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August 16, 2024

Via Regular Mail and Facsimile 855-234-1429

Attention: Brian Schroeder, Internal Revenue Agent
Internal Revenue Service
Mail Stop TEGE:EO:7936
985 Michigan Avenue
Detroit, MI 48226
ID Number: 1000909102

Re: IRS Church Tax Inquiry Regarding Grace Church St. Louis

Dear Mr. Schroeder:

Along with First Liberty Institute, we represent Grace Church St. Louis (“Grace”) in the IRS’s church tax inquiry related to the taxable year ended December 31, 2022. On Grace’s behalf, we write in response to your April 30, 2024 letter. Grace 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 Grace is selective and inconsistent with the policies and practices of the sitting Biden-Harris Administration. For these and other reasons explained more fully below, Grace respectfully requests that the IRS close the inquiry immediately.

The IRS seeks to examine—and potentially to revoke Grace’s tax-exempt status—due to “concerns ... based on the content” reportedly “published on” Grace’s “website,” which Grace uses to communicate its teachings and guidance to its members as part of its Christian ministry. Letter 1. 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 single barebones paragraph has not presented to Grace “the basis of facts and circumstances recorded in writing” that even arguably could form a “reasonabl[e] belie[f]” that any statements by Grace have compromised Grace’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 teachings or guidance of its ministries. *See id.* Accordingly, the inquiry should never have been initiated, *see, e.g., id.*, and should be closed for this reason alone.

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Nor could the IRS “reasonably believe[]” that Grace engaged in political activity that compromised its tax-exempt status based upon the “facts and circumstances” of Grace’s reported publication on its website. *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 church leadership or ministries should or should not have said to a church community—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[.]”). The IRS’s church tax inquiry contravenes these rules, by seeking to probe and “control” Grace’s communications on “faith and doctrine,” *Kedroff*, 344 U.S. at 116, and to “interfer[e]” with Grace’s “preaching, [and] teaching,” *Our Lady*, 591 U.S. at 747; 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 in the context of its communications to its church community conflicts 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 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*

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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, including those made on church diocese website, its “means of ordinary communication with its members”); *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 Grace thus runs headlong into the First Amendment. If more were somehow needed, revoking a church’s tax-exempt status, based upon mere statements by church leadership to their co-worshippers, 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. *Compare Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

By contrast here, the IRS bases its inquiry upon mere alleged statements on a church website—or, perhaps more precisely, based upon a newspaper report and/or an editorial board’s opinion of what the church’s website said—that it states spoke about candidates in a way that “endorsed” or “oppos[ed]” them. *See Letter 1*. The need to avoid even an arguable First Amendment violation inherent in policing the speech of church leadership to the fellow faithful on a church website—the ordinary means of Grace’s communication with its church community, which contains sermons, livestreams of services, and religious resources—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

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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), and 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 its endorsement of political candidates 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 endorsement of political candidates—and that such endorsements do *not* imperil the church’s tax-exempt status. Just one month 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.¹ Likewise, in 2021, Vice President Harris filmed a campaign speech endorsing a Virginia gubernatorial candidate for churches to play for congregants during worship services.²

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. Grace 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

¹ 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).

² 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*, 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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the Biden-Harris Administration—a compelling interest in inquiring into such activity by Grace *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 Grace’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 Grace’s operations, examine the content of its church leadership’s communications, and presume to revoke its recognition of Grace’s tax exemption, since Grace is a church—and would continue so to be even after any such revocation—Grace 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 Grace’s tax exemption; it merely recognizes it when asked. Thus, once again, this inquiry should be closed.

In all events, Grace’s responses below to the Church Inquiry Questions in your April 30, 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 Church have a policy on political activities? If yes, explain and give more details as they relate to the policy for year 2022.

As explained above, the First Amendment forecloses the IRS’s inquiry into the content of a church’s ordinary communications with its 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 Grace may not be tax-exempt solely because of a newspaper editorial describing purported statements on a church website. *See* 26 U.S.C. § 7611. Grace therefore objects to providing any response to Question 1.

Subject to and without waiving that objection, Grace specifically objects to the specific inquiry into Grace’s internal policies, as to (undefined) “political activities” or otherwise. Grace is a church. Its leaders and members, following their interpretation of Holy Scripture, are imbued with the sole authority to determine its internal governance and practices, including the governance of what communications should be made to their fellow worshippers, and how such communications should be phrased. And as explained above, the First Amendment forbids any inquiry into, or interference with, matters of internal church governance. Whether Grace adopts

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written guidelines governing the conduct of its church officials or ministries is the province of church leadership, not the IRS. Grace objects to the IRS's presumption that it may seek inquiry into matters of internal church affairs—including those well outside the content of Grace's website—based on “concerns” about a church's communication with its membership, where the church is a responsible member of the community and compliant with its obligations under the law. Whatever policies, guidelines, actions, or activities Grace chooses to take, now or in the future, the fundamental response of the IRS is merely to recognize that Grace is “automatically considered tax exempt.” I.R.S. Pub. 1828 at 2.

2. Did the Church endorse any candidates for public office? According to a newspaper article and an editorial in the St. Louis Post-Dispatch, the Church published on its website an endorsement of two of its congregants, Linda Henning and Jeff Mintzlaff, for local school board office elections.

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs or communications to its fellow believers. Further, the IRS fails to point to any facts and circumstances, from the cited publication or otherwise, that could support any reasonable belief that Grace may not be tax-exempt because it endorsed candidates for public office. *Cf.* IRS Pub. 1828 at 14 (church may inform congregation that church member is a candidate for office). Grace therefore objects to providing any response to Question 2 and refers the IRS to its answer in Question 1.

3. Did the Church use social media platforms and/or websites to provide a position either for or against a candidate for public office? If so, please explain and give more details.

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs or communications to its fellow believers, including through channels used to convey church teaching and guidance. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that Grace may not be tax-exempt because it used social media platforms or websites to provide a position either for or against a candidate for public office. Grace therefore objects to providing any response to Question 3 and refers the IRS to its answer in Question 1.

4. Did the Church publish flyers or voter information guides that provided a position either for or against a particular candidate for public office?

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs or communications to its fellow believers. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that Grace may not be tax-exempt because it published flyers or voter information guides providing a position either for or against a

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particular candidate. Additionally, even apart from the First Amendment's protection, the IRS welcomes a broad range of such conduct. *See* Rev. Rul. 2007-41 (church may "encourage" voter participation through wide range of activities, including "voter registration and get-out-the-vote drives" and "voter education guides"); *accord* IRS Pub. 1828 at 7 (same). Grace therefore objects to providing any response to Question 4 and refers the IRS to its answer in Question 1.

5. Did the Church make contributions to a candidate for public office?

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that Grace may not be tax-exempt because it made contributions to a candidate for public office in the taxable year ending December 31, 2022, and, therefore, may not be tax-exempt. Grace therefore objects to providing any response to Question 5 and refers the IRS to its answer in Question 1.

6. Did the Church have a political candidate speak at the Church? If so, did the Church offer to have opposing candidates speak at the Church?

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that Grace may not be tax-exempt because it had a political candidate speak at its church in the taxable year ending December 31, 2022. Grace therefore objects to providing any response to Question 6 and refers the IRS to its answer in Question 1.

7. Explain in detail what the Civic Engagement groups within the church do. What is their purpose and how do they accomplish the purpose?

As explained above, the First Amendment forecloses the IRS's inquiry into Grace's internal affairs. Further, the IRS fails to point to any facts and circumstances that could support any reasonable belief that Grace may not be tax-exempt because of the purposes or ministry activities of its "Civic Engagement groups" in the taxable year ending December 31, 2022. Grace therefore objects to providing any response to Question 7 and refers the IRS to its answer in Question 1.

* * *

Grace shares the IRS's interest in bringing the church tax inquiry to a speedy resolution. In fact, Grace 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.

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

Sincerely,



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