

FILED
01-14-2025
CIRCUIT COURT
DANE COUNTY, WI
2025CV000173
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH_____

DANE COUNTY

ANNIE LAURIE GAYLOR & DAN BARKER

[REDACTED]

DAVID PETERSON

Trustee to David Peterson Revocable Trust

[REDACTED]

and

FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750

Madison, WI 53701,

Case No. _____

Case Code: 30701

Declaratory Judgment

Plaintiffs,

v.

THE CITY OF MADISON,

City-County Building

210 Martin Luther King Jr. Blvd.

Madison, WI 53703

PRESBYTERIAN STUDENT CENTER FOUNDATION

731 State St.

Madison, WI 53703,

and

ST RAPHAEL'S CONGREGATION

404 E. Main St.

Madison, WI 53703

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each entity named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. See Wis. Stat. § 801.09(2)(a). The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, 215 S. Hamilton Street, Madison, Wisconsin 53703, the Freedom From Religion Foundation at P.O. Box 750, Madison, WI 53701, and to Pines Bach LLP at 122 W Washington Ave, Suite 900, Madison, WI 53703. You may have an attorney help or represent you. If you require the assistance of auxiliary aids or services because of a disability, call (608) 266-4311.

If you do not provide a proper answer within 20 days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A Judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Respectfully submitted this 14th day of January, 2025.

Electronically signed by Christa O. Westerberg

Christa Westerberg, SBN 1040530

Pines Bach LLP

122 W. Washington Ave., Ste 900

Madison, WI 53703

cwesterberg@pinesbach.com

608.251.0101

Electronically signed by Patrick Elliott

Patrick Elliott, SBN 1074300

Samantha Lawrence, SBN 1119216

Freedom From Religion Foundation

P.O. Box 750

Madison, WI 53701

pellott@ffrf.org

slawrence@ffrf.org

608.256.8900

Attorneys for Plaintiffs

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Defendants.

COMPLAINT

1. Plaintiffs Annie Laurie Gaylor and Dan Barker, David Peterson, and Freedom From Religion Foundation, Inc. (“Plaintiffs”), by their attorneys, Pines Bach LLP and in-house counsel at Freedom From Religion Foundation, Inc., hereby complain against Defendants City of Madison, Presbyterian Student Center Foundation, and St Raphaels’ Congregation, (“Defendants”), as follows under the Uniform Declaratory Judgments Act, Wis. Stat. § 806.04.

I. INTRODUCTION

2. This action challenges an improper and unconstitutional property tax exemption that targets specific church owned rental properties for preferential treatment in the City of Madison: Wis. Stat. § 70.11(3m) (the Exemption). The Exemption, enacted in 2009, benefits the property owners to the tune of hundreds of thousands of dollars saved in unassessed and unpaid property taxes annually, forcing all other Madison property owners to pay more in property taxes each year.

3. As it stands, the Pres House and Lumen House Apartments, owned by Defendants Presbyterian Student Center Foundation and St Raphaels’ Congregation, respectively, are tax exempt under a special Exemption for which no other properties in Madison or the rest of Wisconsin can ever qualify. The Exemption arbitrarily excludes all other nonprofit organizations, religious or otherwise, and it favors rental properties serving primarily students in Madison attending one university, to the exclusion of all other locations and non-student tenants.

4. Explained in greater detail below, the Exemption is unlawful under the Wisconsin Constitution on several bases, including the Uniformity Clause, Equal

Protection Clause, Article I, section 18, and Article IV, section 18's prohibition against private bills.

5. Additionally, the City of Madison Assessor's Office has not regularly ensured that either the Lumen House or Pres House still qualify for the Exemption and has continually allowed these properties to be tax exempt despite serious constitutional defects to any claimed exemption.

6. The Exemption is unconstitutional and its application is thus preempted by the Wisconsin Constitution. The City of Madison cannot legally continue to apply a constitutionally defective property tax exemption.

7. The Exemption and the City's application of it harm plaintiffs Annie Laurie Gaylor, Dan Barker, and David Peterson by forcing them, and all other City of Madison property taxpayers, to pay higher property taxes to make up for the unlawful omission of these properties from the tax rolls.

8. Further, the Exemption and the City's application of it harms plaintiff Freedom From Religion Foundation (FFRF). The Exemption favors rental properties owned by two religious nonprofit organizations that were operating by an arbitrary cut off date to the exclusion of all other nonprofits that may desire to run student apartments in the future, including FFRF.

9. The Plaintiffs seek a declaratory judgment that the Exemption violates the Wisconsin Constitution. This unlawful property tax exemption must be struck down.

II. JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action under Article VII,

Section 8 of the Wisconsin Constitution and Wis. Stat. §§ 801.04 and .05.

11. Venue is proper in this Court under Wis. Stat. § 801.50(2)(a)-(c).

III. PARTIES

12. **Plaintiffs Annie Laurie Gaylor and Dan Barker** are City of Madison residents and property owners. They purchased their current residence at [REDACTED] in Madison in 1991. They paid their most recent property taxes on December 9, 2024.

13. **Plaintiff David Peterson**, as representative of the David Peterson Revocable Trust, is a City of Madison resident and property owner. Mr. Peterson has owned property in Madison for several decades, and Mr. Peterson owned rental properties until recently. Mr. Peterson purchased his current residence at [REDACTED] in 1993 and conveyed the property to his own revocable trust in 2015. He paid his most recent property taxes on February 2, 2024, and March 12, 2024.

14. **Plaintiff the Freedom From Religion Foundation** is a 501(c)3 nonprofit organization headquartered in the City of Madison. FFRF was founded in Madison in 1976 and was incorporated in Wisconsin in 1978. FFRF works as an umbrella for those who are free from religion and are committed to the cherished principle of separation of state and church. FFRF, unlike the Presbyterian Student Center Foundation or St. Raphael's Congregation, cannot benefit from the Exemption if FFRF were to open apartments aimed at renting to students.

15. **Defendant City of Madison** is a municipality located in the State of Wisconsin. The City of Madison's administrative offices are located at 210 Martin Luther

King Jr. Boulevard. The City is responsible for assessing all properties within the city limits for taxes and determining whether a property qualifies for a tax exemption.

16. **Defendant Presbyterian Student Center Foundation** is a church-affiliated organization located at 731 State Street. The Presbyterian Student Center Foundation owns the Pres House Apartments and has benefited from the Exemption since 2010. Defendant Presbyterian Student Center Foundation is joined as a party to this action pursuant to Wis. Stat. § 803.03(1).

17. **Defendant St. Raphael's Congregation** is part of the Our Lady of Guadalupe Pastorate and is controlled by the Diocese of Madison. St. Raphael's Congregation's main office is located at 404 E. Main Street. St. Raphael's owns the Lumen House Apartments and has benefited from the Exemption since 2014. Defendant St. Raphael's is joined as a party to this action pursuant to Wis. Stat. § 803.03(1).

IV. FACTS

The Legislature Enacts a Property Tax Exemption to Benefit the Pres House Apartments

18. In 2009, the State Legislature enacted Wis. Stat. § 70.11(3m) as part of the 2009-10 State budget bill. The bill, 2009 Wis. Act 28, was signed by then-governor Jim Doyle.

19. In its original form, the Exemption granted a property tax exemption to:

All real and personal property of a housing facility, not including a housing facility owned or used by a university fraternity or sorority, college fraternity or sorority, or high school fraternity or sorority, for which all of the following applies:

(1) The facility is owned by a nonprofit organization;

- (2) At least 90 percent of the facility's residents are students enrolled at the University of Wisconsin-Madison and the facility houses no more than 300 such students.
- (3) The facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public.

20. The first draft of the Exemption, introduced by Assembly Democrats, would have applied to facilities housing students "enrolled at a public or private institution of higher education," not just University of Wisconsin-Madison ("UW-Madison") students. The Exemption was later narrowed to target only rental properties serving primarily UW-Madison students.

21. The final version of the Exemption was created explicitly to benefit the Pres House Apartments. When the Exemption was enacted in 2009, then-state Representative Spencer Black, D-Madison, explained that he introduced the measure because he believed the Pres House Apartments should be property tax exempt. Per local news sources, Rep. Black stated "common sense would say it [the Pres House Apartments] should be tax exempt as a religious-based residence, but the tax code was unclear." Chris Murphy, *What's News: Property Tax Exemption for Pres House Dorm Could Be Gone*, Cap Times (May 13, 2011), <https://bit.ly/4b9fOZh>. A true and correct copy of the article is attached as **Exhibit A**.

22. In 2011, the Joint Finance Committee voted to repeal the Exemption. Then-state Senator Alberta Darling, R-River Hills, co-Chair of the Joint Finance Committee, referred to the Exemption as "an aberration and earmark." *Id.*

23. At that time, the Pres House Apartments were still the only property benefiting from the Exemption. However, then-Governor Scott Walker vetoed the repeal, as reported in local media. Doug Erickson, *Walker Veto Will Allow Pres House To Remain Tax-Exempt*, Wis. State J. (June 25, 2011), https://madison.com/news/local/govt-and-politics/walker-veto-will-allow-pres-house-to-remain-tax-exempt/article_75e49a3a-9ea5-11e0-b278-001cc4c03286.html. A true and correct copy of the article is attached as **Exhibit B**.

The Legislature Amends § 70.11(3m) to Benefit the Lumen House Apartments

24. In 2013, the Exemption was amended, again as part of the biannual budget bill. 2013 Wis. Act. 20, §§ 1278h, 1278i. The amendment, § 70.11(3m)(4), created an additional criterion: “The facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.”

25. The 2013 amendment was enacted for two purposes: to benefit the Lumen House Apartments and to prevent additional properties from ever qualifying for this property tax exemption.

26. The Lumen House Apartments is a municipal landmark that completed construction in 2014.

27. At the time, the local Catholic Diocese of Madison recognized that the amendment was created to benefit the Lumen House Apartments:

In a release dated June 21, Monsignor Holmes noted the Cathedral Parish's tremendous appreciation for "the efforts of Assembly Speaker Robin Vos (R-Rochester), Rep. Travis Tranel (R-Cuba City), and Rep. Pat Strachota (R-West Bend) and Senate Majority Leader, Senator Scott Fitzgerald (R-Beaver Dam) for their role in including a matter important to the Cathedral Parish in the governor's budget bill.

"Their efforts, with their colleagues, resulted in language that now clearly stipulates that Lumen House, a project of faith-based student housing and outreach ministry sponsored by the Cathedral Parish, will be tax-exempt, as was envisioned from the beginning."

With the property tax exemption preserved, Lumen House project's rehabilitation efforts will begin and the parish property (formerly Holy Redeemer School) will be renovated into a beautiful apartment complex for housing students with approximately 60 beds.

Brent King, *Lumen House Project Moves Forward*, Catholic Herald (July 4, 2013), <https://madisoncatholicherald.org/lumen-house/>. A true and correct copy of the article is attached as **Exhibit C**.

28. While two other organizations were granted the Exemption between 2010 and 2014, the Babcock House and Association of Women in Agriculture (AWA) House, the two organizations were not the intended beneficiaries of the Exemption. The Babcock House and AWA House are small, UW-Madison student co-ops that house a little more than 20 students each.¹

29. The 2013 amendment creates an arbitrary date-of-existence requirement that grandfathers-in the four then-exempt properties to the exclusion of all other similarly situated properties.

¹ The Babcock House currently houses approximately 20 students per its website, Babcock House, *Members*, <https://www.babcockhouse.org/current-members> (last visited Jan. 10, 2025); the AWA House houses up to 24 students, Association of Women in Agriculture, *Student Housing-flyer*, <https://awamadison.org/library/content/HousingFlyer2.4.pdf> (last visited Jan. 10, 2025).

30. Additionally, the legislative history of this statute indicates that the legislature did not hold a hearing, request public comment, commission reports, or otherwise vigorously debate the impact or constitutionality of the Exemption before it was included in the final version of Act 28. The 2013 amendment, as part of Act 20, similarly appears to have been passed without the Legislature meaningfully researching or debating the constitutionality or impact of the amendment.

31. The legislative history only reveals that a group of Assembly Democrats requested the Exemption be drafted, and the first draft of the Exemption would have applied to nonprofits serving at least 90 percent students, not specifically UW-Madison students. The final version of the Exemption likely specified UW-Madison students because it was intended only to benefit the Pres House.

32. The 2013 amendment was enacted after St. Raphael's lobbied to be included to be allowed to benefit from the Exemption.

The Pres House and Lumen House Apartments are Extremely Profitable Commercial Rental Properties that Would Owe the City Hundreds of Thousands in Property Taxes Annually if Not for the Exemption

33. The Pres House and Lumen House Apartments are commercial properties that charge tenants rent at market rate, and their prices are similar to other commercial rental properties in the area.

34. Though they provide a certain amount of programming for residents, the Pres House and Lumen House rentals are not charitable activities.

35. For example, the Pres House Apartments' website states that an individual lease currently starts at \$1,125 per month. A true and correct copy of the Pres House Apartments' current lease rates are attached as **Exhibit D**.

36. The Pres House Apartments' most recent 990 IRS tax form shows that it collected a little over \$2,150,000.00 in rent during the 2022 tax year.

37. The Presbyterian Student Center Foundation paid more than \$160,000 in property taxes on the Pres House Apartments in 2009. Murphy, *What's News: Property Tax Exemption for Pres House Dorm Could Be Gone*.

38. Starting in 2010, the Pres House Apartments have paid \$0 in property taxes due to the Exemption. *Id.*

39. A studio apartment at the Lumen House currently starts at \$1,395 per month per tenant. A true and correct copy of the Lumen House's current rental rates is attached as **Exhibit E**.

40. The Lumen House is a 19-unit apartment complex that rents to up to 66 individuals. Kevin Wondrash, *Lumen House Opens in Downtown Madison*, Catholic Herald (Aug. 28, 2014), <https://madisoncatholicherald.org/lumen-house-4/>.

41. In 2016, the Lumen House was already charging nearly \$46,000 per month for its 19 apartments.

42. Based on estimates, the Pres House Apartments' current market value likely exceeds \$25 million, with estimated property taxes owed in excess of \$300,000 annually. The Lumen House Apartments' current market value likely exceeds \$7.6 million, with estimated property taxes exceeding \$94,000 annually.

43. The Pres House and Lumen House Apartments are comparable to other housing developments aimed at students in the same area that do not benefit from the Exemption.

44. Based on their combined estimated \$33 million in value, omitting the Pres House and Lumen House Apartments from the property tax rolls is approximately the equivalent of exempting an entire neighborhood from paying property taxes.

45. The City of Madison Assessor's Office has not regularly ensured that either the Lumen House or Pres House Apartments still qualify for the Exemption and has continually allowed these properties to be exempt despite serious constitutional defects to any claimed exemption.

46. The City cannot legally omit properties from the property tax rolls based on an unconstitutional statute.

The City of Madison is Unwilling to Cease Applying this Unlawful Tax Exemption

47. On April 4, 2024, FFRF's counsel sent a letter to the City of Madison Assessor, Michelle Drea, Esq.. The letter explained the background of the Exemption, the 2013 amendment, and laid out the legal reasons why the Exemption is unlawful under the Wisconsin Constitution.

48. The Wisconsin Constitution is the supreme law of the land; therefore, the state's constitution supersedes unlawful property tax exemptions. The City of Madison Assessor has a duty to ensure that an improper and unlawful exemption is not applied to City of Madison properties.

49. Within hours, Assessor Drea replied via email to FFRF's letter:

I am in receipt of your letter dated April 4, 2024 regarding The Lumen House and Pres House Apartments. While I appreciate your perspective, I do not concur with the legal conclusions presented with regard to the property tax exempt status of these properties. I believe that the City is in complete compliance with state law. In my opinion, your arguments are best suited for either the Attorney General or to the Legislature directly.

50. In an effort to resolve the unlawful omission of these properties from the City's property tax rolls without resorting to litigation, plaintiffs Ms. Gaylor & Mr. Barker, and Mr. Peterson, filed objections to their most recent property tax assessments.

51. The first step in objecting to property tax assessments in the City of Madison is submitting a formal written objection to the City of Madison Board of Assessors (BOA).

52. On Friday, May 3, 2024, plaintiffs' counsel filed written objections with the BOA on behalf of plaintiffs Ms. Gaylor & Mr. Barker, and Mr. Peterson as their authorized agent. A true and correct copy of the objections is attached as **Exhibit F**.

53. Plaintiffs objected to their most recent property tax assessments on the basis that the omission of the above discussed properties under the unconstitutional Exemption negatively impacted their property tax assessments.

54. In other words, Ms. Gaylor, Mr. Barker, and Mr. Peterson recognize that they have been assessed higher property tax bills than they would if the City did not apply the unlawful Exemption to the four exempt properties, and particularly the Pres House and Lumen House Apartments.

55. On Monday, May 6, 2024, the Assessor responded to Ms. Gaylor's & Mr. Barker's, as well as Mr. Peterson's submitted objections:

The City is in receipt of the objections filed on behalf of David Peterson Revocable Trust, Annie Gaylor, and Dan Barker for properties located at [REDACTED] and [REDACTED] respectively. The Board of Assessors in the City of Madison operates under authority of Wis. Stat. § 70.075. The purview of this Board and the Board of Review does not include exempt properties. That is solely within the domain of the Assessor, under Wis. Stat. § 70.11. Any objections related to exemptions must proceed under the unlawful taxation statute, Wis. Stat. § 74.35.

The request of the Board of Assessors to place two exempt properties on the roll is not statutorily within their authority. Further, there is no mechanism by which the Board of Assessors or Board of Review may review your claims. Whereas, the Freedom from Religion Foundation is positioned to independently challenge the constitutionality of the statutes providing exempt status for the Pres House and Lumen House. You might even find municipalities and other organizations to be supportive of the claim.

However, the Board of Assessors, Board of Review, nor myself have authority to decree laws unconstitutional. This is not the correct forum for that to occur. As such, the objections as submitted will be unable to proceed, as confirmed by our Board of Assessors and Review Clerk.

A true and correct copy of the Assessor's reply is attached as **Exhibit G**.

56. On May 14, 2024, the City of Madison's Board of Review (BOR) sent an additional letter to FFRF, stating, in part, that "the Board of Assessors and Review will not be reviewing your claims." A true and correct copy of the letter is attached as **Exhibit H**.

57. On July 30, 2024, plaintiffs served the City with a Notice of Circumstances Giving Rise to a Claim and Notice of Claim (the Notice) pursuant to Wis. Stat. § 893.80. A true and correct copy of the Notice is attached as **Exhibit I**.

58. The City did not respond to the Notice within 120 days after the presentation of the Notice.

59. On November 27, 2024, the claim was disallowed by function of law pursuant to Wis. Stat. § 893.80(1g).

The Exemption Continues to Harm Plaintiffs

60. As it stands, the Pres House and Lumen House Apartments are tax exempt under a special exemption for which no other properties in Madison or the rest of Wisconsin can ever qualify.

61. For over a decade, Ms. Gaylor & Mr. Barker, and Mr. Peterson have been paying higher property taxes, along with all other Madison property taxpayers, in part to make up for the unconstitutional omission of these properties from the City's tax rolls.

62. Further, the Exemption was created and later amended to unlawfully favor two religious organizations to the exclusion of all other religious or non-religious organizations, including plaintiff FFRF. FFRF is unable to ever qualify for the Exemption if it were to invest in rental properties aimed at renting to UW-Madison students.

63. The tax exemption that the Pres House and Lumen House Apartments benefit from is unconstitutional and the City cannot bestow unconstitutional exemptions to preferred religious property owners or any other property owners.

V. CLAIMS

Claim One: The Exemption Violates the Uniformity Clause Set Forth in Art. VIII, Sec. 1 of the Wisconsin Constitution

64. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

65. The Uniformity Clause of the Wisconsin Constitution states, in part, “The rule of taxation shall be uniform[.]” WI Const. art. VIII, § 1.

66. Uniformity is violated when a statute imposes arbitrary methods of assessment and unequal taxation of comparable properties.

67. Here, there is no uniform class created by the Exemption, and there is no rational basis for exempting four Madison-specific majority UW-Madison student commercial rental properties from the property tax.

68. The Exemption created an unequal taxation of comparable properties.

69. The Exemption favors (a) nonprofit-owned rental properties (b) renting to at least 90 percent UW-Madison students (c) that house no more than 300 students, (d) that offer support services or outreach programming, (e) and the rental properties must be have been in existence and met the requirements of the state by July 2, 2023, “except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.” Wis. Stat. § 70.11(3m).

70. Plaintiffs – Ms. Gaylor, Mr. Barker, and Mr. Peterson – are all harmed by this unequal taxation because the Exemption results in the plaintiffs paying higher property taxes than they otherwise would if the exempt properties were returned to the property rolls. As taxpayers, Ms. Gaylor, Mr. Barker, and Mr. Peterson have suffered and will continue to suffer pecuniary loss.

71. As noted above, the primary rationale that a lawmaker provided when enacting the Exemption in 2009 was a representative's personal belief that the Pres House Apartments should be property tax exempt.

72. The 2013 amendment, which St. Raphael's lobbied for in the Legislature, was blatantly intended to specifically exempt the Lumen House Apartments.

73. The Exemption is arbitrary and treats specific church-affiliated nonprofit-owned rental properties unequally without a rational basis.

74. The Exemption unreasonably singles out these specific commercial rental properties that theoretically primarily serve UW-Madison students, imposing arbitrary assessment criteria and unequal taxation of comparable properties in violation of the Uniformity Clause.

Claim 2: The Exemption Violates the Equal Protection Clause Set Forth in Art. I, Sec. 1 of the Wisconsin Constitution

75. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

76. The Equal Protection Clause of the Wisconsin Constitution protects Wisconsinites from being subjected to statutes that divide citizens into arbitrary and unreasonable classes. WI Const. art. I, § 1.

77. A statute violates Article I, section 1 if (a) it creates a distinct classification of citizens; (b) treats that class significantly differently from those similarly situated, and (c) the legislature made an irrational or arbitrary classification that has "no reasonable purpose or relationship to the facts or proper state policy." *Metro. Assocs. v. City of Milwaukee*, 2011 WI 20, ¶¶ 61-62, 332 Wis.2d 85, 796 N.W.2d 717.

78. The Exemption creates a distinct classification: (a) nonprofit-owned rental properties, (b) renting to at least 90 percent UW-Madison students, (c) that house no more than 300 students, (d) that offer support services or outreach programming, (e) and the rental properties must be have been in existence and met the requirements of the state by July 2, 2023, “except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.” Wis. Stat. § 70.11(3m).

79. The Exemption treats this class significantly differently from all other similarly situated properties in Madison and Wisconsin as a whole. No other colleges, churches, synagogues, or other nonprofits can ever qualify for the Exemption if they acquire or currently own rental properties.

80. Plaintiff FFRF is a nonprofit that cannot ever benefit from the Exemption if it were to open rental housing aimed at UW-Madison students.

81. The Exemption unfairly targets rental properties serving primarily UW-Madison students. There is no rational reason why rental properties housing at least 90 percent UW-Madison students but no more than 300 individual students should receive a special property exemption while rental properties serving students at other institutions are excluded.

82. The Legislature did not and cannot produce a rational justification for favoring rental properties for UW-Madison students over those that primarily house students at one of the other University of Wisconsin locations throughout the state, or

even any of the other public institutions of higher education located in Madison, such as Madison College.

83. The Exemption's criteria are arbitrary and unmoored from any rationale with a reasonable purpose or relationship to the facts or state policy. There is no rational purpose for exempting from property taxes nonprofit-owned Madison-specific commercial rental properties that must primarily rent to UW-Madison students and that were operating by a certain date.

84. These properties do not present an issue of state policy. Whether or not the Pres House or Lumen House Apartments are property-tax exempt does not impact the entire state. These properties' tax status only impacts Wisconsinites who own property and pay property taxes within the City of Madison.

85. The Exemption violates Article I, Section 1.

Claim Three: The Exemption Violates Art. I, Sec. 18 of the Wisconsin Constitution

86. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

87. Article I, section 18 of the Wisconsin Constitution states in part that no "preference" shall "be given by law to any religious establishments or modes of worship[.]"

88. The Exemption was enacted explicitly to benefit for-profit commercial apartments owned by a religious organization—the Presbyterian Student Center Foundation.

89. The 2013 amendment specifically benefits the Lumen House, which is owned by St. Raphael's Congregation. St. Raphael's is controlled by the Diocese of Madison.

90. The Exemption, as amended, primarily benefits these two religious organizations that own the Pres House and Lumen House Apartments.

91. No other churches, synagogues, or other religious or non-religious organizations in the City of Madison or State of Wisconsin can ever qualify for the Exemption, an exemption that undeniably saves these profitable church-affiliated and owned apartments from being assessed hundreds of thousands of dollars in property taxes annually.

92. For example, plaintiff FFRF is prevented from ever qualifying for the Exemption if it were to open rental properties aimed at serving atheist and agnostic students.

93. For these reasons, the Exemption violates Article I, section 18.

The Exemption Violates Art. IV, Sec. 18 of the Wisconsin Constitution

94. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

95. Article IV, section 18 of the Wisconsin Constitution states, in part, "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."

96. The circumstances under which the Exemption was enacted in 2009 are those of an unconstitutional private bill.

97. Article IV, section 18 serves to “guard against the danger of legislation, affecting private or local interests, being smuggled through the legislature.” *Lake Cnty. Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25, ¶ 9, 289 Wis. 2d 498, 510, 710 N.W.2d 701, 707 (internal citation omitted).

98. Further, Article IV, section 18 helps to prevent “internal logrolling, the legislative practice of bundling several unrelated issues, none of which could be passed singly, and securing passage by a combination of the legislative factions who favor separate pieces of the legislation.” *Id.*

99. A statute challenged on the grounds that it’s an unconstitutional private bill will not be presumed constitutional if there is no record showing that the legislature adequately considered the legislation in question. *Id.* at ¶ 11.

100. Here, the Exemption was not adequately considered by the legislature. In fact, the evidence available does not suggest that the legislature really considered the enactment of § 70.11(3m) but rather suggests that a single state representative and a group of Assembly Democrats worked to get the Exemption into the 2009-10 budget bill in order to aid the Presbyterian Student Center Foundation, as discussed above.

101. The Exemption is an unconstitutional private bill in violation of Article IV, section 18.

VI. REQUESTS FOR RELIEF

102. Plaintiffs respectfully request that this Court:

- a. Enter a declaratory judgment pursuant to Wis. Stat. § 806.04 that Wis. Stat. § 70.11(3m) violates the Uniformity Clause; Equal Protection Clause; Article I, section 18; and, Article IV, section 18 of the Wisconsin Constitution.
- b. Enter permanent orders enjoining Defendants, their successors, and all those acting in concert with them or at their direction from applying Wis. Stat. § 70.11(3m) to any property going forward.
- c. Grant Plaintiffs' costs pursuant to Wis. Stat. § 806.04(10).
- d. Grant any other supplemental relief as appropriate that the Court deems just and equitable pursuant to Wis. Stat. § 806.04(8).

Respectfully submitted this 14th day of January, 2025.

Electronically signed by Christa O. Westerberg

Christa Westerberg, SBN 1040530
Pines Bach LLP
122 W. Washington Ave., Ste 900
Madison, WI 53703
cwesterberg@pinesbach.com
608.251.0101

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Patrick Elliott, SBN 1074300
Samantha Lawrence, SBN 1119216
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701
pelliott@ffrf.org
slawrence@ffrf.org
608.256.8900

Attorneys for Plaintiffs

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	<i>What's News: Property Tax Exemption for Pres House Dorm Could Be Gone</i> , Cap Times (May 13, 2011)
Exhibit B	<i>Walker Veto Will Allow Pres House To Remain Tax-Exempt</i> , Wisconsin State Journal (June 25, 2011)
Exhibit C	<i>Lumen House Project Moves Forward</i> , Catholic Herald (July 4, 2013)
Exhibit D	Pres House Apartments' current lease rates
Exhibit E	Lumen House's current rental rates
Exhibit F	Objections filed on May 3, 2024 with the BOA on behalf of plaintiffs
Exhibit G	Assessor's May 6, 2024 response to plaintiffs' objections
Exhibit H	Madison's Board of Review's letter May 14, 2024 letter to FFRF
Exhibit I	Notice served on the City by plaintiffs on July 30, 2024

EXHIBIT A

https://captimes.com/news/local/whatsnews/whats-news-property-tax-exemption-for-pres-house-dorm-could-be-gone/article_263aa2d2-c747-5ed7-9454-e2356697ff39.html

What's News: Property tax exemption for Pres House dorm could be gone

CHRIS MURPHY | The Capital Times | cmurphy@madison.com

May 13, 2011



Built in 2007, the seven-story Pres House residence sits next to the Pres House chapel and campus ministry center, which has operated at UW-Madison for more than 100 years.

Steve Apps -- State Journal

The Milwaukee Journal Sentinel posted an interesting story Thursday for Madison readers: the Legislature's Joint Finance Committee voted 14-2 to repeal a property tax exemption for a dormitory at 439 East Campus Mall -- Pres House Residence -- owned by the Presbyterian Student Center Foundation.

The foundation got the tax exemption in 2009 when, through the efforts of then-state Rep. Spencer Black, D-Madison, it was put into the state budget. At the time, Black told the Wisconsin State Journal that "common sense would say it should be tax exempt as a religious-based residence, but the tax code was unclear."

That wasn't the take of the Joint Finance Committee.

"It was an aberration and earmark," committee co-Chair and Sen. Alberta Darling, R-River Hills, said Thursday, according to the Journal Sentinel.

"We're just trying to clean up a lot of what happened in the last four years."

Given that the committee is stacked with Republican leaders who control both houses of the Legislature, it's a good bet that the change will pass and be signed into law by Republican Gov. Scott Walker.

Aside from the fact that Pres House's chapel at 731 State St. is a landmark, the story is interesting because it highlights a problem often mentioned by Madison officials: that 58 percent of the city's land is tax-exempt (much of it government property), which puts a squeeze on those who own the remaining parcels. The foundation paid more than \$160,000 in taxes on the 300-resident dormitory in 2009, for example, which then dropped to nothing starting in 2010 the Journal Sentinel reported.

Marc Eisen pointed out in Isthmus earlier this year that former city economic development director Tim Cooley often referenced the high percentage of untaxed land in Madison as a major issue. And the Journal Sentinel took a stern look recently at property tax exemptions, particularly in Milwaukee, charging that taxpayers are losing out in many cases when they shouldn't be.

I'm not trying to make the case that Pres House's exemption should be rescinded -- I haven't done enough research to give a sound opinion there -- but I am in favor of taking a close look at all the exceptions given how

much land they account for.

Pres House executive director Mark Elsdon sent me an email Friday night after my original post saying that losing the property tax exemption would put their mission into jeopardy. "It is greatly concerning that the Republican leadership is seeking to raise taxes on a Christian church."

He also said the "Journal Sentinel article perpetuates some serious misunderstandings regarding our exemption. The language that provides us with an exemption came into being appropriately, openly, and is not at all unusual compared with other exemptions for non-profits."

He provided a sheet of talking points making that case [that you can see here.](#)



EXHIBIT B

https://madison.com/news/local/govt-and-politics/walker-veto-will-allow-pres-house-to-remain-tax-exempt/article_75e49a3a-9ea5-11e0-b278-001cc4c03286.html

Walker veto will allow Pres House to remain tax-exempt

DOUG ERICKSON || 608-252-6149

Jun 25, 2011



Built in 2007, the seven-story Pres House residence sits next to the Pres House chapel and campus ministry center, which has operated at UW-Madison for more than 100 years.

Steve Apps -- State Journal

DOUG ERICKSON || 608-252-6149

Gov. Scott Walker has sided with the Presbyterian student center at UW-Madison, saying he plans to veto a provision in the 2011-13 biennial budget that would have forced the campus ministry to pay property taxes on its student apartment building.

The veto, which will come Sunday when Walker signs the budget, was announced Friday by his office.

It means the 51-unit Pres House Apartments will remain tax exempt, sparing it an annual cost of about \$200,000.

"We're thrilled," said the Rev. Mark Elsdon, executive director of the Pres House ministry. "We take it as an affirmation of the work we're doing and the value of it."

The Pres House ministry has operated at UW-Madison for more than 100 years and includes a chapel. Only the tax status of its apartment building, opened in 2007, was being debated.

People are also reading...

- 1 **Wisconsin men's basketball lost 2 starters to injury vs. Rutgers. Here's what we know**
- 2 **Police Chief Shon Barnes gives video update on Madison school shooting**
- 3 **Long lines seen at Culver's sites raising funds for Madison school shooting families**
- 4 **'It's disgusting': Player retains legal counsel over transfer portal dispute with Wisconsin**

The apartment building paid property taxes until, in 2009, the Legislature approved special legislation giving tax-exempt status to it and any other housing "owned by a nonprofit organization" and having "at least 90 percent" of its residents enrolled at UW-Madison. The exemption, which began in 2010, was not based on the apartment building's loose religious affiliation.

However, in May, the Legislature's Joint Finance Committee, at the request of the Apartment Association of South Central Wisconsin, voted to strip Pres House of its tax-exempt status. The committee added the repeal to the budget.

Pres House supporters soon began forcefully lobbying Walker to veto the provision. Friday, Walker spokesman Cullen Werwie said only, "The governor thought it should be tax exempt."

Elsdon estimated 400 to 500 supporters, including Presbyterian pastors from all over the state, called Walker's office to encourage the veto. The top three Presbyterian leaders in the country also lobbied the governor, he said.

In a letter to Walker from the national Presbyterian Church, leaders wrote that the revenue gained from the apartment building helps fund Pres House's mission work, including "scholarships for residents to lower rent costs, service trips and volunteer work in the Madison community, pastoral counseling and an on-site chaplain presence."

Twenty legislators — 16 Republicans and four Democrats — signed a letter seeking the veto, noting that the Madison City Council, on a 2009 voice vote, sought the tax-exempt status.

However, the move was controversial among some taxpayers and private apartment building owners.

Nancy Jensen, executive director of the apartment association, said last month that the ministry never should have been granted the tax-exempt status and that too much housing is getting taken off the tax rolls, burdening other taxpayers. She could not be reached for comment Friday.

Elsdon said he's glad the last few months are behind him. "It's been a difficult distraction," he said. "A great deal was at stake."

State Journal Capitol reporters Mary Spicuzza and Clay Barbour contributed to this report.



State Journal

EXHIBIT C



Diocese of Madison

Catholic Herald

**CATHOLIC
CEMETERIES****DIOCESE OF MADISON***Bless your family. Make cemetery plans now.*

[Home](#) > [News](#) > [Around the Diocese](#) > [Lumen House project moves forward](#)

Lumen House project moves forward

 On July 4, 2013

 Brent King, For the Catholic Herald

MADISON — Msgr. Kevin Holmes, rector of the Cathedral Parish in Madison, publicly thanked Wisconsin State legislators late in June for acting to ensure the opportunity for faith-based housing for students attending University of Wisconsin-Madison becomes a reality beginning with the 2014 to 2015 school year.

Preserving tax-exemption

In a release dated June 21, Monsignor Holmes noted the Cathedral Parish's tremendous appreciation for "the efforts of Assembly Speaker Robin Vos (R-Rochester), Rep. Travis Tranel (R-Cuba City), and Rep. Pat Strachota (R-West Bend) and Senate Majority Leader, Senator Scott Fitzgerald (R-Beaver Dam) for their role in including a matter important to the Cathedral Parish in the governor's budget bill.

"Their efforts, with their colleagues, resulted in language that now clearly stipulates that Lumen House, a project of faith-based student housing and outreach ministry sponsored

by the Cathedral Parish, will be tax-exempt, as was envisioned from the beginning.”

With the property tax exemption preserved, Lumen House project’s rehabilitatio↑orts will begin and the parish property (formerly Holy Redeemer School) will be renovated into a beautiful apartment complex for housing students with approximately 60 beds.

Those envisioned to benefit from this great opportunity include: men and women discerning a religious vocation, those providing faith-based leadership programs and counseling, as well as students who desire faith-based housing.

Mission of Lumen House

The mission and vision is that this facility will collaborate with many programs offering personal formation and opportunities for service at both St. Paul’s University Catholic Center and the Cathedral Parish, offering some of the programs in the building itself.

Lumen House will allow residents actively involved in the ministries of St. Paul’s or the Cathedral Parish to pay rent at a reduced rate, and will also offer financial aid for those in need. The programs supported by the rents from the building and the contributed services of the residents will benefit many students at the University of Wisconsin and people in the local community.

The correction made to the budget bill, and signed into law by Governor Scott Walker on July 1, contains deadline-extension language allowing the parish until September of next year to complete the project and get it up and running. Without this important extension, the cost of rent would have been too expensive for many students.

Due to the tireless work of State Assembly members Travis Tranel and Pat Strachota, as well as the Assembly and Senate leadership, these otherwise devastating effects on student rent affordability and on the ability to subsidize low-income students were prevented.

Likewise, with the plan and mission intact, the expanded services envisioned in this building are no longer hindered. Again, Monsignor Holmes thanks Rep. Tranel, Rep. Strachota, and our state legislators for their just consideration in this important matter.

Background on the project

The Catholic Church and its St. Paul’s Catholic Center have had a presence at the university’s Madison campus since 1906. As a more-than-a century-old part of the mission of the Catholic Church in Madison, we know that students who graduate with


both educated minds and educated hearts serve the common good, and we believe that society as a whole benefits, not just downtown Madison.

As part of a revitalization of its campus ministry – and after repeated requests [↑], Catholic students and parents statewide for a faith-based residence as an alternative housing option at the University of Wisconsin-Madison – St. Paul’s began planning for such housing and for an expansion of faith-based services.

More than three years ago, St. Paul’s Catholic Center sought City of Madison approval to build residential accommodations as part of its planned new facility on the State Street Mall. In January 2011, approval to construct the new building as planned was denied on account of its height, despite very favorable comment from city staff and Catholic students in support of the project.

Earlier this year, the Cathedral Parish identified the former Holy Redeemer School, at 142 W. Johnson St., as an alternative site for faith-based student housing and more campus outreach. That building had been only marginally maintained since it closed as a parochial school in 1965.

Though a noble old building and a city landmark, the cost of rehabilitating the structure has been prohibitive. Located within six blocks of St. Paul’s, the building offers an ideal location for faith-based residential housing and community outreach. The ability to use it for tax-exempt student housing makes the renovation of the building feasible.

 In [# Catholic](#) , [# Holmes](#) , [# Holy](#) , [# House](#) , [# Housing](#) , [# Lumen](#) , [# Paul](#) , [# Paul's](#) , [# Redeemer](#) , [# School](#) , [# St](#) , [# Students](#) , [# University](#)



Catholic Herald wins awards

Religious freedom on the Fourth of July

For content prior to 9/19/2008, use our [old search engine](#) or browse [older editions](#).

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EXHIBIT D

Online Application

Please select one of the options below to apply.



Group Lease

I/we have already chosen roommates for the upcoming lease term and would like to apply as a group.

Starting at \$2,045

Group Application



Individual Lease

I am ready to apply by myself for a room within an apartment and begin the roommate matching process.

Starting at \$1,125

Shared Room starting at \$1,550
(\$775/person)

Individual Application

EXHIBIT E



Let's Rent Better
Together

PHONE: (608) 251-8777
: (608) 255-0295
1202 Regent St. - Madison WI 53715
AFTER HOURS EMERGENCIES: (608) 258-7726

Lumen: A measure of light to show brightness. From studios to 5 bedrooms, the historic Lumen House features a variety of bright, radiant and modern floor plan options to suite your housing needs! Your apartment comes fully furnished with internet and cable included and is conveniently located on the UW campus, just steps from State St, and on the bus route. Call today to set up your showing!

Building Features & Amenities:

- Fitness Center
- Study Room
- Laundry Facility
- Bike Storage/Bike Racks
- Elevator

Unit Features & Amenities:

- Furnished Units
- Cable & Internet Included
- Central AC
- Dishwasher In Every Unit
- Microwave In Every Unit



Floorplan Packet

Units Available
4 Listings

ADDRESS	UNIT	BATHS	SQ FT	PETS	LEASE	AVAIL	RENT	PARKING	TOUR
142 W Johnson St #1 Madison Campus	2 be, 1 ba Apartment	1	780	No	Standard	8/16/25	\$2195	Street	
142 W Johnson St #4 Madison Campus	3 be, 1 ba Apartment	1	970	No	Standard	8/16/25	\$3095	Street	
142 W Johnson St #205 Madison Campus	Studio, 1 ba Apartment	1	505	No	Standard	8/16/25	\$1495	Street	
142 W Johnson St #301 Madison Campus	Studio, 1 ba Apartment	1	300	No	Standard	8/16/25	\$1395	Street	

1202 Regent St. - Madison WI 53715 |PHONE: (608) 251-8777 |FAX: (608) 255-0295

AFTER HOURS EMERGENCIES: (608) 258-7726

EXHIBIT F

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 › MADISON, WI 53701 › (608) 256-8900 › WWW.FFRF.ORG

May 3, 2024

City of Madison Board of Assessors
City-County Building
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Re: Objection to Omission of Property from City of Madison Tax Rolls

Dear Board of Assessors:

I am writing on behalf of Madison property owners, Annie Laurie Gaylor, Dan Barker, David Peterson - Trustee of the David Peterson Revocable Trust, and the Freedom From Religion Foundation. Our complainants object to the incorrect omission of specific properties from the City of Madison's tax rolls. The unlawful omission of taxable property negatively impacts their property tax assessments by forcing our complainants, and all other Madison property taxpayers, to shoulder the burden of making up for the property taxes that go uncollected by paying higher property taxes.

Our complainants are objecting to "the true value of property within the city," which the Board of Assessors (BOA) has the authority to remedy under Wis. Stat. § 70.075(3). As it stands, the city has omitted a substantial amount of taxable property from the tax rolls. There are two high-value commercial rental properties that have been improperly and illegally omitted from the tax rolls for years now: The Lumen House and the Pres House apartments.

The Lumen House is located at 142 W. Johnson St and is owned by St. Raphael's Congregation, parcel number 070914422210. The Pres House apartment building is located at 439 E. Campus Mall and is owned by the Presbyterian Student Foundation Center, parcel number 070923204047. The city assessor incorrectly categorizes these properties as tax exempt under Wis. Stat. § 70.11(3m), which narrowly applies to certain commercial rental housing facilities that primarily serve UW-Madison students.¹

The Pres House and Lumen House are commercial properties that charge tenants rent, and their prices are similar to other commercial rental properties in the area. To be clear, the Pres House and Lumen House rentals are not charitable activities. The owners are not renting to tenants for free or at a blanket reduced rate.

For example, the [Pres House's website](#) states that an individual lease starts at \$1,125 per month.² Additionally, the Pres House's most recent 990 IRS tax form shows that it collected a little over \$2,150,000.00 in rent during the 2022 tax year. Exhibit A is a true and correct excerpt from the Pres House's 990.

¹ The only other properties exempt under 70.11(3m) are the Babcock House and the Association of Women in Agriculture House.

² Pres House Apartments, Online Application, <https://phapts.com/online-application/>.

Likewise, a studio apartment at [the Lumen House](#) currently starts at \$1,395 per month per tenant.³ The Lumen House is a 19-unit apartment complex that rents to up to 66 individuals, [per a statement](#) by the Diocese of Madison.⁴ Exhibit B is a true and correct copy of the cited Diocese of Madison article regarding the opening of the Lumen House in 2014. In 2016, the Lumen House was already charging nearly \$46,000 per month for its 19 apartments. Exhibit C is a true and correct copy of the Lumen House's 2016-17 rental rates.

The Pres House's current market value likely exceeds \$25 million with estimated property taxes owed in excess of \$300,000. The Lumen House's current market value likely exceeds \$7.6 million, with estimated property taxes exceeding \$94,000. This makes them comparable to other student housing developments in the same area that do not benefit from the same property tax exemption.

The Madison Assessor's Office has not regularly ensured that either the Lumen House or Pres House still qualify for this exemption and has continually allowed these properties to be exempt despite serious constitutional defects to any claimed exemption.

The Pres House and Lumen House combined are equivalent to omitting an entire neighborhood given the estimated approximately \$33 million in value. The BOA can fix this incorrect value of property within Madison by giving notice to the owners of the improperly omitted properties and then taxing those properties.

The tax exemption that the Pres House and Lumen House currently benefit from is unconstitutional and the BOA cannot bestow unconstitutional exemptions to preferred religious property owners. Wis. Stat. § 70.11(3m) is unlawful under the Wisconsin Constitution on several bases, including the Uniformity Clause,⁵ Equal Protection Clause,⁶ Article I, section 18,⁷ and Article IV, section 18's prohibition against private bills, and the BOA should refuse to apply it.⁸

As it stands, four rental properties in Madison are tax exempt under a special exemption that no other properties in Madison or the rest of the state can ever qualify for, notwithstanding the fact that when § 70.11(3m) was enacted in 2009, the then-representative who proposed the exemption explicitly stated that the [exemption was created to benefit the Pres House apartments](#) as reported in an article from the Cap Times.⁹ Exhibit D is a true and correct copy of the article.

In 2013, § 70.11(3m) was amended [specifically to benefit the Lumen House](#), which is a municipal landmark that completed construction in 2014.¹⁰ See Exhibit B. The amendment, § 70.11(3m)(a)4, states that the property tax exemption can only apply if a "facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark,

³ Lumen House, <https://www.madisonproperty.com/lumenhouse>.

⁴ Kevin Wondrash, *Lumen House Opens in Downtown Madison*, Catholic Herald (Aug. 28, 2014), <https://madisoncatholicherald.org/lumen-house-4/>.

⁵ WI Const. art. VIII, § 1.

⁶ WI Const. art. I, § 1.

⁷ WI Const. art. I, § 18.

⁸ WI Const. art. IV, § 18.

⁹ Chris Murphy, *What's News: Property Tax Exemption for Pres House Dorm Could Be Gone*, Cap Times (May 13, 2011), <https://bit.ly/4b9fOZh>.

¹⁰ *Lumen House Opens in Downtown Madison*, <https://madisoncatholicherald.org/lumen-house-4/>.

the facility is in existence and meets the requirements of this subsection on September 30, 2014.” The local Diocese recognized that the statute was amended to benefit the Lumen House:

In a release dated June 21, Monsignor Holmes noted the Cathedral Parish’s tremendous appreciation for “the efforts of Assembly Speaker Robin Vos (R-Rochester), Rep. Travis Tranel (R-Cuba City), and Rep. Pat Strachota (R-West Bend) and Senate Majority Leader, Senator Scott Fitzgerald (R-Beaver Dam) for their role in including a matter important to the Cathedral Parish in the governor’s budget bill.

“Their efforts, with their colleagues, resulted in language that now clearly stipulates that Lumen House, a project of faith-based student housing and outreach ministry sponsored by the Cathedral Parish, will be tax-exempt, as was envisioned from the beginning.”

With the property tax exemption preserved, Lumen House project’s rehabilitation efforts will begin and the parish property (formerly Holy Redeemer School) will be renovated into a beautiful apartment complex for housing students with approximately 60 beds.¹¹

Exhibit E is a true and correct copy of the [Catholic Herald article](#) discussing how the statute was amended to favor the Lumen House. The 2013 amendment creates an arbitrary date-of-existence requirement that grandfathered-in the four then-exempt properties to the exclusion of all other similarly situated properties. The arbitrary property classification created by § 70.11(3m) is unconstitutional under the below referenced provisions of the Wisconsin Constitution.

The Uniformity Clause

This exemption violates the Uniformity Clause, which states in part, “The rule of taxation shall be uniform[.]”¹² Uniformity is violated by arbitrary methods of assessment and unequal taxation of comparable properties.¹³ There is no uniform class created by the exemption and there is no rational basis for exempting these four Madison-specific majority UW-Madison student rental properties from the property tax. This exemption created an unequal taxation of comparable properties primarily housing students. As noted above, the only rationale that a lawmaker provided when enacting the exemption in 2009 was a representative’s personal belief that the Pres House apartments should be property tax exempt, and the 2013 amendment to the statute was intended to specifically exempt the Lumen House, which is arbitrary.

The Equal Protection Clause

Further, the exemption runs afoul of the Wisconsin Constitution’s Equal Protection Clause. A statute violates equal protection if (a) it creates a distinct classification of citizens; (b) treats that class

¹¹ Brent King, *Lumen House Project Moves Forward*, Catholic Herald (July 4, 2013), <https://madisoncatholicherald.org/lumen-house/>.

¹² WI Const. art. VIII, § 1.

¹³ See *Bd. of Trustees of Lawrence Univ. v. Outagamie Cnty.*, 150 Wis. 244, 136 N.W. 619, 621 (1912); *Noah's Ark Fam. Park v. Bd. of Rev. of Vill. of Lake Delton*, 216 Wis. 2d 387, 393, 573 N.W.2d 852, 855, *decision clarified on denial of reconsideration*, 217 Wis. 2d 367, 576 N.W.2d 56 (1998); *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 111, 270 N.W.2d 187, 194 (1978); 54 Op. Atty. Gen. 60 (1965) (finding that special exemption for nonprofit would violate uniformity).

significantly differently from those similarly situated;¹⁴ and, (c) the legislature made an irrational or arbitrary classification that has “no reasonable purpose or relationship to the facts or proper state policy.”¹⁵ Wisconsin courts have invalidated property tax related laws on equal protection grounds. For instance, in *Metro Association v. City of Milwaukee*, the Supreme Court of Wisconsin invalidated a statute that allowed some municipalities, but not others, to “opt-out” of allowing property owners to challenge property tax assessments through certain procedures.¹⁶

Here, § 70.11(3m) creates a distinct classification: four rental properties in the City of Madison that meet very specific criteria. The exemption treats this class significantly differently from all other similarly situated properties in the City of Madison and Wisconsin as a whole. The exemption’s criteria are arbitrary and unmoored from any rationale with a reasonable purpose or relationship to the facts or state policy. There is no rational purpose for exempting from property taxes four Madison-specific properties that must primarily rent to UW-Madison students for profit. These properties do not present an issue of state policy and whether or not these four properties pay property taxes is not a matter relating to state policy or meaningfully affecting the rest of the state.

Article I, section 18

Article I, section 18 of the Wisconsin Constitution states in part that no “preference” shall “be given by law to any religious establishments or modes of worship[.]” § 70.11(3m) was enacted explicitly to benefit a religious establishment—the Pres House, and the 2013 amendment specifically benefits the Lumen House as discussed above. This property tax exemption benefits the two religious organizations that own the Pres House and Lumen House apartments. No other churches, synagogues, or other religious organizations in the City of Madison or State of Wisconsin can ever qualify for this exemption, an exemption that undeniably saves these for-profit church-owned apartments from being assessed hundreds of thousands of dollars in property taxes each year.

Article IV, section 18

Finally, the circumstances under which this exemption was passed bear the hallmarks of an unconstitutional private bill. Article IV, section 18 of the Wisconsin Constitution states, “[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.”¹⁷ In determining whether an enactment is a private bill, the court must first examine whether the legislative record shows that the legislature adequately considered the legislation in question.¹⁸

¹⁴ *Lake Cnty. Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25, 33 (internal citation omitted).
Lake Cnty., at 33 (internal citation omitted).

¹⁵ *Metro. Assocs. v. City of Milwaukee*, 2011 WI 20, ¶¶ 61–62.

¹⁶ *Metro. Assocs. v. City of Milwaukee*, at 5; See also *Wis. Wine & Spirit Inst. v. Ley*, 141 Wis. 2d 958, 416 N.W.2d 914 (Ct. App. 1987) (invalidating grandfather clause of liquor license law on equal protection clause after applying rational basis review).

¹⁷ WI Const. art. I, § 18.

¹⁸ *Lake Cnty.*, at 11 (internal citations omitted) (finding that the legislature adequately considered the enactment at issue, noting that a majority of the Assembly co-sponsored a single-subject bill exempting YMCAs from property taxation before the measure was added to the budget bill, a majority of senators either co-sponsored the stand-alone bill or considered and voted for the proposal as members of the Joint Finance Committee, all legislators were informed via memo by the bill's supporters and opponents of the policy reasons to oppose or support the bill, and at

Here, § 70.11(3m) was not adequately considered by the legislature. In fact, the evidence does not suggest that the legislature really considered the enactment of § 70.11(3m) so much as a single state representative worked to get the exemption into the 2009 budget bill in order to help the Pres House. In 2011, then-senator Alberta Darling [stated that this exemption](#) is “an aberration and earmark.”¹⁹ Exhibit D, referenced above, contains this statement.

Because § 70.11(3m) is unconstitutional, the BOA’s omission of property from the tax rolls based on this exemption is improper. We urge the BOA to rectify this improper omission and add properties exempted under § 70.11(3m) back onto the City of Madison tax rolls. The true value of property within the city will not be correct until these properties are taxed, and any improper omission of property from the tax rolls negatively impacts all other property taxpayers in the city, including the complainants. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Samantha F. Lawrence". The signature is written in a cursive, flowing style.

Samantha F. Lawrence
Anne Nicol Gaylor Legal Fellow
Freedom From Religion Foundation

budget hearings around the state, and at a hearing devoted to budget bill, members of the public voiced their concerns about the exemption.).

¹⁹ Chris Murphy, What's News: Property Tax Exemption for Pres House Dorm Could Be Gone, Cap Times (May 13, 2011), <https://bit.ly/4b9fOZh>.

EXHIBIT G



City of Madison

Office of the City Assessor

Michelle Drea, Esq. City Assessor

City-County Building, Room 104

210 Martin Luther King, Jr. Blvd.

Madison, WI 53703

Phone: (608) 266-4531 | Fax: (608) 266-4257

assessor@cityofmadison.com

cityofmadison.com/assessor

May 6, 2024

Samantha Lawrence

P.O. Box 750

Madison, WI 53701

Dear Ms. Lawrence,

The City is in receipt of the objections filed on behalf of David Peterson Revocable Trust, Annie Gaylor, and Dan Barker for properties located at [REDACTED] and [REDACTED] respectively. The Board of Assessors in the City of Madison operates under authority of Wis. Stat. § 70.075. The purview of this Board and the Board of Review does not include exempt properties. That is solely within the domain of the Assessor, under Wis. Stat. § 70.11. Any objections related to exemptions must proceed under the unlawful taxation statute, Wis. Stat. § 74.35.

The request of the Board of Assessors to place two exempt properties on the roll is not statutorily within their authority. Further, there is no mechanism by which the Board of Assessors or Board of Review may review your claims. Whereas, the Freedom from Religion Foundation is positioned to independently challenge the constitutionality of the statutes providing exempt status for the Pres House and Lumen House. You might even find municipalities and other organizations to be supportive of the claim.

However, the Board of Assessors, Board of Review, nor myself have authority to decree laws unconstitutional. This is not the correct forum for that to occur. As such, the objections as submitted will be unable to proceed, as confirmed by our Board of Assessors and Review Clerk.

Thank you and take care.

Michelle Drea

EXHIBIT H



Office of the City Assessor

City-County Building, Room 104
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3342
Phone: (608) 266-4531
Fax: (608) 266-4257
assessor@cityofmadison.com
www.cityofmadison.com

May 14, 2024

SAMANTHA F LAWRENCE
PO BOX 750
MADISON WI 53701

We received appeals for properties located at 1013 TUMALO TRAIL and 2400 FOX AVENUE.

After further review of those appeals, you are actually appealing two different properties that you do not own and are not the agent for. Those properties are 142 W JOHNSON STREET and 439 E CAMPUS MALL. Specifically, you are requesting the Board of Assessors to place these two properties on the assessment roll.

As outlined in a letter dated May 6, 2024 you received from the City Assessor, this is not statutorily within their authority **and** the Board of Assessors and Review will not be reviewing your claims.

Take care.

Laurie C Muench

Laurie C Muench
Board of Review Clerk

EXHIBIT I

FREEDOM FROM RELIGION *foundation*

P. O. BOX 750 › MADISON, WI 53701 › (608) 256-8900 › WWW.FFRF.ORG

July 30, 2024

VIA HAND DELIVERY & EMAIL: clerk@cityofmadison.com

Maribeth Witzel-Behl
City of Madison Clerk
215 Martin Luther King Jr Blvd
Room 153, Madison Municipal Building
Madison, WI 53703

Re: Notice of Circumstances Giving Rise to a Claim and Notice of Claim Pursuant to Wis. Stat. § 893.80

Dear Clerk Witzel-Behl:

We write to notice the City of Madison of a claim against it and circumstances of the claim, as well as the relief sought on behalf of our claimants pursuant to Wis. Stat. § 893.80(1d).¹ Our claimants are represented by Patrick Elliott and Samantha Lawrence, attorneys with the Freedom From Religion Foundation, as well as attorney Christa Westerberg at Pines Bach LLP. This notice of claim is being presented to the City of Madison Clerk via hand delivery and email in accordance with Wis. Stat. §§ 801.11(4)(a)3, 893.80(1d)(a)–(b).

Our claimants' names and addresses are:

Annie Laurie Gaylor & Dan Barker

[REDACTED]

David Peterson
Trustee to David Peterson Revocable Trust

[REDACTED]

Freedom From Religion Foundation
10 N. Henry St.,
Madison, WI 53703

Our claimants are City of Madison property owners.

Claimants Annie Laurie Gaylor and Dan Barker paid their property taxes on December 18, 2023, and the David Peterson Revocable Trust's property taxes were paid on February 2, 2024 and March 12, 2024. Claimant the Freedom From Religion Foundation (FFRF) does not pay property taxes on its headquarters located at 10 N. Henry St.

Our clients' claims arise from the City's refusal to return specific improperly omitted high-value properties to the City's tax rolls. Explained in greater detail below, the City currently exempts two high-value properties from the tax rolls pursuant to an unconstitutional tax exemption statute.

The unlawful omission of taxable property negatively impacts Annie Laurie Gaylor's, Dan Barker's, and David Peterson's property tax assessments by forcing them, and all other Madison property taxpayers, to shoulder the burden of making up for the property taxes that go uncollected by paying higher property taxes. Further, this exemption statute

¹ By providing this notice, the claimants do not concede that a notice of claim is necessary or required, but they provide it out of an abundance of caution and in the spirit of transparency.

unlawfully benefits two religious non-profit organizations to the exclusion of all other non-profit organizations, religious or secular, including the Freedom From Religion Foundation.

Our clients' injuries are ongoing. Additionally, on May 6, 2024, the City of Madison Assessor, Michelle Drea, stated in a formal letter that she herself, the City's Board of Assessors, and the Board of Review refuse to review or consider our clients' objections to the unlawful omission of these properties from the City's tax rolls.

The two high-value commercial rental properties that have been improperly and illegally omitted from the tax rolls for nearly ten years now are the Lumen House and the Pres House apartments.

The Lumen House is located at 142 W. Johnson St and is owned by St. Raphael's Congregation, parcel number 070914422210. The Pres House apartment building is located at 439 E. Campus Mall and is owned by the Presbyterian Student Foundation Center, parcel number 070923204047. The City incorrectly categorizes these properties as tax exempt under Wis. Stat. § 70.11(3m), which narrowly applies to only four commercial rental housing facilities that must primarily serve UW-Madison students, two of which are owned by religious organizations.²

The Pres House and Lumen House are commercial properties that charge tenants rent, and their prices are similar to other commercial rental properties in the area. To be clear, the Pres House and Lumen House rentals are not charitable activities.

For example, the [Pres House's website](#) states that an individual lease starts at \$1,125 per month.³ Additionally, the Pres House's most recent 990 IRS tax form shows that it collected a little over \$2,150,000.00 in rent during the 2022 tax year.

Likewise, a studio apartment at [the Lumen House](#) currently starts at \$1,395 per month per tenant.⁴ The Lumen House is a 19-unit apartment complex that rents to up to 66 individuals, [per a statement](#) by the Diocese of Madison.⁵ In 2016, the Lumen House was already charging nearly \$46,000 per month for its 19 apartments.

The Pres House's current market value likely exceeds \$25 million with estimated property taxes owed in excess of \$300,000 annually. The Lumen House's current market value likely exceeds \$7.6 million, with estimated property taxes exceeding \$94,000 annually. This makes them comparable to other student housing developments in the same area that do not benefit from the same property tax exemption. The Pres House and Lumen House combined are equivalent to omitting an entire neighborhood given the estimated approximately \$33 million in value.

The Madison Assessor's Office has not regularly ensured that either the Lumen House or Pres House still qualify for this exemption and has continually allowed these properties to be exempt despite serious constitutional defects to any claimed exemption.

Wis. Stat. § 70.11(3m) is Unconstitutional

Background

The tax exemption that the Pres House and Lumen House currently benefit from is unconstitutional and the City cannot bestow unconstitutional exemptions to preferred religious property owners or any other property owners. Wis. Stat. § 70.11(3m) is unlawful under the Wisconsin Constitution on several bases, including the Uniformity Clause,⁶ Equal Protection Clause,⁷ Article I, section 18,⁸ and Article IV, section 18's prohibition against private bills.⁹

² The only other properties exempt under 70.11(3m) are the Babcock House and the Association of Women in Agriculture House.

³ Pres House Apartments, Online Application, <https://phapts.com/online-application/>.

⁴ Lumen House, <https://www.madisonproperty.com/lumenhouse>.

⁵ Kevin Wondrash, *Lumen House Opens in Downtown Madison*, Catholic Herald (Aug. 28, 2014), <https://madisoncatholicherald.org/lumen-house-4/>.

⁶ WI Const. art. VIII, § 1.

⁷ WI Const. art. I, § 1.

⁸ WI Const. art. I, § 18.

⁹ WI Const. art. IV, § 18.

As it stands, these Madison rental properties are tax exempt under a special exemption that no other properties in Madison or the rest of the state can ever qualify for, notwithstanding the fact that when § 70.11(3m) was enacted in 2009, the then-representative who proposed the exemption explicitly stated that the [exemption was created to benefit the Pres House apartments](#) as reported in an article from the Cap Times.¹⁰

In 2013, § 70.11(3m) was amended [specifically to benefit the Lumen House](#), which is a municipal landmark that completed construction in 2014.¹¹ The amendment, § 70.11(3m)(a)4, states that the property tax exemption can only apply if a “facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.” The local Diocese recognized that the statute was amended to benefit the Lumen House:

In a release dated June 21, Monsignor Holmes noted the Cathedral Parish’s tremendous appreciation for “the efforts of Assembly Speaker Robin Vos (R-Rochester), Rep. Travis Tranel (R-Cuba City), and Rep. Pat Strachota (R-West Bend) and Senate Majority Leader, Senator Scott Fitzgerald (R-Beaver Dam) for their role in including a matter important to the Cathedral Parish in the governor’s budget bill.

“Their efforts, with their colleagues, resulted in language that now clearly stipulates that Lumen House, a project of faith-based student housing and outreach ministry sponsored by the Cathedral Parish, will be tax-exempt, as was envisioned from the beginning.”

With the property tax exemption preserved, Lumen House project’s rehabilitation efforts will begin and the parish property (formerly Holy Redeemer School) will be renovated into a beautiful apartment complex for housing students with approximately 60 beds.¹²

The 2013 amendment creates an arbitrary date-of-existence requirement that grandfathers-in the four then-exempt properties to the exclusion of all other similarly situated properties. The arbitrary property classification created by § 70.11(3m) is unconstitutional under the below referenced provisions of the Wisconsin Constitution.

The Uniformity Clause

This exemption violates the Uniformity Clause of the Wisconsin Constitution, which states in part, “The rule of taxation shall be uniform[.]”¹³ Uniformity is violated by arbitrary methods of assessment and unequal taxation of comparable properties.¹⁴ There is no uniform class created by the exemption and there is no rational basis for exempting these four Madison-specific majority UW-Madison student rental properties from the property tax. This exemption created an unequal taxation of comparable properties primarily housing students. As noted above, the only rationale that a lawmaker provided when enacting the exemption in 2009 was a representative’s personal belief that the Pres House apartments should be property tax exempt, and the 2013 amendment to the statute was intended to specifically exempt the Lumen House, which is arbitrary.

The Equal Protection Clause

¹⁰ Chris Murphy, *What's News: Property Tax Exemption for Pres House Dorm Could Be Gone*, Cap Times (May 13, 2011), <https://bit.ly/4b9fOZh>.

¹¹ *Lumen House Opens in Downtown Madison*, <https://madisoncatholicerald.org/lumen-house-4/>.

¹² Brent King, *Lumen House Project Moves Forward*, Catholic Herald (July 4, 2013), <https://madisoncatholicerald.org/lumen-house/>.

¹³ WI Const. art. VIII, § 1.

¹⁴ See *Bd. of Trustees of Lawrence Univ. v. Outagamie Cnty.*, 150 Wis. 244, 136 N.W. 619, 621 (1912); *Noah's Ark Fam. Park v. Bd. of Rev. of Vill. of Lake Delton*, 216 Wis. 2d 387, 393, 573 N.W.2d 852, 855, *decision clarified on denial of reconsideration*, 217 Wis. 2d 367, 576 N.W.2d 56 (1998); *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 111, 270 N.W.2d 187, 194 (1978); 54 Op. Atty. Gen. 60 (1965) (finding that special exemption for nonprofit would violate uniformity).

Further, the exemption runs afoul of the Wisconsin Constitution's Equal Protection Clause. A statute violates equal protection if (a) it creates a distinct classification of citizens; (b) treats that class significantly differently from those similarly situated;¹⁵ and, (c) the legislature made an irrational or arbitrary classification that has "no reasonable purpose or relationship to the facts or proper state policy."¹⁶ Wisconsin courts have invalidated property tax related laws on equal protection grounds. For instance, in *Metro Association v. City of Milwaukee*, the Supreme Court of Wisconsin invalidated a statute that allowed some municipalities, but not others, to "opt-out" of allowing property owners to challenge property tax assessments through certain procedures.¹⁷

Here, § 70.11(3m) creates a distinct classification: rental properties in the City of Madison that have been uniquely targeted for exemption. The exemption treats this class significantly differently from all other similarly situated properties in the City of Madison and Wisconsin as a whole. The exemption's criteria are arbitrary and unmoored from any rationale with a reasonable purpose or relationship to the facts or state policy. There is no rational purpose for exempting from property taxes Madison-specific properties that must primarily rent to UW-Madison students for profit. These properties do not present an issue of state policy and whether or not these properties pay property taxes is not a matter relating to state policy or meaningfully affecting the rest of the state.

Article I, section 18

Article I, section 18 of the Wisconsin Constitution states in part that no "preference" shall "be given by law to any religious establishments or modes of worship[.]" Section 70.11(3m) was enacted explicitly to benefit apartments owned by a religious organization—the Pres House, and the 2013 amendment specifically benefits the Lumen House, which is owned by the Catholic Church. This property tax exemption benefits the two religious organizations that own the Pres House and Lumen House apartments. No other churches, synagogues, or other religious or non-religious organizations in the City of Madison or State of Wisconsin can ever qualify for this exemption, an exemption that undeniably saves these profitable church-affiliated and owned apartments from being assessed hundreds of thousands of dollars in property taxes each year. For instance, FFRF is precluded from ever benefiting from this tax exemption if it were to open rental housing in the future.

Article IV, section 18

Finally, the circumstances under which this exemption was passed bear the hallmarks of an unconstitutional private bill. Article IV, section 18 of the Wisconsin Constitution states, "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."¹⁸ In determining whether an enactment is a private bill, the court must first examine whether the legislative record shows that the legislature adequately considered the legislation in question.¹⁹

Here, § 70.11(3m) was not adequately considered by the legislature. In fact, the evidence does not suggest that the legislature really considered the enactment of § 70.11(3m) so much as a single state representative worked to get the exemption into the 2009 budget bill in order to help the Pres House. In 2011, then-senator Alberta Darling [stated that this exemption](#) is "an aberration and earmark."²⁰

Statement of Relief Sought

For the above stated reasons, § 70.11(3m) is unconstitutional and its application is thus preempted by Wisconsin law. This statute and the City's application of it harms the claimants. They are injured each year that these properties are left off the City's property tax rolls, and they will continue to be injured so long as the City applies this tax exemption to these properties.

¹⁵ *Lake Cnty. Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25, ¶ 33 (internal citation omitted).

¹⁶ *Metro. Assocs. v. City of Milwaukee*, 2011 WI 20, ¶¶ 61–62.

¹⁷ *Metro. Assocs. v. City of Milwaukee*, at ¶ 5; See also *Wis. Wine & Spirit Inst. v. Ley*, 141 Wis. 2d 958, 416 N.W.2d 914 (Ct. App. 1987) (invalidating grandfather clause of liquor license law on equal protection clause after applying rational basis review).

¹⁸ WI Const. art. I, § 18.

¹⁹ *Lake Cnty.*, at ¶ 11 (internal citations omitted).

²⁰ Chris Murphy, What's News: Property Tax Exemption for Pres House Dorm Could Be Gone, Cap Times (May 13, 2011), <https://bit.ly/4b9fOZh>.

The claimants plan to commence an action in Dane County Circuit Court seeking declaratory relief pursuant to Wis. Stat. § 806.04, along with supplemental relief as appropriate and as provided in Wis. Stat. § 806.04(8).

To date, our claimants have not itemized any money damages but reserve the right to do so in the future.

Conclusion

Service of this Notice does not waive any other claims or arguments to support the claims that the claimants may make.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Samantha F. Lawrence". The signature is written in black ink and is positioned above the typed name and title.

Samantha F. Lawrence
Anne Nicol Gaylor Legal Fellow
Freedom From Religion Foundation

CC: cwesterberg@pinesbach.com