

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION  
FOUNDATION, INC.,

*Plaintiff,*

v.

DOUGLAS SHULMAN, Commissioner  
of the Internal Revenue Service,

*Defendant.*

Case No. 12-CV-0818

**DECLARATION OF FATHER PATRICK W. MALONE, OSB**

1. My name is Father Patrick W. Malone. I am over the age of 21 and am capable of making this unsworn declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts contained herein are either within my personal knowledge or are based on upon teachings of my church with which I am familiar and which I believe to be true and correct.

2. I am the vicar of Holy Cross Anglican Church (“Holy Cross Anglican Church” or “Church”) in Milwaukee, Wisconsin. In that role, I am responsible for the preaching and teaching delivered at the Church. I am also a member of the Order of Saint Benedict. Since 2012, I have served as Abbot of the Anglican Communion Benedictines, a Benedictine community devoted to prayer. And I serve as Archdeacon of Religious Orders, Societies, and Communities for the Convocation of Anglicans in North America (“CANA”) East and CANA West. I have over 25 years of pastoral and ministry experience.

3. Holy Cross Anglican Church is a member of The Anglican Church of North America and under the diocese of CANA East, the CANA diocese that covers the eastern half of the United States. There are 55 active members of the church who regularly attend Sunday worship services.

4. The Internal Revenue Service has issued a determination letter recognizing Holy Cross Anglican Church's I.R.C. § 501(c)(3) status.

5. As the vicar of Holy Cross Anglican Church, Anglican teaching requires me to preach to the congregation about what it means to be a follower of Jesus Christ and properly respond to the love that God gave us through Jesus' sacrifice.

6. This requires me to preach the full counsel of Holy Scripture on all relevant issues and areas that I believe God leads me to address. *See* Article XIX, 39 Articles of Religion (September 12, 1801), *available at* [http://anglicansonline.org/basics/thirty-nine\\_articles.html](http://anglicansonline.org/basics/thirty-nine_articles.html) (noting that the church must be a place "in which the pure Word of God is preached").

7. This includes teaching the congregation of their responsibility to "uphold and advocate justice in society" and to "seek relief and empowerment of the poor and needy." *See* CANA East Statement of Belief (citing the Jerusalem Declaration, June 2008); *available at* <http://canaeast.com/#/welcome/we-believe>; *see also* CANA East Vision & Mission: Transform Injustice ("Empowered by the Holy Spirit, we draw attention to the persecution of Christians around the world, stand up for those who are enslaved or wrongly imprisoned, challenge government infringement of religious freedoms, and insist on protections for the most vulnerable among us

including the poor, the elderly, the sick, and the unborn.”), *available at* <http://canaeast.com/#/vision-mission/transform-injustice>.

8. According to Scripture, fulfilling these responsibilities to seek justice for the marginalized and weakest among us is a basic Christian duty that, when not followed, renders the performance of other religious actions hollow and meaningless. *See Isaiah* 1:10-17, 58:1-12 (“Is this not the kind of fasting that I have chosen: to loose the chains of injustice and untie the cords of the yoke, to set the oppressed free and to break every yoke?”); *accord Amos* 5:10-24 (“[L]et justice roll on like a river, righteousness like a never-failing stream!”); *Jeremiah* 22:13-17. Indeed, by seeking and providing for the good of “the least of these” in society, God instructs that we serve Him personally, and failing to do so is sinful and evidence of a dead faith. *Matthew* 25:31-46; *see also* Article XXI of the 39 Articles (“Good Works . . . [are] pleasing and acceptable to God in Christ, and do spring out *necessarily* of a true and lively Faith insomuch that by them a lively Faith may be as evidently known as a tree by the fruit.”) (emphasis added).

9. To fulfill my moral duties as vicar, and to equip my Church congregation to fulfill theirs as Anglicans, I must preach about current problems in our society that violate God’s moral law and about Christ-centered responses to those injustices. *Proverbs* 31:8-9 (“Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.”); *Micah* 6:8.

10. One of the ways that my Church congregation, as American citizens, can fulfill their religious responsibility to seek justice is by voting for candidates for public office who have promised to advance justice in society and protect the disadvantaged, and to vote against candidates who take positions that harm those goals. *Matthew* 25:14-28 (requiring Christians to be good stewards of the resources God gives to them), *id.* at 22:21 (instructing Christians to “render unto to Caesar the things that are Caesar’s; and unto God the things that are God’s.”).

11. Thus, at times and in ways in keeping with my faith, Anglican doctrine requires me to preach to Holy Cross Anglican Church about candidates that, as a matter of faith and practice, they should not vote for.

12. I have done so in the past, as recently as the November 2013 elections, and I plan to do so again in the future.

13. Further, Anglican doctrine also requires me to preach about specific moral issues that have direct political implications, and at times—such as near elections—when my congregation can act on that teaching through voting and advocacy. This teaching on moral issues does not always include guidance about particular political candidates.

14. One such issue is the sanctity of life. The Bible teaches that every human being is made in the image of God, *Genesis* 1:26-27, and thus that it is wrong to intentionally take the life of innocent human beings, *Exodus* 20:13, *Deuteronomy* 5:17, *Matthew* 5:21 and 19:18. Further, the Bible treats the unborn as deserving the full respect accorded other human beings. *See, e.g., Psalms* 139:13-15, 22:10-11;

*Galatians* 1:15; *see also* Luke 1:41, 18:15 (using the same Greek word, *brephos*, to describe a pre-birth and post-birth human being); *Genesis* 25:21-22 (describing pre-born human beings as “children”). Thus, from the earliest days of the Christian church, church leaders such as St. Augustine, St. Jerome, Tertullian, St. John Chrysostom, and Justinian have recognized elective abortion as a grievous injustice against unborn children, against mothers, and against society. Accordingly, the Anglican Church rejects elective abortion as sin. *See, e.g.*, CANA East Vision & Mission: Transform Injustice, *supra* (“Empowered by the Holy Spirit, we . . . insist on protections for the most vulnerable among us, including . . . the unborn.”).

15. In the United States elective abortion is legal, widely practiced, and supported by many elected officials. Thus, it is my responsibility to regularly and appropriately instruct Holy Cross Anglican Church of their Christian duty “to insist on protections” for “the unborn.” As I explain to them, this duty extends to their political choices and their votes.

16. I have in the past, and will in the future, declare to my congregation that Elective Abortion is a fundamental evil, and that voting for a candidate that supports such laws is to be a supporter and accomplice to this grave sin.

17. The history of the church is filled with Christian leaders whose faith in God led them to advocate for change of immoral political policies. This starts in the pages of Scripture, where Moses pushed Pharaoh to end Egypt’s slavery of the Jews; Queen Esther saved her people from legal extermination by appeal to the King; the prophets Daniel, Jeremiah, Ezekiel, Amos, Obadiah, and Nahum instructed their

governments to cease political oppression; and John the Baptist gave execution-inducing public denunciations of a government leader's incestuous marriage. This practice of the church challenging civil authority is part of our ancient heritage and tradition that has been followed and practiced since the Apostles and Early Church Fathers. *See e.g.* Acts 5:29; *see also* <http://www.ccel.org/ccel/schaff/anf01.iv.iv.ix.html> (account of a prominent church leader's refusal to obey a government order to deny Christ). Later examples include St. Thomas Becket's martyrdom for opposing governmental limitations on religious freedom, missionary David Livingstone's efforts to stop the African slave trade, the 12-year imprisonment of John Bunyan (author of *Pilgrim's Progress*) for refusing to seek government licensure to preach, Anthony Ashley Cooper's child labor reform and provision of education for working-class children, William Wilberforce's decades-long battle to end British slavery, and John Wesley's efforts at prison reform. And this tradition has continued on through the twentieth century to include Dietrich Bonhoeffer's public opposition to the Third Reich and Rev. Martin Luther King Jr.'s demand for racial equality.

18. Livingstone, Bunyan, Wilberforce, Wesley, Bonhoeffer, and King are all memorialized at Westminster Abbey, a prominent Anglican church. *See* <http://www.westminster-abbey.org/home>.

19. An essential part of our witness to society at Holy Cross Anglican Church is following this great tradition of challenging the government about ongoing injustice. If we did not follow it, we would not only sin against God, but also our corporate witness to the Gospel of Christ would become inauthentic, irrelevant, and

ineffective. See Rev. Martin Luther King, Jr., *Letter from a Birmingham Jail* (the church must stand against the pervasive, ongoing problem of racial injustice lest it “lose its authenticity” and be “dismissed as an irrelevant social club with no meaning for the twentieth century”), available at [http://mlk-kpp01.stanford.edu/kingweb/popular\\_requests/frequentdocs/birmingham.pdf](http://mlk-kpp01.stanford.edu/kingweb/popular_requests/frequentdocs/birmingham.pdf).

20. My Anglican faith instructs me to preach about candidates and issues in my capacity as the Church’s vicar during our normal worship services and religious gatherings. I cannot segregate such Christian guidance into separate times, separate roles, or different places because that would falsely communicate that there is something different or suspect about such guidance, and inappropriately suggest that Jesus’ call to obedience is somehow diminished as it concerns political matters.

21. Further, as a practical matter, I serve no other role to Holy Cross Anglican Church than its vicar, and we have no other entity or location at which to hold religious instruction on these matters.

22. Thus, providing such religious guidance in a separate time, location, entity, or role would interrupt and interfere with the Church’s internal mission, liturgy, and structure.

23. It is my understanding that the IRS absolutely prohibits me from directly or indirectly making statements to Holy Cross Anglican Church about whether to vote for or against candidates for public office.

24. It is also my understanding that the IRS absolutely prohibits me from preaching on issues in a way that does not mention candidates but, in their estimation, has the indirect effect of supporting or opposing candidates for public office.

25. It is further my understanding that the IRS threatens to punish violations of these absolute prohibitions with revocation of Holy Cross Anglican Church's tax exempt status, which would both subject the Church's income to detailed examination and taxation by the federal government and would prevent the Church's members from obtaining a tax deduction for their tithes to the Church.

26. Further, it is my understanding that the IRS may also elect to punish Holy Cross Anglican Church by imposition of excise taxes against both the Church and against Church leaders such as myself.

27. These sanctions would severely harm the Church, both because of its small size and the modest income of its members, and its leadership.

28. Thus, the threat of these sanctions has chilled and continues to chill my efforts to preach to the Church as I believe God commands. I have not allowed the threat to prevent me from following my Christian duty, but it has consistently created concern both for me and my congregation. This worry has interfered with the Church congregation's ability to receive, understand, and implement the message that I have preached to them.

29. The IRS has not enforced these threats against me or Holy Cross Anglican Church, even though I do not hide and, in fact, have made public that I have



preached sermons that directly offered religious guidance to Holy Cross Anglican Church to vote against certain candidates for public office and to allow their voting habits to be guided by religious considerations on specific moral issues in specific elections.

30. It is my understanding that the Freedom From Religion Foundation (“FFRF”) filed a lawsuit against IRS Commissioner Douglas Shulman to compel the IRS to enforce I.R.C. § 501(c)(3)’s absolute prohibition against churches like Holy Cross Anglican Church.

31. If FFRF is successful, the IRS will be required to enforce its prohibition against Holy Cross Anglican Church, and both the Church and I will not be able to engage freely in our religious exercise of preaching and hearing and will thereby suffer injury to our statutory and constitutional rights of religious freedom, freedom of speech, and freedom of association, including government interruption and interference with the Church’s internal mission, liturgy, and structure.

32. I first realized this threat on October 18, 2013, after learning of the court’s denial of the government’s motion to dismiss in *FFRF v. Shulman*.

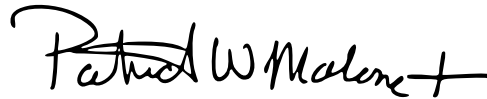
33. I was particularly concerned because it is my understanding that the IRS already considers my teaching to Holy Cross Anglican Church illegal. Thus, I cannot expect the IRS to assert the Church’s and my statutory and constitutional rights against FFRF’s requested enforcement in the *Shulman* case.

34. I promptly began seeking guidance from other leaders within CANA East and from the wardens (church leaders) of Holy Cross Anglican Church to address the threat.

35. On November 11, 2013, after prayer and consideration, the Church voted to seek to intervene in *FFRF v. Shulman* to protect our rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2013.

A handwritten signature in black ink that reads "Patrick W. Malone". The signature is written in a cursive style with a horizontal line underneath the name.

The Venerable Patrick W. Malone, OSB