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_Ecclesia Semper Reformanda Est_: Radical Reformation and the IRS

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Ecclesia Semper Reformanda Est:
Radical Reformation and the IRS

Mason Powell

"What is a 'church' for purposes of the statute must be interpreted in
the light of the common understanding of the word."
—De La Salle Institute v. United States

“My good Erasmus, God’s church is not so common a
thing as the term ‘God’s church’ . . . .”
—Martin Luther, The Bondage of the Will

INTRODUCTION

Here’s the church/here’s the steeple/open the doors/and see all the people/here
is the parson going upstairs/and here he is saying his prayers. This simple
children’s rhyme has been taught in churches and Sunday schools around
the world for many years to impress upon toddlers a basic understanding of
the church. It comes complete with hand motions that illustrate the verses:
fingers pointed upwards for a steeple, folded hands for prayer, wiggling
fingers that represent “all the people” (everyone’s favorite part, of course).
Yet for its simplicity, the toddler’s rhyme attempts to address complex
questions that have troubled many grownups for a very long time.4

Here’s the church. What makes something a “church”? Perhaps a church is
a steeple and doors—a building. After all, it certainly seems that the droves
of “ordinary” churches and religious groups with which we are familiar
tend to reside within a distinctive physical structure of some sort. When
we see the ornately ornamented buttresses of a cathedral or the towering
minarets of a mosque, we instantly know to identify them as housing a
given religious denomination. But there must be more to a church than
steeples and doors. Surely there must be people, but how many? What type
of people must these people be, and what sort of things must these people

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Baptist Theological Seminary.


4 See, e.g., Charles M. Whelan, “Church” in the Internal Revenue Code: The Definitional
do? Should they pray and worship, and exactly whose place is it to decide what passes for prayer and worship anyway? What should they believe in, and just how strongly should they believe in it? Most everyone would claim to be guided by some sort of moral code or compass, but simply having an opinion on an abstract ethical matter does not seem to quite fill the frame of a "religious belief." Thus it seems that differentiating between a group of conscientious people and a church might at times be a more difficult task than one would like to think.

And what about this "parson" fellow in the rhyme? Intuitively it seems like a church should be led by someone, and that the person should be responsible in some way for disseminating the tenants of a given religion. But who must this person be? Should he act on his own accord, or should he belong to an established order that reports to an ecumenical council or association of some sort? If a group of people with legitimate religious convictions chooses not to elect a traditional religious "minister," does this really mean that they are not qualified to be a church? Deciding whether a church leader is "qualified" can be a very difficult and sensitive task. As one court has previously recognized, "one person's prophet is another's pariah."

For most people it is not necessary to answer any of the preceding questions, nor to invent a satisfying algorithm for deciding what a "church" is, because a church is instinctive; we know one when we see it. If while driving down the street you see a large stone building with a steeple and a sign claiming that the building belongs to such-and-such denomination, you probably have little reason to investigate further. This intuitive approach was historically favored by courts adjudicating matters that involved churches. Other attempts at defining the church have produced tautologies rather than guidance. In more recent history, however, unique factual scenarios have forced courts to revise their standard approach to adjudicating ecclesiastical groups. The test endorsed by the IRS is...
particular interest (or, perhaps more accurately, troubling), articulating a fourteenth-part test for establishing a church. It is unclear whether each prong of the test is important but it seems evident that a rigid interpretation would be so restrictive that only existing traditional church formats could rightfully be called churches.

While the IRS test seems too restrictive, the "associational test" preferred by some courts seems so open-ended that almost any group of people with similar viewpoints could be a deemed a "church." The tests currently available would therefore seem to range from unwieldy to inadequate. Moreover, having confusing tests puts existing churches in a precarious position. If the test applied by courts is burdensome or unpredictable, then churches may be forced to become increasingly "lawyerly" simply to pass muster. Given that churches and religious groups enjoy a substantial degree of deference from the government, it would hardly seem consonant that the courts should supply them with a burden that forces them to increase their level of legal sophistication when there are less restrictive means to accomplish the same end. Can courts apply any of these current tests to a "church" group that chooses to form as an urban coffee shop or an internet forum and come to a fair and correct conclusion that does not overly burden churches?

There are in fact many organizations that exist on the line between "church" and "non-church," but the question of whether any particular organization should be classified as a church probably does not greatly disrupt our daily lives. However, from a legal standpoint being able to accurately identify what is and is not a church can have serious consequences. After all, churches are extended privileges (and burdens, to a lesser extent) that are not necessarily extended to other sorts of organizations, such as an exemption from paying taxes, deductible member donations, and exemption from adherence to many employment statutes, such as the

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11 See discussion infra Part II.B. The elements of the test were not introduced through any formal legislation, but rather through a speech by IRS Commissioner Jerome Kurtz in 1978. In the absence of statutory guidance or case law, the fourteenth-part test has been given a sort of "judicial imprimatur." See Found. of Human Understanding, 88 T.C. at 1357-58

12 See Found. of Human Understanding, 88 T.C. at 1368-69 (Simpson, J., dissenting).

13 While the government may require fairly advanced legal sophistication from other businesses, churches are generally insulated from such a burden (and often for good reason). See, e.g., Jones v. Wolf, 443 U.S. 595, 610-11 (1979) (Powell, J., dissenting) (contemplating a method of adjudging church disputes that would essentially require churches to become experts in property and trust law).

14 See, e.g., Synod of the Chesapeake, Inc. v. City of Newark, 254 A.2d 611, 612-13 (Del. Ch. 1969).


Americans with Disabilities Act.\textsuperscript{18} For better or worse, churches are simply treated differently than other types of associations. On the other hand, if there is no reason to distinguish a church from any other business entity at a legal level then there is no reason to grapple with defining it. There are certainly some who would prefer such an approach generally, but that is neither the reality of our system nor the focus of this paper. In reality, courts and administrative agencies must have some reliable method for deciding what exactly a “church” is.

In short, I intend to propose a new test for deciding whether an organization is a church. Since there is little beneficial statutory basis for deciding what a church is,\textsuperscript{19} I have decided to propose another path which courts likely would not be able to consider on their own. Although courts will always be limited in their ability to investigate theology and religion,\textsuperscript{20} it seems very reasonable that the theological doctrine of the church established by churches would be a proper source to consider when creating a legal definition of church. Thus I will explore an irreducible ecclesiological minimum and demonstrate how it is possible to synthesize a new legal formula for churches that can be relied upon by both courts and religious organizations and be applied to a broad reach of religious organizations without favoring a given tradition.

The test I propose for defining “church” consists of four elements: leadership, common beliefs, spiritual activity, and community. The test in general should be construed narrowly (if one of the elements is missing, there is no church), but the elements themselves should be construed fairly broadly (which will give courts some leeway to examine the unique facts and circumstances at hand without being rigidly formulaic). I find that the elements of this test can be administered by the courts without fear of violating First Amendment jurisprudence while also being accessible to churches that have no legal sophistication.

Section I discusses the importance of churches and the inherent semantical difficulties of creating a satisfactory definition to adequately define “church.” Section II will examine the irreducible ecclesiological minimums utilized by both the government and churches themselves. Section III will present my own irreducible ecclesiological minimum, a streamlined version of existing “law”\textsuperscript{21} that I propose is both legally and theologically satisfactory. Finally, Section IV of this note provides conclusory remarks and reiterates the need for, and difficulties inherent in, creating a legal definition for the church.

\textsuperscript{18} See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC., 132 S. Ct. 694 (2012).
\textsuperscript{19} See Fond. of Human Understanding v. Comm'r, 88 T.C. 1341, 1356 (1987).
\textsuperscript{20} See id. at 1357.
\textsuperscript{21} I find current law defining churches to be quasi-authoritative at best. See discussion infra Part I.B.
I. WORDS MADE INCARNATE: THE SEMANTICAL DIFFICULTY OF DEFINING "CHURCH"

A. Why define "church"?

Churches are important. While it is completely reasonable to question government tax subsidy of purely religious groups (such questioning is healthy, as there is little other effective regulation for churches and religious nonprofits), it is also reasonable to conclude that churches offer services to the community that relieve a burden from the government and the taxpayer. If churches do in fact remove a government burden (even if only incidentally or unintentionally), then it is sensible to recognize their contribution, even if we should occasionally wonder at their motives or practices.

Churches can often penetrate segments of society that other organizations (including the government) may not be able to. While churches may not have the resources to provide comprehensive healthcare or welfare to a poor community, they may have the ability to provide important services such as meals, childcare, school supplies, and even medical and financial aid to communities without a proverbial "act of Congress." And since churches are not constrained by financial motives and duties to stockholders (theoretically, anyways), they may target their efforts at poorer social strata without much pressure to do otherwise.

Churches play an important role in society, even from a purely humanistic perspective, and it is not unreasonable to hope that the government would have a set of rules that distinguish and define churches.

However, it is one thing for theologians and scholars to define "church" and another indeed for the government to define it. Theologians may define or redefine "church" with an eye towards reformation or codification of beliefs. Theological reform, however, probably is not the goal of courts

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23 First, [religious] organizations [like churches] are exempted because they, among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community. Walz, 397 U.S. at 687.

24 Southern Baptist Disaster Relief workers, for example, were already manning twenty Hurricane Katrina relief posts in the Gulf region by August 31, 2005—the day before FEMA delivered supplies to survivors in the Superdome (who had been without food or water for days). Tim Yarbrough, Response to Katrina Largest Ever for Southern Baptists, BAPTIST PRESS (Aug. 31, 2005), http://www.bpnews.net/bpnews.asp?id=21495.

25 The mantra that "heresy precedes orthodoxy" suggests that orthodoxy (a definition of "proper" church practice) comes only after improper church practice has been observed. The
and legislatures when defining "church." Just as "religion" may connote a variety of meanings according to various legal purposes, the contextual approaches to defining "church" would seem to be various and sundry. There seem to be two primary theatres of the law that command most of the caseload on this topic, with several secondary and tertiary legal spheres orbiting not too far away. The primary litigation forms that demand a workable definition of the church are tax and zoning, which of course will often overlap. As far as zoning is concerned, it is fairly common for religious groups to begin meeting in a member's home in violation of local ordinances. In a recent highly publicized case, for example, the courts rejected a Phoenix man's claim that the local government was using fire codes and zoning ordinances to discriminate against his small "friends and family" home bible study.

While some may find it especially taboo to restrict acts of worship in a person's home, it also seems unreasonable to subject a suburban subdivision to loud music, an influx of traffic, or a public bathhouse. Zoning laws affect churches in ways that are decidedly local and context-sensitive and are often greatly affected by local values, policy, and even bias.

The tax consequences of being a church are more obvious and are of more national concern. There are tens of thousands of churches in the most pressing theological concern when stating what church is is often the perceived threat of what church is not.


27 For example, the legal definition of church (including the fourteen IRS factors considered at length in this article) has been debated in the context of ERISA. See Goetz v. Greater Ga. Life Ins. Co., 554 F. Supp. 2d 831, 836 (E.D. Tenn. 2008).


29 See Salman v. City of Phoenix, No. CV 11-0646-PHX-FJM, 2011 WL 3459080, at *1 (D. Ariz. Aug. 5, 2011). In Salman, a man requested a building permit for a structure on his lawn. When the zoning committee asked if he was building a church, Salman insisted that he was not. Based on his representations he received a permit and completed the structure. He promptly installed a pulpit, seating, and erected a sign outside that said "Christian Worship, Sunday 10:00 AM, Wednesday 7:00 PM." Each service at the "non-church" was attended by 40-50 people. When neighbors complained, Salman was charged with 67 building and zoning code violations. He argued that this was only a small "family and friends" home bible study, not a church, and thus the government had no right to intervene. The court disagreed and found that Salman had in fact built a church that was subject to zoning laws.

30 See Sexton v. Bates, 85 A.2d 833, 836 (N.J. Super. Ct. Law Div. 1951). In Sexton, a bathhouse for ritual cleansing for Jewish females was determined not to be a church despite the fact that the ritual was necessary under church tradition. The petitioners were not aided by the fact that the bathhouse, rather than containing the simple cleansing vessels mandated by tradition, contained beveled mirrors, colored tiles, and "modern beauty parlors" and charged a nominal fee for entrance.

31 See Islamic Ctr. of Miss., Inc. v. City of Starkville, 840 F.2d 293, 294-95 (5th Cir. 1988) (holding that denying a zoning variance to an Islamic center violated the Constitution when every permit that had been requested by Christian churches had been granted).
United States that claim exemption from federal income tax as nonprofit organizations. Thus there would seem to be, at least from the viewpoint of the IRS, a very present need to define precisely what a church is. However, as will be discussed in this paper, no definition exists in the tax code. Instead, the IRS uncharacteristically allows churches to claim tax exemptions via a process that is most succinctly described as an "honor system."

A formulation of "church" may appear (at least tangentially) in other legal contexts as well. It seems intuitive that such a primal expression of religion as the church would command a great deal of First Amendment litigation, but in practice First Amendment law focuses more on the struggle to aptly define "religion," not "church." The distinction is subtle (though important and demonstrable) and in any case is largely outside the ambit of this paper. The issue of defining the church is also approached obliquely on the rare occasion when a court must settle an internal church dispute.

Although this is not strictly a paper about tax exemptions for nonprofit entities, the uncertain (or rather absent) definition of "church" in the tax scheme is the major backdrop of my discussion below. Having a workable definition of "church" will provide religious groups with a degree of confidence to their own tax liability and will allow courts and the IRS to apply a uniform standard to any church or "almost-church" over which they preside.

B. Semantics: Churches, Religions, and Houses of Worship

For many, mere recitation of the word "church" in a legal context instantly offends political correctness. Certainly to strict adherents of the various faiths it would be inappropriate to label a temple, mosque, or synagogue as a "church." There are a few other terms used to describe the

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33 The absence of a definition for a concept of such significance as "church" from the bound volumes of 26 U.S.C. (which does take the time to define "Machineguns" and "Indoor Tanning Services") is fairly conspicuous. See I.R.C. § 5000B(b)(1) (2006); 26 I.R.C. § 5845(b) (2006).

34 The IRS does not require registration of a church for tax-exempt purposes for fear of violating first amendment jurisprudence. See I.R.C. § 508(a) (2006). However, churches that wish for the contributions of their donors to be exempt generally must file.

35 See, e.g., United States v. Seeger, 380 U.S. 163, 188 (1965) (holding, in a seminal case on the constitutional definition of religion, that even an unclear and non-systematic belief in a deity may qualify as a religion).

36 See, e.g., Watson v. Jones, 80 U.S. (13 Wall.), 679, 681 (1871) (holding that courts should defer in religious matters to the ruling of the highest ecclesiastical body of a church in the case of internal strife).
same concept that err on the side of political correctness, such as "house of worship,"37 "religious organization,"38 or simply "religion," though it could be rightly argued that none of these are completely adequate to grasp what we are talking about. There is certainly some interchangeability between the terms "church," "religion," and "house of worship," but on a diagnostic level there are significant differences between the three.

"Religion" and "religious organization" would seem to be the most open-ended of the group. Historically the definition of "religion" in the courts required relating to and obeying a Creator,39 or "belief in a relation to God involving duties superior to those arising from any human relation."40 Today, however, it seems that to be regarded as religious one only needs to have convictions on a matter that affects "ultimate questions concerning the human condition,"41 provided that the belief be comprehensive rather than a singular teaching and have some sort of external manifestation.42 Defining religion is something of a nebulous abstract, whereas defining what constitutes a "church" has serious pragmatic consequences—while a disagreement about the definition of religion may stir debate between competing theories of the First Amendment, a disagreement about the definition of the church may impact noise pollution in your neighborhood.43 As the standard for being "religious" is permissive, abstract, and generally only used in conjunction with an individual, it is not a sufficient term to describe the church.

It can be difficult at times to distinguish churches from religious organizations but there is some guidance as to the difference: "It is generally accepted that Congress intended a more restricted definition for a 'church' than for a 'religious organization,' but probably because of first amendment considerations it has provided virtually no guidance on this distinction."44 Churches would seem to basically be a subset of religious organizations. Thus the "square and rectangle" distinction exists; a church is a type of religious organization but a religious organization is not necessarily a type of church.


38 For tax purposes at least, churches are considered a subset of religious organizations. That is to say, a church is a religious organization but not all religious organizations are churches.

42 Id.
44 Spiritual Outreach Soc’y v. Comm’r, 927 F.2d 335, 338 (8th Cir. 1991) (quoting Church of the Visible Intelligence That Governs the Universe v. United States, 4 Cl. Ct. 55 (1983)).
A "house of worship" is likely the most comparable analogue to the general understanding of a "church" and does away with the obviously Christian overtones of the word "church." Still, implicit in its name is that there must be present a "house" and "worship." This implication may or may not be correct for certain legal scenarios, but it would likely be less than palatable to religious leaders that insist that a building is not required for church.

Because of the heavy influence on our own political system by the early American and European churches, the modern concept of "church" is bound up in a context that is perhaps not entirely fitting. I do freely admit, however, that it is not always appropriate to force the square peg of "church" into the round hole of American religion. While acknowledging the religious (specifically Christian) undertones that the word implies, I still choose to generally frame this article in terms of the "church" rather than "religious organization" or "house of worship." For one thing, "church" is the word used most predominately in court cases and statutes, and it is also the language used in the relevant IRS authority. That being said, I occasionally will interchange the other terms for the sake of avoiding repetition. In the event that I do so, I mean to use the words as lowest common denominator synonyms, although as I stated above I believe that the words do have their own discrete meanings, nuances, and implications. While I find it illogical to attempt to mute a concept as markedly theological as the church with theologically neutral terminology, I do acknowledge the "fine print" that is attached to the word "church," and thus I proceed with an element of caution as I attempt to explicate a uniform vision of "church."

II. AN IRREDUCIBLE ECCLESIOLOGICAL MINIMUM

A. A Theological Irreducible Ecclesiological Minimum

When asked to define "church," most people begin with the concept of a building where people meet to perform some religious activity. Generally speaking, "church" is understood to be a place. This is not necessarily incorrect for legal purposes but yet it must be more. How much more is, of course, the real question.

For a long time the general jurisprudence regarding the composition of a "church" was simply this: a church is what we commonly understand it to be. This definition is inadequate and has given rise to more complex tests for establishing a church. For those who have not spent much time

45 In the case of a zoning matter, for example, it would seem especially appropriate that there be some sort of structure subject to the zoning.
48 See Found. of Human Understanding v. United States, 88 Fed. Cl. 203, 218 (2009),
attempting to synthesize a definition of the American church, however, it is important to begin by explaining why simplistic judicial appraisals of the church are ineffective. Consider the following:

Imagine two artists given the assignment to paint a picture of a building. After several hours of painting, the artists complete their tasks and reveal to us their masterpieces. Artist A painted a building in the form of a skyscraper. Artist B also completed the task accurately, but he painted a building in the form of a school. . . . Their mental images of a building greatly influenced their final works of art.49

A “common understanding” approach to defining a church is flawed from both a legal and theological viewpoint because even reasonable and like-minded people may have very different understandings of what makes up a “church.” The problem is even more apparent when weighed against the vast amount of unique religions in the United States.50 Courts today realize this but have been given little legislative instruction in the matter and thus struggle with choosing a consistent standard that adequately encompasses the concept of “church.”51 For this reason, I believe it is necessary to introduce the irreducible ecclesiological minimum, a tool which will aid us in locating the factors necessary for a church to exist.

An irreducible minimum is a logical and mathematical tool often utilized by courts and lawyers in many contexts,52 whether they consciously call it by that name or not. An irreducible minimum, logically enough, contemplates the event horizon at which a concept cannot be further divided without sacrificing its essence. Taking away from the irreducible minimum causes a concept to degrade either into nothingness or into its constituent parts.53 Ecclesia (ἐκκλησία in Greek) is a word that may have a broad range of theological meanings (from a simple assembly to a more complex universal church)54 but at its essence simply means “church.”55 Thus it should be evident that the goal of identifying an irreducible ecclesiological minimum

49 PAYNE, supra note 46, at 35.
53 If standing, for example, is reduced beyond its irreducible minimum it is no longer standing, though it may still be cognizable as the three separate elements of injury—in-fact, causality, and likely redressability. See Lujan, 504 U.S. at 560–61.
54 See PAYNE, supra note 46, at 41.
55 See id.
is to decide, at minimum, what elements must be present for a church to exist. If these elements are absent, there is no church.

The actual nomenclature of the Irreducible Ecclesiological Minimum comes from the writings of Dr. J.D. Payne of The Southern Baptist Theological Seminary. For Payne, finding the irreducible ecclesiological minimum is finding the "basic essence" of what makes a church.56 The concept is most often used by ministers to determine the most fitting way to plant a new church so that it is culturally appropriate.57 Put another way, religious organizations identify an irreducible ecclesiological minimum in order to mold churches to be sensitive to the respective community without sacrificing any of what it takes to be a "church." The "trappings" of a traditional protestant church might not be appropriate in the context of an ethnic refugee neighborhood, for example.58

The task of determining what constitutes a church from a legal and religious standpoint is clouded by the understanding that we are not necessarily talking about the same thing.

In this definition we do not say that the visible church is the church as any person in the world (such as an unbeliever or someone who held heretical teachings) might see it, but we mean to speak of the church as it is perceived by those who are genuine believers and have an understanding of the difference between believers and unbelievers.59

A "believer" of a given religion may find the discussion of a legal definition of church to have no impact on their ecclesiology, or perhaps "miss the mark" entirely. I intend some biblical wordplay here; "miss the mark," originally an archery term, is the definition of the Greek word ματαιότης, or ματαιός, which in Septuagint scripture is translated as "sin."60 It is possible that a believer of a particular religion would find a legal definition of "church" to be closer to heretical than probative.61 The definition of "church" certainly can change depending on your viewpoint; from a religious standpoint, for example, the church can have a broader meaning, encompassing both the local church and the universal body of believers, or the "catholic" church (note the small "c").62 As our court system likely is not terribly interested by the abstract concept of a

56 Id. at 32.
58 Id. at 122.
60 Many theologians also claim that the Hebrew word פור has the same connotation, although this is debated linguistically. See 1 David Daube, The Deed and the Doer in the Bible: David Daube’s Gifford Lectures 42–44 (Calum Carmichael ed., 2008).
61 Id.
62 Payne, supra note 46, at 41–42.
universal brotherhood of adherents of any faith, I am restricting my focus to the actual auspices of the local church.

Before investigating much religious authority on the elements of the church, it is probably important to point out views that are not very useful for our purposes. One protestant church model, for example, explains that individual churches must be “self-governing” and “self-supporting,” which would seem to be more of a reaction against episcopal church models that have top-heavy leadership formats. Under this view, established churches such as the Roman Catholic Church would likely not be considered a church, nor would any others that employ non-local leadership. Distinguishing between established religious sects is not the domain of this article, so those sorts of church models will be ignored for our purposes.

Many religious works on the constitution of the church also seem not to distinguish greatly between the elements necessary to be a religious adherent in the church and the elements necessary for the existence of the church itself. This observation will be valuable to us when we consider later in this article the ultimate conclusion that a community of adherents is the most basic unit of the church. Even though much of the information gleaned from explicitly religious sources on the constitution of the church may be outside the bounds of this article, there is still some value that can be distilled from them for the purpose of establishing a legal church, and we should not allow knee-jerk reactions about the separation of church and state to deprive us of resources to deal with an explicitly religious legal issue.

While reasonable minds may differ over what constitutes a church, I believe that my proposed irreducible minimum addresses the shortfalls of current law while satisfying the theological concerns of the religious groups most likely to interact with this body of law. I propose that churches are, at their essence, composed of four common criteria: leadership, common beliefs, spiritual activities, and community. I will give greater attention to this proposal below, but suffice it to say that I believe these four elements are common to all churches, satisfy existing law, and adequately distinguish between a church and other types of religious organizations.

As discussed above, the IRS has a considerable stake in the definition of a church since there are a great number of churches who avoid paying income tax. While the IRS does not have an explicitly codified standard for defining “church,” courts have interpreted other materials as a constructive irreducible minimum and attributed it to the IRS. We will begin by examining this manifestation of the irreducible ecclesiological minimum.

63 See id. at 21.
64 Id.
65 See, e.g., GRUDEM, supra note 59, at 853.
66 See discussion infra Part III.B.4.
B. The Irreducible Ecclesiological Minimum of the IRS

It should be noted again at the outset that these criteria are not a section of the Internal Revenue Code, nor did they originally appear in a published court opinion. Rather, these criteria were presented in a speech by former IRS commissioner Jerome Kurtz, although several courts have given these rules a sort of "judicial imprimatur."\(^6\) Despite the fact that comments made in a speech seem like a poor source for creating law, at least one court has gone so far as to consider the fourteen criteria as more authoritative than actual treasury regulations when considering a church for a tax exemption.\(^6\) It is fascinating (and probably disconcerting) that comments made at a conference can carry the weight of law when they have not been created by any legislative body, agency, or court; this reality further underscores the present and actual need to create a uniform irreducible ecclesiological minimum. According to Mr. Kurtz's speech, a church must satisfy the following criteria to be eligible for tax exemption:

1) a distinct legal existence;
2) a recognized creed and form of worship;
3) a definite and distinct ecclesiastical government;
4) a formal code of doctrine and discipline;
5) a distinct religious history;
6) a membership not associated with any other church or denomination;
7) an organization of ordained ministers;
8) ordained ministers selected after completing prescribed studies;
9) a literature of its own;
10) established places of worship;
11) regular congregations;
12) regular religious services;
13) Sunday schools for religious instruction of the young; and
14) schools for the preparation of its ministers.\(^6\)

C. Shortcomings of the Fourteen-Part Test


\(^6\) See Spiritual Outreach Soc'y v. Comm'r, 927 F.2d 335, 338 (8th Cir. 1991); Lutheran Social Serv. of Minn. v. United States, 758 F.2d 1283, 1286-87 (8th Cir. 1985).

The real danger of this test is not that it will be taken literally but that courts will acknowledge that they cannot constitutionally require each element and thus fashion strange, arbitrary mutations of the test, as discussed in this section. Some of the elements of the IRS test, for example, seem on their face to preclude the recognition of new church forms. A distinct history, for example, may be hard to establish for almost any religious group, as most churches come into being by splintering away from another tradition or sect. And if a church is truly new and unique without any history based in a different denomination or faith, then it would seem to be unable to exist as a church under this rule until it had already existed for whatever time period equates with “history.” This would seem to be either logically impossible (that is, there can be no church history if an organization is not a church) or some sort of arbitrary and undefined probationary period that would require a religious group to exist for some amount of time before it can be considered a church.

Conceivable arguments can be made against almost all of the fourteen factors. Primitive Baptists do not recognize “schools for the preparation of its ministers” and thus do not have ministers that are “selected after completing prescribed studies.” Should they therefore not be afforded a tax exemption since they fail two factors of this “test”? The list of religious groups that do not observe “Sunday school” would be so extensive as not to be practical to reproduce here. The bias implied by a “Sunday school” requirement is manifest; Jews, Muslims, Seventh Day Adventists, and so on, would all lose tax exempt status if this requirement were strictly enforced. If the requirement is distilled to simply mean “a method for educating children in the faith,” then it is conceivable that it would preclude a hypothetical religious group that believes that the religious education of children is strictly the providence of the family unit, or at least does not provide for organized education in the church. The requirement of systematically educating children in the tenants of a faith would also seem to fail to distinguish a church from a religious school, which is arguably one of the purposes of defining “church” in the first place.

70 All of the diaspora of Baptist denominations in America, for example, are all splinter groups from a common origin. See American Baptists, A Brief History, AMERICAN BAPTIST CHURCHES USA, http://www.abc-usa.org/LinkClick.aspx?fileticket=cgvZuPqWwV%3D&tabid=80 (last visited March 26, 2012).


72 Such varied groups as the Amish, Hindus, and various protestant groups all place a strong impetus on training children in the faith at home, although not necessarily to the exclusion of the church.

73 See Heard v. City of Dall., 456 S.W.2d 440, 444 (Tex. Civ. App. 1970). In Heard, an institution was held not to be a church even though it was led by the vicar of the affiliated church and primarily taught religious instruction.
It seems especially troublesome that one of the factors of “central importance” is “regular religious services.” The regularity of church services can be ascertained by both the frequency of gatherings and by the observance of traditional days of worship. In Foundation for Human Understanding, the religious group did not meet the threshold for regular religious services because their meetings were too infrequent and sporadic. Similarly, the court in Spiritual Outreach held that bi-monthly meetings (held on Saturdays to avoid conflict with their members’ other church responsibilities on Sundays) and times of prayers, meditation, gospel music, and spiritual study were not “regular” within the meaning of the IRS test. If there is no evidence of fraud or deception against the IRS, it is difficult to see what possible legal theory mandates frequent and regular meetings of churches. The Foundation court speculated that churches that do not meet regularly are not fulfilling an associational or communal requirement. Even if some sort of communal activity is a requisite of a church (I contend later that it is), it is difficult to see how the communal “quality” of the meetings influences whether the services were sufficiently frequent and regular.

While most traditional religions do have a designated day of the week to meet, surely there cannot be any demonstrable reason for why a church’s meeting date is important to the IRS and thus the court system. The implicit lesson of Sherbert v. Verner would seem to be that the courts will recognize a church regardless of its preferred date of worship. If the true meaning of this requirement is that the members of a church must in fact meet in the most general sense of the word, it seems like it is only a duplicative provision to ensure that there has been no sham tax filing by a single person. The requirement does not address whether internet or

74 Spiritual Outreach Soc’y v. Comm’r, 927 F.2d 335, 339 (8th Cir. 1991) (citations omitted).
75 Id. at 338.
76 See Found. of Human Understanding v. United States, 88 Fed. Cl. 203, 231 (2009), aff’d, 614 F.3d 1383 (Fed. Cir. 2010).
77 Id. (holding that the unpredictable nature of the weddings, seminars, and meetings conducted by the Foundation were not sufficient to constitute a “regular” church service).
78 Spiritual Outreach Soc’y, 927 F.2d at 337. It was perhaps significant that the Spiritual Outreach Society met primarily in an outdoor amphitheater, and thus did not frequently convene in winter months.
79 See Found. of Human Understanding, 88 Fed. Cl. at 231–32.
80 See infra Part III.D.
81 The court in Foundation held that any seminars, radio broadcasts, or meetings were not regular (that is, frequent and planned) because they were not communal. See Found. of Human Understanding, 88 Fed.Cl at 231–33.
82 See Sherbert v. Verner, 374 U.S. 398, 403–06 (1963). In this case, the Court extended benefits to a Seventh Day Adventist who had been fired from her job for refusing to work on Saturdays.
radio communication or other "unorthodox" interaction is sufficient as a regular service. In any event, it is difficult to draw a direct nexus from tax exemption to regular meeting times.

Since reading the fourteen criteria strictly or literally would disqualify many established religious groups from being considered tax-exempt "churches" (and for that matter would seem to impose unconstitutional burdens on religious groups to operate in a certain way – such as meet on a Sunday or establish a seminary – with no countervailing government interest at stake), it is reasonable to assume that at least some of the criteria must be taken figuratively if they are to be taken at all.\textsuperscript{83} It is unclear, however, how to distribute the authoritative weight of the criteria. Courts have considered this dilemma as well and, rather than rejecting the entire premise and finding a firmer foundation on which to build the definition of "church," have found cause to give preeminence to several of the elements at (apparent) expense to the others:

While some of these are relatively minor, others, e. g. [sic] the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance. The means by which an avowedly religious purpose is accomplished separates a "church" from other forms of religious enterprise. At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role.\textsuperscript{84}

Although the court made the effort to attempt to distinguish which of the fourteen elements were most important, there does not seem to be any clear reason why they place emphasis on the elements they chose. It may well be that "established congregation" is vital to the existence of the church but it is difficult to see from a hermeneutical standpoint why this is more essential to a church than the "recognized creed" or "ordained ministers" requirements. Kurtz's criteria do not seem to be arranged in any particular hierarchical order, and there does not appear to be any other evidence suggesting why one criterion is more important than another. Assigning more intrinsic merit to a given factor (and then using this factor as controlling common law) seems particularly arbitrary where the body of factors itself may be construed as arbitrary.

\textsuperscript{83} It is unclear exactly how to apply conventions of statutory interpretation to subject matter that is certainly not a statute. It is to assume, for example, that a statutory requirement for seminary training would probably not survive a constitutional test. Many of the prongs would be hard pressed to pass constitutional muster.

The arbitrariness of the factors becomes even more confused when the role of administrative deference is considered. In *Spiritual Outreach* the Eighth Circuit minimized the IRS test as nothing more than a guide, while simultaneously stating that they were required to give considerable deference to the factors since they are agency interpretations. The court proceeded to stress the handful of factors it “deemed to be of central importance” while dismissing the rest. Creating a golem out of the spare parts of the IRS test hardly seems like a sound way to create good law; it certainly does not sound like deference to an agency. In short, it would be more logically satisfying for courts to adopt all fourteen parts of the test as stated (which I believe would likely be unconstitutional) or to completely reject them; a middle ground is troublesome.

To their credit, the IRS seems to stipulate that their test probably should not be taken as gospel. The IRS goes so far as claiming that, rather than creating a new standard, they were simply providing a guide for the “common understanding” standard of *De La Salle.* This claim seems especially dubious given that courts uniformly reject (or, more accurately, “decline[] to adopt”) *De La Salle* in favor of the IRS test. Given that courts have found the constitutionality of *De La Salle* “is not without doubt” and have not made similar claims about the fourteen-part test, the IRS test seems rather to be its own beast, irrespective of the intention of the Service.

If the purpose of the cited language from *American Guidance Foundation* was to differentiate between churches and other religious entities (such as religious schools, for example), then it is also difficult to see how the “important” church factors do in fact differentiate a church from a church school. Does requiring a church to ensure the “dissemination of a doctrinal code” and “religious education for the young” actually help to differentiate a church from a religious school? Are these not the prime directives of most religious schools anyway? Is it also not true that most religious schools have some form of regular religious service? In short, I propose that the factors courts have highlighted as distinguishing a church from other religious institutions are perhaps often among those that least distinguish them.

85 *Spiritual Outreach Soc’y v. Comm’t,* 927 F.2d 335, 339 n.4 (8th Cir. 1991).
86 *Id.* at 339.
88 *Id.* at 2.
89 *See* Found. of Human Understanding v. United States, 88 Fed. Cl. 203, 218 (2009), *aff’d,* 614 F.3d 1383 (Fed. Cir. 2010).
90 *See* *Spiritual Outreach Soc’y,* 927 F.2d at 339.
92 *Id.*
III. A NEW IRREDUCIBLE ECCLESIOLOGICAL MINIMUM

If the fourteen factors endorsed by the IRS and adopted by the courts are an inaccurate method to identify and define churches, then what standard should be applied? I suggest that a much shorter test can be developed to identify churches that will not overtly restrict the development of churches and will not require churches to decipher a scattershot fourteen part test to determine their exemption eligibility. The test I propose has four criteria that I believe adequately encompass the essence of "church." I pose my four criteria within the matrix of an irreducible ecclesiological minimum, which is to say that if any of the four are not met then I would not consider a "church" to exist.93

I frame my arguments in a theological context (I cannot find an intellectually satisfactory method of defining "church" otherwise), with complete acceptance of the fact that much of the theology would not be accessible to the courts. To wit, I attempt to synchronize any theological references with the existing fourteen IRS criteria in order to demonstrate that my proposed "church" test is not only theologica!ly satisfying but also is a valid interpretation of existing law under the IRS standard.

As mentioned above, I propose that the four criteria that must be present for the valid existence of a church are leadership, common beliefs, spiritual activity, and community.94

A. Leadership

Most religious groups, be they "major" or "minor" in population, acknowledge some form of hierarchical leadership. Some of these leadership structures are infamously complicated.95 While certain religious groups have their churches organized regionally into wards or synods (Presbyterians and Lutherans, respectively), other groups emphasize the independence of local churches (Southern Baptists, for example). Even churches with decentralized leadership structures have some form of leadership, even if that leadership is manifested in the form of a spiritual person in charge of disseminating the teachings of the faith.96

93 While failing a prong of my test may prohibit an organization from being a church, it does not necessarily follow that it will be prohibited from being a tax-exempt entity. This realization does not nullify the purpose of the test; the distinction between the exemption of charitable donations (rather than just income tax exemption) often makes status as a church preferable to status as another non-profit organization.
94 See discussion supra in INTRODUCTION.
95 See, e.g., Tony & Susan Alamo Found. v. Comm't, 63 T.C.M. (CCH) 2422 (1992).
96 See infra footnotes 97–98.
A Rabbi usually leads a Modern Jewish church. The Rabbi developed from the ancient Hebrew Levitical Priesthood. In the Jewish tradition the Rabbi is held to be a deeply spiritual man as well as a teacher. Muslim Imams are also considered to be profoundly spiritual teachers of Islamic faith. Even eastern religions, which are arguably more decentralized than monotheistic religions, recognize Brahmin and Sadhu that serve as teachers and monks in religious culture.

Although we have discussed the decidedly Christian roots of the word "church," it may be surprising to know that Jesus actually makes very few direct references to the concept. In fact, he uses the word χριστὸς in only two passages of the Greek New Testament. In the first instance, Jesus addresses his disciple Peter: "I also say to you that you are Peter, and upon this rock I will build My church; and the gates of Hades will not overpower it." Despite the sparse treatment he gives to the church, the passages do give insight into what Jesus may have considered important elements of the church. This passage is of course the source of much debate. Roman Catholics use the verse as authority to establish the papacy through Peter, while Protestants often interpret the passage to mean that the church will be built upon the confession that Peter had made. Both views are historically valid and relevant for this discussion. Regardless of whether the verse authorizes the line of papal succession, Peter became a key leader of the early church, and the confession of faith made by believers remains a defining characteristic of the church.

Suffice it to say, it is difficult to imagine a religious group (and thus a "church") that has no form of leadership (even if the leadership is minimal, ineffective, corrupt, or otherwise "non-traditional"). Even a church that vests its power in the members of the congregation must make decisions (although from personal experience, often inefficiently), lest they never accomplish anything. This requirement would serve to minimize very loose federations of religious people or perhaps various "cultish" anarcho-

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97 Ancient Hebrew Priests were generally required to be from the tribe of Levi. Aaron, for example, was a Levite.


99 Armstrong notes that the synagogue tradition was greatly influenced by an influx of Greek culture. Rather than simply a place for worship, the synagogue became a forum for sharing ideas. Crowds would come from miles around to hear notable speakers. See ARMSTRONG, supra note 98, at 66.

100 See ARMSTRONG, supra note 98, at 162.

101 Matthew 16:18 (New American Study Bible) (emphasis added).

102 Id.

103 Id.

104 "You are the Christ, the Son of the Living God." Matthew 16:16 (New American Study Bible).

105 See GRUDEM, supra note 59, at 853.

106 Id.
communes from claiming benefits as a church. The leadership does not necessarily need to employ a certain pretense or title, but someone in a church must make decisions on how to proceed. The current IRS definition of church leadership is inadequate because it goes beyond a requirement of religious leadership and emphasizes a formal course of education. How could the IRS require a seminary education of a Hindu who believes that his status as a religious leader is the product of centuries of reincarnation?

B. Common Beliefs

It would be too vague to simply say that a church requires “beliefs” without giving some content to what those beliefs may be. Must the beliefs be systematic, addressing spiritual matters of prime importance as well as those that are relatively minor? Must the beliefs come from somewhere in particular, such as a holy book or a prophet? The current state of the law requires that a legitimate religious belief answer “ultimate questions having to do with deep and imponderable matters.” The belief also needs to be comprehensive and not limited to a belief about a single topic. The nature of these beliefs should be given a great degree of deference, as courts should generally avoid deep investigation into the merits of a particular religious belief. The need for agreement on comprehensive beliefs should not be read so broadly as to preclude “non-denominational” churches. If a group of believers from various denominational backgrounds share enough important beliefs, they should not be precluded from establishing a church because of tangential or tertiary matters.

A common belief would seem to imply that at least some fundamental truth is acknowledged by all of the adherents of a given faith. “Common beliefs” would seem to subsume the IRS requirements for a recognized creed and a formal code of discipline without the baggage that might be associated with either of those terms. An associational test, though perhaps not specifically listed among the IRS criteria, can perhaps be constructively assumed from the requirement for a code of discipline. Although this element does not seem so vital in the IRS construction, could it really be a vital belief of a church? Association seemed to be at play for the court in American Guidance when deciphering the fourteen IRS criteria. Churches need to have a mechanism to dissociate themselves with people that do

107 See discussion supra Part II.B.
109 See id.
110 See Jones v. Wolf, 443 U.S. 595, 595-96 (1979). The statements of religious ecclesiastical bodies are generally deferred to.
111 See discussion supra Part II.B.
112 See discussion supra Part II.B.
not share their beliefs, or else they are perhaps not a legally functioning "church" under the First Amendment. This associational requirement has some theological background as well. "If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector." This legal freedom of association is also expressed as an entry filter; a church must be allowed to decide who it admits. This element of ecclesiastical association seems to have been upheld recently by the Supreme Court. While discipline has not been widely contested in the IRS context, it nonetheless seems to be an important common belief of the church that a court is competent to understand.

C. Spiritual Activities

For Martin Luther, the marks of the church were twofold: teaching the gospel, and administering the sacraments. Calvin similarly defined the church as preaching the word of God and administering sacraments. Teaching the gospel would seem to fall within our current framework that a church must espouse a certain creed, but administering a sacrament is distinct from a simple teaching of the church. In the simplest terms possible, sacraments are physical practices of the church that yield a spiritual benefit. Especially in the ancient and medieval churches, these sacraments took on an almost mystical or magical importance. The actual language of "sacrament" is probably not palatable for usage in the courts, but it should be appropriate to distill the concept down to its basic tenant: a physical action with a spiritual significance. While all churches may argue about the types, significance, and hierarchy of sacraments, it would

116 See Hosanna–Tabor, 132 S. Ct. at 698 (holding that the ministerial exception bars an employment discrimination suit brought on behalf of a minister challenging the church's decision to fire her).
118 JOHN CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION 4.1.9, 1023 (Henry Beveridge, trans., 1536).
119 MERRIAM–WEBSTER DICTIONARY (2012), available at http://www.merriam-webster.com/dictionary/sacrament (defining sacrament as "a Christian rite (as baptism or the Eucharist) that is believed to have been ordained by Christ and that is held to be a means of divine grace or to be a sign or symbol of a spiritual reality").
120 JUSTO GONZALEZ, THE STORY OF CHRISTIANITY 153–54 (1984) (discussing the theology of the Donatists. The Donatists maintained that any salvific significance of a sacrament was based on the worthiness of the priest, rather than the believer. Therefore, it was not uncommon for unsuspecting parishioners to find that their salvation had been revoked because their priest was found guilty of some ecclesiastical offense).
appear that all churches have in common some form of spiritual activities. Since spiritual activity would seem to be common (primary, even) to our conception of church, it is appropriate to include spiritual activity as an irreducible element of the church.

This spiritual activity test could be satisfied by such outward manifestations of faith as prayer, worship, proselytizing, or some other related activity. In theory, these outward manifestations of faith are the reason that churches have tax exemptions in the first place. The overarching reasoning behind subsidizing churches, as already mentioned, assumes that the government is relieved of some burden by the existence of churches. Whether the government receives a benefit in a given case by the specific spiritual practice of a church is, however, not determinative of whether a church exists. Churches are not required to prove that each of their actions benefits the government; churches do not have to "sing for their supper."

It is true that none of the activities I have listed as spiritual activities can be divorced from the creedal element I have already suggested. This would perhaps suggest that the natural limitation of spiritual activity is that the activity must stem from the religious beliefs of the church. The Eighth Circuit has recognized this same limitation under the current IRS Test, although I find their reasoning to be somewhat circular:

When we view the activities of [the group LLS] in light of the regulation and criteria set forth above, we believe that the district court was correct in concluding LSS is not a church. LSS's primary activities consist of providing social services to the public at large irrespective of their religious beliefs. Not only are the services available to persons of any religious belief, but LSS's counselors are not required to counsel with any particular religious orientation. Such services are secular in nature when performed by secular organizations, and cannot be transformed into "ministrations of sacerdotal functions" merely because they are performed by a religiously affiliated social service organization like LSS.

121 See Walz v. Tax Comm'n, 397 U.S. 664, 676 (1970) (noting that "few concepts are more deeply embedded in the fabric of our national life... than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference").
122 See id.
123 See I.R.C. § 501(c)(3) (1986). In order to qualify for tax-exempt status, the religious organization's activities must not result in profits that inure to the benefit of the individual or substantially intervene in political affairs.
124 See Branch Ministries v. Rosotti, 40 F.Supp.2d 15, 19 (1999) (noting that churches may but do not have to file for § 501(c)(3) status in order to be recognized as a tax exempt entity).
125 Lutheran Soc. Serv. of Minn. v. United States, 758 F.2d 1283, 1287 (8th Cir. 1985).
I believe the Eight Circuit's rationale is that the performance of a "secular" activity is not enough in the absence of other factors to push a "religious organization" across the threshold to become a "church," but the conclusion borders on tautology—because LSS was not a church, they were not able to perform the "sacerdotal functions" that would enable them to be a church. This also raises some suspicion about other iterations of the elements of a "church" that seem to imply that the default rule is that an organization is a "church" until it is proved not to be. This logic suggests that organizations default to "religious organizations" and must prove that they are churches. Assuming the logical coherence of the reasoning, it would still seem that the court is ill-equipped to investigate whether an activity is secular or "sacerdotal." In any event, great deference should be given to a religious organization or church in the execution of spiritual activities under the existing IRS test. I believe that the spiritual activity prong would be easier to satisfy under my test—if there is a rational relationship between a stated religious belief of the church and the alleged religious activity, then the activity should probably pass the "spiritual activity" test unless there are other serious factors present (such as fraud or deceit) that would lead a court to doubt the validity or sincerity of the activities themselves.

C. Community

The final element of my irreducible ecclesiological minimum is reflected in the writing of many modern theologians. A church must, of course, be populated by people. Grudem writes that community of God's people at any level—local, regional, universal—may rightly be called a church. Payne builds on this concept, providing that the community of believers in a church should have some bond of commitment to each other and exist as a local "expression" of the church at large. This community should aim to be helpful to all people, but especially the other members of the community. Many religious groups instinctively acknowledge the community implied by "church." The element of "community" reinforces the intuitive IRS requirement that a church have a congregation, while admittedly doing away with the

126 See, e.g., I.R.C. § 7611(b)(1)(a) (2006) (stating essentially that a church is an organization claiming to be a church).
127 See Grudem, supra note 59, at 853.
128 See Payne, supra note 46, at 46.
129 Id.
130 Id.
131 Id. Mosques, for example, often function as community centers in many nations around the world.
132 See discussion supra Part II.B
requirement that the congregation be "regular." The IRS implies that this may even be the most important of all the "prongs" of their test.\textsuperscript{133} Even if there were some definition of "regular" congregation versus an "irregular" congregation, it is still unclear what ill the requirement of a "regular" congregation is intended to cure. Can a church truly not exist if a different group of people show up next week than showed up this week? Could a church near an army base lose its tax exemption because the soldiers and families that normally attend get deployed to another base while a different unit takes their place? It is difficult to see that any threat exists in having different congregants from week to week. Perhaps the requirement of a "regular congregation" is merely observational; most established churches do indeed have a "usual crowd."

Using "community" as an irreducible minimum of the church also mitigates some of the assumptions that a church is merely a building, as opposed to a group of believers. It is not uncommon for church communities to meet variously in homes, school, public parks, and so on, especially given the often insurmountable economic barriers to owning a traditional "house of worship." Should a church lose its tax exemption because it chooses to meet in a school gymnasium? Such a measure would seem to punish a religious nonprofit organization for making a business decision not to invest in property, a business decision which is in no way an attempt to contravene tax law or abuse public policy.

While I realize that I have not given much weight to any of the fourteen IRS criteria, I do accept the stipulation of "a membership not associated with any other church or denomination" as being a valid subset of the community requirement because it successfully closes off several loopholes that may otherwise exist. This stipulation would prevent religious nonprofit groups such as travelling evangelistic "crusades" or summer camps from being considered a church. However, "forbidding" a person with sincere religious beliefs from holding multiple church memberships could be an unconstitutional restraint on the exercise of religion.

Although I do not find that the actual four walls of a building should be a determinative factor in finding a church, I do acknowledge that for many religious groups a building can have great (even transcendent) importance, such as Solomon’s Temple.\textsuperscript{134} Islam also gives special importance to

\textsuperscript{132} See discussion supra Part II.B.

\textsuperscript{133} Robert Louthian & Thomas Miller, supra note 87.

\textsuperscript{134} The historical development of the temple in Jerusalem, for example, is voluminous and fascinating. After the Exodus from Egypt, Moses and Aaron stored the Ark of the Covenant in the Tabernacle, an elaborate tent that the Hebrews took with them as they sojourned through the wilderness. The Tabernacle, rather than being a place of assembly as we might think of "church" today, was a temporary "home" for the divine presence of God. The Hebrew name for the Tabernacle (nings) mischkan), roughly translated to "dwelling place" of the presence of God. Some worship functions were conducted at the Tabernacle, such as priestly sacrifices for the sins of the Hebrew nation. The next "phase" in the development of the
physical structures, yet acknowledges that there is an ultimate disconnect between their faith and the building in which they practice it.\textsuperscript{135} It is also fairly obvious that my minimum for defining “church” will necessarily involve a dispute over a physical property if it is applied to zoning cases.\textsuperscript{136} Nevertheless, it is theologically demonstrable, and legally relevant, that a church can exist without owning a traditional church building if there is a community of believers that fulfill the other requisites of being a church.

CONCLUSION

While the current body of law regarding the constitution of the church is incomplete, it also manages to be too formalistic and complex. Court decisions have inexplicably elevated the fourteen-part IRS test to the level of the law, despite the criticism the test has received. This awkward test, which was likely never meant to be law at all, leaves both courts and churches uncertain of what the law is. Courts are forced to make decisions about theological issues that they are not equipped to deal with, and churches are forced to make sophisticated legal distinctions that they are not well equipped to make. The four-part test that I have suggested combines the workable parts of the IRS test with the standards already understood by the religious community to represent the foundational elements of any “church.” My irreducible ecclesiological minimum captures the essence of the church without the unpredictability of the IRS test.

In addition to being unpredictable and difficult to apply, the current tests for defining a church stymie the propagation of churches. If new and creative types of churches are not allowed to come into existence, then the public and government will both lose a valuable public service that Congress has already seen fit to subsidize with tax exemptions. While it is possible that new church forms may occasionally be abused to create tax shelters and alter egos, this can occur with any business format. The purpose of this article is not to suggest that there should be less regulation.

\textsuperscript{135} "The earth has been made for me (and for my followers) a place for praying . . . therefore anyone of my followers can pray wherever the time of a prayer is due." \textit{Sahih Al-Bukhari}, Vol. I, Book 7, No. 331. The modern concept of a mosque descends from masjid, or a place of prayer. While the mosque is the preferred place to pray, Muslims are not bound by the walls and minarets of the facility.

\textsuperscript{136} See Sexton v. Bates, 85 A.2d 833, 836 (N.J. Super. Ct. Law Div. 1951). Clearly if there is no ritual-spa claiming to be a church, then there is nothing to litigate.
over such an occurrence, and indeed the courts should always have the capacity to decide when an organization exists for fraudulent purposes. The standards I suggest merely present a simple and flexible way to codify the definition of "church" so that both courts and religious organizations will be able to effectively interface with churches without the burden of deciphering perplexing law.