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Bringing in the Sheaves: Combating Televangelists' Abuse of the Internal Revenue Code

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NOTES

Bringing in the Sheaves: Combating Televangelists’ Abuse of the Internal Revenue Code

*Cody S. Barnett*¹

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INTRODUCTION

In August 2015, comedian John Oliver set his satirical crosshairs on certain infamous American “televangelists.”¹ Specifically, Oliver highlighted the exorbitant amounts of money these television preachers bring in by expositing a message linking divine blessing with financial contributions—to that particular minister, of course.² Oliver exposed how these televangelists use funds not for any societal benefit but rather for personal gain.³ One such televangelist bragged about purchasing two multi-million dollar private jets.⁴ Kenneth Copeland, a Texas megachurch pastor, rules over his own personal empire: a \$6.3 million dollar estate, complete with tennis courts and a large boathouse.⁵ Yet even more shockingly, Oliver revealed how the Internal Revenue Code (“the Code”) facilitates tax breaks for these televangelists. Specifically, the automatic designation of “churches” as tax-exempt, and the benefits accompanying such designation, allows these preachers to operate outside the federal income-tax scheme with virtually zero oversight.⁶

Many commentators have suggested tightening the Code to avoid such abuses, with some even calling for the outright repeal of the tax exempt status of religious organizations.⁷ Even some religious figures have suggested churches completely withdraw from the tax exemption scheme in order to avoid more church/state entanglements.⁸ On the other hand, proponents of the status quo have pointed out the nexus between tax exemption and religious organizations’ functions in society.⁹ Revoking tax exemptions would sink smaller organizations and also tighten the tangible benefits religious organizations provide for the “least of these.”¹⁰ Can the law somehow strike the abusers without pulling the rug out from beneath the faithful?

¹ Ed Mazza, *John Oliver Exposes Televangelism, Then Forms His Own Tax-Exempt Church*, HUFFINGTON POST (Aug. 17, 2015, 5:41 AM), http://www.huffingtonpost.com/entry/john-oliver-televangelism_us_55d18b8fe4b0ab468d9da515 [https://perma.cc/2QPF-ZRZ2].

² *Last Week Tonight with John Oliver: Televangelists* (HBO television broadcast Aug. 16, 2015).

³ *Id.*

⁴ *Id.*

⁵ John Burnett, *Onscreen But Out of Sight, TV Preachers Avoid Tax Scrutiny*, NAT’L PUB. RADIO (Apr. 2, 2014, 4:03 PM), <http://www.npr.org/2014/04/02/298373994/onscreen-but-out-of-sight-tv-preachers-avoid-tax-scrutiny> [https://perma.cc/5772-3NAY] [hereinafter Burnett, *Onscreen*].

⁶ *Id.*

⁷ Mark Oppenheimer, *Now’s the Time to End Tax-Exemptions for Religious Institutions*, TIME (June 28, 2015), <http://time.com/3939143/news-the-time-to-end-tax-exemptions-for-religious-institutions> [https://perma.cc/LH88-DUWN].

⁸ Mollie Reilly, *Mike Huckabee: Churches Should Reject Tax-Exempt Status*, HUFFINGTON POST (June 12, 2013, 11:54 AM), http://www.huffingtonpost.com/2013/06/12/mike-huckabee-churches_n_3428481.html [https://perma.cc/YS8V-228G].

⁹ *E.g.*, John J. Dilulio, Jr., *The Value of Nonprofits*, AMERICA: NAT’L CATH. REV. (Feb. 7, 2011), <http://americamagazine.org/issue/763/columns/value-nonprofits> [https://perma.cc/Q2MG-WNNL].

¹⁰ See *Matthew* 25:40.

Religious organizations occupy a special place in American society. Statistics suggest most citizens donate overwhelmingly more to religious organizations than to any other nonprofit organization.¹¹ These religious organizations, in turn, undoubtedly provide a societal bedrock that government simply could not fulfill even given the chance.¹² Beyond the tangible benefits, religious organizations “uniquely contribute” to the diverse American tapestry.¹³ America’s foundational document—the United States Constitution—recognizes this important role in a pluralistic society. The First Amendment explicitly prohibits the federal government from making a “law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁴ Nonetheless, the law should also protect the faithful from wolves in sheep’s clothing. Senator Charles Grassley keenly observed this delicate balance: “The challenge is to encourage good governance and best practices and so preserve confidence in the tax-exempt sector without imposing regulations that inhibit religious freedom or are functionally ineffective.”¹⁵

This Note argues for a balance between vigorously protecting religious organizations in American society while also shielding citizens from the abuse many charlatans have exploited in the Code. Primarily, this Note calls for oversight of “churches” in two ways.¹⁶ First, this Note advocates for congressional action in defining a sufficient “high-level Treasury official” under the Church Audit Procedures Act required for conducting audits on houses of worship. The Treasury Department’s repeated failure to define a “high-level Treasury official” has resulted in the lapse of crucial oversight functions established over thirty years ago through bipartisan efforts. Without such oversight, crafty televangelists have stretched the Code and will continue to do so with impunity. Second, this Note advocates for a Form 990 filing requirement from churches.¹⁷ Naming an auditor only resolves half the battle. The auditor must have a “reasonable belief” that the church either does not qualify for the exemption or is not paying tax before conducting a church audit.¹⁸ A Form 990 disclosure could provide the auditor with the necessary

¹¹ Christine Roemhildt Moore, *Religious Tax Exemption and the “Charitable Scrutiny” Test*, 15 REGENT U.L. REV. 295, 295 (2003) (citing a Barna Research Group study).

¹² See Dilulio, *supra* note 9.

¹³ *Walz v. Tax Comm’n of New York*, 397 U.S. 664, 689 (1970) (Brennan, J., concurring).

¹⁴ U.S. CONST. amend. I.

¹⁵ Lillian Kwon, *Grassley Concludes Senate Probe of ‘Prosperity’ Televangelists*, CHRISTIAN POST (Jan. 7, 2011, 7:26 AM), <http://www.christianpost.com/news/grassley-concludes-senate-probe-of-prosperity-televangelists-48383> [<https://perma.cc/N5EG-JFCN>].

¹⁶ This Note uses the word “church” synonymously with the Internal Revenue Service’s definition codified at 26 C.F.R. § 1.511-2(a)(3)(ii) (2016). The Service further developed a fourteen-point test weighing various factors in determining a church. See *Lutheran Soc. Serv. v. United States*, 758 F.2d 1283, 1286–87 (8th Cir. 1985). “Church” thus encompasses more than the Christian idea but also includes other houses of worship such as synagogues or mosques.

¹⁷ *What Is the IRS Form 990?*, TURBOTAX.COM, <https://turbotax.intuit.com/tax-tools/tax-tips/IRS-Tax-Forms/What-Is-the-IRS-Form-990-/INF14515.html> [<https://perma.cc/852F-ZLHS>] (last visited Nov. 15, 2016).

¹⁸ *Church Audits – “Reasonable Belief” Requirement*, IRS.GOV, <https://www.irs.gov/charities-non-profits/churches-religious-organizations/church-audits-reasonable-belief-requirement> [<https://perma.cc/9GKR-V9LL>] (last visited Nov. 15, 2016).

bedrock for exposing fraudulent activity. After all, other nonprofit organizations are required to file a Form 990.¹⁹ Significantly, a Form 990 would help preserve the separation of church and state found in the First Amendment by providing a “reasonable basis” grounded in financial data rather than religious belief.

Part I of this Note examines the historical background for the religious tax exemption and addresses the modern legal framework. Part II examines the justifications behind tax exemptions for religious organizations, advancing the idea that such exemptions constitute a privilege rather than a constitutional right. Part III discusses the critical role of the Church Audit Procedures Act in making this privilege workable under modern law, advocating for congressional action in filling the Act’s recent gaps. Part IV examines Form 990 and argues for filing requirements from self-designated “churches.” Finally, the Conclusion concludes this Note.

I. “STANDING ON THE PROMISES”: A HISTORY OF RELIGIOUS TAX EXEMPTIONS

Historians cannot precisely pinpoint when religious tax exemptions first appeared. Notable church/state scholar Dean M. Kelley explained:

No one can find that point in history where some great lawgiver declared, “Come now, and let us exempt the church from taxation, for behold! it is as part of the fabric of the state and a pillar of the throne.” There is no time before which churches were taxed and in which we can seek the reason for exemption.²⁰

However, ancient records and modern statutory regimes both contain various religious tax exemptions, each buttressed by differing rationales.

A. The Ancient Judeo-Christian World

Several Old Testament Biblical passages suggest that governments provided a religious tax exemption in the ancient world. For instance, in the Book of Genesis, Egypt exempted priests from two taxes levied in preparation for the impending seven-year famine.²¹ First, the Hebrew Joseph, serving as adviser to the Egyptian Pharaoh, purchased all land in Egypt *except* land held by the priests.²² Second,

¹⁹ See *What Is the IRS Form 990?*, *supra* note 17.

²⁰ DEAN M. KELLEY, *WHY CHURCHES SHOULD NOT PAY TAXES* 5 (1977).

²¹ Vaughn E. James, *Reaping Where They Have Not Sowed: Have American Churches Failed to Satisfy the Requirements for the Religious Tax Exemption?*, 43 *CATH. LAW.* 29, 32–33 (2004).

²² *Genesis* 47:22.

Joseph promulgated an edict granting Pharaoh a one-fifth claim in all proceeds from these lands—but he again exempted the priests from this claim.²³

Centuries later, the Hebrews formed a Kingdom, eventually ruled by the figures David and Solomon; both kings imposed significant taxes to fund military campaigns and an ecclesiastical temple building, respectively.²⁴ The populace begged for tax relief from the onerous burden.²⁵ One constituency, however, remained untouched. The priestly Levite caste received above-average income immune from the heavy taxation plaguing the Kingdom.²⁶ This preferential treatment continued following the Babylonian conquest of Israel's Kingdom. When the Israelites returned from exile, the priests warned against imposing taxes on religious functionaries: "You are also to know that you have no authority to impose taxes, tribute or duty on any of the priests, Levites, musicians, gatekeepers, temple servants or other workers at this house of God."²⁷

The Christian Church initially adopted a different stance toward taxation. Pressed by religious authorities on whether Jews should pay the Roman tax collectors, Jesus himself declared, "Render to Caesar the things that are Caesar's, and to God the things that are God's."²⁸ Thus, Jesus *supported* paying taxes. Furthermore, the apostle Paul echoed this position. In his epistle to the Roman church, Paul noted: "This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing."²⁹ Both Jesus and Paul addressed religious authorities and carved out no exceptions, as found in the Old Testament. *Everyone* must render unto Caesar; *everyone* must pay imperial taxes.

This position changed, however, with the advent of imperial Christendom. The Roman Emperor Constantine issued the Edict of Toleration in 313 C.E.³⁰ This imperial decree placed Christianity on an equal footing with the traditional imperial religion. After his own conversion, Constantine also started bestowing imperial favors on the ascending Christian church. Among these favors: exemption from certain Roman taxes.³¹ Although subsequent emperors, such as Diocletian, revoked these benefits, many—including the various tax exemptions—remained deeply entrenched within Roman society.³²

Nonetheless, religious tax exemption suffered a tumultuous fate following Rome's collapse. Some rulers, such as England's Henry II, continued the tradition

²³ *Genesis* 47:24–26.

²⁴ James, *supra* note 21, at 34.

²⁵ See *1 Kings* 12:4 ("Your father put a heavy yoke on us, but now lighten the harsh labor and the heavy yoke he put on us, and we will serve you.").

²⁶ James, *supra* note 21, at 33–34 (citing MARTIN A. LARSON & C. STANLEY LOWELL, *THE CHURCHES: THEIR RICHES, REVENUES, AND IMMUNITIES* 15 (1969)).

²⁷ *Ezra* 7:24.

²⁸ *Mark* 12:17; see also *Matthew* 22:21.

²⁹ *Romans* 13:6.

³⁰ James, *supra* note 21, at 35–36.

³¹ Keith S. Blair, *Praying for a Tax Break: Churches, Political Speech, and the Loss of Section 501(c)(3) Tax Exempt Status*, 86 *DENV. U.L. REV.* 405, 408 (2009).

³² James, *supra* note 21, at 36.

in limited circumstances.³³ Others outright repealed the ecclesiastical preference. The Holy Roman Empress Maria Theresa, for instance, reformed her tax code so that her empire collected revenues from clergy.³⁴ After all, burgeoning empires needed filled coffers, and exempting classes wholesale from tax proved perverse to the imperial expansion of the crown.

B. Early American Society

Religious tax treatment differed by colony in pre-Revolutionary American society. Many settlers in the so-called New World desired freedom from oppressive European monarchies, especially with regard to the exercise of religion. This desire did not have universal application, however, especially in the intersection between colonial government and organized religion. On the one hand, more tolerant colonies allowed taxpayers a choice in determining which religious organizations received aid collected from the taxpayer. Georgia and Maryland, for instance, allowed such an election from a general tax assessment.³⁵ Other colonies, however, forbade tax aid for religious societies not falling within such colonies' established churches. Massachusetts levied a tax on all citizens supporting the established Congregational Church while simultaneously exempting the Church from paying taxes.³⁶ In short, each colony featured a tax scheme supporting *some* religious organization.

Following the American Revolution, the colonies, now crystallized as states in a federal union, disestablished the various churches. Yet tax exemptions survived despite the lack of explicit Constitutional provision. At the state level, Pennsylvania led the charge by enacting a state constitutional amendment that barred levying a tax on church property.³⁷ At the federal level, Congress exempted religious societies from taxes levied against various items such as imports³⁸ and household furniture.³⁹ When Congress crafted a preliminary income taxing statute in 1894, the Act explicitly exempted "corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes."⁴⁰ Although the Supreme Court later struck down this Act on other grounds,⁴¹ this language persists in the modern statutory scheme.

³³ *Id.*

³⁴ MARGARET R. HUNT, WOMEN IN EIGHTEENTH-CENTURY EUROPE 327 (2010).

³⁵ James, *supra* note 21, at 38.

³⁶ *Id.* at 38–39.

³⁷ *Id.* at 40.

³⁸ *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 677 (1970) (citing 6 Stat. 116 (1813)).

³⁹ *Id.* At 677, n.6 (citing 6 Stat. 346 (1826)).

⁴⁰ 28 Stat. 509, 556 (1894).

⁴¹ *See Pollock v. Farmers' Loan & Tr. Co. of New York*, 158 U.S. 601, 637 (1895).

C. Modern Statutory Framework

Congress finally taxed income successfully after passage of the Sixteenth Amendment⁴² and the Revenue Act of 1913.⁴³ The Revenue Act has received numerous revisions and supersessions over the last one hundred years. The language first embedded in the Act's 1894 precursor exempting religious organizations, however, has persistently survived. Currently, 26 U.S.C. § 501(c)(3) exempts groups "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition."⁴⁴ So long as a group satisfies an exempt purpose—and, significantly, does not privately inure or benefit an individual⁴⁵—the group does not pay federal income taxes. Most groups qualifying for tax-exempt status must receive a ruling from the Internal Revenue Service ("the Service") before reaping § 501 benefits. Additionally, since 1950, the Code has also required most tax-exempt organizations to file a Form 990 with the Service disclosing certain information such as income, expenses, and revenue sources.⁴⁶ However, the Service requires no formal filing from "churches." Self-declared churches automatically receive tax-exempt status.⁴⁷ At present, churches need not file Form 990s with the Service, even though the parent category of "religious organization" *must* file such a form with the Service.⁴⁸

II. "I SHALL NOT BE MOVED": JURISPRUDENTIAL RATIONALIZATION OF RELIGIOUS TAX EXEMPTIONS

The numerous tax-exemption statutes involving churches have not only monetarily advanced religious institutions, but have also imposed only minor oversight monitoring how churches use these tax-free funds. Indeed, churches have greatly benefited from this preferential treatment. An estimated 330,000 churches in the United States received over \$34 billion collectively in revenue and contributions in 2010.⁴⁹ Studies further estimate that American churches own approximately \$300–\$500 billion in untaxed property.⁵⁰ New York City alone loses nearly \$627 million in annual property tax revenue due to exempted churches in the

⁴² U.S. CONST. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.")

⁴³ 38 Stat. 114 (1913).

⁴⁴ 26 U.S.C. § 501(c)(3) (2012).

⁴⁵ *Id.*

⁴⁶ John Montague, *The Law and Financial Transparency in Churches: Reconsidering the Form 990 Exemption*, 35 CARDOZO L. REV. 203, 213 (2013).

⁴⁷ 26 U.S.C. § 508(c)(1)(A) (2012).

⁴⁸ *Id.* § 6033(a)(3)(A)(i).

⁴⁹ Montague, *supra* note 46, at 206.

⁵⁰ Jeff Schweitzer, *The Church of America*, HUFFINGTON POST (Oct. 11, 2011, 3:49 PM), http://www.huffingtonpost.com/jeff-schweitzer/robert-jeffress-romney_b_1002753.html [<https://perma.cc/C75H-K8YX>].

City's jurisdiction.⁵¹ Kenneth Copeland himself would owe \$660,000 in property taxes but for the exemption.⁵²

Should churches continue enjoying this treatment? Many churches argue that these tax exemptions constitute a fundamental right guaranteed by the Constitution's First Amendment.⁵³ Using the very same Amendment, opponents argue that tax exemptions only represent a *privilege*, and this privilege may even violate the First Amendment wholesale.⁵⁴ Both arguments represent a fundamental tension in the First Amendment recognized by the United States Supreme Court in *Walz v. Tax Commission of New York*.⁵⁵ Resolving the tax abuse exposed by John Oliver requires unknitting the Supreme Court's unfortunately convoluted precedent in this area.

A. Tax Exemption as a Right

The First Amendment to the United States Constitution prevents Congress from "prohibiting the free exercise" of religion.⁵⁶ Churches argue that revoking tax exemption would violate this constitutional principle.⁵⁷ After all, the United States Supreme Court recognized early that "[a]n unlimited power to tax involves, necessarily, a power to destroy."⁵⁸ Furthermore, the Court opined the "power to confer or withhold unlimited benefits is the power to coerce or destroy."⁵⁹ More recently, the Court acknowledged the adverse effects taxation could have on religious beliefs: "[I]t is of course possible to imagine that a more onerous tax rate . . . might effectively choke off an adherent's religious practices"⁶⁰ Thus, churches argue, revoking churches' exemptions from tax might result in the destruction of free religious exercise as protected by the Constitution.

⁵¹ Doug Turetsky, *City's Multitude of Property Tax Exemptions Add Up to a Wealth of Revenue Foregone*, INDEP. BUDGET OFF. WEB BLOG (July 15, 2011), <http://ibo.nyc.ny.us/cgi-park/?p=365> [<https://perma.cc/3TDC-MY6X>].

⁵² Burnett, *Onscreen*, *supra* note 5.

⁵³ See *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 676 (1970) (holding that tax exemptions "restrict[] the fiscal relationship between church and state, and tend[] to complement and reinforce the desired separation insulating each from the other").

⁵⁴ See *id.* at 716 (Douglas, J., dissenting) ("If believers are entitled to public financial support, so are nonbelievers.").

⁵⁵ *Id.* at 668–69 ("The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.").

⁵⁶ U.S. CONST. amend. I.

⁵⁷ See Erik Stanley, *IRS Rules Don't Trump the Constitution*, TOWNHALL.COM (Sept. 8, 2008, 1:50 PM), http://townhall.com/columnists/erikstanley/2008/09/08/irs_rules_dont_trump_the_constitution/page/full [<https://perma.cc/DBJ3-N22A>].

⁵⁸ *M'Culloch v. Maryland*, 17 U.S. 316, 327 (1819).

⁵⁹ *United States v. Butler*, 297 U.S. 1, 71 (1936).

⁶⁰ *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 392 (1990).

The Supreme Court has rejected this position, however. First, the Supreme Court has allowed some restrictions on religious exercise. "Not all burdens on religion are unconstitutional," Chief Justice Burger noted.⁶¹ With regard to taxes, the Court also concluded: "[T]o the extent that imposition of a generally applicable tax merely decreases . . . money [spent on] . . . religious activities, any such burden is not constitutionally significant."⁶² Thus, tax-exempt status for churches does not exist as a foundational right. Instead, so long as a generally applicable tax does not "burden the defendant's practice of his religion by pressuring him to commit an act forbidden by the religion or by preventing him from engaging in conduct that the faith mandates,"⁶³ churches theoretically could pay the tax under the United States Constitution.

B. Tax Exemption and the Separation Between Church and State

Some commentators argue the tax exemptions proffered upon churches violate the First Amendment's other provision: the Establishment Clause.⁶⁴ After all, the First Amendment also prohibits the federal government from making a "law respecting an establishment of religion."⁶⁵ Favoring churches through tax exemptions seemingly violates this separation. As Mark Twain noted, "[N]o church property is taxed and so the infidel and the atheist and the man without religion are taxed to make up the deficit in the public income thus caused."⁶⁶ These tax exemptions seem the very evil the First Amendment's Establishment Clause redressed.⁶⁷ Even the United States Supreme Court commented on the preferential nature of tax exemptions. Justice Rehnquist wrote: "Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."⁶⁸

In *Lemon v. Kurtzman*, the United States Supreme Court summed up the test for determining whether a government initiative violates the Establishment Clause.⁶⁹ The test features three prongs. First, the government's actions must have an underlying secular purpose.⁷⁰ Second, the government's actions must not

⁶¹ *United States v. Lee*, 455 U.S. 252, 257 (1982).

⁶² *Jimmy Swaggart Ministries*, 493 U.S. at 391.

⁶³ *United States v. Washington*, 672 F. Supp. 167, 170 (M.D. Pa. 1987).

⁶⁴ U.S. CONST. amend. I.

⁶⁵ *Id.*

⁶⁶ ALBERT BIGELOW PAINE, MARK TWAIN'S NOTEBOOK 223 (1935).

⁶⁷ See *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1450 (2011) (Kagan, J., dissenting) (discussing Madisonian origins of the Establishment Clause).

⁶⁸ *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 544 (1983).

⁶⁹ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

⁷⁰ *Id.* at 612.

promote or inhibit religious exercise.⁷¹ Third, the government’s actions must not intricately entangle church and state.⁷²

The Supreme Court applied these prongs in *Hernandez* and concluded religious tax benefits do not violate the Establishment Clause.⁷³ The Court in *Hernandez* noted: “[A] statute primarily having a secular effect does not violate the Establishment Clause merely because it ‘happens to coincide or harmonize with the tenets of some or all religions.’”⁷⁴ Tax exemptions, the Court concluded, do not endorse religion in general or any “particular religious practice.”⁷⁵ As such, tax exemptions do not violate the constitutional boundaries between the state and the church.

C. Tax Exemption as a “Rationalized” Privilege

The United States Supreme Court has thus charted a middle ground between the logical extremes of the First Amendment’s Religion Clauses concerning tax exemption. Tax exemption does not exist as a right, but neither does tax exemption violate the neutral principles required by the Establishment Clause. As such, churches’ tax-exempt status exists as a *privilege*. This aligns with the Court’s overall view of exemptions generally. The Court has considered “[t]he availability of [tax] exemptions . . . [as] a legislative grace, not a constitutional privilege.”⁷⁶ Lower courts have used this logic in cases involving church taxes. The Tenth Circuit Court of Appeals, for example, opined: “Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions.”⁷⁷

What Congress giveth, Congress may also taketh away. If tax exemptions exist as a legislative grace, what rationales buttress their continued existence? The Supreme Court has enunciated two principles underlining churches’ tax exemption status. These rationales inform when a church should retain tax exemption without violating either principle of the First Amendment. These principles, however, sharply conflict. Delineating a path between these rationales highlights how Congress can address the tax abuse problems perpetuated today while faithfully respecting both church interests and state interests.

⁷¹ *Id.*

⁷² *Id.* at 613.

⁷³ *Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 696 (1989).

⁷⁴ *Id.* (citing *McGowan v. Maryland*, 366 U.S. 420, 442 (1961)).

⁷⁵ *Id.* (quoting *Wallace v. Jaffree*, 472 U.S. 38, 69 (1985) (O’Connor, J., concurring in judgment)).

⁷⁶ *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 643 n.2 (1980) (Rehnquist, J., dissenting).

⁷⁷ *Christian Echoes Nat’l Ministry, Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972).

i. *Walz v. Tax Commission of New York*

The United States Supreme Court first addressed religious tax exemptions in the landmark case *Walz v. Tax Commission of New York*. In that case, a New York property owner sought an injunction against the New York Tax Commission from granting tax exemptions for religious organizations.⁷⁸ The Court upheld the tax exemptions, however, noting the “unbroken practice of according the [tax] exemption to churches” as “not something to be lightly cast aside.”⁷⁹ As such, Chief Justice Burger illuminated the proper rationale for preserving this “unbroken practice.” Writing for the Court, the Chief Justice concluded: “The State has an affirmative policy that considers [religious organizations] as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest.”⁸⁰ A concurring Justice Brennan agreed, noting: “[G]overnment[s] grant[] exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities.”⁸¹ Thus, the Supreme Court found in *Walz* a sufficient rationale for tax exemption in the public benefit provided by religious organizations.

The Court explicitly rejected any “social welfare” test for religious tax exemptions: “We find it unnecessary to justify the tax exemption on the social welfare services or ‘good works’ that some churches perform for parishioners and others”⁸² Such a yardstick, the Court warned, might upset the delicate balance between the First Amendment’s Religion Clauses. At present, “[t]he exemption creates only a minimal and remote involvement between church and state”⁸³ A social welfare test might “. . . conceivably give rise to confrontations that could escalate to constitutional dimensions.”⁸⁴ Justice Brennan departed slightly on this point, insisting the first principle underlying religious tax exemption did rest in a social welfare theory: “First, [religious] organizations are exempted because they, among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens . . . met by general taxation, or be left undone, to the detriment of the community.”⁸⁵ Justice Brennan’s concurrence forecasted the direction the Supreme Court would soon take regarding tax exemption.

⁷⁸ *Walz v. Tax Comm’n of New York*, 397 U.S. 664, 666 (1970).

⁷⁹ *Id.* at 678.

⁸⁰ *Id.* at 673.

⁸¹ *Id.* at 689 (Brennan, J., concurring).

⁸² *Id.* at 674.

⁸³ *Id.* at 676.

⁸⁴ *Id.* at 674.

⁸⁵ *Id.* at 687 (Brennan, J., concurring).

ii. *Bob Jones University v. United States*

Just thirteen years later, the Supreme Court heavily undermined the plurality rationale provided in *Walz*. In *Bob Jones University v. United States*, the Service revoked tax exemption from a Christian university because of the University’s racial discrimination.⁸⁶ Again writing for the majority, Chief Justice Burger now insisted: “. . . [U]nderlying all relevant parts of the Code, is the intent that entitlement to tax exemption depends on meeting certain common-law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy.”⁸⁷ Furthermore, the Court wrote: “. . . [I]n enacting . . . § 501(c)(3), Congress sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind.”⁸⁸

Chief Justice Burger seemingly moved beyond his thinking in *Walz*. Although *Bob Jones University* involved primarily an educational institution (though also classified as a religious organization), the Court nonetheless couched the opinion as concerning all organizations exempted from tax under § 501(c)(3). In fact, the Court disavowed the argument in *Walz* against a social benefit by elaborating:

The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare.⁸⁹

Bob Jones University revoked the tax exemption on public policy grounds.⁹⁰ The Court also, however, integrated the common-law principles of charity into the exemption requirement of § 501(c)(3).⁹¹ This suggested that a tax-exempt organization under § 501(c)(3) could lose exemption status if the organization did not pass a “charitable scrutiny” test. Initially, the Court noted “advancement of religion” as a charitable purpose.⁹² However, the Court also discussed how “charitable purposes” change over time.⁹³ Some legal commentators feared the Court’s actions would make § 501(c)(3) a weapon against religious institutions

⁸⁶ *Bob Jones Univ. v. United States*, 461 U.S. 574, 579 (1983).

⁸⁷ *Id.* at 586.

⁸⁸ *Id.* at 587–88.

⁸⁹ *Id.* at 590 (quoting H.R. Rep No. 1860, 75th Cong., 3d Sess., 19 (1938)).

⁹⁰ *Id.* at 591.

⁹¹ *Id.* at 585–86.

⁹² *Id.* at 589 (citing *Comm’rs v. Pemsel*, AC 531, 583 (Eng. 1891)).

⁹³ *See id.* at 593 n.20.

utilizing this scrutiny.⁹⁴ Even Chief Justice Roberts recently echoed these concerns in his dissent in the landmark *Obergefell* same-sex marriage case.⁹⁵

III. “BEYOND THE GATES”: REVITALIZING THE CHURCH AUDIT PROCEDURES ACT

Both *Walz* and *Bob Jones University* recognized tax exemptions as a privilege rather than a constitutional right. Whereas *Walz* focused on protecting churches based on pluralism, *Bob Jones University* advocated for stronger governmental oversight based on “charitable scrutiny.” The tension generated by those two cases resulted in the Church Audit Procedures Act.⁹⁶ In passing the Church Audit Procedures Act, Congress provided churches with necessary safeguards without unnecessarily hampering the Service’s auditing abilities or their need to combat abuse. The Act largely succeeded in quelling fears, producing little controversy—and even less scholarship⁹⁷—over the Act’s thirty-plus year history. A technicality left unaddressed since the Service’s reorganization in 1998, however, has largely gutted the Act’s efficacy.

Congress should amend the Church Audit Procedures Act and define the currently ambiguous “high-level Treasury official” necessary for an audit sign-off. Furthermore, Congress should codify the Internal Revenue Service Commissioner, at the very least, as such a necessary official. Having the Commissioner as the statutorily defined “high-level Treasury official” would allow the Service to conduct church audits once again. The Commissioner would also satisfy the underlying historical rationales behind the Act. Furthermore, both churches on the one hand and nonprofit watchdogs on the other hand would likely find the Commissioner an acceptable choice. Thus, Congress could amend the Church Audit Procedures Act with little controversy.

A. History of the Church Audit Procedures Act and the Current Statutory Framework

Representative Mickey Edwards and Senator Charles Grassley introduced the first Church Audit Procedures Act shortly after *Bob Jones University*. Senator Grassley specifically noted the Act “should assist both the church under examination and the Internal Revenue Service in a tax audit and resolve clearly

⁹⁴ See Moore, *supra* note 11, at 323–24 (discussing how churches could meet a charitable scrutiny test).

⁹⁵ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2626 (2015) (Roberts, C.J., dissenting) (“Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage.”).

⁹⁶ 26 U.S.C. § 7611 (2015).

⁹⁷ See J. Michael Martin, *Why Congress Adopted the Church Audit Procedures Act and What Must Be Done Now to Restore the Law for Churches and the IRS*, 29 AKRON TAX J. 1, 3 n.7 (2014) (noting the lack of scholarship on the Church Audit Procedures Act).

defined issues quickly in consonance with our Constitution.”⁹⁸ The Act received broad bipartisan support.⁹⁹ Not only did the Act receive support from both Democrats and Republicans, but also, and more importantly, from religious figures and Service auditors.¹⁰⁰

Congress passed and codified the Church Audit Procedures Act at 26 U.S.C. § 7611. Most importantly, the Church Audit Procedures Act requires that a “high-level Treasury official” initiate an audit against an organization classified as a church by the Service.¹⁰¹ To do so, the Treasury official must have a reasonable belief that the church either: does not actually constitute a church under the Regulations; conducts an unrelated, taxable trade or business; or engages in otherwise taxable activity under the Code.¹⁰² The Act also includes restrictions on examinations,¹⁰³ notice requirements,¹⁰⁴ and pre-examination conferences between targeted churches and the Service.¹⁰⁵ These initial procedural safeguards effectively protected churches without significantly hindering the Service’s interests in ferreting out fraud for nearly fifteen years. The term “high-level Treasury official” currently remains undefined, however, essentially gutting the Church Audit Procedures Act.

B. The Church Audit Procedures Act Post-Living Word

Both legislative history and practical effect defined the “high-level Treasury official” as an Internal Revenue Service Regional Commissioner.¹⁰⁶ Yet Congress eliminated the Regional Commissioner position in 1998 when restructuring the Service,¹⁰⁷ but failed to redefine who qualified as a “high-level Treasury official” in the aftermath.¹⁰⁸ The Service tried vesting this power in the Director of Exempt

⁹⁸ 130 CONG. REC. 9,152 (daily ed. Apr. 12, 1984) (statement of Sen. Grassley).

⁹⁹ Martin, *supra* note 97, at 25.

¹⁰⁰ *Id.* at 7–12.

¹⁰¹ 26 U.S.C. § 7611(a)(2) (2015).

¹⁰² *Id.*

¹⁰³ *Id.* § 7611(b).

¹⁰⁴ *Id.* § 7611(a)(3), (b)(2)–(3).

¹⁰⁵ *Id.* § 7611(b)(3)(A)(iii).

¹⁰⁶ See 130 CONG. REC. S4,485–86 (daily ed. Apr. 12, 1984) (statement of Sen. Grassley) (“[T]his provision requires an Internal Revenue Service Regional Commissioner to begin an investigation of a church”); see also *United States v. Living Word Christian Ctr.*, No. 08–mc–37, 2008 U.S. Dist. LEXIS 106639, at *14–15 (D. Minn. Nov. 18, 2008) (“The IRS’s identification of the Regional Commissioner as the appropriate official to make the required reasonable-belief determinations is not surprising given that the House Conference Report for the CAPA made the same selection.”) (citing H.R. CONF. REP. NO. 98–861, at 1101 (1984)).

¹⁰⁷ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 685, 697–98 (1998).

¹⁰⁸ *Living Word Christian Ctr.*, 2008 U.S. Dist. LEXIS 106639, at *23 (“The failure of Congress to redefine the meaning of ‘appropriate high-level Treasury official’ since instructing the IRS to reorganize itself . . . has rendered the statutory definition ambiguous.”).

Organizations, Examinations (“DEOE”).¹⁰⁹ However, one church resisted the Service’s audit, claiming the DEOE did not satisfy congressional intent in naming a “high-level Treasury official.”¹¹⁰ The church argued “the DEOE does not have responsibilities over the many different IRS functions and types of taxpayers.”¹¹¹ The court agreed with the church’s interpretation. The court opined: “Congress clearly wanted the decision to investigate a church to be approved by a high-level Executive Branch official.”¹¹² The DEOE did not qualify as such because the DEOE, as an examiner, was “at odds with the legislative purpose of vesting the authority to halt over-zealous examination of churches in a high-level Treasury official.”¹¹³ Unlike the former Regional Commissioners, the DEOE did not have:

The broad responsibilities and experience of an official with such a high-profile position [that] would make it likely that she has a heightened political and policy sensitivity for balancing the need for vigorous enforcement of our tax laws and the avoidance of excessive government intrusion into a church’s exercise of religious freedom.¹¹⁴

Following *Living Word*, the Service proposed having the Director of Exempt Organizations serve as the requisite “high-level Treasury official.”¹¹⁵ As one commentator noted, however, the Service offered no justifications for why an official merely one rank above the DEOE should satisfy congressional intent.¹¹⁶ Comments for the proposal overwhelmingly reflected disapproval.¹¹⁷ The Treasury thus backed off from the approach. Subsequently, the Freedom From Religion Foundation brought suit attempting to force the Service to name a sufficient official.¹¹⁸ Although the suit settled and the Service indicated that church audits would proceed once more, the Service has not revealed which official satisfies a “high-level Treasury” position.¹¹⁹ All information suggests the Service has largely

¹⁰⁹ *Id.* at *18 (citing Internal Revenue Manual § 4.76.7.4 (June 1, 2004) (“The IRS may begin a church tax inquiry only when the Director, [Exempt Organizations] Examinations reasonably believes . . .”).

¹¹⁰ *Id.* at *4–5.

¹¹¹ *Id.* at *32.

¹¹² *Id.* at *35.

¹¹³ *Id.* at *39.

¹¹⁴ *Id.* at *35.

¹¹⁵ Martin, *supra* note 97, at 16 (citing 74 Fed. Reg. 39,003 (proposed Aug. 5, 2009) (to be codified at 26 C.F.R. pt. 301)).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 16–19.

¹¹⁸ Scott Bauer, *Atheist Group Sues over Religious Electioneering*, SAN DIEGO UNION-TRIB. (Nov. 15, 2012, 8:51 AM), <http://www.sandiegouniontribune.com/sdut-atheist-group-sues-over-religious-electioneering-2012nov15-story.html> [<https://perma.cc/2D2Y-YE9A>]; see also Complaint at 2, Freedom From Religion Found., Inc. v. Shulman, 961 F. Supp. 2d 947 (W.D. Wis. 2013) (No. 12-CV-818).

¹¹⁹ Kimberly Winston, *IRS Agrees to Monitor Churches for Electioneering*, WASH. POST (July 21, 2014), <https://www.washingtonpost.com/national/religion/irs-agrees-to-monitor-churches-for->

stopped auditing churches altogether. In fact, Marcus Owens, a tax attorney and former DEOE at the Service, noted in 2014 that the Service had not conducted *any* church audits since *Living Word*.¹²⁰ No new data suggests the Service has changed in the interim years.¹²¹

This cessation has greatly benefited those abusing the current tax system. The televangelists masquerading as churches, as noted above, have reaped huge benefits from the lack of oversight. Yet the Church Audit Procedures Act did not intend this result. Legislative history even suggests the Church Audit Procedures Act had in mind the evasion practiced by modern televangelists. Representative Mickey Edwards claimed the Act protected churches without hindering the Service’s sincere efforts in ferreting out fraud, specifically noting the rapid growth of “mail-order ministries” attempting to define themselves as churches for illegal tax shelter purposes: “[Y]ou should be aware of the deep appreciation for the IRS efforts to uncover organizations which seek to evade taxes by fraudulently portraying themselves as churches.”¹²²

*C. Congress Should Amend the Church Audit Procedures Act and
Name the Internal Revenue Service Commissioner as a
Sufficient “High-Level Treasury Official”*

Unfortunately, the Service has punted on the issue. The Service’s relative silence over the last few years suggests the Service does not intend on acting anytime soon on formalizing a “high-level Treasury official” sufficient for conducting church audits. Not only that, but the Service has continually declined to comment on exactly *why* no action has commenced.¹²³ Treasury officials merely state that the work is ongoing.¹²⁴ This gives the Service technical grounds for deflecting concern over church tax abuse. The Service likely does not desire wading into the murky depths of First Amendment concerns when conducting church audits. Hamstringing audit requests by gutting the statutory basis provides the Service with the necessary escape hatch.

electioneering/2014/07/21/99815d32-1118-11e4-ac56-773e54a65906_story.html
[https://perma.cc/3M9S-MJHZ].

¹²⁰ Burnett, *Onscreen*, *supra* note 5.

¹²¹ See Sarah Eekhoff Zylstra, *Why the IRS Has Stopped Auditing Churches—Even One that Calls President Obama a Muslim*, CHRISTIANITY TODAY (Oct. 26, 2012), <http://www.christianitytoday.com/ct/2012/october-web-only/why-irs-has-stopped-auditing-churches-even-one-that-calls-p.html> [https://perma.cc/X4EL-KX9G].

¹²² *Church Audit Procedures Act: Hearing Before the Subcomm. on Oversight of the I.R.S. of the Comm. on Fin.*, 98th Cong. 16 (1983) (statement of Rep. Mickey Edwards).

¹²³ John Burnett, *Can A Television Network Be a Church? The IRS Says Yes*, NAT’L PUB. RADIO (Apr. 1, 2014, 4:00 PM), <http://www.npr.org/2014/04/01/282496855/can-a-television-network-be-a-church-the-irs-says-yes> [https://perma.cc/9Z6W-LXC4] [hereinafter Burnett, *Can a Television Network Be a Church?*].

¹²⁴ Martin, *supra* note 97, at 21 n.100.

This does not mean, however, the prevalent abuse in the system should go unaddressed. Given the Service's failure in this area, Congress should amend the Act and name a sufficient "high-level Treasury official." After all, Congress created the problem when revamping the Service by not amending the Act in 1998. Furthermore, Congress has already acknowledged the rampant abuse. Senator Charles Grassley—an early sponsor of the Church Audit Procedures Act—started an inquiry into the country's most extravagant "churches" after receiving complaints about the exorbitant sums televangelists appropriated for themselves.¹²⁵ Senator Grassley made his intent clear: "My business is the enforcement of the tax laws and the integrity of the tax code"¹²⁶ Grassley's inquiry found clear abuse amongst the targeted televangelists.¹²⁷ In the end, however, many religious leaders worried about facing tax persecution. Facing pressure, Senator Grassley merely concluded, "Now we hope that this will cure itself through self-regulation."¹²⁸

As John Oliver's recent exposé demonstrated, however, the Senator's hopes did not translate into reality. The very same televangelists targeted by Senator Grassley's investigation have continued gaming the system in order to "bestow Wall Street-size benefits on . . . ministers."¹²⁹ As such, Congress must take action. This starts with amending the Act so that it can functionally provide the necessary balance between church and state for auditing purposes.

Congress must first designate statutorily a "high-level Treasury official." Congress could select a wide range of officials sufficient for conducting church audits. On the one hand, the statute already clearly contemplates the Treasury Secretary.¹³⁰ The Secretary likely prioritizes church audits as very low, however, and at any rate has not signed off on any audits in five years. On the other hand, the federal court in *Living Word* rejected the DEOE as a high-level official and comments on the Treasury's next suggestion, the DEO, have suffered near-universal contempt. Former DEO Lois Lerner's recent spotlight has not improved the argument for the DEO as the sufficient official, either.¹³¹ Thus, Congress likely could not viably select the DEO or any lower position. As such, Congress should select an official between the Treasury Secretary and the DEO.

Of all the candidates available, the Internal Revenue Service Commissioner likely seems the most viable option. Former DEOE Marcus Owens ". . . identified two important characteristics that the official responsible for approving church tax

¹²⁵ Kathy Lohr, *Senator Probes Megachurches' Finances*, NAT'L PUB. RADIO (Dec. 4, 2007, 7:57 PM), <http://www.npr.org/templates/story/story.php?storyId=16860611> [<https://perma.cc/QZU6-P959>].

¹²⁶ *Id.*

¹²⁷ *See id.*

¹²⁸ Burnett, *Onscreen*, *supra* note 5.

¹²⁹ Memorandum from Theresa Pattara & Sean Barnett on Review of Media-Based Ministries to Sen. Charles Grassley, at 30 (Jan. 6, 2011) [hereinafter Memorandum from Pattara & Barnett].

¹³⁰ 26 U.S.C. § 7611(h)(7) (2015).

¹³¹ *See Reuters, Senate IRS Investigation Leads to Mixed Feelings*, HUFFINGTON POST (Aug. 5, 2015, 9:14 PM), http://www.huffingtonpost.com/entry/irs-investigation-lois-lerner_us_55c2b1cfe4b0d9b743dade89 [<https://perma.cc/AJ9Q-T724>].

inquiries at the IRS should possess to be consistent with congressional intent: (1) experience making high-level sensitive policy judgments, and (2) lack of direct involvement in church tax enforcement.¹³² The Commissioner certainly has the requisite political publicity and distance from church auditing to serve congressional purposes. First, the Commissioner is no stranger to high stakes decision-making. The Commissioner has, amongst other duties, the role of “overall planning, directing, controlling and evaluating IRS policies, programs, and performance.”¹³³ Second, because of these sensitive decisions, the Commissioner receives more scrutiny than any other tax official. After all, the President of the United States appoints the Commissioner with the advice and consent of the Senate.¹³⁴ This political process serves as an initial check on the Commissioner. Recent events also highlight the wisdom in selecting the Commissioner as the official. In the wake of the Tea Party tax exemption scandals, Commissioner Steven T. Miller resigned.¹³⁵ An overzealous Commissioner—and, perhaps, even a lackadaisical Commissioner—could face the same political pressure involving church audits. Finally, as the overall head of the Service, the Commissioner would have a sufficient distance from church audits such that signing off on them would not reflect a personal judgment so much as a measured analysis of the financial data available.

Furthermore, the American Center for Law and Justice endorsed this approach.¹³⁶ The Center argued that naming the Commissioner as the appropriate official would have the additional benefit of avoiding any repeat problems should Congress restructure the Service again.¹³⁷ The Commissioner position, after all, would likely survive any Service shakeup in the future. Religious organizations such as the Alliance Defending Freedom would also likely endorse this approach, given that they have advocated for a *lower* official in the past.¹³⁸ One legal commentator noted that the Commissioner might not function as the most practical choice given the Commissioner’s other tax responsibilities.¹³⁹ Yet this would ensure only the most noteworthy (and egregious) churches undergo audits. In balance, the Internal Revenue Service Commissioner thus seems the best choice for the Church Audit Procedures Act’s “high-level Treasury official.” As such, Congress should amend the Act accordingly and breathe new life into this currently paralyzed auditing tool.

¹³² Martin, *supra* note 97, at 18.

¹³³ Internal Revenue Manual § 1.1.5.1(2) (June 2, 2015).

¹³⁴ *Id.* § 1.1.5.1(5).

¹³⁵ Zachary A. Goldfarb & Juliet Eilperin, *Acting Director of IRS Resigns Amid Furor Over Targeting of Conservative Groups*, WASH. POST (May 15, 2013), <https://www.washingtonpost.com/news/post-politics/wp/2013/05/15/acting-irs-director-steve-miller-resigns/> [https://perma.cc/P7YY-MQP8].

¹³⁶ Martin, *supra* note 97, at 18.

¹³⁷ *Id.*

¹³⁸ *See id.*

¹³⁹ *Id.* at 24.

IV. "HEAVENLY SUNLIGHT": FORM 990 AND INCREASED FINANCIAL TRANSPARENCY

Revitalizing the Church Audit Procedures Act would make significant inroads toward fighting the abuse perpetuated by televangelists. Amending the Act, however, would only partially solve the problem. The "high-level Treasury official" would still need a "reasonable belief" for conducting an audit.¹⁴⁰ Yet televangelists currently abusing the Code have largely operated without any oversight. Financial documents necessary for an adequate audit largely remain concealed. Absent satirical television segments, any auditor may struggle in marshalling evidence necessary for a "reasonable belief." Even Congress could not reach into the televangelists' shadowy financial records under current law. Tellingly, one of the six televangelists targeted by Senator Grassley's investigation did not even respond to the Senator's request for financial records.¹⁴¹ Three others made no good faith attempt toward providing the adequate documentation requested by the Senator.¹⁴²

The Form 990 would provide the Commissioner with sufficient "reasonable belief" in signing off on church audits. The Code currently requires § 501(c)(3) exempt organizations to file a Form 990 with the Service.¹⁴³ The 990 sets forth such items as an organization's gross income, related expenses, and gifts and contributions received.¹⁴⁴ Generally, the Service relies heavily on a Form 990 when reviewing the nonprofits' tax-exempt status.¹⁴⁵

The Code exempts churches from filing a Form 990, however, even though other religious organizations do not enjoy such a privilege.¹⁴⁶ Televangelists have craftily met the Service's fluid test for qualifying as a "church" and succeeded in hiding relevant financial records. As such, Congress should amend § 6033(a)(3) and require a Form 990 from churches. Unlike amending the Church Audit Procedures Act, however, revoking the Form 990 exemption would require much more congressional resolve. Churches have vigorously opposed such efforts in the past.¹⁴⁷ Historically, however, these objections overwhelmingly derive more from anti-government rhetoric rather than actual constitutional law.

Because the shadows have aided televangelists' gaming of the tax system, Congress should repeal § 6033(a)(3). First, § 6033(a)(3)'s revocation would not violate either the Establishment or the Free Exercise Clause. In fact, § 6033(a)(3)

¹⁴⁰ 26 U.S.C. § 7611(a)(2) (2015).

¹⁴¹ Burnett, *Can a Television Network Be a Church?*, *supra* note 123.

¹⁴² *Id.*

¹⁴³ *See* 26 U.S.C. § 6033(a) (2015).

¹⁴⁴ *Id.*

¹⁴⁵ *See* Memorandum from Pattara & Barnett, *supra* note 129, at 20 ("In determining which organizations to examine (and in determining whether the organizations selected for examination are complying with the tax laws), the IRS relies heavily on the information supplied in the Form 990.")

¹⁴⁶ 26 U.S.C. § 6033(a)(3).

¹⁴⁷ *See* Ken Walker, *Sorry 666: Churches Fear 990 More*, CHRISTIANITY TODAY (July 24, 2014), <http://www.christianitytoday.com/ct/2014/july-august/sorry-666-churches-fear-990-more.html> [https://perma.cc/2JF4-336L].

may *already* transgress the Establishment Clause. Second, requiring a Form 990 from churches already has some support amongst other religious organizations. In fact, these organizations' compliance demonstrates Form 990's effectiveness, both for the Service and even the public generally, in combating the financial abuse perpetuated by some televangelists.

A. Section 6033(a)(3) and the First Amendment

Previous attempts at revoking § 6033(a)(3) have resulted in hostility from churches.¹⁴⁸ Specifically, churches have claimed the revocation would violate the Free Exercise Clause. Additionally, churches contend that filing requirements would unnecessarily entangle government in church affairs—a violation of the Establishment Clause under the *Lemon* test.¹⁴⁹ These arguments likely reflect more rhetorical flair than actual constitutional law. In fact, the current exemption plausibly violates the Constitution *more* than revocation would.

First, requiring the Form 990 from churches would not violate the Free Exercise Clause. As noted previously, the Supreme Court has allowed some burdens on free exercise.¹⁵⁰ Specifically the Court has noted that the collection of tax does not impose a significant burden.¹⁵¹ By comparison, government filings cannot equal a significant burden if the actual underlying taxing system does not impose a burden. Although Senator Grassley's staff memorandum feared filing requirements would "unnecessarily burden the overwhelming majority of churches,"¹⁵² the memorandum did not cite any data supporting this contention. The memorandum *did* cite, however, testimony from religious organizations not classified as churches. These organizations flatly stated they had "no problem" with filing Form 990s as required.¹⁵³ In fact, they even believed the filing comported more with underlying religious beliefs rather than burdening them.¹⁵⁴ If filing the Form 990 does not burden the free exercise of regular "religious organizations," such a filing cannot also burden the free belief of churches. As the Grassley staff noted, "the U.S. Constitution does not distinguish churches from other religious organizations. The word 'church' does not appear in the Constitution; the First

¹⁴⁸ See *id.*; see also Montague, *supra* note 46, at 219 (accusing Congress of "attacking religion by holding the hearings and calling them 'the beginning of a new "inquisition"'" (quoting *Federal Tax Rules Applicable to Tax-Exempt Organizations Involving Television Ministries: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 100th Cong. 250 (1987) (letter from Ben Armstrong, Exec. Dir., Nat'l Religious Broadcasters)).

¹⁴⁹ See *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

¹⁵⁰ *United States v. Lee*, 455 U.S. 252, 257 (1982).

¹⁵¹ *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 392 (1990).

¹⁵² Memorandum from Pattara & Barnett, *supra* note 129, at 32.

¹⁵³ *Id.* at 28 (citing *Federal Tax Rules Applicable to Tax-Exempt Organizations Involving Television Ministries: Hearing Before Subcomm. on Oversight of the H. Comm. on Ways and Means*, 100th Cong. 162 (1987)).

¹⁵⁴ *Id.*

Amendment refers to ‘religion,’ not ‘church.’¹⁵⁵ Additionally, churches already honor many government regulations which could burden the church financially. For instance, “churches routinely comply with municipal building codes and zoning regulations in the construction and location of worship facilities.”¹⁵⁶ Compliance with these government regulations further demonstrates how the Form 990 would not burden religious belief under the Free Exercise jurisprudence. Even if filing the Form 990 does pose some burden on churches, the government has a compelling interest outweighing the burden.¹⁵⁷ “A sound tax system requires accountability from organizations that receive special tax benefits such as exemption from federal income tax.”¹⁵⁸

Second, filing the Form 990 would not excessively entangle the government in religious affairs. The government already requires Form 990s from other religious organizations.¹⁵⁹ In receiving these forms, the Service does not inquire into the religious organizations’ beliefs. Rather, the Service focuses on the financial data supplied by the Form. In *Hernandez*, the Supreme Court recognized that routine inquiries into financial data did not constitute the entanglement envisioned by the First Amendment.¹⁶⁰ The Court noted “routine regulatory interaction which involves no inquiries into religious doctrine, no delegation of state power to a religious body, and no ‘detailed monitoring and close administrative contact’ between secular and religious bodies, does not of itself violate the nonentanglement command.”¹⁶¹

The current exemption actually entangles the government more with religion than otherwise. Because only churches—and not “religious organizations” generally—receive exemption from the Form 990 filing, the Service has come up with a cumbersome fourteen-point test in determining what actually constitutes a church.¹⁶² This necessarily involves some examination of the purported churches’ religious beliefs. Both courts and religious organizations have expressed discomfort towards the Service’s definition. The Court of Federal Claims recently noted “[t]he regime appears to favor some forms of religious expression over others . . . which . . . the court finds troubling when considered in light of the constitutional protections of the Establishment and Free Exercise Clauses.”¹⁶³ Congressional testimony from the Reverend Oral Roberts expressed similar concerns: “I think the

¹⁵⁵ *Id.* at 17.

¹⁵⁶ Montague, *supra* note 46, at 260 n.362 (citing Michele Estrin Gilman, “Charitable Choice” and the Accountability Challenge: Reconciling the Need for Regulation with the First Amendment Religion Clauses, 55 VAND. L. REV. 799, 877 n.383 (2002)).

¹⁵⁷ See *United States v. Lee*, 455 U.S. 252, 257–58 (1982).

¹⁵⁸ Memorandum from Pattara & Barnett, *supra* note 129, at 18.

¹⁵⁹ See *id.* at 28.

¹⁶⁰ *Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 696 (1989).

¹⁶¹ *Id.* at 696–97 (internal citations omitted) (quoting *Aguiar v. Sec’y, U.S. Dep’t of Educ.*, 473 U.S. 402, 414 (1985)).

¹⁶² See 26 C.F.R. § 1.511-2(a)(3)(ii) (2016); *Lutheran Soc. Serv. of Minn. v. United States*, 758 F.2d 1283, 1286–87 (8th Cir. 1985).

¹⁶³ *Found. of Human Understanding v. United States*, 88 Fed. Cl. 203, 217 (2009).

IRS has a real problem because they will say to one group you are a church, and to another group, you are not."¹⁶⁴

Scientology's long battle with the Service demonstrates the government's Byzantine entanglement under the current statutory framework. The Service revoked the Church of Scientology's tax-exempt status in 1967 and continually fought the Church over a lengthy twenty-year period before finally granting the Scientology Church exempt status once more in a secret agreement.¹⁶⁵ This litigious fight involved continual application of the Service's "church" standard, which Scientology continually failed in the face of the Church's commercial enterprises.¹⁶⁶ Scientology only fought for church status—rather than merely counting as a "religious organization"—in order to reap § 6033(a)(3)'s benefits.¹⁶⁷

Revoking § 6033(a)(3) would make the Service's "church" definition superfluous. All § 6033(a)(3) organizations would file the Form 990 if Congress revoked the statutory privilege. No special benefits would exist for churches, and the Service would thus no longer need to define a "church." This would prevent the "gaming" noted by Senator Grassley's staff.¹⁶⁸ Most scholarship has coalesced around how the Service defines a "church" as well.¹⁶⁹ In the wake of John Oliver's satire, legal commentators debated how the Service could tighten the definition to combat the exposed abuse.¹⁷⁰ Requiring a Form 990 disclosure, however, would altogether eliminate this tug-and-pull need for a distinct subgroup within the broad "religious organization" category and avoid the highly litigious issue altogether.

Additionally, Congress has not offered a sufficient secular purpose in retaining § 6033(a)(3). The original House bill mandating Form 990 disclosure actually did not exempt churches from filing.¹⁷¹ Only a Senate amendment added § 6033(a)(3)'s "church" exemption.¹⁷² Senator Russell Long merely argued the amendment advanced the "view of the traditional separation of church and state."¹⁷³ As

¹⁶⁴ *Federal Tax Rules Applicable to Tax-Exempt Organizations Involving Television Ministries: Hearing Before Subcomm. on Oversight of the H. Comm. on Ways and Means*, 100th Cong. 161 (1987) (statement of Rev. Oral Roberts).

¹⁶⁵ Steven Hassan, *It's Time to End the Church of Scientology's Tax-Exempt Status*, HUFFINGTON POST (June 28, 2010, 5:12 AM), http://www.huffingtonpost.com/steven-hassan/its-time-to-end-the-churc_b_555843.html [<https://perma.cc/HXH3-AVGH>].

¹⁶⁶ See Memorandum from Pattara & Barnett, *supra* note 129, at 21 ("Scientology is not a 'conventional' church, and had not been treated as such by the IRS for many years.").

¹⁶⁷ See *id.* at 21–24.

¹⁶⁸ *Id.* at 28 ("This raises the question of whether church status is being gamed to shield such activities of a tax-exempt entity from public scrutiny.").

¹⁶⁹ See, e.g., Charles M. Whelan, "Church" in the Internal Revenue Code: The Definitional Problems, 45 *FORDHAM L. REV.* 885, 925 (1977) (noting the Service's definition appears based more on "defensive tactical policy than on empirical and traditional concepts of churches.").

¹⁷⁰ Peter J. Reilly, *John Oliver Should Not Blame IRS for Televangelist Tax Abuse*, FORBES (Aug. 23, 2015, 10:23 AM), <http://www.forbes.com/sites/peterjreilly/2015/08/23/john-oliver-should-not-blame-irs-for-televangelist-tax-abuse/#659f43b17f12> [<https://perma.cc/ANG5-GY7N>].

¹⁷¹ Montague, *supra* note 46, at 215.

¹⁷² *Id.*

¹⁷³ *Id.* (quoting 115 CONG. REC. 32,148 (1969)).

demonstrated above, however, the Service's need for defining "church" has instead *further* entangled the two spheres. Absent an underlying secular purpose, the § 6033(a)(3) church exemption likely violates *Lemon's* first prong.

B. Form 990 Has Religious Support and Precedential Value

Revoking § 6033(a)(3) would not only have constitutional validity but would also have religious support. Senator Grassley's recent investigation of televangelists deferred to self-regulation.¹⁷⁴ For support, Senator Grassley turned to the Evangelical Council for Financial Accountability ("ECFA").¹⁷⁵ The esteemed Reverend Billy Graham founded the ECFA in 1979 in order to support organizations that "have demonstrated adherence to certain financial standards and best practices."¹⁷⁶ After Senator Grassley's probe, the ECFA ultimately concluded Congress should never "pass legislation requiring churches to file Form 990 or any similar information return."¹⁷⁷ Instead, the ECFA encouraged that "churches should, as a best practice, establish appropriate measures to verifiably demonstrate' financial oversight."¹⁷⁸

Yet independent financial oversight has failed since the ECFA's report in 2012. Recently, Kenneth Copeland made headlines once more when he tried justifying his private aircraft ownership. "[Y]ou can't manage [flying public] today," the prosperity gospel-toting minister exclaimed, refusing to "get in a long tube with a bunch of demons."¹⁷⁹ Copeland's quixotic explanation demonstrates he has no intention of financial self-policing anytime soon. A ministry linking divine blessing with financial exuberance has no reason for curbing the excessive tax abuse. In fact, most of the organizations targeted by Senator Grassley's investigation have not even received accreditation from the ECFA.¹⁸⁰ As a result, even other evangelical ministers, such as the Reverend Oral Roberts, do not see self-policing as an effective remedy.¹⁸¹ Reverend Roberts contended the ECFA lacked the appropriate teeth necessary for enforcement.¹⁸² The ECFA even admitted in 1987 that self-

¹⁷⁴ Burnett, *Onscreen*, *supra* note 5.

¹⁷⁵ *Id.*

¹⁷⁶ Montague, *supra* note 46, at 255.

¹⁷⁷ COMM'N ON ACCOUNTABILITY & POLICY FOR RELIGIOUS ORGS., ENHANCING ACCOUNTABILITY FOR THE RELIGIOUS & BROADER NONPROFIT SECTOR 31 (Dec. 2012), <http://religiouspolicycommission.org/CommissionReport.aspx>.

¹⁷⁸ Montague, *supra* note 46, at 209 (quoting COMM'N ON ACCOUNTABILITY & POLICY FOR RELIGIOUS ORGS., ENHANCING ACCOUNTABILITY FOR THE RELIGIOUS & BROADER NONPROFIT SECTOR 31 (Dec. 2012), <http://religiouspolicycommission.org/CommissionReport.aspx>).

¹⁷⁹ Jessica Chasmar, *Televangelists Defend Private Jets: Commercial Planes Full of "Demons"*, WASH. TIMES (Jan. 5, 2016), <http://www.washingtontimes.com/news/2016/jan/5/kenneth-copeland-jesse-duplantis-defend-private-je/> [<https://perma.cc/7RVN-3SVP>].

¹⁸⁰ Burnett, *Onscreen*, *supra* note 5.

¹⁸¹ See Memorandum from Pattara & Barnett, *supra* note 129, at 27.

¹⁸² *Federal Tax Rules Applicable to Tax-Exempt Organizations Involving Television Ministries: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 100th Cong. 158 (1987) (statement of Rev. Oral Roberts).

regulation posed inherent difficulties because a church must consent to the regulations.¹⁸³ Gordon D. Loux, Chairman of the Board of the ECFA in 1987, stated that a Form 990 disclosure should constitute a “minimal requirement” for all tax-exempt entities.¹⁸⁴

Given self-policing’s failure, many religious figures have started favoring revoking § 6033(a)(3).¹⁸⁵ Some religious figures have even suggested churches think about getting out of the tax benefit business altogether.¹⁸⁶ Others think the mild Form 990 requirement would better serve the current system. Tellingly, religious organizations not classified as churches overwhelmingly support revoking § 6033(a)(3).¹⁸⁷ Furthermore, the aforementioned Reverend Billy Graham—universally renowned in evangelical circles—has continuously called for financial transparency from churches.¹⁸⁸ Reverend Graham classifies his organization as a “para-church” and refuses gaming the Service’s definition of church to qualify for § 6033(a)(3)’s shield.¹⁸⁹ Spokesman Mark DeMoss noted: “For the Graham organization, the transparency has not been a challenge”¹⁹⁰ Furthermore, the leading evangelical magazine *Christianity Today* has both consistently supported financial transparency while revealing abuse from Christian ministries.¹⁹¹ The editorial board even opined: “Although churches . . . aren’t legally required to make financial statements available, they are morally obligated to do so.”¹⁹² Furthermore, the editors harshly criticized churches that did not voluntarily file a Form 990, alleging these ministries “were shortsighted, ignorant of reality, and out of step with their ‘higher obligation’ to be transparent in all their doings.”¹⁹³ If both the Reverend Billy Graham and *Christianity Today* endorse revocation of § 6033(a)(3), public opinion might not sway so easily when the televangelists inevitably object.

Additionally, Form 990 disclosures have worked in the past. Franklin Graham, son of the famous evangelist and current Chief Executive Officer of Billy Graham Evangelistic Association, found himself under fire after a local newspaper when

¹⁸³ *Id.* at 207 (statement of Gordon D. Loux, Chairman of the Bd., ECFA).

¹⁸⁴ Montague, *supra* note 46, at 220.

¹⁸⁵ See Reilly, *supra* note 8.

¹⁸⁶ *Id.*

¹⁸⁷ Memorandum from Pattara & Barnett, *supra* note 129, at 27.

¹⁸⁸ Burnett, *Can a Television Network Be a Church?*, *supra* note 123; see also Montague, *supra* note 46, at 254–55.

¹⁸⁹ Montague, *supra* note 46, at 255 (citing Rev. Graham’s strength as never thinking “that he was beyond temptation or that anything he wanted to do was all right.”).

¹⁹⁰ Burnett, *Can a Television Network Be a Church?*, *supra* note 123.

¹⁹¹ Montague, *supra* note 46, at 256.

¹⁹² *Open-book Ministry*, CHRISTIANITY TODAY (Jan. 1, 2003), <http://www.christianitytoday.com/ct/2003/january/30.30.html> [<https://perma.cc/HK2K-S9YE>].

¹⁹³ Montague, *supra* note 46, at 256 (quoting *Open-book Ministry*, CHRISTIANITY TODAY (Jan. 1, 2003)).

data from a Form 990 revealed his large salary.¹⁹⁴ Graham subsequently took a pay cut as a result.¹⁹⁵ Similarly, a *Washington Post* probe into Smithsonian finances resulted in pressure from Senator Grassley—ultimately resulting in the Chief Executive’s resignation.¹⁹⁶ Public disclosure via the Form 990 will likely result in similar pressure from congregants and media watchdogs such that the Service need not even conduct an audit. Given resistance, however, the Service would need a Form 990 for a successful audit. Otherwise the data would remain hidden. National Public Radio, for instance, investigated and discovered relevant financial information on Daystar Television—a television ministry classified as a church under the Service’s current test.¹⁹⁷ The investigation revealed a mere 5% of Daystar’s expenses went toward the “needy.”¹⁹⁸ In fact, the probe unveiled where the large majority of funds did go: \$433,000 tax-deductible donations to the Oral Roberts University, where the ministry’s children attended; \$296,091 to the family church; and \$60,000 to Israeli lawyers who helped Daystar secure a cable contract in Israel.¹⁹⁹ These expenses give a *prima facie* impression of private inurement. A Form 990 would publicly disclose all these results. Such a disclosure could result in pressure from supporters and actual change for ministries such as Daystar Television. Absent change from such pressure, the hard data could certainly form a “reasonable basis” for a church audit. Either avenue results in correcting the current abuse perpetuated in the system.

Unlike amending the Church Audit Procedures Act, Congress may have a harder time revoking § 6033(a)(3). Some religious leaders—especially those with the heaviest stakes in maintaining the status quo—will lobby hard against such a measure. These voices succeeded once before in Senator Grassley’s deferral after his investigation.²⁰⁰ Given self-policing’s failure in the intervening five years, however, Congress has a stronger case in amending the Code and revoking § 6033(a)(3). Senator Grassley certainly represents the best leader for such an amendment. Not only has Senator Grassley investigated religious financial abuse for nearly thirty years, but the Iowan also has strong support amongst evangelicals.²⁰¹ The conservative Family Research Council recently gave Senator Grassley high marks in

¹⁹⁴ Tim Funk & Ames Alexander, *Franklin Graham: Take Away BGEA Pay*, CHARLOTTE OBSERVER (Aug. 4, 2015, 11:22 AM), <http://www.charlotteobserver.com/news/special-reports/article29936640.html> [<https://perma.cc/S7RW-QV9U>].

¹⁹⁵ *Id.*

¹⁹⁶ James V. Grimaldi, *Smithsonian Head’s Expenses ‘Lavish,’ Audit Says*, WASH. POST (Feb. 25, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/24/AR2007022401510.html> [<https://perma.cc/6ZY5-KGDC>]; see also Jacqueline Trescott & James V. Grimaldi, *Smithsonian’s Small Quits in Wake of Inquiry*, WASH. POST (Mar. 27, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/26/AR2007032600643.html> [<https://perma.cc/F46L-DG3N>].

¹⁹⁷ Burnett, *Can a Television Network Be a Church?*, *supra* note 123.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See Burnett, *Onscreen*, *supra* note 5 (noting church leaders “cried religious persecution” during Senator Grassley’s investigation).

²⁰¹ See Montague, *supra* note 46, at 231.

both halves of the 112th Congress²⁰² and the first half of the 113th Congress,²⁰³ criticizing only his voting for judicial appellate nominees.²⁰⁴ Senator Grassley even received a perfect score from the Council in the 110th Congress.²⁰⁵ A broad coalition of respected evangelical leaders, led by Senator Grassley in Congress and armed with the failure of self-policing, could take action over the televangelists’ protestations.²⁰⁶

CONCLUSION

Supreme Court Justice Louis Brandeis once commented: “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”²⁰⁷ Combating the abuse exposed by John Oliver starts with shining light into the long shadows cast by the shady televangelists gaming our tax system. Congress should amend the Church Audit Procedures Act and name the Internal Revenue Service Commissioner as an appropriate “high-level Treasury official” for signing off on church audits. Although the Commissioner oversees several other responsibilities, only the Commissioner has the sufficient publicity to satisfy the original congressional intent in passing the Church Audit Procedures Act. Furthermore, both religious leaders on the one hand and watchdogs on the other should find the choice amenable; thus, Congress should have few if any problems providing the fix.

Congress should also repeal 26 U.S.C. § 6033(a)(2)(A)(i) and have churches file the same Form 990 required for every other exempt entity, including other “religious organizations.” Unlike amending the Church Audit Procedures Act, this measure would likely receive stiff opposition from some religious organizations. However, the evidence supporting the repeal outweighs the flimsy constitutional arguments on the other side. First, the repeal would not violate the First Amendment. In fact, § 6033(a)(2)(A)(i) likely *already* violates the Establishment Clause by necessitating a Byzantine test for determining whether an entity constitutes a “religious organization” or a “church”—with the latter receiving much more favorable treatment without any underlying secular purpose. Second, several religious organizations support requiring a Form 990 disclosure from churches.

²⁰² FAMILY RESEARCH COUNCIL, VOTE SCORECARD 112TH CONGRESS FIRST SESSION (2011) (giving Senator Grassley an 85% rating); *see also* FAMILY RESEARCH COUNCIL, VOTE SCORECARD 112TH CONGRESS SECOND SESSION (2012) (giving Senator Grassley an 85% rating).

²⁰³ FAMILY RESEARCH COUNCIL, VOTE SCORECARD 113TH CONGRESS FIRST SESSION (2014) (giving Senator Grassley an 89% rating).

²⁰⁴ *See id.* (negatively ranking Senator Grassley for affirming Judge William Kayatta); *see also* FAMILY RESEARCH COUNCIL, VOTE SCORECARD 112TH CONGRESS SECOND SESSION (2012) (negatively ranking Senator Grassley for affirming Judge Michael Fitzgerald).

²⁰⁵ FAMILY RESEARCH COUNCIL, VOTE SCORECARD 110TH CONGRESS FIRST SESSION (2008).

²⁰⁶ *See* Jacqueline L. Salmon, *Probe Biased, Televangelists Say*, WASH. POST (May 24, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/23/AR2008052302679.html> [<https://perma.cc/6F55-3Z2B>].

²⁰⁷ LOUIS D. BRANDEIS, OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT 92 (1914).

Such diverse entities as Billy Graham to the Reverend Oral Roberts have vocalized support for more financial transparency in churches. Finally, Form 990 disclosure has resulted in pressure—from media disclosure straight to the halls of Congress—which has effectively regulated other nonprofit institutions without even reaching the Service’s auditing stage.

These solutions should inspire more confidence in the enforcement of the Code. With these enactments, Congress will finally effectuate the ancient Biblical warning: “Do not be deceived: God cannot be mocked. A man reaps what he sows.”²⁰⁸

²⁰⁸ *Galatians* 6:7.