

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

GOD’S STOREHOUSE TOPEKA CHURCH	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
_____	)	

**RESPONSE TO UNITED STATES’ MOTION FOR SUMMARY DENIAL OF VERIFIED  
PETITION TO QUASH INTERNAL REVENUE SERVICE THIRD-PARTY SUMMONS**

God’s Storehouse Topeka Church (“God’s Storehouse” or “Church”), by and through counsel Kriegshauser Ney Law Group, respectfully petitions this Court to deny the motion for summary denial of the Church’s verified petition to quash the Internal Revenue Service (the “IRS”) third-party summons issued to Kaw Valley Bank. In support of its Response, God’s Storehouse states the following:

**NATURE OF THE MATTER**

This matter comes before the Court after God’s Storehouse has repeatedly cooperated with an IRS examination into its status as a church. God’s Storehouse has provided numerous documents to the IRS in its examination which was ultimately initiated as a politically motivated attack against God’s Storehouse and its paster Senator Rick Kloos (“Senator Kloos”), who is currently a member of the Kansas Senate. This attack began while Senator Kloos was running for election based on campaign signs noting Senator Kloos’ role in founding God’s Storehouse. After local press coverage quoting Senator Kloos’ political opponent, the Freedom from Religion Foundation (“FFRF”) filed a complaint with the IRS. The FFRF posted a copy of its complaint

on its website. Although it has now been removed. The United States on behalf of the IRS (hereinafter, the “IRS”) continues to refuse to produce this complaint or acknowledge its existence, upon information and belief, the FFRF complaint is the ultimate motivator of this now protracted and exceedingly broad examination. The IRS has exceeded the proper bounds of its examination without justification such that Petitioner now requests relief from the Court through this Action.

### **STATEMENT OF THE FACTS**

The Church filed an extensive Verified Petition in this matter laying out the overall facts and the law related to this matter. *See* Petition (Doc. 1). The Petition is hereby incorporated by reference as if fully set forth herein. While the Church disputes various statements in the IRS’s factual recitation related to its application of tax law, many of the facts are not in dispute. However, the Church’s Verified Petition asserts various facts that the IRS ignores or otherwise refuses to believe such that it continues its examination after being *voluntarily* provided information by the church directly related to the IRS’s expressed interests.

The Church is an unincorporated registered church organization in the State of Kansas. Petition ¶ 5. That being said, God’s Storehouse operates as a church, has an established congregation, it regularly conducts religious services, and it disseminates its Christian teachings. *See* Petition ¶¶ 22-28. Mr. Kloos is an officer of Petitioner and a Kansas State Senator. *See* Declaration of Internal Revenue Agent Kesroy C. Henry ¶ 5 (Doc. 12-1) (the “Declaration”). The Church’s landing and home page<sup>1</sup> of its website prominently states “God’s Storehouse is a church that operates a thrift store . . . Our vision is to love God and love people; by doing so we

---

<sup>1</sup> *See* <https://www.gshtopeka.org/> (last accessed Feb. 21, 2022).

hope to make a lasting impact in the community in which we serve.” Petition ¶ 33. The Church’s landing and home page to its website also includes a pop-up which displays for all viewers when arriving on the page that invites the public to “JOIN US IN BIBLE STUDY” with an email address for more information. *Id.* The Church has submitted ample materials communicating that it meets regularly for worship services and otherwise acts entirely as a religious house of worship. *Id.*

In good faith and in compliance with the IRS, the Petitioner has *voluntarily* provided the following documents to the IRS for them to determine its status as a church: (1) governing documents; (2) a detailed history of the organization; (3) a summary of its religious beliefs; (4) detailed information concerning its regularly scheduled worship services including photos; (5) service dates for the last two years and order of worship; (6) church member lists; (7) tithing donation receipt records; (8) pastoral biographical and educational information including ordination records and licensing; responsive information providing the number of funerals administered during 2019 and 2022 with sample obituaries and service documents extensive notes from pastors’ sermon and Bible studies conducted during the 2019 and 2020 fiscal years; (9) history of its thrift store ministry selling donated home goods and clothing; sample family assistance applications documenting the free provision of goods and clothing to those in need during 2019 and 2020; (10) minutes of all 2019 and 2020 board meetings; compensation and housing allowance resolutions for the pastors; (11) all payroll reports; IRS Form 941s; (12) copies of all leases and mortgages; letters from the Church’s bank, insurance carrier, and accounting firm supporting the Church’s ongoing operations as a Christian church; (13) all sale, historical, and financial information associated with the sale of coffee and cookies at the thrift store and church, including why the church believes the activity is not operated for profit and

contributes importantly to its exempt purposes; (14) a detailed explanation of why Pastor Kloos’s independent identification of himself as the “founder of God’s Storehouse” on a political campaign yard sign, which was vetted in advance by the Kansas Ethics Commission and done entirely independent of, and without any assets or financial involvement of the Church, did not constitute impermissible political campaign activity by the Church. Petition ¶ 37. Furthermore, the IRS further has full public access to the financial transactions conducted by the Kloos campaign<sup>2</sup> and can easily verify that all yard signs were purchased by the campaign. *Id.* Additionally, the Petitioner invited the IRS to attend a worship service and meet with the church pastor and board. The IRS did not accept this invitation. Petition ¶ 38.

Upon information and belief, Petitioner believes that this church examination was initiated at the behest of Senator Kloos’ political opponents through the FFRF as they claim on their website. Petition ¶ 34. Petitioner requested a copy of this complaint letter and any other documentation on which the IRS relied to open its examination under the Freedom of Information Act and 26 U.S.C. 7611(c)(A)(iv) on October 13, 2021, December 21, 2021, and January 5, 2022. *Id.* A copy of the FFRF letter was noticeably absent from the documents included with the IRS’s Notice of Examination. *Id.*

On February 11, 2022, the IRS refused to release a copy of the FFRF Letter pursuant to the Petitioner’s demands. Petition ¶ 35. In its Motion and the associated brief, the IRS refuses once again to produce the FFRF Letter or acknowledge that the FFRF Letter initiated this examination.

---

<sup>2</sup> All Kansas state campaigns must file campaign finance reports with the Kansas Ethics Commission including, but not limited to, contributor and expenditure information. *See* <http://ethics.ks.gov/CFAScanned/Senate/2020ElecCycle/SLinks2020EC.htm> (last accessed Feb. 21, 2022).

Rather than using the information voluntarily provided to allay its concerns, the IRS has issued an exceedingly broad summons to Kaw Valley Bank for the Church's financial information. In doing so, the IRS is acting at the behest of the FFRF to harass the Church. This action was brought to Quash the Summons under 26 U.S.C. § 7609(h). The IRS has failed to meet its burden and show a justification for the summons to issue, particularly as it relates to church audit procedures.

### **ARGUMENTS AND AUTHORITIES**

Section 7611 of the Internal Revenue Code requires a high-level Treasury official to form a reasonable belief that a church may not qualify for federal tax-exemption as a church, may be carrying on an unrelated trade or business, or may otherwise be subject to taxation. 26 U.S.C. § 7611(a)(2). To protect religious organizations' constitutional freedom, the IRS is legally allowed to examine church records and religious activities only "to the extent necessary" to determine church status or the existence of a tax liability once this high-level Treasury official forms the requisite "reasonable belief." 26 U.S.C. § 7611(b). This barrier is vitally important. Congress enacted these heightened procedural requirements to safeguard religious institutions from "capricious meddling by future I.R.S. personnel" so that "the First Amendment rights of churches are not trampled in the government's zeal to collect revenue." *Church Audit Procedures Act: Hearing Before the Subcomm. On Oversight of the I.R.S. of the S. Comm. On Finance, 98<sup>th</sup> Cong. 2 (1983).*<sup>3</sup> This initial requirement also protects the "integrity, character, and moral foundations of small congregations [from] be[ing] undermined by innuendo, rumor, and press coverage during extended I.R.S. examinations." *Id.* at 1-2.

---

<sup>3</sup> Available at <https://www.finance.senate.gov/imo/media/doc/HRG98-481.pdf> (last visited June 3, 2022).

With respect the summons at issue, the IRS essentially bypasses the constitutional safeguards afforded under § 7611 by securing the financial records of the Church from third-party recordkeepers *rather than the Church itself*. If the IRS is permitted to sidestep these procedural requirements by summoning documents without a showing of reasonable belief or necessity, § 7611 is a dead letter. To avoid this untenable result, the Court should quash the summons. By doing so, the Court will uphold § 7611's purposes and properly protect the Church's First Amendment rights.

### **I. Standard of Review.**

While the IRS generally sets forth the standard of review in its briefing, it also downplays the implications of *United States v. Clarke*, 573 U.S. 248 (2014).

The balance we have struck in prior cases comports with the following rule, applicable here: As part of the adversarial process concerning a summons's validity, the taxpayer is entitled to examine an IRS agent when he can point to specific facts or circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: *The taxpayer must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to meet that burden; after all, direct evidence of another person's bad faith, at this threshold stage, will rarely if ever be available.*

*Id.* at 255 (emphasis added). The Petitioner here has submitted a verified complaint in which the political motivation behind the IRS's inquiry was raised. See Petition ¶¶ 49-51 (Doc. 1) & Exhibit B (Doc. 1-2). The IRS and Agent Henry continue to obfuscate the impact of the FFRF Letter as well as its very existence by going so far as to state "the IRS has neither confirmed nor denied to Petitioner the existence of the 'FFRF Letter.'" See Brief in Support of United States' Motion for Summary Denial of Verified Petition to Quash Internal Revenue Service Third-Party Summons at 11 (Doc. 12) ("Brief for Government"). The inability of the IRS to admit the political origins of this inquiry should not go by unnoticed. Rather, this continued reluctance by the IRS to even admit the original motivation of its investigation is additional evidence of the

IRS's improper purpose in attempting to dive even deeper into the Church's affairs after being provided numerous documents by the Church voluntarily. *See* Petition ¶ 35.

The Tenth Circuit analyzed *Clark* and questioned its impact on the burden shifting procedure set out in *United States v. Balanced Fin. Mgmt., Inc.*, 769 F.2d 1440 (10th Cir. 1985). Ultimately, the Tenth Circuit panel concluded *Clark* “does not clearly overrule *Balanced Financial Management*,” noting “‘one panel of the court cannot overrule circuit precedent’ absent ‘an intervening Supreme Court or en banc decision justifying such action.’” *Speidell v. United States through Internal Revenue Serv.*, 978 F.3d 731, 739 (10th Cir. 2020), cert. denied sub nom. *Speidell v. United States*, 141 S. Ct. 2800, (2021), reh'g denied, 142 S. Ct. 921 (2021).

Regardless, even under the *Balanced Financial Management* standard as advocated by the IRS, the IRS's Motion should be treated as one for Summary Judgment. *Speidell v. United States through Internal Revenue Serv.*, 978 F.3d at 739. Under this standard, the Court will “view the record in the light most favorable to [the petitioners] and ask whether the IRS has shown that there are no genuine disputes of material fact and that it is entitled to judgment as a matter of law.” *Standing Akimbo, LLC v. United States*, 955 F.3d 1146, 1155, 1156 (10th Cir. 2020) (citations omitted). Substantive law determines whether facts are material in a case, so the criteria of Powell are “of central importance” in determining whether there are genuine disputes of material fact. *Id.* (citing *High Desert Relief, Inc. v. United States*, 917 F.3d 1170, 1181 (10th Cir. 2019)). “A fact is material if, under the governing law, it could have an effect on the outcome of the lawsuit. A dispute over a material fact is genuine if a rational jury could find in favor of the nonmoving party on the evidence presented. In reviewing a motion for summary judgment, we review the facts and all reasonable inferences those facts support[ ] in the light most favorable to the nonmoving party.” *Doe v. Univ. of Denver*, 952 F.3d 1182, 1189 (10<sup>th</sup> Cir.

2020) (internal citations omitted). Accordingly, the facts ignored by the IRS but asserted in the Verified Petition must be resolved in favor of the Church. If the IRS wishes to dispute these facts or has evidence to the contrary, dismissal is not appropriate.

Based on this standard, the Court must infer that the FFRF Letter exists and originally motivated this Church audit. *See* Petition ¶¶ 49-51 (Doc. 1) & Exhibit B (Doc. 1-2). Additionally, the Court should infer that the Church is in fact “a church” for tax law purposes. *See* Petition ¶ 30 (Doc. 1). Furthermore, the Court must infer that Pastor Kloos is, in fact, a pastor. *See* Petition ¶ 9 (Doc. 1). The Court must also infer that Pastor Kloos’s campaign created and paid for campaign signs at issue wholly independently of God’s Storehouse, and the use was solely for identification purposes. *See* Petition ¶ 12 (Doc. 1). It must also infer that the signs were reviewed by the State of Kansas Governmental Ethics Commission prior to display, and the Commission opined that the signs provided voters with valuable context “regarding who you are and the nonprofit with which you are associated” and approved them for use in the campaign. *See* Petition ¶ 12 (Doc. 1). In addition, the Court must infer that the IRS has access to all of the campaigns expenditure information through the Kansas Governmental Ethics Commission website. *See* Petition ¶ 35 (Doc. 1). The Court should also infer that all items in the thrift store were received by the Church as gifts or contributions. *See* Petition ¶ 40 (Doc. 1). The Court must infer that any coffee was sold at cost and not for profit. *See* Petition ¶ 35 (Doc. 1). There are numerous other inferences that must be viewed in the light most favorable to the Church based on the Verified Petition. When these facts are applied to the *Powell* factors, the IRS cannot meet even its *prima facie* burden. Again, to the extent any of the facts above are in dispute, a Summary Judgment standard is inappropriate.



## **II. The Provisions Of 26 U.S.C. § 7611 Apply.**

### **A. The IRS must prove that the information sought is “to the extent necessary” to make a determination under § 7611.**

The Government argues that § 7611 does not apply to third-party recordkeeper summons, such as the summons at issue in this case. To the contrary, § 7611 must apply here in order to prevent the IRS from “using information obtained from third-party bank records to avoid the purposes of the church audit procedures.” H.R. Conf. Rep. No. 98-861 at 1106 (1986). In other words, the IRS should not be allowed to circumvent § 7611 through a third-party workaround. In its first IDR, the IRS requested that the Church provide, among other items, credit card statements for the period of January 01, 2019 to December 31, 2020. The Church declined to provide these specific financial records because they were not necessary for the IRS to resolve the specific tax issues raised in the examination. Instead, the Church voluntarily provided the IRS with ample other documentation to make a determination regarding church status, unrelated business income liability, employment tax liability, and political campaign activity. *See* Petition ¶ 35 (Doc. 1). The IRS did not respond to these materials, even though they were directly responsive and sufficient to resolve their concerns.

Issuing a summons to the Church would have required the IRS to prove that the bank records were necessary to its investigation under § 7611. But instead, the IRS attempted to circumvent church audit procedures by requesting these same materials from third-party recordkeepers. A small number of cases not binding on this court have determined that third-party recordkeeper summons fall outside the scope of § 7611. Indeed, the Government relies primarily on *Bible Study Time, Inc. v. United States*, 240 F. Supp. 3d 409 (D.S.C. 2018). Notably, that case involves an entity that did not claim church status until an initial audit had

already commenced. But this conclusion is not required by § 7611 and squarely contravenes § 7611's purpose and legislative history.

The Government relies on § 7611(h)(4), which defines “church records” as excluding “records acquired — pursuant to a summons to which section 7609 applies.” 26 U.S.C. § 7611(h)(4). The Government further relies on § 7611's legislative history, which explains that records held by third parties are not considered church records. But Congress anticipated that the IRS may use this exception to avoid the requirements of § 7611. Accordingly, the same conference report that the Government quotes extensively also states that “[t]he conferees further intend that that the IRS will be prohibited from using information obtained from third party bank records to avoid the purposes of the church audit procedures.” H.R. Conf. Rep. No. 98-861 at 1106 (1986). As Senator Grassley explained when introducing the Church Audit Procedure Act to the Senate, this legislation was intended to protect churches' constitutional rights under the First Amendment:

the potential entanglement of church and state is an issue of great constitutional significance . . . this legislation is designed to give churches a special audit procedure to require the IRS to take greater care in the examination of churches than is required under current law. [The Act] is drafted to be certain churches are protected from unfounded examinations[.]

*Church Audit Procedures Act: Hearing Before the Subcomm. On Oversight of the I.R.S. of the S. Comm. On Finance, 98<sup>th</sup> Cong. 2 (1983).*

Permitting the IRS to summons any church records it believes may be reasonably relevant from a third-party, without abiding by § 7611's heightened standard that would apply if summoning the same records directly from the church, stands in opposition to these purposes and threatens the Church's First Amendment rights.

At least one circuit court has correctly recognized that § 7611 must require the IRS to prove necessity for summons like the one at issue here. In *United States v. Church of Scientology of Boston*, the IRS sought enforcement of a third-party recordkeeper summons directed to the church’s secretary. 933 F.2d 1074 (1<sup>st</sup> Cir. 1991). The Court definitively ruled that the IRS must establish necessity—not merely relevance as required under *Powell*. In doing so, the IRS must “explain why the particular documents it seeks will *significantly* help to further the purpose of the investigation.” *Id.* at 1079 (emphasis added). This higher legal threshold similarly applies here.

From the direct language of §7611(b), it is apparent that the IRS attempts to flip §7611(b) on its head by using an exemption disallowing the IRS from pestering a church for its records to give it free reign to issue unrestricted summonses to third-parties. This is particularly egregious in the case here where the IRS is expressly questioning a church’s activities and whether or not those activities are appropriate for a “church.” Once §7611(b) is examined in its entirety, it is clear that the IRS cannot use an exception in the definition of the words “church records” to circumvent the heightened standard for examinations under §7611(b). §7611(b) generally restricts church examinations as follows:

- (1) In general —The Secretary may begin a church tax examination only if the requirements of paragraph (2) have been met *and such examination may be made only*—
  - (A) *in the case of church records*, to the extent necessary to determine the liability for, and the amount of, any tax imposed by this title, and
  - (B) *in the case of religious activities*, to the extent necessary to determine whether an organization claiming to be a church is a church for any period.

26 U.S.C.A. § 7611(b) (emphasis added).

The IRS clearly states the summons does not seek “church records” so §7611(b)(1)(A) cannot apply. Even *assuming arguendo* the IRS’s position and third-party subpoenas are excluded from the definition “church records,” the subpoena at issue here is not in the context of any examination “in the case of church records.” As stated by the IRS, the subpoena is directed to a bank not the church. *See* Brief for Government at 11 (Doc. 12). Based on its own brief, the IRS here questions the Church’s *religious activity*. The IRS questions the church’s potential involvement in political activity, its overall religious activity, whether its pastor is actually a pastor, and its activity related to a thrift store and coffee shop. *See* Declaration ¶ 33 (Doc. 12-1).

Because of the nature of the exam in question and its focus on the Church’s activities, the IRS cannot use the third-party subpoena exception in the definition of “church records” to avoid the “to the extent necessary” language. It is notable that all of the bases of relevance proffered by Agent Henry relate to church activity. *Id.* Accordingly, by the IRS’s own admission, it is seeking the banking records to ascertain information about the church’s activities which falls under §7611(b)(1)(B) not §7611(b)(1)(A). The words “church records” do not appear in §7611(b)(1)(B) but the “to the extent necessary” heightened standard remains present. Accordingly, because of the focus of this exam at issue, the heightened standard still applies even under the IRS’s reading. The IRS cannot ironically use a protection granted to churches prohibiting the IRS from conducting deep and unnecessary dives into internal church documents to give it the power to summons third-parties at will to attempt to collect information about religious activities beyond the extent necessary and avoid church audit procedures.

**B. The summonsed information is not necessary to resolve the tax issues raised**

The Government cannot meet the requirements of § 7611. Here, the IRS demanded production of fourteen separate types of documents from Kaw Valley Bank, including all

monthly statements, cancelled checks, money orders, safe deposit box entry cards, signature cards, financial statements, and loan applications. In its motion, the Government argues that the “information the summons here seeks—monthly statements, records of deposits, canceled checks—” is plainly relevant to the IRS’s investigation. But the IRS has never articulated a reasonable belief that production of *all* of these documents is relevant, much less that they are necessary for the IRS’s investigation. It is questionable that of these categories could possibly be relevant, much less necessary, even fully accepting the IRS’s arguments and theories.

To prove necessity, the IRS must explain the purpose behind its requests and show how each request falls “directly and logically within [the] proper scope” of the examination. *United States v. Church of Scientology Western United States*, 973 F.2d 715, 721 (9th Cir. 1992).

Beyond its conclusory statement alleging relevance, the IRS has never articulated how each of the fourteen categories of documents it requests from Kaw Valley Bank fall logically within its stated purposes, nor has it recorded the facts and circumstances leading to a reasonable belief.

**III. Even if the *Powell* standard alone applies, the IRS cannot make out a *prima facie* showing of the summons’ validity.**

Even if this Court determines that § 7611 is inapplicable to this third-party summons, the IRS cannot satisfy the factors articulated in *United States v. Powell*, 379 U.S. 48 (1964). The Church’s petition to quash must therefore be granted. Under *Powell*, the Government bears the initial burden of proving the summons’ *prima facie* validity by showing that (1) the summons was issued for a legitimate purpose; (2) the inquiry may be relevant to that purpose; (3) the information sought is not already in possession of the IRS; and (4) the government has complied

with the administrative steps required by law. *Id.* at 57-58. As set forth below, the Government cannot establish these four prongs through its reliance on Revenue Agent Kesroy Henry's affidavit.

Agent Henry's affidavit states four purposes for this church tax examination: (1) to determine whether the Church engaged in prohibited political campaign intervention; (2) to determine whether the Church may be operating as a thrift store rather than a church; (3) to determine whether the Church may have unrelated business income tax liability related to its coffee shop operations; and (4) to determine whether the Church may be liable for employment taxes for wages paid to Pastors Rick and Pennie Kloos. Declaration ¶¶ 14, 17 (Doc. 12-1). These purposes are not legitimate under *Powell* and the bank records are not relevant for the reasons discussed below.

**A. Examining the Church's alleged political campaign intervention is not a legitimate purpose and bank records are not relevant.**

The IRS initiated this church tax examination after receiving a complaint from the FFRF, which accused the Church of "illegal politicking." *See* Petition, Exhibit B (Doc 1-1). The complaint alleged that the Church impermissibly engaged in political campaign intervention because Pastor Kloos included the phrase "founder of God's Storehouse" on independently purchased yard signs during his campaign for the Kansas State Senate. *Id.* Local press also reported on Pastor Kloos's campaign signs, none of which were purchased by the Church or reflected the Church's endorsement.

The signs do not constitute impermissible political campaign intervention under the IRS's guidelines. Indeed, Pastor Kloos sought guidance from the Kansas Election Board *prior* to printing the yard signs. Per the Board's determination, the signs' "founder" statement was

intended to help the public identify who Rick Kloos was and his history in the community. *See* Petition, ¶ 12 (Doc 1). It was not any way to indicate the Church’s support for or its involvement in his campaign

The IRS has similarly determined that using the name of an exempt organization on a campaign sign to identify an individual’s role in the community does not constitute impermissible political campaign activity. Specifically, IRS Revenue Ruling 2007-41,<sup>4</sup> the leading guidance on political campaign activity, includes twenty-one hypothetical situations to communicate the IRS’s interpretation of the statutory provision.

Situation 3 considers a hypothetical chief executive officer of a hospital who uses his title as “CEO of Hospital” on a political campaign ad endorsing a candidate. The IRS concluded that the ad would not constitute political campaign intervention because it was not purchased by the 501(c)(3) organization and was not an official publication of the 501(c)(3). *Id.*

Like in Situation 3, the Church did not pay for Pastor Kloos’s campaign signs and the signs were not an official publication of the church. Importantly, neither the FFRF letter nor the contemporaneous news coverage raised any allegation that the Church paid for the signs or made any other financial transactions in violation of the political campaign prohibition. Agent Henry’s affidavit likewise does not include any research or other facts suggesting that the Church paid for Pastor Kloos’s campaign activities. Because the IRS has no factual basis to suspect that the Church may be involved in impermissible political campaign activity, this is not a legitimate purpose for a church tax examination.<sup>5</sup> Furthermore, because the Verified Petition states that the

---

<sup>4</sup> Available at <https://www.irs.gov/pub/irs-tege/rr2007-41.pdf> (last visited June 3, 2022).

<sup>5</sup> The news coverage alleged that the Church’s name was a trademark and therefore a “charitable asset” of the church that cannot be used to intervene in a political campaign, despite the fact that the campaign sign reference to the church was clearly a noun referencing the legal entity (for example, communicating that Steve Jobs is the founder of Apple is not utilizing the Apple® trademark).

Church did not pay for the signs, the Court must infer this is true based on the Summary Judgment standard.

In addition, all of the financial transactions for the Kloos campaign are a matter of public record. The Church has already provided the IRS with a link to access those records online and to verify the campaign's purchase of the signs.<sup>6</sup> Thus, the IRS has full access to all the information it needs to determine that the Church did not purchase or contribute to the campaign signs and did not engage in impermissible political campaign intervention. Review of the Kaw Valley Bank records are thus irrelevant to this inquiry.

The IRS's assertion that the Church engaged in political campaign intervention is pure speculation, and based only on the signs legitimately used by Pastor Kloos. Nonetheless, the IRS claims that it is both legitimate and relevant to review the Church's bank records, loan applications, signature cards, and more for a full two years—well beyond the length of Pastor Kloos's campaign. The IRS cannot establish that this access is permissible under the *Powell* factors.

**B. Examining the Church's status as a church is not a legitimate purpose and bank records are not relevant to a determination of church status.**

Agent Henry's basis for suspecting that the Church is not a church for IRS purposes is based on an incorrect understanding of federal tax law and therefore does not amount to a legitimate purpose for this church tax examination. In his affidavit, Agent Henry stated that his initial research and investigation revealed that the Church "has never filed a Form 1023 nor an annual Form 990 information return." Declaration ¶ 7 (Doc. 12-1). But federal tax law

---

<sup>6</sup> Available at [ethics.ks.gov/CFAScanned/Senate/2020ElecCycle/SLinks2020EC.htm](https://ethics.ks.gov/CFAScanned/Senate/2020ElecCycle/SLinks2020EC.htm) (last accessed June 6, 2022).



specifically exempts churches from both of these legal requirements due to the First Amendment protections afforded to religious institutions. *See* 26 U.S.C. § 508(c)(1)(A). Indeed, it is quite common for churches not to file these tax documents, as within their constitutional freedoms. In his affidavit, Agent Henry acknowledged this deference to churches within the tax code. His affidavit implies, however, that God’s Storehouse’s constitutionally protected decision to “self-declar[e] exemption” rather than file a Form 1023 Application (to obtain what Agent Henry incorrectly refers to as “proof” of tax-exempt status) motivated his decision to examine the Church. *Id.* at ¶¶ 6-8.

Agent Henry further reported that he looked at the Church’s website, which prominently states that “God’s Storehouse is a church that operates a thrift store,” and he formed a “reasonable belief” that the Church was not a church because it failed to include information identifying its regular worship services. *Id.* at ¶ 8. But, as set forth in the Church’s Petition, God’s Storehouse voluntarily provided extensive information showing that the Church has been organized and operated as a church since its inception and throughout the audit period. Petition ¶¶ 30-37 (Doc. 1).

The IRS uses fourteen criteria to assess organizations’ qualification as a church. *See, e.g., Foundation of Human Understanding v. Commissioner*, 88 T.C. 1341, 1357-58 (1987) (quoting Internal Revenue Manual 7(10)69, Exempt Organizations Examination Guidelines Handbook 321.3(3) (Apr. 5, 1982). In addition to the IRS’s fourteen criteria, the Tax Court employs the associational test to determine whether an organization is a church for federal tax purposes.

God’s Storehouse completed a detailed narrative with supporting documentation addressing each of these fourteen criteria and also establishing that it fulfills the associational

test. Petition ¶¶ 30-37. God’s Storehouse also invited Agent Henry to attend any of its regular Sunday worship services and provided the time and location for every church service held during 2019 and 2020. *Id.* But the IRS has never responded to any of the information provided or attended a worship service. Instead, the IRS continued with its efforts to sidestep § 7611’s requirements.

Significantly, neither the IRS’s fourteen criteria nor the Tax Court’s associational test involves an examination of an organization’s finances to determine whether it qualifies as a church for tax purposes. Because the Church has already provided sufficient evidence to prove church status per the IRS criteria and because the criteria for church status do not include a review of bank documents, the information the IRS demands is therefore not relevant to its determination of church status.

Hypothetically, if allegations of private inurement or some illegal activity were asserted, then conceivably a reasonable basis could arise for examining a Church’s financial records to address those tax issues. But none of these allegations exist here.

**C. Operating a thrift store is permissible 501(c)(3) activity and does not jeopardize the Church’s status as a church.**

Agent Henry’s second rationale for investigating God’s Storehouse’s church status is also based on a flawed understanding of federal tax law. Agent Henry stated that the IRS held “concerns that Petitioner was operating as a thrift shop rather than as a church. . .” Declaration ¶ 14 (Doc. 12-1). In its brief, the Government explains that if the Church was operating as a thrift store rather than as a church, it “would be required to file an application for tax-exempt status and subsequent Forms 990 and 990-T.” Brief for Government, at 9.

This reasoning is legally erroneous in several respects. First, operating a thrift store simultaneously does not mean that an entity cannot qualify as a church for IRS purposes. The IRS does not consider thrift store/church status as an either-or binary proposition. Instead, the IRS has long recognized that churches commonly operate thrift stores as an outgrowth of their ministry to local communities. Most famously, the IRS recognizes the Salvation Army as a church, and it operates thrift stores throughout our nation's local communities – without hindrance from the IRS regarding its church status.

Second, even if the Church lacked church status for tax purposes, it would still not be required to file a Form 990-T or pay income tax on revenues from its sale of entirely donated goods through the thrift store operations. The Internal Revenue Code does not consider the “selling of merchandise, substantially all of which has been received by the organization as gifts or contributions” as an unrelated business which could generate a tax liability. *See* 26 U.S.C. § 513(a)(3). No such allegations have been made that the Church is selling goods that are not donated. Consequently, operating a thrift store does not call the Church's status as a legal church into question or generate income tax liability for the church. The Church's thrift store is therefore not a legitimate purpose for a church tax examination. The IRS has not provided any information to the contrary and the facts asserted in the Verified Petition should be inferred in favor of the Church.

**D. Examining the Church's employment tax liability is not a legitimate purpose and bank records are not relevant.**

Agent Henry next turned to the church's payroll records to find additional potential tax issues for further investigation. Declaration ¶¶ 10-11 Agent Henry noted that the Church did not “withhold and pay over to the IRS any employment taxes” on gross wages received by Pastors

Rick and Pennie Kloos and then asserted that the Church may be liable for additional employment taxes. *Id.* at ¶ 11, 14. His assertion is also based on an incomplete description of federal tax law, which completely undermines the legitimacy of any further IRS scrutiny here.

Under applicable tax law and IRS regulations, pastors hold dual tax status for income tax and social security/Medicare purposes – with critical resulting implications for their tax reporting. First, with respect to income taxes, clergy engaged in the exercise of ministry are exempt from automatic federal income tax withholding and may prepay their federal income tax obligations using quarterly estimated payments. *See* IRS Publication 517 at 11. Second, for Social Security and Medicare taxes, clergy prepay into the system through SECA tax payments. *Id.* at 2-3. Churches are thus not responsible for withholding clergy’s federal income, Social Security, or Medicare taxes. *Id.*

In advance of its pre-examination conference with Agent Henry, the Church provided documentation to prove that Pastors Rick and Pennie Kloos are clergy engaged in the exercise of ministry. The Church provided biographies including both pastors’ formal theological training, documents to support their ordination, licensure, and/or commissioning, and a list of sacerdotal functions they perform for the Church. These materials are consistent with and fully satisfy the IRS’s test for clergy status as articulated in IRS Publication 517.

God’s Storehouse correctly filed its employment tax returns. The Church did not withhold employment taxes for Pastors Rick and Pennie Kloos because they are the pastors of God’s Storehouse Topeka Church and are clergy engaged in the exercise of ministry. The remaining employees are not clergy and are thus subject to income tax withholding.

Agent Henry used these entirely correct employment tax filings as evidence of potential wrongdoing and resulting federal tax liabilities for the Church. Under basic tax principles,

however, such position constitutes a legally baseless purpose for examination. Again, based on the Verified Petition, the Court should infer that Pastor Kloos is a pastor and acting as such.

Moreover, to the extent that Pastors Rick and Pennie Kloos may owe additional employment taxes, this would be an individual tax liability, not a liability on the part of the Church, because of their clergy status. Any examination of the Church's Kaw Valley Bank records is therefore irrelevant in this purported church tax examination.

**E. Bank records are not relevant to the assessment of unrelated business income generated by the coffee shop.**

When Agent Henry examined the Church's website, he observed that the Church "sells coffee to patrons *at cost*." Declaration ¶ 8 (Doc. 12-1) (emphasis added). From this evidence, Agent Henry inferred that the Church may have unrelated business income tax liability that it failed to report. Once again, Agent Henry's suspicion is inconsistent with established federal tax law, and this is not a legitimate purpose for examination.

Subject to many exceptions, the unrelated business income tax applies to income from a trade or business that is regularly carried on and not substantially related to the organization's exempt purposes. 26 U.S.C. §§ 511-513. As Agent Henry observed, the Church provides coffee to the church members and patrons of the thrift store *at cost* and has no purpose of generating profit. Instead, the Church's rationale for operating the thrift store is substantially related to its religious and charitable purposes and cannot be classified as unrelated business income.

The Church developed the coffee shop as a place where people could come together to engage with the Church's staff, receive biblical counseling and prayer, engage in Christian fellowship, and to demonstrate biblical hospitality to the community at large. The Church welcomes people experiencing homelessness into the coffee shop space and gives away a

substantial amount of coffee and cookies for free. The coffee shop is integrally related to the Church's overarching religious purpose of demonstrating God's love to the Topeka community, and therefore any income from the sale of coffee is not properly classified as unrelated business income. Because the description of the coffee shop on the Church's website is not evidence of unrelated business income, this is not a legitimate purpose for a church tax examination.

Furthermore, the records of Kaw Valley Bank are irrelevant to an assessment of unrelated business income tax liability. In its previous response to IDR 1, the Church provided the IRS with Quicken revenue and expense reports disclosing all financial transactions from the operation of the coffee shop as well as consolidated revenue and expense reports generated from Square, the credit card point of sale system utilized by the coffee shop. Because the Church has already provided complete financial information regarding the coffee shop to the IRS, the IRS can already make a determination of unrelated business income tax liability, if any. Given these facts, records from Kaw Valley Bank are not relevant to the determination of unrelated business income tax liability related to the coffee shop.

**F. The IRS has not followed the required administrative steps.**

As to the IRS's failure to produce the FFRF Letter, the government is talking out both sides of its mouth. The IRS claims that the FFRF Letter was not collected "for use in such examination" but at the same time tries to hide behind its regulations relating to confidential informants. *See* Government Brief at 13. If the FFRF Letter precipitated the church audit at issue, the letter was used in the examination because it was the initiating document. Without the FFRF Letter, the IRS likely would not have been aware of the public information surrounding the church. Accordingly, it must be produced pursuant 26 U.S.C. § 7611(b)(3)(A)(iv). If the FFRF Letter was truly did not initiate the examination, the FFRF would not qualify as a

confidential informant. Regardless, the FFRF has independently disclosed its involvement in weaponizing the IRS against a political opponent. The IRS simply refuses to confirm this because it is clear evidence of their improper intent in opening the audit and continuing to dig deeper to the Church's affairs even though it has been provided sufficient information *voluntarily* by the Church sufficient to make the relevant determinations. The Government Brief and the Declaration simply highlight the fact that the IRS has no evidence of any inappropriate actions related to the Church.

Additionally, the procedure used to open the inquiry was flawed. Agent Henry stated that “based on the facts and evidence I had seen, . . . I sought approval to open a church tax inquiry.” Declaration ¶ 13 (Doc. 12-1). Agent Henry sought this approval from Sunita B. Lough, the Commissioner of Tax Exempt and Government Entities Division. *Id.* at ¶ 14 This procedure is inconsistent with the text of the Treasury Regulations and the Internal Revenue Code. Therefore, the IRS has not followed the required administrative steps and cannot fulfill prong four of the *Powell* factors.

Under § 7611(a)(2), a church tax inquiry may not begin until “an appropriate high-level Treasury official” reasonably believes that the church may not be entitled to tax-exempt status and/or may be subject to a tax liability. The Code defines an “appropriate high-level Treasury official” as “the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.” 26 U.S.C. § 7611(h)(7). The Treasury Regulations clarify that a “high-level Treasury official” includes a “Regional Commissioner (or higher Treasury official).” Treas. Reg. § 301.7611-1, Q&A 1.

The Commissioner of Tax Exempt and Government Entities Division is not a Regional Commissioner. Between 1998 and 2000, the IRS reorganized its operations and eliminated the

position of Regional Commissioner, which was a broad position that covered tax matters well beyond the Tax Exempt Organizations division. This reorganization required the IRS, by and through the notice-and-comment rulemaking process, to update this Treasury Regulation to identify a replacement for the Regional Commissioner.

The Regulations have not been updated to reflect the IRS's current organizational structure and to clarify this important definitional question. Updating the Treasury Regulations for § 7611 has been one of eight to ten action items on the IRS Annual Priority Guidance Plan for over a decade. Yet, for reasons unknown, the IRS has intentionally declined to move forward. Thus, churches have been in the dark as to whether the IRS's commencement of a church examination complies with the heightened examination procedures enacted by Congress in § 7611. Churches have been forced to litigate this issue in multiple jurisdictions. *See, e.g., United States v. Living World Christian Ctr.*, Civil No. 08-mc-37 ADM/JJK, 2009 U.S. Dist. LEXIS 6902 (D. Minn. Jan. 30, 2009) (rejecting the IRS's argument that a Director of Exempt Organizations was a sufficiently high-level Treasury official); *United States v. Bible Study Time, Inc.*, 295 F. Supp. 3d 606 (D.S.C. 2018).

Recently, the IRS decided to bypass the notice-and-comment rulemaking process and delegated the authority to begin a church tax inquiry and examination to the Commissioner of the Tax Exempt and Government Entities Division in its recent Delegation Order 7-3. Unlike a proposed regulation, this Delegation Order was not open to public review or comment. And, until the Department of Treasury finalizes updated regulations for § 7611, the legality of this delegation remains an open question. As it stands, the existing Regulation—which was subject to notice and comment rulemaking procedures and is consistent with the statute—contradicts the IRS's internal delegation of authority. This inconsistency is procedurally improper and prevents



examinees and courts from determining whether proper administrative steps under § 7611, a Code provision designed to protect religious institutions from capricious meddling by future I.R.S. personnel, have been followed.

The IRS has deliberately not updated this Treasury Regulation for over twenty years and internally identified its own replacement without subjecting it to the public review and comment process established under the Administrative Procedure Act for government agencies and the Due Process Clause of the Constitution.

### **Conclusion**

For the foregoing reasons, the Church respectfully requests that the Court deny the motion for summary denial and grant its petition to quash the third-party summons of the Church's financial records held by Kaw Valley Bank.

Respectfully submitted this \_\_\_<sup>th</sup> day of June 2022.

### **KRIEGSHAUSER NEY LAW GROUP**

/s/ Ryan A. Kriegshauser

Ryan A. Kriegshauser, KS Bar No. 23942  
KRIEGSHAUSER NEY LAW GROUP  
15050 W. 138th St., Unit 4493  
Olathe, KS 66063  
(913) 303-0639  
[ryan@knlawgroup.com](mailto:ryan@knlawgroup.com)

Ryan Oberly\*  
Sally Wagenmaker\*  
WAGENMAKER & OBERLY  
53 W. Jackson Blvd., Ste. 1734  
Chicago, IL 60604  
(312) 626-1600  
[ryan@wagenmakerlaw.com](mailto:ryan@wagenmakerlaw.com)

ATTORNEYS FOR PETITIONER

\*Admitted Pro Hac Vice.

### **CERTIFICATE OF SERVICE**

I certify that the foregoing motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Ryan A. Kriegshauser