IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
PART II, TWENTIETH JUDICIAL DISTRICT
AT NASHVILLE

CHRIST CHURCH PENTECOSTAL,	
Plaintiff,	
v.	**CASE NO. 11-50-II**
TENNESSEE STATE BOARD OF EQUALIZATION; TENNESSEE ASSESSMENT APPEALS COMMISSION; GEORGE L. ROOKER, JR., in his official capacity as the DAVIDSON COUNTY ASSESSOR OF PROPERTY; and **ROBERT E. COOPER, JR.,** in his official capacity as Attorney General and Reporter for the State of Tennessee,	
Defendants.	

PLAINTIFF'S REPLY BRIEF

INTRODUCTION

A college bookstore can sell a Bible at suggested retail price and still remain exempt from property taxes, but a church that sells Bibles at suggested retail price is not tax exempt. A hospital gift shop can sell all sorts of trinkets and gift items at suggested retail price and be exempt from property taxes, but a church that sells gift items in its bookstore at suggested retail price is not tax exempt. A family wellness center can invite members of the public to use its gymnasium and even charge membership fees and be exempt from property taxes, but a church that does the same thing is not tax exempt. This is not only inequitable, it is unconstitutional.

And this is all despite the fact that Christ Church never made any money at all in its bookstore/café or its fitness center. (T.69-70, 88-89, 126). In fact, the Church consistently lost

money by conducting the activities in these areas. *Id.* The Defendants' characterization of this space as "retail" ignores the undisputed evidence in this case. In addition, such a characterization is irrelevant for purposes of determining whether these areas are exempt. The test is whether the activities are integral to or directly incidental to the purpose of the Church. The undisputed evidence demonstrates that Christ Church has met this standard and that its bookstore/café and fitness center should be exempt.

No one is arguing that Christ Church has the right to open up a Wal-Mart on its property and claim that it is exempt from property taxes. That would certainly cross the line of what should be considered exempt property. But what is clear from the evidence is that Christ Church is nowhere near the line in this case and that all the activities it conducts in the bookstore/café and the fitness center are integral to its religious purpose. These areas are exempt.

ARGUMENT

I. The Denial of Tax Exemption violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because the Church is similarly situated to other entities granted a tax exemption.

The State gives very short shrift to the constitutional issues raised in this case. But these issues are serious and determinative. The State's argument that the tax exemption statutes do not violate the Equal Protection Clause boils down to its assertion that Christ Church is not similarly situated to uses such as family wellness centers, college bookstores, hospital gift shops, and community and performing arts centers. *See* Brief of State at13. The State argues that as long as all religious organizations are treated equally, then the State is not required to grant them the same exemption as other non-profit institutions. *See id.* at 14.[1] But this argument misses the

[1] The Supreme Court has consistently rejected the assertion that as long as all religions are treated similarly that it does not violate the Constitution to treat religion differently from secular uses or activities. *See Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 831-32 (1995) (rejecting the argument that excluding all theistic perspectives from a debate while

point entirely. Christ Church conducts the identical activities in its bookstore/café and its fitness center as do other non-profit organizations that are granted a tax exemption for these same activities. This is a quintessential Equal Protection violation.

The fitness center is virtually identical to a family wellness center as defined in §67-5-225. *See* Plaintiff's Initial Brief at 29. The bookstore is virtually identical to a college bookstore as defined in §67-5-213. *See id.* at 30-31. The bookstore is also virtually identical to a hospital gift shop. *See id.* at 31. Indeed, the only distinction the State can make between these uses is that family wellness centers, college bookstores, and hospital gift shops are operated for a different purpose than Christ Church operates its facilities. But just because the purpose of the activity differs between Christ Church and other similar uses does not avoid an Equal Protection violation. In fact, it exacerbates the violation because it means that the State is making a judgment that family wellness centers, bookstores, and gift shops are not worthy of an exemption if they are operated for a religious purpose. This distinction based on religion puts churches at a disadvantage for no rational reason. The government cannot grant a tax exemption to an activity operated for a secular purpose but deny tax exemption to the identical activity operated for a religious purpose. *See Zobel v. Williams*, 457 U.S. 55, 60 (1982) ("When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.").

In this case, the only asserted interest by the State in treating the bookstore/café and the fitness center differently from other identical uses granted a tax exemption is that the church has a religious purpose and the other uses do not. This is not a rational distinction to make and, because the State attempts to make a distinction based on the religious purpose of the use, it must

---

allowing non-theistic perspectives was not discriminatory). The point is not whether all religions are treated equally, but whether Christ Church is treated differently from other similarly situated uses. In this case, it is.

demonstrate that it has a compelling interest for such distinction that is pursued in the least restrictive means available. *See Bowman v. U.S.*, 564 F.3d 765, 773 (6th Cir. 2008) (stating, "Strict scrutiny applies where the classification affecting eligibility for benefits is based on religion or burdens the exercise of religion."). Here, there can be no compelling reason for disadvantaging religious purposes for activities that are granted a tax exemption for secular purposes. The distinction violates the Equal Protection Clause.

II. The Denial of Tax Exemption violates the Establishment Clause of the First Amendment to the United States Constitution because it substitutes the State's doctrinal understanding of the Church's mission and purpose for that of the Church.

The State argues that the denial of the tax exemption did not prohibit or regulate in any way the religious practices of Christ Church. Yet that is precisely what has occurred here. The denial of the tax exemption substituted the State Board's own judgment for that of the Church. The denial of the tax exemption is a prime example of excessive entanglement of the state with religion in violation of the Establishment Clause.

As Plaintiff set forth in its Initial Brief, well-settled precedent establishes beyond doubt that the Establishment Clause prohibits the state from second-guessing religious doctrine and substituting its own judgment on what is proper religious doctrine for that of the church. *See* Plaintiff's Initial Brief at 21-24. In *In re Westboro Baptist Church*, 189 P.3d 535 (Kan. App. 2008), the Kansas appeals court held that a decision to deny tax exemption for a truck that carried signs of a religious organization violated the Establishment Clause. The Board determined, over the church's objection, that the signs had no religious purpose. *Id.* at 550. The court held that because the board "labeled as nonreligious many of WBC's signs, it violated the Establishment Clause." *Id.* In explaining its decision on this point, the court stated:

> The United States Supreme Court has repeatedly held that government

> entanglement in religion becomes unconstitutionally excessive when state action involves interpreting and weighing church doctrine. (citations omitted).
>
> In *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 716... (1981), the United States Supreme Court clearly indicated that a court should not normally, over the objection of a party, label as nonreligious the statement or actions of that party. In *Thomas*, a Jehovah's Witness quit his job because of his convictions against war when he was transferred to a plant which manufactured tanks. He maintained that he had quit for religious reasons, although he admitted that a fellow worker, who also was a Jehovah's Witness, did not share the same beliefs. In his later appeal over unemployment benefits, the Indiana Supreme Court determined that he had acted out of personal philosophical motives rather than for religious reasons. Nevertheless, the United States Supreme Court reversed, holding that it was not for a court to indulge in such refined analysis over the protest of one having honest religious convictions.

Id.

In this case, the Board of Equalization substituted its own judgment for that of the Church in determining what activities are an integral part of the Church's mission. And it did so with no evidence and just its own opinion. The Assessment Appeals Commission simply deemed these activities to be "secular" despite the overwhelming evidence to the contrary. As further evidence of the excessive entanglement in this case, the City's own brief in this matter attempts to substitute its own judgment on doctrinal matters for that of the Church. The City states, "Bringing in outsiders, whether called outreach or recruitment, is not exempt." *See* Brief of City at 8. The City also argues that the uses are not necessary for Christ Church to accomplish its work. *See id.* at 10. These statements reflect just how intensely entangled the government has become in the religious doctrine of the Church. How can the government decide that Christ Church does not need these facilities to accomplish its purpose when all the evidence is to the contrary? How is the Board able to deem these activities "secular" or "retail" when the Church's testimony is that the activities are not secular or retail and are directly integral to the accomplishment of its religious purpose.

The religious determination made by the Board in this case demonstrates why tax exemption statutes are construed broadly in favor of religious entities. Anything less excessively entangles the state with religion in contravention of the Establishment Clause. Although it is true that the government has some limited power to determine whether the exemption requirements are met, it must do so with great deference in the context of a church applying for a tax exemption. Otherwise, it runs the risk of excessively entangling itself in church doctrine by disagreeing with a church's good faith characterization of its property as integral to its religious purpose. Here, the Church's assertion that the bookstore/café and the fitness center are integral to its religious purpose is in good faith and is supported by compelling and undisputed evidence. Nevertheless, the Board in this case strictly construed the exemption statutes in a way that substituted its own judgment for that of the Church on religious doctrinal matters. This is unconstitutional.

III. The Fitness Center and the Bookstore/Café are used purely and exclusively for the purpose and mission of Christ Church

Defendants spend the majority of their briefs arguing that the bookstore/café and the fitness center are "retail" and thus cannot be entitled to tax exemption. But this argument completely ignores the undisputed evidence in this case that Christ Church never made a profit on any of the activities in the bookstore/café and the fitness center and, in fact, operated those activities at great loss to the Church. (T. 69-70, 88-89, 126). And in any event, whether a space is "retail" is irrelevant to whether the space is exempt.

A. The exemption statutes for religious organizations are broadly construed in favor of the religious organization.

Tennessee has made a commitment to broadly construe its property tax exemption statutes for religious organizations in favor of the religious organization. In *State v. Fisk*

University, 10 S.W. 284 (Tenn. 1889), the Tennessee Supreme Court first announced the liberal construction of exemptions in favor of religious organizations. It stated that unlike corporations created for private gain, "the same strictness of construction will not be indulged where the exemption is to religious, scientific, literary, and educational institutions." *Id.* at 286-87. A few years later, the Supreme Court reiterated this principle and stated that, "The fundamental ground upon which all such exemptions are based is a benefit conferred on the public by such institutions, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens." *Book Agents v. Hinton*, 21 S.W. 321, 322 (Tenn. 1893); *accord Nashville Labor Temple v. City of Nashville*, 243 S.W. 78, 81 (Tenn. 1922), *Book Agents v. State Board of Equalization*, 513 S.W. 2d 514, 521 (Tenn. 1974) (stating same); *Youth Programs, Inc. v. State Board of Equalization*, 170 S.W. 3d 92, 103 (Tenn. Ct. App. 2004) (stating same).

"Courts as a general rule recognize the presumption against exempting property from taxation. However, this rule does not apply as strictly in cases involving claimed Tenn. Code Ann. §67-5-212 exemptions." *Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W. 2d 327, 332 (Tenn. Ct. App. 1987). "In this state, contrary to most other states, tax exemptions in favor of religious, scientific, literary, and educational institutions are liberally construed rather than strictly." *George Peabody College for Teachers v. State Board of Equalization*, 407 S.W. 2d 443, 445 (Tenn. 1966). Indeed, in a case involving a claimed religious exemption, there is a "relaxed standard." *Kopsumbut-Myint*, 728 S.W. 2d at 332.

Because this case involves a claimed exemption as a religious organization under §67-5-212, this Court must use the relaxed standard of liberal construction of the exemption in favor of Christ Church when deciding this case.

B. The bookstore/café and the fitness center uses are an integral part or are directly incidental to the purposes of Christ Church.

Applying the correct standard, the undisputed evidence in this case plainly demonstrates that the use of the property as a bookstore/café and a fitness center is an integral part or is directly incidental to the mission and purpose of Christ Church.

The mission and purpose of Christ Church is stated in the record. The mission of the Church is to be a "community of Worship and Word dedicated to Life Transformation through Service to the Glory of God." (R. 21). The statement of purpose of Christ Church is:

> The Christ Church Corporation exists in order to proclaim in word and deed the gospel of Jesus Christ as this church understands it. Theologically, this involves the teachings of both the Old and New Testaments and the application of those teachings to the entirety of the individual, family and community life. The practical implications of our purpose is to increase the spiritual, social, intellectual and economic lift of individuals and communities through worship, study and building of community, training in physical fitness and healthy diet, and providing for the respectful burial of the dead.
>
> . . .
>
> In order to facilitate these aims, this Corporation shall secure certain organizational and material tools. These shall include, but are not limited to a bookstore (where materials may be purchased at reasonable cost by those who attend our church), places for refreshments and fellowship (such as a coffee shop), a gymnasium for training our members and neighbors in physical fitness, and a cemetery where we can bury our dead and give visible witness to our belief in "the communion of the saints." *All such ministries will grow from our purpose statement and shall be organized and operated in such a way that facilitates this purpose statement.*

Id. (emphasis added). This statement of purpose and mission must guide this Court's determination whether the activities in the bookstore/café and the fitness center areas are integral to or directly incidental to the purpose of the Church.

All of the evidence in this case before the Administrative Law Judge and the Assessment Appeals Commission was undisputed and confirms that the activities in these areas directly

relates to the purpose of the organization and furthers those purposes and mission directly. *See* Plaintiff's Initial Brief at 3-12. In fact, Defendants do not in any way dispute this testimony and evidence, but instead argue that the Church "operated these facilities very much like retail establishments." Brief of State Board of Equalization at 8. The City's brief attempts to characterize the activities as "commercial" and argues that because Christ Church sold items at above-cost prices and charged membership fees for the use of its fitness center its property should not be considered exempt. *See* Brief of City at 5, 6. But these characterizations miss the mark completely and obscure the proper analysis in this case.

The undisputed evidence in this case is that Christ Church did not make a profit at all on the activities in the fitness center or the bookstore/cafe. Scott Hord, the director of the fitness center testified:

Q. Has the amount of fees that you have charged ever exceeded the operating costs of the center itself?

A. One time, I think it was in the third year, I think it was less than $1,00. The other four years the revenues never exceeded expenses.

Q. In fact, how did that work out, just if you can give us an idea, when you say the revenue never exceeded expenses?

. . .

A, It was pretty significant. I would sat in the last few years we've probably lost anywhere between 20 to $30,000 on the facility.

. . .

Q. From the beginning of the center until now, has there ever been anything done there that's intended to profit any of the officers or the members or the employees

of Christ Church individually?

A. Not at all. Like I said, there's -- I don't know of anything in the program that's really made money, and that's part of the reason I don't have a job today.

(T. 69-70, 88-89). Similarly, Katy Mashburn, the director of the bookstore testified:

Q. In the years that you managed it, did the income from the store ever exceed the expenses?

A. No. We lost money every year, but I don't think of it as losing money, I think of it as, you know, giving back to our community.

Q. So you weren't making money on the bookstore?

A. No, not at all.

(T. 126). This evidence is undisputed. As much as Defendants try to point to the fact that the Church sold certain items at suggested retail prices, or that the fitness center charged membership fees for the use of the gymnasium, nothing can change the undisputed fact that the Church never profited from any of these activities, and instead lost a great deal of money conducting the ministry outreach activities in the bookstore/café and the fitness center.

Even if Christ Church had made a profit on its activities, that would still not be determinative for exemption purposes. The determinative focus is not whether particular activities are considered "commercial" or "retail" or whether they generate a "profit" or are in "competition" with other secular businesses. Rather, the focus is on whether the activities on the property are integral to or directly incidental to the purpose of the Church.

In *Book Agents v. Hinton*, 21 S.W. 321 (Tenn. 1893), which is instructive on several fronts, the publishing house of the Methodist Church applied for an exemption for its facility. Besides printing religious materials and selling them, the publishing house also published secular

materials and made a profit on their printing that was then applied to the purposes of the organization. *Id.* at 322-23. In discussing the standard to be applied, the court stated:

> The terms "purely," as used in the constitution, and "exclusively," as used in the statute, are synonymous, and mean that the property must be used wholly and entirely for such charitable and religious purposes, and exclude entirely the idea of any individual gain or profit, or indeed of any corporate profit, *unless it is used purely for such religious and charitable purposes.*

Id. at 322 (emphasis added). Thus, the court did not foreclose the idea that an organization entitled to a property tax exemption might make a profit on its activities. The court stated, "The support of none of these institutions can be had, except by the use of money. Money cannot be made except by labor, and this labor is always more or less tinged with a secular character." *Id.* at 324. The court went on to conclude that, "Even if we concede that the work done could not strictly be called religious, still the proceeds therefrom are wholly devoted to the charitable purposes contemplated in the creation of the institution...." *Id.*

In *Book Agents v. State Board of Equalization*, 513 S.W. 2d 514, 523 (1974), the court rejected the argument that the organizations were engaged in profit making activities and thus were not entitled to an exemption:

> The taxing authorities argue that the Methodist and Baptist corporations are profit-making enterprises and should be taxable. The only reference in T.C.A. s 67--502(2)[2] to profits, however, is to disallow the exemption where stockholders, officers, members, or other employees receive profits other than reasonable compensation for their services. No individual receives such profits here and, therefore, the profitability of the enterprises does not affect the exemptions.

Id. at 524. Importantly, the court also rejected the argument that competition with secular businesses was determinative for tax exemption purposes. The court stated:

> It is true that the Methodist and Baptist institutions are in competition with other publishers, printers and consultants. Under the statute, however, the presence of competition makes property taxable only where an individual receives profits. Prior decisions have made reference to competition with tax-paying businesses.

[2] This statute was the forerunner of Tenn. Code Ann. §67-5-212.

> *Mid-State Baptist Hospital, Inc. v. Nashville*, 211 Tenn. 599, 607, 366 S.W.2d 769, 773 (1963); *Nashville v. State Board of Equalization, Supra*. The presence of competition is relevant but not determinative. Other companies could compete with an institution's efforts to accomplish an exempt institutional purpose, but the circumstances may indicate that the purpose is not exempt.

Id.

As the Tennessee Court of Appeals summed up, "[T]he determinative question [in these cases] was not solely whether the use of the property could be considered fundamentally commercial in nature, but whether the property was used for the stated purposes for which the exempt institution was created or exists." *Youth Programs, Inc. v. State Board of Equalization*, 170 S.W. 3d 92, 101 (Tenn. Ct. App. 2004). In explaining the rationale behind this rule of law, the court stated:

> We cannot imagine an activity in which Youth Programs might engage that would not be a considered a commercial endeavor were it not conducted by a charitable institution and the proceeds not given to a charity. The simplest bake sale involves the commercial activity of selling baked goods and, albeit to a negligible extent, competes with commercial, tax-paying entities conducting the same enterprise. The fact that a charitable institution's activities may be similar to or in competition with tax-paying businesses does not by itself render the property on which it conducts those activities taxable. *Book Agents, of the Methodist Episcopal Church v. State Bd. of Equalization*, 513 S.W.2d 514, 523 (Tenn.1974). For-profit entities may exist to provide the same services as non-profit, charitable entities. *Id.* We recognize, moreover, that the tournament in this case includes a substantial purse or profit to the tournament winner. However, the fact that a profit is generated by an organization's activities is not determinative. Section 67–5–212 disallows the exemption only where stockholders, officers, members,[3] or

[3] The City attempts to argue that because the bookstore carried at one time a book written by Naomi Judd who was a member of the church, that is "an independent obstacle to the exemption of this retail area" because of the section just cited prohibiting profit to any stockholder, officer, member, or employee of the institution. *See* City's Brief at 9 n.4. This argument reflects a fundamental misunderstanding of the law and the record in this case. Michael Briggs, a widely respected Christian bookstore industry consultant was asked whether it was possible to track the profits from the sale of Naomi Judd's book back to her. (T.170). He responded:

> From the point of purchase, you cannot track the funds that end up in Naomi Judd's pocket. There's no possible way to do that for any retailer, doesn't matter if you're Barnes & Noble... The publisher is the one that would track how many units are sold. When an author signs a contract, they sign a contract that

> other employees receive or are entitled to receive profits other than reasonable compensation for services. Tenn. Code. Ann. § 67–2–212(a)(3)(A); *Book Agents*, 513 S.W.2d at 523.

Id. at 104-05.

All along, the Tennessee courts have never focused on whether property was used for "retail" activities, whether the activities were in competition with secular businesses, or whether the activities generated a profit for the organization. Rather, the focus has consistently been on the purpose of the organization and whether the activities are directly incidental to or an integral part of those purposes.

In this case, the Defendants have no evidence that the purposes are not integral to or directly incidental to the purpose of the church other than their misguided argument that some of the activities were "retail." In contrast, the evidence overwhelmingly establishes that the activities carried on in the bookstore/café and the fitness center were not "retail" in any sense. *See* Plaintiff's Initial Brief at 3-10.

The Defendants rely heavily on *City of Nashville v. State Board of Equalization*, 360 S.W. 2d 458 (Tenn. 1962). But that case does not change the analysis and stands for the unremarkable proposition that activities that are not integral to or directly incidental to the purpose of the organization are not exempt from taxation. There the court held that property of

---

> provides them royalty on units sold after it earns out an advance. So if I pay you $10,000 to write a book, we have to make sure that we sell enough to earn back your $10,000 advance before you ever get a royalty, and that's on net sales. So for sake of simplicity, let's say you make a dollar for every book. If we only sell 3,000 books, we put into stores 10,000 books, 7,000 come back, you're $7,000 in the hole. You'll never earn a royalty. So Naomi Judd wouldn't earn any money on her books, either, unless all 10,000 sold at retail across the nation and then 11,000 sold. (T.170-171).

There is absolutely no evidence in the record that Naomi Judd profited at all from the sale of any of her books. Thus, this cannot be an "independent obstacle" to exemption if there is no evidence.

the Sunday School Board of the Southern Baptist Convention that was used for a restaurant, cafeteria, snack bar, and parking for its employees was not entitled to a tax exemption. The Sunday School Board argued that the use of the property makes its employees more efficient and thus helped its religious work. *Id.* at 467. Key to the Court's holding that the property was not exempt was the fact that the use of the property as a restaurant, cafeteria, snack bar, and parking lot had "no relation to [the charter purposes of the Sunday School Board] except the consequential benefits to be derived from such operation...." *Id.* at 468. The focus was still on the activities and whether they were directly incidental to or an integral part of the purposes of the organization. The court's holding is consistent with this standard.

In contrast, there is overwhelming evidence in this case, which Defendants do not rebut, that every activity conducted in the bookstore/café and the fitness center are integral to or directly incidental to Christ Church's purpose and mission. It would ignore all the evidence in this case to hold that the activities in the disputed areas bear no relation (or only a remote relation) to the purpose of the Church as was the case in *City of Nashville*.

The City argues that Christ Church advocates a position that would make the exemption so broad as to swallow the rule. The Assessment Appeals Commission also was concerned with where the line should be drawn. (T. 199). But the issue of where the line should be drawn between exempt and non-exempt uses has been the subject of many judicial decisions through the years. The Tennessee Supreme Court addressed this concern in 1893 in *Hinton*:

> It is said there are dangers to society likely to result in so holding; *that a line must be drawn somewhere*; that such institutions may become too rich and powerful, and menace society. In answer to this, we say the field of charity is large, and is not likely to be overcrowded, unless some element of personal gain enters into the enterprise. Besides, no fund can ever accumulate from the operation of this institution, as the income, so soon as earned, is impressed with a direct trust in favor of this charity, which can be enforced at once; and again, if necessary, the legislature can, if deemed important, limit the exemption in amount.

21 S.W. at 324-25 (emphasis added). The lack of a bright line rule in this context led the *Youth Programs* court to note that the issue of where the line between exempt and non-exempt uses should be properly drawn was a function of the ambiguous nature of the statute, and that "each case must be decided on its facts and upon the application of the law to those specific facts." *Youth Programs*, 170 S.W. 3d at 105-06.

Christ Church by no means is arguing that anything it does is exempt. There are examples of activities that are not integral to or directly incidental to the purpose of Christ Church that, if the Church engaged in such activities, they could not claim that the space used would be exempt. For instance, if Christ Church were to open a McDonalds that ran and functioned like a McDonalds, for the purpose of generating revenue for the Church, that would not be exempt because it bears no relation to the purpose and mission of the Church. The line can be drawn between exempt and non-exempt functions and the case law has done that through the years. But In this case, Christ Church has not crossed the line and the undisputed facts plainly point to tax exemption for the bookstore/café and the fitness center.[4]

CONCLUSION

Christ Church does not seek a blank check in the tax exemption context and has not

[4] The City mischaracterizes the testimony from the record in a few places. They argue that "Pastor Dan Scott testified that the church does not address specific workouts from a spiritual standpoint." *See* Brief of City at 8. Pastor Scott never made a statement like that and instead testified that the Church generally promotes physical fitness, but not a specific diet or workout plan. (T.59; *see also* R.21). The City also says that Gregg Allison, Christ Church's expert witness "testified that selling coffee or books is not necessary to the practice of religion in a philosophical sense." *See* City's Brief at 9. That mischaracterizes the testimony of Dr. Allison who never testified that way. Dr. Allison did testify that these areas provide "that venue or environment which fosters evangelization, discipleship, caring for the poor, education. So we are embodied people and so we do take up space when we engage in these activities, and when there is a financial ability to have a building then we want to construct that building with different venues that will foster the purposes and mission of the church, and I believe that's what Christ Church has done." (T.194-195).

conducted activities that would place it beyond the line of what is considered exempt from property taxation. Rather, the activities in the bookstore/café and the fitness center meet the requirements for exemption as they are integral to the Church's purpose. Granting the tax exemption avoids violating the Establishment Clause and the Equal Protection Clause, but denying the exemption, as the Board has done here violates both of those provisions. Therefore, Christ Church respectfully requests that this Court reverse the determination of the Assessment Appeals Commission and grant it a tax exemption for the bookstore/café and the fitness center.

Dated this 4th day of August, 2011.

Respectfully submitted,

Kevin Theriot
TN Bar No. 015049
ktheriot@telladf.org
Erik Stanley
KS Bar No. 24326
estanley@telladf.org
Alliance Defense Fund
15192 Rosewood
Leawood, KS 66224
(913) 685-8000 – Phone
(913) 685-8001 – Fax
Counsel for Christ Church Pentecostal

CERTIFICATE OF SERVICE

I hereby certify that on August 4th, 2011, a true and correct copy of the foregoing was served by placing same in the U.S. Mail, postage prepaid, addressed to:

Jeff Campbell
Assistant Metropolitan Attorney
Department of Law
Metropolitan Courthouse, Suite 108
P.O. Box 196300
Nashville, TN 37219-6300

Mary Ellen Knack
Senior Counsel
Office of the Attorney General
Tax Division
P.O. Box 20207
Nashville, TN 37202

Erik Stanley