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FREEDOM FROM RELIGION FOUNDATION, *et al*., Plaintiffs, – against – MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS, *et al*., Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: SOMERSET COUNTY DOCKET NO.: SOM-C-12089-15 Civil Action

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

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STATEMENT OF THE CASE

The New Jersey Constitution prohibits the government from taxing citizens to repair or build churches: "No person shall . . . be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship." Since 2012, Morris County has collected and distributed more than $4,500,000 in tax revenue directly to active houses of worship—churches—for building repairs and improvements. Are these grants constitutional?

Only after this Court recognizes this violation—as both plain language and precedent dictate—should it consider defendants' equal protection counter-argument. Removing churches from the grant program does not present an equal protection issue because, compared to similarly situated entities, churches are not actually discriminated against if they are removed from the program. To prove equal protection the churches will have to show that they are alike in *all relevant* aspects to remaining, grant-eligible entities. By ordinance, that means local governments and charities dedicated to historic preservation. Private individuals and nearly all secular charities are already ineligible. Churches are dedicated to religion; the "sole purpose of a church is spreading the gospel of Jesus Christ," according to one defendant. The churches are similarly situated with already ineligible nonprofits, not those dedicated to preserving history. Removing them from the grant program simply removes a special privilege granted to religion, pulling them into parity with other, similarly situated nonprofits.

Even if the churches could overcome this problem, courts have upheld religious aid prohibitions in state constitutions against equal protection challenges because preserving the separation of state and church—even beyond that which is required by the First Amendment—is a government interest sufficient to withstand any level of scrutiny. The U.S. Supreme Court has never upheld a direct financial grant to a church, but has upheld religious aid prohibitions nearly

identical to New Jersey's. Therefore, the direct financial grants from the government to churches with active worship congregations which are at issue in this case should be declared a violation of the New Jersey Constitution, and enjoined.

STATEMENT OF THE RELEVANT UNDISPUTED FACTS[1]

The Morris County Board of Chosen Freeholders awards grants from the Morris County Historic Preservation Trust Fund ("Trust Fund"), which is funded by a county property tax (Joint Statement of Stipulated Facts ("JSSF") Ex. A, 1). Morris County requires residents to pay a tax into the Trust Fund. *Id.* The Freeholders award grants from that fund to only four types of entities:

1) Municipal governments within Morris County,
2) Morris County itself,
3) Charitable conservancies whose purpose includes historic preservation, and
4) Religious institutions.

(*Id.* at 22). The third category is narrowly defined as charitable conservancies "whose purpose includes historic preservation of historic properties, structures, facilities, sites, areas or objects, or the acquisition of such properties, structures, facilities, sites, areas or objects for historic preservation purposes." (*Id.* at 4). Put more simply, this dedicated tax funds the government, charities intent on preserving history, and churches. The vast majority of entities—individuals, for-profit businesses, and most secular nonprofits—are excluded from the County's program even if they own and maintain historic buildings.

By contrast, religious institutions that own historic buildings are eligible for these grants even though their purpose is religious worship and not historic preservation. At least one church *repudiated* "historic preservation" as a purpose, explaining in a letter accompanying the church's

[1] In addition to the facts stated herein, Plaintiffs hereby incorporate by reference all of the facts set forth in the Joint Statement of Stipulated Facts and attached exhibits.

2014 grant application that "the sole purpose of a church is spreading the gospel of Jesus Christ." (JSSF Ex. J2, 1661). Other defendants are equally honest in admitting their exclusively religious purposes:

- First Presbyterian Church in Boonton: "the sole purpose of a church is spreading the gospel of Jesus Christ," noted the church, repudiating "historic preservation" as a purpose. (JSSF Ex. J2, 1661).
    - Awarded $109,840 between 2012 and 2014. (JSSF ¶ 60).
- Community Church of Mountain Lakes: "we affirm our journey to live out the teachings of Jesus Christ." (JSSF Ex. M2, 4893).
    - Awarded $16,800 from the Trust Fund in 2015. (JSSF ¶ 71).
- Stanhope United Methodist Church: "The promotion of the Christian religion through the preaching of the Word of God, the administration of the sacraments, ordinances, and other means of grace, the maintenance of worship, the edification of believers; the evangelization of the world, and the promotion of the missionary and benevolence causes." (JSSF Ex. H2, 621).
    - Awarded $139,223 between 2012 and 2015. (JSSF ¶ 58, 68).
- Church of the Assumption of the Blessed Virgin Mary: "Our long range plan is to provide spiritual support to our more than 2,700 families. This includes preaching the Gospel and administering the Sacraments, celebrating Holy Mass, conducting Assumption School, . . . comforting the sick, consoling the grieving and burying the dead." (JSSF Ex. I2, 1317).
    - Awarded $156,944 between 2012 and 2015. (JSSF ¶ 59, 66).
- Presbyterian Church of New Vernon: "Since 1834 people have gathered here to worship and serve God. . . . Moving into a future of promise the church plans to pursue the following. Worship: Create inspirational and relevant worship services so a diversity of people can praise God, gain faith and hope, be equipped to fulfill Christian responsibilities, and feel part of our fellowship as a community of believers . . . ." (JSSF Ex. C2, 1066).
    - Awarded $746,540 between 2012 and 2015. (JSSF ¶ 53, 64).
- Presbyterian Church in Morristown: "Proclaim faithfully the Good News of the Gospel in fresh and compelling ways; Gather people into a welcoming caring grace-filled community; [and] Nurture relevant thoughtful, committed disciples." (JSSF Ex. B2, 536).

- Awarded $988,016 between 2012 and 2015. (JSSF ¶ 52, 63).

- First Reformed Church of Pompton Plains: "The First Reformed Church of Pompton Plains exists to advance God's Kingdom through acceptance, personal transformation, and service." (JSSF Ex. E2, 991).

    - Awarded $535,336 between 2012 and 2014. (JSSF ¶ 55, 65).

All the churches have active worship congregations, a religious mission, and perform religious activities, including religious worship, in the buildings maintained with Trust Fund grants. (JSSF ¶ 48–50). In their grant application materials, most of the churches plainly informed Morris County that a grant would further their religious mission. For example, the First Presbyterian Church in Morristown said that a grant would "historically preserve the building ***allowing its continued use by our congregation for worship services***," (JSSF Ex. B2, 528). St. Peter's Episcopal Church sought the grant to "ensure continued safe public access to the church ***for worship***." (JSSF Ex. D2, 2559). The Church of the Redeemer stated that "Preserving the Church Building is ***essential to carry out the worship activities*** and community life of Church of the Redeemer." (JSSF Ex. F2, 2383). Ledgewood Baptist Church told the County that "Preservation of the Ledgewood Baptist Church ***will enable the congregation to continue to provide religious and community activities*** to the county's diverse population." (JSSF Ex. L2, 1643) (emphasis added to each).

The Trust Fund Review Board recommends grants to the Freeholders (JSSF Ex. A, 2). Once the grants are awarded, the county begins a two-year performance period, during which county treasurer Defendant Joseph A. Kovalcik disburses money from the Trust Fund to grantees that submit invoices for work completed under their historic preservation grant. (*Id.*). Since 2012, the Freeholders have approved more than $4.5 million in grants to twelve churches, places of worship, or ministries (collectively, "churches"). Both Freeholder Hank Lyon and Plaintiff

David Steketee opposed the constitutionality of these grants on the record at public hearings, and urged the Freeholders to stop awarding grants to churches, but they continued. (JSSF ¶¶ 75–76).

The grants themselves include work on the interior of the churches. For instance, Morris County gave First Presbyterian Church in Boonton a grant in 2014 partly to restore two stained glass windows. The more expensive window shows the "Walk to Emmaus," a religious scene depicting the biblical story in the Book of Luke 24:13-32. The window is situated directly above the church's alter, and is visible only from inside the church. (JSSF Ex. J1; JSSF Ex. J2, 1679–81).[2]

The Trust Fund grants are being challenged by Plaintiffs Freedom From Religion Foundation and David Steketee. Plaintiff Freedom From Religion Foundation ("FFRF") is a nationwide not-for-profit 501(c)(3) membership organization with its primary place of business in Madison, Wisconsin. (JSSF ¶ 1.) FFRF has more than 24,000 members in the United States, including 483 members in New Jersey and 85 in Morris County. (*Id.*) FFRF strongly objects to the use of taxpayer money to repair or maintain churches, places of worship, or ministries. (*Id.* ¶ 2.)

Plaintiff David Steketee is a resident taxpayer of Morris County, New Jersey, and has been since August, 2009. (*Id.* ¶ 3.) Steketee has paid property taxes in Morris County, including the tax that finances the Trust Fund, every year since 2009. (*Id.* ¶ 4.) Since 2012, approximately $40 of Steketee's tax payments has been allocated to the Trust Fund. (*Id.* ¶ 5.) Steketee plans to continue to reside in Morris County and pay property taxes in the future. (*Id.* ¶ 6.) Steketee is a

[2] Other interior work includes upgrading the mechanical, electrical and plumbing systems of the First Presbyterian Church of New Vernon (JSSF, Ex.C2, 1109); improving ventilation for, and removing interior parging of, the tower at St. Peter's Episcopal Church (JSSF, Ex. D2, 2634); and "continued maintenance of the existing mechanical, electrical and plumbing systems" of the chapel at the First Reformed Church of Pompton Plains. (JSSF, Ex. E2, 6146). The Trust Fund Rules specifically contemplate mechanical, electrical and plumbing systems (MEP) as eligible uses of grant funds for religious institutions. (Ex. A, 24).

member of FFRF. (*Id.* ¶ 7.) Steketee is nonreligious and strongly believes that his taxes should not be used for repairing or maintaining any church, place of worship, or ministry. (*Id.* ¶ 8.)

Plaintiffs are seeking an injunction, among other relief, to enjoin the Morris County Defendants from issuing any further grants to any church or churches, place or places of worship, or minister or ministry.

SUMMARY JUDGMENT STANDARD

Rule 4:46-2 provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 528–29 (1995). By its plain language, *Rule* 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a "genuine issue as to any material fact challenged." *Id.* at 529 (emphasis in original). "That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to *any* fact in dispute." *Id.* (emphasis in original). While "genuine" issues of material fact preclude the granting of summary judgment, *R.* 4:46-2, those that are "of an insubstantial nature" do not. *Id.* at 530.

As there are no genuine issues of material facts, this Court should deny defendants' summary judgment motion and grant summary judgment in favor of plaintiffs FFRF and David Steketee.

LEGAL ARGUMENT

I. MORRIS COUNTY'S CHURCH GRANTS VIOLATE THE NEW JERSEY CONSTITUTION.

Giving taxpayer funds to churches violates Article I, Paragraph 3 of the New Jersey Constitution (the "religious aid prohibition"). The Court should enjoin the Freeholders from giving churches any taxpayer funds.

A. The plain language of the New Jersey Constitution prohibits the government from funding the repair or construction of churches for any reason.

The heart of this case is New Jersey's religious aid prohibition:

> . . . nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

N.J. Const. art. I ¶ 3. This prohibition was included in New Jersey's first constitution in 1776 and was readopted in the 1844 and 1947 Constitutions. *Am. Civil Liberties Union of N.J. v. Hendricks*, 445 N.J. Super. 452, 455, 139 A.3d 92, 94 (2016).

This constitutional language is unambiguous. In New Jersey, the government cannot compel taxpayers to repair or build churches or maintain ministries. This plain language carries substantial weight. "The Constitution is, above all, an embodiment of the will of the People, and this Court's responsibility as final expositor is to ascertain and enforce that mandate. Generally, the surest indicator of that intent is a provision's plain language." *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 191 N.J. 344, 359 (2007).

The plain language prohibits Morris County from compelling taxpayers to support churches. There is no exemption for historical preservation. There is no exemption for any purpose. The clause declares that public funds shall not be used "for repairing any church or churches" (N.J. Const. art. I ¶ 3) and Morris County is using public funds to repair churches.

Taxes are, by their very nature, compulsory. But supporting the repair and construction of a church—supporting a religious ministry—is something the government has never had the power to coerce from taxpayers. Any funds that go to a church from a taxpayer must be "deliberately and voluntarily" (*Id.*) given, not collected using the government's enforcement power. That is what the constitution requires and that's how New Jersey courts have interpreted it. *See Resnick v. E. Brunswick Twp. Bd. of Educ.*, 77 N.J. 88, 121 (1978) (enforcing New Jersey's religious aid prohibition).

B. The plain language interpretation has been recognized by higher courts in decisions that bind this court.

The New Jersey Supreme Court has interpreted and enforced the religious aid prohibition, holding that it "specifically prohibits the use of tax revenues for the maintenance or support of a religious group." *Resnick*, 77 N.J. at 102 (1978). In *Resnick*, the New Jersey Supreme Court held that the clause prohibits using taxpayer funds to benefit a religious organization, even as part of a neutral program. *Id.* at 103. The school district in that case offered rental space to churches "on the same terms and at the same rates as for the other non-profit groups." *Id.* at 102. All non-profit groups were charged $4.50 per hour for extra janitorial services, although the extra services actually cost the school district $6.75 per hour. *Id.* at 94 n.1. Even though this policy applied equally to all non-profit groups, it was unconstitutional for the school district to provide churches rental space without the church fully reimbursing the school district for all expenses. *Id.* at 103. The Court concluded that the clause prohibited any arrangement that granted a financial benefit to churches—any arrangement under which "the out-of-pocket expenses of the board directly attributable to the use by the religious body are not fully reimbursed." *Id*.

As both Morris County and the churches also pointed out in their briefs, the religious aid

prohibition "require[s] that religious organizations be singled out among nonprofit groups in general as being ineligible for certain benefits which are partly subsidized by tax-generated funds." *Id.* at 103–04. Churches must be excluded from certain taxpayer-funded programs. The Court in *Resnick* allowed churches to rent public school space only "[s]ubject to the requirement that taxpayers' funds not be expended for the benefit of religious groups." *Id.* at 120-21.

In this case, the violation is more egregious. In *Resnick*, the government simply did not charge churches for the full cost of the rental, effectively discounting their rental rate. Here, the government is actually giving taxpayer money directly to churches.

The N.J. Supreme Court's interpretation of New Jersey's religious aid prohibition in *Resnick* is "binding precedent," as the Superior Court Appellate Division noted in May. *Hendricks,* 445 N.J. Super. at 455, 139 A.3d at 94. *Hendricks* applied *Resnick* to invalidate grants to a yeshiva and a seminary, religious schools dedicated to training clergy. *Id*. at 478. Even though the grants would be used "to fund classrooms, libraries, and computer and audio-visual equipment," *Id.* at 464, the appellate court found *Resnick* to bind and overturn the grants because "the Yeshiva and the Seminary are sectarian institutions. Their facilities funded by the Secretary's grants indisputably will be used substantially if not exclusively for religious instruction." *Id*. at 452.

Like the *Hendricks* grants, Morris County's grants are being given to sectarian institutions that are used for sectarian religious purposes. The grants are not just being used to repair the churches, but also to maintain the religious ministries within the churches. The religious aid clause also prohibits spending tax revenue "for the maintenance of any minister or ministry." When the state pays a church's repair bills, it promotes the religious ministry, "allowing [the church's] continued use by our congregation for worship services," (JSSF Ex. B2,

528) as one defendant wrote in its grant application. It also allows the church to use the money it raised from parishioners who donate voluntarily for its other religious work. Giving money to a church is giving money to its ministry. By the churches' own admission these grants support the quintessential religious purpose: worship. The grants:

- "preserve the building ***allowing its continued use by our congregation for worship services***," (JSSF Ex. B2, 528).
- "ensure continued safe public access to the church ***for worship***." (JSSF Ex. D2, 2559).
- "[are] ***essential to carry out the worship activities*** and community life of Church of the Redeemer." (JSSF Ex. F2, 2383).
- "***will enable the congregation to continue to provide religious and community activities*** to the county's diverse population." (JSSF Ex. L2, 1643) (emphasis added to each).

Even if the churches had not been open about the religious purpose of the grants, *Hendricks* and *Resnick* rejected an argument "that providing money for capital improvements does not equate to 'maintaining a minister or ministry' as those terms are commonly understood in our contemporary times." *Hendricks* at 475. The attempt to distinguish a church structure from the worship that occurs in the church was not "a factor in *Resnick*, where the facilities were used both for the religious instruction of children and for adult worship, prayer meetings, and social gatherings." *Id*., citing *Resnick*, 77 N.J. at 94–95.

Resnick explains that the religious aid prohibition does not apply to certain services, such as police and fire protection. 77 N.J. at 103. Protecting individual citizens or saving a neighborhood from fire is not analogous to handing a church hundreds of thousands of dollars and there is no danger of confusing the two. The distinction is especially stark as the taxpayer funds are used to repair churches, which is explicitly prohibited by the New Jersey Constitution. Plaintiffs are not arguing that churches should be denied these services under any such

constitutional provision and the *Resnick* court, citing two Supreme Court cases, shrugged off these concerns. *Id.*

C. Federal jurisprudence does not alter this Court's inquiry into the state constitution's religious aid prohibition.

This Court can easily resolve the state constitutional question by pointing to the plain language of the religious aid prohibition and relying on *Resnick* and *Hendricks* as binding precedent. The county has argued against this interpretation by summarizing and relying on the "federal treatment of the Establishment Clause of the First Amendment."[3] They also rely on a New Jersey Attorney General opinion that solely concerned "the Establishment Clause of the First Amendment."[4] This reliance is misplaced because plaintiffs are challenging a county grant program under a state constitutional provision. Applying the federal test for a federal constitutional provision to federal and state grant programs is simply not the issue in this case.

The reliance on federal law also misses a crucial point: the New Jersey religious aid prohibition offers, and is permitted to offer, greater protection to taxpayers than the Establishment Clause. New Jersey "has a rich tradition of sometimes construing our own state constitutional protections of individual rights more broadly than cognate provisions in the United States Constitution." *Hendricks*, 445 N.J. Super. at 476. As the *Hendricks* Court noted, *Resnick* "indicat[es] that a proper interpretation of the [religious aid prohibition] is not to be affected by the federal jurisprudence." *Id*. at 477.

In short, New Jersey's Constitution offers broader protections than the U.S. Constitution and plaintiffs are seeking to vindicate their rights under those broader protections. According to

[3] Brief in Support of defendants, Morris County Board of Chosen Freeholders, the Morris County Preseration (sic) Trust Fund Review Board and Joseph A. Kovalcik, Jr.'s Motion for Summary Judgment (hereinafter "Morris County Brief"), 5–10.

[4] *Id.* at 9; JSSF, Ex. P, 1, 4.

Resnick and *Hendricks*, the interpretation of New Jersey's religious aid prohibition is not affected by federal jurisprudence.

D. The religious aid prohibition protects the individual religious liberty of New Jersey citizens.

While federal jurisprudence does not alter this Court's interpretation of Art. 1, ¶ 3, of the state constitution, the history of religious aid prohibitions, both state and federal, shows that they enhance religious freedom.

The religious aid prohibition protects the individual rights of New Jersey citizens, like the plaintiff here, David Steketee. It prevents the state from compelling them to support a religious sect or furthering a religious belief system that might be fundamentally opposed to their own. Taxpayer support of churches was one of the principal "practices of the old world" the separation of state and church is meant to avoid. *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 9 (1947). Until the American Revolution, colonial laws "authorized . . . individuals and companies to erect religious establishments which all, whether believers or non-believers, would be required to support and attend." *Id.* Before the revolution, "dissenters were compelled to pay tithes and taxes to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters." *Id.* at 10.

But these antiquated practices, so plainly violations of religious freedom by today's standards, did not last:

> These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence. **The imposition of taxes** to pay ministers' salaries **and to build and maintain churches and church property aroused their indignation. It was these feelings which found expression in the First Amendment.** *Id.* (emphasis added).

Id. at 11.

When a church gets $80,000 of taxpayer funds for repairs, the government has imposed a tax to maintain a church. Because money is fungible, paying the church's building and repair bills gives the church $80,000 to spend on something else, such as the minister's salary. And "[i]t is, of course, true that if the State pays a church's bills it is subsidizing it, and we must guard against this abuse." *Rosenberger v. Univ. of Va.*, 515 U.S. 819, 844 (1995).

That is why the founding generation "reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group." *Everson,* 330 U.S. at 11.

This shift culminated in what is perhaps the greatest defense of the principles enshrined in New Jersey's religious aid prohibitions and the First Amendment's religion clause—and it was written during a fight to prevent taxpayer-supported churches. James Madison, the Father of the Bill of Rights, drafted his famous *Memorial and Remonstrance Against Religious Assessments* (1785) (appended to *Everson*, 330 U.S. at 63) opposing just such a tax, Virginia's "Bill establishing a provision for Teachers of the Christian Religion."

Madison opposed a three-penny tax that would have had a similar structure to what the county and churches are arguing for in this case; it would have "funded secular as well as religious instruction" but that "did nothing to soften Madison's opposition to it." *Rosenberger*, 515 U.S. at 869 n.1 (Souter, J., dissenting). *Accord Everson*, 330 U.S. at 37 (Rutledge, J., dissenting) ("Madison was unyielding at all times, opposing with all his vigor the general and nondiscriminatory as he had the earlier particular and discriminatory assessments proposed.").

In the *Memorial*, Madison "eloquently argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious

institution of any kind . . . ." *Everson,* 330 U.S. at 12. Any aid was a threat to religious liberty; whether the government assistance to religion occurred in a preferential scheme, or a general, nondiscriminatory program. *Id.* at 40 (Rutledge, J. dissenting) (quoting *Memorial and Remonstrance* ¶ 3); *see also, e.g.*, Douglas Laycock, *"Nonpreferential" Aid to Religion: A False Claim About Original Intent*, 27 Wm. & Mary L. Rev. 875, 921, 923 (1986) ("With respect to money, religion was to be wholly voluntary. Churches either would support themselves or they would not, but the government would neither help nor interfere."); *Flast v. Cohen*, 392 U.S. 83, 103–04 (1968) ("The concern of Madison and his supporters was quite clearly that religious liberty ultimately would be the victim if government could employ its taxing and spending powers to aid one religion over another or to aid religion in general.").

The practices the Supreme Court catalogued in *Everson*—those that "became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence"—are not so common today. And perhaps this freedom has engendered a feeling of complacency or even entitlement. But it ought to be remembered that for Madison and the other framers, this strict prohibition is not meant solely to preserve the government, but also religion: "a union of government and religion tends to destroy government and to degrade religion." *Engel v. Vitale*, 370 U.S. 421, 431 (1962). Madison lamented that the government's financial support for religion weakened support for religion and undermined religion's "purity and efficacy." *Everson*, 310 U.S. at 67 (*Memorial and Remonstrance* ¶ 7).

II. NEW JERSEY'S RELIGIOUS AID PROHIBITION DOES NOT VIOLATE THE FEDERAL EQUAL PROTECTION CLAUSE.

The county and churches argue that removing churches from the grant program would violate the equal protection guarantee in the Fourteenth Amendment. To do so, they must first show that similarly situated entities are eligible for the grants, which they are not. Even if this

threshold requirement were overcome, excluding churches from the Trust Fund program easily survives the correct standard, rational basis review.

A. Denying churches eligibility under the grant program does not violate equal protection because similarly situated nonprofits are also excluded.

Equal protection arguments fall short when they lack "a prerequisite element: A preliminary step in equal protection analysis is to determine whether persons who are similarly situated are subject to disparate treatment." *Rodriguez v. Lamer*, 60 F.3d 745, 749 (11th Cir. 1995) (citations and internal quotations omitted.); *see also N.Y.C. Transit Auth. v. Beazer*, 440 U.S. 568, 587–88 (1979); *Startzell v. City of Phila., Pa.*, 533 F.3d 183, 203 (3d Cir. 2008) ("An essential element of a claim of selective treatment under the Equal Protection Clause is that the comparable parties were 'similarly situated.'") (citing *Hill v. City of Scranton*, 411 F.3d 118, 125 (3d Cir. 2005).

"Persons are similarly situated under the Equal Protection Clause when they are alike 'in all relevant aspects.'" *Startzell* at 203 (3d Cir. 2008) *(*citing *Nordlinger v. Hahn,* 505 U.S. 1, 10 (1992)). Quoting *Startzell*, the Third Circuit recently emphasized that the entities must be "alike in *all* relevant aspects." *Castaneira v. Potteiger*, 621 F. App'x 116, 121 (3d Cir. 2015) (emphasis in original).

Morris County states that "all" other nonprofits are eligible for historic grants.[5] There are two problems with that assertion. First, the grants are not available to all other nonprofits, but only a small, select group dedicated to historic preservation that are therefore not similarly situated to the churches. Second, those entities that are similarly situated with the churches are already excluded from the program.

[5] Morris County Brief, 14.

Apart from churches, the only entities that are eligible for Trust Fund grants are municipal and county governments and charitable conservancies whose purpose is historic preservation. None of these entities are "alike in all relevant aspects" to churches.

Proving similarly situated entities requires more than an assertion that other entities are of the same general category (*e.g.* employees, property owners, nonprofits) and engaged in similar conduct giving rise to the cause of action (*e.g.* applying for a permit or grant, canceling a lease). For instance:

- A married couple alleging selective enforcement of ordinances is not similarly situated with all neighborhood property owners, but only with those "deserving of the attention of the police and/or code enforcement officers for the condition of their properties." *Patterson v. Strippoli*, 639 F. App'x 137, 142 (3d Cir. 2016). Comparing the couple to all property owners would be too "broad an interpretation of similarly situated" and would "ignore[] relevant distinctions." *Id.*

- Employees are not "alike in all relevant respects" where those employees do not share plaintiff's physical disability. *Abrams v. Port Auth. Trans–Hudson Corp.,* 445 Fed. App'x 537 (3d Cir. 2011).

- Though all the property owners were subject to the same street-access regulation, property owners are not similarly situated to others who subdivided their properties differently. *Rucci v. Cranberry Tp., Pa.,* 130 Fed. App'x 572 (3d Cir. 2005).

- Two leaseholders are not similarly situated if one lease contains a termination clause that the other lease does not have. *Adams Parking Garage, Inc. v. City of Scranton,* 33 Fed. App'x 28 (3d Cir. 2002).

- An external applicant with no prior relationship to a school district is not similarly situated to current employees with personal recommendations from the superintendent. *Royster v. Laurel Highlands Sch. Dist.*, 595 F. App'x 105, 108 (3d Cir. 2014).

- The estates of two different mental health patients who died after mistreatment in a state facility and requested that the state indemnify its employees are not similarly situated when only one estate obtained a finding of grossly negligent, willful, or malicious conduct. *Davis v. Coakley*, 802 F.3d 128, 134 (1st Cir. 2015).

Private entities are not similarly situated to the government. *See, e.g., Am. Tower Corp. v. City of San Diego,* 763 F.3d 1035 (9th Cir. 2014) (finding that city government is not similarly situated with private entities); *EJS Properties, LLC v. City of Toledo*, 698 F.3d 845 (6th Cir. 2012) *rehearing and rehearing en banc denied, cert. denied* 133 S. Ct. 1635 (2013) (finding that private property owner is not similarly situated with public schools).

That leaves charitable conservancies dedicated to historic preservation, which are not similarly situated to churches because they have a different purpose. The purpose of churches is to promote religion, as many churches admitted to the county when applying for grants. *See, e.g.,* JSSF Ex. J2, 1661 ("the sole purpose of a church is spreading the gospel of Jesus Christ," noted one church, repudiating "historic preservation" as a purpose).

An entity's purpose is a "relevant aspect" of the Trust Fund program, as evidenced by the Trust Fund Rule's specification that only charitable conservancies with certain, limited purposes are eligible. Churches are dedicated to a different purpose and churches and charitable conservancies are therefore not alike in all relevant aspects and are not similarly situated for purposes of this case.

At most, churches are similarly situated with those secular nonprofits whose purposes are something other than historic preservation. But these entities are *already excluded* from the Trust Fund program. A secular nonprofit in a historic building would not fit into any of the eligible grant recipient categories. The Red Cross, for example, is ineligible for historic preservation grants even if it owns and maintains a historic building in Morris County. Plaintiff FFRF would also be excluded, as a nonprofit that educates for nonreligious interests.

As the program is structured, both in the Trust Fund Rules and in practice, churches are currently favored compared to similarly situated entities. Removing that privilege ensures

equality; it does not violate the Fourteenth Amendment's equal protection guarantee. Ironically, the Equal Protection Clause would be violated if the program were allowed to continue.

B. Even if the churches were similarly situated with the government and historic preservation organizations, the government interest in prohibiting direct financial grants to churches survives an equal protection challenge.

The religious aid prohibition does not raise any equal protection concerns even if the churches can prove the "similarly situated" prerequisite because courts, including the U.S. Supreme Court, have examined this issue and upheld nearly identical religious aid prohibitions against equal protection challenges. In those cases, the courts have done so because the government has an overriding interest in refusing to fund churches and religious worship with taxpayer money—an interest that is strong enough to overcome any level of scrutiny. The government's antiestablishment interest is a longstanding and substantial governmental interest—even when it separates state and church more broadly than is federally mandated. *Locke v. Davey*, 540 U.S. 712, 725 (2004).

In *Locke v. Davey*, the U.S. Supreme Court considered whether Washington's prohibition on state aid to students pursuing degrees in theology violated the Free Exercise or Equal Protections Clauses. The prohibition was based on language in the Washington Constitution, similar to New Jersey's: "No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment." Wash. Const. art. I, § 11.

The Court held that state constitutions may offer broader protections against taxpayer funds flowing to religion than the federal Constitution. These stronger protections enshrine interests that date to the founding: "Even though the differently worded Washington Constitution draws a more stringent line than that drawn by the United States Constitution, the interest it seeks to further is scarcely novel. In fact, **we can think of few areas in which a State's**

antiestablishment interests come more into play. Since the founding of our country, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an 'established' religion." *Locke*, 540 U.S. at 722 (emphasis added). These antiestablishment interests are not only long-standing, but also "historic and substantial." *Id.* at 725.

The Court also noted that, like here, nothing in the history of religious aid prohibitions exhibits any "animus" toward religion. Nor do the county or churches point to any animus in the New Jersey constitutional history. (*See* Morris County Brief, 13–14; Brief in Support of Motion for Summary Judgment by Defendant Preservation Grant Recipients (hereinafter "Churches' Brief"), 42–45). Even if plaintiffs were gripped by animosity, it would be irrelevant to the equal protection inquiry, which focuses on the government's motivations, not the plaintiffs'.

The churches have argued that enforcing New Jersey's religious aid prohibition will burden religious freedom (Churches' Brief, 45), but they have it backward. Antiestablishment clauses actually *promote* religious freedom, as the New Jersey Supreme Court itself has recognized: "The prohibition against the 'establishment of a religion,' growing out of protracted colonial struggle for individual freedom of religion, reflects a societal aversion to varying types of noncoercive governmental intrusions into religious freedom." *Resnick* at 128–29. It is no coincidence that the religious aid prohibition is in the middle of Art. I, ¶ 3, between New Jersey's other constitutional religious freedom protections. The founders, too, viewed funding religion as a threat to religious liberty: "The concern of Madison and his supporters was quite clearly that **religious liberty ultimately would be the victim if government could employ its taxing and spending powers** to aid one religion over another or **to aid religion in general**." *Flast v. Cohen*, 392 U.S. 83, 103–04 (1968) (emphasis added).

Since *Locke v. Davey*, both the First and Eighth Circuit Courts of Appeals have considered and dismissed equal protection challenges to state religious aid prohibitions. *Eulitt v. Me. Dept. of Educ.,* 386 F.3d 344 (2004); *Trinity Lutheran Church of Columbia v. Pauley*, 788 F.3d 779 (8th Cir. 2015), *cert*. *granted* (U.S. Jan. 15, 2016) (No.15-577). Both courts agreed that the antiestablishment interests are substantial enough to exclude churches and religious schools from direct financial aid and that those interests could not be overcome with equal protection arguments.

In *Trinity Lutheran*, the Eighth Circuit dismissed an equal protection challenge to a state constitutional provision similar to New Jersey's. The State of Missouri offered state funds to rubberize playground surfaces, but excluded the church, citing the state constitution's religious aid provision: "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such." *Trinity Lutheran*, 788 F.3d at 782, 784–85.

The appellate court "conclude[d] without hesitation that the **long established** constitutional policy of the State of Missouri, which insists upon a degree of separation of church and state to probably a higher degree than that required by the First Amendment, is indeed a '**compelling state interest** in the regulation of a subject within the State's constitutional power.'" *Id.* at 784 (emphasis added) (citing *Luetkemeyer v. Kaufmann*, 364 F. Supp. 376, 383–84 (W.D.Mo.1973), *aff'd*, 419 U.S. 888 (1974)). The court added, "That interest, in our judgment, satisfies any possible infringement of the Free Exercise clause of the First Amendment or of **any other prohibition in the Constitution of the United States**." *Id.* If a state's antiestablishment interest is strong enough to justify denying churches funds to make their

playgrounds safer, it is strong enough to justify denying churches funds to repair their religious buildings.

In *Eulitt,* the First Circuit found that the government interest in upholding broad antiestablishment state statutes is sufficient to withstand a constitutional challenge. There, a religious family argued that a statute, which permitted state funding to private schools but only if the schools were "nonsectarian," violated equal protection. *Eulitt*, 386 F.3d at 355 (upholding Me. Rev. Stat. 20-A, § 2951 (2)). The First Circuit upheld the statute because "state entities . . . may act upon their legitimate concerns about excessive entanglement with religion, even though the Establishment Clause may not require them to do so." *Id.*

In an earlier case, the First Circuit also upheld the *Eulitt* statute before the Supreme Court decided *Locke*: "Plaintiff-appellants' equal protection claims fail, because, regardless of the appropriate level of scrutiny we employ, the state's compelling interest in avoiding an Establishment Clause violation requires that the statute exclude sectarian schools from the tuition program." *Strout v. Albanese*, 178 F.3d 57, 64 (1st Cir. 1999). This holds true for state constitutional provisions that are more stringent than the Establishment Clause. States are free to impose tighter restrictions on their own programs, and upholding that higher standard is a sufficient state interest to survive any level of scrutiny. The other requirement of strict scrutiny, that classifications be "narrowly tailored" to further a compelling government interest (s*ee, e.g., Grutter v. Bollinger*, 539 U.S. 306, 326 (2003)) is readily met in excluding churches from taxpayer funding programs because that is precisely what religious aid prohibitions require.

Cases that strike down sectarian restrictions are distinguishable. For instance, *Colo. Christian Univ. v. Weaver* upheld a different longstanding principle: that states cannot discriminate among religions. 534 F.3d 1245 (10th Cir. 2008). In that case, Colorado granted

scholarship money to students attending secular and sectarian schools, but not to those attending "pervasively sectarian" schools. *Id.* at 1250–51. The Tenth Circuit struck down the pervasively sectarian restriction, but only because aid was already flowing to students attending religious schools. The state could not give to Catholic or Methodist colleges, which it was doing, and refuse to give to evangelical colleges. *Id.* at 1258. *Weaver* does not require the government to grant financial aid to religious schools, but if a state does so, it cannot "discriminate[] among religions without constitutional justification." *Id.* at 1250. Excluding *all* churches from a taxpayer-funded program does not have this problem.

C. Rational basis is the proper standard of review.

In *Locke*, *Eulitt*, and *Trinity Lutheran* the courts either applied rational basis review to the equal protection arguments or upheld the religious aid prohibition without explicitly stating a standard of review. This Court should do the same, though defendants urge strict scrutiny in spite of this precedent. A statute provokes "strict judicial scrutiny" only if it (1) interferes with a "fundamental right" or (2) discriminates against a "suspect class." *Kadrmas v. Dickinson Pub. Sch.* 487 U.S. 450, 457 (1988). Religious aid prohibitions do not interfere with any fundamental right—indeed they exist to ensure greater religious freedom. Nor is religion a suspect class for state-church separation purposes. This Court should therefore apply rational basis review to the equal protection challenge against New Jersey's religious aid prohibition.

1) Religious aid prohibitions do not violate fundamental rights, including the free exercise of religion.

Strict scrutiny is not appropriate because excluding churches from Morris County's program does not violate a fundamental right, such as the Free Exercise Clause.

In *Locke v. Davey*, "the Court held that if a challenged program comports with the Free Exercise Clause, that conclusion wraps up the religious discrimination analysis. Thus, rational

basis scrutiny applies to any further equal protection inquiry." *Eulitt*, 386 F.3d at 354 (citing *Locke*). The Court stated in *Locke* that because "the program is not a violation of the Free Exercise Clause . . . we apply rational-basis scrutiny to his equal protection claims." 540 U.S. at 720 n.3. The Supreme Court applied the same analysis forty years earlier in *Johnson v. Robison,* 415 U.S. 361, 375 n. 14 (1974) (explaining that once a law is found to be valid with respect to the free exercise right, there is "no occasion to apply to the challenged classification a standard of scrutiny stricter than the traditional rational-basis test" in addressing an equal protection claim). This Court should follow the same framework and apply rational basis review.

The Supreme Court has held that other constitutional rights are not offended because the state refuses to pay the bills of those exercising that right. *See, e.g., Harris v. McRae*, 448 U.S. 297, 316 (1980) (holding that the government is not obligated to pay for medically necessary abortions, even though the government funded other medically necessary services). In *Harris,* the Court found that any coercive effect of withholding government funds was minimal because women had "at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if [the government] had chosen to subsidize no health care costs at all." *Id.* at 316–17. Similarly, Morris County parishioners are just as free to exercise their religion when their church is ineligible for taxpayer funds as they would be if the county had no historic preservation program at all. The county's funding of non-religious historic buildings does not prohibit this freedom in any constitutionally significant way. The churches have not pointed to any sincerely held religious belief that is violated if they are not awarded state taxpayer money to improve their places of worship.

The churches argue that if the state does not fund churches, it effectively coerces churches into "not praying" in their buildings. (Churches' Brief, 45). But "the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) (quoting *Sherbert v. Verner*, 374 U.S. 398, 412 (1963)). Free Exercise protections do not entitle churches to government benefits. The interpretation of the Free Exercise Clause the churches urge would eliminate the historic insulation between church and state. Excluding churches from Morris County's program does not violate the Free Exercise Clause or any other fundamental right. Accordingly, rational basis review is the appropriate level of scrutiny.

2) Religious entities are not a suspect class in the context of separation between state and church.

Morris County argues that strict scrutiny should apply solely because New Jersey's religious aid prohibition refers specifically to religious buildings, and classifications based on "religion" are inherently suspect. (Morris County Brief, 13–14). This analysis flies in the face of *Locke*, and indeed the First Amendment itself, which also singles out religion for differential treatment. The Supreme Court has never adopted defendants' line of reasoning. Classifications based on religion versus nonreligion are *not* inherently suspect when the purpose of the classification is maintaining a separation between state and church. To the contrary, such a classification is essential to any meaningful regulation based on protecting an antiestablishment interest, which is why the Supreme Court presumes such classifications to be constitutional so long as no fundamental rights are violated. *Locke*, 540 U.S. at 720 ("We reject [the] claim of presumptive unconstitutionality.").

In sum, the religious aid prohibition does not violate equal protection because first, the churches fail to meet the threshold requirement that they are similarly situated to entities that receive a benefit the churches are denied. Second, the government's antiestablishment interests override even strict scrutiny. Third, strict scrutiny does not apply because the churches' free exercise of religion is not burdened by an absence of state funds and religion is not a suspect class when analyzing state/church separation. Finally, the government's antiestablishment interests survive rational basis review because excluding churches from Morris County's program is rationally related to upholding New Jersey's religious aid prohibition.

III. THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT DOES NOT ENTITLE CHURCHES TO TAXPAYER FUNDS TO REPAIR THEIR BUILDINGS.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) does not apply in this case. RLUIPA prohibits the government from imposing *land use regulations* that discriminate on the basis of religion. (42 U.S.C. § 2000cc–§ 2000cc-5). RLUIPA defines "land use regulation" as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land . . . ." (42 U.S.C. § 2000cc-5).

RLUIPA does not apply here because (1) the grant program is not a zoning or landmarking law and (2) it imposes no limit or restriction on the churches. The county concedes this second point, acknowledging that "awarding of grants is a benefit . . . rather than a restriction." (Morris County Brief, 15).

Defendants assert that Morris County's program is a "landmarking law," but cite no precedent (Morris County Brief, 15; Churches' Brief, 41). Courts have been unwilling to stretch RLUIPA's definition of "zoning or landmarking law," holding that **none of the following are regulations subject to RLUIPA**:

- **Exercising eminent domain to take a house of worship's property.** *Congregation Adas Yereim v. City of New York, E.D.N.Y.*, 673 F. Supp. 2d 94 (2009); *Faith Temple Church v. Town of Brighton*, 405 F. Supp. 2d 250, 254 (W.D.N.Y. 2005).

- **Condemning land containing a religious cemetery.** *St. John's United Church of Christ v. City of Chi.*, 502 F.3d 616 (7th Cir. 2007), *cert. denied*, 553 U.S. 1032 (2008).

- **Annexing land owned by a religious organization.** *Vision Church v. Village of Long Grove,* 468 F.3d 975 (7th Cir. 2006), *cert. denied*, 552 U.S. 940 (2007).

- **The Americans with Disabilities Act imposing requirements on a private chapel.** *Anselmo v. Cnty. of Shasta*, *Cal*., 873 F. Supp. 2d 1247 (E.D. Cal. 2012).

- **The Controlled Substance Act forbidding a church from growing marijuana.** *Multi Denominational Ministry of Cannabis and Rastafari, Inc. v. Gonzales*, 474 F. Supp. 2d 1133 (N.D. Cal. 2007), *aff'd*, 365 Fed. App'x 817 (9th Cir. 2010).

- **Requiring that a building within 150 feet of any sewer "tap in" to that sewer.** *Second Baptist Church of Leechburg v. Gilpin Tp, Pa.*, 118 Fed. App'x 615 (3d Cir. 2004).

Even if Defendants' interpretation of RLUIPA were correct, churches enjoy special treatment in the program, not equal treatment, as explained above. Excluding churches would not discriminate against them, but would instead put them on equal footing with secular nonprofits. If anything, equal treatment concerns speak against including churches in the grant program.

IV. DEFENDANT CHURCHES CONSPIRED TO VIOLATE THE NEW JERSEY CONSTITUTION AND THEREFORE MUST REFUND THE GRANT MONEY.

The churches played a crucial part in violating taxpayers' rights under the New Jersey constitution. New Jersey holds co-conspirators liable for the harm inflicted by the underlying act.

In New Jersey, a civil conspiracy is an intentional tort with four elements: (1) a combination of two or more persons; (2) a real agreement or confederation with a common design; (3) the existence of an unlawful purpose, or of a lawful purpose to be achieved by unlawful means; and (4) proof of special damages. *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*, 331 F.3d 406, 414 (3d Cir. 2003).

Defendant churches entered into an agreement with Morris County with the common design of transferring taxpayer funds to the churches. This is an unlawful purpose because it violates the plain language of the New Jersey Constitution and established precedent. This unlawful arrangement caused pecuniary, and therefore "special," damages in the amount of the full value of the grants. *See Biondi v. Nassimos*, 300 N.J. Super. 148, 153 (App. Div. 1997) (defining "special damages" as "harm of a material or pecuniary nature.").

Importantly, for conspiracy, "the 'gist of the claim is not the unlawful agreement, but the underlying wrong which, absent the conspiracy, would give a right of action.'" *Id.* at 177–78 (quoting *Morgan v. Union County Bd. of Chosen Freeholders*, 268 N.J. Super. 337, 364 (App. Div. 1993) (internal citations omitted)). The question is not whether the agreement between the churches and Morris County was itself unlawful, but whether the underlying conduct—the transfer of taxpayer funds to churches—is an actionable wrong, and whether the churches understood the scheme's objective and agreed to do their part in carrying it out.

As described above, the agreement to transfer taxpayer funds to churches is an actionable wrong, which the defendants knew or should have known was wrong. First and foremost, Art. I ¶ 3 of the New Jersey Constitution is clear and unambiguous. Second, the New Jersey Supreme Court enforced the provision in 1978. *Resnick*, 77 N.J. at 103. Nine defendant churches[6] accepted 2015 Trust Fund grants after church grants were opposed by both Freeholder Lyon in a January 14, 2015 resolution (JSSF p.76), and by plaintiff Steketee, who testified publicly at two Freeholder meetings in June and July of 2015 to urge the Board to follow the plain language of

[6] First Presbyterian Church of New Vernon, Church of the Assumption of the Blessed Virgin Mary, Church of the Redeemer, Presbyterian Church in Morristown, Stanhope United Methodist Church, First Reformed Church of Pompton Plains, Community Church of Mountain Lakes, St. Peter's Episcopal Church in Mountain Lakes, and Ledgewood Baptist Church. (JSSF, ¶¶ 63–71).

Art. I ¶ 3. Morris County and the churches were both on notice that the taxpayer funds offered were forbidden under state law. Both parties to these unlawful agreements should share liability.

New Jersey churches that accept government grants should be aware that they are violating the constitutional rights of New Jersey taxpayers. It is equitable for this Court to require the churches to refund to Morris County the full amount of taxpayer funds they conspired to receive.

V. THE CONSTITUTIONAL VIOLATIONS DESCRIBED HEREIN VIOLATE THE NEW JERSEY CIVIL RIGHTS ACT.

The New Jersey Civil Rights Act states that:

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

N.J.S.A. 10:6-2(c). As described above, Morris County has violated the New Jersey Constitution by distributing Trust Fund money to churches. In doing so, Morris County has violated the rights of plaintiff David Steketee, a taxpayer in Morris County, and the rights of taxpaying FFRF members who reside in Morris County. Therefore, the Morris County defendants have violated the New Jersey Civil Rights Act.

VI. A PERMANENT INJUNCTION IS NECESSARY TO PREVENT FUTURE CONSTITUTIONAL VIOLATIONS.

The New Jersey Civil Rights Act includes injunctive relief as one of the remedies that plaintiffs may obtain when a constitutional violation has been proven:

> In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

N.J.S.A. 10:6-2(f). Absent injunctive relief, churches will continue to seek and Morris County will continue to distribute millions of taxpayer dollars to churches despite this constitutional prohibition. Therefore, Plaintiffs respectfully request that this Court enjoin Morris County from distributing any further grant money from the Trust Fund to churches, ministries, houses of worship, or other religious institutions.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court grant the following relief:

1. grant the plaintiffs' summary judgment motion;
2. deny the summary judgment motions of the defendants;
3. declare that the Morris County Historic Preservation Trust Fund program violates Article I, ¶ 3 of the New Jersey Constitution as applied to the building or repairing of any church or churches, place or places of worship, or for the maintenance of any minister or ministry;
4. declare that the grants issued to the churches from 2012 through 2015 pursuant to the Morris County Historic Preservation Trust Fund program violated Article I, ¶ 3 of the New Jersey Constitution;
5. declare that the unconstitutional activity described herein has caused a deprivation of rights to Plaintiff David Steketee, a Morris County taxpayer who objects to his tax money being used to build or repair any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right and has deliberately and voluntarily engaged to perform;

6. declare that the unconstitutional activity described herein as caused a deprivation of rights to Plaintiff Freedom From Religion Foundation, as an organizational representative of Morris County taxpayers who object to having their tax money being used to build or repair any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what they believe to be right and have deliberately and voluntarily engaged to perform;
7. declare that the deprivations of rights described herein violate the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c);
8. permanently enjoin the Morris County defendants from distributing any money from the Trust Fund to any church or churches, place or places of worship, or minister or ministry;
9. order the Morris County defendants to pay Plaintiff David Steketee an award of actual damages in the amount of $40;
10. order the Morris County defendants to pay Plaintiff David Steketee an award of nominal damages, as defined by N.J.S.A. 2A:15-5.10, in the amount of $499.99;
11. order the Morris County defendants to pay the Plaintiffs' reasonable attorney's fees and costs, pursuant to N.J.S.A. 10:6-2(f);
12. order the churches to refund to Morris County all grant money they received from 2012 through 2015 pursuant to the Morris County Historic Preservation Trust Fund program;[7] and

[7] The Plaintiffs believe that the churches should have to refund grant money they received to Morris County, and the Plaintiffs assert that issue here in order to preserve it. However, the Plaintiffs do not object to having this issue bifurcated and decided separately, after the underlying issue of constitutionality is adjudicated.

13. such other and further relief as this Court deems equitable and just.

Dated: September 6, 2016

_____

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