

The following amicus brief was joined by James E. Andrews, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.). It was filed in the Supreme Court in the State of Washington on May 25, 1995.

No. 62805-0

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

FIRST UNITED METHODIST CHURCH,  
Petitioner,

v.

HEARING EXAMINER FOR THE SEATTLE LANDMARKS  
PRESERVATION BOARD,

Respondent.

---

BRIEF AMICI CURIAE OF CHRISTIAN LEGAL SOCIETY; AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; CHRISTIAN LIFE COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE CORPORATION OF THE CATHOLIC ARCHBISHOP OF SEATTLE, A CORPORATION SOLE; THE COUNCIL ON RELIGIOUS FREEDOM; THE DIOCESE OF OLYMPIA, THE EPISCOPAL CHURCH IN WESTERN WASHINGTON; THE EVANGELICAL COVENANT CHURCH; THE EVANGELICAL LUTHERAN CHURCH IN AMERICA; THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS; JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (USA); THE NATIONAL ASSOCIATION OF EVANGELICALS; THE NORTH PACIFIC CONFERENCE OF COVENANT CHURCHES; AND THE WASHINGTON STATE CATHOLIC CONFERENCE IN SUPPORT OF PETITIONER

---

Angela C. Carmella  
One Newark Center  
Room 418  
Newark, NJ 07102  
Of Counsel

Steven T. McFarland, Esq.\*  
4208 Evergreen Lane      WSBA No. 11111  
Annandale, VA 22003    Center for Law & Religious  
(703) 642-1070    Freedom, Christian Legal Society  
\*Counsel of Record

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

STATEMENTS OF INTEREST OF THE AMICI ..... v

STATEMENT OF THE CASE ..... 1

STATEMENT OF ISSUE ..... 1

ARGUMENT ..... 3

I. LANDMARK DESIGNATION OF CHURCHES RESULTS IN  
CONSTITUTIONALLY COGNIZABLE BURDENS TO CHURCHES<sup>3</sup>

A. Landmark Designation Results in Expressive  
Burdens ..... 5

B. Landmark Designation Results in Administrative  
Burdens ..... 6

C. Landmark Designation Results in Financial  
Burdens ..... 7

D. Landmark Designation With Suspended  
Restrictions Does Not Avoid Burdens ..... 9

II. FIRST UNITED METHODIST WILL SUFFER FREE  
EXERCISE BURDENS FROM THE COURT OF APPEALS'  
DETERMINATION THAT THE CITY MAY DESIGNATE ITS  
CHURCH AND SUSPEND RESTRICTIONS ..... 10

A. Landmark Designation of First United Methodist  
Results in Administrative Burdens ..... 10

B. Landmark Designation of First United Methodist Results in an Autonomy Burden .....	15
III. THE LANDMARK DESIGNATION TRIGGERS STRICT SCRUTINY REVIEW .....	17
CONCLUSION .....	18

TABLE OF AUTHORITIES

CASES:

Corporation of Presiding Bishop v. Amos, 483 U.S. 327, 97 L. Ed. 2d 273, 107 S. Ct. 2862 (1987) .....	3
Employment Division v. Smith, 494 U.S. 872, 108 L. Ed. 2d 876, 884, 110 S. Ct. 1595, 1599 (1990) .....	4
First Covenant Church of Seattle v. City of Seattle, 120 Wn.2d 203, 840 P.2d 740 (1992) .....	1
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 107, 97 L. Ed. 2d 120, 73 S. Ct. 143, 150 (1952) .....	3
Presbyterian Church v. Mary Elizabeth Blue Hull Church, 393 U.S. 440, 21 L. Ed. 2d 658, 89 S. Ct. 601 (1969) .....	3
Rector, Wardens, & Members of Vestry of St. Bartholomew's Church v. New York, 914 F.2d 348 (2d Cir. 1990), cert. denied, -- U.S. --, 111 S. Ct. 1103, 113 L. Ed. 2d 214 (1991) .....	8
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976) .....	3
Snug Harbor v. Platt, 29 A.D.2d 376, 288 N.Y.S.2d 314 (1968) .....	8

Society for Ethical Culture v. Spatt, 51 N.Y.2d 449,  
415 N.E.2d 922, 434 N.Y.S.2d 932 (1980) ..... 8

Society of Jesus v. Boston Landmarks Comm'n, 409  
Mass. 38, 564 N.E.2d 571 (1990) ..... 17

STATUTES:

Seattle Municipal Code (SMC) 25.12 ..... 14

OTHER AUTHORITIES:

Dahinden, J., New Trends in Church Architecture  
87 (1967) ..... 5

Upton, D., Holy Things and Profane: Anglican  
Churches in Colonial Virginia 164 (1986) ..... 5

## STATEMENTS OF INTEREST OF AMICI CURIAE

Amicus the Christian Legal Society ("CLS"), through the Center for Law and Religious Freedom (the "Center"), its legal advocacy and information arm, has since 1975 argued in state and federal courts throughout the nation for the protection of religious speech and exercise. Founded in 1961, CLS is an ecumenical professional association of 4,500 Christian attorneys, judges, law students, and law professors, with chapters in every state and at 130 law schools.

Through a network of volunteer attorneys and law professors, the CLS Center provides accurate information to the general public concerning the law pertaining to religious exercise. In addition, the Center has filed briefs as amicus curiae, on behalf of many religious denominations and civil liberties groups, in virtually every case before the U.S. Supreme Court involving church-state relations since 1980.

Christian Legal Society is committed to religious liberty because the founding instrument of this nation acknowledges as a "self-evident truth" that all persons are divinely endowed with rights that no government may abridge nor any citizen waive. Declaration of Independence (1776). Among such inalienable rights are those enumerated in (but not conferred by) the First Amendment, the first and foremost of which is religious liberty. The right sought to be upheld here inheres in all persons by virtue of its endowment by the Creator, who is acknowledged in the Declaration. It is also a "constitutional right," but only in the sense that it is recognized in and protected by the United States Constitution. Because the source of religious liberty according to our nation's charter, is the Creator, not a constitutional amendment, statute, or executive order, it is not merely one of many policy interests to be weighed against others by any of the several branches of state or federal government. Rather, it is foundational to the framers' notion of human freedom. The state has no higher duty than to protect inviolate its full and free exercise. Hence, the unequivocal and nonnegotiable prohibition attached to this, our First Freedom, is "Congress shall make no law. . ."

Americans United for Separation of Church and State (Americans United) is a national, nonsectarian, public interest organization committed to preserving the twin constitutional principles of religious liberty and separation of church and state. Since its founding in 1947, Americans United has participated, either as a party or amicus, in a majority of the leading church-state cases decided by the U.S. Supreme Court. Americans United has a long-standing interest in free exercise of religion issues, having been involved in numerous free exercise cases and having worked for the passage of the recently enacted Religious Freedom Restoration

Act. 42. U.S.C. § 2000bb. Americans United joined on an amicus brief before this Court in the *First Covenant Church v. Seattle* case. The Southern Baptist Convention is the nation's largest Protestant denomination, with over 15.4 million members in over 40,000 local churches. The Christian Life Commission is the public policy agency of the Convention and is assigned to address religious liberty and other public policy issues. Amicus produces publications and seminars to educate Southern Baptists about ethical and moral issues in daily Christian life, and to advocate responsible Christian citizenship as part of biblical decision-making. Amicus also seeks to bring biblical principles and Southern Baptist convictions to bear upon public policy debates before courts, legislatures and

policy-making bodies. Amicus frequently files briefs as amicus curiae in important religious liberty litigation, such as this case.

Council on Religious Freedom ("CRF"), a national, nonprofit organization, exists to uphold and promote the constitutionally protected right of religious liberty. Its Board of Directors is composed of individuals active in religious affairs. For almost a decade, CRF has been an advocate of these principles in state and federal courts throughout the country.

The Corporation of the Catholic Archbishop of Seattle, a corporation sole, extends from Canada to Oregon, west of the Cascades (which we call "Western Washington"). It is comprised of 134 parishes and 36 missions serving 336,234 Catholics.

The Diocese of Olympia, the Episcopal Church in Western Washington, encompasses 104 parish and mission congregations with a membership of 35,000 people. Our church buildings are found in urban, suburban, and rural communities from the Columbia River to the Canadian border and from the Cascades to the Pacific. Diocesan offices are located on Seattle's Capitol Hill.

The Evangelical Covenant Church is a Christian denomination whose membership of about 95,000 is scattered throughout the country. It has a congregational polity and about 619 congregations. In the state of Washington, membership of about 5,750 is spread over 39 congregations.

The Evangelical Lutheran Church in America (ELCA) is the largest Lutheran and the fourth largest Protestant body in the United States. It has approximately eleven thousand member congregations which, in turn, have 5.3 million individual members. Three of its regional judicatories, called synods, function in the State of Washington; the Northwest Washington Synod, the Southwestern Washington Synod and the Eastern Washington-Idaho Synod. Two hundred seventy-nine ELCA congregations with approximately 132,000 individual members are located in the State of Washington.

The General Conference of Seventh-day Adventists is the highest governing body of the Seventh-day Adventist Church. The church is an international organization with approximately 32,000 congregations and 6.6 million members. Of the 760,000 members in the United States, 31,000 members in 160 congregations reside in the state of Washington. Seventh-day Adventists believe that freedom of religion is biblically mandated and that such freedom includes the right to worship or refrain from worship; to profess, promulgate and practice religious belief; and to change such belief. From its inception over 130 years ago, the church has been deeply committed to this belief. It teaches that religion and government are institutionally separated from each other.

James E. Andrews, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), is the senior continuing officer of the highest governing body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with approximately 11,500 congregations organized into 172 presbyteries under the jurisdiction of 16 synods. This brief is consistent with the policies adopted by the General Assembly regarding the Free Exercise Clause of the

First Amendment and the landmark status of church property. The 200th General Assembly of the Presbyterian Church (U.S.A.) squarely addressed this issue in 1988:

Churches have a right of autonomy protected by the Free Exercise Clause of the First Amendment. Each worshipping community has the right to govern itself and order its life and activity free of government intervention ...

The government may not require a congregation to maintain a church structure because of its historical significance or subject it to proceedings in eminent domain in order to preserve a church structure. The church should make every effort to cooperate with efforts to preserve aesthetic and architectural character but must finally itself be the judge of what religious life and mission require concerning property and its use.

God Alone Is Lord Of The Conscience, A Policy  
Statement Adopted by the General Assembly (1988)  
Presbyterian Church (U.S.A.), pp. 16-17.

The General Assembly does not claim to speak for all Presbyterians, nor are its decisions binding on the membership of the Presbyterian Church. The General Assembly is the highest legislative and interpretive body of the denomination, and the final point of decision in all disputes. As such, its statements are considered worthy of respect and prayerful consideration of all the denomination's members.

The National Association of Evangelicals is a non-profit association of evangelical Christian denominations, churches, organizations, institutions and individuals. It includes some 45,000 churches from 74 denominations and serves a constituency of approximately 15 million people, including evangelicals belonging to the Washington Association of Evangelicals. NAE is committed to defending religious freedom as a precious gift of God and a vital component of the American heritage.

The North Pacific Conference of Covenant Churches consists of 55 churches and 7,616 members in the states of Washington, Montana and Oregon. The Conference oversees the work of and advises these churches, coordinates ministries and participates in the construction and expansion of new and existing buildings.

The Washington State Catholic Conference is the Public Policy Office of the three Catholic Dioceses of the State of Washington which are the Archdiocese of Seattle (comprised of 134 parishes and 36 missions serving 336,234 Catholics); the Diocese of Spokane (comprised of 18 parishes and 5 missions serving 77,300 Catholics); and the Diocese of Yakima (comprised of 40 parishes and 7 missions serving 58,300 Catholics).

## STATEMENT OF THE CASE

Amici adopt by reference the statement of the case appearing in the Petition for Review of Respondent First United Methodist Church of Seattle.

## STATEMENT OF ISSUE

The question before this Court is whether the decision of the Court of Appeals of the State of Washington in *First United Methodist Church of Seattle v. Hearing Examiner for the Seattle Landmarks Preservation Board* correctly applied this Court's holding in *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 840 P.2d 174 (1992). *First Covenant* held that landmark designation of a church building was an unconstitutional infringement of the church's free exercise under both the United States Constitution and the Washington Constitution. In the case before the Court today, the Court of Appeals has held, contrary to *First Covenant*, that "[m]erely designating property as a landmark...does not interfere with the free exercise of religion." Slip op. at 7. Rejecting the full exemption from landmark designation that this Court granted the church in *First Covenant*, the Court of Appeals offers a new formula for meeting the constitutional requirements: permit the City to designate the church building a landmark, but suspend the operation of specific restrictions until it ceases to be used "primarily for religious purposes." Slip op. at 6. Though crafted to appear sensitive to the constitutional issues, this novel approach simply reassigns to government the jurisdiction over churches and control over their affairs that *First Covenant* removed from it. The lower court's opinion represents a significant departure from *First Covenant* and a violation of both its letter and spirit.

The Court of Appeals' interpretation of *First Covenant* dilutes the unequivocal protections this Court recognized in that case. If allowed to stand, the decision in *First United Methodist* will cause considerable confusion and jeopardize the protection of churches in the State of Washington and beyond. Amici respectfully request that this Court grant the Petition for Review.

## ARGUMENT

### I. LANDMARK DESIGNATION OF CHURCHES RESULTS IN CONSTITUTIONALLY COGNIZABLE BURDENS TO CHURCHES

The U.S. Supreme Court has long recognized that civil authorities must forego involvement in inherently religious matters to avoid interfering with the affairs of religious communities, particularly in

connection with the manner in which a church manages its property. Because the church building is so intimately connected to doctrine, liturgy, identity and mission, mandatory accountability to a governmental body with respect to the building's appearance and use (unrelated to health or safety) intrudes deeply into the internal life of the church and violates its autonomy.

The Court of Appeals has held that Seattle may unilaterally assert landmark jurisdiction over a church, declare it a cultural asset and require accountability. But just such an act was held unconstitutional in *First Covenant*. This Court recognized three burdens to the free exercise of religion resulting from landmark designation: expressive, administrative, and financial. The "liturgy exemption" provided in the designating ordinance alleviated none of these burdens. That exemption was intended to deny the City coercive authority with respect to modifications that were religious in nature, much like the Court of Appeals' suspension of restrictions is intended to deny the City coercive authority while the building is used for religious purposes. The suspension of restrictions, like the "liturgy exemption," fails to remove the burdens on religious exercise.

#### A. Landmark Designation Results in Expressive Burdens

Houses of worship serve a symbolic and communicative role by embodying, or reifying, theological principles and identity. D. Upton, *Holy Things and Profane: Anglican Churches in Colonial Virginia* 164 (1986); J. Dahinden, *New Trends in Church Architecture* 87 (1967). In *First Covenant*, this Court acknowledged "[t]he relationship between theological doctrine and architectural design," 120 Wn.2d 203, 217, 840 P.2d 174, 182, when it found that the church building is an expression of religious belief and message, and that part of the building's function is to convey those beliefs, by architectural "proclamation." *Id.* This Court held that "regulation of the church's exterior impermissibly infringes on the religious organization's right to free exercise and free speech." *Id.*

The "regulation" this Court held unconstitutional in *First Covenant* was the landmark designation alone. The City had provided a "liturgical exemption" in the designating ordinance, presumably to enable certain religious modifications to be made without coercive government authority, but this Court held that the exemption was inadequate to save the designation. "The City still has the right [under the liturgical exemption] to determine what is or what is not for a religious purpose and it acknowledged at argument that it reserved the right to determine if the 'religious purpose' claim was bona fide." 120 Wn.2d at 221, 840 P.2d at 184.

#### B. Landmark Designation Results in Administrative Burdens

The second burden of landmark designation recognized in *First Covenant* is an administrative burden. This arose because of the "liturgical exemption" that had been written into the designating ordinance. The burden consisted of "requir[ing] that *First Covenant* seek the approval of a government body before it alter[s] the exterior of its house of worship, whether or not the alteration is for a religious reason." 120 Wn.2d at 219, 840 P.2d at 184. The designation

coupled with the exemption meant that "[t]he City still has the right to determine what is or what is not for a religious purpose and it acknowledged at argument that it reserved the right to determine if the 'religious purpose' claim was bona fide....[T]he City reserves the right to oversee and challenge First Covenant's decisions about what is liturgy and what is a valid religious purpose." And such challenges "foster[] exactly the kind of religious entanglement the constitution seeks to avoid. The governmental oversight of church action that the City reserves to itself, under the liturgy exemption, impermissibly burdens free exercise." 120 Wn.2d at 221-22, 840 P.2d at 184-85.

### C. Landmark Designation Results in Financial Burdens

The third burden recognized by this Court was the drastic financial reduction in market value for First Covenant Church, the religious community's principal asset. As with the other burdens, this reduction in value by almost one-half occurred immediately upon designation. While diminution in value, standing alone, typically does not establish a taking requiring just compensation, this Court found this loss in value severe enough to impair the church's free exercise.

This Court stated that "a financial burden on religious activity, if too gross, may unconstitutionally infringe on free exercise." 120 Wn.2d at 220, 840 P.2d at 183. This implicitly recognizes the two-fold nature of the financial burden. Designation compromises both the church's ability to borrow money to engage in its religious mission and to sell its church building for its fair market value. First Covenant places such economic activity squarely within the meaning of the free exercise of religion.

### D. Landmark Designation With Suspended Restrictions Does Not Avoid Burdens

First Covenant can only be read to mean that both the U.S. Constitution and the Washington Constitution required the church building to be fully exempt from landmark designation. This Court explicitly rejected the City's assertion of jurisdiction coupled with an exemption that would be within the City's administrative and interpretive control.

There are obvious parallels between the City's landmark designation with a "liturgical exemption" for certain religious modifications in First Covenant and the Court of Appeals' decision that the City may designate with a suspension of restrictions for as long as the building is used primarily for religious purposes. The suspension in the instant case, like the "liturgical exemption", also fails to overcome the constitutional infirmity of the designation because the City still has the right to determine what are religious purposes and to assert its jurisdiction over against the claims of the religious community. Under this arrangement, expressive, administrative and financial burdens are not avoided.

## II. FIRST UNITED METHODIST WILL SUFFER FREE EXERCISE BURDENS FROM THE COURT OF APPEALS' DETERMINATION THAT

## THE CITY MAY DESIGNATE ITS CHURCH AND SUSPEND RESTRICTIONS

In an implausible reading of First Covenant, the Court of Appeals has held that "mere designation" causes no constitutionally cognizable burdens. Slip op. at 7. The lower court's decision would enable landmarks commissions to designate church buildings, put restrictions in place, and then suspend the operation of those restrictions "as long as the building is being used primarily for religious purposes." Id.

### A. Landmark Designation of First United Methodist Results in Administrative Burdens

This arrangement gives the City jurisdiction and control over First United Methodist's church building. The Court of Appeals is incorrect in assuming that "First United need not seek any approval from the landmarks board before modifying its church building." Slip op. at 7. Because the designation is in place, and restrictions are in abeyance only "so long as the building is being used primarily for religious purposes," the church will need City approval on this threshold question in order to be exempt from needing approval on its plans for modification. The burden will fall to the church to prove that its building is being used primarily for religious purposes, which will be open to interpretation. If the congregation decided that the building should be operated exclusively as a soup kitchen, would that be a cessation of religious purpose? Suppose that the congregation rented the building to community groups each night of the week, so that the total number of hours for such "secular" use exceeded the number of hours spent in worship. Is that a cessation of primary use for religious purpose?

Religious property use is diverse. In addition to worship, churches make use of property for a great variety of other religious purposes, such as education, day care, the provision of food and shelter, counseling, and retreats. The house of worship is often used intensely as a multi-purpose building for many non-worship religious uses. Even the sanctuary itself may be put to multiple uses for the congregation and for the larger community. Churches often engage in many property uses in a multi-building complex. And, of course, there are numerous religious uses that exist alone at a site: schools, hospitals, retreat houses, orphanages, and church administration buildings, to name a few. The identity and theology of the church will define what activities are part of the church's purpose, ministry, and mission.

But governmental determination of the secular or religious nature of the use of the building is constitutionally problematic. Justice Brennan wrote in *Corporation of Presiding Bishop v. Amos*, the particular character of nonprofit activity makes inappropriate a case-by-case determination whether its nature is religious or secular... What makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident. As a result, determining whether an activity is religious or secular requires a searching case-by-case analysis. This results in considerable ongoing government entanglement in religious affairs. Furthermore, this prospect of government intrusion raises the concern that a religious organization may be chilled in its free exercise activity. While a church may regard the conduct of certain functions as integral to its mission, a court may disagree. A religious organization therefore would have an incentive to characterize as religious only those activities about

which there likely would be no dispute, even if it genuinely believed that religious commitment was important in performing other tasks as well. As a result, the community's process of self-definition would be shaped in part by the prospects of litigation. A case-by-case analysis for all activities therefore would both produce excessive governmental entanglement with religion and create the danger of chilling religious activity... This substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization, and justifies a categorical exemption for nonprofit activities. *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 343-45, 97 L. Ed. 2d 273, 107 S. Ct. 2862 (1987)(Brennan, J., concurring). Under the appellate court's opinion, the City must inquire into the meaning of property use in order to decide whether it merits labeling as "religious." This places government within the internal church decisionmaking process, precisely where it should not be.

This "religious purpose" determination puts the City in much the same position it was in under the "liturgy exemption" found in *First Covenant*. Under that exemption, the City stated on the face of the designating ordinance "nothing herein shall prevent any alteration of the exterior when such alterations are necessitated by changes in the liturgy, it being understood that the owner is the exclusive authority on liturgy and is the decisive party in determining what architectural changes are appropriate to the liturgy." *Seattle Municipal Code (SMC) 25.12*; Clerk's Papers, at 174-75. Despite this deferential language, the City, as this Court described, "reserve[d] the right to oversee and challenge *First Covenant's* decisions about what is liturgy and what is a valid religious purpose." 120 Wn.2d at 221, 840 P.2d at 184. The City reserved the right to determine what is a religious purpose, to determine if the church's "religious purpose" claim was bona fide, and to challenge the church in court. *Id.*

In the case before the Court today, the Court of Appeals permits an arrangement structurally similar to the "liturgical exemption": the City is given jurisdiction over the building, but restrictions are held in abeyance under certain conditions. Though the exemption from restriction appears, in both cases, to be automatic, the opposite is true: the City is the ultimate arbiter of whether it can be invoked. In this way, an administrative burden exists for *First United Methodist*. As this Court held in *First Covenant*, "[t]he governmental oversight of church action that the City reserves to itself, under the liturgy exemption, impermissibly burdens free exercise." 120 Wn.2d at 221-22, 840 P.2d at 184-85. The attempt to employ this novel "primarily religious purpose" element fails to comport with *First Covenant*, which held that the City could have no jurisdiction over the church building in the first place.

#### B. Landmark Designation of *First United Methodist* Results in an Autonomy Burden

In addition to the administrative burden already recognized by this Court in *First Covenant*, the novel "designation with suspended restrictions" results in new burdens for *First United Methodist*. The restrictions set forth in any designation would become operative upon the City's determination that the church building had ceased being used primarily for religious purposes. Rather than less government oversight of church affairs, such an arrangement actually encourages more oversight. The restrictions are not activated at the church's initiative (applying for a building or demolition permit), but whenever the City decides that the primary use of the building is no longer religious. All church planning that involves the use of the building will have the restrictions -- like the sword of Damocles -- hanging

above it. The concerns Justice Brennan voiced in *Corporation of Presiding Bishop v. Amos*, in section II. A. above, apply here: the designation will have an immediate chilling effect on a whole range of decisionmaking that involves constitutionally protected activity.

The compromise of autonomy is particularly acute here because the nomination of First United Methodist's church is for designation of the exterior and the sanctuary. Assuming that designation were to include the church's interior worship space, the concerns about intrusion into the life of the church multiply exponentially. *Society of Jesus v. Boston Landmarks Comm'n*, 409 Mass. 38, 564 N.E.2d 571 (1990).

### III. THE LANDMARK DESIGNATION TRIGGERS STRICT SCRUTINY REVIEW

As this Court held in *First Covenant*, the burdens resulting from landmark designation were substantial enough to trigger the most exacting standard of judicial review. 120 Wn.2d at 218. Because strict scrutiny requires that the government demonstrate a compelling interest sufficient to justify the burden, the Court had to determine whether landmark preservation was such an interest. It held "that the 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." 120 Wn.2d at 224, 840 P.2d at 185.

In the instant case, no compelling interest justifies the burdens to First United Methodist's free exercise.

### CONCLUSION

Amici respectfully request that this Court grant First United Methodist's Petition for Review.

Respectfully submitted this     day of June, 1995.

Steven T. McFarland, Esq.\*  
WSBA No. 11111  
Center for Law & Religious  
Freedom, Christian Legal Society  
4208 Evergreen Lane, Suite 222  
Annandale, VA 22003  
(703) 642-1070

\*Counsel of Record

Angela C. Carmella  
One Newark Center, Room 418  
Newark, NJ 07102

Of Counsel

Attorneys For Amici Curiae