

Greater Greater Washington

The Washington, DC area is great. But it could be **greater**.

tips@ggwash.org

 Search GGW

Tear down Third Church or I will, judge tells DC

While one judge railed against misconduct in the prosecution of Senator Ted Stevens on Tuesday, another judge in the courtroom next door sharply rebuked the DC government for its refusal to let the Third Church of Christ, Scientist at 16th and I raze their aging, concrete, historically landmarked building.



Federal Judge James Robertson made it clear that he believes the landmark designation of the church imposes a burden in conflict with the federal RLUIPA statute. He denied DC's motion to dismiss and all but promised that if Office of Planning Director Harriet Tregoning, the "Mayor's Agent" on the administrative appeal, doesn't rule for the church and grant them permission to tear down their building, he will in a "hundred page decision" that wades into the First Amendment "thicket".

Most expect Tregoning will do just that. In a very unusual move, she presided over the case personally instead of delegating the job to the typical administrative law judge. Ruling that Third Church's building imposes financial hardship, due to the expense of heating and lighting the concrete structure, the difficulty of maintenance, and other burdens would get rid of the case without creating a potentially dangerous precedent exempting religious bodies from their obligations to preserve other, more historically worthy buildings.

Robertson has earned himself a no-nonsense reputation. After promptly throwing out the lawsuit challenging President Obama's citizenship, he asked the plaintiff's attorneys to justify why their suit wasn't frivolous and harassing and why they shouldn't pay back the President for his own legal fees. Robertson is also the judge who resigned from the FISA court in 2005 with a sharply-worded letter criticizing the constitutionality of the secret court.

The judge made his opinions on this case clear right away. ANC Commissioner Mike Silverstein, a supporter of the church's position, sent this synopsis of one exchange, with Robertson questioning DC's counsel Leah Taylor.

"Have you seen the church?" Judge Robertson asked ... "Yes, your honor," she replied.

"Been down there? Walked around? Seen the building?" he continued. "Yes, your honor," she replied.

"Gone inside?" he asked. "No, your honor," she replied.

"Couldn't find the door, could you?" he shot back with a gleam in his eye and a wicked smile.

The left side of the courtroom, filled with members and backers of the church, erupted with laughter. The right side, where the preservationists were sitting, heard a few nervous chuckles.

One of the biggest urbanist arguments against the building is the position of the door, in a courtyard on the opposite side from the corner. Blank walls face I Street and the portion of 16th closest to the corner. A fire door does open onto I, and according to church officials, confused visitors often try to knock on that door.

But the issue before the court is whether landmarking the structure violates the church's First Amendment rights. And according to Silverstein, Judge Robertson clearly signaled his willingness to overturn the *Metropolitan Baptist Church* case holding that landmarking of a church does not pose a "special burden". Robertson also criticized the HPRB hearing which denied the raze permit, where Chairman Tersh Boasberg dismissed First Amendment issues as being beyond the scope of the Board's purview. "I am very troubled that the District refused to even entertain assertions of violations of First Amendment, RLUIPA and RFRA rights," Robertson said.

This is a great test case for those eager to curtail preservation and a terrible case for

Subscribe

RSS feed 
Add to Google
Get updates by email:

 Your email

About This Site

Who we are · Contact us
Send us a tip
How can our region be greater?

Archives

April 2009 · March 2009
February 2009 · January 2009
December 2008 · November 2008
October 2008 · September 2008
August 2008 · July 2008
June 2008 · May 2008
[More archives »](#)

Most Frequent

Tags

[anti neighbors](#)
[architecture](#) [Arlington](#)
[Barack Obama](#) [bicycling](#)
[bike lanes](#) [bike safety](#)
[buses](#) [Capitol Hill](#)
[Congress](#) [DC](#)
[DC Council](#) [DDOT](#)
[density](#) [development](#)
[downtown DC](#)
[Dupont Circle](#)
[environment](#)
[excessive parking](#)
[freeways](#)
[historic preservation](#)
[ICC](#) [Jim Graham](#)
[links](#) [maps](#)
[Maryland](#) [meta](#)
[Metro](#) [Montgomery](#)
[New York](#) [parking](#)
[parking minimums](#) [parks](#)
[pedestrian safety](#)
[pedestrians](#)
[performance parking](#)
[politics](#) [Prince George's](#)

preservation itself. The preservation community will benefit most if they lose this case in the Mayor's Agent hearing so that they don't lose the broader case in court.

posted by David Alpert on Apr 9, 2009 1:43 pm — tags: DC, [historic preservation](#), law, [Mike Silverstein](#), [RLUIPA](#), [Third Church](#)
([42 comments](#) · [share or email](#))

Related posts:


- [Third Church: Decide another day](#) (Oct 28, 2008)
- [Third Church brings civil rights lawsuit](#) (Aug 8, 2008)
- [Church anti-preservation bill comes back](#) (Jun 20, 2008)
- [Evans' church bill goes beyond RLUIPA](#) (Apr 13, 2008)
- [Church exemption from historic designation?](#) (Mar 17, 2008)

Comments

The problem is that if Tregoning issues the report as you suggest, who reading this blog doesn't think the Committee of 100 on the Federal City won't stupidly file a suit challenging the ruling of the Mayor's Agent.


Such a case would surely begin the death knell for Historic Preservation in the city.

Damned if you do and Damned if you don't, but at some point, the Committee of 100 is going to have to back off of this case.

by William on Apr 9, 2009 1:48 pm 


I like this judge.

Don't get me started on Boasberg though... It's not always his decisions I disagree with, it's the manner in which he makes them. I also feel as though the board follows his lead on every decision.


by SG on Apr 9, 2009 1:49 pm 

This is exactly how preservationists hurt their cause, they try to save concrete hulks in the name of parity.


Fifty years from now a future GGW will do a before and after, but somehow I don't think anyone will wonder why we tore this building down. They'll wonder what happened in the architectural community where by this kind of building was ever built.

by Thayer-D on Apr 9, 2009 2:10 pm 


RLUIPA is annoying in many ways. Why should churches get out of the land use laws set up for everyone else? It's not like land use is keeping you from worshipping. If you can't pay your bills, how are you going to build a new church?

by [The Overhead Wire](#) on Apr 9, 2009 2:12 pm 

I'm trying to understand the similarities or differences between this case and Pennsy. Railroad (station) vs. NYC Landmarks Commission.


by spookiness on Apr 9, 2009 2:18 pm 

I'd be extremely upset if this church was torn down. I'd rather see a land swap, or something. There were once several Crist Scientist churches built in the brutalist style, and I've seen a few of them razed over the years. I don't think they are pretty, but I do think they are significant.

by park view on Apr 9, 2009 2:26 pm 


Agree with Thayer-D: May be "historically significant" building since it came out of a famous architect's office, but it is as much an eyesore as the FBI Bldg. The most "historic" event to ever happen in this bldg. is the fight to save or raze it!

Tear it down and focus on worthy targets (like retaining public access to The Point at St. Elizabeths).


by Glenn on Apr 9, 2009 2:38 pm 

The Third Church doesn't function as a building. It functions as a sculpture with building like features that depict brutalist architectural style. If it functioned as a building there wouldn't be this controversy.

[public spaces](#)
[Purple Line](#) [retail](#)
[Smart Growth](#)
[sprawl](#) [stimulus](#)
[streetcars](#) [technology](#)
Tommy Wells [traffic](#)
[transit](#) [Virginia](#)
[zoning](#) [update](#)
[More tags »](#)


by Bianchi on Apr 9, 2009 2:40 pm 

I hope this case smacks some sense back into the preservationist community. Few of them understand that historic preservation was originally about preserving a sense of place. It was about preserving places from being leveled for highways and mid-20th century "urban renewal" like in SW DC. It was not originally meant to fight for awful buildings like this that do everything they can to destroy a sense of place to the detriment of the property owner who wants a building that actually functions.

by Cavan on Apr 9, 2009 2:59 pm 

The problem is that if Tregoning issues the report as you suggest, who reading this blog doesn't think the Committee of 100 on the Federal City won't stupidly file a suit challenging the ruling of the Mayor's Agent.

The one question is standing, I'm not sure the C100 has any standing to challenge Tregoning's decision. This is ultimately a dispute between the District and the church, with luck the C100 won't be allowed to intervene.

by Steve on Apr 9, 2009 3:17 pm 

I think this building is beautiful in a very literal sense. It's an interesting structure and its doorway is plenty easy to find. The despised plaza in fact ties it in to the history of great churches on 16th St, attempting to interface with the urbanism.

No, it's not great for urbanism, but neither are most other "major" churches, which have massive steps, broken streetwalls, imposing rusticated bottoms, and fences. If you think it's ugly, that's one thing, but if you think it's any different than other large self-important churches, then I urge you to go stand outside one with a notebook and pencil and just watch the interaction with the street.

Look at the buildings surrounding it. This brutalist masterpiece isn't doing anything to hurt the sense of place, because it's surrounded by buildings that don't have a sense of place, even though they are a block away from the White House. I used to think that it was deadly architecture, but then I saw what surrounds it.

The Christian Science movement is dying fast. Really fast, and their attempts to stabilize their assets have been disastrous. Recent condo-church structures they have succeeded in building have been terrible eyesores, built to the poorest quality, with no architectural qualities at all.

Besides, churches have to follow parking, noise, and building code rules. They can either abide or move out. Sorry.

by [uarchitect](#) on Apr 9, 2009 3:30 pm 

Cavan is right on- so is Thayer

IMO when lawyers, so-called "historic preservationists" [who are really surface parking anti small business modernist NIMBYs] start to get their way, and try to ram their HORRIBLE LACK OF GOOD TASTE down our throats- Im leaving for Iran.

At least there, they understand what significant architecture is all about.

this judge- is a shining star among the seas of corrupt lawyers in this city.

The HP people love to sue people and love litigation- like the CHRS suing the city over the 11th street bridge while allowing Friendship House to fall down.

...these people need to be turned over and new generational blood put into HP in this city.

by a on Apr 9, 2009 3:31 pm 

Instead of spending tons of money to line the pockets of their K street pals, maybe these mis-directed HP people could take the money- if this piece of \$hit hulk means so much to them, and just buy it - and make it into a museum or something. After all- the Berliners have figured out a way to market the 3rd Reich Flak Towers that proved to difficult to blow up or to safely demolish.

Why the HP people do not try to raise money to buy significant endangered buildings is beyond belief.

This is the true road to saving threatened structures- not long , drawn out court cases that only clog up the system and make lawyers wealthier.

by a on Apr 9, 2009 3:44 pm 

It would make an excellent home for the Museum of the Armenian Genocide.

Also - St. Matthews Cathedral is an excellent urban church, just to make that distinction more clear.

by [uarchitect](#) on Apr 9, 2009 4:02 pm [↔](#)

Museum if Armenian Genocide - now THAT's an excellent idea for how to use this building. Monumental, brutal - perfect fit.

by Glenn on Apr 9, 2009 4:10 pm [↔](#)

I don't care for this building at all--but tearing it down with cost of maintenance as the justification scares me. Surely the many beautiful churches with slate roofs and stained glass are expensive to maintain; am I wrong? I would hate to give would-be demolishers of those churches a justification.

I feel the same way about the MLK library. I think it's hideous. But I know that Mies was a big deal. And I remember that in the last century, a lot of people wanted to tear down Frank Lloyd Wright's buildings (and in some cases did so, unfortunately).

It's not an easy question, but I do think a long-term view is called for.

If we want to replace some buildings in the K Street area, I think there are many larger and less significant contenders. (What about the one that replaced Reconstruction-era 19th Street Baptist [at H Street] in 1975? That would be poetic justice.)

by JB on Apr 9, 2009 4:16 pm [↔](#)

If we want to replace some buildings in the K Street area, I think there are many larger and less significant contenders.

Oh my God, yes. How about all of them? K Street is an abomination.

by Jazzy on Apr 9, 2009 4:24 pm [↔](#)

why are Mies & FL Wright such sacred cows?

They both hated historic preservation and Wright hated cities.

Most of his buildings are awful.

Thank god he wasn't allowed to build that monster at Florida Avenue and Connecticut back in the 1940's.

He is on record in his many lectures for hailing the destruction of London, New York , and DC , by the Luftwaffe, so that he could re-build it all in his own style.

Corbusier wanted Paris blown up too- so it could become a gigantic Tower in The Park surrounded by freeways.

Why people see these creeps as "significant architects " when others are ignored is psychotic at best.

the best buildings Wright designed were gas stations - and he should be remembered chiefly for his greatest invention-

the car port.

by a on Apr 9, 2009 4:26 pm [↔](#)

Mr. Fentey, if you believe in freedom, TEAR DOWN THIS CHURCH.

by MPC on Apr 9, 2009 4:33 pm [↔](#)

I hope this case smacks some sense back into the preservationist community. Few of them understand that historic preservation was originally about preserving a sense of place. It was about preserving places from being leveled for highways and mid-20th century "urban renewal" like in SW DC. (Cavan)

Wrong.

The American preservation movement got a big jump start after the demolition of Penn Station, sure, but preservation in this country goes back a great deal farther.

The first preserved homes in an American city, usually teetering along today as museums that might open for visitors once a week, are Colonial or Pioneer era structures, brought

under the control of historical societies in the early part of the 20th century. Sometimes you even see entire communities reconstructed out of a mixture of historic structures and others brought to the site to join the collection, as at Colonial Williamsburg or Historic Deerfield - again, this is from the 1930s.


Not historic districts. Individual homes. Single structures. The extreme edge of this movement shows up in older museums like the Baltimore Museum of Art, where you can tour entire rooms that were removed from noteworthy homes.

The trend is older. There's a large body of literature written by earnest local historians from the late 1800s onwards, documenting and celebrating early settlers and great houses. Artifacts, in other words; artifacts that reflected the cultural concerns of the writers, who cared most about their Colonial or Pioneer days.

There's even a 1970s book put out by Montgomery County's historic society that features heavily-retouched photos of old homes and then the tower of the Bethesda Naval Hospital. It's very much a blue-haired, established-money mode of preservation, and it predates the more activist model.

The current concept of a holistic "sense of place" is a modern one. It doesn't start to show up in geography literature until the last few decades. Before then, writers are more interested in actual places and actual artifacts, rather than in the gestalt.


That said, it'd be foolish for the DC government to continue pressing their case. Surely someone's learned from the mess that DC made by creating new precedent for interpreting the 2nd Amendment?

by [David Ramos](#) on Apr 9, 2009 9:25 pm 


Funny thing is, if the congregation had built a "normal" church with windows, steeple, pitched roof, no concrete but regular siding materials, their maintenance costs would have been higher. Look at St. Matthews in SW: built as part of urban renewal, looked like a traditional church, it recently had to be condemned because it fell apart from lack of maintenance and bad design.

RLUIPA means churches don't have to follow zoning, building or any other code: religion over the state, that's the whole point. RLUIPA means a church is not beholden to state regulations in any way, that's the ideal of the law anyway.

C100 does have standing to challenge this in court. Their a citizen organization with a urban planning advocacy mission. If they don't have standing, then no citizen has standing in anything. Citizens having the right to challenge their government (and it's judges) is kind of a bedrock American principal.


by [crin](#) on Apr 10, 2009 7:21 am 

Judging by the opinions of Corbu and Mies on this blog, I might ask why the architecture schools still hold them up as scions of the Pantheon of Architects. FLW is more complex because of his varied stylistic oeuvre. Eitherway, it's the celebration of these modernists who called for a whole scale rejection of all our architectural traditions that accounts for the HPRB's misguided attempts to save this concrete bunker.

by [Thayer-D](#) on Apr 10, 2009 7:39 am 


Sense of Place. Third Church has it in spades. It's like no other place on K Street or DC. You see it, you know exactly where you are. It's intuitively a landmark, whether or not you agree with it being a legal "landmark." If your taste tells you it's ugly then you see this duality as ironic: it's a landmark but it shouldn't be a "landmark." If your taste tells you it's handsome then you see this duality as natural: it's a landmark so it should be a "landmark."

But then preservation law has nothing to do with taste. It's predicated on history and cultural significance.


by [crin](#) on Apr 10, 2009 8:01 am 

Crin - Doesn't a typical McDonalds have a greater cultural significance than the Third Church? Or are you making an esthetic judgement that "high" architecture deserves protection but "low" architecture doesn't?

(I don't think there's any debate that historical significance - eg Ford's Theater - merits protection, but the argument for protecting the Third Church is cultural or architectural significance.)


by [tt](#) on Apr 10, 2009 8:55 am 

McDonald's? No, it doesn't have greater cultural significance than how Americans practice their faith. Wow, just imagine cheap hamburgers being more important than religion, one of the building blocks of civilization. That would be one doomed society. And McDonald's

certainly doesn't have sense of place. If you're at one, you could be anywhere. It's placeless.
by crin on Apr 10, 2009 9:31 am 

It's all about money. The Third Church for 20 years was proud of its modernist building, designed by the internationally famous I.M. Pei firm. The Church distributed flyers praising the structure and did the same on its website until a year ago. Then a developer, ICG, came along and offered the Church several alternatives: \$3 million for its building if it would move off site or many more millions if the Church would support ICG's ambitious plans for development on the site, including demolition of the church building. The Church declined the \$3 million and went for the huge profit. Then the developer announced that it would not go through with its project because of the economy, and the Church was left dangling. Only with the prospect of big bucks did the Church complain in hearings about the "hidden" entrance, problems of upkeep and ugliness of the building.

Appreciation of architecture can run in cycles. Years ago, the majority thought that Victorian buildings were the epitome of ugliness, bad taste, a mishmash of historical styles, and should be demolished. Many, many such buildings were in fact torn down. Now almost everyone appreciates and treasures Victorian architecture. restores it and preserves it.

Brutalist architecture admittedly is tough to like, but those who lambast the Third Church or these grounds should hold their tongue unless they have been inside the Church. It is a magical place, quiet, with soft light from skylights above, in deliberate contract to the forbidding exterior. The sanctuary is in fact an auditorium which seats 400 and could easily be rented out for income for the Church, a step that the Church adamantly refuses to do.
by abc on Apr 10, 2009 12:06 pm 

The most ominous of Judge Robertson's warnings to the District came during discussion of whether the act of landmarking can - in and of itself - pose an "undue burden" on a church. He said "landmarking does pose a burden." And when DC counsel Leah Taylor brought up the Metropolitan Baptist Church ruling, Robertson replied, "any DC court ruling (otherwise) is simply wrong and not binding on this court...There is no problem of standing her as a very significant burden has been imposed upon the Church."

There is only one way to read this: if the City doesn't settle and provide the Church a suitable remedy (and the interest groups butt out), he will overturn the District statutes regarding the landmarking of churches.

The Judge also referred not just to Tregoning's upcoming ruling, but "other possible actions." There is no question the Church will receive damages. The only question is whether the Judge will impose a remedy that will sock DC taxpayers more than the six figure legal fees the congregation has imposed.

The Congregation has fought through more than a year of delays - during which time NO city official ever allowed them to argue their first amendment rights. This has jeopardized a development deal that would permit them to own a smaller church on the site, has cost them hefty legal fees, and deterred them from what they see as their mission.

The costs and delays incurred by Third Church clearly would provide a chilling effect on any Congregation seeking to exercise its rights in a similar struggle in the future. So it is likely any remedy here - in order to be approved by the Judge - would have to make the Church whole and discourage similar illegal actions in the future. If the District thinks it can simply allow demolition, pay the Church's legal fees, walk away, and let HPRB do this again to another church in the future, they are still miscalculating.

They can either cough up the money now, modify a few laws, and satisfy both the Church and an angry federal judge, or fight this thing and cough up even bigger bucks later and see historic preservation laws struck down.

by Mike Silverstein on Apr 10, 2009 1:01 pm 


Crin, as a matter of fact and law, you simply don't know what you're talking about. RLUIPA does NOT allow churches to build five story buildings in areas zoned for three stories. It does NOT allow them to build megachurches in cul-de-sacs that don't have adequate parking. It simply defines land use as an extension of worship, and says religious groups can do anything that any other group or entity can legally do. And that the government cannot impose any undue land use burden on them without a compelling public interest. And that any such burden be the least restrictive possible.

It's a really clearly written statute. It's less than two pages. Most anyone can understand it.

By the way, it was passed unanimously by both Houses of Congress and signed into law by President Clinton. And it will soon apply even in the District of Columbia, thanks to Federal Judge James Robertson.

by Mike Silverstein on Apr 10, 2009 1:10 pm 


@Mike, didn't the Church argue the First Amendment portion of this before the Mayor's Agent? If the HPRB is only supposed to deal in preservation law, then isn't the relief sought via the Mayor's Agent the appropriate venue for this? Or would it be better to have First Amendment discussion before the HPRB?

by William on Apr 10, 2009 2:16 pm 


William, the Church argued this before both. In fact, I personally brought it up in the landmarking hearing and Chairman Boasberg cut me off, responding, "I'm not here to discuss the First Amendment." That quote by Boasberg made it into the Church's complaint. The argument was also brought up in the raze hearing and again ignored.

In the appeal to the Mayor's Agent, Harriet Tregoning allowed First Amendment arguments to be presented and entered into the record, but declined to rule on them.

Judge Robertson said he was "very troubled" that no one had addressed the First Amendment claims. I guess he figures if every cop on the beat has to respect and uphold the First Amendment, so must every bureaucrat.


by Mike Silverstein on Apr 10, 2009 4:21 pm 

The building is not "beautiful" in the orthodox sense, but it is more interesting and notable than 99% of the post-WWII architecture in DC, particularly the stuff nearby. It doesn't relate to the street well, but neither do a lot of the surrounding structures. It's a good example of a type of architecture that enjoyed a brief vogue and then disappeared. The proportions are actually much more balanced than most brutalist buildings and it adds interest to the corner rather than detracting from it the way that most glass boxes do. Christian Science is a rapidly aging, declining denomination, but one with a lot of wealth. I think they should make a classy exit by letting the building be landmarked and taking pride in a really unique building that's much more interesting than Pei's other well known DC building, the East Wing of the National Gallery.

by Rich on Apr 10, 2009 6:01 pm 


re: Mies & Wright as "sacred cows". Mies' buildings, at their best are everything international style architecture strived to be: open, symmetrical, and simple in their composition. The MLK library doesn't compare with Crown Hall or even Inland Steel 9 (an obvious inspiration), but it provides a good introduction to Mies that's here and accessible to people who appreciate architecture but have limited opportunities to travel (e.g., students). The building has large open spaces that can be adapted for a variety of purposes. The city's proposals for replacement would not have added square footage and it's doubtful that they would be any better stewards of a new building than they've been of the current one. It's not monumental in the same way as the NY Public Library or the one in downtown Cleveland, but I doubt that any contemporary replacement would be. I used to be a non-fan of Mies until I taught on campus he designed and came to understand the differences between his buildings and the cheaper knockoffs that were built later.

As for Wright, he bridged beaux arts and modernism and did it with a distinctly American set of ideas. His early work probably had a heavy arts and crafts influence, but he clearly went far beyond that. His roofs (often leaky) and his engineering (concrete not so good over a creek as in Fallingwater and his radiant heating worked better in the short run than the long run) showed shortcomings, but Wright clearly pushed the envelope in ways that influenced a variety of people from the developers of Levittown (which he hated) to people seeking "green" buildings today. He wanted cities less than one would think--he very much enjoyed his trips to New York on the Guggenheim dime.

by Rich on Apr 10, 2009 6:15 pm 

Architecture is I believe incorrect in his statements about Christian Science. As far as I can tell living here on the west coast, their movement is alive and well. I hear of healings, I see their many churches and they're on every block.

Architecturally, between their endeavors with IM Pei and other great landmarks, I think their efforts to remain current in style are commendable.


by Steve on Apr 10, 2009 6:19 pm 

Mike,

I am not sure I would want HPRB, which is comprised of historians and architects, to be adjudicating First Amendment issues. On the other hand, there ought to have been a mechanism for this prior to any lawsuit. I would have thought the Mayor's Agent (in conjunction with some legal authority from the city) would have been that place.

Judge Robertson is correct in my opinion, but the question remains, what the proper outlet


is.

by William on Apr 10, 2009 6:35 pm 

Nothing guarantees this church, or any other church or religious congregation, the right to practice their religion at this site or at any other particular site.

The 1st Amendment gives this church the right to practice its religion. Period. It doesn't say the greater community should financially subsidize them by exempting them from the same rules the rest of us are bound by, and it doesn't say that they should have the right to remain at a particular location if they can't afford to do so AND abide by all the same rules and regs the rest of us do.

If RLUIPA says otherwise (as I'm hearing implied here and in other venues), then I hope and pray it really does get put to the test by this particular case ... because there isn't a snowball's chance in hell it will hold up in court. Creating a special and preferred class of citizenship isN'T what the First Amendment is about.

by Lance on Apr 10, 2009 9:51 pm 

William and Lance,

The Judge's fury in this case was unleashed because this process has been ongoing far more than a year and the church has been invoking its First Amendment rights and their claims have been ingored by District officials. No matter what you believe about this case, that is unacceptable. And Judge Robertson - who cut his teeth as a civil rights lawyer in the South in the '60's - surely fought against delay and "process" claims during times of desegregation.

Put this this way: when civil rights protesters were sitting at lunch counters demanding to be served, they deserved to be served right then. Not after a year of going to through a process involving two hearings before a board, then a mayor's agent and finally a federal court.

And that's why Judge Robertson told the city that claims of First Amendment violations are "always ripe."

EVERY government official - especially those who can have people fined or imprisoned - MUST obey the dictates of the First Amendment. If they have questions, they should refer those questions to their legal people. Just as a cop on the beat cannot violate your civil rights, neither can Tersh Boasberg.

By the by, HPRB allowed the Scientologists to put a star on the Fraser Mansion. So they have acknowledged the law when it wasn't too inconvenient to them. Just in this case, they ignored it. Pure hypocrisy.


And Lance, having attended Judge Robertson's hearing, I can tell you in complete confidence that there is absolutely zero chance he will overturn RLUIPA. He carefully used the exact language of the law in denying the city's request. And his warning to the city that the Metropolitan Baptist ruling "is simply wrong and not binding on this court" leads me to be quite certain that he will overturn the City's landmarking law.

There is always the possibility a higher court might overturn the law, although I doubt it. The law simply recognizes that the free exercise of religion includes the right to have a place to pray and conduct religious activities. And that government agencies may not zone out churches or place "undue burdens" on churches without "a compelling public interest." And if there is such a compelling public interest, that any burden be "the least restrictive" possible.

The law was passed after several cases where communities tried to zone out churches -- or denominations they didn't like -- and other cases where land use laws were used to clearly discriminate against churches. Preservationists absolutely hate the law, and have challenged it at local levels, but have backed off at the federal level.

They need to find a way out here or the law will certainly be upheld in landmarking cases for the first time by a Federal Court judge. And that is the catastrophe that David Alpert and I have been warning about for more than a year, because the ability to landmark and protect other churches all over the nation will be restricted by Judge Robertson's ruling.

Bad cases, they say, make bad law. And this is the worst possible case for preservationists.

by Mike Silverstein on Apr 11, 2009 7:23 am 


Mike,

Thanks for the good explanation of your viewpoint.

You said: "There is always the possibility a higher court might overturn the law, although I doubt it."

Yes, agreed. The ultimate outcome is always questionable. From what I understand though, there is no question that this judge's ruling will be appealed to a higher court. And

personally, IMHO I don't see how a higher court wouldn't exercise better judgement than this particular judge ... because, as you and David have said, the results of the church winning its case would be disastrous. And while there may be a renegade judge in this court willing to set aside the importance of the ramifications, I don't believe that would be the case as the appeal went to higher and higher courts. Reason and intelligence would have to prevail in the end. That's the beauty of our justice system.

by Lance on Apr 11, 2009 10:19 am 

Lance,

Thanks for your comments, but in questions of Constitutional rights, it's the law - and primarily the Constitution that must prevail in the courts.

And the highest precedent in this case is First Covenant Church of Seattle v City of Seattle, in which the Washington Supreme Court ruled in a similar landmarking case: [T]he City's interest in preservation of esthetic and historic structures is not compelling and it does not justify the infringement of First Covenant's right to freely exercise religion. The possible loss of significant architectural elements is a price we must accept to guarantee the paramount right of religious freedom."

The nation's courts rule on matters of law and constitutional rights, not reason and intelligence. People can do all kinds of foolish things in the name of religion and politics and are protected by the law and the courts. They can twirl fish over their heads, whip themselves with chains, handle snakes, or even ask me to vote for Michelle Bachmann or Ralph Nader. And the courts will protect their stupidity.

The federal appeals courts are about preserving the Constitution, not preserving landmarks.

Congress passed RLUIPA. The President signed it into law. It provides a very specific guidance on how the First Amendment must be interpreted. It may be a bad law and overly broad, but that is not an issue for the courts to legally consider. The ONLY way an appeals court could possibly overturn RLUIPA is if they find it to be unconstitutional. Ramifications don't matter any more.


And the real danger here for the C100 and the District is if they appeal a Mayor's Agent decision to allow razing of the building, they are daring the Judge to issue his opinion striking down Metropolitan Baptist Church, knocking down involuntary landmarking and gutting other provisions involving churches most everywhere, while exposing the city to another multi-million dollar damage award. Only the certifiably insane would take such a risk. And if anyone appeals a decision by Judge Robertson, they are risking every historic preservation land use decision involving every church in the United States. Again, anyone doing so belongs in the celebrity wing at St E's.

Of course, it's the Church that has filed the lawsuit, and the District that - for more than a year - has refused to respond to the First Amendment violation claims. The Judge has rejected the District's request to throw out the case.


OHP and HPRB started this with the landmarking. But it's kinda like the old Russian proverb, "You can decide that you want to dance with the bear, but it's the bear who decides when the dance is over."

HPRB and the District started this dance, but are no longer in control of when this ends - or how it will end.

Maybe that's why Tersh quietly left the courtroom midway through the hearing, about twenty minutes before the Judge ripped him a new one. From what he had already heard, he certainly knew what was coming. And he didn't want to be there for the surgery.

by Mike Silverstein on Apr 11, 2009 11:23 am 

Mike, well stated. The Committee of 100 et al would be well served to lay off this, particularly if/when the Mayor's Agent comes out with their decision.

by William on Apr 11, 2009 11:47 am 

Sorry, but this debate seems to be for those out of touch. It's about a few insular preservationists and architecture nerds defending a hideous building few like and even fewer want (including its owners) out of some fear that somehow something "significant" might be lost with its removal and replacement. Buildings serve people, not the other way around. At some point property rights, community desires and common sense needs to take over and allow natural change at this site to happen. A "sense of place" happens with a living, breathing community maximizing its building and environment for its uses today and into the future.

by D.C. resident on Apr 11, 2009 1:59 pm 

Mike, You're filling in a lot of background information of which I wasn't aware ... And I'm getting a very different reading though from than background than you are. It seems to me

that if the Third Church case didn't exist, it would have to have been created to *save* the preservationist movement. It sounds like RLUIPA has created an unstable/uncertain environment ... as *evidenced* by the Washington State case you reference. Our federal appeals system isn't so much designed to come up with ensuring that the Constitution "prevails" (since what "prevails" means is very, very subjective), but rather that the battle of ideas from the several states battle itself out ... and that a resultant nation-wide law come about. Because of the Washington state case you site, it's important now that RLUIPA be reviewed in regards to the rest of our laws. It has to be put into context ... and entirely struck down if it cannot be made to work with existing law. It is highly unlikely that it would trump existing law ... at least in my opinion. There just isn't the popular or political will for that to happen. And I think that is where we may respectfully, and cordially, disagree.

by Lance on Apr 12, 2009 1:07 pm

Lance, I actually *do* agree with you that RLUIPA is a stupid law (there's a book written a few years ago about how congregations can be very poor neighbors, I'm trying to remember the title). That said, there's not a whole lot of grounds for a court to overturn RLUIPA; between historic preservation and the free exercise of religion, it's really not a fight that preservationists are going to win. Likewise don't forget that even if RLUIPA were overturned (very unlikely), RFRA is also applicable in the District and has basically the same effect.

by Steve on Apr 12, 2009 3:30 pm

Post a Comment

Name: (will be displayed on the comments page)

Email: (required, but will be kept private)

URL: (optional, will be displayed)


Your comment:

Notify me of followup comments via e-mail

or see below to post

To post your comment, please enter the two words in the box below to prevent spam:





stop spam.
read books.

Save my name and email address on this computer so I don't have to enter it again next time

All content on this site is licensed under a [Creative Commons license](#).

