No: _____

In The
Supreme Court of the United States

The Society Of Apostolic Church Ministries
Bishop, Elizabeth Gardner Corporation Sole
and Her Successors,

Petitioner,

v.

United States Of America,

Respondent.

On Petition for Writ of Certiorari to
for the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Ninth Circuit permitted the government to violate the First Amendment of the Constitution, Religious Freedom Restoration Act, the Establishment Clause and the Free Exercise Clause that protects churches that own legitimate property in their name and prohibits undue interference of church by the government by seizing its assets using a nominee claiming the property was really owned by its ministers.

II. Whether the Ninth Circuit court erred when it affirmed a summary judgment against the non-moving party, an Ecclesiastical Church Society where there were many genuine disputes of material fact that should have been read in a light favorable to the Petitioner.

A. Whether the church is able to change its name and file a deed without fear that the new name could lead to its property being levied by the government in violation of the Fourteenth Amendment.

B. Whether Yavapai a County assessor's unwavering and responsible determination of full church exemption of real property owned for 25 years should not carry great weight regarding the ownership and beneficial use for religious purposes and exemption from taxes.

C. Whether the Ministerial Exemption protects church autonomy declaring that church mission and church leadership remains free in their governance to fulfill an important religious role of control, leadership, parsonage allowances, and decisions of holding real and personal property.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

Petitioner is The Society of Apostolic Church Ministries Bishop, Elizabeth Gardner Corporation Sole and Her Successors, a church entity, a non-natural person. It was the plaintiff-appellant below. Respondent is the United States of America and was the defendant–appellee below.

There is no parent or publicly held company owning 10% or more of Applicant's stock. There is no issued stock.

LIST OF ALL PROCEEDINGS

Ninth Circuit order granted summary judgment by 2-1 split issued July 24, 2025, SACM v. United States, No. 24-1765.

Ninth Circuit oral argument, heard on May 12, 2025, *SACM* v. United States No. 24-1765.

U.S. District Court District of Arizona order granting summary judgment entered February 22, 2024, SACM v. United States, No. 3:21-cv-08277-DJH

U.S. District Court District of Arizona, Motion for Reconsideration denied entered June 11, 2024, *SACM v. United States, 3:21-cv-0-81277-DJH.*

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STATEMENT OF JURISDICTION

The Ninth Circuit entered judgment on July 24, 2025. Justice Elena Kagan extended the time in which to file this petition until December 21, 2025. The U.S. Supreme Court has jurisdiction of this case as it was finally adjudicated by the Ninth Court. This petition is timely and is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The Fourteenth Amendment to the United States Constitution provides, in

relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Fed. R. Civ. P. 56. of the Federal Rules of Civil Procedure provides that a "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."In U.S. §455(a)(b)(1)(3 28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge.

INTRODUCTION

Justice Bumatay of the 9th circuit wrote our brief in his dissenting opinion. The only thing left to understand is why the other two justices did not go along with him.

There are two factors to consider:

A. First, the Respondent used the name of the Petitioner against it. It is corporation sole which is an old and accepted form of an ecclesiastical organization first created in England to address the fact that the Church of England could not hold real property. The corporation sole filled that avoid. *Santillan v. Moses (1850) 1 Cal. 92; Archbishop v. Shipman (1889) 79 Cal. 288 [21 P. 830].)*

The titular head was the bishop or archbishop and title read as follows: Bishop John Doe corporation sole and his successors. In our case the name that includes Bishop Elizabeth Gardner Corporation Sole and her Successors was used deftly by the Respondent to make the case as if the Gardners were the original plaintiffs.

Another court, albeit a state court, helps us understand the separate nature of the church organization from its ministers. The County of San Luis Obispo v. Ashurst case states there is a clear distinction between the corporation and the individual who happens to be the office holder. *County of*

San Luis Obispo v. Ashurst, 146 Cal. App. 3d. 380, 383 (1983). The Petitioner believes this California case should be followed in this case.

B. The second factor is the apparent inclination of a left leaning judiciary to not give a conservative Christian church the benefit of a chance to explain its position and its facts.

How could the court ignore Petitioners supported positions that there can be no nominee if there is no transferred property:

1.) There can be no nominee if there is no transferred property.

2.) That the funds in the Petitioners account were donations and tithes.

3.) That $50,000 donation from a dying member of the Society was a donation.

4.) That the church home was not purchased from funds of the Gardners or

5.) That the petitioner could support the Gardner through a parsonage allowance.

The California court states that the real property is not subject to execution sale to satisfy the obligation of the judgment debts. The issue is whether the asset of corporation sole are the personal assets of its titular head, thus subject to execution of his or her debt. The court concluded an unequivocal "NO!" Id. *County of San Luis Obispo v. Ashurst. Id. at 383.*

The County contends that the trial court erred in denying the writ seizing the property on the basis that the title stood not in the name of the Ashursts as individuals but in the name of Roandoak of God, a corporation sole. It appears that the County's ground for alleging error is that despite the status of title Delmar Ashurst the assets of that corporation are in fact the assets of the presiding officer.

This being true, the possession of the real property by Delmar Ashurst is deemed to be the possession of the corporation sole. The powers of the corporation sole to administer the property are extensive and almost unfettered except for the qualification that the property must be used for the purposes of the office. *Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)*; *Roe v. Wade, 410 U.S. 113 (1973).*

The ownership of the assets of the church does not change: the person holds the office of the corporation for the church, but the asset of the church remains with the church, as set forth in the case of *County of San Luis Obispo v. Ashurst, Id.* stating that there is a clear distinction between the corporation and the individual who happens to be the current office holder.

The First Amendment prohibits the government from choosing which religious beliefs are protected. *Larson v. Valente, 456 U.S. 228, 244 (1982).* It cannot prefer

particular religions. *Epperson v. Arkansas, 393 U.S. 97, 106 (1968).* And for good reason, our Nation was founded by religious dissenters who knew such favoritism makes religious minorities "outsiders, not full members of the political community." *Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 309 (2000).*

This legal structure acts as a legal entity, distinct from personal ownership. The divided panel of the Ninth Circuit held that the church is nothing more than a defense against liability of it corporation sole. It is the church who determines the quality of a corporation sole and whether Petitioner possesses it. *Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 16 (1929).*

The government must treat all religions equally and cannot show preference for one over another in how it is established. Reinforcement of this principle rule against practices that favor one religion or involve excessive government entanglement with religion is found in *Engel v. Vitale, 370 U.S. 421 (1962); Lemon v. Kurtzman, 403 U.S. 602 (1971*); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012).*

A jury would essentially decide whether the government has to prove that the church and corporation sole status is the nominee for the Gardners. Thus, the error of

the courts is failing to apply the First Amendment's protection and should have waited until the church has been subjected to jury trial, and judgment.

The divided panel of the Ninth Circuit erred by failing to accept Justice Bumatay's dissent. Justice Bumatay followed Rule 56 mandates to render a legal decision based upon a reading of the facts in a light favorable to the non-moving party. He concludes and Petitioner argues that a jury is entitled to hear about this case.

The Establishment and Free Exercise Clauses of the First Amendment protect churches from government overreach and interference. *President Trump Executive Order 13798 of May 4, 2017 (Promoting Free Speech and Religious Liberty); Memorandum, Federal Law Protections for Religious Liberty (October 6, 2017).*

This includes judiciary. The ministerial exemption in churches is essential to protect their autonomy and bolsters this legal principle by declaring that a church's mission must remain free in its governance including the church leadership to fulfill an important religious role of control, leadership, parsonage allowances and decisions of holding real and personal property.

The Ninth Circuit failed to give the church an opportunity to explain to a jury its legal ownership of its legal property to quiet

the title and its independence from its ministers. The Petitioner filed for Quiet Title and Wrongful Levy. Instead, the Ninth Circuit allowed the Respondent to convert and switch petitioner SACM's action to a tax action complaint of individuals claiming that the church is their nominee thus focusing on the individuals instead of the true case of the Petitioner's Church action. The use of the nominee theory by the Ninth Circuit majority is clear error and has broad and negative implications for all churches and particularly small congregations as Justice Bumatay pointed out. The publication of this case has already sent a chilling message to churches all over the United States through media. This can increase fear and anxiety: Congregants may feel unsafe attending services, leading to decreased attendance and participation. This court needs to take action to preserve the constitutional rights of churches. Review is urgently needed.

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The Religious Freedom Restoration Act 1993 (RFRA) - This federal law prohibits the government from substantially burdening a person's exercise of religion

unless it demonstrates a compelling interest and uses the least restrictive means. Churches can claim discrimination if they believe their religious practices are unduly hindered. *Title VII of the Civil Rights Act of 1964.*

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." Fed. R. Civ. P. 56 of the Federal Rules of Civil Procedure provides that a "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

STATEMENT OF THE CASE

I. Factual Background

A. Bethel Aram Ministries

As the congregation began to grow in 2002, the church changed its name to Bethel Aram Ministries and Pastor Elizabeth Gardner became it's corporation sole of the newly named church. Arizona Yavapai Assessor granted Church exemption to the name change. ARS 42-11152; ARS 42-11109

Bethel Aram Ministries by its corporation sole purchased property in Dewey Arizona by means of the exclusive congregation donation, tithes and offerings for the down payment of the new property. *S.*

Rep. No. 1622, 83rd Cong. 2d Sess . at 30 (1954); Huntsman v. Corp. of President of Church of Jesus Christ of Latter-Day Saints, 76 F.4th 962 (9th Cir. 2023). The deed to the property was transferred by the previous owners, the Repans, conveying the property to Bethel Aram Ministries and the church began weekly church services and midweek bible study.

Bethel Aram Ministries house church was built with two parts and two entrances: one entrance to the church and one entrance to the parsonage. *Religious Freedom Restoration Act (RFRA);* Arizona Revised Statutes Title 41-11152 - State Government § 41-1493.01.

House churches operate under the same federal regulations as other religious organizations. The First Amendment guarantees the right to freely exercise religion, which includes gathering for worship in a private home without discrimination compared to other types of gatherings. *Engel v. Vitale, 370 U.S. 421, 430 (1962); Guinn v. Church of Christ of Collinsville, 775 P. 2d 766, 777 (1989*).

B. The Church Parsonage

As ministers, the *Gardners* lived in the pastoral parsonage according to their religious position of pastoral privileges for housing for clergy. According to law and IRS

code, §107, a church can provide a parsonage for its pastor for as long as they remain pastors and even until death paying for everything.

Most churches in the United States provide a parsonage for their pastors, priests, clerics, vicars, etc. There is no law that states that they cannot enjoy the benefits of the parsonage, which is according to church doctrine. A housing allowance is any amount designated by a church be used for housing expenses, which can include utilities, and maintenance costs.

SACM has the authority to make decisions regarding renovations, repairs, and improvements, reflecting its vision for the house allowing it to prioritize expenditure according to the doctrines of the church. These practices help pastors maintain a living environment that supports the ministry and the church's mission. Respondent totally ignored SACM's right to provide a parsonage.

C. Messiah House Fellowship

On September 12, 2012, Bethel Aram Ministries changed its name to Messiah House Fellowship according to the church goal and objectives. Arizona Yavapai Assessor continued to grant Church exemption to the name change.

On December 17, 2012, the church building required repairs due to a strong

hailstorm. After a roof inspection Bishop Dr. Gardner, under the power of corporation sole with the support of the elders of the church, applied for the loan for the benefit of the church. According to the bank's regulation they had to change the church name into their personal names as guarantees of the loan.

During the application process, during the time of it being in the name of the Gardners the church continued using the church property for religious services. Yavapai County Assessor continued to grant church exemption recognizing the property was still being used for church services.

On the transfer of the property the majority is claiming it is irrelevant that the property was transferred to the Gardners for the benefit of the Society. Justice Bumatay stated in his dissenting cite that "the majority makes a broad ruling that would make every corporation sole and all religious organizations using corporation sole structure a nominee under its view of the law."

D. Church Restoration Ministries (CRM)

On March 7, 2013, two months later when the loan application was completed, Bishop Dr. Gardner, corporation sole, due to the different mission goal of the church changed the church name to Church Restoration Ministries and returned the property to the new changed name and filed a

deed accordingly. Church donations paid back the loan. *Nobel v. Morchesky, 697 F. 2d. 97, 103 (3d Cir. 1982); Mc Henry v. Stapleton, 443 P. 186,278 a.,2D 892 (1971).*

In 2018 Yavapai County Assessor and their official attorney, after reviewing the change of deed since 2013 continued to grant a full church exemption on the property. A.R.S. 42-11152

E. The Society of Apostolic Church Ministries (SACM)

SACM was organized in 2006 under the corporation sole law of Montana by five (5) Elders and Ministers. Montana law allows the corporation sole to **exchange**, **transfer, purchase**, sell, **convey** and **hold** property. *Mont. Code § 35-3-205(4)(5)*

In January 2019 after retirement as pastors, the Gardners, at that time 76 and 72, (now 82 and 78), a decision was made by the Church Restoration Ministries to donate the property to SACM. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012).* After the donation, Arizona Yavapai County Assessor's and their attorney visited the property and its facility and certified that the property still remained for church purposes and granted full church exemption to SACM.

On June 24, 2019, SACM opened a bank account titled under "Church Functions" with Joyce Essman, Administrator as

primary signer and Elder Fredric Gardner as Director of the Society. On January 1, 2020, Fredric Gardner resigned from the bank account and Ms. Essman remained on the accounts.

On July 9, 2021, the IRS recorded a Notice of Federal Tax Lien with seizure against SACM's real property as nominee of the *Gardners* without any notice to SACM. Then on August 10, 2021, IRS levied $73,340.37 from SACM's bank accounts under levy notice to the bank stating, *"The Society of Apostolic Ministries as the nominee of Fredric A. Gardner."* The difficulty is that Fredric Gardner was never a member of the Credit Union nor a signatory on SACM's bank account since January 2020 and never had authority over SACM. This begs the question: can the IRS collect upon a religious organization and church's assets for an individual's tax issue.

F. The Society of Apostolic Church Ministries (SACM)

SACM is an ecclesiastical church society with its Headquarter located at the Apache Knolls property and holds annual conferences and local church fellowship meetings at the property. SACM was organized in 2006 by five (5) elected board of ordained minister elders, with over 140+ pastors, evangelists, bishops, apostles, and missionaries, holding the office of corporation

sole with the mission of establishing a relationship and covenant with like-minded kind faith and ministry with established bylaws and constitution.

The elders elected Bishop Dr. Elizabeth Gardner as the corporation sole of SACM due to her response of spiritual calling, ordination, religious doctorate education and pastoral experience. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952).

G. Bishop Elizabeth Gardner Role in SACM

Rev. Bishop Gardner attended Christ for the Nations Bible College, and has ordination with the Assembly of God, Full Gospel International, and Brothers of Christ International since 1978. She received a doctorate degree in Christian Philosophy from Suffield University in 2006. Bishop Elizabeth Gardner is the corporation sole and her successors of SACM that is registered in the State of Montana under the State law titled Religious Corporation Sole and received Certificate of Existence in 2009. Montana statutes regarding religious corporation sole state:

> "the corporation sole has the power to **control**, purchase, sell, **convey**, mortgage, pledge, lease, **own, hold, improve**, use, and **otherwise deal in** and with real personal **property**

> or any interest in real or personal property, **exchange**, **transfer**, and otherwise dispose of all or any of its **property and assets for the benefit of the religious**, **society, or church** for which and in whose behalf the **corporation sole is organized**." Mont. Code § 35-3-205(4)(5); 28 U.S.C. §1331

The corporation sole holds the office of the church and is considered a continuing, self-standing juridical person, possessing and administering property through a vertical succession of office holders. Just like that archbishop of the Catholic church, Presbytery of the Presbyterian church, the presiding Bishop of LDS church it is in total control over all church assets and donations in their diocese. *Mont. Code § 35-3-205(4)(5)*; IRS *Rec. Proc. 2004-27, 2004-1 C.B. 625; Bryan A Garner, A Dictionary of Modern Legal Usage, 225 (2d ed. 1995); Hosanna Tabor Evangelical Lutheran Church and School v. EEOC 565 U.S.171(2012).*

H. Fredric Gardner's Role in SACM

Rev. Fredric Gardner attended Christ for the Nations Bible College and has ordination with the Assembly of God and Full Gospel International, since 1978. Rev. Fredric Gardner, in his capacity as an ordained minister, is one of the other five (5) elders that conduct praise and worship and

helps carry out some of the corporation sole's responsibilities for SACM. He has no authority of management of the Society's assets.

I. Quiet Title and Wrongful Levy.

On December 21, 2021, Petitioner brought a Quiet Title and Wrongful Levy action with Demand for Jury against Respondent before the Arizona Federal District court to restore title of real property and bank accounts affirming that SACM is not a nominee. *Paterra v. Hansen (2021) 64 Cal. App. 5th 507,532; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).*

SACM's named church predecessors paid for its real estate and there was no showing that property was conveyed or that the corporation sole improperly used the church property. Justice Bumatay, in his dissent stated, "If the Gardners legitimately hold those assets for the benefit of the church Society and its religious activity, no nominee status has been established. In determining whether an entity is a taxpayer's nominee, we look at the totality of the circumstances." *Fourth Inv. LP, 720 F. 3d at 1070*; *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012).*

J. Summary Judgment

On May 21, 2023, the Respondent filed for summary judgment claiming that it was entitled to SACM's real estate and banks

accounts focusing on the church being the nominee of the Gardners. They claimed that they are entitled to convert and switch SACM's action to an action of the individual Gardners, claiming they are the issue. All the Respondent's facts relate to the Gardners, and not the church.

In this switch the Respondent just outright without providing a drop of valid legal or factual basis, claimed SACM is the nominee of the Gardners. The district court judge erroneously followed suit and stated in her order adding the *Gardners* are the plaintiffs making two appellants using the plural form as *"The Society of Apostolic Church Ministries,* ***Elizabeth and Fredric Gardner, Plaintiff(s)****"*. Clearly wrong![1] SACM's complaint does not include two other individuals Elizabeth and Fredric Gardner. There is only one appellant, SACM.

The same judge participated in another case, knowing this, the judge did not recuse herself. See *28 U.S. Code § 455(a)(b)(1)(3).* It shouldn't fall on SACM that the district court properly followed the law of a judge who

[1] The same judge participated in case *U.S. v. Gardner, 2008 EWL 906696. At*6 (D. Ariz. Mar. 21, 2008*, as the U.S. Attorney General for the Arizona, knowing this, the judge did not recuse. See *28 U.S. Code § 455(a)(b)(1)(3).* It shouldn't fall on SACM to ensure that the district court properly followed the law of a judge who already litigated against the Gardners.

already litigated against the Gardners. The defendants' whole brief unlawfully became "*the Gardners*." The *Gardners* are not the issue in SACM's Quiet Title Wrongful Levy case. The individual *Gardners* have no part of the operations of the single corporation sole office of Bishop, Rev. Dr. Bishop Elizabeth Gardner. The District judge and the Ninth Circuit made errors in siding with the Respondents claim that this case arises from the *Gardners*. This error has affected the rights and interests and complicated the legal proceedings of the true and existing and ongoing plaintiff.

SACM, being a bona fide church society under the First Amendment, was disregarded and was cast as the nominee of the *Gardners*. Never did the Respondent address SACM as a bona fide ecclesiastical church society with bona fide ordained ministers. Thus, the Defendant and the judges only proceeded under a **theory** that SACM is the *Gardners* "nominee."

The District Court misapplied the Towe factors failing to give deference to the facts in the light favorable to SACM. *Towe Antique Ford v. IRS, 791 F. Supp. 1450,1454 (1992).* This is a challenge against the Johnson Amendment, arguing that it infringed upon their First Amendment rights to freedom of speech and religion. *Johnson Amendment, 26 U.S.C. § 501(c)(3) (1954).*

On July 26, 2023, SACM filed a response to Respondent's misleading summary judgment motion with many conflicting material facts.

On February 22, 2024, the District court judge entered summary judgment on the switch claim without consideration of plaintiffs version of the material facts. The appellate court erred when it affirmed the summary judgment against the non-moving party. Fed. R. Civ. P. 56(a).

On September 13, 2024, SACM appealed to the Ninth Circuit challenging Respondent's summary judgment pursuant to 28 U.S.C. §1331 and 1343. that was not appropriate due to being no credible determinations, the weighing of the evidence, and the drawing of legitimate inferences for a direct verdict and changing the case to their liking. *Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 255 (1986).* And to clarify and establish SACM's legal ownership of SACM's real property and bank account, and to eliminate, and quiet IRS claims on the church society's assets and real property. *Paterra v. Hansen (2021) 64 Cal. App. 5th 507, 532.*

SACM introduced evidence that created a triable question of whether SACM is not the Gardners nominee and that SACM is not a sham church. Also, it introduces evidence that the property is legally owned by SACM in fee simple. It held church services

for over 25 years, was verified by deed history and it showed that Arizona Yavapai County Assessors and their attorney issued a church exemption as the primary meeting place of the congregation and headquarters of the Society three (3) different times to the present.

On July 24, 2025, Respondent's summary judgment was affirmed in a two to one split. Justices Rawlinson and Sanchez affirming and Bumatay dissenting.

J. Property Name Changes

Justices Rawlinson and Sanchez concluded that the transfers of the property do not reflect name changes, but no facts point to it. They called the name change "transfers" without consideration according to the practices established through the Towe Case.

Their conclusion was that the property changes show that Elizabeth Gardner "personally" repeatedly transferred the property to and from herself for no consideration instead, the name change was done by Bishop Elizabeth Gardner as corporation sole, not Mrs. Gardner personally. Justice Bumatay disagreed with the majority. He saw that this small church has a right to present its version of facts to a jury.

A religious entity by its corporation sole bishop as its role and duties should be able to change its name without fear that the

new name could lead to its property being questioned by the government. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012).*

The Church interactions, church doctrine and functions within all the name changes remained the same from its name and filing a deed for recognition is typically referred to as a "name change" or "name amendment." This involves legal documentation (deeds) to officially recognize the new name, requiring a filing with the appropriate state or local authorities. The deed change did not change hands to a separate church or entity, but only for notice of name change for the existing church.

The Ninth Circuit majority stated it relied on the "deed transfer" despite the Society holding legal title, due to IRS being allowed to seize its assets showing that the nominee is SACM. *In re: Application of XYZ Corp. Lemon v. Kurtzman, 403 U.S. 602 (1971); Smith v. Jones, 123 U.S. 456 (1887).*

The Supreme Court held that individuals have a constitutionally protected right to change their names rooted in the principles of personal autonomy and freedom of expression which must include churches under the due process clause of the Fourteenth Amendment. A church could change its name with adhering to state registration requirements, emphasizing the

importance of maintaining public records and preventing fraud. These restrictions aim to protect the integrity of religious organizations and ensure transparency in their operations.

The majority failed to acknowledge that Montana law expressly permits a corporation sole to transfer change of name of real property without consideration. *Mont. Code § 35-3-205(4)(5).*

In Justice Bumatay's dissent he stated that a religious entity should be able to change its name without fear that the new name could lead to its property being levied by the government and as the deed change shows many of the transfers show only a name change. The Arizona Yavapai County, under state law, in every name change of title, established legal ownership of the church property is legally owned by SACM granting church exemption. *Presbyterian Church v. Hull Church, 393 U.S. 440 (1969).*

SCOTUS decided that laws must have a significant secular purpose, must not primarily advance or inhibit religion, and must not foster excessive government entanglement with religion. *Lemon v. Kurtzman, 403 U.S. 602 (1971).*

K. $50,000 Donation to SACM

The Respondent claims there are issues concerning a $50,000 donation from Rev. Nelson of Grace Ministries, arguing it

was payment to the Gardners in exchange for their specific services for a sick Society member and traveling expenses and then hid the money into SACM's bank account and that the bank account was the nominee of the Gardners.

The fact is that as bishop and ministering duties of SACM, the Rev's Gardners under the love of the brethren went to Rev. Nelson's side and cared for him. The check was made out to SACM. Ministry to Ministry as a gift donation. Two of the justices claim that the record does not bear this out. The record absolutely bears this out which gives rise to a disputed issue of material facts. After the passing of Rev. Nelson, the check was deposited in SACM's money market account that remained there eight (8) years until April 31, 2021, the day it was seized by IRS. Neither SACM nor the "*Gardners*" ever used it.

L. Discussion at Oral Argument

At the Oral Argument many questions were asked by the Justice Bumatay of the Respondent:

Question: "Can you describe the government's position what the difference is between a corporation sole and a nominee. Are they the same thing in the government view?"

Answer: *"No, Corporation sole is the same as any other form of entity. It's fine in*

theory [philosophy]. In this case it is used for the Gardners money and property."

Question: "Is there any non-religious uses of corporation sole?"

Answer: *"I'm not sure about that. Any person or entity in theory [assumption] can be a nominee. It [corporation sole] is like any other civil corporation that can be pierced."*

Question: "What are the facts proving that according to government, SACM is not a legitimate religion therefore all your facts indicate that it could be a nominee."

Answer: *"No, -- Ah, Ah,-- it <u>could be</u> a legitimate religion, but that's not what this case is about, it's about who owns the property claimed to be the churches and that Bishop Gardner is supposed to be the titulary head but is not. It is fraud in this case." "The SACM's checking account was depleted because the Gardners used the money for themselves.*

Question: There are facts in light favorable to the church, correct?

Answer: *Correct.*

Question: Are you investigating how church makes it decisions.

Answer: *Not necessarily.*

Question: "How was the money in SACM's bank account used and spent?"

Answer: *"We don't know how they spent and used the money."*

The Respondent would have known it came not from SACM's checking account but from its money market account which was never depleted. Evidence plainly reveals the $50,000 donation remained there until it was seized. (Listen to 9th Cir. URL)

REASONS FOR GRANTING WRIT

I. The question of whether, and under what circumstances, an appellate court's violation of the party presentation principle amounts to a violation of due process is exceptionally important.

In an adversarial judicial system, courts should serve as "neutral arbiter[s] of matters the parties present." *Greenlaw v. United States, 554 U.S. 237, 243 (2008).* Indeed, "[w]hat makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself but instead decides on the basis of facts and arguments pro and con adduced by the parties." *McNeil v. Wisconsin, 501 U.S. 171, 181 n.2 (1991). See Carducci v. Regan, 714 F.2d 171, 177 (D.C. Cir. 1983)* ("The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of the legal questions presented and argued by the parties before them.") *State v. Bristol, 654 S.W.3d 917, 924 (2022)* ("The party-presentation principle

helps reduce the risk that judges will exercise power more appropriately reserved for the political branches.").

The Petitioner fears a judiciary acted as an inquisitor by inappropriately concluding that there are no material facts in dispute entirely ignoring the substantial rights of petitioner to own and possess its own property. SACM has a right under the U.S. Constitution to a jury. *State v. Bristol, 654 S.W.3d 917, 924 (Tenn. 2022.*

SACM requires vital legal protection that supports the unique nature of its religious organizations and their operations significantly impacting church governance by allowing religious organizations to operate without government interference by their corporation sole who perform essential decision religious functions. This legal doctrine ensures that churches can select leaders and give its manage control based on their beliefs and practices, safeguarding their autonomy and religious freedom.

II. The decision below erred when it did not follow proper procedure in affirming a summary judgment against the non-moving party.

The Ninth Circuit's decision forged a 2-1 circuit split over summary judgment in not following Rule 56 mandates to render a legal decision based upon reading the facts in a light favorable to the non-moving party. As

shown elsewhere in this Writ there are many genuine issues of material facts that favor petitioners. Fed. R. Civ. P. 56(a). There exist triable questions on whether SACM is the Gardners nominee. *Scott v. Harris,* 550 U.S. 372 (2007); *Weiss v. JP Morgan Chase & Company, 2d Circ., No 08-0801, June 5, 2009.*

The million-dollar question is who truly benefits from the asset and property of SACM. It is whether the *Gardners'* exercised active and substantial control over the property or does SACM have complete control. In other words, is there a distinction between the church and its pastor. Justices Rawlinson and Sanchez found that the Gardners' controlled the property. Dissenting Justice Bumatay stated **if** the Gardners legitimately did hold those assets for the benefit of the Society and its religious activity, no nominee status has been established.

The power of the corporation sole's legal right to control church assets and the parsonage does not require consideration. Since there was no transfer, the transfer Towe factor is not applicable. *Towe Antique Ford v. IRS 791 F. Supp. 1450, 1454 (D. Mon. 1992).* This favors the Petitioners.

SACM has a right under the U.S. Constitution that is a fundamental legal right to a jury. The Supreme Court interprets and enforces these rights, ensuring that jury trials are conducted fairly

and in accordance with constitutional standards. It ensures that individuals have the opportunity to have their cases decided by a group of peers rather than solely by a judge. *Duncan v. Louisiana 22 Ill. 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968).*

III. Material facts that should have been read in a light favorable to the Petitioner.

There are many genuine issues of material facts that favor petitioners. Fed. R. Civ. P. 56(a). The decision below erred when it did not follow proper procedure in affirming a summary judgment against the non-moving party. When called to weigh evidence and draw inferences from that evidence, judges must tread lightly. As Justices Bumatay argued in his dissenting summary judgment is appropriate only when there is no genuine dispute of material fact. There are many triable issues of fact in this case to be heard from a jury and not by judges. *Weiss v. JP Morgan Chase & Company, 2d Circ., No 08-0801, June 5, 2009.*

IV. The ruling failed to properly apply the ministerial exception.

Many legitimate churches use legal structure "corporation sole" that allow their religious leader, a single individual, such as a bishop, to act as the sole office of the corporation to manage all church assets and hold property on behalf of the church ensuring

the property remains with the church when leadership changes. The Respondent and the Courts in their inaccuracy of understanding the separate nature of the church organization from its ministers brought about faculty decisions that are essential to the religious mission of the church organization regarding their ministers applies to individuals in ministerial roles, which can include pastors, priests, and other religious leaders that is rooted in the First Amendment, which guarantees the free exercise of religion or the right of the people peaceably to assemble. It is the importance of religious organization's' autonomy. The Respondent and the District and Ninth Circuit court interfered SACM's decision regarding its Bishop corporation sole. The County of San Luis Obispo v. Ashurst case states there is a clear distinction between the corporation and the individual who happens to be the office holder. *County of San Luis Obispo v. Ashurst, 146 Cal. App. 3d. 380, 383 (1983). Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012); President Trump Executive Order* 13798 of *May 4, 2017 (Promoting Free Speech and Religious Liberty); Memorandum, Federal Law Protections for Religious Liberty (October 6, 2017); Tucker v. Faith Bible Chapel Int'l., No. 20-1230 (10th Cir. 2022).*

V. The Towe Factors favor that the Petitioner is not a Nominee.

SACM introduced evidence that creates triable questions on whether SACM is the Gardners nominee. *Scott v. Harris,* 550 U.S. 372 (2007). The Towe Factors favor that Petitioner is not a Nominee. The record in the district court read in a light favorable to Petitioner shows that:

1. SACM is a separate and distinct entity from the Gardners, and it was created and has been governed by a board of elders, not the Gardners.

2. SACM purchased and maintained the church house with its own money.

3. SACM received and held donations in two bank accounts.

4. SACM used its funds for legitimate ecclesiastical purposes.

5. The Gardners did not transfer money or real property to SACM.

6. SACM housed the Gardners under the legal principle of a parsonage allowance.

7. The Gardners both commenced receiving social security income at age 62 (20 years ago) and use it for almost all their personal expenses.

8. While the roof repair required a loan which could only be obtained by the Gardners through temporary deed transfer, the property was transferred back to SACM and was paid by SACM.

9. The IRS levy was against Fredric Gardner on the SACM accounts. However, Fredric was not a signer on the account. Joyce Essman was and still is on the account as SACM's administrator.

Through the documents and declarations submitted to the District court, SACM is a separate legal entity that did not receive any money or property from the Gardners. Furthermore, SACM was not created to hold or hide any Gardner assets. The Towe factors, therefore, favor the Petitioner. Towe Antique Ford v. IRS id.

The Supreme Court interprets and enforces these rights, ensuring that jury trials are conducted fairly and in accordance with constitutional standards. It ensures that individuals have the opportunity to have their cases decided by a group of peers rather than solely by a judge. *Duncan v. Louisiana 22 Ill. 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968).*

SACM has been in complete control of the property since 2019. A full church exemption was granted to SACM by Yavapai County Assessor and their attorney, after visiting three (3) times making a complete examination of the property for religious use, disclosing that there is no other entity or person having beneficial interest in the property. The levy of SACM's bank account was seized claiming Fredric Gardner as

nominee who had no dominion and control over SACM's account nor was on the account at the time of the levy.

The majority focused exclusively on whether the taxpayer exercised active or substantial control and possession over the property. They did not find it necessary to analyze whether the property also served legitimate religious purposes. The ruling in summary judgment in this case could result in IRS using the nominee theory to harm many small church organizations. See *Our Lady of Guadalupe School v. Morrissey-Berrr, 591 U.S. 732,753 (2020).*

All the deeds of the property in every change of name related to the property physical evidence that the church was purchased and held in the corporation sole's name. The use of the nominee theory, especially against bona fide churches, would permit government agencies to dictate to any church, big or small, as to how it should operate and control forfeiting the right to occupy or use property for church purposes.

Factors contributing to this prejudice can include judges being influenced by prevailing societal attitudes towards religion, which can lead to skepticism or bias. Previous court decisions may shape a judge's views, especially if they lean towards secularism. A judge's own beliefs and

experiences can inadvertently affect their impartiality.

Judge Bumatay's dissent contended that: "The right question is: Did the Apache Knolls property also benefits the [organization]? If so, then it's not dispositive that the property also happened to benefit the [taxpayers]." Judge Bumatay noted that if the property was used for religious services (as the organization claimed was used for over twenty-five 25) years), this might create a legitimate dual purpose.

The appeals majority held that the SACM held bare legal title to the Apache Knolls property to benefit the individual Gardners because the Society paid all the expenditures, such as gas, telephone cable, internet services and homeowners insurance policy of the church and parsonage property. If this broad accusation is true, that would make every corporation sole and all religious organizations using corporation sole a nominee under its view of the law. Every church in the United States provides a parsonage for their pastors, priests, clerics, vicars, etc. There is no law that states that they cannot enjoy the benefits of the parsonage no matter how long they live there even until death in which is absolutely according to church doctrine and church law. See *IRC Section 107.*

CONCLUSION

In conclusion, the undersigned takes the liberty of offering a personal statement. The undersigned has practiced tax law for 53 years commencing in the office of Chief Counsel with the IRS for six years in Washington D.C., Los Angeles and Phoenix. In 1979 the undersigned entered private practice and has handled over 1000 IRS collection cases since then. The undersigned has personally witnessed IRS revenue officers inappropriately ruin the lives of many taxpayers. In 1998 our U.S. Senate Finance Committee conducted 4 months of hearings excoriating the IRS for its harsh tactics. The result was an IRS reorganization and a taxpayer bill of rights. Sadly, over time little changed. To be an IRS collector a person must do uncomfortable things--seize assets. One half of new revenue officers quit within the first year. Many of those that remain employed have an attitude that taxpayers who do not pay are deadbeats and do not deserve much consideration and have created their own mess. A revenue officer learns that as a collector by applying pressure, the taxpayers come up with money whether a liquidation of assets or borrowing funds from others. Revenue officers are not trained in tax law. They are trained in tax collection.

Regarding the Gardners, a revenue agent was assigned. She was from Tucson, 180 miles from the Gardners. She never met the Gardners or went to the property, but she saw (probably on Google Maps) the church house which looked like normal residential property to her. The Gardners heard her say " I got me a house". By applying pressure, she felt collection would occur. She had no training regarding church law, church houses or parsonage allowances. She, however, knew that the full weight of the federal government would fall upon the Gardners and the church, SACM. She nor anyone else in the government had to prove the "nominee" theory upon which she predicated the seizures. The notices of levy were issued.

SACM filed the district court action in response. The USDOJ attorney threw the Gardners history of owing taxes and completely disregarded the Petitioner's church and those congregants that had given it donations. The district court judge, a former US attorney who had experience with IRS collection suits and who even had her name on litigation against the Gardners, never even granted oral argument. She sided with the USDOJ tax division attorney by granting summary judgment. Next the 9th Circuit affirmed. Only Justice Bumatay has seen fit to acknowledge the church autonomy

and the need for it to at least have a chance to express its position to a jury.

Rule 56 has been violated. The Towe decision has been misinterpreted. When Justice Bumatay asked the DOJ attorney whether the facts had been read in a light favorable to the Petitioner, he could think of none. SACM deserves better.

There are thousands of small churches who will be forever negatively affected by this 9th Circuit decision that gives too powerful tool to the IRS. The Society of Apostolic Church Ministries respectfully requests that this Court issue a writ of certiorari.

DATED 22nd day of December 2025.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1765
D.C. No. 3:21-cv-08277-DJH

THE SOCIETY OF APOSTOLIC CHURCH MINISTRIES BISHOP, ELIZABETH GARDNER CORPORATION SOLE AND HER SUCCESSORS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Filed July 24, 2025

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Argued and Submitted May 12, 2025
Phoenix, Arizona

Appendix A

Before: RAWLINSON, BUMATAY, and SANCHEZ, Circuit Judges.

Dissent by Judge BUMATAY.

MEMORANDUM*

Plaintiff Society of Apostolic Church Ministries Bishop ("the Society") brought this suit against Defendant United States challenging the Internal Revenue Service's ("IRS") tax lien on the Society's Apache Knolls property and levy on the Society's bank account to recover $826,381.05 in unpaid taxes owed by Elizabeth and Frederic Gardner for tax years 2002 through 2004. This action reflects another entry in a decades-long effort by the Gardners to avoid

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

paying income taxes—an effort that has already reached this court four times. [1]

The IRS' tax lien and levy proceeded under the theory that the Society is the Gardners' "nominee." A "nominee" is "one who holds bare legal title to property for the benefit of another." *Fourth Inv. LP v. United States*, 720 F.3d 1058, 1066 (9th Cir. 2013) (citation omitted). We review the district court's grant of summary judgment for the Government de novo, considering the evidence in the light most favorable to the Society and drawing all reasonable inferences in its favor as the nonmoving party. *See Hittle v. City of Stockton*, 101 F.4th 1000, 1011 (9th Cir. 2024).[2]We affirm.

Under 28 U.S.C. §§ 6321 and 6331, the IRS has broad powers to impose tax liens and levies upon properties belonging to persons who have not paid their taxes. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 349-

1. *See Gardner v. Comm'r of Internal Revenue*, 845 F.3d 971, 973-74 (9th Cir. 2017) (describing history of the Gardners' tax evasion efforts); *see also Gardner v. IRS*, 672 F. App'x 776, 777 (9th Cir. 2017) (holding that Gardners' church was their alter ego for tax levy purposes); *United States v. Gardner*, 457 F. App'x 611, 612 (9th Cir. 2011) (affirming injunction barring the Gardners from "promoting, organizing, and selling their corporation sole tax scheme").

2. The district court applied the factors articulated in *Towe Antique Ford Foundation v. IRS*, 791 F. Supp. 1450, 1453 (D. Mon. 1992) to determine if the Society is the Gardners' nominee. Neither party disputes the use of the *Towe* factors to determine nominee status.

50 (1977). The authority conferred by these statutory provisions is "broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." *United States v. Nat'l Bank of Com.*, 472 U.S. 713, 719-20 (1985). This power extends to "all property of a taxpayer, including property that is held by a third party as the taxpayer's nominee or alter ego." *Fourth Inv. LP*, 720 F.3d at 1066 (citing *G.M. Leasing Corp.*, 429 U.S. at 350-51).

Although the *Towe* factors are a helpful guide in assessing the Society's nominee status, our ultimate focus is on the "totality of the circumstances," with the "overarching consideration" being "whether the taxpayer exercised active or substantial control over the property." *Id.* at 1070 (cleaned up). Reviewing de novo, we find no genuine disputes of material fact concerning the district court's determination that the Society was the Gardners' nominee.

As the district court concluded, undisputed record evidence establishes that the Gardners exercised "active or substantial control" over the Apache Knolls property despite the Society holding legal title to it. *Id.* The property's deed chain shows that Elizabeth Gardner repeatedly transferred the property to and from herself as corporation sole of various entities, including the Society, for no consideration. Mrs. Gardner also transferred the property to and from herself and her husband in their individual capacities without consideration. [3]

3. The dissent suggests that these transfers primarily reflect the name changes of the Gardners' church, but that is belied by the record. The Apache Knolls property has been owned and

The record also reflects that the Gardners continued to enjoy the benefits of the Apache Knolls property through each change in legal ownership. They have lived on the property for over twenty years. The Society pays for the Gardners' utilities and living expenses, such as their gas and telephone bills, cable and internet services, and their residential homeowner's insurance policy—despite the Gardners registering many of these accounts in their name. These undisputed facts establish the existence of a nominee relationship, *i.e.*, the Society held bare legal title to the Apache Knolls property to benefit the Gardners.

The Society does not point to any record evidence contradicting the district court's conclusion. Instead, the Society argues that a corporation sole is allowed to own and manage real property. But this appeal does not concern the legality of a corporation sole. The corporation sole form can be abused just like any other relationship or entity. Where the undisputed evidence shows that the Gardners exercised active or substantial control over the

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transferred between the Gardners in their individual capacity, the Gardners' church, Messiah's Remnant, and the Society, which is a different legal entity altogether. Only one of the five property transfers on the deed chain could be attributable to a church name change. The dissent also contends that transfer to the Gardners individually to qualify for a personal loan raises a triable dispute. It does not. Nominee analysis is concerned with whether the taxpayer had active or substantial control over property held by a third party, not *why* they exercised such control. *See Fourth Inv. LP*, 720 F.3d at 1070. Multiple transfers of the Apache Knolls property to different entities controlled by the Gardners for no consideration establishes the uncontradicted fact that the Gardners exercised active and substantial control over the property.

Apache Knolls property to benefit themselves despite the Society holding legal title to it, the IRS was allowed to reach the property to recover taxes owed by the Gardners.

The same conclusion holds with respect to the Society's bank account. Undisputed testimony by the Society's leadership establishes that the Gardners had decision-making authority over the Society's finances and exercised substantial control over the Society's bank account. Frederic Gardner was the co-signer on the bank account. The Society paid for the Gardners' various living expenses and utilities from this account. The Society even paid for a portion of the Gardners' legal fees from this account.

Our dissenting colleague contends that nominee status must be evaluated on an asset-by-asset basis, and the district court's failure to conduct such an analysis with respect to the Society's bank account requires reversal.[4]But the Society never raised this argument either in briefing before the district court or on appeal here. Even if it were the applicable standard, the district court did analyze the Society's bank account

4. The dissent cites *Oxford Capital Corp. v. United States*, 211 F.3d 280 (5th Cir. 2000) for this proposition, but that decision required only that a court conducting a nominee analysis determine if the "taxpayer in fact has beneficial ownership" over the property in which legal title is held by a third party. *See id.* at 284. *Oxford Capital* is consistent with our "totality of the circumstances" test requiring a showing that the "taxpayer exercised active or substantial control over the property." *See Fourth Inv. LP*, 720 F.3d at 1070.

in its discussion of the *Towe* factors. The district court found that the Society pays for the Gardners' "bills and expenses" as well as their "legal fees" from the Society's checking account, and it concluded, under a totality of the circumstances, that the Gardners exercised "active or substantial control" over the Society's bank account and used the Society's funds to benefit themselves. The Society points to no evidence in the record contradicting the district court's conclusion. [5]

The Society and the dissent contend that a triable dispute exists with respect to a $50,000 donation made by a now-deceased Society member. The Society claims this donation was made to the Society to help a member in need. The record does not bear this out. Mrs. Gardner testified that the donor's instructions were for the money "to be used for the ministry for special need(s)—*for you if need be*—helping someone else." The donor's successor similarly stated that the donation was "for a special hardship [Mrs. Gardner] chose and if hard times came upon themselves use it for that necessity also." This instruction does not give rise to a disputed issue of material fact.

Finally, the dissent contends that the Government exhibits disrespect for minority religions and does not

5. The dissent makes much of the distinction between the Society's checking account and money market account, both with Wells Fargo. The distinction is of no moment because the undisputed evidence establishes that the funds in the Wells Fargo money market account were transferred from the Society's checking account.

view the Society as a bona fide religion. Nothing in the record or briefing supports this bald assertion. This is not a case about religion or how a church operates. It is about the determination of who owns and actively controls certain assets held for the benefit of another—the very purpose of nominee analysis and an inquiry that can be made without implicating protected First Amendment interests. *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.").

This appeal involves a straightforward determination of whether the Society held bare legal title to property for the benefit of the Gardners. The Society has produced no evidence establishing a genuine dispute of material fact that the Society is the Gardners' nominee as to the Apache Knolls property and the Society's bank account. Accordingly, summary judgment was properly granted in the Government's favor.

AFFIRMED.

Appendix A

The Society of Apostolic Church Ministries Bishop, Elizabeth Gardner Corporation Sole and Her Successors v. United States of America, No. 24-1765

BUMATAY, Circuit Judge, dissenting:

Summary judgment is appropriate only when there is no genuine dispute of material fact. That's because "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Here, the Society of Apostolic Church Ministries Bishop ("Society") has introduced evidence that creates a triable question on whether it's Elizabeth and Fredric Gardners' nominee. On these facts, that question should be answered by a jury—not by judges.

The Society sued the United States after the IRS recorded a tax lien against its property in Arizona ("Apache Knolls") and levied its bank account for taxes owed by the Gardners. Elizabeth Gardner is the Society's bishop and its sole corporate officeholder. Fredric, her husband, is one of its elders. Apache Knolls is the Gardners' primary residence and the meeting place of Messiah's Remnant—a church fellowship—and the headquarters of the Society. The Society's religious activity also occurs at Apache Knolls, according to the Society.

Both the Society and Messiah's Remnant are organized as corporations sole. The IRS defines a "corporation sole" as "a corporate form authorized under

certain state laws to enable bona fide religious leaders to hold property and conduct business for the benefit of the religious entity." Rev. Rul. 2004-27, 2004-1 C.B. 625, 626, 2004 WL 389673, at *1. Elizabeth Gardner most recently became a corporation sole of the Society under the laws of Montana. Under Montana law, the corporation sole has the power "to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, provided that all property must be in trust for the use, purpose, and benefit of the religious denomination, society, or church for which and in whose behalf the corporation sole is organized." Mont. Code § 35-3-205(4).

The Gardners owe the IRS taxes. To collect on those back taxes, the IRS set its eye on Apache Knolls and the Society's bank account. The government's theory is that those assets in fact belong not to the Society but to the Gardners personally. Legally speaking, the government argues that the Society is the Gardners' *nominee* for both Apache Knolls and the bank account. While Arizona hasn't expressly adopted a nominee theory of liability, in general, a nominee is a person or entity that holds "bare title" to an asset for the actual benefit of someone else—the true owner. *See Fourth Inv. LP v. United States*, 720 F.3d 1058, 1066 (9th Cir. 2013) (analyzing California law). But if the Gardners legitimately hold those assets for the benefit of the Society and its religious activity, no nominee status has been established. In determining whether an entity is a taxpayer's nominee, we look to the totality of the circumstances. *Fourth Inv. LP*, 720 F.3d at 1070.

With this standard in mind, let's turn to the facts of this case.

1. First, turning to the Apache Knolls property. Bethel Aram Ministries, the corporate entity now known as Messiah's Remnant, acquired Apache Knolls in 2003. Since then, the deed chain shows that Apache Knolls changed hands several times over the years, mostly to other successor church entities but once to the Gardners personally before being transferred back again. Here is the deed chain:

Grantor	**Grantee**	**Date recorded**
Dennis M Repan and Olga Repan	Elizabeth A Gardner, A Corporation Sole of Bethel Aram Ministries	April 8, 2003
Elizabeth A Gardner, A Corporation Sole of Bethel Aram Ministries	Pastor, Elizabeth A Gardner A Corporation	September 12, 2012
Pastor, Elizabeth A Gardner A Corporation Sole of Messiah House Fellowship	Fredric A & Elizabeth A Gardner	December 17, 2012

Fredric A & Elizabeth A Gardner	Church Restoration Ministries, Elizabeth A Gardner, A Corporation	March 7, 2013
Church Restoration Ministries, Elizabeth A Gardner, A Corporation	Society of Apostolic Church Ministries, Bishop Elizabeth A Gardner, Corporation Sole	June 27, 2019

This deed history presents a triable issue of fact on whether Apache Knolls is held for the benefit of the Society or the Gardners personally. In favor of the government are four undisputed facts. First, Elizabeth transferred the property to and from various corporation-sole entities she governs, including the Society, without consideration. Second, she transferred the property to herself and her husband one time. Third, they have enjoyed the benefits of the property by living on it for 20 years. And fourth, the Society pays for living expenses and various costs associated with homeownership, such as insurance and utilities.

While these facts might support a government verdict, a jury could reasonably draw inferences favoring the Society too. On the property transfers between different church entities, a jury could credit that some of the transfers were prompted by Messiah Remnant's name changes over the years—as Fredric said in his deposition.

A religious entity should be able to change its name without fear that the new name could lead to its property being levied by the government. The majority concludes that the transfers do not primarily reflect name changes. But no facts point to this. As the deed chain shows, many of the transfers show only a name change: from *Bethel Aram Ministries* to *Messiah House Fellowship* to—after the transfer to the Gardners personally—*Church Restoration Ministries.* All three of these names refer to the same house church, which is now known, indeed, as Messiah's Remnant. Inference-drawing from these facts should be for a jury, rather than circuit judges.

On the transfer to the Gardners personally, a jury could find, again as explained by Fredric, that they transferred the property to their name at the direction of a bank to qualify the Society for a loan to fund a roof repair. In claiming it's irrelevant that the Apache Knolls property was transferred to the Gardners for the benefit of the Society, the majority makes a broad ruling that would make every corporation sole (and all religious organizations using the corporation sole structure) a nominee under its view of the law. To the majority, it doesn't matter *why* a property is transferred and "[m]ultiple transfers of the Apache Knolls property to different entities controlled by the Gardners for no consideration" is enough to establish nominee status. The majority cites no Arizona law for this exceedingly broad proposition of law. It also fails to acknowledge that Montana law expressly permits a corporation sole to transfer real property between church entities without consideration. *See* Mont. Code § 35-3-205(4). Most importantly, it

misunderstands what the nominee inquiry is about—it's trying to determine who truly benefits from the asset. Of course the reason why a property is transferred is crucial to that inquiry. Under the majority's novel theory of law, every corporation sole now is in danger of being deemed a nominee of its officer.

The majority also holds it was sufficient that the "Society held bare legal title to the Apache Knolls property to benefit the Gardners." Again, this asks the wrong question. The right question is: Did the Apache Knolls property *also* benefit the Society? If so, then it's not dispositive that the property also happened to benefit the Gardners. For example, if the Apache Knolls property was used for weekly religious services (as the Society contends), then it serves the Society even if the Gardners also personally benefitted. At least there's a triable issue of fact on that question and so summary judgment was inappropriate.

A jury too could find that the Gardners' living at the property and the Society's paying associated expenses is not evidence of a nominee relationship but is instead simply indicative of their roles in the church. The Gardners, after all, claim that they took vows of poverty and that they conduct church business from the property, which they call a parsonage. All sorts of religions provide dwelling places for their leaders and pay their expenses, including personal expenses. Would we be here today if the parsonage-dwelling, vow-of-poverty-taking bishop led a better-known church?

Permeating the government's theory of liability is the government's dislike of the way the Society runs its internal finances and how much control it cedes to Elizabeth Gardner. But this argument treads on dubious constitutional territory. The government has no role in dictating the proper form of church governance. *See*, *e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 753 (2020).

Because there are triable issues of fact about whether Apache Knolls benefited the Society—rather than only the Gardners personally—this claim should have gone to the jury.

2. The bank account presents a triable question too. And here the case for remand should be even more uncontroversial: that's because the district court did not conduct nominee analysis *at all*. That's enough to send it back. The district court simply concluded that because the Society was the Gardners' nominee for Apache Knolls, then it must also be for the bank account. But that's wrong as a matter of logic and law.

Even if the Gardners were found to be the nominee of some of the Society's assets, that doesn't mean they are the nominee for all its assets. The Gardners could hold some of the Society's assets solely for their benefit but legitimately hold some assets for the benefit of the Society. That's why the nominee analysis proceeds asset-by-asset. The idea is to establish who the true owner of the asset is. If the government wanted to avoid this searching asset-by-asset inquiry, it could have charged the Society with being the

Gardners' *alter ego*. *See Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000) (explaining the difference between a nominee and an alter ego). That's a stronger claim, one that would essentially require the government to prove that the Society's corporate status is itself is a sham or fraud. If it succeeded, the IRS could reverse pierce the Society's corporate veil and get at its assets. *See id.* But the IRS does not argue that the Society is the Gardners' alter ego—only their nominee.

The majority suggests that this argument was forfeited. Reading the Society's complaint shows that this is wrong. The complaint makes clear that the Society's action was for both "quiet title" and "wrongful levy"—two separate actions. It shouldn't fall on the Society to ensure that the district court properly followed the law.

In any event, the majority concludes that the district court analyzed the bank account by mentioning in passing the Society's checking account in its discussion of a few *Towe* factors. That analysis ignores that most of the levied funds, including a sizeable donation, came not from the Society's checking account but from its money market account, which the district court did not analyze. To the extent it analyzed the Society's bank account at all, the district court collapsed the checking account and Apache Knolls into the same analysis and concluded that the Society is the Gardners' the nominee as a matter of law. The problem with this analysis is that it failed to proceed asset-by-asset. When district courts conduct the wrong analysis, we ask them to try again. Why not here?

What's more, the government surprisingly admitted at oral argument that it didn't know how the Society spent the money in the account. So the government doesn't even know if the Society used the account for bona fide religious purposes—or for the Gardners' personal expenses—yet it wants to immediately claim ownership. That the government and the district court failed to do this analysis is troubling.

The record shows that a $50,000 donation was made by a late donor to "be used for the ministry for any special need(s) and for you if need be—helping someone else." The majority waves away too quickly the significance of this donation: a jury might reasonably infer from its deposit in the levied account that the account truly belongs to the Society, not to the Gardners. This is true even though Elizabeth Gardner had complete control over the donated funds—it is not uncommon that an organization's top leader is the ultimate authority on how donations are spent.

The government may be right, but the Society deserves a jury trial—not judges sitting as their overseers.

* * *

When called to weigh evidence and draw inferences from that evidence, judges must tread lightly, avoiding trespassing on the domain reserved for juries. *See Anderson*, 477 U.S. at 255 (1986). Here, because "conflicting inferences may be drawn from the facts"—on both Apache Knolls and the bank account—"the case must

go to the jury." *LaLonde v. Cnty. of Riverside*, 204 F.3d 947, 959 (9th Cir. 2000). Summary judgment was thus inappropriate. We should have reversed and remanded.

I respectfully dissent.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED JUNE 11, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-21-08277-PCT-DJH

SOCIETY OF APOSTOLIC CHURCH MINISTRIES, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Filed June 11, 2024

ORDER

Plaintiffs Society of Apostolic Church Ministries ("SACM"), Elizabeth Gardner and Fredric Gardner ("Plaintiffs") have filed an untimely[1] Motion for

1. The Court notes that Plaintiffs' Motion for Reconsideration is untimely. LRCiv 7.2(g)(2) states that "[a]bsent good cause shown, any motion for reconsideration shall be filed no later than ***fourteen (14) days*** after the date of the filing of the Order that is the subject of the motion." (emphasis added). The Courts Order was filed on February 22, 2024. (Doc. 47). Plaintiffs' Motion was filed on March 11, 2024—eighteen days after the Court's Order was filed. (Doc. 52). Thus, Plaintiffs' Motion is untimely. *See* LRCiv 7.2(g)(2).

Reconsideration (Doc. 52) regarding the Court's Order Granting Summary Judgment in favor of the Government. (Doc. 47). Plaintiffs argue that the Court committed manifest error by erroneously applying the law and incorporating facts from prior decisions. (Doc. 52 at 5). The Court has allowed the Defendant United States of America ("the Government") to file a response to Plaintiff's Motion (Doc. 55), to which it has done. (Doc. 56).

The Government also filed its own Motion for Reconsideration (Doc. 49) in which it argues that Plaintiffs' quiet title claim should be dismissed based on the Court's finding that SACM is the Gardner's nominee. (*Id.* at 1). The Court allowed Plaintiffs to respond to the Government's Motion (Doc. 51), in which they concede that their quiet title claim should be dismissed if the Court denies their Motion for Reconsideration. (Doc. 53 at 1). For the following reasons, the Court denies Plaintiffs Motion for Reconsideration and dismisses their claim to quiet title.

I. Background

This case arises from the Gardner's unpaid tax liability. The IRS levied $73,340.37 in 2021 from a bank account owned by SACM ("the Levy") to satisfy tax obligations owed by the Gardners related to unpaid tax liability from the 2002-2004 tax years. (Docs. 25 at ¶ 18 (Amended Complaint); 27 at ¶ 18 (Answer)). Due to the Levy, Plaintiffs filed suit against the Government asserting claims to quiet title and for wrongful levy. (Doc. 1 at 4-5 (Complaint); Doc. 25 at 4-5 (Amended Complaint)).

Appendix B

The Gardners' underlying tax liability related to the levy arises from an adjudication of tax liability concerning their previously operated church: Bethel Aram Ministries ("BAM"). (Doc. 47 at 2). In a previous controversy with the IRS, the Ninth Circuit affirmed the Tax Court's finding that the Gardners' corporation sole, BAM, did not have any congregation, therefore, the donations that BAM received were taxable income. *Gardner v. Comm'r of Internal Revenue*, 845 F.3d 971, 973 (9th Cir. 2017). Specifically, the Tax Court found that the Gardners had unreported income of $100,070 for 2002; $217,973 for 2003; and $235,542 for 2004 and that they should have included these amounts as gross income. *Gardner v. Comm'r*, 105 T.C.M. (CCH) 1433, at *1 n.1 (T.C. 2013). The Tax Court also noted that the Gardners are liable for self-employment tax because they did not submit IRS Form 4361: "the Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners" for the 2002-2004 tax years. *Id.* at *8.

In the current matter, the Government filed a Motion for Summary Judgment (Doc. 37) arguing that SACM was holding property for the Gardners as their "nominee," therefore, the IRS' Levy on SACM's bank account was proper. (Doc. 37 at 13). The Court agreed and found that SACM was the Gardners' nominee as a matter of law. (Doc. 47 at 7).

The Court reached this decision after reviewing the evidence presented at the summary judgment stage and analyzing the factors set out in *Towe Antique Ford v.*

IRS, 791 F.Supp. 1450, 1454 (D. Mon. 1992).[2](*Id.* at 6-7). The Court concluded evidence that (1) Mrs. Gardner had "consistently transferred the property in and out of entities for which she is the corporation sole for no consideration;" (2) the Gardner's payment of personal legal fees from SACM's checking account; and (3) the Gardner's enjoyment of the benefits of the property after each transfer "affirmatively demonstrate[d] that no reasonable trier of fact could find other than for the [Government]." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). (*Id.*) The Court reasoned that "the 'overarching consideration' is whether the Gardners exercised active or substantial control over the property—which they [did]." (*Id.*) (citing *Fourth Inv. LP v. United States*, 720 F.3d 1058, 1070 (9th Cir. 2013)).

II. Legal Standard

Motions for reconsideration should be granted only in rare circumstances. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening

2. The *Towe* factors include: (1) Whether the nominee paid no or inadequate consideration; (2) Whether the property was placed in the name of the nominee in anticipation of litigation or liabilities; (3) Whether there is a close relationship between the transferor and the nominee; (4) Whether the parties to the transfer failed to record the conveyance; (5) Whether the transferor retained possession; and (6) Whether the transferor continues to enjoy the benefits of the transferred property. 791 F.Supp. at 1454.

change in controlling law." *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Indeed, Arizona Local Rule of Civil Procedure 7.2 ("LRCiv 7.2") provides that "[t]he Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence." LRCiv 7.2(g)(1). The movant must specify "[a]ny new matters being brought to the Court's attention for the first time and the reasons they were not presented earlier." *Id.* This is because "[m]otions for [r]econsideration may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises, Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).

A motion for reconsideration should not be used for the purpose of asking a court "to rethink what the court had already thought through—rightly or wrongly." *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995) (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). A mere disagreement with a previous order is an insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988).

III. Discussion

Plaintiffs argue that the Court's Order rests on manifest errors of fact and law because it was improper for the Court to incorporate and rely on facts from prior decisions that include evidence that is not in the record in this case. (Doc. 52 at 2-3). Plaintiffs also argue that the State of Arizona recognizes the existence of corporation soles, contrary to what the Court noted.[3](*Id.* at 5). Plaintiff finally argues that the Court erred in finding that SACM is the Gardner's nominee based on the *Towe* factors and Ninth Circuit law as these are issues of fact and credibility that the Court should not have decided. (*Id.* at 6-8). None of these arguments entitle Plaintiffs to relief.

First, the Court's reference to facts from the Gardner's previous cases was to provide context to this case. The Court restated these in its background section because they are intertwined with the current litigation and indeed gives rise to it. It would be impossible to understand the current facts and arguments without restating those is *Gardner v. Comm'r of Internal Revenue*,

3. The Court notes that whether or not Arizona recognizes corporations sole was not a fact necessary, or even relevant, to the disposition of the Government's Motion. So, this discussion was essentially dictum. *See Lamorie v. Davis*, 485 F. Supp. 3d 1065, 1072 (D. Ariz. 2020) ("A statement is dictum when it is 'made during the course of delivering a judicial opinion, but . . . is unnecessary to the decision in the case and [is] therefore not precedential.'") (citing *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004)). Furthermore, SACM is incorporated as a corporation sole in Nevada under N.R.S. § 84.050—not Arizona's A.R.S. § 10-11904. (Doc. 47 at 5).

845 F.3d 971, 973 (9th Cir. 2017) & *Gardner v. Comm'r*, 105 T.C.M. (CCH) 1433, at *1 n.1 (T.C. 2013). However, the Court did not rely on any fact not presented by the parties in their respective pleadings. For example, the Court noted that the independent fact that Mrs. Gardner frequently transferred the Property between entities for no consideration bolstered the Government's argument that "the church has functioned the same since its initial inception, and all iterations have been governed by Elizabeth Gardner as a corporation sole." (Doc. 47 at 7). The Court did not use this argument as evidence to reach its conclusion, as Plaintiffs argue. (Doc. 52 at 2-3). Instead, the Court relied on the deed chain—independent evidence from any previous case—to show that the nominee (SACM) (1) paid no or inadequate consideration for the property and that (2) the transferor (Mrs. Gardner) retained possession of the Property. (*Id.* (discussing the first and fifth *Towe* factors)). The deed chain shows that the Property was transferred (1) directly to Mrs. Gardner by BAM, then (2) to Mrs. Gardner as corporation sole of Messiah House Fellowship, then (3) to Mrs. Gardner as corporation sole of "church restoration ministries," and (4) finally to "Bishop" Gardner as corporation sole of SACM—all within a sixteen-year period. (*Id.* (citing Doc. 37-10 at 2)). Thus, because the Court did not rely on facts outside of the evidence presented to reach its ultimate conclusion, Plaintiffs' first argument fails.

Second, the Court did not weigh conflicting evidence or make credibility determinations to reach its ultimate conclusion. (Doc. 52 at 2-3). Instead, as many district courts in this Circuit do, the Court utilized the *Towe*

factors and Ninth Circuit precedent to reach a conclusion as a matter of law. *See e.g.*, *United States v. Bigley*, 2017 WL 2417911, at *7 (D. Ariz. May 10, 2017) (citations omitted); *United States v. Secapure*, 2008 WL 820719, at *7 (N.D. Cal. Mar. 26, 2008) (noting that courts throughout the Ninth Circuit rely on the *Towe* factors to determine nominee status). These factors are but a "tool[] used to determine the amount of control the delinquent taxpayer has over an asset." *911 Mgmt., LLC v. United States*, 657 F. Supp. 2d 1186, 1214 (D. Or. 2009). The *Towe* factors only bolster the Court's conclusion, as the undisputed facts demonstrate that the Gardner's exercised active or substantial control over the Property. *Fourth Inv. LP*, 720 F.3d at 1070. The Court could have reached this outcome without discussing any of the *Towe* factors, however, as a matter of law the overwhelming undisputed evidence establishes that SACM is the Gardner's nominee. *See id.* The Court applied the *Towe* factors not to weigh evidence or judge credibility, but to determine the amount of control the Gardner's have over SACM—which is, in essence, total control. *911 Mgmt., LLC*, 657 F. Supp. 2d at 1214.

In sum, after reviewing Plaintiffs' arguments on reconsideration and the Court's previous Order, the Court concludes that it did not err in finding that SACM was the Gardner's nominee as a matter of law. Because the Court denies Plaintiffs' Motion for Reconsideration (Doc. 52), it must grant the Government's Motion for Reconsideration (Doc. 49) and enter judgment on Plaintiffs' remaining quiet title claim.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Reconsideration (Doc. 52) is **DENIED**.

IT IS FURTHER ORDERED that the Government's Motion for Reconsideration (Doc. 49) is **GRANTED**. Summary judgment should have been granted in favor of the Government on Plaintiffs' quiet title claim. The Clerk of Court is kindly directed to enter judgment in the Government's favor on Plaintiffs' last remaining claim to quiet title and terminate this action.

Dated this 11th day of June, 2024.

s/ Diane J. Humetewa
Honorable Diane J. Humetewa
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 2, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1765
D.C. No. 3:21-cv-08277-DJH
District of Arizona, Prescott

THE SOCIETY OF APOSTOLIC CHURCH MINISTRIES BISHOP, ELIZABETH GARDNER CORPORATION SOLE AND HER SUCCESSORS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Filed September 2, 2025

ORDER

Before: RAWLINSON, BUMATAY, and SANCHEZ, Circuit Judges.

Judge Rawlinson and Judge Sanchez voted to deny the petition for panel rehearing and for rehearing en banc (Dkt. 65). Judge Bumatay voted to grant both

petitions. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on it. *See* Fed. R. App. P. 40. The petition for panel rehearing and for rehearing en banc (Dkt. 65) is therefore DENIED.