

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE MENDHAM METHODIST)	Civil Action No. 2:23-cv-02347
CHURCH; and THE ZION)	
LUTHERAN CHURCH LONG)	Hon. Evelyn Padin, U.S.D.J.
VALLEY,)	
)	<i>(Document Electronically Filed)</i>
Plaintiffs,)	
)	
v.)	Brief of Jewish Coalition for
)	Religious Liberty as
MORRIS COUNTY, NEW)	<i>Amicus Curiae</i> in Support of
JERSEY et al.,)	Plaintiffs' Motion for
)	Preliminary Injunction
Defendants;)	
)	
ATTORNEY GENERAL of NEW)	Motion Day: July 15, 2024
JERSEY,)	
)	
Intervenor-Defendant.)	

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CASES

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Espinoza v. Mont. Dep’t of Revenue,
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*Freedom from Religion Found. v. Morris Cnty. Bd. of
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Trinity Lutheran Church of Columbia, Inc. v. Comer,
582 U.S. 449 (2017) 9, 10

STATUTES

National Historic Preservation Act, as amended,
Pub. L. No. 89-665, 80 Stat. 915 (1966) 2

OTHER AUTHORITIES

10 Most Endangered Historic Places 2023, Pres. N.J.,
<https://bit.ly/49FkqXc> (last visited May 29, 2024)..... 4, 10, 11, 16

2023 Belleville Church Steeple Repair, GoFundMe
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*A 325-Year-Old NJ Church With Ties to George Washington Is
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A Brief History of Old Tennent Church, Old Tennent Presbyterian
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Allison Pries, *Endangered Historic N.J. Temple Has a New Life
After \$2.5M Sale*, NJ.com (Jan. 18, 2023, 8:41 AM),
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Biography, Joachim Prinz, <https://bit.ly/4dYdoi>
 (last visited June 3, 2024) 15

Byron Johnson et al., *Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities* (2017) ... 19

Convent of the Community of St. John Baptist, NJ.gov: N.J. Hist. Tr.,
<https://bit.ly/47vKbqR> (last visited May 30, 2024) 11

Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2016*, NJ.com (updated May 12, 2016, 3:01 PM),
<https://bit.ly/3FY6tpx> 15

Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2017*, NJ.com (May 18, 2017, 8:40 PM),
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East Lynne Theater Company Signs 25-year Lease with Cape May to Use Allen African Methodist Episcopal Church,
 New Jersey Stage (June 3, 2023), <https://bit.ly/3QXM6Pz> 16

Eric Kiefer, *Historic Temple Sanctuary, Buildings in Newark Sold For \$2.5 Million*, Patch (Jan. 10, 2023, 8:03 AM),
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Grace Episcopal Church, NJ.gov: N.J. Hist. Tr.,
<https://bit.ly/47oMjRo> (last visited May 30, 2024) 16

Historic Church Needs Expensive Repairs, WWNYTV
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History of Christ Church, Christ Church New Brunswick,
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History of CSJB, The Community of St. John Baptist,
<https://bit.ly/469CZ2R> (last visited May 30, 2024) 11

Jacob’s Chapel, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47gkz1M>
 (last visited May 30, 2024) 13, 14

Jennifer Mauro, *Holy Spirit Church Closure to Help Ensure Catholic Presence in Asbury Park*, Trenton Monitor (Dec. 3, 2020), <https://bit.ly/4aYPm3T> 17

Jessica Perry, *Historic Temple in Newark Sold for \$2.5M*, NJBiz (Jan. 4, 2023), <https://bit.ly/3wMDLab> 14, 15

Jonathan Merritt, *America’s Epidemic of Empty Churches*, The Atlantic (Nov. 25, 2018), <https://bit.ly/49BTPdH> 11

Karl Zinsmeister, *Less God, Less Giving? Religion and Generosity Feed Each Other in Fascinating Ways*, Philanthropy Roundtable (2019), <https://bit.ly/49LmAom> 19

Kathleen O’Brien, *Historic Belleville Church Still Decked by Sandy Damage Almost a Year Later*, NJ.com (Oct. 24, 2013, 11:00 AM), <https://bit.ly/3wP78IZ> 12

Kerry Margaret Butch, *Developer to Share Plans for Saving the Holy Spirit Church Building* (Feb. 6, 2024), <https://bit.ly/4cbTwXq> 18

Lois Rogers, *At Closing Mass, Holy Spirit Churchgoers Bid Farewell to Iconic Worship Site*, Trenton Monitor (June 10, 2021), <https://bit.ly/3RhEGXa> 17

Margaret F. Brinig & Nicole Stelle Garnett, *Lost Classroom, Lost Community: Catholic Schools’ Importance in Urban America* (2014) 23

Mike Wood Daly, Cardus, *The Halo Project: Phase One; Valuing Toronto’s Faith Congregations* (2016) 21

Morris County Office of Planning and Preservation, *Celebrating Over 20 Years of Historic Preservation*, <https://bit.ly/3QYrHJN> (last visited May 29, 2024) 8

N.J.’s 2021 Most Endangered Historic Places List Released by Preservation Group, NJ.com (May 18, 2021, 12:10 PM), <https://bit.ly/3sEINUa> 16

Nat’l All. to End Homelessness, *Faith-Based Organizations: Fundamental Partners in Ending Homelessness* 1 (2017) 19

National Fund for Sacred Places, Nat’l Tr. for Hist. Pres., <https://bit.ly/3sImjBN> (last visited May 29, 2024) 2

Our History, Temple B’nai Abraham, <https://bit.ly/3Ve0K6v> (last visited June 2, 2024) 14

Partners for Sacred Places, *Sacred Places at Risk* (1998)..... *passim*

Partners for Sacred Places, *The Economic Halo Effect of Historic Sacred Places* (2016) *passim*

Partners for Sacred Places, *The Economic Halo Effect of Rural United Methodist Churches in North Carolina* (2021) 20, 21, 22, 23

Suzann Morris & Linda K. Smith, Bipartisan Policy Center, *Examining the Role of Faith-Based Child Care* 3 (2021) 19

The Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund, Combined Rules and Regulations § 5.1 (Morris Cnty. Bd. of Cnty. Comm’rs, Apr. 10, 2024), <https://bit.ly/45fyh4D> 8

U.S. Bureau of Lab. Stat., *Producer Price Index by Commodity: Special Indexes: Construction Materials*, FRED Econ. Data: Fed. Rsrv. Bank of St. Louis, <https://bit.ly/3sOUgk1> (last visited May 29, 2024) 6

INTEREST OF *AMICUS CURIAE*

The Jewish Coalition for Religious Liberty (JCRL) is a nondenominational organization of Jewish communal and lay leaders who seek to protect the ability of all Americans to freely practice their faith and to foster cooperation between Jewish and other faith communities in the public square. JCRL has an interest in protecting religious organizations against unlawful discrimination and exclusion—and in particular in protecting Jewish institutions and communities from suffering such discrimination. Especially given the number of Jewish communities who gather and worship in buildings of historic significance, JCRL has an interest in ensuring that programs like Morris County’s are equally open and accessible to all people and all organizations, regardless of their religious beliefs.

INTRODUCTION

American policymakers have long recognized the importance of historic preservation. Nearly 60 years ago, the National Historic Preservation Act stressed that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” National Historic Preservation Act, Pub. L. No. 89-665, § 1(b)(2), 80 Stat. 915, 915 (1966) (as amended by Pub. L. No. 96-515).

Houses of worship are essential parts of this historical and cultural foundation. *See, e.g., National Fund for Sacred Places*, Nat’l Tr. for Hist. Pres., <https://bit.ly/3sImjBN> (last visited May 29, 2024). Indeed, New Jersey’s own historic houses of worship provide a rich example. These sites have served as Revolutionary War hospitals, hosted some of the first readings of the Declaration of Independence, sheltered travelers along the Underground Railroad, and witnessed the preaching of Martin Luther King, Jr.¹ They stand today as representatives of a proud legacy

¹ *See A Brief History of Old Tennent Church*, Old Tennent Presbyterian Church, <https://bit.ly/40IjyNq> (last visited May 29, 2024); *History of Christ Church*, Christ Church New Brunswick, <https://bit.ly/3R1grNf> (last visited May 29, 2024); Allison Pries,

of the many vital contributions that communities of faith have made to their neighbors—and indeed to the nation itself—for centuries. Even more importantly, many of these houses of worship continue that rich tradition of service today, providing an extensive network of services to their local communities, serving their members and nonbelievers alike.

Preserving historic buildings is, of course, costly. Both routine maintenance and unexpected repairs pile up and often impose significant financial burdens—particularly on these religious communities that may find themselves without substantial financial resources. Programs like Morris County’s historic preservation grants were created specifically to help alleviate those burdens. And, as the Plaintiffs in this case have well demonstrated, *see* Pls.’ Br. in Opp. to Mot. to Stay and in Support of Mot. for Prelim. Inj. (Dkt. 49-1) (“Pls.’ PI Br.”) at 28–33, the Constitution squarely prohibits the County from excluding groups who are otherwise qualified for that aid merely because they happen to be religious.

Endangered Historic N.J. Temple Has a New Life After \$2.5M Sale, NJ.com (Jan. 18, 2023, 8:41 AM), <https://bit.ly/47d9kag>; *A 325-Year-Old NJ Church With Ties to George Washington Is in Danger of Closing*, NBC N.Y. (Feb. 24, 2023, 1:31 AM), <https://bit.ly/49AbNNs>.

But excluding religious organizations from generally available preservation grant programs does not merely violate the law. Worse still, that denial threatens significant harms that can never be undone through litigation. Indeed, depriving these congregations of access to critical resources that can help preserve their culturally and historically significant houses of worship threatens to close them—forcing those who worship and serve there to limit their activities or even to move. *See 10 Most Endangered Historic Places 2023*, Pres. N.J., <https://bit.ly/49FkqXc> (last visited May 29, 2024). That stands to harm not merely those forced out of these historic properties but also their surrounding communities, including the many people who rely daily on the many services and programs that religious organizations provide.

The churches in this case—and the communities that surround them—should not be left to suffer these harms as mounting repair costs threaten their ability to worship or to serve while they wait to vindicate their fundamental constitutional rights. Pls.’ PI Br. at 34–35. No award of monetary damages or other order from a court can fully repair those injuries once they have been suffered by the Plaintiffs and, especially, the

public. This Court should grant Plaintiffs' Motion for a Preliminary Injunction to guard against these irreparable harms.

ARGUMENT

Historic houses of worship play a central role in serving their local communities, offering extensive social services and other programs to benefit their neighbors—regardless whether they are members of the religious institution or not. And their buildings offer irreplaceable cultural and historic value to their communities. But maintaining those buildings often imposes significant financial burdens on these religious communities. And when mounting costs force a congregation to limit its services or abandon its house of worship, it is not merely the congregants who suffer. Rather, losing these centerpieces of service and community life imposes a substantial and lasting harm on the public at large—harms that can never fully be remedied by a court order after the fact.

I. Discriminatory exclusions from historic preservation programs harm many historically significant houses of worship.

Maintaining a historic building is costly. Historic preservation programs seek to alleviate this burden by offering funding to help protect important cultural sites. The discriminatory exclusion of religious

groups from these programs harms those groups and undermines the very purpose of programs like Morris County's by excluding some of the historically significant sites most in need of that help.

A. Historic houses of worship face high operating and maintenance costs.

Like other historic buildings, historic houses of worship present substantial maintenance costs for their religious communities. For example, a 2016 study of ninety religious congregations housed in buildings that are at least fifty years old found that these churches often face unpredictable repair costs, beyond their already-significant annual operating costs. Partners for Sacred Places, *The Economic Halo Effect of Historic Sacred Places* 10, 28 (2016). Every congregation surveyed reported frequent non-routine maintenance expenses, and 41% spent “over \$100,000 on significant building repairs, new building projects, or building restoration campaigns over the previous five years.” *Id.* at 10. An earlier study concluded that the average historic church will spend more than \$225,000 on building repairs in the near future, Partners for Sacred Places, *Sacred Places at Risk* 5 (1998)—a figure that is presumably much higher today, *see, e.g.*, U.S. Bureau of Lab. Stat., *Producer Price Index by Commodity: Special Indexes: Construction*

Materials, FRED Econ. Data: Fed. Rsrv. Bank of St. Louis, <https://bit.ly/3sOUgk1> (last visited May 29, 2024).

The needed repairs run the gamut. *See* Pls.’ PI Br. at 4–5, 34 (describing Plaintiffs’ repair needs, including stained-glass windows, bell towers, roofs, walls, and foundations). One-third of congregations surveyed in the 1998 study faced roof and gutter problems, “which can lead to chronic water penetration, the most serious and pervasive repair problem faced by any building.” *Sacred Places at Risk, supra*, at 31. One-fifth of congregations reported “structural problems” like “cracks in walls, or separating roof beams,” that “pose serious” safety threats. *Id.* And even seemingly small issues, such as broken or damaged stained glass or stone, can impose a significant burden on religious communities. One recent quote estimated that stone repair alone would cost \$150,000, while repairing or replacing stained glass could cost more than \$130,000. *See, e.g., Historic Church Needs Expensive Repairs*, WWNYTV (updated Jan. 9, 2020, 12:47 PM), <https://bit.ly/3GcCVEF>.

In short, congregations that worship in historic buildings “typically face enormous repair needs that are increasingly overwhelming their ability to keep up.” *Sacred Places at Risk, supra*, at 30.

B. Without access to preservation funds, some congregations must abandon their historic houses of worship.

To encourage the preservation of historic buildings, Morris County offers funding that eases the financial burden imposed by repairs like these. See The Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund, Combined Rules and Regulations § 5.1 (Morris Cnty. Bd. of Cnty. Comm’rs, Apr. 10, 2024), <https://bit.ly/45fyh4D> (“The Morris County Historic Preservation trust fund was created . . . to help support the preservation of the county’s exceptional abundance of historic resources.”). For years, the County allowed historic houses of worship—like all other historic buildings—to receive this assistance. Indeed, “[f]rom 2012 to 2015, the . . . [County] awarded \$4,634,394 . . . to twelve churches. The grants funded the preparation of construction documents and plans, and the restoration of church buildings, towers, parish houses, windows, and other items.” *Freedom from Religion Found. v. Morris Cnty. Bd. of Chosen Freeholders*, 232 N.J. 543, 550 (2018); see also Morris County Office of Planning and Preservation, *Celebrating Over 20 Years of Historic Preservation*,

<https://bit.ly/3QYrHJN> (last visited May 29, 2024) (listing more than a dozen religious properties that have received funding since 2002).

But now, the County excludes religious properties from this assistance program. As Plaintiffs have demonstrated, that exclusion is squarely unconstitutional. *See* Pls.’ PI Br. at 28–33. “The Free Exercise Clause of the First Amendment protects against ‘indirect coercion on the free exercise of religion, not just outright prohibitions.’” *Carson v. Makin*, 596 U.S. 767, 778 (2022) (quotation omitted). Accordingly, the Supreme Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Id.* (citing cases). Only “a state interest of the highest order” can “justif[y]” such religious discrimination. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017) (quotation omitted). A State can rarely satisfy this “stringent standard.” *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 484 (2020) (citation omitted). And it can *never* do so based on an interest “in achieving greater separation of church and State” than the federal Constitution itself requires. *Id.* at 485 (quotation omitted). Applied here, the dictates of the Supreme Court are clear: Morris County cannot deny historic preservation funding to

religious properties like the Plaintiffs’ “solely because they are religious,” *Carson*, 596 U.S. at 780 (quotation omitted); it cannot require them to “disavow [their] religious character” as a condition of receiving that funding, *Trinity Lutheran*, 582 U.S. at 463; and it cannot justify any exclusion on the basis of their “anticipated religious use of the benefits.” *Carson*, 596 U.S. at 789.

The unlawful prohibition against awarding preservation funding to historic houses of worship has had “a cascading impact,” “putting many valued architectural resources and historic landmarks at risk.” *10 Most Endangered Historic Places 2023*, Pres. N.J., <https://bit.ly/49FkqXc> (last visited May 29, 2024). Facing financial burdens from frequent and unpredictable repairs, many faith communities have been unable to adequately preserve their historic buildings or had to abandon them altogether. “[M]any congregations lurch from one repair crisis to another.” *Sacred Places at Risk*, *supra*, at 32. When religious communities are unable to pay for much-needed maintenance, some resort to “property dismemberment, where portions of religious buildings are demolished or vacated.” *Id.* at 30 (internal quotation marks omitted). Others sell to developers who convert historic church buildings for

commercial purposes—including apartments, laser-tag arenas, and frat houses. Jonathan Merritt, *America's Epidemic of Empty Churches*, *The Atlantic* (Nov. 25, 2018), <https://bit.ly/49BTPdH>.

Take one example. The Community of St. John Baptist, an Episcopal religious order, resides in a century-old convent and retreat house in Mendham, New Jersey. The Community of St. John Baptist, *History of CSJB*, <https://bit.ly/469CZ2R> (last visited May 30, 2024). The Community's Sisters have long ministered to others, including immigrants, orphans, and the needy. *Id.* In 2004 and 2006, the Garden State Historic Preservation Trust Fund awarded the Community grants totaling more than \$600,000 to help restore the exterior walls and to prepare a preservation plan for the convent, garden walls, chapel, and cemetery bell tower and walls. *Convent of the Community of St. John Baptist*, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47vKbqR> (last visited May 30, 2024). But now, state and local governments exclude religious communities' historic buildings from their preservation programs—an exclusion that has caused the Community to lose “fifty percent of their bricks-and-mortar funding that has been vital for their upkeep and preservation of the site.” *10 Most Endangered Historic Places 2023*,

supra. Last year, Preservation New Jersey identified the Community of St. John Baptist's convent as one of the ten most endangered historic places in the State. *Id.*

Beyond the burden of routine maintenance, religious groups often struggle to provide repairs after their historic structures suffer unforeseen damage. For example, a centuries-old church in Belleville—now home to a Pentecostal community, Iglesia La Senda Antigua—is in danger of closing after suffering significant damage during Superstorm Sandy in 2012. *See A 325-Year-Old NJ Church With Ties to George Washington Is in Danger of Closing*, NBC N.Y. (Feb. 24, 2023, 1:31 AM), <https://bit.ly/49AbNNs>. This historic Dutch Reformed Church of Second River has been an integral part of its community since the earliest days of our republic. Indeed, its belltower served as a lookout and alarm for local militia during the Revolutionary War. *See Kathleen O'Brien, Historic Belleville Church Still Deckerd by Sandy Damage Almost a Year Later*, NJ.com (Oct. 24, 2013, 11:00 AM), <https://bit.ly/3wP78IZ>. Dozens of Continental Army soldiers (and members of the Rutgers family) now rest in the church's cemetery. *Id.* The church also housed the first school for Chinese immigrants to the area in the late nineteenth century and

was a likely stop along the Underground Railroad for escaped slaves seeking freedom. *See A 325-Year-Old NJ Church, supra.* The current congregation—including members who have incurred personal debt to help maintain the church—has spent a quarter million dollars on repairs in the wake of Sandy’s damage. *See id.* More than a decade after the storm, the Belleville Historical Society launched a GoFundMe fundraising campaign to help save the building. *2023 Belleville Church Steeple Repair*, GoFundMe (Feb. 13, 2023), <https://bit.ly/46gJkcT>. The campaign emphasizes the difficulty and expense of repairing the church’s steeple, which stands eighteen stories high. *Id.*

Unfortunately, these challenges are not unusual. The same storm flooded Jacob’s Chapel, a historically Black African Methodist Church, and the accompanying Colemantown Meeting House, which also sheltered travelers seeking freedom along the Underground Railroad. *See* Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2017*, NJ.com (May 18, 2017, 8:40 PM), <https://bit.ly/40E4DUo>; *Jacob’s Chapel*, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47gkz1M> (last visited May 30, 2024). As a result, the meeting house was “unusable.” Rojas, *supra*. And while the chapel received \$50,000 in 2012 from New Jersey’s Garden

State Historic Preservation Trust Fund, *see Jacob's Chapel, supra*, the estimated “\$1.3 million for repair, restoration and site improvements” needed for the meeting house after the hurricane is “beyond the means of the congregation.” Rojas, *supra*.

Other religious communities have been forced to abandon their historic buildings entirely. In 1972, Deliverance Evangelical Ministries moved its community into a building that already had served as an important house of worship for nearly half a century. Jessica Perry, *Historic Temple in Newark Sold for \$2.5M*, NJBiz (Jan. 4, 2023), <https://bit.ly/3wMDLab>. “[T]he largest synagogue building in New Jersey,” the structure was “[o]riginally constructed in 1924 as Temple B’nai Abraham.” Eric Kiefer, *Historic Temple Sanctuary, Buildings in Newark Sold For \$2.5 Million*, Patch (Jan. 10, 2023, 8:03 AM), <https://bit.ly/3QXTt9F> (quotation omitted). Founded by immigrants, B’nai Abraham’s congregation has served the Jewish community in New Jersey since 1853. *Our History*, Temple B’nai Abraham, <https://bit.ly/3Ve0K6v> (last visited June 2, 2024). Added to the National Register of Historic Places in 2007, the building’s significance is obvious. Perry, *supra*. Dr. Joachim Prinz, a storied leader who served in Berlin

and “began early on to urge that Jews leave” Germany because “[h]e understood that Hitler was lethal,” led the congregation for decades. *Biography*, Joachim Prinz, <https://bit.ly/4dYdoii> (last visited June 3, 2024). He was also an active supporter of the Civil Rights movement. *See id.*; Kiefer, *supra*. The Temple once hosted Martin Luther King, Jr. as a guest preacher. *See Pries, supra*.

In the 1970s, B’nai Abraham’s congregation relocated to a nearby town to better serve the migrating Jewish community. *Our History, supra*. Deliverance Evangelical Ministries adopted the historic building, itself worshipping there for decades. Perry, *supra*. But by 2016, the building was in disrepair and no longer in use by the evangelical congregation. Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2016*, NJ.com (updated May 12, 2016, 3:01 PM), <https://bit.ly/3FY6tpx>. Last year, the congregation sold the building to a secular charter school. Pries, *supra*.

Allen African Methodist Episcopal Church, a historically Black church in Cape May County, fared no better. After the Church was devastated by a fire in 2018, Preservation New Jersey listed it among those historic buildings most at risk of being lost. *N.J.’s 2021 Most*

Endangered Historic Places List Released by Preservation Group, NJ.com (May 18, 2021, 12:10 PM), <https://bit.ly/3sEINUa>. In 2021, the congregation deconsecrated the church and sold the building to the City of Cape May. *East Lynne Theater Company Signs 25-year Lease with Cape May to Use Allen African Methodist Episcopal Church*, New Jersey Stage (June 3, 2023), <https://bit.ly/3QXM6Pz>.

The list goes on. Grace Episcopal Church in Plainfield, New Jersey, worshipped for over a century in a Gothic Revival church featuring a 47-bell carillon and Tiffany stained-glass windows. *Grace Episcopal Church*, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47oMjRo> (last visited May 30, 2024). In 2020, unable “to afford critical repairs to its 130-year-old church building” and facing “potentially dangerous building conditions,” the congregation was forced to sell the building and find another place to worship. *10 Most Endangered Historic Places 2023*, *supra*. The municipality now plans to redevelop historic Grace Church, which is zoned for a variety of uses including apartments, taverns, and parking lots. *Id.*

Finally, the congregation of Holy Spirit Church in Asbury Park was recently forced to abandon the oldest church in the Diocese of Trenton—

a beautiful Gothic-style building that had “shone as a beacon of faith for Catholics along the Asbury Park shoreline since it opened in 1880.” Lois Rogers, *At Closing Mass, Holy Spirit Churchgoers Bid Farewell to Iconic Worship Site*, Trenton Monitor (June 10, 2021), <https://bit.ly/3RhEGXa>. Despite the church’s place as a “centerpiece of . . . community life and family life,” the parish was forced to sell it due to “serious financial challenges” including those imposed by the “costly impact of aging buildings.” *Id.* In fact, the church was sold in part to help afford improvements to maintain the parish’s only other worship site, Our Lady of Mount Carmel. Jennifer Mauro, *Holy Spirit Church Closure to Help Ensure Catholic Presence in Asbury Park*, Trenton Monitor (Dec. 3, 2020), <https://bit.ly/4aYPm3T>. Although Holy Spirit Church was recently spared from the new developer’s plan to demolish it and replace it with luxury condos, the church’s “towering Gothic-style brick sanctuary” and “soaring stained glass windows,” *id.*, are now set to be transformed into a “combination of . . . commercial, retail, and restaurant and eatery spaces.” Kerry Margaret Butch, *Developer to Share Plans for Saving the Holy Spirit Church Building* (Feb. 6, 2024), <https://bit.ly/4cbTwXq>.

In sum, maintaining and preserving even vital historical properties often imposes difficult obstacles to property owners of all kinds. Morris County's grant program offers many property-owners aid, and hope, in this important endeavor. The County cannot deny that aid—and stifle the preservation of many communities' most culturally and historically significant properties—merely because the landowner happens to be religious.

II. Houses of worship offer extensive social services and economic benefit to their surrounding communities, which suffer when those congregations must leave.

The discriminatory exclusion of religious properties from preservation funding harms not only those who worship there, but also the communities surrounding them. Religious groups provide extensive social services and other programming to serve their greater communities. When a congregation is forced to close or to move because it lacks the means to preserve its historic building, the community is deprived of these critical ministries.

Communities across the country depend on the extensive network of social services provided by local houses of worship.² Indeed, more than 90% of congregations that worship in historic houses of worship “actively serve the[ir] larger community.” *Sacred Places at Risk, supra*, at 8. These services benefit some of the most vulnerable populations, including “families, seniors, children and youth, the poor and the homeless, refugees and immigrants.” *Id.* at 11. And they range from prison ministries to support for working families to healthcare to education programs. *Id.* Most historic churches operate food pantries and clothing closets to serve those in need, with another four in ten offering soup

² See, e.g., Karl Zinsmeister, *Less God, Less Giving? Religion and Generosity Feed Each Other in Fascinating Ways*, Philanthropy Roundtable (2019), <https://bit.ly/49LmAom> (churches provide 130,000 alcohol-recovery programs,” “120,000 programs that assist the unemployed,” and “26,000 programs to help people living with HIV/AIDS”); see also Nat’l All. to End Homelessness, *Faith-Based Organizations: Fundamental Partners in Ending Homelessness* 1 (2017) (“Faith-based organizations . . . operat[e], at a minimum, nearly 30 percent of emergency shelter beds for families and single adults at the national level.”); Byron Johnson et al., *Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities* 20–21 (2017) (concluding that, in some cities, religious shelters account for as many as 90% of beds for the homeless); Suzann Morris & Linda K. Smith, Bipartisan Policy Center, *Examining the Role of Faith-Based Child Care* 3 (2021) (more than half of working-parent households who depend on childcare centers send their children to one affiliated with a religious organization).

kitchens for the hungry. *Id.* at 12. Beyond working to meet basic human needs, historic churches also contribute to the culture of their neighborhoods; an estimated 80% offer arts programming. *Id.* at 14. Indeed, while historic churches attract an average of 780 visits each week, only a fraction of those are for worship. *See Economic Halo Effect, supra*, at 4 (11% of visits to historic churches are for worship). Nearly 90% of visits were by those attending events or benefiting from social programs, including childcare and schools. *See id.*

Even “[s]mall churches can make a big impact.” Partners for Sacred Places, *The Economic Halo Effect of Rural United Methodist Churches in North Carolina* 6 (2021). The same is true of rural churches. *See id.* For example, Franklinton United Methodist Church in North Carolina provides meals and other services to those in need, offers abundant programming such as an early childhood education, and creates opportunities to partner with other community-based organizations to contribute to similar efforts. *Id.* at 21. Through these programs, the congregation contributes nearly \$1.2 million to the local economy each year—all with only twenty-five active members. *Id.* at 6, 21. Franklinton’s contributions are certainly significant, but the church’s

efforts are not unusual: One study found the average annual economic value per congregation is more than \$735,000. *See id.* at 19.³

Indeed, nearly every religious congregation provides some social service to its community. *See, e.g.,* Ram A. Cnaan & Femida Handy, *Comparing Neighbors: Social Service Provision by Religious Congregations in Ontario and the United States*, 30 *Am. Rev. Can. Stud.* 521, 529 (2000) (98% of 251 surveyed congregations provide at least one social service). And these programs disproportionately benefit those who are *not* members of the relevant congregation. *See Economic Halo Effect, supra* at 5 (“87% of the beneficiaries of the community programs and events housed in sacred places are not members of the religious congregation.”). In fact, Partners for Sacred Places has estimated that programs offered by urban congregations housed in historic churches benefit more than four nonmembers for every one member benefitted.

³ In urban areas, the average economic impact of a congregation that worships in a historic sacred place is estimated to be more than \$1.7 million annually. *Economic Halo Effect, supra*, at 4; *see also* Mike Wood Daly, Cardus, *The Halo Project Phase One: Valuing Toronto’s Faith Congregations* 24–25 (2016) (concluding that ten churches in Toronto collectively contributed \$45 million CAD to their communities annually, including more than half in counseling, employment programs, crime reduction, immigration and refugee assistance, and substance abuse programs).

Sacred Places at Risk, *supra*, at 8; *see also* Cnaan & Handy, *supra*, at 537. The same is true in rural communities. *See, e.g., Rural Economic Halo Effect*, *supra*, at 6 (72% of beneficiaries of surveyed churches' programs did not belong to congregation).

Consider, as just one example, childhood education programs provided by religious groups. In urban communities, nearly half of a congregation's total economic value is estimated to come from childcare programs and elementary and secondary schools it offers to the local community. *Economic Halo Effect*, *supra*, at 6. Like congregations' other services, educational programs benefit students from a variety of neighborhoods and backgrounds. *Id.* at 7. And daycare programs not only serve children, but also "enable a parent to work"—particularly important, of course, to households who cannot afford for one parent to stay home full time. *Id.* Moreover, these "schools often provide affordable access to private education." *Id.* So too in rural areas, which can be "childcare deserts, where children lack access to licensed childcare." *Rural Economic Halo Effect*, *supra*, at 21. Houses of worship "are important supporters of early childhood education" in such neighborhoods. *Id.* at 15. In short, "[c]ongregations that host[] daycare

or parochial schools provide[] local, inclusive, and affordable places for children to learn”—critical opportunities that would be lost if such congregations were forced to leave. *Economic Halo Effect, supra*, at 7; see also Pls.’ PI Br. at 5 (describing Plaintiff Zion Lutheran’s nursery school).

The effect of a house of worship’s closure thus extends far beyond those who gather and pray in that sacred place. When congregations must leave their historic properties because of unaffordable maintenance and repair costs, their local communities are deprived of the extensive benefits and services they offer. In other words, these sacred places no longer provide “outsized civic value . . . to the larger community.” *Rural Economic Halo Effect, supra*, at 5. Indeed, after two congregations studied by Partners for Sacred Places closed, their communities lost more than \$1.1 million per year. *Economic Halo Effect, supra*, at 22. And that harm is not merely economic. For example, the closure of Catholic schools, which serve as “stabilizing forces in urban neighborhoods,” has been found to “lead to less socially cohesive, and more disorderly, neighborhoods”—in short, these religious communities often anchor community life itself. Margaret F. Brinig & Nicole Stelle Garnett, *Lost*

Classroom, Lost Community: Catholic Schools' Importance in Urban America 71 (2014).

These consequences impose significant burdens on the public as a whole and especially those most in need. This Court should act now to safeguard those communities and to forestall such wide-ranging harms—which can never fully be remedied once they have occurred. *See* Pls.' PI Br. at 33–34.

CONCLUSION

Amicus curiae respectfully urges this Court to enter a preliminary injunction to prohibit Morris County from enforcing the discriminatory exclusion of religious organizations from historic preservation grant programs.⁴

⁴ *Amicus curiae* thanks Alicia Armstrong, Sakethram Desabhotla, and Christopher Ostertag, students in Notre Dame Law School's Religious Liberty Clinic, for their assistance with this brief.

Dated: June 11, 2024

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CERTIFICATE OF SERVICE

I certify that on June 11, 2024, I electronically filed the foregoing brief and accompanying papers with the Clerk of the U.S. District Court for the District of New Jersey. Counsel for all parties will be served via CM/ECF.

Dated: June 11, 2024

Respectfully submitted,

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