

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA U.S. MAIL AND EMAIL**

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Patrick G. Gilligan, Esquire  
City Attorney  
Gilligan, Gooding & Franjola, P.A.  
1531 S.E. 36th Avenue  
Ocala, FL 34471

Re: Unconstitutional Grants to Churches

Dear Mr. Gilligan and Council Members:

I am writing on behalf the Freedom From Religion Foundation. Last year we exchanged correspondence regarding the religious motto on Ocala's city seal. We do not consider that matter settled, but I am writing again to alert you to another constitutional violation occurring in Ocala. We were contacted by a concerned local taxpayer. We are aware that the City is currently engaged in a legal dispute with the American Humanist Association regarding the mayor and police chief's alleged promotion of Christianity. We hope that our complaints can be resolved without resorting to litigation.

We understand that the Ocala City Council has used its discretionary fund to grant funds to local churches. Our complainant informed us that this year St. Paul African Methodist Episcopal (AME) Church has requested \$10,000, and that last year the City Council provided a grant to the First Presbyterian Church of Ocala to help repair its steeple.

Such grants violate both the United States and Florida constitutions. We ask the City Council to reconsider this practice and to refuse all future requests for taxpayer funds to aid 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 Committee for Public Education 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 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 . . . cases dealing with speech forums are simply inapplicable”).

The Florida Constitution similarly prohibits funding of religious spaces. Not only are government entities prohibited from establishing religion, “[n]o 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. Board of Ed.*, 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 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); *Allegheny v. ACLU*, 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).

#### **St. Paul AME Church of Ocala**

We understand that St. Paul AME Church has historical significance as the second AME church in Ocala. According to the church’s website, the structure was erected just over one hundred years ago, although substantial renovations have occurred since then.<sup>1</sup>

But if the City wishes to preserve this history, it cannot do so by financially aiding the AME Church. From the building’s construction until recently, it appears the AME Church has maintained the structural integrity of the building, funding such projects as a roof replacement in the early 1980s and major additions and renovations in 1994. If the City is to fund a restoration of the building, it should either require the Church to turn over complete and full ownership to the City and quit all claims to the property, or the City should take the property by eminent domain.

It is neither appropriate, nor good policy, for the City to spend taxpayer dollars to repair a church-owned building. Since its inception, the building has been continuously used for religious worship, and continues to be owned by the church and is used for worship purposes with an active congregation. As discussed above, using taxpayer funds to perpetuate religious worship is unconstitutional.

We also understand that Councilwoman Mary S. Rich is a member of St. Paul AME Church. The risk of appearing to award discretionary funds based on the City Council’s bias is yet another reason to decline the church’s request.

#### **First Presbyterian Church of Ocala**

According to the church’s website, the current building for the First Presbyterian Church was erected in 1926–1928 and stands in the historic district of Ocala.<sup>2</sup> The building features a prominent steeple that rises over 100 feet into the air, and is topped by an eight-foot cross. Like St. Paul AME Church, the First Presbyterian Church has been and continues to be used for active worship purposes.

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<sup>1</sup> <http://www.stpaulameocala.org/St%20Paul.htm>.

<sup>2</sup> <http://www.fpcocala.org/?i=3759&mid=1000&id=407001>.

We understand that last year the City Council provided funding to help repair the church's steeple. At the City Council's Regular Meeting on October 7, 2014, councilmembers Rich and Malever questioned whether funding churches was appropriate. The grant was nevertheless approved, apparently because of the building's history.

Providing taxpayer funds for this project was illegal. Despite the building's history, the substantial repair of the steeple kept a Latin cross towering over the historic district of Ocala. Furthermore, a brass plaque that included a bible verse was placed over the cross. This demonstrates why it is inappropriate for the City to entangle itself with religious projects: any reasonable observer who sees that taxpayer funds have been used to erect a large symbol of Christianity, alongside a brass-inscribed verse from the Christian holy book, will understand the City to be endorsing the Christian religion.

The total estimated cost of this project was \$400,000, and the City only contributed a small portion of this amount. Further, the project was completed under budget. As such, the First Presbyterian Church itself was obviously capable of raising sufficient funds for the building's restoration, and there was no reason for the City to enter into the religion business by funding such a project. As Councilwoman Rich pointed out, "if one church is supported the others will make requests,"<sup>3</sup> and will now expect that the City Council will fund their projects as well. The obvious solution is to decline all grants to religious institutions in the future, as is constitutionally required.

The message this Council 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 City to further legal liability, jeopardizing even more taxpayer money. On behalf of our Ocala members we ask that you examine the above facts carefully and reconsider this misguided funding policy. The money could be used for more appropriate secular purposes. Shouldn't the Ocala City Council 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 Ocala history, consider seizing the property through eminent domain. Title should not remain with a religious institution if the taxpayers are paying to maintain their buildings.

Please respond in writing with the steps taken to resolve this matter.

Sincerely,



Andrew L. Seidel  
Staff Attorney

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<sup>3</sup> October 7, 2014, City Council Regular Meeting Minutes, 9.