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Are Tax Exemptions for “Churches” a Blessing or a Curse for Taxpayers?

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Departmental Honors Thesis  
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## **ABSTRACT**

This paper focuses on the rules and requirements governing the participation of religious organizations as defined in IRC § 501(c)(3) in the political process. Included in this is a study of historical events and case law both for and against the participation of religious organizations in politics.

## **INTRODUCTION**

With the focus on religious beliefs in recent political campaigns, especially where the issues of abortion and marriage equality, among others are concerned, an increased focus has been given to the roles churches are and are not allowed to play in the political process. In reviewing current tax law, case law, and historical context, it appears that current policy regarding electioneering related to non-profit religious organizations may not be restrictive enough given the current climate where religious issues have been the subject of multiple pieces of legislation.

## **WHAT IS A CHURCH?**

The phrase “church” is not specifically defined in the Internal Revenue Code. However, the Internal Revenue Service explains its criteria for considering an organization a church in Publication 1828, *Tax Guide for Churches and Religious*

*Organizations.* According to this document, a church must, among other things, have a “distinct legal existence” with a religious history, church government, and ordained ministers who have completed a “prescribed course of study.” More importantly, the church must have a regular congregation to attend regular religious services<sup>1</sup>- a church will not be considered a church if they meet only sporadically or do not have regular members. Combined with the surrounding facts and circumstances, as well as other listed criteria, the IRS considers the above facts to decide whether or not an organization can be considered a church. The publication goes on to say that the IRS will not evaluate the particular beliefs of an organization to decide if they are religious or not, but the beliefs must be “truly and sincerely held” to be considered religious. The rites of the religion may not include illegal acts, or acts that are clearly against public policy.<sup>2</sup>

A church must also meet the requirements of IRC § 501(c)(3) to become exempt from federal income tax. This exemption allows the church to receive tax deductible donations and contributions, which gives the church more flexibility in generating income. If the church does meet the requirements of IRC § 501(c)(3), it does not have to apply to the IRS; said church is automatically tax-exempt. However, many churches choose to seek recognition of their tax exempt status from the Internal Revenue Service anyway to make their congregations feel secure in their legal standing. To even begin to meet the criteria for §501(c)(3) tax exempt status, an organization must be organized for one or more of several purposes. In most cases, the relevant purposes of a church are

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<sup>1</sup> Although the IRS does not define what constitutes a “service.”

<sup>2</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015)

religion, education, or charity. The organization must be both organized and operated ONLY for the purposes listed in section §501(c)(3). If any of these criteria are not met, the organization is not exempt.<sup>3</sup>

An organization is formed solely for the purposes listed in § 501(c)(3) only if its articles of organization (trust instrument, corporate charter, articles of association, or any other written document of organization) limit the organization's purposes to those listed and do not empower the organization to engage in other activities except in very minor ways. The purposes may be more narrow than those listed in §501(c)(3) but may not be more broad. In the case of a church, this means that the organization could detail their purpose as a church, or define itself as a religious organization. If an organization is not organized solely for the purposes listed in §501(c)(3), and is empowered to engage in other activities other than as a very small part of its activities, then the organization is not exempt. If the articles of organization are broader than the terms of §501(c)(3), the organization will not be considered exempt, even if the activities are within the terms of those listed.<sup>4</sup> This means that the church could not simply call itself an organization.

An exempt organization's purpose must meet the definition of that purpose under IRC § 501(c)(3). "Charitable" is used in this section in accordance with its legal definition.<sup>5</sup> It may not be interpreted according to judicial decisions which give a broader

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<sup>3</sup> IRC § 501(c)(3)

<sup>4</sup> Treasury Regulation § 1.501(c)(3)-1 - *Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

<sup>5</sup> More specifically, Treasury Regulation § 1.501(c)(3)-1(d)(2) defines "charitable" as  
*"relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments,*

meaning to the word. Charitable organizations for the use of this section are organized and operate to do one or more of the following: relief for the poor, distressed, or underprivileged; advancement of religion; advancement of education or science; building and maintenance of public buildings and monuments; lessening costs to the government; promotion of social welfare. The term “charitable” may also aim to lessen neighborhood tensions, eliminate prejudice or discrimination, defend human and civil rights, or strengthen communities and fight juvenile delinquency. An organization that provides relief to indigents may still take voluntary donations from the people they aim to help and still qualify for exemption. Even if the organization advocates for social, political, or civic changes, they may qualify as exempt if they do not meet the criteria for an action organization.<sup>6</sup>

The term “educational” as used in IRC §501(c)(3) is defined as the instruction or training of individuals for the purpose of improving or developing their capabilities or instruction of the public on useful and beneficial subjects, both to the individual and the

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*or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an **action** [emphasis added by author] organization of any one of the types described in paragraph (c)(3) of this section.”*

<sup>6</sup> Treasury Regulation § 1.501(c)(3)-1 - Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

community. Even if an organization advocates a certain viewpoint or position it may still be considered educational if it: Presents a full and fair exposition of the facts to allow the individual or community to develop independent opinions or conclusions. An organization is not educational if their objective is presentation of an unsupported opinion. The definition of the term “religious” is not included in IRC § 501(c)(3), but the IRS will consider beliefs that are sincerely and truly held to be religious.

### **APPLYING THE DEFINITION OF “CHURCH”**

Defining what is and is not considered a church has been an issue for decades. In 1984, in *Patrick v. LeFevre*, an inmate named Vernon Patrick sued a New York prison for violating his right to religious freedom. Patrick argued that the prison system had refused to recognize his legal right to “practice, exercise, promulgate, and gather together with others for the purpose of worshipping his faith” as a member of the Five Percenter Nation of Islam.<sup>7</sup> The federal district court ruled against Patrick opining that he did not prove that his beliefs were sincerely held or that his practices were “religious” in nature.<sup>8</sup> Patrick appealed.

The U.S. Court of Appeals determined that the district court had essentially granted summary judgment to the prison system because the court did not find the creed of the Five Percenter Nation of Islam to be credible or believable. The Court of Appeals reversed this ruling and said the court may not rule that a religious belief is not sincerely

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<sup>7</sup> *Patrick v. LeFevre*, 745 F.2d 153 (2<sup>nd</sup> Circuit, 1984).

<sup>8</sup> *Ibid.*

held merely because it did not accept its creed.<sup>9</sup> The court ruled that “the freedom to exercise religious beliefs cannot be made contingent on the objective truth of such beliefs.”<sup>10</sup> Further, the court noted that sincerity in those beliefs does not have anything to do with the truth of such religious beliefs, and that Patrick was not given a full sincerity analysis since there was no observation of his “demeanor during direct and cross-examination.”<sup>11</sup>

In this case, as long as Patrick’s beliefs were truly and sincerely held, the Internal Revenue Service would have no choice but to treat the Five Percenter Nation of Islam as a religious belief. If Patrick were to be released from prison and build a congregation, legal existence, and regularly schedule services after completing the studies required to become an Imam, the Internal Revenue Service could consider Patrick and his congregation a church.

It is important to remember, however, that even when an organization calls itself a church and is legally recognized as a church, such recognition does not always guarantee that tax-exempt status will follow. Note, for example, the Church of Scientology. In the case of *Hernandez v. Commissioner*, the U.S. Supreme Court ruled that contributions to the Church of Scientology could not be tax-exempt and the Church itself could not be tax-exempt because “donations” in questions were not for religious or charitable purposes. Instead, what was happening was that church members were required to make

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<sup>9</sup> *Patrick* at 156.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Patrick* at 156.

payments to the church in exchange for auditing or training courses, so the payments were not contributions, and the church was earning income like a business.<sup>12</sup>

In a Tax Court case, *Church of Scientology v. Commissioner*, the court ruled that the church did not qualify for a tax exemption because it was “tightly controlled by its founder and his family. . . and it had a substantial income from the sale of its services to the public.”<sup>13</sup>

In another tax case, Mildred Kelly Love, Katherine Kelly Thompson and John Thompson formed a religious organization called “First Church of In Theo.” They asked the IRS for tax exempt status and it was denied. They claimed this was a church because it was

*organized exclusively for religious purposes, including . . .the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) . . . . More specifically, it is for the purpose of learning Bible truths, discussing and attempting to practice the principles of life. Then publishing experiences both great and small, successful and unsuccessful. In the beginning the foundation will use available publishers, but eventually a publishing plant will be established to publish only books related to the Christian Religion.*<sup>14</sup>

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<sup>12</sup> *Hernandez v. Commissioner*, 490 U.S. 680 (1989).

<sup>13</sup> *Church of Scientology v. Commissioner*, 83 T.C. 25 (1984).

<sup>14</sup> *First Church of In Theo*, T.C. Memo 1989-16

They argued that since they were advancing the belief that "all persons have God within to some extent," then they were, by definition, a church. The court, however, noted that they did not have a regular group of believers who came together to worship, and the three petitioners had formed a non-membership organization that would not likely seek new members. These factors indicated it as a private foundation and not a church.<sup>15</sup>

## **LOBBYING**

A church can jeopardize its tax-exempt status in several ways under IRC §501(c)(3). The church's assets should be allocated to its purposes as a religious, charitable, or educational organization. If the church is dissolved, the assets should, according to the articles of organization or under legal requirement, be distributed for one or more of those purposes, given to the government for public use, or be distributed by a court to another tax-exempt organization. If the articles of organization or state law say that the items should go to members or shareholders, the organization is not tax-exempt. Further, the church's earnings, if any, cannot benefit shareholders; for example, a church could not distribute dividends to its congregation. The church also may not work towards private interests -- for example, a church may not be considered tax-exempt if the beneficiaries of the church's activities are limited to founders of the church.<sup>16</sup>

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<sup>15</sup> *First Church of In Theo*, T.C. Memo 1989-16.

<sup>16</sup> Treasury Regulation § 1.501(c)(3)-1(c)(4).

If a church devotes a substantial part of its activities to influencing legislation by contacting lawmakers, urging the public to contact lawmakers proposing, supporting or opposing legislation, or advocating for legislation to be passed or denied, it is considered an “action organization.” (See footnote 5.) An action organization may also be defined as one that participates in or interferes with (directly or indirectly) a political campaign in support of or in opposition of a political candidate. This type of “action” is forbidden under IRC § 501(c)(3) and disqualifies the organization for tax-exempt status under this particular section. This, of course, is also known as electioneering.<sup>17</sup>

*Substantial Part Test.* The IRS offers two tests for determining whether a church or religious organization has engaged in “excessive lobbying” – the Substantial Part Test and the Expenditure Test.<sup>18</sup> If attempting to determine whether a church or religious organization has engaged in excessive lobbying under the Substantial Part Test, the IRS would examine whether a considerable portion of workers’ time (both paid and non-paid workers) is spent on lobbying as well as whether sizeable expenditures are made on the lobbying activities.<sup>19</sup> Under this test, any church or religious organization that is found to have participated in “excessive lobbying” can lose its tax-exempt status and may be subject to a five percent excise tax on the amount spent lobbying. The religious organization’s managers may also be jointly and severally liable to pay a tax equal to five

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<sup>17</sup> Treasury Regulation § 1.501(c)(3)-1(c)(3).

<sup>18</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), pages 6-7.

<sup>19</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), page 6.

percent of the lobbying expenses if they permitted the expenditures knowing the organization could lose its tax-exempt status as a result.<sup>20</sup>

*Expenditure Test.* Religious organizations (but not churches) may choose to have the IRS measure their lobbying activities under the Expenditure Test. Under this test, the extent of an organization's lobbying activity won't jeopardize its tax-exempt status, provided its expenditures, related to the activity, do not normally exceed an amount specified in IRC §4911. This limit is generally based on the organization's size and may not exceed \$1,000,000.<sup>21</sup> Despite the generous boundaries of the Expenditure Test, there may be religious organizations whose lobbying activities are excessive under this test. Should that occur, the penalties can be severe. If the Expenditure Test is used to measure excessive lobbying, and the religious organization fails over a four year period, it may lose its tax exemption, subjecting its income to taxation. Moreover, if the IRS rules that that organization has engaged in excessive lobbying in a given year, the organization must pay an excise tax equal to 25% of the amount by which its lobbying expenditures exceeded the permissible limit.<sup>22</sup>

## **POLITICAL CAMPAIGNS**

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<sup>20</sup> *Ibid.*

<sup>21</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), page 7.

<sup>22</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), page 7.

All organizations with tax-exemptions under IRC § 501(c)(3) are forbidden from participating or intervening in political campaigns. They are also forbidden from making contributions or public statements for or against any candidate. Violation of these rules carries the same punishments as violation of the lobbying rules. However, there are a few activities organizations subject to these rules may participate in, provided they are non-partisan events. These include voter education programs and voter registration drives. If there is evidence of bias for or against a candidate or political group, these activities are considered part of the prohibited activities listed above. Religious leaders risk the tax-exempt status of their churches if they choose to make partisan comments in organization publications or at official functions. Of course, the IRS recognizes that churches and religious organizations may, at times, feel the need to engage in advocacy regarding certain policy issues (*i.e.*, abortion, euthanasia, care for the mentally ill, etc.) Issue advocacy is permissible under IRS rules without tax-exempt status as long as the organization in question (1) does not spend a substantial amount of its time engaged in advocacy activities, and (2) the advocacy activities do not evolve into support for or opposition of a particular political candidate or party.<sup>23</sup> Church or organization leaders may also make political comments IF they clearly state that the comments are their personal views and do not represent the organization's views.

Should the church or religious organization violate these clearly defined rules, the Internal Revenue Service may impose an excise tax on both the organization and

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<sup>23</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), page 9.

organization's managers. The initial tax is imposed at a rate of ten percent on all political expenditures, and then another two and a half percent (calculated on the political expenditures, as well) is imposed on the organization's managers. The tax on managers cannot exceed five thousand dollars per expenditure. The organization is then given the chance to correct (or recover, to the extent possible) these expenditures and to put in place safeguards to prevent the issue from reoccurring. If they do not, then an additional tax may be imposed which is equal to one hundred percent of the political expenditure. The managers will be liable for an additional tax equal to fifty percent of the original expenditure and not to exceed ten thousand dollars per expenditure.<sup>24</sup>

## **GOVERNMENT AND RELIGION**

The government generally attempts to avoid placing restrictions on churches and religions in keeping with the First Amendment. At times, however, the Supreme Court and legislative branch of the government have had to step in and set limits, either on religious practices, church activities, or to restrict others from harmfully interfering with religious practice, or to ensure that churches comply with federal laws enacted for the health and safety of the public.

For example, in *Reynolds v. United States*, George Reynolds was convicted of bigamy by the Utah court of Law in 1878 and was subject to a fine of up to \$500 and up

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<sup>24</sup> Internal Revenue Service *Publication 1828: Tax Guide for Churches & Religious Organizations* (August 2015), page 18

to 5 years in prison. Reynolds appealed the decision, which was upheld.<sup>25</sup> Among other points, Reynolds maintained the defense that his polygamous lifestyle was executed in accordance with his religious beliefs as a member of the Church of Latter-Day Saints and because of this, he was exercising his right to religious freedom, and that the law criminalizing bigamy infringes upon that right. In fact, Reynolds asserted that the Church doctrine mandated

*that it was the duty of male members of said church, circumstances permitting, to practise polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practise polygamy by [\*\*\*32] such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come." He also proved "that he had received permission from the recognized authorities in said church to enter into polygamous marriage . . . ."*<sup>26</sup>

The Court addressed the question about whether or not religious belief can be used as justification to knowingly break the law. In a Virginia legislative act (12 Hening's Stat.

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<sup>25</sup> *Reynolds v. United States*, 98 U.S. 145 (1879)

<sup>26</sup> *Reynolds* at 161

84), it was decided that the government could intervene in religious expression when “principles break out into overt acts against peace and good order.” The Court then examined the history of marriage as a civil institution, and the criminality of polygamy, and noted that polygamy has clearly been against public policy oppressive in a way that monogamy has not. “Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people.”<sup>27</sup> The Court went on to discuss other scenarios in which the government must intervene in the exercise of religious beliefs, namely human sacrifice and sati, an Indian practice of a wife burning herself on her husband’s funeral pyre. The Court then went on to observe that polygamy also interferes with the organization of society because it interferes with marriage as a civil instrument, and because of this, it cannot be allowed in the United States. To allow it would be favoring Mormonism over the government and, along this slippery slope, allow everyone to make their own laws.<sup>28</sup>

In *McCreary County v. American Civil Liberties Union*, ACLU originally sued two Kentucky counties to enjoin removal of large displays of the Ten Commandments inside their courthouses. The counties attempted to adopt larger, revised exhibits showing that the Ten Commandments were Kentucky’s “precedent legal code.”<sup>29</sup> The U.S. Supreme Court found through a “secular legislative purpose enquiry” that the displays were meant to favor one religious faith over another. Consequently, the Court opined that

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<sup>27</sup> *Reynolds* at 164

<sup>28</sup> *Reynolds* at 165

<sup>29</sup> *McCreary County v. American Civil Liberties Union*, 545 U.S. 844 (2005)

enabling the municipalities to favor one religion over another was, in effect, a violation of the First Amendment's Establishment Clause which states "Congress shall make no law respecting an establishment of religion." The Fourteenth Amendment mandates that the First Amendment (in addition to the other first ten Amendments) all apply to state and local governments as well. Therefore, according to the Court, the government must remain neutral in matters of religion.<sup>30</sup>

In *School District of Abingdon Township v. Schempp*, the Schempps (who were Unitarians) were fighting to prevent enforcement of a Pennsylvania state law that required schools to open each day with a reading from the Bible. The state acknowledged that reading from the Bible was a religious exercise.<sup>31</sup> The Schempps complained that their children were being taught things in these morning Bible exercises that contradicted their own personal beliefs. At their particular school, the home room teacher led the exercises, and Mr. Schempp feared that excusing their children from the morning exercises would affect the children's relationships with their teachers and peers. Schempp also feared that the children would miss important school announcements and, as the protocol for sitting out of the exercises and being punished were the same, he feared his children would fear they were being punished for holding different beliefs.<sup>32</sup> The Court found that the Pennsylvania statute, in requiring reading from the Holy Bible, was

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<sup>30</sup> *McCreary County* at 867-868

<sup>31</sup> *School District of Abingdon Township v. Schempp*, 374 U.S. 203 (1963)

<sup>32</sup> *School District of Abingdon Township* at 208-209

favoring the Christian religion over others and was meant to “introduce a religious ceremony into the public schools of the Commonwealth.”<sup>33</sup>

In 1984, when the United States commenced diplomatic relations with the Vatican, a group called “Americans United for the Separation of Church and State” filed suit against the President, the Secretary of the Treasury and the Ambassador to the Vatican, arguing, among other things, that having diplomatic relations with the Vatican was comparable to supporting the Catholic Church.<sup>34</sup> The district court held that the group did not have “sufficient protectable interests as taxpayers, as citizens, or as victims of allegedly adverse stigmatization” to challenge the actions. The court also stated that it was a political issue and not something the court could take action on. The case was dismissed.<sup>35</sup> The group appealed the decision, and U. S. Court of Appeals affirmed the original decision, and noted that the Vatican State is a sovereign territory, albeit with an unusual governmental setup. President Reagan was not attempting to set up relations with a church, but rather with the government of the Vatican State.<sup>36</sup> A key part of this case is the fact that the Vatican City, though the center of the Catholic Church, is a sovereign state with a functioning government. Because of this, the United States was not sponsoring the church itself, but engaging in diplomatic relations in the same way they would any other country, religious or not. While the government did not need to restrict religious activity in this case, it should be noted that the courts continue to hear these

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<sup>33</sup> *School District of Abingdon Township* at 225

<sup>34</sup> *Americans United for the Separation of Church & State v. Reagan*, 607 F. Supp. 747 (1985)

<sup>35</sup> *Americans United for the Separation of Church & State* at 750-752

<sup>36</sup> *Americans United for the Separation of Church & State v. Reagan*, 786 F.2d 194 (3<sup>rd</sup> Circuit Pa. 1986)

types of cases to avoid sponsoring any one religion or restricting the practice of any religion.

## **HISTORY OF CHURCHES AND POLITICS**

Churches have played a range of roles in politics for centuries. Roman persecution of Christians came to end under Constantine the Great, who was possibly the first Christian emperor. Constantine and his mother, Helena, were responsible for building many Catholic Churches across what is now the Holy Land, including the Church of the Holy Sepulcher, where the Tomb of Jesus is housed. Also during Constantine's rule, Christianity became legal.

For years in the United States, despite the Establishment Clause, churches and Christian legislators exercised substantial influence over the curriculum in schools such that only creationism could be taught in science class. The Butler Act was a Tennessee law that forbade

*...any teacher in any of the Universities, Normals and all other public schools of the State which are supported in whole or in part by the public school funds of the State, to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals.<sup>37</sup>*

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<sup>37</sup> The Butler Act, <http://evolution.about.com/od/controversy/g/The-Butler-Act.htm>

John Scopes intentionally violated the Butler Act, and the ACLU financed a test of the law when Mr. Scopes was prosecuted. He was found guilty, but the charges were eventually dropped.<sup>38</sup>

Interestingly, in 1953, according to Johnathan P. Herzog, the United States government released thousands of balloons into Eastern European sky.<sup>39</sup> Each balloon was attached to an excerpt from the bible or another religious text. The balloons were an attempt to reach Eastern Europeans with religion in the hopes that they would be inspired to rebel against the new Communist regime. According to Herzog, the idea was created by two “fundamentalist Protestant radio preachers,” Billy James Hargis and Carl McIntire. The plan was carried out at General Dwight D. Eisenhower’s insistence, though the State Department was not confident that it would be effective. The effort was undertaken by religious groups both in the United States and in Europe. In fact, Crusade for Freedom, an organization inaugurated by General Eisenhower, coordinated the construction and release of these balloons.<sup>40</sup> Herzog posed interesting questions: “How were preachers’ sermons transformed into foreign policy? Why, by 1953, had U.S. policy makers understood the battle against Communism as profoundly religious?”<sup>41</sup> Herzog notes the scholarship of Reinhold Niebuhr to try and answer these questions. According to Niebuhr, a professor at Union Theological Seminary who produced “one of the earliest and most complete U.S. examinations of Communism as a religion,” concluded that

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<sup>38</sup> The Scopes Trial, <http://evolution.about.com/od/controversy/a/The-Scopes-Trial.htm>

<sup>39</sup> Philip Muehlenbeck and Johnathan P. Herzog *Religion and the Cold War: A Global Perspective* 44-64 (2012)

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid*

Communism (at the time) was a new religious movement.<sup>42</sup> According to Herzog, Niebuhr's research viewed Marx's writings as "the Communist bible" and compared Vladimir Lenin's contributions to those of Thomas Aquinas.<sup>43</sup> Niebuhr's analysis spurred several more, including one religious writer who saw "psychological similarities between zealous Christians and converted Communists." American Catholic leaders agreed with this analysis, viewing Communism as a "mass religious neurosis."<sup>44</sup>

Regardless of denomination, Herzog writes, American Christians believed that Communism was a perversion of the human need for spirituality. Bishop Fulton Sheen, an American priest, frequently targeted communism during his own radio broadcasts. He argued that Communism "invaded spiritually weak hosts," Herzog writes, and that those with strong religious beliefs would not be swayed by Communist ideals. Sheen's superior, Francis Cardinal Spellman, "made his home at the nexus of religion and politics" according to Herzog. In 1946, Spellman led the ideological charge against the Communist regime's new policy of imprisoning Catholic clergy. He spoke at many political protests in the Northeast, led letter-writing campaigns to prominent politicians, and even helped officials write anti-communist pamphlets. Jewish leaders joined in on the fight against Communism as well, though, as Herzog notes, they were a little late to the party. Despite the differences in religious ideology, Herzog writes that Catholic and

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<sup>42</sup> Philip Muehlenbeck and Johnathan P. Herzog *Religion and the Cold War: A Global Perspective* 44-64 (2012)

<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*

Protestant leaders welcomed Jewish support against Communism, as they believed that any religious ideology was better than the “perversion” presented by Communism.<sup>45</sup>

Religious American citizens were vocal in denouncing Communism, and this began to shape Foreign Policy in definite ways. President Truman, Herzog observes, “readily tapped into the spiritual perceptions of Communism circulated by the nation’s religious leaders and security analysts,” even stating in a 1950 speech that Communism was “godless” and that “democracy’s most powerful weapon” was faith. In 1947, according to Herzog, President Truman attempted to create an alliance with the Vatican. The Psychological Strategy Board, a committee of U.S. Executive branch created by President Truman, based its original strategy on spreading Christian ideals to fight Communism, stating in its Inventory of Instrumentalities that “The potentialities of religion as an instrument for combating Communism are universally tremendous. Religion is an established basic force which calls forth men’s strongest emotions,” and going on to note that had an “over-all objective in seeking the use of religion as a cold war instrumentality should be the furtherance of world spiritual health; for the Communist threat could not exist in a spiritually healthy world.” At this point, the government clearly began to incorporate religion into its policy where Communism was concerned.<sup>46</sup>

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<sup>45</sup>Philip Muehlenbeck and Johnathan P. Herzog *Religion and the Cold War: A Global Perspective* 44-64 (2012)).

<sup>46</sup> *Ibid*

In 1953, General Dwight D. Eisenhower was inaugurated as President. He began his speech with a prayer he had written himself, and his float, Herzog notes, was religiously-themed. During his presidency, Eisenhower continued to further the goal of spreading Christianity as a countermeasure to the spread of Communism. He created two new organizations, The US Information Agency for propaganda, and the Operations Coordinating Board, which was intended to “implement the broad recommendations of the National Security Council.”<sup>47</sup> President Eisenhower’s security plan is shown to have focused on “mobilizing the spiritual and material resources necessary to meet the Soviet threat,” and though nothing was explicitly stated towards any religion, it can be assumed that the “spiritual resources” referenced were in alignment with the American majority, who were Protestants.<sup>48</sup> “Just as President Eisenhower and President Truman had presided over the creation of a military-industrial complex, so too did they supervise the creation of a spiritual-industrial complex—a fusion of religious ideas, national resources, and state policy,” Herzog observes. This comes far too close to establishment of a state religion for comfort – had the Cold War never ended, Christianity could have become the de-facto state religion based only on anti-communist legislation.<sup>49</sup>

More recently, churches and church leaders have played a significant role in the Civil Rights Movement on both sides of the question. Dr. Martin Luther King, Jr., was a

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<sup>47</sup> Philip Muehlenbeck and Johnathan P. Herzog *Religion and the Cold War: A Global Perspective* 44-64 (2012)

<sup>48</sup> *Ibid*

<sup>49</sup> *Ibid*

minister, and theology greatly influenced his ideals, as can be seen in his speech “I’ve Been to the Mountaintop.”<sup>50</sup> He references several significant biblical events in relation to the Civil rights movement and states that ministers are meant to “articulate the longings and aspirations of the people.” Dr. King discusses his desire to “do God’s will” and ends this speech with the title lyric of a popular hymn, “Mine eyes have seen the glory of the coming of the Lord.”<sup>51</sup> In fact, many notable leaders of the Civil Rights Movement were ministers. Reverend Fred Shuttlesworth led the countless civil rights marches in the movement in Birmingham, Alabama; Reverend Ralph Abernathy gathered as many people as he could “to attend what became the first meeting of the Montgomery Boycott”; and Reverend S.S. Seay was the president of the Montgomery Improvement Association- the group that organized the bus boycott.<sup>52</sup> David L. Chappell argues in “Religious Revivalism in the Civil Rights Movement” that the government “frequently responds...to religious pressure,” meaning that the civil rights movement was “no different than any other effort to achieve moral ends by political means.”<sup>53</sup>

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<sup>50</sup> Keith D. Miller, *Martin Luther King’s Biblical Epic: His Final, Great Speech* 175-182 (2012)

<sup>51</sup> Keith D. Miller, *Martin Luther King’s Biblical Epic: His Final, Great Speech* 175-182 (2012)

<sup>52</sup> David L. Chappell *Religious Revivalism in the Civil Rights Movement* (2002)

[http://go.galegroup.com.proxy.lib.utc.edu/ps/retrieve.do?sort=RELEVANCE&docType=Article&tabID=T002&prodId=AONE&searchId=R1&resultListType=RESULT\\_LIST&searchType=AdvancedSearchForm&contentSegment=&currentPosition=1&searchResultsType=SingleTab&inPS=true&userGroupName=tel\\_a\\_utc&docId=GALE%7CA97515888&contentSet=GALE%7CA97515888](http://go.galegroup.com.proxy.lib.utc.edu/ps/retrieve.do?sort=RELEVANCE&docType=Article&tabID=T002&prodId=AONE&searchId=R1&resultListType=RESULT_LIST&searchType=AdvancedSearchForm&contentSegment=&currentPosition=1&searchResultsType=SingleTab&inPS=true&userGroupName=tel_a_utc&docId=GALE%7CA97515888&contentSet=GALE%7CA97515888)

<sup>53</sup> David L. Chappell *Religious Revivalism in the Civil Rights Movement* (2002)

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It is impossible to discuss religious influence on the Civil Rights Movement without mentioning the Ku Klux Klan. Even now, the creed of the Church of the National Knights of the Ku Klux Klan, according the Southern Poverty Law Center, is

*Our God, we as KLANSMAN acknowledge our dependence on You and Your loving kindness toward us. May our gratitude be full and constant and inspire us to walk in Your ways. Let us never forget that each Klansman, by his conduct and spirit determines his own destiny, good or bad. May he forsake the bad and strive for the good as truly being in the image of God. Keep us in the powerful bond and fraternal Union of Klannish fidelity towards one another and devoted loyalty to this, our great Klan movement. Let us remember that the crowning glory of a Klansman is to serve his race, his community, his nation and his own high principles. God save our Race and help us to be free people, masters of our own destiny.*<sup>54</sup>

Though the KKK has existed since the 1860s, the form in which we know them today emerged during the Civil Rights Movement, when many individual white supremacy groups adopted the name.<sup>55</sup> A resurgence in cross burnings, protest marches, and protests of civil rights events (in a manner similar to that of the Westboro Baptist Church) ensued. Unfortunately, for many groups that was not enough. One man attempted to jump on stage and assault Nat King Cole at a concert in Birmingham, Alabama, according to

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<sup>54</sup> Southern Poverty Law Center, Section on The Church of the National Knights of the Ku Klux Klan, <https://www.splcenter.org/fighting-hate/extremist-files/group/church-national-knights-ku-klux-klan> (March 21, 2016).

<sup>55</sup> David M. Chalmers *Hooded Americanism: The History of the Ku Klux Klan* 343-386 (3<sup>rd</sup> Ed. 2012)

David Mark Chalmers in *Hooded Americanism: the History of the Ku Klux Klan*.<sup>56</sup> He also mentions that four Klansmen were sentenced to twenty years in jail for kidnapping and castrating an African American man during a “sacrificial initiation ceremony.” In 1959 the Friends’ Service Committee, National Council of Churches of Christ, and the Southern Regional Council published a report that listed around 530 cases in which the Klan had committed “overt racial violence, reprisal, and intimidation” including six murders, twenty-nine shootings, forty-four beatings, five stabbings, thirty residential bombings- one of which destroyed thirty homes at once- four school bombings, seven church bombings, and a slew of other burnings, attempted bombings, and threats of violence. As the Civil Rights Movement progressed in the 1960s, the Ku Klux Klan gained the approval of towns and cities that previously disagreed with their beliefs and methods. Many white pastors and church leaders were in league with the Klan, including Reverend Alvin Horn, Grand Dragon of the Alabama Ku Klux Klan, who was involved in the shooting of an African American shopkeeper. By 1964, the Klan had resolved to use violence only where the local police and governments would turn a blind eye to it due to a string of arrests and prosecutions.<sup>57</sup>

Lynn S. Neal argues in an article for Church History that two major Klan members, Bishop Alma White and Reverend Branford Clarke were instrumental in the religious ideologies of the Ku Klux Klan.<sup>58</sup> Beginning in the early 1900s, Clarke and

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<sup>56</sup> David M. Chalmers *Hooded Americanism: The History of the Ku Klux Klan* 343-386 (3<sup>rd</sup> Ed. 2012)

<sup>57</sup> David M. Chalmers *Hooded Americanism: The History of the Ku Klux Klan* 343-386 (3<sup>rd</sup> Ed. 2012)

<sup>58</sup> Lynn S. Neal, *Christianizing the Klan: Alma White, Branford Clarke, and the Art of Religious Intolerance*. (2009)

White began to merge the identities of white Protestants with that of the members of the Ku Klux Klan. Their efforts were successful, and by the 1920s, there were four to six million members of the Klan. Through the adoption of White's written work and Branford's illustrations, the Klan slowly became a "Christian" organization, a crutch they continue to lean on to support their beliefs today.<sup>59</sup>

Hate groups aside, Curtis J. Evans argues in an article for *The Harvard Theological Review* that white evangelical Protestants were some of Dr. Martin Luther King Jr.'s "fiercest critics."<sup>60</sup> These evangelicals, Evans writes, frowned upon the civil rights protesters' methods on the grounds that they did not conform to the evangelicals' notions of "sin, social change, and personal ethics." The evangelicals described in Evans' essay did not believe that legislation could end racism, and therefore they did not support legislation that sought to end discrimination. Southern Baptist minister Billy Graham believed that the only thing that would improve race relations was conversion to the Protestant faith and "spiritual revival of Christians who harbored racial prejudice." However, Evans writes, Reinhold Niebuhr pointed out that while Graham did not condone racism, he also did not preach racial equality or "love transcending racial boundaries."<sup>61</sup> After the Civil Rights Act passed, Graham urged his congregation to "call

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<http://journals.cambridge.org.proxy.lib.utc.edu/action/displayAbstract?fromPage=online&aid=5635856&fileId=S0009640709000523>

<sup>59</sup> Lynn S. Neal, *Christianizing the Klan: Alma White, Branford Clarke, and the Art of Religious Intolerance*. (2009)

<sup>60</sup> Curtis J Evans, *White Evangelical Protestant Responses to the Civil Rights Movement* (2009), [http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page_scan_tab_contents)

<sup>61</sup> Curtis J Evans, *White Evangelical Protestant Responses to the Civil Rights Movement* (2009), [http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page_scan_tab_contents)

on black leaders to ‘declare a moratorium on demonstrations until people have an opportunity to digest the new Civil Rights act’,” according to Evans. Also, Evans states that Graham was very careful to dissuade his congregation of the idea that he was an integrationist. Similarly, according to Evans, E. Earl Ellis wrote an article for *Christianity Today* in which he stated that the “greatest sin of Christian Segregationists” was their lack of interest in the injustice of a segregated social system. However, he added to that statement that he did not think segregation added to race relations issues and that in some ways, “Black progress in the south had surpassed that in the North.”<sup>62</sup> According to Evans, this was a typical argument of people who were against “forced integration.” Evans also contends that “*Christianity Today's* coverage of Martin Luther King was primarily negative and disparaging,” though he was rarely mentioned at all. Though a small subsection of younger evangelicals disagreed with these beliefs, there appears to be an overall indifference in the attitudes of evangelical Protestants of the time towards racism and segregation, and an absolute loathing of the idea of “forced integration.”<sup>63</sup>

Today, churches are still engaging in issue advocacy that frequently bleeds into political activity. The Catholic Church, in particular, has been extremely vocal in the abortion debate, many churches debate “What would Jesus do?” when it comes to issues related to illegal immigration and admitting floods of refugees from Syria and other war-torn areas of the world. Just this term, the Little Sisters of the Poor are arguing before the U.S. Supreme Court that they should not be forced to pay for birth control under the

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<sup>62</sup> *Ibid*

<sup>63</sup> Curtis J Evans, *White Evangelical Protestant Responses to the Civil Rights Movement* (2009), [http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org.proxy.lib.utc.edu/stable/40211995?seq=1#page_scan_tab_contents)

Affordable Care Act, and their case appears to be triggering a larger political movement on both sides. The government and taxpayers may seek to separate churches and politics, and but our history indicates that this may not be so simple.

## **RATIONALE FOR ANTI-ELECTIONEERING RULES**

Admittedly, religious groups may accomplish miraculous things when it comes to political causes. That said, however, just as the U.S. Supreme Court has repeatedly recognized in its opinions over the years, there should be a fundamental separation between church and state. When the IRS (an arm of the government) grants churches tax-exempt status, and then churches use that status to bring in tax-free income to influence who gets elected, then, effectively taxpayers (who might otherwise benefit from the tax dollars on that tax-exempt income) are “paying” for the preferences of the churches. If I were an atheist, and I knew that I could not get a U.S. Postal Service office near my rural home because tax revenues were down, but many Christian politicians were being elected because all the tax-exempt churches around me were permitted to campaign, I would feel cheated as a taxpayer.

## **CONCLUSION**

According to the Secular Policy Institute, the tax benefits awarded to religious organizations total 71 billion dollars per year.<sup>64</sup> While there is no disputing the positive effects of churches and religious organizations on the community through church programming, community outreach, and other charitable ventures, we must also be very careful that churches are not taking advantage of their voices within their communities. The government must be careful not to favor certain religions over others (or to favor religion over non-religion), whether the majority of the community practices a certain faith or not. The Establishment Clause was created to preserve religious freedom for everyone, not just the majority.

The restrictions placed on religious organizations by the Internal Revenue Service are vital in protecting both the political process and the religious freedoms of American citizens. However, there will always be those who choose not to operate within the parameters allowed to them by these regulations, and that is where the IRS and the United States government must step in. Enforcement of the regulations placed on religious and other non-profit organizations means nothing without enforcement of the penalties that accompany them.

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<sup>64</sup> Deanna Cantrell, *Numbers: 71 Billion Reasons to Tax Religious Organizations* (on March 21, 2016) <https://secularpolicyinstitute.net/71-billion-reasons-to-tax-religious-organizations/>

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