

SJC: NO BLANKET BAN, BUT PUBLIC MONEY FOR CHURCH NEEDS SCRUTINY

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STATE HOUSE, BOSTON, MARCH 12, 2018.....While it put a temporary hold on public dollars the town of Acton wants to spend on an historic church, the Supreme Judicial Court has ruled there is no blanket ban on public funding for religious institutions.

The decision handed down on Friday stems from the town's use of Community Preservation Act money to fund a master plan and stained glass restoration at Acton Congregational Church. Historic preservation is among the authorized uses of Community Preservation Act funds in communities that adopt the law.

The decision delves into the centuries-old history of Massachusetts previously supporting the Congregational Church and the state's subsequent constitutional restriction on public funds for religious institutions.

In the ruling, Chief Justice Ralph Gants wrote, "We do not interpret the Massachusetts anti-aid amendment to impose a categorical ban on the grant of public funds to a church 'solely because it is a church.'"

Justice Elspeth Cypher agreed that there is no blanket prohibition on the use of public funds for religious institutions and concluded there should be no restriction on the grants being used to preserve the church.

"Historic churches and meeting houses are, like secular historic buildings, an indispensable part of our historic landscape, and warrant the same degree of preservation," Cypher wrote in her dissent.

In its ruling, the court explained the metrics by which the constitutionality of the grants must be evaluated.

"We conclude that the constitutionality of such grants must be evaluated under our three-factor test: a judge must consider whether a motivating purpose of each grant is to aid the church, whether the grant will have the effect of substantially aiding the church, and whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment," the court wrote.

The court concluded that "in light of the history of the anti-aid amendment, a grant of public funds to an active church warrants careful scrutiny" and said a lower court judge's denial of a preliminary injunction was vacated because the judge had applied the three-factor test incorrectly.

The court ordered a preliminary injunction against funding the stained glass windows – which include a depiction of Jesus and other Christian imagery – and sent the \$49,500 planning grant back to the Superior Court for additional investigation.

The legal costs have "eclipsed" the amount of the grants, which total roughly \$100,000, according to attorney Nina Pickering-Cook, who represents the town and said Acton fought the lawsuit against the town because historic preservation is an "important principle" for the town to uphold.

Anticipating that the local taxpayers who challenged the grants will ultimately prevail, attorney Eric Rothschild, of Americans United for Separation of Church and State, said the preliminary injunction establishes that they "aren't forced to support the religions they aren't affiliated with."

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