IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

IN THE MATTER OF Calvary Chapel Iowa 327 35th Street NE Cedar Rapids, IA 52402, Property Tax Exemption.	Case No. 24IDR0007 PROPOSED DECISION GRANTING MOTION TO DISMISS

On November 29, 2023, a group of taxpayers (collectively "Petitioners") filed an Application to Revoke the tax exemption on properties ostensibly owned by Calvary Chapel Iowa ("Calvary") with the Iowa Department of Revenue ("IDR"). IDR transmitted this case to the Tribunal for hearing, and after this, Calvary filed the pending Motion to Dismiss. Petitioners resisted the Motion, and a hearing was held on the Motion on August 25, 2024. The record was held open to allow Petitioners to file an Amended Application, which was received. The Motion to Dismiss is now fully submitted.

I.

The issue in this case is whether as a matter of *statutory* (not constitutional) law individuals can use the taxpayer-standing provision of Iowa Code section 427.1 to force a religious organization into litigation and spend the time and resources to prove its entitled to its property-tax exemption already claimed by it. Prior to the enactment of the Iowa Religious Freedom Restoration Act ("RFRA") the answer was an unequivocal yes (with individuals having done precisely this for at least a generation); however, with the passage of RFRA, the answer now appears to be no at least under the circumstances of this case.

As discussed below, this is because this type of litigation imposes a substantial burden on the exercise of religion and because the State's compelling interest in the appropriate administration of tax law can be met with the lesser restrictive means of having the State (with its constitutional and statutory constraints) enforce tax law. To hold otherwise would be to allow the unaccountable political opponents of a church the option to use the power of the State to target and/or retaliate against the religious organization for the organization's activities, thereby creating a chilling effect not only on that specific religious group but also all other similarly oriented religious organizations. This is precisely the type of religious interference that RFRA was designed to prevent, and until the judiciary provides different guidance on the scope of RFRA, this case must be dismissed.

A.

Due likely to the passage of RFRA, this case has a somewhat unusual procedural history, with the parties agreeing to stay all matters pending the resolution of the Motion to Dismiss and Petitioners effectively *narrowing* their claim in their Amended Application to just the tax exemption for the parsonage Calvary provides to its pastor. Briefly, and starting at the commencement of the case, Petitioners filed their original 2023 Application, seeking to remove the tax exemption of *two* properties of which Calvary is the owner of record, namely a home provided to the pastor in Marion, Iowa and the portion of Calvary's campus in Cedar Rapids, Iowa related to a daycare and school (but not the church portion of the campus). Application, at pp. 1-2.

With respect to the Marion home, Petitioners alleged the property tax exemption for religious buildings and grounds under Iowa Code section 427.1(8) is improper because the home was not being used "solely for the appropriate objects of the religious institution," as "non-ecclesiastical personnel" were residing there and as the home was being used by two for-profit companies. Id., at p. 2. With

respect to the daycare/school building on the Cedar Rapids campus, Petitioners alleged the property tax exemption for religious facilities under Iowa Code section 427.1(8) does not apply because the daycare/school building is again not being used "solely for the appropriate objections of the religious society" due to the daycare charging market rates and due to the revenue funding the pastor's family. Id.

After a scheduling conference, Petitioners sought discovery. On March 1, 2024, Petitioners served discovery on Calvary, requesting not only information concerning the usage of the properties at issue (asking, for example, whether the Marion property is "exclusively devoted to the business use of church officers or for other pastoral activities") but also a full accounting of all of Calvary's political activities, requesting for example:

> 8. Describe in complete detail all efforts of Calvary Chapel, Iowa, and its officers, directors agents and employees to influence the Linn-Mar Community School Board's decision with respect to Linn-Mar Community School District Policy Nos. 504.13 and 504.13-R.[1]
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> 9. Has Calvary Chapel Iowa and its officers, directors agents and employees ever sought to influence State, Federal or municipal legislation other than Linn-Mar Community School District Policy Nos. 504.13 and 504.13-R? If so please provide the details of the same including the names, addresses, telephone number and email of anyone acting in behalf of Calvary Chapel Iowa, the dates the same occurred and the legislation involved.

Motion to Compel, at p. 7. Petitioners further sought information concerning nearly all of Calvary's other activities, including requesting: "All minutes of board meetings for the board of directors of Calvary Chapel Iowa, or any other committee or group that serves as a Board of Directors, including any Church Council, Trustee Committee or the like." Id., at p. 4. When Calvary failed to comply with these discovery requests, Petitioners filed a Motion to Compel, which Calvary resisted on the grounds the Motion to Compel was technically flawed (leaving for another day its substantive objections).

In addition to resisting the Motion to Compel, Calvary also filed the present Motion to Dismiss, in which the church effectively indicated the Tribunal has no jurisdiction to hear the present matter. See Calvary Mot. to Dismiss. Synthesizing the various claims, Calvary first argues the Tribunal has no jurisdiction to hear this matter because "the ministerial exception and ecclesiastical abstention doctrine do not permit civil authorities to interfere in the internal church affairs" (which would occur in this case as the Tribunal would be examining the church's conduct) and Petitioners have failed to state a cognizable claim since the property-tax exemption for religious building and property applies to this case even assuming the facts claimed by Calvary (as neither the fact that the pastor's entire family lives in the home nor the fact that the daycare charges for its services necessarily result in the property being ineligible for the tax-exemption due to a non-qualifying use). Id., at pp. 1-10.

[1] Of note, Linn-Mar Community School District Policy Nos. 504.13 and 504.13-R appears to pertain to public school policies concerning transgender students or pupils that dot not confirm to gender role stereotypes.

Second, Calvary argues the Tribunal has no jurisdiction to hear this matter because of RFRA, which went into effect April 2, 2024, and is retroactive by its own terms. Id., at p. 13. Specifically, Calvary argues RFRA is applicable because: the application of tax law by IDR (through the Tribunal) is qualifying state action; Calvary is a qualified "person" under the statute capable of invoking its protections; and the litigation is imposing a substantial burden on the exercise of its religion through draining its resources, with Calvary stating at one point:

> Here, subjecting Pastor Higgins, the Church, its Board Members, its Elders and its members to defending against a contested proceeding, complete with abusive discovery demands, substantially burden religious free exercise of religion. Time is a limited resource. The work and ministries of the church will face the vagaries of litigation which will take primacy. Pastor Higgins will experience a chill on his First Amendment-protected speech about socio-political-theological issues, and will face the choice of self-censorship, or run the risk that Petitioners will add more of his protected statements to their litany of complaints. Moreover, the Church's religious associational rights under the First Amendment, to associate with like-minded organizations and to associate as religious individuals, will be chilled, if the church's membership rolls, donors, or funding

> sources are opened to inspection by Petitioners. The Church's Board Members, Elders, and members face further retaliatory actions limited only by Petitioners' interests and imagination. These are substantial burdens upon their religious free exercise.

Id., at pp. 12-14. Calvary then claims, since RFRA applies, the State must demonstrate that there is no lesser restrictive means of achieving its admittedly compelling governmental interest in the proper administration of the tax system. Id., at p. 15. Calvary asserts the State cannot show this with respect to the taxpayer standing provision because restricting this type of action to State entities (either IDR or governmental "taxing districts") is a lower intrusion on Calvary's exercise of religion since the State has the duty to act neutrally towards religions and since private parties like Petitioners have no such duty. Id. Calvary points to the irrelevant and expensive nature of Petitioners' discovery to show it is already overreaching and using this matter to bully Calvary and proverbially fish for information it can use to challenge Calvary's other tax exemptions. Id., at pp. 14-16.

Third, Calvary asserts the Tribunal has no jurisdiction because this type of taxpayer standing provision conflicts with constitutional standing requirements (as Petitioners lack a cognizable injury given the exemption benefits charities and reduces the burden on the government for caring for individuals) and because Petitioners are targeting Calvary for its protected activities with the power of the State (which is not allowed given the State cannot cloak private citizens with its power and then let them act in a way the Constitution forbids the government from acting). Id., at pp. 15-23. In the words of Calvary: "The private prosecutors of this action have provided both direct and circumstantial evidence that their purpose for this action is because they disagree with Pastor Higgins' viewpoints in the exercise of cherished First Amendment speech and religious free exercise rights." Id., at pp. 20- 21.

In response, Petitioners moved to amend their Application to focus on the tax exemption for the Marion home and on the legal consequences of Calvary's engagement in "substantial political activity" in violation of its Articles of Incorporation and tax law concerning 501(c)(3) entities. See Applicants' More Definitive Statement. Petitioners also resisted the Motion to Dismiss, arguing they have stated a cognizable claim as the facts in their Application must be accepted as true for purposes

of the Motion to Dismiss and as they allege improper usage sufficient to negate any tax exemption. Resistance, at pp. 2-3. Petitioners further reject Calvary's other arguments and claim in particular RFRA does not apply to this case because: (1) RFRA did not repeal the taxpayer-standing provision in Iowa Code section 427.1(16); (2) this proceeding itself places no cognizable burden on Calvary's exercise of religion as all churches must follow all tax laws; (3) this proceeding is an appropriate means of vindicating the compelling government's interest in appropriate taxation; and (4) Petitioners are not asking that Calvary refrain from political activity. Petitioners are just requesting Calvary accept the tax consequence of doing so. Id., at pp. 4-5 ("Calvary Chapel Iowa is not required by any law to refrain from political activity, but by engaging in political activity Calvary Chapel Iowa must be prepared to forego its property tax exemptions."). Finally, Petitioners claim they "are not motivated by religious concern of any sort," being "motivated by a desire to see that the law concerning property tax exemptions is applied fairly and evenly to all owners of real estate." Id., at p. 5.

At the August 26, 2024, hearing on the Motion to Dismiss, the parties agreed that Petitioners would filed an Amended Application to ensure a clear record was made (particularly since the political activity claim was being withdrawn). The parties further agreed the State has a compelling interest in the appropriate administration of tax laws and, notwithstanding the lack of a specific rule, motions to dismiss are cognizable in contested cases with the facts in the application being essentially taken as true just like in traditional civil litigation. In addition, Petitioners indicated they are *not* challenging Calvary's status as a religious entity (i.e., Petitioners accept Calvary in principle is a church engaged in religious activity). Motion Hearing Recording, at 42:10-:55. (Petitioners stating they are limiting their claims "to the specific transactions" and not the broader issues of whether Calvary is a religious organization or church). As for their differences, the parties generally reiterated their claims, with Petitioners focusing on their argument they have a good-faith basis for bringing this action after having conducted research on Calvary's actions. By contrast, Calvary focused on its RFRA claim, noting that the *statutory* definition of substantial burden specifically includes the withholding of benefits and this case satisfies this statutory definition because the issue is withholding Calvary's tax exemption, which is a substantial monetary benefit.

Petitioners timely filed the Amended Application, and the Amended Application *narrowed* by omission Petitioners' claims only to the property tax exemption for the Marion residence, currently occupied by Calvary's pastor and his family. See generally, Amended Petition. The Amended Petition also *reformulated* the claim against the tax exemption for the home, going solely from an improper use claim to a broader ownership claim (i.e., that the pastor and his family are the true owners of the property and have used Calvary as an alter-ego to hide their ownership and claim a tax benefit for which they as individuals could not qualify). Id. The Amended Petition is fairly concise, and it states:

> 1. Calvary Chapel Iowa is the nominal owner of 4395 Rec Drive, Marion, Iowa 52302, legally described as Lot 1, Briargate First Addition in the City of Marion, Linn County, Iowa, however Jeremy Higgins and Brooke Higgins or their relatives or designees are the real owner of the premises.
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> 2. The Board of Directors of Calvary Chapel Iowa is controlled by Jeremy Higgins, Brooke Higgins or their relatives or designees. See Exhibit A.
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> 3. Applicants believe that Calvary Chapel Iowa may not have observed proper corporate procedures, such as regular meeting of the Board of Directors, duly adopted by-laws, annual meetings of the members of the corporation, separate financial books, and regular financial statements
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> 4. The property, as a bare lot, was first acquired by the Higgins under a Warranty Deed from their builder, Abode Construction, Inc. dated April 30, 2021. See Exhibit B..
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> 5. Higgins conveyed this lot to Calvary Chapel by deed dated September 8, 2021, with Transfer Tax reflecting the same valuation. See Exhibit C. The Linn County Auditor reports the purchase price to be $53,000.00. See Exhibit D.
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> 6. Calvary Chapel in turn granted the Higgins a Mortgage dated September 8, 2021. This mortgage secures a loan by Higgins to Calvary Chapel in the amount of $765,000.00. See Exhibit E.
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> 7. The Higgins were in complete control of the plans for the house and directed its construction.
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> 8. The mortgage at $765,000.00 is in excess of the actual valuation of the real estate. The most recent assessed valuation of the real estate for real estate tax purposes is $700,200.00. See the Linn County Assessor's Property Report, Exhibit D.
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> 9. Contemporaneously with the grant of mortgage, Calvary Chapel granted to the Higgins an Option to Purchase the property. See Exhibit F. In this Option Calvary Chapel agrees that it will not sell the property to anyone except the Higgins or their descendants.
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> 10. The Option together with the mortgage that secures an amount in excess of the assessed value, is a sure guarantee that Calvary Chapel would not be able to sell it to anyone else, if the Higgins lost control of the Calvary Chapel Board of Directors.
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> 11. The Higgins as individuals do not constitute a religious institution, they are not entitled to claim their home exempt from property taxes.

Amended Petition, at p. 1. Importantly, one of the referenced and included exhibits in the Amended Application is Calvary's Articles of Incorporation, which states the entity's purpose is: "To function as a Christian local church in Cedar Rapids, Iowa proclaiming the gospel of Jesus Christ to other parts of

Iowa and beyond." Ex. G, at p. 1.

II.

Despite the evolving nature of the claims by Petitioners and Calvary's staggering number of cites to First Amendment law, the dispositive issue in this case is relatively straightforward and solely statutory in nature. As discussed below, Petitioners have stated a facially cognizable claim under Iowa Code section 427.1(16) to challenge the tax exemption given to Calvary for the Marion residence, and Calvary's reliance on the ministerial exception and ecclesiastical-abstention doctrine is misplaced. By contrast, Calvary has shown RFRA applies to this case, principally because RFRA *statutorily* defines substantial burden to include

a broader range of burdens that the federal version of the RFRA, and because restricting this type of litigation to the State (at least in these circumstances) would impose a lower barrier, in part because the State has not indicated it wants to participate in this litigation and because the State has fairness and other constraints not applicable to private parties that would intrinsically lower the burden on Calvary's exercise of religion. This holding moots the remainder of Calvary's mostly constitutional claims, although it is not entirely clear how much of the remaining claims the Tribunal could meaningfully consider since the Tribunal is only empowered to hear *as-applied* and not *facial* constitutional claims. See Shell Oil Co. v. Bair, 417 N.W.2d 425, 429 (Iowa 1987) ("We commit to administrative agencies the power to determine constitutional applicability, but we do not commit to administrative agencies the power to determine constitutionality of legislation.").

A.

Accepting the allegations in the Amended Application as true (supplemented by the claim in the original Application that Petitioners are taxpayers), Petitioners have stated a cognizable claim under Iowa Code section 427.1(16) to contest the tax exemption given to Calvary concerning the Marion home, with the claimed deficiencies either not being applicable anymore or necessarily relying on claimed facts that cannot be considered at this juncture. Moreover, Calvary cannot rely on the ministerial exception or the ecclesiastical-abstention doctrine to find a jurisdictional defect because this litigation only concerns the tax consequences of actions taken by Calvary and because this does not involve passing on the propriety of any personnel decision or doctrine of the church. To the extent the true concern pertains to improperly burdensome discovery, this is a consideration for another day, with the Iowa Supreme Court having already articulated a stringent test to protect First Amendment rights. See, e.g., Lamberto v. Bown, 326 N.W.2d 305, 308 (Iowa 1982) (holding the test "for subordinating a first-amendment privilege to a compelling state interest in obtaining [ ] evidence" is whether the claimed material "is necessary or critical to the involved cause of action or defense pled" and whether "other reasonable means [exist] by which to obtain the information sought have been exhausted").

i.

As an initial matter, Petitioners have stated a cognizable action under Iowa Code section 427.1. Broadly speaking, Iowa Code section 427.1(8) exempts from property tax the "property of religious, literary, and charitable societies," and with the statute specially exempting:

> All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. . . . For assessment years beginning on or after January 1, 2016, the exemption granted by this subsection shall also apply to grounds owned by a religious institution or society, not exceeding a total of fifty acres, if all monetary and in-kind profits of the religious institution or society resulting from use or lease of the grounds are used exclusively by the religious institution or society for the appropriate objects of the institution or society.

Iowa Code § 427.1(8). While exemptions to taxation are typically "strictly construed," the Supreme Court holding to precedent has interpreted this provision to allow for a tax exemption of housing owned by a

religious organization used for its employees/agents so long as the residence was used for the "appropriate objects" of the religion and not for other purposes. See Wisconsin Evangelical Lutheran Synod v. Regis,

197 N.W.2d 355, 357 (Iowa 1972) ("A church seeking tax exemption for employee housing facilities must do more than merely show the property is owned by the church and occupied by church personnel. From the facts we conclude this house was leased to [an employee] with a view to pecuniary profit.").

The Iowa legislature also created a mechanism for challenging any tax exemption given under Iowa Code section 427.1, with Iowa Code section 427.1(16) stating:

> Any taxpayer or any taxing district may make application to the director of revenue for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed.

Iowa Code Ann. § 427.1(16). As the Supreme Court has held in interpreting this language in a prior version of the statute, [t]his section allows any taxpayer to apply to [IDR] for revocation of any property tax exemption" for violations of the statute, and such an application makes the applicant "a proper party to the agency proceeding." Richards v. Iowa Dep't of Revenue & Fin., 454 N.W.2d 573, 574 (Iowa 1990).

Here, Calvary has challenged the sufficiency of the Amended Application in the context of a motion to dismiss. While the standards governing motions to dismiss for failure to state a claim or for all forms of jurisdictional issues are not specifically articulated in the governing rules, such motions are nonetheless cognizable and routinely utilized to ferret out legal issues before the full costs of litigation are needlessly incurred. Indeed, pursuant to the Iowa Administrative Procedure Act ("IAPA"), IDR has promulgated a series of rules governing contested cases before it. See generally, 701 Iowa Administrative Code ("I.A.C.") § 7.1 ("These rules shall govern the practice, procedure, and conduct of . . . contested case proceedings . . . and other areas within the department's jurisdiction."). IDR's administrative rules do specifically contemplate some types of motions to dismiss, including for untimely and unauthorized appeals. Id. § 7.12(1),(2). Additionally, IDR's rules permit general motion practice, providing a non exhaustive list of "types of motions" that include "motion[s] for dismissal." Id. § 7.19(5)(e). As in often true with administrative law (which is by design more flexible in accord with its overall duty to be inquisitional in nature and accessible), the precise contours and standards of each type of cognizable motion are not stated, including in the Tribunal's gap-filling rules in Chapter 10 of its administrative rules. See 701 I.A.C. § 7.12; 481 I.A.C. § 10.15.

Because the more flexible rules of agency contested case practice are grounded in civil litigation, the Iowa Rules of Civil Procedure are generally a guide to the type and standards for motions, particularly since IDR often directly relies on them such as with the form of pleadings and discovery. See, e.g., 701 I.A.C. § 7.2 (defining motion to mean the "same" as the term is construed in Iowa Rule of Civil Procedure 1.431); 7.17 (generally applying the discovery rules of "civil proceedings" into its contested cases). Under the Iowa Rules of Civil Procedure, "[a] motion to dismiss challenges a petition's legal sufficiency," and the reviewing entity is required to consider only "the contents of the petition and matters of which the court can take judicial notice," with the allegations in the petition being taken "in the light most favorable to the

plaintiff." Meade v. Christie, 974 N.W.2d 770, 775 (Iowa 2022). A motions dismiss can only be granted when there is no right to relief "under any state of the facts." Id.

Applying the statutory requirements for challenging a property-tax exemption to the governing motion to dismiss standards, Petitioners need only allege in their Application they are taxpayers and that a tax exemption provided under Iowa Code section 427.1 is in violation "of this chapter." Iowa Code § 427.1(16). Here, no dispute exists Petitioners have sufficiently alleged they are taxpayers, which the record bears this out as long as the filings are viewed collectively. As for a violation, Petitioners allege the Marion home is not entitled to a tax exemption under Iowa Code section 427.1(8) because Calvary is not the true owner and, thus, incapable of claiming the exemption that it now enjoys. This would appear to be a violation of Iowa Code section 427.1, particularly since viewing the allegations to their fullest would mean Petitioners are alleging the Higgins have used Calvary as an alter-ego to hide their true ownership of the property for a benefit of which they are incapable of qualifying. The claim is veil-piercing in nature, and it encompasses the idea that the property has not been used for sufficient religious purposes and instead has been used for personal gain. In short, there is more than enough in the allegations to survive a motion to dismiss, and Calvary's arguments to the contrary either rely on factual assertions the Tribunal cannot consider or relate to the original claim. Accordingly, Petitioners have stated a facially viable claim.

ii.

The ministerial-exception and ecclesiastical-abstention doctrines do not independently bar the Tribunal from hearing the present controversy. Broadly speaking, the ministerial exception is "a doctrine that precludes, on First Amendment grounds, employment-discrimination claims by 'ministers' against the religious organizations that employ or formerly employed them." Fratello v. Archdiocese of New York, 863 F.3d 190, 192 (2d Cir. 2017). The doctrine itself arises out of concern for "government interference with an internal church decision that affects the faith and mission of the church." Our Lady of Guadalupe Sch. v. Morrissey-Berru, 591 U.S. 732, 750 (2020). As for the ecclesiastical abstention doctrine, the Kentucky Supreme Court aptly summarized this area of law as follows:

> The ecclesiastical-abstention doctrine [ ] is a mechanism employed to prevent secular courts from violating the guarantees embodied in the Establishment and Free Exercise Clauses of the First Amendment. Broadly, this doctrine prohibits secular courts from adjudicating quintessentially ecclesiastical issues, such as matters relating to faith, doctrine, and ecclesiastical governance. To be sure, the mere involvement of a church or other religious entity in a suit before a secular court does not require invocation of the ecclesiastical-abstention doctrine.

St. Joseph Cath. Orphan Soc'y v. Edwards, 449 S.W.3d 727, 735 (Ky. 2014). As explained by Justice Waterman in a recent concurrence, Iowa has not yet formally adopted the ministerial exception but has recognized the ecclesiastical exception. Konchar v. Pins, 989 N.W.2d 150, 165 (Iowa 2023) ("We have not yet formally applied the ministerial exception. So far, we have applied only the ecclesiastical abstention doctrine, under which courts may not determine the correctness of interpretations of canonical text or some decisions relating to government of the religious polity." (internal quotation marks and citations omitted)). Of note, [t]he ecclesiastical abstention doctrine is separate from the ministerial exception in that the former considers the "character" of the dispute, but the latter does not," even though "the two doctrines are intertwined." Id. (internal quotation marks and citations omitted).

Here, these doctrines do not apply because the underlying issue in this case is whether Calvary can meet the factual elements for the claimed tax exemption for the Marion property, which turns on the action Calvary has taken and not on the correctness of the interpretation of a sacred authority or the propriety of any personnel decision. It is true that Justice Waterman did state in his concurrence in Konchar that the "ministerial exception extends to all issues arising out of the employment of the minister and not just to the hiring or firing itself," but this does not bear on the tax consequences of actions taken. Konchar, 989 N.W.2d at 164. As noted above, the mere involvement of a church or other religious entity in a case before a secular tribunal does not automatically prevent the secular body from hearing matter; if this were true, then churches would effectively be immune from all lawsuits, ranging from their vehicles causing traffic accidents to their clergy abusing their members. It would mean effectively the State could never review the propriety of a tax exemption for a church, but the State would have to simply accept any claim. This is not the law, and it never has been. In fact, Calvary seemingly concedes this when it acknowledged the State could have brought this action even under RFRA. Accordingly, Justice Waterman's statement must be read in *context*, and these doctrines do not prevent the present litigation.

In contrast to the strength of its first set of arguments, Calvary's second set of arguments concerning RFRA requires this matter be dismissed, unless or until the IDR or a governmental taxing district decides to initiate it or at least have involvement as a party. On April 2, 2024, the Iowa legislature passed with immediate effect RFRA, with the stated intent "[t]o restore the compelling governmental interest test and to guarantee its application in all cases where the free exercise of religion is substantially burdened by state action" and "[t]o provide a claim or defense to a person whose exercise of religion is substantially burdened by state action." [2] Iowa Code § 675.2. This statute follows in the wake of two United States Supreme Court decisions, first that a "valid and neutral law of general applicability" does not violate the Constitution's Free Exercise Clause even if the law imposes a burden on religion, Emp. Div., Dep't of Hum. Res. of Oregon v. Smith, 494 U.S. 872, 879 (1990), and second that Congress could not override the Smith decision for states with the federal version of the RFRA, City of Boerne v. Flores, 521 U.S. 507, 511 (1997).

Under RFRA, "State action shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the government demonstrates that applying the burden to that person's exercise of religion is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." Iowa Code § 675.4(1). "State action" is defined by statute to mean "the implementation or application of any law, including but not limited to state and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the state or a political subdivision, including a local government, municipality, instrumentality, or public official authorized by law." Id. § 675.3(4). "Substantially burden" is defined to mean "any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion and includes but is not limited to withholding of benefits; assessment of criminal, civil, or administrative penalties; or exclusion from governmental programs or access to governmental facilities." Id. § 675.3(5). A "person" is defined by statute to mean "any individual, association, partnership, corporation, church, religious institution,

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[2] There is no claim RFRA does not apply to the present proceeding due to the statute coming into force during this litigation, and the Tribunal will not weigh in on the matter beyond noting the apparent legislative intent to have the statute apply to existing burdens through the use of the present tense verb "is" in its purpose statement that the desire is to "restore" the previous balance between religion and the State. Iowa Code § 675.2.

estate, trust, foundation, or other legal entity." Id. § 675.3(3). "Exercise of religion" is statutorily defined to mean "the practice or observance of religion," with such "include[ing] but [ ] not limited to the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief." Id. 675.3(2). "Compelling governmental interest" is statutorily defined to mean "a governmental interest of the highest order that cannot otherwise be achieved without burdening the exercise of religion." Id. § 675.3(1). Finally, a person "whose exercise of religion has been substantially burdened in violation of this chapter may assert such violation as a claim or defense in a judicial or *administrative proceeding* and obtain appropriate relief[.]" Id. § 675.4(2) (emphasis added).

To determine the reach of this new statutory language, the Tribunal must turn the established rules of statutory interpretation. Under the established rules of interpretation, the overarching purpose behind any statutory interpretation is to effectuate the legislature's intent, and the "first step when interpreting a statute is to determine whether it is ambiguous." State v. Iowa Dist. Court for Scott Cty., 889 N.W.2d 467, 471 (Iowa 2017). "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." The Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 424 (Iowa 2010) (internal quotation marks omitted). "Ambiguity arises in two ways—either from the meaning of specific words or from the general scope and meaning of the statute when all of its provisions are examined." State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010) (internal quotation marks omitted).

A term or phrase is given its "common and ordinary meaning" often from a common usage dictionary, unless the legislature chose to define it or the term or phrase had "a well-settled legal

meaning" at the time the legislature passed the law. Miller v. Marshall Cty., 641 N.W.2d 742, 748 (Iowa 2002). "If no ambiguity exists, [a] statute is rationally applied as written." Andover Volunteer Fire Dep't, 787 N.W.2d at 81. This is true absent the most exceptional circumstances where confidence exists that "the legislature did not intend the result required by literal application of the statutory terms." Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 541 (Iowa 2017). Indeed, "the task is to interpret the statute, not improve it," and statutory interpretation cannot be used a guise for redrafting a statute, even one that is at best a "half measure" on an important issue. Id.

i.

In this case, despite some lingering doubts due to the limited record made and the standards applicable to motions to dismiss, Calvary has established each of the four elements necessary to trigger the protections of RFRA. More specifically, Calvary has shown: (1) qualifying state action exists because IDR (through the Tribunal) is applying the law to determine whether a tax exemption should exist; (2) Calvary is a qualifying person able to claim the statute because it is a religious institution or at least a church; (3) a qualifying exercise in religion exists in the form of it performing its function to be a "Christian local church" spreading the Gospel of Christ; and (4) a substantial burden on this exercise in religion exists in the form of this litigation diverting the tangible and intangible resources of the church away from its religious activities to the present proceeding. Petitioners' assertions to the contrary in its Resistance to the Motion to Dismiss cannot change this, as the burden of litigation is a fact beyond dispute in most circumstances including here and as this is a cognizable burden under the Iowa RFRA.

The first requirement for RFRA to apply is for qualifying "state action," and by statute, this include the "application of any law" such as "state laws" by the "State," its "instrumentalities," or "public official authorized by law." Iowa Code § 675.3(4), .4. While some conceptual ambiguity could

exist on the margins when dealing with quasi-governmental entities, no ambiguity exists with the record made because, by statute, the Director of IDR (through the Tribunal) is tasked with holding a contested case where it will apply State law to Calvary to determine tax liability of Calvary to the State. However viewed, this squarely fits within the definition, and without seeing any argument to the contrary, the Calvary has demonstrated the first element for evoking RFRA's protection.

The second requirement for RFRA to apply is that the qualifying state action affects a "person," with such statutorily defined to include effectively all cognizable entities including specifically a "church" and "religious institution." Iowa Code § 675.3(3), .4. While some ambiguity may again conceptually exist on the fringes with defining the outer limits of what constitutes a church or religious institution, the plain meaning of those terms easily include Calvary, particularly since Petitioners acknowledged at the Motion hearing they were not challenging Calvary status as a church and Calvary's Articles of Incorporation included in the Amended Application indicate it is a religious institution. Indeed, church is generally understood to mean "a body or organization of religious believers," and this covers Calvary at least generally. Merriam-Webster's Dictionary (2024); see also Parshall Christian Ord. v. Bd. of Rev., Marion Cnty., 315 N.W.2d 798, 802 (Iowa 1982) (noting Iowa case law has defined the concept of church to include "a voluntary organization, whose members are associated together not only for religious exercises but also for the purpose of maintaining and supporting its ministry and providing the conveniences of a church home and promoting the growth and efficiency of the work of the general church of which it forms a co-ordinate part"). At most, the refined claim in the Amended Application states Calvary was used in an impermissible manner by the Higgins, who treated it as an alter-ego that should result in the corporate veil being pierced with its actions being attributed to Higgins personally and not seen as those of a religious organization, but this newfound claim does not overcome the admission the entity is a church at the hearing or the lack of a claim that the entity is not religious in the Amended Application. In short, and seeing no need to deny the motion only for Calvary to submit an affidavit confirming Petitioners' admission Calvary is a church in presumably a motion for summary judgment, the second element for evoking RFRA's protection is also met.

The third requirement for RFRA to apply is the qualifying state action affecting a qualifying person's "exercise of religion," with that term statutorily defined to include "the practice or observance of religion" and "not limited to the ability to act or refuse to act in a manner substantially motivated by one' sincerely held religious beliefs." Id. § 675.3(2). As far as the Tribunal can discern, the phrase "practice or observance of religion" has no statutory definition (beyond necessarily including the

subsequent example in the statute), and the dictionary definition of it—with practice being defined as "to perform" and religion being defined as either "a personal set or institutionalized system of religious attitudes, beliefs, and practices"—captures the essence of the phrase and how it is used both colloquially and in law. Merriam-Webster (2024); see also Forest Hills Early Learning Ctr., Inc. v. Lukhard, 728 F.2d 230, 240 (4th Cir. 1984) ("Whether, in turn, the holding or active expression of particular beliefs involves the observance of 'religion' depends upon the sincerity of the beliefs held and the centrality of those beliefs to an identifiable religious faith or commitment[.]").

While the "determination of what is a religious belief or practice [is generally] a most delicate question," this case is the exception in that the claimed burden is the impact of the overall loss of resources on the religious functioning of Calvary and not the specific impact on any particular ritual or religious act. Wisconsin v. Yoder, 406 U.S. 205, 215–16 (1972). This is not, for example, the recent situation where a closely held company was being required to purchase a type of health care coverage that violated the owners' religious beliefs. See, e.g., Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 688–89 (2014). As Voltaire observed in in his enduring quip "I was never ruined but twice: once

when I lost a lawsuit, and once when I won one," the costs of litigation are real and often crippling for parties, taking not only tangible resources like money but also intangible resources like time, attention, and emotional energy. Aetna Cas. & Sur. Co. v. Leo A. Daly Co., 870 F. Supp. 925, 941 (S.D. Iowa 1994) (noting the quotation and its origin). It is this undeniable reality that creates a burden on Calvary's exercise of religion, as it is a religious institution being forcing to turn its attention and resources to this matter instead of on its sincerely held religious practices. No claim exists Calvary is not a church or is not conducting religious activities, and while it is true the parties did not make an evidentiary record on the precise scope of the cost of the litigation to Calvary, no requirement appears to exist under the circumstances of this case. This is because litigation itself is intrinsically impactful to a church that is the party to the litigation. The motion practice in this case is proof of the existence of a burden. In fact, when considering the similar federal version of RFRA, the only dispute appears to lie in whether the costs of litigation create a substantial burden (which is the next criterion) and not whether such create any impact on religious functioning generally, with the Seventh Circuit recently commenting about a frivolous lawsuit targeting a religious entity:

> It's hard to imagine a vaguer criterion for a violation of religious rights. But a frivolous suit aimed at preventing a religious organization from using its only facility—a suit that must have distracted the leadership of the organization, that imposed substantial attorneys' fees on the organization, and that seems to have been part of a concerted effort to prevent it from using its sole facility to serve the religious objectives of the organization (to provide, as a religious duty, facilities for religious activities and observances and living facilities for homeless and other needy people)—cannot be thought to have imposed a merely insubstantial burden on the organization.

World Outreach Conf. Ctr. v. City of Chicago, 787 F.3d 839, 843 (7th Cir. 2015). Accordingly, Calvary has shown the third requirement for evoking the protections of FRFA.

The fourth requirement for RFRA to apply is that qualifying state action creates a "substantial burden" on a qualifying entity's recognized exercise of religion. As with the other key terms, RFRA contains a *statutory* definition for this term, which defines it as "any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion" and specifically includes the "withholding of benefits." Iowa Code §§ 675.3(5), .4. Without any additional statutory insight on the meaning of the definitional phrase and with the definitional phrase not appearing to have any specialized legal meaning in this context, the Tribunal again turns to the dictionary, which defines: (1) "any" to include "one or more"; (2) "action" to include "the bringing about of an alteration"; (3) "direct" to include "cause" with indirect being a nonlinear cause; and (3) constrain to include to "restrict" or "limit." Merriam-Webster (2024). These types of terms are quite broad by nature, and when put together, a substantial burden is *statutorily* defined to include one or more alterations that restrict or limit (either in a straightforward or in a circuitous manner) the exercise of religion. There is no restricting concept contained in the plain language of this statute, such as requiring a significant constrain or inhibition, and as such, applying the statute as written effectively requires the foregoing finding that the costs of litigation for Calvary impede its exercise of religion through draining it of resources dispositive of this requirement as well.

The implications from applying RFRA *as written* are expansive enough it intrinsically creates doubt as to whether the legislature truly intended the plain meaning of the words it used. Indeed, without some limiting factor, such as requiring a heavy burden, RFRA would appear to apply to nearly all state action involving religious organizations. Such a result would certainly make Iowa a leader in

protecting religious freedom, and it would also make Iowa's version of the RFRA materially broader than the federal version, which does not statutorily define the term "substantial burden" and which has had this term interpreted in a variety of ways that essentially require state action to create a heavy burden on the practice of religion. 42 U.S.C. § 2000bb-1(a). As one court noted of the federal statute's history:

> Early drafts of RFRA prohibited the government from placing a 'burden' on religious exercise, but Congress added the word 'substantially' before passage to clarify that only some burdens would violate the act. [ ] RFRA does not define 'substantially burden,' and the federal appellate courts provide several different formulations. Contrary to Appellant's argument, not every interference with conduct motivated by a sincere religious belief constitutes the substantial burden that RFRA prohibits.

United States v. Sterling, 75 M.J. 407, 417 (C.A.A.F. 2016). In summarizing the various tests used to apply the federal RFRA's substantial burden requirement, another federal court stated:

> In other words, courts must accept the claimant's religious exercise as he understands that exercise and the terms of his faith but must also objectively determine whether the governmental law or policy at issue directly conflicts with the religious conduct and, if so, whether the pressure the law exerts is substantial.

United States v. Kelly, No. 2:18-CR-22, 2019 WL 5077546, at *24 (S.D. Ga. Apr. 26, 2019).

Given the potential reach of the statute and asymmetry with a substantively similar federal law, it is possible to find an ambiguity in Iowa's RFRA statute and narrow it. For example, the use of the term "substantially" in "substantially burden" in the RFRA could be viewed as intent to ensure that the only substantial constrains, inhibitions, curtailments, and denials trigger the Iowa statute (with the specific statutory analysis being that the statutory definition of substantially burden is silent on the level of coercion required thereby creating an ambiguity and the legislative's intent from using the overarching term substantial burden instead of just burden means this ambiguity should be resolved in favor of a more limited statute matching federal law). While this or a similar argument may carry the proverbial day on review, the Tribunal cannot accept this narrowing without guidance from a reviewing entity because: using silence in a statute to find an ambiguity and then impose a material barrier to the statue's application when the statute can rationally be applied without this appears to be an impermissible effort to "improve," not interpret, the statute; nothing about the statute's overall structure and history indicate a desire to restrict the plain language of the statute; and, dropping all pretenses, the legislature's decision to define all the key terms in the statute reveal a desire to limit the ability of the courts or the Tribunal to interpret away the broad protections of the statute, as arguably has been done on occasion with the federal version of the RFRA. Accordingly, and bearing in mind the Iowa Supreme Court's repeated admonition to "be mindful not to substitute the language of the federal statutes for the clear words of [Iowa law]," the Tribunal applies the law as written, with the fourth requirement for triggering the RFRA met. Deboom v. Raining Rose, Inc., 772 N.W.2d 1, 7 (Iowa 2009).

In reaching this conclusion, the Tribunal is mindful of Calvary's claim concerning substantial burden. Calvary argues it meets the substantial burden requirement of the RFRA because the term is specifically defined to include the "withholding of benefits" and because this proceeding concerns whether the church will retain its tax exemption, which is a benefit. Since withholding generally means

"to refrain from granting . . . or allowing," Merriam-Webster (2024), and benefit means "to be useful or profitable to: AID, ADVANCE, IMPROVE," Endress v. Iowa Dep't of Hum. Servs., 944 N.W.2d 71, 78 (Iowa 2020) (citing the dictionary), little doubt exists that the withdrawal or failure to provide a tax exemption meets the definition. However, one difficulty with the claim is that the withholding of the benefit goes to the *substantive* propriety of the tax exemption, whereas Calvary is asking to be relieved of the *procedural* burden of litigation brought by a non-state actor to force the church to prove it is entitled

to the benefit. In other words, there is a symmetry issue, which is highlighted by the fact that the "substantial burden" has to be on the exercise of religion. While claims have long existed any taxation limits religious exercise essentially on the same grounds of draining resources as litigation costs do, Calvary is not placing at issue (at least so far) the substantive requirements of the property tax exemption it claims. See generally, United States v. Washington, 672 F. Supp. 167, 170 (M.D. Pa. 1987) ("We are sensitive to the defendant's claim that the income tax inhibits the free exercise of his religion because money collected in the form of tax cannot be used for religious activities."). Again, the issue is the church is being forced by a non-state actor to litigate the propriety of the tax exemption when the State has indicated no interest in participating in the litigation, and in this regard, the impact on the exercise of religion is litigation costs draining Calvary's resources and not the withholding of a specific benefit. This is not a case, for example, where a governmental grant is being withheld because it requires certain services to be performed on Sunday and because working on Sunday is inimical to a religious organization that would otherwise be able to secure the grant. As such, the Tribunal is deeply skeptical of simply stating that, because the result of the litigation could theoretically be the loss of a tax benefit, the entire litigation, including the action itself, necessarily meets this portion of the substantial burden definition. Instead, the foregoing litigation-burden analysis would appear to address the real issue in this case and control the outcome. At most, the specific examples in the statutory definition of substantial burden give credence to the idea that the Iowa RFRA imposes a lower threshold for showing a qualifying burden because it is unclear the extent to which the federal law would recognize the specific examples in the Iowa RFRA as qualifying burdens *alone* (as opposed to also requiring a separate showing of substantiality).

ii.

With Calvary carrying its burden of proof to show RFRA applies, the issue turns to whether the government can "demonstrate[ ] that applying the burden to that person's exercise of religion is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." Iowa Code § 675.4. While the requirement for the State to bear the burden of proof on the issue of a compelling governmental interest and no lesser restrictive means arguably creates an interesting procedural ripple when IDR (the State) decided to only sit (through the Tribunal) as the adjudicator and not also as a party (as is common in revenue cases), this does not alter the final outcome of this case as all agree there is a compelling governmental interest in taxation and the record indicates there is a lesser restrictive means of achieving this goal, namely through restricting these actions to when the government moves or at least participates as a party.

The State has a compelling governmental interest in taxation and administration of the tax law that satisfies RFRA. By statute, for purposes of RFRA, a compelling governmental interest means "a governmental interest of the highest order that cannot otherwise be achieved without burdening the exercise of religion." Iowa Code § 675.3(1). As the parties agree, and in accord with long-standing Supreme Court precedent, the government has a compelling interest in taxation even if such interferes with the exercise of religion, and this compelling governmental interest extends at least generally to actions to verify taxpayers are paying the appropriate amount of tax. See, e.g., Hernandez v. Comm'r,

490 U.S. 680, 699–700 (1989) ("In any event, we need not decide whether the burden of disallowing the § 170 deduction is a substantial one, for our decision in Lee establishes that even a substantial burden would be justified by the broad public interest in maintaining a sound tax system, free of myriad exceptions flowing from a wide variety of religious beliefs." (internal quotation marks omitted)); United States v. Lee, 455 U.S. 252, 260 (1982) ("Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."). Accordingly, Calvary cannot prevail on the grounds of a lack of a sufficient State interest, leaving in dispute only whether there is a lesser restrictive means of achieving this tax interest than allowing taxpayers essentially the unlimited right to force churches into litigation to prove the propriety of tax exemptions.

With the caveat that the Tribunal is unaware of any case law on point in this context and that, as a result, certainty in this area will only be achieved through reviewing courts considering the issue, it appears the State's compelling interest in the enforcement of the tax code can be met without allowing taxpayers the unfettered right to force churches into litigation to justify their tax status. As noted by the Supreme Court, "[t]he least-restrictive-means standard is exceptionally demanding," and it requires

showing the government "lacks other means of achieving its desired goal[.]" Burwell, 573 U.S. at 728. When applied, though, the test is tempered by "[n]ot requiring the government to do the impossible—refute each and every conceivable alternative regulation scheme," with the issue typically turning on whether "the proffered alternative schemes would be less restrictive while still satisfactorily advancing the compelling governmental interests." United States v. Wilgus, 638 F.3d 1274, 1289 (10th Cir. 2011). Of note, "[a] statute that asks whether a regulation is the least restrictive means of achieving an end is not an open-ended invitation to the judicial imagination." Id.

Here, Calvary's proffered alternative to Petitioners being able to trigger the present proceeding and force Calvary into litigation over its tax exemption is to limit this power to the government, either through IDR or the governmental taxing districts. Iowa Code § 427.1(16). While Calvary focuses on the capacity of taxing districts to bring the present litigation, an analysis of IDR's authority and role in the process is dispositive, with the matter turning on whether IDR is both willing and able to enforce property-tax laws and whether IDR enforcing the property-tax law would create a lower burden. With respect to IDR's capacity, nothing exists in the record or upon which the Tribunal can take official notice to suggest IDR is factually or legally unable or unwilling to enforce Iowa tax law. Iowa Code section 427.1(16) specifically gives IDR the authority to initiate a proceeding on its "own motion" to review a property-tax exemption under Iowa Code section 427.1(8), and there is nothing intrinsic in the structuring of this exemption that would make it materially different than any other area of law IDR routinely monitors and enforces. There is, for example, no inherent conflict of interest intrinsic to this exemption, as arguably may be the case if IDR would be called upon to discern the exemption of a building it controls.

What does exist is the legislative determination taxpayers can institute this proceeding. Iowa Code § 427.1(16). This arguably suggests the legislature has made the determination IDR cannot be trusted with the *exclusive* policing of this area of law, lacking either the motivation or resources. Indeed, this type of citizen-standing provision could be viewed as the legislature's choice essentially for cost effective enforcement of this statute, relying on the opponents of charities to keep the charities honest in their use of the tax law instead of IDR auditors. While this claim has some appeal, the difficulty with relying on it comes from the exacting nature of RFRA's least restrictive means test, which again requires a "lack[ ] other means of achieving [the] desired goal[.]" Burwell, 573 U.S. at 728. To find this position controlling would in essence require finding IDR is not only presently unable to enforce

this area of tax law but also is intrinsically incapable of doing so in the future. After all, the State cannot choose to forgo an achievable corrective action and then claim its present difficulty reveals there is no lesser restrictive means of securing a compelling state interest. Finding IDR hopelessly unable to enforce tax law in Iowa appears to be a step too far based solely on a taxpayer standing provision, at least without an unusual record not claimed or proven. Once more, even setting this difficulty aside, it should be noted that the legislative's determination to allow taxpayers to challenge exemptions applies to all the exemptions and the various organizations that claim the exemptions and not specifically to religious entities, thereby revealing the legislature did not make any specific finding of IDR's incapacity when it comes to taxation for religious organizations. See Iowa Code 427.1. It may be claimed that IDR does not as a matter of policy challenge church exemptions absent the most egregious circumstances due to political considerations, but such a claim lacks specific factual support, runs afoul of the ancient presumption of propriety for governmental action, and would not negate the fact IDR could change if necessary. See, e.g., Bank of U.S. v. Dandridge, 25 U.S. 64, 69 (1827) (holding that the law "presumes that every man, in his private and official character, does his duty, until the contrary is proved"). As such, the compelling State interest in the enforcement of the taxing code can be achieved *without* Petitioners (as taxpayers) having the independent right to bring and prosecute this case. A conclusion that could only be bolstered should the impact of the governmental taxing districts be considered.

With respect to the remaining issue of whether restricting Petitioners' (as taxpayers) ability to initiate and prosecute this proceeding without a governmental entity commencing the matter or at least participating as a party would create a lower burden on Calvary's exercise of religion, the answer would appear to be yes, looking either at the specific facts of this case or this class of case more generally. To the extent the analysis focuses *solely* on the circumstances of this case, neither IDR not any other governmental entity has initiated this proceeding or decided to participate as a party. As such, if the Petitioners are prevented from independently moving, then this case is over. It is hard to imagine a more straightforward reduction in burden for Calvary, as the claimed burden is the draining of resources due

to the litigation and as this would no longer occur if the proceeding were dismissed. To the extent the analysis focuses *broadly* on this class of case, the answer would be the same. IDR as well as every other governmental entity in Iowa has constitutional and other requirements to act impartially towards religions and can only act when there is a rational basis. See generally, Church of Lukumi Babalu Aye, Inc. v. City of Hialeah., 508 U.S. 520, 534 (1993) ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt."); State v. Bell, 572 N.W.2d 910, 911-12 (Iowa 1997) (noting the general due process standard for governmental action); Iowa Code § 17A.19(10) (judicial review standards for agency action). Petitioners —as private parties—do not share the same restrains, and as such, governmental involvement would tend to be more measured and avoid creating prolonged and targeted challenges to specific organizations, which has occurred in the past with individuals using this statute. See, e.g., Richards v. Iowa Dep't of Revenue & Fin., 454 N.W.2d 573, 574 (Iowa 1990) ("Northcrest was allowed an exemption from property taxes because it qualified as a charitable institution. R.K. Richards has attempted for several years to get the Iowa Department of Revenue and Finance to revoke Northcrest's exemption."). While it may be true that in any specific case a taxpayer might act with the upmost restraint similar to the State, this is no guarantee, and irrespective of the procedural ripple of IDR not appearing as a party, the burden of proof is not on Calvary for this issue, meaning factual doubts are resolved in its favor. As such, there appears to be lesser restrictive means of enforcing the State's compelling governmental interest in the enforcement of the tax laws than to allow Petitioners (as taxpayers) the right to independently challenge

the tax exemption given to Calvary for its parsonage in Marion, Iowa. Thus, this case must end unless or until the government pursues the matter.

C.

Petitioners' arguments to the contrary do not change the outcome. Petitioners argue that being allowed to file an application to challenge Calvary's property-tax exemption for the Marion home is a "suitable remedy" that "does not present any burden whatsoever upon exercise of religious freedom." Resistance, at p. 4. However, this claim is not persuasive because it does not acknowledge the fact that the litigation itself creates a burden, and while there is not a specific factual record on the extent of the burden as stated previously, the last six months of motion practice, discovery, and hearings reveals a burden does exist on Calvary. While it is conceptually possible a religious entity could structure its tenants in such a fashion that the loss of tangible resources like money and intangible resources like time would not impede its religious functioning (if, for example, the only religious act of a church without any resources was considering the wonder of a celestial object for a moment each decade), the Tribunal need not check its common sense at the proverbial door, at least here where all agree that Calvary has purchased (at least nominally) the Marion property as a parsonage. Such an act intrinsically requires resources, and this means resources are a matter of concern for the religious activities of the church even though its specific tenants and structure are not in the record. In fact, looking at Calvary's Articles of Incorporation, which state the entity is to be a local church spreading the Gospel of Christ, it is unclear how any cognizable drain of resources would not impair its religious functioning. To hold otherwise would be to require an evidentiary hearing to establish the self-evident. This is not necessary, particularly since the Iowa RFRA *as written* does not impose the requirement to show a heavy burden like the federal statute requires as interpreted. Also, once RFRA is triggered, the analysis does not turn on the taxpayers-standing provision being "suitable" as discussed above.

Petitioners further argue the Iowa RFRA cannot cut down their right to independently challenge Calvary's tax exemption before the IDR for the Marion property because the legislature did not repeal the taxpayer-standing provision of Iowa Code section 427.1 when passing the Iowa RFRA. Resistance, at p. 5. This claim is not persuasive because the Iowa RFRA was essentially meant to create a preferential status for religious activities and relieve such of the everyday burdens of life that other are expected to carry, such as litigation costs. See generally, Iowa Code chapter 675. Both its plain language and purpose is to provide specific exemptions to otherwise generally applicable law in an array of circumstances, and as such, the fact the legislature did not repeal the taxpayer standing provision of Iowa Code section 427.1(16) means little.

Petitioners further argue, at least in the Motion hearing, that they have a good-faith basis for their application. While the Tribunal will not challenge the good-faith assertions of the Petitioners despite the materially evolving nature of their claims, the fact Calvary has a good-faith basis to initiate litigation is not dispositive. To the extent this assertion is directed at whether Calvary is facing a cognizable substantial burden, it is unpersuasive because the Iowa RFRA turns on the burden actually borne by the church and not further considerations such as the magnitude of the burden as under the federal RFRA. See World Outreach Conf. Ctr., 787 F.3d at 843. Likewise, to the extent this assertion is directed at the least restrictive means analysis, it is unpersuasive because it does not change the fact this case would not exist without Petitioners since neither IDR nor any governmental taxing district has chosen to participate. It also does not change the fact that the governmental entities that could have brought this claim or participated as a party have legal constraints to ensure the protection of Calvary's religious activities. To the extent the claim is actually a more nuanced one—where the argument is that rules governing contested cases such as the pleading requirements or limits on discovery for First

Amendment matters mean the practical burden on Calvary is materially similar to the burden the State would create—such is also not persuasive. This is because, while all parties must adhere to the governing contested case rules and will presumably do so, only the government has the duty to act rationally in a manner that is neutral towards religions when exercising the available legal options, including in the initiation of the proceeding itself. Also, the sweeping discovery requests propounded in this case and the evolving nature of the core claims cast a material shadow on any claim of restraint by Petitioners.

Finally, through recasting the assertions in the Amended Application to alleged the Higgins are the true owners of the Marion home, Petitioners are potentially arguing the true party in interest is the Higgins and not Calvary, which would mean there is no cognizable burden on the exercise of Calvary's religious freedom. See, e.g., Resistance to Motion to Dismiss, at p. 3 ("The Higgins are not a religious institution and are not allowed claim a religious exemption over their own individual home."). This new formulation of the claim does not presently appear capable of providing Petitioners with relief. Indeed, Iowa Code section 427.1 makes the entity claiming the tax exemption a party in any contested case proceeding involving a tax exemption assigned to it. Iowa Code § 427.1(16) ("The director of revenue shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification."). Even if erroneous, Calvary is the organization that is claiming the benefit, meaning it is a party. Once more, even if there were some veil-piercing theory to strip Calvary of its status as a separate legal entity, RFRA applies to informal associations like churches, and everyone agrees Calvary is a church. Thus, it is unclear how RFRA would not creep into this matter, and as such, RFRA cannot be defeated with a simple claim a church is an alter-ego of the pastor with respect to a parsonage but not elsewhere. Accordingly, the Tribunal must GRANT the Motion to Dismiss. Nothing in this decision prevents IDR or the appropriate taxing districts from initiating a challenge to Calvary's property-tax exemption.

III.

Based on the foregoing, the Tribunal GRANTS Calvary's Motion to Dismiss. IDR shall take all necessary action to enforce this decision.

IT IS SO ORDERED.

Dated this the 17th day of September, 2024.

Jonathan M. Gallagher
Administrative Law Judge

cc: Jeorgia Robison (by AEDMS)

Alan Ostergren (byAEDMS)
Kelsi Royster (by AEDMS)

Nick Belhke (by EADMS)
Alana Stamas (by EADMS)

NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. 701 I.A.C. § 7.19(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

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Type: Order - Dismissal

IT IS SO ORDERED.

Jonathan Gallagher, Administrative Law Judge