

COMMONWEALTH OF MASSACHUSETTS

<p>MIDDLESEX COUNTY, SS</p> <p>GEORGE CAPLAN, JIM CONBOY, G. STODEL FRIEDMAN, DANIEL GILFIX, MARIA GREENE, JESSE LEVINE, DAVE LUNGER, ALLEN NITSCHELM, SCOTT SMYERS, WILLIAM ALSTROM, JENNIFER BROWN, WILLIAM BROWN, and DAVID CAPLAN,</p> <p>thirteen taxable inhabitants, citizen-taxpayers of Acton, Massachusetts,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>TOWN OF ACTON, MASSACHUSETTS, inclusive of its instrumentalities and the Community Preservation Committee,</p> <p style="text-align: right;">Defendant.</p>	<p>SUPERIOR COURT C.A. NO. _____</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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INTRODUCTION

1. The Anti-Aid Amendment to the Massachusetts Constitution protects the religious liberty of all citizens of the Commonwealth by prohibiting the use of public funds to support active houses of worship. Defendant Town of Acton is threatening that religious liberty. The Town approved at its April 2016 town meeting three grants of tax funds under the Community Preservation Act for the restoration of core facilities or religious imagery of two active houses of worship. One of the churches explained that the

grants would help the church “continue to be a prominent and positive part of Acton” and would free up church funds — that would otherwise need to be spent on the church building — for programming that “offer[s] the congregation what draws them to their church.” Among other benefits, the grants would enable that church to make a large stained-glass window that depicts Jesus with a kneeling woman better visible from the church’s exterior. Plaintiff Acton taxpayers bring this lawsuit to prevent the three grants from going forward.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court under Mass. Gen. Laws Ann. ch. 40, 212, and 231A.

3. Venue is proper under Mass. Gen. Laws Ann. ch. 223, § 8(4) because Plaintiffs reside in Acton.

THE PARTIES

4. Plaintiffs are George Caplan, Jim Conboy, G. Stodel Friedman, Daniel Gilfix, Maria Greene, Dave Lunger, Jesse Levine, Allen Nitschelm, Scott Smyers, William Alstrom, Jennifer Brown, William Brown, and David Caplan.

5. Each Plaintiff resides in Acton, owns a home in Acton, and pays property taxes to Acton on the home. *See* Ex. N (affidavits of plaintiffs).

6. Plaintiffs bring this action under Mass. Gen. Laws Ann. ch. 12, § 11I; ch. 40, § 53; and ch. 231A *et seq.*

7. The Defendant is the Town of Acton, inclusive of its instrumentalities, among them the Town’s Community Preservation Committee.

THE ANTI-AID AMENDMENT

8. Article XVIII, Section 2 of the Massachusetts Constitution (as amended by articles XLVI and CIII) is known as the Anti-Aid Amendment and provides in relevant part:

No grant, appropriation or use of public money . . . shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both . . . and no such grant, appropriation or use of public money . . . shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.

THE COMMUNITY PRESERVATION ACT

9. The Massachusetts legislature enacted the Community Preservation Act on September 14, 2000 to provide a method for towns to fund, among other things, “the acquisition, creation and preservation of historic resources . . .” Mass. Gen. Laws Ann. ch. 44B, § 2.

10. To participate in funding under the Act, a town must establish a Community Preservation Fund.

11. The Preservation Fund must be used exclusively for community preservation purposes. *Id.* § 7.

12. The Preservation Fund must be funded locally by a property-tax surcharge of up to three percent of the town’s total property-tax levy. *Id.* § 3.

13. If a town is otherwise in compliance with the Act, the state Community Preservation Trust Fund yearly distributes to the town Preservation Fund a percentage of what the Preservation Fund raises locally. *Id.* § 10.

14. The state Trust Fund is funded by a statewide surcharge on real-estate transactions, as well as certain monies transferred from general revenue. *Id.* §§ 8, 9.

15. The town Preservation Fund must be administered by a three- to nine-person Community Preservation Committee. *Id.* § 5.

16. The Preservation Committee's members must be designated by ordinance or bylaw, and must include at least one member of a town's conservation commission, historical commission, planning board, board of park commissioners, or housing authority, as selected by those bodies. *Id.*

17. If a town has not established one or more of these bodies, the Preservation Committee must include "persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority." *Id.*

18. The Preservation Committee is charged with studying a town's "needs, possibilities, and resources" regarding community preservation, including consulting with "existing municipal boards" and conducting "public informational hearings." *Id.*

19. All appropriations from the Preservation Fund must be recommended by the Preservation Committee and approved by the town government. *Id.*

20. Each fiscal year, a participating town must spend or set aside not less than ten percent of its Preservation Fund revenues for historic resources. *Id.* § 6.

21. "Historic resource" means "a building, structure, vessel[,] real property, document or artifact that is listed on the state register of historic places or has been determined by the local historic preservation commission to be significant in the

history, archeology, architecture or culture of a city or town.” *Id.* § 2.

22. Spending on historic resources can be used for “acquisition, preservation, rehabilitation and restoration of historic resources,” but “shall not be used for maintenance.” *Id.* § 5.

23. Spending of Community Preservation Act funds on historic resources is subject to the provisions of the Anti-Aid Amendment because such spending involves the use of public funds raised by local and state taxes.

**ACTON’S INTENDED UNCONSTITUTIONAL
USE OF PUBLIC MONEY**

24. The Town of Acton voted to adopt the Community Preservation Act at a town meeting in 2002.

25. The Town of Acton’s Community Preservation Committee selects preservation projects and recommends selected projects to the annual town meeting for funding.

26. The Town of Acton approved at least four grants of Community Preservation Act funds to active houses of worship prior to 2016. On April 1, 2013, the Town approved grants to West Acton Baptist Church of \$18,563 for restoring the belfry’s interior structure and \$22,500 for creation of a master plan for rehabilitating the church building. Ex. L at 62. On April 7, 2014, the Town approved grants to the same church of \$37,000 for ceiling work and \$52,000 for fire-safety systems. Ex. M at 48. Plaintiff George Caplan expressed concern about these grants in an October 2013 email to Acton’s Community Preservation Committee and spoke against the grants at the April 2014 town meeting.

The Two Applications of Acton Congregational Church

27. Acton Congregational Church calls its principal building “the Evangelical Church.” Ex. F at 2.
28. The Church owns the Evangelical Church building, which is located at 12 Concord Road in Acton. Ex. F at 2.
29. The Church uses the Evangelical Church building for worship and religious education. *See, e.g., Sunday Morning Worship*, Acton Congregational Church, http://www.actonc.org/sunday_morning_worship (last visited June 16, 2016) (Ex. B); *Adult Education*, Acton Congregational Church, http://www.actonc.org/adult_education (last visited June 16, 2016) (Ex. C); *Children’s Ministries*, Acton Congregational Church, http://www.actonc.org/childrens_education (last visited June 16, 2016) (Ex. D); *see also* Ex. F, Form B (Acton Historical Commission document describing both “present” and “original” use of the building as “religious”).
30. The Church describes its mission as follows:
- The mission of Acton Congregational Church, which it shares with the Church Universal, is to preach and teach the good news of the salvation that was secured for us at great cost through the life, death, and resurrection of Jesus. The church encourages each individual to accept the gift of Christ and to respond to God’s love by taking part in worship, ministry to one another, and the Christian nurture of people of all ages. With the guidance of the Holy Spirit, we are called as servants of Christ to live our faith in our daily lives and to reach out to people of this community and the world with love, care, and concern for both their physical and spiritual needs.
- Our Beliefs*, Acton Congregational Church, http://www.actonc.org/our_beliefs (last visited June 16, 2016) (Ex. E).
31. On November 16, 2015, the Church submitted two grant applications to the Acton Community Preservation Committee.

32. In the cover letter transmitting the two applications, the chair of the Church's board wrote:

As you may know, mainstream churches have not been growing for years, and the financial strain is significant. ACC has weathered the storm better than many churches, but the reality is that we have had to cut programs and personnel. The cuts can further exacerbate the financial problem *by not offering the congregation what draws them to their church*. With that in mind, the long list of maintenance and capital improvement projects get delayed before we cut programs, but there are many things that we've had to fix.

Ex. A at 2 (emphasis added).

The "Master Plan" Application

33. The first application of Acton Congregational Church was for \$49,500 in Community Preservation funds for a "Master Plan for Historic Preservation of the Evangelical Church, John Fletcher House and Abner Hosmer House." Ex. F.

34. As explained in the Master Plan application, the Evangelical Church building dates back to 1846 and "shows the signs of 170+ years of wear":

In the sanctuary building, this is evident in the bell tower, stained glass windows, and the exterior building envelope (windows, doors, siding, and roof). Insufficient building insulation and leaky roofs and walls have caused extensive ceiling and wall damage over a number of years. These conditions will continue to threaten extensive damage to the interior of the building until they are corrected.

Ex. F at 4.

35. The Master Plan application further stated:

As part of the effort to restore and protect these historic buildings [the Evangelical Church and two other properties owned by the Acton Congregational Church], ACC proposes to hire an architectural consultant to thoroughly investigate each of the 3 historic buildings to identify all the needs of each building in order to protect and preserve these historic assets for future generations. The result of this effort will be a Master Plan detailing the work required to bring the buildings up to an acceptable level of safety

and preservation. The Master Plan will identify, itemize and prioritize the work to be done, so that ACC can begin to address the needs of these assets in an efficient and logical way.

Ex. F at 1.

36. The application adds that “[t]he proposed work” on the Evangelical Church building “includes a thorough assessment of the Church building envelope, including windows, doors, siding, roof, chimney, bell tower, skylights, and fire escapes, with a focus on protecting the building from the elements, moisture, and potential ice dam issues.” Ex. F at 12. “In addition, the building structure and electrical, mechanical, plumbing, and safety systems of the church will be evaluated.” Ex. F at 12.

37. In its cover letter, the Church said that “[t]he Master Plan will be used not only for further CPC applications, but also to apply for other local, state and federal funding.” Ex. A at 1.

38. In the application, the Church represented the total cost of this project to be \$55,000. Ex. F at 1.

39. The Church requested a Community Preservation Act grant of \$49,500, saying it would pay the remaining \$5,500. Ex. F at 1.

40. The Church estimates that project work will begin in September 2016 and be completed in December 2016. Ex. F at 1.

The Stained Glass Application

41. The second application of Acton Congregational Church was for \$41,000 in Community Preservation funds for “Evangelical Church Stained Glass Window Preservation.” Ex. G.

42. The funds would be spent on improvements to the eight “major stained glass windows of the [Church’s] sanctuary building.” Ex. G at 2, 3.

43. The improvements would include “replac[ing] missing or broken pieces of glass” and providing new sealing and glazing for the glass. Ex. G at 1.

44. The windows are currently covered by “cloudy” exterior plexiglass, so “the beauty of the glass cannot be appreciated outside of the church.” Ex. G at 1. The new sealing and glazing will provide “complete transparency to the beauty of the stained glass.” Ex. G at 6.

45. The application explains that Community Preservation Committee “funding of the stabilization of the stained glass windows of” the Evangelical Church building “also helps ACC continue to be a prominent and positive part of Acton here in the center of Town.” Ex. G at 6-7.

46. Stained-glass windows that would be restored under this application have expressly religious imagery.

47. “The most prominent stained glass window, which is visible from Concord Road . . . is a double window which depicts Jesus and a kneeling woman.” Ex. G at cover page, 2, 11.

48. Another of the stained-glass windows includes a cross and the words “Rock of Ages Cleft for Me.” Ex. G at 13.

49. Two of the stained-glass windows are described in the application as “Altar Windows.” Ex. G at 12.

50. The amount requested was \$41,000, approximately ninety percent of the \$45,600 projected total cost of the work. Ex. G at 1.

51. The Church estimates that this project, too, will begin in September 2016 and be completed in December 2016. Ex. G at 1.

The Application of South Acton Congregational Church

52. South Acton Congregational Church owns its building, which is located at 29 School Street in Acton. Ex. I at 2-3.

53. South Acton Congregational Church uses this building for worship services and religious education. *Services*, South Acton Congregational Church, <http://southactoncc.org/worship/services/> (last visited June 17, 2016) (Ex. H).

54. On November 19, 2015, South Acton Congregational Church applied to the Acton Community Preservation Committee for \$15,000 in Community Preservation funds for the preservation of its roof. Ex. I.

55. As explained in the roof-preservation application, the roof work is necessary for the continued viability of the building: “Absent this fix, ice dams will continue to form each winter resulting [in] water backing up into the roof and leaking into the building, damaging the ceilings, walls, and eventually rotting the structure.” Ex. I at 1.

56. The application stated that the work would commence on April 1, 2016 and be completed by May 1, 2016. Ex. I at 4. However, based on a visual inspection of South Acton Congregational Church, Plaintiffs are informed and believe that the work has not been performed yet.

Town Approval of the Three Church Applications

57. At a January 21, 2016 meeting of the Acton Community Preservation Committee, Thomas Cooper (a member of the public) urged the Committee to reject the three applications of the two churches because funding them would violate the Anti-Aid Amendment.

58. On February 11, 2016, the Preservation Committee recommended the Master Plan application, the Stained Glass application, and the roof-preservation application for Preservation Act funding.

59. At the April 4, 2016 Acton Annual Town Meeting, Plaintiff George Caplan spoke against funding for the applications.

60. At this Town Meeting, voters approved Preservation Act funding for the Master Plan application, the Stained Glass application, and the roof-preservation application.

61. The amounts appropriated at the Town meetings were equal to the amounts requested in the original applications, except that \$51,237 was approved for the Stained Glass application instead of the \$41,000 originally requested. Ex. J at 78.

62. On June 6, 2016, Plaintiffs' counsel sent a letter to the Chair of Acton's Board of Selectmen and Acton's Town Manager, advising them that Plaintiffs were preparing a lawsuit against the Town to block disbursement of the grants to the churches, but that Plaintiffs were willing to engage in dialogue before filing the lawsuit. *See* Ex. K.

63. Counsel for the Town responded to Plaintiffs' letter on June 8 and 9, 2016, asking Plaintiffs to provide a copy of their draft complaint, with the names of the plaintiffs included, so counsel could discuss the matter with the Town.

64. Undersigned counsel provided the Town's counsel a draft of the complaint (without Plaintiffs' names) on June 22, 2016.

65. Counsel for the parties subsequently reached certain procedural agreements without dialogue about substantive issues.

CLAIM FOR VIOLATION OF THE ANTI-AID AMENDMENT

66. The allegations of paragraphs 1-65 are incorporated by reference.

67. The Anti-Aid Amendment prohibits payment of public funds for preservation, restoration, or rehabilitation of the houses of worship of active congregations.

68. Payment to Acton Congregational Church or South Acton Congregational Church of any of the three grants approved at the April 4, 2016 Town Meeting would violate the Anti-Aid Amendment.

69. The Anti-Aid Amendment also prohibits future payment by the Town of Community Preservation funds to either of those two churches — or to any other house of worship — for preservation, restoration, or rehabilitation of facilities that host an active congregation.

WHEREFORE, Plaintiffs demand judgment against Defendant Town of Acton as follows:

1. A declaratory judgment pursuant to Mass. Gen. Laws Ann. ch. 231A, § 2 that Defendant Town of Acton would violate the Anti-Aid Amendment if it (a) pays the Community Preservation Act grants approved at the April 4, 2016 Town Meeting to Acton Congregational Church and South Acton Congregational Church; or (b) provides any other Community Preservation funds in the future to either of those two churches — or to any other house of worship — for preservation, restoration, or rehabilitation of facilities that host an active congregation.
2. An injunction prohibiting Defendant Town of Acton from (a) paying the Community Preservation Act grants approved at the April 4, 2016 Town Meeting

to Acton Congregational Church and South Acton Congregational Church; and (b) providing any other Community Preservation funds in the future to either of those two churches — or to any other house of worship — for preservation, restoration, or rehabilitation of facilities that host an active congregation.

3. An award of attorney's fees and costs to Plaintiffs against the Town under Mass. Gen. Laws Ann. ch. 12, § 11I; and
4. Any other remedy that the Court may deem appropriate.

Respectfully submitted,

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