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NO. A10-859

State of Minnesota
In Supreme Court

CROSSROADS CHURCH OF PRIOR LAKE MN,
Relator,

vs.

COUNTY OF DAKOTA,
Respondent.

RELATOR'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIESi

STATEMENT OF THE LEGAL ISSUES1

I. AS A MATTER OF LAW, DID THE TAX COURT ERR WHEN IT
REQUIRED THE CHURCH TO “ACQUIRE” MORE THAN EQUITABLE
TITLE TO ESTABLISH EXEMPTION STATUS FOR TAXATION
PURPOSES?

II. AS A MATTER OF LAW DOES PAYMENT WITH A CHECK AND
ACCEPTANCE OF PART OF THE PURCHASE PRICE MANIFEST
THE MUTUAL ASSENT NECESSARY TO FORM A CONTRACT?

III. AS A MATTER OF LAW DID THE TAX COURT’S CONTRACT
FORMATION ANALYSIS VIOLATE THE CONTRACTING PARTIES’
FREEDOM OF CONTRACT RIGHTS WHEN IT DENIED THAT A
CONTRACT HAD BEEN FORMED BEFORE A SIGNATURE WAS
PLACED ON A PURCHASE AGREEMENT EVEN THOUGH THE
ACTIONS OF THE PARTIES MANIFESTED MUTUAL ASSENT TO
CONTRACT FORMATION?

IV. DOES MINNESOTA STATUTE §272.02 SUBD. 38(b) VIOLATE
THE MINNESOTA CONSTITUTION WHEN IT PLACES CHURCHES
AND GOVERNMENT ENTITIES IN THE SAME CLASS FOR
TAXATION PURPOSES?

V. DOES MINNESOTA STATUTE § 278.03 subd.1(3) VIOLATE THE
ESTABLISHMENT CLAUSE BY REQUIRING A CHURCH TO
ESTABLISH FINANCIAL HARDSHIP BEYOND SWORN AFFIDAVIT
TESTIMONY OF CHURCH OFFICIAL?

STATEMENT OF THE CASE3

STATEMENT OF THE FACTS4

LEGAL ARGUMENT8

STANDARD OF REVIEW.....8

APPLICABLE LAW AND LEGISLATIVE HISTORY.....8

I. THE TAX COURT ERRED IN ITS INTERPRETATION
AND APPLICATION OF MINN. STAT. §272.02 subd.
38(b).....8

II. THE TAX COURT'S CONTRACT FORMATION
ANALYSIS IS NOT IN CONFORMITY WITH MINNESOTA
LAW..... 18

III. THE TAX COURT'S CONTRACT FORMATION
ANALYSIS VIOLATED THE CONTACTING PARTIES'
FREEDOM OF CONTRACT25

IV. MN STAT. §272.02 subd. 38, VIOLATES THE
MINNESOTA CONSTITUTION..28

V. MINNESOTA STATUTE § 278.03 subd. 1(3) VIOLATES
THE ESTABLISHMENT CLAUSE31

CONCLUSION35

INDEX TO APPENDIX37

TABLE OF AUTHORITIES

United States Constitution

First Amendment- Establishment Clause.....	31,32
Fourteenth Amendment.....	26, 34

Minnesota Constitution

Minn. Const. Art. 10 § 1.....	30
Minn. Const. Art. 1 § 16.....	31
Minn. Const. Art. 1 § 2	34
Minn. Const. Art. 10 §1.....	34, 35

Statutes:

<i>Minn. Stat.</i> §272.02 subd. 38.....	3,8,9, 11,15,19,19,28,36
<i>Minn. Stat.</i> §272.68.	10,11
<i>Minn. Stat.</i> §278.03 subd. 1(3).....	31

Cases:

<i>Anchor v. Columbia Electric Co. et al.</i> 63 N.W. 1109 (Minn. 1895).....	13
<i>Brown v. State Automobile Insurance, Ass'n of Des Moines, Iowa,</i> 12 N.W.2d 712, 715 (1944).....	22
<i>In re Caldwell Port Elevator,</i> 23 B.R. 154 (Bkrtcy W.D. La. 1982).....	27
<i>Cherokee State Bank of St. Paul v. Wallace,</i> 279 N.W. 410, 415 (1938).....	29
<i>Clarno v. Gamble-Robinson Co. et al,</i> 190 Minn. 256, 259, 251 N.W. 268, 269 (Minn. 1933).....	13
<i>Confer v. Winters,</i> 27 N.W.2d 247, 248 (Minn. 1947).....	25
<i>Dolder v. Griffin,</i> 323 N.W.2d 773, 778 (Minn. 1982).	24
<i>Edelstein v. Duluth M & I.R. Ry. Co.,</i> 31 N.W.2d 465, 467 (Minn. 1948).....	24

<i>Fabio v. Bellomo</i> , 504 N.W.2d 758, 761 (Minn. 1993).	8
<i>Fairmont Creamery Co. v. State of Minnesota</i> , 274 U.S. 1, 47 S.Ct. 506, 71 L.Ed.893, 52 A.L.R. 163.	26
<i>Federal Distillers, Inc. v. State</i> , 229 N.W.2d 144, 154 (Minn. 1975).	26
<i>First & American Nat. Bank v. Whiteside</i> , 207 Minn. 537, 292 N.W. 770 (Minn. 1940).	16
<i>Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n</i> , 358 N.W.2d 639, 642 (Minn. 1984).	8
<i>George Benz Sons, Inc. v. Ericson</i> , 34 N.W.2d 725 (1948).	26
<i>Gorblirsch v. Heikes</i> , 547 N.W.2d 89, 93 (Minn. App. 1996)	20
<i>Greenfield v. Olson</i> , 173 N.W. 416 (1919).	14
<i>Hedberg & Sons v. County of Hennepin</i> , 232 N.W.2d 743, 750 (Minn. 1975).	22
<i>Hibbing Educ. Ass'n v. Public Employment Relations Bd.</i> , 369 N.W.2d 527, 529 (Minn. 1985).	8
<i>Hill- Murray Federation of Teachers, v. Hill- Murray High School, Maplewood, Minnesota</i> . 487 N.W. 2d 857, 864 (Minn. 1992).	32
<i>Hodge v. Evans Financial Corp.</i> 707 F.2d 1566, 1568, 228 U.S. App. D.C. 161, 163(1983).	27
<i>Lemmon v. Kurtzman</i> , 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111-12, 29 L.Ed.2d 745 (1971).	32
<i>Lenman v. Jones</i> , 222 U.S. 51, 32 S.Ct. 18, 20, L.Ed. 89, 92 (1911).	16
<i>Lockner v. VanVebber</i> , 5 N.E.2d 460, 461 (Ill. 1936).	15

<i>Malmquist v. Peterson</i> , 183 N.W. 138 (1921).	25
<i>Micca v. Wisconsin Nat. Life Ins. Co.</i> , 75 F.2d 710, 712 (1935).	26
<i>Miller Brewing Company v. State</i> , 284 N.W.2d 353, 356 (Minn. 1979).....	28,29
<i>Morrisette v. Harrison Int'l Corp.</i> , 486 N.W.2d 424, 427 (Minn. 1992).....	19
<i>Odenthal v. Minnesota Conference of Seventh Day Adventist</i> , 649 N.W.2d 426, 435 (Minn. 2002).....	31,33
<i>Reed v. Bjornson et al.</i> , 253 N.W. 102, 104 (1934).....	28
<i>Riley Bros. Construction, Inc., v Shuck</i> , 704 N.W.2d 197, 202 (Minn. App. 2005).....	19
<i>Rosenberg v. Townsend, Rosenberg & Young</i> , 376 N.W.2d 434, 437(Minn. App. 1985).....	19
<i>Schwandt Sanitation of Paynesville v. City of Paynesville</i> , 423 N.W.2d 59, 67 (Minn. App. 1988).....	19
<i>In re S.R.A., Inc.</i> 219 Minn. 493, 507, 18 N.W.2d 442, 450 (Minn. 1945), <i>aff'd sub nom</i> <i>S.R.A., Inc. v. State of Minnesota</i> , 327 U.S. 558 (1946).....	14,16
<i>Starlite Limited Partnership v. Landry's Restaurants, Inc.</i> , 780 N.W.2d 396 (Minn. App. 2010).....	23
<i>State by Cooper v. French</i> , 460 N.W.2d 2, 4 (Minn. 1990).	8
<i>State v. Corbett</i> , 59 N.W. 317 (1894).....	26
<i>State v. Pehrson</i> ,	34
287 N.W.313, 315 (Minn. 1939).	
<i>Steinhilber v. Prairie Pine Mutual Insurance Company</i> , 553 N.W.2d 92, 93 (Minn. App. 1995)	25

<i>Stearns v. Kennedy</i> , 103 N.W. 212, 213 (1905).....	14
<i>Stiernagle v. County of Waseca</i> , 511 N.W.2d 4 (Minn. 1994).....	11
<i>Tollefson Development Inc. v. McCarthy</i> , 668 N.W.2d 701 (Minn. App. 2003).....	15
<i>Twin City Candy and Tobacco Company, Inc. v. A Weisman Company et al.</i> , 149 N.W.2d 698, 701 (Minn. 1967).....	27
<i>U.S. v. Seven Oaks Dairy Co. et al.</i> , 10 F. Supp. 995, 1002	26
<i>Valspar Refinish, Inc. v. Gaylord's, Inc.</i> , 764 N.W.2d 359, 366 (Minn. 2009).....	24
<i>Village of Hibbing v. Commissioner of Taxation</i> , 217 Minn. 528, 14 N.W.2d 923 (Minn. 1944).....	18,21
<i>Wayzata Enters., Inc. v. Herman</i> , 128 N.W.2d 156, 158 (1964).....	20
<i>Wolff v. McCrossan</i> , 210 N.W.2d 41, 44 (Minn. 1973).....	25
<i>Wolfsen v. City of St. Paul</i> , 535 N.W.2d 384, 386 (Minn. App. 1995).....	19
<i>Young v. Sinsabaugh</i> , 173 N.E. 784 (1930).....	15

STATEMENT OF THE LEGAL ISSUES

I. AS A MATTER OF LAW, DID THE TAX COURT ERR WHEN IT REQUIRED THE CHURCH TO “ACQUIRE” MORE THAN EQUITABLE TITLE TO ESTABLISH EXEMPTION STATUS FOR TAXATION PURPOSES?

The Tax Court required that a binding contract be formed before the church acquired adequate interest in the property to establish exempt status.

Apposite Authorities:

Minn. Stat. §272.02 subd. 38(b).

Minn. Stat. § 272.68.

Petition of S.R.A., Inc. 18 N.W.2d 442 (1945).

Village of Hibbing v. Commissioner of Taxation, 217 Minn. 528, 14 N.W.2d 923 (Minn. 1944).

II. AS A MATTER OF LAW DOES PAYMENT WITH A CHECK AND ACCEPTANCE OF PART OF THE PURCHASE PRICE MANIFEST THE MUTUAL ASSENT NECESSARY TO FORM A CONTRACT?

The Tax Court required a signed contract in order to establish a binding contract sufficient to establish the necessary interest in the property to warrant change in exemption status.

Apposite Authorities:

Riley Bros. Construction, Inc., v Shuck, 704 N.W.2d 197 (Minn. App. 2005).

Rosenberg v. Townsend, Rosenberg & Young, 376 N.W.2d 434 (Minn. App. 1985).

Dolder v. Griffin, 323 N.W.2d 773 (Minn. 1982).

III. AS A MATTER OF LAW DID THE TAX COURT’S CONTRACT FORMATION ANALYSIS VIOLATE THE CONTRACTING PARTIES’ FREEDOM OF CONTRACT RIGHTS WHEN IT DENIED THAT A CONTRACT HAD BEEN FORMED BEFORE A SIGNATURE WAS PLACED ON A PURCHASE AGREEMENT EVEN THOUGH THE ACTIONS OF THE PARTIES MANIFESTED MUTUAL ASSENT TO CONTRACT FORMATION?

The Tax Court held that a binding contract was not formed until the Purchase Agreement was signed.

Apposite Authorities:

Federal Distillers, Inc. v. State, 229 N.W.2d 144 (Minn. 1975).

Hodge v. Evans Financial Corp., 707 F.2d 1566, 228 U.S. App. D.C. 161 (1983).

IV. DOES MINNESOTA STATUTE §272.02 SUBD. 38(b) VIOLATE THE MINNESOTA CONSTITUTION WHEN IT PLACES CHURCHES AND GOVERNMENT ENTITIES IN THE SAME CLASS FOR TAXATION PURPOSES?

The Tax Court did not address the constitutional question.

Apposite Authorities:

Minnesota Constitution. Article 10 Section 1.

Miller Brewing Company v. State, 284 N.W.2d 353 (Minn. 1979).

V. DOES MINNESOTA STATUTE § 278.03 subd.1(3) VIOLATE THE ESTABLISHMENT CLAUSE BY REQUIRING A CHURCH TO ESTABLISH FINANCIAL HARDSHIP BEYOND SWORN AFFIDAVIT TESTIMONY OF CHURCH OFFICIAL?

The Tax Court denied the church waiver of payment of property tax in part because it failed to establish hardship when only sworn affidavit testimony of church official was provided.

Apposite Authorities:

U.S. Constitution, First Amendment.

Hill- Murray Federation of Teachers, v. Hill- Murray High School, Maplewood, Minnesota, 487 N.W. 2d 857 (Minn. 1992).

Odenthal v. Minnesota Conference of Seventh Day Adventist, 649 NW2d 426 (Minn. 2002).

STATEMENT OF THE CASE

The issue in this property tax case is whether the Subject Property, purchased in 2008 by Crossroads Church ("Relator") of Prior Lake, MN, is exempt from taxation under Minn. Stat. §272.02 subd. 38, for the 2008 assessment year pay year 2009. The Church and the County of Dakota filed cross Motions for Summary Judgment. In addition, Relator made a Motion seeking waiver of payment of second-half year taxes for October 2009. That request was denied from the bench in-part on the basis that the Church failed to establish hardship.

The Church claimed that it acquired equitable interest in the property prior to the date that the tax was levied on July 1, 2008, thereby acquiring the necessary interest in the property to achieve tax exempt status for the entire year. The County argued that the Church did not have the requisite interest in the property at the time the tax was levied on July 1, 2008. The County argued legal title was required, that a signed purchase agreement was required or possession was required. The County also argued that the statute of frauds applied in this matter.

An Eerie Transfer from district court was accomplished. Arguments were heard by the Honorable Kathleen H. Sanberg of the Tax Court on November 10, 2009. Following the arguments, the judge requested that the parties research the legislative history of the applicable statute of Minn. Stat. §272.02 subd. 38. Both parties submitted legislative history briefings. The record closed on January

13, 2010. On April 13, 2010, the Honorable Kathleen H. Sanberg of the Tax Court issued the ruling granting the County's Summary Judgment Motion and Denying the Church's Motion for Summary Judgment. Rule 144 requirements were met. The MN Attorney General's office was placed on notice of the constitutional challenges to the statutes on May 26, 2010.

STATEMENT OF THE FACTS

In late 2007 and early 2008, the Relator Church conducted a search for a new location for their church building. (A-1) A suitable location was found at 14300 W. Burnsville Parkway in Burnsville, MN and the Church entered into negotiations with the seller which was a commercial entity. (A-1) In late January or early February of 2008, an oral agreement to purchase the property was reached. (A-1) In February, the pastor of the church began meeting with architects from the Finn-Daniels firm to develop the floor plan for the church. (A-1) (A-4) An original drawing was prepared. (A-5-6) On February 11, 2008 an architect met with the Church Board to discuss the renovations. (A-1) Sometime during the middle of February 2008, the pastor met with the seller and two architects to discuss development of an architectural plan for the church; the architects drew plans for the church building in order for the members of the church to review the potential site of their new church. (A-1) (A-4) The church had an open house at the new building on March 2, 2008. (A-1) The original architectural plans prepared by the Finn-Daniels architects were available during

the open house for viewing by the members of the church. (A-1) In early March of 2008, a draft purchase agreement was circulated. (A- 1) (A-7-11)

On March 30, 2008 a special business meeting was held by the church. (A- 2) A resolution to purchase the property at 14300 Burnsville Parkway was presented. The members voted to purchase the property. (A-2) On April 10, 2008, a check in the amount of \$10,000 was drafted and presented to the owner of the building as earnest money for the purchase of the property. (A-2) (A-9) The seller requested that the property be part of a §1031 exchange of property. (A-13) The seller vacated the property on or before April 14, 2008. (A-2).

By April 21, 2008, the seller has ceased all activities in the building and the seller turned over his key to the property to the church pastor. (A-2) On that date, the buyer Church took full possession of the property and began making preparations to transition the building into a church facility. (A-2) From April 21, 2008, forward the church staff, volunteers, and pastors were on the property or in the building almost daily. (A-2) Estimates were obtained for communication systems, carpet, sound systems, lighting and seating. (A-2) The church made physical changes to the building including a new door, signage for the front of the building, painting, wiring and other projects. (A-2)

The zoning for the subject property had to be changed in order to allow the commercial property to be used as a church. On or about April 16, 2008, the Church submitted plans to the City Planning Commission as part of the PUC-change of Use requirements. (A-16-24) Checks were issued to the City of

Burnsville on March 3, 2008 and April 10, 2008. Each check was in the amount of \$5000. (A-15) The purpose of the checks was to pay for the necessary process needed to change the zoning. (A-2) The church staff worked with the City of Burnsville Planning Commission to get the necessary permits and approvals. (A-2) The City of Burnsville accepted the church's "change of use" petition on May 27, 2008. (A-2)

The earnest money check that had been handed to the seller was deposited into an escrow account with the title company on August 25, 2008.(A-12) Because the Purchase Agreement included the exchange of two other properties included in the § 1031 Exchange, the parties signed all Purchase Agreements on August 27th and 28th, 2008. (A-9-10) The original drafting date on the purchase agreement was March 6, 2008 and was crossed off to reflect August 28, 2008 signing date. (A-7) The closing on all three properties took place on September 8, 2008. (A-3) The \$10,000 earnest money given to the seller on April 10, 2008 was credited as partial payment of the purchase price of the property. (A-25)

In December of 2008, the church financial secretary completed the Application for Tax Exemption and submitted the document to the county. (A-27) In the box that requests "Date Property Acquired by Organization" the financial secretary erroneously wrote the date of the closing when legal title was acquired. (A-28)

Tax exempt status has been granted by the county to the church for the property for tax year 2009 payable 2010. **(A-29)** Tax exempt status was denied for tax year 2008 payable 2009 “due to the fact that the parcel was purchased after 7/1/08.” **(A-29)**. The Petitioner brought a Property Tax Appeals Petition on April 29, 2009 because Minnesota law only requires that the property be “acquired” by July 1st and not “purchased” by July 1st as claimed by the county. The Application for Tax Exemption was signed “under penalty of law.” **(A-27)** Once the error was found, the correct information regarding when the Petitioner “acquired” the property was provided to the county.

On May 14, 2008, the Church brought a Motion for Waiver of first-half taxes which was denied. **(A-30-26)** The Church brought another Motion for Waiver on the second half taxes. **(A-37-49)** At that time the church submitted a sworn affidavit testimony from the pastor indicating that paying the tax would create a hardship. **(A-50)** That motion too was denied from the bench “because Petitioner failed to show that there was reasonable cause that could prevail on the exemption claim and because it failed to prove the payment of the additional \$51,918.29 taxes would cause a hardship.” **(A-53-71)**

Both parties then filed cross summary judgment motions on the issue of when the property was “acquired” by the church. Arguments were heard by the Tax Court on November 10, 2009. **(A-53-71)** Following the arguments, the Tax Court requested legislative history briefing by the parties. **(A-51)** The record was closed on January 13, 2010. **(A-53-71)** Rule 144 requirements were met. The

MN Attorney General's office was placed on notice of the constitutional challenges to the statutes on May 26, 2010. (A-77).

LEGAL ARGUMENT

Standard of Review of Summary Judgments

On an appeal from summary judgment, two questions are addressed: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The evidence must be viewed in a light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (*citations omitted*), but is not bound by nor need give deference to the district court's application of the law. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984). Interpretation of statutes is also subject to de novo review. *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985).

I. THE TAX COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF MINN. STAT. §272.02 subd. 38(b).

A. Applicable Statutory Law and Its Legislative History

Prior to the 1990 legislative session there was no statutory provision which addressed the taxability of property acquired by a church or educational institution. There was statutory language that governed when a property lost its exempt status, (M.S. §272.02 subd. 4 (a)) but there was no language governing

when property acquired by a church or educational institution converted to exempt status.

In 1990, H.F. #1936 was introduced and amended by the House Property Tax Subcommittee. After revisions, H.F. 1936A3 as amended was passed and referred to the full Tax Committee. Section (3) of H.F. #1936A3 contains the proposed additional language for Minn. Stat. § 272.02 Subd 4 (b)¹, which reads:

(b) Property subject to tax on January 2 that is acquired by a governmental entity, church, or educational institution before August 1 of the year is exempt for that year if (1) the property is to be used for an exempt purpose under the subdivision 1, clauses (1) to (7), and (2) the property is not subject to the filing requirement under section 272.025.²

This language was rolled into an omnibus bill and passed during the 1990 legislative session. The Property Tax Subcommittee Minutes and Session Law documents were silent as to any guidance as to how the term “acquired” is to be interpreted. There is some helpful guidance however in The House Research Bill Summary Report dated 2-28-90. (A-72). The House of Representative’s Analyst/Researcher writes:

SECTION 3 provides that property subject to tax on January 2 that is acquired by a governmental entity, church or educational institution before August of the year is exempt for the year if the property is to be used for an exempt purpose and the property is not subject to the filing requirement under section 272.025. Hence, the taxes for the current year must be paid on the property but the property will be exempt for taxes payable in the following year. Currently there is no statutory provision which addresses the taxability of property acquired by a church and educational institution, whereas, in the

¹ Minn. Stat. §272.02 subd. 4, was later renumbered as §272.02 subd. 38(b).

² Minn. Stat. §272.025 excepts churches and does not apply to this matter.

case of governmental entities, the language in M.S. 272.68 has been interpreted and administered by the department of revenue to exempt properties which they acquire for the following payable year. This change codifies and treats these qualifying exempt entities in the same manner. (A-72). (Emphasis added).

Given the legislature's reliance on Minn. Stat. §272.68, it is appropriate and helpful to review the language of Minn. Stat. §272.68 at the time the legislative language was considered. This pertinent language has remained unchanged for decades. The language of the statute that is pertinent to this discussion is limited to subdivisions (1) and (2).

272.68. Payment of taxes and assessments on property acquired by the state

Subdivision 1. Acquisition of property; unpaid taxes. When the state or a political subdivision of the state, except the state Transportation Department, acquires a fee interest in property before forfeiture, by any means, provision must be made to pay all taxes, including all unpaid special assessments and future installments thereof, unpaid on the property at the date of acquisition. For the purpose of this section, the date of acquisition shall be the date on which the acquiring authority shall be entitled under law to take possession of the property except in cases of condemnation, the date of acquisition shall be the date of the filing of the petition in condemnation. Taxes which become a lien on such property after the date of acquisition and before the condemning authority is by law entitled to actually take possession thereof shall, if paid by the owner, be added to the award, and if not so paid, shall be paid by the condemning authority. Taxes lawfully levied shall not be abated. This subdivision shall not be construed to require the payment of accrued taxes and unpaid assessments on the acquired property which exceed the fair market value thereof. The state or a subdivision acquiring property may make provisions for the apportionment of the taxes and unpaid assessments if less than a complete parcel is acquired.

If such accrued taxes and unpaid assessments are not paid as hereinabove required, then the county auditor of the county in which the acquired property is located shall notify the commissioner of management and budget of the pertinent facts, and the commissioner of management and budget shall divert an amount equal to such accrued taxes and unpaid assessments from any funds which are thereafter to be distributed by the commissioner of management and budget to the acquiring authority, and shall pay over such diverted funds to the county treasurer of the county in which the acquired property is located in payment of such accrued taxes and unpaid assessments.

Subd. 2. Property remains taxable until possession. Property otherwise taxable, which is acquired by subdivisions of government shall remain taxable until the acquiring authority is by law or by the terms of a purchase agreement entitled to actually take possession thereof.

The language used by the legislature in subdivision (1) of M.S. 272.68, includes the phrase “acquires a fee interest in property... by any means.” This phraseology is consistent with prior court rulings found in Minnesota case law. The vendee in the contract for the sale of land becomes the equitable fee owner of the property once part of the purchase price has been paid.³

In choosing to use the term “acquired” the legislature made an affirmative decision not to use other criteria such as the criteria utilized by the Tax Court.

They chose not to use: 1) Possession
2) Legal title

³ “It is well established by Minnesota decisions that a contract for the sale of land, part of the purchase price being paid, vests in the vendee an equitable title in fee with the bare legal title remaining in the vendor for security, and upon payment the vendor holds it in trust for the vendee. As the equitable fee owner of the premises, the vendee is entitled to full possession and enjoyment of the property, subject, of course, to cancellation of that ownership interest if the vendee does not comply to the contract terms.” *Stiernagle v. County of Waseca*, 511 N.W.2d 4 (Minn. 1994).

- 3) Equitable title
- 4) An executed contract
- 5) An enforceable contract
- 6) Improvement to the property
- 7) Or any combination of the above.

Instead, the legislature chose the term “acquired” knowing that “acquired” had previously been defined in both Minnesota statutes and common-law as “to gain by any means.” The church’s interest in the property on July 1, 2008, surpassed the threshold requirement of “acquired”. Indeed, by July 1, 2008, the church had equitable title, possession, and had made significant improvements to the property.

B. “Acquired” Defined.

1. The church “acquired” the property before July 1, 2008.

The statute regarding the time in which a party acquires property for tax exemption purposes is unambiguous. “If a statute is unambiguous, the court may engage in no further construction or interpretation but must apply its plain meaning.” *Rose v. Rose* 765 N.W. 2d 142, 146 (Minn. App. 2009). The actual language of Minn. Stat. §272.02 subd. 38(b) provides in pertinent part that:

(b) Property, ... that is subject to tax on January 2 that is **acquired** before July 1 of the year is exempt for that assessment year if the property is to be used for an exempt purpose under subdivisions 2 to 8. (Emphasis added.)

The “plain meaning” of “acquire” has already been established by Minnesota case law when this court relied on the Webster’s definition of “acquire” which has a very broad definition.

One of the definitions of ‘acquire’ given by Webster is “to gain by any means”; and in the connection in which the word is used in these articles, it seems to us that its meaning is as broad as that definition. *Anchor v. Columbia Electric Co. et al.* 63 N.W. 1109 (Minn. 1895).

This court again used the Webster’s Dictionary to define “acquire” in 1933:

The word ‘acquire’ is defined in Webster’s dictionary to mean: ‘To gain by any means, usually by one’s own exertions; to get as one’s own.’ *Clarno v. Gamble-Robinson Co. et al.*, 190 Minn. 256, 259, 251 N.W. 268, 269 (Minn. 1933).

When the Minnesota legislature chose to use the term “acquire” to determine “when” a tax exemption status would change, it did so knowing that Minnesota courts had already defined the term “acquire” to mean “to gain by any means.” The legislature chose not to define the timing of tax exemption changes to when purchase agreements are signed, possession, improvement to property, or when legal title is obtained. It chose to use “to gain by any means” as the time when a change in tax exemption status occurs. The essence of that phrase reflects the legislative intent for transfer to be at the earliest possible moment. It is the church’s position that as soon as the partial payment of the purchase price was made on April 10, 2008, the check converted into the real estate. In addition, Crossroads Church, paid part of the purchase price, took possession of the property, and took control of the property made significant improvements toward zoning changes in the months before the July 1, 2008 cutoff and accordingly, the

church acquired the property before July 1, 2008 making the property exempt from taxation for tax year 2008 payable 2009.

C. Executory Contract Defined

Under an executory sale contract the equitable estate, in its entirety, passes immediately to the purchaser at the moment the contract becomes effective and bare legal title for security purposes remains in the vendor. *Petition of S.R.A., Inc.* 18 N.W.2d 442 (1945). An executory contract for the sale of land vests in the vendee an equitable title to the land, a title and interest which can be conveyed or otherwise transferred to others. *Greenfield v. Olson*, 173 N.W. 416 (1919) *citing Stearns v. Kennedy*, 103 N.W. 212, 213 (1905). An executory contract is a contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement. *Black's Law Dictionary*, 321 (Bryan A. Garner ed., 7th ed., West 1999). An executory contract does not require an executed contract; a memorandum or oral agreement meets the threshold requirements for contract formation.

D. Equitable Conversion Doctrine Defined

Minnesota recognizes the doctrine of equitable conversion. *Petition of S.R.A., Inc.* 18 N.W.2d at 449. Equitable conversion has been defined as that change in the nature of the property by which, for certain purposes, real estate is

considered personalty⁴, and personalty as real estate. *Young v. Sinsabaugh*, 173 N.E. 784 (1930).

Nothing is better established than this principle, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are to be converted; and this, in whatever manner the direction is given, whether, by will or by way of contract, marriage articles, settlements, or otherwise; and whether the money is actually deposited or only covenanted to be paid, whether the land is actually conveyed or only agreed to be conveyed, the owner of the fund of the contracting parties may make land money or money land. The cases establish this rule universally. 4 *Horner Probate Prac. & Estates* § 72:1.

The doctrine of equitable conversion is an application of the maxim that equity regards as done that which ought to be done. *Lockner v. VanVebber*, 5 N.E.2d 460, 461 (Ill. 1936). In order to work a conversion while property remains unchanged in form, there must be a clear and imperative direction to convert it, although an express declaration is not required. *Id.*

The Tax Court (at the urging of the county) erroneously relied upon *Tollefson Development Inc. v. McCarthy*, 668 N.W.2d 701 (Minn. App. 2003) when it ruled, an executed binding contract is required to establish equitable title for taxation purposes. *Tollefson* does not apply. *Tollefson* is a partition case and the ruling is limited to partition actions under *Minn. Stat.* §558.01 and is not applicable for taxation purposes under *Minn. Stat.* 272.03 subd. 38.

1. The church acquired equitable title on or before April 10, 2008.

⁴ Personalty is personal property as distinguished from real property. *Black's Law Dictionary*, 1164 (Bryan A. Garner ed., 7th ed., West 1999.)

A vendee who pays part of the purchase price under an executory contract for the sale of land acquires equitable title. *In re S.R.A., Inc.* 219 Minn. 493, 507, 18 N.W.2d 442, 450 (Minn. 1945), *aff'd sub nom., S.R.A., Inc. v. State of Minnesota*, 327 U.S. 558 (1946).⁵

The church paid the \$10,000 earnest money to the seller on April 10, 2008 (A-12) and the earnest money in turn was credited as part of the purchase price. (A-25) On that basis alone the church is entitled to an equitable interest in the form of an equitable title to the property.

This court's position in *Petition of S.R.A., Inc.* negates any claims of the Respondent that the church did not acquire equitable title until the purchase agreement was signed, or until the closing date, or until the deed was transferred. The court was very specific when it ruled that a mere *partial payment of the purchase price* is enough to establish equitable title. This holding is not unique to Minnesota.

It is likewise the federal rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with bare legal title remaining in the vendor for security. In *Lenman v. Jones*, 222 U.S. 51, 32 S.Ct. 18, 20, L.Ed. 89, 92 (1911).

It is the well settled doctrine of our court of equity that, under a contract for the sale of lands, the purchaser becomes the equitable

⁵ Also see *First & American Nat. Bank v. Whiteside*, 207 Minn. 537, 292 N.W. 770 (Minn. 1940) and *Village of Hibbing v. Commissioner of Taxation*, 217 Minn. 528, 14 N.W.2d 923 (Minn. 1944).

owner of the lands, and the seller the equitable owner of the purchase money. *Williston on Contracts* §50:42 (4th Ed.).

At the time of the payment of the \$10,000 earnest money on April 10, 2008, the rights and liabilities of the parties were established. When the church provided the earnest money, the real estate transaction had progressed to a point where the seller had a right to recover the purchase price and was obligated to deliver the property upon the Church's performance. The seller had no right to rescind the contract if the Church met its obligation.

It was on the date of the payment of the earnest money that the Church had a right to the property and could demand specific performance. On April 10th, the Church was obligated to pay the purchase price upon the seller's performance.

Also on April 10th, the buyer's and seller's rights shifted. The seller's right to the property and the church's right to the \$10,000 consideration changed. On April 10, the seller now had a right to that \$10,000 and the church had a right to the property. Neither party had a right to reverse the transaction unilaterally. The church acquired equitable title on or before April 10, 2008.

2. Equitable Title of the Purchaser Determines Ownership for Taxation Purposes

Minnesota case law establishes that the equitable title that is acquired in an executory contract such as a purchase agreement, is what will determine when a property's exemption status changes. "While an executory contract for a sale or conveyance of land conveys in law no legal title, in equity the purchaser is

regarded, for purposes of taxation as well as for other, as the owner, subject to liability for the unpaid price, and the vendor as holding legal title in trust for him.” *Village of Hibbing v. Commissioner of Taxation*, 217 Minn. 528, 533 14 N.W.2d 923, 927 (Minn. 1944). Emphasis added.

The court went on to hold, “It is not necessary that the vendee under an executory contract for the sale of land be given possession to constitute him the equitable owner thereof.” *Id.*

In addition to the payment of partial purchase price the parties to the transaction manifested an unwavering intent to contract.

Even though the law does not require that the possession be given to establish equitable title, the church in this case was given possession of the property on or about April 21, 2008. **(A-2)** This is the date the church obtained the key to the property from the seller. From that day on, the church pastors, staff, volunteers and workers were on the premise on almost a daily basis. The church not only gained equitable title when it paid the earnest money required in the Purchase Agreement, it gained possession and control of the property long before the July 1, 2008 date. Every act that was done by the buyer was for the benefit of the buyer.

There is no authority that requires improvement or alteration to building structures as a threshold requirement for contract formation.

II. THE TAX COURT’S CONTRACT FORMATION ANALYSIS IS NOT IN CONFORMITY WITH MINNESOTA LAW.

Contract formation is not required by Minn. Stat. §272.02 subd. 38(b). Despite this, the tax court performed an extensive analysis of whether a contract was formed by the seller and buyer prior to July 1, 2008. Whether a contract exists is generally an issue for the fact finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). Unless of course when the writing can wholly determine the parties' intention, the construction of the instrument is a question of law. *Wolfsen v. City of St. Paul*, 535 N.W.2d 384, 386 (Minn. App. 1995).

A. A binding contract was created when the earnest money was accepted.

Minnesota follows the objective theory of contract formation, under which the parties' outward manifestations are determinative, rather than either party's subjective intent. *Riley Bros. Construction, Inc., v Shuck*, 704 N.W.2d 197, 202 (Minn. App. 2005). Thus a party's intention to make an offer, or to accept an offer made to him, may be inferred from his words and conduct. *Id.* An acceptance has been defined as "a manifestation of assent when evaluated under an objective standard." *Rosenberg v. Townsend, Rosenberg & Young*, 376 N.W.2d 434, 437(Minn. App. 1985). Even silence can serve to be an acceptance where there is a duty to otherwise deny. *Id.* An offeree may accept an offer for a contract which leaves the offeror reasonably to assume he assents and accepts the terms of the offer. *Schwandt Sanitation of Paynesville v. City of Paynesville*, 423 N.W.2d 59, 67 (Minn. App. 1988).

It is the Relator's position that a bilateral contract was formed on April 10, 2008. The seller placed the property on the market and asked for a \$10,000 payment as part of the purchase price. When the church made that payment, the payment not only served as the acceptance but also was the consideration. At the very least, a unilateral contract was formed by payment of part of the purchase price. The payment was part performance of the contract.

B. Part-performance of the contract was accomplished when the check was given to the seller.

A check has the same effect as cash. The Tax Court ruling reads without a holding:

Respondent argues that the giving of the check does not constitute part performance because it was made payable to and held by a third party and not cashed until August, just prior to the signing of the Purchase Agreement. 2010 WL 1558557 at 9.

The question of "when" the debt is paid if a check has been given but not brought in for payment until a later date has already been determined by this court. Under Minnesota law, a "debt is considered to have been paid when the check was given." *Gorblirsch v. Heikes*, 547 N.W.2d 89, 93 (Minn. App. 1996) citing *Wayzata Enters., Inc. v. Herman*, 128 N.W.2d 156, 158 (1964). The check itself is the conditional payment. The underlying debt remains until such time as the check is paid. But "upon payment of the check, the debt is considered to have been paid when the check is given." *Id.* In other words, when the pastor handed the check to the seller, the debt was paid at that time even if the check

was not presented for payment until a later date. Once the check was handed to the seller, the church had an equitable interest in the property. This ruling is consistent with UCC statutes regarding instruments on obligations.

Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. *Minn. Stat. 336.3-310(a)*. (in pertinent part).

Accordingly, the check presented by the pastor on April 10, 2008 was the same as if \$10,000 cash had been handed to the seller and at the moment the seller accepted the payment, the church had an equitable interest in the property.

Possession

Village of Hibbing v. Commissioner of Taxation, 217 Minn. 528, 533 14 N.W.2d 923, 927 (Minn. 1944) specifically prohibits requiring possession as a threshold requirement for transfer of equitable title. Possession has not been nor should be used as a criterion in deciding "when" a property is "acquired." The concept of possession or rights to possession is not a particularly helpful indicator of ownership interest transfer. Often neither party to a particular sale actually use the property, for example when a property is vacant, leased, or dormant. A buyer may acquire certain rights with respect to the property prior to obtaining outright possession, such as the right to enter and inspect the property, the right to begin structural changes, or to control the property with the seller. In real estate matters, the economic exposure sometimes referred to as "equitable title" shifts fairly early in the staging of the transaction. The more complicated the

transaction the more difficult it becomes to determine possession or ownership. For these reasons, possession should not be a deciding factor in the determination of when a party "acquired" property.

Improvements

The church paid the City of Burnsville \$5000 on March 3, 2008 and another \$5000 on April 10, 2008. The purpose of this \$10,000 in payments was to pay for the process needed to change the zoning of the property so the property could be used for a church. Zoning is an improvement to the property. See *Hedberg & Sons v. County of Hennepin*, 232 N.W.2d 743, 750 (Minn. 1975). Zoning has long been held to be an improvement to property. A change in zoning is often used for determination of the market value of real property for tax purposes. *Id.* Everything the church was required to do in order to establish the zoning was completed prior to July 1, 2008. Any delay beyond that date was due to the government's own actions. The government would be equitably estopped from denying tax exemption because the final consent for the zoning change was granted after July 1, 2008.

The Tax Court refused to reach the issue of whether the giving of the earnest money takes the oral agreement out of the statute of frauds. Despite this the ruling, the court required a signed document before finding a binding contract. A signature simply authenticates the writing. *Brown v. State Automobile Insurance, Ass'n of Des Moines, Iowa*, 12 N.W.2d 712, 715 (1944).

A. A party to a contract may waive a condition precedent which exists for that party's own benefit.

In its contract formation analysis, the Tax Court relied upon *Starlite Limited Partnership v. Landry's Restaurants, Inc.*, 780 N.W.2d 396 (Minn. App. 2010) to arrive at a holding that the Seller did not have a right to waive the time deadlines stated in the Purchase Agreement. *Starlite* does not apply here. Neither of the parties with privity of contract is contesting the contract formation and contract formation analysis by the tax court is inappropriate and irrelevant to the deciding of this matter.

In *Starlite*, the party seeking to enforce the contract attempted to waive a condition that resulted in a legal consequence for the other party to the contract. One party cannot choose to waive a term of the contract when that waiver results in a consequence for the non-consenting party. Waiver only works when the waiving party is the party which suffers a legal consequence. That is not what happened in the present case. In this case, there was a bilateral waiver of a condition of the contract – specifically a time deadlines stated in the Purchase Agreement. The seller did not create a consequence for the buyer by waiving performance of that condition and the buyer's waiver of the performance of that condition did not create a consequence for the seller.

The Tax Court held:

No writings have been produce that waive the terms of the agreement. Thus Petitioner's attempt to deny some of the terms of the Purchase Agreement saying that they do not apply,

demonstrates that there was no clear agreement. ... Petitioner argues that the inconsistent dates should be ignored or were waived by the Seller. We disagree.

Contrary to the tax court's holding, no writings are required for a party to waive the terms of an agreement. Parties may waive contract provisions by ignoring them and acting as if they had no application. *Edelstein v. Duluth M & I.R. Ry. Co.*, 31 N.W.2d 465, 467 (Minn. 1948). Minnesota law provides that waiver is "the 'intentional relinquishment of a known right.'" *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 366 (Minn. 2009) *citations omitted*. It is the expression of an intention not to insist on what the law affords. *Id.* Waiver generally is a question of fact, and it is rarely to be inferred as a matter of law. *Id.* Waiver "is essentially unilateral and results as a legal consequence from some act or conduct of the party against whom it operates, without any act of the party in whose favor it is made being necessary to complete it." *Id.* Knowledge and intent are essential elements of waiver. *Id.* But the requisite knowledge may be actual or constructive and the intent to waive may be inferred from conduct. *Id.* When a party acts in a way that is inconsistent with the terms of a contract, a fact finder can reasonably conclude that a party waived those contractual provisions. *Id.*

It is well settled that one party to a contract may waive a condition precedent which exists for that party's own benefit. *Dolder v. Griffin*, 323 N.W.2d 773, 778 (Minn. 1982). Ignoring a provision of a contract will constitute waiver... and waiver may be found where a party continues to exercise rights under a

contract even though [that party] knows a condition has not occurred or cannot be performed. *Id.* Parties to a written executed and delivered contract with the express condition that it shall not become binding or go into operative effect until a future date or until a specific happening of a future event may waive such condition by subsequent acts of performance in recognition of and reliance upon the written terms of such instrument, and thereby bring the contract into immediate effect as written. *Confer v. Winters*, 27 N.W.2d 247, 248 (Minn. 1947).

Similarly, where the course of conduct of a party entitled to the performance of certain terms or conditions of a contract has led the other party to believe that such performance will not be required until it has become too late to perform, the person who has so conducted himself is barred from asserting the right. *Steinhilber v. Prairie Pine Mutual Insurance Company*, 553 N.W.2d 92, 93 (Minn. App. 1995) *citing* *Wolff v. McCrossan*, 210 N.W.2d 41, 44 (Minn. 1973). *Also see* *Malmquist v. Peterson*, 183 N.W. 138 (1921). In this case, both the buyer and seller demonstrated an ongoing desire to complete the contract. The only terms of the contract that were waived were the time deadlines. And these were bilaterally waived out of necessity created by the complicating factors related to the church processes and the seller's §1031 exchange.

III. THE TAX COURT'S CONTRACT FORMATION ANALYSIS VIOLATED THE CONTACTING PARTIES' FREEDOM OF CONTRACT

A. Standard of Review/ Burden of Proof

The legislature possesses all the power not withheld or forbidden by the State or Federal Constitutions. *George Benz Sons, Inc. v. Ericson*, 34 N.W.2d 725 (1948). To warrant the judiciary's declaring an act invalid, it must be able to point out some constitutional limitation which the act clearly transcends. *State v. Corbett*, 59 N.W. 317 (1894). Every legislative act comes to the courts with a presumption in favor of its constitutionality. *Federal Distillers, Inc. v. State*, 229 N.W.2d 144,154 (Minn. 1975). The burden of proof is on the challenging party to show beyond a reasonable doubt that the act violates some particular constitutional provision. *Id.* Courts must exercise with restraint their power to strike down legislation. *Id.*

As a constitutional principle, it is well established that the freedom to contract with respect to one's property and in the conduct of a lawful business to select the party with whom one chooses to do so is a part of the liberty protected by the due process clauses of the State and Federal Constitution. *Id.* at 157.

The right to contract freely, without unreasonable restraint by government, is one of the fundamental liberties of the individual which is protected by the Fourteenth Amendment to the Constitution. *U.S. v. Seven Oaks Dairy Co. et al.*, 10 F. Supp. 995, 1002 *citing in-part Fairmont Creamery Co. v. State of Minnesota*, 274 U.S. 1, 47 S.Ct. 506, 71 L.Ed.893, 52 A.L.R. 163. A paramount principle of public policy is that the courts are not lightly to interfere with freedom of contract. *Micca v. Wisconsin Nat. Life Ins. Co.*, 75 F.2d 710, 712 (1935). Indeed, freedom to contract is an important principle that is nurtured by the

courts. *In re Caldwell Port Elevator*, 23 B.R. 154 (Bkrtcy W.D. La. 1982). A basic principle of contract law is the concept of freedom of contract- the right of the contracting parties to structure their transactions in accordance with their wishes. *Hodge v. Evans Financial Corp.* 707 F.2d 1566, 1568, 228 U.S. App. D.C. 161, 163(1983). A basic assumption is the premise that vendors have a right to deal with their property as they wish and that freedom to contract is a liberty which may not be circumscribed except for compelling reasons. *Twin City Candy and Tobacco Company, Inc. v. A Weisman Company et al.*, 149 N.W.2d 698, 701 (Minn. 1967).

The nature of real estate transactions are fluid. In this case, the seller chose to sell the property on a §1031 exchange involving other property owned by a third-party. The buyer was not an individual but a church. Church decision-making procedures for major purchases of this order are inherently cumbersome and prolonged. In addition to the traditional impediments to purchases, church real estate purchases involve search committees, board decisions, open houses, and congregational votes. Each transaction will have its own set of unique facts describing the complexities of the transaction. Without uniform facts and uniform criteria, it is impossible to determine with any useable consistency when a property is “owned” by the buyer or the seller. The legislature chose to use the term “acquire” with the understanding that an equitable interest in the property would trip the taxation toggle switch toward the buyer. The transfer of equitable interest occurs fairly early in the transaction process.

It is a violation of the parties freedom of contract for the court to tell a party there was no contract formed, when the parties, in their every word and deed, demonstrated a mutual assent to the formation and completion of a contract.

IV. MN STAT. §272.02 subd. 38, VIOLATES THE MINNESOTA CONSTITUTION

Under the Constitution, churches are a different classification than that of governmental entities when it comes to the exemption from taxation. The legislature erred in 1990 when it provided that tax obligation in light of a change in status be handled the same for governmental entities as it would for churches.

Standard of Review for Constitutional Questions

The Relator is well aware of the lofty threshold that must be overcome to have a statute declared unconstitutional. A statute will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision. *Miller Brewing Company v. State*, 284 N.W.2d 353, 356 (Minn. 1979). Every presumption is invoked in favor of the constitutionality of a statute. *Id.* The power of the Supreme Court to declare a statute unconstitutional is to be exercised only when absolutely necessary and with extreme caution. *Id.* The Court should not declare a legislative act unconstitutional except when satisfied, after most careful consideration, that it conflicts with some provision of the state or Federal Constitution. *Reed v. Bjornson et al.*, 253 N.W. 102, 104 (1934).

The power of taxation is inherent in sovereignty and reposes with the Legislature with only such limitations as are fixed by State and Federal Constitutions. *Cherokee State Bank of St. Paul v. Wallace*, 279 N.W. 410, 415 (1938). The state constitutional provisions relating to power of taxation are not a grant of power but only a limitation thereon. *Id.*

The power to classify for tax purposes is primarily with the Legislature, and its laws should not be declared invalid unless it clearly appears that they transgress the Constitution. *Id.* The provision of the State Constitution that taxes shall be uniform on the same class of subjects and the equal protection clause of the Federal Constitution prohibit only arbitrary classification and allow reasonable classification for tax purposes. *Id.*

The test to determine the constitutionality of statutory classifications includes three primary elements: (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs particular to the class and the prescribed remedy; (3) the purpose of the statute must be one that the state can legitimately attempt to achieve. *Miller Brewing Company v. State*, 284 N.W.2d at 356.

The Minnesota Constitution grants tax exemption for all churches, church property and houses of worship.

The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value \$200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. *Minnesota Const. Art. 10, § 1.*

The Constitution goes further to add heightened protection against the legislature making laws defining or limiting that exemption for churches and houses of worship.

The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning. *Minnesota Const. Art. 10, § 1.* (Emphasis added).

Despite the constitution's prohibition preventing the legislature from making, defining, or limiting the property exemptions for churches and houses of worship, the Crossroads Church was required to pay \$103, 836.58, for property taxes for the year 2008 pay 2009.

When the law was written, the framework for the statute was taken from the statute that governed governmental entities. Governmental entities however, are a different classification under the constitution for tax purposes.

Under the language of the Minnesota Constitution, the entities are not similarly situated. There are no heightened protections for public burying grounds, public school houses, public hospitals, institutions of purely public charity, and public property used exclusively for any public purpose. But there is a heightened protection for churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning within the Article 10 Section 1 of the Minnesota Constitution.

Accordingly, any statute, that requires a church to pay property taxes violates the Minnesota Constitution and must be struck down.

V. MINNESOTA STATUTE § 278.03 subd. 1(3) VIOLATES THE ESTABLISHMENT CLAUSE

No law shall be made respecting establishment of religion, U.S. Constitution Amendment 1, and no preference may be given by law to any religion or form of worship, *Minn. Const.* art. I sect. 16. The First Amendment applies to both legislative and judicial power. *Odenthal v. Minnesota Conference of Seventh Day Adventist*, 649 N.W.2d 426, 435 (Minn. 2002).

In order to be valid under the establishment clause, a government regulation must have a secular purpose, must neither inhibit nor advance religion

in its primary effect, and must not foster excessive governmental entanglement with religion. *Hill- Murray Federation of Teachers, v. Hill- Murray High School, Maplewood, Minnesota*. 487 N.W. 2d 857, 864 (Minn. 1992). *citing Lemmon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111-12, 29 L.Ed.2d 745 (1971). This is not a rigid “test” but rather a flexible analytical framework which emphasizes the objectives of the establishment clause. *Hill-Murray Federation of Teachers, v. Hill Murray High School, Maplewood, Minnesota* 471 N.W.2d 372, 378 (Minn. App.1991) *citation omitted*. When assessing a claim to religious freedom under the first amendment, the state has the burden of showing its regulatory scheme will not lead to excessive government entanglement with religion. *Id.*

It is undisputed the statute has a secular legislative purpose, and does not inhibit or advance religion as its primary effect. The only issue is whether the statutory requirement that the churches prove “hardship” in order to be eligible for waiver of payment of disputed property taxes fosters an excessive government entanglement with religion.

Entanglement is a question of kind and degree. *Id.* In assessing entanglement claims, the court must consider (1) the character of the institution affected, (2) the type of burden placed upon the institution, and (3) the resulting church-state relationship. *Id.*

Because of constitutional protections, churches are allowed significant protections against governmental entanglement. Under the entanglement

doctrine, a state may not inquire into or review the internal decision-making or governance of a religious institution. *Odenthal* 649 N.W.2d at 435. The First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the hierarchy of the church but must accept such decisions as binding on them, in the application to the religious issues of doctrine or polity before them. *Id.* There is no entanglement problem, however, when the dispute can be resolved according to “neutral principles of law” – that is, by rules or standards that have been developed and are applied without particular regard to religious institutions or doctrines. *Id.*

The church was required to make a showing of hardship. In this case, it was a financial hardship that needed to be established. The church submitted sworn affidavit testimony from the senior pastor that paying the taxes would create a financial hardship for the church. **(A-50)** That failed to meet the threshold proof for the Tax Court. In order to make that showing, the church was required to prove financial hardship which could only be done by opening up the church records for perusal by opposing counsel and the court. The documents would have been required to be submitted as exhibits. The government would have access to and evidentiary records of the church’s internal decision-making. There are no set criteria in which to guide the court. The information would have been presented to the judge who would apply his/her own personal criteria. Without set decision-making criteria the criteria would vary from judge to judge. There are no “neutral principles of law” in which to govern the decision. A judge

would look at a church's financial expenditures and reserves and make a determination that there was money available to pay the property tax even if it meant staff layoffs, loss of missionary support, or non-payment of other commitments related to the priorities set by the church. There is no way for a judge to look at the financial documents from the church and not impose their personal or the government's second-guessing priorities to the church's records.

Accordingly, any requirement beyond sworn affidavit testimony of a church official to establish hardship would constitute excessive government entanglement with the administration of the church.

C. Equal Protection Analysis

Requiring churches to establish the hardship factor with a sworn affidavit testimony of a church official passes an Equal Protection Clause analysis. Class legislation is forbidden by the state constitution as well as by the 14th Amendment of the federal constitution.⁶ *State v. Pehrson*, 287 N.W.313, 315 (Minn. 1939). The problem arises when a law selects particular individuals from a class and imposes on them special burdens from which others of the same class are exempt. *Id.* To operate uniformly, a law must bring within its influence all who are in the same condition and treat them alike. *Id.* Legislative enactments which discriminate against some and favor others are prohibited unless they affect alike all persons similarly situated and classification is not arbitrary. *Id.* If a

⁶ Minnesota Constitution art. 1 § 2 (general equal protection) and art. X §1 (uniformity clause). And Art. XIV § 1 of the Federal Constitution which states, "No state shall... deny to any person within its jurisdiction the equal protections of the law."

classification is made on a reasonable basis and is applicable without discrimination to all similarly situated, it is valid. *Id.* The fact that a statute discriminates in favor of a certain class does not make it arbitrary if the discrimination is founded upon a reasonable distinction or if any reasonable state of facts can be conceived to sustain it. *Id.* If the selection is neither capricious nor arbitrary and rests upon some reasonable consideration of difference or policy, there is no denial of equal protection of the law. *Id.* at 316. The rights of all persons must rest upon the same rule under similar circumstances and classification must be based in some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily without such basis. *Id.*

The heightened protection against taxation for churches is grounded in the Minnesota Constitution. Article 10 Section 1 of the Minnesota Constitution which offers heightened protection from taxation to churches.

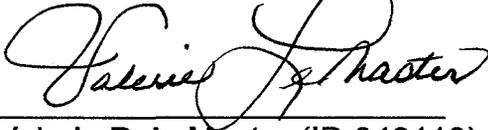
CONCLUSION

The Appellants respectfully request that the Minnesota Supreme Court reverse the judgment of the Tax Court that was entered in favor of the respondents' Summary Judgment Motion in regard to property taxes for 2008 pay year 2009. It is requested that this Court hold that the church acquired an equitable interest in the property prior to July 1, 2008 which entitled the property tax exempt status for that period. In the alternative, the Relator asks this court to

find that MN Stat. §272. 02, subd. 38(b) is unconstitutional as written. The Court is also asked to find that the statute that requires churches to provide proof beyond sworn affidavit testimony from church officials in order to establish financial hardship is unconstitutional.

Respectfully submitted,

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