

FREEDOM FROM RELIGION *foundation*

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March 28, 2019

SENT VIA EMAIL AND U.S. MAIL:
jimbreed@verizon.net

Jim O'Donnell
Chairman
Community Preservation Committee
365 Boston Rd.
Billerica, MA 01821

Re: Unconstitutional CPA church funding

Dear Mr. O'Donnell:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional concerns regarding a proposed CPC grant. FFRF is a nationwide nonprofit organization with more than 31,000 members, including more than 500 in Massachusetts. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public about matters related to nontheism.

A concerned local taxpayer contacted us to report that on April 4 the Community Preservation Committee will hold a hearing regarding several proposed grants, including a proposed historic preservation grant to First Parish Church. Media reported that the church is seeking half of the \$105,755 it will cost to rehabilitate the steeple of the church. The church reportedly has several historically notable elements, such as a pulpit that was used by Ralph Waldo Emerson, but the steeple is apparently not of any special historical significance.

The minutes for the January 24, 2019 CPC meeting state that there was "some discussion . . . regarding if the project could be approved due to the religious factor. It was stated that as long as there were no religious icons on or imbedded in the steeple, it could [be] approved." This analysis is at odds with a recent decision by the state's top court that invalidated a historic preservation award to a church.

We urge the CPC not to move forward with the proposed funding project for the First Parish Church's steeple restoration.

As you are likely aware, the Massachusetts Constitution contains an "anti-aid amendment" that prohibits the "grant, appropriation or use of public money ... for the purpose of founding, maintaining or aiding any church, religious denomination or society." Mass. Const. Art. XLVI § 2. The Massachusetts Supreme Judicial Court recently interpreted the application of this provision on historic preservation grants to churches in *Caplan v. Town of Acton*, 479 Mass. 69 (2018). That case struck down an award of \$51,237 for the restoration and preservation of the main church

building's stained glass windows. *Id.* at 73.¹ The court applied a three-factor test to this situation: (1) whether a motivating purpose of the grant is to aid the church, (2) whether the grant will have the effect of substantially aiding the church, and (3) whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment. *Id.* at 71.

The court held that although the stained glass restoration grant had a stated secular purpose of historic preservation (*Id.* at 87), the grant did substantially aid the church because the grant amount of \$51,237 was “neither minimal nor insignificant,” and that “the grant[] would help defray planning and restoration costs that the church would otherwise have to shoulder on its own, allowing the money saved to be used to support its core religious activities . . . in effect ‘underwrit[ing]’ its essential function as an active house of worship.” *Id.* at 89–90 (citing *Bloom v. Sch. Comm. of Springfield*, 376 Mass. 35 (1978) and *Opinion of the Justices to the Senate*, 401 Mass. 1201, 1209 (1987)). The currently contemplated grant of \$52,877 toward the repair of the steeple of an active house of worship is legally indistinguishable on this factor.

The test's third and final factor is admittedly vague, but the court found that the stained glass restoration grant risked “infringing on taxpayers’ liberty of conscience—a risk that was specifically contemplated by the framers of the anti-aid amendment,” because the stained glass was located in “the main church building, where the church conducts its worship services. . . . For town residents who do not subscribe to the church’s beliefs, the grants present a risk that their liberty of conscience will be infringed, especially where their tax dollars are spent to preserve the church’s worship space and its stained glass windows.” *Id.* at 91.

The court also listed the religious iconography in the stained glass as a contributing factor weighing against the grant’s constitutionality, which is likely the motivation behind the CPC’s prior conclusion based on “religious icons on or imbedded in the steeple,” but this was by no means the turning point of the *Town of Acton* decision. The court discussed hypothetical grants to churches that would likely “survive careful scrutiny” as “where historical events of great significance occurred in the church, or where the grants are limited to preserving church property with a primarily secular purpose,” such as funding “shrine property leased for [a] battered women’s shelter and used as [a] wildlife sanctuary.” *Id.* at 94 (citing *Shrine of Our Lady of La Salette Inc. v. Bd. of Assessors of Attleboro*, 476 Mass. 690, 700–02 (2017)).

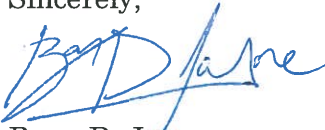
Collecting the court’s examples leads to the conclusion that grants with a secular purpose will likely survive constitutional scrutiny so long as they do not contain religious iconography, *and* so long as they do not renovate an actual, active house of worship (unless the grant relates directly to historical events of great significance). As mentioned above, the steeple of the First Parish Church does not have any special historical significance; it is simply a prominent and iconic feature of a house of worship. Further, steeples are themselves specifically Christian, similar to the

¹ The case also considered funding for a “Master Plan for Historic Preservation,” but the court did not reach a definitive conclusion on that grant.

crosses in the *Town of Acton* stained glass grant, since they are “very common on Christian churches and cathedrals and the use of the term generally connotes a religious structure.”² In short, repairing an active place of worship will always draw close scrutiny, and repairing a specifically religious element of the building like a steeple makes the grant virtually identical to the grant at issue in the *Town of Acton* case. “Grants for the renovation of churches . . . pose an inevitable risk of making ‘the irritating question of religion’ a politically divisive one in a community, the more so where those grants are for the renovation of a worship space or of . . . religious imagery.” *Town of Acton* at 93–94.

In short, of the court’s three-factor test regarding these types of grants, the second factor unquestionably weighs toward unconstitutionality and the third almost certainly does as well. Awarding this grant would thus subject the Town of Billerica to substantial legal liability, and for good reason—“As centuries of experience have shown, government support of churches has always and inevitably been a politically divisive issue in Massachusetts.” *Id.* at 93. Town of Billerica taxpayers should not be coerced into financially supporting a religion that they do not agree with. We strongly urge the CPC to decline this request for historic preservation funding.

Sincerely,



Ryan D. Jayne
Staff Attorney

² See en.wikipedia.org/wiki/Steeple.