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9th Circuit grants church new hearing, vacates ruling that would reinstate tithing suit

The Church of Jesus Christ of Latter-day Saints will argue in June that the lawsuit seeking the return of \$5 million in tithing would endanger religious freedom by giving courts and juries power over religious doctrine

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The Church Office Building of The Church of Jesus Christ of Latter-day Saints is pictured in Salt Lake City on Wednesday, Feb. 19, 2020. | Steve Griffin, Deseret News



By Tad Walch

Tad Walch covers religion with a focus on The Church of Jesus Christ of Latter-day Saints.

The Church of Jesus Christ of Latter-day Saints will now be able to make its argument that decisions related to tithing funds are protected by the First Amendment in an upcoming hearing before a larger group of judges on the 9th Circuit Court of Appeals.

In August, a three-judge panel of the 9th Circuit reinstated part of [James Huntsman's previously dismissed lawsuit](#) seeking the return of \$5 million in tithing from the church by a vote of 2-1. But the church appealed, asking for an [en banc](#) hearing with the full 9th Circuit.

The court's leader, [Chief Circuit Judge Mary H. Murguia](#), granted the church's appeal Friday. She issued a brief order that stated a majority of the 9th Circuit's judges had voted to vacate the split decision that reinstated Huntsman's lawsuit in August.

A church spokesman said the church welcomed the court's decision.

"These are important matters the church is following carefully," spokesman Doug Andersen said. "The church appreciates the 9th Circuit's ruling setting aside the three-judge panel's opinion and agreeing to give this case further consideration. We look forward to presenting our case to the full court."

Huntsman, a California businessman, filed a federal lawsuit in March 2021 asking for the return of more than \$5 million in tithing he said he donated to The Church of Jesus Christ of Latter-day Saints over a quarter of a century.

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A U.S. District Court judge [tossed out](#) Huntsman's lawsuit in September 2021.

But a 2-1 vote in August by a three-judge panel of the 9th Circuit [reversed](#) part of that decision and reinstated pieces of Huntsman's suit, saying that the issue in question was secular, not religious.

The church [appealed that ruling](#) in September.

Other faiths signed a friend-of-the-court [brief](#) in October, stating, “If a court can reframe an inquiry into the meaning of a religious term, as indicated by a church’s highest ecclesiastical leader, as purely ‘secular’ in nature, then there is no sacred ground left under the First Amendment for religious organizations.”

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“The Supreme Court has consistently refused to allow courts to hide theological elephants in secular mouseholes,” the group of 10 religions added in the amicus brief.

Next up is a rehearing of Huntsman’s request to reinstate the case, which will take place the week of June 24 in Seattle. The 9th Circuit consists of more than two dozen judges, so rather than a customary en banc hearing, which customarily includes all judges from an appellate court, the 9th Circuit’s procedure is to convene a limited en banc court of the chief judge and 10 randomly selected judges, according to the court’s [website](#).

Some judges may recuse themselves.


Two judges recused themselves from the vote that overturned the August split decision.

Church leaders have maintained that tithing funds are used for religious purposes. A ruling that a jury could hear Huntsman’s lawsuit would endanger religious freedom by giving the jury power to interpret the church’s scripture, the amicus brief lawyers wrote.

“Under the panel’s decision, any disillusioned former adherent who finds his way to the 9th Circuit can sue for a refund and attempt to get civil authorities to label their former church a liar,” lawyers for the church wrote in their appeal of the now-vacated split decision in Huntsman’s favor. “It is hard to imagine a greater threat to religious liberty or a better reason to grant en banc review.”

Typically, rulings by three-judge panels are the final say in a case, making en banc reviews relatively rare. The 9th Circuit received 886 requests for a rehearing en banc in 2021, for example, and only seven en banc hearings were granted, according to [court records](#).

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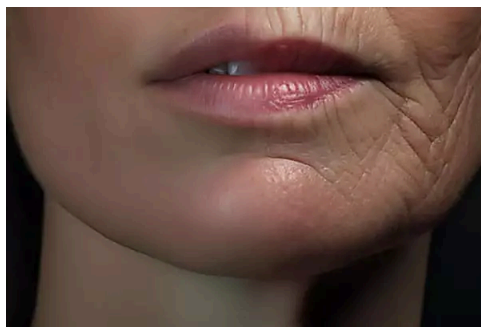
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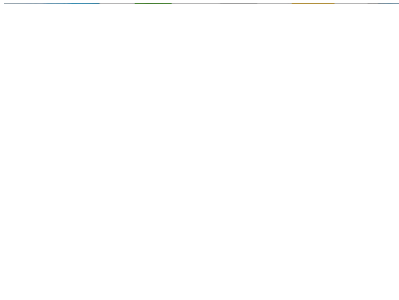
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