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Historic Preservation Grants to Religious Organizations After *Caplan v. Town of Acton*

- **Facts Giving Rise to the *Caplan* Decision**
 - Two grants recommended by the Acton CPC and approved by Town Meeting to the Acton Congregational Church:
 - (1) To preserve stained glass windows in the main church building; and
 - (2) For an architectural evaluation of the preservation work required for the church and two other buildings on its property.
 - Challenged by a “ten taxpayer” suit under G.L. c. 40, § 53.
- **State Constitutional Language at Issue**
 - So-called Anti-Aid provision of the state constitution, which reads:
 - “No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any . . . charitable or religious undertaking which is not publicly owned.”
- **Court’s Analysis**
 - In evaluating a grant of public money to any non-profit or religious institution, the Court will consider three factors:
 - (1) Whether the grant is for the **purpose** of maintaining or aiding a non-profit or religious organization.
 - Court may allow discovery into so-called “hidden motive”
 - (2) Whether the **effect** of the grants is to substantially aid a non-profit or religious organization.
 - This almost always will be met
 - (3) Whether the risks meant to be avoided by the Anti-Aid amendment are implicated by the grant, specifically:
 - Risk that “liberty of conscience” would be infringed;
 - Risk that public funding would result in entanglement with religion; or
 - Risk that the public support of religious institutions would threaten “civic harmony.”



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- Applying analysis to the grants in question, the Court concluded:
 - The grant for the stained glass window restoration was impermissible; regardless of the purpose of the grant, the risk of entanglement between religion and government was too great.
 - Further facts are needed to determine whether the architectural evaluation grant was permissible (including what portion of the grant was to be used on the church building itself).
- **Moving Forward**
 - Clear Principles
 - “A grant of public funds to an active church warrants careful [judicial] scrutiny.”
 - Any use of the funds to support religious imagery or an active place of worship is very likely impermissible, with a very narrow exception “where historical events of great significance occurred in the church.”
 - The grant application will be reviewed closely.
 - Any suggestion that the funds are needed to assist the religious mission of the entity will be problematic.
 - Under a recent United States Supreme Court decision, a grant application may not be rejected on the sole basis that the applicant is a religious organization.
 - Unresolved Issues
 - Splintered court
 - Typically, 4 Justices form a majority of the 7-person SJC. But only 6 Justices sat on this case (3 signed onto the lead decision; 2 wrote a narrower concurrence; and 1 dissented).
 - The 2-Justice concurrence suggested grants are impermissible only where they support an “essentially religious endeavor,” which it described as a “very narrow” bar
 - Other grant applications by religious organizations for:
 - Affordable housing, cemeteries, parish hall



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