

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION**

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RALPH HARRISON BENNING,

Plaintiff,

v.

Civil Action No.: CV602-139

STATE OF GEORGIA and the GEORGIA  
DEPARTMENT OF CORRECTIONS

Defendants.

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**MOTION OF  
THE BECKET FUND FOR RELIGIOUS LIBERTY  
AND JOAQUIN TERRERO  
TO FILE BRIEF *AMICI CURIAE*  
OBJECTING TO REPORT AND RECOMMENDATION  
FINDING RLUIPA UNCONSTITUTIONAL**

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(application for *pro hac vice* pending)  
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October 31, 2003

The Becket Fund for Religious Liberty and Joaquin Terrero respectfully move this Court to grant leave to file a brief *amici curiae* in support of the constitutionality of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, *et seq.* (“RLUIPA” or “the Act”), which the Report and Recommendation on Defendants’ Motion to Dismiss recommends finding unconstitutional. The brief is conditionally filed with this motion.

The Becket Fund for Religious Liberty is a non-partisan, interfaith public-interest law firm that defends the religious liberty of all religious traditions. For example, the Becket Fund has represented Protestants, Catholics, Mormons, Jews, Muslims, Buddhists and Native Americans in a wide variety of cases throughout the country. The Becket Fund has been heavily involved in litigation on behalf of a wide variety of religious worshippers, ministers, and institutions under RLUIPA.

The Becket Fund’s RLUIPA cases run the gamut – as *amicus curiae* and as plaintiffs’ counsel, in prisoner and land-use cases, from Alabama to Hawaii – including cases within the Eleventh Circuit.<sup>1</sup> The Becket Fund is also litigating a host of RLUIPA cases outside the Eleventh Circuit, including some that have resulted in published decisions,<sup>2</sup> and others that have

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<sup>1</sup> See, e.g., *Cotton v. Fla. Dept. of Corrections*, Civ. No. 02-22760 (S.D. Fla. filed Sept 19, 2002) (settlement agreement signed October 2003); *Temple B’nai Sholom v. City of Huntsville*, Civ. No. 01-1412 (N.D. Ala. removed June 1, 2001) (settlement agreement signed June 2003); *Refuge Temple Ministries v. City of Forest Park*, Civ. No. 01-0958 (N.D. Ga. filed Apr. 12, 2001) (consent order March 2002); *Primera Iglesia Bautista Hispana v. Broward County*, No. 01-6530-CIV (S.D. Fla.) (*amicus* brief filed April 18, 2003); *Konikov v. Orange County*, No. 6:02-CV-376-ORL-28-JGG (M.D. Fla.) (*amicus* brief filed April 11, 2003).

<sup>2</sup> See, e.g., *Murphy v. Town of New Milford*, No. 3:00-CV-2297, 2003 WL 22299219, \_\_\_ F. Supp. 2d \_\_\_ (D. Conn. Sept. 30, 2003); *Williams v. Bitner*, No. 1:CV-01-2271, 2003 WL 22272302, \_\_\_ F. Supp. 2d \_\_\_ (M.D. Pa. Sept. 30, 2003); *Hale O Kaula v. Maui Planning Comm’n*, Civ. 229 F. Supp. 2d 1056 (D. Haw. 2002); *Cottonwood Christian Center v. City of Cypress*, 218 F. Supp. 2d 1203 (C.D. Ca. 2002); *Freedom Baptist Church v. Township of Middletown*, 204 F. Supp. 2d 857 (E.D. Pa. 2002). See also *Castle Hills First Baptist Church v. City of Castle Hills*, Civ. No. 01-1149 (W.D. Tex. removed Dec. 14, 2001); *Redwood Christian*

concluded by favorable settlement.<sup>3</sup> In addition, we have filed a series of *amicus curiae* briefs in both prisoner and land-use cases involving RLUIPA.<sup>4</sup> We intend to continue filing lawsuits and *amicus curiae* briefs under RLUIPA until the jurisprudence under the law, as well as its constitutionality, is established beyond reasonable dispute.

The Becket Fund believes that its experience in this area of the law enables it to aid the Court in clarifying the complex issues of the Act's constitutionality, and so will assist the Court in its evaluation of the pending Report and Recommendation on Defendants' Motion to Dismiss.

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*Schs. v. County of Alameda*, Civ. No. 01-4282 (N.D. Ca. filed Nov. 16, 2001); *Missionaries of Charity, Brothers v. City of Los Angeles*, Civ. No. 01-08511 (C.D. Ca. filed Sept. 19, 2001).

<sup>3</sup> See, e.g., *Cotton v. Fla. Dept. of Corrections*, Civ. No. 02-22760 (S.D. Fla.) (settlement agreement signed October 2003); *Temple B'nai Sholom v. City of Huntsville*, Civ. No. 01-1412 (N.D. Ala.) (settlement agreement signed June 2003); *Greenwood Comm'y Church v. City of Greenwood Village*, Civ. No. 02-1426 (Colo. D.C.) (permit granted Dec. 2, 2002); *Living Waters Bible Church v. Town of Enfield*, Civ. No. 01-450 (D.N.H.) (agreement for entry of judgment signed Nov. 18, 2002); *Calvary Chapel O'Hare v. Village of Franklin Park*, Civ. No. 02-3338 (N.D. Ill.) (settlement agreement signed Sept. 3, 2002); *Refuge Temple Ministries v. City of Forest Park*, Civ. No. 01-0958 (N.D. Ga.) (consent order signed Mar. 14, 2002); *Unitarian Universalist Church of Akron v. City of Fairlawn*, Civ. No. 00-3021 (N.D. Ohio) (settlement approved Oct. 1, 2001); *Haven Shores Comm'y Church v. City of Grand Haven*, 1:00-CV-175 (W.D. Mich.) (consent decree signed Dec. 20, 2000).

<sup>4</sup> See, e.g., *Madison v. Riter*, No. 03-6362 (4<sup>th</sup> Cir.) (*amicus* brief filed on behalf of a broad coalition June 6, 2003); *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570 (2d Cir. 2002) (*amicus* brief filed on behalf of broad coalition, Mar. 15, 2002); *San Jose Christian College v. City of Morgan Hill*, No. 02-15693 (9<sup>th</sup> Cir.) (*amicus* brief filed on behalf of a broad coalition Aug. 28, 2002); *C.L.U.B. v. City of Chicago*, No. 01-4030 (7<sup>th</sup> Cir.) (*amicus* brief filed June 26, 2002); *Johnson v. Martin*, 223 F. Supp. 2d 820, 822 (W.D. Mich. 2002) (noting Becket Fund intervention in defense of constitutionality of RLUIPA); *Primera Iglesia Bautista Hispana v. Broward County*, No. 01-6530-CIV (S.D. Fla.) (*amicus* brief filed Apr. 18, 2003); *Konikov v. Orange County*, Civ. No. 6:02-376-ORL-28-JGG (M.D. Fla.) (*amicus* brief filed Apr. 11, 2003); *Goodman v. Snyder*, Civ. No. 2000-948 (N.D. Ill.) (*amicus* brief filed Mar. 17, 2003); *Murphy v. Town of New Milford*, Civ. No. 3:00-2297-HBF 2003 WL 22299219, \_\_\_ F. Supp. 2d \_\_\_ (D. Conn. Sept. 30, 2003) (*amicus* brief filed Dec. 27, 2002); *Williams v. Bitner*, Civ. No. 1:01-2271 2003 WL 22272302, \_\_\_ F. Supp. 2d \_\_\_ (M.D. Pa. Sept. 30, 2003) (*amicus* brief filed Apr. 16, 2002); *Lighthouse Institute for Evangelism v. City of Long Branch*, Civ. No. 00-3366 (D.N.J.) (*amicus* brief filed May 7, 2001).

Joaquin Terrero presently has pending a suit for relief under Section 3 of RLUIPA before the Southern District of Georgia. *See Terrero v. Watts et al.*, No. CV202-134 (S.D. Ga.). The same magistrate who issued the Report and Recommendation in this case, also issued a Report and Recommendation in that case. Both recommended that RLUIPA be found unconstitutional. Accordingly, this Court's determination of whether to uphold the constitutionality of RLUIPA will profoundly influence, if not determine, the outcome of the same issue in Mr. Terrero's case.

The Becket Fund and Joaquin Terrero therefore respectfully request that the Court grant their motion to file the *amici curiae* brief accompanying this motion.

Respectfully submitted,

THE BECKET FUND FOR RELIGIOUS LIBERTY

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*Attorneys for amici curiae*

Dated: October 31, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of October, 2003, I served on all parties the above and foregoing Motion to File Brief *Amici Curiae* by depositing same in the United States mail, with proper first-class postage affixed thereto, addressed to counsel of record as follows:

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