

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NONBELIEF RELIEF, INC.,

Plaintiff,

v.

CHARLES P. RETTIG, COMMISSIONER
OF THE INTERNAL REVENUE SERVICE

Defendant,

THE NEW MACEDONIA BAPTIST
CHURCH,

Intervenor-Defendant.

Civil Action No. 18-2347 (TJK)

ORDER

The New Macedonia Baptist Church has filed a motion to intervene in this action as a defendant. *See* ECF No. 5. For the reasons explained, the motion to intervene is **GRANTED**.

Nonbelief Relief, Inc., (“Plaintiff”) commenced this action against the Commissioner of the Internal Revenue Service (“Defendant”), challenging under the Establishment Clause the constitutionality of the IRS’s exception for religious organizations from the annual informational filing requirements for tax-exempt non-profits. *See* ECF No. 1 (“Compl.”). Under 26 U.S.C. § 6033(a)(1), organizations that are exempt from taxation under § 501(a) must file annual returns with the IRS disclosing information about the organizations’ balance sheets and other financial matters. *See* 26 U.S.C. § 6033(a)(1), (b). Churches and other religiously affiliated organizations, however, are excepted from that reporting requirement. *Id.* § 6033(a)(3)(A)(i). Plaintiff, a self-described “humanitarian agency organization” “providing help to nonbelievers who find themselves imperiled or threatened because of their nonreligious views, writings, or activism,” is a § 501(c)(3) non-profit and therefore subject to those reporting requirements.

Compl. ¶¶ 14–18. It had its tax-exempt status revoked, however, after it failed to file the applicable form under § 6033(a)(1), and it now challenges that revocation, along with the underlying reporting requirements and exceptions, as unlawful under the Establishment Clause. *See id.* ¶¶ 31, 42–43, 62–64.

The New Macedonia Baptist Church (“the Church”) is a non-profit church located in the District of Columbia. ECF No. 5-2 (“Decl.”) ¶¶ 4, 6. It is exempt from the reporting requirements under § 6033(a). *Id.* ¶ 6; *see also* 26 U.S.C. § 6033(a)(3)(i). According to its senior pastor, the Church “would be significantly burdened” if it were required to devote its resources to complying with the reporting requirements and make public “sensitive and confidential information related to [its] governance, ministry expenses, compensation of pastors and other key employees, and financial contributions” it receives. Decl. ¶¶ 7–8. To protect those interests, the Church now seeks to intervene as a defendant in this lawsuit, either as of right or with the Court’s permission under Federal Rule of Civil Procedure 24. *See* ECF No. 5-1 (“MTI Br.”). Plaintiff takes no position on the Church’s motion. Defendant, however, opposes it.

In deciding whether a party may intervene as of right under Rule 24(a), this Circuit “employ[s] a four-factor test requiring: 1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor’s interest.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015). The potential intervenor, even when seeking to intervene as a defendant, must also demonstrate Article III standing—that is, injury in fact, causation, and redressability. *Id.* at 316.

All but one of these requirements can be summarily dispatched. Addressing standing first, the Church unquestionably has standing to intervene as a defendant in this lawsuit. Plaintiff seeks to invalidate the IRS's exception from the reporting requirement for religious non-profits, an exception that the Church currently benefits from, on the ground that it is constitutionally infirm. If Plaintiff obtains the relief that it seeks, the Church will be harmed, and thus the Church has standing to defend the reporting exception as a participant in this lawsuit. *See id.* at 318 (“For standing purposes, it is enough that a plaintiff seeks relief, which, if granted, would injure the prospective intervenor.”). Moreover, because the Church has constitutional standing, “it *a fortiori* has ‘an interest relating to the property or transaction which is the subject of the action.’” *Id.* at 320 (quoting *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003)).

Defendant, sensibly, does not dispute those conclusions. *See* Opp'n at 5–6, 10. Nor does it dispute that this lawsuit, if resolved favorably for Plaintiff, may impair the Church's interest, *see id.* at 6, and that the Church's motion, which was filed a little over a month after Plaintiff filed its complaint and before Defendant answered, was timely, *id.* at 5 & n.2; *see also Fund For Animals*, 322 F.3d at 735 (finding timely a motion filed less than two months after the complaint and before an answer). Rather, Defendant asserts that because it intends to defend the constitutionality of the reporting exception, it will adequately represent the Church's interests. Opp'n at 7–9. Moreover, Defendant argues that, in any event, the Church's motion is premature, and that the Court should first resolve Defendant's pending motion to dismiss for lack of subject-matter jurisdiction. *Id.* at 2–4; *see* ECF No. 19 (“Def.'s MTD”).

These arguments are unpersuasive. As to the final Rule 24(a) factor, the inadequacy-of-representation requirement “is satisfied if the applicant shows that representation of his interest

‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). This requirement is “not onerous,” and “a movant ‘ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation.’” *Crossroads*, 788 F.3d at 321 (quoting *Fund For Animals*, 322 F.3d at 735, then *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)). Moreover, the D.C. Circuit “look[s] skeptically on government entities serving as adequate advocates for private parties.” *Id.*

Here, although Defendant and the Church both seek the broad goal of affirming the lawfulness of the IRS’s reporting exception, the Church’s interests are somewhat narrower, as the Church seeks to vindicate the particular interests of it and other religious organizations in avoiding the purported costs of reporting, unique to religious institutions, that it alleges it would endure. *See* MTI Br. at 10–12; ECF No. 22 (“Reply”) at 3–4. Significantly, for those reasons, the Church intends to argue not simply that the IRS’s reporting exception is lawful, but that it is constitutionally *required* under the First Amendment. *See* ECF No. 21-1 (Church’s proposed motion to dismiss) at 19–26. It does not appear that Defendant shares this view. *See generally* Def.’s MTD; Opp’n. Accordingly, it is not difficult to imagine how the two parties’ interests may diverge over the course of the litigation, especially with regard to how the Court, if necessary, determines precisely how to resolve the Establishment Clause issues raised in Plaintiff’s complaint. That is sufficient to meet the “minimal” requirement that the Church’s interests “*may be*” inadequately represented by Defendant in this action. *Trbovich*, 404 U.S. at 538 n.10 (emphasis added); *see also Fund For Animals*, 322 F.3d at 737 (“[E]ven ‘a shared general agreement . . . does not necessarily ensure agreement in all particular respects.’” (omission in original) (quoting *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977))).

Defendant's contention that the Church's motion is premature is also without merit. Rule 24(a) provides that, upon a timely motion, the Court "*must* permit" intervention upon the requisite showing. Fed. R. Civ. P. 24(a) (emphasis added). Nowhere does the Rule's text contemplate courts maintaining discretion to nevertheless deny intervention because an existing party has raised jurisdictional concerns. Indeed, the approach proposed by Defendant would "place the proposed intervenor in a precarious position under Rule 24(a), which demands the *timely* filing of motions to intervene." *100Reporters LLC v. U.S. Dep't of Justice*, 307 F.R.D. 269, 282 (D.D.C. 2014).

The one case cited by Defendant, *Public Citizen, Inc. v. Trump*, 361 F. Supp. 3d 60 (D.D.C. 2019), is not to the contrary. In that case, the court denied without prejudice a motion to intervene *as plaintiffs* because the Court was unsure whether the existing plaintiff itself had standing to bring its claims. *See id.* at 93. Relying on the notion that "intervention will not be permitted to breathe life into a 'nonexistent' law suit," *id.* (quoting *Fuller v. Volk*, 351 F.2d 323, 328 (3d Cir. 1965)), the court concluded that determining whether the proposed intervenor-plaintiffs could intervene, including whether they themselves had standing, was premature, *id.* In this case, however, participation by the Church *as a defendant* would have no effect on the existence of jurisdiction *vel non* over Plaintiff's claims. In fact, the potential injury the Church faces is posed by the very existence of this lawsuit. And thus to preclude the Church from participating at this juncture—including by independently arguing, as the Church seeks, *see* ECF No 21-1 at 7–13, that the Court lacks jurisdiction over Plaintiff's claims—would deprive it of its right to defend its interests at a crucial stage of the litigation.

In sum, the Court finds that the Church satisfies the requirements for intervention as of

right under Rule 24(a) and that it is therefore entitled to intervene in this lawsuit as a defendant.¹

For all of the above reasons, it is hereby **ORDERED** that the Church's Motion to Intervene, ECF No. 5, is **GRANTED**. The Clerk of Court shall add the New Macedonia Baptist Church to this case as Intervenor-Defendant and file its proposed motion, ECF No. 21-1, attached to its Notice filed on March 5, 2019, as a motion to dismiss on the docket.

It is further **ORDERED** that the Church may, if it chooses, file a response to Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 25, no later than May 13, 2019. If necessary, Plaintiff may file, no later than May 20, 2019, a reply in support of its motion, but it must be limited to addressing only those arguments raised by the Church in its opposition.

SO ORDERED.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: May 2, 2019

¹ Because the Court concludes that the Church may intervene in this action as of right, the Court need not address whether it would nevertheless permit the Church to intervene pursuant to Rule 24(b).