

**Hume Lake Christian Camps, Inc. v. Planning Board of Monterey: Creating a New  
Religious Exemption Test Under the Dover Amendment**

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*“The [Dover] [A]mendment ‘seeks to strike a balance between preventing local discrimination against a religious use and honoring legitimate municipal concerns that typically find expression in local zoning laws.’”<sup>1</sup>*

When the Massachusetts Supreme Judicial Court (SJC) announced its opinion in *Hume Lake Christian Camps, Inc. v. Planning Board of Monterey*<sup>2</sup> in June of 2023, some in the Massachusetts legal community believed the SJC only further muddied the waters on what qualifies as an exempt religious use under Massachusetts General Laws chapter 40A, section 3 (Dover Amendment).<sup>3</sup> However, by parsing through the court’s opinion, a new test can be derived which provides clarity and direction for municipalities and courts evaluating whether the Dover Amendment’s exemptions apply to religious organizations’ proposed land uses.<sup>4</sup>

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<sup>1</sup> *Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 747 N.E.2d 131, 137 (Mass. 2001).

<sup>2</sup> 210 N.E.3d 379 (Mass. 2023).

<sup>3</sup> MASS. GEN. LAWS ch. 40A, § 3; *see, e.g.*, Eric T. Berkman, *Attorneys Weigh Usefulness of SJC Ruling in Clarifying Dover Amendment Exemptions*, MASS. LAWS. WKLY. (June 23, 2023), <https://masslawyersweekly.com/2023/06/23/attorneys-weigh-usefulness-of-sjc-ruling-in-clarifying-dover-amendment-exemptions/> [<https://perma.cc/MT9W-WSFR>] (quoting attorneys’ opinions on the *Hume* decision).

<sup>4</sup> *See infra* Part IV.

## **I. Case Background**

Hume Lake Christian Camps, Inc. (Hume) is a nondenominational Christian organization founded in 1946 in California.<sup>5</sup> Hume runs its “camping ministry” at three permanent locations, including two in California and the third in Monterey, Massachusetts, referred to as Hume New England (Hume NE), which is the site at issue in this case.<sup>6</sup> Hume acquired the Monterey campground to form Hume NE in 2012, and at the time of trial operated on more than 400 acres of land containing a number of small buildings, a dining hall, two larger residential lodges, and two chapels.<sup>7</sup>

In May 2019, Hume submitted to the Planning Board of Monterey (Board) an application for site plan review for the construction of an RV camp on Hume NE’s campgrounds.<sup>8</sup> The proposed RV camp would include a twelve-space camp to accommodate “temporary travel trailers, motorhomes, tents, and seasonal staff housing trailers,” in an area somewhat distant from the rest of Hume NE’s campground, but within walking distance.<sup>9</sup> Hume’s stated uses for this area would be (1) for a new family camp program; (2) to house volunteers working at Hume NE; and (3) to house seasonal and temporary staff.<sup>10</sup> The Board rejected Hume’s application because Monterey’s zoning bylaw prohibits the principal use of a “[t]railer or mobile home park” in all

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<sup>5</sup> See *Hume*, 210 N.E.2d at 383.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 385.

<sup>9</sup> See *Hume*, 210 N.E.3d at 385.

<sup>10</sup> See *id.*

zoning districts, and the Board determined that the trailer park is not a customary religious use and therefore should not be exempt from local zoning bylaws under the Dover Amendment.<sup>11</sup>

Hume then appealed the decision of the Board to the Land Court, which held that the Board was only partially correct.<sup>12</sup> The Land Court determined that housing family attendees of Hume NE in the RV camp would serve Hume's religious purpose, but housing volunteers and staff of Hume NE in the RV camp would serve a financial, rather than religious, purpose, and accordingly not be exempt under the Dover Amendment.<sup>13</sup> The Board appealed the Land Court decision to the Appeals Court, Hume filed a cross appeal, and the SJC then transferred the case on their own motion to review.<sup>14</sup>

## **II. The Dover Amendment**

Massachusetts enacted the Dover Amendment in 1950 with the intent to protect religious and nonprofit educational organizations from discrimination.<sup>15</sup> Among other measures, the Dover Amendment prevents zoning ordinances or bylaws from prohibiting, regulating, or restricting the use of land or structures *for religious purposes or educational purposes* on land

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<sup>11</sup> *See id.* at 385-86.

<sup>12</sup> *See id.* at 382.

<sup>13</sup> *See Hume*, 210 N.E.3d at 382-83.

<sup>14</sup> *See id.* at 383.

<sup>15</sup> *See* Stephen Batchelder, *Dover Amendment Can Present Challenges For Cities, Towns*, MASS. MUN. ASS'N (June 4, 2018), <https://www.mma.org/dover-amendment-can-present-challenges-for-cities-towns/> [<https://perma.cc/6GMG-MH2V>] (explaining Dover Amendment's enactment in response to zoning bylaws impacting religious schools).

owned or leased by a *religious sect or denomination, or by a nonprofit educational corporation*.<sup>16</sup> Effectively, any property used by a religious organization for religious purposes is exempt from the otherwise-applicable local City or Town zoning bylaws which regulate the use of land or structures.<sup>17</sup>

### **III. Court's Reasoning**

The issue on appeal in *Hume* is one that has been raised many times since the Dover Amendment's enactment: What qualifies as the use of land or buildings for a religious purpose?<sup>18</sup> *Hume* is a religious charity recognized by the Internal Revenue Service under 26 U.S.C. § 170(b)(1)(A)(i), and a nonprofit organization under § 501(c)(3) of the Internal Revenue Code.<sup>19</sup> On appeal, the Board did not contest the court's finding that *Hume* is a religious organization entitled to the protections provided by the Dover Amendment, because the truly controversial issue of law raised in *Hume*—and many past Dover Amendment cases—is whether a religious organization is using their land or structures for a *religious purpose*.<sup>20</sup>

Over the years, the jurisprudence on what qualifies as the use of land or buildings for a religious purpose has provided the SJC with two related inquiries that help determine whether specific land or buildings are used for a religious purpose.<sup>21</sup> First, the court asks whether the

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<sup>16</sup> MASS. GEN. LAWS ch. 40A, § 3.

<sup>17</sup> *See id.*

<sup>18</sup> *See Hume*, 210 N.E.3d at 382.

<sup>19</sup> *See id.* at 383.

<sup>20</sup> *See id.* at 387.

<sup>21</sup> *See id.* (reviewing SJC jurisprudence on Dover Amendment).

proposed use has as its “‘bona fide goal something that can reasonably be described as’ religiously significant.”<sup>22</sup> Second, the court asks whether the religiously significant goal is the “‘primary or dominant’ purpose for which the land or structures will be used.”<sup>23</sup>

The SJC answered these two questions affirmatively by treating the RV camp as a supporting structure necessary for Hume NE’s overall religious goal.<sup>24</sup> According to the SJC, the Land Court’s decision was flawed because it applied the religious purpose test too narrowly, focusing on each individual’s use of the RV camp instead of the structure as a whole in relation to the rest of Hume NE.<sup>25</sup> The SJC also specified that “religious purposes” encompass more than just typical worship or religious instruction; it covers any use which aids a system of faith and

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<sup>22</sup> See *Hume*, 210 N.E.3d at 387. (quoting *Regis Coll. v. Town of Weston*, 968 N.E.2d 347, 351 (Mass. 2012).

<sup>23</sup> See *id.* (quoting *Regis*, 968 N.E.2d at 351).

<sup>24</sup> See *id.* at 388. Hume NE’s overall religious goal is described as uniting different denominations of evangelical Christians together and growing their faith through Hume’s camping ministry. See *id.* at 383 (relaying testimony of Hume NE employees explaining Hume NE’s mission).

<sup>25</sup> See *Hume*, 210 N.E.3d at 387 (quoting *Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 747 N.E.2d 131, 138 (Mass. 2001). The SJC rejected the Board’s argument that staying in an RV camp is not a religious activity and therefore should not be exempt under the Dover Amendment because the argument fails to take into account *why* they are staying at the RV camp. See *id.* at 389 (asserting that “religious purposes” encompass more than just typical religious uses).

worship, which is much more broad, and does not have to be intrinsically religious.<sup>26</sup> This outlook lays the foundation for the SJC's holding in *Hume*.<sup>27</sup>

#### IV. Analysis

The SJC's decision in *Hume* provided clarity to municipalities which have struggled to apply the religious purpose test to land use proposals of religious organizations.<sup>28</sup> While the SJC did not explicitly create a test to use in these situations, lower courts can deduce a three-part analysis from their ruling which provides clarity to the extensive case law interpreting the religious purpose test. The three-part test is as follows:

*A proposed use of land by a religious organization, viewed as a part of the religious organization, serves a religiously significant goal if:*

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<sup>26</sup> See *id.* at 387-88; see also *Shrine of Our Lady of La Salette Inc. v. Bd. of Assessors of Attleboro*, 71 N.E.3d 509, 516 (Mass. 2017); *Martin*, 747 N.E.2d at 138; *Regis*, 968 N.E.2d at 351. The SJC uses the example of a church parking lot to illustrate how a structure or area which is not intrinsically religious can still have a clear religious purpose. See *Hume*, 210 N.E.3d at 388.

<sup>27</sup> See *Hume*, 210 N.E.3d at 392. The SJC relies on this broad interpretation of “religious purposes” in rejecting the Land Court judge’s finding that housing staff and volunteers at the RV camp would not serve a predominantly religious purpose. See *id.* at 390. The SJC states that “a religious organization may depend upon secular tasks, such as the provision of food and housing, in order to operate effectively.” See *id.*; see also *Shrine*, 71 N.E.3d at 516.

<sup>28</sup> See Berkman, *supra* note 3 (quoting attorneys who believe the *Hume* decision clarifies the religious purpose test).

*(1) the primary or dominant use of the land supports the religious purpose of the organization;*

*(2) the religious organization is in control of the primary or dominant use of the land; and*

*(3) the organization is not generating otherwise unanticipated profits directly from the primary or dominant use of the land.*

Requiring the test to analyze the proposed land use as a part of the religious organization instead of as a separate entity avoids the argument the Board raised in *Hume* that an RV camp categorically cannot be a religious use. This test would also assume that the organization under scrutiny has already been established as a religious organization benefitting from the exemptions provided under the Dover Amendment, and solely focuses on the organization's newly proposed use of land, as was the case in *Hume*.

The Amicus Brief of the Real Estate Bar Association of Massachusetts, Inc. (REBA) and the Abstract Club in support of *Hume* largely influenced this test.<sup>29</sup> REBA and the Abstract Club describe the two-prong test adapted by the SJC which has been condensed into the first requirement of the test described above.<sup>30</sup> The second and third parts of this test reflect the

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<sup>29</sup> See generally Brief for Real Estate Bar Association of Massachusetts, Inc. & the Abstract Club as Amici Curiae Supporting Plaintiff-Appellee, *Hume Lake Christian Camps, Inc. v. Planning Bd. of Monterey*, 210 N.E.3d 379 (Mass. 2023) (No. 22-SJC-13365) [hereinafter Amicus Brief].

<sup>30</sup> See *id.* at 30; *Hume*, 210 N.E.3d at 387. The two-prong test described in the Amicus Brief asks two questions: (1) does the use of the land or buildings have as a *bona fide goal* something that can reasonably be described as educationally or religiously significant; and (2) is that goal

arguments raised by REBA and the Abstract Club, which are based on past Dover Amendment case law.<sup>31</sup>

Requiring the religious organization to have control over the primary or dominant use of the land or buildings reflects the decision in *Needham Pastoral Counseling Ctr., Inc. v. Bd. of Appeals of Needham*,<sup>32</sup> which differentiated between a third party having exclusive use and control of a proposed land use, and the religious organization maintaining control. The third prong, prohibiting the religious organization from generating otherwise unanticipated profits directly from the primary or dominant use of the land, seeks to limit religious organizations from abusing the exceptions provided by the Dover Amendment, a concern of the Board and other critics.<sup>33</sup> This issue was raised in *Needham Pastoral Counseling* and *Collins v. Melrose-Wakefield Hospital Ass'n. et al.*,<sup>34</sup> among other cases, with the courts holding that a financial motivation only disqualified a proposed use of land by a religious or educational applicant when

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the primary or dominant purpose for which the land or structures will be used. *See* Brief for Plaintiff-Appellee at 30, *Hume*, 210 N.E.3d 379 (No. 22-SJC-13365).

<sup>31</sup> *See* Brief for Plaintiff-Appellee at 34-38, *Hume*, 210 N.E.3d 379 (No. 22-SJC-13365).

<sup>32</sup> 557 N.E.2d 43 (Mass. App. 1990).

<sup>33</sup> *See* Brief of Appellant at 18-19, *Hume Lake Christian Camps, Inc. v. Plan. Bd. of Monterey*, 210 N.E.3d 379 (Mass. 2023) (No. 6-SJC-13365); Berkman, *supra* note 3 (discussing the deference that courts give to religious uses under the Dover Amendment).

<sup>34</sup> 4 LCR 178 (1996) (Misc. Case No. 206667).



the applicant was using the land to gain a profit from an independent commercial venture, with no relationship to the religious or educational use of the land.<sup>35</sup>

Hume's RV camp proposal meets this test by (1) having the primary or dominant purpose of the land be the housing of campers, volunteers, and staffers attending or working at their religious camp; (2) maintaining complete control and authority over the RV camp and the volunteers and staff lodging there; and (3) not generating additional income from the operation of the RV camp, instead only saving costs on lodging, which frees up money to go towards its overall religious purpose.<sup>36</sup> Court's have struggled for decades to apply the Dover Amendment in a manner that adequately protects religious organizations in line with the original purpose of the legislation, without allowing these organizations to exploit the Dover Amendment's exemptions for profit or otherwise. By applying the three-prong *Hume* test to proposed uses of land by religious organizations, courts would be able to more easily determine which uses should be exempt from local zoning bylaws under the Dover Amendment as legitimate contributions to the organization's religious purpose, and which uses extend beyond the Dover Amendment's intended protections, and should be subject to local zoning bylaws.

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<sup>35</sup> See *Needham*, 557 N.E.2d at 46; Brief for Plaintiff-Appellee at 35, *Hume*, 210 N.E.3d 379 (No. 22-SJC-13365).

<sup>36</sup> See *Hume*, 210 N.E.3d at 384-85.