

ORIGINAL

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AMERICAN ATHEISTS, INC., and STEVE
WALKER,

Civil No. _____

Plaintiffs,

vs.

COMPLAINT

CITY OF DETROIT, CITY OF DETROIT
DOWNTOWN DEVELOPMENT
AUTHORITY, AND DETROIT
ECONOMIC GROWTH CORPORATION,

Case: 2:06-cv-11696
Assigned To: Cohn, Avern
Referral Judge: Majzoub, Mona K
Filed: 04-07-2006 At 03:17 PM
CMP AMERICAN ATHEISTS, INC ET AL V
CITY OF DETROIT, ET AL (EW)

Defendants.

INTRODUCTION

1. Plaintiffs, as taxpayers of the United States, seek to have declared unconstitutional under the Establishment Clause of the First Amendment to the United States Constitution and similar provisions of the Michigan Constitution, the defendants' payment of funds directly to two Detroit churches under a program to improve real estate located in the Lower Woodward neighborhood of downtown Detroit. Defendants paid approximately \$690,000.00 to the two churches to improve their real estate, from funds derived from taxes imposed upon the plaintiffs. Such direct subsidies of religious organizations from taxpayer-derived funds violates the Plaintiffs' rights to be free of taxation for the support of religious organizations under the Establishment Clause of the First Amendment to the Constitution of the United States, and Article I, Sections 4 and 5 of the Michigan Constitution. Plaintiffs seek declaratory, injunctive, and equitable relief to prevent the defendants and those acting as agents or in concert with them, from making

further payments of tax funds to religious organizations, and to recover payments already made.

JURISDICTION AND VENUE OF THIS COURT

2. This is an action claiming violations of the First and Fourteenth Amendments to the Constitution of the United States, as hereinafter more fully appears. As a result, jurisdiction is conferred on this Court by 28 U.S.C. § 1331 (2006).

3. In addition, this is an action to redress the deprivation, under color of state law of a right, privilege, or immunity secured by the Constitution of the United States, as hereinafter more fully appears. As a result, jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983.

4. In addition, this action seeks declaratory judgment that the actions of the defendants violate the constitutions of the United States and the State of Michigan. As a result, jurisdiction is conferred on this Court by 28 U.S.C. § 2201.

5. Venue is proper in the Eastern District of Michigan, where defendants reside, pursuant to 28 U.S.C. § 1391(b)(1) and 1391(b)(3).

6. A substantial part of the events or omissions giving rise to this claim occurred in this judicial district, making venue proper under 28 U.S.C. § 1391(b)(2).

7. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over claims relating to the Michigan Constitution.

PARTIES

8. Plaintiff American Atheists, Inc. is a non-profit corporation under the laws of the State of Texas. American Atheists is a volunteer organization active in

protecting the rights of Atheists, dedicated to the separation of church and state, and a tireless advocate of the Atheist cause. Plaintiff American Atheists, Inc. has members who are citizens of the United States, of the State of Michigan, and of the City of Detroit, and they own real estate in the City of Detroit, State of Michigan and this action is brought on behalf of such persons. Accordingly, such members of American Atheists pay taxes to the United States, the State of Michigan, the County of Wayne, and the City of Detroit that are used to fund the payments of money described in this Complaint. Plaintiff American Atheists, Inc. has standing as an organization on behalf of its taxpayer members who are citizens of the United States, of the State of Michigan, and of the City of Detroit, and who own real estate in the city of Detroit, State of Michigan under Friends of the Earth, Inc. v. Laidlaw Environmental Services, 528 U.S. 167 (2000). Taxpayer members of Plaintiff American Atheists, Inc. have standing under Flast v. Cohen, 392 U.S. 83 (1968) to object to the exercise of the government's taxing and spending powers in violation of the Establishment Clause, as hereinafter alleged.

9. Plaintiff Steve Walker is an individual who is a citizen of the United States, of the State of Michigan, and of the City of Detroit, and he owns real estate in the City of Detroit, State of Michigan. Accordingly, he pays taxes to the United States, the State of Michigan, Wayne County, Michigan, and the City of Detroit that are used to fund the payments of money described in this Complaint. Plaintiff Steve Walker has standing as a taxpayer to object to the use of the taxing and spending power of the defendants in violation of the Establishment Clause under Flast v. Cohen, 392 U.S. 83 (1968), as hereinafter alleged.

10. Defendant City of Detroit is a municipal corporation whose activities, including those complained of herein, are funded by taxes levied by the United States, the State of Michigan, the County of Wayne, and the City of Detroit.

11. Defendant City of Detroit Downtown Development Authority ("DDA") is an agency of Defendant City of Detroit. It was created pursuant to Act 197 of the Public Acts of Michigan, 1975, and a city ordinance adopted by the City Council on May 20, 1976. Defendant DDA is governed by a Board of Directors appointed by the Mayor and confirmed by the city council of Detroit. The activities of DDA, including those complained of herein, are funded by taxes levied by the United States, the State of Michigan, the County of Wayne, and the City of Detroit.

12. Defendant Detroit Economic Growth Corporation ("DEGC") is a non-profit quasi-governmental corporation under the laws of the State of Michigan that administers the programs of Defendant DDA. The activities of Defendant DEGC, including those complained of herein, are funded by taxes levied by the United States, the State of Michigan, the County of Wayne, and the City of Detroit.

CONTROLLING LAWS

13. The First Amendment to the Constitution of the United States of America states, in pertinent part, that "Congress shall make no law respecting an establishment of religion."

14. The Fourteenth Amendment to the Constitution of the United States of America states, in pertinent part, that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15. Under the Fourteen Amendment, the States are subject to the Establishment Clause of the First Amendment of the Constitution. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940) ("The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws"); School Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963).

16. The Michigan Constitution provides in Article I (Bill of Rights):

Section 4. Every person has a right to worship Almighty God according to the dictates of his own conscience, and no person can of right be compelled to attend, erect, or support, against his will any place of religious worship, or pay any tithes, taxes or other rates, for the support of any minister of the gospel or teacher of religion.

17. The Michigan Constitution provides in Article I (Bill of Rights):

Section 5. No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.

COUNT ONE – First Amendment

18. Under a program named the Lower Woodward Redevelopment Initiative, Defendant DDA allocated the sum of \$11.18 million during the fiscal year 2004-2005 for grants to property owners for improvements to façades and parking lots within the boundaries of DDA Development Area No. 1 ("Façade Improvement Program").

19. Under the Façade Improvement Program property owners who made exterior building improvements were eligible to receive up to \$150,000 in matching

funds from Defendant DDA.

20. In addition, under the Façade Improvement Program property owners who made parking lot edge improvements were eligible to receive up to \$30,000 in matching funds from Defendant DDA.

21. Defendant DDA has paid or approved seven grant applications to pay approximately \$690,000.00 under the Façade Improvement Program to improve real estate owned by two churches, to wit: Central United Methodist Church, located at 23 East Adams Avenue, Detroit, Michigan; and Second Baptist Church, located at 441 Monroe Street, Detroit, Michigan.

22. The funds paid or to be paid to the two churches described above were derived from taxes levied by the United States, the State of Michigan, the City of Detroit, and the County of Wayne.

23. Both the Central United Methodist Church and the Second Baptist Church are religious organizations.

24. The payment of funds by the DDA to the two churches described above violates the prohibitions of the United States Constitution, Amendment I, that "Congress shall make no law respecting an establishment of religion," as applied to the states and their municipal corporations through the Fourteenth Amendment.

25. The payments to the two churches described above are ultra vires and void.

COUNT TWO – Michigan Constitution, Art. I, Sec. 4

26. Re-allege paragraphs 1 through 22 above.

27. The properties for which improvements were paid by Defendant DDA under the Façade Improvement Program described above, are “place[s] of religious worship” within the meaning of the Michigan Constitution, Article 1 (Bill of Rights), Section 4.

28. The grants to the two churches described above constitute erection and support of places of religious worship against the plaintiffs’ will in violation of the Michigan Constitution, Article 1 (Bill of Rights), Section 4.

29. The two churches described above are “minister[s] of the gospel or teacher[s] of religion” within the meaning of the Michigan Constitution, Article I (Bill of Rights), Section 4.

30. The grants to the two churches described above constitute taxes or other rates for the support of any minister of the gospel or teacher of religion in violation of the Michigan Constitution, Article I (Bill of Rights), Section 4.

31. The payments described above are ultra vires and void under the Michigan Constitution, Article I (Bill of Rights), Section 4.

COUNT THREE – Michigan Constitution, Art. I, Sec. 5

32. Re-allege paragraphs 1 through 22 above.

33. The two churches described above are “religious societies” within the meaning of the Michigan Constitution, Article I (Bill of Rights), Section 5.

34. The grants to the two churches described above violates the prohibition that “No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries” in the Michigan Constitution, Article I (Bill of Rights), Section 5.

35. The payments described above are ultra vires and void under the Michigan Constitution, Article 1 (Bill of Rights), Section 5.

COUNT FOUR – Declaratory Judgment

36. Reallege paragraphs 1 through 35, above.

37. Plaintiffs request a declaration pursuant to 28 U.S.C. Sec. 2201 that the payments of funds to the two churches described above violate the constitutions of the United States and the State of Michigan, and are ultra vires, and void.

COUNT FIVE – Injunctive Relief

38. Reallege paragraphs 1 through 35, above.

39. Plaintiffs have no adequate remedy at law.

40. Plaintiffs will be irreparably harmed unless the defendants are restrained and enjoined from further payments of funds to the two churches described above.

41. Plaintiffs will be irreparably harmed unless the defendants are mandatorily enjoined to recover and recoup all payments described above from the two churches.

WHEREFORE, plaintiffs pray that this Court:

1. Issue a declaratory judgment adjudging that the payment of funds to the two churches described above violates the constitutions of the United States and the State of Michigan, and are ultra vires, and void.

2. Issue preliminary and permanent injunctions restraining the defendants, their employees, agents and intermediaries from paying funds to the

two churches described above.

3. Issue preliminary and permanent mandatory injunctions requiring the defendants to use all deliberate speed to recover and recoup from the two churches all funds paid pursuant to the Façade Improvement Program, and report the results of their efforts to this Court.

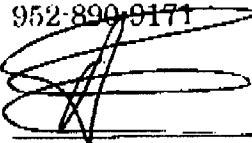
4. Award plaintiffs their costs of suit and their attorneys' fees under 42 U.S.C. § 1988.

5. Award such other and further relief that this court may deem just and proper.

Dated: April 4, 2006.



Robert J. Bruno (#12415)
Robert J. Bruno, Ltd.
1601 E. Highway 13, Suite 107
Burnsville, MN 55337
952-890-9171



Allan S. Rubin
Draper & Rubin, PLC
29800 Telegraph Road
Southfield, Michigan 48034
248-358-9400

Attorneys for plaintiffs