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# LDS Church fires back at James Huntsman's 'unfounded' tithing lawsuit, stands by its story on funding of City Creek Center

Faith dismisses an IRS whistleblower's sworn statement as "hearsay," saying it doesn't contradict statements from then-church President Gordon B. Hinckley that member donations helped build the mall.

(Trent Nelson | The Salt Lake Tribune) City Creek Center in Salt Lake City on Monday, Aug. 23, 2021. Funding to build the mall is at the heart of a fraud lawsuit against The Church of Jesus Christ of Latter-day Saints

By Tony Semerad | Aug. 24, 2021, 9:28 a.m. | Updated: 3:14 p.m.

True to the words of its top leaders, The Church of Jesus Christ of Latter-day Saints spent earnings from investing member donations — and not their original tithing — on the City Creek Center shopping mall in Salt Lake City, lawyers for the faith argued Monday.

Even though new assertions in federal court in California by former Utahn James Huntsman imply otherwise — [including a dramatic sworn statement from IRS whistleblower David Nielsen](#) — “nothing Huntsman or Nielsen has said or could say changes that dispositive fact,” church attorneys contend in new filings.



This latest legal volley in the high-profile tithing dispute comes even as U.S. District Court Judge Stephen Wilson canceled an Aug. 30 hearing in the case. A clerk for the judge, Paul M. Cruz, wrote in an email Tuesday that Wilson instead will rule on the church's motion for summary judgment based on documents lawyers already have submitted.

Huntsman — a brother of former Utah Gov. Jon Huntsman Jr. and a son of the late Utah industrialist-philanthropist [Jon Huntsman Sr.](#), who had served as an area Seventy in the church — is accusing Latter-day Saint leaders of fraud for promising faithful members that billions of dollars in tithing would be used only for charity and religious causes, while secretly spending up to \$2 billion for commercial purposes, including \$1.4 billion on developing the upscale downtown mall in Utah's capital.

James Huntsman

In motions submitted Aug. 23, James Huntsman included a sworn statement from Nielsen, a former portfolio manager at Ensign Peak Advisors, the church's investment arm, alleging that fund managers commingled tithing and earnings from investments, while referring to "every penny" as sacred donations from members.

But that, church lawyers contend, is "secondhand hearsay, not based on his personal knowledge." Confidential financial documents submitted under seal to Wilson earlier this month, on the other hand, state the church instead used "earnings of invested reserve funds" and added cash from commercial entities — proving, they contend, the veracity of statements made in 2003 by then-church President Gordon B. Hinckley th **X**

ignoring them will not make them go away.”

*[Get more content like this in the Mormon Land newsletter, a weekly highlight reel of developments in and about The Church of Jesus Christ of Latter-day Saints. To receive the free newsletter in your inbox, [subscribe here](#). You also can support us with a donation at [Patreon.com/mormonland](#), where you can access gifts and a transcripts of our “Mormon Land” podcasts.]*

And while the California businessman, who resigned from the church in 2020, insists that is a “distinction without a difference,” the spending happened exactly as Hinckley outlined, they argue, “and that’s what counts.”

“Huntsman’s theory means a drop of tithing in an ocean of earnings creates an ocean of tithing,” they said in their motion. “That cannot be right, and Huntsman fails to point to any case law that could even arguably support this proposition.”

Nielsen filed a whistleblower complaint with U.S. tax authorities in late 2019, saying Ensign Peak amassed a [\\$100 billion reserve fund](#) from excess tithing meant for — but never spent on — charitable causes, in potential violation of tax laws governing nonprofits.

That complaint is Huntsman’s “sole support for his fraud claim,” church attorneys in California contend. But “the IRS document,” they note, “has not been presented to the court and is not in the record.”

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Instead, Nielsen's latest sworn statement, submitted to back Huntsman's case, is "a newly minted declaration, arguing that because Ensign Peak's seed money once came from tithing, and because of the way some of Ensign Peak's investment managers generically spoke of investment reserves as being sacred, all reserve earnings must be considered tithing no matter what President Hinckley said."

In his statement, Nielsen said [tithing donations](#) were mixed in with earnings and "every penny was referred to as the 'widow's mite'" — a [biblical reference](#) to its sacred nature.

Based on his personal knowledge, Nielsen said, "it appeared the church's public statements were intended to conceal the truth about EPA's use of tithing funds for City Creek mall" and an ailing church insurance company known as Beneficial Life.

In their latest filings, church attorneys counter that "even if what Nielsen says is true, which it is not, none of what he says changes what actually happened." They contend Nielsen's assertions to the contrary "can be most charitably understood as a narrow, incorrect, and incomplete understanding of how church finances operate."

With his main argument legally neutered, church lawyers contend, Huntsman is now trying "to recast his failing fraud theory on general allegations about church teachings." But those, they argue, are barred by First Amendment protections for religion, which prevent government, including the courts, from proving or disproving matters of faith.

Monday's filings also take a personal dig at Huntsman, whose grandfather was the late [David B. Haight](#), a member of the church's Quorum of the Twelve Apostles. In seeking to keep some of the documents they submitted confidential, attorneys for the faith maintain there is a risk his lawsuit will "promote public scandal" against his former



“Huntsman accuses church leaders ‘at every level’ of telling ‘outright lies,’” church lawyers write, “during a time when his own grandfather was one of the most senior leaders in the church, and his father also held a high-level leadership position.”

They further assert that because Huntsman’s suit seeks damages meant to “punish” and make “an example of” the church, his “unfounded accusations heighten the risk that the confidential financial materials could be used as a ‘vehicle for improper purposes,’” weighing in favor of sealing them from public view.

[LDS Church's latest motion by The Salt Lake Tribune on Scribd](#)



Case 2:21-cv-02504-SVW-SK Document 44-2 Filed 08/23/21 Page 1 of 16 Pa

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**Editor's note** • *James Huntsman is a brother of Paul Huntsman, chairman of the nonprofit Salt Lake Tribune's board of directors.*



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