

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ROMAN CATHOLIC DIOCESE OF SPRINGFIELD,)	
as Corporation Sole,)	
Plaintiff)	
)	
v.)	Civil Action No. 10-30033-MAP
)	
CITY OF SPRINGFIELD, et al.,)	
Defendants)	
)	
_____)	

**SPRINGFIELD’S MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF
SPRINGFIELD’S CROSS-MOTION FOR SUMMARY JUDGMENT**

The defendants, City of Springfield, Massachusetts (“City”), Dominic J. Sarno, in his official capacity as the City’s mayor (“Mayor Sarno”), the Springfield City Council (“City Council”), Patrick J. Markey, William T. Foley, Rosemarie Mazza-Moriarty, Timothy J. Rooke, Bruce W. Stebbins, Jose Tosado, Kateri Walsh, Bud L. Williams , and James J. Ferrera, III, in their official capacity as city councilors (collectively called “Springfield”) submit this Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of Springfield’s Cross-Motion for Summary Judgment.

I. FACTUAL BACKGROUND

Plaintiff's¹ suit challenges the facial validity of the enactment of Springfield's Our Lady of Hope ("OLOH") Historic District Ordinance on constitutional and statutory grounds. The factual background for Springfield's actions is contained in the Springfield's Response to Plaintiff's Facts and Defendants' Supplementary Statement of Material Facts², and is supported by the affidavits with exhibits of Robert S. McCarroll³ and Scott Hanson⁴.

Under the Massachusetts Historic District Act⁵ and Springfield City Ordinances properties within a historic district are given architectural protection by the Springfield Historical Commission. The Historic District Act and local historic districts created thereunder protect any exterior architectural feature visible from the public street or park. Before any change to an exterior architectural feature within a local historic district may take place, approval must be sought from the Historical Commission. There is an application process by which the Commission may issue one of three types of certificates

¹ Plaintiff, the Roman Catholic Bishop of Springfield (the "RCB"), is "a corporation sole created by Chapter 368 of the Acts of the Massachusetts General Court of 1898." Plaintiff's Statement of Undisputed Material Facts ("Pl's Facts") # 2.

² Springfield's Response to Plaintiff's Statement of Undisputed Material Facts and Defendants' Supplementary Statement of Material Facts ("Springfield's Response") is attached hereto and incorporated herein by reference.

³ The affidavit of Robert S. McCarroll ("McCarroll Aff.") is attached hereto and incorporated herein by reference as Exhibit A.

⁴ The affidavit of Scott Hanson ("Hanson Aff.") is attached hereto and incorporated herein by reference as Exhibit B.

⁵ Chapter 40C of the Massachusetts General Laws "shall be known and may be cited as the Historic Districts Act." M.G.L. ch. 40C, § 1.

to allow changes within historic districts: 1) APPROPRIATENESS – issued for those changes that are in conformance with guidelines and/or are acceptable for the district; 2) HARDSHIP – issued for those changes that are not appropriate, but which may be necessary due to economic, physical, social, or other special conditions; and 3) NON-APPLICABILITY – issued for those changes which affect features not controlled by the Commission.

Instead of filing an application for one of the aforementioned certificates, which is required of any owner of property within a historical district who seeks to make exterior architectural changes, the plaintiff has chosen to challenge the constitutionality of the OLOH Ordinance under the State and Federal constitutions, and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000 cc et seq. (“RLUIPA”).

As noted in the affidavit of Robert S. McCarroll the OLOH Historic District was created pursuant to Springfield Ordinances enacted under authority of the Historic District Act.

In 2001, the City of Springfield commissioned a historic survey of the Liberty Heights neighborhood. It was conducted by Bonnie Parson, preservation planner for the Pioneer Valley Planning Commission. Our Lady of Hope Church (“OLoH”) was included in that survey. A true and authentic copy of the survey completed by Ms. Parsons is attached to Exhibit A and incorporated herein by reference as Exhibit 2.

As noted in the survey of Ms. Parsons, the building meets the criteria for eligibility for the National Register of Historic Places, the federal listing of places important to the nation, state, or locality, as the first parish church for Irish immigrants of the Hungry Hill section of Springfield when population spread far enough north of the

city to make Sacred Heart too far and too crowded. Established in 1906, the parish has continuously served as the religious, education and social, and civic center for Hungry Hill's Catholic residents, most of whom have been among successive waves of immigrants to the city. See Exhibit A, Ex. 2, National Register of Historic Places Criteria Statement Form.

The OLoH church is an imposing Italian Renaissance style structure at the corner of Carew Street, a major east/west thoroughfare, and Armory Street, a north/south connector. Not only is the building seen in the immediate neighborhood, but its 145-foot tower can be seen for a distance, such as from the North End bridge as one enters the City from West Springfield.

As noted in Exhibit A, Ex. 2, the OLoH church was designed by Springfield architect John Donohue, who was active throughout central and western Massachusetts designing many of Roman Catholic churches, schools, parish houses, rectories and social centers. Construction began in 1925 and was completed in 1938. See Exhibit A, Ex. 2.

On September 3, 2009, State Representative Sean Curran attended a SHC meeting and requested that the SHC begin the process to recommend that OLoH be designated a LHD by the City Council. The SHC voted to start a Preliminary Report, as required by MGL Chapter 40C. See copy of minutes "Meeting Summary" and copy of letter from Sean Curran dated September 3, 2009 attached to Exhibit A and incorporated herein by reference as Exhibit A, Ex. 3.

The Report was completed; and on September 17, 2009, the SHC voted to submit it to the MHC for its review. See copy of minutes "Meeting Summary" and copy of

Preliminary Report dated September 17, 2009 a true and authentic copy of which is attached as Exhibit A hereto and incorporated herein by reference as Ex. 4.

On September 3, 2009, the MHC voted to recommend that the City proceed with the creation of the LHD. See copy of minutes "Meeting Summary" and correspondence from the Massachusetts Historical Commission dated October 19, 2009 a true and authentic copy of which is attached hereto as Exhibit A and incorporated herein by reference as Ex. 5.

On December 3, 2009, the SHC held a public hearing, after having notified the property owner listed in the Assessors records as required by MGL Chapter 40C. See copy of minutes "Meeting Summary" a true and authentic copy of which is attached hereto as Exhibit A and incorporated herein by reference as Ex. 6.

33. I attended the hearing along with other SHC members. The hearing was attended by a large number of people. Many spoke in favor of creating a LHD. The legal representative of the Roman Catholic Bishop spoke against creating the LHD. After testimony before the SHC, a motion was made and seconded to make the Preliminary Report into a Final Report and to send it to the City Council. After discussion, the motion was unanimously voted. See copy of minutes "Meeting Summary" a true and authentic copy of which is attached hereto as Exhibit A and incorporated herein by reference as Ex. 6.

OLOH is not the only Historic District in Springfield which contains a place of worship and Springfield is not the only municipality in the commonwealth with places of worship in local historic districts. As noted in Exhibit A, McCarroll Affidavit:

Springfield created the Quadrangle-Mattoon Street LHD, its first district under MGL Chapter 40C, in 1972. Within its boundaries and subject to its exterior controls are Christ Church Episcopal Cathedral and Hispanic Baptist Church (Grace Baptist Church at the time of enactment).

Springfield created the Forest Park Heights LHD in 1975. Within its boundaries and subject to its exterior controls are Faith United Church, Kodimoh Synagogue, and First Park Memorial Baptist Church. Additionally at the time of the establishment of the LHD, there was an estate owned by the Congregation of Saint Vincent DePaul, a Roman Catholic order commonly known as the Vincentian Fathers; the property was sold in 1984 to a private person.

Springfield created the McKnight LHD in 1976. Within its boundaries and subject to its exterior controls are Saint Peter's Episcopal Church, Holy Temple Church, Christian Hill Baptist Church, Faith Baptist Church, and Huong Sun Meditation Temple, a Buddhist group.

Springfield created the Lower Maple LHD in 1977. Within its boundaries and subject to its exterior controls is South Congregational Church.

The City of Springfield created the Maple Hill LHD in 1977. Within its boundaries and subject to its exterior controls is The Church of Jesus Christ of Latter Day Saints, also known as the Mormons. Additionally at the time of the establishment of the LHD, there was Ursuline Academy, a school operated by the Ursuline Sisters, a Roman Catholic order. The property was sold in 1984 to the Glorious Gospel Church but is now owned by Holyoke-Chicopee-Springfield Head Start.

The Massachusetts Cultural Resource Information System (“MACRIS”) allows a search of the Massachusetts Historical Commission database for information on historic properties and areas in the Commonwealth. I have researched the MACRIS database. It reveals that a number of communities in Western Massachusetts have religious institutions located within the boundaries of their respective Local Historic Districts.

In 1972, Longmeadow created a LHD, which contains the First Church of Christ, Congregational.

In 1972, West Springfield created a LHD, which contains the First Congregational Church.

In 1975, Lenox created a LHD, which contains Saint Anne’s Roman Catholic Church, Church on the Hill, and Trinity Episcopal Church.

In 1979, Granby created a LHD, which contains the Immaculate Heart of Mary Roman Catholic Church and the Church of Christ.

In 1990, Belchertown created a LHD, which contains the Saint Francis Roman Catholic Church, Hope United Methodist Church, and the Congregational Church.

In 1991, Chicopee created a LHD, which contains the Assumption of Mary Roman Catholic Church, Holy Name of Jesus Roman Catholic Church, Christ’s Community United Church of Christ, and Grace Episcopal Church.

In 1994, Northampton created a LHD, which contains the Saint Mary of the Assumption Roman Catholic Church, Blessed Sacrament Roman Catholic Church, and Saint John’s Episcopal Church.

In 1995, Great Barrington created a LHD, which contains the First Congregational Church.

Mr. McCarroll searched MACRIS for communities beyond Western Massachusetts with local historic districts in which was a resource containing “catholic church” in its description. He then searched the Internet for church web sites or web presence.⁶ The results of that research exercise produced the list below:

Our Lady of Hope Catholic Church in Barnstable
Saint Andrew’s Catholic Church in Billerica
Cathedral of the Sacred Heart in Boston
Our Lady of the Cape Catholic Church in Brewster
Our Lady Help of Christians Catholic Church in Concord (closed 2004)
Saint Elizabeth’s Catholic Church in Edgartown
Sacred Heart Catholic Church in Groton (closed 2009)
Sacred Heart Catholic Church in Lexington
Saint Joseph’s Catholic Church Lowell (now a Shrine)
Mary Immaculate of Lourdes Catholic Church in Natick
Our Lady Star of the Sea Catholic Church, Oak Bluffs
Saint Peter’s Catholic Church in Plymouth
Saint James’ Catholic Church in Salem
Saint John’s Catholic Church in Townsend
Saint Mary’s Catholic Church in Uxbridge.

While plaintiff has brought a facial challenge to the OLOH Historic District no such challenge has been brought with regard to any of the other local historic districts in the commonwealth containing property owned by the Roman Catholic Church or any other religious denomination. Recently the plaintiff submitted to the jurisdiction of the City of Northampton Historic Commission by filing an application to demolish a building on its property.⁷

II. ARGUMENT

A. THE THRESHOLD PROCEDURAL ISSUES

⁶ Exhibit A, McCarroll Aff. ¶24.

⁷ Ex. 8 attached to Exhibit A, McCarroll Aff.

Before discussing the substance of plaintiff's assertions we turn first to two procedural issues that should be addressed.

1. Claims against named individuals are redundant and should be dismissed

Plaintiff sued the city and the individual defendants in their official capacities. Plaintiff's claims against the individuals in their official capacities are redundant because suits against municipal agents in their official capacities are actually suits against the municipality.⁸ To allow plaintiff to sue both the City and its agents would essentially allow the plaintiff to sue the City twice for the same set of allegations. Accordingly, courts have routinely dismissed claims against municipal agents in such cases.

2. The City is not a person under the Massachusetts Civil Rights Act (MCRA)

Massachusetts courts have indicated that a municipality is not a "person" within the terms of the MCRA and, as such, cannot be sued under the statute.⁹ Consequently, the City cannot be liable for a MCRA violation in this case and the individuals, who are only sued in their official capacities, are not proper parties under the State Civil Rights Act. As such, that claim must be dismissed in its entirety and Defendants are entitled to summary judgment on such claims.

⁸ *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985) (stating that "[p]ersonal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits, in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent. As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity.") (citations and internal quotation marks omitted).

⁹ *Howcroft v. City of Peabody*, 51 Mass. App. Ct. 573, 591-92 (2001) (concluding "that a municipality is not a 'person' covered by the Massachusetts Civil Rights Act (MCRA), G. L. c. 12, §§ 11H, 11P").

B. THE GENERAL CONSTITUTIONAL RULE

1. Defendants are entitled to summary judgment on Plaintiff's facial constitutional challenge.

A basic principle of constitutional law is that the First Amendment “free exercise clause embraces two separate concepts—freedom to believe and freedom to act. The first is absolute but, . . . the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection.”¹⁰ Laws which regulate conduct rather than speech generally fall outside the First Amendment and into an area over which government enjoys full regulatory power. The Supreme Court has:

“never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary ... more than a century of our free exercise jurisprudence contradicts that proposition.”¹¹

Although the application of the OLOH Historic District Ordinance may have some minimal impact upon “the unfettered autonomy” plaintiff “would otherwise enjoy,” plaintiff’s “generalized and diffuse concern for church autonomy, without more, does not

¹⁰ *Attorney Gen. v. Bailey*, 386 Mass. 367, 375 (1982) (citations and internal quotation marks omitted); *see also Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971) (pointing out that prior precedent does “not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. Fire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws are examples of necessary and permissible contacts.... Judicial caveats against entanglement must recognize that the line of separation, far from being a ‘wall,’ is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.”) (citations omitted).

¹¹ *Employment Div. v. Smith*, 494 U.S. 872, 878-79 (1990) (footnote omitted).

exempt” plaintiff “from the operation of secular laws.”¹² Under well established Supreme Court precedents, because the Historic Districts Act and the OLOH Historic District Ordinance are laws “of general application” and are “not targeted at religion,” they are “subject only to rational basis scrutiny” even if they “may have an incidental effect of burdening religion.”¹³

2. *The facial challenge is not ripe for judgment*

Plaintiff challenges the facial validity of Springfield’s the OLOH Ordinance.¹⁴ “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.”¹⁵ The Supreme Court has noted:

Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "anticipate a question of constitutional law in advance of the necessity of deciding it" nor "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "[a] ruling of unconstitutionality frustrates the intent of the elected

¹² *Soc’y of Jesus of New Eng. v. Commonwealth*, 441 Mass. 662, 668 (2004) (citations and internal quotation marks omitted).

¹³ *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1031 (9th Cir. 2004).

¹⁴ Plaintiff’s Memorandum Of Law In Support Of Motion For Summary Judgment (“Pl’s Mem.”) 1.

¹⁵ *United States v. Salerno*, 481 U.S. 739, 745 (1987).

representatives of the people." It is with these principles in view that we turn to the merits of respondents' facial challenge.¹⁶

In this case, plaintiff cannot carry the heavy burden of demonstrating that the OLOH Historic District Ordinance is facially unconstitutional. Springfield did not prohibit all religious exercise anywhere within its municipal boundaries by the plaintiff. In fact, plaintiff admits to circumstances in which the OLOH Historic District Ordinance allows adequate alternative means of religious expression; "the Parish was merged with St. Mary's Parish, East Springfield, under a new name, St. Mary Mother of Hope Parish."¹⁷ Merely designating a building as historical is not an infringement of any constitutional right because the designation itself does nothing to restrict religious practice. Plaintiff's facial challenge to the OLOH Historic District Ordinance must fail because the challenged Ordinance has a plainly legitimate sweep. Moreover, an issue ordinarily is not ripe for decision until a landowner has requested permission to act and been denied the right to act, or has suffered actual and present harm as a result of the designation.¹⁸

¹⁶ *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008) (citations omitted).

¹⁷ PI's Facts # 23.

¹⁸ *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530, 535-37 (1st Cir. 1995) (discussing the ripeness doctrine and, among other things, stating that its basic rationale "is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. While the doctrine has a prudential flavor, a test for ripeness is also mandated by the constitutional requirement that federal jurisdiction extends only to actual cases or controversies. Consequently, although a court may, within stated limits, dismiss declaratory judgment actions in its discretion, a court has no alternative but to dismiss an unripe action.") (citations, internal quotation marks and footnotes omitted); *see also Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349 (2d Cir. 2005) (stating that "prong-one ripeness reflects the judicial insistence that a

Since the constitutional issues of concern to the plaintiff have not been tested by seeking permission from the Springfield Historical Commission, they are not ripe for decision at this time and this court should reject plaintiff's request to adjudicate those issues based only on anticipatory expectations of problems which may never arise.

"Irrespective of plaintiff's status as a church, the ultimate determination of the constitutional issue must depend on future developments and particularly on what action the Commission takes with respect to plaintiff's renovation plans."¹⁹ Defendants are entitled to summary judgment based upon these prudential concerns.

C. THE OLOH HISTORIC DISTRICT IS PRESUMED CONSTITUTIONAL AND VALID.

A consistently followed general rule for judicial review "of municipal by-laws and ordinances is that every presumption is to be made in favor of their validity, and that their enforcement will not be refused unless it is shown beyond reasonable doubt that they conflict with the applicable enabling act or the Constitution."²⁰ The usual approach involves an inquiry into:

federal court know precisely how a property owner may use his land before attempts are made to adjudicate the constitutionality of regulations purporting to limit such use."

¹⁹ *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 524 (1986) (citations omitted); *Id* 521-23 (1986) (discussing whether plaintiff's claim of constitutional harm was ripe where plaintiff did "not directly challenge or seek to review the Commission's act of designating its property as a landmark. The claim is that the Landmarks Law, as made applicable to plaintiff by virtue of the designation, is unconstitutional because of the effect of that statute in obstructing or interfering with plaintiff's rebuilding program and subjecting plaintiff to immediate repair and maintenance requirements which carry criminal sanctions" finding for "several reasons, the controversy is not ripe.").

²⁰ *Crall v. Leominster*, 362 Mass. 95, 101-102 (1972) (citations omitted); *cf. Springfield Pres. Trust, Inc. v. Springfield Library & Museums Ass'n*, 447 Mass. 408, 418 (2006) (stating that local "regulations are presumed valid, unless they exceed the authority conferred by the enabling statute or the Home Rule Amendment (art. 89 of the Amendments to the Massachusetts Constitution). A municipality may have powers not

whether the challenged measure bears a rational relation to any permissible public object which the legislative body may plausibly be said to have been pursuing. Under this standard, any possible permissible legislative goal which may rationally be furthered by the regulation will support a measure's constitutionality.²¹

Ordinarily a municipality's reason for creating a new historic district is not reviewable.²² The record here reveals a reasonable basis for the enactment of the OLOH Historic District. It was created to "protect the architectural integrity of Our Lady of Hope Church, which is scheduled to be closed and is possibly threatened by demolition."²³ As the Planning Department report pointed out:

Our Lady of Hope Church is slated to be closed by the Diocese of Springfield at the end of 2009. The last church to be closed in Springfield was St. Joseph's Church located on East Columbus Avenue. Although listed on the National Register of Historic Places, it was sold to a

expressly granted in an enabling statute, if they are "essential and not merely convenient to the implementation of express powers conferred by statute." Plaintiffs bear a heavy burden in demonstrating that a local ordinance exceeds statutory authority.") (citations omitted).

²¹ *Sturges v. Chilmark*, 380 Mass. 246, 257 (1980) (citations omitted).

²² *Springfield Pres. Trust, Inc. v. Springfield Library & Museums Ass'n*, 447 Mass. 408, 419 (2006) (stating that the Historic District "Act gives municipalities unfettered discretion whether to establish a historic district and, if so, what lands, buildings, and structures to include in that district. No matter how great its historic or architectural significance, nothing compels a municipality to include a particular property within a historic district, and nothing in the Act limits the permissible reasons for placing a particular property or properties outside the district. Properties may be excluded from a historic district either by the placement of the boundary lines pursuant to § 3, or they may be made exempt from review based on whether they can be seen from particular locations pursuant to § 8 (c). Thus, when a historic district is created, the municipality may vote to exclude or exempt whatever properties it wishes, and its reasons for doing so -- i.e., on account of who owns a particular property -- are beyond review.") (citation omitted).

²³ See Ex.4 to Exhibit A, McCarroll Affidavit, FINAL REPORT FOR THE PROPOSED OUR LADY OF HOPE LOCAL HISTORIC DISTRICT SPRINGFIELD, MASSACHUSETTS PREPARED FOR THE SPRINGFIELD HISTORICAL COMMISSION BY THE OFFICE OF PLANNING & ECONOMIC DEVELOPMENT DECEMBER 8, 2009 ("FINAL REPORT") p. 2.

developer and demolished for a strip commercial complex. This proposed local historic district is being proposed to avoid the same possible fate for Our Lady of Hope.²⁴

As noted in the record, the OLOH site is significant to the history of Springfield.²⁵ Since its establishment in 1906, the OLOH site has continuously served as: “the religious, educational, social and civic center of Hungry Hill's Catholic residents, most of who have been among successive waves of immigrants to the City.”²⁶

Built in 1925, Our Lady of Hope Church represents the best work of the Springfield architect John Donohue who was active throughout central and western Massachusetts designing many of the churches, schools, parish houses, rectories and social centers for the Roman Catholic Church. It is also significant as a well-preserved example of the Italian Renaissance design favored by the Catholic Church to suggest its spiritual foundation in that country.²⁷

The OLOH Historic District Ordinance should be construed to make it a legally valid piece of local legislation.²⁸

D. THE OLOH ORDINANCE DOES NOT CONTROL RELIGIOUS SYMBOLS.

Plaintiff's constitutional claims are based in large part upon the erroneous contention that the OLOH Ordinance purports to control plaintiff's religious symbols.

²⁴ FINAL REPORT at 3.

²⁵ Exhibit A, McCarroll Affidavit at ¶ 26.

²⁶ FINAL REPORT at 4, Exhibit A, McCarroll Affidavit at ¶ 26.

²⁷ FINAL REPORT at 4.

²⁸ *Springfield Pres. Trust, Inc. v. Springfield Library & Museums Ass'n*, 447 Mass. 408, 422-23 (2006) (observing that just “as we interpret statutes in a manner that avoids rendering them unconstitutional, we should interpret an ambiguous ordinance in a manner that avoids violating its enabling statute.”) (citations omitted).

“[A] Latin cross is not merely a reaffirmation of Christian beliefs.”²⁹ “Our Lady of Hope was a central meeting point as religious, social and civic center for Hungry Hill residents. In 1945 with the end of World War II it was at the church that a Servicemen's honor roll was erected to name all the 1000 young parish members who served, placing stars by those from Hungry Hill who had died.”³⁰ Simply because the exterior architectural features of the OLOH property may have some “religious content” or promote “a message consistent with a religious doctrine” does not make them “run afoul of the Establishment Clause.”³¹ In the context of the OLOH Ordinance, the exterior architectural features have a dual significance partaking of both religion and government.

“The goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm. A cross by the side of a public highway marking ... need not be taken as a statement of governmental support for sectarian beliefs. The Constitution does not oblige government to avoid any public acknowledgment of religion's role in society. Rather, it leaves room to accommodate divergent values within a constitutionally permissible framework.”³²

²⁹ “It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people. Here, one Latin cross in the desert evokes far more than religion. It evokes thousands of small crosses in foreign fields marking the graves of Americans who fell in battles, battles whose tragedies are compounded if the fallen are forgotten.” *Salazar v. Buono*, 130 S. Ct. 1803, 1820 (2010).

³⁰ FINAL REPORT, unnumbered continuation sheet re: Historical Narrative.

³¹ *Van Orden v. Perry*, 545 U.S. 677, 690 (2005) (citations omitted). None of the three main evils against which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in religious activity” are implicated by the OLOH Historic District Ordinance because it has “a secular legislative purpose”; “its principal or primary effect” is “one that neither advances nor inhibits religion”; and it does “not foster an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (citations and internal quotation marks omitted).

³² *Salazar v. Buono*, 130 S. Ct. 1803, 1818-19 (2010) (citations omitted).

In 1898, plaintiff transformed itself into a “body politic and corporation sole” and thereby became “subject to all the liabilities and limitations imposed by the Public Statutes.”³³ By the 1898 Act plaintiff was empowered to acquire, hold, manage and dispose of real and personnel property “subject to the laws of the Commonwealth.”³⁴ In this connection it is worth remembering that:

Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.³⁵

Plaintiff does not challenge the OLOH Historic District to use the OLOH site exclusively for religious purposes. Although the plaintiff retains title³⁶ to the OLOH property, it is no longer used as a place of sacred worship. In fact, plaintiff admits that “the Our Lady of Hope Church was closed”³⁷, its assets “were transferred” and “the Church [is] out of service with respect to religious worship.”³⁸

³³ 1898 ACTS ch. 368 § 1.

³⁴ 1898 ACTS ch. 368 § 2.

³⁵ *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990) (citation and internal quotation marks omitted).

³⁶ *Salazar v. Buono*, 130 S. Ct. 1803, 1819 (2010) (stating that as “a general matter, courts considering Establishment Clause challenges do not inquire into ‘reasonable observer’ perceptions with respect to objects on private land.”).

³⁷ Pl’s Facts # 23.

³⁸ Pl’s Facts # 24.

The closing of the OLOH property for religious purposes terminated use of the exterior architectural features of the OLOH property as sacred religious symbols. Religious symbolism is the use of symbols by a religion. Upon closing the OLOH Church, its former religious symbols were “reduced to profane (non-sacred) use.”³⁹ The object of the Historic Districts Act and the OLOH Ordinance is to protect the exterior architectural features of historically significant buildings and places. It is not to infringe upon or restrict practices because of their religious motivation. Springfield is not doing anything but regulating in a content neutral manner the exterior architectural features of the OLOH Historic District. The OLOH Ordinance governs actions and while it cannot interfere with plaintiff’s religious belief and opinions, the Ordinance may interfere with plaintiff’s practices. The OLOH Ordinance does not interfere with plaintiff in the performance of any religious rituals or Catholic ceremonies of worship. The OLOH Ordinance does not suppress the Catholic religion or religious conduct. The OLOH Ordinance neither encourages nor discourages participation in religious life. To permit plaintiff to excuse illegal alteration of the exterior architectural features of the OLOH Historic District because of his religious beliefs “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”⁴⁰

Assuming, *arguendo*, that the OLOH Ordinance limits plaintiffs “ability to raise revenues to carry out its various charitable and ministerial programs” by lessening the

³⁹ Pl’s Facts # 34.

⁴⁰ *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990) (citations and internal quotation marks omitted).

fair market value of land that could be valuable if put to commercial uses, nevertheless, “we understand Supreme Court decisions to indicate that neutral regulations that diminish the income of a religious organization do not implicate the free exercise clause.”⁴¹ This Court should reject plaintiff’s challenge under the Free Exercise Clause to the OLOH Ordinance because regulation of the OLOH property does not impede the observance of plaintiff’s religion or discriminate invidiously against that religion.⁴² The Free Exercise Clause is inapplicable in this case because the OLOH Ordinance does not promote or restrict religious beliefs.

The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all “governmental regulation of religious beliefs as such.” The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.⁴³

Although the “door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such” Springfield is not compelling affirmation “of a repugnant belief” nor penalizing or discriminating “against individuals

⁴¹ *Rector, Wardens, & Members of Vestry of St. Bartholomew's Church v. New York*, 914 F.2d 348, 355 (2d Cir. 1990).

⁴² *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993) (citations omitted) (stating that “the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons”).

⁴³ *Employment Div. v. Smith*, 494 U.S. 872, 876-77 (1990) (citations omitted).

or groups because they hold religious views abhorrent to the authorities”; nor employing its limited taxing “power to inhibit the dissemination of particular religious views.”⁴⁴

The Catholic religion does not forbid compliance with the OLOH Historic District Ordinance. Plaintiff will not be subject to substantial pressure to modify his behavior and violate his religious beliefs in order to comply with the OLOH ordinance. The “routine regulatory interaction which involves no inquiries into religious doctrine, no delegation of state power to a religious body, and no detailed monitoring and close administrative contact between secular and religious bodies does not of itself violate the nonentanglement command.”⁴⁵ Substantial alteration or complete destruction of abandoned religious exterior architectural features, without compliance with the OLOH Ordinance, is not a constitutionally protected form of religious exercise. Springfield’s modest and reasonable restrictions on the exterior architectural features of the OLOH property are intended to promote the educational, cultural, economic and general welfare of the public, through the preservation and protection of the distinctive characteristics of OLOH property which is significant in the history of Springfield; they do not constitute governmental regulation of plaintiff’s religious beliefs. After all “a religious institution, no less than any other group, must comply with reasonable regulations designed to preserve a comfortable, desirable community.”⁴⁶

⁴⁴ *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963) (citations and footnote omitted).

⁴⁵ *Hernandez v. Comm'r*, 490 U.S. 680, 696-97 (1989) (citations and internal quotation marks omitted).

⁴⁶ *Boyajian v. Gatzunis*, 212 F.3d 1, 6 (1st Cir. 2000) (citation and footnote omitted). The fact that the Legislature did not exempt churches from the Historic District Act as it did from the zoning law through the Dover Amendment reveals the legislative intent to extend historic protection to the exterior architectural features of property owned by