

FREEDOM FROM RELIGION *foundation*

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August 1, 2017

SENT VIA EMAIL & U.S. MAIL:

fletcher@hillsboroughcounty.org

Chip Fletcher
Hillsborough County Attorney
601 E. Kennedy Blvd., 27th Floor
Tampa, FL 33601-1110

Re: Unconstitutional Grants to St. Paul Lutheran Church

Dear Mr. Fletcher:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional violations occurring in Hillsborough County. FFRF is a national nonprofit organization with more than 29,000 members across the country, including more than 1,400 in Florida and a local chapter, Central Florida Freethought Community. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned local taxpayer informed us that the Hillsborough County Board of County Commissioners (Board) has repeatedly provided funding to renovate and repair St. Paul Lutheran Church Tampa (Church), and this year will likely fund Phase III of the Church's Restoration Project based on a recommendation from the County's Historic Preservation Challenge Grant Review Committee (Committee).¹ The recommended \$59,000 would be used for "roof renovation and repairs to the Sanctuary building Plans also are to replace the awning-style windows with compatible, efficient ones and upgrade the A/C."² The County granted the Church \$50,000 in fiscal year 2014 and \$18,250 in fiscal year 2015.³

We understand that the Church provides numerous religious services in the building subsidized by these grants. In addition to its weekly communion, it hosts Sunday School for children and "Adult Christian Education" for adults.⁴ It also offers a "Pastor's Bible Study," sermons for children, and confirmation classes.⁵ The April 2017 edition of the Church's monthly publication states, "God's mission for St. Paul Lutheran Church is to witness God's love and our faith in the Resurrected Christ."⁶

¹

eagenda.hillsboroughcounty.org/portal/PTL29560/search?D=07/19/2017&T=Regular%20BOCC%20Meeting&Y=Backup&o=A-11.pdf. Committee's funding recommendation to the Board for its July 19, 2017 meeting.

² *Id.*

³ *Id.*

⁴ stpaultampa.org/.

⁵ stpaultampa.org/ministries/.

⁶ stpaultampa.org/wp-content/uploads/2017/04/April-2017.pdf.

The grants from the County to support the Church's house of worship violate both the United States and Florida constitutions. We ask the Board to reconsider its practice and to refuse all future requests for taxpayer funds to renovate or repair churches.

The Establishment Clause of the First Amendment prohibits any "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. NY Tax Comm'n*, 397 U.S. 664, 668 (1970) (emphasis added); *see also Mitchell v. Helms*, 530 U.S. 793, 819 (2000); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754–55 (1976).

Specifically, the government may not fund projects for religious worship. *See Comm. for Pub. Educ. v. Nyquist*, 413 U.S. 756, 777 (1973) (striking down repair grants meant to renovate parochial schools because the buildings were used for sectarian purposes); *see also Tilton v. Richardson*, 403 U.S. 672 (1971) (unanimously holding that government construction subsidies are unconstitutional if the buildings are ever used for religious activities); *Hunt v. McNair*, 413 U.S. 734 (1973) (upholding government construction bond only because the bond-financed buildings *were barred from being used for religious activities*).

Unlike the rental of government property or private displays on public property, direct government grants do not involve free speech considerations, only Establishment Clause concerns. *See Locke v. Davey*, 540 U.S. 712, 720 n.3 (2004) (rejecting a student's argument that state scholarships which were unavailable to majors in "pastoral ministries" was "an unconstitutional viewpoint restriction on speech" because the "Scholarship Program is not a forum for speech . . . [so] cases dealing with speech forums are simply inapplicable").

The Florida Constitution similarly prohibits funding of religious spaces by the government. Not only are government entities prohibited from establishing religion, "No revenue of the state or any political subdivision or agency thereof shall *ever* be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." Fla. Const. Art. I, § 3 (emphasis added).

Nor can the government promote one religion over another, or religion over nonreligion. The First Amendment "requires the state to be neutral in its relations with groups of religious believers and non-believers." *Everson v. Bd. of Educ.*, 303 U.S. 1, 18 (1947); *see also Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 27–28 (1997) (separate opinion concurring in judgment) (the "government may not favor religious belief over disbelief"); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires the government . . . *effect no favoritism among sects or between religion and nonreligion.*") (emphasis added); *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989) ("[T]he prohibition against governmental endorsement of religion '*preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred*'") (quoting *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J., concurring in judgment)) (additional emphasis added).

The Committee's purpose is admirable: "to promote historic preservation, heritage tourism, and related economic development within Hillsborough County."⁷ If the County wishes to preserve its history, however, it cannot do so by funding renovations or repairs for a house of worship. If St. Paul Lutheran Church is failing to maintain its historic building, the County should either require the Church to turn over complete and full ownership to the County and quit all claims to the property, or the County should take the property by eminent domain.

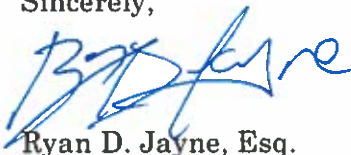
It is neither appropriate nor good policy for the County to spend taxpayer dollars to repair a church. The building is regularly used for religious worship and continues to be used by an active congregation. As discussed above, using taxpayer funds to perpetuate religious worship is unconstitutional. It is possible that supporting one church now will lead to calls from other religious organizations for funding in the future. The obvious solution is to decline all grants for projects that will advance religion, as is constitutionally required.

The message the Board has communicated to its citizens is that churches will be rewarded if they neglect their duties as landowners and community members and fail to maintain their historic buildings. The current practice also exposes the County to legal liability, which jeopardizes taxpayer money. On behalf of the citizens and taxpayers of Hillsborough County, we ask that the Board examine the above facts carefully and reconsider its misguided funding of religious buildings. The money could be used for more appropriate secular purposes. The Board should stop rewarding churches for neglect and help those who really need it.

If you truly believe the best policy is to use taxpayer funds to repair historic churches, then those churches should sign the building and property over to you free and clear. Alternatively, if the Church has shown neglect for a piece of history, the County should consider seizing the property through eminent domain. Title should not remain with a religious institution if the taxpayers are paying to maintain their worship buildings.

Please inform us in writing of the steps you take to resolve this matter.

Sincerely,



Ryan D. Jayne, Esq.
*Elaine and Eric Stone Legal Fellow
Freedom From Religion Foundation*

RDJ:rac

⁷ hillsboroughcounty.org/en/government/boards-and-committees/e-1/historic-preservation-challenge-grant-committee.