

2010

Gregory A. Lowrey v. Department of Workforce Services, Workforce Appeals Board and Jacklyn Emmett Johnson : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Gregory A. Lowrey; Petitioner Pro Se.

Jacklyn Emmett Johnson; Co-Respondent; Amanda McPeck; Attorney for Respondent.

Recommended Citation

Reply Brief, *Lowrey v. Workforce Appeals Board*, No. 20100795 (Utah Court of Appeals, 2010).
https://digitalcommons.law.byu.edu/byu_ca3/2529

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

GREGORY A LOWREY)
Petitioner,)
)
v.) PETITIONER'S REPLY
)
DEPARTMENT OF WORKFORCE) CASE NO. 20100795
SERVICES, WORKFORCE APPEALS)
BOARD, and JACKLYN EMMETT)
JOHNSON)
Respondents.)

APPEAL FROM A DECISION OF THE UTAH DEPARTMENT OF WORKFORCE
SERVICES APPEALS BOARD

GREGORY A LOWREY
PETIONER PRO SE
621 SAINT LOUIS STREET
FERNDAL, MICHIGAN 48220

JACKLYN EMMETT JOHNSON
640 SPRUCE STREET
PLEASANT GROVE, UTAH 84062-3715

Co-Respondent

AMANDA McPECK #10768
ATTORNEY FOR RESPONDENT
WORKFORCE APPEALS BOARD
DEPARTMET OF WORKFORCE SERVICES
140 EAST 300 SOUTH
PO BOX 45244
SALT LAKE CITY, UTAH 84145

FILED
UTAH APPELLATE COURTS

MAR 11 2011

COVER PAGE

UTAH COURT OF APPEALS

I want to apologize to the court for having to write this cover and hope the court will be able to indulge me in these issues which have prevented me from making the presentation as desired by the court.

I have been permanently disabled since 1991 and suffer from structural issues and constant pain. The petitioner's brief I sent cost me almost \$100 in printing, binding and shipping costs, which severely depletes the \$750 per month that SSI gives me and my wife, who must care for me, to live on.

I cannot afford to prepare this reply in the manner demanded by the court, yet I think it is important and I hope the court will excuse me in this.

Additionally, about the time the brief of the respondent arrived, I had to move in with my 83 year old mother in Ohio to provide around the clock care for her while she is dying.

I just spent 3 days living in the hospital with her and might be taking her back today. She requires constant care and there is no-one to help her but me.

This also means that there is no one to help me and so my own handicaps are severely exacerbated.

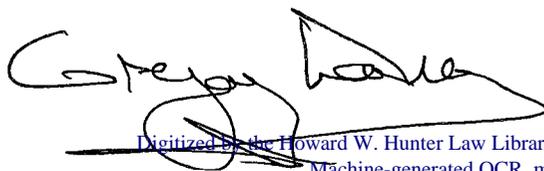
I feel the WFS response amounts to an admission that they have no evidence, code or case law to back up their assumptions. They repeatedly admit that their entire case is based on assumption and nowhere suggest that they have any evidence to back up their assumption and innuendo.

I really think this should be obvious and that the court will recognize the WFS action as a personal attack against me and my religious rights as well as a poorly disguised attack against the church to which I belong and to other members WFS has included in their complaint.

I have had to truncate my reply to fit this work which is very taxing for me into the limited occasional moments that I have to attend to it. Many of the references are not available to me via the internet and I do not have access to a law library or the opportunity to visit one if I did.

So, in spite of the shortcomings of this reply, I hope the court will accept and consider it, though I honestly think that the wrongness of the WFS position in every regard shines like a beacon light and really should require no reply from me at all.

Thank you for your indulgence,
Gregory Lowrey - Petitioner

A handwritten signature in black ink, appearing to read "Gregory Lowrey". The signature is written in a cursive style with a large, sweeping flourish at the end.

IN THE UTAH COURT OF APPEALS

GREGORY A LOWREY)
Petitioner,)
)
v.) PETITIONER'S REPLY
)
DEPARTMENT OF WORKFORCE) CASE NO. 20100795
SERVICES, WORKFORCE APPEALS)
BOARD, and JACKLYN EMMETT)
JOHNSON)
Respondents.)

APPEAL FROM A DECISION OF THE UTAH DEPARTMENT OF WORKFORCE
SERVICES APPEALS BOARD

GREGORY A LOWREY
PETIONER PRO SE
621 SAINT LOUIS STREET
FERNDALE, MICHIGAN 48220

JACKLYN EMMETT JOHNSON
640 SPRUCE STREET
PLEASANT GROVE, UTAH 84062-3715

Co-Respondent

AMANDA McPECK #10768
ATTORNEY FOR RESPONDENT
WORKFORCE APPEALS BOARD
DEPARTMET OF WORKFORCE SERVICES
140 EAST 300 SOUTH
PO BOX 45244
SALT LAKE CITY, UTAH 84145

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES WITH PAGE REFERENCES.....	ii
STATEMENT OF JURISDICTION	iii
STATEMENT OF ISSUES.....	iii
PETITIONER'S REPLY.....	1- 30
SUMMARY OF THE ARGUMENT.....	30
CONCLUSION AND STATEMENT OF RELIEF SOUGHT.....	31
SIGNATURE OF PETITIONER.....	32
CERTIFICATE OF SERVICE.....	32

TABLE OF AUTHORITIES CITED

CASE AUTHORITY

EAGALA, Inc. v. Dep't of Workforce Servs, 2007 UT App 43, ¶ 16, 157 P.3d 334
United States v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944)

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(a).

STATEMENT OF ISSUES

POINT 1. WFS misrepresents the issues of the Petitioner

POINT 2. The entity “Gregory A. Lowrey/Whole Life Ministries/UBU Ministries/Happy Valley Tattoo” does not now and never has existed

POINT 3. WFS admits that their position is based on assumption and nowhere do they claim to have any evidence supporting their assumptions

POINT 4. WFS actually rejects their own evidence and attempts to give inappropriate interpretations to all of their citations whether code or case law or other investigation of fact.

POINT 5. WFS misdirects the court by miss-stating the issues and claiming their right to rule by assumption rather than by evidence.

POINT 6. WFS intentionally misidentified the employer to achieve some purpose other than what they are authorized to do.

POINT 7. WFS has never produced any evidence of any kind that supports their invented entity(s).

POINT 8. The proper employer is a church that is a legally organized entity separate from Lowrey and an exempt entity.

POINT 9. WFS violates Utah Code 63G.4.403(4)(a)(b)(c)(d)(e)(g)(h)(i)(iv)

POINT 10. WFS violates the substantial evidence test.

POINT 11. The WFS action is only against Gregory Lowrey who cannot be proved to be the employer which should nullify the case.

POINT 12. WFS admits that their determination never considered the Claimant's

qualifications for receiving the benefits she applied for and that benefits were denied without consideration.

POINT 13. The entire Determination of WFS is an attempt to discriminate against a church and it's membership.

POINT 14. UBU was not the entity to which the Determination was addressed. All the attention WFS paid to attempting to discredit UBU is irrelevant to the Determination.

POINT 15. WFS attributes to official documents the attributes of other documents to achieve a different reading than the documents present. WFS purports one document to be another such as purporting the DBA to be the Articles of Incorporation, etc.

POINT 16 WFS admits that the Employer was UBU Ministries, not Lowrey

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES AND RULES**

Utah Code -- Title 35A -- Chapter 04

Utah Code 63G.4.403(4)(a)(b)(c)(d)(e)(g)(h)(i)(iv)

Establishment Clause of both the United States and Utah Constitutions

IRS pub. 1828, Tax Guide For Churches and Religious Organizations

UC 35A-4-205

Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8)

UC 35A-4-313

35A-4-204(2)(d) and (e)

26 U.S.C. § 501 : US Code - Section 501

IRS Publication 1828

Utah Admin. Code R994-405-202 (2004)

IRS pub. 557

Utah Code Ann. § 35A-4-204(3) (Supp.2008)

R994-204-303

1st and 14th Amendments

PETITIONER'S REPLY

As has proved typical thus far in this matter with WFS, the department continues to sidestep the issues at hand and fails to support any of their unwarranted assumptions. Not only does WFS fail to answer the issues presented, they propound their abuses of their authority and make wild and unsupportable insinuations that do indeed violate the civil and religious rights of the petitioner. These abuses, first directed only at Gregory Lowrey have escalated to include similar violations against additional individuals who have not simply suffered the threat of violation, but have actually been violated in their religious practice by the irresponsible actions of WFS.

On page one of the Response to the Petitioner's Brief, *ISSUES PRESENTED FOR REVIEW*, WFS misrepresents the issues of the Petitioner.

The "entity" to which WFS refers "Gregory A. Lowrey/Whole Life Ministries/UBU Ministries/Happy Valley Tattoo" does not now and never has existed. This entity is an invention of the Review Board, who added additional parties to this invented entity, some of whom WFS now appears to disregard. This expanded multiple party "entity" declaring several persons and a corporation to be one and the same not only is a legal impossibility, it is a new invention of the Review Board, not even remotely suggested in the original determination or ALJ appeal. In fact any association of these separate entities is manifestly avoided by WFS in the original action and

ALJ appeal so that the issue of employment by an exempt organization (a church) could be avoided.

The ALJ and Review Board were to review the evidence of the original determination, not invent new entities and affronts, which simply expanded and further complicated the web of WFS fraud and deceit.

WFS attempts by intentional misinterpretation, misdirection and complication to confound and confuse the issues in order to avoid honest examination of or admission to the simple fact that their entire cause is founded on nothing but unfounded, unsupported assumption and religious bias and that their actions are a complete abuse of their positions of public trust which have not a shred of validity from their authorizing code or any other state or federal code. In their RESPONSE WFS on nearly every page admits that their position is based on assumption and nowhere do they claim to have any evidence supporting their assumptions whatsoever. WFS actually rejects the evidence they did present themselves and attempts to give inappropriate interpretations to all of their citations whether code or case law or other investigation of fact.

The proper issue is WFS lacked authority to make a determination regarding the legal status of a church. WFS does not inherit the rights of the IRS to apply such tests. In fact, WFS does not even attempt to actually apply the test. They simply state the nature of the IRS test and act as if they had applied it and act as if UBU failed the test that they failed to apply. Additionally, WFS knows this test only applies to organizations that have requested to contract with the IRS and does not apply to parties not so contracted. WFS pretends to fail to comprehend the simple language of the IRS regarding 501.c.3 status and the fact that churches are automatically exempt and are not dependent on the IRS for the privilege to exercise their 1st amendment rights or for the protections guaranteed by the U.S. Constitution regarding those

rights. The fact that a church declines to apply to the IRS for a formalized letter of recognition of rights IRS clearly states churches automatically have without such the need for formalized recognition does not in any regard diminish the legal standing or constitutional protections for the church.

WFS from the beginning presents their case, by simply citing a piece of code and then, making no effort to examine the applicability of the code assumes that the mere making of a citation is sufficient to authorize their wrong conclusion. In this newest offering from WFS, there is not only even more of this bizarre behavior, but also repeated admissions that the position of WFS is based only on assumption and nowhere is any claim that such assumptions are or even should be supported by fact. The facts; even those obtained by WFS are simply ignored, since not a single one supports the conclusions WFS assumes.

Additionally, in this Response, WFS implies new allegations, citing case law that fails to support their action. Their insinuations are defaming and completely alien to any legitimate purpose and an obvious effort to prejudice the Court of Appeals against the facts in this case.

The second issue assumed by WFS in their response also was not an issue of the petitioner, since originally all parties were in agreement on this point. WFS seeks to distract attention from the true issues by continuing to hammer what has been a non-issue from the beginning.

Fortunately, because WFS has refused to eliminate their continued harping on this point, review has shown that according to the IRS code repeatedly cited by WFS, the Claimant, Jacklyn Emmett Johnson fits a category that is exempt from the definition of employment as she was in essence simply an extension of the ministers in performance of ministerial duties imposed by the ministry to achieve the purposes of the ministry. IRS code states that such arrangement exempts

her from the definition of Employment.

Also, the WFS Response clearly demonstrates that the true purpose of the WFS action, from the beginning, and affirmed all along the way to this court, was not to consider the needs of the Claimant, who for the first time WFS reveals was denied benefits – which also requires consideration – but was intended all along to be an oblique attack on religious exercise, constituting religion on religion discrimination, which is a violation of Federal and Utah law.

WFS lists in their contents an impressive list of case law, but most of the cases cited are simply there to project the appearance of strength in the WFS position and never make it into their actual argument (like padding a resume') and the ones that do are irrelevant and calculated to misdirect, deceive and prejudice the court. The case of WFS is simply all bluff and no stuff.

Likewise, the plentiful statutes listed are thrown into the following text without the benefit of examination, supposing again that the mere citing of a few numbers is equal to actual proof of the proper applicability of such codes. WFS stridently refuses to actually examine the codes they cite because they know those codes do not support their cause. These tactics are underhanded and reprehensible. Untangling this web of misrepresentation, misdirection, misinterpretation and outright deceit is a formidable task which requires me to ask the court's patience and for the court to review the entire case.

In the Respondent's *STANDARD OF REVIEW*, WFS again attempts to misdirect the court by miss-stating the issues and claiming their right to rule by assumption rather than by evidence.

WFS states

“Petitioner presents two main issues on appeal.”

In reality there are 6 main issues on appeal, and while WFS has attempted to make their statement of issues sound similar, this is simply a diversionary tactic.

None of the 6 issues are what WFS here claims to be:

- 1) Did WFS violate constitutional rights of (the invented and reinvented entity) by failing to find them exempt from this employment tax. And
- 2) Did WFS properly conclude the Claimant's employment to be subject to coverage.

The actual issues are:

- 1) WFS exceeded their authority by arbitrarily assigning employer status to an individual, contrary to the declaration of the claimant and the evidence of pay records and Department of Commerce records.
- 2) WFS exceeded their authority by inventing an entity
- 3) WFS miss-identified the employer.

It is obvious that WFS intentionally misidentified the employer to achieve some purpose other than what they are authorized to do.

The original decision identifies “Gregory A. Lowrey DBA Happy Valley Tattoo & Piercing” as the employer, ignoring Department of Commerce documents proving ownership of the DBA to be a separate corporate entity, a church.

WFS has never produced any evidence of any kind that supports their claim of this invented entity. It's odd that the ALJ and the REVIEW BOARD both ridicule the concept of UBU Ministries being a “self-declared” entity (in spite of their own evidence that UBU is not “self-declared”, but a legally organized church) while doing themselves the very thing they repudiate, which is to self-declare that a non-existent entity exists. WFS invents their own reality at every step. These points are clearly referenced in the PETITIONER'S BRIEF.

The WFS determination should fail on this single point. They have made improper demands, which include several threats of imprisonment toward an individual who is not under

their jurisdiction and who is legally not a responsible party to the matter at hand.

Gregory Lowrey not the employer in this case and WFS does not even pretend to evidence that he has ever been an employer. Apparently, to WFS, their invention is all the evidence required!

The numerous documents submitted in actual evidence all point toward the proper employer which is a church that is a legally organized entity separate from Lowrey. (Petitioner's Brief, pg. 4, 5, 7)

WFS again completely ignores this issue even though it is the primary issue of their determination and one of only two issues in this case that actually falls within their authority to determine.

The authority repeatedly cited by WFS (UC, 35A.4) does not mention any authority to create entities or to arbitrarily assign employer status at will, but is very specific as to how WFS is to establish who is the employer as examined in page 3 of the Petitioner's Brief.

There is nothing in their authorizing code to permit or condone any of the actions of WFS in this matter.

WFS violates Utah Code 63G.4.403(4)(a)(b)(c)(d)(e)(g)(h)(i)(iv)

WFS cites Utah Code 63G.4.403(4)(a) on page 2 of their Response to claim their action was not a constitutional violation but an examination of the reference actually supports Petitioner's claim. The WFS claim to satisfy item (a) is simply a diversion, asking; Is the statute unconstitutional on it's face or as applied. Certainly if WFS had stuck to the statute, the constitutionality of which is NOT being questioned, this matter would not now be before the Court of Appeals. But WFS hangs on the "as applied" section, because in the pretense of applying their authorizing statute, they violated subsections a, b, c, d, e, g, h(i) and perhaps h(ii),

but certainly h(iv) by which the person seeking review (Lowrey) and other parties later included by WFS has been treated with substantial prejudice.

U.C. 63G-4-403. Judicial review -- Formal adjudicative proceedings.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

- (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
- (b) the agency has acted beyond the jurisdiction conferred by any statute;
- (c) the agency has not decided all of the issues requiring resolution;
- (d) the agency has erroneously interpreted or applied the law;
- (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
- (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
- (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
- (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

In trying to find the case law cited (which is often not to me obtainable) regarding the intermediate deference standard, I could not locate the case and the definitions I did find were relatively incomprehensible to me, but in the process and apparently related is the substantial evidence test. *EAGALA, Inc. v. Dep't of Workforce Servs*, 2007 UT App 43, ¶ 16, 157 P.3d 334 (quoting *Grace Drilling Co. v. Bd. of Review of the Indus. Comm'n*, 776 P.2d 63, 68 (Utah Ct. App. 1989)); accord *Carter*, 2006 UT App 477, ¶ 17. When applying the substantial evidence test under UAPA, appellate courts must consider not only the evidence supporting the board's findings but also the evidence that fairly detracts from the weight of the board's evidence. See *Rd. Runner Oil, Inc. v. Bd. of Oil, Gas & Mining*, 2003 UT App 275, ¶ 15, 76 P.3d 692 (citing *Grace Drilling Co.*, 776 P.2d at 68); see *WWC Holding*, 2002 UT 23, ¶ 8 (providing that in evaluating sufficiency of evidence, appellate court "will not sustain a decision which ignores uncontradicted, competent, credible evidence to the contrary").

The record clearly illustrates that WFS continually ignores all evidence, even their own. I do consider in light of UC 63G (already examined) that as on Response pg 3, the decisions of WFS were "irrational or unreasonable".

WFS has presented us with two irreconcilable issues which affect all consideration of this matter.

The first is the claim that Gregory Lowrey was an employer.

WFS has produced no evidence that Gregory Lowrey was an employer.

The statement of the Claimant, Payroll Records, Employment Contract and Department of Commerce Records all point to Gregory Lowrey NOT being the employer.

On this one issue alone the determination and subsequent decisions should be nullified.

The second issue is if the claimant is eligible for benefits. In this RESPONSE WFS for

the first time mentions that they denied benefits to the CLAIMANT, Ms. Johnson. They also for the first time reveal that they did not consider her work misbehavior, the reason for dismissal, in their decision to deny her benefits

As I read the WFS benefit guidelines I only found two issues that would cause a person to be denied benefits. One is that they were terminated for violations of policies they were acquainted with and the other is that they were employed by an exempt organization.

WFS who did not elaborate on why they denied benefits, except to say that it was NOT based on policy violations and that they never even considered Ms. Johnson's qualification to receive benefits, then what is left to deny on except their knowledge that Ms. Johnson worked for a church, an exempt organization?

So the issue, #5 is moot as far as declaring that the Claimant is ineligible for benefits, but it raises other issues, and points out that WFS was not attempting to serve the needs of the public but was engaging in a personal attack against an individual that they knew had no legal responsibility; to punish him by making him pay taxes for having the temerity to have religious beliefs that WFS did not approve of and to take the same opportunity to attempt to ridicule, discredit and deny the legality of the church to which he belongs, attacking other church members similarly in the process.

All evidence DOES however support that a church, an exempt entity, properly formed and incorporated in the State of Utah was the employer.

Even though WFS attempted to disregard their own evidence, policy, state and federal law, they knew that their ruse of claiming the invented entity "Gregory A. Lowrey DBA Happy Valley Tattoo" was likely to fail since there was no evidence to support it. And apparently the

opportunity to take a swing at a church that had the audacity to believe tattooing to be spiritual when the predominant religion in Utah took a 10 year stand beginning in 2000 to decry body art as a desecration was too tempting to pass up.

So, against all rational logic, the Field Auditor added to the Determination a citation, FEDERAL UNEMPLOYMENT TAX ACT, 26 U.S.C. 3306(c)(8) that unless both parts were met would invalidate what otherwise would be a clear case, excepting of course that the employer was misidentified and the true employer was an exempt organization.

The citation in question was not only NOT proven to be satisfied (and amply shown by Lowrey to be impossible to satisfy) but it was a citation that only applied to churches. Since WFS was taking the position of declaring the employer was an individual and not a church, they seriously complicated matters by including this requirement to the validity of their determination.

Now for the first time in the RESPONSE, WFS claims that by CONCLUDING UBU to not be a church that they can excuse themselves from examination of UC 3306. This is a new tactic as previously WFS held 3306 as preeminent in their claim though they refused to examine the possible applicability. Now they want to reject it entirely, which only leaves them with the problem of making a person and a legally formed corporation, including it's board of directors and several thousand members a single entity. I think WFS have been watching too many Star Trek movies.

WFS also "showed their hand" regarding their true intent, which was to step entirely out of their purpose and authority and practice religious discrimination.

True to form, WFS made no effort at all to show the demands of 26 U.S.C. 3306(c)(8) were satisfied and instead cited an IRS Test for 501.c.3 organizations, again failing to make any

effort of any kind to see if this test applied (which does not apply to non 501.c.3 churches, for whom such status is optional) but simply implying that UBU Ministries did not comply and concluding that UBU was therefore not a church. In this WFS contradicts the very IRS document they draw the “test” from.

But as already stated, UBU was not the entity to which the determination was addressed.

Yet, in spite of WFS declaring that Lowrey was the employer and not the church, the majority, almost the entirety of their thrust has been against the church, including ridiculing and demeaning Lowrey and other church members, which church and other members are not even named as a parties to the action.

Why would WFS do this, and why do they so openly and contemptuously demean and ridicule Lowrey and UBU and insinuate fraudulent intent when there has never been any history of any kind to support such notions?

Testimony was given and the ALJ acknowledges that **“Mr. Lowrey operates the religious entity UBU Ministries... The art of tattooing is held as one of the religion's doctrinal tenets. Tattoo services are performed in the same facility the ministry conducts it's religious services.”** ALJ Decision pg. 2, Petitioner's Brief pg. 21.

It would be logical to conclude that if “tattooing is held as one of the religion's doctrinal tenets.” that tattooing would also be one of the church's “religious services”, especially since the church has historically claimed it to be so as shown in the original WFS exhibits.

I'm sure the court recalls the recent case of WAL-MART being sued by an employee who was a member of THE CHURCH OF BODY MODIFICATION, a legally organized church, recognized as an exempt organization by the IRS whose only purpose is the practice and promotion of tattooing and body piercing. There exist several churches who subscribe to similar

and limited doctrines. These churches are protected in their practice as long as those practices are legal.

From The Legal Dictionary:

“The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The first part of this provision is known as the Establishment Clause, and the second part is known as the Free Exercise Clause. Although the First Amendment only refers to Congress, the U.S. Supreme Court has held that the Fourteenth Amendment makes the Free Exercise and Establishment Clauses also binding on states (*Cantwell v. Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 [1940], and *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 [1947], respectively). Since that incorporation, an extensive body of law has developed in the United States around both the Establishment Clause and the Free Exercise Clause.

To determine whether an action of the federal or state government infringes upon a person's right to freedom of religion, the court must decide what qualifies as religion or religious activities for purposes of the First Amendment. The Supreme Court has interpreted religion to mean a sincere and meaningful belief that occupies in the life of its possessor a place parallel to the place held by God in the lives of other persons. The religion or religious concept need not include belief in the existence of God or a supreme being to be within the scope of the First Amendment.

As the case of *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944), demonstrates, the Supreme Court must look to the sincerity of a person's beliefs to help decide if those beliefs constitute a religion that deserves constitutional protection. The *Ballard* case involved the conviction of organizers of the I Am movement on grounds that they defrauded people by falsely representing that their members had supernatural powers to heal people with

incurable illnesses. The Supreme Court held that the jury, in determining the line between the free exercise of religion and the punishable offense of obtaining property under False Pretenses, should not decide whether the claims of the I Am members were actually true, only whether the members honestly believed them to be true, thus qualifying the group as a religion under the Supreme Court's broad definition.

In addition, a belief does not need to be stated in traditional terms to fall within First Amendment protection. For example, Scientology—a system of beliefs that a human being is essentially a free and immortal spirit who merely inhabits a body—does not propound the existence of a supreme being, but it qualifies as a religion under the broad definition propounded by the Supreme Court. The Supreme Court has deliberately avoided establishing an exact or a narrow definition of religion because freedom of religion is a dynamic guarantee that was written in a manner to ensure flexibility and responsiveness to the passage of time and the development of the United States. Thus, religion is not limited to traditional denominations.

The First Amendment guarantee of freedom of religion has deeply rooted historical significance. Many of the colonists who founded the United States came to this continent to escape religious persecution and government oppression.

This country's founders advocated religious freedom and sought to prevent any one religion or group of religious organizations from dominating the government or imposing its will or beliefs on society as a whole. The revolutionary philosophy encompassed the principle that the interests of society are best served if individuals are free to form their own opinions and beliefs.”

But, UBU is NOT a church founded around the practice of tattooing and piercing. UBU has a formal creed that is similar to most contemporary churches, holds regular meetings, publishes literature, performs healing and counseling, promotes service to the community and

uses its funds exclusively for charity services.

Tattooing and Piercing are practices of the church, that are viewed similarly to other church's wearing of a cross or the LDS practice of wearing temple garments because of the symbols that remind them of their covenants and beliefs. UBU believes that tattoos and piercings serve the same purpose.

To me, all of this effort by WFS to claim UBU to not be a legitimate church, qualified for tax exempt status coupled with their refusal to even attempt to prove a single one of their claims, except to invent new definitions for Department of Commerce designations completely contrary to clear definitions given by the Department of Commerce, conclusively shows WFS knew from the beginning that the employer was an exempt church organization and WFS perpetrated an not so elaborate, but certainly convoluted ruse in an overt attempt to defame the church, force UBU into paying taxes for which it is legally exempt and to punish Lowrey for having the audacity to believe differently than they.

There is no mention that WFS had any problem with the other "religious services" that the ALJ refers to, and in fact aside from the practices of tattooing & piercing, UBU's services are not all that different from many contemporary churches. It is a simple fact that the belief that tattoos and piercings serve as spiritual emblems and that their application constitutes a spiritual service does not reduce the legitimacy of UBU's status. The ALJ had in evidence the purposes clause from UBU's incorporation document which states clearly that a purpose of the incorporation was to engage in any and all legal activities which further the mission of the ministry. Tattooing and piercing are legal in Utah and they do further the purposes of the ministry. Additionally, UBU follows the MONASTIC TRADITION of renunciation, charity and supporting the ministry through service. Historically, disciples have created goods, such as

honey, butter, bread, beer, done carpentry, etc. or provided other services to obtain the funding for their work. Today, many churches create or resell religious emblems, books, clothing etc. as well as holding dinners, dances and excursions to raise funds to directly fund the work of their ministry. Modern churches generally have set dollar amounts placed on spiritual services including marriage, baptism, circumcision, burial sermons and blessings, counseling and other services performed by pastors and priests. Even in Mormonism, to obtain spiritual services offered only at LDS Temples, without which one cannot be considered a true disciple, a strict 10% payment of lifetime earnings is demanded and scrupulously accounted for in a yearly “tithing settlement” in which all members are expected to participate. If one does not pay the 10%, he or she cannot obtain the spiritual services held most desirable by Mormons and critical to the obtaining of their highest eternal reward. Mormons are also expected to pay other set amounts to support the mission of the church and often are called into their church leaders offices where a set formula is applied to their particular earnings. One service the LDS church provides at no charge is “temporal” marriage which is considered in the church to be a mostly legal arrangement and not spiritually significant. Many non-Mormons seek out marriage by LDS Bishops only because they want to avoid the cost, often \$1,000.00 or more to be married by their own priest or pastor.

Churches must pay the rent and light bill just like anyone else and those payments are considered as supporting their mission and the fund-raising they do, more often than not with set donations is considered exempt from taxation as it directly supports the mission of the church. WFS makes a big issue of set donations for tattoos and piercings, but it should not be an issue. Rev. Lowrey performed services for no donation at all on a daily basis. Even the Claimant, Ms. Johnson received many tattoos, piercings, piercing jewelry, counseling and healing services for

herself and family members and never once paid any money to the church for those services.

On pg. 4 of the RESPONSE WFS again makes the unsupported claim that Ms. Johnson was Reverend Lowrey's personal assistant. Ms. Johnson never makes this claim herself and it has been denied since she was a general assistant who performed no duties not regularly performed by all other staff members. It turns out however that as an assistant to ministers carrying out the duties of their ministry, the IRS considers her activities to not fit the definition of employment but she was simply an extension of the ministers. Ms. Johnson was the only person on staff that was not an ordained minister or student studying for the ministry according to the UBU model. Ms. Johnson was not a "receptionist" though she did perform reception services more often than other staff who were generally engaged with patrons seeking ministry services of one sort or another.

On pg. 5 of the RESPONSE WFS errs in claiming that Department of Commerce documents state Whole Life Ministries purpose was "performance of tattoo and body piercing and related services". This is incorrect as a look at the document in evidence will show. Whole Life Ministries always showed it's purpose to be a "Religious Organization".

It was the DBA Happy Valley Tattoo which originally listed it's purpose as "performance of tattoo and body piercing and related services". Over the years, this was noted to not accurately reflect the true nature of the services and the documents were updated until the designation was appropriate. Why WFS attempts to insinuate that this action of making UBU's designation more correct is somehow an attempt at deception, which is surely what they insinuate only further proves that WFS had determined to take a whack at a church they disapproved of.

Also on page 5, WFS states that "Mr. Lowrey amended the corporate filing for Happy

Valley with the Department of Commerce, listing himself and Whole Life Ministries as the registered principles of the business. Whole Life Ministries was listed as the “applicant.”

This is an outright FABRICATION by WFS. Firstly Happy Valley Tattoo was never a corporation and thus had no “corporate filing” to amend. There was no such amendment, but there was a requirement to renew the DBA. Secondly, Reverend Lowrey was never listed as a “registered principle” but only signed documents as an AGENT of the corporation, which was always clearly indicated. Even had it not been indicated that he was signing as an agent, two truths exist. One is that the APPLICANT is the registered principle, which WFS admits was the church, Reverend Lowrey's name appearing nowhere in the APPLICANT designation, and secondly that any corporation, being a paper entity requires an agent to sign documents and conduct business for the corporation. That agent is not the corporation, and by definition, (see footnotes to Appellant's Brief) cannot be as a corporation is a legal person and it is a physical impossibility for two legally recognized, separate persons to be one and the same.

Again on pg. 5 WFS misrepresents the plain facts in evidence to suggest that the corporation documents of Whole Life Ministries were altered to list the purpose of the entity as a religious organization. Whole Life Ministries has always shown it's purpose as a religious organization. WFS again is mixing documents and in doing so they are confounding their own argument, which WAS that only Lowrey was the principle for Happy Valley and that Whole Life Ministries (UBU) was not connected at all to this DBA.

It seems rational to me that correction of error should be expected of a legitimate organization and not be seen as a deceptive act as WFS alludes.

In the RESPONSE, pg. 6, WFS makes the point that Department of Commerce records indicate Reverend Lowrey and Whole Life Ministries to have the same “address of record”,

obviously insinuating that this indicates some element of fraudulent intent. Yet it is not unusual for ministers to keep an office at home where they conduct the business of the church and receive mail, etc. Also, Rev. Lowrey was the REGISTERD AGENT of the ministry and was required to list his address as the address where government mail could be sent. There is nothing wrong with this. It is actually the normal method for most churches. Additionally, many churches (Mormons excluded) provide a home for their ministers which have the same address as the church and often provide an apartment actually in the church building proper. WFS is trying to invent an issue in an attempt to raise a cloud of doubt in the mind of the court to influence the court by emotion instead of fact and true reading of law.

Here WFS admits that payroll records clearly show Ms. Johnson was an employee of UBU Ministries.

When WFS says “The Employer paid “FICA” taxes on behalf of Ms. Johnson” they are referring to UBU Ministries, not Lowrey. Here, WFS first admits that the EMPLOYER was UBU not Lowrey.

Ms. Johnson, as most of the staff of UBU was a charity case, virtually unemployable. She was hired specifically to attempt to help her develop attributes that would contribute to her ability to maintain employment and provide for her children.

WFS makes several claims about what Ms. Johnson “understood” about the religion, suggesting she knew little of it. Yet not only is this not true, it is irrelevant. The fact that a person understands little of a religion does not invalidate that religion!

Yet, this claim by WFS is simply false and another attempt to mislead and bias the court. The WFS claim that Ms. Johnson understood little about UBU is derived entirely from the ALJ Appeal where Ms. Johnson was led in her testimony by the Judge to say that she didn't even

know she worked for a church for the first six months of her employment. This is insane! Her employment contract, which a portion of is included in evidence opens with the statement that the contract is between Whole Life Ministries and Ms. Johnson. Throughout the contract are stipulations regarding respecting the spiritual nature of the services and the often emotionally fragile nature of patrons as many of them are sick or seeking counseling or memorializing their dead. Most of the people who have come to me for healing over the last 30 years have been to every other kind of specialist with no positive resolution and are often quite sensitive and distraught when they arrive.

During the same ALJ Appeal, Ms. Johnson offered that she had to repeatedly, on a daily basis explain to patrons the religious nature of our services. All of our literature, which she helped patrons with named the church prominently at the top and bottom of each page. Our business cards named the church as the provider of the services. Our front door and window contained signage that spelled out the name of the church in two foot tall letters and explained our services, including meetings, healing, etc. which she cleaned around every day and walked past to enter the building every day.

I find it hard to accept that she could open a door every day that had a sign at eye level stating she was entering a church, with church information on it and the name of the church in prominent boldface letters and not know we considered ourselves a church. She admitted to attending daily church meetings where the application of the "Golden Rule" was taught and offered in the ALJ hearing that she valued those teachings so much that she kept every supplementary handout for future study and reference.

UBU had a meeting schedule posted on the door and a sandwich board sign that was placed outside on State Street every day inviting the public to our meetings. I personally give

Ms. Johnson more intellectual credit than to believe she didn't know she was in a church.

What I do believe was that she “smelled money” and followed the ALJ's lead to give answers that would appear to discredit the church so she wouldn't be found to have worked for an exempt organization and thus be denied benefits, which is what appears to have happened anyway.

On pg. 6 and 7 of the RESPONSE, WFS notes that the Happy Valley Tattoo website points out that the artists were Ministers and that “Happy Valley Tattoo is a service of UBU Ministries, a non-denominational church which revolves around one central teaching (the Golden Rule) and does not proselyte tattoo and piercing patrons. We treat tattoos and piercings as spiritual emblems and their application as a spiritual service.” What could be more clear?

UBU does not proselyte patrons. This means that we do not go door to door selling our religion and that a person may come to our church without fear of having our religious views forced on them. From our Official Declaration of Belief comes the following:

“Our relationship with, interpretation and practice of our spirituality is personal and derived from the Law of Reciprocity and the Golden Rule.”

True to our statement, we are here to serve the individual according to their perception of their spiritual needs – not to attempt to make them adopt our spiritual platform. UBU is founded on the Golden Rule and we do recommend that as a method to achieve positive results from what we believe is a universal law of reciprocity, but we do not want people to think that in order to get help with a health or emotional problem or to receive any other service, including tattoos etc. requires them to be proselyted to.

However, anyone who has ever visited Happy Valley Tattoo while it was synonymous with UBU Ministries will attest that religious philosophy and practice was discussed by staff and

patrons non-stop, every day. So, the fact that we are not a “missionary” church does not mean that UBU is not a church. We provide our perspective for those who wish to know about it. We do not force any man to heaven and we do not hold any patron as a captive audience for our pontification. UBU provides spiritual services to people seeking spiritual service and we respect their personal feelings and perceptions.

I have already covered donations being a set amount and suggest that is simply ignorance (real or pretended) on the part of WFS to suggest that having a set donation invalidates religious practice or legal church status. WFS points out that there was a \$50 deposit on appointments for personal service, but fails to notice apparently in the clearly stated deposit policy that this deposit is to guarantee the time with one of the ministers. In the event that the patron failed to keep the appointment, the deposit went to the minister, who was legally a subcontractor (except in the case of Reverend's Gregory and Katrina Lowrey) and not a penny went to the church. In the case of Reverend's Lowrey, forfeited deposits did go directly into the church general fund.

In over 30 years of service to this ministry, Reverend's Gregory and Katrina Lowrey have never taken one single penny of profit for their services but have worked entirely as unpaid volunteers. The ministry was formed to perform charity services and raises the funds for providing such services by honest labor instead of begging as most churches do. Many tattoo and piercing services were performed at no cost as charity service. UBU has several thousand members who are very pleased to know that the proceeds from their tattoo services provide a wide variety of charity services for people in their own community and for other emergency aid nationally and internationally.

UBU has improved their definition to UNIVERSALIST rather than Non-denominational as that is a more correct rendering of our posture and we accept that our membership may hold

membership in other churches as well as UBU. This also is not unusual. Even the LDS Church Bishop's handbook states that membership in another church does not diminish or otherwise affect the standing of a member of the LDS church.

WFS suggests that using the term “management” somehow invalidates UBU as a church. Even the operations of churches must be managed and this is simply another attempt by WFS to make a lame attempt to prejudice the court with another implication of presumed impropriety.

Still, the fact that a church has a manager does not mean it is not a proper church. I suppose we could have chosen to use the term directors instead of managers. I don't see that it makes any difference legally. WFS is simply clutching at straws.

WFS points out that UBU clearly identifies that services are performed by a Minister and that the services are performed at the “church building” which links to Happy Valley Tattoo. This should be a clear indication that UBU is telling the world that it is a church and that if you want a tattoo from UBU it will be performed as a spiritual service, by an ordained minister in a church as a service of that church. What could be clearer?

Again, I must point out that the ALJ Appeal brochure directs that only pertinent excerpts of materials be included in evidence, so for WFS now to object to only portions of documents being offered (though they admit I later submitted the entire documents, such as articles of incorporation, etc.) is ridiculous. I was only following their directions.

The Determination was not against UBU Ministries, (directly) so WFS has no right to complain about any information I included about the church. I only included the portion of the incorporation document that had to do with purpose to illustrate that UBU was formed to pursue any legal activity that would further it's mission. Tattooing is legal in Utah.

WFS wants to complain that I only included a blank employment contract. These

contracts are privileged information. I did not have permission from Ms. Johnson to provide her actual contract and there was no demand that I produce an employment contract at all. I included it on my own simply to illustrate that the standard contract was between the church and the individual. The actual contract is six pages long. I only included the pertinent extract which happened to be the introductory page, illustrating that Ms. Johnson knew she was contracting with a church.

It also has always been UBU policy, strictly followed that the contract is read to the applicant word for word and each element is sectioned off to be signed and dated by the applicant. It is inconceivable that anyone could complete a UBU contract and not know exactly who they were contracting with and what they were contracting to.

On pg. 8 of the RESPONSE, WFS repeats from the ALJ hearing “For this reason it is important to present all testimony and evidence at this hearing.” But the ALJ cut the hearing short and refused to hear all the evidence and testimony. Of the over 50 pages of exhibits no more than three were examined and those were not given fair treatment. Also the ALJ refused to hear a single one of my witnesses who all had been properly identified in the appeal and made arrangements to be sitting by the phone waiting for their call. The ALJ Appeal did not live up to it's claims and it's decision contradicts itself repeatedly.

WFS suggests that “the Department and Administrative Law Judge were unable to verify that information.” suggesting that they made an attempt, but the truth is there was never any attempt made and that is why information could not be verified. Again WFS uses deceptive tactics to present a picture that is mere illusion in direct opposition to reality.

Beginning on pg. 8 of the RESPONSE and continuing as the SUMMARY OF ARGUMENT, WFS states that “Mr. Lowrey is the principal agent for Happy Valley, Whole Life

Ministries, and UBU Ministries.

WFS ADMITS FINALLY on pg. 9 that “Whole Life Ministries and UBU Ministries have been listed as the “owners” of Happy Valley” and I ask listed where? None other than the Department of Commerce.

Also on page 9 WFS again refers to IRS 501.c.3 and suggests that there was some investigation as to whether UBU met the IRS religious test. But WFS never conducted any investigation of this sort and shows no evidence that they did.

In spite of UBU exercising the traditional option (501.c.3 was only offered to churches beginning in 1954 and is optional) to NOT apply for formal IRS recognition, UBU still would have passed the IRS test, though it was not required to because UBU had not placed itself under the purview of the IRS. WFS simply assumes that UBU would fail the test because WFS desired that outcome. Also, WFS suggests that Reverend's Lowrey profited from the ministry and that this would invalidate church status. However, had WFS done any research at all they would have found that although pastors are routinely paid, neither Gregory or Katrina Lowrey ever received personal payment for any of the services they performed for the church. WFS offers no proof of any kind to support this allegation, following that SIMPLY BECAUSE THIS LAW EXISTS WFS felt they could “reasonably and rationally conclude” that “the Employer” (AGAIN ADMITTING THE EMPLOYER WAS THE CHURCH AND NOT LOWREY) was not a church. Then WFS again attempts to mislead the court by stating at the bottom of pg. 9 “The Employer (the church) originally reported to the Utah Department of Commerce that it was established to provide “tattoo and body piercing related services”, however, this is untrue. WFS is reading from the DBA for Happy Valley Tattoo and trying to make it sound like UBU Ministries was organized simply for tattooing.

Still, as already mentioned, even if this false claim were true, it would not deprive UBU of church status or deny their status as an exempt organization, since the true standard for a church is sincere belief and that is why there are churches such as the Church of Body Modification, who only believe in tattoos, piercings, etc. and yet are legitimate churches and exempt organizations.

It should be obvious that WFS is only using Lowrey as a whipping boy in their all out attack on UBU Ministries, and that their objection to this church is the fact that they tattoo and pierce as spiritual practices, both of which are legal and fall within the purposes clause of the church's incorporation.

The Court can see that on page after page of the RESPONSE, WFS states that they REASONABLY CONCLUDED. Nowhere at any time does WFS base any CONCLUSION on any actual evidence except for documents, they repudiate when it fits their purpose, or intentionally misread, misinterpret or otherwise misrepresent as it suits their purposes.

Nowhere does WFS present any authorizing code that allows them to apply religious tests or to decide if a church is or is not legitimate. On nearly every page WFS admits their findings are all based only on ASSUMPTION not on evidence.

WFS assumes that there were only two Directors of UBU, but there were nine. Nobody ever asked about it.

WFS alludes that UBU had only two members, but UBU has several thousand members in Utah.

The number of members, directors or other authorities have nothing to do with the legitimacy of a religion, yet WFS attempts to prejudice the court with the notion that it does and the unsupported assumption that there were only two members who WFS projects as operating a

fraud.

WFS continually declares that the Employer failed to produce a preponderance of evidence, yet they ignore over 30 exhibits introduced as evidence.

WFS refuses to consider their own citations, except to pull a partial reading out of it's true meaning as shown by their rendering of UC63G where they, in a backwards fashion admit that they violated the U.S. Constitution if they failed subsection (a) which states that they are not violating my constitutional rights if the law is constitutional. But, WFS wants to avoid the second part of subsection (a) that says they are violating my rights if they misapply the law, which they have.

WFS also avoids looking at subsections (b) through (h) because they all condemn the WFS action and prove WFS did in fact violate my constitutional rights and contrary to WFS claims, it has interfered (pg.11) with my free exercise of religion.

I had to resign my post as CEO of UBU so that I could study tax law all day, every day.

I was no longer available to offer counseling and healing services or to prepare teaching materials.

Other ministers were not prepared to conduct church meetings which disrupted our teaching services to our membership.

Reverend Katrina Lowrey resigned her administrative and pastoral relationship with the ministry and even now in Michigan has been so affected by this attack by WFS that she will no longer perform functions of the ministry, including tattooing in spite of being one of the world's premiere tattoo artists.

Reverend Bosh, who took over as CEO May 1, 2010 was so stressed out by receiving subpoenas and threats of fines and imprisonment that he actually dissolved the corporation,

transferred the assets to himself and formed an LLC that has no religious purpose at all, leaving all of UBU's Utah membership without any local guidance or spiritual services.

If this does not qualify as having had a chilling effect on religious exercise I don't know what could.

Since I have brought it up, there is an interesting issue that impacts this case. On May 1, 2010 Reverend Steven Bosh assumed the office of CEO of UBU Ministries.

Because of this case, all of the members of the Board of Directors had resigned.

Reverend Bosh amended the Articles of Incorporation to show himself and two other parties, previously unassociated with the ministry as incorporators and named himself as the Registered Agent. Reverend Bosh also amended the DBA, Happy Valley Tattoo to show himself as the Registered Agent and signed the application for amendment as an agent of the ministry.

So, as of May 1, 2010 Reverend's Lowrey have had nothing to do with the Utah Ministry.

Then during the summer of 2010 Reverend Bosh, citing debilitating emotional stress over this case, actually dissolved the ministry, kept the assets and formed an LLC, Happy Valley Tattoo, LLC which took ownership of the then defunct DBA, Happy Valley Tattoo.

Email From Steven Bosh 9/6/2010

Doc,

Ok been putting this off and avoiding it for a while now, so its time to come clean and fix it. I feel you'll have a come apart over this thats why its taken me so long to write this. All of the battles you are fighting are your battles alone not Jeri"s and mine. Again these battles you have going in the fire are yours to fight not ours and I'm so stressed out about it all, worrying that when it all falls apart we'll fall with it and I'm not about to let that happen.

I'm sorry if this upsets you but its something we feel, and have gotten professional advise on doing it all this way.

Steve & Jeri

Email From Steven Bosh 9/28/2010

Doc,

All the proper paper work has been changed and taken care of, I dont remember having anything notarized from you or from me the first time so i dont see any reason anything needs to be notarized this time. I have already donated everything to the shop and have dissolved the ministry as you siad a few months ago that i had the power to do that so that is what i have done.

So, in May, 2010 the Ministry and it's liabilities passed out of my control to Reverend Bosh and his new Board of Directors properly amended through the Department of Commerce.

Then, by 9/28/2010, because of the stress of this case, Reverend Bosh actually dissolved UBU Ministries and reformed as an LLC. During the short period of Rev. Bosh's administration, where my only involvement was to volunteer to continue to work on this case and I was no longer an administrator or board member or held any powers or liabilities in the ministry, what happens to the case against Rev. Lowrey, who was only an agent for the ministry in the first place, replaced by Rev. Bosh?

Does WFS then claim that Rev. Bosh is operating a fraudulent church?

You see, agents are transitory. The liabilities remain with the corporation.

The nature of incorporation is such that agents of the corporation have no liabilities.

That is the law and is covered in the footnotes to the Petitioner's Brief.

And now that Rev. Bosh has resigned his ministry and dissolved the corporation, reorganizing as a business, where is the liability of a now dead organization?

As an LLC, though Rev. Bosh has not communicated with me since the email of

9/28/2010 I suppose he is now subject to WFS, unless he has followed my advice to not have any employees.

And of course, this brings another item regarding the chilling of religious exercise, because it was in the purpose of the Ministry to create jobs and offer employment, which we specifically offered to persons otherwise unemployable as a religious, community and rehabilitative service.

After Ms. Johnson was terminated, while still CEO, though I was no longer in Utah, I instructed Rev. Bosh that we should not hire anyone to replace her as Rev. Bosh was also undergoing an effort of rehabilitation, which, because of this action has been largely undone.

I am running out of time and space here but I want to mention one other item that illustrates the underhanded manner that WFS has used to approach this case. As WFS relates the case *Christian Echoes National Ministry, Inc. v. United States*, WFS attempts to present a tax case which includes in part that the home of the minister did not qualify as a church building for the purpose of property tax exemption for churches to mean that the tax court ruled that the ministry was not a church at all. This is another attempt to mislead the court and has no applicability in the current case. Contrary to WFS "research" UBU Ministries has always had a separate church building, but except for the first building UBU purchased in Lehi (60 W. Main) in 1998 which qualified for property tax exemption, (the building was let go to maintain funding for charity services in a full time charity health clinic UBU operated at the time in Lehi where Rev. Lowrey labored 65 hours per week, with a recommended donation of \$40 but generally received \$40 or less per week in actual donations, the clinic being supported by proceeds raised by tattoo services in the then still undissolved Michigan Church which was dissolved in 2000 as the Utah Incorporation was formalized). Later church buildings also separate from the Lowrey's

residence were leased and the property tax was paid by the property owner. No effort was made to secure exemption from real estate property tax. However, the Utah Tax Commission has always exempted UBU Ministries from personal property tax and have never questioned the exemption extended to UBU. Likewise, the IRS audit UBU underwent was over a late payroll tax issue. The status of UBU as a legitimate church has never been questioned by the IRS since UBU's inception in 1986. In American Fork, the church secured a leased building for church services built in 1920 that had a separate but attached apartment in the rear. The Lowrey'es used the apartment as a pastor's residence. It did not share any facilities with the church but did share the address. It is simply another assumption of WFS that UBU held services in the Lowrey home and that that might disqualify UBU as a church. Far from it, many churches have dedicated space in a home, perhaps of the pastor or some other member, which portion of the home is exempt from taxation as it has exclusive use for church functions. The case referred to by WFS concerns a non-dedicated space, used as normal living space except for church meetings by a membership that consisted of only persons living in the home. The taxing authority did not have the authority to deny the reality of the church itself, only that the home did not qualify as a church and thus was not exempt from property tax. WFS ASSUMES YET AGAIN that because Rev. Lowrey had official business mail sent to his home office in Lehi and that his personal address was the same as the church address in American Fork that some fraud was being perpetrated. But WFS FAILED TO INVESTIGATE yet again, and is completely off the mark, as by now expected. UBU never asked for a real estate property tax exemption and so their citation is worthless except to show once more the intent and methodology of WFS to misdirect and deceive.

And most importantly, the only reason the IRS was able to make a case at all was because this

particular church had registered with the IRS as a 501.c.3 organization, giving the IRS power to apply tests which are not allowed to be applied to non 501.c.3 churches. This case is irrelevant because it hinges ONLY on the church being 501.c.3, which UBU is not.

WFS attempts to persuade the court that the recipients of NOW ADMITTEDLY SPIRITUAL tattoo services (pg. 17) could for the patron “serve an entirely secular purpose”. What evidence does WFS have to back up this assertion? What church can say what purpose their membership puts to the spiritual services they receive at church services?

What does the purpose of the MEMBERS now have to do with the legitimacy of the church – except to be another back-handed admission by WFS that UBU was a legitimate church – only now WFS feels like attacking the sincerity of a membership they know nothing of!

Well, I have nothing left to say. The rest of the RESPONSE is just full of more of the same WFS malarkey and addressing every little lie and misrepresentation is too stressful, time consuming and exceeds the amount of paper I am allowed to send to the court.

Rev. Lowrey has worked as an unpaid volunteer for over 30 years performing charity services for all who requested them.

UBU Ministers have picked people up out of the gutter and trained them be responsible hard working productive members of the community by developing their God-given talents to provide their own support when no other church or organization was offering anything but disdain for these children of God. WFS has no idea of what type of service UBU offered or the impact it has had on those receiving service.

Leaving healing and counseling aside, let me share one short story. A woman came to the church with a tattoo on each forearm. 30 years earlier she and her husband and their best friend drank a quart of whiskey together, sitting on their living room floor, leaning against the wall.

She was sitting in the middle and passed out drunk. The “friend” suggested that while she was passed out the husband get a needle and some ink and they could each tattoo the arm (her arm) that was closest to them. The husband (Rick) tattooed a four by four inch cross composed of the letters of his name, so it said Rick twice, crossing at the I. The “friend” tattooed in a two inch tall letters a diagonal scrawl across her arm the word “LOSER”. She divorced Rick about a year later and remarried, had several children and suffered horrific embarrassment for 30 years over these tattoos. Her husband and children were always faced with them and all were affected adversely. Her spiritual perspective was also affected negatively as she felt foolish and embarrassed and ugly. When I met her, her countenance was literally gray. She wouldn't look me in the eye. She despised herself and felt she had become the loser her tattoo suggested. I designed some pretty flowers to cover up both tattoos. What a change! I could hardly get her away from the mirror afterward. She beamed. “I'm pretty”, she said. Her countenance was radiant. She had been spiritually redeemed. Did the flowers have a spiritual significance to her. You bet they did.

UBU had always had a reputation as the only place to go for tattoos of Jesus and Mary, which in Michigan's large Catholic culture are very, very popular and understandably spiritual in nature. It is not difficult to understand why someone who wanted to wear the image of their God imprinted into their skin forever would appreciate having the service performed by someone who also appreciated their devotion.

But there was one lady in Utah who came in and wanted a tattoo of a butterfly. Afterward, she related that she felt the transformation of a caterpillar to a butterfly represented to her the resurrection and that it was the best symbol of her spiritual belief that she could desire. I was pretty impressed. Over several years, she returned, always to add another butterfly to

her growing collection. I thought that one butterfly to symbolize the resurrection was understandable, but why the collection? So I asked. She told me that each butterfly represented one of her children or grandchildren that she was praying would also be resurrected in her faith (LDS) and that she would never get any other tattoos that did not directly relate to her religious beliefs, but that she would still get them in spite of the new LDS stance against them. She did not feel she was desecrating her body and felt she was adorning it with spiritual symbols just as the Salt Lake Temple is adorned.

So, how can WFS know what the purpose of the patron is?

What business of theirs is it to question such purpose anyway?

What does the purpose of the patron have to do with the mission and service of the church? I mean, when a Mafia hit man goes to Catholic confession to be absolved of his sins, does his “purpose” at which we can only guess, mean that the Catholic Church is no longer a church? WFS arguments are so obtuse, intentionally misleading, that they simply do not deserve extensive repudiation.

And what does the purpose of a church patron in receiving services have to do with determining if Ms. Johnson was entitled to unemployment benefits?

Nearly every page of the RESPONSE uses the phrase “THE BOARD REASONABLY AND RATIONALLY CONCLUDED” instead of ever saying “The evidence conclusively demonstrates”, meaning of course what WFS is really saying is they ASSUMED EVERYTHING and PROVED NOTHING. On nearly every page WFS “REASONABLY CONCLUDES”, but there is no rational reasoning involved in their conclusions, only avoidance, misdirection and invention of the law.

WFS plays another little game with the letter the IRS was kind enough to send me just for

this case. They include from the two paragraph letter one sentence from the first paragraph that states that the IRS has not officially recognized UBU, which is because we did not apply for official recognition.

But they ignore the second paragraph which states (pg 20 of Appellant's Brief) "Churches are automatically considered tax exempt...without applying for formal recognition of such status" "No determination letters are issued to these organizations."

On pg. 25 WFS claims they found the Employer was not 501.c.3 and in spite of repeatedly referring to the IRS definitions and rules regarding 501.c.3 organizations and churches being automatically exempt, not requiring IRS 501.c.3 recognition, WFS continues to pretend to be deaf, dumb and blind regarding this simple issue. Then they invent an supposed action of the Review Board in determining that since "the Employer was not religious organization under 501.c.3" (deaf, dumb, blind) that it was not officially required to satisfy the demands of Tax Code 3306, which if one actually reads it, does not give taxing power over churches to anyone. (recall it is actually about taxing dividends on retirement trust accounts for which church employees [nothing to do with employers] must only pay if there are four or more employees) and the DETERMINATION on which all this is founded claimed that both parts of 3306 must be satisfied or the claim failed. WFS could not satisfy any parts.

The claim on pg. 25 regarding other employees avoids the fact as explained in the Petitioner's Brief that the entire matter was extensively covered by Lowrey in Exhibits for the ALJ hearing, but the ALJ refused to look at it. The Court has all of that though and it is repeatedly referenced in several documents.

On pg. 26 the statement "In fact, no testimony or evidence was provided in the hearing (ALJ) regarding why Ms. Johnson was separated" is another boldface lie. There was written

testimony, still in the exhibits and there were witnesses, which the ALJ refused to hear. And this again the question, why did WFS make this determination in the first place if it was not even going to examine the claimant's qualifications to receive benefits?

And according to WFS, without any examination they denied her benefits! Isn't this odd? WFS had another purpose in mind and it had nothing to do with their authorized functions, but to harass and violate a church and the pastor of that church.

On pg. 27 "The Department does not question the legitimacy or sincerity of the religious practices or beliefs of Mr. Lowrey, Whole Life Ministries or UBU Ministries" Excuse me! WFS has done nothing but question and denigrate, ridicule and malign the religious beliefs and practices of these entities and their membership. What kind of nonsense is this?

In the same paragraph, WFS has the temerity to say, "For tax purposes, the tax law prevails." I could not get anyone from WFS to even read the tax laws they cite and as I read them over and over and over and over, I found that WFS was misinterpreting and violating those very laws they were attempting to use against me (Lowrey) and UBU Ministries!

On pg. 30 WFS simply lies about requiring the Employer to produce evidence to show it was an exempt organization. There was never any such request and WFS has no evidence to show otherwise. The determination was against an individual after all, so why would WFS ask about an individual being an exempt organization in the first place. (well because they knew the true employer was an exempt church and they were trying to be sneaky in their attempt to make their religion's view the prevailing view in the community)

SUMMARY OF THE ARGUMENT

Gregory Lowrey was not the employer. There is no evidence to show that Gregory Lowrey ever employed anyone. The WFS invented entity “Gregory Lowrey DBA Happy Valley Tattoo” is an element of WFS fraud. The proper owner of the DBA according to the issuing agency, Utah Department of Commerce, is UBU Ministries. The Appeals Board includes UBU in its conglomerate Employer entity, a tacit admission that WFS recognized UBU to be the Employer and in the RESPONSE WFS finally and repeatedly ADMITS UBU to be the Employer. All employment records and the statement of the Claimant on intake (never retracted) was that employment was by a church, UBU Ministries.

UBU was a legally organized incorporation. Officers of corporations are not liable for the actions or debts of the corporation they serve.

WFS has no rational cause against Lowrey.

UBU Ministries was not a party to the WFS action, never mentioned in the determination letter. This was an intentional act on the part of WFS to commit fraud upon both Lowrey and UBU, hence the mysterious inclusion of the demands of U.S.C.3306.

WFS has continually refused to examine any of the actual evidence, even their own, instead resorting to misdirection, innuendo, ridicule, misinterpretation, and outright invention. Upon these layers of deceit WFS bases its assumptions, which it coyly calls “Reasonable and Rational Conclusion”.

The bulk of the WFS action, nearly the entirety of it, made obvious by all of these documents and decisions, has not been directed toward proving Gregory Lowrey to be an

Employer as much as toward denouncing his religious faith and the church to which he belongs. Indeed, no attempt is made by WFS to produce a single piece of evidence pointing to Lowrey as an Employer. With fanatical zeal, WFS makes repeated irrational and unsupportable accusations of insincerity, impropriety, and fraud toward Lowrey and UBU Ministries, at times including other parties in their attacks as well.

Supposedly, WFS was to determine if the Claimant, Ms. Johnson was eligible for unemployment benefits, yet in the RESPONSE it is admitted that WFS never even considered Ms. Johnson's qualifications for benefits and did not grant her benefits. The entire purpose of the WFS Determination, by the preponderance of evidence, can be reasonably concluded, to attack a religion, members of that religion and their legal and sincere religious practice. There is no rational conclusion that can be made for this attack by WFS other than prejudice.

UBU Ministries is a church which acted within the law and it's stated purposes and has been considered an exempt organization by the IRS and the Utah Tax Commission. There has never been a challenge to this exempt status. WFS has failed to produce authority to challenge the legitimacy of a church or to apply tests which are in the domain of the IRS exclusively. IRS repeatedly states that churches are "Automatically Tax Exempt" and do not need to apply for a formal IRS recognition (501.c3), meaning that 501.c.3 status is optional for churches. Also, an organization that has not applied to be a 501.c.3 organization is not subject to the IRS test for 501.c.3 entities. IRS has a different test for non-subject organizations which UBU passes. (UBU also passes the 501.c.3 test, except for making political statements which actual 501.c.3 churches violate with

impunity constantly anyway – but as a non-501.c.3 UBU is exempt from that rule)

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

The court should rule that “Gregory Lowrey DBA Happy Valley Tattoo” is an invented entity and that neither Gregory Lowrey or “Gregory Lowrey DBA Happy Valley Tattoo” can be established to be an Employer. The Determination against these parties should be voided.

The court is requested to find WFS exceeded it's authority in declaring that UBU Ministries is not a religious entity or legitimate church and denying that UBU was entitled to constitutional protections and exempt status long recognized and never disputed by the IRS and the Utah Tax Commission. As WFS was provided from the beginning with guidance from the U.S. Supreme Court regarding the impropriety of such acts, WFS chooses to disregard the U.S. and Utah Constitutions and the U.S. Supreme Court, has intentionally engaged in the chilling of religion and religious practice and is essentially in Rebellion Against the Constitution, a violation of the 14th Amendment, section 3, as well as the 1st Amendment. WFS should be found in violation of these rights as well as for practicing religion on religion discrimination. This entire procedure has been an outrage against the principles on which this Nation was founded and has had a devastating chilling effect on the practice of religion not just by the parties named, many who now are afraid to be associated with their own religion, but also by the thousands of UBU membership who are now left without a church and without spiritual support.

SIGNATURE OF PETITIONER


Gregory Allen Lowrey 11 March 2011

CERTIFICATE OF SERVICE

I, Gregory A. Lowrey, hereby certify that on 11 MARCH 2011

I served a copy of the attached Petitioner's Brief upon the parties listed below by mailing it by first class mail to the following addresses.

Jacklyn Johnson
640 Spruce Street
Pleasant Grove, Utah 84062

and 2 copies to

State of Utah
Department of Workforce Services
140 E. 300 S.
PO Box 45288
Salt Lake City, Utah 84145-0288

By: Gregory Lowrey

Dated this 11 MARCH 2011