 2002 WL 31015539 at \*4 n.3. Once a substantial burden is established, the burden of proof and persuasion shifts to Defendants to prove that the challenged action advances a compelling governmental interest and that there are no less

restrictive means by which it could further that interest.

**Id.** ("Once plaintiffs demonstrate the existence of a substantial burden on the exercise of their religious beliefs, the burden then shifts to the local government to show that the challenged action furthers a compelling state interest by the least restrictive means.").

**2. Defendants Have Substantially  
Burdened The Exercise Of  
Plaintiffs' Religion.**

RLUIPA seeks to limit land use regulations that impose substantial burdens on religious exercise. The term "substantial burden" is not defined in the statute. It is a term, however, that courts have interpreted previously.

Substantial burdens have been found where plaintiffs were prevented from engaging in religious conduct; from having a religious experience that is central to plaintiffs' religious beliefs and where substantial pressure is applied to an adherent to modify his behavior or beliefs. *Murphy*, 148 F.Supp.2d at 188 (citations omitted). In *Murphy*, a municipal government's efforts to prevent more than 25 people from holding religious meetings at a private home were found to substantially burden religion and the court issued a preliminary injunction under RLUIPA. A substantial burden was also found in *Cottonwood Christian Center*, 2002 WL 1827845 at \*17, where a church was prevented from building a worship site. The court held that "[p]reventing a church from building a worship site fundamentally inhibits its ability to practice its religion." *Id.*

It is apparent that Defendants' refusal to issue Second



Baptist an occupancy permit for the Grace Christian Church substantially burdens Plaintiffs' religious activities.<sup>10</sup> Plaintiffs have been denied the opportunity to locate and conduct their ministry in West Mifflin.<sup>11</sup> Due to the space limitations of its current Homestead location, Second Baptist is unable to offer its members adequate facilities within which to hold such core religious activities as wedding and funeral receptions.<sup>12</sup> Second Baptist has also had to suspend its plans to expand its Bible study program<sup>13</sup> and to postpone development of a teen ministry program as a result of Defendants' refusal to issue an occupancy permit.<sup>14</sup> Defendants have effectively limited Plaintiffs' ability to spread the gospel in, and attract potential new members from, West Mifflin.<sup>15</sup>

Certainly, West Mifflin's refusal to allow Second Baptist to occupy and use an existing church building for church

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<sup>10</sup> **Complaint** ¶¶77-83, 87-93.

<sup>11</sup> **Id.**

<sup>12</sup> **Complaint** ¶¶25-27.

<sup>13</sup> **Complaint** ¶¶27, 78-80.

<sup>14</sup> **Complaint** ¶¶27, 80.

<sup>15</sup> **Complaint** ¶¶81-83.

purposes imposes a burden on religious exercise that is at least as egregious as the refusal to permit a church to build a worship site. One court has already held that a refusal to permit a congregation to build a church satisfies the substantial burden test and violates RLUIPA. **Cottonwood Christian Center, supra.** And, as the court held in **Murphy**, 148 F.Supp.2d at 189:

Foregoing or modifying the practice of one's religion because of government interference or fear of punishment is precisely the type of 'substantial burden' Congress intended to trigger the RLUIPA's protections,; indeed, it is the concern which impelled adoption of the First Amendment.

In light of the above, Plaintiffs have demonstrated that Defendants' refusal to issue Second Baptist an occupancy permit plainly creates a substantial burden on plaintiffs' right to practice their religion.

**3. Defendants' Refusal To Grant An Occupancy Permit To Second Baptist Discriminates Against Plaintiffs On The Basis Of Religion Or Religious Denomination.**

In addition to restricting the circumstances under which governments may substantially burden religious exercise, RLUIPA prohibits governments from imposing land use regulations that discriminate "against any assembly or

institution on the basis of religion or religious denomination.” 42 U.S.C. §2000cc (b) (2).

Plaintiffs have a high probability of proving at trial that Defendants, in denying Second Baptist an occupancy permit, have discriminated against them on the basis of their religion.

The property at issue is currently owned by Grace Christian Ministries, Inc. - a church. The property is situated in an R-2 medium density residential district. Pursuant to Defendant West Mifflin’s zoning ordinance, churches are permitted conditional uses in R-2 districts. West Mifflin Zoning Ordinance, §303 (B). West Mifflin issued Grace Christian a conditional use certificate of occupancy in 1998,<sup>16</sup> thereby allowing the property to be used as a church.

After contracting with Grace Christian to purchase the West Mifflin church property, Second Baptist applied for an occupancy permit from West Mifflin.<sup>17</sup> Second Baptist’s application specified that it would occupy the property for a “church use.”<sup>18</sup> Since conditional uses run with the land and

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<sup>16</sup> **Complaint** ¶49.

<sup>17</sup> **Complaint** ¶50.

<sup>18</sup> **Id.**

enure to the benefit of subsequent land owners, **Appeal of Barefoot**, 263 A.2d 321, 322

(Pa. 1970),<sup>19</sup> the grant of Second Baptist's application should have been a routine matter. West Mifflin, however, denied the application without explanation.<sup>20</sup>

Since West Mifflin had already approved use of Grace Christian's property as a church, its failure to articulate a basis for denying leave to another similar-sized church to occupy the land for the same purpose is highly suspect.<sup>21</sup>

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<sup>19</sup> Pennsylvania law provides for the equal treatment of special exceptions and conditional uses. **Sheetz v. Phoenixville Borough Council**, 804 A.2d 113, 115 n.5 (Pa. Cmmw. Ct. 2002). Although the **Barefoot** decision concerns a special exception, its holding would be equally applicable to a conditional use. **See, also, Kulak**, 563 A.2d at 980.

<sup>20</sup> **Complaint** ¶¶54-55. State law requires that permit application denials be accompanied by a "brief explanation setting forth the reasons for said disapproval and the manner in which the application can be corrected and/or modified to obtain the required approval." 53 P.S. §4104 (a).

<sup>21</sup> **Complaint** ¶60.

Second Baptist has functioned as a church in neighboring Homestead for ninety-eight (98) years.<sup>22</sup> There can be no doubt that it is a legitimate, established church. The only conclusion that can be reached from the circumstances presented here is that West Mifflin is discriminating against Second Baptist on the basis of either the church's denomination or the race of its members.<sup>23</sup> West Mifflin's preferential treatment of Grace Christian over Second Baptist in the issuance of land use permits authorizing church activities on property within the Borough is precisely the type of religious discrimination proscribed by RLUIPA.

**4. Defendant West Mifflin Is The  
Recipient Of Federal Financial  
Assistance.**

Plaintiffs aver in their Verified Complaint that Defendant West Mifflin, a Pennsylvania municipality, is the recipient of federal financial assistance.<sup>24</sup> Consequently, it

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<sup>22</sup> **Complaint** ¶19.

<sup>23</sup> **Complaint** ¶60. A majority of Second Baptist's members are African-American. **Id.** ¶21. The predominant race of Grace Christian's membership was White. **Id.** ¶¶5, 49. In this particular argument, and for purposes of their request for a temporary restraining order/preliminary injunction, Plaintiffs rely exclusively on the religious aspect of Defendants' discrimination.

<sup>24</sup> **Complaint** ¶86.

is subject to RLUIPA's provisions.

**B. Defendants' Refusal To Grant Second Baptist  
An Occupancy Permit Also Violates The Free  
Exercise Clause Of The First Amendment.**

RLUIPA represents, at least in part, a Congressional attempt to provide a mechanism for enforcing the free exercise clause of the First Amendment. 146 Cong. Rec. E1563-01 (daily ed. Sept. 21, 2000) (statement of Rep. Canady); **Murphy**, 148 F.Supp.2d at 180; **Freedom Baptist Church**, 204 F.Supp.2d at 862, 865. It does not supersede the traditional remedies for free exercise violations available under First Amendment and 42 U.S.C. §1983. Accordingly, Defendants' denial of Second Baptist's occupancy permit application remains actionable under the free exercise clause of the First Amendment. **Cottonwood Christian Center**, 2002 WL 1827845 at \*15; **Murphy**, 148 F.Supp.2d at 181.

To establish an entitlement to relief under §1983, Plaintiffs must demonstrate that their federal rights were violated by a person acting under color of state law. **Freedom Baptist Church**, 204 F.Supp.2d at 875; **quoting, Groman v. Township of Manalapan**, 47 F.3d 628, 633 (3d Cir. 1995). Under the circumstances presented by this case, there can be no

doubt but that Defendants are persons who, at all relevant times, were acting under color of state.

**1. Defendants Acted Under Color Of State Law.**

Defendant West Mifflin is a municipality operating under the laws of Pennsylvania.<sup>25</sup> Consequently, it is a person for purposes of §1983. **Monell v. Dept. of Social Services**, 436 U.S. 658 (1978). Its official actions, and those of its authorized administrators and decision makers, are performed under color of state law. **Monell, supra**. Liability will attach to Defendant West Mifflin where it causes "a constitutional tort through 'a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.'" **Brown v. Muhlenberg Township**, 269 F.3d 205, 215 (3d Cir. 2001).

Defendant West Mifflin's decision to deny an occupancy permit to Second Baptist was made by Defendant Butler, the municipal official with the authority to issue and withhold such permits.<sup>26</sup> In denying Second Baptist the permit that would have allowed it to occupy property in West Mifflin,

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<sup>25</sup> **Complaint** ¶16.

<sup>26</sup> **Complaint** ¶¶55, 57-59.

Defendant Butler was acting on behalf of the municipality and within the scope of his authority as a municipal official.<sup>27</sup> Consequently, he, too, was acting under color of state law.

**2. Defendants Violated Plaintiffs'  
Constitutional Right To The Free  
Exercise Of Their Religion.**

Since RLUIPA was enacted to provide a mechanism to remedy free exercise clause violations in land use and prison contexts, ***Freedom Baptist Church***, 204 F.Supp.2d at 861-862, the standards for proving a §1983 free exercise claim are similar to those discussed above in the RLUIPA section of the argument. Plaintiffs, therefore, request that the court also consider their RLUIPA arguments in connection with their constitutional claim. The only issue relating to the free exercise claim that bears additional discussion is the level of scrutiny to be used in reviewing the propriety of Defendants' burden on the exercise of Plaintiffs' religion.

While the rational basis test applies generally to free exercise claims,<sup>28</sup> strict scrutiny continues to apply where, as

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<sup>27</sup> ***Id.***

<sup>28</sup> The Supreme Court has held that neutral laws of general applicability are to be subjected to review under the rational basis test when challenged as burdening the free exercise of religion. ***See Employment Division, Department of Human***



here, the burden on religion results from an individualized governmental assessment. **Fifth Avenue Presbyterian Church v. City of New York**, 293 F.3d 570, 574 (2d Cir. 2002); **Cottonwood Christian Center**, 2002 WL 1827845 at \*13 (“[**Smith**] left undisturbed the application of a strict scrutiny test to situations where there are ‘individualized governmental assessments.’”), **citing, Smith**, 494 U.S. at 884; **Freedom Baptist Church**, 204 F.Supp.2d at 868-869. Subsequent to the **Smith** decision in 1990, the Supreme Court confirmed that strict scrutiny remains the norm in the “individualized assessment context.” **Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah**, 508 U.S. 520 (1993). The **Lukumi Babalu Aye** case involved an ordinance that permitted certain exemptions to a general regulation proscribing the slaughter of animals within

city limits. When the ordinance was challenged as prohibiting religiously-mandated animal sacrifice, the Supreme Court noted:

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**Resources of Oregon v. Smith**, 494 U.S. 872 (1990).

As we noted in **Smith**, in circumstances in which individualized exemptions from a general requirement are available, the government "may not refuse to extend that system to cases of religious hardship without **compelling reason.**"

**Id.**, at 537 (emphasis added). Other courts have followed suit.<sup>29</sup>

This case concerns the decision of Defendants Butler and West Mifflin to deny Second Baptist's application for an occupancy permit. Such decisions unquestionably entail individual assessments and, consequently, are subject to strict scrutiny:

No one contests that zoning ordinances must by their nature impose individual assessment regimes. That is to say, land use regulations through zoning codes necessarily involve case-by-case evaluations of the propriety of proposed activity against extant land use regulations. They are, therefore, different from laws of general applicability which do not admit to exceptions on Free Exercise grounds.

**Freedom Baptist Church**, 204 F.Supp.2d at 868. Therefore, this court should apply strict scrutiny in evaluating plaintiffs'

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<sup>29</sup> **Freedom Baptist Church**, 204 F.Supp.2d at 868-869; **Peterson Minidoka County School District**, 896 F.2d 1221, 1224 (9<sup>th</sup> Cir. 1997) (strict scrutiny applied to individualized assessments in personnel decisions); **Cottonwood Christian Center, supra.**; **First Covenant Church of Seattle v. City of Seattle**, 120 Wash.2d 203, 840 P.2d 174 (Wash. 1992) (applying strict scrutiny to historical landmark decision).

claims under both RLUIPA and the free exercise clause.

In sum, since Plaintiffs have demonstrated that Defendants have substantially burdened their ability to practice their faith, Plaintiffs are likely to prevail unless Defendants can prove that the permit denial supports a compelling governmental interest and that the interest cannot be achieved by less restrictive means. **Murphy**, 148 F.Supp.2d at 187.

**IV. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IF PRELIMINARY INJUNCTIVE RELIEF IS NOT GRANTED**

The denial of an occupancy permit substantially burdens Plaintiffs' ability to exercise their religion. Second Baptist is unable to fully provide core religious services, such as wedding and funeral receptions, Bible classes, a teen ministry and community outreach programs, at its existing property.<sup>30</sup> If Plaintiffs are to perform their ministry to the degree that they believe their faith compels, they must be permitted to occupy the Grace Christian property in West Mifflin. Defendants' refusal to issue necessary land use permits constitutes irreparable injury.

Irreparable injury is legally presumed in First Amendment cases. As the Supreme Court has noted, "The loss of First

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<sup>30</sup> **Complaint** ¶¶77-83, 87-93.

Amendment freedoms, for even minimal periods of time, unquestionably **constitutes irreparable injury.**" *Elrod v. Burns,*

427 U.S. 347, 373-374 (1976) (emphasis added).<sup>31</sup> Infringement of such fundamental First Amendment rights as those encompassed by the free exercise clause are generally not compensable by money damages and are, therefore, considered irreparable. The harm noted in the preceding paragraph, such as the inability to accommodate all members during weddings and funerals, and to extend teen ministries and Bible classes, are certainly irreparable. Those precise opportunities to

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<sup>31</sup> *See also, American Civil Liberties Union*, 217 F.3d at 180; *Abu-Jamal v. Price*, 154 F.3d 128, 135-36 (3d Cir. 1998) (same). *See also*, 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed.1995) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Courts have found that religious liberty violations are irreparable. *See ,e.g., Fifth Avenue Presbyterian*, 293 F.3d at 574 (Applying free exercise clause to enjoin City's refusal to allow homeless to sleep on church steps and holding that, "Violations of First Amendment rights are commonly considered irreparable injuries for the purposes of a preliminary injunction"); *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001); *Jolly v. Coughlin*, 76 F.3d 468 (2d Cir. 1996); *Murphy*, 148 F.Supp.2d at 180-81; *Youth Opportunities Unlimited, Inc. v. Board of Public Education*, 769 F.Supp. 1346, 1357 (W.D. Pa. 1991) (enjoining school board from revoking permit to use school facilities during non-school time by religious youth organization).

associate with fellow church members and to minister to interested congregants can never be restored.

Furthermore, Defendants' interference with Second Baptist's efforts to purchase the Grace Christian property is, itself, irreparable injury. *Cottonwood Christian Center*, 2002 WL 1827845 at \*21 ("Every piece of property is unique and thus damages are an insufficient remedy to the denial of property rights."). In the absence of an injunction, Second Baptist may have to forego its purchase of the church property in West Mifflin. It would therefore be deprived, not just of the right to effectively pursue its religious mission in that municipality, but also of the property it would like to own. These are injuries for which an award of money damages is inadequate.

**V. DEFENDANTS ARE UNLIKELY TO BE HARMED BY THE ENTRY OF REQUESTED PRELIMINARY INJUNCTIVE RELIEF**

Whereas Plaintiffs will continue to suffer irreparable harm absent preliminary injunctive relief, Defendants will suffer no appreciable harm if they are compelled to issue the requested occupancy permit. Defendants have already issued an occupancy permit to Grace Christian authorizing it to use the property as a church. Plaintiffs propose no change in use. The property will continue to be used for church purposes.

Thus, to the extent there would be some minimal inconvenience to Defendants through the award of preliminary relief, it is no more than that which they experienced by issuing an occupancy permit to the current property owner. Consequently, the award of a preliminary injunction serves to maintain the status quo ante - the continued use of the property by a church for church purposes.

## VI. PUBLIC POLICY SUPPORTS THE AWARD OF PRELIMINARY INJUNCTIVE RELIEF

The public interest in this matter clearly favors Plaintiffs' position. RLUIPA was passed unanimously by both houses of Congress in the summer of 2000. The law's enactment establishes the nation's public policy to be the protection of religious exercise from substantial burdens resulting from land use regulation. As the court held in **Cottonwood Christian Center**, 2002 WL 1827845 at 21, "Congress conclusively determined the national public policy that religious land uses are to be guarded from interference by local governments to the maximum extent permitted by the Constitution." The **Cottonwood Christian Center** court concluded that the grant of an injunction enjoining the municipality's restrictions on building a new church furthered the public interest. **Id.** The public interest would be similarly advanced by the issuance of the requested injunction in this case.

## VII. CONCLUSION

For the foregoing reasons, this court should enter a temporary restraining order and/or a preliminary injunction requiring Defendants to issue to Plaintiffs, forthwith, an occupancy permit that authorizes them to use the Grace

Christian Church property for church purposes.

Respectfully submitted:

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