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12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 ELSINORE CHRISTIAN CENTER,
A CALIFORNIA NONPROFIT
16 CORPORATION, and GARY
HOLMES,

17 Plaintiffs,

18 v.

19 CITY OF LAKE ELSINORE,
A MUNICIPAL CORPORATION OF
20 THE STATE OF CALIFORNIA, LAKE
ELSINORE REDEVELOPMENT
21 AGENCY, A MUNICIPAL
CORPORATION OF THE STATE
22 OF CALIFORNIA, ROBERT A.
SCHIFFNER, PAMELA BRINLEY,
23 DANIEL METZE, GENIE KELLY,
KEVIN PAPE, and DOES 1-10
24 inclusive,

Defendants.

Case No. CV 01-4842 SVW (RCX)

REPLY BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
RECONSIDERATION

Date: August 11, 2003

Time: 1:30p.m.

Ctrm: 6

Judge: Hon. Stephen V. Wilson

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1 INTRODUCTION

2 Plaintiffs have moved for reconsideration of this Court’s decision of June 23,
3 2003, on the ground that the decision overlooked one of Plaintiffs’ claims under the
4 Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc,
5 *et seq.* (“RLUIPA”): that RLUIPA Section 2(a) applies on these facts pursuant to
6 the jurisdictional element contained in Section 2(a)(2)(B), and is violated by the
7 Defendants’ conduct. Absent reconsideration, the Court would not only deny
8 Plaintiffs a full and fair hearing on the merits of this claim, it would also
9 unnecessarily strike down part of an Act of Congress. *See Ashwander v. Tennessee*
10 *Valley Authority*, 297 U.S. 288, 347, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis,
11 J., concurring) (“The Court will not pass upon a constitutional question although
12 properly presented by the record, if there is also present some other ground upon
13 which the case may be disposed of....”).

14 In response, the Defendants do *not* contest: (1) that the Plaintiffs have, in
15 fact, asserted a claim under RLUIPA Sections 2(a) and 2(a)(2)(B), which was
16 overlooked by the Court; (2) that the factual allegations in the Complaint suffice to
17 satisfy the requirements of Section 2(a)(2)(B); (3) that the evidence Plaintiffs have
18 marshaled fully supports those allegations (or, at the very least, suffice to generate a
19 genuine issue of material fact precluding summary judgment on that claim); or (4)
20 that the Court’s finding that Defendants have imposed a “substantial burden” on
21 Plaintiffs under Section 2(a) is correct.

22 Instead, the Defendants dedicate their entire response to the argument – raised
23 now for the first time – that RLUIPA Section 2(a), as applied through Section
24 2(a)(2)(B), is unconstitutional because it exceeds Congress’ enumerated authority
25 under the Commerce Clause. But these provisions contain an “express jurisdictional
26 element,” and regulate “economic activity” – namely, burdens on the use and
27 development of land – whose connection to interstate commerce is not “attenuated,”
28 but “visible to the naked eye.” *See United States v. Lopez*, 514 U.S. 549, 561-63,

1 115 S. Ct. 1624, 131 L.Ed.2d 626 (1995); *United States v. Morrison*, 529 U.S. 598,
2 608-13, 120 S. Ct. 1740, 146 L.Ed.2d 658 (2000). Therefore, Defendants’
3 Commerce Clause challenge to RLUIPA Section 2(a) should be rejected, the
4 decision of June 23, 2003 should be vacated, and judgment should be entered for
5 Plaintiffs on their claim under Sections 2(a) and 2(a)(2)(B).

6 ARGUMENT

7 **I. RLUIPA SECTION 2(A) IS A LEGITIMATE EXERCISE OF** 8 **CONGRESS’ POWER UNDER THE COMMERCE CLAUSE.**

9 The Supreme Court recently clarified the factors courts should consider when
10 assessing whether congressional legislation represents “regulation of an activity that
11 substantially affects interstate commerce,” *Lopez*, 514 U.S. at 559: (1) whether the
12 statute contains an express “jurisdictional element which would ensure, through
13 case-by-case inquiry, that the [regulated activity] in question affects interstate
14 commerce,” *Lopez*, 514 U.S. at 561; *Morrison*, 529 U.S. at 611-12; (2) whether the
15 statute regulates “economic activity,” *Lopez*, 514 U.S. at 559; *Morrison*, 529 U.S. at
16 610; (3) whether “the link between [the regulated activity] and a substantial effect
17 on interstate commerce was attenuated,” *Morrison*, 529 U.S. at 612 (citing *Lopez*,
18 514 U.S. at 563-67); and (4) whether the statute’s “legislative history contain[s]
19 express congressional findings regarding the effects upon interstate commerce,”
20 *Morrison*, 529 U.S. at 612 (quoting *Lopez*, 514 U.S. at 562). *See United States v.*
21 *Griffith*, 284 F.3d 338, 346 (2d Cir. 2002). Although legislation need not satisfy
22 every single factor, and no single factor is strictly required, all are satisfied here.

23 Notably, moreover, Commerce Clause legislation is entitled to the same
24 judicial deference and strong presumption of constitutionality as other Acts of
25 Congress. *See Morrison*, 529 U.S. at 606 (“Due respect for the decisions of a
26 coordinate branch of government demands that we invalidate a congressional
27 enactment only upon a *plain showing* that Congress has exceeded its constitutional
28 bounds.”) (emphasis added). *See also Walters v. Nat’l Ass’n of Radiation Survivors*,

1 473 U.S. 305, 319, 105 S. Ct. 3180, 87 L.Ed.2d 220 (1985) (“Judging the
2 constitutionality of an Act of Congress is properly considered ‘the gravest and most
3 delicate duty that this Court is called upon to perform.’”) (quoting *Rostker v.*
4 *Goldberg*, 453 U.S. 57, 64, 101 S. Ct. 646, 69 L.Ed.2d 478 (1981) (quoting *Blodgett*
5 *v. Holden*, 275 U.S. 142, 148, 48 S. Ct. 105, 72 L. Ed. 206 (1927))). Because all
6 four factors of the *Lopez / Morrison* analysis are satisfied, the Defendants do not
7 remotely approach the “plain showing” necessary to invalidate the RLUIPA
8 provisions at issue here.

9 **A. RLUIPA contains an “express jurisdictional element.”**

10 First and foremost, in contrast to the laws at issue in *Lopez* and *Morrison*,
11 Section 2(a) of RLUIPA is supported by an “express jurisdictional element which
12 might limit its reach to a discrete set of [burdens on land use] that additionally have
13 an explicit connection with or effect on interstate commerce.” *Morrison*, 529 U.S.
14 at 611-12; *see* RLUIPA § 2(a)(2)(B). As a matter of law and logic, the presence of
15 this provision ensures the *facial* constitutionality of the statute under the Commerce
16 Clause: by its own terms, the statute applies only to conduct affecting “commerce
17 with foreign nations, among the several States, or with Indian tribes.” *Compare*
18 RLUIPA § 2(a)(2)(B), *with* U.S. CONST. Art. I., § 8, cls. 3.¹

19 The jurisdictional element also precludes *as-applied* challenges under the
20 Commerce Clause. If the conduct at issue in a particular case satisfies the
21 jurisdictional requirement of Section 2(a)(2)(B), then the conduct also falls within
22 the sweep of the commerce power and may be regulated constitutionally. If the
23 facts do not satisfy the jurisdictional element, then the constitution *would* prohibit
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25 ¹ *See also United States v. Bishop*, 66 F.3d 569, 588 (3d Cir. 1995) (“[T]he
26 jurisdictional element in [the federal carjacking statute] independently refutes
27 appellants’ arguments that the statute is constitutionally infirm.”). *See also United*
28 *States v. Chesney*, 86 F.3d 564, 568-69 (6th Cir. 1996) (concluding “presence of the
jurisdictional element defeats [defendant’s] facial challenge”); *United States v.*
Sorrentino, 72 F.3d 294, 296 (2d Cir. 1995) (“The statute before us avoids the
constitutional deficiency identified in *Lopez* because it requires a legitimate nexus
with interstate commerce” by means of a jurisdictional element.).

1 the statute from reaching the conduct under the commerce power – but those are the
2 same cases where the statute does not reach the conduct, so constitutional limits are
3 never crossed.² In other words, the Act applies either constitutionally, or not at all.

4 This has proven sufficient *alone* for courts to reject Commerce Clause
5 challenges to both RLUIPA Section 2(a)(2)(b), and the analogous prisoner
6 provision, Section 3(b)(2).³ This Court should do the same here.

7 **B. RLUIPA regulates “economic activity.”**

8 As the United States has explained in reply to Defendants, when a
9 jurisdictional element assesses the effect of regulated activity on interstate
10 commerce on a case-by-case basis, the Court need not examine whether that
11 regulated activity may *also* be characterized as “economic” generally. *See* U.S. Br.
12 4-5 (discussing distinction between case-by-case and generally applicable
13 Commerce Clause legislation, and citing *United States v. Jones*, 231 F.3d 508, 514-
14 15 (9th Cir. 2000)). *See also* *Life Teen, Inc. v. Yavapai County*, No. CIV-01-1490-
15 PCT-RCB, slip op. 25-26 (D. Ariz. Mar. 26, 2003) (rejecting Commerce Clause
16 challenge to Section 2(a) on the same basis) (attached hereto as Exh. A); *Hale O*

17 _____
18 ² *See Morrison*, 529 U.S. at 611-12; *Lopez*, 514 U.S. at 561 (noting that
19 jurisdictional element ensures “through case-by-case inquiry” that regulated activity
20 falls within Commerce Clause authority); *United States v. Cummings*, 281 F.3d
21 1046, 1051 (9th Cir. 2002) (same); *see, e.g., United States v. Grassie*, 237 F.3d 1199,
22 1211 (10th Cir. 2001) (“[B]y making interstate commerce an element of the [Church
23 Arson Prevention Act] ... to be decided on a case-by-case basis, constitutional
24 problems are avoided.”). *See also United States v. Harrington*, 108 F.3d 1460, 1465
25 (D.C. Cir. 1997) (“Indeed, the Court specifically suggested that a jurisdictional
26 element could justify the application of the commerce power to a single firearm
27 possession, despite the inevitable insubstantiality of such a one-time, small-scale
28 event from the perspective of interstate commerce.”).

23 ³ *See, e.g., Hale O Kaula Church v. Maui Planning Comm’n*, 229 F. Supp. 2d 1056,
24 1072 (D. Haw. 2002) (concluding that “jurisdictional element” of § 2(a)(2)(B)
25 precludes Commerce Clause challenge); *Johnson v. Martin*, 223 F. Supp. 2d 820,
26 828 (W.D. Mich. 2002) (“RLUIPA is saved by its jurisdictional requirement which
27 establishes the requisite nexus to interstate commerce to satisfy the Commerce
28 Clause.”); *Mayweathers v. Terhune*, 2001 WL 804140, at *7-*8 (E.D. Cal. July 2,
2001) (“The jurisdictional element in § 3(b)(2) thereby ensures that Congress’
Commerce Clause power is only exercised in those cases where interstate commerce
is directly affected by the prison regulation at issue.”). *See also Freedom Baptist
Church v. Middletown Tp.*, 204 F. Supp. 2d 857, 867 (E.D. Pa. 2001) (“As
subsection (a)(2)(B) on its face has an interstate commerce jurisdictional element,
defendants are reduced to question, as they do, the Congressional findings here....”).

1 *Kaula Church v. Maui Planning Comm’n*, 229 F. Supp. 2d 1056, 1072 (D. Haw.
2 2002) (noting that further Commerce Clause analysis only appropriate for “laws of
3 general applicability where Congress regulates an entire field of activity”).
4 Nonetheless, in the abundance of caution, if the Court deems it necessary to
5 continue the Commerce Clause analysis, the Court should find the “economic
6 activity” factor satisfied.

7 RLUIPA, by its very terms, regulates “economic activity”: burdens on the
8 use and development of real property, where the burdens also affect interstate
9 commerce. *See Freedom Baptist Church v. Middletown Tp.*, 204 F. Supp. 2d 857,
10 867-68 (E.D. Pa. 2002) (concluding that “insofar as state or local authorities
11 ‘substantially burden’ the economic activity of religious organizations, Congress has
12 ample authority to act under the Commerce Clause”); RLUIPA §§ 2(a)(2)(B), 8(5).

13 The conclusion in *Freedom Baptist Church* that RLUIPA regulates
14 “economic activity” is reinforced by a recent decision of the Fifth Circuit Court of
15 Appeals concluding that congressional regulation of local zoning laws to combat
16 housing discrimination fell within the commerce power, based in part on a finding
17 that Congress was regulating “economic activity.” *Groome Resources, Ltd. v.*
18 *Parish of Jefferson*, 234 F.3d 192, 205-206 (5th Cir. 2000) (upholding
19 constitutionality of Fair Housing Amendments Act.) The court reasoned that “an act
20 of discrimination that directly interferes with a commercial transaction” – there, the
21 purchase, sale, or rental of residential property – “is an act that can be regulated to
22 facilitate an economic activity.” *Id.* at 205-06. The development of land, such as
23 construction activity associated with renovation, is at least as “commercial” or
24 “economic” as the purchase, sale, or rental of that land. Indeed, the legislative
25 history of RLUIPA repeatedly identifies the “construction project” as an example of
26 “a specific economic transaction in commerce” that land-use regulations may
27 impermissibly burden. 146 CONG. REC. S7775; H.R. REP. 106-219, at 28.

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1 Moreover, the purchase, sale, rental, development or use of land is no less an
2 “economic activity” when undertaken by a religious group or other non-profit
3 organization.⁴ Courts have consistently held that the commercial activities of
4 religious institutions are subject to regulation under the Commerce Clause.⁵ If
5 commercial activities of religious entities fall within the commerce power when
6 Congress would regulate them, they cannot fairly be said to fall beyond that power
7 when it would deregulate them. Therefore, unlike the statutes at issue in *Lopez* and
8 *Morrison*, both of which pertained to violent crime, RLUIPA regulates “economic
9 activity.”

10 Defendants nevertheless argue that the “economic activity” of disrupting
11 commercial transactions involving real property – here, purchase, construction, and
12 use of that property – is suddenly no longer “economic” when local governments do
13 the disrupting. *See* Defs. Br. 6-7. Notably, Defendants cannot muster a single case
14 that carves out such a remarkable exemption from the commerce power. Little
15 wonder – as the pattern of congressional legislation and the cases make clear, state
16 and local governments are commonly the targets of Commerce Clause legislation,
17

18 ⁴ *See Camps Newfound / Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 585,
19 117 S. Ct. 1590, 137 L.Ed.2d 852 (1997) (“Nothing intrinsic to the nature of
20 nonprofit entities prevents them from engaging in interstate commerce.”); H.R. REP.
21 No. 106-219, at 28 (noting that predecessor bill of RLUIPA “does not treat religious
22 exercise itself as commerce,” but “recognizes that the exercise of religion sometimes
23 requires commercial transactions, such as the construction of churches.”); *see, e.g.,*
24 *Grassie*, 237 F.3d at 1210 (“Religion and in particular religious buildings actively
25 used as the site and dynamic for a full range of activities, easily falls within” the
26 commerce power.); *id.* at 1209 (listing among common church activities that affect
27 interstate commerce “social services, educational and religious activities, the
28 purchase and distribution of goods and services, civil participation, and the
29 collection and distribution of funds for these and other activities across state lines”);
30 *Cottonwood Christian Center v. City of Cypress*, 218 F. Supp. 2d 1203, 1221-22
(C.D. Cal. 2002) (listing various activities of particular church interference with
31 which “affects commerce”).

32 ⁵ *See, e.g., Tony & Susan Alamo Fdn. v. Sec’y of Labor*, 471 U.S. 290, 105 S. Ct.
33 1953, 85 L.Ed.2d 278 (1985) (finding religious foundation to be an “[e]nterprise
34 engaged in commerce or in the production of goods for commerce” under Fair
35 Labor Standards Act); *Volunteers of America v. NLRB*, 777 F.2d 1386, 1389 (9th
36 Cir. 1985) (noting that nonprofit charitable employers are subject to National Labor
37 Relations Act when they affect commerce, and finding statute to cover church-
38 operated alcohol rehabilitation center).

1 because they are commonly the cause of disruption to interstate commerce. *See*,
2 *e.g.*, *Camps Newfound / Owatonna*, 520 U.S. at 583-87 (holding Commerce Clause
3 invalidates state real estate tax imposing discriminatory burden on economic activity
4 of small church camp). Indeed, Section 2(a) is typical of Commerce Clause
5 regulation, such as the Telecommunications Act of 1996 and the Fair Housing
6 Amendments Act of 1988, that sets certain limits on (but does not replace or
7 supplant) the zoning power of local governments when it interferes with commerce
8 – *that is, when it treads into federal territory*.⁶

9 Even if zoning *burdens* on the real estate transactions of purchase,
10 construction, and use were somehow disqualified from the definition of “economic
11 activity,” those real estate transactions *themselves* may be viewed as the regulated
12 “economic activity.” In either case, Sections 2(a) and 2(a)(2)(B) still fall
13 comfortably within the ambit of the commerce power. *See United States v. Turner*,
14 301 F.3d 541, 547 (7th Cir. 2002) (“If there is an interstate commercial activity
15 which meets any of the three *Lopez* categories Congress may regulate that activity
16 *and* the actions or activities which secondarily affect the primary commercial
17 activity.”). Thus, the Court should reject the contention that Section 2(a) does not
18 regulate “economic activity.”

19 **C. RLUIPA regulates a class of activity having a direct, rather than**
20 **an attenuated, link to interstate commerce.**
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22

23 ⁶ *See, e.g., Groome Resources*, 234 F.3d at 205-06 (rejecting Commerce Clause
24 challenge to Fair Housing Amendments Act); *USCOC of Virginia RSA#3, Inc. v.*
25 *Montgomery County Bd. of Supervisors*, 245 F. Supp. 2d 817, 833-34 (W.D.Va.
26 2003) (rejecting Commerce Clause challenge to Telecommunications Act); *Freedom*
27 *Baptist Church*, 204 F. Supp. 2d at 867 (noting that Telecommunications Act
28 “specifically governs state and local authorities passing upon zoning requests of
wireless providers without (to date) any judicially-recognized constitutional
objection”). *See also id.* (“Nor is [RLUIPA] the first time Congress has entered the
zoning arena.”); Salkin, *Smart Growth and Sustainable Development: Threads of a*
National Land Use Policy, 36 VAL. U. L. REV. 381, 388 (Spring 2002) (providing
additional examples from the “host” or “litany of federal laws and implementing
regulations [that] affect and restrict state and local land use decision making.”).

1 Third, there can be little doubt that the aggregate effect of the regulated
2 activity at issue in this case has a direct link to interstate commerce. Even after
3 *Lopez* and *Morrison*, courts will measure interstate effect by examining the activity
4 at issue ““taken together with that of many others similarly situated.”” *Lopez*, 514
5 U.S. at 556 (quoting *Wickard v. Filburn*, 317 U.S. 111, 127-28, 63 S. Ct. 82, 87 L.
6 Ed. 122 (1942)).⁷ But even these aggregated effects may fall beyond the commerce
7 power if they are ““so indirect and remote that to embrace them ... would effectually
8 obliterate the distinction between what is national and what is local.”” *Lopez*, 514
9 U.S. at 557 (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.
10 Ct. 615, 81 L. Ed. 893 (1937)).

11 Here, the Church has shown that Defendants have imposed the substantial
12 burden of prohibiting: (1) the Church’s *purchase* of the building, (2) its proposed
13 *construction* to renovate the building, and (3) its ongoing *use* of that building.
14 Specifically, the Church had entered an agreement to *purchase* the Subject Property
15 for \$375,000, but when the City denied the Church’s request for a permit to worship
16 there, escrow was cancelled and the deal collapsed. *See* 7/18/03 SUF ¶ 36.

17 The City’s prohibition on worship also directly stifles the multiple, large-
18 scale, commercial activities involved in the Church’s proposed *construction* project:
19 employing construction workers, purchasing and transporting building materials and
20 supplies, raising and transferring funds, entering contracts, and engaging in other
21 related commercial transactions. *See* 7/18/03 SUF ¶ 69; 7/17/03 Hilbrant Decl. ¶ 38
22 (Exh. Y to 7/18/03 PSJ Motion); City of Lake Elsinore Report to Planning
23 Commission and Design Review Committee, at 2/12-3/12 (Exh. A to 7/18/03 PSJ
24 Motion) (describing scope of construction project, including interior remodeling,
25 parking redesign, roofing, and landscaping). *See, e.g., Cottonwood*, 218 F. Supp. 2d

26 _____
27 ⁷ *See, e.g., Camps Newfound / Owatonna, Inc.*, 520 U.S. at 586 (relying on
28 “interstate commercial activities of nonprofit entities *as a class*” in Commerce
Clause determination, citing *Lopez* and *Wickard*) (emphasis added); *Freedom
Baptist Church*, 204 F. Supp. 2d at 867 & nn.12, 14 (discussing “continued vitality”
of *Wickard’s* aggregation principle, and its incorporation into the text of RLUIPA).

1 at 1221 (“The construction of the church will affect a large quantity of construction
2 workers, construction materials, transportation vehicles and commercial financial
3 transactions, all of which affect commerce.”).

4 Although the commercial effects above are sufficient alone, the burden
5 imposed by the City also precludes longer-term economic activities associated with
6 mere *use* of the building once purchased and renovated: employing maintenance
7 workers and staff; providing social services; hosting receptions and banquets;
8 collecting tithes; and funding of national and international missionaries. *See* 7/17/03
9 Hilbrant Decl. ¶ 38 (discussing employment activities as part of proposed use); *id.*
10 ¶ 37 (discussing reduction in tithes since denial of CUP); SUF ¶ 54 (discussing food
11 and clothing services curtailed or prohibited by CUP denial); 6/25/01 Hilbrant Decl.
12 ¶ 5 (same); 7/21/01 Hilbrant Decl. ¶ 19 (same); *id.* ¶¶ 1, 6 (discussing funding of
13 missionaries); *id.* ¶ 22E (discussing proposed uses of fellowship hall). *See, e.g.,*
14 *Volunteers of America v. NLRB*, 777 F.2d 1386, 1389 (9th Cir. 1985) (noting that
15 nonprofit charitable employers are subject to National Labor Relations Act when
16 they affect commerce, and finding statute to cover church-operated alcohol
17 rehabilitation center); *Cottonwood*, 218 F. Supp. 2d at 1221-22 (concluding that
18 burden affects commerce based in part on finding that burdened church “will
19 employ ministers, maintenance personnel, and daycare center workers[; ...] will use
20 its church to transmit a televised ministry and hold national religious conferences[;
21 and will include a] bookstore [that] will have employees and will regularly obtain
22 merchandise for resale.”).

23 There can be little doubt that the burden on these activities, “taken together
24 with ... many others similarly situated,” would “substantially affect interstate
25 commerce.” *Lopez*, 514 U.S. at 556, 559. Even if every commercial transaction
26 suppressed in the instant case would have occurred exclusively in the State of
27 California – unlikely though that may be – the aggregate effect of similar
28

1 suppression elsewhere would still implicate the commerce power.⁸ By contrast, the
2 regulated activity in *Lopez* – possessing a gun in a school zone – was not one “that
3 might, through repetition elsewhere, substantially affect any sort of interstate
4 commerce.” *Lopez*, 514 U.S. at 567.

5 Moreover, this Court need not “pile inference upon inference,” *Lopez*, 514
6 U.S. at 567, Defs. Br. 9-10, 12, to get from the regulated category of activity to an
7 effect on interstate commerce: the application of land-use restrictions ***directly and***
8 ***immediately*** prohibits a full range of commercial transactions, including the
9 purchase, construction, and use of land at issue here.⁹

10 Finally, applying RLUIPA here does not remotely threaten “the distinction
11 between what is national and what is local.” *Lopez*, 514 U.S. at 557, 567. As noted
12 above, RLUIPA neither replaces local zoning and land-marking systems with a
13 federal one, nor provides religious uses a blanket exemption from such systems.
14 Instead, Section 2(a) requires local authorities to provide ***additional justification*** for
15 a ***limited category*** of zoning and land-marking laws, namely, those that ***both***
16 substantially burden religious exercise ***and*** tread into national territory by affecting
17 interstate commerce. *See Freedom Baptist Church*, 204 F. Supp. 2d at 867-68
18 (concluding that “insofar as state or local authorities ‘substantially burden’ the
19 economic activity of religious organizations, Congress has ample authority to act
20 under the Commerce Clause”).¹⁰

21 _____
22 ⁸ *See, e.g., Camps Newfound / Owatonna*, 520 U.S. at 586 (“[A]lthough the
23 [Christian Scientist] summer camp involved in this case may have a relatively
24 insignificant impact on the commerce of the entire Nation, the interstate commercial
25 activities of nonprofit entities as a class are unquestionably significant.”). *See also*
26 *Johnson*, 223 F. Supp. 2d at 829 n.8 (noting the continuing viability of the
27 aggregation principle of *Wickard v. Filburn*, and noting its codification in RLUIPA
28 § 4(g)); *Freedom Baptist Church*, 204 F. Supp. 2d at 867 & nn.12, 14 (same). *Cf.*
29 *Johnson*, 223 F. Supp. 2d at 829 (“RLUIPA covers regulation of the free exercise of
30 religion, an objectively interstate activity.”).

31 ⁹ *See Groome Resources*, 234 F.3d at 213 (noting that “the connection between
32 racial discrimination and its effect on interstate commerce had been established by
33 [the Supreme Court] in *Heart of Atlanta Motel* and *McClung*.”). *See, e.g.,*
34 *Cottonwood*, 218 F. Supp. 2d at 1221-22 (detailing commercial activities directly
35 prohibited by application of land-use regulation).

36 ¹⁰ *See also Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153, 102
37 REPLY BRIEF IN SUPPORT OF
38 PLAINTIFFS’ MOTION FOR
39 RECONSIDERATION

1 **D. RLUIPA’s legislative history contains evidence that the regulated**
2 **activity “substantially affects interstate commerce.”**

3 Both *Lopez* and *Morrison* make clear that Congress is not generally required
4 to make formal findings of the regulated activity’s effect on interstate commerce.
5 *Morrison*, 529 U.S. at 612 (quoting *Lopez*, 514 U.S. at 562). Instead, congressional
6 findings may help courts assess whether the effect is substantial when “no such
7 substantial effect [is] visible to the naked eye.” *Id.* (quoting *Lopez*, 514 U.S. at
8 563). Because the substantial effect on commerce of the regulated activity here is
9 abundantly “visible,” *see supra*, Section I.C. (discussing effect of regulated activity
10 on purchase, construction, and use of property), the Court need not rely on
11 congressional findings to conclude that Congress has acted within its bounds.

12 Nevertheless, Congress still found in RLUIPA’s legislative history that one of
13 the particular burdens on religious land use at issue here – a “construction project” –
14 substantially affects interstate commerce. *See* 146 CONG. REC. S7775; H.R. REP.
15 No. 106-219, at 28. These findings, moreover, are based on extensive testimony,
16 studies, and other evidence indicating the nationwide magnitude of the commercial

17
18 S. Ct. 3014, 73 L.Ed.2d 664 (1982) (addressing preemption of state real property
19 law, and concluding that “‘The relative importance to the State of its own law is not
20 material when there is a conflict with a valid federal law, for the Framers of our
21 Constitution provided that the federal law must prevail.’”) (quoting *Free v. Bland*,
22 369 U.S. 663, 666, 82 S. Ct. 1089, 8 L.Ed.2d 180 (1962)); *Groome Resources*, 234
23 F.3d at 215 (rejecting “incantation of ‘local zoning’ and ‘traditional’ authority,”
24 because “it does not serve the balance of federalism to allow local communities to
25 discriminate against the disabled”); *USCOC of Virginia RSA#3, Inc.*, 245 F. Supp.
26 2d at 834 (when Congress acts within its Commerce Clause authority, “[i]t is
27 completely irrelevant that land use decisions are an important and traditionally local
28 matter.”); *Freedom Baptist Church*, 204 F. Supp. 2d at 867 (“[T]he mere fact that
zoning is traditionally a local matter does not answer Congress’s undoubtedly broad
authority after *Wickard* to regulate economic activity even when it is primarily
intrastate in nature.”). *Cf. Franchise Tax Bd. of California v. Hyatt*, ___ U.S. ___,
123 S. Ct. 1683, 1689, 155 L.Ed.2d 702 (2003) (rejecting “as ‘unsound in principle
and unworkable in practice’ a rule of state immunity from federal regulation under
the Tenth Amendment that turned on whether a particular state government function
was ‘integral’ or ‘traditional.’”) (quoting *Garcia v. San Antonio Metropolitan
Transit Authority*, 469 U.S. 528, 546-547 (1985)); *Camps Newfound / Owatonna*,
520 U.S. at 574-75 (rejecting argument that dormant Commerce Clause cannot
invalidate discriminatory state real estate tax because Congress cannot impose real
estate tax itself).

1 activity of religious institutions, in construction and otherwise. For example,
2 according to one study cited, in 1992 alone, religious communities spent \$6 billion
3 on capital investments and new construction, up from \$4.8 billion five years
4 earlier.¹¹ Paired with the substantial evidence of widespread discriminatory land-use
5 regulation also presented to it,¹² Congress had vastly more than a “*rational basis* ...
6 for concluding that [such regulation] sufficiently affected interstate commerce.”
7 *Lopez*, 514 U.S. at 557 (emphasis added).

8 Thus, because the application of RLUIPA to the facts of this case satisfies all
9 four factors of the *Lopez-Morrison* analysis, this Court should reject the argument
10 that Sections 2(a) and 2(a)(2)(B) of RLUIPA exceed the commerce power on their
11 face and as-applied.

12 CONCLUSION

13 For each and all of the foregoing reasons, the Court should: (1) reconsider
14 and vacate its decision of June 23, 2003, finding that RLUIPA Section 2(a), as
15 applied through RLUIPA Section 2(a)(2)(C), exceeds the enumerated power of
16 Congress under the Enforcement Clause; (2) find that RLUIPA Section 2(a) applies
17 in this case because the jurisdictional element of RLUIPA Section 2(a)(2)(B) is
18 satisfied on the facts of this case; (3) reaffirm its finding that RLUIPA Section 2(a)
19 has been violated by the conduct of Defendants in this case; and (4) find that
20
21

22 ¹¹ See, e.g., *Religious Liberty Protection Act of 1998: Hearing on H.R. 4019 Before*
23 *the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th
24 Cong., 2d Sess., at 125, 134 (June 16 and July 14, 1998) (statement of Marc D.
25 Stern, American Jewish Congress) (“Stern Statement”); 146 CONG. REC. S7775
26 (citing Stern Statement in support of Commerce Clause authority).

25 The evidence presented to Congress indicating a “history and pattern” of likely
26 constitutional violations is available in summary form in Douglas Laycock, *State*
27 *RFRA’s and Land Use Regulation*, 32 U.C. DAVIS L. REV. 755, 769-83 (1999), and
28 *Protecting Religious Liberty: Hearings Before the Senate Comm. on the Judiciary*,
106th Cong., 2d Sess. (Sept. 9, 1999), (statement of Prof. Douglas Laycock, Univ.
Texas Law Sch.) (available at <<http://www.senate.gov/~judiciary/9999dlay.htm>>).
Similarly, one of the studies representing a small part of this evidence is published
in Von G. Keetch & Matthew K. Richards, *The Need for Legislation to Enshrine*
Free Exercise in the Land Use Context, 32 U.C. DAVIS L. REV. 725 (1999).

1 RLUIPA Section 2(a), as applied through RLUIPA Section 2(a)(2)(B), does not
2 exceed the enumerated power of Congress under the Commerce Clause.

3 Dated: August 4, 2003

THE BECKET FUND FOR RELIGIOUS
LIBERTY

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B. RLUIPA regulates “economic activity.” 4

**C. RLUIPA regulates a class of activity having a direct,
rather than an attenuated, link to interstate commerce. 7**

**D. RLUIPA’s legislative history contains evidence
that the regulated activity “substantially affects
interstate commerce.” 11**

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