

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY, SS GEORGE CAPLAN, et al., Plaintiffs, v. TOWN OF ACTON, MASSACHUSETTS, Defendant.	SUPERIOR COURT C.A. NO. 1681CV01933 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
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Proponents of [the Anti-Aid] [A]mendment urged that liberty of conscience was infringed whenever a citizen was taxed to support the religious institutions of others

Bloom v. School Comm., 376 Mass. 35, 39 (1978).

The Anti-Aid Amendment of the Massachusetts State Constitution prohibits the “use of public money . . . for the purpose of founding, maintaining or aiding any church, religious denomination or society.” Mass. Const. amend. art. XVIII, § 2 (as amended by arts. XLVI and CIII). On April 4, 2016, Defendant Town of Acton approved a town warrant that would violate the Anti-Aid Amendment by providing three grants of public funds totaling \$115,737 to Acton Congregational Church and South Acton Congregational Church under the Massachusetts Community Preservation Act.

The planned grants would fund the restoration of core facilities or religious imagery of these two active houses of worship. Acton Congregational Church explained that the grants would help it “continue to be a prominent and positive part of Acton,” Ex. G at 6–7, 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.” Ex. A at 2. Among other benefits, the grants would enable Acton Congregational

Church to enhance the exterior visibility of a large stained-glass window that depicts Jesus with a kneeling woman.

The grants therefore threaten the “liberty of conscience” of the plaintiffs—thirteen Acton taxpayers—not to be “taxed to support the religious institutions of others.” *Bloom*, 376 Mass. at 39. Absent an injunction, the Town would infringe that liberty, in violation of the Anti-Aid Amendment, and Plaintiffs would have no adequate remedy at law.

BACKGROUND

The Community Preservation Act

The Community Preservation Act was enacted on September 14, 2000 to enable public funding of “the acquisition, creation and preservation of historic resources,” among other spending. Mass. Gen. Laws Ann. ch. 44B, § 2.¹ To obtain funding under the Act, a town must establish a Community Preservation Fund. *Id.* § 7. The Preservation Fund must be devoted exclusively to community preservation and must be funded by a local property-tax surcharge of up to three percent. *Id.* §§ 3, 7. If a town is in compliance with the Act, the Preservation Fund will also receive a yearly distribution from the state Community Preservation Trust Fund. *Id.* § 10. 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. Each fiscal year, a participating town must either spend or save at least ten percent of its Preservation Fund revenues for historic resources. *Id.* § 6. The Preservation Fund must be administered by a three- to nine-person Community Preservation Committee. *Id.* § 5. All

¹ The Act also enables public funding of “the acquisition, creation and preservation of open space” and “the creation and preservation of community housing.” Mass. Gen. Laws Ann. ch. 44B, § 2. Those provisions of the Act are not at issue in this case.

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

The Town of Acton established a Community Preservation Committee pursuant to the Act. The Preservation Committee oversees the Town's Preservation Fund to finance projects under the Act. The Preservation Committee receives applications, conducts hearings, and then makes funding recommendations that are subject to approval at the Acton annual town meeting.

The Acton Congregational Church and its Grant Applications

Acton Congregational Church owns and occupies a building at 12 Concord Road, which it calls "the Evangelical Church." Ex. F at 2.² It uses the Evangelical Church for worship and religious education activities. *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"). Acton Congregational 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

² All exhibits cited herein were filed with the complaint.

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).

In November 2015, Acton Congregational Church submitted two grant applications to the Acton Community Preservation Committee. In the cover letter transmitting the applications, the Church explained that it needed public funds because of the financial strain it is suffering:

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

Acton Congregational Church's first application was for \$49,500 for a "Master Plan for Historic Preservation of the Evangelical Church, John Fletcher House and Abner Hosmer House." The application explains that 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.

Therefore, “[a]s part of the effort to restore and protect” the Evangelical Church building and two other properties owned by Acton Congregational Church, the Church “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.” Ex. F at 1. “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.” Ex. F. at 1. “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.

The application adds that “[t]he proposed work” on the Evangelical Church “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.

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. The total cost of the Master Plan is \$55,000; Acton Congregational Church requested \$49,500 of that amount (ninety percent) from the Town. Ex. F at 1. The Church estimates that project work will begin in September 2016 and be completed in December 2016. Ex. F at 1.

The Stained Glass Window Application

Acton Congregational Church's second application was for \$41,000 for "Evangelical Church Stained Glass Window Preservation." Ex. G. 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. According to the application, the stained-glass windows are "an integral part" of the Evangelical Church. Ex. G at 6. 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.

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 would provide "complete transparency to the beauty of the stained glass." Ex. G at 6. The application explains that Community Preservation Committee "funding of the stabilization of the stained glass windows of" the Evangelical Church "also helps ACC continue to be a prominent and positive part of Acton here in the center of Town." Ex. G at 6-7.

Stained-glass windows that would be restored under this application have expressly religious imagery. "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. Another of the stained-glass windows includes a cross and the words "Rock of Ages Cleft for Me." Ex. G at 13. Two of the stained-glass windows are described in the application as "Altar Windows." Ex. G at 12.

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

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

In November 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. The Church says that 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. The application stated that the work would commence on April 1, 2016 and be completed by May 1, 2016. Ex. I at 4. Based on an in-person inspection of the Church’s exterior, however, Plaintiffs are informed and believe that the work has not yet been performed.

Town Approval of the Three Church Applications

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 churches’ three applications because funding them would violate the Anti-Aid Amendment. On February 11, 2016, the Preservation Committee recommended all three applications for Preservation Act funding.

At the April 4, 2016 Acton Annual Town Meeting, Plaintiff George Caplan spoke against funding for the applications. But the Town's voters approved Preservation Act funding for all of them. The amounts appropriated at the Town meeting were equal to the amounts requested in the original applications, except that \$51,237 was approved for the Stained Glass Window application instead of the originally requested \$41,000. Ex. J at 78.

On June 6, 2016, Plaintiffs' counsel sent a letter to the Chair of Acton's Board of Selectmen and Acton's Town Manager, advising that Plaintiffs were preparing a lawsuit against the Town to block disbursement of the grants to the churches but were willing to engage in dialogue before filing suit. *See* Ex. K. Counsel for the parties subsequently reached certain procedural agreements without dialogue about substantive issues.

STANDARD OF REVIEW

This case is brought by thirteen Acton taxpayers (*see* Ex. N) under the Ten Taxpayer Statute (Mass. Gen. Laws Ann. ch. 40, § 53), which gives ten or more taxpayers of a municipality a right to sue to enjoin unlawful municipal spending. In a Ten Taxpayer lawsuit, a court must issue a preliminary injunction if it concludes that (1) the plaintiff has demonstrated a likelihood of success on the merits, and (2) “the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *LeClair v. Town of Norwell*, 430 Mass. 328, 331–32 (1999) (quoting *Commonwealth v. Massachusetts CRINC*, 392 Mass. 79, 89 (1984)). A showing of irreparable harm to the plaintiff or consideration of harm to the governmental body is not required in Ten Taxpayer cases, because “the taxpayer plaintiffs act as private attorneys general, enforcing laws designed to protect the public interest.” *Edwards v. Boston*, 408

Mass. 643, 646–47 (1990); *accord Fordyce v. Town of Hanover*, 457 Mass. 248, 255 n.10 (2010); *LeClair*, 430 Mass. at 331–32.

ARGUMENT

Plaintiffs are entitled to a preliminary injunction. Plaintiffs are likely to prevail on the merits under the Anti-Aid Amendment, and the public interest favors entry of a preliminary injunction to fulfill the Anti-Aid Amendment’s objectives.

I. Plaintiffs are Likely to Prevail on the Merits under the Plain Language of the Anti-Aid Amendment.

The Anti-Aid Amendment provides in pertinent 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.

Mass. Const. amend. art. XVIII, § 2 (as amended by arts. XLVI and CIII).

The Anti-Aid Amendment includes a general prohibition against the use of public money to support private institutions (the “General Prohibition”) and a more specific prohibition against the use of public money to support religious institutions (the “Religious Prohibition”). Acton’s intended use of public money to support the two churches violates both prohibitions. Plaintiffs focus first on the Religious Prohibition because it expressly prohibits public aid to active houses of worship such as the two churches.

A. The proposed grants violate the plain language of the Religious Prohibition.

The Religious Prohibition’s language is clear: “no [] 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.” *Id.*³ This Prohibition is based partly on the principle that “liberty of conscience [is] infringed whenever a citizen [is] taxed to support the religious institutions of others.” *Bloom*, 376 Mass. at 39 (citing 1 *Debates in the Massachusetts Constitutional Convention, 1917–1918*, at 68, 74–79, 161–164 (1919)).

All three challenged grants would plainly “maintain[] or aid[]” the two churches, taxing Plaintiffs “to support the religious institutions of others.” *See id.* The Master Plan grant would support Acton Congregational Church as a whole, funding a comprehensive study of “all the needs of [the] building” and a comprehensive plan to make the needed improvements. Ex. F at 1, 4, 12. The Stained Glass Window grant would improve the stained-glass windows in Acton Congregational Church’s sanctuary—“an integral part” of the Evangelical Church. Ex. G at 6. The proposed work would make the stained glass, which features expressly religious imagery such as a depiction of Jesus, much more visible to people who pass by the Church. Ex. G at cover page, 1, 2, 6, 11, 13. And South Acton Congregational Church’s Roof Preservation grant is necessary for the continued viability of its church building. Ex. I at 1.

³ The Supreme Judicial Court has defined “public money” under the Anti-Aid Amendment as “money raised by State or local taxation.” *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 680 n.16 (1981) (citing *Opinion of the Justices*, 374 Mass. 843, 856 (1978); *Opinion of the Justices*, 354 Mass. 779, 784 (1968)). Community Preservation Act grants involve “public money” because both the state Trust Fund and the town Preservation Funds are financed by property taxes and other tax revenue. *See* Mass. Gen. Laws Ann. ch. 44B, §§ 3, 7-10.

What is more, Acton Congregational Church’s cover letter for its grant applications is a candid plea for public financial support for the Church’s efforts to serve and recruit congregants. The letter explains that because of “financial strain,” the Church has “had to cut programs and personnel,” and such “cuts can further exacerbate the financial problem by not offering the congregation what draws them to their church.” Ex. A at 2. The letter adds, “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.

Acton Congregational Church, like most active houses of worship, faces difficult choices: Should it spend its limited dollars on personnel, educational activities, programs, or physical facilities? Instead of making those choices, the Church has turned to the Town for aid—precisely what the Anti-Aid Amendment prohibits.

The constitutional harm from giving Community Preservation funds to active houses of worship like these two churches goes further. The framers of the Anti-Aid Amendment believed that “churches would benefit in independence and dignity by not relying on governmental support.” *Bloom*, 376 Mass. at 39. Public support comes with public oversight. Churches that receive public money not only may become dependent on public funding for their survival but also may become subject to intrusive governmental inquiries about how they spend their funds. Such inquiries, in turn, may embroil governmental officials in improper judgments about religious matters.

The Amendment’s framers also believed that “to promote civic harmony the irritating question of religion should be removed from politics as far as possible, and with it the unseemly and potentially dangerous scramble of religious institutions for public funds

in ever-increasing amounts.” *Id.* In Acton, that scramble is already on. In 2013 and 2014, the Town funded four grants totaling \$130,063 to West Acton Baptist Church. Ex. L at 62; Ex. M at 48. If the three challenged grants proceed, more requests for Town dollars by the funded or other houses of worship would surely follow, and the Town would invite the perception of religious favoritism if such future requests are denied.

Thus, all three grants facially violate the Anti-Aid Amendment’s prohibition against “grant[s] . . . for the purpose of . . . maintaining or aiding any church.” Mass. Const. amend. art. XVIII, § 2 (as amended by arts. XLVI and CIII). For this reason alone, Plaintiffs are likely to prevail on the merits of their claims against the Town.

B. The CPA grants violate the General Prohibition because they serve religious purposes, provide substantial aid to private institutions, and risk the political and economic abuses that the Anti-Aid Amendment was intended to prevent.

Because the Religious Prohibition disposes of this case, this Court need not address the General Prohibition. But if this Court chooses to do so, it should conclude that the challenged grants also violate the General Prohibition, because they would serve religious purposes, substantially aid the two churches, and risk the kinds of political and economic abuses that the Anti-Aid Amendment was intended to prevent.

The General Prohibition provides that

[n]o 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.

Mass. Const. amend. art. XVIII, § 2 (as amended by arts. XLVI and CIII).

The General Prohibition has been broadly and “consistently” construed “as forbidding aid from appropriated funds to any nonpublic institution not within the very limited exceptions” found in the Anti-Aid Amendment. *Opinion of the Justices*, 357 Mass. 836, 844 (1970) (emphasis added); *see also Bloom*, 376 Mass. at 45 (“Our anti-aid amendment marks no difference between ‘aids,’ whether religious or secular.”).⁴ The Massachusetts Supreme Judicial Court has thus repeatedly relied on the Anti-Aid Amendment to strike down efforts to funnel public funds to private schools, most of which are religious. *See Opinion of the Justices to the Senate*, 401 Mass. 1201 (1987); *Bloom*, 376 Mass. at 35; *Opinion of the Justices*, 357 Mass. 846 (1970); *Opinion of the Justices*, 357 Mass. at 836.

To determine whether an expenditure of public funds violates the General Prohibition, courts consider: (1) “whether the purpose of the challenged [spending] is to aid [a private institution]; (2) whether the [spending] does in fact substantially aid [a private institution]; and (3) whether the [spending] avoids the political and economic abuses which prompted the passage of [the Anti-Aid Amendment].” *Helmes v. Commonwealth*, 406 Mass. 873, 876 (1990); *accord Attorney Gen. v. School Comm. of Essex*, 387 Mass. 326, 330 (1982); *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675 (1981). The grants here are improper on all three grounds.

⁴ The only exceptions in the Anti-Aid Amendment are “for the maintenance and support of the Soldiers’ Home in Massachusetts,” “for free public libraries in any city or town,” and for “grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.” Mass. Const. amend. art. XVIII, § 2 (as amended by arts. XLVI and CIII). None of these exceptions apply here.

1. A principal purpose of the grants is to aid the churches.

Although the Town contends that the purpose of the grants is historical preservation, the churches' applications show that "one of the primary purposes of [the grants], if not [their] only purpose" (*see Opinion of the Justices*, 401 Mass. at 1208) is aiding the churches' private and religious functions.

As noted above, Acton Congregational Church's cover letter explains that the Church is seeking public money for work needed on all aspects of its building so that it does not have to spend its own funds on that work and can instead spend its money on "offering the congregation what draws them to their church." Ex. A at 2. The Church further seeks the grants to "help[] ACC continue to be a prominent and positive part of Acton here in the center of Town." Ex. G at 6–7. Financing work essential to their buildings, the grants to both churches would serve the purpose of facilitating their religious activities.

The grants here are akin to the grants struck down in *City of Springfield v. Dreison Investments, Inc.*, Nos. 1999-1318, et al., 2000 WL 782971 (Mass. Super. Ct. Feb. 25, 2000). The proponent of the grants there contended that expenditure of public funds to enable a private charitable corporation to carry out its purpose was a permissible public purpose under the Anti-Aid Amendment. *Id.* at *50. The Superior Court rejected that contention out of hand: "[q]uite simply, that type of expenditure is prohibited by the anti-aid amendment." *Id.* The court's opinion suggests that aid to a private charity is permissible under the Anti-Aid Amendment only if the charity serves solely public purposes. *See id.* On that basis, the court distinguished *Helmes*, 406 Mass. at 877, which upheld a grant to a non-profit organization whose sole purpose was rehabilitating a battleship to preserve it as a memorial for the public. *Dreison Investments, Inc.*, Nos. 1999-1318, et al., 2000 WL 782971, at *50.

2. The CPA grants provide substantial assistance to the churches.

To show that public spending provides “substantial assistance” to a private institution, it is not necessary to demonstrate that the aid “comprise[s] ‘a major portion of the total expense’” of a private institution. *Opinion of the Justices*, 401 Mass. at 1208 (holding \$50 tax deductions to be substantial assistance to private schools) (quoting *Springfield*, 382 Mass. at 679). Rather, the question is whether the aid supports the institution in carrying out its “essential enterprise.” *Id.* at 1209; *accord Springfield*, 382 Mass. at 681; *see also Bloom*, 376 Mass. at 42.

The grants here would substantially aid the churches’ religious functions. Improving a church building—the structure that both houses and embodies a church—undeniably serves a church’s religious mission. Here, the Master Plan grant would support extensive work covering “all the needs” of Acton Congregational Church’s building, throughout the structure, including to remedy “conditions [that] threaten extensive damage to the interior of the building.” Ex. F at 4. Similarly, the Roof Preservation grant would fund work necessary for the continued viability of South Acton Congregational Church’s building. Ex. I at 1.

What is more, the Stained Glass Window grant would help Acton Congregational Church spread its religious message by making expressly religious imagery—including Jesus and a cross—more visible to members of the public who pass by the Church. Ex. G at 1, 2, 11–13. And the grants would free up church funds for programs “offering the congregation what draws them to their church.” Ex. A at 2.

3. The grants are the type of spending that the Anti-Aid Amendment was intended to prohibit.

The third factor that courts analyze under the General Prohibition is whether the spending at issue is contrary to “the history and purpose of the [A]nti-[A]id Amendment.” *Opinion of the Justices*, 401 Mass. at 1209. The principal purpose of the Amendment was to prevent “aid to sectarian institutions.” *Springfield*, 382 Mass. at 683. The challenged grants straightforwardly run afoul of this purpose because they would be paid to core religious institutions—churches.

The Anti-Aid Amendment was also intended to prevent “politically divisive” or “financially wasteful” governmental spending. *Id.* Spending may be “politically divisive” when “political pressures” may “determine how the public money will be allocated.” *Id.* The grants here were approved by elected officials and then a vote of the whole town. *See* Ex. J at 77–78. A house of worship that is not popular among Acton leaders or voters might not be approved for funding, and the divisiveness the Anti-Aid Amendment is designed to avoid could then ensue.

Finally, the grants are “financially wasteful.” *Springfield*, 382 Mass. at 683. Neither church contended in its applications that it could not pay for the desired work with private funds. To the contrary, Acton Congregational Church admits that the grants would enable it to direct its own funds toward “offering the congregation what draws them to their church.” Ex. A at 2.

II. Plaintiffs are Entitled to An Injunction.

As noted earlier, in a Ten Taxpayer suit, once a plaintiff demonstrates likelihood of success on the merits, the plaintiff is entitled to a preliminary injunction so long as the injunction would promote or would not adversely affect the public interest. *LeClair*, 430

Mass. at 331–32. A preliminary injunction here would advance the public interest by ensuring that the objectives of the Anti-Aid Amendment are not flouted. *See CRINC*, 392 Mass. at 94. The Anti-Aid Amendment’s purposes, as noted earlier, include protecting taxpayers’ liberty of conscience by shielding their taxes from “support[ing] religious institutions of others”; preventing churches from becoming dependent on governmental largesse; and avoiding the divisiveness that would be triggered by competitions for public funding among religious institutions. *Bloom*, 376 Mass. at 39. Enjoining the challenged grants would serve all of these important purposes, benefiting taxpayers, churches, and the town’s polity.

At a minimum, a preliminary injunction would not adversely affect the public interest. Even if the improvements the churches seek could provide some benefit to the public through preservation of historic buildings, the improvements could be paid for with private funds. Or, if the Town ultimately prevails on the merits, they could still be financed with public money. A mere delay in funding the improvements would inflict no harm on the public.⁵

⁵ As explained above, because Plaintiffs are suing under the Ten Taxpayer Statute, they need not show irreparable harm, and the Court need not consider harm to the Town. *See LeClair*, 430 Mass. at 331; *Edwards*, 408 Mass. at 646–47. But even if Plaintiffs did need to show irreparable harm, they could easily do so, for violations of constitutional rights are intrinsically irreparable. *See, e.g., T & D Video, Inc. v. City of Revere*, 423 Mass. 577, 582 (1996). Furthermore, relief may not be available under the Ten Taxpayer Statute once challenged spending has occurred. *See Kapinos v. City of Chicopee*, 334 Mass. 196, 198 (1956); *Fuller v. Trustees of Deerfield Acad.*, 252 Mass. 258, 260 (1925). (Plaintiffs reserve their right to argue that an exception to this principle would apply if the challenged grants are not enjoined.) In addition, the Town would suffer no harm from retaining the money at issue in the Town Preservation Fund pending a trial on the merits.

CONCLUSION

This lawsuit is not an attack on Acton Congregational Church, South Acton Congregational Church, any other house of worship or denomination, or religion generally. Rather, Plaintiffs bring this lawsuit and seek this injunction because they agree with the framers of the Anti-Aid Amendment that (i) their “liberty of conscience” will be “infringed” if they are “taxed to support the religious institutions of others”; (ii) “churches would benefit in independence and dignity by not relying on governmental support”; and (iii) “to promote civic harmony the irritating question of religion should be removed from politics as far as possible, and with it the unseemly and potentially dangerous scramble of religious institutions for public funds in ever increasing amounts.” *Bloom*, 376 Mass. at 39.

For the reasons stated above, Plaintiffs respectfully request that this Court preliminarily enjoin Acton from paying the Master Plan, the Stained Glass Window, and the Roof Preservation grants to Acton Congregational Church and South Acton Congregational Church until the Court can issue a final ruling on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on July 8, 2016

upon the attorneys of record for defendant Town of Acton by email:

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