

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

District Court

\_\_\_\_ Judicial District

Court File Number: \_\_\_\_\_

Case Type: Tax Court

\_\_\_\_ Church, \_\_\_\_\_ Pastor/Trustee

PLAINTIFF,

vs.

County of \_\_\_\_\_, \_\_\_\_\_,

DEFENDANT.

**PETITIONER'S RESPONSE TO RESPONDENT'S MEMORANDUM IN SUPPORT OF  
SUMMARY JUDGEMENT AND MEMORANDUM IN SUPPORT OF PETITIONER'S  
CROSS-MOTION FOR SUMMARY JUDGMENT**

**Note. The Outline of Response was not included in the Response**

**Outline of Response**

**I. INTRODUCTION**

**II. STATEMENT OF FACTS**

**III. ARGUMENT**

**A. The undisputed facts in this case show that the subject property meets requirements under United States and Minnesota law for a property tax exemption because the property, a house of worship, was always owned by Lord Jesus Christ and because the property has always been and will continue to be used exclusively for church purposes.**

**1. The highest Federal and Minnesota law forbid required incorporation or Internal Revenue Code § 501(c)(3) status of a church for any reason, including qualification for property tax exemption.**

**a. Federal Law and 501(c)(3).**

**(1). Federal Law**

**(2). Internal Revenue Code § 501(c)(3) tax exemption and its relationship to church property tax exemption.**

**b. Minnesota Constitution, Minnesota Non-Profit Corporation Law, Minnesota Property Tax Law, and Minnesota Trust Law**

**(1). Relevant Minnesota Constitutional Provisions and Law**

**(2). Minnesota Trust Law and the Common Law of Trust**

**c. The subject property qualifies for a property tax exemption because the property is owned by a church and because it is used exclusively for church purposes as a house of worship.**

**B. Petitioner qualifies for the property tax exemption for the pay-2017, pay-2018, and pay-2019 tax exemption years**

**1. The 2016 (pay-2017) Notice of Exemption.**

**2. The 2017 (pay-2018) and 2018 (pay-2019) Applications for Exemption.**

**IV. Conclusion**

**I. INTRODUCTION ....**

**II. STATEMENT OF FACTS**

\_\_\_\_\_ executed a Resolution and Declaration of Trust on November 11, 2012. Affidavit of Pastor \_\_\_\_\_ §§ 10, 11 which is attached hereto as Exhibit 1 and incorporated herein for all purposes; to Exhibit 1, Attachment 1 (Copy of Resolution and Declaration of Trust). On November 24, 2015, \_\_\_\_\_ (“\_\_\_”) purchased the subject property located at 7570 210<sup>th</sup> Street West, City of Lakeville, County of \_\_\_\_\_, State of Minnesota, legally described as Lot 1, Block 1, Super America 2<sup>nd</sup> Addition, \_\_\_\_\_ County, Minnesota. \_\_\_\_\_), Pastor \_\_\_\_\_ acting as trustee for the church (Exhibit 1, ¶12). The property was purchased by funds contributed by members of \_\_\_; the purchase price was paid in full, and no mortgage was taken out to pay for the property (Exhibit 1, ¶15). A copy of the General Warranty Deed is attached to Exhibit 1 as “Attachment 2.” (Exhibit 1, ¶13). The GENERAL WARRANTY DEED named the new owner as “GRANTEE, \_\_\_\_\_, PASTOR/TRUSTEE OF THE \_\_\_\_\_, and GRANTEE’S heirs and assigns forever” (Exhibit 1, ¶16).

\_\_\_ has used the property for church purposes only and no one has ever lived on the property (Exhibit 1, ¶17). Should the property ever be used partially or wholly for any purpose other than church purposes, \_\_\_\_\_ will immediately inform the \_\_\_\_\_ County Property Tax Office. (Exhibit 1, ¶18). All upkeep, utilities, and other expenses regarding the property are paid for by funds contributed by members of \_\_\_ (Exhibit 1, ¶19).

All funds which are contributed (tithes and offerings) by members of \_\_\_ are held in the Trust Estate of \_\_\_\_\_ 2012, Church Trust bank account (Exhibit 1, ¶20). No profit of any kind is ever realized from the tithes and offerings of \_\_\_ (Exhibit 1, ¶21). All monies and properties in the Trust Estate of \_\_\_\_\_ 2012, Church Trust are used for purposes and ministries which conform to New Testament principles for the benefit of the true owner of all things, the Lord Jesus Christ. (Exhibit 1, ¶22). All property both real and personal in the Trust Estate has always been, is, and will always be used for the true, equitable, and beneficial owner of the property, the beneficiary, for those purposes approved in His (the Lord Jesus Christ’s) Holy Bible (Exhibit 1, ¶23). All funds in the trust estate are spent in furtherance of the religious purposes of the church, and that there is no possibility of their application to other uses (Exhibit 1, ¶26). “\_\_\_ has meetings in the subject property for Bible

study, worship, and evangelism. \_\_\_\_ regular meetings are Friday at 7:30 and Sunday 10 a.m. and 5:00 p.m. Guests are welcome at those worship services. Pretty much every day there are church activities such as main choir, youth choir, youth orchestra (16 and up), kid's orchestra (ages up to 16), men's choir, and miscellaneous meetings concerning church matters.” (Exhibit 1, ¶27).

Pastor \_\_\_\_\_ receives “no gifts, salary or anything from \_\_\_\_, the Trust Estate, or any member of \_\_\_\_\_. He supports his wife and family of six children, ages 7 to 15, by working. His wife, Yaroslava, also works full time. \_\_\_\_\_ works 40 hours per week as a customer service representative at Curtis Wright. He started working there in 2007. Curtis Wright is located at 18400 West 77<sup>th</sup> Street, Chanhassen, MN 55317. Curtis Wright is a division of Exlar Corporation.” (Exhibit 1, ¶28). No person receives any support or pay from the church or the Trust Estate (Exhibit 1, ¶29). \_\_\_\_\_’s pastoral duties include preaching, teaching, baptizing, handling all church meetings and all other pastoral responsibilities (Exhibit 1, ¶30). He was ordained on by \_\_\_\_ by the highest pastor in The International Union of Churches of Evangelical Christian Baptists (IUCECB) (Exhibit 1, ¶31).

“The headquarters of IUCECB is in Russia, but there are branches in the United States also. IUCECB has meetings in different cities in houses of prayer and churches. The STATUTES of the International Union of Churches of the ECB are attached as ‘Attachment 3’” (Exhibit 1, ¶32). The IUCECB makes clear, in the STATUTES, that the member churches are autonomous and that they “ruled by the Evangelical Christian Baptist doctrine of faith, [which is in Russian] ruled by the Word of God in their ministry and activities” (bottom of page 3 of Attachment 3), and that “the ministry and activity of member churches must be conducted in full accord with the teachings of Jesus Christ” (bottom of page 4 of Attachment 3) (Exhibit 1, ¶33).

\_\_\_\_\_ founded \_\_\_\_ in 2002 (Exhibit 1, ¶34). \_\_\_\_ rented different church meetinghouses until 2015 (Exhibit 1, ¶35). \_\_\_\_\_ is the only pastor of \_\_\_\_ which has three deacons (Exhibit 1, ¶36). \_\_\_\_ is founded upon a belief in God the Father, God the Son (Jesus Christ), and God the Holy Spirit. (Exhibit 1, ¶37). \_\_\_\_ believes that every local New Testament church is built by the Lord Jesus Christ (Matthew 16.18) (Exhibit 1, ¶38). \_\_\_\_ believes and practices the eleven “Marks of New Testament Church” as given in Exhibit 1, ¶39, one of which is separation of church and state. Because of their “Bible beliefs, \_\_\_\_ cannot have employees. \_\_\_\_ cannot have officers other than those specified by the New Testament—Pastors and Deacons” (Exhibit 1, ¶40). “The members of \_\_\_\_ regard themselves as members of the spiritual body which is \_\_\_\_\_. They realize that they are also members of society and citizens of America and of the state of Minnesota, but that membership is separate from and of a different nature than their membership with \_\_\_\_\_. The former is temporal and worldly (fleshly) and the latter is eternal and heavenly (spiritual)” (Exhibit 1, ¶41).

\_\_\_\_\_ members give to God, according to their own free will, in the form of tithes and offerings (Exhibit 1, ¶42). Members do not make pledges to give in the future; any member who has given in the past may refrain from giving at any time, from time to time, or forever (Exhibit 1, ¶43). “\_\_\_\_\_ has about 100 adult members. All members or families provide for their own living accommodations and expenses” (Exhibit 1, ¶44). One becomes a member of \_\_\_\_ by recognizing the word of God, being born again, and being baptized by immersion (Exhibit 1, ¶45). Members cannot also be members of another church (Exhibit 1, ¶46). As long as Bible requirements for

membership are met, membership in \_\_\_\_ is 100% voluntary at all times (Exhibit 1, ¶47). “\_\_\_\_ is a body of persons dedicated to loving, serving, and honoring the Lord Jesus Christ and loving their fellow man according to the precepts of the Bible. The members of the church practice only one religion—Christianity” (Exhibit 1, ¶48). “Each church which is a member of the International Union of Churches trains members and future pastors. The brotherhood has a school for training pastors. Churches and pastors train those called to be pastors and those candidates must meet the requirements in knowledge, temperament, etc. required by \_\_\_\_ before being ordained to pastor a church” (Exhibit 1, ¶49). \_\_\_\_ teaches a way of life for all its members patterned after what the Bible says (Exhibit 1, ¶50). “The first concern is being born again. After that, a person is eligible to become a member through baptism” (Exhibit 1, ¶51). After becoming a member and as \_\_\_\_ teaches and preaches the Word of God, the member grows in their knowledge, understanding, and wisdom of God’s Word (Exhibit 1, ¶52). \_\_\_\_ members are taught to be ideal Christians and ideal citizens of America (Exhibit 1, ¶53).

\_\_\_\_ believed that filing an application for property tax exemption (1) would operate as a recognition of the right of the state of Minnesota to discriminate against \_\_\_\_\_ because of her sincerely held religious beliefs and (2) prefer the religious beliefs of others in violation of the Declaration of both the United States Constitution, Amendment I and also the Constitution of the State of Minnesota Article I, Section 16 (Exhibit 1, ¶89). Therefore, on or about November 30, 2105 Petitioner sent Respondent a NOTICE FOR PROPERTY TAX PURPOSES [PROPERTY USED BY \_\_\_\_\_, A NEW TESTAMENT CHURCH (Exhibit 1, ¶88; Exhibit 1, Attachment 4 ). That NOTICE listed facts that showed that \_\_\_\_ was a church; explained why filing an Application violated the sincerely held religious beliefs of the church; explained that the NOTICE was a reasonable alternative to the requirement for filing an Application; and the law that requires the state to accommodate a religiously based objection requirement imposed by statute, procedure or regulation.

Respondent took the position then that the property was owned by or held in trust for \_\_\_\_\_ (See Exhibit 1, Attachment 7—May 19, 2016 letter from Respondent to Petitioner). In a letter to Respondent dated 08.23.16 (Exhibit 1, Attachment 5), Petitioner stated:

“As the Pastor/Trustee of \_\_\_\_\_, I, Pastor \_\_\_\_\_, am writing in regard to properties held in trust by Pastor \_\_\_\_\_ for the benefit of the Lord Jesus Christ. The property is used exclusively by \_\_\_\_\_, the Trustor. Please note, it doesn't say, ‘held in trust ‘for’ \_\_\_\_\_, it says, ‘by’. You are mistaken, the property is not ‘owned by an individual as trustee of a church,’ as you said in your letter of May, 19.”

In that letter dated 08.23.16 (Exhibit 1, Attachment 5), Petitioner included his sincerely held religious beliefs and reasons for sending Notice as opposed to filing an application; explained the Declaration of Trust; ownership of the trust estate; repeated a portion of the NOTICE; explained why \_\_\_\_ was a church; explained why a reasonable alternative to the Application was required to accommodate Petitioner’s sincerely held religious beliefs; and explained the Biblical and Historical Baptist Position on Separation of Church and State.

Respondent, in a letter dated October 20, 2016 stated,

“Although it is true that churches are exempt from property taxation under Minn. Stat. § 272.02, Subd. 6, there is a process for a church to go through to qualify for a property tax exemption. First, your church must be lawfully incorporated as a church under either Chapter 315 or 317A of Minnesota Statutes. This involves a process of filing your church's Articles of Incorporation as required by each chapter. At this point, you have not provided any evidence showing that your church has been legally set up under one of these chapters.” (Exhibit 1, Attachment 8).

Jerald Finney moved from Texas to Minnesota in 2016 and was granted reciprocity by the Minnesota Supreme Court to practice law in Minnesota in early 2017. See ¶2 of Affidavit of Jerald Finney which is attached hereto as Exhibit 2 and incorporated herein for all purposes. Soon after getting his license to practice law in Minnesota, Finney agreed to represent \_\_\_\_\_ (“\_\_\_”) in regards to its property tax exemption (Exhibit 2, ¶3). Upon examining the facts and the application process and form, attorney Finney informed Petitioner that he saw no problem with any church, incorporated or not, filing the Application for Property Tax Exemption since, in his opinion, the requirement that the petition be filed did not discriminate against \_\_\_ because of her sincerely held religious beliefs. (Exhibit 1, ¶73; Exhibit 2, ¶4). Finney helped Petitioner fill out the 2017 Application for Property Tax Exemption and went with him to file the Application (Exhibit 1, ¶99; Exhibit 2, ¶5). Petitioner filed the 2017 and 2018 Applications for Property Tax Exemption believing that the deadlines for filing were May 1, 2017 and May 1, 2018; he did not knowingly violate the legal deadline for filing (Exhibit 1, ¶98, Exhibit 2, ¶6).

Petitioner did not identify the property in Petitioner’s 2018 (pay-2019) application because the assessor with whom he filed the application told him he did not have to do so (Exhibit 1, ¶100). When he went to file the application, Pastor \_\_\_\_\_ took with him copies of the property description attached to the pay-2018 petition to identify the property (Exhibit 1, ¶100). He asked the clerk if he needed to identify the property. Since she told him that he did not need to do so because they already had that information on file, he did not give her a copy of the description (Exhibit 1, ¶100).

Finney was in the process of getting on the Minnesota e-filing system and educating himself as to the use thereof, but could not yet e-file. (Exhibit 2, ¶7). As a result, Petitioner filed a pro se petition contesting the denial of the property tax exemption before the May 1, 2017 deadline for filing (Exhibit 1, ¶; Exhibit 2, ¶8).

Petitioner, due to sincerely held religious convictions, cannot obtain either corporate or 501(c)(3) status. Since \_\_\_’s sole authority for faith and practice is the 1611 King James Bible in English and the Synodal Bible in Russian, \_\_\_ cannot have a civil government charter, constitution, bylaws, or operational guide supplementary to the Bible (Exhibit 1, ¶54). Other reasons are given in Exhibit 1, ¶¶55-86.

The original deed, recorded 11/25/15, named the grantee as “Pastor \_\_\_\_\_, Pastor/Trustee of \_\_\_\_\_.” (Exhibit 1, Attachment 2). Respondent

disagreed with Petitioner's position that the deed did not place ownership in [the trustee], that he was merely the trustee of Evangelical Church and ownership was in \_\_\_\_\_ (Exhibit 2, ¶9). Attorney for Petitioner also discussed the matter with the Title Company who did the deed. The Title Company assured him that he was correct in his belief that the deed placed ownership in \_\_\_\_\_, not in [the trustee] (Exhibit 2, ¶10). In hopes of satisfying Respondent's incorrect position that ownership was in [the trustee], Finney asked the Title Company to do a corrective deed; the Title Company prepared a corrective deed (Exhibit 2, ¶¶11, 12). The Corrective Deed named "\_\_\_\_\_ 2012, Church Trust" as owner (Exhibit 1, Attachment 6).

On or about April 7, 2017, Finney sent a letter to The \_\_\_\_\_ County Administration Center, 1590 Highway 55, Hastings MN 55033 to which was attached three exhibits: The \_\_\_\_ Resolution Adopting Declaration of Trust and Declaration of Trust, the Affidavit of \_\_\_\_\_, and the STATUTES OF THE INTERNATIONAL UNION OF CHURCHES OF \_\_\_\_ES. (Exhibit 2, ¶13). He also enclosed with the letter a copy of the "Application for Property Tax Exemption submitted by \_\_\_\_ to \_\_\_\_\_ County (Exhibit 2, ¶13). The Application clearly identified the property for which the exemption was being requested, and answered all other information required on the Application.

Respondent replied to the above correspondence from Jerald Finney on April 25, 2017 acknowledging that she had received the application and the other documents attached to and included with the letter (Exhibit 2, ¶14 and Attachment ). Respondent also sent a letter dated April 27, 2017 stating that the deadline to file an appeal contesting the 2016 assessment (for taxes payable in 2017) was next Monday, May 1, 2017 (Exhibit 2, ¶15 and Attachment). Respondent further replied to the above correspondence on May 11, 2017 giving her reasons for denying the exemption (Exhibit 2, ¶16 and Attachment). She did not mention that she took the position that the application was filed late or that Petitioner was disqualified for the exemption because of late filing. Respondent never mentioned in written or oral communications with Finney that the Application for Property Tax Exemption had been filed late and that was a reason for denying the exemption (Exhibit 2, ¶17). Finney moved to Amarillo Texas at the end of May, 2018 (Exhibit 2, ¶).

Petitioner did not knowingly violate the filing deadline for either the 2017 or 2018 applications (Exhibit 1, ¶98). Respondent never mention to Petitioner that they had missed the 2017 deadline for filing Application for Property Tax Exemption nor that the late filing was a reason for denial of the exemption (Exhibit 1, ¶98; Exhibit 2, ¶17).

\_\_\_\_ ("\_\_\_\_") has made known to the \_\_\_\_\_ County Attorney's Office that \_\_\_\_ would allow Respondent to inspect the subject premises at their convenience, that they were welcome to stop by the premises an anytime, to attend worship services, choir practices, and any other activities, to talk with any members of the church, and that \_\_\_\_ would fully cooperate with and encouraged further investigation of the facts (See Exhibit 1, ¶101, Exhibit 2, ¶7). No one from \_\_\_\_\_ County has ever attempted to come by the premises, call about coming by the premises, or investigated the facts in any way (See Exhibit 1, ¶102).

### III. ARGUMENT

Requiring establishment of religion through incorporation of churches and/or Internal Revenue Code 501(c)(3) status for any purpose, including for property tax exemption, is forbidden by the First Amendment to the United States Constitution. U.S. CONST. amend. I; *Walz v. Tax Comm'n*, 397 U.S. 664, 676-680, 90 S.Ct. 1409, 1415, 25 L.Ed.2d 697 (1970) (interpreting the First Amendment religion clause in the property tax exemption context).

Consistent with the First Amendment, the Minnesota Constitution, laws, and cases which deal with church property tax exemption make clear that requiring establishment of religion for property tax exemption or for any other purpose is prohibited. Minnesota Constitution, Article 1, Sec. 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP; Minnesota Constitution Article X, § 1 (“all churches, church property, houses of worship, ... shall be exempt from taxation”); Minnesota Statute § 272.02, Exempt Property (“All churches, church property, and houses of worship are exempt.”); Minnesota Statute § 315.01 (See also, § 315.22; “may incorporate” not “must incorporate for some purposes”); Minnesota Statute 317A.021 Application and election, Subdivision 1. No Minnesota law requires establishment of religion for any purpose and the Minnesota Supreme Court has never included incorporation or Internal Revenue Code § 501(c)(3) status in the definition of “church” or included a requirement that a church be established for any purpose, including qualification for property tax exemption. See, e.g., *Ideal Life Church of Lake Elmo*, 304 N.W.2d, 308, 319 (1981), *State of MN v. American Fundamentalist Church*, 530 N.W.2d 200, 205 (1995).

Unlike federal tax exemption law, Internal Revenue Code 501(c)(3), state property tax exemption law strengthens the First Amendment rather than diminishes it. *Walz*. There is no nexus between 501(c)(3) and state property tax law.

Minnesota law recognizes the common law trust and has upheld it in Court. Minnesota Trust Code, Minn.Stat. 501C; *Mabel First Lutheran Church v. Cadwallader*, 172 Minn. 471, 476, 479 (1927) (deed substantially worded as Petitioner’s original and corrective deeds). Likewise other states have dealt with the matter and recognized church trusts in the property tax exemption context. See, e.g., *KOPSOMBUT-MYINT BUDDHIST CENTER, v. STATE BOARD OF EQUALIZATION*, 728 N.W. 2d 327 (1986) Court of Appeals of Tennessee, Middle Section, at Nashville. Permission to Appeal Denied, April 6, 1987 (Court inferred a trust in order to uphold property tax exemption); Wisconsin—in a case where property was held in trust for a church, Basic Bible Church of America—has declared that incorporation is not necessary for church property tax exemption, even though the Court then held that the organization, Basic Bible Church of America, was not a church—the property being held in trust was not a factor considered in determining eligibility. *WAUSHARA COUNTY v. Sherri L. GRAF*, 166 Wis.2d 442 (1992), 480 N.W.2d 16, Supreme Court of Wisconsin. Submitted on briefs October 4,

1991. Decided February 17, 1992. (Court declared that incorporation was not necessary for property tax exemption where property held in trust for a church.).

Respondent has a legitimate right to determine if an organization claiming to be a church and requesting property tax exemption is indeed a church. Otherwise, there would be many fraudulent requests for church property tax exemption without any means to determine if the request were legitimate. See letter dated January 4, 1978, from the Commissioner of Revenue to all county assessors which was attached to *Am. Fundamentalist Church v. County of Hennepin*, TC-1535, 1983 WL 1050 at 3 (Minn. Tax Ct. Mar. 22, 1983). But Respondent has no right to force a church to incorporate and get federal 501(c)3 status as a prerequisite for obtaining the exemption or for any purpose.

Respondent has made no effort to determine whether \_\_\_\_ is indeed a church because she believes, incorrectly, that a church must be an incorporated and/or 501(c)3 religious establishment in order to be eligible for property tax exemption. Respondent's position is contrary to the First Amendment to the United States Constitution, Article 1, § 16 and Article 10, § 1 of the Minnesota Constitution and Minnesota Statute § 272.02, subdivision 6. Respondent argues, without legal authority, that \_\_\_\_ does not qualify as a church for property tax exemption purposes since \_\_\_\_ has not become established under either Minnesota Statutes 315 or 317A even though Respondent correctly begins her analysis in II.A.1 with "Under Minnesota Statutes, a church **may** be established under either Chapter 315 (Religious Societies) or under Chapter 317A (Nonprofit Corporations)." [Bold emphasis mine]. Respondent's Motion, page 6, incorrectly states, "[I]t is reasonable to expect that a church seeking a property tax exemption must be properly established such that its organization's records are filed in the public domain." Petitioner believes that it is not reasonable to violate either the United States or Minnesota Constitutions and Minnesota law by requiring establishment as a church corporation and 501(c)(3) status.

The Minnesota Supreme Court recognized long ago that real property held in trust by trustees for any religious society will be held in trust for such society (which in the case was an unincorporated church society). *Mabel First Lutheran Church v. Cadwallader*, 172 Minn. 471, 476, 479 (1927). Cases from other states recognize that a church does not have to be incorporated nor are they required to obtain 501(c)(3) status in order to qualify for property tax exemption and that property held in trust for a church qualifies for a tax exemption if indeed the church meets the requirements for being a church.

Many churches in the United States use the method of church organization used by \_\_\_\_ and are granted property tax exemption on property used exclusively for church purposes (Exhibit 2, ¶¶ 19, 20). Trinity Springs Baptist Church in Shoals, Indiana is one such church (Exhibit 2, ¶¶ 19, 20.b.):



The local property tax board denied the Trinity Springs Baptist Church property tax exemption in 2013. The issues in the case were whether the church had to be incorporated and obtain Internal Revenue Code § 501(c)(3) status in order to qualify for the property tax exemption; whether a church which files a letter of notification stating the that the sole purpose of the property was for worship and explaining that filing an exemption application was against the Church's religious precepts instead of the state application for property tax exemption is disqualified from receiving the property tax exemption. After an agency hearing was held the local tax board denied the exemption and Pastor Jones appealed to the Indiana Board of Tax Review who held for Pastor Jones in all matters. Attachment 3 (to Exhibit 2) is a copy of the **FINAL DETERMINATION OF THE INDIANA BOARD OF TAX REVIEW**.

Just because “virtually *all* cases” in Minnesota “involving church-based property tax exemptions” shows that “the particular church was established under either Chapter 315, Chapter 317A or 317” (See Respondent’s brief, pages 10-11), does negate the First Amendment and Minnesota Constitutional provisions which forbid the federal, state, county, and city governments, to include government agencies, from forcing establishment of religion under state non-profit corporation law or Internal Revenue Code § 501(c)(3).

**A. The undisputed facts in this case show that the subject property meets requirements under United States and Minnesota law for a property tax exemption because the property, a house of worship, was \_\_\_\_\_ and because \_\_\_\_ is and has always been a church.**

**NOTE FOR JAMES. I AM NOT REPEATING THE LAW OF SUMMARY JUDGMENT. RESPONDENT BEGAN HER ARGUMENT BY STATING THE LAW. I HAVE NOT CHECKED THAT OUT.**

No genuine matters of material fact exist. Petitioner is entitled to judgment as a matter of law. No Minnesota case or law contravenes the First Amendment or the Minnesota Constitution by requiring a church to become established through incorporation or any other means for any reason. In the Minnesota cases determining whether an organization was a church, whether the church was incorporated with 501(c)(3) status was not a factor used to determine whether it was a church. In those cases, generally speaking, the Court held that organizations claiming to be churches incorporated and obtained 501(c)(3) status in their efforts to avoid paying property taxes.

**1. The highest Federal and Minnesota law forbid required incorporation or Internal Revenue Code § 501(c)(3) status of a church for any reason, including qualification for property tax exemption.**

**a. Federal Law and 501(c)(3).**

## (1). Federal Law

The First Amendment to the United States Constitution (“First Amendment”): “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I.

The United States Supreme Court has discussed the development and historical background of the First Amendment in detail. *Everson v. Board of Education*, 330 U.S. 1 (1947); *Engel v. Vitale*, 370 U.S. 421 (1962). At this point, it would serve no useful purpose to review the background of the Establishment and Free Exercise Clauses of the First Amendment. However, looking at one United States Supreme Court case in particular is instructive for purposes of the situation at hand. In *Walz*, 397 U.S. 664, 90 S.Ct. 1409, 1415, 25 L.Ed.2d 697, the United States Supreme Court has looked at the issue of state property tax exemption for churches. *Walz* stated:

1. The First Amendment tolerates neither governmentally established religion nor governmental interference with religion. Pp. 667-672.
2. The legislative purpose of [property] tax exemptions is not aimed at establishing, sponsoring, or supporting religion, and New York's legislation simply spares the exercise of religion from the burden of property taxation levied on private profit institutions. Pp. 672-674.
3. The tax exemption creates only a minimal and remote involvement between church and state, far less than taxation of churches would entail, and it restricts the fiscal relationship between them, thus tending to complement and reinforce the desired separation insulating each from the other. Pp. 674-676.
4. Freedom from property taxation for two centuries ... has helped to guarantee the free exercise of all forms of religious belief. Pp. 676-680.

“It is sufficient to note that for the men who wrote the Religion Clauses of the First Amendment the ‘establishment’ of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity. 668, 701. The general principle deducible from the First Amendment and all that has been said by the Court is this: that **we will not tolerate either governmentally established religion or governmental interference with religion**. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. 669, 702. Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so. **Adherence to the policy of neutrality that derives from an accommodation of the Establishment and Free Exercise Clauses has prevented the kind of involvement that would tip the balance toward government control of churches or governmental restraint on religious practice.**” 669-670, 702. [Bold emphasis mine]

“The hazards of placing too much weight on a few words or phrases of the Court is abundantly illustrated within the pages of the Court's opinion in *Everson*. MR. JUSTICE BLACK, writing for the Court's majority, said the First Amendment ‘means at least this: Neither a state nor the Federal Government can . . . pass laws which . . . **prefer one religion over another.**’ 330 U.S., at 15. [Bold emphasis mine]

“Congress, from its earliest days, has viewed the religion clauses of the Constitution as authorizing statutory real estate tax exemption for religious bodies.” 676, 706. **This freedom from taxation “has operated affirmatively to help guarantee the free exercise of all forms of religious belief.”** 678, 707. [Bold emphasis mine]

Mr. Justice Brennan noted:

“History is particularly compelling in the present case because of the undeviating acceptance given religious tax exemptions from our earliest days as a Nation. Rarely if ever has this Court considered the constitutionality of a practice for which the historical support is so overwhelming.

“The Establishment Clause, along with the other provisions of the Bill of Rights, was ratified by the States in 1791. Religious tax exemptions were not an issue in the petitions calling for the Bill of Rights, in the pertinent congressional debates, or in the debates preceding ratification by the States. n1 The absence of concern about the exemptions could not have resulted from failure to foresee the possibility of their existence, for they were widespread during colonial days. n2. Rather, it seems clear that the exemptions were not among the evils that the Framers and Ratifiers of the Establishment Clause sought to avoid. Significantly, within a decade after ratification, at least four States passed statutes exempting the property of religious organizations from taxation. n3.” [on pp. 681-687, 708-711 Mr. Justice Brennan traced the early history of exemptions]. The exemptions have continued uninterrupted to this day. They are in force in all 50 states.” 685, 711.

“Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, n9 they do so in fundamentally different ways. . . . In other words, ‘in the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches,’ while ‘in the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.’ Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development*, pt. II, 81 Harv. L. Rev. 513, 553 (1968). Thus, ‘the symbolism of tax exemption is significant as a manifestation that organized religion is not expected to support the state; by the same token the state is not expected to support the church.’ Freund, *Public Aid to Parochial Schools*, 82 Harv. L. Rev. 1680,

1687 n. 16 (1969). Tax exemptions, accordingly, constitute mere passive state involvement with religion and not the affirmative involvement characteristic of outright governmental subsidy. n11.” 690, 713-714.

“In certain circumstances, of course, the economic value of a subsidy exceeds that of an exemption. If the only state assistance received by a religious organization is a real property tax exemption, the church must raise privately every cent that it spends. If, on the other hand, the only state aid to a church is a general subsidy, the church is relieved of the need to support itself to the extent that its subsidy payments from the State exceed its tax payments to the State. Thus, to take the extreme case, a lightly taxed religious organization that received a large, general subsidy could purchase property, construct buildings and maintain its program wholly at public expense. Such dependence on state support is impossible when the only aid provided is a real property tax exemption.” 690, 713 fn9.

“Moreover, the termination of exemptions would give rise, as the Court says, to the necessity for ‘tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.’ *Ante* at 674. Taxation, further, would bear unequally on different churches, having its most disruptive effect on those with the least ability to meet the annual levies assessed against them. And taxation would surely influence the allocation of church resources. By diverting funds otherwise available for religious or public service purposes to the support of the Government, taxation would necessarily affect the extent of church support for the enterprises that they now promote. In many instances, the public service activities would bear the brunt of the reallocation, as churches looked first to maintain their places and programs of worship. In short, the cessation of exemptions would have a significant impact on religious organizations. Whether Government grants or withholds the exemptions, it is going to be involved with religion. n12” 691-692, 714-715.

Mr. Justice Harlan, in his concurring opinion, pointed out:

**“What is at stake as a matter of policy is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point.**

“Two requirements frequently articulated and applied in our cases for achieving this goal are ‘**neutrality**’ and ‘**voluntarism**.’ *E. g.*, see *Abington School Dist. v. Schempp*, 374 U.S. 203, 305 (1963) (concurring opinion of Mr. Justice Goldberg); *Engel v. Vitale*, 370 U.S. 421 (1962). These related and mutually reinforcing concepts are short-form for saying that the Government must neither legislate to accord benefits that favor religion over nonreligion, nor sponsor a particular sect, nor try to encourage participation in or

abnegation of religion. Mr. Justice Goldberg's concurring opinion in *Abington* which I joined set forth these principles: **‘The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief.’** 374 U.S., at 305. The Court's holding in *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961), is to the same effect: the State cannot ‘constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can [it] aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.’ In the vast majority of cases the inquiry, albeit an elusive one, can end at this point. **Neutrality and voluntarism stand as barriers against the most egregious and hence divisive kinds of state involvement in religious matters.**” 694-695, 716-717 [Bold emphasis mine]

**(2). Internal Revenue Code § 501(c)(3) tax exemption and its relationship to church property tax exemption.**

Internal Revenue Code § 501(c)(3) (1954) status is voluntary. See, e.g., Michael Hatfield, Ignore the Rumors—Campaigning from the Pulpit Is Okay: Thinking Past the Symbolism of Section 501(c)(3), 20 NOTRE DAME J. L. ETHICS & PUB. POL’Y 125 (2006), <https://digitalcommons.law.uw.edu/faculty-articles/356>. No nexus exists between federal 501(c)(3) status and state property tax law.

Respondent relies on 14 IRS criteria for determining whether a “legal entity” is a church. This criteria is used when a church applies for 501(c)(3) tax exempt status. The correct analysis in this case is whether an organization is a church (whether or not a corporation and/or a 501(c)(3) tax exempt organization).

In attempting to define “church,” the IRS has “given certain characteristics [14 criteria] which are generally attributed to churches.” IRS Publication 1828 (2015), p. 33. “In determining whether a particular organization can be considered to be a “church” within the meaning of section 170(b)(1)(A)(i) \* \* \* the following criteria are taken into consideration.” Foundation of Human Understanding v. Commissioner of Internal Revenue, 88 T.C. 1341, 1351; 1987 U.S. Tax Ct. LEXIS 75; 88 T.C. No. 75 (1987). The court listed the 14 criteria in Respondent’s Motion, and then stated **“These criteria are not exclusive and are not mechanically applied, but, rather, serve as a list of some of the characteristics that may be used in determining whether an organization is a church \* \* \*** any other facts and circumstances which may bear upon an organization's claim that it is entitled to church status must also be taken into consideration.” *Id.* [Emphasis mine]. “We hasten to emphasize that by its use of the term ‘church,’ Congress must have intended a more narrow classification than that embodied by a term such as ‘religious organization.’ Despite the lack of guidance from Congress, and in the absence of a more explicit regulatory definition of the term ‘church,’ we will continue our efforts to give a distinct meaning to this statutory classification.” *Id.* at 1361.

“The Internal Revenue Service [criteria for a church to obtain federal tax exempt status], does not give controlling weight to any single factor, since some well recognized religious organizations might not satisfy all of these characteristics.” *Am. Fundamentalist Church v. County of Hennepin*, TC-1535, 1983 WL 1050 at 3 (Minn. Tax Ct. Mar. 22, 1983). “In summary the property test used from determination of a ‘church’ depends upon an analysis of all the facts and circumstances of a particular case” *Id.* quoting *Ideal Life Church of Lake Elmo*, 304 N.W.2d, 308, 319 (1981). *Am. Fundamentalist* examined the reasons the Court gave for declaring American Fundamentalist Church not to be a church. *Am. Fundamentalist* then stated, “We do not feel very comfortable with either the above citation from *Ideal Life Church of Lake Elmo*, supra, or the Internal Revenue characteristics.” “All churches had some beginning and few new churches would meet many of the characteristics of the Internal Revenue requirements.” *Am. Fundamentalist* at 5.

Petitioner has found no Minnesota property tax case which used the IRS criteria to define “church.” Petitioner has found no case in which “distinct legal existence” has been required for an organization to be a church. It is a factor that “may be used [by the IRS] in determining whether an organization is a church.” To require a distinct legal existence would not only violate the First Amendment but also The Minnesota Constitution and Minnesota law as shown below. Respondent’s assertion that a church in Minnesota must have a distinct legal existence by complying with “either Chapter 315 or Chapter 317 A of Minnesota Statutes” and that “only a church set up under these chapters are authorized to own real property in the name of the church” (See page 7 of Respondent’s Motion) is disproved in the following section of this Response and Memorandum. The cases cited in Respondent’s footnote 4 apply to various Federal tax cases which have utilized these criteria. No church is required to apply for Federal Tax Exempt Status, but if they do the IRS may use some of these criteria.

Churches are mandatory exceptions to the requirement for filing for 501(c)(3) status. Internal Revenue Code § 508(a)(c). Accordingly, the Internal Revenue Service openly recognizes that a “church” is not required to file for 501(c)(3) status and publishes this fact in its publications. Federal tax exempt status is implemented by invitation and acceptance. “Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits. For example, contributors to a church that has been recognized as tax exempt would know that their contributions generally are tax-deductible..... Unlike churches, religious organizations that wish to be tax exempt generally must apply to the IRS for tax-exempt status unless their gross receipts do not normally exceed \$5,000 annually.” IRS Publication 1828 (2015), pp. 2, 3. “You can deduct contributions only if you make them to a qualified organization. **To become a qualified organization, most organizations, other than churches and governments, as described below, must apply to the IRS....**” IRS Publication 526 (2018), p. 2. [Bold emphasis mine.].

**b. Minnesota Constitution, Minnesota Non-Profit Corporation Law, Minnesota Property Tax Law, and Minnesota Trust Law**

## **(1). Relevant Minnesota Constitutional Provisions and Law**

The Minnesota Constitution perhaps provides greater protections for freedom of religion and conscience than does the First Amendment. Incorporation under the Minnesota Constitution and Minnesota law is voluntary, not mandatory. No Minnesota law requires an organization to be incorporated and to apply for 501(c)(3) status to be defined or classified as a church in order to qualify for property tax exemption or for any other purpose.

“Minnesota Constitution, Article 1, Sec. 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship....”

Minnesota Constitution Article X, § 1: POWER OF TAXATION; EXEMPTIONS; LEGISLATIVE POWERS: “... all churches, church property, houses of worship, ... shall be exempt from taxation except as provided in this section.”

Minnesota Statute § 272.02, Exempt Property, Subd. 6: “All churches, church property, and houses of worship are exempt.”

Minnesota Statute § 315.01 Subdivision 1 “Who **may** elect. The worshipers with an **unincorporated church**, congregation, or religious society who are of lawful age and have been considered as belonging to it, **may** elect trustees and incorporate as provided in this section.” [Bold emphasis mine].

Minnesota Statute 317A.021 Application and election, Subdivision 1: A corporation incorporated under or governed by chapter 300, 309, or 315 that has not later become governed by Minnesota Statutes 1988, chapter 317, **may** elect to be governed by this chapter.”. [Bold emphasis mine].

Neither Chapter 315 nor 317A of Minnesota Statutes violates the First Amendment or Article 1, § 16 or Article 10, § 1. of the Minnesota Constitution by requiring churches to become incorporated or to obtain 501(c)(3) status.

Mr. Justice Wahl of the Minnesota Supreme Court, in concurring with the majority in *Ideal Life Church of Lake Elmo*, 304 N.W.2d, 308, 319 (1981), stated most appropriately:

“The United States Supreme Court has held that it is constitutional under the establishment clause to provide property tax exemptions for churches and religious institutions. Such property exemptions are a matter of legislative grace. **They neither advance nor inhibit the establishment of religion if equally applied.** Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970). **Unequal application occurs when tax exemptions are accorded some ‘churches’ and not others.**” [Bold emphasis mine]

“In order for any institution to qualify for tax exemption under Minn.Const. art. 9, s 1 and M.S.A. s 272.02 enacted pursuant thereto there must be a concurrence of ownership of the property by an institution of the type prescribed by the constitution and a use of the property for the purpose for which such institution was organized.” *Christian Businessmen's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949) (footnote omitted; emphasis in original) cited in *Ideal Life Church of Lake Elmo*, 304 N.W.2d, 308, 313 (1981). Thus, it must be determined whether the property is owned by a ‘church.’ Second, and concurrently, it must be ascertained whether there is an appropriate ‘use’ of the property.” *Id.* at 313.

The Court has struggled with defining the term “church.” In *Ideal Life*, a case in which a non-profit corporation claimed to be a church, the Court did not look at the Internal Revenue Code definition of “church.” The Court did not consider whether the institution was incorporated with 501(c)(3) status in seeking to define church or state that to qualify as a “church” an organization had to be incorporated or 501(c)(3). The Court recognized that before incorporation, the organization was a church. The Court stated, for example, “The Ideal Life Church was incorporated on December 23, 1977.... The day after the Ideal Life Church was incorporated, December 24, 1977, LeRoy Rossow and his wife signed a contract for deed conveying their home to the church.” 310.

Also, the Court pointed out that the Internal Revenue Service had determined that “Ideal Life Church had been determined on the merits not to be an exempt organization under Internal Revenue Code § 501(c)(3).” 312. Nonetheless, the Court then proceeded to examine the issues, one of which was “(1) Whether the Ideal Life Church is an entity falling within the property tax exemption provided by Minn.Const. art. X, § 1, and Minn.Stat. § 272.02(1)(5) (1980), for ‘churches, church property and houses of worship.’” 312. Had 501(c)(3) status been necessary for “church” status, the Court would have so stated.

In seeking to arrive at a definition of “church” the Court first looked at “the only Minnesota case which even remotely indicates (at that time) what sort of factors make up a ‘church’ for tax exempt purposes, *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 22 N.W.2d 642 (1946).” *Id.* The Court then examined cases from other jurisdictions which attempted to define “church.” 314. The Court pointed out that the Missouri Supreme Court in



*Missouri Church of Scientology v. State Tax Commissioner* 560 S.W.2d 837 (Mo. 1977) also reviewed the manner in which the United States Supreme Court dealt with religion in *Davis v. Beacon*, 133 U.S. 333 (1890) long before 501(c)(3) was enacted into law in 1954. 314.

The petitioner in *Ideal Life* had used a dictionary definition of church; but “[i]n ascertaining the legal meaning of the word ‘church,’ as used in Minnesota’s exemption provisions, the Tax Court neither adopted a single, all-purpose theistic definition nor the liberal definition that the Ideal Life Church advocates.” Instead, it based its decision upon a multiple factual analysis test. The Court concluded that the “Tax Court’s multifactual analysis test is a workable formula for determining whether a ‘church’ qualifies as a tax exempt entity.” *Id.*

The Tax Court in *Ideal Life* refused to declare an exemption for a religious corporation seeking property tax exemption for a home which had been originally homesteaded and later deeded to a non-profit religious corporation founded by the home owner, Ideal Life Church, Inc. The Court affirmed the Tax Court’s refusal to declare the property exempt from taxation.

In determining whether Ideal Life Church was a “church” for Minnesota property tax exemption purposes, the Court never included a requirement that the organization be an incorporated 501(c)(3) religious organization. The Court never referred to any case involving the question of whether an organization was a church for IRS 501(c)(3) tax exempt purposes.

The Supreme Court of Minnesota again looked at the issue of the definition of ‘church’ in 1995. The case involved American Fundamentalist Church (“AFC”), a religious corporation claiming church property tax exempt status. The court, in upholding the decision of the tax court that AFC was not a church, stated:

“While we do not overrule *Ideal Life*, we hold that the test for determining whether an organization is properly considered a church for tax purposes is a subjective one, focusing on the sincerity of belief and taking into account evidence on issues such as those articulated in *Ideal Life*.<sup>[6]</sup> By combining these two approaches, we avoid the risk of favoring religious bodies which are similar to mainline churches, and disfavoring others which may be equally sincere, but are **nontraditional in their organization**, their theology or their methods of worship. This approach also seems most consistent with the teaching of the Supreme Court in *Walz v. Tax Comm’n*, 397 U.S. 664, 677, 90 S.Ct. 1409, 1415, 25 L.Ed.2d 697 (1970). There the Court said that tax exemption of churches and church properties does not violate the Establishment Clause of the Free Exercise Clause of the First Amendment so long as under the state laws exempting the church property ‘[no religion] was favored over others and none suffered interference.’ *Id.* at 677, 90 S.Ct. at 1415. **A test which adheres to a rigid enumeration of organizational characteristics may run afoul of the First Amendment prohibitions of state actions**

**which favor one denomination, sect or independent religion over another.”** [Bold emphasis mine]

*State of MN v. American Fundamentalist Church*, 530 N.W.2d 200, 205 (1995). The Court affirmed the tax court determination that the property was not used principally for church purposes and therefore the property was not exempt from property taxes.

In both *Ideal Life* and *American Fundamentalist Church*, “**religious non-profit 501(c)(3) corporations**” tried to use the laws providing for property tax exemption under the guise of being a church. In neither case did the Court include a requirement that the organization be an incorporated 501(c)(3) religious organization to be a church. In both cases, the organizations were declared to be tax scams.

Respondent also relies on *Inter-Faith Care Ctr. v. Carlton County*, 09-CV-11-992, 2014 WL 1711798 (Minn. Tax Apr. 24, 2014), and specifically footnote 39 of that case. That reliance is misplaced. *Inter-Faith* is not applicable.

- First, InterFaith did not claim to be a church or a religious organization until it was too late to make and factually support the claim. The Court stated under “1. Governing Law,” “In Minnesota, public property used exclusively for a public purpose is excluded from Taxation.” The organization was not, and did not claim to be, protected by the same statutes and State and Federal Constitutional provisions as a church or religious organization. Its “Restated Articles of Incorporation provides that the corporation is organized and shall be operated exclusively for charitable, medical, and educational purposes.” The opinion states, “The property is subject to a long-term lease to the State of Minnesota and used by the State to provide medical services to chemically dependent women. These services are administered on the subject property by the State of Minnesota, Department of Human Services, which is a tax exempt entity. The parties have stipulated that the State’s use of the subject property is a public, governmental use of the property.”
- The governing law in the case is Minn. Stat. § 273.19, subd. 1, “tax-exempt property held under a lease for a term of at least one year ... shall be considered, for all purposes of taxation, as the property of the person holding it. In this subdivision, ‘tax-exempt property’ means ‘property owned by the United States, the State or any of its political subdivisions, a school, or any religious, scientific, or benevolent society or institution **incorporated or unincorporated.**’ [Emphasis mine] The Court found that InterFaith qualified as a benevolent society. This statute, as do the laws I have already referenced, makes clear that a church (as well as other tax-exempt properties) does not have to be incorporated.

Respondent stated in its letter dated June 15, 2017, as to footnote 39 in *InterFaith*: “the Court determined that the property in question could not be exempt as a church because it did not meet

the requirement of Minn. Stat. Chapter 315. *See also Elim Baptist Church v. County of Hennepin*, 1004, 1981 WL 1229, at \*2 (Min. Tax July 21, 1981). Footnote 39, states:

“InterFaith argues that the subject property should qualify for tax exempt status under Minn. Stat. § 273.19, subd. 1, as a religious society or institution and that its property would be considered church property exempt from taxation. See Minn. Const. art. X, § 1; Minn. Stat. § 272.02, subd. 6 2012 (property exempt from taxation includes ‘all churches [and] church property’). However, based on the stipulated facts before us, we are not able to determine whether InterFaith qualifies as a religious society under Minnesota law. See generally Minn. Stat. § 315 (2012). Because we find that InterFaith qualifies as a benevolent society under Minn. Stat. § 273.19, subd. 1, we do not reach these issues.”

Therefore, Respondent’s reliance on Interfaith is totally misplaced. Facts were not in the record by which the Court could make a determination as to whether InterFaith was a church. It appears that the first time this issue may have been raised was after all the facts were in. Facts must be entered into the record to support a position relied upon. When no such facts are entered into the record and an issue is not relied upon, a court cannot decide the issue. The issue of whether Interfaith was a church seemed like an afterthought introduced when it was too late to develop the issue. Also, it was a moot question since the Court determined that the property was tax exempt for the factually supported reasons raised by Interfaith.

## **(2). Minnesota Trust Law and the Common Law of Trust**

The Minnesota Trust Code, Minn.Stat. 501C, recognizes trusts in their various forms. The Code also states, “In addition, the common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another law of this state.” Minn.Stat. 501C.0106.

The Minnesota Supreme Court recognized long ago in a case where property was deeded to a “[pastor and two other church members] as trustees for the [name of church]” the obvious truth, the common law of trusts, and statement of Minnesota law that:

“Lands, tenements, or hereditaments conveyed by devise, grant, purchase, or otherwise, to any persons as trustees in trust for the use of any religious society heretofore or hereafter organized, or a meeting house, burial ground, or parsonage, with the improvements thereon, shall descend in perpetual succession, and be held by such trustees in trust for such society.”

*Mabel First Lutheran Church v. Cadwallader*, 172 Minn. 471, 479 (1927).

Respondent incorrectly relies upon *In re Collection of Delinquent Real Prop. Taxes*, 89-2961, 1993 WL 444013 at \*1 (Minn. Tax Oct. 29, 1993), taking a statement of the Court out of context. See pages 8-9 of Respondent's brief. In that case, as part of a "tax avoidance device cloaked in religious garb" (\*9), "the Pages transferred by quitclaim deed their vendees' interest in Property to Douglas A. Page and Carolyn Page as joint trustees for the Basic Bible Church of America, Chapter 8035 ("the BBC")(\*1). Then they sought property tax exemption of the Property as church property (*Id.*). However, the Court ruled that BBC was not a religious organization or a church organization and was used primarily, if not exclusively, as the residence and business office of Reverend page (*Id.*). There was no church that the Pages, as trustees, could hold the property for.

There are numerous churches which have organized as has \_\_\_\_ use the same basic Resolution and Declaration of Trust and receive state property tax exemption (Exhibit 2, ¶19, 20). One such church is Trinity Springs Baptist Church in Shoals, Indiana. The local property tax board denied the property tax exemption. The Indiana Board of Tax Review which issued a ruling and determined that the Petitioner was entitled to a property tax exemption (Exhibit 2, ¶20b, **Attachment 4**). Several other churches in Indiana and many throughout the nation are organized in the same manner as is \_\_\_\_ and receive property tax exemptions (Exhibit 2, ¶20b).

Likewise, Faith Baptist Church, 3621 3<sup>rd</sup> Ave.; Kearney, Nebraska, 68845, whose pastor is Clarence Patterson established a trust like that utilized by Petitioner and receives the state property tax exemption (Exhibit 2, ¶20a).

The Court of Appeals of Tennessee declared an oral trust on property held in a joint tenancy for a Buddhist Temple and held that this did not disqualify the institution for property tax exemption purposes. KOPSOMBUT-MYINT BUDDHIST CENTER, v. STATE BOARD OF EQUALIZATION, 728 N.W. 2d 327 (1986) Court of Appeals of Tennessee, Middle Section, at Nashville. Permission to Appeal Denied, April 6, 1987. Property held in trust and which otherwise qualifies for the exemption is to be exempted from property tax. *Id.*, 333-5. It was obvious that corporate, 501(c)(3) status was not a prerequisite for religious property tax exemption. The trust varied from the \_\_\_\_ trust agreement in that in the \_\_\_\_ trust agreement, the church is the trustor ... but not the beneficiary.

Wisconsin—in a case where property was held in trust for a church, Basic Bible Church of America—has declared that incorporation is not necessary for church property tax exemption, even though the Court then held that the organization, Basic Bible Church of America, was not a church—the property being held in trust was not a factor considered in determining eligibility. WAUSHARA COUNTY v. Sherri L. GRAF, 166 Wis.2d 442 (1992), 480 N.W.2d 16, Supreme Court of Wisconsin. Submitted on briefs October 4, 1991. Decided February 17, 1992. Basic Bible Church of America was not a legal entity. 449. [T]he court of appeals held that the title to the real estate was properly held in the name of the trustees for the benefit of Basic Bible, and that the trust was an "entity" which "could claim" tax exemption. 450. The principal issue which

[the court of appeals] in its discretion addressed was the circuit court's conclusion that for a "church" to claim a tax exemption it must be incorporated under the laws of Wisconsin or another state. 453 The Court stated: "The opinion of the court of appeals convincingly demonstrates that "the church was not required to show that it was incorporated as a religious society or corporation under ch. 187, Stats., or otherwise, to establish that its property was exempt from taxation." 453-454. We need not reiterate the excellent discussion and analysis underpinning that conclusion that appears in the court of appeals opinion. 157 Wis. 2d at 539-49. 453. "Basic Bible Church of America: is a subterfuge designed to evade taxation." 462.

The opinion from the court of appeals referred to by the Wisconsin Supreme Court was WAUSHARA COUNTY v. Sherri L. GRAF, 157 Wis.2d 539 (1990), 461 N.W.2d 143, Court of Appeals of Wisconsin. Submitted on briefs December 8, 1989. Decided August 2, 1990.

"Decisions interpreting ch. 91, Revised Statutes of 1878, make plain that failure of a church or religious organization to incorporate thereunder did not affect the power of the church or religious organization to hold title to property. 'Under the repeated decisions of this court, we must hold that the *mere fact* that [a] church or religious society had not yet been incorporated at the time of the delivery of [a] deed in no way frustrated the trust thereby created, if such trust was otherwise valid.' *Fadness v. Braunborg*, 73 Wis. 257, 278-79, 41 N.W. 84, 90 (1889) (emphasis in original).... In *Holm v. Holm*, 81 Wis. 374, 382, 51 N.W. 579, 581 (1892), the facts included that the Norwegian Evangelical Lutheran Church of Roche-a-Cree was a voluntary association until February 7, 1889. The court noted that "[p]rior to that date the title to the churches in which the members of the association worshiped was vested in trustees named in . . . deeds, **and their successors in office.** . . . The trusts imposed by such deeds appear to have been valid upon the principles stated by this court in *Fadness v. Braunborg*. . . ." *Id.*

In *Franke v. Mann*, 106 Wis. 118, 131, 81 N.W. 1014, 1018-19 (1900), the court further said that "[w]hat has been said is in harmony with the law regarding trusts for religious uses, *whether the trustees be officers of a religious corporation or of an unincorporated ecclesiastical body.* . . ." *Id.* at 131-32, 81 N.W. at 1019 (emphasis added). It is plain from these decisions that the court did not consider that the legislature, by offering to ecclesiastical bodies the advantages of incorporation, intended to impose corporate structure upon such bodies. The property of unincorporated ecclesiastical bodies was commonly held in trust for the benefit of the members." *Id.* at 548-549.

**c. The subject property qualifies for a property tax exemption because the property is owned by a church and because it is used exclusively for church purposes as a house of worship.**

Respondent's motion, beginning on page 8, again takes the incorrect legal position that Respondent can force establishment of a church by stating that the only way a church can own real property "in the name of the church," is by becoming a Chapter 315 and/or 317A

organization. A church may buy property in its own name or in the name of a trust through a trustee or trustees.

Petitioner acquired the property in November 2015. The new ownership was in the name of “GRANTEE, \_\_\_\_\_, PASTOR/TRUSTEE OF THE \_\_\_\_\_, and GRANTEE’S heirs and assigns forever” (Exhibit 1, ¶16 and Attachment 2). Obviously, the pastor was not the owner of the property. He was buying the property as Pastor/Trustee of \_\_\_\_\_. A church, whether incorporated or not, whether 501(c)(3) or not, cannot sign a deed. Trustees sign the deed for an incorporated church. ... The Corrective Deed which was done in hopes of satisfying Respondent’s concerns conveyed the property to \_\_\_\_\_ 2012, Church Trust (Exhibit 1, Attachment 6).

**B. Petitioner qualifies for the property tax exemption for the pay-2017, pay-2018, and pay-2019 tax exemption years**

**1. The 2016 (pay-2017) Notice of Exemption.**

Petitioner’s sincerely held religious belief was that filing an application for tax exemption would operate as a recognition of the right of the state of Minnesota to discriminate against \_\_\_\_\_ and prefer the religious beliefs of others in violation of both the United States Constitution, Amendment I and also the Constitution of the State of Minnesota Article L, Section 16 (See, Exhibit 1, ¶89; Respondent’s Motion, page 10). Therefore, instead of filing an Application, on or about November 30, 2015 Petitioner sent the NOTICE FOR PROPERTY TAX PURPOSES [PROPERTY USED BY \_\_\_\_\_, A NEW TESTAMENT CHURCH (Exhibit 1, ¶88, Attachment 4) for 2016 (pay-2017) property tax exemption purposes.

At that point, Respondent shifted the focus from the correct procedure for obtaining property tax exemption to incorrect positions on two matters—ownership of the property and church establishment under Minnesota non-profit corporation law. Respondent incorrectly notified Petitioner that the property was not owned by a church, but by an individual and that since the church was not incorporated under Minnesota law that it could not get a property tax exemption. Respondent (1) incorrectly declared that the property was owned by an individual as trustee of the church (Exhibit 1, Attachment 7—Letter from Respondent to Petitioner dated May 19, 2016) and (2) told Petitioner, contrary to the law, that only a church which was incorporated under either Chapter 315 or 317A of Minnesota Statutes qualified for a property tax exemption (Exhibit 1, Attachment 8—Letter from Respondent to Petitioner dated October 20, 2016).

Since Notification or Application would have been denied unless Petitioner chose to incorporate, the issues raised by Respondent’s positions on property ownership and church incorporation precluded going forward on the issue of notification as opposed to application.

A party wishing to obtain relief must come into court with clean hands. Equity further requires that justice be done. Obviously, \_\_\_\_ is a church and qualifies for the exemption. Respondent

stood on misunderstandings of law and fact to the detriment of Petitioner. The right thing to do in this situation is to grant the property tax exemption to \_\_\_\_\_. The facts clearly prove that \_\_\_\_\_ is a church and that the property is used for church purposes as a house of worship only.

The First Amendment compels the government to accommodate a religiously based objection to the statutory requirement. *Sherbert v. Verner*, 374 U.S. 398, 10 L.Ed. 2d 965, 83 S.Ct. 1790 (1963); *Review Board, Inc. Empl. Sec. Div.*, 450 U.S. 707, 67 L.Ed. 2d 624, 101 S.Ct. 1425 (1981). The First Amendment and the Preamble to the Minnesota Constitution and Bill of Rights require the State to accommodate religiously based objections to statutory requirements when reasonable alternatives are available.

## **2. The 2017 (pay-2018) and 2018 (pay 2019) Applications for Exemption.**

Respondent is willing to treat Petitioner's applications provided in 2017 and 2018 as timely for those assessment years (Respondent's Motion, p. 11).

Minn. Stat. § 272.025, Subd. 4 requires knowing violation of provisions of section 272. Petitioner "believed that the deadline for filing the 2017 Application for Property Tax Exemption was May 1, 2017 and that the deadline for filing the 2018 Application was May 1, 2018 and filed both applications accordingly." He "did not knowingly violate the deadline for filing." (Exhibit 1, ¶98).

Petitioner waited two years for this case to get to court with no knowledge that he had honored a late filing date. Petitioner's error in no way prejudiced Respondent or harmed the state. Petitioner has paid the taxes pending termination of this case; and Respondent had full knowledge of where the property was located and all the facts surrounding the use of the property needed to decide whether \_\_\_\_\_ was a church and a house of worship. Respondent is willing to treat the 2017 and 2018 applications as timely, as referenced above.

## **IV. Conclusion**

There is no nexus between either state incorporation status or federal 501(c)(3) status and state property tax exemption eligibility. Therefore, in accord with United States Constitution, Amendment 1 and the Minnesota Constitution and law, the subject Church Property and house of worship should be declared exempt from property taxation as a matter of law. Requiring a church to become incorporated and to obtain Internal Revenue Code § 501(c)(3) status in order to be eligible for property tax exemption is forbidden by the United States and Minnesota Constitutions and Minnesota Property Tax Exemption law and the cases which have interpreted those laws in the property tax context. Both federal 501(c)(3) status and state incorporation status are voluntary and not required for a church to receive property tax exemption on houses of worship. No Minnesota law requires a church to incorporate or obtain 501(c)(3) status since such a law would be illegal under both the First Amendment and the Minnesota Constitution.

The facts prove that \_\_\_\_ is a church, that the subject property is used exclusively by \_\_\_\_ as a house of worship, that a church does not have to incorporate, obtain Internal Revenue Code § 501(c)(3) status, or become established in any way to be eligible as a church for property tax exemption. \_\_\_\_ holds the property through a trustee, the Lord Jesus Christ being the beneficial owner.

Petitioner asserts that when viewing the material facts presented in a light most favorable to Petitioner, the following is clear: The 2016 Application should be honored because the State is required to accommodate religiously based objections to statutory requirements when reasonable alternatives are available. After consulting with a lawyer, Petitioner was convinced that filing an application did not violate sincerely held religious beliefs. Petitioner filed and qualified for a property tax exemption for assessment years 2017 and 2018. Petitioner did not knowingly file late Applications for those years.

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