

STATE OF ILLINOIS
IN THE COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY

ROBERT I. SHERMAN,

Plaintiff,

v.

ROD BLAGOJEVICH, in his official capacity as
Governor of the State of Illinois, JACK LAVIN,
in his official capacity as Director, Illinois
Department of Commerce and Economic
Opportunity, and DANIEL W. HYNES, in his
official capacity as Comptroller of the State of
Illinois,

Defendants.

2008CH 0832

No. 08-CH-

FILED

JUL 17 2008 CIV-3

Anthony P. ... Clerk of the
Circuit Court

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

NOW COMES the Plaintiff, Robert I. Sherman, by and through his attorney, Richard J. Whitney, and for his complaint against Defendants Rod Blagojevich, sued in his official capacity as Governor of the State of Illinois, Jack Lavin, sued in his official capacity as Director, Illinois Department of Commerce and Economic Opportunity, and Daniel W. Hynes, sued in his official capacity as Comptroller of the State of Illinois, states:

JURISDICTION AND VENUE

1. This Complaint is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the First and Fourteenth Amendments to the United States Constitution, and Article I, § 3, Article VII, § 1, and Article X, § 3 of the Illinois Constitution. This Court is a court of general jurisdiction that is authorized to hear § 1983 actions as affirmed by the United States Supreme Court in *Felder v. Casey*, 487 U.S. 131, 147 (1988). Venue is proper in this Court in that each of the named

Defendants maintains a principal place of conducting State business in Sangamon County and the transactions complained of herein all occurred in Sanagmon County.

PARTIES

2. Plaintiff Robert I. Sherman is a citizen of the United States and resident of Illinois. He pays taxes to the State of Illinois.

3. At all relevant times herein, Defendant Rod Blagojevich was acting in his official capacity as Governor of the State of Illinois, and currently serves in that capacity.

4. At all relevant times herein, Defendant Jack Lavin was acting in his official capacity as Director of the Illinois Department of Commerce and Economic Opportunity, an agency of the State of Illinois and currently serves in that capacity.

5. At all relevant times herein, Daniel W. Hynes, was acting in his official capacity as Comptroller of the State of Illinois and currently serves in that capacity.

FACTUAL ALLEGATIONS

6. On or about March 3, 2008, Defendant Blagojevich, pursuant to Fiscal Year 2008 enacted appropriations for the Illinois Department of Commerce and Economic Opportunity, authorized and instructed Defendant Lavin to approve the expenditure of a \$1 million (\$1,000,000.00) grant ("Grant") to a religious association or organization known as Pilgrim Baptist Church ("Church"), with its principal place of business being 3301 S. Indiana Ave., Chicago, IL 60616. The Grant has been identified by the Illinois Department of Commerce and Economic Opportunity as 08-203176. Copy of the Notice of Grant Award and Grant Agreement is attached hereto as Exhibit "A" and made a part of this Complaint.

7. On or about June 30, 2008, Defendant Lavin signed the Notice of Grant Award and Grant Agreement, thereby authorizing the release and payment of \$1 million (\$1,000,000.00) to the Church from the public funds of the State of Illinois, pending further approval by two other agencies of the State of Illinois.

8. The stated purpose of the Grant is to "pay for a portion of the costs for capital construction expenses of labor and materials toward rebuilding" the Church "facility located at 3301 South Indiana Avenue" in Chicago, "as well as an administrative office/daycare center building which the Grantee also owned next door with an address of 3313 South Indiana Avenue," both of which were "destroyed by fire in January 2006." (Ex. A, part III, § 1.) The Grant Agreement further states that the Grant is intended "specifically to benefit the secular/nonreligious programs run by the Church such as but not limited to educational, human service and related programs." (Ex. A, part III, § 1.)

9. The Grant Agreement further states that the Church as Grantee "shall not use grant funds to perform or to further the performance of sectarian activities." (Ex. A, part II-B1, § 2.6(a).) This condition notwithstanding, the very nature and stated purpose of the Grant means that it will necessarily be used to promote a religious purpose, in that:

a. It will be used for construction of a church and a facility adjacent to a church that will be identified as a Church facility, and which therefore will necessarily be promoting religion and the religious purposes of the Church;

b. There is no meaningful and practical way of segregating the religious purposes and uses of the buildings constructed from the non-religious purposes and uses of the buildings constructed;

c. Even if the Grant was intended to be used for the construction of buildings having an entirely secular purpose, with no identification of or promotion of religion whatsoever occurring in, or appearing in, or on, the buildings, the Grant would still relieve the Church of having to expend \$1 million in construction costs that it would otherwise expend for such purposes, thereby permitting it to divert \$1 million of, or avoid the necessity of raising \$1 million of, its own funds, toward the promotion of its religion or religious activities.

10. Even if were possible for the parties to the Grant Agreement to somehow meet its terms and conditions, so as not to "further the performance of sectarian activities," (Ex. A, part II-B1, § 2.6(a)), such restrictions would only apply "for the term of the Grant Agreement," (Ex. A, part III, § 2.5) which runs from March 1, 2008 through February 28, 2010. (Ex. A, Notice of Grant Award at 1.) The Grant Agreement provides no provision for enforcement of such restrictions beyond the life of the Grant, which may encompass most, if not all, of the period required for actual construction. Therefore, the afore-stated restriction on sectarian activities is all but meaningless, since (a) during most of the period of construction, the sites would be presumptively unsuitable for conducting any activity, religious or secular, anyway, and (b) after construction of the buildings is completed, and the Grant period expires, the Church would be free to use the buildings for religious purposes without restriction.

11. Plaintiff objects to the expenditure of government, and thus taxpayer, funds, to promote and further a religious purpose.

**COUNT I: FEDERAL CLAIM AGAINST DEFENDANT BLAGOJEVICH FOR
VIOLATION OF FIRST AMENDMENT ESTABLISHMENT CLAUSE**

12. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

13. For the reasons set forth in paragraphs 9 and 10 herein, Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates the Plaintiff's right, and the right of all citizens of the State of Illinois, to be free from unconstitutional establishment of religion under the First Amendment to the United States Constitution, made applicable to the State of Illinois by the Fourteenth Amendment and made actionable by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission and disgorgement of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission and disgorgement of any such funds already released to the Church, and permanently enjoining Defendant Blagojevich from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates the Establishment Clause of the First Amendment;

D. Such further relief as the Court deems necessary and just; and

E. Attorney fees, costs and expenses of this action pursuant to 42 U.S.C. Section 1988.

COUNT II

STATE CLAIM AGAINST DEFENDANT BLAGOJEVICH FOR VIOLATION OF ARTICLE I, § 3 OF THE ILLINOIS CONSTITUTION

14. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

15. Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article I, § 3 of the Constitution of the State of Illinois, which provides that: "No person shall be required to . . . support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." The Grant at issue violates both clauses of this section for the reasons set forth in paragraphs 9 and 10 herein, and for the additional reasons that the intended recipient, Pilgrim Baptist Church, is clearly being accorded preferential treatment as a denomination, or for its mode of worship, by virtue of being favored financially, and that Plaintiff is compelled, through the payment of taxes, to support the Church's ministry.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary

injunction enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church, and permanently enjoining Defendant Blagojevich from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article I, § 3 of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT III

STATE CLAIM AGAINST DEFENDANT BLAGOJEVICH FOR VIOLATION OF ARTICLE VII, § 1 OF THE ILLINOIS CONSTITUTION

16. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

17. Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article VII, § 1(a) of the Constitution of the State

of Illinois, which requires that "Public funds . . . shall be used only for public purposes." The Grant Agreement contains no requirement that the unspecified secular, non-religious activities made possible by the Grant serve a public purpose, nor does it contain any specification as to what activities would constitute such a public purpose.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission and disgorgement of any such funds already released to the Church, and permanently enjoining Defendant Blagojevich from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT IV

STATE CLAIM AGAINST DEFENDANT BLAGOJEVICH FOR VIOLATION OF ARTICLE X, § 3 OF THE ILLINOIS CONSTITUTION

18. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

19. Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article X, § 3 of the Illinois Constitution of the Constitution of the State of Illinois, which forbids the "General Assembly . . . or any public corporation" from making any appropriation "from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy . . . controlled by any church or sectarian denomination whatever." It further specifies, "*nor shall any grant or donation of . . . money . . . ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.*" (Emphasis added.)

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Blagojevich from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already

disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church, and permanently enjoining Defendant Blagojevich from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Blagojevich's authorization of and instruction to Defendant Lavin to approve the expenditure of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT V

FEDERAL CLAIM AGAINST DEFENDANT LAVIN FOR VIOLATION OF FIRST AMENDMENT ESTABLISHMENT CLAUSE

20. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

21. For the reasons set forth in paragraphs 9 and 10 herein, Defendant Lavin's authorization of the Grant violates the Plaintiff's right, and the right of all citizens of the State of Illinois, to be free from unconstitutional establishment of religion under the First Amendment to the United States Constitution, made applicable to the state of Illinois by the Fourteenth Amendment and made actionable by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church,

or, if already disbursed, enjoining Defendant Lavin to order the rescission and disgorgement of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant Lavin to order the rescission and disgorgement of any such funds already released to the Church, and permanently enjoining Defendant Lavin from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Lavin's authorization of the Grant violates the Establishment Clause of the First Amendment;

D. Such further relief as the Court deems necessary and just; and

E. Attorney fees, costs and expenses of this action pursuant to 42 U.S.C. Section 1988.

COUNT VI

STATE CLAIM AGAINST DEFENDANT LAVIN FOR VIOLATION OF ARTICLE I, § 3 OF THE ILLINOIS CONSTITUTION

22. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

23. Defendant Lavin's authorization of the Grant violates Article I, § 3 of the Constitution of the State of Illinois, which provides that: "No person shall be required to . . . support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." The Grant at issue violates both clauses of this

section for the reasons set forth in paragraphs 9 and 10 herein, and for the additional reasons that the intended recipient, Pilgrim Baptist Church, is clearly being accorded preferential treatment as a denomination, or for its mode of worship, by virtue of being favored financially, and that Plaintiff is compelled, through the payment of taxes, to support the Church's ministry.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church, and permanently enjoining Defendant Lavin from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Lavin's authorization of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT VII

STATE CLAIM AGAINST DEFENDANT LAVIN FOR VIOLATION OF ARTICLE VII, § 1 OF THE ILLINOIS CONSTITUTION

24. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

25. Defendant Lavin's authorization of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois, which requires that "Public funds . . . shall be used only for public purposes." The Grant Agreement contains no requirement that the unspecified secular, non-religious activities made possible by the Grant serve a public purpose, nor does it contain any specification as to what activities would constitute such a public purpose.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant Lavin to order the rescission, disgorgement or recoupment of any such funds already released to the Church, and permanently enjoining Defendant Lavin from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Lavin's authorization of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT VIII

STATE CLAIM AGAINST DEFENDANT LAVIN FOR VIOLATION OF ARTICLE X, § 3 OF THE ILLINOIS CONSTITUTION

26. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 herein.

27. Defendant Lavin's authorization of the Grant violates Article X, § 3 of the Illinois Constitution of the Constitution of the State of Illinois, which forbids the "General Assembly . . . or any public corporation" from making any appropriation "from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy . . . controlled by any church or sectarian denomination whatever." It further specifies, "*nor shall any grant or donation of . . . money . . . ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.*" (Emphasis added.)

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Lavin from issuing any further instructions or taking any other action to further the release of funds authorized by the Grant and Grant Agreement to the Church, or, if already disbursed, enjoining Defendant Lavin to order the rescission, disgorgement or recoupment of any such funds already released to the Church, and permanently enjoining Defendant Lavin from taking any other action to appropriate, grant or transfer government funds to the Church;

C. A declaration that Defendant Lavin's authorization of the Grant violates Article VII, § 1(a) of the Constitution of the State of Illinois;

D. Such further relief as the Court deems necessary and just; and

E. Costs and expenses of this action.

COUNT IX

FEDERAL CLAIM TO ENJOIN DEFENDANT HYNES FROM VIOLATING FIRST AMENDMENT ESTABLISHMENT CLAUSE

28. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 and Counts I and V herein.

29. Defendant Hynes, as Comptroller of the State of Illinois, has a legal duty to disperse funds and issue payments on behalf of the State of Illinois, as duly authorized by Defendant Blagojevich, the agencies and departments of the State of Illinois and Illinois state law. However, in carrying out such duties, he is also bound to adhere to the provisions of the United States Constitution, including the First Amendment to the United States Constitution, made applicable to the State of Illinois by the Fourteenth Amendment and made actionable by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff requests:

A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Hynes from dispersing, releasing, issuing or paying any funds to the Church pursuant to the Grant and Grant Agreement, or, if already disbursed, enjoining Defendant Hynes to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Hynes from dispersing, releasing, issuing or paying any funds to the Church pursuant to the Grant and Grant Agreement, or, if already disbursed, enjoining Defendant Hynes to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

C. Such further relief as the Court deems necessary and just; and

D. Attorney fees, costs and expenses of this action pursuant to 42 U.S.C. Section 1988.

COUNT X

STATE CLAIM ENJOIN DEFENDANT HYNES FROM VIOLATING THE ILLINOIS CONSTITUTION

30. Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs 6-11 and Counts II, III, IV, VI, VII and VIII herein.

31. Defendant Hynes, as Comptroller of the State of Illinois, has a legal duty to disperse funds and issue payments on behalf of the State of Illinois, as duly authorized by Defendant Blagojevich, the agencies and departments of the State of Illinois and Illinois state law. However, in carrying out such duties, he is also bound to adhere to the provisions of the Constitution of the

State of Illinois.

WHEREFORE, Plaintiff requests:


A. Pending a trial on the merits, a temporary restraining order and/or a preliminary injunction enjoining Defendant Hynes from dispersing, releasing, issuing or paying any funds to the Church pursuant to the Grant and Grant Agreement, or, if already disbursed, enjoining Defendant Hynes to order the rescission, disgorgement or recoupment of any such funds already released to the Church;

B. Following a trial on the merits, the entry of an injunction permanently enjoining Defendant Hynes from dispersing, releasing, issuing or paying any funds to the Church pursuant to the Grant and Grant Agreement, or, if already disbursed, enjoining Defendant Hynes to order the rescission, disgorgement or recoupment of any such funds already released to the Church; and

C. Such further relief as the Court deems necessary and just.

RESPECTFULLY SUBMITTED,
ROBERT I. SHERMAN, PLAINTIFF

BY:



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