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Associated Press: Critics say Amish religious rights violated by upstate NY town

MORRISTOWN, N.Y. (AP) — The religious rights of 10 Old Order Amish men are being violated by an upstate New York town that is selectively prosecuting them for building homes without permits, a national public interest group charged Tuesday.

Meanwhile, elected officials in rural Morristown accuse the state of turning its back on them in the dispute, which the Becket Fund for Religious Liberty said involves discrimination against the Amish.

"We feel the state is sitting back and watching our situation as a test case on this issue, which will have statewide ramifications," the town's councilors said in an open letter to the governor and state legislators published Sunday in local newspapers.

Town councilors want the state to provide financial and technical help dealing with the pending trials of the violations, said W. Howard Warren, one of the councilors. The state attorney general's office has so far declined to intervene.

The fight began in July 2006 when a member of the conservative Swartzentruber sect was charged with building a house without a permit. Since then, nine other Amish men have been cited for failing to adhere to the town's building code.

Building codes are established by the state and enforced by towns, villages and cities. Morristown updated its 22-year-

old building codes in 2006 based on a model law provided by the state. The code requires new and existing structures "to keep pace with advances in technology in fire protection and building construction."

"The basis of the Old Order Amish faith is that they don't conform to new technology," said Steve Ballan, the St. Lawrence County assistant public defender who is representing the Amish men. "So if you have a law that says you have to keep pace with technology, that's the same as having a law that says no Amish allowed."

The men do not deny building houses without permits. They are willing to purchase building permits, but contend the requirements of the codes — such as having smoke detectors, submitting engineering plans and allowing inspections — violate their religious beliefs, Ballan said.

Ballan has filed motions to dismiss the charges based on religious persecution and legal technicalities.

Town Justice James Phillips Jr. is currently reviewing the cases, which are complicated because of a language barrier. The Amish men speak mostly Pennsylvania Dutch and German and have had to use an interpreter to understand the charges against them.

On Tuesday, the Becket Fund for Religious Liberty, a Washington, D.C.-based legal organization, joined the dispute, sending a 5-page letter to the town board, New York Attorney General Andrew Cuomo and the U.S. Department of Justice's Civil Rights Division.

"Continued prosecution of these cases would result in the violation

of a number of federal constitutional and statutory provisions that protect religious and linguistic minorities, as well as New York's own constitutional protections for religious exercise and against discrimination," attorney Lori Windham wrote.

In a telephone interview, Windham said "it is illegal to selectively enforce a law against a particular religious group, unless there is a demonstrated compelling government interest in that enforcement, and the government uses the least restrictive means available."

Windham said there have been no building collapses, fires, or other public emergencies that would provide the town with a compelling interest to enforce the building code on the Amish, who follow their own stringent building codes, which are part of the Ordnung, Amish rules for living passed down orally from one generation to the next.

"The lack of any demonstrated public safety threat, combined with the sudden spike in prosecutions of a discrete religious minority, leads to an inference of selective code enforcement against that minority group," she said.

The town could easily provide an exemption to the building code for Old Order Amish who follow the Ordnung.

Interference with the housing practices of the Amish may also result in a violation of the Fair Housing Act, which prohibits any discrimination based upon "race, color, religion, sex, familial status, or national origin," Windham said.

Windham warned town leaders that failure to abide by the Fair Housing Act could result in consent decrees reforming city ordinances and endanger the town's ability to obtain federal community development block grants.

Ballan said he hoped an out-of-court settlement could be reached. In the early 1980s, local leaders and the Amish were able to reach a compromise on safety signs for Amish buggies, he noted.

Morristown officials, though, said they have been unable to reach agreement and have no choice but to uphold the law. Councilors said allowing an exemption could open the floodgate for other groups to seek exemptions.

Ballan said the Amish men would likely be fined if convicted, but could also face jail time and the razing of any structures they build illegally.