SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

THE ETHICS AND RELIGIOUS LIBERTY
COMMISSION OF THE SOUTHERN BAPTIST CONVENTION

v. Tax Docket No. 7791-98

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

The litigation herein arises from the denial of an exemption from liability for real property taxes. The subject property is denominated as Lot 30 in Square 754, located at 505 Second Street, N.E. in the District of Columbia. It is sometimes known as "Leland House."

The Petitioner is a religious organization, and it sought a real property tax exemption on this basis. The District denied the exemption based upon its view that the Petitioner was using the property for the purpose of impermissible "policy issue advocacy." In a nutshell, the Petitioner defends its entitlement to the exemption, arguing

that all activities at this property are conducted as an integral and explicit part of religious exercise based upon Southern Baptist doctrine.

The Court herein is required to adjudicate the Petitioner's Motion for Summary Judgment and the District's Cross-Motion for Summary Judgment. It is fair to say that the material facts are not in dispute. Rather, the resolution of this case lies in the legal interpretation that must be applied to those facts. The issues herein have been ably briefed and argued.

Based upon the following analysis of the undisputed facts and the applicable law, the Petitioner is entitled to a judgment in its favor because the Petitioner is fully qualified to receive the tax exemption it had requested. The Petitioner is entitled to a refund of all property taxes that were paid. For the reasons set forth below, the outcome herein is not a close question.

UNDISPUTED MATERIAL FACTS OF RECORD

The Petitioner (hereinafter the "Ethics Commission" or "Commission") has provided very detailed information regarding its organizational purpose, structure, and operations. In addition to the Affidavit of Rev. Richard D. Land (its President), the Petitioner filed with its Motion for Summary Judgment various materials that illustrate the multi-faceted religious activity that is conducted from the property. In support of the denial of the exemption, the District relies upon certain publications that are produced at this property by the Commission. The District cites these very same publications, in support of its argument that the property is used in furtherance of political lobbying.

The facts in the Affidavit of Rev. Land are not actually rebutted by any evidentiary proffer of the District of Columbia. This is important, because Land sets forth the exact nature of the Southern Baptist Convention, which is the parent organization and sole constituent part of the Ethics Commission. It is useful to recapitulate what Rev. Land has explained and to isolate what the undisputed facts do establish as to (1) the Convention, (2) the Commission, and (3) the use of the subject property.

The Convention. The Southern Baptist Convention is a religious denomination and is an aggregate of individual church congregations throughout the United States. It meets annually, with each member church being entitled to send one or more representatives. Many of its member churches are located in the District of Columbia. The District of Columbia does not challenge these facts.

The Ethics Commission. The Southern Baptist Convention created and chartered the Religious and Ethics Commission in 1974. The sole member of the Commission is the Convention itself. In 1974, the Commission was incorporated as a nonprofit religious corporation in Tennessee under the name of Christian Life Commission of the Southern Baptist Convention. It assumed its present name in 1997.

It is uncontested that the Ethics & Religious Liberty Commission is exempt from the payment of federal income taxes as a religious corporation, pursuant to §501 (c)(3) of the Internal Revenue Code of 1986. It is also exempt from paying District of Columbia income tax.

Attachment 2 to the Affidavit of Rev. Land is a document entitled "The Baptist Imperative: Gospel Faith and Christian Character in Action." This monograph is the

seminal document that precisely sets forth the mission of the organization and the interplay between its daily activities and specific religious doctrine.

The two key concepts in the Commission's religious purpose are that Baptists are "the salt of the earth" and "the light of the world." These words are expressions that emerge directly from the Bible. See Matthew 5:13-16 (New International Version). In plain terms, these Biblical admonitions are the foundation of both the Convention and its Ethics Commission. Their doctrine basically requires that all members of the Convention "live out the moral implications of that biblical faith in relation to society and their fellow human beings." Attachment 2 at 1. The theme that pervades the Commission's purpose is that Southern Baptist religious beliefs and the practicalities of daily living cannot be separated.

As a practical matter, this immediately translates into an obligation of individual Southern Baptists "to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love." Attachment 2 at 3.

It is the business of the Commission, on behalf of the membership of the Convention, to monitor the manifestations of the Southern Baptists' religious beliefs in all facets of life. This involves the continuing scrutiny of government and commercial endeavors that either support or denigrate the religious and moral principles that are adopted by the Southern Baptists. In the "Baptist Imperative," Rev. Land wrote that the Convention increased resources directed to the Commission in order to

> assist Southern Baptists to become more aware of the ethical implications of the Christian gospel with regard to such aspects of daily living as family life, human relations, moral issues, economic life and daily work, citizenship, and related fields, and by helping them create, with God's

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> assist Southern Baptists to become more aware of the ethical implications of the Christian gospel with regard to such aspects of daily living as family life, human relations, moral issues, economic life and daily work, citizenship, and related fields, and by helping them create, with God's

> leadership and by His grace, the kind of moral and social climate in which the Southern Baptist witness for Christ will be more effective.

Attachment 2 at 3.

In a 1997 speech at the installation of the Commission's current President, one leader of the Convention noted,

> The assignment of the Christian Life Commission of our Convention is to provide leadership for Southern Baptists in areas of social action and moral concerns. There seems to be implicit in this program assignment an understanding of the biblical mandate to take truth and apply it convincingly to life. This is particularly seen in the construction of the New Testament letters of Paul to the churches. As we read and glean from these letters, we discover that Paul begins by stating doctrine, and he moves from there to Christian application. Doctrine always results in duty; belief always impacts behavior. The biblical mandate is to take biblical principles and bring those principles to bear upon individual practice. The Christian Life Commission has been assigned not to speak for Southern Baptists, but to speak to Southern Baptists, serving as a biblically informed conscience to our lives.

Attachment 2 at 4 (emphasis added) (quoting a speech of Dr. Jerry Vines, co-pastor of First Baptist Church of Jacksonville, Florida).

According to Dr. Vines, the functional goal of the Ethics Commission is to reaffirm the "inextricable faith-action principle . . . ." He reiterated,

> The Ethics & Religious Liberty Commission is committed to a complete Gospel for the complete person. We reject any inherent conflict between the social and salvation aspects of the Gospel. It was never intended that there should be a dichotomy between the two. Jesus has called all Christians to be salt and light. The salt of law can

> change actions, but only the light of the Gospel can change attitudes.

Attachment 2 at 3-4.

To implement the concepts of "salt and light," the Commission publishes two communications. Several examples of both are reproduced and cited by both the Petitioner and the Respondent as attachments to their dispositive motions. One publication is a newsletter known as "Salt." It is a newsletter that informs members of the Convention and any other subscribers about decisions and activities in private industry and within the Executive Branch and the Legislative Branch of government that impinge upon religious issues of concern to Southern Baptists. The Commission itself describes "Salt" as "the federal public policy newsletter of the Ethics & Religious Liberty Commission," and it is published six times per year.

The internal content of "Salt" reflects religious doctrine and how it is manifested in daily life and practical issues. As one example, the religious beliefs of the members of the Convention lead them to be opposed to abortion. In one sample edition of "Salt" proffered by the District (Vol. 5, No. 1, 1995), the newsletter included articles consistent with this belief regarding abortion. In this particular edition, the newsletter provided to its readers an update on what to expect from the newly appointed Surgeon General. In that same issue, the newsletter contained a feature article on the Secretary of State's signing of a treaty known as the United Nations Convention on the Rights of the Child. It was evident that the Ethics Commission viewed this particular document as one that advocated the right of children to disobey their parents and to intrude upon child-rearing decision-making. See Exhibit B to the District's Statement of Material Facts. This was

portrayed to be at odds with Southern Baptist beliefs. Family-related issues such as this are often the topic of articles in this publication.

For the sake of brevity, the Court will not pause to recount all of the articles that appear in the newsletter copies that are proffered herein by both parties. It is sufficient to note that each edition of the newsletter contains some type of article on the happenings of government that affect moral and religious beliefs of the members of the Southern Baptist Convention. They include for example, perceived threats to religious liberty.

The content of "Salt" is not limited to news about what the government is doing. For example, in Vol. 7, No.3, 1997 (attached to the District's Statement of Material Facts as Exhibit B) a large feature article highlighted the efforts of the Southern Baptist Convention to chastise the Disney Corporation for what it terms "promoting immoral ideologies." In fact, this particular edition of "Salt" specifically noted that the Commission was about to issue a "bulletin insert" that would include a "form letter" for members to use in order to register "financial protest against Disney." In other words, the publication supported a boycott of this company as a means of protesting its policies or products that were in conflict with moral and religious views of the Southern Baptists.

Each edition of "Salt" contains a box captioned "Express your opinion," which consists of a form for mailing the reader's views to his or her legislator at the national level. Somewhere in most editions, this newsletter also provides the address and "comment line" for reaching the President of the United States as well as the "Capitol Switchboard."

One edition of "Salt" contains an article on the "adopt a leader" effort, whereby individuals could "select a local, state or national decision-maker to pray for and communicate with for a year," and "Salt" provided a telephone number for requesting a "kit" for doing so. See Vol. 5, No. 2, 1995 (attached to the District's Statement of Material Facts).

The other publication produced by the Ethics Commission is known as "Light." The Commission describes it as a "Christian ethics, public policy and religious liberty publication for pastors, teachers, state and national denominational workers, and others interested in applied Christianity." It is published six times a year. Subscriptions are sold. However, like "Salt," free copies are sent to anyone who requests them. Sample copies are attached to Petitioner's Statement of Material Facts Not in Dispute, as Exhibit E.

The District of Columbia does not point to or rely upon any editions of "Light" as proof that the Commission is not entitled to a tax exemption. Nonetheless, the Petitioner includes samples of this publication to further illustrate the nature of what the Commission actually does as part of its official activities.

The samples of "Light" attached to the Petitioner's Statement of Material Facts include articles on the following kinds of subjects: criticism of commercial television programming, the dangers of discrimination in medical insurance due to genetic testing; and the "slippery slope" of legalized suicide. One issue also contained advertisements and ordering information for educational books, pamphlets, and videotapes on various religious and ethics topics related to abortion. "Light" Nov-Dec. 1997.

PROCEDURAL HISTORY OF THE EXEMPTION REQUEST

In its early years, the Ethics Commission operated in the District of Columbia in rented quarters. Eventually, it purchased the subject property that is known as Leland House on February 25, 1994. The house is a two-story and basement townhouse.

On February 25, 1994, the Commission filed its application for exemption from property tax. The exemption was denied in a letter of May 14, 1998 from the District's Chief Assessor. In pertinent part, he wrote,

> After an inspection of the property and a review of the application and supporting documents, we have determined that the property does not qualify for exemption from real property tax. The supporting documents provided indicate that 'Leland House' is used for policy issue advocacy and/or a 'public policy agency' which does not qualify under any provision of the D.C. Code.

Letter of James R. Vinson, May 14, 1998 [emphasis added]. The denial letter did not contain any specific references to the Code or any regulation as to the precise character or amount of impermissible "advocacy" that would spoil anyone's entitlement to an exemption. There was also no detail as to the underlying analysis that convinced the Chief Assessor to deny the exemption.

To preserve its right to appeal, the Commission paid all taxes that were due. The instant appeal was filed on November 12, 1998. As of that date, the Commission had paid over $41,129.53, and taxes are continuing to fall due during this litigation.

APPLICABLE STATUTE

The District of Columbia Code provides that property owners are exempt from the obligation to pay real property assessments in several kinds of circumstances. Two of them are relevant here.

One relevant exemption applies where the subject property is one "belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities." D.C. Code §47-1002(14).

Another pertinent exemption applies where the subject property is one "belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of §47-1002 . . . . and used as administrative headquarters thereof."

Here, the Ethics Commission contends that it is entitled to a tax exemption under both sections of Title 47, although prevailing as to either one of them is sufficient to provide the relief that is sought.

RELEVANT PRINCIPLES FROM CASE LAW

As a prelude to the adjudication of the cross-motions, the Court must briefly survey what the law provides as to key concepts that are interwoven in this case. These topics include (1) elements for entitlement to the statutory exemptions; (2) the bar against political lobbying; (3) public advocacy by exempt organizations. These three issue areas form the context in which the Court must determine whether the Petitioner's use of the property is within the ambit of qualifying for exemption. As later discussion will reflect, this question is more sophisticated that the District would concede.

Elements of Entitlement to the Property Tax Exemptions. The Ethics Commission asserts that it is entitled to a tax exemption under Section 1002(14) because any so-called "policy issue advocacy" that is conducted at or from the property is a direct expression of the core and explicit Southern Baptist religious doctrine, qualifying as "missionary activity." The United States Court of Appeals for the District of Columbia Circuit long ago held that the exemption language in subsection (14)

> was designed to include . .. those buildings which are entitled to exemption because of the work carried on within. That is to say, where the nature of the organized work is essentially religious, there shall be no tax on a building belonging to a religious corporation or society . . .
> .

Calvary Baptist Church Extension Ass'n v. District of Columbia, 81 U.S.App.D.C. 330, 331, 158 F.2d 327, 328 (1946) (emphasis added).

The Circuit likewise established the elements for entitlement to this particular exemption. The applicant for the exemption must demonstrate "(1) that the building belongs to a religious corporation or society, and (2) that it is primarily and regularly used for religious worship, study, training and missionary activities." *Id.* (emphasis added).

A second statutory exemption is involved in the instant case, and the parties have utterly different interpretations of the factual elements that comprise entitlement to this exemption. This controversy relates to D.C. Code §47-1002(17).

The Petitioner contends that this particular exemption is offered to organizations that – on their own – do not qualify for any type of tax exemption, but which are entitled

to an exemption if the property in question is one "belonging to" an organization that is "charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of §47-1002. . . and used as administrative headquarters thereof."

These elements must be separated in order to be clearly understood. First, the realty must "belong to" some organization that is charged with the administration of activities of some institution or organization that is exempt under Section 1002. Secondly, such real property itself must be "used as administrative headquarters thereof."

This Court presumes, for the sake of practicality, that the phrase "belong to" denotes legal ownership. If the lawful owner of the realty merely "administers" the activities of a tax-exempt organization, that administrative entity might not necessarily be tax exempt in its own right. Otherwise, this whole subsection would be superfluous. This is because the property owner that is the administrative agent of the tax-exempt organization – if already exempt itself – would be entitled to a property tax exemption anyway. The specifics of whether it was used as some type of "headquarters" for a tax-exempt entity would be a totally meaningless and unnecessary distinction.

In the instant case, the District of Columbia argues that this particular exemption is available solely to property owners that are already tax exempt in their own right under Section 1002, before any consideration of how the property is used. Under this rubric, the District argues that unless the Petitioner can prevail as to exemption under Subsection 14, it cannot prevail separately and in the alternative under Subsection 17.

The District's position as to Subsection 17 rests on one appellate decision, *National Medical Assoc. v. District of Columbia*, 611 A.2d 53 (D.C. 1992). In that case, the Petitioner was a nonprofit corporation representing the interests of thousands of black physicians practicing nationwide. It sought exemption from real property taxes with respect to a building located at 1012 10th Street, N.W. in the District of Columbia. This was its national headquarters. The issue in dispute was whether this entity was entitled to a property tax exemption based upon Subsection 8. This relates to buildings belonging to and operated by nonprofits and "which are used for purposes of public charity principally in the District of Columbia." The more precise debate was whether and how to interpret the geographical reference. The appellate court agreed with the District that the reference to the local jurisdiction is a requirement that the "impact" of the organization's charitable activity must be principally in the District of Columbia. *Id.* at 55. Note, however, that the instant case does not involve any issue concerning the geographic impact of Petitioner's activities.

In the present litigation, the District relies on certain language in *National Medical* for the principle that exemption under Subsection 17 cannot exist independently of any other subsection of Section 1002. The District cites the following passage from *National Medical*:

> Because of our holding that the NMA real property in question does not qualify under any other exemption provision in section 47-1002, perforce it cannot qualify under this special exemption for the administrative headquarters of already exempted entities.

Id. at 57. In *National Medical*, the entity that owned the building and the entity that was "charged with the administration" of the putatively exempt organization was the same

entity altogether. Undoubtedly, this is why the National Medical Association could not separately qualify for a tax exemption under Subjection 17.

In the present case, the Petitioner has correctly isolated the fact that Subsection 17 could potentially apply to an entity that was merely in the business of owning and operating an administrative headquarters for some other organization that was tax-exempt. In such event, two different entities would be involved. Under those facts, this Court would find that the management entity -- as property owner of an administrative "headquarters" -- could qualify for a real property tax exemption as long as its client qualified for an exemption under Section 1002. However, in the instant case this is simply not the scenario.

Here, as in *National Medical,* the Petitioner is both the property owner/administrative services provider, as well as the exempt organization itself. For this discrete reason, the District is correct in stating that the Ethics Commission can only be entitled to exemption under Subsection 17 if it is entitled to exemption from some other Subsection within 1002.

Limits on Lobbying and Pursuit of Legislation by Exempt Organizations. The District of Columbia argues that when an organization engages in political lobbying, the taxing authority can lawfully deny exemption from tax liability or tax exempt status.

For what it is worth, the Court pauses to note that District of Columbia Code and the implementing tax regulations are totally devoid of any prohibition against political lobbying as a condition for obtaining a tax exemption. There is nothing in the record to explain why local Code has never been amended to include such prohibitions. The

District asks the Court to treat the District under any analogous case that that emerges from the federal court system as to the relationship between a government and a tax-exempt organization. On the whole, this Court finds that the District's approach is logical, if only because it would be absurd to presume that the District does not have the same interest as the United States in avoiding financial subsidization of political activity.

The District relies upon several appellate opinions for the proposition that political lobbying that is operated at a subject property will prevent entitlement to exemption from property taxes. The key cases cited by the District are *Slee v. Comm. of Internal Revenue*, 42 F.2d 184 (2d Cir. 1930), *Cammarano v. United States*, 358 U.S. 498 (1959); *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), *cert. denied*, 414 U.S. 864 (1973), and *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983).

The raw subject of political lobbying is addressed in these cases, though not in situations that are truly analogous to the Ethics Commission and its activities. Factually, these cases are all distinguishable from the Petitioner's situation.

In *Slee*, a charitable deduction was disallowed for an individual taxpayer, based upon that person's donation to the American Birth Control League. Judge Learned Hand wrote, in referring to the Internal Revenue Code, "Political agitation as such is outside the statute." *Slee, supra*, at 185. The particular Code provision that was in dispute in *Slee*, granted tax deductions for gifts made to "any corporation . . . organized and operated exclusively for religious, charitable . . . or educational purposes. . ." *Id.* at 184. The District basically argues that *Slee* presents a bright line above which any type of

political lobbying, even by a religious organization, will eliminate deductibility of contributions to that entity.

It is a fact of history that *Slee* was issued prior to a pivotal amendment to the Internal Revenue Code. This 1934 amendment diluted the previous total ban on lobbying by tax exempt organizations. The test became whether any lobbying was a "substantial part of its activities." *Girard Trust Co. v. Comm. of Internal Revenue, infra.* Clearly, the opinion in *Slee* is very outdated and is not controlling precedent for the instant litigation. The law has moved on.

In *Cammarano*, the Supreme Court ruled unanimously that persons may not deduct from their federal income taxes any money spent on publicity programs to defeat local voter initiatives. The taxpayers in question had attempted to deduct such sums as if they were "business expenses" because the voter initiatives allegedly damaged their businesses. The bald abuse of tax deductions in that case is certainly not present where the Ethics Commission is concerned. Thus, *Cammarano* is not helpful. Furthermore, *Cammarano* did not actually involve a religious or charitable organization whose status as such was unquestioned.

In *Christian Echoes*, the facts that spoiled the taxpayer's exemption were extreme and most colorful. They are nothing like the facts in the instant case. In *Christian Echoes*, the organization carrying this name was a nonprofit religious organization that had been formed by Dr. Billy James Hargis (a radio and television preacher). He also established a national religious magazine and other publications. *Christian Echoes, supra*, at 851.

On behalf of his organization, Hargis filed suit for a refund of FICA taxes that had been paid for several years. The organization attained tax exempt status pursuant to 26 U.S.C. § 501(c)(3). However, the Internal Revenue Service revoked the exemption for three reasons:

> (1) it was not operated exclusively for charitable, educational or religious purposes; (2) it had engaged in substantial activity aimed at influencing legislation; and (3) it had directly and indirectly intervened in political campaigns on behalf of candidates for public office.

Id. at 853.

The Tenth Circuit held that the revocation of the exemption was well justified. It is not difficult to understand the wisdom of this decision in light of the underlying facts of what Hargis was actually doing.

First, the magazine in question (known as "Christian Crusade") contained numerous articles that exhorted members of the public to take targeted steps to react to certain issues. The specifics are worth repeating, for comparison to the Petitioner.

> For example, Christian Echoes appealed to its readers to: (1) write their Congressmen in order to influence the political decisions in Washington; (2) work in politics at the precinct level; (3) support the Becker Amendment by writing their Congressmen; (4) maintain the McCarran-Walter Immigration law; (5) contact their Congressmen in opposition to the increasing interference with freedom of speech in the United States; (6) purge the American press of its responsibility for grossly misleading its readers on vital issues; (7) inform their Congressmen that the House Committee on UnAmerican Activities must be retained; (8) oppose an Air Force Contract to disarm the United States; (9) dispel the mutual mistrust between North and South America; (10) demand a congressional investigation of the biased reporting of major television networks; (1) support the Dirksen Amendment; (12) demand that Congress limit foreign aid spending; (13)

> discourage support for the World Court; (14) support the Connally Reservation; (15) cut off diplomatic relations with communist countries; (16) reduce the federal payroll by discharging needless jobholders; stop waste of public funds and balance the budget; (17) stop federal aid to education, socialized medicine and public housing; (18) abolish the federal income tax; (19) end American diplomatic recognition of Russia; (20) withdraw from the United Nations; (21) outlaw the Communist Party in the United States; and (22) to restore our immigration laws.

Id. at 855.

In other words, Christian Echoes unabashedly used the magazine to facilitate a campaign to remake virtually the entire federal government, customized to the political tastes of Hargis. In no fashion did Christian Echoes claim that its furtherance of the public issues and legislation enumerated herein above was fueled by discrete religious doctrine. It is evident that this organization demanded its tax-exempt status based upon its general religious nature without regard to the substance of what it was actually doing. It is self-evident that most of these topics have no discernable connection to religious issues at all, such as demanding investigation of media networks and demanding changes in immigration laws. Many of the topics are facially partisan in nature, such as urging withdrawal from the United Nations.

To boot, the use of the magazine for nakedly political purposes was exacerbated by the taxpayer's attempts "to mold public opinion" on such disparate issues as Medicare, the Nuclear Test Ban Treaty, and the Outer Space Treaty. *Id.* The Tenth Circuit easily concluded,

> An essential part of the program of Christian Echoes was to promote desirable governmental policies consistent with its objectives through legislation. The activities of Christian Echoes in influencing or attempting

> to influence legislation were not incidental, but were substantial and continuous. The hundreds of exhibits demonstrate this. These are the activities which Congress intended should not be carried on by exempt organizations.

Id. at 855-56 (citations omitted) (emphasis added).

In *Regan*, the litigation involved the denial of tax exempt status to an organization known as Taxation With Representation (TWR). This entity was formed "to take over the operation of two other nonprofit organizations, one of which had tax-exempt status under §501(c)(3) and the other under §501(c)(4)." *Regan, supra*, 461 U.S. at 540. The IRS denied the application for tax-exempt status under §501(c)(3) because a substantial part of TWR's activities would consist of attempting to influence legislation. TWR brought suit claiming that §501(c)(3)'s prohibition against substantial lobbying is unconstitutional under the First Amendment and because it is a denial of equal protection under the Fifth Amendment's Due Process clause. The due process argument was based on the complaint that the Internal Revenue Code permits veterans to engage in lobbying while permitting deductions for contributions to those entities. In short, TWR sought "to force Congress to subsidize its lobbying activity." *Id.* at 544.

The Supreme Court held that there is no constitutional violation or infirmity in the prohibition against "substantial" lobbying by tax-exempt organizations.

In comparison, the instant case does not involve any type of frontal attack on the prohibition against "substantial lobbying." This is simply not the premise on which the Petitioner seeks relief. Moreover, the Petitioner argues that it does not in fact engage in "substantial" lobbying.

The Role of Public Advocacy by Tax Exempt Organizations. Various courts have recognized the inherent role of public policy advocacy in charitable and religious organizations that are tax-exempt. Courts in the post-*Slee* era have drawn a distinction between impermissible political lobbying as a core function of an organization and issue advocacy that is a natural component of the entity's tax-exempt purpose. This natural component can include efforts to win passage of legislation that enhances or enforces the religious or charitable purpose that originally entitled the organization to the exemption or exempt status.

The leading case on point is *International Reform Federation v. District Unemployment Comp. Bd.*, 76 U.S.App.D.C. 282, 131 F.2d 337 (1942). There, the issue was whether a particular employer was exempt from having to contribute to the workman's compensation fund. The employer had claimed exempt status pursuant to a law that exempted organizations that operated "exclusively for religious, charitable, scientific, literary, or educational purposes. . . ." *Id.* at 283, 131 F.2d at 338. The very purpose of the Reform Federation was "the promotion of those reforms on which the churches sociologically agree while theologically differing, such as the enactment and enforcement of laws prohibiting the alcohol liquor traffic, the white slave traffic, harmful drugs and kindred evils . . ." *Id.* In fact, this organization had actually engaged in outright attempts to influence the passage of legislation and "boast[ed] of having, at one time or another, written 36 bills on moral subjects for submission to various State legislatures and 18 that have been passed by the Congress." *Id.* Not unlike the Petitioner herein, the official magazine of the Federation was mailed to libraries, churches, etc. Unlike "Salt" and "Light," however, its magazine was also targeted to

members of the United States Congress and State legislatures "when moral issues are pending." *Id.*

The United States Court of Appeals for the District of Columbia Circuit reversed the District Court's affirmance of the Board's denial of the exemption.

The Circuit determined that the employer was entitled to the exemption from fund contribution liability, because "the Federation's primary purpose is the establishment of higher codes of morality and manners throughout the world, and its contribution to or even its advocacy of legislation to these ends are merely 'mediate' or 'ancillary' to the primary purpose." *Id.* at 287, 131 F.2d at 342. The panel notes that "what are denominated its political activities do not make its purposes less charitable or educational." *Id.* (emphasis added).

Ironically, the majority in *Reform Federation* relied on and quote from Judge Learned Hand's decision in *Slee*, as the rationale for the distinction that it drew in favor of the Federation. The Court stated that Judge Hand

> reached the conclusion that the [Birth Control] League was conducted in part for charitable purposes, in that it operated a free clinic, but that its avowed purpose to 'enlist the support of legislators to effect the lawful repeal' of existing laws against birth control made that, rather than charity, its real objective. He distinguished the case from one in which a corporation, otherwise charitable, educational, or scientific, seeks legislation merely ancillary to the achievement of its main objective.

Id. at 286, 131 F.2d at 341 (emphasis added).

More precisely, Judge Hand wrote in *Slee* that "there are many charitable, literary and scientific ventures that as an incident to their success require changes in the law. A

charity may need a special charter allowing it to receive larger gifts than the general laws allow. It would be strained to say that for this reason it became less exclusively charitable, though much might have to be done to convince legislators." *Slee, supra*, at 185. He explained further,

> A society to prevent cruelty to children, or animals, needs the positive support of law to accomplish its ends. It must have power to coerce parents and owners, and it does not lose its character when it seeks to strengthen its arm. A state university is constantly trying to get appropriations from the Legislature; for all that, it seems to us still an exclusively educational institution. No less so if, for instance, in Tennessee it tries to get leave to teach evolutionary biology. We should not think that a society of book lovers or scientists was less 'literary' or 'scientific,' if it took part in agitation to release the taboos upon works of dubious propriety, or to put scientific instruments upon the free lists. All such activities are mediate to the primary purpose, and would not, we should think, unclass the promoters.

Id. (emphasis added).[1]

Similarly, the United States Court of Appeals for the Third Circuit ruled for the taxpayer in a case involving the disallowance of a deduction from the estate tax of a decedent bequest to the Board of Temperance, Prohibition and Public Morals of the Methodist Episcopal Church. The case in point is *Girard Trust Co. v. Comm. of Internal Revenue*, 122 F.2d 108 (3rd Cir. 1941). This appellate opinion though much like that of *Reform Federation* is all the more pertinent to the Ethics Commission because of the Circuit's discussion of religious convictions and actions to influence legislation. A close look at *Girard Trust Co.* is warranted.

[1] The term "agitation" certainly embraces traditional lobbying.

The Third Circuit in *Girard Trust Co.* reversed a decision of the Board of Tax Appeals, which had disallowed a deduction from the estate tax. Such deduction supposedly ran afoul of the Internal Revenue Code which, at that time, authorized deductions from the gross value of an estate all bequests to "any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . ." However, in 1934 the Internal Revenue Code was amended to add to this definition that "no substantial part of the activities" could include "carrying on propaganda, or otherwise attempting, to influence legislation." *Id.* at 109.

The Third Circuit reasons as follows:

> It is clear that a trust for the advancement of religion is charitable. Scott on Trusts, § 371.n 3. It is clear, too, from the facts of this case that the Methodist Episcopal Church has, since its organization in 1784, regarded personal practices of its members with regard to the use of intoxicating liquors as an inherent part of its religious practices. It is not the business of the court either to approve or disapprove of such inclusion or exclusion so long as no violation of secular law is involved . . . . The difficult part of this case comes with regard to that part of the activity of the Board of Temperance, which has to do with the attempt to influence legislation. A bright line between that which brings conviction to one person and its influence on the body politic cannot be drawn . . . . Religion includes a way of life as well as beliefs upon the nature of the world and the admonitions to be 'Doers of the word and not hearers only' (James 1:11) and 'Go ye therefore, and teach all nations,' (Matthew 28:19) are as old as the Christian Church. The step from acceptance by the believer to his seeking to influence others in the same direction is a perfectly natural one, and it is found in countless religious groups. The next step, equally natural, is to secure the sanction of organized society for or against certain outward practices thought to be essential.

Id. at 109-10 (emphasis added).

The above-quoted language bears an eerie resemblance to the facts of record in the instant case, as far as doctrinal pronouncements are concerned. The above passage in *Girard Trust Co.* gives recognition to the significance of the "Salt" and "Light" concepts of the Southern Baptists as the real underpinning of its missionary activities conducted at Leland House.

Moreover, the Third Circuit also recognized the permissible connection between the exercise of religious faith that is the tax-exempt purpose of an organization and the follow-up action that is mandated by doctrine. The Circuit Court observed, "Surely a church would not lose its exemption as a religious institution if, pending a proposal to repeal Sunday observance laws, the congregation held a meeting on church property and authorized a committee to appear before a legislative body to protect against the repeal." *Id.* at 110.

In combination, the dispositions in *Reform Federation* and in *Girard Trust Co.* plainly demonstrate that much "public policy advocacy" can occur legitimately on the part of an organization that is exempt from taxation. The same principle would apply to an exemption for that organization's property tax liability.

ADJUDICATION OF THE CROSS-MOTIONS

In its pleadings and in oral argument, there is no doubt that the District now seeks to convince the Court that the Ethics Commission engages in political lobbying and that an exemption was properly denied for this reason. This argument requires the Court to scrutinize the instant case on two different levels.

First, the Court must recall the Chief Assessor's actual reason for denying the request for exemption and determine whether the stated rationale for denying the exemption is legally supportable and borne out by the facts of record.

Secondly, the Court must review the factual record to determine if the facts actually justify a de novo finding that the Ethics Commission uses the subject property for political lobbying and that such lobbying is so "substantial" a part of its activity at Leland House that it is not "merely ancillary to the primary purpose" of the Commission.

In performing both types of analysis, the Court must juxtapose several different legal concepts.

Assessor's Actual Basis for the Denial of the Exemption. It is significant that the Chief Assessor clearly did not accuse the Ethics Commission of political lobbying as such. In the normal use of that term, "lobbying" is the activity that embraces an effort to pressure or persuade elected officials to legislate or administer the government in a manner that is sought by the entity in question. Instead, the Chief Assessor never used the word "lobbying" but based the denial of the exemption only upon "public policy advocacy." This is a much broader term.

The Chief Assessor did not elaborate on precisely how he defined "public policy advocacy" that is legally impermissible. There is no way for the Court to discern or reconstruct whether the Chief Assessor was in any way cognizant of the case law such as *Reform Federation* or *Girard Trust Co.* If he was knowledgeable about that case law, he certainly ignored it or misapplied it. It is also possible that the Chief Assessor merely assumed that a property tax exemption can be denied if there is any evidence (however

slight) that the property is used for publicly advocating certain positions concerning legislation or government action. In any event, the record only reflects what is set forth on the face of the letter of denial.

Use of the Property for Missionary Activity and Policy Advocacy. Because Superior Court tax appeals are *de novo* proceedings, the Court must give due consideration to the more specific arguments that have been briefed by the District. The District attempts to be somewhat more detailed than the Chief Assessor's letter of denial. The increased detail, however, is virtually limited to relying on the more pointed allegation that Leland House is a beachhead for raw political lobbying. The District totally fails to confront the obvious and more sophisticated question of whether a tax exemption can be denied because of public issue advocacy that is mandated by religious doctrine and the religious purpose of the Petitioner. By not grappling with the First Amendment issue, the District's complaint about "lobbying" through "Salt" and "Light" merely begs the larger question.

To analyze the arguments of the District, it is useful for the Court to address in two different respects what the record shows about the use of the subject property as far as religious activity is concerned.

First, the Court must examine the content of "Salt" and "Light" as alleged forms of lobbying. The real question is not only whether any so-called "lobbying" is effectuated by those publications themselves, but whether the public policy advocacy communicated in them is anything other than ancillary to the religious charter of the Ethics Commission.

Secondly, the Court must probe whether, as the District contends, the activities of the employees at Leland House are devoted to public issue advocacy or "lobbying" that is not ancillary to the religious purpose of the Ethics Commission.

For purposes of analysis, there is no genuine difference between public issue advocacy that is inherently a form of "missionary activity" and that which is not "missionary activity" but which is nonetheless ancillary to the Commission's basic religious purpose. If the public issue advocacy falls into either category, the significance is identical, *i.e.* the use of the property is essentially religious under *Calvary Baptist Church*.

The Content of "Salt" and "Light." This Court concludes that the production and publication of this newsletter and magazine are not a form of political lobbying. Several factors are important.

First, in a very literal sense both publications are directed only to members of the Southern Baptist faith and those persons who take the initiative to request it. It is sent to subscribers and requesters. There is no evidence in this record that legislators and public officials are subjected to any unsolicited delivery of either publication.

Second, to the extent that either publication contains opinions about legislative action or the behavior or policies of public servants, the content of "Salt" and "Light" is certainly no more than proverbially preaching to the converted. They are inwardly directed to members of the Southern Baptist faith. Thus, these two publications are

no more proof of political lobbying than the circulation of a scholarly journal (such as the Harvard Law Review) or the circulation of any publication that is targeted as to subject matter to a discrete membership (such as a newsletter of AARP).

Third, the Court has looked closely at the particulars cited by the District as proof that "Salt" is used to lobby public officials. The District points to discrete informational boxes or ads that routinely appear in this newsletter. This material is (1) the box that informs readers how to "express your opinion;" (2) the inclusion of the address and "comment line" phone number for the President of the United States and for the "Capitol Switchboard," and (3) the information about the "adopt a leader kit." As to these items, the Court finds that they are no more than transmissions of information to the readers of "Salt," providing information as to how readers might communicate individually to government entities. Whatever the readers might choose to do with the phone numbers or other data, it is certainly not activity that occurs at Leland House. These informational "boxes" are not a form of lobbying.

As a separate matter from direct forms of lobbying as such, it is important for the Court to determine the legal significance of any public issue advocacy that is clearly included in nearly every issue of "Salt."

The issue advocacy in this publication is squarely a part of the "missionary activity" that is conducted at Leland House, and such missionary activity is directly mandated by religious doctrine of the Southern Baptist faith. The production of both publications is an important part of how the property is used by the Ethics Commission and this publication activity is regular in nature. Thus, the Petitioner meets the legal requirements for obtaining a property tax exception because this property is "primarily

and regularly used for . . . missionary activities." *Calvary Baptist Church, supra,* at 328. There is no doubt that the use of the property is "essentially religious." *See Calvary Baptist Church, supra.*

The Court pauses to emphasize that a very central factual issue is not on the table for debate. The District of Columbia has never in any fashion challenged the correctness or authenticity of the Convention's definition of what constitutes "missionary activity" that implements its religious doctrine. This means that the District does not challenge the Convention's assignments and directives to the Ethics Commission as part of the obligations of the faith. Since the record is replete with evidence that the Southern Baptist Convention and the Commission implements the "salt" and "light" motif through printed communications and public advocacy, there is no basis on which to deny that regular production and distribution are demonstrative religious functions operated out of Leland House.

The Southern Baptist Convention explicitly and publicly has decreed that its members express their worship beliefs in part by monitoring the organized actions of government and private industry that threaten their religion. Similarly, Southern Baptist doctrine requires its members as individuals to actively support the activities of others that will strengthen their religion. In this doctrinal obligation, there is no genuine distinction between government and private industry as the potential source of threat. All world influences are viewed as a part of a mosaic, and governmental activity is not the sole concern at all.

On the subject of public advocacy as affecting tax exemption, the District's reliance upon *Slee*, etc. is misplaced because those cases are completely unrelated to the

direct clash between government and religious doctrine. The instant case is *sui generis*. There is no case law cited by the District or the Petitioner in which any denial of a tax exemption has been upheld because of "public policy advocacy" that was known to be a discrete religious obligation.

Petitioner has produced ample evidence to prove that its use of Leland House flows from the requirements and mandates of its religious faith. The District has never challenged such evidence. Even though this tax appeal is a de novo proceeding, this Court has no lawful basis on which to challenge the particular evidence produced by the Petitioner on this subject. This is because there is abundant case law that soundly forbids courts to rule upon temporal disputes by delving into and interpreting what constitutes religious doctrine or requirements of a particular faith. American jurisprudence has a rich history of forbidding the Judicial Branch to intrude into the definition of religious beliefs.

First, the Supreme Court of the United States has emphasized that courts cannot engage in weighing, approving, or defining what constitutes "religious doctrine and practice" in order to resolve secular disputes, such as a dismissal from employment. *See Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 710 (1976). In *Milivojevich*, the litigation involved the suspension and removal of a bishop. The Supreme Court held that inquiries made by the state supreme court into matters of ecclesiastical cognizance and polity contravened the First and Fourteenth Amendments.

Courts are prohibited from questioning a decision of a particular faith or denomination as to what doctrine requires of its members. The Supreme Court has

reiterated that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church adjudicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.*, quoting *Watson v. Jones*, 13 Wall. 679, 727 (1872). Thus, once the Southern Baptist Convention dispatched the Ethics Commission to carry out missionary activities that are doctrinally required, the Superior Court of the District of Columbia cannot question the substance of this determination. The Court cannot look behind it or parse through it for an alternative interpretation. Likewise, no tax assessor can do so.[2]

Employee Activity at Leland House. Where employee activity is concerned, the undisputed facts of record show the following.

In his Affidavit, Rev. Land confirmed that four employees are at work at Leland House. One is an administrative assistant. One is Director of Public Policy & Legal Counsel. One is Director of Communications. One is a Bureau Chief of the Baptist Press, a publishing enterprise controlled by the Convention. Affidavit at 8. Rev. Land incorporated by reference into his Affidavit additional facts concerning these employees,

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[2] Courts in many jurisdictions have declined to delve into or interpret the substance of religious teaching in many contexts. For example, the United States Court of Appeals for the District of Columbia Circuit has ruled that courts have no jurisdiction over a contract claim involving a minister's qualifications because the inquiry would require the courts to analyze ecclesiastical matters. *See Minker v. Baltimore Annual Conference of United Methodist Church*, 282 U.S.App.D.C. 314, 318-19, 894 F.2d 1354, 1358-59 (1990). Similarly, the First Circuit determined that the proper role of a court cannot include the adjudication of a church's obligations to its members. *See Dowd v. Society of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988). Conversely, no court – or taxing authority – can sit in judgment of a church member's obligations to his or her church or faith. Yet, this is effectively what is happening when a tax assessor decides that doctrinally required "advocacy" does not qualify as "missionary activity" that would entitle a religious organization to a tax exemption.

as set forth in Petitioner's Statement of Material Facts. The pertinent facts are summarized as follows.

The original Director of Public Policy and Legal Counsel (William C. Dodson, Esq.) is responsible for communicating the position of the Convention on public policy issues to government officials and to the public. Where communications with public officials are concerned, his role is to represent the Southern Baptist Convention in coalitions of other groups with similar religious and ethical interests. Such coalitions in turn draft legislation and pursue congressional action on such subjects as: the Religious Freedom Restoration Act; the Religious Freedom Amendment; and the Religious Liberty Protection Act. In addition, he is the Convention's representative among coalitions that generally oppose religious persecution in Third World countries and which seek to protect churches from being required to repay tithes paid by individuals in bankruptcy. Such coalitions advocate limitations on the spread of abortion and pornography. Petitioner's Statement of Material Facts at 5.

Furthermore, the General Counsel has prepared *amicus* briefs in the United States Supreme Court on issues affecting religious liberty. He also wrote articles for "Salt" and for "Light" and "occasionally contacted federal agencies about proposed regulations or other administrative actions." To illustrate, Petitioner cites four editions of "Salt" and "Light" as Attachments C, D, E, and F to the Petitioner's Statement of Material Facts.

Where this particular employee is concerned as to contacts with federal agencies, the best example is seen in "Light" in the edition published for Nov-Dec. 1997. This edition contains an article reporting that the Commission's General Counsel joined many

other officials of other religious organizations in endorsing certain employment guidelines issued by President Clinton, insuring that federal employees would not be unduly restricted in exercising their religious beliefs and practices while on the job. Attachment F. It was apparent that the protection of federal workers was a mutual concern of The American Jewish Congress and other religious groups that have no connection to the Ethics Commission, and this issue was not subject to partisan politics.[3]

A third employee at Leland House was King Sanders, Director of Communications. His duties include the preparation of sermon outlines, the production of "Salt" and "Light," and other pamphlets and brochures.

The fourth employee at Leland House was Tom Strode, who is the Bureau Chief of the Baptist Press. He is a writer and reporter and also prepares sermon outlines and bulletin flyers. He is an ordained minister. Petitioner's Statement of Material Facts at 6-7.

In its Cross-Motion for Summary Judgment, the District at least acknowledges the holding in *Reform Federation*, *supra*, stating, "The real crux of the International Reform Fed. decision was whether the Federation's legislative advocacy activities were merely 'ancillary' to its primary charitable purpose or whether its attempts to secure legislation 'were in themselves a major purpose' of the organization." Respondent's Cross-Motion for Summary Judgment at 6. The District does not attempt to weigh the facts and argue them so as to illustrate precisely why Petitioner's public advocacy is not

[3] This employee, an ordained minister, has returned to seminary study and has been replaced by a new person.

"ancillary" to its purpose of supporting religious doctrine. In other words, the District simply does not speak to the nitty gritty of the very question that it raises.

In its Cross-Motion, the District only states, "ERLC, the District submits, is a legislation-oriented organization. One need only read any issue of *Salt* to realize this. Moreover, '[t]he fact that specific legislation [is] not [always] mentioned does not mean that these attempts to influence public opinion were not attempts to influence legislation.'" Cross-Motion for Summary Judgment at 6, quoting *Christian Echoes*, *supra*, at 855.

The District's argument is completely shallow and conclusory. The District does not attempt to parse through the various topics covered over many years of "Salt" and "Light," so as to demonstrate with concrete examples that the articles informing Southern Baptists are some type of political activity that is a centerpiece of the Commission's function, *i.e.* its "substantial" function. The District implies that these publications are nothing more than a front for attempting to influence public officials (who are neither subscribers nor readers) to pass specific legislation. There is no evidence of such a mask. Yet, this is the allegation that the District makes.

To be sure, the facts of how the Ethics Commission uses its two publications and its employees are in stark contrast to the facts in *Christian Echoes*. The following comparisons are important.

Where the Ethics Commission is concerned, "Salt" and "Light" do not include any crass laundry list or agenda for direct action on specific legislation. These publications do not crudely approach their readers as precinct level political foot soldiers who are merely waiting for the next assignment. Moreover, the internal content of the

ethical issues that are highlighted in "Salt" and "Light" does not drift into matters that have no discernable connection to religious doctrine or Baptist personal values, such as outer space or surplus government employees. There are no personal attacks on individual politicians and no fundraising pitches for partisan election campaigns.

Instead of baldly generating public opinion for or against certain politicians, the informational "boxes" in "Salt" only provide generic data as to how public officials might be contacted. Indeed, this information is actually no more than a pass-through of such addresses or phone lines that were especially established for this purpose by those very officials (such as the President). This terse and generalized information is already elsewhere in the public domain and is certainly not on a par with the use of "publications and broadcasts to attack candidates and incumbents" as was done by Christian Echoes.

Where the General Counsel of the Ethics Commission is concerned, the District has offered no proof that his personal contacts with public officials are anything more than "occasional," just as Rev. Land described it. There is no proof that the General Counsel's job title is a wily hood for being a full-time political lobbyist. This is what the District implies, but the proof is not there. In fact, the only factual account of what the employees do at Leland House comes from the Petitioner. There is no room within which the Court can put any other gloss on what the Petitioner does with the subject property.

Even if public officials were among the intended readers of the multi-topic public policy advocacy in these publications, this material would scarcely approach what the District of Columbia Circuit found to be "ancillary" to tax exempt activity in *Reform Federation*. Any "public issue advocacy" focused on those outside the Southern Baptist

faith would be well within the ambit of what Judge Learned Hand ultimately recognized to be tax exempt activity that does not actually run afoul of the prohibition against lobbying. Thus, under the totality of circumstances herein, it is doubtful that the author of the opinion in *Slee* would quibble about the entitlement of the Ethics Commission to a property tax exemption.

The decision in *Girard Trust Co.* provides an instructive analog to the instant case. Under the holding in *Girard Trust Co.* a tax exempt organization, such as the Commission, may still seek to influence legislation and public agency behavior that directly enhances its tax exempt purpose. As a practical matter, there is no palpable difference between a Board of Temperance seeking legislation to outlaw public drinking and a religious missionary organization seeking legislation to protect religious freedom itself.

For good reasons, the opinions in *Girard Trust Co.* and *Reform Federation* retain their vitality despite their age, and they are not in conflict with the distinguishable facts in *Slee*, *Cammarano*, and the other cases cited by the District. The decisions in *Girard Trust Co.* and *Reform Federation* have never been overruled, and they are controlling herein.

Courts should interpret facts and exercise discretion according to relevant standards that are established for the particular subject matter. Case law cited herein is the source for the Court's comparison of the facts to the requirements of the law. Within the local scheme of taxation, there are no other standards (in the local Code or tax regulations) by which the Court can further refine any assessment of public advocacy

beyond using the term "ancillary."[4] Though the District describes the Petitioner as a "legislation-oriented" organization, this label has no basis the record or in the law.[5]

The decision in *Reform Federation* is the law of the District of Columbia. Nothing in the Code or local tax regulations provides concrete standards for evaluating how much "advocacy" of any kind constitutes too much for tax exemption purposes. In retrospect, the issuance of the opinion *Reform Federation* was a virtual invitation to the District to enact such legislation or regulations. Yet, this has never happened. This entire subject is left to judicial interpretation.

Judicial interpretation has its limits. The unchallenged facts shows that Bible-based religious doctrine requires the public advocacy that is done by the Ethics Commission. Such "missionary activity", or advocacy that is ancillary to Petitioner's religious purpose, does not vitiate the Petitioner's entitlement to a property tax exemption. Having concluded this much, the Court cannot indulge in interpreting the activity of the Petitioner beyond what is set forth herein. [6]

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[4] Indeed, a "percentage test to determine whether the [alleged lobbying] activities were substantial obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances." *Christian Echoes*, *supra*, at 855; *cf. Seasongood v. Comm. of Internal Revenue*, 227 F.2d 907, 912 (6th Cir. 1955).

[5] As Petitioner points out in its Opposition to Respondent's Cross-Motion for Summary Judgment, this phrase has "no limit to the types of organizations that it might swallow up [and] if a new standard is to be created, it must be created by legislation, not by administrative fiat." Opposition to Respondent's Cross-Motion for Summary Judgment at 5 n2 (emphasis in original).

[6] This Court is fully alert to the fact that the District of Columbia government, like all local governments, must be able to protect itself against charlatans, who would peevishly abuse tax exemptions by falsely claiming to use property for religious purposes. There is no such danger in the instant case. "As the Sixth Circuit noted, the Supreme Court has never definitively endorsed a fraud or collusion exception [to the prohibition against judicial definition of religious activity], . . . but has merely left the issue open as a possibility for later consideration." *Burgess v. Rock Creek Baptist Church*, 734 F.Supp. 30, 32 (D.D.C. 1990), citing *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir.), *cert. denied*, 479 U.S. 885 (1986); *Serbian Easter Orthodox Dioscese, supra*, at 712; *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929)(*dictum*). "However, assuming without deciding that a fraud or collusion exception exists, it is

This Court is firmly convinced that Leland House is not used for anything that is not directly mandated by Southern Baptist doctrine or not ancillary to its tax-exempt purpose. That being the case, there is no doubt that the property tax exemption should not have been denied by the District.

There is a significant irony that plagues the District's whole approach to the Petitioner's demand for the tax exemption. The District has never explained why the very same "public policy advocacy" now in dispute was not a bar to granting tax-exempt status as to income taxes, sales tax, and personal property tax. The District cannot have it both ways.

The denial of the property tax exemption cannot be squared with the granting of other tax relief to the Petitioner. This is because the Code provisions that cover income tax, sales tax, etc. specifically preclude exempt status to a religious or charitable organization if a "substantial part" of its activities "is carrying on propaganda or otherwise attempting to influence legislation." See D.C. Code §47-1802.1(4). There is no such language in the Code as it relates to real property tax.

This divergent treatment of the same taxpayer makes no sense. The District has never claimed that tax-exempt status was granted erroneously, and there has never been any threat to revoke the exempt status based upon the application for the real property tax exemption. Since the District has never contended that the other regulatory decisions were wrong or invalid, it can scarcely justify the denial of the property tax exemption for

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inapposite here because even a liberal reading of the [District's Cross-Motion] does not reveal allegations of fraud or collusion against the [District]." *Burgess*, *supra*, at 32.

the particular reason chosen by the Chief Assessor. The District has no real explanation for this anomaly.

The Petitioner's Due Process Claim. The Petitioner included in its Motion for Summary Judgment a contention that it is the victim of unequal treatment, in violation of the equal protection clause of the Fifth Amendment. The Petitioner asserts that the District of Columbia has granted property tax exemptions to several other organizations that engage in activities to pursue a specific legislative agenda. According to the Petitioner those organizations are the Congressional Black Caucus Foundation (hereinafter "CBCF"), the Congressional Hispanic Caucus, and the Heritage Foundation.

The District does not deny that exemptions have been granted to these organizations.[7] However, the District has argued that the Superior Court should not adjudicate the instant tax appeal based on the exemption history or status of other organizations. This principle was argued in the context of the District's Motion to Strike, with respect to the deposition transcript material and other evidence filed by Petitioner in the record in this case.[8]

As a practical matter, this Court need not delve into the Due Process issue because this Court has already found that the Petitioner is entitled to the property tax exemption on its own merits. Nonetheless, it is worthwhile to pause to analyze why the

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[7] Petitioner acknowledges that the District eventually challenged the entitlement of the Heritage Foundation to tax-exempt status, but only because it was not using its property for purely charitable purposes in the District of Columbia. This was different from any issue about legislative lobbying.

[8] Such material is found as attachments to the Petitioner's Opposition to Respondent's Cross-Motion for Summary Judgment. Petition sought to demonstrate the extent to which the CBCF engaged in efforts to secure passage of certain legislation, using seminars, a newsletter, and other methods.

Due Process claim appears to be a weak alternative basis on which to great relief to the Petitioner.

In a nutshell, the District argues that to "avoid liability for a proper tax . . . each individual must rest, in every instance, on the validity of his [or her] own position, under the applicable taxing provision, independently of the others." *International Business Machines Corp. v. United States*, 343 F.2d 914, 919 (Ct.Cl. 1965), *cert. denied*, 382 U.S. 1028 (1966).

The District of Columbia Court of Appeals relied upon *International Business Machines, Inc.* in another case where a taxpayer made a complaint similar to the argument of the Petitioner herein. That case was *Washington Theatre Club, Inc. v. District of Columbia*, 311 A.2d 492 (D.C. 1973). There, the Court of Appeals observed, "While taxpayers cannot avoid liability for a proper tax by showing that others have been treated leniently or erroneously, yet equal treatment within a class is fundamental to an equitable administration of tax laws." *Id.* at 495. (emphasis added). Petitioner cites this opinion as grounds for seeking relief from the denial of the property tax exemption.

Upon close examination, the reasoning in *Washington Theatre Club* is not supportive of the Petitioner. In *Washington Theatre Club*, the other entity in question was Arena Stage. The alleged similarity between them was that both provided acting opportunities to students for educational purposes. The trial record was unclear as to the exact factual similarities between the two entities – other than being theaters. The Court of Appeals stated,

> We do not have before us now the issue of unequal tax treatment within a class. . . . But if there is no substantial difference between the operation of these two

> organizations, it would amount to an unfair denial of equal tax treatment to appellant. This, if true, should not be permitted. This is why we consider that the government should review its actions as they relate to the two organizations during the remand period to determine whether from its standpoint it is proceeding fairly in its administration of the tax statute.

Id. at 495-96 (emphasis added).

In the instant litigation, the Ethics Commission does not appear to be in the same "class" with the Congressional Black Caucus Foundation, etc. The Petitioner is strictly a religious organization. The other entities cited for comparison plainly are not. The Court infers from *Washington Theatre Club* that tax "class" denotes the fundamental nature of the entity such that its organic purpose is deemed analogous to others within a group. In the view of lay persons, it would appear superficially that two live performance theaters are in the same "class." However, the Court of Appeals found this broad descriptive connection to be legally insufficient. Because being another theater was somehow not sufficient to achieve "same class" status in *Washington Theatre Club*, this Court can only conclude that the Petitioner is not in the same "class" as patently non-religious organizations (whatever their legislative activities might be). The fact that they all were previously granted some type of tax exemption does not alone transform them into being part of the same "class."

The Court of Appeals has drawn the distinction in *Washington Theatre Club* that similarity in "class" is the threshold factor for relief from a Fifth Amendment violation. This Court cannot contravene the premise invoked by the Court of Appeals, and this Court must apply it to the facts herein.

Certainly, the Petitioner has presented a tantalizing reference to the CBCF and the Congressional Hispanic Caucus as organizations that appear to be far more "legislation-oriented" than the Petitioner. Yet, since the Petitioner cannot establish that it is in the same "class" under the rubric of *Washington Theatre Club*, the record herein does not yield sufficient proof of a Due Process violation.[9] Under these circumstances, if the District improperly granted any tax relief to other entities the remedy is surely not for the Court itself to require the imposition of unwarranted tax relief for an entity that does not deserve it.[10] Here, of course, the Ethics Commission does deserve the property tax exemption on its own merits.

CONCLUSIONS

To summarize, the Petitioner is entitled to a grant of summary judgment because (1) the denial of the exemption under D.C. Code §47-1002(14) was based upon an improper intrusion into religious doctrine as to "missionary" activities; (2) the use of the building is "essentially religious" inclusive of all advocacy activities and alleged political lobbying was not a substantial part of the Petitioner's use of the property, nor is it a substantial part of the Petitioner's activities as an entity; and (3) the building is used as administrative headquarters for an organization that itself is entitled to an exemption under D.C. Code §47-1002.

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[9] The Court should not engage in speculation about precisely what these organizations do, based solely on the imagery created by their names. Whatever the underlying facts might reveal, the District has not been clear as to whether it will revisit the tax exemptions of the other non-religious organizations in light of what has emerged in the instant litigation.

[10] This Court denied the Motion to Strike, so as to preserve the factual record as to the proof offered by the Petitioner.

WHEREFORE, it is by the Court this 25th day of July, 2001

ORDERED that the Motion for Summary Judgment filed by Petitioner is granted; and it is

FURTHER ORDERED that the Cross-Motion for Summary Judgment of the District of Columbia is denied; and it is

FURTHER ORDERED that no later than August 6, 2001 the Petitioner shall file a Motion for Entry of Judgment, containing the explicit recitation of the amount of refund that is due, with provision for interest as provided by applicable law.

Cheryl M. Long
Judge

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