

# JONES DAY

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August 29, 2024

## Via Regular Mail and Facsimile 855-780-9036

Attention: Kristopher A. Raper, Internal Revenue Agent  
Internal Revenue Service  
Mail Stop MC 4957 DAL  
1100 Commerce Street  
Dallas, TX 75242  
ID Number: 1002841529

Re: IRS Church Tax Inquiry Regarding New Way Christian Fellowship

Dear Mr. Raper:

Along with First Liberty Institute, we represent New Way Christian Fellowship (“New Way”) in the IRS’s church tax inquiry related to the taxable year ended December 31, 2022. On New Way’s behalf, we write in response to your June 14, 2024 letter. New Way is a responsible member of the community and complies with all of its legal obligations. We are grateful for the opportunity to offer our responses to your inquiry and trust that these responses will resolve any outstanding concerns the IRS may have. For the reasons explained below, we believe the inquiry is barred by the First Amendment and lacks any basis in law and fact. Moreover, we are concerned that the IRS’s inquiry into New Way is selective and inconsistent with the policies and practices of the sitting Biden-Harris Administration regarding political candidates speaking at houses of worship. For these and other reasons explained more fully below, New Way respectfully requests that the IRS close the inquiry immediately.

The IRS seeks to examine—and potentially to revoke New Way’s tax-exempt status—due to “concerns” that New Way “allowed Jill Woolbright, a candidate in a local school board election, to address your congregation during a Church service.” Letter 4. The IRS’s inquiry is inappropriate on its face. In the first place, the IRS has failed to comply with the requirements of Section 7611 of the Internal Revenue Code. The IRS’s barebones characterization of addresses to a congregation during “an official church function,” *id.*, does not present to New Way “the basis of facts and circumstances recorded in writing” that even arguably could form a “reasonabl[e] belie[f]” that the religious service in question compromised New Way’s tax-exempt status. 26 U.S.C. § 7611(a)(2). The IRS thus remains under the unequivocal restriction against inquiring into the operations of a church, or the addresses and sermons delivered at a church. *See id.*

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Accordingly, the inquiry should never have been initiated, *see, e.g., id.*, and should be closed for this reason alone.

Nor could the IRS “reasonably believe[.]” that New Way engaged in political activity that compromised its tax-exempt status based upon the “facts and circumstances” of addresses and sermons during New Way’s religious services. *Id.* In fact, any inquiry by the IRS, or any other government official, into what a church teaches to its congregation—or what the government believes a “pastor” or invited speaker should or should not have said to a church community, *see* Letter 4—is necessarily suspect, and presumptively unconstitutional. As the U.S. Supreme Court has held, both direct and indirect “interference by secular authorities” in a church’s “independence” as to the content of “preaching, teaching, and counseling” is forbidden. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020); *see Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (First Amendment guarantees “independence from secular control or manipulation” in “faith and doctrine”); *see also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (“[T]he First Amendment doubly protects religious speech[.]”). And one obvious consequence of this principle, as the Court has long held, is that the First Amendment forecloses any conceivable basis for the government “to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings.” *Fowler v. State of Rhode Island*, 345 U.S. 67, 68–70 (1953) (religious “address” remarking on “the futility” of political peacemaking efforts); *see Our Lady*, 591 U.S. at 748 (Religion Clauses forbid regulating “what ministers could preach” and “impos[ing] penalties for noncompliance”).

The IRS’s church tax inquiry contravenes these rules, by seeking to probe and “control” New Way’s communications on “faith and doctrine,” *Kedroff*, 344 U.S. at 116, and to “interfer[e]” with New Way’s “preaching, [and] teaching,” *Our Lady*, 591 U.S. at 747, including “address[es]” and “sermons delivered at religious meetings,” *Fowler*, 345 U.S. at 68, 70; *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196 (2012) (enforcing religious groups’ independence in “preach[ing] their beliefs, teach[ing] their faith, and carry[ing] out their mission”). The inquiry therefore violates the First Amendment and should be closed for that reason alone.

Indeed, a government inquiry into a church’s exercise and expression of its beliefs during worship services is irreconcilable with the First Amendment’s core protections of religious independence and free exercise, free speech, and free association. *See, e.g., Our Lady*, 591 U.S. at 747; *Hosanna-Tabor*, 565 U.S. at 189. The Supreme Court has made clear that even “the very process of inquiry” into church communications can impinge on First Amendment rights. *N.L.R.B. v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979); *see Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality) (First Amendment bars courts from “trolling through a person’s or institution’s religious beliefs”). After all, any such inquiry strikes at the “independence of religious institutions” in both “matters of faith and doctrine” and “matters of church government.” *Our*

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*Lady*, 591 U.S. at 746–47 (citation omitted); see *Hosanna-Tabor*, 565 U.S. at 186 (upholding the “power” of “religious organizations” to “decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine” (quoting *Kedroff*, 344 U.S. at 116)).

Courts therefore regularly forbid such inquiries and investigations, even when the communications implicate important political or policy matters. See, e.g., *Whole Woman’s Health v. Smith*, 896 F.3d 362, 372–74 (5th Cir. 2018) (quashing subpoena into church communications relating to legislation supported by the church; free speech, free association, and church autonomy “protect the inner workings of [a religious organization] when it engages in activity in the public square”); *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1261 (10th Cir. 2008) (barring “governmental monitoring” of religious practices as condition of benefits); *Duquesne Univ. of the Holy Spirit v. N.L.R.B.*, 947 F.3d 824, 835 (D.C. Cir. 2020) (barring NLRB inquiries in union-recognition matter). And if even *inquiring* about religious statements made within the church context breaches the First Amendment, seeking to revoke a church’s tax-exempt status and impose tax *liability* based upon such statements is an even more egregious First Amendment violation of a church’s right to “independence” in the content of its “teaching.” *Our Lady*, 591 U.S. at 747; see, e.g., *In re Lubbock*, 624 S.W.3d 506, 515–16 (Tex. 2021) (First Amendment bars civil liability for “ecclesiastical” statements); *Bryce v. Episcopal Church*, 289 F.3d 648, 659 & n.2 (10th Cir. 2002) (no civil liability based on “communications that are protected by the ... church autonomy doctrine”); see also *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 978 (7th Cir. 2021) (en banc) (entertaining claim based on statements between ministers “threaten[s] the independence of religious organizations ‘in a way that the First Amendment does not allow’” (quoting *Our Lady*, 591 U.S. at 762)).

The IRS’s inquiry into New Way thus runs headlong into the First Amendment. If more were somehow needed, revoking a church’s tax-exempt status, based solely upon a sermon or address to the congregation during a worship service or church gathering, appears to be unprecedented in American history. The absence of any comparable exercise of authority, on a matter of great political and constitutional significance, strongly suggests the absence of such authority. See *West Virginia v. EPA*, 597 U.S. 697, 725 (2022) (“[J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.” (citation omitted)). Such enforcement bears no resemblance to, for example, the IRS examining a religious organization’s expenditure of funds on a nationwide political advertisement in a national newspaper. Cf. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

The need to avoid even an arguable First Amendment violation inherent in policing religious speech in the context of a worship service, including the speech of a “pastor” to the

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congregation during a prayer or otherwise, Letter 4, alone warrants the IRS immediately closing the inquiry. See, e.g., *Kennedy*, 597 U.S. at 523–24; *Our Lady*, 591 U.S. at 746–47; *Hosanna-Tabor*, 565 U.S. at 186, 189; *Catholic Bishop*, 440 U.S. at 502; *Kedroff*, 344 U.S. at 116.

In fact, it is difficult, if not impossible, to imagine how the Religious Freedom Restoration Act (“RFRA”) would ever permit the IRS to penalize religiously-motivated statements made to fellow worshippers regarding how to engage in the public sphere consistent with their faith. Such an action would “substantially burden a person’s exercise of religion,” 42 U.S.C. § 2000bb-1(a), *regardless* of whether such statements are “compelled by, or central to,” the person’s religious belief, *id.* § 2000cc-5(7)(A). The IRS could not surmount the demanding burden to show that revoking a church’s tax-exempt status based upon the content of such communications satisfies strict scrutiny, *see id.* § 2000bb-1(b); *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (strict scrutiny is the “most demanding test known to constitutional law”). Thus, RFRA, too, counsels the IRS to close the inquiry immediately.

Moreover, the IRS’s apparent position that the First Amendment permits the IRS to revoke a church’s tax-exempt status based upon the church permitting political candidates to speak during worship services or church gatherings, or lending them verbal support during a service (in the form of prayer or otherwise), is irreconcilable and in open conflict with the policies, practices, and position of the sitting Biden-Harris Administration. See *Fonticiella v. Comm’r of Internal Revenue*, 117 T.C.M. (CCH) 1377 (T.C. 2019) (“The President retains full oversight of the [IRS] Commissioner,” who exercises “delegated authority” in his supervision of the IRS as a bureau of the Department of the Treasury). Indeed, both President Biden and Vice President Harris have confirmed that the First Amendment protects a church’s hosting and endorsement of political candidates—and that such hosting and endorsements do *not* imperil a church’s tax-exempt status. Just under two months ago, President Biden, then a re-election candidate, gave a campaign speech during worship services at a Philadelphia church, and received the endorsement of the pastor.<sup>1</sup> Likewise, in 2021, Vice President Harris filmed a campaign speech endorsing a Virginia gubernatorial candidate for churches to play for congregants during worship services.<sup>2</sup>

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<sup>1</sup> See F. Farrow et al., *Black churchgoers in Philadelphia come to Biden's defense amid fallout over debate performance*, ABC News (July 7, 2024), <https://abcnews.go.com/Politics/black-churchgoers-philadelphia-bidens-defense-amid-debate-fallout/story?id=111729423>. The full speech, and accompanying sermon, is available on the Washington Post’s YouTube Page. See Washington Post, *President Biden to Deliver Remarks at Mt. Airy Church in Philadelphia*, YouTube.com, <https://www.youtube.com/watch?v=eANfPiAbWSM> (streamed live on July 7, 2024).

<sup>2</sup> N. Minock, *As McAuliffe-Youngkin race reaches final stretch, Kamala Harris church video questioned*, ABC7 News (Oct. 25, 2021), <https://wjla.com/news/local/terry-mcauliffe-glenn-youngkin-race-final-stretch-kamala-harris-endorsement-questioned-churches-501c3-irs>. The full speech is available on Forbes’s YouTube page. See Forbes Breaking News, *VP Kamala Harris Releases Message To Virginia Black Churches In Support Of Terry McAuliffe*,

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Such public speeches and similar events make clear the current Administration's position (even against public criticism) that political engagement and candidate endorsements by churches are lawful and constitutionally protected. New Way agrees that churches enjoy a First Amendment right to enter the public square and to endorse candidates in whatever manner they believe their faith encourages. And there is no justification for the IRS to claim—at odds with the position of the Biden-Harris Administration—a compelling interest in inquiring into such activity by New Way *at all*, let alone when it apparently has not opened any inquiry into the churches President Biden and Vice President Harris have used to secure and convey candidate endorsements. Either the IRS's prohibition on church participation on behalf of any candidate for public office applies to every church and every candidate or it does not. To inquire into New Way's conduct but turn a blind eye to the President's and Vice President's actions, is political hypocrisy at its finest.

Finally, the IRS's inquiry is an exercise in futility. The IRS's own guidance recognizes that churches "are automatically considered tax exempt." IRS Pub. 1828 at 2 (Rev. 8-2015). Thus, even if the IRS were permitted to inquire into New Way's operations, examine the content of its worship services and church leadership's communications, and presume to revoke its recognition of New Way's tax exemption, since New Way is a church—and would continue so to be even after any such revocation—New Way would be "automatically considered tax exempt and [would not be] required to apply for and obtain recognition of tax-exempt status from the IRS." *Id.* In short, the IRS does not determine New Way's tax exemption; it merely recognizes it when asked. Thus, once again, this inquiry should be closed.

In all events, New Way's responses below to the Church Inquiry Questions in your June 14, 2024 letter further demonstrate that there is no basis for the IRS's inquiry and, thus, that the IRS should close it.

### RESPONSES TO THE IRS'S CHURCH INQUIRY QUESTIONS

**1. Does the video located at [https://www.youtube.com/watch?v=E9F\\_vPlvvDo](https://www.youtube.com/watch?v=E9F_vPlvvDo) accurately depict Jill Woolbright speaking at an official church function of New Way Christian Fellowship Inc. in 2022?**

**a. If yes, how many people were in attendance and in what capacity were they there (e.g., church congregant)?**

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YouTube.com (Oct. 18, 2021), <https://www.youtube.com/watch?v=DEQDFuIx6o>. See also A. Kenmore, *VP Kamala Harris tells SC voters at AME retreat they need to organize to elect Biden again*, South Carolina Daily Gazette (Jan. 6, 2024), <https://scdailygazette.com/2024/01/06/vp-kamala-harris-tells-voters-at-ame-retreat-they-need-to-organize-to-elect-biden-again/> (summarizing remarks given at church denomination's event).

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**b. Also, the referenced video appears to have been published on YouTube.com by a local news organization. In 2022, did you publish or stream your own recording of Jill Woolbright's speech?**

**c. What was the purpose of allowing Jill Woolbright to speak at an official church function of New Way Christian Fellowship Inc.?**

As explained above, the First Amendment forecloses the IRS's inquiry into the content of prayers, sermons, and addresses delivered during the worship services or gatherings of a religious congregation. Moreover, this inquiry never should have been opened because the IRS has failed to comply with the Internal Revenue Code: it has not pointed to any facts and circumstances that could support any reasonable belief that New Way may not be tax-exempt solely because of addresses to the congregation during a worship service or gathering. *See* 26 U.S.C. § 7611. New Way therefore objects to providing any response to Question 1.

Additionally, New Way specifically objects to the IRS inquiring into the details of New Way's worship services or gatherings, including the church leadership's "purpose[s]" in planning a given service, and the relationship between New Way and individual persons attending New Way's religious services. New Way is a church. Its leadership, following their interpretation of Holy Scripture, is imbued with independent authority to determine what messages should be communicated at the heart of the community's weekly worship service, as well as how the messages from those services should be disseminated. As explained above, the First Amendment forbids any inquiry into, or interference with, such key matters of internal church governance.

**2. The video referenced in question 1.a. appears to depict Jill Woolbright giving a speech discussing her candidacy for the Flager County School Board in 2022 at an official church function of New Way Christian Fellowship Inc. The video appears to further depict New Way Christian Fellowship Inc.'s pastor, Richard Summerlin, endorsing Jill Woolbright's candidacy for the Flagler County School Board at an official church function. Organizations exempt under 501(c)(3) are prohibited from engaging in political campaign intervention.**

**a. If you believe what is depicted in the video does not constitute prohibited political campaign intervention, please explain why.**

As explained above, the First Amendment forecloses the IRS's inquiry into New Way's internal affairs or communications to its fellow believers. Further, as noted, the IRS fails to point to any facts and circumstances, from the local news clip or otherwise, that could support any reasonable belief that New Way may not be tax-exempt due to prayers, sermons, or addresses at

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an official church function. New Way therefore objects to providing any response to Question 2 and refers the IRS to its answer in Question 1.

**3. In 2022, if you permitted a candidate for any public office to speak at any event you organized or otherwise sponsored, did you provide an equal opportunity to all candidates to speak at the event?**

**a. Allowing one candidate for office to speak at an event, without providing all candidates with the same opportunity, may result in violation of the prohibition against political campaign intervention outlined in IRC Section 501(c)(3). If you did not provide an equal opportunity to all candidates, please explain why you believe you have not engaged in prohibited political campaign intervention.**

As explained above, the First Amendment forecloses the IRS's inquiry into New Way's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that New Way may not be tax-exempt because it did not provide an equal opportunity to all candidates to speak at its worship service. New Way therefore objects to providing any response to Question 3 and refers the IRS to its answer in Question 1.

**4. In 2022, were you aware that by violating the prohibition on political activities outlined in IRC Section 501(c)(3) (without making a correction) that your tax-exempt status could be revoked or that you could be subject to excise taxes?**

As explained above, the First Amendment forecloses the IRS's inquiry into New Way's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that New Way may not be tax-exempt because it engaged in "political activities." Moreover, the IRS's inquiry into New Way is inconsistent with the expressed position and practice of the current Administration as to what political engagement by churches is lawful and constitutionally protected, which dates to prior to 2022. New Way therefore objects to providing any response to Question 4 and refers the IRS to its answer in Question 1.

**5. Have you participated in any political campaign intervention activities in 2022 that you have not mentioned in response to the above questions?**

As explained above, the First Amendment forecloses the IRS's inquiry into New Way's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that New Way may not be tax-exempt because it engaged in unidentified "political campaign intervention activities in 2022." New Way therefore objects to providing any response to Question 5 and refers the IRS to its answer in Question 1.

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**6. In 2022, did you have any measures in place designed to prevent your organization from violating the prohibition on political campaign intervention under IRC Section 501(c)(3)?**

**a. If yes, please explain.**

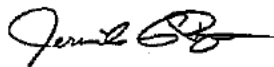
As explained above, the First Amendment forecloses the IRS's inquiry into New Way's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that New Way may not be tax-exempt because it engaged in "political campaign intervention." Moreover, whether New Way adopts written guidelines governing the conduct of its church officials or ministries is the province of church leadership, not the IRS. New Way objects to the IRS's presumption that it may seek inquiry into such matters of internal church affairs based on "concerns" about any prayers, sermons, or addresses delivered during a church's worship service or gathering, where the church is a responsible member of the community and compliant with its obligations under the law. Whatever policies, guidelines, actions, or activities New Way chooses to take, now or in the future, the fundamental response of the IRS is merely to recognize that New Way is "automatically considered tax exempt." I.R.S. Pub. 1828 at 2. New Way therefore objects to providing any further response to Question 6 and refers the IRS to its answer in Question 1.

\* \* \*

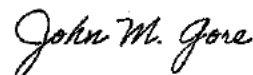
New Way shares the IRS's interest in bringing the church tax inquiry to a speedy resolution. In fact, New Way believes this inquiry fails to meet the threshold of reasonableness as defined by law and, as such, never should have been opened. We trust that this response will be more than sufficient to facilitate the closing of this inquiry.

Please do not hesitate to contact me if I can provide you with any further assistance in this matter.

Sincerely,



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