UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA,	*	CIVIL ACTION:
Plaintiff,	*	
v.	*	SECTION
KATHLEEN BABINEAUX BLANCO, Governor of Louisiana, in her official capacity; JOHN NEELY KENNEDY, State Treasurer, in his official capacity,	*	MAGISTRATE:
Defendants.	*	

* *

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER / PRELIMINARY INJUNCTION

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INTRODUCTION

The Framers of the Constitution and the courts of the United States have long recognized that religious liberty flourishes best when government neither interferes with the beliefs of any person or group nor taxes individuals to support religion. *See, e.g.*, *Everson v. Bd. of Educ.*, 330 U.S. 1, 12 (1947) (quoting James Madison, *Memorial & Remonstrance Against Religious Assessments*, in II WRITINGS OF JAMES MADISON 183). This fundamental precept, codified in the First Amendment to the United States Constitution and applied to the states by the Fourteenth Amendment, prohibits the government from subsidizing churches and other houses of worship. Although, in certain circumstances, the government may work with religiously affiliated groups through neutral programs that provide secular social services, the Establishment Clause does not permit state legislatures to handpick preferred faith institutions and direct state taxpayer funds to support their religious facilities and activities. The State of Louisiana, however, has done precisely that.

House Bill 1, a general budget bill passed by the Louisiana Legislature and signed into law by Governor Blanco as Act 18 on July 12, 2007, ("House Bill 1"), appropriates State General Fund money to Stonewall Baptist Church of Bossier City ("Stonewall Baptist Church") and Shreveport Christian Church without explanation or restriction. *See* 2007 La. Acts 18; H.B. 1, 2007 Leg., Reg. Sess. (La. 2007). Plaintiff American Civil Liberties Union Foundation of Louisiana (ACLU-LA) respectfully requests that the Court order the Defendants to halt payment

of taxpayer funds to these churches, or, to the extent that the money has already been disbursed, direct the Defendants to recoup the appropriated funds.[1]

BACKGROUND

House Bill No. 1 is a general appropriations bill, also referred to as a major budget bill, passed by the Legislature of the State of Louisiana and signed into law by Governor Blanco last month. The Bill allocates funds from various state sources for purposes including state government administration, public education, local government services, and health and human services. The final schedule of the bill, Schedule 20 (titled "Other Requirements"), includes section 20-945, "State Aid to Local Government Entities," which is described as "provid[ing] special state direct aid to specific local entities for various endeavors." *See* 2007 La. Acts 18 at § 20-945; H.B. 1, 2007 Leg., Reg. Sess., at § 20-945. In past years, the entries in this section (which sends taxpayer money from the State Treasury to various private entities) were not made public and were frequently referred to derisively in the media as "slush funds."

After a reform effort initiated by Governor Blanco, these payments are for the first time listed individually in House Bill 1. They include, among others, the following allocations:

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[1] Plaintiff has standing to bring this lawsuit. *See* Exhibit A, Declaration of Katie Schwartzmann (stating that the ACLU Foundation of Louisiana and its members pay taxes in the state of Louisiana; that they object to the unconstitutional use of their tax dollars to support religious purposes, activities, and facilities; and that the organization's purpose is to protect constitutional rights); *see also, e.g.*, *Bowen v. Kendrick*, 487 U.S. 589, 618-20 (1988) (recognizing the longstanding rule that taxpayer standing is sufficient for Establishment Clause claims); *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv.*, 528 U.S. 167, 181 (2000) (holding that an organization has standing to sue on behalf of its members when members would have standing to sue in their own right, where the interests at stake are germane to purpose of organization, and where the participation of individual members is not required) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)); *Sierra Club v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 555 (5th Cir. 1996) (same).

> Payable out of the State General Fund (Direct) to the Stonewall Baptist Church of Bossier City, Louisiana — $100,000
>
> Payable out of the State General Fund (Direct) to the Shreveport Christian Church — $20,000

Id. No purpose is stated for either appropriation, nor are the permissible uses of the grants restricted or monitored in any way. Plaintiff requested back-up documentation regarding these earmarks directly from the legislator who sponsored them, but no response was provided. *See* Complaint ¶ 10.

Because this is the first year that the State has made the individual recipients of section 20-945 funds public, ACLU-LA has reason to believe that the State Legislature has long been appropriating and the State Treasurer has long been disbursing unrestricted, direct funds to churches and other religious organizations for unspecified purposes. Plaintiff has filed this lawsuit and accompanying motion to ensure that these blatantly unconstitutional practices cease.

LEGAL STANDARD

The Court should grant equitable relief in the form of a temporary restraining order followed by a preliminary injunction if it finds that Plaintiff has established:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399-400 (5th Cir. 2006) (citation omitted). Further,

> [w]hen analyzing the degree of "success on the merits" that a movant must demonstrate to justify injunctive relief, the Fifth Circuit employs a sliding scale involving the balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits. . . . Moreover, when the other factors weigh in favor of an injunction, a showing of *some* likelihood of success on the merits will justify temporary injunctive relief.

McWaters v. Fed. Emergency Mgmt. Agency, 408 F. Supp. 2d 221, 228 (E.D. La. 2005) (citations omitted) (emphasis in original). As discussed below, Plaintiff clearly meets the requirements for immediate equitable relief.

ARGUMENT

I. Plaintiff Will Likely Prevail on the Merits Because the Establishment Clause Prohibits Direct Appropriations to Religious Organizations for Unspecified Purposes.

Plaintiff has a substantial likelihood of prevailing on the merits of this suit. Direct payment of state tax revenues to selected churches – without any attempt to guarantee, let alone an effective way to ensure, that the government funds will be used exclusively for secular purposes, materials, and activities – violates longstanding and uncontested principles of the Establishment Clause of the First Amendment.

"The 'establishment of religion' clause of the First Amendment means at least this: . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." *Everson*, 330 U.S. at 15-16. The Supreme Court has repeated this foundational principle on many occasions and, despite finding that other, indirect forms of support sometimes pass constitutional muster, has never strayed from the basic rule that the government may not send money directly into the coffers of religious organizations for unidentified purposes. In the controlling opinion in *Mitchell v. Helms*, 530 U.S. 793 (2000), for example, Justice O'Connor noted the Court's

> continued recognition of the special dangers associated with direct money grants to religious institutions. . . . In fact, the most important reason for according special treatment to direct money grants is that this form of aid falls precariously close to the original object of the Establishment Clause's prohibition.

Id. at 855 (2000) (O'Connor, J., concurring) (citations omitted)[2]; *see also id.* at 818-9 (plurality opinion) (stating that the Court finds "'special Establishment Clause dangers' when *money* is given to religious schools or entities directly") (emphasis in original) (citation omitted); *id.* at 890 (Souter, J., dissenting) ("[F]rom the start we have understood the Constitution to bar outright money grants of aid to religion."); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 842 (1995) (stating that "[t]he Court of Appeals (and the dissent) [were] correct to extract from our decisions the principle that we have recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions"); *Committee for Pub. Educ. v. Nyquist,* 413 U.S. 756, 772 (1973) ("Primary among those evils" against which the Establishment Clause guards "have been sponsorship, financial support, and active involvement of the sovereign in religious activity.") (citations and internal quotation marks omitted). The legislators of the State of Louisiana, although surely not ignorant of this most basic stricture of the Establishment Clause, have used the earmarking process to provide financial support to their preferred churches.

Funneling taxpayer dollars directly to houses of worship, without any stated purpose or limitations on use, is clearly unconstitutional. As the Court stated in *Rosenberger*, 515 U.S. at 840, "a tax levied for the direct support of a church or group of churches . . ., of course, would

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[2] Because no single opinion in *Mitchell v. Helms* garnered the votes of five Justices, and because Justice O'Connor's opinion is based upon the narrowest grounds, her concurrence is the controlling precedent of *Mitchell* before this Court. *See Marks v. United States*, 430 U.S. 188, 193 (1977); *see also Community House, Inc. v. City of Boise*, No. 05-36195, -- F.3d --, 2007 WL 1651315, at *14 (9th Cir. June 8, 2007) (recognizing Justice O'Connor's view in *Mitchell* as controlling); *DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397, 418-19 (2d Cir. 2001) (same).

run contrary to Establishment Clause concerns dating from the earliest days of the Republic."[3] Simply put, "states may not make unrestricted cash payments directly to religious institutions." *Freedom From Religion Found., Inc. v. Bugher*, 249 F.3d 606, 612-13 (7th Cir. 2001) (citing cases). The appropriations challenged here violate that core constitutional principle, failing all of the prevailing Establishment Clause requirements: The Defendants have no secular purpose in providing the earmarked grants; the State's financial support advances the religious missions of the recipient organizations; and the selection of particular churches for financial support sends an unconstitutional message of endorsement.

A. The Appropriations to Stonewall Baptist Church and Shreveport Christian Church Have No Secular Purpose.

To avoid invalidation, a "statute must have a secular legislative purpose." *Lemon*, 403 U.S. at 612; *see also Mitchell*, 530 U.S. at 807-08 (plurality opinion); *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 293 (5th Cir. 2001). House Bill No. 1 provides general taxpayer revenues to churches without any expressed secular purpose. In such a situation, the Court must presume the obvious – that the government intended its financial support to advance the funded organizations' general, primary religious purpose. *Cf. Mitchell*, 530 U.S. at 819 n.8 (plurality opinion) (noting that direct monetary grants to religious entities "create[] special risks that that

[3] Indeed, although the Supreme Court "has long held that the First Amendment reaches more than classic, 18th-century establishments," *Board of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 709 (1994), under any historical analysis the Establishment Clause unquestionably contemplates a ban on direct monetary grants to religious institutions. As the Supreme Court has recognized, "Our history vividly illustrates that one of the specific evils feared by those who drafted the Establishment Clause and fought for its adoption was that the taxing and spending power would be used to favor one religion over another or to support religion in general." *Flast v. Cohen*, 392 U.S. 83, 103 (1968); *see also, e.g., Mitchell*, 530 U.S. at 856 (O'Connor, J., concurring); *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) ("[W]e must draw lines with reference to 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.'") (quoting *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 668 (1970)).

governmental aid will have the effect of advancing religion (*or even more, a purpose of doing so*)") (emphasis added). Indeed, the Supreme Court has never upheld the distribution of government money to a religious organization in the absence of an articulated secular intent. Rather, the Court has permitted funding only where a clear, genuine secular purpose is evident. *See, e.g.*, *Bowen*, 487 U.S. at 602 (stating "it is clear from the face of the [Adolescent Family Life Act] that [the statute] was motivated primarily, if not entirely, by a legitimate secular purpose – the elimination or reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood"). Louisiana's appropriations fail even this preliminary prong of the *Lemon* test. The State's manifest objective of advancing the activities of the religious organizations it funded "may be dispositive of the constitutional enquiry" in this case. *McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 850-51 (2005).

B. Unrestricted Funding of Churches Through Unmonitored, Non-Neutral Earmarks Has the Unconstitutional Effect of Advancing the Churches' Religious Activities.

By providing unrestricted monetary aid directly to houses of worship through the earmarking process, the Defendants also act with the impermissible effect of advancing religion. "Although [the Court's] cases have permitted some government funding of secular functions performed by sectarian organizations, [the] decisions provide no precedent for the use of public funds to finance religious activities." *Mitchell*, 530 U.S. at 840 (O'Connor, J., concurring) (citation and internal quotation marks omitted); *Bowen*, 487 U.S. at 621 (stating that aid has the impermissible effect of advancing religion whenever it is used to support "specifically religious activit[ies]," such as the teaching of religious doctrine, indoctrination, or the creation of materials that have an explicitly religious content or are designed to inculcate the views of a particular religious faith) (citation and internal quotation marks omitted); *Rosenberger*, 515 U.S. at 841,

842 (citing the dangers involved when the "the government is making direct money payments [("from a general tax fund")] to an institution or group that is engaged in religious activity"); *School Dist. of Grand Rapids v. Ball,* 473 U.S. 373, 385 (1985) ("Although Establishment Clause jurisprudence is characterized by few absolutes, the Clause does absolutely prohibit government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith."), *overruled on other grounds by Agostini v. Felton*, 521 U.S. 203, 218-27, 235 (1997).

The First Amendment, therefore, imposes a blanket prohibition on all government-funded religious activity. In *ACLU of Louisiana v. Foster*, Civ. A. No. 02-1440, 2002 WL 1733651 (E.D. La. Jul. 24, 2002), for example, this Court invalidated certain grants under the Governor's Program on Abstinence – notwithstanding the program's purportedly secular aims – because those funds were not used *exclusively* for non-religious activities and programs. *See id.* at *3-*6. Unlike the present case, where the State has not even attempted to restrict the challenged earmarks to secular uses, the Court in *Foster* noted the facial permissibility of the abstinence program, *see id.*; nonetheless, the Court granted the requested injunction, recognizing that the Establishment Clause strictly forbids direct governmental grants to fund "'specifically religious activit[ies]' even within 'an otherwise substantially secular setting.'" *Id.* at *5 (quoting *Bowen*, 487 U.S. at 621).

To guard against unconstitutional funding of religion, government grants must expressly be limited to non-religious activities, a feature fatally absent from the earmarks challenged here. As the Supreme Court has made clear, anything short of a strict bar on taxpayer-funded religious functions would not suffice. For instance, in reviewing the federal government's authorization of construction grants for religious colleges, the Court in *Tilton v. Richardson*, 403 U.S. 672

(1971), found insufficient the government's restrictions on taxpayer-funded buildings because those limitations expired after two decades: "Limiting the prohibition for religious use of the structure to 20 years obviously opens the facility for any purpose at the end of that period. . . . If, at the end of 20 years, the building is, for example, converted into a chapel or otherwise used to promote religious interests, the original federal grant will in part have the effect of advancing religion. To this extent the Act therefore trespasses on the Religion Clauses." *Id.* at 683; *see also, e.g.*, *Community House, Inc.*, 2007 WL 1651315, at *12-*15 (enjoining subsidized government lease of homeless shelter to religiously affiliated organization that used the property for religious chapel services, even assuming participation in such activities were voluntary); *Bugher*, 249 F.3d at 613 ("[E]ven if the sectarian schools in the present case were found not to be pervasively sectarian, the direct aid portion of the program still fails because there are no statutory prohibitions or administrative enforcements in place."). Earmarked appropriations omitting any explanation, let alone a sufficient delineation of permissible and impermissible uses of government funds, simply cannot pass constitutional muster.

Further, even had the State somehow anticipated that Stonewall Baptist Church and Shreveport Christian Church would use taxpayer money solely for secular activities – and nothing indicates that the State so contemplated – it failed to implement adequate monitoring measures to ensure that the funds would actually be expended for such purposes.[4] "There is no

[4] Governor Blanco in fact promulgated two executive orders relevant to line item appropriations, neither of which even attempts to address Plaintiff's constitutional concerns. Executive Order KBB 06-32, "Accountability for Line Item Appropriations," requires only a description of the "public purpose" to be served by an appropriation and auditing to ensure that funds flow toward that stated purpose. Exec. Order KBB 06-32 (July 12, 2006). That the funds must serve a secular purpose, and may not support religious activities, is not mentioned here or in any other Executive Order implicated. A previous Order similarly states that "cooperative endeavor agreements" should include "specific goals sought to be achieved by the non-governmental entity," but imposes no substantive requirements – let alone requirements ensuring compliance

doubt that the monitoring of [public] grants is necessary if the [government] is to ensure that public money is to be spent . . . in a way that comports with the Establishment Clause." *Bowen*, 487 U.S. at 615; *see also*, *e.g.*, *Mitchell*, 530 U.S. at 861-63 (O'Connor, J., concurring) (outlining safeguards taken in that case – including express limitations on use of funds, a requirement that funds supplement and not supplant prior support, written assurances from recipients that funds would not be used for religious activity, and regular monitoring visits – and finding these monitoring devices constitutionally sufficient); *Nyquist*, 413 U.S. at 780 ("In the absence of an effective means of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral, and nonideological purposes, it is clear from [the Court's] cases that direct aid in whatever form is invalid."); *Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 413 U.S. 472, 480 (1973) ("[T]he State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination."); *Foster*, 2002 WL 1733651, at *7, *8 (ordering State to install comprehensive monitoring and oversight program to ensure that no taxpayer dollars are used to support religious messages, materials, or activities); *Bugher*, 249 F.3d at 613 (finding funding scheme constitutionally deficient because, *inter alia*, "there is no evidence of any ability or attempt to monitor the use of the grant money received by the religious schools").

While the absence of express limitations on funds and sufficient monitoring practices render these appropriations unconstitutional under the effects test, the earmarks suffer from another fundamental flaw: Aid to religious organizations, if provided at all, must be "allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and [must be] made available to both religious and secular beneficiaries on a nondiscriminatory basis."

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with the Establishment Clause – on those "specific goals." *See* Exec. Order KBB 05-14 (May 27, 2005).

Agostini, 521 U.S. at 231; *see also Mitchell*, 530 U.S. at 867 (O'Connor, J., concurring) (upholding the challenged program after determining that "[a]s in *Agostini,* the Chapter 2 aid is allocated on the basis of neutral, secular criteria; the aid must be supplementary and cannot supplant non-Federal funds; no Chapter 2 funds ever reach the coffers of religious schools; the aid must be secular; any evidence of actual diversion is *de minimis;* and the program includes adequate safeguards"); *id.* at 810 (plurality opinion) (stating that in a requisite neutral program, "the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose") (citation omitted); *cf. Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 5 (1989) (plurality opinion) (striking down a tax exemption that benefited religious but not secular publications). Such a rule serves many purposes: It ensures that government entities remain neutral as between religion and non-religion when distributing funds, and it requires that any time a government entity selects one religious group over another for support, it does so in the context of a fair competition in which secular, and not theological, criteria govern. By handpicking churches – through a non-neutral process that achieves no particular secular aims – for financial support, the State has violated the rights of taxpayers and has also exhibited those religious preferences that the government has long worked to avoid.[5]

[5] Further evidence of Defendant Blanco's inattention to Establishment Clause violations can be seen by contrasting her approval of the appropriations challenged here with her decision to veto a grant for marching band scholarships at Southern University–Baton Rouge. "Many of our public universities have marching bands," the Governor explained, and "[i]t is not equitable to provide additional funding for just one marching band." Letter, Governor Blanco to Clerk of the House of Representatives and Secretary of the Senate, July 12, 2007 (House Bill 1-Act No. 18 (enrolled), at 315, Veto Message No. 8). Certainly the concern that one entity should not be favored over others applies with greater force, as the constitutional Framers determined, to houses of worship than to marching bands. *See, e.g., Mitchell*, 530 U.S. at 810 (plurality opinion) (noting Establishment Clause dangers when state distributes aid not "pursuant to neutral

Finally, the Defendants impermissibly advance religion in violation of the Establishment Clause by directing funds to "institution[s] in which religion is so pervasive that a substantial portion of [their] functions are subsumed in the religious mission." *Hunt v. McNair*, 413 U.S. 734, 743 (1973); *see also, e.g.*, *Bowen*, 487 U.S. at 621; *Foster*, 2002 WL 1733651, at *3, *4. The "pervasively sectarian" test – developed to target the same constitutional problems addressed by rules on funding limitations, monitoring, and neutrality – squarely prohibits government funding of churches. When the State doles out monetary benefits to houses of worship such as Stonewall Baptist Church and Shreveport Christian Church, whose activities uniformly incorporate and promote their theological beliefs, courts reasonably presume that such government aid will, "knowingly or unknowingly, result in religious indoctrination." *Bowen*, 487 U.S. at 612.

C. The State Impermissibly Endorses Religion by Financially Supporting Preferred Churches.

The State of Louisiana's practice of selecting churches of its preference and providing them with direct monetary aid has an unconstitutional purpose and effect of advancing religion. The practice also conveys an unconstitutional message of endorsement of particular religious organizations. "'A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of "neutrality" toward religion,' favoring neither one religion over others nor religious adherents collectively over nonadherents." *Board of Educ. of Kiryas Joel Vill. Sch. Dist.*, 512 U.S. at 696 (quoting *Nyquist*, 413 U.S. at 792-93). The U.S. Constitution, while permitting legislators to act on preferences in policy and politics, plainly prohibits state actors to imbue official favored status on particular religious communities. *See,*

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eligibility criteria," but instead "grant[s] special favors" according to the "unmediated will of government") (internal quotation marks and citation omitted).

e.g., *id.* at 703 (stating that the "fundamental source of constitutional concern" in that case was that the "legislature itself may fail to exercise governmental authority in a religiously neutral way" and lauding that "principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion"). "Whatever else the Establishment Clause may mean . . ., it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions). The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 605 (1989) (citations and internal quotation marks omitted).

The State has placed its imprimatur on particular religious communities selected through an earmarking process that has long lacked basic accountability and certainly has no uniform, stated secular purpose or neutral application process. Additionally, by sending money to favored organizations without sufficient restrictions, the Defendants financially support religious indoctrination, conveying a clear message of support for the distinctly religiously activities and beliefs of some, and only some, religious communities. In selecting certain religious groups for preferential treatment, the State has "[m]anifest[ed] a purpose to favor one faith over another," *McCreary*, 545 U.S. at 860, thereby conveying to adherents of the selected faiths, "that they are insiders, favored members of the political community," and invariably sending the converse message to nonadherents. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (citing *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)) (internal quotation marks omitted); *see also McCreary*, 545 U.S. at 860. The Establishment Clause forbids the government to dole out political benefits in this manner.

II. Immediate Injunctive Relief Is Necessary to Protect Taxpayers from Suffering Constitutional Injury.

Under Fifth Circuit law, a substantial threat of irreparable harm exists whenever First Amendment rights are at issue. Thus, for example, in *Ingebretsen v. Jackson Public School District*, 88 F.3d 274 (5th Cir. 1996), the Fifth Circuit granted the plaintiffs' motion for a preliminary injunction in an Establishment Clause case after recognizing that the "[l]oss of First Amendment freedoms, even for minimal periods of time, constitute irreparable injury." *Id.* at 280 (citing *Elrod v. Burns,* 427 U.S. 347, 373 (1976)); *see also Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 958 (5th Cir. Unit B Jun. 1981) (same); *Let's Help Florida v. McCrary*, 621 F.2d 195, 199 (5th Cir. 1980) (same). And in *Foster*, this Court concluded:

> Because the implementation of the GPA infringes on First Amendment rights and because the GPA continues to be implemented, an injunction is necessary to prevent irreparable harm. The threatened injury to the plaintiffs in this matter far outweighs the threatened injury to the defendants because constitutional rights are at stake. An injunction will not disserve the public interest; in fact, the public interest favors the issuance of an injunction.

2002 WL 1733651, at *2.

An injunction is necessary in this case to prevent the ongoing, irreparable harm of unconstitutional expenditure of taxpayer money. The need in this case is also immediate, as the funds in question have not yet, to Plaintiff's knowledge, been disbursed by the Defendants or expended by the recipient churches.

III. The Balance of Hardships Tips Heavily in Favor of Granting Injunctive Relief Because Constitutional Rights Are at Stake and the Defendants Will Suffer Minimal, if Any, Harm.

Injunctive relief is also appropriate in this case because while the Plaintiff will suffer constitutional injury if such relief is denied, the Defendants will suffer only the administrative

costs and annoyances (if any) associated with delaying payment to Stonewall Baptist Church and Shreveport Christian Church if the Court grants the injunction. *See, e.g.*, *Foster*, 2002 WL 1733651, at *2.

IV. Injunctive Relief Will Serve the Public Interest by Protecting the First Amendment Rights of Louisiana Taxpayers.

The public interest can be served only by granting the preliminary injunction in this case. Louisiana residents, who have paid the taxes now held in the State General Fund, would undoubtedly benefit from an immediate cessation of the unlawful conduct; the State's taxpayers suffer no general harm from delayed payment of these earmarked funds to the designated churches. "The public interest is best served by enjoining any statute which impermissibly favors a religious group in violation of the Establishment Clause of the First Amendment until it can be conclusively determined whether the statute withstands constitutional scrutiny." *New Orleans Secular Humanist Ass'n, Inc. v. Bridges*, Civ. A. No. 04-3165, 2006 WL 1005008, at *6 (E.D. La. Apr. 17, 2006) *see also, e.g.*, *Entm't Software Ass'n v. Foti*, 451 F. Supp. 2d 823, 837 (M.D. La. 2006); *Wexler v. City of New Orleans*, 267 F. Supp. 2d 559, 568-69 (E.D. La. 2003); *Foster*, 2002 WL 1733651, at *2.

CONCLUSION

The State of Louisiana may not use earmarked appropriations to funnel taxpayer money directly into the accounts of Stonewall Baptist Church and Shreveport Christian Church, particularly without specifying any legitimate secular purpose and in the absence of effective restrictions on or monitoring of the churches' use of funds. The Plaintiff respectfully requests that the Court grant its motion for a temporary restraining order followed by a preliminary injunction and prevent the Defendants from distributing general state revenues to Stonewall

Baptist Church and Shreveport Christian Church pursuant to House Bill 1. Alternatively, if the appropriated funds have already been disbursed, Plaintiff requests injunctive relief directing the Defendants to prohibit the recipient organizations from spending those funds and immediately to recoup the funds to the State General Fund.

Dated: August 13, 2007

Respectfully submitted,

By: Katie Schwartzmann

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EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA,	*	CIVIL ACTION:
Plaintiff,	*	
v.	*	SECTION
KATHLEEN BABINEAUX BLANCO, Governor of Louisiana, in her official capacity; JOHN NEELY KENNEDY, State Treasurer, in his official capacity,	*	MAGISTRATE:
Defendants.	*	

* *

DECLARATION OF KATIE SCHWARTZMANN

I, Katie M. Schwartzmann affirm under penalty of perjury:

1. I am an individual of the full age of majority who is domiciled in Louisiana. I am employed as the Staff Attorney for the American Civil Liberties Union Foundation of Louisiana ("ACLU-LA").
2. The ACLU-LA is a non-profit organization that operates in the state of Louisiana with its principal place of business in New Orleans, Louisiana.

3. The ACLU-LA has as its primary purpose the protection of those civil liberties embodied in the United States and Louisiana constitutions, including those liberties of religious belief and conscience safeguarded by the Establishment Clause of the First Amendment. The ACLU-LA works to secure the rights of its members and the residents of the state of Louisiana through litigation, advocacy, and public education.
4. The ACLU-LA and its members object to the unconstitutional use of their tax dollars to support religious purposes, activities, and facilities.
5. Members of the ACLU-LA reside and are employed in the State of Louisiana. Such members receive income from their employment within the State of Louisiana and pay taxes on that income to the State of Louisiana. The ACLU-LA and many of its members reside in Orleans Parish, Louisiana, where they pay taxes that flow into the State General Fund.
6. I also make, or authorize, purchasing decisions regarding materials and services in connection with the work of the ACLU in Louisiana. Purchases made by and on behalf of the ACLU within the State of Louisiana cause it to pay sales and use taxes.
7. ACLU-LA members purchase materials and services in the State of Louisiana. Purchases made by ACLU-LA members within the state of Louisiana cause them to pay sales and use taxes.

8. I make these observations of my own personal knowledge, and am competent to testify to the same in a court of law.

Executed this 13th day of August, 2007.

KATIE SCHWARTZMANN

CERTIFICATE OF SERVICE

It is hereby certified that on this day, August 13, 2007, I have served upon each party to this lawsuit a true and correct copy of the foregoing by sending same via U.S. mail and facsimile.

Katie Schwartzmann