

9

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 16-01933

GEORGE CAPLAN & others<sup>1</sup>

vs.

TOWN OF ACTON, MASSACHUSETTS

MEMORANDUM OF DECISION AND ORDER ON  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This is a taxpayer suit under G.L. c. 40, § 53 against the Town of Acton, Massachusetts (“Town” or “Acton”) for a declaratory judgment, alleging that three grants of public funds by the Town to the Acton Congregational Church and the South Acton Congregational Church (collectively “Churches”) under the Community Preservation Act (“CPA”), G.L. c. 44B, §§ 1-17, violate Article XVIII, Section 2 of the Massachusetts Constitution, as amended by articles XLVI and CIII, known as the Anti-Aid Amendment. Plaintiffs have moved for a preliminary injunction to enjoin the Town from distributing these funds. For the following reasons, Plaintiffs’ Motion for Preliminary Injunction is **DENIED**.<sup>2</sup>

DISCUSSION

**I. Standard**

To obtain a preliminary injunction in a taxpayer suit, Plaintiffs must demonstrate:

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<sup>1</sup> 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, as taxable inhabitants, citizen-taxpayers of Acton, Massachusetts.

<sup>2</sup> In their Stipulation of Schedule for Responding to Complaint and Briefing on Plaintiffs’ Motion for Preliminary Injunction No. 4, the parties have stipulated that the funds will not be disbursed to the Churches until at least thirty (30) days after entry of this Order.

(1) a likelihood of success on the merits; and (2) that “the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” LeClair v. Norwell, 430 Mass. 328, 331-32 (1999), quoting Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984). In taxpayer suits under G.L. c. 40, § 53, the taxpayers “act as private attorneys general, enforcing laws designed to protect the public interest.” Edwards v. Boston, 408 Mass. 643, 646 (1990). Accordingly, neither irreparable harm to the plaintiffs nor harm to the governmental body are considered in determining whether to issue an injunction. *Id.* at 646-47.

## II. Success on the Merits

To determine whether the Town’s grants to the Churches under the CPA would violate the Anti-Aid Amendment, this court is guided by the three factors outlined in Helmes v. Commonwealth, 406 Mass. 873, 876 (1990). This court considers whether: (1) the purpose of the grants is to aid the Churches; (2) the grants in fact substantially aid the Churches; and (3) the grants avoid the political and economic abuses which prompted the Anti-Aid Amendment to be enacted. See *id.* The third factor, stated more precisely, requires this court to examine whether there is any use of public funds that aids the Churches “in a way that is abusive or unfair, economically or politically.” *Id.* at 878. Though each factor is considered separately, they are “cumulative and interrelated,” compelling a conclusion that balances the distinct components. Commonwealth v. School Comm. of Springfield, 382 Mass. 665, 675 (1981). A presumption of constitutionality favors the CPA, which Plaintiffs bear the heavy burden to overcome. See *id.*

Applying the three Helmes factors to the present case, this court concludes there is no likelihood that Plaintiffs will succeed on the merits of their claim that grants to the Churches under the CPA would violate the Anti-Aid Amendment. Under the first prong, Plaintiffs have

failed to demonstrate that the purpose of the grants is to aid the Churches. This court is directed to examine the purpose of the CPA, under which the challenged grants are to be conferred upon the Churches, rather than the stated purpose of the recipients, as Plaintiffs urge. Helmes, 406 Mass. at 877; Attorney Gen. v. School Comm. of Essex, 387 Mass. 326, 330-31 (1982). Grants of public funds to private institutions under the CPA are for “the acquisition, preservation, rehabilitation and restoration of historic resources[.]” G.L. c. 44B, § 5(b)(2). The Churches at issue in this case are historic churches located in historic districts of Acton. Affidavit of Roland Bartl ¶¶ 6-9. Thus, this court finds the purpose of the grants to the Churches under the CPA is to preserve historic resources, and not to aid the Churches.

Similarly, this court finds the Plaintiffs have failed to satisfy the third prong of the Helmes test. There is no credible evidence that the grants under the CPA are economically or politically abusive or unfair. The application and approval procedures for grants under the CPA operate without regard to the applicant’s makeup or purpose. Approval thereunder is determined based on the Town’s assessment of how best to use public funds to effectuate a legitimate public purpose. Therefore, this court finds no political or economic abuse which the Anti-Aid Amendment was enacted to prevent. Helmes, 406 Mass. at 877.

Assuming arguendo Plaintiffs can satisfy the second prong of the Helmes test, which this court is not convinced they can, there remains no likelihood of success on the merits. It is well established that “[t]he fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason . . . to say that a legislature has erroneously appraised the public need.” Essex, 387 Mass. at 332, quoting Everson v. Board of Educ., 330 U.S. 1, 6 (1947). As noted above, the factors are

“cumulative and interrelated,” and must be balanced as a whole. Springfield, 382 Mass. at 675. Plaintiffs have failed to satisfy the first and third prongs of the Helmes test, precluding them from overcoming the presumption of constitutionality that favors the CPA. *Id.* For these reasons, this court finds that Plaintiffs are unlikely to succeed on the merits of their contention that grants to the Churches under the CPA would violate the Anti-Aid Amendment.

**ORDER**

For the foregoing reasons, Plaintiffs’ Motion for a Preliminary Injunction is **DENIED**.

A handwritten signature in black ink, appearing to read 'Leila R. Kern', written over a horizontal line.

Leila R. Kern  
Justice of the Superior Court

Dated: September 16, 2016