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RELIGION AND POLITICAL CAMPAIGNS: A PROPOSAL TO REVISE SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE

INTRODUCTION

Religion and politics have been intertwined since the birth of our nation.1 In a democracy created to reflect the social fabric of its citizens, religious groups have always advocated moral positions to further or impede political causes and political campaigns.2 Although critical junctures in American history have long been accompanied by religious and political controversies,3 as well as by interreligious tensions,4 a particularly powerful religious-political crusade began to emerge in the period immediately following the Second World War.5 Political preaching has since become an increasingly common phenomenon in religious institutions throughout the United States.6

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2. Since the campaign of Thomas Jefferson, religious and political controversy has been prominent in approximately one of every three campaigns for the Presidency. Id. at v. See generally H. Foote, The Religion of Thomas Jefferson 45 (1960) (electioneering pamphlets written and distributed by clergymen accused Jefferson of atheism and thus "too dangerous an enemy of Christianity to be president").
4. Religious groups have been united in their political efforts on issues, such as the Civil Rights Act of 1964, and divided over others, such as temperance. R. Morgan, supra note 3, at 27, 45-47; see Methodist Bishops Attack Catholics, N.Y. Times, May 8, 1947, at 26, col. 2 (The Council of Bishops of the Methodist Church, then the largest Protestant denomination in the United States, "accused the Roman Catholic Church of political activities in this country and abroad, which . . . amounted to bigotry and denial of religious liberty."). See also R. Morgan, The Supreme Court and Religion 82 (1972); R. Morgan, supra note 3, at 19-36.
5. R. Morgan, supra note 3, at 28-29. This increased activism has been attributed to the rapid social changes that have occurred in recent years. One commentator suggests that the appearance of religious groups in the political arena has been triggered by two major developments: the increased governmental support for welfare services, and non-public educational facilities. Id. at 37-40.
During the 1980 election year, a number of religious groups participated in energetic presidential and congressional campaign activities to promote the election of politicians who share their beliefs. This activism has given rise to numerous debates among...
politicians,9 commentators,10 and theologians11 regarding the proper mixture of religion and politics in the United States. Perhaps the most important issue raised in the present controversy concerns the tax treatment of religious organizations that engage in political campaign activity.

Religious organizations are considered tax-exempt organizations long been viewed as a religious duty for the bishop to advise his parishioners on their political choices. B. Dulce & E. Richter, supra note 1, at 17, 202; Puerto Rican Attorneys Assault Bishops' Rules on How to Vote, N.Y. Times, Nov. 5, 1960, at 9, col. 2 (church politics dictated interference in American politics); Puerto Rico Bishops, supra, at 12, col. 1 (pastoral letter stating that it is the duty of the Catholic prelates to prohibit church members from voting for a certain political party).

9. In the 1980 presidential campaign, Ronald Reagan openly endorsed and encouraged the role of religious leaders during a campaign stop at a “revival meeting cum political rally” of 15,000 church leaders in Dallas, Texas. He stated that they had a duty to be involved in politics. Born-Again Politics, supra note 6, at 36. The incumbent, President Carter, expressed his fear that, in view of Ronald Reagan’s alignment with religious-political coalitions, a victory by Reagan “would increase divisions between Christians and Jews.” Carter and Reagan Comments Tangle Campaigns in a Controversy Surrounding Evangelical Group, N.Y. Times, Oct. 10, 1980, § D, at 14, col. 1. During the presidential campaign debate in September 1980, candidates Ronald Reagan and John Anderson were asked whether the church should guide the political decisions of officeholders and the voting choices of congregations. Transcript of Campaign's First Presidential Debate, With Reagan vs. Anderson, N.Y. Times, Sept. 22, 1980, § B, at 6, col. 1. Ronald Reagan said that “too many of our churches have been too reluctant to speak up in behalf of what they believe is proper in Government.” Id. at 7, col. 3. While Reagan expressed his belief that the first amendment permits everyone in this country to “try to persuade others to follow their leader,” id., John Anderson rebutted by saying that, “to try to tell the parishioners of any church ..., how they should vote or for whom they should vote ..., violates the principle of separation of church and state.” Id. at 7, col. 4.

10. E.g., Taylor, supra note 6, at 12, col. 1; Lewis II, supra note 8, § A, at 31, col. 2; The Archbishop and Abortion, supra note 8, at 26, cols. 1-2; Potter, A Christian America, N.Y. Times, Oct. 15, 1980, § A, at 31, col. 1; Briggs, Christians on Right and Left Take Up Ballot and Cudgel, N.Y. Times, Sept. 21, 1980, § 4, at 20E, col. 2; Meehan, Free Speech is Indivisible, N.Y. Times, Sept. 25, 1980, § A, at 27, col. 2; Lewis I, supra note 6, at 27, col. 5.

11. The religious community is divided concerning the extent to which it should be involved in partisan politics. R. Morgan, supra note 3, at 19-36. Some religious leaders believe that they do not have the competence to deal with political questions. For example, Richard John Neuhaus, a Lutheran pastor, expressed his concern that religious leaders are “profoundly immature” and thus “don’t really understand the ethical and philosophical traditions of democracy or how to bring about change in a pluralistic society.” Born-Again Politics, supra note 6, at 29. They reject the notion that the redemption of society may be achieved through political means. The evangelist preacher Pat Robertson has stated that “God isn’t a right-winger or a left-winger.” Id. at 29. The Reverend Theodore Edquist has commented that, “[i]f in order to be faithful you have to support a certain stand regarding Russia, what’s the next step? ... It strikes at the very heart of the whole notion of religious pluralism and religious and political freedom.” Id. at 36. Other religious leaders defend the idea of political participation by churches, yet dispute the approach taken by certain
under section 501(a) of the Internal Revenue Code (the Code). To maintain this status, however, section 501(c)(3) requires that the organization "not participate in, or intervene in . . . any political campaign on behalf of any candidate for public office." Religious-political activism during the 1980 campaign has brought into question the constitutionality, as well as the efficacy, of the electioneering prohibition in section 501(c)(3). Some groups argue that the prohibition against electioneering must be more strictly enforced by the IRS to ensure that the law is applied equally to all organizations.

12. I.R.C. § 501(a). Contributions to organizations exempt under § 501(a) are tax deductible under I.R.C. § 170(c)(2).

13. Other groups, such as charitable, scientific, and educational groups, are also covered by § 501(c)(3). This Note is only concerned with the tax treatment of religious organizations. Therefore, for the purposes of this Note, all secular § 501(c)(3) organizations will be referred to as "charitable" organizations.

14. I.R.C. § 501(c)(3). Exempt organizations can, however, engage in lobbying for or against positions on political issues, as distinguished from candidates, but such activity must not become a "substantial part" of the organization's activities. See also id. § 501(h). The regulations explain that an organization that "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office" is an "action organization" and therefore does not qualify for § 501(c)(3) status. Treas. Reg. § 1.501(c)(3)-1(e)(3)(iii) (1959).

15. Debate is Growing, supra note 6, at 22, col. 3; Taylor, supra note 6, at 12, col. 5; Church Takes I.R.S. to Court On Tax Status, N.Y. Times, Sept. 23, 1980, § B, at 8, col. 1 [hereinafter cited as Church Takes IRS to Court].


17. Pro-abortion groups filed suit in federal district court in October 1980, accusing the IRS of neglecting its duty to remove the tax-exempt status of various religious organizations allegedly in violation of the campaign prohibition in § 501(c)(3). Abortion Rights Mobilization v. Miller, No. 80 Civ. 5590 (S.D.N.Y., filed Oct. 2, 1980). It should be noted that two procedural problems may prevent the plaintiffs in this case from arguing their cause before the court. First, the Anti-Injunction Act, I.R.C. § 7421(a), bars injunctive suits regarding the collection of taxes from being heard in federal district courts. Commissioner v. "Americans United" Inc., 416 U.S. 752 (1974) (Anti-Injunction Act barred corporation's challenge to constitutionality of § 501(c)(3) lobbying restriction because the Court held the purpose of the suit was to restrain taxation). Second, plaintiffs may be denied standing for failure to show a sufficient causal connection between the government's inaction and their injury. See Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38-39 (1976); Warth v. Seldin, 422 U.S. 490, 506-07 (1975). The plaintiffs assert that removing deductibility from contributions made to violators would result in increased donations to organizations that abide by the § 501(c)(3) restrictions. Thus, the plaintiffs conclude that lack of enforcement results in less money available to exempt organizations that properly...
subject to section 501(c)(3). Others contend that the provision’s restriction on political freedoms must be enforced only when violations are clear so as not to infringe on precious fundamental freedoms. In addition, some constitutional scholars question the validity of imposing any restrictions on political uses of tax-exempt funds.

In view of the various challenges that have been made with regard to the enforcement and continued validity of the absolute campaign prohibition contained within section 501(c)(3), the law should be amended. This Note will propose a viable alternative within the tax law that will best accommodate the disparate concerns expressed by religious groups that are interested in their political futures. The impetus for the revision is provided by the substantial problems of enforcement created by the prohibition. The justification for this tax reform is twofold. First, the tax policy underlying the prohibition is of less consequence in view of legislative changes in the tax law affecting political campaign activity. Second, the campaign clause as

refrain from partisan political activity. Complaint at 12-13, Abortion Rights Mobilization v. Miller, No. 80 Civ. 5590 (S.D.N.Y., filed Oct. 2, 1980). The causal connection is tenuous, however, and thus, the complaint may fail to survive a challenge to plaintiffs’ standing.

18. Complaint at 12-14, Abortion Rights Mobilization v. Miller, No. 80 Civ. 5590 (S.D.N.Y., filed Oct. 2, 1980). The complainants claim that the government’s failure to police alleged violations of the tax law by religious (anti-abortion) groups places pro-abortion exempt organizations at a relative disadvantage because they must abstain from competing with political opponents for fear of losing tax-exempt status. Id. at 13; see pt. I(A) infra.

19. The United States Catholic Conference and the American Civil Liberties Union, for example, have claimed that the IRS has gone “beyond the intent of Congress” and has infringed upon “First Amendment freedoms of speech and association.” Taylor, supra note 6, at 12, cols. 4-5. They fear that selective governmental surveillance of political activities by exempt groups under the vague regulations that accompany the Code may prove discriminatory against groups that are out of favor with a particular administration. Id. at 12, col. 5. The United Church of Christ has alleged that IRS regulations represent an unconstitutional interference with the church’s first amendment right to publicize its opinion on the voting records of particular members of Congress. Church Takes IRS to Court, supra note 15, at 8, col. 1; Churches, Politics And the Tax Man, Newsweek, Oct. 6, 1980, at 46 [hereinafter cited as Churches, Politics And the Tax Man].

20. Debate is Growing, supra note 6, at 22, col. 3 (quoting Professor Laurence Tribe of the Harvard Law School); Taylor, supra note 6, at 12, col. 5 (quoting Professor Choper of Boalt Hall, the University of California’s law school).

21. This Note will focus on income tax treatment of partisan campaign conduct by § 501(c)(3) religious organizations. For articles dealing with related issues, see Birmingham & Peartree, Taxation of Political Contributions, 7 Creighton L. Rev. 554 (1974) (considerations relating to contribution of appreciated securities to political candidates); Schoenblum, The Changing Meaning of “Gift”: An Analysis of the Tax Court’s Decision in Carson v. Commissioner, 32 Vand. L. Rev. 641 (1979) (gift tax consequences of campaign contributions).

22. See pt. I(A) infra.

23. See pt. I(B) infra.
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presently stated places severe limitations upon a religious group's fundamental right to engage in political speech activity. The proposed revision will reflect these concerns as well as the limitations imposed by the establishment clause of the first amendment.

I. CONSIDERATIONS MILITATING AGAINST AN ABSOLUTE PROHIBITION OF CAMPAIGN ACTIVITY

A. Section 501(c)(3) Enforcement Problems

Charitable tax-exempt organizations have raised serious questions concerning the enforcement of section 501(c)(3). They have claimed, for example, that the enforcement by the IRS of the section 501(c)(3) campaign restriction works in favor of some religious groups. Specifically, they allege that the IRS has neglected to enforce the campaign condition against certain religious organizations participating in electioneering activity, thereby depriving other exempt organizations of their fifth amendment right to equal protection of the law. At the same time, religious groups that have been the subject of IRS investigations have alleged that the IRS is enforcing the section 501(c)(3) campaign prohibition too strictly.

 Plaintiffs challenging the application of the tax law, however, will confront a heavy burden to prove that the allegedly unequal application of the law constitutes discriminatory conduct by the IRS.

24. See pt. I(C) infra.
25. See pt. II infra.
27. Id. at 12-13. Plaintiffs in this suit claim that, when the campaign restriction is equally enforced, all organizations that are potentially exempt "find their funds equally available or unavailable for the purpose of intervening in political campaigns ... [and] find potential donors equally willing or unwilling to contribute, depending on whether contributions to the organization are deductible." Id. It is claimed that uneven enforcement results in a relative disadvantage for those charitable organizations that refrain from political activity for fear of losing tax-exempt status and deductibility of contributions. Id. at 14 (due to uneven enforcement "campaigns have been disproportionately influenced by opponents of abortion because [charitable organizations] did not enjoy the same financial and political advantage as ... [religious] organizations"); see Cammarano v. United States, 358 U.S. 498, 513 (1959) ("Since purchased publicity can influence the fate of legislation ... everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.").
28. California Case in Third Week, N.Y. Times, Nov. 27, 1980, § A, at 17, col. 1 [hereinafter cited as California Case]; Church Takes IRS to Court, supra note 15, at 8, col. 1; Churches, Politics And the Tax Man, supra note 19, at 46.
29. In addition, the plaintiffs must demonstrate they have standing to bring their claim. See note 17 supra.
National Ministry, Inc. v. United States,\textsuperscript{30} in which a nonprofit religious corporation filed suit claiming it had been discriminatorily selected for removal of tax-exempt status in violation of the due process clause of the fifth amendment.\textsuperscript{31} Although the district court found the record replete with administrative abuses by the IRS, and inferred that the IRS had arbitrarily singled out the evangelist organization,\textsuperscript{32} the court of appeals remained unconvincing.\textsuperscript{33} It declared that the religious group must show "no reasonable relationship to a proper governmental objective" to prove discriminatory enforcement by the IRS.\textsuperscript{34} The court stated that "[i]n order to establish discrimination violating the due process clause, the taxpayer must show discrimination based on differences of religion, race, politics or an unacceptable classification."\textsuperscript{35}

Although it may be an insurmountable burden for an individual or group to show discriminatory enforcement by the IRS, the numerous enforcement complaints do reflect the deficiencies in the tax statute as written. The major problem is that campaign conduct is not adequately defined. According to the regulations, an organization cannot qualify for exempt status "if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office."\textsuperscript{36} A further attempt is made to clarify the parameters of proscribed conduct as activities which "include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to . . . a candidate."\textsuperscript{37} Nevertheless, these guidelines are clearly inadequate.\textsuperscript{38} The implementation of the campaign prohibi-

\begin{itemize}
\item \textsuperscript{30} 470 F.2d 849 (10th Cir. 1972), \textit{cert. denied}, 414 U.S. 864 (1973).
\item \textsuperscript{31} \textit{Id.} at 853.
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} \textit{Id.} at 857.
\item \textsuperscript{34} \textit{Id.} \textit{See also} United States v. Department of Revenue, 202 F. Supp. 757, 759 (N.D. Ill.) ("[t]ax exemptions are subject to the limitation that they and the classification upon which they are based be reasonable, not arbitrary, and apply to all persons similarly situated"), \textit{aff'd per curiam}, 371 U.S. 21 (1962).
\item \textsuperscript{35} 470 F.2d at 857; \textit{accord}, American Sugar Ref. Co. v. Louisiana, 179 U.S. 89, 92 (1900) (Discrimination based "upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers . . . would be . . . a denial of the equal protection of the laws to the less favored classes.").
\item \textsuperscript{36} Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (1959) (emphasis added).
\item \textsuperscript{37} \textit{Id.} (emphasis added).
\item \textsuperscript{38} The Senate Finance Committee has expressed concern that "the standards as to the permissible level of activities under the present law are too vague and thereby tend to encourage subjective and selective enforcement." S. Rep. No. 938-pt. II, 94th Cong., 2d Sess. 80, \textit{reprinted in} [1976] U.S. Code Cong. & Ad. News 4030, 4104. This concern led to the enactment of the § 501(h) alternative in the Code, I.R.C. § 501(h), a congressional attempt to clarify the "substantial" standard used for lobbying activity. \textit{See note 48 infra.} The new section provides a formula for apprais-
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tion requires delicate determinations to be made in distinguishing whether speech activity is permissible discussion of controversial public issues or impermissible electioneering activity. Given the issue-oriented nature of political campaigns, this distinction may prove to be problematic because "[c]andidates . . . are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." The IRS' task of traversing this fragile line is comp-

39. See Buckley v. Valeo, 424 U.S. 1, 42 (1976) (per curiam). In an analogous context, the Court recognized the difficulty of drawing lines in the area of "the supposedly clearly-cut distinction between discussion, laudation, general advocacy, and solicitation," Thomas v. Collins, 323 U.S. 516, 535 (1945), and stated that the blurred borders put "the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning." Id. (striking down a state regulation of solicitation by labor organizers). The problem of a chilling effect created by so nebulous a restriction was also addressed by the Court. "Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." Id. The need for further clarification was acute during President Kennedy's campaign, when anti-Catholic literature and sermons were abundant. See B. Dulce & E. Richter, supra note 1, at 194. Addressing this issue, one commentator explained that "[w]hile presumably a sermon or series of sermons which touched upon political subjects would not amount to 'propaganda' as used in the statute, nothing in the statute prevents such an interpretation by the court." Comment, Religion in Politics and the Income Tax Exemption, 42 Fordham L. Rev. 397, 420 n.172 (1973) [hereinafter cited as Religion in Politics]. Doubt concerning the propriety of political conduct is pervasive among § 501(c)(3) groups. Reference to prior revenue rulings issued by the IRS is of little assistance. See, e.g., Rev. Rul. 74-574, 1974-2 C.B. 160, 160-61 (§ 501(c)(3) organization "operating a broadcasting station presenting religious, educational, and public interest programs, is not participating in political campaigns on behalf of public candidates . . . by providing reasonable air time equally available to all . . . candidates . . . and [by] endorsing no candidate or viewpoint"); Rev. Rul. 67-368, 1967-2 C.B. 194 (IRS denied exempt status under § 501(c)(4) to social welfare group that rated candidates on a nonpartisan basis and disseminated the ratings to general public because rating process was considered intervention or participation "on behalf of those candidates favorably rated and in opposition to those less favorably rated"); Rev. Rul. 67-71, 1967-1 C.B. 125 (IRS denied exemption to organization created to improve public education because it participated in a school board election campaign on behalf of a candidate "even though its process of selection may have been completely objective and unbiased and was intended primarily to educate and inform"); Rev. Rul. 66-258, 1966-2 C.B. 213 (IRS granted exemption to an organization urging high standards of ethics and morality in elections when the activity was not associated with a particular candidate).

40. Buckley v. Valeo, 424 U.S. 1, 42 (1976) (per curiam) (footnote omitted). When the D.C. Circuit considered the Buckley case, it stated that "[p]ublic discus-
plicated by the vagueness of section 501(c)(3) and the accompanying regulations. It has also given rise to the fear among exempt organizations of arbitrary discriminatory enforcement of the campaign prohibition against organizations advocating ideologies and supporting candidates opposed to the administration in power.41

Finally, these enforcement problems are greatly compounded by the extremely high stakes involved. If the IRS determines that a section 501(c)(3) organization has acted in support of a candidate, it must revoke entirely the organization's tax-exempt status.42 This in itself may cause the IRS to be reluctant43 in enforcing section 501(c)(3). It also brings into question the continued viability of an absolute pro-

41. Such accusations have been made by the United States Catholic Conference, in conjunction with the American Civil Liberties Union, Taylor, supra note 6, at 12, col. 4. See generally Grosjean v. American Press Co., 297 U.S. 233, 250 (1936). The fear of selective enforcement is not without justification. Until the 1970's, the Code provided no express exemption for political committees. It has been explained that "[t]he income tax status of political parties has been in legal limbo since the beginning of our income tax system. It is a matter of history that the Internal Revenue Service has never attempted to tax political parties, although there is nothing specific in the Internal Revenue Code which says that they are nontaxable. . . . They have just grown up that way." Bruce, Taxing of Political Organizations, Candidates, Contributors, 62 A.B.A.J. 123, 123 n.3 (1976) (quoting former Treasury Secretary Schultz); see Rev. Proc. 68-19, 1968-1 C.B. 810. Despite the general hands-off policy exercised by the IRS, the Communist Party was selectively subjected to income tax in 1956. Communist Party v. Commissioner, 373 F.2d 682 (D.C. Cir. 1967). Such an anomaly in administrative behavior supports an argument that the IRS may again wield its sword against "splinter groups . . . not in the mainstream of American politics." Taxing Political Contributions: The IRS Balks at Reform, 23 Cath. U.L. Rev. 322, 330 (1973). See generally Bruce, supra. The IRS also withdrew exempt status from the Fellowship of Reconciliation (FOR), " 'a movement of Christian protest against war, and of faith in a better way than violence for the solution of all conflicts.' " Note, The Revenue Code and a Charity's Politics, 73 Yale L.J. 661, 662 (1964) (quoting FOR's statement of purpose). The IRS withdrew the group's tax-exempt status because it considered FOR's goals—"achievement of peace and international reconciliation through love"—to be political in character. Id. at 662-63.

42. In view of the absolute nature of the campaign prohibition, the law does not tolerate any intervention or participation in the political campaign arena by a group enjoying tax-exempt status. I.R.C. § 501(c)(3).

43. Courts have also shown reluctance in revoking tax benefits from religious organizations. E.g., Trinidad v. Sagrada Orden, 263 U.S. 578 (1924); Elision Guild, Inc. v. United States, 412 F.2d 121 (1st Cir. 1969); Morey v. Riddell, 205 F. Supp. 918 (S.D. Cal. 1962). Courts have exhibited a liberal approach in cases concerning business activity by religious organizations by ruling according to an intuitive sense
hibitation on campaign activity. It is evident that the limitation on campaign activity would be more effective if the stakes were reduced and more precise guidelines were set forth and made available to the affected organizations.

B. Demise of the Treasury Neutrality Tax Policy

1. History of the Restriction on Campaign Activity

The present statutory framework within which religious organizations enjoy tax-exempt status, conditioned on their abstention from campaign activity, developed over a number of years. The tax exemption for charitable and religious organizations was first enacted in the tax law of 1894 and reenacted in the Act of 1913. Groups organized and operated exclusively for charitable or religious purposes were granted tax-exempt status because of the benefit the public obtains from their activities. Although the Code did not contain a restriction on political activity prior to 1934, it was recognized in both the regulations and decisions that such activity was grounds for denying the exemption.

about the activities, rather than adhering strictly to statutory construction. Thus, it may be inferred that the courts are not satisfied with the guidelines established in the regulations for determining exempt status. Religion in Politics, supra note 39, at 405 n.55.


45. “The Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.” H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1939).


47. See, e.g., Slee v. Commissioner, 42 F.2d 184 (2d Cir. 1930) (seeking to repeal anti-birth control legislation); Herbert E. Fales, 9 B.T.A. 828 (1927) (disseminating controversial propaganda); Sol. Mem. 1362, 2 C.B. 152, 154 (1920) (promoting labor legislation).
The first limitation on any type of political activity appeared in the Code of 1934, which contained a prohibition against a “substantial” amount of lobbying activity or “carrying on propaganda.” This limitation on lobbying activity became part of the income tax law in response to the use of charities as vehicles through which private business interests were asserting their political views. The restric-
tion prevented businesses from gaining political influence by means of tax deductible contributions. At the same time, the restriction on lobbying ensured that tax-exempt groups would not deviate from the beneficial public purpose that justified their special tax status.

The enactment of the lobbying restriction also has been attributed to the treasury neutrality rationale expressed by the Second Circuit in *Slee v. Commissioner.* The court declared that the American Birth Control League’s political attempts to repeal laws preventing birth control removed it from the Code’s definition of a charitable organization. The deductible status of contributions to the League was withdrawn to ensure that the government remain outside the sphere of partisan political activity and thereby prevent the appearance of federal support of selected political views. Judge Learned Hand stated that “[p]olitical agitation as such is outside the statute, however innocent the aim . . . Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.”

The campaign intervention clause in section 501(c)(3) was added as a floor amendment to the Code in 1954. It was introduced with little explanation by its sponsor, Senator Lyndon B. Johnson. In

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51. 78 Cong. Rec. 5959 (1934) (remarks of Sen. Harrison) ("[T]here are certain organizations which are receiving contributions in order to influence legislation and carry on propaganda. The committee thought there ought to be an amendment which would stop that, so that is why we have put this amendment in the bill."); *Church Lobbying,* supra note 50, at 488 & n.55. Businesses have since been permitted to deduct, as ordinary and necessary expenses, the costs incurred in lobbying activity related to their business interests. I.R.C. § 162(e); see note 66 infra and accompanying text.

52. See note 45 supra and accompanying text; note 55 infra. See generally *Slee v. Commissioner,* 42 F.2d 184, 185 (2d Cir. 1930).

53. 42 F.2d 184 (2d Cir. 1930).

54. Id. at 185.

55. Id. In *Slee,* the court noted that, in many cases, political activity could be within the purpose of a tax-exempt organization and illustrated how various tax-exempt organizations could permissibly engage in politics, at least to the extent necessary to realize their aims. Id. For example, societies to prevent cruelty to children could persuade concerned citizens to support laws to accomplish their aims; educational institutions could seek state aid; and literary groups could take part in efforts to relax the taboos on allegedly obscene material. Id. “All such activities are mediate to the primary purpose, and would not . . . unclass the promoters. The agitation is ancillary to the end in chief, which remains the exclusive purpose of the association.” Id. The organization would be no less exclusively charitable for engaging in that activity. Id.

56. Id.

57. Id.


59. 100 Cong. Rec. 9604 (1954). Senator Johnson merely stated that "this amendment seeks to extend the provisions of section 501 . . . denying tax-exempt status to
view of the absence of explanatory legislative history of the campaign
clause, it has been assumed that this clause reflects the treasury neu-
trality rationale of Slee6 and furthers the exclusivity of purpose re-
quirement imposed upon organizations subject to section 501(c)(3).61

2. Diminished Importance of Treasury Neutrality

During the half century that has passed since the enactment of
political restrictions on tax-exempt organizations,62 congressional revi-
sion of tax laws affecting political conduct63 has brought into question
the rationale of political restrictions.64 It also indicates that the cam-
paign prohibition is no longer in harmony with the government’s
overall tax policy regarding political participation by various sectors of
society. In the Revenue Act of 1962,65 for example, Congress revised
section 162(e) of the Code to permit deductions for direct lobbying
expenses by businesses.66 This encouragement of political participa-
tion undermined the government’s expressed interest in remaining
neutral and ensuring “tax equilibrium”67 with regard to charitable and

not only those people who influence legislation but also to those who intervene in
any political campaign on behalf of any candidate for any public office.” Id.
60. Haswell v. United States, 500 F.2d 1133, 1140 (Ct. Cl. 1974), cert. denied,
419 U.S. 1107 (1975); see Christian Echoes Nat’l Ministry, Inc. v. United States, 470
F.2d 849, 854 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973); notes 53-57 supra
and accompanying text. There is nothing in the legislative history of the Code in-
dicating that an incompatibility between charitable and political activities was the
rationale for the Code provision. See 78 Cong. Rec. 5861 (1934). The establishment
clause of the first amendment, however, may make religious and political conduct
incompatible, particularly if such activities are financed by tax subsidies. See pt. II
infra.
61. “Americans United” Inc. v. Walters, 477 F.2d 1169, 1183 (D.C. Cir. 1973)
(Wilkey, J., concurring) (§ 501(c)(3) disqualification test “is aimed at assuring some
purity in that purpose” for which tax-exempt status was granted (emphasis deleted)),
rev’d on other grounds sub nom. Commissioner v. “Americans United” Inc., 416
U.S. 752 (1974). See also Helvering v. Bliss, 293 U.S. 144 (1934) (construction of
“charitable” for federal tax purposes is governed by the general, non-tax law of char-
itable trusts); Restatement (Second) of Trusts § 374, comment k (1959) (“[a] trust to
promote the success of a particular political party is not charitable”); Clear, Note:
Political Speech of Charitable Organizations Under the Internal Revenue Code, 41
U. Chi. L. Rev. 352, 373 (1974) (funds spent for partisan campaign activity are not
being used for a charitable purpose).
62. See notes 48-52 supra and accompanying text.
(amended 1974 and 1976) (codified in scattered sections of 2, 18, 47 U.S.C.); Re-
No. 87-834, 76 Stat. 960.
64. E.g., Troyer, Charities, Law-Making, and the Constitution: The Validity of
the Restrictions on Influencing Legislation, in 31 N.Y.U. Inst. on Fed. Tax. 1415,
66. Id. § 3, 76 Stat. 973 (codified at I.R.C. § 162(c)).
67. In Cammarano v. United States, 358 U.S. 499 (1959), the government ex-
pressed its concern for tax equilibrium in its arguments against permitting business
business organizations. The law was revised because expenses incurred by businesses for appearances before judicial, executive, and administrative officials were deductible, and Congress believed that appearances by business groups before legislators should be "on the same footing." In addition, Congress recognized the advantages of encouraging businesses to present pertinent information to the legislature during debates on proposed measures.69


69. Id., reprinted in [1962] U.S. Code Cong. & Ad. News at 3325. The Senate Report stated that "[t]he deduction of such expenditures on the part of business also is necessary to arrive at a true reflection of their real income for tax purposes. In many cases making sure that legislators are aware of the impact of proposed legislation may be essential to the very existence of a business." Id., reprinted in [1962] U.S. Code Cong. & Ad. News at 3325. According to the report, Congress also was influenced by the administrative difficulty of distinguishing ordinary and necessary business expenses incurred in lobbying for business interests. Id., reprinted in [1962] U.S. Code Cong. & Ad. News at 3324-25. See also Haswell v. United States, 509 F.2d 1133, 1141 (Cl. Ct. 1974), cert. denied, 419 U.S. 1107 (1975). Revisions in federal election law also reflect a policy of furthering partisan political activity. For example, there is no longer a limitation on independent expenditures. 2 U.S.C. § 441(b) (1976).
The federal tax law does not permit the business taxpayer to deduct expenses for participation in political campaign activity. Additionally, corporations and labor organizations are prohibited from making direct political contributions to candidates for federal office to avoid the effect of undue influence of labor and corporate wealth in federal elections and to alleviate the appearance of political favoritism resulting from large corporate and labor campaign contributions. Nonetheless, congressional tolerance for corporate and labor involvement in political campaign activity may be inferred from the Federal Election Campaign Act because corporate and labor personnel can establish, administer, and solicit voluntary contributions to political action committees (PACs), and the sponsoring corporation or union may pay the general administrative expenses of its PAC. Provided that contributions to the PAC are maintained in segregated funds and are not intermingled with corporate treasury

71. 2 U.S.C. § 441b(a) (1976); 11 C.F.R. § 114.2 (1980); see 2 U.S.C. § 431(c) (1976) ("Federal office" includes the offices of President, Vice President, and Senator or Representative in, and Delegate or Resident Commissioner to, Congress.).
75. 2 U.S.C. § 441b(b)(2)(C) (1976); 11 C.F.R. § 114.5 (1980). Because the corporation or labor organization may finance solicitation and related PAC activities, the total amount of contributions donated by individuals can be used for political purposes. 11 C.F.R. § 114.5(b) (1980). The sponsoring organization may exercise complete control over the income and expenditures of its separate segregated fund, id. § 114.5(d), including who will be solicited and which candidates will be supported. Id. The existence of a PAC enhances personal involvement in the political process through contributions of time and money. It remains unresolved whether and to what extent a sponsoring entity—corporation or labor union—is able to deduct the cost of maintaining a PAC as an ordinary and necessary business expense. Arthur Anderson & Co., Federal Taxation of Political Activities 9 (1980). Whether such expenditures are deductible is not answered in current official IRS interpretations. Id. It is clear, however, that if the expenses incurred on behalf of the PAC are viewed as participation or intervention in a campaign on behalf of a political candidate, they are not deductible. I.R.C. § 162(e)(2)(A). The tax laws also encourage individuals to engage in the campaign process. The Revenue Act of 1971, Pub. L. No. 92-178, title VII, § 701, 85 Stat. 560 (codified at I.R.C. § 541), added a tax credit for individual contributions to candidates for public office, organizations, including PACs, and newsletter funds. It was the stated aim of Congress to “encourage more widespread financing of political campaigns by small contributions.” S. Rep. No. 1357, 93rd Cong. 2d Sess. 35 (1974), reprinted in [1974] U.S. Code & Cong. Ad. News 7478, 7511.
finances, the PAC funds afford a legal vehicle through which a corporation or labor organization can contribute to political campaigns and influence legislation, as well as counter-balance the impact of other special interest groups.\textsuperscript{6} Organizations exempt under section 501(c)(3), however, must refrain from political campaign activity and are, therefore, not permitted to establish PACs.\textsuperscript{7}

The proliferation of federal legislation affecting the election process can be viewed as congressional consent to subsidize political conduct in many areas. The tax benefits granted to businesses and labor groups for partisan activity signify a shift from the \textit{Slee} treasury neutrality doctrine and toward a policy of integrating all voices of the public sector in "robust and wide open" public debate.\textsuperscript{8} By restraining the political speech of charitable organizations that qualify for section 501(c)(3) status, the present Code, in effect, denies the members of these organizations, as a whole, an equal opportunity to gain meaningful representation.\textsuperscript{9} Accordingly, there is considerably less justification for an absolute governmental prohibition upon partisan campaign activity by section 501(c)(3) religious organizations.

\section*{C. Infringement on Political Expression}

The demise of the government's treasury neutrality policy has been accompanied by the Supreme Court's endorsement of political speech by all sectors of society. Numerous Court decisions have extended first amendment speech protection beyond the community of natural persons to the realm of organizations.\textsuperscript{10} In view of the ability of orga-

\begin{thebibliography}{9}
\bibitem{footnote:6} Brown, \textit{supra} note 72, at 756 n.2.
\bibitem{footnote:7} Proposed Treas. Reg. § 1.527-5(f) (1976) ("The fact that section 527 imposes a tax on the political expenditures of section 501(c) organizations and permits such organizations to establish separate segregated funds to make political expenditures does not sanction these activities by section 501(c)(3) organizations."); see Ltr. Rul. 7904064 (Oct. 15, 1978) (holding that the establishment of a political action committee is consistent with a veterans' organization's 501(c)(19) status because the "Code and Regulations themselves are silent as to the permissibility or extent of political participation or intervention").
\bibitem{footnote:8} New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); see notes 83-86 infra and accompanying text.
\bibitem{footnote:9} Despite the intensive interests of exempt organizations in political campaign issues, they are compelled to refrain from rebutting the assertions of their political opponents for fear that, if they emerge from silence into the campaign arena, they will be met with the "fatal injury" of deexemption. "Americans United" Inc. v. Walters, 477 F.2d 1169, 1177 (D.C. Cir. 1973), \textit{rev'd on other grounds sub nom.} Commissioner v. "Americans United" Inc., 416 U.S. 752 (1974). Loss of exempt status for § 501(c)(3) organizations also entails loss of qualification for deductibility under I.R.C. § 170(c)(2)—the lifeline for associations that rely on public contributions for their existence. \textit{See} Bob Jones Univ. v. Connally, 472 F.2d 903, 906 (4th Cir. 1973), \textit{aff'd sub nom.} Bob Jones Univ. v. Simon, 416 U.S. 725 (1974).
izations to effectively amplify the voice of their adherents, the Court has also recognized the right of freedom of association as a derivative constitutional right protected by the first amendment. Additionally, because expensive media coverage has become the most influential means of political speech, individuals may find that their viewpoints are expressed more effectively by group association.

Section 501(c)(3) places direct limitations on the right of tax-exempt organizations to participate and express their views with regard to the political process. Political speech activity is "at the core of our electoral process and of the First Amendment freedoms" and is of great importance in a democratic society. Legislative restrictions on advocacy of the election or defeat of political candidates, therefore, generally are considered to be in conflict with the guarantees of the first amendment. The Supreme Court has recognized that

[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment

v. American Press Co., 297 U.S. 233 (1936). See also Clear, supra note 61. Arguably, in the case of speech, "the organization has no life apart from its members," who are responsible for choosing the content of its expressions. Id. at 355 n.18. Thus, the individual members provide the group with "first amendment protection sufficient to enable it to challenge section 501(c)(3)'s effect on speech." Id. In addition, "[a]lthough the group exercises the direct control over financing of speech, the final expression coming from the group cannot meaningfully be separated from the individuals who determined what that expression should be and indirectly provided the necessary funds." Id.


83. Williams v. Rhodes, 393 U.S. 23, 32 (1968); accord, Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971) ("I't can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."); Mills v. Alabama, 384 U.S. 214, 218 (1966) ("[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs. . . . This of course includes discussions of candidates . . . .").

affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'

The Court also has declared that "[d]emocracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues."

Given this mandate, it would appear that a less than absolute restriction is permissible. Given the enforcement problems, the demise of treasury neutrality, and the practical and constitutional importance of group speech, such a change is desirable. Any revision concerning organized religious expression, however, must conform to the limitations that the establishment clause imposes upon congressional action.

II. Proposed Revision

A. Religious Organizations and Section 501(c)(3):
   Additional Constitutional Considerations

The religion clauses of the first amendment present additional factors to be considered when balancing the right of religious organizations to engage in political speech against the interest of the government in prohibiting campaign intervention by these groups. The free exercise clause of the first amendment ensures the right of religious groups to observe their beliefs without interference from gov-

86. Id. at 49 n.55. The Buckley Court invalidated the Federal Election Campaign Act's limits on independent expenditures made by individuals or groups. Id. at 39. The Court stated that "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." Id. at 48.
87. See pt. I(A) supra.
88. See pt. I(B) supra.
89. See notes 80-82 supra and accompanying text.
90. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.
91. Wisconsin v. Yoder, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"). See also Buckley v. Valeo, 424 U.S. 1, 25 (1976) (per curiam) (a substantial interference with the right to associate and the right to participate in political activities can be justified if the government can show a "sufficiently important interest" and uses "means closely drawn to avoid [their] unnecessary abridgment").
ernment regulation. Preaching religious beliefs, therefore, is not only protected by the free speech guarantee of the first amendment afforded to all 501(c)(3) organizations, but has the additional protection of the free exercise clause. Thus, the right to engage in religiously motivated political proselytizing rests on a strong constitutional foundation.

On the other hand, there is a strong governmental interest in restricting the political expression of a religious group. The establishment clause requires the government to remain neutral in matters of religion and constructs a wall of separation between church and state. The notion is that "the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." Theoretically, the wall isolating the two institutions is impermeable from either direction. Total isolation of these two major forces in a democratic nation, however, is impossible, as well as undesirable. The Supreme Court recognizes that "some involvement and entanglement are inevitable," but insists that "lines must be drawn." Thus, any statute governing partisan campaign activity of tax-exempt religious organizations must be carefully constructed to reflect these concerns.

92. See Prince v. Massachusetts, 321 U.S. 158, 165 (1944) (delicate balance between government interest and religious freedoms); Cantwell v. Connecticut, 310 U.S. 296 (1940) (right to spread one's religious beliefs limits the police power of the State).
93. See pt. I(C) supra.
94. See Wisconsin v. Yoder, 406 U.S. 205, 214 (1972) ("Religion Clauses ... specifically and firmly [fix] the right to free exercise of religious beliefs"); First Unitarian Church v. Los Angeles, 357 U.S. 545, 548 (1958) (Douglas, J., concurring) ("There is no power in our Government to make one bend his religious scruples to the requirements of this tax law."); Cantwell v. Connecticut, 310 U.S. 296, 305 (1940) ("a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment").
97. Id.
98. Lemon v. Kurtzman, 403 U.S. 602, 625 (1971) ("government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government").
99. Id.
100. J. Tussman, The Supreme Court on Church and State xvi (1962) (The separation of church and state has been analogized to the separation of powers, a concept that suggests separate jurisdictions and a measure of independence, but does not mandate a complete lack of cooperation and support.).
102. Id.
B. Revised Section 501(c)(3)

When the Tenth Circuit, in *Christian Echoes National Ministry, Inc. v. United States*,103 upheld the campaign condition in section 501(c)(3),104 it did not conclude that the voice of religious organizations is constitutionally barred from the political arena. To the contrary, the court outlined the alternatives available to a politically conscious church. The religious group may refrain from lobbying and electioneering activities and enjoy the benefits of exempt status, or it may "engage in all such activities without restraint, subject, however, to withholding of the exemption."105 Under the present section 501(c)(3), this directive is of no value to religious organizations because they require exempt status and deductible contributions to survive.106 Rather, the law should be revised to provide separate tax treatment for religious organizations.107 The proposed revision would grant tax-exempt status, permit partisan campaign activity, and impose a tax on political expenditures.108 Incoming contributions to

104. Id. at 856-57.
105. Id. at 857. One court, in addressing the extent to which religious organizations should permissibly engage in lobbying, stated that "it is clear that the healthy working of our political order cannot safely forego the political action of the churches, or discourage it. The reliance, as always, must be on giving an alert and critical hearing to every informed voice, and the spokesmen of religious institutions must not be discouraged, nor inhibited by the fear that their support of legislation, or explicit lobbying for such legislation, will result in its being constitutionally suspect. That does not mean that the fact of denominational support is not relevant to analysis of legislation to determine whether it violates the establishment clause, the law is otherwise." *McRae v. Califano*, 491 F. Supp. 630, 741 (E.D.N.Y. 1980) (citations omitted), rev'd sub nom. *Harris v. McRae*, 100 S. Ct. 2671 (1980).
106. See note 79 supra.
107. The necessity of separation of church and state implied under the religion clauses of the first amendment mandate separate tax treatment for sectarian groups. "For the separation of church and state to be a reality, government must be able to recognize and articulate the basic differences between churches, business corporations, labor unions, political parties, schools, hospitals, and museums. If government lumps churches indiscriminately for legal purposes with any one of these groups, there cannot be any distinctive separation of church and state." Whelan, *Governmental Attempts to Define Church and Religion*, 446 Annals of the American Academy of Political & Social Science 32, 33 (1979). It should be noted that § 501(c)(3) may be an unconstitutional restriction upon the political speech of charitable organizations. In view of the lessened importance of treasury neutrality, see pt. I(B) supra, the abridgment of fundamental first amendment rights may not be justified by a sufficiently compelling governmental interest. See *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curiam). A strong argument can be made, therefore, that tax-exempt charitable groups should be permitted to engage in political campaign activity, provided that they do not deviate substantially from their primary purpose. See notes 45, 55 supra and accompanying text.
108. Tax-exempt organizations under § 501(c) that are permitted to participate in political activities are taxed on any amount spent for the election process. I.R.C. §
qualifying organizations would remain tax deductible, regardless of political activity.

The revision is desirable for two reasons. First, the IRS and religious groups will no longer be confronted with an all-or-nothing approach to political participation. \(^{109}\) The IRS will not be as reluctant to enforce the revised provision because it need determine only whether to tax the religious organization upon its political campaign expenditures. The proposed revision, therefore, will enable the IRS to deal more effectively with the presence of religious organizations in the political arena. \(^{110}\) Second, it permits the religious sector of society to engage in political speech at a time when controversial campaign commentary has been encouraged by both Congress and the Court. \(^{111}\)

In view of the chilling effect that the campaign prohibition has on section 501(c)(3) groups, \(^ {112}\) the IRS also should clearly delineate what conduct constitutes participating or intervening in political campaigns. The IRS should revise its regulations to include more precise definitions, including examples of electioneering conduct, as distinguished from essentially charitable or religious activity. \(^ {113}\) Concededly, there are no infallible formulas to distinguish valid political means to charitable or religious ends from political campaigning. The IRS should, however, establish advisory procedures similar to those utilized by the Federal Election Commission in administering the Federal Election Campaign Act. \(^ {114}\) Under such a system, tax-exempt organizations could write to the IRS, or to a special advisory commission, and request an opinion as to the propriety of a specific political transaction or activity in which they are involved. \(^ {115}\) In this way, tax-

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527(f). The tax on such expenditures is calculated at the same corporate rate applicable to political organizations. *Id.* An alternative plan has been proposed whereby contributions may be deductible only if the donor earmarks the donation for a specific use. A fiduciary obligation would thereby be imposed on the recipient religious group, thus discouraging it from becoming more political than religious. Under this scheme, contributions made without stipulation as to use would be nondeductible. This program would both prevent large donors from using religious organizations to promote social or political views and eliminate the need for detailed examination. *Religion in Politics, supra* note 39, at 423.

109. See notes 42, 43 *supra* and accompanying text.

110. See notes 7, 8 *supra* and accompanying text.

111. See pts. I(B), (C) *supra*.

112. See note 41 *supra* and accompanying text.

113. See generally note 55 *supra*.


115. The IRS should enumerate specific examples of political campaign involvement. Such examples should include letters by religious officials to congregations on church stationery directing voting choices, *The Archbishop and Abortion, supra* note 8, at 26, cols. 1-2, articles and editorials appearing in church newspapers endorsing specific candidates, *Churches, Politics And The Tax Man, supra* note 19, at 46, and
exempt religious organizations will be aware of conduct that will incur a tax\textsuperscript{116} and then decide whether to be politically active.

It is possible that the proposed revision may be challenged constitutionally as violative of the establishment clause. Although internal church communication concerning issues of morality has never been cause for alarm, when church leaders seek the aid of legislators and politicians to ban evil elements in our society the wall of separation has been raised by courts to preclude such advocacy.\textsuperscript{117} Admittedly, in *Lemon v. Kurtzman*,\textsuperscript{118} the Court stated that "[i]t conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government."\textsuperscript{119} The Court, in considering the divisive political potential of providing public aid to parochial schools, envisioned that candidates would be forced to address issues of this kind and voters consequently would "find their votes aligned with their faith."\textsuperscript{120} From this language, it would appear that the mixture of religion and politics in American life is always inappropriate.

\begin{footnotes}
\item[	extsuperscript{116}] Under the present system, an organization may refer to Revenue Rulings for some suggestion as to how their conduct may be treated. A Revenue Ruling is defined as "an official interpretation by the Service that has been published . . . for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned." Rev. Proc. 69-1, 1969-1 C.B. 381, § 2.05. Revenue Rulings are not law and are not binding on courts. *Biddle v. Commissioner*, 302 U.S. 573, 582 (1938). Identical situations may be subject to different tax treatment. Therefore, an organization should not have to rely on prior Revenue Rulings, but should be able to avail itself of advisory opinions addressing its specific situation.
\item[	extsuperscript{117}] See *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973).
\item[	extsuperscript{118}] 403 U.S. 602 (1971).
\item[	extsuperscript{119}] Id. at 623.
\item[	extsuperscript{120}] Id. at 622. *Decker v. O'Donnell*, No. 80-1230 (7th Cir. Sept. 9, 1980), is the most recent case concerning the potential for political divisiveness and the establishment clause. In this case, the placement of CETA workers in sectarian schools was "prohibited . . . because the structure of decisionmaking about funding creates an impermissible risk of political entanglement." Id., slip. op. at 28. The district court in *Decker* emphasized that, because there are a limited amount of funds available, the process of allocating public money is a competitive one. Id., slip. op. at 7. The process whereby a single elected official awards the funds according to his discretion, combined with the presence of religious groups among the possible recipients, gives rise to impermissible political entanglement, rendering the CETA program unconstitutional. Id. Tax exemptions do not raise an entanglement issue in terms of political divisiveness because of the large size of the benefitted class. See Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 794 (1973). See also Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646, 661 n.8 (1980) (statute authorizing use of public funds to reimburse church-sponsored and
In view of the broad scope of religious concerns, however, it may be unreasonable,121 if not impossible, to separate churches from national and world affairs.122 Moreover, an attempt to do so may be unwarranted in view of the Court's historical note in Walz v. Tax Commission123 that "for the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity."124 In addressing the separation argument that is associated with the Establishment Clause, the Court stated that "[n]o perfect or absolute separation is really possible."125 The Constitution simply commands that government not establish religion nor interfere with religion.126 The Court recognized "the very existence of the Religion Clauses [as] an involvement of sorts—one that seeks to mark boundaries to avoid excessive entanglement."127

The Supreme Court announced its decision in Lemon v. Kurtzman128 only one year after its declarations in Walz.129 It is in-

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121. In Walz v. Tax Commission, 397 U.S. 664 (1970), the Court stated that "[a]dherents of particular faiths and individual churches frequently take strong positions on public issues including, as this case reveals . . . vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right." Id. at 670.
122. Even before the adoption of the first amendment, the Constitution provided that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const. art. 6. Nonetheless, voters do regard the religious beliefs of a candidate as a relevant aspect of his character. J. Tussman, supra note 100, at xvii. The tendency of voters to support the candidates of their own religious affiliation was particularly apparent during President Kennedy's campaign. M. Stedman, Religion and Politics in America 115-17 (1964).
124. Id. at 668. The Court conceded that "[t]he Establishment Clause and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution" and admitted its struggle "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." Id. at 668-69.
125. Id. at 670.
126. Id. at 669. In Zorach v. Clauson, 343 U.S. 306 (1952), Justice Douglas declared that "[t]he First Amendment . . . does not say that in every and all respects there shall be separation of Church and State." Id. at 312. The Court in Zorach was not primarily concerned with the absolute isolation of religion and government, but rather that the government show "no partiality to any one group and . . . lets each flourish according to the zeal of its adherents and the appeal of its dogma." Id. at 313.
127. 397 U.S. at 670.
conceivable that in so doing the Court was revoking its prior interpretation of the Religion Clauses. Instead, the incongruity of the dicta and holdings in the two decisions may be attributed to the factual situation presented in Lemon. They can be reconciled by the Court’s directive in Lemon that “lines must be drawn” to avoid excessive entanglement. The crucial test of any revision of section 501(c)(3), therefore, is to determine whether the new language will give rise to excessive entanglement.

 Whereas the present provision imposes an absolute prohibition on political campaign activity by religious organizations, the proposed revision would permit, but tax, such activity. Theoretically, the establishment clause would in neither case be violated because federal funds would not be used to subsidize partisan activity. The proposed revision would more adequately reflect the purpose underlying the establishment clause. Religious organizations are presently

130. 403 U.S. at 625.
131. Presently, churches, conventions, and associations of churches are not required to file financial reports with the IRS. I.R.C. § 6033(2)(A)(i). See also I.R.C. § 7605(c) (restricting scope of church audits based on principle of noninterference). Permitting electioneering activity by church groups will require public disclosure of political expenditures. Traditionally, the government has acted cautiously when dealing with religion. The Supreme Court has expressed concern that government agencies should not be put in a situation requiring surveillance of religious institutions. Roemer v. Maryland Bd. of Pub. Works, 426 U.S. 736, 749 & n.16, 765-66 (1976); Lemon v. Kurtzman, 403 U.S. 602, 620 (1971). In addition, in Walz v. Tax Commission, 397 U.S. 864 (1970), the Court noted that taxation of religious organizations creates a greater degree of entanglement than exemption. Id. at 674. This would seem to raise the wall between church and state to bar government investigations of church activity. The relevant inquiry, however, is whether taxation creates excessive entanglement. See notes 127, 130 supra and accompanying text. Thus, when the IRS sought production of church documents necessary to investigate tax liability, the Fifth Circuit stated that “[a] defense against disclosure based upon religious objections can find First Amendment support only if the disclosure either serves to establish religion or impedes the free exercise of sectarian conviction.” United States v. Holmes, 614 F.2d 985, 989 (5th Cir. 1980). The court deemed disclosure an “incidental burden on church religious activities” and considered the “government[s] interest in maintaining the integrity of its fiscal policies . . . sufficiently compelling to justify any incidental infringement of plaintiff’s First Amendment rights.” Id. at 990. see Christian Echoes Nat’l Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1973), cert. denied, 414 U.S. 864 (1973).
132. The revision may be suspect in that the restrictions are aimed at ensuring the purity of purpose for which a § 501(c)(3) organization is granted its exemption. See note 45 supra and accompanying text. Religious organizations, however, claim that their political acts are religiously motivated. Although it may be difficult for the IRS or a court to determine when religion ends and politics begin, the revision will
engaged in campaign conduct\textsuperscript{133}—at the American taxpayers’ expense. Under the proposed revision, religious organizations would be paying out of “their own pockets” without suffering the loss of exempt status when they choose to participate in the political campaign arena. Consequently, the constitutional mandates of free speech and separation of church and state will be fulfilled.

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\textsuperscript{133} See notes 7, 8 \textit{supra} and accompanying text.