

STAMP AND RETURN

No. _____

In the Supreme Court of the United States

MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS, THE MORRIS COUNTY
PRESERVATION TRUST FUND REVIEW BOARD, JOSEPH A. KOVALCIK, JR., IN HIS OFFICIAL
CAPACITY AS MORRIS COUNTY TREASURER,

Applicants,

v.

FREEDOM FROM RELIGION FOUNDATION AND DAVID STEKETEE,

Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO FOR
AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEW JERSEY**

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JULY 31, 2018

Counsel for Applicants

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit Court of Appeals:

Pursuant to Supreme Court Rule 13.5, Applicants The Presbyterian Church in Morristown, First Presbyterian Church of New Vernon, St. Peter's Episcopal Church, First Reformed Church of Pompton Plains, Church of the Redeemer, Community of St. John the Baptist, Stanhope United Methodist Church, Church of the Assumption of the Blessed Virgin Mary, First Presbyterian Church of Boonton, St. Peter's Episcopal Church in Mountain Lakes, Ledgewood Baptist Church, and Community Church of Mountain Lakes (hereafter, collectively the "Defendant Churches") respectfully request that the time to file a petition for a writ of certiorari in this matter be extended for 30 days up to and including Wednesday, September 19, 2018. The New Jersey Supreme Court issued its opinion on April 18, 2018. *Freedom From Religion Found. v. Morris Cty. Bd. of Chosen Freeholders*, 181 A.3d 992 (N.J. 2018) (App. A). It filed its denial of a motion for rehearing on May 21, 2018 (App. B). Absent an extension of time, the petition would be due on August 20, 2018. Petitioner is filing this application at least ten days before that date. See S. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1257.

BACKGROUND

Since 2002, Morris County, New Jersey has overseen a program funding grants for the preservation of historic buildings, including historic churches. *Freedom From Religion Found. v. Morris Cty. Bd. of Chosen Freeholders*, 181 A.3d 992, 994-95 (N.J. 2018) (App. A at 5). Grants awarded to religious institutions are

limited to use for funding preservation plans, construction documents and construction work to preserve historic church exteriors. *Id.* at 995 (App. A at 5-6). Grants cannot be used for routine repairs or operating expenses, and grant recipients must demonstrate the financial ability to support the long-term maintenance and preservation of the property through the term of a thirty-year conservation easement. Recipients are “required to provide public access” to the funded properties during hours negotiated with the County. *Id.* (App. A at 6).

Respondents Freedom From Religion Foundation (FFRF) and David Steketee challenged the grant program in a lawsuit against Morris County Board of Chosen Freeholders, the County’s grant review board, and the County Treasurer (hereinafter, collectively the “County Defendants”). The Defendant Churches were grant recipients and were also named as defendants. Respondents claimed that the grant program was unconstitutional under N.J. Const. Art. I, ¶ 3, which provides that “No person shall * * * be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.” Applicants argued, *inter alia*, that interpreting Art. I, ¶ 3 to exclude churches from a generally available public benefits programs would violate the United States Constitution.

The Superior Court of New Jersey granted summary judgment in favor of the County Defendants and Defendant Churches and upheld the historic preservation grant program under the New Jersey Constitution, in part to comply with federal

free exercise law. The New Jersey Supreme Court, however, struck the grants under the New Jersey Constitution. The New Jersey Supreme Court acknowledged the Supreme Court’s recent decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), but held that the Morris County churches with “active congregations” had to be denied grants to avoid the possibility that public funds would be used to “repair church buildings” for the purpose that “religious worship services can be held there.” *Freedom From Religion Found.*, 181 A.3d at 1009-10. The Defendant Churches petitioned for rehearing, and on May 21, 2018, the New Jersey Supreme Court denied the petition.

This case presents a strong candidate for certiorari. The New Jersey Supreme Court’s decision cannot be reconciled with this Court’s precedent. It also conflicts with the decisions of other federal circuit and state supreme courts that have permitted government funds for preservation or restoration of religious historic buildings—including active houses of worship—on equal terms with other historic buildings, in part because denying such funding would violate the Free Exercise Clause. In addition, if left in place, the New Jersey Supreme Court decision compels discrimination against religious organizations and will lead to the degeneration of many historic sites that play a significant role in the culture and economy of communities in Morris County and throughout New Jersey.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for 30 days for these reasons:

1. There is a significant commonality of interest between each of the Defendant Churches, as participants in the County Defendants' challenged grant program, and the County Defendants, whose desire to have the Defendant Churches participate in that program has been blocked by the decision below. Throughout this litigation the Defendant Churches, who have been jointly represented by pro bono counsel, have coordinated with the counsel retained by the County Defendants.

2. The County Defendants are presently represented by the Becket Fund for Religious Liberty. While the Becket Fund filed an amicus brief in the New Jersey Supreme Court, it was not counsel for the County Defendants in the lower courts and did not participate in the briefing. Accordingly, the County Defendants recently filed an application to extend their time to file a petition for certiorari by 30 days, to and including September 19, 2018, as their counsel requires additional time to assess the record and to prepare a petition.

3. The Defendant Churches request the same extension to provide sufficient time to research and fully address the important issues raised by the proceedings below in coordination with new counsel for the County Defendants, and to ensure that the petitions for certiorari filed by the County Defendants and the Defendant Churches are on the same schedule.

4. No inefficiency or prejudice would arise from the extension, as this Court would likely hear oral argument and issue its opinion in the October 2018 Term regardless of whether an extension is granted.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended 30 days up to and including September 19, 2018.

Respectfully submitted.



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