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LATTER DAY DELIVERANCE REVIVAL
CHURCH and CHRISTIAN FELLOWSHIP
MISSIONARY BAPTIST CHURCH,

Plaintiffs,

v.

THE HOUSTON HOUSING AUTHORITY,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS’ VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, AND PERMANENT INJUNCTION**

Plaintiffs Latter Day Deliverance Revival Church (“Latter Day”) and Christian Fellowship Missionary Baptist Church (“Christian Fellowship”) (collectively, “the Churches”) file this, their Verified Original Petition for Declaratory Judgment and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

I. DISCOVERY LEVEL

1. Plaintiffs intend Level 2 discovery and affirmatively plead that the expedited actions process in Texas Rule of Civil Procedure 169 does not govern this case because plaintiffs seek injunctive relief.

II. PARTIES

2. Latter Day Deliverance Revival Church is located in the Fifth Ward of Houston, in Harris County, Texas. It owns property at 1613 Benson Street, and 3923, 4025, and 4036 Lyons Avenue, Houston, Texas 77020.

3. Christian Fellowship Missionary Baptist Church is located in the Fifth Ward of Houston, in Harris County, Texas. It owns property at 3920 New Orleans Street, Houston, Texas 77020.

4. Houston's City Council created the Houston Housing Authority ("HHA"), an independent agency, to exercise certain governmental powers, including the power of eminent domain. The HHA is located at 2640 Fountain View Drive, Houston, Texas 77057.

III. JURISDICTION AND VENUE

5. The Court has jurisdiction over Plaintiffs because they are residents of the State of Texas and because they operate in Harris County, Texas. The Court has subject matter jurisdiction because Plaintiffs request declaratory relief.

6. Venue is proper in Harris County, Texas. All or a substantial part of the events giving rise to the Churches' claims against Defendants occurred in Harris County, Texas, and the Defendant is located in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(1), (2).

IV. BACKGROUND

7. Latter Day and Christian Fellowship are pillars of the Fifth Ward's spiritual and social community. The Churches have operated in the community for decades, seeking to strengthen community bonds through faith and worship. The Churches have shepherded this community through its darkest times—providing a place of peace and hope and a beacon of inspiration to the community. The HHA intends to condemn property throughout the Fifth Ward to pursue urban renewal. HHA's urban renewal includes attempts to seize property instrumental in the Churches' efforts to restore the Fifth Ward community through Christian outreach, service, and ministry.

8. Latter Day has been an integral part of the Fifth Ward community for more than fifty years. Since 1965, the Church has served congregants and neighbors alike, strengthening the community's spiritual and social ties. Bishop Roy Lee Kossie has served Latter Day as a pastor and spiritual leader for 60 years. Bishop Kossie and Latter Day's religious influence have been a stabilizing force in the Fifth Ward community. Latter Day's commitment to its community facilitates its congregants' spiritual calling to minister to their neighbors.

9. The consistent, sacrificial offerings of Latter Day's impoverished congregants over the past six decades have ensured the slow but steady growth of Latter Day's ministry since its founding. To take just one example, in 1965, Latter Day used those offerings to purchase Lyons Theater and its accompanying lot at 4036 Lyons Avenue. Less than a year later, Latter Day had transformed that abandoned and dilapidated building into a house of worship. Latter Day held services there and made further renovations as its congregants' offerings made funds available. Over the last few decades, Latter Day has gradually purchased lots in the surrounding area, one at a time, always putting them to use for community outreach, worship services, and expansion of its ministry.

10. Latter Day acquired 1613 Benson Street, 4025 Lyons Avenue, and 3923 Lyons Avenue in 2004, 2008, and 2015 respectively. It uses these plots of land to expand its ministry through Outdoor Ministry Areas and parking for worship activities. See Ex. 9-14. This property allows Latter Day to openly engage with the community and neighborhood—to put faith into practice.

11. Christian Fellowship operates in the same neighborhood, on the same block, and on adjoining property to Latter Day, serving its congregation and the immediate community. Christian Fellowship's building has been at 3920 New Orleans Street for 39 years.

Christian Fellowship holds services at this location and ministers to the community every week. Pastor Quinton Smith has been leading the congregation for 20 years.

A. HHA Attempts to Purchase and Threatens to Condemn the Churches' Properties

12. After decades of dedicated commitment to—and painstaking sacrifice for—the communities they serve, the eminent domain power now looms over the Churches. On February 18, 2015, Fox Appraisals contacted Latter Day seeking to appraise its properties, notifying the Church that the HHA plans to condemn the Church's properties at 1613 Benson and 4025 Lyons. Ex. 1.

13. On March 3, 2015 the HHA made an initial offer to purchase the Church's properties at 1613 Benson and 4025 Lyons, informing the Church that it has eminent domain power and would condemn the Church's properties if the Church did not agree to a sale. Ex. 2.

14. On March 17, 2015, Latter Day sent HHA a letter stating that the Church had no interest in selling the properties. Ex. 2.

15. On April 8, 2015, the HHA made its final offer to purchase the Church's properties at 1613 Benson and 4025 Lyons. The letter included an appraisal report and a threat to proceed with condemnation if Latter Day did not respond within fifteen days. Ex. 2.

16. On May 22, 2015, the HHA made its initial offer to Latter Day to purchase the Church's property at 3923 Lyons. Ex. 3.

17. On July 1, 2015, the HHA made its final offer to Latter Day to purchase the Church's property located at 3923 Lyons. The letter also included an appraisal report and a threat to proceed with condemnation if Latter Day did not respond within fifteen days. Ex. 4.

18. In the fall of 2014, Christian Fellowship was approached to sell its church building and property to the government-created Fifth Ward Redevelopment Corporation. See

Ex. 8 {Houston City Ordinance 1999-766}. The Church was then approached again a few months later about selling its property at an increased price. Christian Fellowship does not want to sell its property or be forced into condemnation proceedings.

19. Forced forfeiture of these properties would inhibit the Churches' ability to minister to their community and to freely exercise their faith. The condemnation of Christian Fellowship's church property would prevent the church from ministering to the community that it has been involved with for 39 years. The taking of Latter Day's properties would eliminate its Outdoor Ministry Areas, diminish its ability to practice its faith, and would hinder the congregation's six-decade commitment to bringing hope and the positive influence of Christian ministry to the community it serves. Latter Day has labored for more than 50 years in what was once called "Texas' toughest, proudest, baddest ghetto" by *Texas Monthly*.¹ Latter Day and Christian Fellowship labored for decades to improve its community, proving true the words that churches "uniquely contribute to the pluralism of American society by their religious activities." *Walz v. Tax Com. of New York*, 397 U.S. 664, 689 (1970); see also *Board of Zoning Appeals*, 172 N.E.2d 39, 43 (1961) ("We judicially know that churches and schools promote the common welfare and the general public interest.").

V. CLAIM FOR DECLARATORY JUDGMENT

20. Plaintiffs incorporate by reference paragraphs 1 to 19 above.

21. Under Chapter 37 of the Texas Civil Practice and Remedies Code, a person whose rights are affected by government action "may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise

¹ See Diana J. Kleiner, "FIFTH WARD, HOUSTON," Handbook of Texas Online (<http://www.tshaonline.org/handbook/online/articles/hpfhk>), accessed August 03, 2015. Published by the Texas State Historical Association.

and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE § 37.004.

22. HHA’s exercise of eminent domain to condemn the Churches’ properties violates their rights as defined by The Texas Religious Freedom Restoration Act and the Texas Constitution. The HHA’s looming condemnation of the Churches’ properties would substantially burden their free exercise of religion. The HHA cannot justify this substantial burden: it lacks a compelling government interest and its plan is not narrowly tailored. Furthermore, the threatened takings are improper as the properties are not intended for “public use” as required by Article 1, Section 17 of the Texas Constitution.

23. Plaintiffs seek a declaration that the exercise of eminent domain against them would violate their rights under the law and that, therefore, the HHA should be enjoined from initiating condemnation proceedings against the Churches’ respective properties. Moreover, Plaintiffs seek a declaration that their properties may not be condemned by any entity with eminent domain power.

A. TRFRA Claim

24. The Texas Religious Freedom Restoration Act (“TRFRA”) ensures that “a government agency may not substantially burden a person's free exercise of religion [unless it] demonstrates that the application of the burden to the person . . . is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that interest.” TEX. CIV. PRAC. & REM.CODE § 110.003(a)–(b). TRFRA imposes strict scrutiny on governmental actions that burden the free exercise of religion. Parties successfully asserting such a claim are entitled to declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code. *Id.* at § 110.005(a)(1). TRFRA “requires the government to tread carefully and lightly when its actions

substantially burden religious exercise.” *Barr v. City of Sinton*, 295 S.W.3d 287, 289 (Tex. 2009).

(i) Jurisdictional Requirements to Bring a TFRA Claim

25. The threat to condemn the Church’s properties at 1613 Benson, 4025 Lyons, and 3923 Lyons has already imposed a substantial burden on Latter Day’s free exercise of religion. Faced with the uncertainty of *when* the government will condemn the property, Latter Day has already been forced to postpone or reschedule future religious events. Latter Day’s leadership cannot be sure that they will have possession of the property.

26. The threat to Latter Day’s properties directly implicates Christian Fellowship because its church building is on the same block. Christian Fellowship has received interest in its property from parties with eminent domain power. HHA’s plans to condemn Later Day’s property at 1613 Benson, 4025 Lyons, and 3923 Lyons are part of plans to condemn the entire block presenting a threat to Christian Fellowship’s property at 3920 New Orleans Street. *See Exhibit 7.* The HHA’s threat to condemn Christian Fellowship’s property—and the property on the rest of the block—constitutes a real and imminent threat to Christian Fellowship.

27. The HHA’s July 15, 2015, letter poses an imminent threat to the Churches. It represents a crucial step toward, and another overt threat of, condemnation proceedings for the entire block, which would strip all other courts of jurisdiction to enjoin violations of the Churches’ free exercise rights. This Court has jurisdiction over the Churches’ separate TRFRA claims.

(ii) TRFRA’s Substantive Requirements

28. HHA’s exercise of eminent domain power to condemn the Churches’ respective Fifth Ward properties would severely burden their free exercise of religion. HHA cannot offer a compelling government interest to justify that burden. Moreover, HHA cannot

show that the blunt exercise of power it plans can be narrowly tailored to achieve its stated goals. On the contrary, HHA's threatened actions would be counterproductive to its stated goals.

29. To prevail on this claim, the Churches must prove two things: (1) that HHA's actions burden their "free exercise of religion," and (2) that the burden is "substantial." TEX. CIV. PRAC. & REM. CODE § 110.003(a).

30. Once the Churches prove the HHA will substantially burden their free exercise of religion, the burden shifts to HHA to show two things: (1) that the threatened exercise of eminent domain "further[s] a compelling governmental interest," and (2) that it is narrowly tailored or "the least restrictive means of furthering that [compelling governmental] interest." *Id.* at § 110.003(b)(1)-(2). HHA may not offer a broad interest and show only *some* relationship between their actions and their stated goal. The HHA must have a narrow, compelling interest that it can achieve only through the actions it proposes.

31. In making these four inquiries, this Court may consider decisions under analogous federal law. TEX. CIV. PRAC. & REM. CODE § 110.001(b) ("In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution."); *see also Barr*, 295 S.W.3d at 298 (finding that Texas courts may consider analogous federal law including the federal Religious Freedom Restoration Act, Religious Land Use and Institutionalized Persons Act, and strict scrutiny free exercise claims).

32. The above four-part analysis "requires a case-by-case, fact-specific inquiry to determine whether the government action or regulation in question imposes a substantial burden on an adherent's religious exercise." *Adkins v. Kaspar*, 393 F.3d 559, 571

(5th Cir. 2004). Therefore, this Court must analyze the threat of condemnation to each property individually, taking into account the individual circumstances of the separate properties and the separate churches.

(iii) Taking land away from the Churches burdens their free exercise of religion.

33. Community engagement is central to the faith of Latter Day and Christian Fellowship's respective congregations, and exercise of eminent domain would burden their exercise of their faith. Condemnation would limit Latter Day's growth and its congregants' ability to worship and minister to the community. Furthermore, condemnation would fully displace Christian Fellowship from its only property in the community.

34. Latter Day's Outdoor Ministry Areas on the Lyons Block are integral not only to its community outreach but also its worship services. These spaces serve multiple purposes. First, they are physical access points to the community. Using these Outdoor Ministry Areas, Latter Day is able to evangelize and promote faith in the community. This outreach is essential to the Church's community-building mission. Both churches use the Outdoor Ministry Areas to host outdoor revival meetings, prayer vigils, community fellowship gatherings, vacation Bible school programs, youth ministry activities, and more. Second, these areas allow the Church's congregants to worship in the middle of their community, strengthening spiritual and social ties to the area. Third, they serve as parking lots during times of peak attendance. The threatened condemnation of its overflow parking, threatens to stunt the Church's growth and the expansion of its ministry. It also threatens to burden those congregants who would not otherwise be able to attend services.

35. The HHA intends to take away Latter Day's properties which is a prima facie showing of burden on Latter Day's free exercise. The threatened action would deprive the

Church of both a worship area and an access point to the community, and, in turn, congregants' ability to live and operate according to their faith.

36. Moreover, the HHA's exercise of eminent domain would effectively end Latter Day's current outdoor ministries and curb plans for future growth. Condemnation of the Churches' properties would truncate their prospective ability to engage in community development through faith. "Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion." *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002). The Churches' animating goal is to integrate with their community. Shuttering one of the community's access points to the Churches is thus a double burden on their free exercise.

37. Christian Fellowship's building and land is similarly integral to its exercise of religion. Stripping the church of its building and surrounding land would leave its congregation no location to worship and practice their faith. Furthermore, Christian Fellowship shares the Outdoor Ministry Area with Latter Day, often sharing the space for joint ministry efforts and sometimes using the space for ministry efforts of its own. This is a prima facie showing of a burden on free exercise.

(iv) Condemnation would pose a substantial burden because it would strike at the heart of the Churches' free exercise.

38. Unlike many claims in the case law that only tangentially implicate the free exercise of religion, the HHA exercising eminent domain over the Churches' properties would impose a direct impediment to free exercise. The Supreme Court of Texas has adopted *Webster's Third New International Dictionary's* definition of substantial: "material", "not seeming or imaginary," "real," "true," "being of moment," and "important." *Barr*, 295 S.W.3d at 301 (invoking Webster's Third New Int'l Dictionary 2280 (1961)). Two considerations bear

on substantiality: whether the burden is “real vs. merely perceived,” and whether it is “significant vs. trivial.” *Barr*, 295 S.W.3d at 301.

39. Taking physical areas of worship and ministry eliminates an essential nexus between church and community. The HHA cannot sidestep a showing of substantial burden by merely indicating that there is “evidence of *some* possible alternative.” *Id.* at 302. The fact that there are hypothetical alternative locations for worship ignores two crucial details. First, the Churches’ exercise of religion is inextricably tied to the geographic location of its own small community. Therefore, forcing the Church out of that community would eliminate its access to—and accessibility for—an impoverished congregation. For historically rooted community churches like these, locations are *not* fungible. Second, “[a] restriction need not be completely prohibitive to be substantial; it is enough that alternatives for the religious exercise are severely restricted.” *Barr*, 295 S.W.3d at 305. The Churches’ theoretical ability to relocate is immaterial to the substantial burden question, and it belies a fatal flaw in the HHA’s plan: available land for the Churches is also *available land for the HHA*, meaning the HHA’s plan is not narrowly tailored.

40. Latter Day faces a substantial burden on its free exercise from the threat of eminent domain on the properties it owns at 1613 Benson, 4025 Lyons, and 3923 Lyons. Latter Day relies on its Outdoor Ministry Areas to exercise its faith today, and plans to continue to develop these properties for use in church ministry further in the future. To take Latter Day’s property at 3923 Lyons would impose a burden on Latter Day. The HHA’s April 18 and July 1, 2015 letters prove the threat is real. HHA has threatened to initiate condemnation proceedings on *all of Latter Day’s Lyons Block properties* as of July 15. The threat is *not* trivial.

Condemnation proceedings would trigger major upheaval for Latter Day. Indeed, the mere threat of condemnation has forced Latter Day to limit its offerings to its congregants.

41. Christian Fellowship also faces a grave burden on its free exercise. First, the threat of eminent domain is real. The HHA's plan to redevelop the Lyons Block necessarily requires it to pursue Christian Fellowship's property. Christian Fellowship has already received various notices from HHA, which indicates that the HHA's plans do not end with Latter Day. Second, condemnation proceedings would displace Christian Fellowship from its *only* house of worship. The threat to Christian Fellowship's free exercise rights is significant.

(v) The HHA lacks a compelling government interest.

42. The government cannot show that its "interest justifies the substantial burden on religious exercise." *Barr*, 295 S.W.3d at 306. Even noble interests applied to the wrong parties are not "compelling." *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–431 (2006) ("[T]he Government [must] demonstrate that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of religion is being substantially burdened."). Exercise of eminent domain fundamentally differs from ordinary legislative functions. Unlike neutral laws and regulations of general applicability, eminent domain targets individuals—here, two Churches. It is not enough to say that the HHA's interest is compelling merely because it is broad. HHA must prove that its broad purpose *as applied* to these two Churches is one of "those interests of the highest order and [one of] those *not otherwise served*." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (emphasis added).

43. HHA's decision to target two spiritual landmarks in Fifth Ward triggered a duty to show why it must place the proposed developments on the same site as the targeted Churches' property. The HHA's eminent domain power allows it to take any property it wishes,

not just those available on the market. Consequently, HHA only has two options: it can argue that taking the properties on this *specific block* in the Fifth Ward is its compelling interest—an argument implausible on its face—or it can argue that taking property *from these two Churches* is a compelling government interest—an argument that is equally implausible and baldly unconstitutional to boot.

44. The HHA’s assertion that it plans to use the property to provide low-income housing is pretextual. See Ex. 7. The Fifth Ward Redevelopment Corporation’s plans go far beyond merely providing housing and include building a clinic on the block of the Churches’ property. Therefore, the HHA must prove that each of its proposed developments on the land satisfies the “compelling interest” prong.

(vi) The HHA’s plan to achieve its interest is not narrowly tailored to meet that goal.

45. The HHA cannot prove that taking the Churches’ property is the least restrictive means of accomplishing its stated goals. Defendants must prove that there are *zero* less-restrictive alternatives. See *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 804 (2000) (applied to a TRFRA claim in *Merced v. Kasson*, 577 F.3d 578, 594–95 (5th Cir. 2009)). This is a burden the HHA cannot meet. To be narrowly tailored and the least restrictive means, HHA’s plan would have to require it to take land *specifically* from the Churches. This not only is implausible on its face, but would actually be counterproductive to HHA’s stated goals.

46. First, there are other ways to provide low-income housing. The Churches’ area of ministry is geographically bounded; the HHA’s authority is not. HHA cannot prove that there are *no other areas* in the community that would serve their purposes as well, if not better. Instead of trying to develop the community in a way that they would not displace the property of

two landmark houses of worship, the HHA “has done the equivalent of using a sledgehammer to kill an ant.” *Cottonwood*, 218 F. Supp. 2d at 1229.

47. Second, neighborhood revitalization is surely the larger goal of providing low income housing. If that is true, however, the HHA’s approach undermines its goal. Limiting Latter Day’s growth and taking away its Outdoor Ministry Areas, and kicking Christian Fellowship out of the community it serves would hamper neighborhood revitalization, not promote it. Through condemnation and government interference, the HHA seeks to displace organic sources of growth, rooted in the character of the community. Its plan not only fails to meet TRFRA’s tailoring requirement, it would likely be counterproductive to the HHA’s stated goals. That which is ineffectual cannot be narrowly tailored.

48. In sum, this Court has jurisdiction to hear Plaintiffs’ TRFRA claim under the exception to its 60-day notice requirement. Condemnation of the Churches’ properties would constitute a substantial burden on their free exercise and a grave injustice to the Fifth Ward community. The HHA cannot justify its encroachment on religious liberty with *both* a showing of a compelling government interest *and* a showing that their plan to condemn church properties is narrowly tailored to accomplish such an interest.

B. Freedom of Worship Claim

49. The HHA’s looming exercise of eminent domain to condemn the Churches’ properties violates the Churches’ right to Freedom of Worship as defined by the Constitution of the State of Texas. TEX. CONST. art. I, § 6. Parties successfully asserting such a claim are entitled to declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code. TEX. CIV. PRAC. & REM. CODE § 110.005(a)(1).

50. The right to Freedom of Worship in Texas is coextensive with the Free Exercise Clause of the First Amendment of the Constitution of the United States. *See Tilton v.*

Marshall, 925 S.W.2d 672, 677 n. 6 (Tex. 1996). Therefore, federal precedent applies to state constitutional claims. Furthermore, “the constitutional analysis applicable to the government’s religious classification is the same, whether raised as an equal protection claim or as a freedom of religion complaint.” *Casarez v. State*, 913 S.W.2d 468, 494 (Tex. Crim. App. 1994), on reh’g (Dec. 13, 1995). When state action is not neutral and generally applicable, the Free Exercise Clause of the First Amendment and the Freedom of Worship section of the Texas Constitution “prohibit[] the government from ‘plac[ing] a substantial burden on the observation of a central religious belief or practice’ without showing that a “compelling governmental interest justifies the burden.” *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989). When laws burdening religion are “not of general application,” they “must undergo the most rigorous of scrutiny.” *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

51. The exercise of eminent domain is not a “neutral law of general applicability” as understood by *Employment Division v. Smith*, 494 U.S. 872 (1990). Actions are not generally applicable when they “impose burdens *only* on conduct motivated by religious belief” in a “*selective manner*.” *Id.* at 543 (emphasis added). The HHA must show its action is both neutral and generally applicable, and “[n]eutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied.” *Id.*

52. Exercise of the eminent domain power is a “selective” burden on the free exercise of both Latter Day and Christian Fellowship. Though offered for the secular purpose of providing low income housing, condemning the Churches’ property would necessarily impede free exercise of religion and invites strict scrutiny.

53. Therefore, condemning the Churches' property "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 651 (Tex. 2007). The analysis for this claim is nearly identical to the above TRFRA claim in paragraphs 28-48. There is, however, no analogous limitation to this Court's jurisdiction like TRFRA's 60-day notice period.

54. The HHA's targeting of church property has already burdened the free exercise of religion. Eminent domain affords government actors surgical precision. In this case, however, the government has eschewed surgical precision for a blunt exercise of state force against the Churches. This exercise lacks both a compelling state interest and a showing that it is the least restrictive means to accomplish that interest. This is an unconstitutional infringement on the Churches' and their respective congregants' Freedom of Worship.

C. Unconstitutional Taking Claim

55. The HHA's threatened condemnation of the Churches' property would be an unconstitutional taking. The HHA does not intend to take the churches for "public use," but rather, to "transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues." TEX. CONST. art. I, § 17(b). Parties successfully asserting such a claim are entitled to declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code. TEX. CIV. PRAC. & REM. CODE § 110.005(a)(1).

56. The HHA's plans to "revitalize" the Fifth Ward depend primarily on economic development through the taking of private property. The mere assertion that the taking is for public use is not enough: "a mere declaration by the Legislature cannot change a private use or private purpose into a public use or public purpose." *Maher v. Lasater*, 354 S.W.2d 923, 925 (Tex. 1962). Exercise of eminent domain, regardless of the party, is fundamentally a legislative act. *See Luby v. City of Dallas*, 396 S.W.2d 192, 197 (Tex. Civ. App.—Dallas 1965),

writ refused NRE (May 11, 1966) (“The right of eminent domain exercised here is one delegated to the city by the legislature, and its exercise is a legislative, not a judicial, function.”).

57. To take “property for private use under the guise of public use violates due process and constitutes a legal fraud upon property owners even if there is no fraudulent intent.” *City of Arlington, Tex. v. Golddust Twins Realty Corp.*, 41 F.3d 960, 963 (5th Cir. 1994).

VI. REQUEST FOR TEMPORARY RESTRAINING ORDER

58. The Churches incorporate by reference paragraphs 1 to 57 above.

59. Pursuant to Rule 680 of the Texas Rules of Civil Procedure, and Texas Civil Practice & Remedies Code §§ 65.011 (1), (3) and (5), the Churches request a temporary restraining order prohibiting the HHA from continuing to pursue the condemnation or taking possession or title of the properties they own at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

60. HHA has threatened to take Plaintiffs’ property, substantially burdening the Churches’ free exercise of religion in violation of TRFRA and the Texas Constitution. If the Court does not enjoin Defendant from pursuing condemnation, the Churches will suffer harm from the loss of their properties.

61. As a direct and proximate result of Defendant’s wrongful actions and planned future wrongful actions as alleged in this pleading, the Churches’ free exercise has been burdened, and will be burdened further by future HHA action. Injunctive relief is the adequate remedy at law for the infringement of religious liberties.

62. The Churches request that the Court enter a temporary restraining order and hold a temporary injunction hearing 14 days from the date of signing a temporary restraining order. Because the Churches can establish a probable right, injunctive relief is proper. The balance of equity strongly favors Christian Fellowship and Latter Day.

63. The Churches will post a reasonable bond as required by the Court.

VII. REQUEST FOR TEMPORARY INJUNCTION

64. The Churches incorporate by reference paragraphs 1 to 63 above.

65. For the reasons stated in this pleading, the Churches request that, after notice to Defendant and an evidentiary hearing, this Court issue a temporary injunction prohibiting HHA and other actors with eminent domain power from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

66. The Churches have a probable right to succeed on their claims for declaratory and injunctive relief.

67. Accordingly, after an evidentiary hearing, this Court should render and sign a temporary injunction prohibiting HHA from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

VIII. REQUEST FOR PERMANENT INJUNCTION

68. The Churches incorporate by reference paragraphs 1 to 67 above.

69. For the reasons stated in this pleading, the Churches request that, after trial on the merits, this Court issue a permanent injunction prohibiting HHA and other actors with eminent domain power from pursuing condemnation or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

70. The Churches have a right to recovery on their claim for declaratory relief.

71. Accordingly, after a trial, this Court should render and sign a permanent injunction prohibiting HHA and other actors with eminent domain power from pursuing

condemnation or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

IX. ATTORNEYS' FEES

72. The Churches seek the recovery of reasonable attorneys' fees pursuant to Sections 38.001 and 110.005(a) of the Texas Civil Practice and Remedies Code.

X. JURY DEMAND

73. The Churches assert their rights under Article 1, Section 15, of the Texas Constitution and demand a jury trial. TEX. R. CIV. P. 216.

XI. PRAYER

74. FOR THESE REASONS, Christian Fellowship and Latter Day pray that:
- (i) the Court grant a temporary restraining order restraining Defendant HHA from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street;
 - (ii) the Court grant a temporary injunction, upon a hearing to take place within 14 days from the date of this order for the purpose of determining the Churches' entitlement to a temporary injunction enjoining Defendant HHA from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street;
 - (iii) the Court grant a permanent injunction enjoining Plaintiff HHA from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street; and
 - (iv) the Court grant a declaration that authorities with eminent domain power may not condemn or take possession of title the properties at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

The Churches further pray that, upon final judgment, this Court award the Churches' reasonable and necessary attorneys' fees and costs of court and such other and further relief to which the Churches may show themselves to be justly entitled.

Respectfully submitted,

BAKER BOTTS L.L.P.

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LATTER DAY DELIVERANCE REVIVAL
CHURCH AND CHRISTIAN FELLOWSHIP
MISSIONARY BAPTIST CHURCH

NO. _____

LATTER DAY DELIVERANCE REVIVAL
CHURCH & CHRISTIAN FELLOWSHIP
MISSIONARY BAPTIST CHURCH,

Plaintiffs,

v.

THE HOUSTON HOUSING AUTHORITY,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**ORDER GRANTING PLAINTIFFS’ APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiffs Latter Day Deliverance Revival Church (“Latter Day”) and Christian Fellowship Missionary Baptist Church (“Christian Fellowship”) (collectively, “the Churches”) filed their Verified Original Petition for Declaratory Judgment, and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction (“Application for Temporary Restraining Order”). Based on the facts set forth in the Application for Temporary Restraining Order, and other evidence produced at the hearing, it clearly appears to the Court that Defendant Houston Housing Authority (“HHA”), should be immediately restrained from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street. If the commission of this act is not restrained immediately and Defendant acts, the Churches will suffer imminent harm and irreparable injury without an adequate remedy at law, which outweighs the harm, if any, that a temporary restraining order would inflict on Plaintiffs.

IT IS THEREFORE ORDERED that Defendant is prohibited from pursuing condemnation proceedings or taking possession or title of the properties located at 1613 Benson Street, 3923 Lyons Avenue, 4025 Lyons Avenue, and 3920 New Orleans Street.

IT IS FURTHER ORDERED that Plaintiffs' Application for Temporary Injunction be heard before the Honorable _____, Judge of the _____ Judicial District Court of Harris County, Texas on _____, 2015, at _____ o'clock in the courtroom of the _____ Judicial District of Harris County, Texas, then and there to show cause, if any thereby, why a temporary injunction should not be issued as requested by Plaintiffs. The Clerk of the Court is hereby directed to issue a show cause notice to Plaintiffs to appear at the temporary injunction hearing.

The Clerk of the Court shall forthwith, on filing by Plaintiffs of the Bond hereinafter required, and on proving on the same according to law, issue a temporary restraining order in conformity with the laws and terms of this Order.

This Order shall not be affected unless and until Plaintiffs execute and file with the Clerk a bond in conformity with the law, in the amount of _____ dollars.

Signed this _____ day of August, 2015, at _____ o'clock in Harris County, Texas.

JUDGE PRESIDING