

RECEIVED

DEC 01 2015

PAUL S. GROSSWALD  
NJ Attorney ID #: 040312001  
13 Irving Place, Ste. 1  
Summit, NJ 07901  
(917) 753-7007  
pgrosswald@hotmail.com  
Attorney for Plaintiffs,  
**FFRF & David Stekete**

STEPHAN C. HANSBURY  
PRESIDING JUDGE  
CHANCERY DIVISION

DEC 1 2015

STEPHAN C. HANSBURY  
PRESIDING JUDGE  
CHANCERY DIVISION

RECEIVED & FILED  
SUPERIOR COURT

2015 DEC -1 P 2:47

MORRIS COUNTY  
CIVIL DIVISION

FREEDOM FROM RELIGION  
FOUNDATION and DAVID STEKETEE,

Plaintiffs,

– against –

MORRIS COUNTY BOARD OF CHOSEN  
FREEHOLDERS; THE MORRIS COUNTY  
PRESERVATION TRUST FUND REVIEW  
BOARD; and JOSEPH A. KOVALCIK JR.  
(in his official capacity as Morris County  
Treasurer),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MORRIS COUNTY

DOCKET NO. \_\_\_\_\_

Civil Action

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. Morris County has given more than \$5,500,000 of taxpayer money to churches since 2012. In some instances, the county granted the money explicitly so that church congregations can, in their own words, continue to “worship.” Plaintiffs are a Morris County taxpayer and a state-church watchdog organization of which he is a member. Plaintiffs have tried to resolve this issue amicably, but the county has ignored their entreaties. The grants violate Plaintiffs’ rights under Article I, Paragraph 3 of the New Jersey Constitution: “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 . . . .”

## **PARTIES**

2. 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. The organization is devoted to protecting the constitutional principle of separation between church and state. FFRF has 23,000 members in the United States, including 454 members in New Jersey and 85 in Morris County.
3. FFRF and its New Jersey membership strongly object to the use of taxpayer money to repair or maintain churches, places of worship, or ministries.
4. David Steketee is a resident taxpayer of Morris County, New Jersey, and has been since August, 2009.
5. Steketee has paid property taxes in Morris County, including the tax that finances the Morris County Historic Preservation Trust Fund ("Trust Fund"), every year since 2009.
6. Since 2012, approximately \$40 of Steketee's tax payments have been allocated to the Trust Fund.
7. Steketee plans to continue paying property taxes in Morris County in the future.
8. Steketee is a member of FFRF.
9. Steketee is nonreligious and strongly believes that his taxes should not be used for repairing or maintaining any church, place of worship, or ministry.
10. The Morris County Board of Chosen Freeholders ("Freeholder Board") is the seven-member governing body of Morris County, New Jersey, performing both legislative and administrative functions.
11. The Morris County Historic Preservation Trust Fund Review Board ("Review Board") is an eleven-member body that recommends Trust Fund grants to the Freeholder Board.

12. Joseph A. Kovalcik, Jr. is the treasurer of Morris County and disburses Trust Fund money to grantees. He is a party to this suit in his official capacity as treasurer.

### **FACTUAL ALLEGATIONS**

#### **The Morris County Historic Preservation Trust Fund**

13. On November 5, 2002, Morris County voters approved a referendum authorizing the Freeholder Board to permit historic preservation funding under the Open Space Trust Fund, as allowed by N.J.S.A § 40:12–15.2.
14. The Freeholder Board then created the Trust Fund “to help support the preservation of the county’s exceptional abundance of historic resources.”
15. To bankroll the Trust Fund, the Freeholder Board sets a property tax “not to exceed \$.02 per \$100 of total county equalized real property valuation.”
16. The proceeds of this tax are placed in the Trust Fund.
17. The Freeholder Board created the Review Board to review and evaluate applications under the Trust Fund and provide recommendations for funding.
18. The Review Board’s recommendations are subject to the final approval of the Freeholder Board.
19. Once the Freeholder Board approves a grant, the grantee executes a grant agreement with the County of Morris.
20. When the grant agreement is fully executed, a two-year period of performance begins.
21. During this two-year period, grantees can receive grant funds as an 80% reimbursement of payments to contractors, following an inspection of the site or draft documents of plans or reports, and review of contractor invoices.
22. A true and correct copy of an email summarizing this process, from Historic Preservation

Program Coordinator Ray Chang to Plaintiff David Steketee, is attached and incorporated herein as Exhibit 1.

23. A true and correct copy of the rule governing this process, Rule 5.16 of the Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund Rules and Regulations, is attached and incorporated herein as Exhibit 2.

### **The Challenged Grants**

24. Since 2012, fourteen (14) churches, places of worship, or ministries (collectively “churches”) have received grants from the Trust Fund.
25. A list of these grantees is attached and incorporated herein as Exhibit 3.
26. Since 2012, the Freeholder Board has awarded \$5,530,322 from the Trust Fund to churches.
27. From 2012 to 2014, over 55% of total Trust Fund assets have been given to churches.
28. On information and belief, most of these churches use their buildings for sectarian religious purposes.
29. The Freeholder Board has awarded the Presbyterian Church in Morristown a total of \$1,047,640 from the Trust Fund since 2012.
30. The Presbyterian Church in Morristown’s 2013 construction grant application states on page 3 that a distribution from the Trust Fund would “historically preserve the building allowing its continued use by our congregation for worship services . . .”
31. A true and correct copy of that application is attached and incorporated herein as Exhibit 4.
32. The Presbyterian Church in Morristown has an active congregation that regularly uses the church for worship services. (Ex. 4, p. 3.)

33. “Worship services” are religious activities.
34. The mission of the Presbyterian Church in Morristown includes to “Proclaim faithfully the Good News of the Gospel in fresh and compelling ways,” and “Nurture relevant thoughtful, committed disciples,” according to the application. (Ex. 4, p. 11.)
35. The Freeholder Board has awarded St. Peter’s Episcopal Church a total of \$615,984 from the Trust Fund since 2012.
36. St. Peter’s Episcopal Church’s 2014 construction grant application states on page 3 that a distribution from the Trust Fund would “ensure continued safe public access to the church for worship, [and] periods of solitude and meditation during the week....”
37. A true and correct copy of that application is attached and incorporated herein as Exhibit 5.
38. St. Peter’s Episcopal Church has an active congregation that regularly worships in the church. (Ex. 5, p. 3.)
39. “Worship” is a religious activity.
40. The mission of St. Peter’s Episcopal Church includes “engaging worship” and “service in Christ’s name to our parish family, Morristown and the world,” according to the application. (Ex. 5, p. 11.)
41. On information and belief, funds from 2014 and 2015 grants have not yet been fully disbursed.
42. On information and belief, once funds are disbursed and spent, Morris County will be unable to retrieve the funds.
43. On information and belief, Defendants will suffer little or no hardship if they are prohibited from disbursing taxpayer funds to churches, places of worship, or ministries.

### **Previous Resolution Attempts**

44. FFRF sent a letter in February 2015 to the Freeholder Board expressing FFRF's concern about the unconstitutionality of distributing taxpayer funds to religious buildings.
45. A true and correct copy of that letter is attached and incorporated herein as Exhibit 6.
46. The Freeholder Board did not respond to FFRF's letter of complaint.
47. David Steketee testified to the Freeholder Board on June 24, 2015, and again on July 8, 2015, urging the Freeholder Board to follow the federal and New Jersey constitutions by not awarding grants to churches, places of worship, or ministries.
48. Freeholder Hank Lyon also objected to this practice and proposed a draft resolution on January 14, 2015 that would have prohibited grants that violate the plain language of Article I, Paragraph 3 of the New Jersey Constitution.

### **CAUSE OF ACTION PURSUANT TO NEW JERSEY CIVIL RIGHTS ACT**

49. Defendants' distributions of taxpayer funds to the fourteen (14) grantees listed in Exhibit 3 violates Plaintiffs' and all Morris County taxpayers' constitutional rights protected by Article I, Paragraph 3 of the New Jersey Constitution, which states, ". . . 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."
50. Defendants' unconstitutional distributions of Plaintiff David Steketee's tax payments subjects Steketee to the deprivation of a substantive constitutional right in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).
51. Although preserving historic Morris County buildings is an appropriate use of taxpayer

funds, the New Jersey Constitution must trump any other considerations regarding the distribution of public funds to churches, places of worship, or ministries.


52. The Defendants have, at all times, acted under color of law.
53. As a result of the actions of the Defendants, the Plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

### **DEMAND FOR RELIEF**

WHEREFORE, the Plaintiffs request that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that each of Defendants' grants of taxpayer funds to churches, places of worship, and ministries, in which the money was disbursed within two years prior to the filing of this Complaint, violated Article I, Paragraph 3 of the New Jersey Constitution.
3. Enter a preliminary injunction, later to be made permanent, requiring the Defendants to rescind the challenged grants and enjoining the Defendants from offering taxpayer money to any church, place of worship, or ministry in the future.
4. Award Plaintiff David Steketee nominal damages.
5. Award Plaintiff David Steketee actual damages in the amount of his tax payments that were awarded to churches, places of worship, or ministries, within two years prior to the filing of this Complaint.
6. Award the Plaintiffs their costs and attorneys' fees pursuant to N.J.S.A. 10:6-2(f).
7. Award all other relief that is just and equitable.

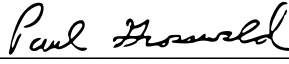
Dated: December 1, 2015

  
\_\_\_\_\_  
Paul S. Grosswald, Esq.  
Attorney for Plaintiffs,  
**FFRF & David Steketee**

**DESIGNATION OF TRIAL ATTORNEY**

Pursuant to Rule 4:5-1(c), Paul S. Grosswald, is hereby designated as trial counsel for the Plaintiffs in this matter.

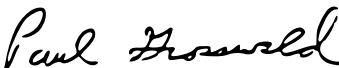
Dated: December 1, 2015

  
\_\_\_\_\_  
Paul S. Grosswald, Esq.  
Attorney for Plaintiffs,  
**FFRF & David Steketee**

**RULE 4:5-1(b)(2) CERTIFICATION**

I hereby certify pursuant to Rule 4:5-1(b)(2) that to the best of my knowledge, information and belief, the controversy that is the subject of this lawsuit is not the subject of any other action pending in any other Court, nor is it the subject of any pending arbitration proceeding. No such other action or arbitration proceeding is currently contemplated. I further certify at this time that there are no other known parties who should be joined in the instant action, nor are there any other known parties who are subject to joinder. Nevertheless, each of the churches listed in Exhibit 3 may have an interest in intervening in this action.

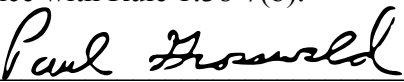
Dated: December 1, 2015

  
\_\_\_\_\_  
Paul S. Grosswald, Esq.  
Attorney for Plaintiffs,  
**FFRF & David Steketee**

**RULE 4:5-1(b)(3) CERTIFICATION**

I hereby certify pursuant to Rule 4:5-1(b)(3) that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)."

Dated: December 1, 2015

  
\_\_\_\_\_  
Paul S. Grosswald, Esq.  
Attorney for Plaintiffs,  
**FFRF & David Steketee**



**PLAINTIFF VERIFICATION**

I, DAVID STEKETEE, of full age, certify:

I have read the Complaint and certify that the allegations contained in the Complaint are true to the best of my knowledge and belief. I am aware that if any of my statements are willfully false, I am subject to punishment.

Dated: November 25, 2015

  
David Stekete

**PLAINTIFF VERIFICATION**

I, ANNIE LAURIE GAYLOR, of full age, certify:

I am a co-president of Plaintiff FFRF, and am authorized to sign this verification on behalf of FFRF. I have read the Complaint and certify that the allegations contained in the Complaint are true to the best of my knowledge and belief. I am aware that if any of my statements are willfully false, I am subject to punishment.

Dated: November 30, 2015

  
Annie Laurie Gaylor  
Co-President, FFRF