

# FREEDOM FROM RELIGION *foundation*

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December 19, 2017

**SENT VIA EMAIL AND U.S. MAIL:**  
**Brian.hanson@cityofsitka.org**

Brian Hanson  
City Attorney  
City and Borough of Sitka  
100 Lincoln St.  
Sitka, AK 99835

Re: City funding of church repairs

Dear Mr. Hanson:

I am writing on behalf of the Freedom From Religion Foundation regarding the City of Sitka's contemplated funding of church repairs. FFRF is a national nonprofit organization with 30,000 members across the country, including members in Alaska. 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.

It is our understanding that the City Assembly will soon vote on allocating \$5,000 from the city's Visitor's Enhancement fund to help repair a local church, St. Michael's Cathedral. St. Michael's Cathedral has an active religious congregation and a singular mission to win Christian converts:

The mission of the Cathedral is the mission of the whole Orthodox Christian Church. Matthew 28:18–20 “All authority has been gicen [sic] to Me in heacen [sic] and on earth. Go therefore and make disciples of all the nations, baptizing them in the name f [sic] the Father and of the Son and of the Holy Spirit, teaching them to observe all things that I have commanded you; and behold, I am with you always, even to the end of the age.” Come and see!<sup>1</sup>

Media reported that you reviewed concerns that funding this church would violate the First Amendment, but concluded that the grant would be permissible because “the donation 1) is for a secular (public purpose), 2)

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<sup>1</sup> [stmichaelcathedral.org/](http://stmichaelcathedral.org/).

neither advances nor inhibits religion, and 3) does not result in excessive entanglement of the municipality with religion.”<sup>2</sup>

We write to correct this conclusion. Although *Lemon* is the correct test, more recent Supreme Court cases have shown that *Lemon*’s second prong does not allow grants that support religious activities. See *Mitchell v. Helms*, 530 U.S. 792, 840, 857 (2000) (O’Connor, J., controlling concurring opinion); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754–55 (1976); *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).

In *Tilton v. Richardson*, 403 U.S. 672 (1971), which was decided the same day as *Lemon*, the Court unanimously struck down a statute that provided grants to colleges for the construction of educational facilities, to the extent that the statute allowed funded facilities to be used “as a place for religious worship” after twenty years. The Court reasoned that if, after twenty years, a building were used for religious purposes, “the original federal grant will in part have the effect of advancing religion.” *Id.* at 683. The Court explained that “[i]t cannot be assumed that a substantial structure has no value after that [twenty-year] period and hence the unrestricted use of a valuable property is in effect a contribution of some value to a religious body.” *Id.*

More recently, in *Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1059–60 (9th Cir. 2007), the Ninth Circuit, which has jurisdiction over Alaska, enjoined a city from leasing a homeless shelter to a religious organization for one dollar per year so long as the lessee continued to hold daily chapel services for its residents.

The City of Sitka’s contemplated funding of St. Michael’s Cathedral advance religion even more plainly than the unconstitutional actions in *Tilton v. Richardson* and *Community House*. Repairing a building that is used for religious worship, and has the sole stated mission of winning converts to a particular religion, supports both that religious worship and that religious mission.

FFRF understands that the city’s Visitor Enhancement fund is designed to fund projects that will enhance the visitor experience in Sitka. However, this goal cannot circumvent the Constitution. Churches receive many benefits due to the separation between state and church, but these benefits come with certain burdens, one of which is that churches cannot rely on the government

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<sup>2</sup> Emily Kwong, *Sitka attorney: \$5000 Cathedral donation passes church v. state test*, KCAW (Dec. 15, 2017), available at [www.kcaw.org/2017/12/15/sitka-attorney-5000-cathedral-donation-passes-church-v-state-test/](http://www.kcaw.org/2017/12/15/sitka-attorney-5000-cathedral-donation-passes-church-v-state-test/).

to maintain their houses of worship. If Sitka residents are concerned about the degradation of an iconic church that is still used as a house of worship, they must raise private funds to finance repairs, as one Assembly member reportedly intends to do, acknowledging that “giving away other people’s money is so easy.”<sup>3</sup>

The message the City of Sitka 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 buildings. We ask that you consider this issue carefully and advise the Assembly that funding church repairs will needlessly expose the city to legal liability.

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

Sincerely,



Ryan D. Jayne  
Staff Attorney

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<sup>3</sup> Robert Woolsey, *Cathedral donation prompts debate over separation of church and state*, KCAW (Nov. 9, 2017), available at [www.kcaw.org/2017/11/09/cathedral-donation-prompts-debate-separation-church-state/](http://www.kcaw.org/2017/11/09/cathedral-donation-prompts-debate-separation-church-state/).