

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION  
FOUNDATION, INC.,

*Plaintiff,*

v.

JOHN KOSKINEN, Commissioner of  
the Internal Revenue Service,

*Defendant,*

HOLY CROSS ANGLICAN CHURCH  
and FATHER PATRICK MALONE,

*Defendant-Intervenors.*

Case No. 12-CV-0818

**OPPOSITION TO MOTION TO DISMISS WITHOUT PREJUDICE**

Defendant-Intervenors Father Patrick Malone and Holy Cross Anglican Church (collectively, “the Church”) oppose the joint motion of Plaintiff Freedom From Religion Foundation (“FFRF”) and Defendant Koskinen (“IRS”) because it seeks dismissal without prejudice. Dismissal without prejudice would be unjust at this stage in the case: it has been almost two years since the case was filed, the parties are well into document discovery, and both the Court and the Church have expended significant resources in the case. FFRF should not be in a position to drop this lawsuit and file an identical lawsuit (and again put the Church’s interests in jeopardy) a week, a month, or a year in the future.

Dismissal with prejudice is especially appropriate because of the odd factual predicate for the motion. IRS has apparently shown FFRF documents that FFRF says

convince it that the Court “would be unable in any event to fashion relief at this time.” Exhibit 1 at 2-3. But both IRS and FFRF refuse to show these apparently outcome-dispositive documents to the Church or to the Court. Indeed, IRS signed a certification that it was sending the Church those documents, but then refused to do so. Thus one is left to wonder what has passed between IRS and FFRF that would cause FFRF—which fought hard to establish standing—to declare suddenly that its claimed injury is unredressable.<sup>1</sup> This apparent collusion between FFRF and IRS, while withholding from the Church relevant information to which is entitled by the Rules and IRS’s certification, only underscores that dismissal at this late stage should not be granted, unless with prejudice.

Given the injustice of allowing a case to be half-litigated and then dropped without consequence, and the concealed motive for dropping the lawsuit, this case should be dismissed with prejudice.

### **FACTUAL BACKGROUND**

In their motion, FFRF and IRS claim that they made “numerous attempts” to obtain the Church’s stipulation to dismissal. Mot. at 2. This account leaves out most of the interaction between the parties. Indeed, the Church has repeatedly told IRS and FFRF that it *would* likely stipulate to a dismissal *with prejudice*, especially after seeing the documents that changed FFRF’s mind about redressability. But neither FFRF nor IRS agreed to a dismissal with prejudice. And a fair appraisal of the factual and procedural background of this case demonstrate that this case has consumed

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<sup>1</sup> The Court could of course order that the apparently outcome-dispositive documents be filed under seal so the Court and the Church could review them.

significant Church resources, particularly in the discovery process, only for the case to be dropped for reasons that remain as yet concealed.

Ironically, about a month after this Court's intervention order suggesting that the Church's intervention should not create a need for any additional discovery, Dkt. 33 at 6, FFRF served the Church, in addition to IRS, with requests for document production. And until Friday (when FFRF produced documents), the Church was the only party to have produced any documents.<sup>2</sup> IRS has not produced any documents to the Church, though it has apparently produced documents to FFRF.

And the documents that are being withheld by IRS are apparently very important: FFRF and IRS demand that the Church stipulate to a dismissal without prejudice based on those documents, even while IRS refuses to show them to the Church or the Court. IRS's odd behavior in responding to discovery—including a false certification that it was sending the documents to the Church, Exhibit 2 at 4—is all the more reason to question FFRF's new-found belief that it lacks standing to bring its Establishment Clause claim.

FFRF's July 17 press release concerning this case only reinforces these impressions. FFRF expressly states that "FFRF could refile the suit" later, that dismissal merely "resolves for the time being" the issues in this case, and that the Court's resolution of the present Motion "is expected to be without prejudice, which means that further legal action by FFRF to enforce anti-electioneering provisions is not precluded in the future." Exhibit 3 at 2. FFRF could not say more clearly that it

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<sup>2</sup> FFRF said that it had previously attempted to send the production via email.

views dismissal as a temporary measure. Similarly, FFRF describes in its press release multiple details concerning IRS practices that have not been produced in discovery: (1) IRS has “resolved the signature authority issue necessary to initiate church examinations”; (2) “IRS also has adopted procedures for reviewing, evaluating and determining whether to initiate church investigations”; (3) “IRS no longer has a blanket policy or practice of non-enforcement of political activity restrictions as to churches”; and (4) “IRS has suspended all examinations of tax-exempt organizations for alleged political activities.” *Id.* IRS has apparently provided FFRF with information about these practices, but withheld it from the Church and the Court.

Given the injustice of a dismissal without prejudice, and based on IRS’s and FFRF’s secretive behavior, the Church declined to stipulate to a dismissal without prejudice, and without review of the withheld documents that should have been pursuant to Fed. R. Civ. P. 5(a)(1)(C) and 34.

Finally, it is difficult to review the progress of this lawsuit and say that nothing has happened. The following timeline describes what has happened thus far in the lawsuit:

**2012**

- *November 14*: FFRF files its complaint. Dkt. 1.

**2013**

- *April 8*: IRS moves to dismiss for lack of standing. Dkt. 12.
- *August 19*: After evaluating full briefing on the question, this Court denies IRS’s motion to dismiss for lack of standing. Dkt. 17.
- *December 12*: The Church moves to intervene. Dkt. 25.

- *December 18*: This Court denies IRS's motion for certificate of appealability. Dkt. 29.

**2014**

- *February 3*: This Court grants the Church's motion to intervene. Dkt. 33.
- *March 12*: FFRF serves the Church and IRS with document production requests. Exhibit 4.
- *April 14*: At the deadline for production responses, the Church serves its initial document production response on FFRF and IRS. IRS does not serve its responses, which were also due on this date.
- *May 17*: The Church serves a supplemental response to FFRF's document production requests. The Church also serves document production requests on FFRF and IRS. The Church's request to IRS seeks only those documents responsive to FFRF's March 12 document production requests.
- *May 20*: IRS admits that it still has not issued its production in response to FFRF's request, asks that the Church agree to a protective order for that overdue production, and states that IRS expects that once FFRF receives the production, FFRF will voluntarily dismiss the case. IRS further agrees that its discovery responses to the Church are due by June 19.
- *May 22*: IRS circulates a draft protective order. After review, the Church determines that the order plainly violates Seventh Circuit case law because it allows IRS to accord strict confidentiality to any document produced under the order without any description of the number or nature of the documents or any specific description of harm that could be caused by disclosure. *See, e.g., EEOC v. Synergy Health Inc.*, 265 F.R.D. 403 (E.D. Wis. 2009).
- *June 3, 5*: The Church informs IRS that it cannot agree to the protective order as written. The Church requests a listing of the categories of documents that IRS wishes to subject to the protective order. IRS agrees to provide the listing, but never subsequently does.
- *June 6*: Counsel for the Church calls counsel for FFRF to inquire about FFRF's alleged inclination to dismiss. FFRF's counsel states that this was just "wishful thinking" on behalf of IRS.
- *June 17*: Two days before its discovery responses are due, IRS asks the Church for a two-week extension until July 1. The Church agrees, while reminding IRS of its duty under Fed. R. Civ. P. 5(a)(1)(C) to serve the Church immediately with any discovery responses already served on FFRF.

- *June 24*: The Church receives FFRF's written response to the Church's document production requests, certified by FFRF's counsel as mailed on June 19, but no responsive documents are included.
- *July 1*: IRS fails to meet the deadline for production of documents that it had expressly agreed.
- *July 2, 12:25 AM*: IRS emails a document purporting to be a response to the Church's request for production. The document states that the production, Bates-stamped USPROD1-686, is being produced via Fed Ex. *See Exhibit 2 at 3*. The document contains a signed certification by IRS counsel Richard A. Schwartz stating that, "on July 1, 2014," IRS served the response on the Church. *Id.* at 4.
- *July 2, 12:35 PM*: IRS leaves a voicemail for the Church's counsel stating that FFRF has offered to dismiss the case, asking whether the Church will agree to dismissal, and requesting the Church's response "right away."
- *July 2, 1:06 PM*: The Church asks for, and receives, a copy of FFRF's email stating its desire to dismiss the case "[b]ased on the recent information [IRS's counsel] have provided." *See Exhibit 1 at 2-3*.
- *July 3*: The Church informs FFRF that it has not yet received the production that FFRF has evidently already received, and that it should be able to review that production before agreeing to a stipulated dismissal. *See Exhibit 1 at 2*.
- *July 7*: Still having not received IRS's production, the Church asks for the tracking number on the FedEx shipment with the documents. IRS responds that—despite its agreement to produce by July 1 and counsel's certification that production was made on July 1—it had not actually sent the production and now refused to do so.
- *July 9*: The Church states that it will likely stipulate to dismissal if dismissal is with prejudice and if the Church receives the promised production to allow it to evaluate the factual basis for the proposed dismissal.
- *July 10*: FFRF changes its mind and states that it cannot agree to dismiss and that the case must move forward to a determination on the merits. The Church reiterates to IRS that IRS's production should be served immediately.
- *July 17*: FFRF reverses its decision yet again and joins IRS in a joint motion to dismiss.
- *July 17*: FFRF issues a press release stating that it had "settled" the lawsuit. The press release includes details of IRS practices and also states FFRF's expectation that this Court will dismiss the case without prejudice. *Exhibit 3*.

- *July 18*: The Church receives FFRF's document production via email. To date, IRS has not fulfilled its discovery obligations to produce to the Church the same documents it produced to FFRF.

As is apparent from this timeline, this nearly two-year-old case has proceeded well past the motion to dismiss stage and deep into discovery. And after fighting hard for the right to bring this lawsuit, and demanding discovery from the Church and IRS, FFRF has suddenly "thr[own] in the towel." *Riviera Distributors, Inc. v. Jones*, 517 F.3d 926, 928 (7th Cir. 2008).

### ARGUMENT

Under Fed. R. Civ. P. 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." The Seventh Circuit allows district courts to "impose such terms and conditions as it believes necessary to protect the other parties from prejudice and that 'terms and conditions are the quid pro quo of allowing the plaintiff to dismiss his suit.'" *Ratkovich By & Through Ratkovich v. Smith Kline*, 951 F.2d 155, 158 (7th Cir. 1991) (quoting *Brandt v. Schal Associates, Inc.*, 854 F.3d 948, 955 (7th Cir. 1988)). To guide the district court's decision, the Seventh Circuit has articulated four factors "that a district court may wish to consider in making its determination as to whether a defendant has suffered legal prejudice." *Id.* These are:

[1] the defendant's effort and expense of preparation for trial, [2] excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, [3] insufficient explanation for the need to take a dismissal and [4] the fact that a motion for summary judgment has been filed by the defendant.

*Id.* (quoting *Pace v. Southern Express Co.*, 409 F.3d 331, 334 (7th Cir. 1969)). Because dismissal without prejudice would give rise to legal prejudice against the Church, as

assessed under these factors, the Church respectfully requests that this Court grant dismissal with prejudice.

First, under the first factor, both this Court and the Church have expended significant effort and expense in preparing for a merits determination of this case. This Court has already issued twelve orders in this case, two of which were accompanied by opinions, and held two conferences with the parties. *See, e.g.*, Dkt. Nos. 7, 8, 9, 11, 17, 19, 21, 22, 29, 33, 37, 39; *see also* Text-Only Orders on March 26, 2013 and March 12, 2014. And not only has the Church provided discovery in response to requests from FFRF, but it has repeatedly attempted to advance this litigation by trying to obtain discovery from its co-parties. Permitting FFRF to “throw in the towel” now and then refile its suit at a later date, in the “hop[e] to acquire better evidence in the future,” would simply compel the Church to engage once more in precisely the same tasks with precisely the same parties. *Riviera Distributors*, 517 F.3d at 927-28; *see also* Exhibit 3 at 2 (FFRF’s public statement that it is seeking dismissal “without prejudice” precisely so that “further legal action by FFRF to enforce anti-electioneering provisions is not precluded in the future.”).

Second, under the third factor, FFRF and IRS have not provided a sufficient explanation for the need to take a dismissal. Because IRS has continually refused to send the Church the documents that it promised to produce, its explanation for the need to take a dismissal falls short of the necessary mark. Although “FFRF is satisfied that IRS does not have a policy at this time of non-enforcement specific to churches and religious organizations,” IRS itself says nothing to confirm or deny that



fact. Dkt. 38 at 2-3. Further, the uncontroverted evidence in the record shows that IRS is *not* currently enforcing its speech restrictions on churches, *see* Dkt. 15 at ¶¶ 3-5 (Bolton Decl.); Dkt. 27 at ¶ 29 (Malone Decl.); *see also* Exhibit 3 at 2 (stating that “IRS has suspended all examinations of tax-exempt organizations for alleged political activities.”).<sup>3</sup> And, given FFRF’s public statement about its apparent knowledge of IRS procedures and actions, Exhibit 3 at 2, it is bizarre for FFRF and IRS to be so secretive about the document production upon which FFRF is relying to make that public statement. The Church would suffer prejudice if it is forced to intervene again when this suit is refiled, never having been given a forthright and sufficient explanation of the actual basis for why the suit was dismissed the first time.

Finally, under the fourth factor, while the Church has not yet filed a motion for summary judgment, it has expended significant resources preparing to file that motion because the dispositive motions deadlines has twice come within weeks of being due and before being reset to a later date. *See* Dkt. 37; *see also* March 12, 2014 Text-Only Order; *Ratkovich*, 951 F.2d at 158 (noting the significance of summary judgment motion practice).

After so much time and effort has been invested by this Court and by the parties,

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<sup>3</sup> *See, e.g.*, Dkt. 15 at ¶ 3 (attesting that an IRS official admitted that “even egregious cases of violations of § 501(c)(3) by churches are not being pursued by the IRS”), ¶ 5 (attesting that “[s]ince at least 2009, in fact, churches and religious organizations have been blatantly engaging in political activity in violation of the restrictions of § 501(c)(3),” and that “perhaps hundreds of videotapes of such violations have been sent to the IRS, and . . . FFRF has also notified the IRS of numerous such violations by churches and religious organizations.”); *accord* Dkt. 27 at ¶ 29 (attesting that, despite IRS’s threats against church speech and the Church’s openly teaching its religious beliefs despite those threats, “the IRS has not enforced the[] threats”).

“the time for a voluntary dismissal, without prejudice . . . ha[s] passed.” *Riviera Distributors*, 517 F.3d at 927. The Church therefore respectfully requests that the case be dismissed with prejudice.

Dated: July 21, 2014

Respectfully submitted,

/s/ Daniel Blomberg  
Eric C. Rassbach  
Daniel Blomberg  
The Becket Fund for Religious Liberty  
3000 K St. NW, Suite 220  
Washington, DC 20007  
Telephone: (202) 955-0095  
Facsimile: (202) 955-0090

*Counsel for Fr. Malone and  
Holy Cross Anglican Church*

# **Exhibit 1**

## Lee Marsh

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**From:** Eric Rassbach  
**Sent:** Thursday, July 03, 2014 10:32 AM  
**To:** Richard L. Bolton  
**Cc:** Rose, Richard G. (TAX); 'Schwartz, Richard A. (TAX)'; Daniel Blomberg  
**Subject:** RE: FFRF Suit

Rich –

Thanks for this. We have not yet received the discovery materials it sounds like you have already received from the IRS. Since Mr. Rose certified that those materials (Bates-stamped USPROD1-686) were being sent to us by FedEx in order to meet the IRS's obligation to dispatch them to us by July 1, we should be receiving those materials in our offices soon. (I must admit I am surprised that they got to Wisconsin before they reached DC.) We'd like to see what everyone else is looking at before agreeing to a stipulated dismissal.

Also, could you please clarify which part of Rule 41 you are looking to dismiss under? I think there is a typo in your email below.

Thanks,

Eric

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**From:** Richard L. Bolton [mailto:rbolton@boardmanclark.com]  
**Sent:** Wednesday, July 02, 2014 1:06 PM  
**To:** Eric Rassbach  
**Cc:** Rose, Richard G. (TAX); 'Schwartz, Richard A. (TAX)'  
**Subject:** FW: FFRF Suit

Eric: I am forwarding to you my communication to Attorneys Rose and Schwartz for consideration. Rich



Richard L. Bolton  
Attorney  
[rbolton@boardmanclark.com](mailto:rbolton@boardmanclark.com)  
Direct: 608-283-1789  
Phone: 608-257-9521  
Fax: 608-283-1709

**MADISON OFFICE**  
BOARDMAN & CLARK LLP  
1 S PINCKNEY ST STE 410  
P.O. BOX 927  
MADISON, WI 53701-0927

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**From:** Richard L. Bolton  
**Sent:** Wednesday, July 02, 2014 2:23 PM  
**To:** Rose, Richard G. (TAX); 'Schwartz, Richard A. (TAX)'  
**Subject:** FFRF Suit

Gentlemen: Based on the recent information you have provided, and the current suspension of all political action examinations due to issues unrelated to our suit, we feel that the court would be unable in any event to fashion relief at

this time. We accordingly request your concurrence in a stipulation to dismiss pursuant to Rule 41(1)(a) of the Federal Rules of Civil Procedure. Please advise of your position. Thanks. Rich



**Richard L. Bolton**

Attorney

[rbolton@boardmanclark.com](mailto:rbolton@boardmanclark.com)

Direct: 608-283-1789

Phone: 608-257-9521

Fax: 608-283-1709

**MADISON OFFICE**

BOARDMAN & CLARK LLP

1 S PINCKNEY ST STE 410

P.O. BOX 927

MADISON, WI 53701-0927

IRS CIRCULAR 230 NOTICE: To ensure our compliance with certain U.S. Treasury Regulations, please be advised that, unless expressly indicated otherwise, if this communication or any attachment to this communication contains advice relating to any Federal tax issue, the advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding Federal tax penalties. If any of the advice was written to support the promotion, marketing, or recommendation of any transaction or matter addressed within the meaning of Internal Revenue Service Circular 230, you should seek advice based upon your particular circumstances from an independent tax advisor.

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## **Exhibit 2**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION )  
FOUNDATION, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JOHN KOSKINEN, COMMISSIONER OF )  
THE INTERNAL REVENUE SERVICE, )  
 )  
Defendant )  
 )  
and )  
 )  
HOLY CROSS ANGLICAN CHURCH, )  
FATHER PATRICK MALONE )  
 )  
Intervenor Defendants. )  
\_\_\_\_\_ )

Case No. 12-CV-818

**DEFENDANT’S RESPONSE TO DEFENDANT-INTERVENORS’ FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS FROM DEFENDANT KOSKINEN**

Pursuant to Federal Rule of Civil Procedure 34, through undersigned counsel, the defendant responds to Defendant-Intervenors’ First Request for Production of Documents from Defendant Koskinen as follows.

**OBJECTION TO DEFENDANT-INTERVENORS’ “INSTRUCTIONS”**

The defendant objects to each definition and instruction which exceeds the requirements imposed by the discovery provisions set forth in Federal Rules of Civil Procedure 26 through 37. The defendant’s responses assume that words used in plaintiff’s requests for production of documents have their ordinary and customary meanings without regard to any special meanings assigned to them by plaintiff.

## DOCUMENT REQUESTS

1. All discovery responses Defendant Koskinen has made in this litigation, including without limitation all documents produced in response to Plaintiff's requests for production, all responses to Plaintiff's interrogatories, and all responses to Plaintiff's requests for admissions.

**RESPONSE:** See USPROD1-686, to be produced via FedEx.

Dated: July 1, 2014

Respectfully submitted,

/s/ Richard G. Rose

RICHARD G. ROSE

District of Columbia Bar Number: 493454

U.S. Department of Justice, Tax Division

Post Office Box 7238

Ben Franklin Station

Washington, D.C. 20044

Telephone: (202) 616-2032

Facsimile: (202) 514-6770

E-mail: richard.g.rose@usdoj.gov

/s/ Richard Adam Schwartz

RICHARD ADAM SCHWARTZ

California Bar Number: 267469

U.S. Department of Justice, Tax Division

Post Office Box 683

Washington, D.C. 20044

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Fax: (202) 307-0054

E-mail: richard.a.schwartz@usdoj.gov

*Counsel for the Defendant*



**CERTIFICATE OF SERVICE**

I certify that, on July 1, 2014, I served the foregoing DEFENDANT'S RESPONSE TO DEFENDANT-INTERVENORS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM DEFENDANT KOSKINEN upon defendant-intervenors by emailing it to their Counsel, Eric Christopher Rassbach and Daniel Howard Blomberg, at [erassbach@becketfund.org](mailto:erassbach@becketfund.org) and [dblomberg@becketfund.org](mailto:dblomberg@becketfund.org), and by delivering a hard copy to them via the U.S. Mail, postage prepaid to:

ERIC CHRISTOPHER RASSBACH  
DANIEL HOWARD BLOMBERG  
Becket Fund for Religious Liberty  
3000 K St. NW  
Suite 220  
Washington, DC 20007  
Telephone: (202) 349-7222  
Facsimile: (202) 955-0090

*/s/ Richard A. Schwartz*  
RICHARD A. SCHWARTZ

# **Exhibit 3**

## FFRF, IRS settle suit over church politicking

July 17, 2014

The Freedom From Religion Foundation and the Internal Revenue Service reached an agreement today (July 17) that resolves for the time being an ongoing federal lawsuit over non-enforcement of restrictions on political activity by tax-exempt religious organizations and churches.

“This is a victory, and we’re pleased with this development in which the IRS has proved to our satisfaction that it now has in place a protocol to enforce its own anti-electioneering provisions,” said FFRF Co-President Annie Laurie Gaylor.

“Of course, we have the complication of a moratorium currently in place on any IRS investigations of any tax-exempt entities, church or otherwise, due to the congressional probe of the IRS. FFRF could refile the suit if anti-electioneering provisions are not enforced in the future against rogue political churches.”

**FFRF filed suit** against the IRS **shortly after the presidential election in 2012**, based on the agency’s reported enforcement moratorium, as evidenced by open and notorious politicking by churches. Pulpit Freedom Sunday, in fact, has become an annual occasion for churches to violate the law with impunity. The IRS, meanwhile, admittedly was not enforcing the restrictions against churches. A prior lawsuit in 2009 required the IRS to designate an appropriate high-ranking official to initiate church tax examinations, but it had apparently failed to do so.

The IRS has now resolved the signature authority issue necessary to initiate church examinations. The IRS also has adopted procedures for reviewing, evaluating and determining whether to initiate church investigations. While the IRS retains “prosecutorial” discretion with regard to any individual case, the IRS no longer has a blanket policy or practice of non-enforcement of political activity restrictions as to churches.

In addition to FFRF’s lawsuit, IRS enforcement procedures with respect to political activity by tax-exempt organizations have been the subject of intense scrutiny by Congress. As a result, the IRS is reviewing and implementing safeguards to ensure evenhanded enforcement across the board with respect to all tax exempt organizations.

Until that process is completed, the IRS has suspended all examinations of tax-exempt organizations for alleged political activities. The current suspension, however, is not limited to church tax inquiries.

Until the IRS has satisfied congressional overseers that objective procedures are firmly in place with regard to political activities by all tax-exempt organizations, the judge in FFRF’s pending suit would not currently be able to order any immediate or effective relief.

As a result, FFRF has reached a point where no further immediate changes realistically can be accomplished through continued litigation. The dismissal of the pending action, however, is expected to be without prejudice, which means that further legal action by FFRF to enforce anti-electioneering provisions is not precluded in the future if necessary.

# **Exhibit 4**

boardman  
& clark llp

LAW FIRM



Richard L. Bolton, Attorney

1 SOUTH PINCKNEY STREET, STE. 410, P.O. BOX 927, MADISON, WI 53701-0927

Telephone 608-283-1789

Facsimile 608-283-1709

rbolton@boardmanclark.com

March 12, 2014

Richard G. Rose  
Richard A. Schwartz  
U. S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044

John W. Vaudreuil  
United States Attorney's Office  
Western District of Wisconsin  
660 W. Washington Avenue, Suite 303  
Madison, WI 53703

Eric C. Rassbach  
Daniel Blomberg  
The Becket Fund for Religious Liberty  
3000 K St. NW, Suite 220  
Washington, DC 20007

Re: Freedom From Religion Foundation, et al. v.  
Daniel Werfel, Internal Revenue Service  
U.S. District Court, Western District of Wisconsin  
Case No. 12-CV-818

Gentlemen:

Enclosed is Freedom From Religion Foundation, Inc.'s First Request for Production of Documents, First Request for Admissions and First Set of Interrogatories to the Defendant with regard to the above referenced matter. Also enclosed is the First Request for Production of Documents to Defendant-Intervenors.

Pursuant to statute, we are maintaining the original of the documents in our file. If you have any questions or concerns, please be sure to let me know. Thank you.

Sincerely,

BOARDMAN & CLARK LLP

Richard L. Bolton

RLB/nr  
Enclosure

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

Case No. 12 CV 0818

v.

JOHN KOSKINEN, Commissioner  
Of The Internal Revenue Service,

Defendant,

and

FATHER PATRICK MALONE and  
HOLY CROSS ANGLICAN CHURCH,

Defendant-Intervenors.

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**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT-INTERVENORS**

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TO: Eric C. Rassbach  
Daniel Blomberg  
The Becket Fund for Religious Liberty  
3000 K St. NW, Suite 220  
Washington, DC 20007  
Attorneys for Defendant-Intervenors

Pursuant to Federal Rule of Civil Procedure 34, the Plaintiff hereby requests that the Defendant-Intervenors respond to the following requests for production of documents.

All responsive documents should be produced at the offices of Attorney Richard L. Bolton, Boardman & Clark LLP, located at 1 S. Pinckney St., Ste. 410, P. O. Box 927, Madison,

Wisconsin 53701-0927. You must provide a written response to each request for production of documents within thirty (30) days after the service of these requests for production.

You are required to provide not only all documents in your actual possession, but also all documents available to you. This includes information and documents in the possession of others working for you.

If you withhold any information or documents on the grounds of privilege or attorney work product, please describe the information and documents being withheld in a manner sufficient to enable plaintiffs to assess the applicability of the claimed privilege.

#### **DEFINITIONS**

“Document” and “documents” shall be used in their broadest sense and shall mean and include all written, printed, typed, drawn, taped, electronic, electromagnetic, graphic, photographic, or any other tangible matter of documentary material from whatever source, however produced or reproduced, whether sent or received or neither, whether original, copies, drafts, translations or otherwise, including the original and any non-identical copy, including but not limited to any and all writings, correspondence, letters, telegrams, telex communications, cables, advisories, orders, opinions, notes, notations, papers, memoranda, interoffice communications, intra-office communications, tapes, disks, minutes of meetings, recordings or other memorials of any type, both originals and copies, and all attachments and appendices thereto, that are in your possession, custody or control or in the possession, custody or control of your attorney, including digital copies of any or all of the aforementioned. Without limiting the term “control,” a document is deemed to be within your control if you have ownership, possession or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical control thereof.

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1.** All documents since January 1, 2010, relating to any preaching or sermonizing by Father Malone about candidates that, as a matter of faith and practice, church members should not vote for. (As described in paragraph 11 of Declaration of Father Malone filed on December 12, 2013, in the above captioned case.)

**REQUEST FOR PRODUCTION NO. 2.** All documents relating to the statement in paragraph 12 of Father Malone's Declaration, filed on December 12, 2013.

**REQUEST FOR PRODUCTION NO. 3.** All documents relating to the statement in paragraph 15 of Father Malone's Declaration, filed on December 12, 2013, including documents relating to Father Malone's statement that he explains to members of his church that their duty "to insist on protections" for "the unborn" extends to their political choices and their votes.

**REQUEST FOR PRODUCTION NO. 4.** All documents relating to the statement in paragraph 16 of Father Malone's Declaration, filed on December 12, 2013, wherein Father Malone states that he has declared to his congregation that voting for a candidate that supports elective abortion is to be a supporter and accomplice to grave sin.

**REQUEST FOR PRODUCTION NO. 5.** All documents relating to Father Malone's understanding that the IRS prohibits him from making statements to Holy Cross Anglican Church about whether to vote for or against candidates for public office, as stated in paragraph 23 of Father Malone's Declaration.

**REQUEST FOR PRODUCTION NO. 6.** All documents relating to Father Malone's understanding that the IRS prohibits him from preaching on issues in a way that does



not mention candidates but which has the indirect effect of supporting or opposing candidates for public office, as stated in paragraph 24 of Father Malone's Declaration.

**REQUEST FOR PRODUCTION NO. 7.** All documents relating to Intervenors' involvement or participation in "Pulpit Freedom Sunday" activities.

**REQUEST FOR PRODUCTION NO. 8.** All documents relating to communications about "Pulpit Freedom Sunday" activities or other activities intended to disobey IRS requirements or prohibitions relating to political advocacy.

**REQUEST FOR PRODUCTION NO. 9.** All documents relating to Father Malone's understanding that the IRS threatens to punish violations of advocacy prohibitions, as stated in paragraph 25 of Father Malone's Declaration.

**REQUEST FOR PRODUCTION NO. 10.** All documents relating to Father Malone's statement in paragraph 28 of his Declaration indicating that "this worry has interfered with the Church congregation's ability to receive, understand, and implement the message that I [Father Malone] have preached to them."

**REQUEST FOR PRODUCTION NO. 11.** All documents relating to Father Malone's statement in paragraph 29 of his Declaration indicating that the IRS has not enforced threats against him or Holy Cross Anglican Church, even though he does not hide and, in fact, has "made public that I [Father Malone] have preached sermons that directly offered religious guidance to Holy Cross Anglican Church to vote against certain candidates for public office." (Include your response to this Request documents indicating how and when Father Malone has made public that he preached such sermons of advocacy.)

**REQUEST FOR PRODUCTION NO. 12.** All documents relating to Father Malone's statement in paragraph 32 of his Declaration that he first realized the threat posed by FFRF's lawsuit in this matter on or about October 18, 2013.

**REQUEST FOR PRODUCTION NO. 13.** All documents relating to any information, knowledge, or understanding that the IRS has enforced the political advocacy prohibitions against any church or church official since January 1, 2008.

**REQUEST FOR PRODUCTION NO. 14.** All documents relating to Father Malone's statement in paragraph 34 of his Declaration that he began seeking guidance on or after October 18, 2013, from other leaders within CANA East and from the wardens (church leaders) of Holy Cross Anglican Church, so as to address the perceived threat posed by FFRF's lawsuit.

**REQUEST FOR PRODUCTION NO. 15.** All documents relating to Father Malone's statement in paragraph 35 of his Declaration to the effect that on November 11, 2013, the Holy Cross Anglican Church voted to seek to intervene in the above captioned matter.

**REQUEST FOR PRODUCTION NO. 16.** All documents relating to communications with and between The Becket Fund for Religious Liberty relating to the above captioned lawsuit.

**REQUEST FOR PRODUCTION NO. 17.** All documents relating to Father Malone's communications with any individual or organization relating to the above captioned lawsuit.

**REQUEST FOR PRODUCTION NO. 18.** All documents relating to any communication to or from Father Malone and any individual or organization relating to the political advocacy restrictions referenced in paragraphs 24-25 of Father Malone's Declaration.

Dated this 12<sup>th</sup> day of March, 2014.

By:

**BOARDMAN & CLARK LLP**



---

Richard L. Bolton,  
Wisconsin State Bar No. 1012552  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

Case No. 12 CV 0818

DANIEL WERFEL, ACTING  
COMMISSIONER OF THE  
INTERNAL REVENUE SERVICE,

Defendant.

---

**PLAINTIFF'S FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT**

---

TO: Richard G. Rose  
Richard A. Schwartz  
U. S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
Attorneys for Defendant

John W. Vaudreuil  
United States Attorney's Office  
Western District of Wisconsin  
660 W. Washington Avenue, Suite 303  
Madison, WI 53703  
Attorney for Defendant

Pursuant to Federal Rule of Civil Procedure 34, the Plaintiff hereby requests that the Defendant respond to the following requests for production of documents.

All responsive documents should be produced at the offices of Attorney Richard L. Bolton, Boardman & Clark LLP, located at 1 S. Pinckney St., Ste. 410, P. O. Box 927, Madison, Wisconsin 53701-0927. You must provide a written response to each request for production of documents within thirty (30) days after the service of these requests for production.

You are required to provide not only all documents in your actual possession, but also all documents available to you in your official capacity. This includes information and documents in the possession of others working for you.

If you withhold any information or documents on the grounds of privilege or attorney work product, please describe the information and documents being withheld in a manner sufficient to enable plaintiffs to assess the applicability of the claimed privilege.

### **DEFINITIONS**

“Document” and “documents” shall be used in their broadest sense and shall mean and include all written, printed, typed, drawn, taped, electronic, electromagnetic, graphic, photographic, or any other tangible matter of documentary material from whatever source, however produced or reproduced, whether sent or received or neither, whether original, copies, drafts, translations or otherwise, including the original and any non-identical copy, including but not limited to any and all writings, correspondence, letters, telegrams, telex communications, cables, advisories, orders, opinions, notes, notations, papers, memoranda, interoffice communications, intra-office communications, tapes, disks, minutes of meetings, recordings or other memorials of any type, both originals and copies, and all attachments and appendices thereto, that are in your possession, custody or control or in the possession, custody or control of your attorney, including digital copies of any or all of the aforementioned. Without limiting the term “control,” a document is deemed to be within your control if you have ownership, possession or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical control thereof.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1.** All documents relating to the enforcement of the electioneering restrictions of § 501(c)(3) of the Tax Code against churches and religious organizations, since January 1, 2008. (In these requests for production of documents, the phrase “electioneering restrictions” refer to the prohibition in § 501(c)(3) against

participating or intervening, directly or indirectly, in political campaigns on behalf of or in opposition to any candidate for elective office.)

**REQUEST FOR PRODUCTION NO. 2.** All documents since January 1, 2008, relating to consideration of whether or not to enforce the electioneering restrictions of § 501(c)(3) against churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 3.** All documents relating to consideration of whether to investigate or commence inquiries of potential violations of the electioneering restrictions of § 501(c)(3) against churches or religious organizations, since January 1, 2008.

**REQUEST FOR PRODUCTION NO. 4.** All documents relating to consideration of whether or how to respond to publicized violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations, including publicized actions of churches or religious organizations, such as on “Pulpit Freedom Sundays,” including without limitation on or about October 7, 2012.

**REQUEST FOR PRODUCTION NO. 5.** All documents since January 1, 2008, relating to possible violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations, wherein churches or religious organizations s submitted to the I.R.S. recordings or other evidence of their partisan activities.

**REQUEST FOR PRODUCTION NO. 6.** All documents relating to any investigation, inquiry, audit, or enforcement action taking against any church or religious organization, since January 1, 2008, based upon potential violation of the electioneering restrictions of § 501(c)(3). (Specific taxpayer identifying information may be redacted before the production of any documents responsive to this request.)

**REQUEST FOR PRODUCTION NO. 7.** All documents since January 1, 2008, relating to any policy or practice of the Internal Revenue Service concerning enforcement, audits, investigations, or inquiries, of churches or religious organizations for potential violation of the electioneering restrictions of § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 8.** All documents relating to any determinations by the I.R.S., since January 1, 2008, that any church or religious organization has violated the electioneering restrictions of § 501(c)(3). (Taxpayer identifying information may be redacted before the production of any documents responsive to this request.)

**REQUEST FOR PRODUCTION NO. 9.** All documents since January 1, 2008, relating to Chief Counsel Advice regarding enforcement, audits, investigations, or inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 10.** All documents since January 1, 2008, relating to Technical Advice Memorandums regarding enforcement, audits, investigations, or inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 11.** All documents since January 1, 2008, relating to Published Guidance regarding enforcement, audits, investigations, or inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 12.** All documents since January 1, 2008, relating to Revenue Procedure Files regarding enforcement, audits, investigations, or

inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 13.** All documents since January 1, 2008, relating to General Counsel Memorandum Files regarding enforcement, audits, investigations, or inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 14.** All documents since January 1, 2008, relating to Office Memorandum Files regarding enforcement, audits, investigations, or inquiries of potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations.

**REQUEST FOR PRODUCTION NO. 15.** All documents since January 1, 2008, relating to enforcement policies and practices applicable to the electioneering restrictions of § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 16.** All documents relating to any documentation by a high-ranking I.R.S. official, in writing, of the acts and circumstances, including potential violations of the electioneering restrictions, that led the high-ranking official to reasonably believe that a church or religious organization may have violated the requirements for tax exemption under § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 17.** All documents relating to any investigation or determination of whether there was sufficient evidence for a high-ranking I.R.S. official to reasonably believe that a church or religious organization may have violated the electioneering restrictions of § 501(c)(3).



**REQUEST FOR PRODUCTION NO. 18.** All documents relating to consideration of whether to place inquiries or audits of church or religious organizations on hold, or in abeyance, since January 1, 2008.

**REQUEST FOR PRODUCTION NO. 19.** All documents relating to any statement in 2012 by I.R.S. official(s), including Russell Renwicks, indicating that the I.R.S. has not been auditing churches because necessary regulations have not been approved.

**REQUEST FOR PRODUCTION NO. 20.** All documents relating to complaints/notifications received by the I.R.S. about political involvement of churches and religious organizations, since January 1, 2010.

**REQUEST FOR PRODUCTION NO. 21.** All documents relating to any consideration by the I.R.S. of response to a statement by Russell Renwicks in 2012 that the I.R.S. has not been auditing churches because it has no authority to do so since necessary regulations have not been approved.

**REQUEST FOR PRODUCTION NO. 22.** All documents relating to proposed or considered I.R.S. regulations to designate a high-ranking official in the I.R.S. to approve church audits or inquiries.

**REQUEST FOR PRODUCTION NO. 23.** All documents relating to the status/adoption of I.R.S. regulations intended to designate a high-ranking I.R.S. official to approve church audits or inquiries.

**REQUEST FOR PRODUCTION NO. 24.** All documents relating to a statement(s) by Dean Patterson, a spokesman for the I.R.S., disavowing the statement by Mr. Renwicks that the I.R.S. was holding church audits in abeyance.

**REQUEST FOR PRODUCTION NO. 25.** All documents relating to the statement by Dean Patterson, a spokesman for the I.R.S., indicating in 2012 that the I.R.S. follows-up on potential non-compliance with the electioneering restrictions of § 501(c)(3) by church organizations.

**REQUEST FOR PRODUCTION NO. 26.** All documents relating to I.R.S. follow-up on potential non-compliance with the electioneering restrictions of § 501(c)(3) by churches or religious organizations, since January 1, 2010.

**REQUEST FOR PRODUCTION NO. 27.** All documents relating to the designation of a high-ranking I.R.S. official to authorize audits or inquiries of churches or religious organizations relating to compliance with the electioneering restrictions of § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 28.** All documents relating to the consideration by the I.R.S. of Pulpit Freedom Sunday activities of churches and religious organizations, in possible violation of the electioneering restrictions of § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 29.** All documents since January 1, 2008, relating to advice, instruction, guidance, or information provided to I.R.S. employees regarding enforcement, investigation, or auditing of churches or religious organizations for compliance with the electioneering restrictions of § 501(c)(3).

**REQUEST FOR PRODUCTION NO. 30.** All documents since January 1, 2008, relating to advice, instruction, guidance, or information provided to I.R.S. employees regarding enforcement, investigation, or auditing of churches or religious organizations relating to compliance by churches or religious organizations with the requirements of § 501(c)(3).

Dated this 12<sup>th</sup> day of March, 2014.

By:

**BOARDMAN & CLARK LLP**



---

Richard L. Bolton,  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

---

FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

Case No. 12 CV 0818

v.

JOHN KOSKINEN, Commissioner  
Of The Internal Revenue Service,

Defendant,

and

FATHER PATRICK MALONE and  
HOLY CROSS ANGLICAN CHURCH,

Defendant-Intervenors.

---

**PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT**

---

TO: Richard G. Rose  
Richard A. Schwartz  
U. S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
Attorneys for Defendant

John W. Vaudreuil  
United States Attorney's Office  
Western District of Wisconsin  
660 W. Washington Avenue, Suite 303  
Madison, WI 53703  
Attorney for Defendant

Pursuant to Federal Rule of Civil Procedure 33, the Plaintiff hereby requests that the Defendant respond to the following interrogatories.

You must provide a written response to each interrogatory within thirty (30) days after the service of these interrogatories.

**INTERROGATORIES**

**INTERROGATORY NO. 1.** Identify with particularity all actions by the IRS relating to inquiry, investigation, or enforcement of the electioneering restrictions of § 501(c)(3) of the Tax Code against churches and religious organizations, since January 1, 2008. (In these interrogatories, the phrase “electioneering restrictions” refer to the prohibition in § 501(c)(3) against participating or intervening, directly or indirectly, in political campaigns on behalf of or in opposition to any candidate for elective office.)

**INTERROGATORY NO. 2.** Identify with particularity any consideration by the IRS of whether or not to investigate and/or enforce the electioneering restrictions of § 501(c)(3) against churches or religious organizations, since January 1, 2008.

**INTERROGATORY NO. 3.** Describe with particularity any consideration by the IRS of whether to investigate or commence inquiries about potential violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations, since January 1, 2008.

**INTERROGATORY NO. 4.** Describe with particularity any consideration by the IRS of whether or how to respond to publicized or self-reported violations of the electioneering restrictions of § 501(c)(3) by churches or religious organizations, including publicized actions of churches or religious organizations, on annual “Pulpit Freedom Sunday,” since January 1, 2008.

**INTERROGATORY NO. 5.** Identify with particularity those instances since January 1, 2008, where churches or religious organizations submitted to the IRS recordings or other evidence of possible violations of electioneering restrictions of § 501(c)(3), including actions on annual “Pulpit Freedom Sunday.”

**INTERROGATORY NO. 6.** Identify with particularity any investigation, inquiry, audit or enforcement action taken against any church or religious organization, since January 1, 2008, based upon potential violation of the electioneering restrictions of § 501(c)(3). (Specific taxpayer identifying information may be omitted in answer to this interrogatory.)

**INTERROGATORY NO. 7.** Describe with particularity any and each policy or practice of the IRS concerning enforcement, audits, investigations, or inquiries, of churches or religious organizations for potential violation of electioneering restrictions of § 501(c)(3), since January 1, 2008.

**INTERROGATORY NO. 8.** Identify with particularity any determination by the IRS since January 1, 2008, that any church or religious organization has violated the electioneering restrictions of § 501(c)(3). (Taxpayer identifying information may be omitted in answer to this interrogatory.)

**INTERROGATORY NO. 9.** Identify with particularity any documentation by a high-ranking IRS official, since January 1, 2008, of the acts and circumstances that led the high-ranking official to reasonably believe that a church or religious organization may have violated the requirements for tax exemption under § 501(c)(3).

**INTERROGATORY NO. 10.** Identify with particularity any inquiry, investigation, or determination of whether there was sufficient evidence for a high-ranking IRS official to reasonably believe that a church or religious organization may have violated the electioneering restrictions of § 501(c)(3), since January 1, 2008.

**INTERROGATORY NO. 11.** Describe with particularity the reason(s) that the IRS has not investigated and/or taken enforcement action against churches or religious

organizations that may have violated the electioneering restrictions of § 501(c)(3) on any Pulpit Freedom Sunday, since January 1, 2008.

**INTERROGATORY NO. 12.** Describe with particularity the basis for the statements made in 2012 by Russell Renwicks, an IRS employee, indicating that the IRS has not been auditing churches because necessary regulations have not been approved.

**INTERROGATORY NO. 13.** Identify with particularity each high-ranking IRS official since January 1, 2008, that was designated and/or responsible for documenting in writing the acts and circumstances that led the high-ranking official to reasonably believe that a church or religious organization may have violated the requirements for tax exemption under § 501(c)(3).

**INTERROGATORY NO. 14.** Describe with particularity the consideration and/or adoption by the IRS of regulations intended to designate a high-ranking official in the IRS to approve church audits, inquiries, or investigations.

**INTERROGATORY NO. 15.** Identify with particularity the person or persons employed by the IRS during the 2008-2014 time period with responsibility for determining whether to approve church audits, inquiries, or investigations.

**INTERROGATORY NO. 16.** Identify with particularity the IRS official(s) who prepared or contributed to the statement by Dean Patterson, a spokesman for the IRS, disavowing the statement by Russell Renwicks in 2012 that the IRS was holding church audits in abeyance.

**INTERROGATORY NO. 17.** Describe with particularity any IRS follow-up on potential non-compliance with the electioneering restrictions of § 501(c)(3) by church or religious organizations during the period January 1, 2008, through the present.

**INTERROGATORY NO. 18.** Describe with particularity the consideration and/or response by the IRS to Pulpit Freedom Sunday activities of churches and religious organizations engaged in possible violation of the electioneering restrictions of § 501(c)(3).

**INTERROGATORY NO. 19.** Describe with particularity any advice, instruction, guidance, or information provided to IRS employees regarding enforcement, investigation, or auditing of churches or religious organizations for compliance with electioneering restrictions of § 501(c)(3) since January 1, 2008.

**INTERROGATORY NO. 20.** Describe with particularity any changes and/or considered changes in the IRS policies or practice(s) regarding enforcement of the electioneering restrictions of § 501(c)(3) against churches or religious organizations, since November 14, 2012.

**INTERROGATORY NO. 21.** Identify the person or persons most knowledgeable of the IRS enforcement policies and practices relating to the electioneering restrictions of § 501(c)(3), as applied to churches or religious organizations, since January 1, 2008.

**INTERROGATORY NO. 22.** Describe with particularity the basis for the response to each of Plaintiff's First Requests for Admissions that is other than an unqualified admission.

Dated this 12<sup>th</sup> day of March, 2014.

By:

**BOARDMAN & CLARK LLP**



---

Richard L. Bolton,  
Wisconsin State Bar No. 1012552  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

---

FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

Case No. 12 CV 0818

v.

JOHN KOSKINEN, Commissioner  
Of The Internal Revenue Service,

Defendant,

and

FATHER PATRICK MALONE and  
HOLY CROSS ANGLICAN CHURCH,

Defendant-Intervenors.

---

**PLAINTIFF'S FIRST REQUESTS FOR ADMISSIONS TO DEFENDANT**

---

TO: Richard G. Rose  
Richard A. Schwartz  
U. S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
Attorneys for Defendant

John W. Vaudreuil  
United States Attorney's Office  
Western District of Wisconsin  
660 W. Washington Avenue, Suite 303  
Madison, WI 53703  
Attorney for Defendant

Pursuant to Federal Rule of Civil Procedure 36, the Plaintiff hereby requests that the Defendant respond to the following requests for admissions.

You must provide a written response to each request for admission within thirty (30) days after the service of these requests for admission.

**REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1.** The IRS may initiate a tax inquiry of a church or religious organization if a high-ranking IRS official documents in writing the acts and circumstances, including potential violations of the electioneering prohibition of § 501(c)(3), that led the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption.

**REQUEST FOR ADMISSION NO. 2.** The IRS did not have a high-ranking IRS official designated and/or responsible for initiating a tax inquiry of a church or religious organization by documenting the acts and circumstances that lead the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption under § 501(c)(3), between January 1, 2012 and November 14, 2012.

**REQUEST FOR ADMISSION NO. 3.** The IRS did not have a high-ranking IRS official designated and/or responsible for initiating a tax inquiry of a church or religious organization by documenting the acts and circumstances that lead the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption under § 501(c)(3), between January 1, 2011 and December 31, 2011.

**REQUEST FOR ADMISSION NO. 4.** The IRS did not have a high-ranking IRS official designated and/or responsible for initiating a tax inquiry of a church or religious organization by documenting the acts and circumstances that lead the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption under § 501(c)(3), between January 1, 2010 and December 31, 2010.

**REQUEST FOR ADMISSION NO. 5.** The IRS did not have a high-ranking IRS official designated and/or responsible for initiating a tax inquiry of a church or religious

organization by documenting the acts and circumstances that lead the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption under § 501(c)(3), between January 1, 2009 and December 31, 2009.

**REQUEST FOR ADMISSION NO. 6.** The IRS did not have a high-ranking IRS official designated and/or responsible for initiating a tax inquiry of a church or religious organization by documenting the acts and circumstances that lead the official to reasonably believe that the church or religious organization may have violated the requirements for tax exemption under § 501(c)(3), between January 1, 2008 and December 31, 2008.

**REQUEST FOR ADMISSION NO. 7.** The IRS did not initiate a tax inquiry of a church or religious organization, based on a reasonable belief that the requirement for tax exemption under § 501(c)(3) may have been violated, between January 1, 2012 and November 14, 2012.

**REQUEST FOR ADMISSION NO. 8.** The IRS did not initiate a tax inquiry of a church or religious organization, based on a reasonable belief that the requirement for tax exemption under § 501(c)(3) may have been violated, between January 1, 2011 and December 31, 2011.

**REQUEST FOR ADMISSION NO. 9.** The IRS did not initiate a tax inquiry of a church or religious organization, based on a reasonable belief that the requirement for tax exemption under § 501(c)(3) may have been violated, between January 1, 2010 and December 31, 2010.

**REQUEST FOR ADMISSION NO. 10.** The IRS did not initiate a tax inquiry of a church or religious organization, based on a reasonable belief that the requirement for tax

exemption under § 501(c)(3) may have been violated, between January 1, 2009 and December 31, 2009.

**REQUEST FOR ADMISSION NO. 11.** The IRS did not initiate a tax inquiry of a church or religious organization, based on a reasonable belief that the requirement for tax exemption under § 501(c)(3) may have been violated, between January 1, 2008 and December 31, 2008.

**REQUEST FOR ADMISSION NO. 12.** The IRS was aware and/or had information in 2012 that at least some churches and religious organizations may have violated the electioneering restrictions of § 501(c)(3) between January 1, 2012 and November 14, 2012.

**REQUEST FOR ADMISSION NO. 13.** The IRS was aware and/or had information in 2011 that at least some churches and religious organizations may have violated the electioneering restrictions of § 501(c)(3) between January 1, 2011 and December 31, 2011.

**REQUEST FOR ADMISSION NO. 14.** The IRS was aware and/or had information in 2010 that at least some churches and religious organizations may have violated the electioneering restrictions of § 501(c)(3) between January 1, 2010 and December 31, 2010.

**REQUEST FOR ADMISSION NO. 15.** The IRS was aware and/or had information in 2009 that at least some churches and religious organizations may have violated the electioneering restrictions of § 501(c)(3) between January 1, 2009 and December 31, 2009.

**REQUEST FOR ADMISSION NO. 16.** The IRS was aware and/or had information in 2008 that at least some churches and religious organizations may have violated the electioneering restrictions of § 501(c)(3) between January 1, 2008 and December 31, 2008.

**REQUEST FOR ADMISSION NO. 17.** The IRS was aware of and/or had information about non-compliance with the electioneering restrictions of § 501(c)(3) by some churches and religious organizations on “Pulpit Freedom Sunday,” held on October 7, 2012.

**REQUEST FOR ADMISSION NO. 18.** The IRS was aware of and/or had information about non-compliance with the electioneering restrictions of § 501(c)(3) by some churches and religious organizations on “Pulpit Freedom Sunday” held in 2011.

**REQUEST FOR ADMISSION NO. 19.** The IRS was aware of and/or had information about non-compliance with the electioneering restrictions of § 501(c)(3) by some churches and religious organizations on “Pulpit Freedom Sunday” held in 2010.

**REQUEST FOR ADMISSION NO. 20.** The IRS was aware of and/or had information about non-compliance with the electioneering restrictions of § 501(c)(3) by some churches and religious organizations on “Pulpit Freedom Sunday” held in 2009.

**REQUEST FOR ADMISSION NO. 21.** The IRS was aware of and/or had information about non-compliance with the electioneering restrictions of § 501(c)(3) by some churches and religious organizations on “Pulpit Freedom Sunday” held in 2008.

**REQUEST FOR ADMISSION NO. 22.** The IRS received complaints and/or information about some churches and religious organizations violating the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2012.

**REQUEST FOR ADMISSION NO. 23.** The IRS received complaints and/or information about some churches and religious organizations violating the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2011.

**REQUEST FOR ADMISSION NO. 24.** T The IRS received complaints and/or information about some churches and religious organizations violating the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2010.

**REQUEST FOR ADMISSION NO. 25.** The IRS received complaints and/or information about some churches and religious organizations violating the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2009.

**REQUEST FOR ADMISSION NO. 26.** The IRS received complaints and/or information about some churches and religious organizations violating the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2008.

**REQUEST FOR ADMISSION NO. 27.** The IRS has received information from churches and religious organizations about their own violations of the electioneering restrictions of § 501(c)(3), which information has been sent by churches and religious organizations directly to the IRS, including in 2012.

**REQUEST FOR ADMISSION NO. 28.** The IRS has received information from churches and religious organizations about their own violations of the electioneering restrictions of § 501(c)(3), which information has been sent by churches and religious organizations directly to the IRS, including in 2011.

**REQUEST FOR ADMISSION NO. 29.** The IRS has received information from churches and religious organizations about their own violations of the electioneering restrictions of § 501(c)(3), which information has been sent by churches and religious organizations directly to the IRS, including in 2010.

**REQUEST FOR ADMISSION NO. 30.** The IRS has received information from churches and religious organizations about their own violations of the electioneering restrictions

of § 501(c)(3), which information has been sent by churches and religious organizations directly to the IRS, including in 2009.

**REQUEST FOR ADMISSION NO. 31.** The IRS has received information from churches and religious organizations about their own violations of the electioneering restrictions of § 501(c)(3), which information has been sent by churches and religious organizations directly to the IRS, including in 2008.

**REQUEST FOR ADMISSION NO. 32.** The IRS has not taken any action against churches and religious organizations that may have violated the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2012.

**REQUEST FOR ADMISSION NO. 33.** The IRS has not taken any action against churches and religious organizations that may have violated the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2011.

**REQUEST FOR ADMISSION NO. 34.** The IRS has not taken any action against churches and religious organizations that may have violated the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2010.

**REQUEST FOR ADMISSION NO. 35.** The IRS has not taken any action against churches and religious organizations that may have violated the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2009.

**REQUEST FOR ADMISSION NO. 36.** The IRS has not taken any action against churches and religious organizations that may have violated the electioneering restrictions of § 501(c)(3) on Pulpit Freedom Sunday in 2008.

**REQUEST FOR ADMISSION NO. 37.** Russell Renwicks was an employee of the IRS in 2012.

**REQUEST FOR ADMISSION NO. 38.** Russell Renwicks publically stated in 2012 that the IRS has not been auditing churches because it had no authority to do so since necessary regulations had not been approved.


**REQUEST FOR ADMISSION NO. 39.** The IRS is aware of Pulpit Freedom Sunday actions by churches and religious organizations in violation of the electioneering restrictions of § 501(c)(3).

**REQUEST FOR ADMISSION NO. 40.** The IRS has initiated no inquiry and/or taken no investigative or enforcement action against any known participant in Pulpit Freedom Sunday actions involving non-compliance with the electioneering restrictions of § 501(c)(3).

Dated this 12<sup>th</sup> day of March, 2014.

By:

**BOARDMAN & CLARK LLP**



---

Richard L. Bolton,  
Wisconsin State Bar No. 1012552  
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**CERTIFICATE OF MAILING**

I certify that I have on this date I have caused to be served a true and accurate copy of the foregoing First Request for Production of Documents to Defendant, First Request for Admissions and First Set of Interrogatories to the Defendant, and First Request for Production of Documents to Defendant-Intervenors via First Class Mail to the following attorneys of record:

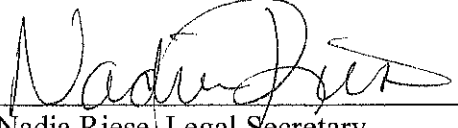
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Dated this 12th day of March, 2014.

BOARDMAN & CLARK LLP

  
\_\_\_\_\_  
Nadia Riese, Legal Secretary