



HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC

August 24, 2026

Mille Lacs County Board of Commissioners

[REDACTED]
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Dear Members of the Board of Commissioners:

We represent members of the Old Order Amish in Mille Lacs County who have been repeatedly subjected to the County's discriminatory application of its zoning and permitting ordinances. We demand that the County's unlawful application of its ordinances against the Old Order Amish community immediately cease. For years, the Old Order Amish have lived, built, and worked in Mille Lacs County. And for years the County cooperated with them so that they could work and build in the ways their deeply held religious convictions mandate. In recent years, however, the County has applied its zoning and permitting ordinances in a manner that places special burdens on Old Order Amish residents and threatens their ability to live according to their religious beliefs.

These actions violate the United States Constitution, federal statutory religious freedom protections, the Fair Housing Act, and the Minnesota Constitution. If the County continues its current course, it is likely to face significant exposure to civil litigation, including damages, attorneys' fees, and injunctive relief. Continued enforcement may also invite investigation by the United States Department of Justice and other agencies charged with enforcing federal civil-rights laws. We write now because we believe those consequences are avoidable.

Our conclusions are based on substantial experience litigating religious freedom cases. The Harvard Religious Freedom Clinic is a program at Harvard Law School devoted to protecting the rights of religious minorities through litigation, advocacy, and scholarship. First Liberty Institute is a public-interest law firm dedicated exclusively to defending the religious liberty of all Americans. Foley & Lardner LLP is an international law firm with extensive constitutional and civil-rights litigation experience. Together, we have represented Christians, Jews, Muslims, Sikhs, Native Americans, and many other religious communities in state and federal courts throughout the country. We have successfully litigated cases involving unlawful governmental interference with religious exercise, including disputes arising from municipal zoning and land-use regulations. We have also successfully represented the Amish in other parts of the country. Our collective experience leaves us with little doubt that the County's application of its zoning ordinances raises serious constitutional and statutory concerns.

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I. Mille Lacs County's restrictions on the Old Order Amish are both severe and out of step with counties around the country.

The two Old Order Amish church communities residing in Mille Lacs County order virtually every aspect of their daily lives according to religious convictions passed down through generations. Their faith governs not only worship, but also family life, building practices, work, transportation, and the use of technology. The Old Order Amish strive to be good neighbors, avoid conflict whenever possible, and comply with the law except where doing so would require them to violate religious conscience.

For many years, the County appears to have respected those religious practices. But recently its approach changed. In particular, enforcement of Development Ordinance § 107.1¹ has taken on a markedly less tolerant character. Rather than work with the Amish community to facilitate zoning and permitting compliance, the County enforced its ordinances in ways that conflict with longstanding—and long-accommodated—Amish building practices. County officials have imposed procedural requirements that uniquely burden Amish residents and have pursued unusually severe enforcement measures, including seeking arrest warrants for minor zoning infractions.

Many of these problems trace back to changes in the County's permitting procedures several years ago, including the transition from paper applications to an online system. Because their religious beliefs prohibit the use of many modern technologies, Old Order Amish residents sought alternative means of complying with the County's new requirements. Their efforts were met with resistance and, at times, hostility. A Minnesota legislator ultimately intervened to protect the Old Order Amish and secured a change restoring an option to file paper permit applications. But the period of online-only permitting set in motion a series of legal consequences that continues to affect the Amish community today.

We have learned of dozens of alleged zoning and permitting violations and criminal cases, as well as at least one instance of incarceration resulting from an inability to keep pace with accumulating fines and court appearances. We are likewise concerned by reports of outstanding arrest warrants. Particularly troubling are reports that repeated efforts by Amish residents to seek reconciliation have been met with an unwillingness to engage and, at times, open hostility. What could have been resolved through the ordinary exercise of administrative discretion instead escalated into a cascade of citations, criminal charges, fines, and court proceedings.

¹ See Mille Lacs County Development Ordinance, art. I, § 107.1 (2017), available at <https://www.millelacs.mn.gov/DocumentCenter/View/963/Development-Ordinance-PDF>.



None of this is necessary. We see no reason the County cannot administer its zoning and permitting process in a manner that serves legitimate goals while respecting the religious exercise of its Old Order Amish residents. Neighboring counties and jurisdictions across the country do so. We remain hopeful that the County is willing to work with the Old Order Amish to resolve these issues amicably. If it is not, however, we believe the Amish community has substantial legal claims and would likely prevail in litigation. We are prepared to bring suit should that become necessary.

II. The County's actions expose it to substantial liability under federal and Minnesota law.

Our conclusion that the County faces substantial legal exposure rests on well-established constitutional and statutory protections of religious exercise. Those protections are especially robust where, as here, local officials exercise discretionary authority in a manner that treads on longstanding religious practices.

The First Amendment. The Supreme Court has long recognized that the First Amendment prohibits selective enforcement of laws against religious communities, even if those laws are generally applicable. Under *Employment Division v. Smith*, 494 U.S. 872 (1990) and *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), laws that are enforced in a manner that targets religious exercise are subject to the most demanding standard of constitutional review: strict scrutiny.

The same is true when the government retains discretion to accommodate religious exercise but declines to do so. Development Ordinance § 107.1 confers discretionary authority on County officials in administering the permitting process. The County's decision not to exercise that discretion to protect religious exercise thus triggers the highest level of constitutional scrutiny under *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

The County is unlikely to meet the demanding strict scrutiny standard. First, strict scrutiny requires the County to demonstrate both that its actions further interests "of the highest order" and that those interests are pursued through the least restrictive means available.² General appeals to administrative convenience, planning objectives, or public safety are not enough. Then, the County must show that its restrictions are narrowly tailored. They are not. Neighboring Minnesota counties, as well as jurisdictions across the country, have long accommodated Amish religious practices of the kind at issue here while protecting legitimate governmental interests. Mille Lacs County itself did so for years. It thus seems that the County

² *Mahmoud v. Taylor*, 606 U.S. 522, 565 (2025) (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021)).

could accomplish its objectives without imposing the unconstitutional burdens it now places on the Amish community.

RLUIPA. Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect religious groups against the sort of burdens on religious exercise that Mille Lacs County is imposing on the Old Order Amish.³ The statute prohibits governments from implementing land-use regulations in a manner that substantially burdens religious exercise unless the government demonstrates that doing so furthers a compelling governmental interest through the least restrictive means available.⁴

The County’s permitting process determines whether Amish families may construct homes, maintain farms, and continue living according to their faith. And as Minnesota courts have recognized, it is the County that bears the burden of showing that the interests it seeks to further are compelling and that no less restrictive means are available.⁵ The County is unlikely to be able to make that showing. The Amish community has consistently sought practical means of complying with County requirements while remaining faithful to its religious convictions. Rather than pursue those alternatives, the County appears to have responded with escalating citations, criminal prosecutions, fines, and warrants. That course is impossible to reconcile with Congress’s directive that governments employ the least restrictive means available before substantially burdening religious exercise.

The Minnesota Constitution. Section sixteen of the Minnesota Constitution independently guarantees the “right of every man to worship God according to the dictates of his own conscience.”⁶ Minnesota courts emphasize that these protections

³ 42 U.S.C. § 2000cc.

⁴ RLUIPA provides that “No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). RLUIPA applies when, relevant to this situation, “the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.” 42 U.S.C. § 2000cc(a)(2)(C).

⁵ *Mast v. Cnty. of Fillmore*, 993 N.W.2d 895, 904 (Minn. Ct. App. 2023); *see also id.* at 909 (citing *Holt v. Hobbs*, 574 U.S. 352, 364–65 (2015)).

⁶ Section sixteen reads, in pertinent part, “Freedom of conscience; no preference to be given to any religious establishment or mode of worship The right of every man to worship God according to the dictates of his own conscience shall never be infringed [N]or shall any control of or



continues to enforce its ordinances in a manner that prevents the Old Order Amish from constructing homes consistent with their religious beliefs, its actions will have the effect of excluding a religious minority from the County through the unlawful administration of discretionary zoning and permitting laws. The Fair Housing Act does not permit that result.

The consequences extend beyond private litigation. The Department of Justice routinely investigates municipalities alleged to have administered zoning and housing regulations in a discriminatory manner, often resulting in consent decrees, damages, and ongoing federal oversight. Those considerations warrant careful attention before the County continues on its present course.

III. The County can resolve these issues without litigation.

We write to ensure that the County has fully considered the legal consequences of its present course. The Old Order Amish community has strong claims under the Free Exercise Clause of the First Amendment, the Religious Land Use and Institutionalized Persons Act, the Minnesota Constitution, and the Fair Housing Act. If litigation becomes necessary, we are prepared to vindicate those rights in court.

But litigation need not be the next step. For years, the County and the Old Order Amish maintained a cordial relationship that respected both the County's interests and the Amish community's religious convictions. We see no reason that relationship cannot be restored. Counties throughout Minnesota and across the country administer zoning and permitting systems that protect public interests while accommodating the religious practices of their Old Order Amish citizens. Mille Lacs County's ordinances give it broad discretion to approve our clients' use of their property. We ask the County to exercise that power to accommodate the Old Order Amish.

We also ask the County to meet with us to discuss a practical resolution. We are prepared to discuss how the County can work with the Amish without requiring them to violate their religious beliefs. Any solution should also address the consequences of the County's recent enforcement efforts, including outstanding citations, criminal cases, fines, and warrants that arose from these disputes.

The Old Order Amish have consistently sought to resolve these issues cooperatively. They remain eager to pursue that course, and we hope the County is likewise interested in an amicable resolution. We represent the Old Order Amish pro bono, so they are insulated from the costs of litigation, but our clients wish to be good

relief if necessary. Addressing these issues now would allow all parties to avoid the significant financial and emotional costs of protracted litigation and to reach a constructive resolution, as is the strong preference of the Amish in your community.



neighbors and are sensitive to the burdens that could fall on the County if it becomes necessary to resolve this matter in court. A negotiated resolution would avoid the substantial costs and burdens of litigation while preserving the County's interests and the Amish community's ability to continue living and worshiping in accordance with its faith.

We ask that the County respond no later than September 8, 2026 indicating whether it is willing to meet and begin working toward a resolution.

Thank you for your prompt attention to this matter.

Sincerely,



Joshua C. McDaniel
 Parker W. Knight III
 Kathryn F. Mahoney
 Jacob M. McIntosh
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