REVIEW OF INTERNAL REVENUE CODE SECTION 501(c)(3) REQUIREMENTS FOR RELIGIOUS ORGANIZATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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TUESDAY, MAY 14, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:00 p.m., in room 1100 Longworth House Office Building, Hon. Amo Houghton (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE
May 7, 2002
No. OV–12

Contact: (202) 225–7601

Houghton Announces Hearing on the Review of Internal Revenue Code Section 501(c)(3) Requirements for Religious Organizations

Congressman Amo Houghton (R–NY), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing to review Internal Revenue Code (I.R.C.) Section 501(c)(3) requirements for religious organizations. **The hearing will take place on Tuesday, May 14, 2002, in room 1100 Longworth House Office Building, beginning at 2:00 p.m.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

BACKGROUND:

I.R.C. § 501(c)(3) organizations—such as religious, charitable, educational, scientific, and literary organizations—enjoy certain benefits because of their tax-exempt status:

- Being exempt from Federal income taxation under I.R.C. § 501(a), and
- Allowing contributors to take tax deductions under I.R.C. § 170(a) for charitable contributions.

However, § 501(c)(3) organizations also have certain restrictions and limitations imposed on their allowable activities, including lobbying and political activity.

All § 501(c)(3) organizations may attempt to influence legislation as long as it does not constitute a "substantial part" of the organizations' overall activities. In addition, § 501(c)(3) organizations can elect to use an alternative I.R.C. § 501(h) safe-harbor "expenditure test," in which the I.R.C. outlines specific expenditure limits in I.R.C. § 4911 that may be spent on lobbying activities. However, churches, along with church-related organizations outlined in I.R.C. § 501(h)(5), were excluded from this "expenditure test" election at their own request.

All § 501(c)(3) organizations must not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Violation of this political activity prohibition, which has been in existence since 1954, can result in the organization losing its tax-exempt status and the imposition of certain excise taxes.

The Internal Revenue Service (IRS) has revoked one § 501(c)(3) church's tax-exempt status for violation of this political activity prohibition. In 1992, the Church at Pierce Creek purchased a full-page advertisement in two newspapers that attacked the views of then-Governor Bill Clinton. The bottom of the advertisement stated that "[t]ax-deductible donations for this advertisement gladly accepted." The

IRS found that the newspaper advertisement was prohibited intervention in a political campaign.

In announcing the hearing, Chairman Houghton stated, "This is a very complex issue, and I look forward to a careful review of this section of the tax code."

FOCUS OF THE HEARING:

The focus of the hearing is to review the history of and current requirements for I.R.C. § 501(c)(3) organizations. In addition, the Subcommittee will hear testimony on two bills, H.R. 2357, the Houses of Worship Political Speech Protection Act, and H.R. 2931, the Bright-Line Act of 2001, that are intended to revise current tax law for religious organizations so as to then permit certain activities that presently are prohibited (political campaigns) and limited (lobbying) by I.R.C. § 501(c)(3) organizations.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to *hearingclerks.waysandmeans@mail.house.gov,* along with a fax copy to (202) 225–2610, by the close of business, Tuesday, May 28, 2002. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Oversight in room 1136 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to *hearingclerks.waysandmeans@mail.house.gov,* along with a fax copy to (202) 225–2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov/*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call (202) 225–1721 or (202) 226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HOUGHTON. Good afternoon, ladies and gentlemen. We are delighted you are here. This ought to be a very interesting session.

I would like to make a few remarks, and I would like to suggest that Mr. Coyne make remarks if he wants to. Anybody else who

would like to say something to begin the session, fine; and then we will turn it over to Mr. Miller and Mr. Hopkins.

So we are here today, as most of you know, to talk about an important issue, which is the proper role of religious groups in politics and lobbying. section 501(c)(3) of the Tax Code establishes requirements for charities, such as the United Way, museums, nonprofit hospitals, animal shelters, as well as churches, mosques, synagogues, and other religious groups. These groups are tax exempt. Donors who make contributions to these worthwhile organizations receive the benefit of having the contribution tax deductible.

Two Members of Congress, my good friend, Mr. Philip Crane, a Member of the Committee on Ways and Means, and Representative Walter Jones have introduced legislation to change the Tax Code. It would allow churches to engage in greater activity than is now currently permitted.

We will hear from the Internal Revenue Service (IRS) and one of the leading experts of tax-exempt organizations in a minute on what the law now requires and how it is enforced. Then we are going to hear from interested parties who represent a variety of different backgrounds and points of view on this issue.

The key issue at the moment is the right balance, and how does that balance measure with the Constitution. In other words, what activity should be permitted through one's place of worship.

I also look forward to what I am sure will be an important and enlightening discussion from the Members of the panel.

So I am pleased now to yield to my great friend and Ranking Democrat, Mr. Coyne.

[The opening statement of Chairman Houghton follows:]

Opening Statement of the Hon. Amo Houghton, a Representative in Congress from the State of New York, and Chairman, Subcommittee on Oversight

Good afternoon. We are here today to talk about an important issue—what is the proper role of religious groups in politics and lobbying. Section 501(c)(3) of the tax code establishes requirements for charities such as the United Way, museums, nonprofit hospitals, animal shelters, as well as churches, mosques, synagogues, and other religious groups. These groups are tax-exempt. Donors who make contributions to these worthwhile organizations receive the benefit of having the contribution tax-deductible.

Two Members of Congress, my good friend Rep. Phil Crane, a Member of the Ways and Means Committee, and Rep. Walter Jones, have introduced legislation to change the tax code. It would allow churches to engage in greater activity than is currently allowed.

We will hear from the IRS and one of leading experts in exempt organizations on what the law now requires and how it is enforced. Then, we will hear from interested parties who represent a variety of different backgrounds and points of view on the issue.

The key issue is the right balance—and how does that balance measure with the Constitution. In other words, what activities should be permitted through one's place of worship? I look forward to what I am sure will be an important and enlightening discussion.

Mr. COYNE. Thank you, Mr. Chairman, and welcome.

Today's hearing will provide a hearing record on the current law as it applies to political and lobbying activities by churches and charities. Specifically, we would review legislation that would change the current tax law in this particular area.

Two versions of this legislation have been proposed in this current Congress. The Tax Code prohibits section 501(c)(3) organizations from engaging in any political campaign activities. The law also limits the amount of lobbying activities that these organizations can conduct. These tax rules have been in place for 25 years and have been substantially modified during this time.

I look forward to the witnesses' statements about the public interest served in restricting the activities of organizations receiving charitable donations as well as the concerns of churches about this policy.

The Oversight Subcommittee has a long tradition of reviewing tax-exempt issues and organizations and their issues. As we evaluate the issues before us this afternoon, I look forward to continued bipartisanship in this particular area.

Thank you, Mr. Chairman.

[The opening statement of Mr. Coyne follows:]

Opening Statement of the Hon. William J. Coyne, a Representative in Congress from the State of Pennsylvania

Today's hearing will provide a hearing record on the current law rules applicable to political and lobbying activities by churches and charities. Specifically, we will review legislation to change the current tax law rules for churches, as proposed by Congressman Walter Jones and Congressman Crane.

The tax code prohibits section 501(c)(3) organizations from engaging in any political campaign activities. The law also limits the amount of lobbying activities these organizations can conduct. These tax rules have been in place for over twenty five years and have been substantially modified during this time. I look forward to the witnesses' statements about the public policy served in restricting the activities of organizations receiving charitable donations, as well as the concerns of churches in speaking freely from the pulpit.

The Oversight Subcommittee has a long tradition of reviewing the tax-exempt organization issues. As we evaluate the issues before us this afternoon, I look forward to continued bipartisanship in this area. Thank you.

Chairman HOUGHTON. All right. I, too, Mr. Coyne. Thank you very much. Mr. Crane, would you like to make a statement?

Mr. CRANE. I simply want to express my appreciation to you, Mr. Chairman, for permitting me, not a Member of this Subcommittee, to be here and to participate in this very important hearing.

I have introduced legislation on this subject going back several years, and it is something that we continue to push toward answering some of the questions, but this kind of a hearing is vitally important in doing that. So I just want to congratulate you for what you have done, and I look forward to today's hearing.

Chairman HOUGHTON. Thanks very much.

Mr. Weller, do you have a comment? No. Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman. I just want to thank you for holding this hearing. I look forward to hearing from the witnesses.

Chairman HOUGHTON. Thanks, Mr. Lewis. Ms. Dunn, would you like to make an opening statement? All right, gentlemen, you are on.

Mr. Miller, will you lead off?

STATEMENT OF STEVEN T. MILLER, DIRECTOR, EXEMPT ORGANIZATIONS, INTERNAL REVENUE SERVICE

Mr. MILLER. Thank you, Mr. Chairman.

In the time available, I will concentrate on the requirements for tax exemption as the rules apply to churches. I will also touch on our experience in administering this area.

I request that my written testimony be made a part of the record of this hearing.

Section 501(c)(3) of the Internal Revenue Code provides for tax exemption of certain organizations. It does not specifically mention churches. However, they qualify as entities organized and operated for religious purposes. While there are special rules applicable to churches under the Internal Revenue Code, the lobbying and campaign intervention rules apply not only to churches but to all section 501(c)(3) organizations.

Let me spend a moment on lobbying restrictions. No substantial part of a section 501(c)(3) organization's activities can be carrying on propaganda or otherwise attempting to influence legislation. Lobbying includes direct communications to Members of legislatures, as well as indirect communications that are made through the general public.

Section 501(c)(3) restricts lobbying. It does not prohibit it. Churches are subject to the restriction although, unlike other section 501(c)(3) organizations, they are not eligible to file the election under section 501 (h). Section 501 (h) allows an organization to have its lobbying activity measured by expenditures.

Since some lobbying is acceptable under the law, it is fair to say that the IRS has not often identified situations in which information shows or even suggests that a church is engaged in sufficient lobbying to justify revocation of its status.

Let me move to the prohibition on political activity. Section 501(c)(3) does not prohibit all activity that might be described as political within the common meaning of that term. Rather, it prohibits an exempt organization from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

On the other hand, unlike lobbying, when the section 501(c)(3) limit on political campaign intervention applies, it is absolute. Like any other section 501(c)(3) organization, a church not only jeopardizes its tax-exempt status for participating in a political campaign, it also becomes subject to excise tax under section 4955 on its political expenditures. This excise tax may be imposed in addition to or in lieu of revocation.

I would like to touch on one rule applicable only to churches. Under section 7611, the IRS is required to follow special procedures, both before and during the audit of an organization claiming to be a church.

First and foremost, the IRS may begin a church tax inquiry, the initial step of the church audit, only when a high-level official has a reasonable belief that the church may not be tax exempt or may have other certain liabilities under the Code. There are various other protections under section 7611 that are outlined in my written testimony.

Let me take a moment to highlight our outreach efforts in this area, because we take the approach that the most efficient means of assuring compliance is to educate the taxpayer.

We have made the church community aware of the tax law rules. We have disseminated to the church community and to the public a publication containing a discussion of the rules in this area. This publication has been widely available and widely discussed since it was issued in July 1994. We also remind churches and all other section 501(c)(3) organizations each election cycle of their responsibilities in this area through news releases. Finally, we share information with leaders of the church community and persons who provide tax advice to churches through various outreach opportunities.

In the coming weeks, we will release a revised version of the above-referenced publication entitled Tax Guide for Churches and Other Religious Organizations. We will have an expanded discussion of the prohibition on political campaign activity. We are also considering what other guidance may be necessary in the area.

Moving on to a discussion of our experience in Administration, I would first note that we fully recognize the sensitive nature of the area. Our primary purpose here is to influence individuals and organizations to voluntarily comply with the law. We try to enhance voluntary compliance in as unobtrusive a manner as possible, recognizing that the less entanglement between the religious community and the Internal Revenue Service the better. Such an approach is in the best interest of both parties and is in keeping with the competing constitutional interests in this area.

Our experience in this area indicates that the issue of political intervention occurs infrequently in our examination program and does not often justify the revocation of a church's tax-exempt status.

From time to time, we find well-meaning individuals who act out of faith but not in conformance with the law. When we come upon this situation, we normally prefer to pursue the excise tax, if available, and correction rather than revocation. Correction means that the organization attempts, to the extent possible, to undo the error and creates and adheres to procedural safeguards to prevent the recurrence.

However, in rare and appropriate circumstances, the IRS has and will revoke the exempt status of a church or other organization for political activities. This is a challenging area for us to administer, made even more so because of issues specific to churches.

The Joint Committee on Taxation staff has commented upon the church tax procedures under section 7611 by stating that, while they provide important safeguards to the church community, they may result in unintended consequences. For example, in the church area we are most often left to use third-party referrals of information about potential noncompliance. In addition, there is a lack of information available to the IRS and the public in this area. Churches do not need to apply for a determination letter from the Internal Revenue Service, and they don't have to file annual reports either.

Other issues in administering the political campaign intervention prohibition exist not just for churches but for all section 501(c)(3)

organizations. These include determining whether the action of an individual may be attributed to the organization and whether a given pronouncement constitutes prohibited political campaign intervention.

Finally, the section 4955 excise tax on political activities available to us in lieu of revocation may not be effective in certain circumstances. That is because the tax is based on expenditures, and certain political activities are not readily measurable in that context.

Mr. CRANE. Mr. Chairman, could Mr. Miller use that mike to the right of him? Obviously, that one he has is not functioning properly.

Chairman HOUGHTON. It cuts in and out. Yes. Try that. Yes.

Mr. MILLER. All right.

Mr. CRANE. Thank you.

Mr. MILLER. A little better. Although timing is everything, I would just want to——

Chairman HOUGHTON. You take as much time as you want now.

Mr. MILLER. As I said, for the most part, churches are faced with the same requirements for exemption as other section 501(c)(3) organizations, including the prohibition on campaign intervention. They are, however, afforded additional protections under section 7611 and have fewer public reporting requirements. It is a challenging area for us to administer.

Thank you, and I am available for comments.

[The prepared statement of Mr. Miller follows:]

Statement of Steven T. Miller, Director, Exemption Organizations, Internal Revenue Service

Thank you Mr. Chairman, for the opportunity to provide this Subcommittee with general background on the requirements for tax exemption, particularly as they relate to the prohibition on political activities. I will also discuss how these rules apply to churches, the Internal Revenue Service's experience with these issues, and the numerous challenges we confront in administering this law.

General Requirements for Tax Exemption

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income taxation of organizations organized and operated exclusively for religious, charitable, scientific, educational, and certain other purposes. Section 501(c)(3) imposes a number of conditions to exempt status:

- No part of the organization's net earnings may inure to the benefit of any private shareholder or individual.
- No substantial part of the organization's activities may be attempts to influence legislation (lobbying restriction).
- The organization may not intervene in any political campaign on behalf of or in opposition to any candidate for public office (political campaign prohibition).

Section 501(c)(3) does not specifically mention churches. They qualify as entities organized and operated for religious purposes. Thus, the above-referenced conditions apply to churches as well as all other section 501(c)(3) entities. In addition, there are rules specifically applicable to churches that I will outline in my testimony.

Restriction on lobbying

One condition of exemption under section 501(c)(3) is that no substantial part of an organization's activities can be carrying on propaganda, or otherwise attempting to influence legislation (commonly known as lobbying). Lobbying includes direct communications to members of a legislature, indirect communications through the electorate or general public ("grass roots" lobbying), and advocating adoption or re-

jection of legislation on an issue, even if specific legislation is not pending. Whether a communication on an issue constitutes lobbying depends on the facts and circumstances of the communication.

Section 501(c)(3) restricts lobbying; it does not prohibit it. Churches are subject to the restriction, but unlike other section 501(c)(3) organizations, are not eligible to file the election provided under section 501(h) of the Code to have lobbying measured by expenditures. Although the "no substantial part" test is less precise—courts have generally rejected using a percentage test as the sole test of whether the activity is a substantial part of an organization's activities—it is fair to say that the IRS has not identified situations in which we received information showing, or even suggesting, that a church was engaged in lobbying as a substantial part of its activities.

Prohibition on Political Campaign Intervention

Section 501(c)(3) does not prohibit all activity that might be described as "political" within the common meaning of that term. Rather, it prohibits an organization seeking to be exempt from directly or indirectlyparticipating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office violate the prohibition against political campaign intervention.

The section 501(c)(3) limit on political campaign intervention is absolute. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Section 1.501(c)(3)–1(c)(3)(iii) of the Income Tax Regulations refines the prohibition on campaign intervention by defining "candidate for public office" as an "individual who offers himself or herself, or is proposed by others, as a contestant for elective public office". The regulation also provides that prohibited political campaign intervention includes, but is not limited to, publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such a candidate. Since a candidate must be a contestant for elective public office, section 501(c)(3) only prohibits organizations from participating or intervening in election campaigns.

It has been argued that the prohibition on campaign intervention does not apply to churches. Courts have considered and rejected this argument. In *Branch Ministries, Inc. v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000), *aff'g* 40 F. Supp. 15 (D.D.C. 1999), the Court of Appeals upheld the IRS's revocation of the section 501(c)(3) exempt status of the Church at Pierce Creek. The District Court had granted summary judgment to the IRS on its claim the organization violated the statutory prohibition on political campaign intervention when it placed full-page advertisements in two newspapers. The content of the advertisement was in opposition to a candidate. The Court of Appeals rejected the church's claims that the revocation violated the church's right to free exercise of religion under the Constitution and the Religious Freedom Restoration Act, and that it was the victim of selective prosecution.

Rules Relating to Specific Issues in the Area of Political Intervention in Campaigns

Certain activities or expenditures may or may not constitute campaign intervention. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. On the other hand, voter education activities that show a bias for one candidate over another will constitute prohibited political campaign intervention. Two examples are described below to better explain the rules in this area and our administration.

Voter guides

Like other section 501(c)(3) organizations, some churches undertake voter education activities by publishing voter guides. Voter guides, in general, provide information on how candidates stand on various issues. These guides may be distributed with the stated purpose of educating voters. A careful review of the following may help determine whether or not a church's publication or distribution of voter guides constitutes prohibited political campaign activity:

- Whether the guide provides information with respect to all candidates for an office;
- Whether the guide contains editorial opinion or remarks, or otherwise indicates approval or disapproval of candidate or their records;
- Whether the guide is disseminated in close proximity to an election;
- Whether the guide covers a wide variety of issues; and

- For a candidate questionnaire, whether the organization asks the same neutral questions of all candidates, or indicates a bias toward the organization's preferred responses, whether the guide is based on responses to a questionnaire sent to all candidates, and whether the guide is made generally available to the public.

"Get out the vote" activities

Questions are raised about the use of church assets or funds in "get out the vote" activities. In this regard, whether these activities violate the campaign prohibition depends on whether a church's activities favor or oppose a candidate for public office. Thus, the church's financial resources, facilities, or personnel may not be used in get out the vote activities that favor one candidate over another (as by only helping individuals get to the polls if they favor a particular candidate). Of course, this does not mean that church members may not conduct these activities independent of the church.

Consequences of Political Campaign Intervention

Like any other section 501(c)(3) organization, a church not only jeopardizes its tax exempt status under section 501(c)(3) for participating in political campaign activities, it also becomes subject to an excise tax under section 4955 on its political expenditures. This excise tax may be imposed in addition to revocation, although in certain situations it may be imposed instead of revocation. Also, the church or religious organization must correct the violation to avoid the second-tier tax under section 4955.

Section 4955 imposes an initial tax on an organization at the rate of 10 percent of the political expenditures. It also imposes an initial tax at the rate of 2.5 percent of the expenditures on any of the organization's managers (jointly and severally) who, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The initial tax on management may not exceed $5,000. In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against any of the organization's managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed $10,000 with respect to any one expenditure. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures.

Rules Applicable to Churches under the Internal Revenue Code

Congress has enacted tax laws applicable to churches in recognition of their unique status in American society and of rights guaranteed them under the First Amendment of the Constitution of the United States. The Internal Revenue Code includes several provisions relevant for a discussion of the treatment of churches by the Internal Revenue Service. These provisions generally serve the purpose of preventing needless entanglement between churches and the IRS. For example, unlike almost any other section 501(c)(3) organization, a church need not apply for recognition from the IRS to obtain tax-exempt status. Nor do churches ordinarily have to file an annual information return (the Form 990) with the IRS. However, Congress recognized the need for the IRS to ensure that churches follow the requirements for tax exemption. In this regard, it enacted section 7611 of the Internal Revenue Code.

Section 7611 requires that the IRS follow several procedures when auditing an organization claiming to be a church. First, a church tax inquiry requires the approval of a high level official of the Internal Revenue Service (the Director of Examinations for Exempt Organizations); that is, the IRS may begin a church tax inquiry only when a high level official believes, on the basis of facts and circumstances recorded in writing, that the organization: may not qualify for tax exemption as a church; may be carrying on an unrelated trade or business; or may otherwise be engaged in an activity subject to tax.

Under section 7611, notice to the church is required before beginning an examination, and must include the following elements: an explanation of the concerns that give rise to the inquiry and the general subject matter of the inquiry in sufficient detail to allow the church to understand which specific activity is at issue; a general explanation of the Internal Revenue Code provision(s) that authorize the inquiry and that may otherwise be involved; and a general explanation of applicable administrative and constitutional provisions involved, including the right to a conference before examination. Other rights guaranteed under the statute and implementing

regulations include an offer of pre-examination conference, completion of any audit tax liabilities within two years after the date on which the notice of examination is supplied to the church, limitations on the IRS's ability to revoke a church's tax-exempt status, limitations on the period of assessment, limitations on additional inquiries and examinations, required coordination with IRS counsel at various stages, and remedies for IRS violation of the procedures.

Outreach Efforts to the Church Community by the Internal Revenue Service

The IRS takes the approach that an educated taxpayer is generally a compliant taxpayer. As a result, we have attempted to make the church community aware of the tax law rules relating to political campaign intervention. The IRS has (1) disseminated to the church community and the public for comment, a publication (*Tax Guide For Churches and Other Religious Organizations* (Draft 7/26/94)); (2) periodically reminds churches (and all section 501(c)(3) organizations) of their responsibilities in the area of political campaign intervention (*see, e.g.*, News Release 2000–47 (July 5, 2000)); and (3) shared information with individual church leaders and persons who provide tax advice to churches.

In the coming weeks, we will release a revised version of the *Tax Guide for Churches and Other Religious Organizations.* It will have an expanded discussion of the prohibition on political campaign activity, including practical guidance.

Administrative Issues and Internal Revenue Service Experience in this Area of Political Campaign Activity

The IRS is appreciative of the sensitive nature of this area. Our mission and our hope are to influence individuals to voluntarily comply with existing rules. Thus, we try to enhance voluntary compliance in as unobtrusive a manner as possible recognizing that the less entanglement the better between the religious community and the IRS. Such an approach is in the best interests of both parties and is in keeping with the competing Constitutional interests in this area. Unfortunately, from time to time, we find well-meaning individuals acting out of faith but not acting in conformance with the rules. As a result, when we find an issue in this area, we normally prefer to pursue correction rather than revocation. Correction means that the organization attempts to undo the error, and creates and adheres to procedural safeguards to prevent a recurrence.

Our experience in this area indicates that this issue occurs infrequently in our examinations and does not often result in revocation of tax-exempt status. However, as indicated by the Branch Ministries case discussed above, the IRS will revoke the exempt status of an organization for political activities in appropriate circumstances.

This is a challenging area for the IRS to administer. This is not the first time that Congress has reviewed our activities in this area. This was the subject of congressional review in the 1980's, and as recently as March of 2000, when the Joint Committee on Taxation reported on our handling of tax-exempt organization matters. In Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters (JCS–3-00), the staff looked at numerous cases, including certain church tax inquiries and examinations. The Joint Committee staff found no credible evidence of political motivation in the manner in which we carry out our responsibilities.

Our administration is made more challenging in part because of issues specific to churches. For example, at page 22 of the Joint Committee report, staff commented upon the church tax procedures:

> The Joint Committee staff found that the church audit procedures provide important safeguards against the IRS engaging in unnecessary examinations of churches. However, the procedures also have the effect of (1) making it more difficult for the IRS to initiate an examination of a church even where there is clear evidence of impermissible activity on the part of the church and (2) hampering IRS efforts to educate churches with respect to actions that are not permissible, such as what constitutes impermissible political campaign intervention.

Similarly, the lack of information available from churches (e.g., the fact that churches do not need to apply for a determination letter and are not required to file an annual information return) has an impact on our ability to determine compliance with requirements for tax exemption. This in turn leads us to more frequent use of third-party referrals of information about potential non-compliance in the church area.

Other issues in this area exist not just for churches, but also for all organizations prohibited from participating in political activity. First, we have the issue of attribu-

tion. Was an individual making a pronouncement in his or her individual capacity, or can the pronouncement be attributed to the tax-exempt organization? In the church area, the IRS is sometimes asked to consider whether campaign advocacy by a minister or other church official may be attributed to the church with which he or she is associated. The prohibition on political campaign activities applies only to section 501(c)(3) organizations, not to the activities of individuals acting in their private capacities. Accordingly, the prohibition does not prevent a church's minister from being involved in a political campaign, so long as the minister does not use the church's financial resources, facilities, or personnel, and clearly indicates that his or her actions or statements are his or her own, and not those of the organization.

A second difficult issue we face is whether a given pronouncement constitutes prohibited political campaign intervention. In this area specifically, the IRS is faced with reviewing both the content and circumstances surrounding the distribution of voter guides during worship services or on church property.

A third issue common to churches and other non-profits is that the sanction in this area is often misdirected. Candidates, political fundraisers or other outsiders sometimes request churches or other section 501(c)(3) organizations to make their resources available for political purposes either because the outsider does not know the rules or simply does not care. The sanction for such action is on the church and its managers, not on the outsider.

Finally, the section 4955 excise tax that can be used in lieu of revocation may not be effective in certain instances. The tax is based on expenditures. Yet there are times when this excise tax does not correspond to the prohibited intervention. For example, what is the expenditure related to an endorsement of a candidate during a sermon from the pulpit?

The IRS takes all these considerations into account when it enforces or educates, but taken together they do make the area more challenging to regulate. Thank you for your time and I am available for any questions.

Chairman HOUGHTON. All right. Thank you very much. I forgot to mention earlier that Mr. Miller is the Director of Exempt Organizations of the Internal Revenue Service.

I would like to introduce Mr. Hopkins, who is——

Ms. DUNN. Now yours is doing the same thing.

Chairman HOUGHTON. Is mine doing the same thing? Let me keep trying. Is it all right now? If I scream, is that all right? Okay.

But, anyway, Mr. Hopkins is of Counsel with Polsinelli, Shalton & Welte, Kansas City, Missouri. Mr. Hopkins, we are delighted to have you here. Let's see if your mike works any better than ours.

STATEMENT OF BRUCE R. HOPKINS, OF COUNSEL, POLSINELLI, SHALTON & WELTE, KANSAS CITY, MISSOURI

Mr. HOPKINS. Well, let me try.

Thank you, Mr. Chairman, and other Members of the Subcommittee. I appreciate the opportunity to be here today.

I am a lawyer in private practice. I have been practicing in the exempt organizations field for 33 years now. I have taught the course in two law schools and have written some books on the subject.

Mr. CRANE. Could you swap mikes?

Mr. HOPKINS. Does that help? Apparently, it does.

I have been asked to review the history of and the current requirements for tax exemption for public charities, with particular attention to churches. Mr. Miller has summarized the law in this area, making the distinctions between the rules concerning lobbying and the rules concerning political campaign activities, and so I will not repeat what he has said. Let me add some comments that I have in connection with this matter.

In the lobbying area, as Mr. Miller mentioned, there is a special set of rules, section 501(h), that public charities are allowed to elect to measure permissible lobbying. This particular election is not available to churches and certain other religious organizations.

In addition to the tax law, of course, first amendment considerations affect this analysis, and government may not be involved in the establishment of religion. The U.S. Supreme Court has held that tax exemption for public charities is constitutional, even if exemption is extended to religious organizations. The Court has also ruled, however, that a tax exemption that is only for religious organizations is not constitutionally permissible.

The Supreme Court has further held that Congress has broad latitude in creating classifications and distinctions in tax statutes. This principle has been applied in the tax-exempt organization's context.

Congress has over the years enacted exempt organization rules uniquely beneficial only to churches and other religious organizations. Three of these are particularly notable. Mr. Miller mentioned a couple of these.

Churches and other religious organizations can be tax exempt without having to file an application for recognition of exemption with the Internal Revenue Service. Churches and other religious organizations are not required to file annual information returns with the Internal Revenue Service. As you mentioned, churches have been provided special rules by which audit of them is more difficult for the IRS.

In my view, Congress has the authority under the Constitution to permit political campaign activity by churches. I say this as a matter of classification for income tax exemption. Put another way, if this proposal is unconstitutional, then so, too, must be the other tax law benefits Congress has accorded churches.

I would like to make some comments about the pending bills. The Houses of Worship Political Speech Protection Act would introduce the standard of substantiality into the political area. This is the same standard that is used today in the lobbying context. All of the uncertainties as to what this word means would be imported into the political area. Pressure would mount for the equivalent of a section 501 (h) election in this context.

More importantly, in my view, a new approach to defining substantiality is required. Traditional definitions in terms of time or expenditures are no longer working. How does one value a clergyperson's endorsement of a candidate from the pulpit or a Web site communication? There may have to be a new definition, some sort of a facts and circumstances test, to capture this factor of influence.

Likewise, the Bright-Line Act does not address this problem. This is because it focuses only on expenditures. An expenditure for a political act may be minuscule but exert enormous influence. Also, political activities by volunteers would be disregarded.

I am also concerned about the section 4955 tax that Mr. Miller has referenced. The two bills address the matter of income tax exemption but not the political expenditures tax. If churches only were exempted from this tax, I believe that would amount to an

unconstitutional sponsorship by the Federal Government of religion.

Mr. Chairman and Members of the Subcommittee, I would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Hopkins follows:]

Statement of Bruce R. Hopkins, of Counsel, Polsinelli, Shalton & Welte, Kansas City, Missouri

Mr. Chairman and other Members of the House Subcommittee on Oversight, thank you for the opportunity to appear before the Subcommittee today.

Attached is a description of the federal income tax rules concerning legislative and political campaign activities by churches, other religious organizations, and public charities (IRC § 501(c)(3) entities) in general.

I have been asked to review the history of and current requirements for tax exemption for these organizations.

As to legislative activities:

- Public charities can engage in attempts to influence legislation, without endangering tax-exempt status, as long as these efforts are not *substantial.*
- The term substantial remains undefined.
- There is a safe-harbor exception, which must be elected, using a mechanical test for measuring allowable lobbying (IRC § 501(h)).
- Churches and other religious organizations may not make this election.
- There are taxes on excess legislative expenditures (IRC §§ 4911, 4912).

As to political campaign activities:

- Public charities cannot engage in political campaign activities.
- Some of these activities are considered educational and thus are permissible.
- There is a tax on political campaign expenditures (IRC § 4955).

Other points:

- The federal tax law contains several provisions creating special advantages and benefits for churches and other religious organizations.
- Tax exemption for all public charities is constitutional, even though religious organizations are benefited.
- Tax exemption only for religious organizations is unconstitutional.
- The bills that are the subject of this hearing pass constitutional law muster, unless it is intended that one or more tax exemptions only for religious organizations are to be created.

[The attachment is being retained in the Committee files.]

Chairman HOUGHTON. Thank you very much, Mr. Hopkins.

I am going to ask you and also Mr. Miller a question, and then I will turn this thing over to Mr. Coyne, and we will go on to the other participants.

What I am really interested in is what is the practical effect of passage of either the Jones or the Crane bills?

Mr. HOPKINS. Well, the practical impact of passage of the bill would be basically to engraft into the area of political campaign activities the type of law that is in the law today concerning lobbying. In other words, the limitation on a political campaign activity for churches and other public charities today is absolute. It is not permissible. In a lobbying context, there is a standard of insubstantiality. That standard in the lobbying setting would be imported into the political arena to allow a certain amount of political activity by churches.

Chairman HOUGHTON. Is that the practical impact or the technical impact?

Mr. HOPKINS. Well, maybe I misunderstood what you meant by the terms. I guess maybe that is more of a technical impact.

I suspect the practical impact would be twofold, if I understand what you mean by the word "practical." One, as we know, there are churches engaged in political activity today, so it would legitimize practices that are going on in any event. Second, it would probably generate more political campaign activity by churches than we have today.

Chairman HOUGHTON. Mr. Miller.

Mr. MILLER. I am somewhat limited in what I can say about the pending legislation, but I would echo Mr. Hopkins—it is clear there are instances out there of pulpit comments and things of that nature that would seem to fall within the rules that are being discussed in the bills.

Chairman HOUGHTON. Well, but this is a hypothetical situation. It doesn't have anything to do with what Mr. Crane or Mr. Jones—it is just a hypothetical.

Seriously, what do you think from the standpoint of the IRS the practical impact of this would be?

Mr. MILLER. Of the bills?

Chairman HOUGHTON. Yes.

Mr. MILLER. The only thing that I would point to in my testimony is we have outlined what our administrative impact is in the lobbying area; and because of the rules of section 7611 and the substantiality rules, we have a very limited enforcement role in lobbying with respect to churches.

Chairman HOUGHTON. All right. Thank you. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Mr. Miller, why is it improper to finance political campaign activities with tax-deductible charitable donations in the judgment of the IRS?

Mr. MILLER. On that issue actually I would defer to Congress. But there is an issue as to why you would be able to deduct something with a charitable deduction where you were not allowed otherwise to, so it would create some disparity.

Mr. COYNE. Well, are you saying that you judge it to be or you rule it to be improper as a result of the actions of Congress? Is that what you are saying?

Mr. MILLER. In some respects, yes. There is a line of rules in the Tax Code and in our regulations that talks about the earmarking of donations. A donation to a charitable organization that is used or earmarked for political purposes is not deductible under current law.

Mr. COYNE. Basically, it is the action of Congress that you respond to. Is that it?

Mr. MILLER. It certainly is.

Mr. COYNE. How many times have you revoked the tax-exempt status of a church for political activities?

Mr. MILLER. Let me preface my answer. Churches have a specific status under the Tax Code and a specific definition. According to our information, we have the exempt revoked status of two churches. We have revoked religious organizations or religious-affiliated organizations four or five times in the last 20 years.

Mr. COYNE. Last 20 years?

Mr. MILLER. It probably goes farther back than that, since—the first one would be, I guess, Christian Echoes, which is a 1980 case. So farther back than that.

Mr. COYNE. How many times has the IRS imposed excise taxes on churches for political activities?

Mr. MILLER. I will go back and check our records on that. I am personally aware of at least twice that we have done that.

Mr. COYNE. Current law does not require churches to apply for tax-exempt status nor to file form(s) 990, the annual information returns, with the IRS. The documents are required for all other section 501(c)(3) charities and are disclosable to the public. If the law was changed to allow churches to engage in political activities, isn't it correct that neither the IRS nor the public would have any information about the church's political activity—that is, who funded the political campaign effort and how much money was spent?

Mr. MILLER. We would have the same information that is available today, which is we do not have an exemption application from churches, and they are not required to file annual returns.

Mr. COYNE. So you would have no information?

Mr. MILLER. We would have limited information.

Mr. COYNE. Wouldn't allowing political activities by churches create a large campaign finance loophole?

Mr. MILLER. I don't know about a large loophole. It certainly would create an additional player in the political arena.

Mr. COYNE. So it would be involving the churches and religious institutions in the political arena even more so than they currently are?

Mr. MILLER. Potentially.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Thanks very much. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

Mr. Miller, is there a statutory or regulatory definition of the word "substantial" as it relates to the amount of activity a religious organization may engage in?

Mr. MILLER. I don't believe there is a—and Bruce can correct me if I am wrong on this. I don't believe there is a statutory rule and probably not in the regulations either. There are revenue rulings, and there is some case law out there. Some of these do not involve religious organizations. Because the substantiality test applies across the board to all section 501(c)(3) organizations, you can look to those cases as well. There is some guidance out there.

Mr. CRANE. Well, since this term remains undefined, are religious organizations simply supposed to wait until some enforcement action is taken by the IRS to find that line?

Mr. MILLER. Again, if we are talking about lobbying and the substantiality rules, we have not done a lot of enforcement in that area. We do not have information that would indicate that we should be more involved in this area.

Mr. CRANE. Well, could it be that there are so few enforcement actions that—because churches totally refrain from political activity because they are afraid of running afoul of the IRS?

Mr. MILLER. I am not sure how to answer that one.

Again, substantiality applies only in the lobbying context, and there is an absolute bar in the political context. So the definition

of substantiality would not flow over into political intervention unless your bill became law.

Mr. CRANE. What is the average cost for defending against an IRS enforcement action in court?

Mr. MILLER. That I do not have.

Mr. CRANE. Thank you, Mr. Chairman. I yield back.

Chairman HOUGHTON. Thank you. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Miller, is it conceivable that, with the campaign finance reform, that if you change the law, is it conceivable that the churches could become a conduit, that you would have individuals making large contributions to churches and then the churches engage in political activity? Is there some way the IRS can monitor that?

Mr. MILLER. That is, of course, a possibility. It is a possibility now as well.

Again, I don't believe the law that is being suggested would change the fact that earmarking of moneys going into churches is not deductible or should not be deductible on a charitable basis. That is existing law, and there has been no suggestion that this would change. Again, as I have said, clearly, if the bill is passed, I think that you would have another player in the political arena that doesn't necessarily exist today, although to some extent obviously they do.

Mr. LEWIS. Let me come another way. As a rule, do you monitor the activities of churches during the political season?

Mr. MILLER. We do monitor churches. We are limited in how we do that by reason of section 7611 and because of the lack of information in the area because there is no annual filing. So our monitoring is mostly receipt of information from third parties who are looking.

Mr. LEWIS. But if you have a minister speaking from the pulpit on Sunday morning, maybe a rabbi from the synagogue or the temple, saying that he had been told by God about somebody, that somebody should be elected, somebody should be defeated, is that political activity?

Mr. MILLER. That would constitute political activity.

Again, most of these are based on facts and circumstances. It would be difficult for me to find circumstances in which that wouldn't be found to be a political campaign intervention. But, again, whether we would know about that would really depend on who was in the audience.

Mr. LEWIS. Do you have the ability or the capacity as an agency to monitor the activities of churches and other religious institutions?

Mr. MILLER. The only thing we can rely upon, again, is who would be in that audience to report it, and that presumably would continue under——

Mr. LEWIS. So you wait for someone to file a complaint against the institution or against the minister or against the rabbi or whoever?

Mr. MILLER. Again, as I mentioned, obviously, we do not have reporting from churches, and under section 7611 we cannot go out and survey churches. We cannot do audits unless we have a rea-

sonable belief that there is an exemption or other tax issue out there. So there are some limitations.

Mr. LEWIS. Thank you, Mr. Chairman.

Chairman HOUGHTON. Let me just ask you a quick question. Even if you did have reporting for the churches, would you still be able to determine whether somebody got up at a pulpit and suggested that a candidate be elected?

Mr. MILLER. In all likelihood, we would not. There is a question on the form 990 asking whether you engaged in political activities. Even assuming that they would check that box, that would obviously not be contemporaneous with the action.

Chairman HOUGHTON. Thank you. Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. First I want to commend you for conducting this hearing today. I also want to commend my colleagues, Mr. Jones and Mr. Crane, for their leadership on this issue.

There are millions of Americans, because of their involvement and their strong religious faith, for them their temple, their synagogue, their church, their mosque is their center of community. They seek the opportunity to be involved, and they believe through their central community that they should have the opportunity to be more involved politically.

The question I have and I would like to direct to Mr. Miller is, just try and get a little more specific here and follow up on some of the questioning that the Chair and others have asked here. Mr. Miller, is the IRS—are you proactive in communicating with churches and other religious organizations regarding political activity?

Mr. MILLER. We have tried, Congressman, and we will continue to try. I think we could do a better job.

One thing that we are doing in the coming weeks, we will reissue our church publication with a little more practical guidance in this particular area, and we will do additional outreach, I think.

Mr. WELLER. Do you work with any third party or private groups to communicate limitations on political involvement in churches or religious organizations?

Mr. MILLER. We certainly do outreach to whoever comes to us, and we do have a network of individuals from the religious community that we talk to.

One person on our advisory Committee is, in fact, a representative of the religious community. We do have an outside advisory Committee that speaks to us, and we bounce things off of and——

Mr. WELLER. Who is that?

Mr. MILLER. That is Deirdre Dessingue of the Catholic Conference.

Mr. WELLER. Let me ask some specific examples of activity that may or may not have occurred at churches and temples and synagogues and mosques, other religious institutions. But under current law can a church or a synagogue or a temple or a mosque, can they conduct a voter registration drive sponsored by the institution or on the institution's property?

Mr. MILLER. Yes. The short answer is, yes, provided they do not bias their registration activities toward one candidate over another. There is no prohibition.

Mr. WELLER. And can they offer a candidate debates or forums, invite candidates to come in and present themselves?

Mr. MILLER. The same general rules would apply.

Mr. WELLER. And what about paid political advertising in a church bulletin or a publication at the mosque or temple?

Mr. MILLER. There is no prohibition, provided that it is done on a fair market basis and that it is made available to whoever wants to use that space. So it has to be equally available to the candidate base.

Mr. WELLER. And can the minister say the following from the pulpit and not be in violation of the tax status, that candidate X is pro-life or candidate Y is pro-choice?

Mr. MILLER. That becomes more problematic, Congressman. The pastor, the minister, the rabbi can speak to issues of the day, but to the extent they start tying it to particular candidates and to a particular election, it begins to look more and more like either opposition to a particular candidate or favoring a particular candidate.

Mr. WELLER. And would the Crane and Jones legislation allow—clarify the law to allow for that type of statement?

Mr. MILLER. I believe so. But Bruce might be able to answer that better than I.

Mr. WELLER. Mr. Hopkins, can you answer that?

Mr. HOPKINS. Most of the examples that you provided would not be political activity in the first place, as Steve indicated, so the legislation would not be needed. But if it were to go beyond that, say statements made by a Member of the clergy from the pulpit and they were deemed to be political statements, which would be prohibited under current law, the two bills, within certain parameters, would allow that kind of activity to occur without the church losing its exemption.

Mr. WELLER. So just to follow up on that, say you have a candidate who is a guest speaker, was in a church speaking from the pulpit, concludes his or her remarks, and the minister walks up, puts his or her arm around that particular candidate and says, this is the right candidate. I urge you to support this candidate. That would be—is that allowable under current law?

Mr. HOPKINS. No, that would not be allowable under current law. That would clearly be political campaign activity. It would be protected, however, under the two bills that are the specific subject of the hearing.

But as I said in my opening statement, the problem is in terms of computing how you stay within the boundaries, either of the 5 percent rule under one bill or the insubstantiality test under the other bill. That is, what monetary value do you assign to that kind of activity?

Mr. WELLER. Just a last question. You know, also on Election Day sometimes it is alleged that churches or synagogues, temples or mosques may use what we call the church bus to transport voters to the polls. Is that allowable under current law?

Mr. MILLER. That is. It is allowable, again, with the restriction that they cannot bias toward one candidate versus another, but get out the vote is a permissible activity of churches.

Mr. WELLER. Okay. Thank you, Mr. Chairman. I see my time is expired. Thank you.

Chairman HOUGHTON. Thank you, Mr. Weller. Mrs. Thurman?

Mrs. THURMAN. Thank you, Mr. Chairman.

In the same idea, what about handing out voting guides? Is that considered to be a political activity, and—either in the church or is it different if it is outside of the church?

Mr. MILLER. The voter guide issue is one that we are presented with often. There is nothing per se wrong with voter's guides if they are done in a way that includes all candidates in a fair and impartial manner, and, includes a wide array of issues.

Mrs. THURMAN. One other question, and I—or a couple of other questions. It is my understanding that today under the churches and being organized under a section 501(c)(3), they cannot do any kind of political issue campaigning. Is that correct?

Mr. MILLER. They cannot do specific advocacy of a particular candidate or advocating the defeat of another candidate.

Mrs. THURMAN. Okay. Is there—and it is my understanding there is a way for them, in fact, to be involved in political campaigns by setting up a section 501(c)(4), is that correct?

Mr. MILLER. They can have affiliated organizations, provided that the resources of the church don't find their way there and are not used for improper purposes. We do see the ability—and perhaps, Bruce, you want to speak to this as well—of an organization creating a section 501(c)(4). Again, any section 501(c)(3) organization, could create a section 501(c)(4) organization. For that matter, a political action Committee could be attached to that section 501(c)(4) organization.

Mrs. THURMAN. So they are not then being—I mean, they have an ability to do that if they choose. Are their churches, synagogues, mosques, others that do that today?

Mr. MILLER. I am not familiar with any, but I am not sure I would be.

Mrs. THURMAN. Mr. Hopkins.

Mr. HOPKINS. Well, first of all, let me say, as to your first question, the problem—and Steve indicated this—is not just a matter of setting up a related entity. It is a question of getting it funded, and that often is a problem. Because, as he said, the church resources can't flow over to the section 501(c)(4). So the section 501(c)(4) has got to find independent funding, and often that is difficult because contributions to them are not deductible. But, aside from that, it is not, in my experience, terribly common for a church to have a related section 501(c)(4). It is far more common for other types of religious organizations to do that. I have seen churches do it, but, in my experience, it is quite uncommon and in large part because of this funding aspect.

Mrs. THURMAN. I guess my point is that there is a legal way for them to be involved in the political activities if they choose to do that.

Aside from their—you know, issue that you bring up as funding, if a church and its parishioners wanted to be involved and used that church and/or—for the ability to persuade their congregation, they have an ability to do that?

Mr. HOPKINS. That is true, although I would point out that while social welfare organizations—these are section 501(c)(4)s—are not limited as to lobbying, they are limited as to political campaign activity. They can only expend an insubstantial part of their funding on political campaign activities. So that outlet is of limited utility in the political campaign activity context.

Mrs. THURMAN. But you bring up a good point, because that means that there is a lot of these organizations out there other than just in the religious area that would have the same restrictions unless they did some very similar things that—and I don't know if in this piece of legislation are those also being considered, or is it just religious organizations? I mean, do we say to one, you have a freedom, but the others you don't unless you abide by the rules that are already set in place?

Mr. HOPKINS. Well, it is very common to have the section 501(c)(3), section 501(c)(4) in-tandem relationship across the public charities spectrum, very common. I confess to having set those up many times over the course of my practice.

Mrs. THURMAN. But didn't you just say they were limited in what they could do?

Mr. HOPKINS. As far as political activity.

Mrs. THURMAN. Even the section 501(c)(4)——

Mr. HOPKINS. But they are unlimited as to lobbying activity.

Mr. COYNE. Would the gentlewoman yield?

Mrs. THURMAN. I would yield to Mr. Coyne.

Mr. COYNE. Just to follow up on Mrs. Thurman's question as about the section 501(c)(4) and section 501(c)(3), it is your experience that people are willing to contribute to the church under the section 501(c)(3), but they are not willing—not very willing, anyway, to take up the section 501(c)(4) option? Is that it? Is that your experience?

Mr. HOPKINS. Are you speaking to me?

Mr. COYNE. Yes.

Mr. HOPKINS. Yes, it is. Donors are reluctant to donate if they do not receive a charitable contribution deduction. It does occur, but it is uncommon.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Mr. Foley.

Mr. FOLEY. Thank you very much, Mr. Chairman; and let me join Mr. Weller in commending our colleagues, Mr. Jones and Mr. Crane, and such stalwarts as Lee Sheldon for their leadership in this issue. This has been a very complicated issue, and I think one that desperately needs clarity.

It is interesting, in the schools, you can't have a Bible study, but you can have any number of other groups. In the churches, you can invite a candidate. A preacher may be able to invoke that that particular person, be it the President of the United States, is a phenomenal leader and deserves to return to office. Yet a small church who may not be able to accord the arrival or the visit of a President has a small-town local elected official, and somehow they are in jeopardy of losing tax status or, in fact, could be crippled, if you will, by the IRS.

Mr. Miller, you suggested, which is interesting, that this was a recent area that the Christian Coalition found themselves in on

voter's guides. And the voter's guides you suggested would be okay if they provide a wide-array discussion. So, if you could, could you define for me what a wide array would be considered? Is it 10 issues, 20 issues, five candidates?

Mr. MILLER. Mr. Foley, I apologize, but we are in litigation with the Christian Coalition over that very issue, and I don't think I am authorized to speak in great detail on that one.

Mr. FOLEY. Okay. Hence the confusion. Okay.

The other question I have, while I enjoy both of these bills and I think they would bring some clarity, my concern always is, when government gets more meddlesome and more involved by staking out percentages or other issues, will the IRS need the churches to maintain more detailed records such as direct expenses, logs or tapes of political campaigns, time sheets, overhead and administrative allocation? Would these bills actually invite more government and IRS interference?

Mr. MILLER. Once again, I would point to our experience in the lobbying area. Again, because of section 7611, our involvement would be limited because we need a reasonable belief that exemption is an issue. And if you have the typical example of a pulpit pronouncement, that generally might not be sufficient to initiate a church inquiry under section 7611. If we were auditing the organization, then, yes, it is conceivable that we would require record-keeping, as we would with other section 501(c)(3) organizations.

Mr. FOLEY. I guess the question always for me has been the churches, synagogues have long been the mainstay of American society, and many of the works that they pronounce from the pulpits are works that government is involved in—feeding and clothing the poor, cleaning up inner-city neighborhoods, dealing with spousal problems and spousal abuse. It seems to me if the minister or rabbi wants to continue and make that a cause for their church to expand those opportunities, engaged in a dialog with their parishioners whose parishioners attend voluntarily, if they were to advocate for someone who, in fact, espoused those same virtues or were at least on the same thought pattern, it seems that it restricts the churches from a continuation of their good work, and I guess I don't understand where the politics comes in.

If—Dr. Kennedy is here from Fort Lauderdale—and I am delighted he is here—he will preach about the things necessary to bring a community together, to bring it whole and holistic, if you will. Yet if he treads slightly over to suggesting that some of those individuals who may in fact bring those changes to government, then he could be in serious jeopardy and conflict with the IRS, which seems to me a difficult standard.

Mr. MILLER. I guess I would respond in a couple of fashions.

First, I think that there is nothing in the statute that prevents the clergy from speaking to the issues of the day. It is when they tie those issues to a particular election campaign that there is even an issue.

As I mentioned in our testimony, our experience is where there has been the kind of foot fault that you are speaking of, we have talked to the church to ensure that they understand what the rules are. We have not revoked generally. We have spoken to them about what the rules are and gotten their agreement that they under-

stand the rules and will establish some procedures as to how they will operate so that we don't have to come back and intervene again.

Mr. FOLEY. Thank you. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much. Unless there are any other questions, we appreciate very much your being here. You have helped us a great deal.

Now we will move on to the second panel. What I would like to do is to call the second panel, Mr. Colby May, Senior Counsel for the American Center for Law and Justice in Alexandria, Virginia; the Reverend Dr. C. Welton Gaddy, Ph.D., Executive Director of the Interfaith Alliance; the Honorable Reverend Walter Fauntroy—Walter, great to have you back here—Pastor of the Bethel Baptist Church; the Reverend Barry Lynn, Executive Director, Americans United for Separation of Church and State; Brenda Girton-Mitchell, Associate General Secretary for Public Policy with the National Council of Churches (NCC).

And Mr. Foley is going to introduce Dr. Kennedy.

Mr. FOLEY. Thank you very much, Mr. Chairman. I want to thank you again for holding the hearing.

However opinions may vary, this issue is critically important to the countless religious institutions across our country, and I appreciate the Chairman's decision to allow us to consider it.

I also want to—I appreciate all the witnesses for being here today. In particular, I would like to recognize among our panelists today Dr. James Kennedy of my home State of Florida. Dr. Kennedy's Coral Ridge Presbyterian Church is located in Fort Lauderdale, Florida, near my district and that of the district of our colleague on the Committee on Ways and Means, Clay Shaw, and has a Membership of nearly 10,000 Members. Moreover, his Coral Ridge ministries is a vibrant television, radio, and print outreach ministry that reaches millions both here and abroad.

I know the Chairman has an abundance of people who all wanted to testify here, so I am pleased that Dr. Kennedy was able to join the panel. We need to look at this issue clearly, and again I applaud and welcome Dr. Kennedy to our hearing today.

Chairman HOUGHTON. Thanks very much, Mr. Foley.

Well, ladies and gentlemen, I think we should proceed. Mr. May, will you take the first cut at this?

STATEMENT OF COLBY M. MAY, DIRECTOR, AMERICAN CENTER FOR LAW & JUSTICE, ALEXANDRIA, VIRGINIA

Mr. MAY. Thank you, Mr. Chairman. How is this mike working? Is it okay?

Mr. Chairman and Members of the Subcommittee, thank you for extending to me the invitation to be here today. I am and was Legal Counsel for the Church at Pierce Creek in Binghamton, New York, which in 1992 had its exemption revoked for a single violation of this portion of the Tax Code.

Until 1954, all houses of worship were afforded the full and clear opportunity to act and speak as their conscience and leadership may direct, even in the political area. Today, houses of worship do not, however, enjoy that freedom because of the Johnson amendment which was inserted into the Tax Code in 1954 without a de-

bate or a hearing. Then-Senator Johnson was angry because two Texas charitable organizations had taken a position contrary to him during his then-current primary bid.

The law under the Johnson amendment now provides that churches and exempt organizations may engage in an insubstantial amount of lobbying activities, as you have heard from the IRS panel, but they are banned from doing anything that may be regarded as participating or intervening in a political campaign. Now the law is so intrusive and incomprehensible that the IRS has actually taken the position—and I was curious to note that they did not mention this during their testimony, but they have taken the position that there is coded language that may be used which would violate the political prohibition.

In its publication, Election Year Issues, the IRS explains that the concerns that an exempt organization may support or oppose a particular candidate without specifically naming the candidate by using code words to substitute for the candidate's name and its message—code words such as conservative or liberal, pro-life or pro-choice or anti-choice, or even Republican or Democrat.

Now, making matters worse, the IRS doesn't know whether the intent behind the message matters. Did the organization intend to actually endorse or not?

Adding further inscrutability, the IRS has also said the same message can be both permissible for an exempt organization to make if it is an educational or religious message, but it may nevertheless violate the political intervention ban.

Now, what a Catch-22. Code language violates the ban, but maybe it doesn't. Intent matters, but it doesn't. And the same message is okay, but it isn't.

Now, those opposing the bill have insisted that replacing the absolute ban on political intervention with the no substantial part test currently used in the lobbying context would create a loophole in the Nation's campaign finance system. Such an assertion, however, is unfounded. Under the new bipartisan Campaign Finance Reform Act of 2002 which amends the Nation's Federal election campaign laws, all corporations, and including tax-exempt nonprofit corporations, are barred from making hard money contributions or any direct or indirect disbursements for electioneering communications.

In the Act, the phrase "electioneering communications" means any communication by means of any broadcast, cable or satellite communication, newspaper or magazine, outdoor advertising facility, mass mailing, telephone banks to the general public or any other form of general public policy advertising. These restrictions apply right now and will continue to apply regardless of any changes that you may make to the Tax Code with passage of either of the bills that are before you today.

Since the beginning of the Tax Code, churches and houses of worship have been exempt from income taxes because they provide services and promote the general welfare, saving those costs to the government. That fundamental relationship will not change if you abandon the absolute political intervention ban and replace it with a no substantial part test as you currently have in the lobbying area.

The passage of H.R. 2357, for example, the House of Worship Political Free Speech Act, will not require houses of worship to affirmatively do anything or fundamentally change their functions. Houses of worship will continue to serve the basic needs of their congregations and their local communities, preserving the historic balance between church and State and fulfilling the purpose for tax exemption, even if they incidentally or occasionally speak out concerning candidates and issues.

Now, you have heard also from the IRS panel that they believe it is constitutional because there isn't a great disparity in its application between groups of exempt organizations.

I would just note that in the 1983 Supreme Court decision of Reagan versus Taxation With Representation, the courts upheld Congress's constitutional powers to treat different speakers differently in the context of the Tax Code. In the Reagan case, the lobbying limits for exempt organizations are upheld against a constitutional challenge as to the lobbying limits, even though there were different standards for different types of exempt organizations.

Now, I conclude my introductory remarks by simply noting that, whatever this standard is, it certainly isn't applied in a very consistent or even-handed manner. I hold up for the Subcommittee's consideration a recent front page from the Montgomery Advertiser in Montgomery, Alabama, noting that a Democratic senatorial candidate has put on his staff a clergy coordinator for the sole and exclusive purpose to make sure he gets around to all the churches in the area to receive the appropriate endorsements.

Now, Members of the Subcommittee, I think that is okay. I frankly believe it should be appropriate for churches to be able to take a stand. I believe when Reverend Walter Fauntroy speaks, he will also speak to that issue from his life's experience in this matter.

I end with the irony that if this were 1953, we would not need this hearing, because churches were able to do this without concern or fear that the Federal Government was going to come and revoke their tax exemption. Can you imagine if you are the pastor of a church where your whole mission is to serve the needy, feed the hungry, and take care of the widows and children? Well, if you think there is any ambiguity and confusion in this area, I don't believe for 1 minute you would speak out on an issue that you may otherwise believe is important for your congregation to hear about. Why? Because your real primary mission will be shut down by the IRS, because they do not know exactly what it means to violate the absolute ban on political speech. They will take you out of business. Take it from me. I represented the Church at Pierce Creek, and they lost their tax exemption.

If there are any questions, I would be glad to talk about them later.

Chairman HOUGHTON. Thanks very much, Mr. May.

[The prepared statement of Mr. May follows:]

Statement of Colby M. May, Director, American Center for Law & Justice, Alexandria, Virginia

Mr. Chairman and members of the Subcommittee on Oversight, thank you for extending the invitation to appear before the Subcommittee to testify in support of

H.R. 2357, the "Houses of Worship Political Speech Protection Act," a measure designed to advance free speech and to curb the unbridled discretion of the IRS.

I respectfully request that the entirety of my prepared statement be made a part of the record of today's hearing. The following is an overview of my testimony:

I. OVERVIEW

First, replacing the absolute ban on political intervention with the "no substantial part of the activities" test currently used in the lobbying context would not create a loophole in the nation's campaign finance system.

Some critics contend that HR 2357 would open a loophole in the nation's campaign finance system. Such criticism, however, is unfounded since all corporations, including tax-exempt nonprofit corporations, are barred from making "hard money" contributions, or any direct or indirect disbursements for "electioneering communications" under the new *Bipartisan Campaign Finance Reform Act of 2002*, which amends the *Federal Election Campaign Act*, 2 U.S.C. § 431, *et seq*. The phrase "electioneering communications" boils down to a communication by "means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." *BCFRA* §§ 101(a); 102(b); *FECA* §§ 431(22); 441b(b)(2). These restrictions apply right now, and will continue to apply regardless of any changes to the tax code which may be made by the passage of the "Houses of Worship Political Speech Protection Act."

Second, because there is no clarity on what is a violation of the political intervention ban, having an absolute, one-strike-your-out ban is inherently unjust and unworkable.

The IRS has taken the position that "coded language" violates the political prohibition. *TAM 9117001*. In the publication "Election Year Issues," it explains that "[t]he concern is that [an exempt] organization may support or oppose a particular candidate without specifically naming the candidate by using code words to substitute for the candidates name in its message, such as "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," or "Democrat," etc. . . ." *Exempt Organizations Continuing Education Technical Instruction Program for FY 2002* at 345 ("2002 CETIP"). In a footnote following the text, the IRS notes that it is the "intent" of the party making the communication which will determine whether these "coded words" are to be treated as violations of the political campaign intervention ban:

> "[a] finding of political campaign intervention from the use of coded words is consistent with the word "candidate"—the words are not tantamount to advocating support for or opposition to an entire political party, such as "Republican," or a vague and unidentifiable group of candidates, such as "conservative" because the sender of the message does not intend the recipient to interpret them that way. Coded words, in this context, are used with the intent of conjuring favorable or unfavorable images—they have pejorative or commendatory connotations. [So,] the voter in Vermont, hearing an exhortation regarding "liberal" candidates, may not know who fits that label in Kansas, but presumably he knows who stands for what in Vermont, which is why the coded word is used in the first place." *id.* at 345, n. 10 (underlining added).

As if just dealing with the uncertainty of losing one's tax exemption because "code words" were used wasn't bad enough, the problem is compounded because the IRS here says "intent" is determinative. That position, however, directly contradicts previous statements by the IRS that "intent" or "purpose" is irrelevant in determining whether the political campaign ban has been violated. In its 1993 version of "Election Year Issues" the IRS stated "the motivation of an organization is irrelevant when determining whether the political campaign prohibition has been violated." 1993 CETIP at 414–15. Then, as if this inconsistency over "intent" was not enough confusion on the matter, in its 2002 version the IRS stated:

> "Therefore, the resolution of the 'bad motive' issue depends upon the way the activity is conducted (the facts and circumstances) [—intent doesn't matter—] and upon any [sic] inquiry into the state of mind of the organization [—intent matters]."

2002 CETIP at 351. The only thing that is clear is that the IRS wants the unrestricted discretion to decide it either way. Because a single violation of the political

intervention ban requires revocation of exemption, due process and fairness require replacement of the absolute ban with the "no substantial part" standard.[1]

Third, since the beginning of the tax code churches and houses of worship have been exempt from income taxes because they provide services and promote the general welfare, saving the government the costs of having to do so. That fundamental relationship will not be changed by abandoning the absolute political intervention ban and replacing it with the "no substantial part" test.

Following passage of the Sixteenth Amendment allowing the federal government to directly tax personal income, churches and houses of worship have been exempt from income taxes. *Tariff Act of 1913.* Congress has always recognized that they are tax-exempt because "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." The occasional or incidental, intentional or unintentional, participation by a church, synagogue or mosque in activities that may be regarded as political campaign involvement will not change this relationship. Passage of HR 2357 will not require houses of worship to affirmatively do anything, or fundamentally change their functions. Houses of worship will continue to serve the basic needs of their congregations and their local communities, preserving the historic balance between church and state, and fulfilling the purpose for tax-exemption.

Fourth, given the vague and contradictory positions of the IRS that the same activity can be both permissible for an exempt organization and still violate the political intervention ban, modification of the absolute ban is necessary.

The "Houses of Worship Political Speech Protection Act" will both alleviate and obviate the confusion and fear surrounding the requirements for compliance with the political intervention ban. In "Election Year Issues," the tome relied upon by most practitioners in this area as an indicator of the IRS's approach to political campaign activities by exempt organizations, the IRS has taken the view that educational or religious activities which otherwise qualify as exempt activities can nevertheless constitute prohibited political activity:

> "The most common question that arises in determining whether an IRC 501(c)(3) organization has violated the political campaign intervention prohibition is whether the activities constitute political intervention or whether they are educational [or religious], purposes for which an IRC 501(c)(3) organization may be formed . . . Sometimes, however, the answer is that the activity is both—it is educational [or religious], but it also constitutes intervention in a political campaign."

2002 CETIP at 349. In a 1989 ruling the Service stated that "[e]ducating the public is not inherently inconsistent with the activity of impermissibly intervening in a political campaign." *TAM 8936002.* Then in a 1999 *Tax Advice Memorandum*, *199907021*, the IRS went on to say "[e]ven if the organization's advocacy is educational, the organization must still meet all other requirements for exemption. . .". In short, the IRS says you can do it, but you can't. The "Houses of Worship Political Speech Protection Act" will alleviate the deep chill caused by such IRS double speak since whatever the IRS standard is, a one time step over the line would not result in revocation.

Fifth, modifying the political intervention ban applicable to houses of worship to conform with the "no substantial part" test currently applicable for lobbying activities passes constitutional muster.

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[1] The courts have repeatedly held that when a regulatory agency has conflicting interpretations or applications of its rules and regulations, due process is violated because no clear or fair notice of what is required for compliance has been given. *Satellite Broadcasting Co., Inc. v. FCC*, 262 U.S. App. D.C. 274, 824 F.2d 1 (D.C. Cir. 1987); *General Elec. Co. v. EPA*, 311 U.S. App. D.C. 360, 53 F.3d 1324, 1327 (D.C. Cir. 1995); *United States v. Chrysler Corp.*, 332 U.S. App. D.C. 444, 158 F.3d 1350, 1354–57 (D.C. Cir. 1998) (holding that agency failed to provide fair notice of specific requirements of compliance and therefore could not move to enforce its regulations); *Rollins Envtl. Svcs. (NJ) Inc. v. EPA*, 290 U.S. App. D.C. 331, 937 F.2d 649, 653 (D.C. Cir. 1991) (rescinding fine assessed by EPA because regulation was ambiguous); *Gates & Fox Co., Inc. v. OSHRC*, 252 U.S. App. D.C. 332, 790 F.2d 154, 156 (D.C. Cir. 1986) (holding that agency failure to give fair notice of its interpretation of its regulations precluded enforcement); *Trinity Broadcasting of Florida, Inc., et al. v. FCC*, 211 F3d 618, 2000 U.S. App. LEXIS 8918 (D.C. Cir. 2000) (same).

In analyzing the constitutionality of a Congressional enactment in the Establishment Clause area, the courts continue to use the three part test articulated in *Lemon v. Kurtzman,* 403 U.S. 602 (1971). See *Lamb's Chapel v. Center Moriches Sch. Dist.,* 508 U.S. 384 (1993) (noting that despite heavy criticism of the Lemon test, Lemon has not been overruled). *See also Jager v. Douglas County Sch. Dist., 862 F.2d 824, 828–29* (11th Cir.), *cert. denied*, 490 U.S. 1090 (1989) (discussing appropriateness of using Lemon test).

Under the Lemon test, "first, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion. . .; finally, the statute must not foster 'an excessive government entanglement with religion.'" *Lemon,* 403 U.S. at 612–13 (citations omitted). Allowing Congress to determine the application and reach of the tax code fulfills the "secular purpose" element of the *Lemon* test since only Congress has power under Article I of the constitution to make and levy taxes. As upheld in *Regan v. Taxation With Representation*, 461 U.S. 540, 544 (1983), Congress may constitutionally permit certain speakers to be treated differently than others in the context of the tax statute. In *Reagan* the lobbying limits for exempt organizations were upheld against a constitutional challenge even though different tax-exempt organizations were not subject to the same limitations. As stated in *Rosenberger v. Rector and Visitors of Univ. Of Va.,* 515 U.S. 819, 825 (1995):

> *Regan* relied on a distinction based on preferential treatment of certain speakers—veterans organizations—and not a distinction based on the content or messages of those groups.

Accordingly, allowing Congress to determine the application of the tax code does not violate the secular purpose of the legislation.

Under the second prong of the Lemon test, legislation will only violate the Establishment Clause if its primary effect is to advance or inhibit religion. The effects prong of the Lemon test "'asks whether, irrespective of [the] government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval'" of religion. *Wallace v. Jaffree,* 472 U.S. 38, 56 n.42 (quoting *Lynch v. Donnelly,* 465 U.S. at 690 (O'Connor, J., concurring)). Modifying the absolute ban on political intervention to conform to the "insubstantiality" test now used in the lobbying test conveys no such endorsement.

Moreover, HR–2357 avoids the excessive entanglement of the government with religious institutions, in conformance with the third *Lemon* requirement "The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact." *Lee v. Weisman*, 505 U.S. 577, 598 (quoting *Schempp,* 374 U.S. at 308 (Goldberg, J., concurring)). In addition, the U.S. Supreme Court has previously upheld the tax exemption for all religious organizations as *required* in order to avoid the excessive entanglement of the government in to the affairs of the church. *Walz v. Tax Commission*, 397 U.S. 664, 671 (1970).[2] It is for all these reasons that "The Houses of Worship Political Speech Protection Act" is constitutional, and a legally appropriate act for Members of Congress to support.

II. CURRENT LAW

The phrase "no substantial part of the activities" is found in the current version of the *Internal Revenue Code*, section 501(c)(3), and it relates to the limit of how much "lobbying," or legislative activity a church or exempt organization may conduct. The *Houses of Worship Political Speech Protection Act* (HR–2357) uses that same phrase to loosen the **absolute** ban now applying to any "political activity" (speech or association) by a house of worship.[3]

As a rough rule-of-thumb, the phrase "no substantial part of the activities" has generally come to mean no more than five percent (5%) of an organization's overall expenditures of time, money and personnel. The five percent (5%) limit also follows the objective expenditure allowances (but a much lower rate) permitted for tax-ex-

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[2] The concern over entanglement is also why churches and houses of worship, pursuant to IRC 6033(a)(2), need not file annual informational tax returns (IRS Form 990), while all other exempt organizations must.

[3] Section 501(c)(3) of the Internal Revenue Code has been interpreted by courts to prevent even a *single* activity which might be regarded as Aparticipating in, or intervening in@ a political campaign on behalf of or in opposition to a candidate for public office. *Association of the Bar of the City of New York v.* Commissioner, 858 F.2d 876 (2nd Cir, 1988); *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15 (D.D.C. 1999); *aff'd*, 211 F.3d 1137 (D.C. Cir. 2000).

empt organizations, but **not** churches or houses of worship, in *IRC 501(h)*, the so-called safe-harbor for lobbying activities.

The "Houses of Worship Political Speech Protection Act" recognizes that no house of worship should be penalized for an occasional or inadvertent statement or action that may be regarded as "political intervention."

III. THE NEED FOR THE *HOUSES OF WORSHIP POLITICAL SPEECH PROTECTION ACT*

Congressional hearings over the last few years have served to highlight the abuses of the IRS in the name of tax code enforcement. In addition, the IRS has conducted tax or compliance audits of "the Heritage Foundation, Citizens for a Sound Economy, the Christian Coalition, The National Rifle Association, Freedom Alliance, the Western Journalism Center, the National Center for Public Policy, and National Review." *The Washington Times* (January 8, 1998 at A.7). These and other conservative organizations have been audited as well, while their counterparts in the liberal establishment have gone unscathed.

This type of selective federal investigation and enforcement highlights the need for regulatory reform and deregulation. The point is that no church or house of worship should be penalized for simply speaking out on the issues, candidates, or public leaders, occasionally or inadvertently engaging in activity that may be regarded as political, or accurately providing the voting records and issue stances of elected officials and candidates. Federal agencies such as the IRS cannot become so highly politicized that they become federal arbiters of political thought and permissible speech. The current federal tax code allows the IRS the unbridled leeway and discretion to conduct such politically motivated audits under the guise of regulatory enforcement, and it is using this unbridled discretion in a partisan and selective fashion.

To reign in the IRS's unbridled discretion and bring balance and fairness back to the system the time has come to change the "*Johnson Amendment.*" This amendment was highly partisan and political and was specifically designed in 1954 by then Senator Lyndon Johnson to "deny tax-exempt status to not only those people who influence legislation but also those who intervene in any political campaign on behalf of any candidate for any political office."[4] Senator Johnson was angry that two non-profit Texas groups had supported his primary opponent, so he rammed his amendment through the Congress as a floor amendment without any benefit of a congressional hearing or debate.[5]

The rule has become so intrusive, and so significant a threat to the First Amendment rights of all churches, synagogues, mosques and houses of worship, that total removal of tax exemption can be imposed if a candidate for office addressing a religious body is favorably introduced, or is supported from the pulpit. Under the law as written, a one hour political strategy meeting held on the premises of a church or charity, without paying a market rental, could trigger the complete destruction of the institution by the IRS. A priest who speaks on the moral issues of abortion or capital punishment during a campaign season runs the risk of triggering an IRS investigation or violating the "coded words" restriction. As written, the rule of '501(c)(3) is akin to a highway in which traffic to 65 mph is permissible, but if a motorist goes even 1 mph over the speed limit, the police can arrest the motorist who would then be subject to the death penalty; and absurd situation. This is not only manifestly unfair, but an intolerable infringement by the IRS of the fundamental rights of free speech, and the free exercise of religion. It also intrusively entangles the government in religious matters.

The solution is simple. Under current tax law, tax exempt organizations may carry on lobbying if their efforts constitute "no substantial" amount of their activities. IRC 501(c)(3). While the term "substantial" is not defined for those entities not making the safe-harbor election permitted under IRC 501(h), such as churches,[6] for over 40 years courts have generally determined that if no more than five percent (5%) of the time and effort of the organization is devoted to lobbying, the lobbying

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[4] 100 Cong. Rec. 9604 (1954).

[5] *See*, Hopkins, *The Law of Tax-Exempt Organizations* at 327 (6th ed. 1992)(herein "Hopkins").

[6] Churches are not permitted to make the election for lobbying activities pursuant to IRC '501(h)(5). This exclusion means that the lobbying activities of churches is governed by the" substantial part test," which is a facts and circumstances evaluation. IRS Reg. '1(a)(4); *Kentucky Bar Foundation, Inc. v. Comm'r*, 78 T.C. 971 (1982)(the issue of "[]substantial[ity]" is a question of facts and circumstances). Moreover, for the same reason that churches need not file an annual tax return (IRC '6033(a)(2))—to avoid government entanglement—so too churches may not make the IRC '501(h) election.

was not "substantial." See, *Seasongood v. Commissioner*, 227 F.2d 907, 912 (6th Cir. 1955); *World Family Corp. v. Commissioner*, 81 T.C. 958 (1983)(exempt organization's lobbying activities which were less than ten percent (10%)—but more than 5%—of its total efforts was "insubstantial." Indeed, Marcus Owen, the former head of Exempt Organizations for the IRS, has been quoted as saying that "the law in this area needs to be clarified since anything from five percent to *fifteen percent* of total expenditures has been permitted for [l]egislative activity." *Washington Times*, December 2, 1997, p. A5. From this line of cases, and comments, it appears that as long as an organization expends only five percent (5%) or so of its overall expenditures on legislative activity such activity will be regarded as "insubstantial" and not result in a loss of exemption. Adopting a similar standard for political activity, and amending IRC '501(c)(3) as proposed in the *House of Worship Political Speech Protection Act*, does precisely that.

IV. TAX EXEMPTION IS LINKED TO SOCIAL POLICY, WHICH LEADS TO THE INEVITABLE RESULT OF REVOCATION OF TAX EXEMPTION FOR RELIGIOUS INSTITUTIONS AND RELIGIOUS ORGANIZATIONS

Ever increasing inroads have been made into the tax exempt status of religious organizations and churches. Both the IRS and atheist groups have been seeking the revocation of tax exempt status for religious institutions for some time. See, *e.g.*, *Walz v. Tax Commission*, 397 U.S. 664 (1969). Religious institutional doctrine has historically been at odds with social mores which are in vogue. To condition tax exemption on a religious institution's willingness to conform to fashionable ideals (*e.g.*, ordination of homosexuals, same sex marriages) unavoidably leads to the demise of tax exemption for houses of worship. To avoid this egregious result, it is necessary to modify the tax code, and allow a wider berth for houses of worship to generally engage in political speech.

The Threat to Free Speech and Free Exercise is Real Since the IRS Sanctions for Using "Coded Language" and is Contradictory on Whether "Intent" Is Relevant

The Service has taken the position that "coded language" violates the political prohibition. *2002 CETIP* at 344–45. It explains that "[t]he concern is that [an exempt] organization may support or oppose a particular candidate without specifically naming the candidate by using code words to substitute for the candidates name in its message, such as "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," or "Democrat," etc. . . ." *2002 CETIP* at 345. Then in a footnote, it contradicts its admonition not to use these very "coded words" and states that:

> "[a] finding of political campaign intervention from the use of coded words is consistent with the word "candidate"—the words are not tantamount to advocating support for or opposition to an entire political party, such as "Republican," or a vague and unidentifiable group of candidates, such as "conservative" because the sender of the message does not intend the recipient to interpret them that way. Coded words, in this context, are used with the intent of conjuring favorable or unfavorable images—they have pejorative or commendatory connotations. [So,] the voter in Vermont, hearing an exhortation regarding "liberal" candidates, may not know who fits that label in Kansas, but presumably he knows who stands for what in Vermont, which is why the coded word is used in the first place." *id.* at 345, n. 10 (underlining added).

The confusion and fear surrounding the requirements for compliance with the political intervention ban in section 501(c)(3) are quite real. One need look no further than the guidance pronouncements of the IRS and others in this area. For example, in "Election Year Issues,"[7] the tome relied upon by most practitioners in this area as an indicator of the Service's approach to political campaign activities by exempt organizations, the Service has taken the view that educational or religious activities which otherwise qualify as exempt activities can nevertheless constitute prohibited political activity:

> "The most common question that arises in determining whether an IRC 501(c)(3) organization has violated the political campaign intervention prohibition is whether the activities constitute political intervention or whether they are educational [or religious], purposes for which an IRC 501(c)(3) organization may be formed . . . Sometimes, however, the answer is that the activity is

[7] Judith Kindell and John F. Reilly, "Election Year Issues," Exempt Organizations Continuing Education Technical Instruction Program, www.irs.gov ("2002 CETIP Text").

> both—it is educational [or religious], but it also constitutes intervention in a political campaign."

2002 CETIP at 349. In a 1989 ruling the Service stated that "[e]ducating the public is not inherently inconsistent with the activity of impermissibly intervening in a political campaign." *TAM 8936002.* Then in a 1999 *Tax Advice Memorandum, 199907021,* the IRS went on to say "[e]ven if the organization's advocacy is educational, the organization must still meet all other requirements for exemption. . .". So, the IRS says you can do it, but you can't.

There is also considerable uncertainty over whether one's "intent" or "purpose" in making the communication matters. In its 1993 version of "Election Year Issues" the IRS stated "the motivation of an organization is irrelevant when determining whether the political campaign prohibition has been violated." 1993 CETIP at 414–15. However, in its 2002 version the IRS, discussing the debate its 1993 statement generated, stated:

> "Therefore, the resolution of the 'bad motive' issue depends upon the way the activity is conducted (the facts and circumstances) and upon any [sic] inquiry into the state of mind of the organization."

2002 CETIP at 351. It's clear, the IRS cares about motive or purpose, but then again it doesn't.[8]

V. THE ORIGINAL PURPOSE OF IRC 501(C)(3) WAS TO PREVENT POLITICAL ACTIVISM OF NON–PROFIT GROUPS IN TEXAS DURING THE 1954 SENATORIAL CAMPAIGN OF L.B.J.

Tax exemption under IRC 501(c)(3) requires four basic criteria.[9] The chief prohibition amongst these is that nonprofit organizations, including houses of worship, must "not participate in, or intervene in" political campaigns. IRC '501(c)(3). As noted above, this provision was added to the federal tax law in 1954, without benefit of congressional hearings, in the form of a floor amendment in the Senate, 100 Cong. Rec.9604 (1954). During consideration of the legislation that was to become the Revenue Act of 1954, Senator Lyndon B. Johnson of Texas forced the amendment out of his anger that local two Texas non-profit groups had supported his primary opponent. Hopkins, "The Law of Tax-Exempt Organizations," 327 (6th ed. 1992) (hereinafter "Hopkins").

The tax exemptions contained in IRC 501(c)(3) originated as a part of the Tariff Act of 1894. The provision stated that "nothing herein contained shall apply to. . . corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes" (*ie.*, houses of worship) After ratification of the Sixteenth Amendment, Congress enacted the Tariff Act of 1913, exempting from the federal income tax "any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inure to the benefit of any private shareholder or individual."

In the Revenue Act of 1918, the enumeration of tax-exempt organizations was expanded to include those organized "for the prevention of cruelty to children or animals." The Revenue Act of 1921 expanded the statute to exempt "any community chest, fund, or foundation" and added "literary" groups to the list of exempt entities. The Revenue Act of 1924, 1926, 1928, and 1932 did not provide for any changes in the law of tax-exempt organizations.

The Revenue Act of 1934 carried forward the exemption requirements as stated in the prior revenue measures and added the rule that "no substantial part" of the activities of an exempt organization can involve the carrying on of "propaganda" or "attempting to influence legislation." The Revenue Acts of 1936 and 1938 brought forward these same rules, as did the Internal Revenue Code of 1939. The current

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[8] The courts have repeatedly held that when a regulatory agency has conflicting interpretations or applications of its rules and regulations, due process is violated because no clear or fair notice of what is required for compliance has been given. *Satellite Broadcasting Co., Inc. v. FCC*, 262 U.S. App. D.C. 274, 824 F.2d 1 (D.C. Cir. 1987); *General Elec. Co. v. EPA*, 311 U.S. App. D.C. 360, 53 F.3d 1324, 1327 (D.C. Cir. 1995); *United States v. Chrysler Corp.*, 332 U.S. App. D.C. 444, 158 F.3d 1350, 1354–57 (D.C. Cir. 1998) (holding that agency failed to provide fair notice of specific requirements of compliance and therefore could not move to enforce its regulations); *Rollins Envtl. Svcs. (NJ) Inc. v. EPA*, 290 U.S. App. D.C. 331, 937 F.2d 649, 653 (D.C. Cir. 1991) (rescinding fine assessed by EPA because regulation was ambiguous); *Gates & Fox Co., Inc. v. OSHRC*, 252 U.S. App. D.C. 332, 790 F.2d 154, 156 (D.C. Cir. 1986) (holding that agency failure to give fair notice of its interpretation of its regulations precluded enforcement); *Trinity Broadcasting of Florida, Inc., et al. v. FCC*, 211 F3d 618, 2000 U.S. App. LEXIS 8918 (D.C. Cir. 2000) (same).

[9] That is, organizations described in IRC 170(c)(2)(B), 501(c)(3), 2055(a)(2), 2106(a)(2)(A)(ii) & (iii), and 2522(a)(2) and (b)(2).

IRC '501(c)(3) language follows the "*Johnson Amendment*" and came into being upon enactment of the Internal Revenue Code in 1954. 68A Stat. 163 (ch. 736).

VI. THE SUBSEQUENT INTERPRETATIONS OF IRC 501(C)(3) BY THE IRS AND COURTS MAKES IT CLEAR THAT THIS PORTION OF THE TAX CODE IS MEANT TO REPRESS PARTICIPATION IN THE POLITICAL PROCESS

The requirement that a church or charitable organization not engage in political campaign activities has been expanded to prohibit even remotely partisan involvement. In *Christian Echoes National Ministry Inc. v U.S.*, 470 F2d 849 (10th Cir 197. cert. den. 414 U.S. 864 (1973), a federal appeals court denied tax exempt status to a religious organization for backing a conservative political agenda. The organization, by means of publications and broadcasts, expressed its opposition to candidates and incumbents considered too liberal and endorsed conservative officeholders. The Tenth Circuit summarized the unforgivable offense: "These attempts to elect or defeat certain political leaders reflected. . . [the organization's] objective to change the composition of the federal government." *Christian Echoes*, 470 F2d at 856. *See also Monsky v. Comm.*, 36 T.C.M. 1046 (1977); *Giordano v Comm.*, 36 T.C.M. 430 (1977). This flat ban on religious involvement in politics is not limited to active campaigning, however. In 1978 the IRS issued a ruling that confined "voter education" activities to those that are nonpartisan in nature. Rev. Rul. 78–248, 1978—1 C.B. 154.[10]

In a later ruling the IRS specified the following factors as demonstrating the absence of prohibited campaign activity by a church or nonprofit organization:

1. the voting records of all incumbents will be presented;
2. candidates for reelection will not be identified;
3. no comment will be made on an individual's overall qualifications for public office;
4. no statements expressly or impliedly endorsing or rejecting any incumbent as a candidate for public office will be made;
5. no comparison of incumbents with other candidates will be made;
6. the organization will point out the inherent limitations of judging the qualifications of an incumbent on the basis of certain selected votes, by stating the need to consider such unrecorded matters as performance on subcommittees and constituent service;
7. the organization will not widely distribute its compilation of incumbents' voting records;
8. the publication will be distributed to the organization's normal readership only; and
9. no attempt will be made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign.

Rev. Rul. 80–282, 1980–2 C.B. 178. The IRS' application of IRC 501(c)(3) then, is to limit any preferential expression for a political candidate. There is no compelling governmental reason to so limit the First Amendment activities of churches and houses of worship. This restriction should thus be modified to track the "insubstantial" standard regarding lobbying, and apply that standard to political activity as well.

VII. THE IRS APPLICATION OF THE LIMITATION ON CHURCHES PARTICIPATING IN THE POLITICAL PROCESS IS EXPANDING, INTRUSIVE AND SELECTIVE

Under the First Amendment, the government lacks the license to make determinations about whether a "creed" or "form of worship" is sufficiently "recognized," and whether the church has an adequate organizational structure (*i.e.*, properly ordained ministers, a literature "of its own," etc.) to prevent IRS intrusion and inspection. If "it is not within the judicial ken to question the centrality of particular beliefs or practices of faith" and the "courts must not presume to determine the place

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[10] This ruling was a reversal of a prior ruling wherein the IRS stated that the prohibitions against involvement in political campaigns "do not refer only to participation or intervention with a partisan motive, but to *any* participation or intervention which affects voter acceptance or rejection of a candidate." Consequently, the IRS determined that "the organization's solicitation and publication of candidates' views on topics of concerns to the organization can reasonably be expected to influence voters to accept or reject candidates." Rev Rul.78—I 60. 1978—1 C.B. at 154 (emphasis added). This flat ban on all First Amendment activity relating to politics engendered a public outcry and a rare reversal by the IRS. Hopkins at 332.

of a particular belief in a religion or the plausibility of a religious claim," *Employment Division v. Smith*, 494 U.S. 872, 878 (1990) (citations omitted), it stands to reason that the other branches of the federal government are constitutionally unfit to make those judgments as well. Many independent small churches do not meet regularly, do not have an independent existence, do not have ordained ministers, do not have a formal doctrinal code, and yet nonetheless are churches warranting tax exemption.[11]

Similarly, Treasury regulations describe a church as an organization the duties of which include the "ministration of sacerdotal functions and the conduct of religious worship." Reg. I.51 I–2(a)(3)(ii). This definition begs the question, because it requires Treasury officials to exercise their own judgment in determining what is a priestly function, and what is sufficient "religious worship" to qualify for "church" status.

Governmental judgments of this kind are not only unworkable, they are dangerous and unconstitutional. The Supreme court has reiterated the oft repeated principle that "religious freedom encompasses the power of religious bodies to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine. Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 722 (1976) (emphasis added); *Kedroffy St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). In *Corp. of Presiding Bishops v. Amos*, 483 U.S. 327, 341 (1987), Justice Brennan noted: "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: "*Select their own leaders, define their own doctrines, and run their own institutions*." (citations and internal quotation marks omitted, emphasis added). Given the weight of constitutional precedent in this area, it defies rationality for the government to empower its tax collecting arm with the ability to invade the religious autonomy of churches while other branches of the government are constitutionally forbidden from doing so.

This is of even greater concern because conservative or orthodox and liberal or reform church organizations are treated quite differently by the IRS. For example, a conservative evangelical church in upstate New York, the Church at Pierce Creek, had its tax exemption revoked in 1995 for impermissible "political" activity. The offending activity involved its published moral and religious stand in the newspaper calling abortions on demand, homosexuality, and premarital sex "sins." "Christians" were admonished to oppose such "sins" and not vote for then Governor Clinton.[12] Historically, currently, and at the time the Church at Pierce Creek was having its tax exempt status revoked, numerous churches engaged in similar or more egregious violations, as follows:

Historical Context

1. Since the campaign of Thomas Jefferson, religious and political controversy has been prominent in approximately one of every three campaigns for the presidency. B. Dulce & E. Richter, *Religion and the Presidency* v, 1–11 (1962). *See also* 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").

2. "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." Note, "Religion and Political Campaigns: a Proposal to Revise Section 501(c)(3) of the Internal Revenue Code," 49 *Fordham L. Rev.* at 537 (1981) (footnotes omitted).

Political Activity by Churches Where No Sanctions Have Been Levied, But for Which Other Churches Have Had Their Tax Exemptions Revoked

3. "[T]he Reverend Jesse Jackson . . . campaigned from pulpits of black churches across the nation in his pursuit of the Democratic nomination" for President in 1984. Reichley, *Religion in American Public Life* (The Brookings Institution, Wash., D.C. 1985). *See also* Rosenthal, "Prelates and Politics: Current Views on the Prohibition Against Campaign Activity," Tax Notes 1122 (1991); and Chisolm, "Politics and Charity: A Proposal for Peaceful Coexistence." 58 Geo. Wash. L. Rev. (No. 2) 308 (1990); Tesdahl, "Intervention in Political Campaigns by Religious Organizations

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[11] Indeed, by the standards the IRS applies today, Jesus and the Apostles would not qualify for "church" status. *See*, Internal Revenue Service Manual '321.3 (outlining the 14 point test used by the IRS to determine "church" status).

[12] *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15 (D.D.C. 1999); *aff'd*, 211 F.3d 1137 (D.C. Cir. 2000).

After the Pickle Hearings—A Proposal for the 1990s," 4 Exempt Org. Tax Rev. (No. 9) 1165 (1991).

4. The IRS Chief Counsel's office "reluctantly" concluded in 1989 that an organization "probably" did not intervene in a political campaign on behalf of or in opposition to a candidate for public office, even though the organization ran a political advertising program that (1) was, in the words of the IRS, "mostly broadcast during a two week period around the Reagan/Mondale foreign and defense policy debate on October 21, 1984," (2) contained statements that "could be viewed as demonstrating a preference for one of the political candidates" [Mondale], (3) "could be viewed" as having content such that "individuals listening to the ads would generally understand them to support or oppose a candidate in an election campaign," (4) involved statements that were released so close to the November vote as to be "troublesome." IRS Technical Advice Memorandum 8936002. Even though these campaign broadcasts were in clear violation of the IRS' voter education rules, *see e.g.,* Rev. Rul. 86–95, 1986–1 C.B. 332, the IRS nonetheless took no action against this charitable organization for this campaign activity.

5. 9/25/94 [13]—then-Governor of New York Mario Cuomo, President Clinton, and New York Mayor Rudolf Gulliani all campaigned on behalf of Governor Cuomo from the pulpit of the Bethel A.M.E. Church in Harlem, New York.

6. 10/23/94—Senator Charles Robb and Governor Wilder campaigned on behalf of Senator Robb from the pulpit of the Trinity Baptist Church in Richmond, Virginia.

7. 10/11/94—California Democratic gubernatorial candidate Kathleen Brown campaigned in five different Los Angeles churches: Bethel A.M.E. Church, the Mount Tabor Missionary Baptist Church, the First A.M.E. Church, and the West Los Angeles Church of God in Christ.

8. 11/21/92—Vice President Al Gore campaigned from the pulpit of three different Savannah, Georgia churches on behalf of Democratic run-off candidate Wyche Fowler.

9. 4/5/92—Presidential candidate Bill Clinton campaigned from the pulpit of the Bridge Street A.M.E. church in Harlem, New York.

10. 1/27/92—Democratic presidential candidate Tom Harkin campaigned from the pulpit of the Heritage United Church of Christ, located in Baltimore, Maryland.

11. 8/14/90—District of Columbia Mayor Marion Barry campaigned from the pulpit of the Israel Baptist Church.

12. 4/30/90—New York Democratic congressional candidate Charles Shumer campaigned at St. John's Church in New York, speaking with 30 black ministers.

13. 4/98—Democratic congressional candidate contenders Ohio State Senator Jeffrey D. Johnson and Cuyahoga County Prosecutor Stephanie Tubbs Jones campaigned at the Starlight Baptist Church in Cleveland "for an endorsement interview by a black ministers group." Johnson spends his Sundays campaigning at black churches.

14. 4/8/98—Florida Republican gubernatorial candidate campaigned at Faith Memorial Baptist Church in Liberty City.

15. 3/31/98—Detroit Democratic gubernatorial candidate Doug Ross "announced a 19-member Executive Board of Clergy United for Ross" which was "expected to include 250 ministers by May."

16. 3/8/98—Chicago Democratic gubernatorial candidate Roland Burris campaigned at Chicago churches.

17. 2/22/98—Chicago Democratic gubernatorial candidate Jim Burns "preached his crime-fighting message to South Side parishioners at a storefront church called the House of Refuge."

18. 2/14/98—Democratic congressional candidate Irma Cohen "is relying on Operation Big Vote, the church-based alliance set up by Florida Democrats in 1994 to bring out the black vote. 'The one thing we have going for us is the church network,' Kennedy said. 'Rightly or wrongly, 90 percent of the people in the church do what the minister says.'"

19. 1/6/98—Former Democrat Congressman Rev. Floyd Flake, endorsed the congressional candidacy of New York Democratic Assemblyman Gregory Meeks, during services at Flakes' Church, the Allen African Methodist Episcopal Church in Jamaica, Queens.

20. 11/13/97, 10/24/97—New Jersey Democratic gubernatorial candidate Jim McGreevy during the course of his campaign, campaigned in more than 100 churches, and made 104 campaign visits to African-American churches.

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[13] The cited dates are the dates of articles about the church campaign events, not necessarily the dates of the events themselves.

21. 11/3/97—Both Virginia Democratic gubernatorial candidate Donald S. Beyer, Jr. and Virginia Republican candidate James S. Gilmore, III campaigned in churches across the State of Virginia.

22. 11/2/97—Roman Catholic Bishop Frank J. Rodimer endorsed New Jersey Democratic gubernatorial candidate Jim McGreevy in his Sunday service homily at St. John's Cathedral in Paterson.

23. 11/1/97, 10/29/97—Executive Director of the Black Ministers Council of New Jersey, Rev. Reginald Jackson, endorsed Republican Governor Christie Whitman, while 24 African-American ministers representing more than 600 churches statewide endorsed Democratic gubernatorial candidate Jim McGreevey.

24. 10/20/97—Rev. Al Sharpton endorsed the candidacy of New York Democratic mayoral candidate Ruth Messinger during Sunday worship services at the Bethel A.M.E. Church in Harlem, and at the New Jerusalem Baptist Church in Queens.

25. 10/4/97—Washington Governor Gary Locke made four campaign visits to a Redmond Buddhist Temple, where he was offered sizable campaign donations.

26. 10/4/97—Muslim Amatullah Yamini campaigned in Christian churches in the Onondaga County, New York, State legislative district Democratic primary.

27. 10/2/97—Houston, Texas Democratic mayoral candidate Lee P. Brown campaigned at the Green Grove Missionary Church.

28. 10/1/97—New York Democratic mayoral candidate Ruth Messinger campaigned at "the Christian Life Center, a 7000-member nondenominational ministry in Brownsville, Brooklyn."

29. 5/15/97—The Black Clergy of Philadelphia, representing 450 churches, announced their choices for judicial candidates at the Vine Memorial Baptist Church. The clergy members were joined by many of the candidates they were endorsing.

30. 12/9/96—At the Houston, Texas, Windsor Village United Methodist Church: "The message to God came just after U.S. Rep. Richard Gephardt of Missouri, the Democratic leader of the U.S. House, asked the audience to support the reelection of Democratic U.S. Rep. Ken Bentsen." Rep. Gephardt and Rep. Bentsen then proceeded to campaign at a Chinese Baptist church and several African American churches in Houston.

31. 11/11/96—As the Denver Post plainly put it: "Don't try to tell a black minister about the separation of church and state. Not when the state comes striding into the sanctuary nearly every Sunday, begging for votes. . . . Other political and religious leaders in Denver say far more candidates than Webb owe their elections to northeast Denver and the political work of black churches there. They say Tim Wirth and Gary Hart could not have won their U.S. Senate races without an all-out effort from the church congregations."

32. 11/5/96—U.S. Senator Paul Simon campaigned at the Grace United Methodist Church in Springfield, Illinois, on behalf of Democratic congressional candidate Dick Durbin.

33. 11/5/96—Rev. Jesse Jackson campaigned on behalf of Rhode Island Democratic candidates at the Pond Street Baptist Church in Providence.

34. 11/4/96—President Clinton campaigned at the St. Paul AME Church in Tampa, Florida.

35. 11/4/96—Democratic Rep. Martin Frost "made campaign stops at four African-American churches [during Sunday services] in southeast Fort Worth, Texas."

36. 11/4/96—Louisiana Democratic Senatorial Candidate Mary Landrieu "visited African-American churches Sunday, including Asia Baptist Church, where she received an enthusiastic endorsement from the Rev. Zebadee Bridges."

37. 11/4/96—North Carolina Democratic "Senate Candidate Harvey Gantt visited five black Charlotte congregations on Sunday, mounting the pulpit in three . . . 'There comes a time in a campaign when you have to trust the voters to do the right thing,' he said from the pulpit, 'I'm not going to beat up on Senator Helms . . . All I'm going to say is, he's been there 24 years. That's enough time.'"

38. 11/4/96—Pastor Joe Fuiten of the Cedar Park Assembly of God Church in Seattle, Washington urged his congregants to vote for Republican candidates, while across town at the Mount Zion Baptist Church, Rev. Samuel B. McKinney urged his church members to vote the Democratic ticket.

39. 11/4/96—Democratic Senatorial candidate Mark Warner campaigned in African American churches across the State of Virginia.

40. 11/3/96—Democratic Memphis Mayor Herenton endorsed Democratic congressional candidate Harold Ford, Jr. at the Greater Imani Church, in Memphis, Tennessee.

41. 10/28/96—The Northeast Ministers Alliance, an organization of 60 mostly African American churches located in Houston Texas, endorsed a slate of Democratic Candidates running for various state-level offices, and one Republican running for local sheriff.

42. 10/21/96—President Clinton campaigned at the New Hope Baptist Church in Newark, New Jersey.
43. 9/17/96—"The Greater Denver Ministerial Alliance, representing more than 100 black churches and 20,000 Denver voters, endorsed Bill Clinton for president, Al Gore for vice president, Democrat Ted Strickland for the Senate and Republican Joe Rogers for the House."
44. 9/13/96—Reverend Acen Phillips endorsed the candidacy of Republican congressional African American candidate Joe Rogers, at the Mount Gilead Baptist Church, in Denver, Colorado.
45. 8/26/96—Vice President Al Gore campaigned with the Rev. Jesse Jackson at the Fellowship Baptist Church in Charleston, North Carolina. The Rev. Jackson is co-minister of the church.
46. 11/8/95—U.S. Democratic Rep. Cleo Fields campaigned for governor at a New Orleans church.
47. 9/15/95—Several Orthodox Rabbis spoke from the pulpit in favor of Baltimore Democratic mayoral primary candidates.
48. 8/12/95—"the influential and powerful United Ministerial Coalition of Baltimore threw their thousands of affiliated church members behind the re-election effort of [Baltimore] Mayor Kurt L. Shmoke."
49. 5/18/95—Gubernatorial candidate Kentucky Senate President John "Eck" Rose campaigned at the Canaan Missionary Baptist church in Louisville, Kentucky.
50. 2/28/95—Philadelphia Mayor Edward G. Rendell picked up a re-election endorsement from the Black Clergy of Philadelphia & Vicinity, representing more than 400 churches and ministries. The endorsement "was formally announced at a press conference in the basement of the Vine Memorial Baptist Church in West Philadelphia."
51. 2/6/95—Chicago Democratic primary mayoral candidate Joe Gardner campaigned at the St. Stephen's African Methodist Episcopal Church, on Chicago's west side.
52. 11/7/94—Rev. Jesse Jackson campaigned on behalf of Democratic candidates at the New Hope Church of God in Christ, in Norfolk, Virginia.
53. 11/6/94—Republican Senatorial Candidate Ollie North and Democratic Senatorial incumbent Charles Robb both campaigned at Virginia churches.
54. 11/3/94—President Clinton campaigned for Democratic candidates at the Antioch Baptist Church in Cleveland, Ohio.
55. 10/31/94—New Jersey Democratic Senator Frank Lautenberg campaigned at the Salem Baptist Church in Jersey City.
56. 10/24/94—Former Virginia Gov. Douglas Wilder campaigned for Virginia Senator Charles Robb at the Trinity Baptist Church.
57. 10/13/94—New Jersey Democratic Senator Frank Lautenberg was endorsed by a group of 30 ministers at a news conference held at the Zion AME Church in Brunswick, New Jersey.
58. 7/19/94—Democratic Rep. Maxine Waters campaigned at Detroit's Dexter Avenue Baptist Church on behalf of Michigan Democratic gubernatorial candidate Howard Wolpe.
59. 6/2/94—Democratic Governor Mario Cuomo campaigned at the St. John Baptist Church in Buffalo, New York.
60. 5/13/94—Democratic Governor Mario Cuomo campaigned at "the Hillcreat Jewish Center in Queens, a Conservative shul, to Temple Emmanuel on Fifth Avenue, a Reform synagogue, and wrapped up his evening at the Orthodox Union dinner at the Grand Hyatt Hotel."

VIII. THE IRS SHOULD NOT HAVE UNBRIDLED DISCRETION

Clearly, churches and houses of worship engage in "political activity." However, the IRS uses its authority selectively to only target those it wishes to silence or threaten. Today it may be orthodox and conservative views, but tomorrow it could be liberal or unconventional views. Such unbridled discretion not only creates constitutional concerns, but illustrates why Congress needs to reign-in the IRS to insure constitutional compliance and lift the sword of Damocles hanging over churches. The Supreme Court has "previously identified two major First Amendment risks associated with unbridled licensing schemes: self-censorship by speakers in order to avoid being denied a license to speak [or having one withdrawn]; and the difficulty of effectively detecting, reviewing and correcting content-based censorship as applied without standards by which to measure the licensor's action." *City of Lakewood v. Plain Dealer Publishing Company*, 108 S. Ct. 2138, 2145 (1988).

In *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153 (1969), the court also explained: "[w]e have consistently condemned licensing [or regulatory] schemes

which vest in administrative officials discretion to grant or withhold a permit upon broad criteria." This is the heart of the problem which has been created due to the IRS' discretion and selective application of the law. It is precisely the absence of sufficient clear and specific standards by which to gage the qualifications and conduct of houses of worship in the political activities area which needs to be corrected. Otherwise, government officials may unconstitutionally "pursue their personal predilections."

IX. A SIMPLE REVISION TO THE TAX CODE WILL ALLEVIATE THIS PROBLEM

The IRS' enforcement and regulation of the "political" activities of houses of worship is discriminatory and improperly based upon its "predilections" of the moment: one church is permitted to say something another is not, one's activity is appropriate, but same activity by another not, etc. To avoid this type of arbitrary or capricious enforcement, and remove the dramatic chilling impact the IRS' selective enforcement has, the *Houses of Worship Political Speech Protection Act* proposes a substantiality test for this type of "political activity," as is currently the case with regard to legislative or lobbying activity by churches and houses of worship.

Present Language of IRC 501(c)(3):

The following organizations are [exempt from taxation under this subtitle. . .]

Corporations, and any community chest, fund, or foundation, 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 (but only if not part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), ***and which does not participate in, or intervene in (including the publishing and distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.***

Proposed Change to IRC 501(c)(3) in the Houses of Worship Political Speech Protection Act:

The following organizations are [exempt from taxation under this subtitle. . .]

Corporations, and any community chest, fund, or foundation, 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 (but only if not part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and ***except in the case of an organization described in section 508(c)(1)(A) (relating to churches), which does not participate in, or intervene in (including the publishing and distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office and, in the case of an organization described in section 508(c)(1)(A), no substantial part of the activities of which is participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.***

X. CONCLUSION

Given the historic and critically necessary role churches and houses of worship have played in speaking to the issues of the day, and with the continuing desire of many religious people in the United States to speak out collectively on matters of moral importance, the time has come to rectify a nearly 50-year old injustice and to change IRC 501(c)(3), as proposed in the *Houses of Worship Political Speech Protection Act*.

Chairman HOUGHTON. Dr. Gaddy?

STATEMENT OF REVEREND C. WELTON GADDY, PH.D., EXECUTIVE DIRECTOR, INTERFAITH ALLIANCE

Reverend GADDY. Yes. Thank you, Chairman Houghton and Members of the Subcommittee on Oversight. I appreciate the opportunity to share with you concerns about the two bills pending before this Committee.

My name is C. Welton Gaddy. I serve as Executive Director of the Interfaith Alliance, a faith-based, nonpartisan, grassroots organization dedicated to promoting the positive and healing role of religion in public life, and challenging those who employ religion to promote intolerance. The Interfaith Alliance is supported by more than 150,000 Members drawn from over 50 different religious traditions, local alliances in 38 States, and a national network of religious leaders.

I also serve as Pastor for preaching and worship at Northminster Baptist Church in Monroe, Louisiana.

Profound constitutional issues are at stake in these two legislative proposals. Adoption of this legislation would alter the whole landscape of church-State relations in this Nation. Current law protects the integrity of houses of worship and prevents government entanglement in the affairs of houses of worship. With the lifting of the absolute prohibition on political activities comes an invitation to the government to regulate the practices and affairs of a house of worship.

However, even if, by some stretch of the imagination, one could conceive that the bills before this Subcommittee today present no constitutional problems, I would oppose them. I would oppose them as a pastor who has worked in congregational ministry for more than 40 years, as well as the Executive Director of a national interfaith organization that values the importance of religious congregations. I can think of few ways to compromise the integrity of religious congregations and to blunt the vitality of religion in our land more than by the passage of either one of these bills.

First of all, neither the Houses of Worship Political Speech Protection Act nor the Bright-Line Act of 2001 is wanted or needed by most religious people in this land. A recent Gallup/Interfaith Alliance foundation poll of religious leaders found that 77 percent of clergy believe they should not endorse political candidates. Of those participating in this poll, 59 percent identified themselves as evangelicals. It is ironic that these results show that the very people whom these bills are supposedly intended to empower are people who adamantly resist even the premise on which the bills are based.

Second, these bills have the potential to compromise religious leaders' ministries of compassion and even to silence the prophetic voice of communities of faith in this land. Passage of either of these bills would turn pastors, imams, rabbis, and other would-be prophets into political operatives to be lobbied by candidates for public office and used as endorsers of partisan campaigns.

To saddle religious leaders with the skepticism commonly associated with politics would erode the reverence accorded to religious offices and leave congregations devoid of clergy functioning with an

authority rooted in spirituality. When pulpits, bimahs, and other sacred desks from which the Scriptures and oral traditions of various religions are read and interpreted become stumps on which ministers stand to deliver political speeches and hand out political endorsements, the prophetic voice of the religious community, arguably religion's most important contribution to this Nation, will be silenced.

I also have grave concerns about the health of religious congregations. Lifting the absolute ban on politicking is sure to create a rift between the leadership of a house of worship and the congregants. A religious leader in a congregation must be able to serve all of the people in that congregation.

More than once in a single day, I have conducted funerals for people of competing political persuasions and blessed babies born to parents who wanted nothing to do with the political process. In each instance the families involved sought the ministry of a clergyperson, not a politician. Taking on the role of a political power broker would jeopardize beyond measure the acceptance and effectiveness of a minister within a congregation, who must be able to serve all members of that congregation.

Then there is the issue of money. When people of faith give money to their congregations as an act of devotion to God, they should not have to worry about a portion of that money going to politicians. To turn offerings given in the name of God as acts of worship into political contributions devoted to the support of partisan politicians is a sacrilege.

Needless to say, people of faith are not monolithic in their political ideology. Passage of this legislation will divide religious communities dramatically and literally reconfigure congregational life in this Nation.

Supporters of these two bills call for their support under the guise of assuring freedom for houses of worship. Make no mistake about it, at this very moment houses of worship are free to endorse candidates for political offices and to give moneys to those candidates' campaigns. They just cannot do that politicking with funding that is tax-deductible. Every house of worship is free to forfeit the privacy of its identity as a spiritual body and to function as a political entity governed by all of the IRS regulations and State and Federal laws that apply to political institutions.

Mr. Chairman, I hope that each of these proposed pieces of legislation, which represents as serious a threat to the integrity and vitality of religion in this Nation as it does to the continuation of religious liberties guaranteed by the Constitution, will be stopped at this moment in this Committee. Thank you.

[The prepared statement of Reverend Gaddy follows:]

Statement of Reverend C. Welton Gaddy, Ph.D., Executive Director, Interfaith Alliance

Good afternoon Chairman Houghton and members of the Subcommittee on Oversight. I appreciate the opportunity to share with you my concerns about two bills pending before this committee, H.R. 2357, the Houses of Worship Political Speech Protection Act and H.R. 2931, the Bright-Line Act of 2001.

Mr. Chairman, I consider myself fortunate to have had the pleasure of working with you on issues of mutual concern over your long career of service to this nation. I would be remiss if I did not also acknowledge Congressman John Lewis, who has

been a good friend to The Interfaith Alliance Foundation through his work of many years on our *Walter Cronkite Faith and Freedom Award* Selection Committee.

For those on the Oversight committee whom I have not met, I am the Rev. Dr. C. Welton Gaddy, and I serve as the executive director of The Interfaith Alliance. The Interfaith Alliance is a faith-based, non-partisan, grassroots organization dedicated to promoting the positive and healing role of religion in the life of our nation and challenging those who employ religion to promote intolerance. With more than 150,000 members drawn from over 50 faith traditions, local Alliances in 38 states, and a national network of religious leaders, The Interfaith Alliance promotes compassion, civility and mutual respect for human dignity in our increasingly diverse society.

In addition to my role at the Alliance, I also serve as Pastor for Preaching and Worship at Northminster (Baptist) Church in Monroe, Louisiana.

Mr. Chairman and members of the Committee, The Interfaith Alliance has very serious concerns about H.R. 2357 and H.R. 2931. Indeed, we are fundamentally *opposed* to both of these bills that are before you today.

Our analysis of H.R. 2357, the Houses of Worship Political Speech Protection Act, is in accord with the Congressional Research Service, which has stated that this bill "would amend IRC Section 501(c)(3) to exempt churches and church auxiliaries from the absolute prohibition on participation or intervention in a political campaign and add language, which would measure churches by the same test that is used for all 501(c)(3) organizations; i.e., no substantial part of their activities would be participating in, or intervening in any political campaign on behalf of any candidate for public office."[1]

In other words, despite the unique place that houses of worship hold in our current tax code, this bill seeks to dismantle the absolute ban on partisan politicking and allows houses of worship to engage in the mechanisms of partisan politics while retaining their tax-exempt status and receiving tax-deductible contributions.

H.R. 2931, the Bright-Line Act of 2001, is similar to H.R. 2357 in intent, except that it would "add a new subsection to IRC, section 501, applicable to churches, church auxiliaries and members of an affiliated group of organizations. The proposed subsection would deny tax exemption to a church or church auxiliary if the organization normally spent more than 20% of its gross revenues in a year on activities to influence legislation or, normally spent more than 5% of its gross revenues on political campaign activities."[2]

Thus, while H.R. 2357 lifts the ban on absolute prohibition of partisan politicking while leaving the "no substantial part" test up to interpretation, H.R. 2931 lifts the ban but provides a benchmark for "no substantial part" and specifically includes lobbying activities.

Mr. Chairman, profound constitutional issues are at stake in these two bills. As a religious leader with a national constituency and as an active Baptist pastor from Louisiana, I oppose these legislative proposals. Adoption of this legislation would alter the whole legal landscape of church-state relations in this nation. When I speak about the possible consequences of these bills, my passion is deep, and my concern about their negative impact on religion's prophetic voice in our nation is real.

Even if by some stretch of the imagination one could conceive that the bills before this committee today presented no constitutional problems, I would oppose them. As a pastor who has worked in congregational ministry for more than 40 years as well as the executive director of a national interfaith organization that values the importance of religious congregations, I shudder to think of the devastation that would be visited upon the religious community and its leaders were these bills to become law.

Indeed, I can think of few ways to compromise the integrity of religious congregations and to blunt the vitality of religion in our land more than by the passage of either one of these bills.

- First, neither the House of Worship Political Speech Protection Act, nor the Bright-Line Act of 2001 is wanted or needed among most religious people in this land and the clergy who lead them. Any claim by supporters of these bills that there is a mainstream movement among this nation's clergy to rewrite the tax code to allow houses of worship to engage in partisan politicking is simply without foundation.

[1] Marie B. Morris, "Bills to Permit Churches to Engage in Campaign Activities," Congressional Research Service, 15 Nov. 2001.

[2] Ibid.

As a matter of fact, it is far more accurate to say that clergy appreciate the firewall that 501(c)(3) status provides between the inner-sanctuaries of houses of worship and what has unfortunately become the "anything goes" culture of a modern day political campaign.

This assertion is backed by a recent national Gallup/Interfaith Alliance Foundation poll of religious leaders, which found that 77% of clergy believe that they should not endorse political candidates. Of those participating in the poll, 59% identified themselves as Evangelicals. It is ironic that these polling results show that the very people whom these bills are supposedly intended to empower adamantly resist even the premise on which the bills are based.

I am not suggesting that The Interfaith Alliance believes that clergy and houses of worship do not have an important role to play in the political process. We believe that clergy have an absolute right and further, a moral obligation, to address the crucial issues of the day and to serve the nation as a prophetic voice in times of calm and crisis.

But clergy do not need a change in the current law to be faithful to this important responsibility. The ability of clergy to educate their congregations about important issues of the day is unambiguously legal. The only activities that tax-exempt houses of worship may not engage in are endorsing or opposing candidates, or using their tax-exempt donations to contribute to partisan campaigns.

Since the introduction of these bills last year, supporters of these measures have argued their merit under the guise of assuring freedom for houses of worship. Make no mistake about it, at this very moment houses of worship are free to endorse candidates for political offices and to give money to those candidates' campaigns. However, such politicking cannot be done with funding that is tax deductible. Every house of worship is free to forfeit the primacy of its identity as a spiritual body and to function as a political entity governed by all of the IRS regulations and state and federal laws that apply to political institutions.

- Second, these bills have the potential to compromise religious leaders' ministries of compassion and even to silence the prophetic voice of communities of faith in this land.

Throughout the history of our nation, religious leaders have provided a perspective of integrity and independence when they speak about the moral issues. Whether it was the civil rights movement of the 1960's or the importance of forgiving third world debt in 2000, religious leaders have spoken conscientiously, often in the face of negative influences and political pressure.

Passage of either of these bills would turn pastors, imams, rabbis and other would-be prophets into potential political operatives to be lobbied by candidates for public office and used as endorsers of partisan campaigns. To saddle religious leaders with the controversy and skepticism commonly associated with politics would erode the reverence accorded to religious offices and leave congregations devoid of clergy functioning with an authority rooted in spirituality. When pulpits, beemas, and other sacred desks from which the scriptures and oral traditions of various religions are read and interpreted become stumps on which ministers stand to deliver political speeches and hand out political endorsements, the prophetic voice of the religious leaders community—arguably religion's most important contribution to the nation—will be silenced.

This view is shared by Deirdre Dessingue, associate general counsel of the National Conference of Catholic Bishops who wrote in a July 2001 article that, "as the church pursues its religious mission, it is guided by its own unique vision of the way our society should be. As a God-given vision, it admits of no compromise. Yet since compromise is the essence of politics, choosing involvement in electoral politics, risks compromise, co-option, and collusion." She concludes by saying, "a religious message without integrity is no message at all."[3] I could not agree with her more.

Lifting the ban on politicking is also sure to create a rift between the leadership of a house of worship and the congregants. A religious leader in a congregation must be able to serve all of the people in that congregation. More than once, in a single day, I have conducted funerals for people of competing political persuasions and blessed babies born to parents who wanted nothing to do with the political process. In each instance, the families involved sought the ministry of a clergyperson not the assistance of a politician. Taking on the role of a political power broker would jeopardize beyond measure the acceptance and effectiveness of a minister within a congregation.

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[3] Dessingue, Deirdre, *Prohibition in Search of a Rationale: What the Tax Code Prohibits; Why; to What End?*, 42 B.C.L. Rev 903 (2001).

Knowing well the schismatic passions related to partisan politics, you easily can imagine a congregant, even in a time of need, refusing to turn for help from a minister whose identity has been shaped by the political endorsements that have become a part of his or her leadership in a congregation. Passage of either one of these bills threatens the effectiveness of ministers of compassion in religious congregations.

- Third, current law protects the integrity of houses of worship and prevents government entanglement in the affairs of houses of worship. Churches, synagogues, temples and mosques should not be used as partisan political rally halls or as venues for partisan political fundraising activities.

With the lifting of the absolute prohibition on political activities comes an invitation to the government to regulate the practices and affairs of a house of worship. Surely there will be different interpretations of what constitutes a "substantial" activity, a "normal year" or even, what constitutes an actual partisan activity. Churches should not be in the business of defending their denominational or financial affairs to the government, and indeed, this is precisely the situation the framers of our Constitution sought to avoid.

- Fourth, when people of faith give money to their congregations as an act of devotion to God, they should not have to worry about a portion of that money going to politicians. The fact is that members of religious congregations will not make financial contributions to a congregational budget knowing that a part of their financial support for the ministries of that house of worship will end up in the campaign war chest of a political candidate seeking help in winning an election. To turn offerings given in the name of God as acts of worship into political contributions devoted to the support of partisan politicians is a sacrilege.

People of faith are not monolithic in their political ideology. Passage of this legislation will divide religious communities dramatically and literally reconfigure congregational life in this nation. Religious people will realign themselves in congregations that reflect their respective political positions. What conscientious religious person would want to be a faithful member of a congregation that supports a candidate for office that the person opposes on the basis of conscience?

We do not want to see houses of worship identified more by the political parties that they support than by the theology or the moral values that they proclaim.

In the 2000 election, specifically in South Carolina, Michigan, and Washington, we saw the sad spectacle of candidates for public office highlighting theological differences between congregations in an attempt to divide congregations for the purpose of dividing the electorate and propelling voters to the polls. In Washington, Senator John McCain's campaign took responsibility for sending the following statement to primary voters by telephone:

> *"This is a Catholic Voter Alert. Gov. George Bush, Jr. has campaigned against Sen. John McCain by seeking the support of Southern Fundamentalists who have expressed anti-Catholic views. Several weeks ago Gov. Bush spoke at Bob Jones University in South Carolina. That's the same Bob Jones who said the Pope was "the antichrist" and called the Church 'a satanic cult.' Sen. John McCain has strongly criticized this anti-Catholic bigotry, while Gov. Bush stayed silent while gaining the support of Bob Jones University. For this reason, many Washington Catholics now support John McCain for President. Please vote for John McCain. Thank you."*[4]

Not to be outdone, then Christian Coalition President Pat Robertson sponsored automated phone calls to voters prior to the Michigan Republican primary in support of then Governor Bush criticizing Senator McCain's record on abortion, and calling his campaign chairman, Senator Warren Rudman, a "bigot" for criticizing Christian conservatives. In this scenario, religion was used as a political football, and it truly was unfortunate.

- Finally, passage of these bills would open a dramatic new loophole in the campaign finance laws just passed by this Congress. Donations to houses of worship are tax-deductible because the government assumes that their much-needed work is contributing to the common good of society, not a political party or a partisan campaign.

Contributions to churches are tax deductible while donations to political candidates and parties are not. Therefore, these bills would create an exemption in our

[4] "Religion Rules as Primaries Approach," *Associated Press* 3 March 2000.

national campaign finance laws. Political contributions that legally could not be made to candidates or their parties could legally be channeled through the offerings of a house of worship. Houses of worship will find themselves giving tax-deductible dollars to politicians at the expense of the general public. All of this will happen under the banner of faith. This is just not right.

Mr. Chairman and members of the committee, I must be honest with you. When I first heard of legislative proposals that would blatantly politicize houses of worship, I couldn't believe my ears and thought someone was playing a practical joke on me. 114 co-sponsors later, I now know better. Each of these proposed pieces of legislation represents as serious a threat to the integrity and vitality of religion in this nation as it does to the continuation of religious liberty as guaranteed by the constitution. The bills are no joke. And I am not laughing. I come here today to plead with members of this committee to not allow these bills to go any further.

Chairman HOUGHTON. Thank you very much, Dr. Gaddy. Chairman Houghton. Reverend Fauntroy.

STATEMENT OF HON. REVEREND WALTER E. FAUNTROY, PASTOR, NEW BETHEL BAPTIST CHURCH, AND FORMER MEMBER OF CONGRESS

Reverend FAUNTROY. Chairman Houghton and Members of the Subcommittee, my name is Walter Fauntroy. I am an experienced politician and a well-trained Minister. I am in my 43rd year as Pastor of New Bethel Baptist Church here in our Nation's Capital. Over the course of those years, I have had the privilege of being at the core of every major change in public policy affecting people of African descent in this country.

In the decade of the sixties, I served as Director of the Washington Bureau of Dr. Martin Luther King, Jr.'s Southern Christian Leadership Conference, and in that capacity I coordinated our activities for both the historic march on Washington in 1963 and the voting rights march from Selma-Montgomery in 1965.

I was Dr. King's chief lobbyist for the passage of the Civil Rights Act of 1964 and the Voting Rights Act 1965. In the decades of the seventies and eighties, I served as a Member of this august body as the District of Columbia's first Delegate to the Congress in 200 years, and during my 20-year tenure as a Member of the House Banking, Finance, and Urban Affairs Committee of the House, I had the privilege of being Chairman of the Subcommittee on Domestic Monetary Policy, which oversaw our participation through the Federal Reserve, the quasi-public Federal Reserve Board, on the distribution and management of money in the country. Then I served as Subcommittee Chairman on the Subcommittee on International Development, Finance, Trade, and Monetary Policy.

I do not want you to think as a Minister I believe money is everything, but I have learned it is so far ahead of whatever is second best when it comes to declaring good news to the least of these that we have to manage to see to it that it happens.

What I have learned as a Pastor, as a civil rights activist, and as a Member of Congress over these years has led me to appear before you today in support of H.R. 2357, the Houses of Worship Political action Protection Act. In the 5 minutes allowed me, I want to share with you two definitions of politics upon which I have acted over these years as Pastor, as a civil rights activist, and as a Member of Congress.

The first definition is that politics is the means by which we in a democracy translate what we believe into public policy and practice. That is, we go to the polls and vote for people who, if elected, promise to translate what we believe into public policy and practice.

That right to vote is so precious to me because, as an African American, I am painfully aware of how racist white voters in the Southland, by denying my people the right to vote, were able to translate what they believed into public policy and practice. They believed that black people, for example, should not be allowed to drink water from the same public fountains used by white people, and they translated that into public policy and practice.

Now, the second definition of politics upon which I have always relied is that politics is the process of determining who gets how much of what, when, and where, in five areas: Who gets how much income, who gets how much education, who gets how much health care, housing, and justice?

In fact, during my 20-year tenure in this Congress, I became thoroughly conversant with our Nation's 14 Cabinet-level agencies and their counterparts in the standing Committees of the U.S. House and Senate that determined who gets how much of what, when, and where in agriculture, in commerce, in labor, in housing, in health and human services. That is what I have learned as a politician.

Let me tell you what I have learned as a thoroughly trained Pastor. I have learned from the prophet Isaiah that the basic tenet of our Judeo-Christian-Muslim heritage is that we are "anointed of God to declare good news to the poor, to bind up the broken-hearted, and to set at liberty them that are bound."

You can understand, therefore, that as a citizen who has a right to vote, to translate what he believes into public policy and practice, and as a man of faith who is anointed to declare good news in terms of access to income, education, health care, housing, and justice to the least of these, I have never and I will never allow anyone to deny me the right to vote my beliefs at the polls. I have not and I will not allow anyone to deny me the right to try to persuade as many people as I can to vote good news for the poor.

We enter our houses to worship, and we depart to serve. If we are to serve, the question will not be whether you are Baptist or white or black or Muslim or Jew or atheist. The question is, when I was hungry, did you feed me?

In my view, therefore, there is no election, local, State, or national, where I think the plight of the least of these is at stake that I do not endorse a candidate of my choice to the Members of my church and try to influence them to vote the values that we embrace as serious people of faith. That is my right, both as a citizen and as a man of faith, and I will defend that right, even for those people of faith with whom I vehemently disagree on how income, education, health care, and housing should be distributed.

Now, I must tell you that it is not in my best interests nor is it in the interests of the people I serve that certain people who call themselves religious benefit from the passage of this bill. That is because it has been my experience that people often use religion and race as an excuse to deny others the income, education, health

care, and housing and justice that they covet for themselves. And that is what we define as sin, the arrogance and self-seeking of many. Mr. Chairman, take it from someone who knows: People who call themselves religious, when it comes to their greed and opportunism, will often talk east and walk west on matters of public policies. They say one thing and do another. Jesus called such people false prophets who come to you in sheep's clothing, and yet in their hearts are ravenous wolves.

Ku Klux Klansmen are false prophets who use Christianity as an excuse to deny black people and other minorities access to those five things. Muslim extremists, like Osama bin Laden, are false prophets who use Islam as an excuse to kill other people, to deny them access to those five things, and in the process, they distort Islam, and they blaspheme Allah. Jewish extremists are false prophets who use Judaism as an excuse to take from others what they have coveted for themselves. They all come up with cute excuses for their ungodly actions, but they are not correct. They may appear to be sincere, but they are sincerely wrong.

The right thing for all Jews, all Christians, all Muslims, and all people who are of good will in this country to do is recorded in Micah, the Sixth chapter, and all agree with it because it is in their literature: He hath shown thee, O man, what is good; and what doth the Lord require of thee, but to do three things, to do justice, and to love mercy, and to walk humbly with thy God. Don't just talk the talk, walk the walk to the polls.

Mr. Chairman, I know it is not in my interest nor the people whom I serve that everybody who calls themselves religious be able to do what I do in my pulpit. But like Voltaire, I may disagree with them vehemently, but I will defend to the death their right to be wrong and their right to participate in an orderly effort that democracy afforced us to translate what we believe into public policy and practice.

I support this because I must not be selfish and, therefore, sinful. I must not demand for myself what I would deny others. I believe that he who would save his life shall lose it, and he that will lose his life for my sake will find it. That is why I support this bill.

[The prepared statement of Reverend Fauntroy follows:]

Statement of the Hon. Reverend Walter E. Fauntroy, Pastor, New Bethel Baptist Church, and Former Member of Congress

Chairman Houghton and members of committee, my name Walter E. Fauntroy. I am in my forty-third (43rd) year as pastor of the New Bethel Baptist Church here in our nation's capital. Over the course of those years, I have had the privilege of being at the core of nearly every major change in public policy in this country affecting people of African descent.

In the decade of the 1960s I served as Director of the Washington Bureau of Dr. Martin Luther King, Jr.'s Southern Christian Leadership Conference. In that capacity I coordinated our activities for both the Historic March on Washington in 1963 and the Selma-To-Montgomery Voting Rights March of 1965. I was Dr. King's chief lobbyist for passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

In the decades of the 1970s and '80s I served as a member of this august body as the District of Columbia's first Delegate to the U.S. House of Representatives in 100 years. During my twenty year tenure as a member of the House Banking, Finance, and Urban Affairs Committee, I had the great privilege of being chairman of the subcommittee on Domestic Monetary Policy and then the subcommittee on International Development, Finance, Trade and Monetary Policy.

What I have learned as a pastor, civil rights activist and member of congress over these years has led me to appear before you today in support of H.R. 2357, the Houses of Worship Political Speech Protection Act. In the five minutes allowed me, I want to share with you two definitions of "politics" upon which I have acted over these years as a pastor, as a civil rights activist and as a politician that inform my decision to support this legislation.

The first definition is this: ***"Politics is the means by which we in a democracy translate what we believe into public policy and practice;"*** that is, we go to the polls to vote for people who, when elected, promise to translate what we believe into public policy and practice. That right to vote is so precious to me because, as an African American, I am painfully aware how racist white voters in the Southland, by denying my people the right to vote, were able to translate into public policy and practice what they believed. They believed that black people, for example, should not be allowed to drink water from the same public fountains used by white people; and with their votes, they translated that into public policy and practice.

A second definition of politics upon which I have always acted is that ***"Politics in the process by which we determine who gets how much of what, when and where in five areas: income, education, healthcare, housing and justice."*** In fact, during my twenty year tenure in this congress, I became thoroughly conversant with our nation's fourteen cabinet level agencies and their counterparts in the standing committees of the U.S. House and Senate, agencies and committees that determine who gets how much and what, when and where in agriculture, in commerce, in labor and housing and health and human services, for example. That's what I have learned as a politician.

Let me tell you what I have learned as a thoroughly trained pastor. I have learned from the Prophet Isaiah that the basic tenet of my Judeo-Christian-Muslim heritage is that we are all ***"anointed of God to declare good news to the poor, to bind up the broken hearted and to set at liberty them that are bound" (Isaiah 61:1).*** You can understand, therefore, that as a citizen who has a right to vote to translate what he believes into public policy and practice and as a man whose faith dictates that he seek to provide "the least of these" access to adequate income, education, healthcare, housing and justice, I never have and I never will allow any one to deny me that right to vote my beliefs at the polls. I have not and I will not allow any one deny me my right to try to persuade as many fellow citizens as I can reach to vote as I do.

There is, therefore, no election—local, state or national—where I think that the plight of the "least of these" is at stake that I do not endorse a candidate of my choice in an effort to influence the members of my congregation and any one else who I think values my opinion on matters of public policy. That is my right both as a citizen and a man of faith, and I will defend that right even for those people of faith with whom I vehemently disagree as to how income, education, healthcare, housing and justice should be distributed in our society.

Now I must also tell you that it is not in my interest nor is it in the interest of the people whom I serve that certain people who call themselves "religious" benefit from the passage of HR 2357. That's because it has been my experience that people often use religion and race as excuses for denying to others the income, education, healthcare, housing and justice that they covet for themselves. In our Judeo-Christian-Muslim heritage we call that "sin" which, defined, is the arrogance and self-seeking of man.

Mr. Chairman and members of the committee, take it from someone who knows, people who call themselves religious, when it comes to their greed and opportunism, will often talk East and walk West on you in the arena of public policy. They say one thing and they do another. Jesus called such people ***"false prophets who come to you in sheep's clothing, but inwardly they are ravening wolves"*** *(Matt. 7:15).* Ku Klux Klansmen are false prophets who use Christianity as an excuse to deny black people access to income, education, healthcare, housing and justice. Muslim extremists like Osama Bin Laden are false prophets who use Islam as an excuse to kill other people to deny them access to income, education, health care housing and justice. In so doing, they distort Islam and blaspheme the name of Allah. Zionists extremist are false prophets who use Judaism as an excuse to take from others what they covet for themselves: income, education, healthcare, housing, and justice.

They all come up with cute excuses for their ungodly actions but they are not correct. They appear to be sincere but they are sincerely wrong. The right thing for all Jews, all Christians and all Muslims to do is recorded in their own holy writ in the words of Micah 6:8—***"He hath shown thee O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?"***

So, Mr. Chairman, I know that it is not in my interest or that of the people whom I serve that certain people who are self-centered hypocrites when it comes to the basic tenets of their religions exercise their right to be wrong. But like Voltaire, I may disagree with them vehemently, but I will defend to the death their right to be wrong and their right to participate in an orderly effort to "translate what they believe into public policy and practice." I must not be selfish and, therefore, sinful; I must not demand for myself what I would deny others. I believe that he who would ***"save his life, shall lose it; and he that loses his life for my sake shall find it."(Matthew 10:39)***

I support the passage of H.R. 2357. Thank you.

Chairman HOUGHTON. Thank you very much, Walter. Great to have you here. Reverend Lynn?

STATEMENT OF REVEREND BARRY W. LYNN, EXECUTIVE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Reverend LYNN. Thank you very much.

Mr. Chairman and Members of the Subcommittee, my name is Barry Lynn. I serve as the Executive Director of Americans United for Separation of Church and State. I am also an ordained Minister in the United Church of Christ, and an attorney, and I have had a long interest in the issues that we are discussing here today.

America's policy of separating religion and government has given us here in the United States more religious freedom than any Nation in the history of the world. When it comes to the relationship between houses of worship and politics, we had struck, in our view, precisely the right balance, creating an environment that works to the benefit of all religious organizations, their Members, and our democracy. We change it at our peril.

The bills before you would scrap a time-tested system and substitute a reckless experiment in mixing religion with partisan politics. Make no mistake, these bills are not about free speech; instead, they would promote the corruption of the church and the corruption of the political process.

No freedom of speech of any American pastor, priest, imam, or rabbi is endangered today by the United States Tax Code. Religious leaders are as free today as any time in American history to expose moral evils, to propose ethical solutions, and to hold our leaders to the highest standards. In fact, the only thing that our tax laws prohibit is use of resources or personnel of a tax-exempt group to promote the campaigns of specific candidates for public office. Frankly, this is a small price to pay for the enormous dual benefit of an organizational tax exemption and the right of contributors to gain a tax deduction for their contributions.

Pastors are not gagged, churches are not shuttered by the fear of the IRS. This is a nonsensical caricature by those who are trying to scare religious leaders by misrepresenting current law.

So if these proposals are not about free speech, and America's religious leaders already enjoy the right to speak out on the moral issues of the day, then what precisely are these bills about? Let me be blunt. I believe it is simple. There are television preachers and special interest groups who would like to turn America's churches into a powerful political machine. They would also like to undermine the principles of separation of church and State.

Lawyers for Pat Robertson are out here, including on this panel, pushing this legislation. Dr. D. James Kennedy, also here today to express support for the bill, has repeatedly said that he believes church-State separation is, in his words, a lie, and that he wants to reclaim America for Christ. If these activists are politically successful, in part by passing these bills, the consequences would be devastating for the Nation's tradition of religious pluralism and genuine religious freedom.

For example, these bills would allow money to go straight from the collection plate of a church to buying campaign bumper stickers or attack ads for someone's favorite politician. That is a vision that is to me as morally repugnant as it is politically unhealthy.

Moreover, these bills would actually create an unlevel playingfield in which religious groups get special rights to endorse candidates while thousands of secular charities, from the American Cancer Society to the Red Cross to the local birdwatching group, are still denied that power. Such a special privilege for religious groups over secular ones is, without question, an unconstitutional promotion of religion under the first amendment to the Constitution.

But the legislation does more. It opens a Pandora's box of new opportunities for mischief through abuse of the Nation's campaign finance system. Supporters of a candidate could make tax-deductible contributions to a church, and the church could then use an equivalent amount on behalf of that donor's favorite candidate.

The motive could be crass, an effort to curry favor with politicians for future gain, or it might well be quite noble, a well-intentioned effort to fund those leaders who are deemed morally superior. But frankly, either way, this amounts to nothing short of clerical money-laundering, and it is wrong to introduce it into this system.

According to a poll this year, 70 percent of Americans disapprove of the idea of churches endorsing political candidates, and little wonder. Most parishioners want the church board to debate expenditures on aid to the homeless and hungry in their communities, not wrangle over which politicians will be favored with the grace of 5 percent or 10 percent of the revenues from the collection plate. Few pastors themselves even want to serve their flocks as both a spiritual leader and a political boss.

The practical magnitude of these bills is staggering. They would permit some denominations to spend literally $1 million a year or more on electioneering. We should not try to add churches to the dazzling array of other organizations that can be formed to campaign for political leaders.

The moral authority of the church has always been highest when it played no partisan favorites and spoke its truth to government without fear of reprisal or the specter of special privilege. A taint, a deep taint, grows on that prophetic voice when there is even the appearance of buying favor with political leaders by any mechanism, from a sermon endorsement to a cash transfer.

Ultimately, these proposals to change Federal tax law offer a solution to a problem that does not exist. These bills would create a so-called "benefit" that America's religious community does not

need, does not want, and has not even requested. I therefore urge this Subcommittee to reject both of these proposals.

[The prepared statement of Reverend Lynn follows:]

Statement of Reverend Barry W. Lynn, Executive Director, Americans United for Separation of Church and State

Mr. Chairman and Members of the Subcommittee On Oversight:

My name is Barry W. Lynn. I serve as executive director of Americans United for Separation of Church and State, a 53-year-old watchdog organization created to protect religious liberty. The organization is concerned about protecting the twin guarantees of religious freedom in the First Amendment: prohibiting governments from encroaching on the free exercise of religion and prohibiting government promotion of some religions over others or of religion over non-religion. I am an ordained minister in the United Church of Christ as well as an attorney.

I appear today in strong opposition to several proposals to allow tax-exempt religious organizations to engage in partisan political activities. In my view, both H.R. 2357 ("Houses of Worship Political Speech Protection Act") and H.R. 2931 ("Bright-Line Act") run afoul of sound public policy and the United States Constitution. Far from merely clarifying the rights of religious institutions, these bills would grant special rights to certain religious groups not given to similarly situated secular groups and would deeply politicize America's churches, synagogues, temples and mosques.

Current tax law exempts certain organizations from taxation, including those organized and operated for religious purposes, provided that they do not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. §501 (a), (c)(3) (1994). This levelheaded policy works perfectly for all concerned: Tax-exempt religious institutions are not used or manipulated for partisan political purposes, and religious leaders remain free to speak out on moral and ethical issues of the day.

This harmony would be dramatically altered by enactment of either of the aforementioned bills. H.R. 2357 would allow institutions described in section 508 (c)(1)(a) ["churches, integrated auxiliaries, and conventions or association of churches"] to engage in partisan activities so long as "no substantial part" of their activities would constitute intervention in political campaigns. H.R. 2931 would permit intervention in campaigns so long as the expenditures did not exceed five percent of the organization's gross revenues for the year.

The prohibition against partisan political intervention which exists today applies equally to both churches and other secular charities that claim tax-exempt status. There is absolutely no Supreme Court authority under either the "free exercise of religion" or "free speech" provisions of the First Amendment that even remotely suggests that churches are entitled to exemption from tax law requirements that apply to all similarly situated groups. Therefore, both pieces of legislation raise important constitutional questions of equal protection of the law and violation of the Establishment Clause, that principle of constitutional jurisprudence that holds that government cannot favor religion over non-religion.

Perhaps the closest analogy to the kind of policy embraced in the proposals is the Supreme Court decision in Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989). There, the state of Texas had created an exemption for sales tax on religious publications, including periodicals and books containing sacred texts. The publishers of Texas Monthly, a secular magazine, challenged this disparate treatment favoring religion and prevailed. The Court noted: "It is difficult to view Texas' narrow exception as anything but state sponsorship of religious belief. . ." Id. at 15.

Accordingly, should either proposal before you be enacted, any non-religious 501(c)(3) organization, still required to maintain a position of no endorsement of candidates, would be able to allege that the special treatment of religious groups violated the Establishment Clause. Giving preferential treatment to churches, a status not accorded the scores of other charitable, non-profit groups is a giant step in the wrong direction.

Just one year after the Texas Monthly decision, the Supreme Court made clear that a state can decline to exempt churches from a generally-applicable sales tax, because religious activity is not "being singled out for special and burdensome treatment." Jimmy Swaggart Ministries v. California Board of Equalization, 493 U.S. 378 (1990). In Christian Echoes National Ministry v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973), the appeals court ruled that Section 501(c)(3)'s prohibition against political activities may be applied to churches in the

same manner as to other charities. Indeed, an appeals court upheld the revocation of tax exemption for a New York church's participation in a political campaign to defeat Bill Clinton finding no significant burden on the right to freely exercise the religious beliefs proscribed by the faith. Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000). Taken together, these cases demonstrate there is no serious constitutional claim that taxing authorities must, or can, treat religious groups differently from other charities.

The practical implications of these bills would be staggering. Anywhere from 5% to 20% of a church's revenues could go for partisan activities. There are many churches and related organizations with multi-million dollar budgets. A typical so-called "mega-church" with a $2 million budget under H.R. 2931 could contribute $100,000 to partisan campaigns. Under H.R. 2357, that same church could send $225,000 to favored politicians. * If the Southern Baptist Convention or the Unification Church's entire budget was taken into account, such entities could spend over $1 million dollars on electioneering.

It is also worth noting that the Congress passed, and President Bush recently signed, a major overhaul of the campaign finance system. Although some have questioned the constitutionality of that proposal, enactment of the bills under consideration here would open another enormous loophole in a system already viewed as Byzantine and inequitable.

Houses of worship are awarded tax-exempt status because the government assumes that their work is charitable and educational, not political. To undo the restriction on church electioneering—allowing religious groups to act as political operatives while maintaining their tax-exempt status—creates a loophole that would allow contributors to make tax-exempt contributions to a church with knowledge that the money would benefit a favored candidate.

Throughout the nation, neither church leaders nor their parishioners are clamoring for this bill. A recent survey by the Pew Forum on Religion and Public Life found that 70 percent of respondents said churches should not endorse political candidates, while only 22 percent backed church involvement in campaigns.

A closer look at the Pew Forum's results show that church politicking was unpopular among all tested demographic groups. For example, the report indicates that Catholics and mainline Protestants—regardless of their level of religious commitment—disapproved of church political endorsements by more than a three-to-one margin.

Similarly, pastors are not seeking the "help" these bills offer. Most clergy now strictly adhere to the law as it is written regarding candidate activity in their church and are not interested in turning their religious institutions into cogs in someone's political machine. This is a bad move for the church and for the integrity of the political process.

Many persons with whom I have only rare agreement have nevertheless expressed strong reservations on the proposals before you. Cal Thomas, the most widely syndicated columnist in the country, wrote in questioning these bills that "more politicians would be free to come to churches, taking time away from preaching about a kingdom not of this world in favor of earthly salvation."

Fox News Channel host Bill O'Reilly told me on air that he agreed with me and informed Rep. Walter Jones several nights later that: "I don't want the churches involved in the political process." It is little wonder. The moral authority of the church has always been highest when it played no partisan favorites and spoke its truth to the governing order without the fear of reprisal or the specter of special privilege from the powerful.

That taint grows whenever there is even the appearance of "buying" favor with political figures with the financial resources of the church: whether that is a sermon

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*Current law permits most charities (churches were omitted at their request) to choose between not spending a "substantial" amount of their revenues on lobbying or spending no more than 20% of their first $500,000 in revenue and a declining percentage of additional revenue up to a total expenditure of $1,000,000 on lobbying (the latter is referred to as the "[h] election"). The "[h] election" is often referred to as a "safe harbor", a guarantee that a charity does not risk its tax exemption if it spends no more than the articulated limits. The risk of non-election is that the Internal Revenue Service could reach its own decision on what constitutes an amount of lobbying so "substantial" that it could lead to revocation of tax-exempt status. See, for example, Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974)(allocation of 20.5% of total expenditures for influencing legislation was "substantial", but that "a percentage test is not determinative of substantiality" but is "one measure of the relative significance" of an activity); Seasongood v. Commissioner of Internal Revenue, 227F.2d 907 (6th Cir. 1955) (5% of organization's time devoted to influencing legislation found not substantial). Under H.R. 2357, a church could reasonably argue that 20% or less of expenditures is no "substantial".

endorsement or an elaborate transfer of cash from church treasury to a party or a candidate fund.

I am not naïve enough to ignore the fact that these bills are directly related to one of the highly visible projects of Americans United for Separation of Church and State, an effort we call "Project Fair Play." Our program is a strictly non-partisan citizen effort educate about existing legal strictures against partisan activity by any institutions that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

"Project Fair Play" consists of several activities. First, we have produced, or have retained outside counsel to produce, a number of legal and practical memoranda and pamphlets to let churches know of the current law regarding participation in political activities. Although these documents do warn of violating prohibitions against intervention in campaigns, they also frequently detail the large number of perfectly permissible "political" activities that churches can engage in that inform community members about important issues and candidates seeking political office, but that fall short of utilizing the resources of the church to promote some specific candidates over others. For example, a church may host a "candidate forum" in their facility so long as they invite all candidates to appear. It is not the church's fault if some choose not to do so. Churches can also discuss the vital moral issues of the day and even endorse or oppose legislation, subject only to the far less restrictive language regarding lobbying contained in the Tax Code.

Second, though, when flagrant violations of the principle of non-participation in political campaigns are brought to our attention, we have (on 38 occasions) sent a letter to the Internal Revenue Service detailing our reasons for believing that a church has violated the provision prohibiting intervention in campaigns and should be investigated and penalized where appropriate. These letters are generally accompanied by additional evidence, from affidavits of church members to newspaper accounts, to demonstrate why we believe the entity has crossed a forbidden line. The activities we have reported have ranged from a $44,000 church-sponsored advertisement in a major newspaper urging the defeat of a Presidential candidate, distribution of highly slanted "voter guides" by political party members in church, direct pulpit endorsements, and collection of funds in Buddhist temples. In a few cases, we know that the complaints have led to enforcement actions by the Internal Revenue Service. However, unless an institution challenges a penalty in court or discusses it in the media, we do not know, nor are we entitled to know, the disposition of these complaints.

According to the chief sponsor of H.R. 2357, Representative Walter Jones of North Carolina, his legislation was born from anger over a letter we sent to nearly 300,000 houses of worship nationwide in 2000 outlining federal tax law and urging that churches seek their own legal counsel before passing out materials such as "voters' guides" of the Christian Coalition. Apparently a copy of this letter went to "a fundamentalist Baptist minister" in his district who was "stunned—that he could lose his status by just saying, 'Bush is pro-life, Gore is pro-choice.'" (Actually, it is not clear that any church could lose its tax exemption based on that statement alone.)

These comments obviously do not reflect the only reasons sponsors have for wanting to enact legislation on this matter. However, the comments about our work are based on two completely erroneous and unsubstantiated claims that have been repeated in dozens of press conferences and media appearances. I would like to set the record straight.

First, these bills are not necessary because pastors feel unable to speak to the moral issues of the day. It is a "red herring" of considerable dimension to allege that pastors, priests, rabbis, or imams are having their speech "stifled." Regrettably, this is the kind of misleading position staked out by Congressman Jones in a recent letter to the *Washington Times* (2/24/2002): "Houses of worship have always, since the Founding, spoken out on issues of the day. Simply because politicians also debate those issues—from abortion to the death penalty—churches are now required to be quiet because to speak out during an election cycle threatens government sanction and the loss of tax exemption." In fact, speaking out on issues is virtually unregulated by the Tax Code. No church has ever been penalized under the lobbying restriction in the Code for making moral statements on any topic. In fact, to suggest otherwise is to create the very chilling effect our letters supposedly generate. It is quite easy to talk about issues, stake out ethical positions, ask your congregation to seek out political leaders who adhere to those positions—all without endorsing a specific party or candidate with the resources of your church. The one and only thing the valuable tax exemption requires you to give up is the right to endorse candidates; it is no different from the requirements that any 501(c)(3), religious or secular, would have to follow. The church on the corner is no different from the Red Cross or Americans United for Separation of Church and State.

The proponents of this legislation also continue to perpetuate the myth that either Americans United or the Internal Revenue Service or both of us is only concerned about the activities of conservative churches and religious institutions. This is demonstrably false. Indeed our first interest in this matter was the effort of the Reverend Jesse Jackson to hold a "Super Sunday" fundraising effort for his 1988 presidential bid by having African-American congregations take up collections for his primary bid right during church services. We alerted the IRS to this planned activity and through the help of an "open letter" generated a spate of adverse activity that caused Mr. Jackson to back off. In other significant cases, we have reported the alleged fundraising in the Hsi Lai Buddhist Temple on behalf of the Democratic Party and Al Gore, the Democratic Primary endorsement of the candidacy of Al Gore over Bill Bradley by the Reverend Floyd Flake of New York (which he conceded led to an agreement with the IRS not to engage in similar activity in the future), and most recently the in-church electioneering permitted on behalf of a Democratic candidate for sheriff in Wake County, North Carolina.

Obviously, we have also pointed out the potentially unlawful conduct of churches seeking to provide aid to Republican candidates, including the pulpit endorsement immediately before an election of a former Congresswoman from Idaho was, among other things, extolled as "a prophet for our nation," the distribution of Christian Coalition voter guides in Idaho by the chairman of the local Republican Party (who was either very benevolent in passing out a wholly "objective" document or was seeking to promote the candidacies of the Republican candidates all obviously favored in the "voter guide"), and a pastor, speaking on behalf of his Philadelphia congregation, who endorsed GOP presidential candidate George W. Bush from his pulpit, while being broadcast via satellite to the Republican National Convention. Independent candidacies have also been the subject of complaints. We submitted material regarding what we considered the endorsement of Howard Philips of the U.S. Taxpayer Party in the presidential race of 1996 by a religious anti-abortion group called the American Life League, as well as a Pennsylvania's church endorsement of specific candidates in a non-partisan school board race.

When all is said and done, as a matter of tax policy and constitutional law, I believe it will be a sad day in America when her houses of worship begin to descend into the political fundraising world. Of course, some argue that if the church is uneasy with partisan politicking, it can just forego it. That may be easier said than done. If parishioners see the church across the street doling out dollars for politicians and then (*quid pro quo* or merely the appearance thereof) getting money under programs like the president's "faith based initiative," there will be strong pressure on church leaders to craft similar "arrangements." Churchgoers should be able to assume that their $20 bill in the collection plate will be used for the ministry and not shunted off to attack ads or political bumper stickers. If not, they might just let the collection plate pass by empty.

In all candor, the bills before you are unconstitutional, unnecessary, and unhealthy for both the church and the political process. I urge that they be rejected. Thank you for this opportunity to be included in this hearing.

ADDENDUM

I am writing to expand on some of the statements in my written testimony of May 14, 2002 concerning the interaction of Rep. Walter Jones' H.R. 2357 and Rep. Phil Crane's H.R. 2931 with the campaign finance laws, especially the Bipartisan Campaign Reform Act of 2002, which will go into effect after the upcoming election cycle.

There are several ways in which the contributions of church parishioners could be used for political activity. The most direct way would be for a church to open a political action committee (PAC) bank account for contributions, and follow relevant individual contribution caps and FEC reporting requirements for PACs. When soliciting political funds, the church would have to make clear to individual congregants contributing to the collection plate that a specific portion of their contribution will go to the PAC fund for political activity. The church would not be able to simply transfer money from the general treasury to the PAC bank account—the church must ensure that all PAC money came from individual contributions, and not from the church bake sale or spaghetti dinner. The church should also instruct congregants not to treat contributions that may be used for political purposes as tax deductible, because the IRS will likely treat these church PAC accounts as § 527 accounts, contributions to which cannot be tax deductible. However, the church will retain its tax-exempt status for other activities.

Allowing 501(c)(3) religious organizations to operate PAC operations is just one of *many* ways that the Jones and Crane bills open new loopholes in the nation's campaign finance system.

In addition to diverting collection plate funds to candidates, the PAC funds of unincorporated houses of worship could be used for other express advocacy activities, such as print and broadcast attack ads against candidates sponsored by the church PAC account. And it is clear that H.R. 2357 and H.R. 2931 would open the door to houses of worship engaging in partisan political activity through slanted "issue advocacy" advertisements. An example of an "issue advocacy" ad would be a negative message targeted at Congressman X followed by a request to "call Congressman X" and tell him you are outraged by his record. In addition to print and broadcast advertisements, the Jones and Crane bills would allow houses of worship to engage in direct mail, push polling and voter guides with the same negative partisan political message. However, assuming the new campaign finance law takes effect, these messages may be restricted 30 days before a primary and 60 days before a general election.

The bottom line is that the Jones and Crane bills would open outrageous new loopholes in the campaign finance system. And more disturbingly, H.R. 2357 and H.R. 2931 would be a corrupting influence on our nation's houses of worship.

Chairman HOUGHTON. Thanks very much, Reverend Lynn. Dr. Kennedy.

STATEMENT OF D. JAMES KENNEDY, PH.D., PRESIDENT, CORAL RIDGE MINISTRIES, FORT LAUDERDALE, FLORIDA

Reverend KENNEDY. Thank you. Mr. Chairman, and ladies and gentlemen, it is a pleasure for me to be here to have an opportunity to speak to you, especially after what I have just been listening to. I hardly recognized the Nation that we are talking about in a previous discussion. It is certainly nothing that I would be in favor of.

May we simply remind ourselves of the history of this matter. Up until July 2, 1954, when this Nation and its churches had been active for 334 years with the kind of freedom that this bill would grant, it did not create the kind of monstrosity that we just heard about, nor do I believe it would in the future.

What is new and what is radical is this bill, which, as you know, was introduced on the floor on July 2 as Members were leaving for summer by LBJ, by Lyndon Baines Johnson, who was very upset that a couple of anti-Communist groups in Texas had been giving him a very difficult time in the election, and he decided to do what often has been decided to be done by people in power that did not like the things that had been said about them. He decided to silence them, so he added on the floor, without debate, the amendment that took away from churches and ministers what they had enjoyed for 334 years; that is, the right to say whatever they felt their consciences and the Scriptures were teaching them, and that they did not need to be afraid of what the government would do if they said certain things that the government disallowed.

I have traveled all through this Nation. I have talked to thousands, over 100,000 ministers on this subject. I have noticed several things. One of them, if you ask any 100 of them what this says, we probably would get almost 100 different answers. It is very confusing. I think that was seen when we heard the experts talk about it earlier today. It is not something that is easily understood, and I have talked to many ministers who would not say anything on any moral issue or any other issue that might be perceived as being unacceptable because they were afraid that the IRS

would come down upon them, open a new file on their church, and that they would experience repercussions because of that. Therefore, they have abstained from saying anything.

Most people in America today believe that anything that is legal is right, and anything that is illegal by definition is wrong. Therefore, they feel that it is wrong to speak on these issues today, especially if there is any kind of election that is forthcoming in the near future, because they believe that this is illegal.

They are not sure what it is that is illegal, because it is, indeed, confusing and obscure, in many aspects. And when you question them about that, it is very clear that they do not know exactly what is or what is not legal for them to say and when they can say it.

I think this needs to be done away with, and I have talked, again, to a great many Christians who believe that their pastors do not say anything about these issues simply because of the fact that they are afraid of the consequences. This is what the people believe is the motivation behind that, rightly or wrongly, but I have heard this said numbers of times.

I believe that what we have in this country here is something that has contributed in the freedom we had for 334 years, has contributed markedly to the moral and spiritual advantage of this country, and if we selectively silence those who have the greatest vested interest in trying to maintain the moral law of God, we are inevitably going to see a decline in the moral status of the Nation. And what have we seen in the last 48 years other than just precisely that, indeed?

And, therefore, I think that this unfair and ill-understood concept needs to be abandoned, and we should go back not to some advanced radical new view that somebody might come up with now, but rather we should go back to what the founders of this country and Americans in general for over 300 years believed was the proper thing to do.

It was said by a great historian in the 19th century that the moral force of this country came from the Puritan pulpits of New England, and without that, we probably never would even have obtained our freedom. And what would the IRS have to say about things like what Martin Luther King did, or those that fought against slavery? Would these be construed to be political matters if they were spoken of shortly before an election? I believe they would. What would have been the result in our Nation if that were true?

I believe, ladies and gentlemen, that it is time for us to get rid of this inequitable, unfair, and ambiguous law that was attached without any debate. I thank God that 48 years later, finally, the Congress is getting that debate.

Thank you for your time.

[The prepared statement of Dr. Kennedy follows:]

Statement of D. James Kennedy, Ph.D., President, Coral Ridge Ministries, Fort Lauderdale, Florida

Good afternoon, Mr. Chairman. Thank you for the opportunity to be here. On behalf of the thousands of people who have signed petitions asking Congress to pass the Houses of Worship Political Speech Protections Act—some of which you see

stacked on the table before me—I am pleased to have this opportunity to address the subcommittee.

In the summer of 1954, Lyndon B. Johnson had a problem: What to do about powerful anti-Communist organizations threatening his Senate reelection. The answer proved amazingly simple. Just like Congress this past spring, Johnson figured out that the best way to deal with these "special interests" was to silence them.

So, on July 2, 1954, as the Senate considered a major tax code revision, Johnson offered a floor amendment to ban all nonprofit 501(C)(3) groups from engaging in political activity. Without hearings or public debate, his amendment passed the Senate on a voice vote. Johnson's revision to the federal tax code was targeted at the nonprofit groups contesting his seat, but churches were caught up in the ban. In just minutes and without debate, churches, for reasons that had nothing to do with the separation of church and state, were stripped of their liberty to participate in America's political life.

That will change if "The Houses of Worship Political Speech Protection Act," introduced by Rep. Walter Jones, and cosponsored by 114 other Members, becomes law. Jones' bill will reverse Johnson's ban and return the protection of the First Amendment to America's churches, synagogues, and mosques. Today, the hearing that never took place 48 years ago is convening as the House Ways and Means Oversight Subcommittee considers this bill.

This legislation is a vitally important step in reversing a long-standing injustice whereby free speech seems to be protected everywhere except in the pulpits of our churches and other houses of worship. It will restore to churches a freedom and role that dates to America's infancy. Nineteenth century historian John Wingate Thornton said that "in a very great degree, To the pulpit, the PURITAN Pulpit, we owe the moral force which won our independence."

The British would agree. Disgusted at the black-robed clergy's prominent role in stirring the colonies to fight, the Redcoats called them the "Black Regiment." And Prime Minister Horace Walpole declared in Parliament that "Cousin America has run off with a Presbyterian parson." Walpole was most likely referring to John Witherspoon, who was a Presbyterian minister, president of Princeton and a signer of the Declaration of Independence. Witherspoon, who was accused of turning his college into a "seminary of sedition," was the most important "political parson" of the Revolutionary period, according to the Library of Congress.

During the Revolutionary era, it was graduates of Yale and Harvard, serving in churches across New England, who laid out the theology of resistance that made war with Britain inevitable. One of the most provocative and influential sermons preached was Jonathan Mayhew's 1750 "Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers." His message, quickly printed and read on both sides of the Atlantic, justified political and military resistance to tyrants and has been called "The Morning Gun of the American Revolution."

When British General Thomas Gage attempted to silence the incendiary messages being preached by New England's Black Regiment, one clergyman, William Gordon, declared in defiance that "There are special times and seasons when [the minister] may treat of politics." To do otherwise was not possible for New England's ministers, who had been faithfully applying God's Word to every area of life since the first generation arrived in Massachusetts.

In the mid-nineteenth century, evangelical Christians were primary agents in shaping American political culture, according to Richard Carwardine, author of *Evangelicals and Politics in Antebellum America*. "Political sermons, triumphalist and doom laden, redolent with biblical imagery and theological terminology, were a feature of the age," he writes.

For example, one minister distilled the question before voters in the 1856 election as a contest pitting "truth and falsehood, liberty and tyranny, light and darkness, holiness and sin—the two great armies of the battlefield of the universe, each contending for victory."

Language like that today might earn a visit from the Internal Revenue Service. It did in 1992 after the Church at Pierce Creek in Vestal, New York, placed a newspaper ad warning Christians not to vote for Bill Clinton for president. Such a vote, the ad warned in rhetoric echoing 1856, would be to commit a sin. The IRS took notice and three years later revoked the church's tax exemption.

Aggressive toward Pierce Creek, the IRS has, at other times, looked the other way. In 1994, for example, New York governor Mario Cuomo campaigned for reelection on a Sunday morning at the Bethel African Methodist Episcopal Church in Harlem. "Cuomo was rewarded with a long, loud round of applause and an unequivocal endorsement from the pastor," according to a *Newsday* report. The American Center for Law and Justice, which represented the Church at Pierce Creek, uncovered evidence at trial that the IRS knew of more than 500 instances where can-

didates appeared before churches, as happened with Gov. Cuomo and Bethel A.M.E., but took no action to revoke these church's tax-exempt status.

The unequal enforcement of the existing law is just one of several reasons why scrapping the political activity ban altogether is a good idea. The political activity restriction is a blatant violation of the First Amendment, is vague and burdensome, and marginalizes churches at a time when America most needs a moral compass.

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech—." Yet that is exactly what the Congress has done by silencing churches.

Nor is the political activity ban easy to obey. Not just endorsements, but voter education activities, such as voter guides that compare office-seekers on issues, may violate the ban if they are perceived as partisan. Even addressing moral concerns, such as abortion, from the pulpit during an election campaign may violate the IRS rule if abortion, for example, is under debate in the campaign.

With so much uncertainty and so much at risk, silence is, regrettably, the only option for the minister who wants to ensure that the IRS does not open a file on his church. But when Caesar's demand for silence confronts the message of God's Word, ministers are forced into hard choices. That's what happened in Nazi Germany a generation ago. Many pastors submitted, and were silent. Others were not, and paid the price.

If, as has been asserted, we owe our liberties to the "moral force" of the pulpit, the censorship of that voice—for reasons that have everything to do with partisan politics and nothing to do with the separation of church and state—is a monumental mistake that should be quickly corrected. In a culture like ours, which sometimes seems on moral life support, the voice of the Church and her message of reconciliation, virtue, and hope must not be silenced.

Chairman HOUGHTON. Thank you, Dr. Kennedy. Ms. Girton-Mitchell.

STATEMENT OF BRENDA GIRTON-MITCHELL, ASSOCIATE GENERAL SECRETARY FOR PUBLIC POLICY, AND DIRECTOR, WASHINGTON OFFICE, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE USA

Ms. GIRTON-MITCHELL. Thank you, Mr. Chairman and Members of the Subcommittee. My name is Brenda Girton-Mitchell. I am Associate General Secretary for Public Policy and Director of the Washington office for the National Council of Churches of Christ in the USA. For the record, I am also the Chair of the Board of trustees of the Metropolitan Baptist Church here in the Nation's Capital, a divinity student at Wesley Theological Seminary, and a former staff of the other body.

Thank you for the opportunity to present testimony on behalf of the National Council of Churches, which is the Nation's leading organization in the movement for Christian unity. The council brings together 36 Protestant, Anglican, and Orthodox communions, which have an average Membership of some 50 million U.S. Christians and more than 140,000 congregations in communities across the Nation. A list of our Member communions/denominations is attached for the record.

While I cannot presume to speak for all of those individuals I represent, I do speak for the general assembly of the National Council of Churches. The assembly is a representative body of some 270 persons chosen by the Member communions, which sets policy for the council and commends policy to the churches.

Since our founding in 1950, the council has a long and proud record of witnessing for the religious freedom of all Americans. My predecessors on the council staff have often found themselves

where I find myself today, testifying before a congressional Committee regarding our deep conviction about the religious and civil liberties that we and all Americans treasure.

We are not bashful about speaking out on public policy, because we are bound by our sense of mission and our obedience to God. God requires us to speak out on issues that are designed to help the common good. We welcomed Dr. Martin Luther King as our keynote speaker to the council in 1957. We sent a youth director by the name of Andrew Young to work with Dr. King, and he later became a Member of this body. We and our Members have preached, written, marched, applauded, protested, and even prayed for Congress and for legislation, and have found that this current legal system serves us well.

It is against this backdrop of a proud heritage and with a continuing concern for religious liberty that I come to you today to say that while H.R. 2357 and H.R. 2931 are purported to protect the political speech of churches, they are, in fact, unnecessary, they are unwise, and they are unwanted by our Member communions of the National Council of Churches and many other faith groups that have been represented today.

These bills are unnecessary because the views of the church have not been muzzled. Houses of worship already enjoy the right and the responsibility to speak out on any and all political issues. The system is not broken. We believe that separation of church and State, which has served our Nation so well for more than two centuries, applies to the institutions of church and State. However, the separation of church and State does not mean that religion and politics will never intersect. Everything that affects the well-being of human beings is of direct interest to churches, and churches are compelled to proclaim what they believe to be right and moral forces for this whole society, not just for the church and its Members.

My pastor often says, for a religion to truly be relevant, a preacher must come to the pulpit with his Bible, his or her Bible in one hand, and the newspaper in the other. We know what we are called to do as we heed the words of Amos: to establish justice in the gate.

This legislation is unwise because the measures in these bills would corrupt our prophetic voices. Pastors know what their callings require and are free to speak on any issue. Churches are already allowed to engage in citizen education, voter registration, nonpartisan political forums. However, the National Council of Churches believes that to allow churches to explicitly endorse and support political candidates crosses the line that has served us well and puts us in dangerous territory.

The churches could not effectively play this role if they were to become enmeshed in partisan politics. By encouraging churches to do so, these bills pose a great threat to the free and prophetic voice of churches. A church that backs a particular candidate for office and that promotes one political party over another has forfeited the critical distance that allows the church to critique the stands taken by the candidate and the party.

This legislation is unwanted. It threatens the church in ways that have been noted today. Allowing churches to use tax-deductible dollars to support or oppose candidates for public office often

will damage our system of government in yet another way. We are deeply concerned that, if enacted, these bills will undermine the progress we have made as a nation in the area of campaign finance reform. The NCC strongly supports campaign finance reform as a way to level the playingfield, maintain fairness, and build confidence in our political system.

In closing, I would like to share a quote with you from our former counsel for religious liberty, the Reverend Oliver Thomas, who was trained as a Baptist Minister and a lawyer. The wisdom he shared with the congregation sums up many of our objections to these bills. He said, and I quote, "even if there were no prohibition on electioneering in the Tax Code, churches would do well to avoid such partisan political activity. Rarely, if ever, can a particular candidate or party be identified as God's choice. The misguided use of Christ's church for secular and political purposes not only creates dissension within the household of faith, but also, inevitably, diminishes the churches' witness and credibility on moral concerns. In most cases, good theology and good tax advice go hand in hand."

Thank you.

[The prepared statement of Ms. Girton-Mitchell follows:]

Statement of Brenda Girton-Mitchell, Associate General Secretary for Public Policy, and Director, Washington Office, National Council of the Churches of Christ in the USA

My name is Brenda Girton-Mitchell. I am an Associate General Secretary for Public Policy and Director, of the Washington Office National Council of the Churches of Christ in the USA and Director of the Council's Washington Office. For the record I am also Chair of the Board of Trustees of the Metropolitan Baptist Church, a divinity student at Wesley Theological Seminary and a former staff in "the other body."

I thank you for this opportunity to present testimony on behalf of the National Council of Churches, which is the nation's leading organization in the movement for Christian unity. The Council brings together 36 Protestant, Anglican and Orthodox communions, which have an aggregate membership of some 50 million U.S. Christians in more than 140,000 congregations in communities across the nation. (A list of our member communions is attached.)

While I cannot presume to speak for all of those individuals, I do speak for the General Assembly of the National Council of Churches. The Assembly is a representative body of some 270 persons chosen by the member communions, which sets policy for the Council and commends policy to the churches.

The National Council of Churches has a long and proud record of witnessing for religious freedom of all Americans. Since our founding in 1950, we have filed countless friend-of-the-court briefs in cases where important principles of religious liberty were at stake. We have helped to convene faith-based coalitions for religious liberty that were so large and so diverse that practically the only thing its participants had in common was a dedication to preserving our religious freedoms. And my predecessors on the Council's staff have often found themselves where I am today—testifying before a congressional committee regarding our deep convictions about the religious and civil liberties that we and all Americans treasure.

Nor are we bashful about speaking out on public policy. We welcomed Dr. Martin Luther King, Jr. as our keynote speaker in 1957. We sent our Youth Director, a young minister named Rev. Andrew Young to work with Dr. King in 1961. We and our members have preached, written, marched, applauded, protested and above all prayed for Congress and for legislation and have found the current legal structure serves us perfectly well.

Summary

It is against the backdrop of this proud heritage and with a continuing concern for religious liberty that I come before you today. I come to say that while HR 2357 and HR 2931 are purported to protect the political speech of churches, they are in

fact unnecessary, they are unwise, and they are unwanted by the member denominations of the National Council of Churches and by many other faith groups.

Unnecessary

The full and free participation of the nation's churches in public policy debates both before and after 1954—the year that provisions of the tax code were adopted prohibiting churches from taking part in partisan political activity demonstrates that these bills are unnecessary. The views of churches have not been muzzled, as some have claimed; houses of worship already enjoy the right and the responsibility to speak on any and all political issues. The system is not broke.

Put another way, the National Council of Churches holds that separation of church and state, which has served our nation so well for more than two centuries, applies to the *institutions* of church and state. However, separation of church and state does not mean that religion and politics will never intersect. In fact, churches contribute much to the moral thinking and public policy in our nation and that role has been widely valued and is likely to grow.

Many congregations belonging to our member denominations have opposed official government policies and actions that they believe are harmful, and we have not feared reprisals. Many of these congregations have vigorously advocated for policies that in their view will make for peace and justice and they have not shied away from controversial subjects. Indeed, churches have weighed in on issues of war and peace, health care, the rights of women, Civil Rights and most of the hottest issues that have come before this body. In some cases, our advocacy has enjoyed a measure of success. In other cases our views have not prevailed, but we have never been prevented from advancing our views.

Unwise

Pastors can use the church as a bully pulpit on any issue and the law already allows churches to devote a portion of their budget to advocacy, and to engage in citizen education, voter registration and non-partisan political forums, the ability to speak out, debate and express differing opinions is an essential part of the freedom that we have as Americans. To allow churches to explicitly endorse and support political candidates, however, crosses a line that has served us well and puts us in dangerous territory.

I can vouch for the extent and vitality of church activity on public policy issues from my vantage point as director for the Washington Office of the National Council of Churches. My office works closely with the Washington staff of our member denominations, with state and local ecumenical and interfaith organizations nationwide and with congregations across the country. The range of issues that we have tackled over the course of 52 years is extraordinarily wide, and the passion with which churches approach these issues is extraordinarily deep.

For half a century we have brought an ethical and moral perspective to the great issues of the day, from civil rights to the war in Vietnam, from international debt to domestic welfare legislation, from campaign finance reform to gun violence and everything in between. To say that churches have been muzzled in the political arena is simply not true. Every day, churches across the nation generate an abundance of evidence that speaks to their role in holding government accountable and in publicly advancing their vision of the common good—in the pulpit, in other communications and through education and advocacy on public issues.

But churches could not effectively play this role if they were to become enmeshed in partisan politics. By encouraging churches to do so, HR 2357 and HR 2931 actually pose a great threat to the free and prophetic voice of the churches. A church that backs a particular candidate for office and that promotes one political party has forfeited the critical distance that allows the church to critique the stands taken by that candidate or that party. The measures in these bills would corrupt our prophetic voices.

Furthermore, churches that back a political candidate run the risk that their choice for office might very well claim divine sanction for his or her party and its stances—thus jeopardizing the credibility of religious voices. The church must speak to worldly issues from the deep places of faith, but must not lend the voice of faith to temporal interests.

Unwanted

The proposed legislation threatens churches in the ways I have noted and it also poses risks to the wider society. Legislation that in essence allows churches to be-

come integral parts of political parties and to engage in the heat of political campaigns opens the door to the kind of religious strife that has devastated other countries—from Ireland to Indonesia and from Benares to Beirut—strife from which our nation largely has been spared by the wisdom of our country's founders and the continuing vigilance of Congress. As the United States becomes ever more religiously diverse, the possible permutations for such conflict also increase.

Allowing churches to use tax-deductible dollars to support or oppose candidates for public office damages our system of government in yet another way. We are deeply concerned that, if enacted, these bills will undermine the progress that we have made as a nation in the area of campaign finance reform. The NCC strongly supports campaign finance reform as a way to level the political playing field, maintaining fairness and building confidence in our political system. As gifts to churches are tax deductible and gifts to political parties and candidates are not, how fair is it then to allow political partisans to channel support for their candidates through churches? We say, not fair at all—to churches or to taxpayers.

For all these reasons, the National Council of Churches, along with many other faith groups from Baptists to Buddhists, Jews to Quakers, Methodists to Presbyterians etc., views HR 2357 and 2931 as ethical liabilities and sees no advantage whatsoever for our society or our churches. The proposed legislation would inevitably cause internal dissension among congregations, and tear our communities of faith apart.

Our stance, based on longstanding policy voted by our member communions, is also supported by recent opinion polls that once again lift up the common sense of the American public. The Pew Research Center for the People and the Press and the Pew Forum on Religion and Public Life found that 70 percent of Americans feel that houses of worship should not favor one candidate over another during political elections. Another poll, conducted by Gallup and the Interfaith Alliance Foundation, canvassed the clergy and found that a full 77 percent of America's clergy are opposed to their fellow clergy endorsing political candidates.

I want to conclude this testimony with a quotation on this subject from our former counsel for religious liberty, the Rev. Oliver Thomas, who was trained both as a Baptist minister and a lawyer. The wisdom that he shared with congregations sums up many of our objections to HR 2357 and H.R. 2931 and I share his words with you now. Mr. Thomas said, "Even if there were no prohibition on electioneering in the tax code, churches would do well to avoid such partisan political activity. Rarely, if ever, can a particular candidate or party be identified as God's choice. The misguided use of Christ's church for secular political purposes not only creates dissension within the household of faith but also inevitably diminishes the churches' witness and credibility on moral concerns.—In most cases, good theology and good tax advice go hand in hand."

Member Communions of the National Council of Churches

African Methodist Episcopal Church
African Methodist Episcopal Zion Church
Alliance of Baptists
American Baptist Churches in the USA
The Antiochian Orthodox Christian Archdiocese of North America
Armenian Church of America
Christian Church (Disciples of Christ)
Christian Methodist Episcopal Church
Church of the Brethren
Coptic Orthodox Church in North America
The Episcopal Church
Evangelical Lutheran Church in America
Friends United Meeting
Greek Orthodox Archdiocese of America
Hungarian Reformed Church in America
International Council of Community Churches
Korean Presbyterian Church in America (General Assembly of the)
Malankara Orthodox Syrian Church
Mar Thoma Syrian Church of India
Moravian Church in America (Northern Province, Southern Province)
National Baptist Convention of America, Inc.
National Baptist Convention, USA, Inc.
National Missionary Baptist Convention of America
Orthodox Church in America

Patriarchal Parishes of the Russian Orthodox Church in the USA
Philadelphia Yearly Meeting of the Religious Society of Friends
Polish National Catholic Church of America
Presbyterian Church (U.S.A.)
Progressive National Baptist Convention, Inc.
Reformed Church in America
Serbian Orthodox Church in the USA and Canada
The Swedenborgian Church
Syrian Orthodox Church of Antioch
Ukrainian Orthodox Church of America
United Church of Christ
The United Methodist Church

Chairman HOUGHTON. Thank you very much, Ms. Girton-Mitchell. Mr. Coyne, would you like to inquire?

Mr. COYNE. Thank you, Mr. Chairman.

Dr. Kennedy, Mr. Miller earlier in the other panel testified that there already is a vehicle by which religious organizations can channel money into political activities by forming a section 501(c)(4), and I wondered if you took advantage of that particular path.

Reverend KENNEDY. I am sorry, you wonder if I could——

Mr. COYNE. I wonder if you are currently taking advantage of that provision in the IRS Code?

Reverend KENNEDY. Yes, sir. At one of our ministries, we are.

Mr. COYNE. So why, then, is it necessary to channel money or support legislation that would channel money from the collection plate into political activities when you have this section 501(c)(4) option?

Reverend KENNEDY. Because actually this bill does not really address any other religious organizations, but simply houses of worship. This other ministry I am referring to is not a church. It is not a house of worship, so it really has nothing to do with this.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Mr. Lewis?

Mr. LEWIS. Thank you very much, Mr. Chairman.

Mr. Chairman, I want to thank you for inviting the witnesses to be here, and I want to thank all of the witnesses for appearing.

I don't know exactly where to start, but I have noticed certain names and church groups and organizations have been thrown around. I don't know where to start, but let's see.

Mr. May, in the beginning you made the point that the church should be allowed to take care of the sick, feed the hungry, clothe the naked, visit those in prison, and maybe, Mr. Fauntroy went on to say to others, to preach the good news. There is nothing that prevents the church from doing any of these things, is there?

Mr. MAY. There is nothing that says they cannot feed the hungry and clothe the naked. What happens, however, is that a minister may believe, for the same reason he is called to feed the hungry and clothe the naked, that he needs to speak out on an issue, as Mr. Fauntroy has already indicated he has done his whole life, because it is a matter of conviction and justice. In those instances, they are frozen off of the field, because if they do so, they compromise their ability to, in fact, clothe the naked and feed the hungry.

Mr. LEWIS. Reverend Fauntroy, am I missing something here? Tell me. Help me out, here. I have a list of Members of the National Council of Churches, and almost every major Protestant denomination, Methodist, Baptist, Orthodox Christian, Christian Methodist Episcopal, CME, Church of the Brethren, the Baptists, Presbyterian, all types, oppose this legislation.

Now, your church is a Member of the National Council of Churches, right?

Reverend FAUNTROY. That is right.

Mr. LEWIS. In the Baptist tradition we believe in a democracy, but how did you break with the National Council of Churches? How did you break with the national Baptists or the progressive Baptists?

Reverend FAUNTROY. I break with all of them on the basis of the fact that I am an experienced Pastor who heads a house of worship.

Mr. LEWIS. Are you saying these other religious leaders are not experienced as pastors?

Reverend FAUNTROY. You said, break with the body. I would say, with my church. I am an experienced Pastor, and I am an experienced politician. I know that politics is about who gets how much of what, when, and where in five areas. For 20 years I watched and participated with this Congress in the decision as to who got how much of what of the Commerce budget of the U.S. Department of Health and Human Services, and so forth. So that is one reason I speak, out of the authority of my experience as Pastor.

Second, I beg to differ with some here who stated, and if I am incorrect, help me to understand this, that this bill would authorize churches out of their budgets to pay staff for political campaigns. Help me out, somebody.

Mr. MAY. In fact, no. I think I stated and my testimony outlined for you where in the Federal campaign laws this activity is specifically precluded now, whether this bill ever gets out of Committee or not.

Reverend FAUNTROY. All right. Second, someone has suggested that a person may make a tax-deductible contribution to the church to free up money to carry out its budget responsibilities. In 43 years of ministry, I have thought that it has always been unlawful for people to designate where the money they give to the church goes. Our church and most churches I know develop a budget to carry out the worship and service ministries.

I must tell you as a Minister and Pastor of a church, I did not dare ask the church to put my campaign in the budget. But I will tell you one thing, when the Tuesday before the Sunday came, when politicians show up at a place where they know they have motivated people, I made it clear that having listened to all the candidates and assessed the issues as they affect income in our neighborhood, education for our children, health care for our sick, housing, and justice, that I recommend to you that you vote for this person or that. If you had shown up in the sixties on that, the seventies, eighties, or now, and put me in jail, I would go to jail on that.

All I am saying is, and I said at the end, that I recognize that people who talk east and walk west on income, education, health

care, and housing for the least of these may use this idea that we cannot speak, but they ought to be able to use it under the kinds of fairness and equity that I think exists now. It does not include some rich person trying to support a politician who is going to cut the cake of the income, education, housing for his people and to the exclusion of the least of these; who can give his money and have it covered like that, no. When Members contributed to my campaigns, they had to go through the usual process.

Mr. LEWIS. Mr. Chairman, may I have another moment or so, since the witness used so much of my time?

Reverend FAUNTROY. Please forgive me, Congressman Lewis.

Mr. LEWIS. Let me say, Congressman Fauntroy, I appreciate the contribution you have made to the cause of civil rights and the religious community. I appreciate it very much.

But I wonder whether Dr. Gaddy or Reverend Lynn, Ms. Girton-Mitchell, would have something to say about the need to plant this strong, solid wall, the separation of church and State.

I want to make another little point here, Mr. Chairman. We could be dealing with some other issues here in this Congress. I know this is dealing with political activities coming to the churches. Many of these big churches are competing with Wal-Mart and K–Mart. You are not only engaged in political activity, but some of you in certain communities around the country, certain churches, are known as the Republican church, a Democratic church. It is known. But in some places you are selling books, tapes, T-shirts, the Bible, and everything. I know we are not dealing with that today, we are dealing with political activity.

Some of you have mentioned Martin Luther King, Jr. I knew him; he was a friend of mine. He was my leader. I first met him in 1958 when I was 18 years old. He never, to my knowledge, never endorsed a political candidate. You can preach the good news and tell the story, but you cannot use the church as a political platform. I think that is in violation of the law.

Dr. GADDY. Reverend Lynn? Ms. Girton-Mitchell?

Reverend GADDY. Congressman Lewis, thank you very much for the observation. I just have two points to make quickly for the sake of time.

I must live in a different world from that of Dr. Kennedy. I also have traveled the Nation. I also have talked to lots of ministers. I have never met a minister worth his or her salt that was refusing to talk about moral issues. I don't know how one ministers without talking about moral issues.

The legislation that we are talking about today does not discourage talking about moral issues. It does not prohibit that. It does prohibit the endorsement of a candidate for political office.

I have admired the ministry of Walter Fauntroy for a long time, I once, long ago, asked him to speak to a session that he probably does not remember now. But instead of pursuing the proclamation of good news in the five arenas that he has talked about so eloquently by endorsing a candidate for office from the pulpit, I think it is much more in order to encourage the people in the congregation to think out of their orientation to the good news, and to work in both political parties and among Independents to accomplish the goals.

I don't ever want to live in a nation that has come to identify political integrity by a spiritual definition, or that defines spiritual authenticity by a political identification.

Reverend LYNN. If I might add to that, and to clarify the record on this important issue about whether this allows the transfer of funds directly from a religious institution, a church or an association of churches, all those organizations covered by the Tax Code. Congressman Crane's bill is called the Bright-Line Act because he wants to permit up to 5 percent of the revenues of a church to be utilized for these purposes. That is more than a casual comment, that is an extraordinary amount, a large amount from a megachurch with a budget of $2 million or $3 million which, as Congressman Lewis points out, exist all over these the United States. So this is not just a comment here or there that we are talking about, but the direct ability of organizations to transfer from the collection plate, literally or figuratively, hundreds of thousands of dollars for the benefit of political persons that they believe, rightly or wrongly, for the best of reasons or the worst of reasons, will somehow move along their agenda.

I think that is absolutely the most dangerous, retrograde direction we can go when we think about both the integrity of the church and the integrity of the political process, which we are all concerned about cleaning up on a day-to-day basis.

Chairman HOUGHTON. We have some other questioners here. Mr. Foley.

Mr. FOLEY. Thank you very much.

Mr. Lynn, you advocate for, obviously, separation of church and State. Do you quarrel with what is, in essence, a Federal subsidy to churches through tax-exempt status?

Reverend LYNN. The Members of Americans United for Separation of Church and State are not monolithic in their answer to that question. The last time we did a survey of our own Members, about half of them said, do away with tax exemptions for churches. The other half said, no, keep them, they are important, as long as you give a similar tax exemption to other charities. That is why we are not actively advocating on this or other occasions about that issue.

Mr. FOLEY. Let me further the conversation earlier, because you mentioned, why don't we give the right to the American Cancer Association and others to be politically active? But I sense there is a little bit of a difference, because in the churches, truly, you do discuss a multitude of areas where there is a need for involvement. Reverend Fauntroy mentioned it himself. Don't you at least allow that that preacher, rabbi, has some significant stake in the outcome of an election? You can have these great moral discussions in church all day long, but if you end up electing the wrong person who has no interest in any of these issues, and you have allowed it to happen, don't you by some sense fail your congregation?

Reverend LYNN. I think you may overstate the case about the church and understate it for charities, because I think you can say of any major organization that is tax-exempt, that they have an interest, in the broadest sense, in the outcome of elections.

But I do think it is a good idea to have a class of organizations, tax-exempt charities, religious and otherwise, which are trying to effect social change through the work that they do day to day,

through the advocacy and the educational work, without getting involved in the issue of choosing the best political candidate in every election. The equation is exactly the same for all those other charities.

Believe me, as you well know as Members of this body, people who are advocates for more funding for cancer and those who are advocates for more funding for Parkinson's disease both have an interest in the outcome of elections.

Mr. FOLEY. Granted.

Let me suggest to you that I am called to speak by the Alzheimer's Association, the cancer groups. All these groups ask me to speak to them two or three times a year. During each presentation, they go on to tell their Members how strong I am on these issues: "Mark Foley wrote a letter for these, Mark Foley did this." Ultimately, their influence is achieving the same thing that this basic ruling is suggesting that they are not capable of doing.

Reverend LYNN. They are capable of doing the same. In fact, many churches would invite you and other Members of this and other political bodies to come to their churches, and they would thank you for the good work that you did.

They would not, however, put out campaign leaflets explaining why you are literally God's gift to the country. They would not endorse you from the pulpit. Those would be steps that they would not be allowed to take under current law. They should not take those under current law now, just as those medical organizations should not be able to pass out your campaign literature at their conventions, or invite you to speak and not acknowledge that you have someone running against you. That would be as wrong for a secular charity as it would be for a church.

Mr. FOLEY. But they do.

Reverend LYNN. Maybe somebody should form a group and look into that, because it is not my experience that charities, or churches, by the way, are looking to break the law. I think most charities want to obey the law. They like the bright-line test we have now, which is no political endorsement.

"No" does not mean a little bit, it does not mean 5 percent, 20 percent, or 19 percent. It just means no intervention in a political campaign. I think it is simple to understand. I think it has served us well, and I think we should keep it.

Mr. FOLEY. Mr. May, maybe you can help us. Have you talked to other church groups about the legislation, both versions, Mr. Crane's and Mr. Jones', relative to their support for the legislation?

Mr. MAY. I have. In Congressman Jones' measure, H.R. 2357 has polled the largest area of support. I would emphasize that what this measure will ultimately do is simply remove the anxiety and uncertainty, because it is very obvious, either from Mr. Fauntroy's testimony or from the nearly 60 examples I have provided in pages 18 through 22 of my testimony, that this measure is not abided by by a whole bunch of churches in America. I don't think we intend for those churches to be regarded as criminals or somehow acting outside the law.

We know Jesse Jackson, for example, has preached in churches, been endorsed in churches, raised money in churches. This is not about creating some great fear that we are going to change the na-

ture of our democracy. Remember, until 1954, churches did this all the time, and our democracy was not otherwise fractured or fissured off in 100 directions.

The bottom line is that we want to make sure that the occasional, the incidental endorsement, particularly from the pulpit itself, does not mean that you lose your tax exemption.

Then I want to add one thing. Barry Lynn keeps saying that somehow this permits the actual transfer of moneys from the U.S. Department of the Treasury or from the donation plate of the church. I have looked through the campaign finance reform law. I defy him to show me a section of that law which makes this legal and permissible. It is not there. It cannot be done.

Mr. FOLEY. Let me just ask quickly, Dr. Kennedy, do you think that prohibiting ministers from speaking from the pulpit on political issues and their candidates unfairly limits them in carrying out their vocation?

Reverend KENNEDY. Yes, I do. For example, we talk about moral issues. I have, as thousands of other clergymen have, spoken at times about abortion, feeling that this is not right and should not be done. But should I, 90 days before an election, speak on that same issue and indicate some candidate that may be against it or for it, I am in great jeopardy of losing; or I do not lose anything, it is the congregation, the people who lose it. I do not lose the money, it goes to the church. But the people who give it lose their tax exemption, which is something that they have now.

Mr. FOLEY. Thank you.

Chairman HOUGHTON. Thank you. Ms. Girton-Mitchell, I think we cut you off at one point. Would you like to make a statement?

Ms. GIRTON-MITCHELL. Thank you, Mr. Chairman. I was simply going to say that on behalf of the National Council of Churches, we believe that this legislation is unnecessary, unwise, and unwanted. With the present statutes, the clergy is able to do what is needed to be done.

Our primary focus is that of helping society in general. Ministers are able to speak out on issues. We have very knowledgeable congregations today who, with the right educational opportunities, are able to make their decision on political candidates without direct endorsements from the pulpit.

Chairman HOUGHTON. Thank you very much.

Mrs. Thurman.

Mrs. THURMAN. Mr. Chairman, Mr. Pomeroy has a 4:00, and if I could, I would like to go ahead and let him have my time.

Chairman HOUGHTON. All right. Go ahead, sir.

Mr. POMEROY. Thank you, Mr. Chairman, and thank you, Congresswoman Thurman.

I must say that I am somewhat surprised at the testimony that I have heard. One would conclude from some on the panel that the church has been utterly silent on the moral issues of our time for the last 50 years, ever since 1954.

Now, I think if we look back, my recollection of the church's role during this period of time is as a significant source of activism and leadership against segregation policies, a major bulwark of the movement for civil rights, and certainly raising the four questions,

the important questions that needed to be asked about the Vietnam War.

If some would think church activism and moral issues only come from the left, look at the seventies, eighties, nineties, the tremendous activism marshaled in congregations against abortion, and the tremendous political force that has come from there. So it certainly is not as though the churches have been constricted or leaders of churches have been constricted from speaking out about the moral issues of our time.

Really what this legislation is about is not at all, not one little bit, about a fear that some kind of nuanced slip from the pulpit might cross the line.

There are a couple of items I wish to put in the record on this hearing. First is a copy of the ad that provoked the court case in the Pierce Creek case that revoked their tax exemption. This is a full-page newspaper ad that cites Scriptures: "The Bible warns us not to follow another man into sin, nor help him promote sin, lest God chasten us. How then can we vote for Bill Clinton?" And it says by way of disclaimer, "This advertisement is cosponsored by the Church at Pierce Creek. Tax-deductible donations for this advertisement are gladly accepted." This is not some nuanced thing from the pulpit.

[The information follows:]

USA Today
October 1992

CHRISTIAN BEWARE

Do not put the economy ahead of the Ten Commandments.

Did you know that Governor Bill Clinton . . .

- **Supports abortion on demand?** (Violates Exo. 20:13, Lev, 20:1–5)
- **Supports the homosexual lifestyle, and wants homosexuals to have special rights?** (Violates Exo. 20:14, Lev. 20:13. See also Rom. 1:26,27)
- **Promotes giving condoms to teenagers in public schools?** (Violates Exo. 20:12, Col. 3:5. See also Rom. 1:28–32)

Bill Clinton is promoting policies that are in rebellion to God's Laws. In our desire for change, do we really want as a president and a role model for our children a man of this character who supports this type of behavior?

But what about the economy?

Yes, we are in tough economic times *but if God forbid that we sell out our most sacred beliefs in a vain hope of financial gain.* How can we expect God to bless our economy if we plunge down a path of immorality? (Deur. 28)

The Bible warns us to not follow another man in his sin, nor help him promote sin—lest God chasten us. (See Deut. 13, Jer. 23, Prov. 4:14; 11:21; 16:5, 1 Tim. 5:22)

How then can we vote for Bill Clinton?

This advertisement was cosponsored by The Church at Pierce Creek, Daniel J. Little, Senior Pastor, and by churches and concerned Christians nationwide. Tax deductible donations for this advertisement gladly accepted. Make donation to: The Church at Pierce Creek. Mail to: PO Box 132 SVS, Binghamton, NY 13903–0132

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Mr. POMEROY. What worries me about this is that we are going to have almost an Elmer Gantry model, someone with an agenda that is not their best effort at understanding their lord's agenda, God's agenda, but their agenda, trying to enlist and inflame the congregation so they might contribute funds that church leadership could directly funnel into campaigns with utterly no disclosure about where those dollars are individually coming from.

Now, you say, no way, religious leaders would not be prone to overstate. Let me read to you from an ad that I will also put into the record of this hearing, a mailing: "Stop IRS intimidation of churches and ministries. Please help my church and my pastor so we can," and this is the response, "Yes, help us. Fight for us. Please help my church and pastor so we can speak out on moral issues of national importance. I stand behind you to support all the work" of a certain ministry. And it goes on to say in the petition itself, "Please give your full support to passage of legislation that would restore freedom of speech to America's houses of worship."

[The information follows:]

SPECIAL REPORT

Is Your Minister Breaking the Law?

You and I have no say-so on that question. It's all up to the IRS!

Your church may run the risk of losing its tax-exempt status.

How?

By doing anything the Internal Revenue Service deems "political activity."

If ministers like Dr. D. James Kennedy or your own pastor speak out on moral or religious issues related to an upcoming election, for example, the IRS may decide that your church is "too political" — force it to pay taxes — and take away the income tax deductions claimed by congregants who financially support the church!

A MIXED HISTORY

How could this situation come about in the "land of the free"?

It wasn't always this way.

In the early days of our Republic, the Revolution — our country's fight for independence — was fueled by the Bible-based moral and political messages coming from the pulpits.

This strong tradition continued for many years ... until 1954.

That's when then-Senator Lyndon B. Johnson decided to get revenge against two groups for opposing him in his Texas senatorial election campaign.

He slipped an amendment into an unrelated revenue bill; the bill was passed, and along with it, LBJ's "spite amendment."

His addition — which became law without any public debate — gave the Internal Revenue Service unprecedented access to the country's churches and synagogues.

A CHOOSY TAXMAN

Is such a law constitutional? Hardly. The law is outrageous in its own right — a suffocating muzzle on the First Amendment rights of church-going citizens.

But what makes it worse is that the IRS has been highly ***selective*** in how it chooses to enforce its anti-faith code.

The agency appears to target conservative churches — while turning a blind eye to the political involvement of other churches.

Church leaders are not only confused and intimidated — they are also being unjustly silenced from exercising their freedom of speech!

A RAY OF HOPE

But now U.S. Representative Walter B. Jones of North Carolina has introduced the *Houses of Worship Political Speech Protection Act*.

It would amend the IRS code "to permit churches and other houses of worship to engage in political campaigns."

In short, his bill would protect the free speech rights of pastors and ministers to speak out about moral and religious issues during political campaigns.

Congressman Jones makes this observation:

"If this nation is going to remain free and strong, I think churches have an obligation to talk about issues, and I think there's nothing wrong at all for those ministers to say how individuals in office or running for office feel about those same issues the Church is talking about."

A CALL TO ACTION

Such a law is vitally important. Churches and ministries like Coral Ridge Ministries must be free to comment on issues of importance to the nation. The Christian faith must continue to influence public affairs — or America is doomed.

So Coral Ridge Ministries is committing itself to support the *Houses of Worship Political Speech Protection Act* through a nationwide information and petition campaign.

Blessed is the nation whose God is the Lord....

—Psalm 33:12 NKJV

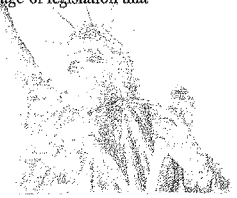
Join with Dr. D. James Kennedy and Coral Ridge Ministries in calling for passage of the *Houses of Worship Political Speech Protection Act*. Please sign the enclosed petitions to the Speaker of the House and your U.S. senators today, and return them to me immediately with your generous tax-deductible gift ... for the sake of America's spiritual health! (And feel free to pass on this Special Report to your pastor or a friend!)

A PETITION

TO SENATOR PAUL SARBANES

Pastors and religious leaders should have the right to speak out about moral and religious issues during political campaigns. Yet current law is interpreted to prohibit such activity without jeopardizing the organization's tax exempt status. Please give your full support to the speedy passage of legislation that would restore freedom of speech to America's houses of worship.

Signed, _____



Glorifying God Proclaiming Truth Reclaiming America

CORAL RIDGE MINISTRIES

Stop IRS Intimidation of Churches and Ministries!

❑ **Yes, Dr. Kennedy,** fight for us! Please help my church and my pastor so we can speak out on moral issues of national importance. I stand behind you to support all the work of Coral Ridge Ministries with my enclosed gift of:

❑ $35.00 ❑ $25.00 ❑ $20.00 ❑ $_____

For your convenience, you may give via credit card by calling **1-888-332-3069** or by filling in the information below:

Circle your card type: MasterCard VISA Discover Card

No._____ Exp. Date____/____

Print name as it is on card_____

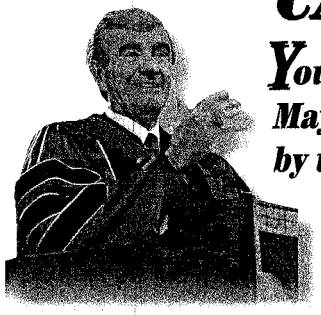
Signature_____

Dr. Kennedy, I'd like for you to have my email address:

_____

Please make your check payable to Coral Ridge Ministries, and return this form with your gift in the envelope provided. All contributions to Coral Ridge Ministries Media, Inc., which is a 501(c)(3) tax-exempt organization, are tax deductible to the extent permitted by law. In the event that we send you any requested books, videotapes or other things of more than insubstantial value, the Internal Revenue Code permits you to deduct the amount you give to Coral Ridge Ministries Media, Inc., less your bona fide value of the materials we send you. To help our donors meet the tax deduction provisions of IRC §8, we will provide you with a receipt that includes a description of the materials you receive, or estimate of the fair market value of the materials, and the total gift amount of your contribution for reference at Post Office Box 40015, Fort Lauderdale, FL 33340-7157. For additional financial information please see reverse side.

Do not detach. Please return entire form with your gift to Coral Ridge Ministries. Thank you!



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D. James Kennedy, Ph.D.
Coral Ridge Ministries
Post Office Box 407132
Ft Lauderdale FL 33340-7132

D. JAMES KENNEDY, PH.D.

April 11, 2002

Dear Friend in Christ,

Where does your minister sit during services at your church? Who sits next to him? The official IRS censor?

Perhaps this sounds absurd -- but the ugly truth is: the Internal Revenue Service, at this moment, has the authority to pass judgment on anything your minister says in the pulpit -- and levy taxes on your church and ministries if the IRS disapproves of what he says!

Thanks to an obscure passage in a 1954 law, the IRS can rip away the tax-exempt status of any church or Christian organization if it engages in anything the IRS considers to be "political activity" ...

... and the IRS has demonstrated what they consider to be "political activity"....

They actually demanded that a Binghamton, N.Y. church start paying taxes -- and refused to honor tax-deductions claimed by supporting members of the church.

Why? Because the church took out an ad in a newspaper during President Clinton's re-election campaign, explaining Clinton's stand on issues of concern to Christians -- and urged Christians not to vote for someone with such values!

As a result -- even though clergymen have been heavily involved in American civic affairs from the time of the Revolution and earlier ...

... and even though provision in the 1954 law went stealthily in under the radar of public opinion by then-Senator Lyndon Johnson as a payback to two groups opposed to his Senate candidacy ...

... and even though the law is a complete contradiction of the First Amendment to the U.S. Constitution ... the IRS cut off that church's tax-exempt status.

After several appeals, the courts still refused to reverse the IRS action. The law, after all, is on the books.

So -- I say -- the law must be changed.

In a republic, where the people are supposed to guide the

government, we are free to change laws as we see fit.

And THIS LAW NEEDS TO BE CHANGED.

I must be free to speak out on Sunday morning, when I feel America's spiritual life is at stake.

Neither I nor any other minister in America should have to risk economic pressure from the government for the biblical and moral stands we take from the pulpit!

No church should be intimidated by the IRS! No religious group should be silenced -- its freedom of speech expunged -- simply because a bureaucrat in Washington does not like its positions on matters of biblical morality!

And now, there is hope.

U.S. Representative Walter B. Jones of North Carolina has introduced the Houses of Worship Political Speech Protection Act which would amend the IRS code "to permit churches and other houses of worship to engage in political campaigns."

"If this nation is going to remain free and strong, I think churches have an obligation to talk about issues," Jones says, "and I think there's nothing wrong at all for those ministers to say how individuals in office or running for office feel about those same issues the church is talking about."

His bill before the House would protect the free speech rights of pastors and ministers like me to speak out and inform the public about moral and religious issues during political campaigns -- without the threat of losing their tax-exempt status.

Will you partner with me to call on Congress to protect churches all across the country from censorship by the IRS?

I want you to know that I am deeply and personally committed to this. I brought Congressman Jones' bill to the attention of our nation via our *Truths That Transform* radio program. I am dedicated to doing whatever I can to see our nation's churches set free from IRS intimidation.

Yes, I already speak out on sensitive moral issues -- more than many pastors, though I do not intervene in political

campaigns. But this is only because I am willing to take risks -- and we have paid a great price for speaking out on sensitive moral issues. Our programs have been pulled off some stations and our ministry has received threats.

Yet as much as I speak out on the air, there is far more that needs to be said -- but which I cannot say, because of the risk of IRS retaliation! Tens of thousands of like-minded ministers are in the same position.

Furthermore, thousands of ministers across America are afraid to speak out at all ... simply because of this risk.

FOR THE SAKE OF OUR NATION'S SPIRITUAL HEALTH, EVERY MINISTER IN AMERICA MUST BE SET FREE. I, and all pastors of this nation, must have greater freedom to preach God's truth. "Righteousness exalts a nation," Proverbs 14:34 (NKJV) declares, "But sin is a reproach to any people."

Just think of what can be accomplished -- when thousands of churches like yours are free to speak out, informing Christians and calling America to biblical morality, America can truly be reclaimed for Christ -- one heart at a time!

So you can understand why this legislation is so important.

However, to see it pass requires a concerted effort on the part of God's people across our nation. With God's help, your faithful prayers and generous support, we can win this battle.

That is why I am writing to you today -- to challenge you: Please stand with me in support of this bill's passage.

I have enclosed a petition to your U.S. senators and to the Speaker of the House of Representatives. I ask you to read and sign them, and return them to me as soon as possible. For maximum impact, I will gather the petitions of other friends, then have them delivered all together to Capitol Hill.

With even greater passion, I urge you to pray about this effort. Ask God to move powerfully through this campaign to inspire a speedy passage of the Houses of Worship Protection Act this spring so America's churches can be free to speak out before this fall's elections.

And finally -- although not the least important -- I ask you to give generously to help us carry out this effort, as well as all the other outreaches of Coral Ridge Ministries

that are designed to share God's truth with our nation.

You have helped us face major challenges already this year. Together, we have fought crucial battles. We still have some distance to go before we are financially healthy and strong again, and yet this battle cannot wait. It will happen now, or not at all, as the bill makes its way through Congress.

In the long term, this will be one of the most important battles we have ever waged. It will impact our churches, it will impact our families, and it will impact America for generations.

But we cannot make a difference without your help. I am asking you to send your best gift of support TODAY for this campaign and all of our ministry outreaches. Stand up to this unconstitutional restraint of our freedoms with your timely support. This legislation is critical! Please let me hear from you quickly with your signed petitions, your gift of support, and your commitment to pray.

I am so grateful to have the dedicated partnership of a friend like you, who shares my love of God and country, and desires to see our entire nation turn to righteousness. God can move through the dedication and vision of strong Christian citizens like you!

Please let me hear from you today. Our freedom of speech is truly at stake.

Yours in Christ,

D. James Kennedy, Ph.D.

P.S. When the IRS intimidates pastors regarding their Sunday morning sermons, something is terribly wrong in America. Join with me to change this erroneous law -- and set our churches free from IRS control! Be sure to sign the petitions and send your gift today! Thank you again!

Mr. POMEROY. Well, in my opinion, that does not in any way represent an effort to capture for the parishioner the issue before us. In fact, I think it is a perfect example of what we are worried about, a religious leader leveraging the confidence and faith of their congregation to drive a personal agenda by funneling cash directly into the political system. A lot has changed since 1954, Mr. May.

In fact, in 1954, I think we would have one cycle where there was the initial effort of television advertising. The technological revolution undergirding the campaign since that time has been a complete revolution, completely expanding the influence of money in campaigns and enhancing the danger of those that would purport to speak on behalf of God interpreting very narrow political agendas.

I will quote from the testimony of Dr. Kennedy, where he talks about we need this bill because present law selectively silences those who have the greatest vested interest in upholding the moral law of God. Well, Dr. Kennedy, there are a whole host of churches on the other side of this question from now. I go to one of those churches, the Presbyterian church, and when we pray the Lord's prayer in my church, we pray that God's will be done on Earth like it is in heaven, and we really mean it.

We don't think you mean it any more than we mean it. We mean it, too. We couldn't be more sincere and devout as we try to bring this about. So, I must say I not only take exception, but I take some offense that you purport to have a greater vested interest than we do in trying to bring about the Lord's work on Earth. And let me just tell you that that is exactly the kind of attitude that makes me so fearful of a church leader being able to use, really almost misappropriate the funds of the trusting parishioners for crass direct entry into the political system, again, without any accountability in terms of where those dollars are coming from.

I have used my time, Mr. Chairman. I thank you for letting me speak my piece on this important legislation.

Reverend KENNEDY. Mr. Chairman, having been mentioned by name——

Mr. POMEROY. Go ahead, Doctor.

Reverend KENNEDY. I would like to respond. Sir, you totally misunderstand what that statement means. I, in making that statement, was referring to the clergy in general in this country, that if the clergy are silenced, since it is the God-given function of the clergy to try to maintain decency and order and morality in a nation. As we have seen one historian said, it was from the Puritan pulpit that the moral force of America was borne and strengthened. Therefore, I am saying if the Congress, or anybody, were to silence clergy on crucial issues, then they would have been, indeed, hampering the moral ongoing of decency in America, and that I say is what precisely has happened.

Mr. POMEROY. Dr. Kennedy, I would just respond by saying that this country was founded on very important religious values. They continue to be the bedrock of what distinguishes our Nation and represent the hope for our future, but it does not take a 30-second ad funded by parishioners to establish moral leadership

from the churches. And in fact, the moral leadership of the churches during the period of time that you say we have been silenced, I think, speaks so powerfully for historical evidence that indeed the present balance has allowed the church plenty of room to offer their ongoing vital contribution to this country. I believe this legislation tipped that over in very dangerous ways.

Mr. MAY. Mr. Chairman, since my name was mentioned as well, might I have a moment to respond?

Chairman HOUGHTON. Absolutely.

Mr. MAY. I would just say, again, on page 1 of my testimony, I explain why under the new campaign finance laws and the current campaign finance laws, there is no such thing as taking out a 30-second ad by the parishioners with use of the church money. It can't happen. The second thing is that you have expressed, I think, a balanced revulsion toward the idea that churches may get so involved in political matters. But the truth is, there is a gigantic portion of the churches in America who do this, and either we have laws that are evenhanded and apply across the board or not. We have had testimony from Mr. Fauntroy, who has made it clear that he has endorsed from the pulpit. The IRS expert panelist said that clearly is political intervention in violation of the Tax Code. I don't believe it is the intent of Congress for our pastors and our moral leaders to be able to say to their congregations, I have an understanding about what I believe is right in terms of justice and indeed what the call of God is on my life and my congregation's life. And therefore, I believe that so and so does better in the public sphere to recognize and to fulfill those things than such and such. Please support and vote for so and so.

And when you do that incidentally or occasionally, I don't believe the republic comes crashing down. We did it before 1954, and this measure simply provides that same sense of balance back into what we are doing today.

Mr. POMEROY. Again, it is not as though the churches have been missing from the landscape of debate on these issues since 1954. They have been at the heart of debate on one moral issue after another. Dr. Gaddy, as long as everyone else is jumping in with the other side, do you feel or do you, the ministers your organization speaks for, feel as though they are somehow constrained and muted about their ability to participate in national debate relative to moral issues?

Reverend GADDY. I am completely baffled by that observation. I don't know what ministers are talking about in the pulpit if they are not talking about the way religion impacts life in all of its complexity and need. What is at stake here, as I understand it, is not a prohibition against any minister talking about issues that have moral dimensions to them. What is at stake here is saying to ministers that you should not use the sacred desk and claim the authority of God to endorse a candidate for public office. And I have a hard time, I must admit, understanding why ministers resist that.

The fact is that if we went that route, perhaps there would be mobilized some political movements that would be satisfying to the supporters of these proposed bills. You might accomplish that, but you would lose your congregations. Can you imagine what happens

to people in a congregation who have fundamental spiritual needs of grief or family counseling or whatever, and they find themselves in a congregation in which they, on the basis of their conscience, disagree with the endorsement of the president of the congregation or of the pastor or the rabbi or the imam? Where do they go for help? And, so you reconfigure the whole religious landscape so that people are looking for ministers whom they can trust for spiritual counsel on the basis of the political identity of that congregation. People don't deserve that, and this Nation doesn't need that.

Mr. POMEROY. You think indeed that there might be, with this legislation, more of an inducement for those to take advantage of a minister position to drive a political agenda, either personal or very personally entwined with the ideological advocacy in an election?

Reverend GADDY. It is an invitation to do that as I see it. To pass the legislation would say we are encouraging ministers to become political power brokers and to endorse candidates from the pulpit. Ministers are a cross-section of the population, and sometimes ministers, like everyone else, use their religion rather than letting their religion use them. It is very possible, under the passage of a bill like this, that someone could mistake indigestion or a political preference as the revelation of God. In a hierarchical congregation in particular, if the minister says this is God's man or woman for this position, people in that congregation have a religious responsibility to pay attention to that authority. I think it is a blatant misuse of religious authority.

Reverend FAUNTROY. May I respond to two issues?

Chairman HOUGHTON. We have got to move along here, Walter. But please go ahead, and then we will——

Reverend FAUNTROY. Well, first of all, if I thought that this bill authorized the laundering of money for political purposes to the churches, I would be opposed to it. And second, I do take issue with those who say the church has spoken out over the last 30 or 40 years. And most of the times they have spoken out the wrong way, as far as I am concerned. You ought to read Martin Luther King's letter from a Birmingham jail to get an idea of what some churches thought needed to be done to endorse the status quo.

And you need—I teach my people, at least in my church, that I am not God, that God is not a Democrat or a Republican, God is not a white or a black, God is not a Muslim, Catholic, or a Jew. God is the one who rewards those who diligently seek him in the care of the least of these. And it is not enough to talk that talk generally. You have got to take the newspaper in the pulpit, at least what they are reading, and help them to interpret the word of God.

And I would hope that this bill would not authorize people to claim they speak in the name of God. They speak in a name of a world that is consistent across every major religion in the world. Take it from somebody who has studied comparative religion, that God requires you to do justly, love mercy, and walk humbly with God and not just talk it, but walk it.

Chairman HOUGHTON. Thank you. Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman. First of all, I need to ask a question. How many churches are there in this country?

I am just curious. I have no clue what that number is. Anybody know?

Reverend KENNEDY. There are about 300,000 Protestant churches. I know that.

Mr. MAY. I was just going to add there must be at least 280,000 because Barry Lynn mails to them to make sure that churches don't do this sort of thing.

Reverend FAUNTROY. I can tell you the statistics for—the 1990 Census show there were 40,000 African American churches across seven denominations that convened 24 million people a week.

Mrs. THURMAN. So, Mr. May, when you said that this law was intrusive, let me just give you some facts that we have, that there has only been two churches that have lost their exemptions. There have been only four to five religious groups that have lost their exemption. And it is my understanding there are only two that have led or have had to pay an excise tax. So I would say, after asking that question and the response I get, that is a very small percentage. I certainly can appreciate and understand, you know, the issue and why you are in favor of this, but I certainly am not one to believe that we have been so intrusive of this government into our churches and our places or worship that this, you know, has caused a problem.

You know, I am somewhat offended in some ways for those that might be for this piece of legislation. I know that sounds a little curse, but I have to tell you. You know, I am a thinking person. I go to a church to get my moral stability, to hear the teachings, to have an understanding of the word. I don't go for somebody to interpret for me how and what I should believe, how I should think, and how I should vote. I would be offended and am offended if that happens. That is my right to decide that, and I do worry about that retribution if I, in fact, voiced a different opinion as to either part of my congregation or to my pastor. You know, what kind of retribution is put on me as a person that has a different thought?

I mean, we see that now all across our country where that can happen. I mean, you know, I have people that come up to me all the time and say I am such and such, but I just don't believe, you know, this part of what they are teaching. And to come down and feel like—I mean, I have to tell you, I mean, I would like to believe that we should not take something that we think is very precious to our democracy away from people, and that is, the ability to think and clearly decide, based on what you have taught them. I mean, you also need to understand that you have been giving them what you believe is the right way to live your life.

And certainly through those teachings, you know, Dr. Kennedy and others, you would be imparting that information onto them. Do we have such little faith in those folks that listen to us that not to make the right decision, but that we would have to be told what decision were made because we don't get it? I mean, I just—I am very confused that we would go in that direction.

And maybe the opposite I guess could be made that, you know, maybe you should be able to do that and we should still have the right to have that decision, but I—just as a person who would do that—and especially because there is an ability for you to already

do that under section 501(c)(4). If people believed that you ought to be involved in those activities, they have a way of giving those moneys, just like people who give money to me for my campaign. They don't get tax deductions for that, and they give me the opportunity to spread my word, and people have the right to hear it and make a decision.

So I just—if you want to comment on it, fine. I just kind of——

Reverend LYNN. I would like to comment on it also. I think Congresswoman Thurman, you raise a good point about what brings 70 percent of Americans in the latest poll to opposing this idea of allowing churches to contribute. Churches do, in fact, make important civic contributions by the educational process they use. Even a tax exempt church is invited to have—certainly may invite all the candidates for the school board or the local congressional race to come to their church. If he or she chooses not to come, that is the decision by the candidate. There are also kinds of civic responsibilities that churches can take, including nonpartisan get-out-the-vote campaigns, as the representatives on the first panel made clear.

So it is not like those of us who are actively engaged in the church cannot help educate people, but ultimately the education ought to stop at the polling place curtain. I think that is exactly where ministers, priests, imams, and rabbis should not be. And this is a bill that would take them a lot closer than they ought to get.

Reverend KENNEDY. May I say that I certainly agree with you that intelligent people have the right to think. If this bill were in any way trying to limit that, I would definitely oppose it. I certainly believe that I have the right to think. I believe my congregation has the right to think. Our congregation happens to be of a certain economic level, but most of those people are very well educated. We have many doctors, lawyers, professors of this sort in our congregation.

I have never once ever told them to vote for anyone or against anyone. Why? It is against the law. I try to keep the law. Nor the idea that I as a clergyman am going to go inside the curtain when they pull their levers and cast their votes, I mean, that is just too preposterous even to comment on. But the thing is, if it is true that many, many people would hear a pastor speaking and may recommend a candidate, if they didn't like that, they would go somewhere else, and let me say this, ministers are not utterly stupid. They are not going to do things from the pulpit that are going to drive their congregation away. I can't imagine that they would be that foolish.

And so, you know, there is a fact, a man has his own conscience, his own mind, and he is going to indeed keep in mind the congregation he is dealing with. And the ideas that have been bounced around by several Congresspersons today to me are just beyond comprehension that any minister would do something as foolish as that.

Mr. MAY. Could I just comment that all this measure—Congressman Jones' measure is intended to do, is, for the same reasons, apparently Congress is comfortable with, an insubstantial amount of lobbying activity from churches and exempt organizations. They are going to accept the same sort of thing from church-

es, and part of the reason is it is already happening. You know it is happening. I know it is happening. But we are talking about direct endorsements now. Again, I refer you to the 60 examples I provided in my testimony, just from a Lexus-Nexus search. It is real clear that many pastors in America, in fact, believe for the reasons that Mr. Fauntroy, who has communicated here today, that he believes may be part of his responsibility to let his flock know how he feels about these issues. There is nothing improper or immoral about it.

I don't believe he insults his congregation when he does it, and I am sure they are filled with thinking people just like your congregation is. But he believes it is important to do it, and it is part of the democratic pluralistic system we have. And when you know that many churches may do it, but others, for the reasons that Dr. Kennedy just articulated, he won't break the law, you have got yourself this dual-standard kind of a system.

Now, that is not what anybody really is trying to get here, so all we do for the same reasons that you trust them to be able to engage in lobbying, a very important activity for a free people, likewise they could do the same thing.

Now incidentally or occasionally, not a lot of it, insubstantial is the phrase—no 5 percent Bright-Line. We are not here to support Congressman Crane's measure in that context, but Congressman Jones' we are for the reasons we expressed. We do believe it is a liberty issue, which is why we are very comfortable in suggesting that, in fact, it is a necessary change for the law.

Mrs. THURMAN. But let me say something to you, though. Every day we are going to have a piece of legislation on the floor this week, and my guess is that there will be a group of organizations that will be supporting the welfare reform or not supporting it. It will have the interfaith alliance. It will have the Catholic church charities. It will have, I don't know how many more. We get that lobbying all the time. We hear from those people all the time. It is not against anything. It is not, you know, so you are still given that opportunity in your participation of government.

Mr. MAY. And you don't believe it threatens democracy and freedom, of course. That's right. It is perfectly good to have that exchange.

Mrs. THURMAN. And I don't disagree, but I think from, maybe from the pulpit or from or ways without going through the proper channels, I mean, I think, you know what? We just disagree.

Mr. MAY. Will you just acknowledge for me that, in fact, it happens and it does happen a lot in a lot of churches in America right now today, and either the IRS has decided because it was articulated in its panel that it is against the current law, and yet they do it and the IRS goes, oops, I didn't see that, but now and again, they may decide there it is; I am going to make sure this person gets penalized. And that is the reason I think you have to change it, to make it fair and right for all players in the game for the reasons that——

Mrs. THURMAN. Well, it just seems odd to me, as I mentioned the statistics that I have, that two or three churches have been the ones that have been penalized when there are hundreds of thousands of other churches out there. One or two didn't play. One or

two didn't get caught. I don't know what the reasons are, but it seem to me some chose to go a little step further than those who have tried to play by the rules. And I think that is the issue here.

Reverend LYNN. You know, I do know what the answer to some of this is, because we were involved in distributing information to the Internal Revenue Service about that outrageous ad that Congressman Pomeroy indicated. It had been placed in USA Today at a cost of $44,000. The pastor of that church, who Mr. May represented, said repeatedly, including to the courts and to the IRS, you know, God told me what to do and I don't really care what the Congress says or the courts say or the IRS. I am going to keep doing it. Compare that to your former colleague here, Congressman Floyd Flake. Congressman Flake endorsed Al Gore over Bill Bradley in the New York primary in the last presidential race. That was considered a pulpit endorsement. The IRS visited him. He said, you know, I did the wrong thing. I am not going to do it again.

So obviously the treatment that the IRS gives to someone who says I made a mistake and I am not going to do it again ought to be different from that of a man who says, God told me to do it, I don't care what the secular law requires, and I am going to keep doing it again. That is a distinction that makes a difference in law enforcement across the board.

Reverend FAUNTROY. Mr. Chairman, may I please ask for clarity on three things. I read 2357, and I did not think it, I did not interpret it as authorizing churches to monitor money for political candidates.

Mr. MAY. It does not.

Reverend FAUNTROY. Second, I did not consider it a means by which a church could meet and, by a binding vote, commit the church to vote for somebody. That is not true, is it?

Mr. MAY. No.

Reverend FAUNTROY. All right. Now, third, my view is that the responsibility of leadership is to lead, and I will not abandon that responsibility. And I don't want to see ministers like Floyd Flake who have got people who are wanting in income, in education, health care, housing, and justice, to many ministers every day who have a stake in the election, not to know what he is committed to learn as a leader, to share with them, not a binding vote, but simply to say, look, I have looked at this. You all have been pushing pots and pans in somebody's scrub kitchens all week.

I have been reading, and I have been studying these things, and I think consistent with our mission, I am going to vote this way, and I hope you will. Is anything wrong with that? And why would Floyd Flake feel upset about looking at——

Reverend GADDY. I do see something wrong with it.

Reverend FAUNTROY. Tell me.

Reverend GADDY. Okay. Because the authority of the person behind the pulpit is a derived authority. When you become a religious person, you don't become perfect in all understanding. Ordination doesn't carry with it a guarantee of infallibility. The authority is a derived authority based on the scriptures and oral traditions, and the nature of the God that you serve. People listen to you when you work with that authority saying "We need to feed the poor, we need to clothe those who are naked" and so forth, but the leap from

speaking with that authority to saying "and the best way for you to do that is to vote for this candidate" that is not a legitimate use of spiritual authority. Then you are speaking of your personal judgment.

Reverend FAUNTROY. Sir, you need to come to my church and be a part of my——

Reverend GADDY. I can't. I have to preach in my church.

Reverend FAUNTROY. They do not consider me God. You hear me? And a lot of people in the congregation——

Chairman HOUGHTON. We will accept that as fact, Walter.

Reverend FAUNTROY. No, they really don't. And you can trust people to make their own judgments, but they want to know from their spiritual leader, and spirituality has little to do with a pie in the sky. It has to do with these five things I have been talking about, and they want to know how you feel.

Reverend GADDY. But you are using a spiritual judgment, in your words, using a spiritual judgment to commend a political decision.

Reverend FAUNTROY. And politics is about who gets how much, what, when, and where. I understand that and——

Chairman HOUGHTON. All right. I would like to ask Mr. Lewis for a comment.

Mr. LEWIS. Mr. Chairman, I think Dr. Gaddy said it all, and I don't want to get into a battle between these two religious leaders here. Walter, all of that may be well and good, maybe perfect in your understanding. No one is asking people to violate their conscience, their religious conviction, but if you violate the law, then you are prepared to pay the consequences, and that is very much in keeping with the philosophy of nonviolence, with the philosophy of David Thoreau in Civil Disobedience. So if you go down that road, then all the rest will be—you know, the law is the law.

Reverend FAUNTROY. That's right.

Mr. LEWIS. And the church is not necessarily—the activity—political activity, cannot secede the law.

Chairman HOUGHTON. Thanks very much.

Mr. LEWIS. I guess we can say amen to that, huh?

Reverend FAUNTROY. Yeah. I have done it all my life. Unjust laws are not to be obeyed. Ask Thoreau. Ask Martin Luther King, Jr.

Chairman HOUGHTON. Well, usually the Chairman has to step in and stir things up. I didn't have to do that today. It has been an extraordinary day. I certainly appreciate this, and if there are no other questions, this Subcommittee hearing is adjourned.

[Whereupon, at 4:27 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Alliance for Justice
Washington, DC 20036–1206
May 14, 2002

The Honorable Amo Houghton, Chairman
Committee on Ways and Means
Subcommittee on Oversight
U.S. House of Representatives
1136 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Houghton:

The Alliance for Justice submits this written statement for consideration by the Subcommittee On Oversight and inclusion in the printed record for the May 14, 2002 hearing on the Houses of Worship Political Speech Protection Act (H.R. 2357) and the Bright-Line Act of 2001 (H.R. 2931).

The Alliance for Justice is a national association of 60 public interest advocacy organizations. A primary mission of the Alliance is to strengthen the capacity of the public interest community to influence public policy. The Alliance's Nonprofit Advocacy Project works with nonprofits around the country to enhance their ability to participate in the policy process. The Project monitors federal legislative developments that impact 501(c)(3) organizations, offers workshops on the rules governing nonprofit lobbying and political activity, and produces plain-language legal guides for nonprofit organizations.

The Alliance for Justice is opposed to the passage of the Houses of Worship Political Speech Protection Act and the Bright-Line Act of 2001 in their present form. We oppose any amendment of the tax code that confers rights to one group of 501(c)(3) organizations to the exclusion of others. However, we would support permitting all public charities to engage in a limited amount of political activity.

Presently, the law strictly prohibits any 501(c)(3) organization from engaging in political activity. The Houses of Worship Political Speech Protection Act and the Bright-Line Act of 2001 propose to amend the Internal Revenue Code to permit religious 501(c)(3) organizations to engage in political activity while continuing to forbid non-religious 501(c)(3) organizations from engaging in these activities. This distinction between religious and non-religious 501(c)(3) organizations is both exclusionary and unwarranted.

The provision is unwarranted because non-religious 501(c)(3) organizations are in greater need of a law allowing insubstantial political activity than are religious organizations. As the D.C. Circuit Court of Appeals noted in Branch Ministries v. Rossotti, when a religious organization loses its tax-exempt status because it engages in political activity the loss is more symbolic than substantial. If the Church does not intervene in future political campaigns, it may hold itself out as a 501(c)(3) organization and receive all the benefits of that status. 211 F.3d 137 (D.C. Cir. 2000). Religious 501(c)(3) organizations do not have to submit an application to the IRS for tax-exempt recognition, thus, the loss of their tax-exempt status is less detrimental then it would be to a non-religious 501(c)(3) organization. Non-religious organizations stripped of their exemption for electioneering would have to reapply with the IRS to regain their tax-exempt status.

In addition, history suggests that a complete ban on political activity was never intended for any 501(c)(3) organization. Legislative history supports the view that Senator Lyndon Johnson's amendment to create the political prohibition, adopted as part of the 1954 Revenue Act, was intended to extend the same insubstantial activity restrictions on political activity as it did to lobbying. 100 Cong. Rec. 9,604 (1954). Nevertheless, the IRS and judiciary have continued to interpret an absolute ban on political activity. Thus, to correct this misinterpretation, all 501(c)(3) organizations should be allowed to engaged in an insubstantial amount of political activity.

The Alliance for Justice believes that any change to the political prohibition should apply equally to all 501(c)(3) organizations, not strictly religious 501(c)(3) organizations. We oppose any proposed change that is inequitably reserved for the benefit of some 501(c)(3) organizations to the exclusion of others. Therefore, unless the Houses of Worship Political Speech Act and the Bright-Line Act of 2001 are amended to apply to all 501(c)(3) organizations, we would oppose any amendment to the current political prohibition.

Thank you for this opportunity to comment on these bills. We would be happy to assist the Subcommittee in any way as it considers this legislation.

Sincerely,

Nan Aron
President

Statement of the American Jewish Committee

AJC STRONGLY OPPOSES THE HOUSES OF WORSHIP POLITICAL SPEECH PROTECTION ACT OF 2002

With over 110,000 members and supporters and 32 offices around the country, the American Jewish Committee, an organization, long engaged in the fight for civil rights and religious liberty, strongly opposes the Houses of Worship Political Speech Protection Act, introduced last year as H.R. 2357 by Representatives Walter Jones (R–NC) and John Hostettler (R–IN).

This bill would endanger the integrity and autonomy of houses of worship by injecting them into partisan political campaigns. Federal tax law has been clear for decades: houses of worship, like other 501(c)(3) organizations, cannot legally engage in partisan politicking and retain their tax exempt status for contributions. This simple and unambiguous provision of federal law has served as a valuable safeguard for the integrity of both religious institutions and the political process.

Current law upholds the integrity of houses of worship. Churches, synagogues, temples and mosques should not be used as political headquarters or as a means of partisan fundraising for political activities. Tying houses of worship to partisan activity would demean those institutions, and the potential for them to be involved in political campaigns would lead to pressure on them to take a partisan stance.

This bill is unwanted and unneeded by America's clergy. In a recent Gallup/Interfaith Alliance Foundation poll, a full 77% of clergy were opposed to their fellow clergy endorsing political candidates. Another poll conducted by The Pew Research Center for the People and the Press and The Pew Forum on Religion and Public Life, found that 70% of Americans feel that houses of worship should not come out in favor of one candidate over another during political elections.

The bill is predicated on false assumptions about existing law. Supporters of these bills have argued that their enactment is necessary to allow religious leaders to speak out on issues of interest to their congregations. The reality is that religious leaders have an absolute right to use their pulpit to address the moral issues of the day. The only things tax-exempt houses of worship may not do is endorse or oppose candidates, or use their tax-exempt donations to support partisan campaigns. Current law simply limits groups from being both a tax-exempt ministry and a partisan political entity.

In addition, this bill would open a dramatic loophole in the nation's campaign finance laws. Donations to houses of worship are tax deductible because the government assumes that their work is contributing to the common good of society, not a political party or a partisan campaign. As such, contributions to churches are tax deductible and donations to political candidates and parties are not. Therefore, these bills would create a significant new loophole in our nation's campaign finance laws with serious ethical and legal implications.

The American Jewish Committee urges you to oppose this measure, which threatens religious liberty and the independent character of houses of worship.

Statement of the American Jewish Congress

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, religious and economic rights of American Jews and all Americans. It is tax exempt under 26 USC § 501(c)(3). In its work it has emphasized both the protection of religious liberty and the ban on religious establishment. Although firmly committed to the freedom of religious persons and institutions to speak freely concerning public issues, it nevertheless opposes the so-called House of Worship Political Speech Protection Act, H. 2357 as both unwise and unconstitutional. Moreover, even if it agreed with the bill's purpose and goals, the language of the House of Worship Political Speech Protection Act would not in any event achieve its stated purpose.

I. Religious Ideas Are Not-Band Should Not Be-Banned From the Marketplace of Ideas

Exempt organizations are, and should be, free to address public policy questions from whatever perspective they choose without hindrance from government. This is as true of religious organizations as it is of any other.

The separation of church and state does not require the exclusion of religious voices from the marketplace of ideas. On the contrary, as Justice Brennan explained, concurring in *McDaniel v. Paty*, 435 U.S. 618, 640–42 (1978):

> [R]eligious ideas, no less than any other, may be the subject of debate which is "uninhibited, robust, and wide-open. . . ." Government may not interfere with efforts to proselyte or worship in public places. . . . It may not tax the dissemination of religious ideas. . . . It may not seek to shield its citizens from those who would solicit them with their religious beliefs. . . .
>
> That public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife does not rob it of constitutional protection. . . . The mere fact that a purpose of the Establishment Clause is to reduce or eliminate religious divisiveness or strife, does not place religious discussion, association, or political participation in a status less preferred than rights of discussion, association, and political participation generally. "Adherents of particular faiths and individual churches frequently take strong positions on public issues including . . . vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right."
>
> The . . . goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities. . . .
>
> In short, government may not . . . promote "safe thinking" with respect to religion and fence out from political participation those, such as ministers, whom it regards as overinvolved in religion. Religionists no less than members of any other group enjoy the full measure of protection afforded speech, association, and political activity generally. The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion. . . . It may not be used as a sword to justify repression of religion or its adherents from any aspect of public life. . . .
>
> The antidote which the Constitution provides against zealots who would inject sectarianism into the political process is to subject their ideas to refutation in the marketplace of ideas and their platforms to rejection at the polls.

(Citations omitted.)

Nothing in the Internal Revenue Code prohibits houses of worship, or their clergy, from taking a position on the burning "moral" issues of the day or from endorsing candidates. Any rule of that sort would be incompatible with historic practice. American religious leaders took a leading role in preaching about the Revolution, slavery-on both sides, it should be recalled-social reform, nativism, science teaching in the schools, prohibition, war and peace, civil rights, and, of course, gambling and abortion. In retrospect, some of these religious intrusions into the political sphere produced happy results. In others, the results were less happy, even, judged by today's standards, offensive. But that does not mean that government should seek to silence religious speech. And, in fact, it has not, although it does limit (or ban) such speech when paid for with tax exempt dollars.

Whatever else may be said about the current tax law, it cannot be said that it has silenced religious or anti-religious speech. One would have to inhabit a different political universe than ours not to know that on many of the burning political and moral issues of the day, religious voices play an important, even determinative, role. Studies of recent elections show that even under current tax law, religious positions on such issues correlate closely with voting behavior. See generally, M. Silk, ed., Religion and American politics: The 2000 Election In Context (2001). If there is a problem of a closing of the marketplace of ideas to moral or religious ideas, it is not evident to informed observers.

The American Jewish Congress often disagrees with the speech of religious leaders, sometimes even often insisting that religious speakers seek imprudently to inject religion into the sphere of government. But those disagreements do not justify silencing religious speech, any more than religious objections to secular speech justify silencing it.

Current Law

Current law (26 U.S.C. § 501(c)(3)) exempts from income tax any "corporation organized and operated exclusively for religious, charitable, scientific or . . . education purposes," provided that "(a) no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; and (b) which does not participate in, or intervene in . . . any political campaign on behalf of (or opposition to) any candidate for public office." Contributions to exempt organizations are, more importantly, tax deductible. 25 U.S.C. § 170.

The ban on endorsing or opposing a candidate for public office is total and applies equally to all 501(c)(3) tax exempt organizations. Religious groups labor under no special disability. All 501(c)(3) organizations may not use a "substantial" portion of their resources to influence legislation, and none can use any tax-exempt money to intervene in a political campaign. Religious opponents of abortion and secular advocates of reproductive choice alike must use taxable dollars to endorse or oppose candidates. By contrast, the ban on "attempting to influence legislation" is less total. An "insubstantial" amount of a secular or religious exempt organization's assets may be used to influence legislation.

Unfortunately, neither the Code nor the implementing regulations specify the demarcation line between substantial and insubstantial efforts at influencing legislation. The result is that exempt organizations live with a fair amount of uncertainty. In practice, the IRS has not been particularly vigilant in enforcing this condition. It appears to rely chiefly on self-policing, a policy which can give the unscrupulous a substantial advantage over groups attempting good faith compliance with the law.

The late Reverend Dean Kelley, the National Council of Church's expert on church-state relations, once informed the undersigned that internal IRS documents released to him under the Freedom of Information Act placed the line at somewhere between 5 and 20 percent of an organization's expenditures. This uncertainty makes it difficult for exempt organizations to know whether to speak on a particular piece of legislation, since they have no way of knowing whether that effort would put the organization over the vague "substantial" threshold. Organizations have to decide whether to be active in influencing legislation in February, lest come October they would be silenced on a more important issue. H.R. 2357 would compound this confusion by extending the "substantiality" test to "supporting or opposing candidates," without lending any greater precision to it.

Congress has provided an alternative to the uncertainty of the substantiality test for secular 501(c)(3) organizations. They may elect to be covered by the so-called Conable Amendment, 26 U.S.C. § 501(h), which, incorporating provisions of 26 U.S.C. § 4911, specifies amounts which may be spend on influencing legislation. Churches may not so elect, 26 U.S.C. § 501(h)(5).

The exclusion of churches was not intended to discriminate against churches, nor was it motivated by an animus against religious speech, nor the fear that encouraging religious organizations to influence legislation would endanger church/state separation. The exclusion was inserted at the behest of churches, who wished to preserve their claim that Congress could not constitutionally tax churches, and surely not condition exemption on limiting their religious speech.

Subsequent to the enactment of Conable, however, the Supreme Court has twice held that religious institutions are not constitutionally exempt from taxation, *Jimmy Swaggert Ministries v. Bd. of Equalization,* 493 U.S. 378 (1990); *Bob Jones University v. U.S.,* 461 U.S. 574 (1983). It has further held that conditioning exemption for 501(c)(3) organizations on limits on influencing legislation is not an unconstitutional condition. *Regan v. Taxation With Representation,* 461 U.S. 540 (1983); *Branch Ministries v. Rossoti,* 211 F.3d 137 (D.C. Cir. 2000).

Although religious institutions had—and have—a substantial claim that the separation of church and state prohibits the state from taxing the church, for the moment-and for the foreseeable future-that claim is not recognized by the Supreme Court. Consequently, Congress may want to reconsider the blanket exclusion of religious organizations from Conable coverage. Provided that Conable election remains voluntary, it is hard to see why religious institutions should be automatically foreclosed from such an election.

As noted, the ban on the endorsement of candidates is total. Again, the prohibition applies equally to all organizations exempt from taxation under § 501(c)(3). And, as noted, the courts have found this restriction constitutional even as applied to religious organizations. *Branch Ministries, supra; Christian Echoes National Ministry v. U.S.,* 470 F.2d 849 (10th Cir. 1972). *As Branch Ministries* pointed out, these rulings are simply a routine application of the general rule that tax exemption is a form of subsidy which the government need not extend to all subjects on which people choose to speak, 211 F.3d at 143–44, citing *Regan, supra,* 461 U.S. at 548; *Cammarano v. U.S.,* 358 U.S. 498, 513 (1959).

Although *Regan* and *Cammarano* are free speech cases, adding the Free Exercise Clause to the analysis changes nothing. Cf. *Larsen v. Valente,* 456 U.S. 258 (1982) (religious speech subject to same restrictions as secular speech). The rule barring a group from involving itself in a political campaign as a condition of receiving exemption is a rule of general applicability allowing for no individualized exceptions. Under current law, such rules do not violate the Free Exercise clause. *Smith v. Oregon Div. of Employment Security,* 494 U.S. 872 (1990).

Even if, as the AJCongress believes would be best, *Smith* were to be overruled, and the law would return the older and sounder rule of *Sherbert v. Verner,* 374 U.S. 398 (1963), it would be necessary to demonstrate that a rule "substantially burdened" religious activity before the government would be obligated to offer any accommodation. The Supreme Court has held that while subjecting religious organizations to neutral tax rules makes religious speech marginally more expensive, it does not "substantially burden" it as that term is used in constitutional law. *Jimmy Swaggert Ministries, supra,* 493 U.S. at 391; *Hernandez v. CIR,* 490 U.S. 680, 700 (1989). Government is under no duty to exempt religious organizations from the limits contained in Section 501(c)(3).

In *Regan,* several concurring Justices observed that the restrictions of 26 U.S.C. § 501(c)(3) would be constitutional only if there were an alternative avenue of communication left open to exempt organizations. Later cases adopt this requirement. Religious and other exempt organizations are not, however, without an effective and adequate alternative. As the D.C. Circuit Court of Appeals has explained:

> [T]he Church may form a related organization under section 501(c)4) of the Code. Such organizations are exempt from taxation; but unlike their section 501(c)(3) counterparts, contributions to them are not deductible. . . . Although a section 501(c)(4) organization is also subject to the ban on intervening in political campaigns . . . it may form a political action committee "PAC") that would be free to participate in political campaigns. . . . ("an organization described in section 501(c) that is exempt from taxation under section 501(a) may, [if it is not a section 501(c)(3) organization], establish and maintain such a separate segregated fund to receive contributions and make expenditures in a political campaign.")
>
> At oral argument, counsel for the Church doggedly maintained that there can be no "Church at Pierce Creek PAC." True, it may not itself create a PAC; but as we have pointed out, the Church can initiate a series of steps that will provide an alternate means of political communication. . . .

(Citations omitted.)

II. H.R. 2357 Unconstitutionally Prefers Religious Viewpoints

In addition to fixing a statute that is not broken-and in vague language that undermines, not advances, its stated purpose-H.R. 2357 is flat out unconstitutional. Although that is not the most serious flaw with the bill, it ought to be enough to condemn it. The House of Worship Political Speech Protection Act is a naked preference for religious political speech over competing secular political speech. Under any view of the Establishment, Free Speech and Press Clauses, such a preference is unconstitutional. No view of the Constitution would allow government to subsidize a religious group to oppose candidates who support gambling on the ground that the Bible is opposed to it, but deny a subsidy to a secular organization to oppose such candidates on secular grounds.

The thrust of the Supreme Court's decisions over the last twenty years has been to equate religious and secular speech, and to insist that identical rules apply to both. See, e.g., *Good News Club v. Milford Central School District*, 121 S.Ct. 2093 (2001); *Lamb's Chapel v. Center Moriches School District*, 508 U.S. 949 (1994); *Rosenberger v. Bd. of Rectors, University of Virginia*, 515 U.S. 819 (1995); *Board of Educ. Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Larsen v. Valente*, 456 U.S. 228 (1982). Many of those organizations and individuals who have testified in support of H.R. 2357 have devoted much energy to establishing that legal principle, insisting all the while that they do not seek any advantage for religious speech, but only to end discrimination against it. That position and support for H.R. 2357's preference for religious political speech cannot be squared.

The case most on point, dealing with a statute almost on all fours with H.R. 2357, is *Texas Monthly v. Bullock*, 489 U.S. 1 (1989). There the Supreme Court invalidated a sales tax exemption for religious but not secular periodicals. The narrowest holding of the Court is stated in the concurring opinion of Justice O'Connor, who wrote:

> In this case, by confining the tax exemption exclusively to the sale of religious publications, Texas engaged in preferential support for the communication of religious messages. Although some forms of accommodation religion are constitutionally permissible . . . this one surely is not. A statutory preference for the dissemination of religious ideas offends our most basic understanding of what the Establishment Clause is all about and hence is constitutionally intolerable.

(Citations omitted)

> In a separate concurrence, Justice White put the result on grounds of freedom of the press: The Texas law at issue here discriminates on the basis of the content of publications: it provides that "[p]eriodicals . . . that consist wholly of writings promulgating the teaching of (a religious faith) . . . are exempted" from the burdens of the sales tax law.. . . Thus, the content of a publication determines whether its publisher is exempt or nonexempt. Appellant is subject to the tax, but other publications are not because of the message they carry. This is plainly forbidden by the Press Clause of the First Amendment.

Subsequent to *Texas Monthly*, courts have uniformly invalidated sales tax exemptions for religious periodicals only on one or the other of these grounds. *ACLU v. Crawford*, F.Supp.2d (E.D. La. 2002); *Haller v. Commonwealth*, 556 Pa. 289, 728 A.2d 351 (1999); *Ahlburn v. Clark*, 728 A.2d 449 (R.I. 1999); *Thayer v. South Carolina*, 307 S.C. 6, 413 S.E.2d 810 (1997); *Finlator v. Powers*, 902 F.2d 1158 (4th Cir. 1990). *Cf. In Re Springmoor*, 479 N.C. App. 184, 479 S.E.2d 795 (1997) (invalidating exemption of only religiously operated nursing homes from real property taxation). By a parity of reasoning, allowing a religious exempt organization greater leeway to engage in political endorsements than competing secular organizations is unconstitutional.

The governing constitutional principle is neither technical nor obscure. It goes to the heart of the constitutional arrangements for the relationship between church and state. The government is required to be neutral between religious and secular viewpoints, given the Establishment, Free Speech and Free Press Clauses. Current tax law maintains that balance. So would a law permitting all exempt organizations to intervene in campaigns, a law we do not think desirable. H.R. 2357, however, upsets the constitutional balance exactly as would a law that permitted secular but not religious exempt organizations to endorse candidates. H.R. 2357 is unvarnished viewpoint discrimination of the kind the Supreme Court has repeatedly condemned.

The American Jewish Congress does not subscribe to the view that government may accommodate religion only where the Free Exercise Clause compels exemption, a very narrow class of cases subsequent to the unfortunate decision in *Employment Division v. Smith, supra. Smith* itself disclaims any such rule. But the *sine qua non* of permissible accommodation is a substantial governmental burden on religious practice. Here, there is none.

There is surely no burden on religious organizations that does not equally apply to their secular counterparts. Remedying one but not the other burden invidiously discriminates against speech on the basis of its viewpoint. Such discrimination violates core First Amendment, principles.

III. H.R. 2357 Is Extraordinarlily Poor Public Policy

If there is one lesson to be learned from repeated efforts at campaign finance reform, it is that political parties will accommodate themselves to whatever fund raising opportunities the law allows. Rather than politics driving fund raising, fund raising has come to drive politics. So it was with PAC's, so it was with soft money and so it would be if religious organizations, alone among exempt organizations, could intervene in political campaigns with "cheaper" tax-deductible dollars while secular competitors had to pay for their endorsements with more "expensive" after-tax dollars.

Passage of H.R. 2357 would inevitably cause politics to be recast and redrawn along religious lines, not as they are now, in an indirect, unspoken and therefore uncertain, demographic sense (evangelicals are conservative, Jews liberal, Catholic swing voters, and the like), but explicitly, as politicians and parties aligned and realigned themselves to gain favor of religious groups and access to their tax exempt dollars. That would be a most unfortunate and unhappy development.

With a few exceptions, our Nation has avoided a religiously centered politics, even as it has allowed religious groups full freedom to express themselves on the issue of the day. To be sure, Alexander Hamilton unsuccessfully tried to organize a Christian Party to oppose Thomas Jefferson, the short lived Know-Nothing party was called into being by Protestants to limit the power of Catholics, and the National Reform Association unsuccessfully attempted to amend the Constitution so that it acknowledged the nation's Christian heritage.

These isolated examples call attention to the secular and ecumenical cast of American political parties. Surely for all of the twentieth century and continuing into the twenty-first, this country has harbored no serious, significant or substantial political party whose platform was religious, whose candidates and leaders were selected because they held approved religious beliefs or designated clerical office, and whose members shared a common set of religious dogmas or rituals.

It takes no more than a glance around the world to see how fortunate we have been. In countries with religiously based political parties and a politics riven with

religious debate and differences, parties compete over which one more vigorously advances God's agenda. Those differences are difficult to the point of the impossible to compromise. Who dares compromise God's command?

Other countries, to avoid this evil, have gone to the opposite anti-clerical extreme, substantially restricting the liberty of religious groups to address political issues and to participate in politics. The former countries are condemned to instability and internal division. The latter are deprived of the moral insight religion brings to bear on public issue. Neither is an attractive alternative. Neither is the American way.

Whether or not H.R. 2357 would, as we predict, lead to the creation of religious parties, it would surely lead existing parties to jockey for the favor of organized religious groups who could provide the dollars modern political campaigns require. The results would be unhappy, and far worse than whatever shortcomings inhere in the present system.

IV. The Internal Revenue Service Should Clarify The Law

Although H.R. 2357 is unnecessary, unwise and unconstitutional, there is substantial room for improvement in the way that the Internal Revenue Service enforces Section 501(c)(3). Enforcement of the restriction on intervening in campaigns is hardly aggressive and universal. Only the most egregious and public of violations result in enforcement actions. Under such a lax enforcement policy, it is not surprising that those "caught" believe they are the victims of selective prosecution. Another consequence of under-enforcement is that conscientious and law abiding organizations are often asked by their members to intervene in campaigns in ways that competing exempt organizations do with apparent impunity.

One reason for the relatively relaxed enforcement-beyond the Service's understandable and commendable reluctance to challenge the speech of religious and other not-for-profit organizations over rules some of whose parameters are uncertain-is that the penalties for a violation are so draconian. Loss of tax exemption is the organizational equivalent of a death sentence. It had been hoped that the intermediate sanctions of 26 U.S.C. § 4495 might result in some leeway for the Internal Revenue Service and hence more aggressive enforcement of the no-intervention rule, but this has so far not happened. Perhaps Congress ought to consider anew the question of graduated penalties for violations of the anti-intervention rules.

Second, a search of the Internal Revenue Service's website turned up no publication setting out in plain English the Internal Revenue Service's positions on what constitutes influencing legislation or endorsing or opposing candidates. Some while ago, the Internal Revenue Service did publish a helpful booklet for religious groups (as it does for veterans organizations) but it was not widely disseminated and it cannot now be found on the IRS website (or at least the undersigned cannot find it, which may be a very different thing).

The Service ought to consider ways to make its views on these issues more widely and easily available to not-for-profits and especially smaller and less well-counseled religious institutions. Doing so would not eliminate all disputes about the scope of Section 501(c)(3), but it would eliminate much of the chilling effect generated by uncertainty and ignorance. Increased clarity would, we believe, dispel many of the grievances giving rise to H.R. 2357.

Although various Revenue Rulings and internal training materials (the latter are not binding law) make clear that a Section 501(c)(3) organization which has a longstanding position on a public policy issue need not refrain from expressing that view because a campaign is underway, many organizations believe they are condemned to silence during the never-ending campaign season. Similarly, the Internal Revenue Service has offered views on the much mooted and recurring question of when employees and lay leaders of not-for-profit organizations can speak out in support of or opposition to candidates even though their speech may be identified with their organization (can a Rabbi announce personal political preference from the pulpit?), but it is apparent that its views are not widely known.

Without endorsing every one of its interpretations, it seems fair to say that the IRS' views on these subjects are on the whole reasonable and practical-and go far to meeting the objections which have given rise to the present legislative proposal. Were they better known, there would be less impetus for legislation such as HR 2357. The IRS should cure this problem on its own.

Conclusion

The Committee should not favorably report H.S. 2357. It should reexamine whether religious groups should be permitted to elect under the Conable rules (Section 501(h)). It should also consider whether more moderate penalties for violations would lead to better and more equal enforcement of Section 501(c)(3) restrictions.

Finally, the IRS should undertake to make its understanding of the restrictions which accompany 501(c)(3) status broadly accessible.

Statement of the Anti-Defamation League, New York, New York

Opposing HR 2357 ("Houses of Worship Political Speech Protection Act") and H.R. 2931 ("The Bright Line Act")

The Anti-Defamation League has long been a lead voice advocating for the separation of church and state. Founded in 1913 to "to stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike," ADL has worked tirelessly to fight anti-Semitism, racism, and bigotry (including religious intolerance), to advocate for good will and mutual understanding among Americans of all creeds and races, and to safeguard the rights and liberties of all Americans. To this end, and to the end of the general stability of our democracy, ADL strongly advocates for the separation of church and state and the right to the free exercise of religion.

ADL opposes H.R. 2357 ("Houses of Worship Political Speech Protection Act "), introduced by Representative Jones, Jr., and H.R. 2931 ("The Bright Line Act"), introduced by Representative Crane. These legislative initiatives would amend federal tax law to permit houses of worship to utilize tax-exempt contributions and other resources to fund partisan political activity and candidates for political office.

Both bills are unconstitutional because each would give religious organizations, specifically houses of worship, an advantage over non-religious organizations simply because they are religious organizations. The bills fail each of the three most commonly used tests that the Supreme Court has articulated to determine whether a statute runs foul of the Establishment Clause:

1) Under the standard articulated in *Lemon v. Kurtzman* (403 U.S. 602 (1971)), a statute is unconstitutional if it lacks a secular purpose, or if it has the primary effect of advancing religion, or if it fosters excessive governmental entanglement with religion. A statute which expressly selects houses of worship for special treatment (and gives them benefits that other, non-religious non-profits do not have) plainly lacks a secular purpose and advances religion over non-religion. Statutes that give special advantages to religious organizations simply do not pass constitutional muster. See *Board of Ed. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994)

2) Under the no-endorsement standard, government may not advance religion over non-religion. The Constitution "preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred." *Wallace v. Jaffree*, 472 U.S.38 at 70 (1985) (O'Connor, J., concurring in judgment)

3) Under the neutrality standard, government must be "neutral" among religions and between religion and non-religion. *Everson,* 330 U.S. 1 at 18 (1947). See also *Abington School District v. Schempp*, 374 U.S. 203, 305, 83 S.Ct. 1560, 1615, 10 L.Ed.2d 844 (1963) (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects or between religion and nonreligion").

The plain effect of these bills is to give houses of worship—religious institutions—a special advantage over non-religious non-profits. It is a cornerstone of Establishment Clause jurisprudence that the government cannot prefer religion over non-religion. Therefore, these bills are unconstitutional and we urge Congress to reject them.

These bills, especially H.R. 2357, the House of Worship Free Speech Act, suffers from another failing as well. Supporters of these measure wrongly argue that, under current law, religious viewpoints in particular are being muzzled in the public arena. That is simply not true. Houses of worship, like other 501(c)(3) non-profit organizations, are permitted to engage in a wide range of non-partisan voter participation and voter education initiatives. All 501(c)(3) non-profits, however, are expressly prohibited from the sort of politicking that these bills would allow. To identify religious organizations as being unfairly silenced is both unfair and disingenuous.

Baptist Joint Committee
Washington, DC 20002–5797
May 13, 2002

The Honorable Amo Houghton, Jr.
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

You are being asked to consider legislation that would allow houses of worship explicitly to endorse or oppose candidates for public office, and even contribute money and other resources to candidates and political parties, while maintaining their tax-exempt status. We write to you in order to express our opposition to H.R. 2357 and H.R. 2931.

The "Houses of Worship Political Speech Protection Act" and "The Bright-Line Act" may sound good at first but would ultimately pervert, not protect, houses of worship. The First Amendment already creates protection for houses of worship by setting boundaries between church and state. While we agree that houses of worship need to speak out on the social and moral issues of the day, they already have that freedom.

Preachers can and do speak out with impunity, even from the pulpit, on any issue, and houses of worship may engage in some lobbying to advocate moral/ethical positions. Houses of worship may encourage good citizenship among their members by launching voter registration and education projects, conducting a nonpartisan forum for the candidates and distributing the answers to candidate questionnaires. Pastors and other church leaders, as individuals, can participate in the electoral political process as much as they wish, but nonprofits cannot participate in electioneering without jeopardizing their tax-exempt status under Section 501(c)(3).

Why is it so bad to allow houses of worship to endorse candidates or give political contributions? Electioneering by churches would be highly divisive. For religious leaders to seek to endorse and contribute money to candidates on behalf of the entire house of worship would be to drop a bombshell in the sanctuary of most congregations, especially Baptist churches. Worshipers in the pew do not need or want religious leaders telling them how to vote or funneling tithes to the coffers of political parties.

Electioneering by houses of worship would compromise their prophetic witness. Credibility and integrity of congregations would suffer with bad decisions of candidates they endorsed. Partisan groups would have increased incentives to use congregations as a conduit for political activity and expenditures, thus diminishing the distinctive role of the church.Houses of worship could be turned into virtual political action committees. These bills would provide an irresistible loophole for some to deduct political contributions by funneling them through houses of worship. It would become the preferred way to make political donations. This would be a step backward in the quest for campaign finance reform and raise the stakes for exploitation of the good name and resources of houses of worship.

In short, these bills would do houses of worship no favors. Anytime the wall of separation between church and state is breached, religious liberty is threatened. These bills would compromise church autonomy, turn pulpit prophets into political puppets and politicize our houses of worship.

We encourage you to oppose "The Houses of Worship Political Speech Protection Act" and "The Bright-Line Act."

Sincerely,

J. Brent Walker
Executive Director

K. Hollyn Hollman
General Counsel

RELIGIOUS LEADERS SAY: OPPOSE H.R. 2357 & H.R. 2931

Dear Representative,

We, the undersigned religious and denominational organizations, are writing to urge you to oppose both H.R. 2357, "The Houses of Worship Political Speech Protection Act," introduced by Rep. Walter Jones, and H.R. 2931, "The Bright Line Act," introduced by Rep. Phillip Crane. Both of these bills would lead to partisan political activity in our nation's houses of worship.

Current federal law states that houses of worship, like other 501(c)(3) organizations, cannot legally engage in partisan political activities and retain their tax-exempt status. This provision of federal law has served as a valuable safeguard for

the integrity of both religious institutions and the political process. Both H.R. 2357 and H.R. 2931 would lift important safeguards, and allow houses of worship to use their tax-exempt contributions for political purposes and to endorse candidates.

Religious leaders, denominational offices and faith-based organizations are **against** H.R. 2357 and H.R. 2931 for many ethical reasons:

- **Current law upholds the integrity of houses of worship**. Churches, synagogues, temples and mosques should not be used as political headquarters or as a means of partisan fundraising for political activities. Tying churches to partisan activity demeans the institutions from which so many believers expect unimpeachable decency.
- **This bill is unwanted and unneeded by America's clergy**. In a recent *Gallup/Interfaith Alliance Foundation* poll, a full 77% of clergy were opposed to their fellow clergy endorsing political candidates. Another poll conducted by *The Pew Research Center for the People and the Press and The Pew Forum on Religion and Public Life,* found that 70% of Americans feel that houses of worship should not come out in favor of one candidate over another during political elections.
- **The bill is predicated on false assumptions about existing law**. Supporters of these bills have argued that their enactment is necessary to allow religious leaders to speak out on issues of interest to their congregations. The reality is that religious leaders have an absolute right to use their pulpit to address the moral issues of the day. The only things tax-exempt houses of worship may not do is endorse or oppose candidates, or use their tax-exempt donations to contribute to partisan campaigns. Current law simply limits groups from being *both* a tax-exempt ministry and a partisan political entity.
- **This bill would open a dramatic loophole in the nation's campaign finance laws**. Donations to houses of worship are tax deductible because the government assumes that their work is contributing to the common good of society, not a political party or a partisan campaign. As such, contributions to churches are tax deductible and donations to political candidates and parties are not. Therefore, these bills would create a significant new loophole in our nation's campaign finance laws with serious ethical and legal implications.

For these reasons, we urge you to oppose H.R. 2357 and H.R. 2931.

Sincerely,

American Jewish Committee
American Jewish Congress
Anti-Defamation League
Baptist Joint Committee on Public Affairs
Central Conference of American Rabbis
Church of the Brethren Washington Office
Council of Khalistan
Friends Committee on National Legislation (Quaker)
General Board of Church and Society, United Methodist Church
Hadassah, the Women's Zionist Organization of America
Interfaith Alliance Foundation, The
NA'AMAT USA
National Council of Churches of Christ in the USA
National Council of Jewish Women
Presbyterian Church (USA), Washington Office
Seventh-day Adventist Church, General Conference
Soka Gakkai International—USA Buddhist Association
The Congress of National Black Churches
Union of American Hebrew Congregations
Unitarian Universalist Association
United Church of Christ Justice and Witness Ministries

Statement of James Bopp, Jr., Bopp, Coleson & Bostrom, Terre Haute, Indiana

Thank you for the opportunity to submit written comments regarding the Internal Revenue Code Section 501(c)(3) requirements for religious organizations and in support of H.R. 2357, the Houses of Worship Political Speech Protection Act, and H.R. 2931, the Bright-Line Act of 2001.

I am a practicing attorney with the law firm of Bopp, Coleson & Bostrom in Terre Haute, Indiana. Since 1980, a significant portion of my law practice has involved the representation of non-profit and religious organizations—including the National Right to Life Committee and the Christian Coalition of America—regarding compliance with Internal Revenue Code Section 501(c)(3), Section 501(c)(4), and Section 527. I have represented non-profit organizations in both state and federal courts, successfully challenging state laws that were an infringement on their constitutional right of freedom of speech.

I am also the General Counsel for the James Madison Center for Free Speech (a corporation recognized as tax exempt by the Internal Revenue Service under 501(c)(3) of the Internal Revenue Code), which advocates and promotes free speech and association rights in the election law context through litigation, legislative analysis and testimony, comments on proposed rule-making by the Federal Election Commission, and which publishes scholarly and popular articles.

Because of my developed expertise in federal constitutional law, I have provided testimony on numerous occasions before federal and state legislative committees on proposed election legislation and before the FEC on proposed regulations. Since 1996, I have served as the Chairman of the Election Law Subcommittee and the Free Speech & Election Law Practice Group of The Federalist Society for Law & Public Policy Studies.

Introduction

I am pleased to support H.R. 2357, the Houses of Worship Political Speech Protection Act, and H.R. 2931, the Bright-Line Act of 2001. The problem addressed by these resolutions is illustrated when, on the one hand, people of faith who speak about moral issues *in public* are accused of attempting to force their religion upon others; and when, on the other hand, they address moral issues *in church,* they are accused of engaging in politics. The Jeffersonian "wall of separation" doctrine, which does not appear in the U.S. Constitution, has inspired a rather bold attempt to silence people of faith not only in the public square, but also in their houses of worship. This attitude is an unofficial but outspoken form of bias or discrimination against people of faith.

A good example is the issue of abortion. When people of faith speak out against abortion in the public arena, they are told not to force their religious views upon others. When people of faith speak out against abortion in their churches, they are told not to bring politics into the church. Opposition to abortion is interpreted as support for pro-life political candidates and opposition to pro-abortion candidates, *even when the candidates' names are not mentioned*.

Sometimes churches are also threatened with loss of tax exempt status, and sometimes they are investigated by the Internal Revenue Service in order to determine whether revocation of their exempt status is justified. Thus, the possible loss of tax exempt status is used by those hostile to people of faith, to chill their right of free speech, and silence them in their own houses of worship.

This bias against houses of worship has been codified in Section 501(c)(3) by the prohibition against activities considered "political intervention" broadly interpreted and enforced by the Internal Revenue Service. The root of the current problem with the prohibition against political intervention by churches and other organizations exempt under IRC § 501(c)(3) is: (1) the vague and overbroad definition of "political intervention;" (2) the draconian penalties for violation of the prohibition; and (3) the resulting chilling effect of the prohibition on churches who want to speak out about the social and moral issues facing our nation.

I. The vague and overbroad definition of "political intervention" includes much more than the use of express words in favor of or opposition to a candidate for public office.

Section 501(c)(3) tax exempt status is limited to organizations "which *do not participate in, or intervene in* (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office" (emphasis added). Treasury Regulation § 501(c)(3)–1(c)(3)(iii) provides:

> The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

The prohibition on participation or intervention in a political campaign language has been shortened for quick reference in customary usage to the phrase "political intervention."

A. What is "political intervention"?

"Political intervention" constitutes any activity "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors." 26 U.S.C. § 527(e)(2).

"All activities that are directly related to and support the process of influencing the selection, nomination, election or appointment of any individual to public office and office in a political organization" are political intervention. Treas. Reg. § 1.527–2(c)(1).

Although the Federal Election Commission has adopted a bright line test of what constitutes "political intervention," the IRS has not.1 Instead of a bright line test, the IRS has adopted a "facts and circumstances" test: "[I]t is not feasible for the Service to adopt the FEC 'express advocacy' standard," because "[t]he language of IRC 501(c)(3) indicated a much broader scope to the concept of participation or intervention in a political campaign." Thus, "there is no bright-line test," and "all the facts and circumstances must be considered." Judith E. Kindell & John Francis Reilly, *Election Year Issues*, *in* Exempt Organization Continuing Professional Education Technical Instruction Program for FY 2002 344, 346, 349 (2001) (hereinafter "*Election Year Issues*").

It has even been acknowledged that educational activities may be political intervention when using such a vague and overbroad test: "Educating the public is not inherently inconsistent with the activity of impermissibly intervening in a political campaign." Treasury Advice Memorandum 8936002.

B. Specific activities.

For example, voter registration and GOTV activities are considered "political intervention" by the IRS unless they are nonpartisan, done without regard to voter's political preference, do not name any candidate or do not favor one candidate over another, do not name a political party, and the materials *only* urge registering and voting.

The preparation and distribution of voter guides is "political intervention" unless they address a "wide variety" of issues, the position of the organization on the issues is not indicated, and the voter guides are distributed broadly to the general public, not a target audience. Revenue Ruling 78–248, 1978–1 C.B. 154; *Election Year Issues* at 370–72.

Candidate forums are only permissible voter education if "all legally qualified persons" are included, a broad range of issues are covered, questions are posed by "a nonpartisan, independent panel of knowledgeable persons," candidates are given an equal opportunity to present their views, and the moderator states that the views expressed are the views of the candidates, not the organization. Revenue Ruling 86–95, 1986–2 C.B. 73; *Election Year Issues* at 372–75.

Even educational activities may be deemed "political intervention" if there is a use of "code words" like "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," or "Democrat." *Election Year Issues* at 345. Further, any "coordination" of an *otherwise permitted activity* with a political committee or candidate constitutes "political intervention." Treasury Advice Memorandum 9117001.

It is obvious that the expression of an opinion on any matter of public concern may be deemed "political intervention" when such a vague and overbroad definition is used. When political issues are inherently moral issues as well, houses of worship are effectively excluded from the debate by such a vague and overbroad rule. When the Internal Revenue Service uses an "all the facts and circumstances" test, the likelihood that any communication addressing social and moral issues will be found to be "political intervention" is substantial.

II. There are draconian penalties for violation of the prohibition.

The prohibition against "political intervention" by organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code is absolute. Not only will a church that is deemed to have engaged in activities constituting "political intervention" lose its tax exempt status, there are taxes to be paid.

In 1987, Congress enacted several new provisions concerning the political campaign prohibition for 501(c)(3) organizations. The first of these was IRC 4955. Section 4955(a)(1) provides for an initial tax of ten percent of each political expenditure. IRC 4955(b)(1) imposes an additional tax of 100 percent of each political expenditure previously taxed and not corrected within the taxable period. There is no upper limit on the tax that can be levied on the organization. IRC 4955(a)(2) imposes a

tax of 2½ percent of the political expenditure on any "organization manager" (e.g., priests, pastors and other officers of the organization) who agreed to make a political expenditure. Organizational managers who refuse to agree to all or part of the correction are subject to a tax of fifty percent of the political expenditure. *Election Year Issues* at 355.

Congress enacted Section 4955 because revocation for violation of the prohibition on political campaign activity was viewed by some as an inappropriate remedy in two situations. First, the penalty of revocation was disproportionate to the violation in cases where the expenditure was small, the violation was unintentional, and the organization subsequently had adopted procedures to assure that similar expenditures would not be made in the future. Second, in some cases, revocation would be an ineffective remedy, particularly if the Section 501(c)(3) organization ceased operations after it diverted all of its assets to improper purposes. *Election Year Issues* at 354.

Although Section 4955 penalties may be used as a type of "intermediate sanctions," they may also be used in addition to revocation, as an additional deterrent. Congress also enacted Section 6852, which provides that if such a violation occurs, the Service may immediately determine the amount of income and Section 4955 tax due from the Section 501(c)(3) organization. Section 7409 grants authority to the Service to seek an injunction against a 501(c)(3) organization that flagrantly violates the political campaign prohibition to prevent further political expenditures by the organization.

Thus, the remedies include revocation of exemption, a ten percent tax, a 100 percent tax, a 2½ percent tax against officers, an immediate assessment of tax due, and injunction. These remedies have a chilling effect on churches that wish to address social and moral issues.

III. The result of the prohibition is a chilling effect on churches who want to speak out about the social and moral issues facing our nation.

The First Amendment states: "Congress shall make no law . . . abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment protects the four "indispensable democratic freedom[s]." *Thomas v. Collins*, 323 U.S. 516, 529–30 (1945).

Political expression is "at the core of our electoral process and of the First Amendment freedoms." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968). Further, "[I]t can hardly be doubted that the constitutional guarantee [of the First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976). "[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates." *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

Section 501(c)(3), as currently interpreted, effectively silences houses of worship by prohibiting them from addressing those social and moral issues that are at the center of public policy debate. In other words, Section 501(c)(3) only permits churches to discuss moral issues that don' t have any impact on current public policy issues. Such a rule marginalizes people of faith and makes houses of worship irrelevant to public discourse and debate. It is inherently discriminatory.

Even if very carefully orchestrated, any communication that might have an impact on an issue of public policy may be deemed "political intervention" by the IRS under current law. All that is necessary is that a communication be found by the IRS to "contain some relatively clear directive that enables the recipient to know the organization's position on a specific candidate or slate of candidates." *Election Year Issues* at 345–46. No wonder so many clergy and churches avoid addressing any social or moral issues during an election year. No matter what the church's communication is, it can be construed under the "all the facts and circumstances" test to be supporting all candidates who share the same or similar view, and opposing all candidates who hold a different view.

IV. How the proposed legislation will change Section 501(c)(3)

In order to properly understand the effect of the proposed changes on Section 501(c)(3) we must first look at the history of Section 501(c)(3).

A. The history of Section 501(c)(3)

Prior to 1954, there was no statutory provision prohibiting organizations described in the antecedents of IRC 501(c)(3) from engaging in political campaign activities. From the earliest days of our Republic churches have played a key role in public life. Where moral issues and political issues collided, as with the abolitionist movement, churches were frequently the forum for public discussion and debate.

Many sermons were preached on such subjects central to our national discourse and debate.

The current political campaign prohibition has a vague but unenacted antecedent. What eventually became the Revenue Act of 1934, under which the lobbying restriction of IRC 501(c)(3) was first enacted, at one time contained a provision extending the prohibition to "participation in partisan politics." S. Rep. No. 73–558, 73d Cong., 2d Sess. 26 (1934). The provision, however, was deleted in conference, so that only the lobbying restriction remained. H.R. Conf. Rep. No. 73–1385, 73d Cong., 2d Sess. 3–4 (1934). In explaining its deletion, Representative Samuel B. Hill stated: "*We were afraid this provision was too broad*." 78 Cong. Rec. 7,831 (1934) (emphasis added); *Election Year Issues* at 336. A fear that it now appears was well founded.

During the Senate consideration of what became the Revenue Act of 1954, Lyndon Johnson, then Senate Majority Leader, added a floor amendment to provide that IRC 501(c)(3) organizations may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Johnson stated ". . . [t]his amendment seeks to extend the provisions of section 501 of the House bill, denying tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for public office." 100 Cong. Rec. 9,604 (1954). The amendment was accepted; no debate or discussion took place. The Conference Report (H.R. Conf. Rep. No. 83–2543, 83d Cong., 2d Sess. (1954) contains no further discussion of the amendment. *Election Year Issues* at 337.

In 1969, a number of provisions were enacted concerning the treatment of private foundations. Under one provision, an initial tax in an amount equal to ten percent of each taxable expenditure and an additional 100 percent tax on each taxable expenditure previously taxed and not corrected within the taxable period was imposed on private foundations. In addition, taxes were imposed on foundation managers who agreed to the making of the taxable expenditure. IRC 4945. A taxable expenditure included any amount paid or incurred by a private foundation to influence the outcome of any specific public election or to directly or indirectly carry on any voter registration drives, unless certain requirements were met. IRC 4945(d)(2); *Election Year Issues* at 337.

In 1987, Congress again amended the law applicable to charitable organizations, this time specifically focusing on the prohibition on political campaign activity. Congressional concern appears to have been triggered by two occurrences. First, in 1986, an organization then exempt under IRC 501(c)(3), the National Endowment for the Preservation of Liberty, was reported to have intervened in Congressional campaigns, opposing the reelection of members who had not supported aid to the Nicaraguan Contras. Second, questions had been raised about the use of ostensibly educational 501(c)(3) organizations by politicians to promote their candidacy or potential candidacy. After hearings held by this Subcommittee and after it made its recommendations, IRC 501(c)(3) was amended to clarify that the prohibition on political campaign activity applied to activities in opposition to, as well as on behalf of, any candidate for public office, in accordance with the existing interpretations of the prohibition in the regulations. *Election Year Issues* at 338.

B. How would H.R. 2357 change Section 501(c)(3)?

If H.R. 2357 were enacted, Section 501(c)(3) would be revised as follows:

> (c) List of exempt organizations.—The following organizations are referred to in subsection (a):
>
> > (3) Corporations, and any community chest, fund, or foundation, 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 . . . and except in the case of an organization described in section 508(c)(1)(A) (relating to churches), which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office and, in the case of an organization described in section 508(c)(1)(A), no substantial part of the activities of which is participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Although the bill would not change the vague and overbroad definition of "political intervention," it would exempt churches from the absolute prohibition, and establish a "no substantial part of the activities" standard for political intervention. This is identical language to the restriction on legislative lobbying activities, thus it utilizes familiar statutory language and interpretative precedents. It is not a bright line

test, but a test that would take the chill out of occasional church pronouncements on social and moral issues, and allow an insubstantial amount of political activities by churches.

C. How would H.R. 2931 change Section 501(c)(3)?

H.R. 2931, the Bright-Line Act of 2001, would also give houses of worship some breathing room. It would add a new subsection to Section 501(c)(3):

(p) EXPENDITURES BY CHURCHES, ETC., TO INFLUENCE LEGISLATION OR PARTICIPATE IN CAMPAIGN ACTIVITIES—

(1) EXPENDITURES TO INFLUENCE LEGISLATION—An organization to which this subsection applies shall be denied exemption from taxation under subsection (a) because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally makes lobbying expenditures (as defined in section 4911(d)) for each taxable year in excess of an amount equal to 20 percent of such organization' s gross revenues for such year.

(2) EXPENDITURES TO PARTICIPATE IN CAMPAIGNS—An organization to which this subsection applies shall be denied exemption from taxation under subsection (a) because such organization participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, but only if such organization normally makes expenditures for such purpose for each taxable year in excess of an amount equal to 5 percent of such organization' s gross revenues for such year.

(3) AGGREGATE LIMIT—An organization to which this subsection applies shall be denied exemption from taxation under subsection (a) if the aggregate of the expenditures described in paragraph (1) and the expenditures described in paragraph (2) which such organization normally makes for each taxable year exceeds an amount equal to 20 percent of such organization's gross revenues for such year.

(4) GROSS REVENUES—For purposes of this subsection, the term 'gross revenues' means the sum of—

(A) the organization's gross income for the taxable year, and

(B) the aggregate contributions and gifts received by such organization during such year.

(5) ORGANIZATIONS TO WHICH SUBSECTION APPLIES—This subsection shall apply to any disqualified organization (as defined in subsection (h)(5)) which is described in subsection (c)(3).

(6) AFFILIATED ORGANIZATION—If, for any taxable year, 2 or more organizations to which this subsection applies are members of an affiliated group of organizations (as defined in section 4911(f)(2)——

(A) paragraphs (1), (2), (3), and (4) shall be applied by treating such group as 1 organization, and

(B) if such group exceeds the expenditure limitation of paragraph (1), (2), or (3), each organization to which this subsection applies which is a member of such group shall be treated as not described in subsection (c)(3).

The preceding sentence shall not be applied so as to treat an organization which is not (without regard to the preceding sentence) exempt from tax by reason of paragraph (1), (2), or (3) as being so exempt.

(b) EFFECTIVE DATE—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

As stated in its short title, the primary feature of this resolution is to provide a *bright line test* for compliance. Houses of worship would be permitted to use 20% of their gross receipts for lobbying, and 5% of their gross receipts for activities considered "political intervention." Although the vague and overbroad definition of "political intervention" is not changed by this resolution, it does give churches some breathing room before loss of tax exemption, or penalties, would apply.

A secondary feature of this resolution is the "affiliated organizations" provision in subsection (6). This provision would provide additional protection to individual churches that are affiliated with other similarly exempt organizations. When an individual church's gross receipts and political expenditures would fail the proposed bright line test, the affiliation provision would require the examiner to use the grand totals of gross receipts and political expenditures of all affiliated organiza-

tions. This would provide remarkable protection for churches in denominations, that would be unavailable to unaffiliated churches. It would also provide an increased safe harbor for churches with affiliated charitable organizations, schools, missions, or other affiliated organizations under Section 4911(f)(2).

Conclusion

It is time to stop the IRS and others from using Section 501(c)(3) to silence houses of worship. H.R. 2357 and H.R. 2931 will go a long way in accomplishing that goal. Clergy and churches should be able to make public statements about social and moral issues without threat of investigation, loss of tax exempt status, or assessment of taxes and penalties.

H.R. 2357 permits an insubstantial amount of activity that would otherwise be prohibited as "political intervention." It allows churches to discuss moral issues without threat of sanctions by the IRS. The threshold established by H.R. 2357, namely "no substantial part of the activities," is the same standard applied to legislative lobbying and is sufficiently clear and well established as to remove the threat of sanctions for public communications on social and moral issues by churches.

H.R. 2931 provides a bright line test that would make the determination of a violation more objective. By providing an explicit limit of 5% of gross receipts by a house of worship and its affiliated organizations it may insulate clergy and churches from being singled out for investigation and penalties for a single act considered "political intervention" under the "all facts and circumstances" test of the Internal Revenue Service.

Both resolutions return clergy and houses of worship to some measure of the freedom of speech they enjoyed from the founding of this nation to 1954 when the absolute prohibition of "political intervention" went into effect.

For these reasons, I support the Houses of Worship Political Speech Protection Act and the Bright-Line Act of 2001.

Statement of the Hon. Chet Edwards, a Representative in Congress from the State of Texas

Chairman Houghton, Ranking Member Coyne, and Members of the Subcommittee:

Thank you for allowing me to submit a statement regarding H.R. 2357,The Houses of Worship Political Speech Protection Act, and H.R. 2931, the Bright Line Act. I appreciate your interest in the marriage of religion and politics, and I am glad to see you are giving it the thoughtful consideration it deserves.

Let me begin by asking one of the basic questions of America's experiment in democracy: *what it the proper role of churches and houses of worship in our government?*

The Founding Fathers clearly considered this an important question and placed their answer squarely at the beginning of the Bill of Rights, asserting, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." For over two centuries, those 16 words have worked to protect our religious freedom, and in my opinion, make religious liberty the crown jewel of America's experiment in democracy. As students of human behavior, and human history, our forefathers understood that, politicians, if allowed, could not withstand the temptation to use religion as a means to their own political ends.

Martin Luther King, Jr. faced this same question and voiced his answer well. He said: "The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state." (*Strength to Love*, p. 47,1963) He knew that the independence of religious institutions during the civil rights movement gave them the freedom to speak out against government policies—unconstrained by the potential repercussions.

As a person of faith, I believe religion has a profound impact on our private values, our personal lives and our public life as a nation. However, one of the principles that keeps our government and our religious institutions so strong is that each has been allowed to flourish separately. To see how religious institutions and government operate together, I suggest you look at countries across the Middle East. I humbly submit that we in this country keep our own model rather than following theirs.

Currently, federal law prohibits all 501(c)(3) organizations, including churches and houses of worship, from legally participating in partisan political activities without forfeiting their tax-exempt status. In essence, once an organization participates in political activities, it can no longer be considered tax-exempt. I believe this is an important safeguard measure, which protects the autonomy of all religious or-

ganizations. However, provisions in both H.R. 2357 ad H.R. 2931 will enable houses of worship to be excluded from this prohibition and to use their tax-exempt contributions for political activities and endorse candidates. I cannot emphasize how dangerous this could be for our government and for our religious institutions—it could ultimately compromise the integrity of both. Do we really want to create a system where elected officials will use our churches and houses of worship as a tool in partisan fighting and politics?

Religious freedom is of the utmost importance to me, and I urge the Subcommittee to consider the threat that these bills pose to that pillar of American democracy.

Statement of the Islamic Supreme Council of America

In the Name of God, Most Merciful, Most Compassionate

Chairman Houghton and distinguished Members of the Subcommittee:

The Islamic Supreme Council of America (ISCA) is a religious organization dedicated to providing practical solutions for American Muslims, based on the rulings of classical Islamic jurisprudence. We work proactively with government and civil institutions, both domestically and abroad, to present the ideological standpoint of traditional Muslims throughout the world.

We respectfully express to you today our opposition to HR 2357 and HR 2931, which would amend the Internal Revenue Service Code of 1986 to permit churches and other houses of worship to engage in political campaigns.

In restricting the political participation of religious organizations, the current tax codes embody the will of our Founding Fathers and reflect their wise and sound judgment *not to converge* religious institutions and the political system of this nation.

As traditional Muslims, we know that classical Islamic doctrine is in harmony with the views articulated by the framers of our Constitution in this matter.

According to Islamic tradition, our houses of worship are for God and for God alone. Though this makes mosques the central focus of public life in Islam, it also places them outside the sphere of worldly discourse. Emphasizing the purely spiritual nature of the mosque in Islam, the Prophet Muhammad (s) said, "And a prayer followed by a prayer with no worldly talk during the gap between them will be recorded in the good deeds of believers."

The sanctity of the mosque as a place for remembrance of God and His worship is emphasized time and again in the Holy Quran. In one place it was revealed, "When the call is made for prayer on Friday, then hasten to the remembrance of God and leave off trading; that is better for you, if you know" (62:9). Trade here refers to all that involves the worldly life—not just buying and selling but the business of power-seeking and politics. Thus the emphasis is that, in responding to the call for prayer, worldly concerns are set aside as one enters the mosque. Once prayers are completed, the affairs of this world may be picked up again *outside the mosque* as the next verse stresses: "And when the prayer is finished, then may ye disperse through the land, and seek of the Bounty of God . . ." (62:10).

For this reason, the 2nd Caliph of the Prophet, Umar ibn al-Khattab, set aside an area near the mosque and said, "Whoever wishes to talk of this world . . . or raise his voice should go to that area."

Throughout the ages, the leading thinkers of the Islamic world have warned against turning the mosque into a political forum. These men and women valued the sanctity of the mosque and knew that allowing it to become a political venue would diminish its holy status. They also knew that doing so would divide the members of a congregation along political lines, turning a house of worship into an arena for political wrangling, in-fighting, and all manner of intrigues.

We believe the same holds true for churches and synagogues, too. What sincere believer would like to see the pulpit of his church or the *bima* of her temple turned into a stump for political lobbying, fundraising or vote seeking? Who would like to see their pulpit turned into the floor of Congress?

While there are surely members of every faith community that would, in their short-sighted pursuit of greater political influence, welcome the increased lenience proposed by the authors of these two bills, we believe that the problems created thereby far outweigh any possible benefits.

The tragic events of September 11 are a grim reminder of the ultimate consequences of transforming religion into a political tool. It is an extreme example, but one which should not be forgotten in the present debate.

As Muslims, we are all too aware of the perils posed by politicizing religion. As Americans, we are also well aware of the prudent provisions our Founding Fathers instituted to prevent the marriage of politics and religion. As people of faith, we urge the Subcommittee to leave those barriers intact, to leave that door closed and to ensure that America's mosques, synagogues, chapels and churches remain places of worship, not of politics.

Thank you.

Statement of the Hon. Walter B. Jones, a Representative in Congress from the State of North Carolina

Mr. Chairman, Ranking Member Coyne, members of the Committee, thank you for holding this hearing to discuss whether the 1st Amendment to the U.S. Constitution guarantees the freedom of speech to our churches, synagogues, and mosques.

Specifically the question is: Should the Internal Revenue Service be able to determine what is appropriate speech in our nation's houses of worship, and then revoke the tax-exempt status if it feels those religious institutions have "crossed the line"?

Mr. Chairman, if this were 1953, there would be no need for this oversight committee hearing, because at that time our nation's churches, synagogues and mosques had no restrictions on speech! But in 1954, one Senator, Lyndon Johnson—without a debate—attached an amendment to a tax bill that for the first time since the writing of the Constitution restricted the political speech of all 501 c (3) organizations.

I find the restriction on the speech of houses of worship to be particularly troubling, and that is what this bill attempts to address.

The First Amendment to the Constitution says, "Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof. " I firmly believe that threatening the tax exempt status of those houses of worship whose speech the IRS deems has 'crossed the line into politics' has the effect of denying their right to the free exercise of their religious beliefs.

HR 2357 would take the Internal Revenue Service out of the business of telling houses of worship what is and what is not appropriate speech, by restoring the rights they enjoyed prior to 1954.

Just as non-profit organizations—including churches—are currently allowed to expend an "insubstantial" amount of their funds on lobbying activities, they would be allowed to expend an "insubstantial amount" on political activity. Just as they are allowed to speak out on the moral ramifications and endorse bills before Congress, ministers, priests, and rabbis would to be able to speak out about candidates on the ballot.

Is speaking out on candidates, or engaging in an insubstantial amount of political activity a good thing? People of faith will obviously disagree. A great many good things, like the abolition of slavery for instance, would not have happened without the political involvement—through the churches—of people of faith.

But the appropriate level—if any—of political speech should be decided by the church and its parishioners, not the Internal Revenue Service.

Examples of the chilling effect of the Internal Revenues Service's policing of speech in the pulpit are not difficult to find.

When Floyd Flake, a former member of congress and pastor of Allen A.M.E. Church in Harlem, asked his parishioners to vote for Al Gore in the 2000 Presidential race, he did so believing—right or wrong—that his moral code, grounded in his religious faith, led him to believe that voting for Mr. Gore was the right thing to do. Not just right politically, but right morally.

What was his reward for speaking out on the practical political expression of his religious beliefs? The Internal Revenue Service threatened to revoke his tax-exempt status, and required Floyd Flake to sign a document promising to cease politicking from the pulpit.

A minister of the Gospel being required by an agency of the United States Government to cease speaking out on issues which his morality compels him to address! That is as chilling as it is wrong.

In my own district, for example, I know of a constituent who asked his priest to remind the parishioners during the homily (sermon) that George Bush was pro-life, and that Al Gore was pro-choice. The priest replied that he felt he could not make that statement—not because he did not feel it was important, but because he feared that speaking out on the practical political application of his church's moral code might jeopardize his church's tax status. Consider what that priest was saying: Preaching the practical application of your church's faith risks incurring the wrath of the IRS!

Unfortunately, the examples go on. The practical result is nothing less than a violation of free speech and the free exercise of religion guaranteed by the Constitution.

To add insult to injury, Mr. Chairman, the law is not applied in an even manner. Press accounts are full of candidates in some churches prior to elections, asking for—and receiving—the endorsement of the minister. Yet the same IRS that gagged Floyd Flake turns a blind eye to alleged violations of the law that are printed in the newspapers for all the world to see!

The IRS should treat all the churches, synagogues, and mosques equally. There are only two ways to do so: Either have armies of IRS agents and informants, permanently monitoring the speech and activities of every house of worship, or by getting the IRS out of the religious speech business.

Mr. Chairman, I submit the only way to fairly apply the law, in a manner consistent with our national and constitutional values, is to get the IRS out of the business of telling ministers, priests, and rabbis, what is appropriate speech.

Therefore, we need to eliminate the Johnson Amendment. The IRS should not be the "Speech Patrol". Our spiritual leaders should feel free to speak on moral and political issues of the day, including talking about candidates for public office and where they stand on those issues. If a minister believes that one candidate best reflects that church's moral beliefs, the IRS should be in no position to deter him or her from saying so.

Mr. Chairman, we as members of the United States Congress take an oath to defend the constitutional rights of the American people. I hope this committee will move a bill that will return the 1st Amendment rights to our spiritual leaders. It is the right thing to do.

Thank You.

Maryland Bible Society
Baltimore, Maryland 21202

Ways and Means:

As a United Methodist Minister for 35 years and an Executive Director of a religious nonprofit, I am totally against any church or religious group using funding to do campaigning and electioneering for political candidates through churches or ministries. This is absolutely the wrongheaded way of doing business. Discussion of issues and candidates freely yes, but the use of nonprofit funds for such political and partisan agendas is absolutely stupid. I totally oppose any religious institution or church using any funding as a nonprofit tax exempt body for political purposes of pushing the candidacy of any political party.

Thank you.

Rev. Dr. Raymond T. Moreland
Executive Director

National Council of Nonprofit Associations
Washington, DC 20005–1525
May 28, 2002

The Honorable Amo Houghton, Chairman
Committee on Ways and Means
Subcommittee on Oversight
U.S. House of Representatives
1136 Longworth House Office Building
Washington, DC 20515
via e-mail (hearingclerks.waysandmeans@mail.house.gov) and facsimile ((202) 225–2610)

Re: Comments for the May 14, 2002 Hearing on the Review of Internal Revenue Code Section 501(c)(3) Requirements for Religious Organizations

Dear Representative Houghton:

Thank you for the opportunity to submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the May 14, 2002 hearing on the Houses of Worship Political Speech Protection Act (H.R. 2357) (the "Political Speech Protection Act") and the Bright-Line Act of 2001 (H.R. 2931) (the "Bright-Line Act"). These comments are submitted by and on behalf of the National Council of Nonprofit Associations (NCNA).

NCNA is a membership organization of state and regional associations of nonprofits that represent and serve thousands of local nonprofits throughout the country. Our members work at the state and local level to provide training and technical

assistance to improve the operations and effectiveness of organizations while promoting the value of the nonprofit sector.

NCNA strongly believes in the need for a united nonprofit sector, and opposes any legislative or regulatory act that seeks to divide the nonprofit sector based on subject matter and philosophy. Both the Political Speech Protection Act and the Bright-Line Act are intended to—and will—divide the sector.

These bills allow churches to engage in activities not permitted of all other 501(c)(3) organizations. Such distinctions are unnecessary and harmful to the sector. Whether nonprofits should be prohibited from engaging in electioneering activities (participating in, or intervening in, political campaigns on behalf of a candidate) is a legitimate question. However, neither the Political Speech Protection Act nor the Bright-Line Act address it. Instead, they allow churches and other church-related organizations only to participate in campaigns.

In addition, the Bright-Line Act would permit churches to expend greater expenditures to influence legislation than section 501(h) of the Internal Revenue Code of 1986, as amended (the "Code"), allows all other organizations. Churches could spend up to twenty (20) percent of its gross revenues to influence legislation, while all other organizations that make the 501(h) election ("Electing Charities") are limited to a maximum expenditure of the lesser of $ 1,000,000 or twenty (20) percent of the first $ 500,000 of gross revenues, plus lesser percentages of its remaining gross revenues. In addition, while Electing Charities can spend no more than twenty-five (25) percent of its lobbying expenditures on grassroots lobbying,[1] the Bright-Line Act does not contain a similar limitation for churches. Such disparities based on type of organization should not be endorsed and enacted into law.

One of the stated justifications for these bills is that churches are refraining from engaging in legally permissible activities due to fear of losing their tax-exempt status for engaging in an impermissible activity. However, the solution is not to change the law, but to better educate the churches about permissible activities. NCNA and its network of state associations are currently engaging in these educational efforts, along with other national organizations such as the Alliance for Justice and Charity Lobbying in the Public Interest.

Thank you for this opportunity to comment. Please let me know if you have any questions or would like any further information on my comments, or if NCNA can be of any further assistance to the Subcommittee on Oversight of the Committee on Ways and Means.

Sincerely,

Audrey R. Alvarado
Executive Director

Statement of Kay Guinane, Counsel and Manager, Community Education Center, OMB Watch

OMB Watch is a nonprofit organization that promotes government accountability and citizen participation in public issues and decision-making. We appreciate the opportunity to comment on HR 2357 and HR 2931, on our own behalf and in the interest of the nonprofit sector.

OMB Watch works with and through the nonprofit sector because of its vital place in communities and our faith that the sector can play a powerful role in reinforcing our democratic principles. Because of our commitment to strengthening the voice of the nonprofit sector in public policy debates we fully support the right of all nonprofits to speak out publicly on the moral and political issues of the day, regardless of their religious character. This right is protected the First Amendment to the Constitution and current tax law. There is nothing in current law to stop religious congregations or any other 501(c)(3) organization from fully exercising this right.

1. Current Law is Adequate to Protect the Right of Religious Organizations to Speak on Public Policy Issues

Proponents of HR 2357 and HR 2931 claim passage is necessary to protect the right of religious organizations to speak on moral and political issues, and that its impact would only be to free clergy to speak on issues and their principles of faith. However, the tax code specifically limits the definition of prohibited "political" to speech the support of or opposition to a candidate for office. This hardly puts a muz-

[1] NCNA is supporting current efforts to eliminate the distinction between grassroots and direct lobbying under Code section 4911(c)(4) and to raise the lobbying expenditure limits contained in Code section 4911(c)(2).

zle on clergy that wish to address the morality of abortion, the death penalty or any other public issue. HR 2357 and HR 2931 ignore current legal protections for speech by 501(c)(3) organizations.

Current Law Allows Unlimited 501(c)(3) Time and Money for:

- Commentary on public issues from the pulpit
- Public education campaigns
- Publication of pamphlets, research, newsletters and analysis
- Litigation
- Comment on proposed regulations
- Participation in agency and commission proceedings
- Nonpartisan voter education, registration and get out the vote activity

Limitations on 501(c)(3) Legislative Lobbying

- All public charities, including religious organizations, can lobby at the local, state or national level as long as it is not a "substantial part" of its overall activities.

Prohibition on Supporting or Opposing Candidates for Office

- The tax code prohibits support or opposition to candidates, but there are no regulations that clearly define what activities are allowable and what are not. The IRS uses a "facts and circumstances" test to determine whether a 501(c)(3) has in fact engaged in partisan electioneering. This lack of clarity leaves all 501(c)(3)s, not just religious organizations, without clear guidance.
- Religious organizations can create 501(c)(4) affiliates that can endorse or oppose candidates. Contributions to these organizations are not tax deductible.

Clergy, Members of Congregations and Others Can Act as Individuals

- Any person, acting on their own behalf, can endorse candidates, volunteer on campaigns, or even run for public office, as long as they do not use the resources of a 501(c)(3) organization.

Based on the above, we believe there is no need for new legislation to protect the right of religious organizations to speak on issues.

2. HR 2357 and HR 2931 Would Turn Religious Organizations Into Soft Money Conduits

The proposed bills would have an enormous financial impact on campaign finance. They would create an enormous soft money loophole, and turn religious congregations into conduits for campaign contributors seeking to avoid campaign finance laws. They would allow religious congregations to spend money and use their institutional resources for a wide range of partisan political activity, from operating phone banks to running ads on radio or TV.

- The soft money problem would be exacerbated by two factors:
- Donations to 501(c)(3) organizations are tax deductible and

Religious organizations are not required to file IRS Form 990, the annual information return filed by most 501(c)(3) organizations. Since there is less public accountability, it would be impossible to know the extent of the use of religious organizations as conduits for unregulated campaign contributions, or to know who is contributing and what candidates they support or oppose.

This is clearly contrary to the intent of Congress is passing the Bipartisan Campaign Finance Reform Act earlier this year, and for that reason alone is sufficient justification to defeat these bills.

3. HR 2357 and HR 2931 Discriminate Against Non-religious 501(c)(3) Organizations

If free speech rights of 501(c)(3) organizations are to be extended, they should be extended fairly, to all public charities, not just religious organizations. By limiting new rights to congregations, the proposed legislation unduly discriminates against other charities that can be equally concerned with the moral and political issues of the day. There is no rational justification for such a distinction.

Conclusion

All 501(c)(3) organizations share the same experience with the current lack of clarity of what constitutes prohibited partisan electioneering. If, as is claimed by the

proponents of this legislation, the problem is the chilling effect this lack of clarity has, the uneven enforcement that results, the solution should be fashioned to fit the problem. HR 2357 and HR 2931 go well beyond what is needed to bring clarity to the law. If, on the other hand, the sponsors of these bills believe that tax deductible dollars should be used for candidate campaigns, they should clearly state why, and allow for a debate on that issue.

People for the American Way
Washington, DC 20036
May 10, 2002

House of Representatives
Washington, DC

Dear Representative,

On behalf of the more than 500,000 members and supporters of People For the American Way, we are writing to urge you to oppose H.R. 2357, the so-called "Houses of Worship Political Speech Protection Act." This bill threatens religious liberty by turning America's houses of worship into partisan political operations.

H.R. 2357 flies in the face of federal tax law, which clearly states that houses of worship, like all other 501(c)(3) organizations, cannot legally engage in partisan politics and still retain their tax-exempt status. This law safeguards the integrity of both religious institutions and the political process.

H.R. 2357 is based on the false assumption that existing law does not allow religious leaders to speak out on issues pertinent to their congregations. Claims that existing law would have silenced the religious community on issues such as abolitionist and civil rights movements are simply not true. Religious leaders currently use their moral authority to address current issues. They are prevented, however, from endorsing or opposing candidates, and using their tax-exempt donations to contribute to partisan campaigns.

Finally, H.R. 2357 is unnecessary, and unwanted by America's clergy. Supporters of this bill erroneously claim that there is a clamoring within the religious community for radical changes to existing tax law pertaining to houses of worship. In actuality, a recent Gallup poll found that 77% of clergy were opposed to clergy endorsing political candidates.

Please join us in opposing H.R. 2357.

Sincerely,

Ralph G. Neas
President

Stephenie Foster
Director of Public Policy

Statement of William J. Murray, Chairman, Religious Freedom Coalition

The Religious Freedom Coalition commends Congressmen Phil Crane (R–IL) and Walter Jones (R–NC) for trying to alleviate the present intolerable situation in which clergymen and their congregations fear to express publicly any political views or even opinions about moral issues such as abortion, because these may be perceived as political. This climate of fear, which is exactly what the First Amendment was created to prevent, is caused by uncertainty about what is or is not permissible for a clergyman to say without having the church's tax exempt status taken away.

As things stand now, the guidelines are so unclear that it is just up to the discretion of IRS bureaucrats to decide who is in violation. There is evidence that these rulings by the IRS are selectively and unfairly enforced, targeting those who express conservative views while ignoring others whose liberal views are favored.

Congressman Crane's Bright Line Act of 2001 (H. R. 2931) and Congressman Jones' Houses of Worship Political Speech Protection Act (H. R. 2357) would help restore First Amendment rights to America's churches and synagogues.

America had a long history of free speech in her houses of worship, beginning with Revolutionary War era preachers who spoke out for freedom and encouraged the founding of the new country. It was largely in the churches where the abolitionist movement began, as religious people stirred up the conscience of the nation about the evils of slavery. In the first half of the twentieth century, clergymen spoke out fearlessly on many social issues and they warned of the dangers of murderous fascism and communism.

The era of free speech came to an ignoble end in 1954 when Senator Lyndon Johnson inserted the ban on political speech as a little noticed floor amendment to another bill. There were no hearings on this amendment, nor does the Congressional Record indicate that any explanation was ever given for this ban. There was a behind the scenes explanation though; Johnson was being criticized by a conservative Texas pastor. To silence his critic, he slipped in a law that clearly violates the spirit of the Constitution.

It's true that the law was ignored when Martin Luther King and other black pastors led peaceful civil rights demonstrations in the 1960's. If it had been strictly enforced, Dr. King and other church leaders could have been silenced. In fact, the law was largely ignored until the early 1990's, when Democrats realized they could follow the example of LBJ and use it against political opponents.

During Bill Clinton's 1992 presidential campaign, the Church at Pierce Creek in Conklin, New York sponsored a newspaper ad that criticized Clinton for his stand on abortion. In retaliation, the church had its tax exempt status revoked. Yet when first Bill Clinton and then later Al Gore campaigned in churches, there was hardly a word said from IRS officials. Preacher and former Democrat Congressman Floyd Flake invited candidate Gore to speak at his Allen A.M.E. Church in Queens, New York. From behind the pulpit Flake told the congregation, "This should be the next president of the United States." Was Rev. Flake or his church punished in any way? Well, he did get a "caution" from the IRS, but that was all.

While this was a clear violation of the law, the actual wording of the tax code is so vague that IRS officials may interpret it any way they please. It is not necessary to name a candidate or political party to get in trouble. All that is necessary is that the IRS finds a given communication "contains some relatively clear directive that enables the recipient to know the organization's position on a specific candidate or slate of candidates." In other words, suppose a certain candidate is well known to be in favor of unlimited abortion, homosexual marriage, or anti-Semitism. If a pastor in an election year chooses to address such moral issues, is that an implicit rejection of the candidate and therefore a "political statement?" It can be, if the IRS so decides.

Religious organizations deserve the clarity of knowing exactly what political activity is acceptable and allowed by law. It should not be left up to some bureaucrat to interpret the law and determine if a religious institution is in violation, thus losing their tax exempt status. We believe that either the Crane or the Jones bill will remove confusion from sanctioned and unsanctioned activities by establishing a clear set of standards and bringing proper enforcement.

Topeka, Kansas 66605–2086

Honorable Bill Thomas
Chairman, Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.
Phone: (202) 225–3625
Fax: (202) 225–2610
E–Mail: contact.waysandmeans@mail.house.gov

Ref: Comments on The Houses of Worship Political Speech Protection Act (HR 2357) and the Bright Line Act of 2001 (HR 2931)

Dear Chairman Thomas:

Please accept these comments on HR 2357 and HR 2931. The nonprofit sector has a vital place in communities with this sector playing a powerful role in reinforcing our democratic principles. Please strengthen the voice of the nonprofit sector in public policy debates and support the right of all nonprofits to speak out publicly on the moral and political issues of the day, regardless of their religious character. As you know, this right is protected the First Amendment to the Constitution and current tax law. There is nothing in current law to stop religious congregations or any other 501(c)(3) organization from fully exercising this right.

1. Current Law is Adequate to Protect the Right of Religious Organizations to Speak on Public Policy Issues

Proponents of HR 2357 and HR 2931 claim passage is necessary to protect the right of religious organizations to speak on moral and political issues, and that its impact would only be to free clergy to speak on issues and their principles of faith. However, the tax code specifically limits the definition of prohibited "political" to speech the support of or opposition to a candidate for office. This hardly puts a muz-

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Clergy, Members of Congregations and Others Can Act as Individuals

Any person, acting on their own behalf, can endorse candidates, volunteer on campaigns, or even run for public office, as long as they do not use the resources of a 501(c)(3) organization.

Based on the above, I believe there is no need for new legislation to protect the right of religious organizations to speak on issues.

2. HR 2357 and HR 2931 Would Turn Religious Organizations Into Soft Money Conduits

The proposed bills would have an enormous financial impact on campaign finance. They would create an enormous soft money loophole, and turn religious congregations into conduits for campaign contributors seeking to avoid campaign finance laws. They would allow religious congregations to spend money and use their institutional resources for a wide range of partisan political activity, from operating phone banks to running ads on radio or TV.

The soft money problem would be exacerbated by two factors:

Donations to 501(c)(3) organizations are tax deductible and Religious organizations are not required to file IRS Form 990, the annual information return filed by most 501(c)(3) organizations. Since there is less public accountability, it would be impossible to know the extent of the use of religious organizations as conduits for unregulated campaign contributions, or to know who is contributing and what candidates they support or oppose.

This is clearly contrary to the intent of Congress is passing the Bipartisan Campaign Finance Reform Act earlier this year, and for that reason alone is sufficient justification to defeat these bills.

3. HR 2357 and HR 2931 Discriminate Against Non-religious 501(c)(3) Organizations

If free speech rights of 501(c)(3) organizations are to be extended, they should be extended fairly, to all public charities, not just religious organizations. By limiting new rights to congregations, the proposed legislation unduly discriminates against other charities that can be equally concerned with the moral and political issues of the day. There is no rational justification for such a distinction.

Conclusion

All 501(c)(3) organizations share the same experience with the current lack of clarity of what constitutes prohibited partisan electioneering. If, as is claimed by the proponents of this legislation, the problem is the chilling effect this lack of clarity has, the uneven enforcement that results, the solution should be fashioned to fit the problem. HR 2357 and HR 2931 go well beyond what is needed to bring clarity to the law. If, on the other hand, the sponsors of these bills believe that tax deductible dollars should be used for candidate campaigns, they should clearly state why, and allow for a debate on that issue.

Thank you for the opportunity to bring these remarks to your attention. Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,

Robert E. Rutkowski

Soka Gakkai International-USA Buddhist Association
Washington, DC 20004
May 13, 2002

Rep. Amo Houghton, Chairman
Attn: Kimberly A. Reed, Esq.
U.S. House of Representatives
Committee on Ways and Means Oversight Subcommittee
Washington, DC 20515

Dear Rep. Houghton,

I am writing to express our opposition to both H.R. 2357 "The Houses of Worship Political Speech Act" introduced by Rep. Walter Jones, and H.R. 2931, "The Bright Line Act" introduced by Rep Phillip Crane. Both bills would have the undesirable and corrupting effect of bringing partisan political activity into our nation's religious institutions.

Religious voices have spoken out consistently and at times passionately to provide both guidance and prophetic warning concerning the affairs of our nation. It is a role that has served both our nation and our churches well. Present law provides well for this function. To make our churches centers of partisan activity would be to undermine the moral authority of these essential voices.

Furthermore, the proposed legislation would have the effect of creating a significant loophole in our nation's campaign finance laws. At present, those who contribute to our religious organizations may deduct those donations from their taxes, because these 501(c)(3) organizations are understood to be working for the general welfare of society. Allowing church funds to support partisan causes would so confuse the nature of these institutions as to erode the ethical basis for tax-exemption.

From the events of the past year, we have witnessed with horror and anger how those who seek to advance their political agenda can manipulate religion and religious symbols. Let us learn from this example and promote the health of both our religious institutions and our political discourse by protecting the integrity of our voices of conscience.

Speaking on behalf of the 300,000 US members of our Buddhist community, I assure you that we as individuals of faith want to bring our voices and our ideas into the public square of this nation. We believe we can do this best under existing law and ask that you oppose H.R. 2357 and H.R. 2931.

The Soka Gakkai International-USA is a culturally diverse Buddhist association with more than 80 centers located throughout the country. Its community-based activities invite a shared commitment to the values of peace, culture and education.

Sincerely,

Bill Aiken
Director of Public Affairs

Union of Orthodox Jewish Congregations of America
Washington, DC 20036
May 10, 2002

Chairman Amo Houghton
Ranking Member William J. Coyne
& Members of the
Committee on Ways & Means,
Subcommittee on Oversight
1136 Longworth Building
Washington, DC 20515

Dear Chairman Houghton, Ranking Member Coyne and Members of the Subcommittee,

We write to you on behalf of the Union of Orthodox Jewish Congregations of America—this nation's largest Orthodox Jewish umbrella organization, representing nearly 1,000 synagogues across America—to express our serious concerns over H.R. 2357, "The Houses of Worship Political Speech Protection Act," and H.R. 2931, "The Bright Line Act," which are the subjects of your May 14 hearing. While noble in their goals, both of these bills in their current forms would allow partisan political

pressures to be exerted upon our synagogues and all other houses of worship in the United States.

As you are aware, current federal law provides that houses of worship, like other 501(c)(3) organizations, may not engage in partisan political activities and retain their tax-exempt status. This provision of federal law has served to insulate religious institutions from the political process in important ways. While we strongly advocate for a vigorous role for religious institutions in our nation's public life, both H.R. 2357 and H.R. 2931 would remove from the law the most critical legal provision that keeps America's houses of worship at arm's length from the rough and tumble of political contests.

Supporters of these bills contend that their enactment is necessary to allow religious leaders to speak out on issues of interest to their congregations. However, current law grants religious leaders an absolute right to use their pulpits to address the moral issues of the day. Tax-exempt houses of worship may not endorse or oppose candidates, or use their tax-exempt donations to contribute to partisan campaigns. Without this clear legal prohibition, clergy and/or their congregations may well be pressured by candidates for office or congregational leaders to explicitly support a political candidacy with no recourse but to extend that support or risk offending the candidate or leader whose support the religious institution needs for its core mission.

We agree with the proponents of H.R. 2357 and H.R. 2931 that the Internal Revenue Service must not be allowed to meddle in the missions of America's houses of worship and must not be allowed to selectively enforce the provisions of 501(c)(3) against some churches but not others. But we believe that these goals are better achieved by this Subcommittee's oversight of the I.R.S., not by altering the legal status quo in the manner proposed by H.R.2357 and H.R.2931. We would welcome the opportunity to discuss with you these matters and possible alternative avenues of addressing them should you or the sponsors of these bills wish to do so.

Thank you for considering our views on this important matter. Please do not hesitate to call upon us for any assistance we may render in your deliberations.

Sincerely,

Harvey Blitz
Richard B. Stone
Rabbi T. Hersh Weinreb
Nathan J. Diament

Statement of William Wood, Charlotte, North Carolina

It is fascinating that there are hearings on the 501(c)3 status of churches and their ability to engage in political speech. On the one hand, every perversion, foul word, and form of pornography passes as "free speech" under the pretense that no one dare tread on this liberty. Yet "free speech" is not so free in the province and domain of religious institutions. The first Amendment did not suggest that there was "free speech" except for churches and pastors. Yet somehow we have interpreted "freedom of religion" to have both speech prohibitions and religious prohibitions through IRS regulations. This paper approaches the entire subject of IRS regulation from the standpoint of why is political speech restricted at all in a church? How has "freedom OF religion" been converted to "freedom FROM religion" in the political sphere by the use of IRS code?

A more preliminary investigation as to whether or not a 501(c)3 designation, and IRS regulation is in order.

> *"Separation of church and state today goes beyond the simple non-coercion approach of the founders. What appears to be happening is that government (e.g., the defendant in the Good News Club case) appears to be affirmatively hostile to religion. Many people rightly sense three things: (1) the exclusion of religion from the public square threatens liberty by stunting the formation of moral consciences; (2) the exclusion of religion also threatens liberty by requiring government to use government power to enforce secular norms of morality; and (3) the exclusion of religion in the name of neutrality is false and discriminatory when the government then chooses to endorse and promote a secular morality that is offensive to the very people excluded from the debate. As applied, the notion of the wall of separation between church and state, rather than removing govern-*

ment from the morality game, just picks certain winners and losers, a result that the founders sought to avoid."[1]

"The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such.[2] Government may neither compel affirmation of a repugnant belief;[3] nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities;[4] **nor employ the taxing power to inhibit the dissemination of particular religious views**."[5]

Our "American" legal system and government have in fact done exactly that which has been prohibited. We have enacted special IRS rules, regulations, and procedures, under the guise of a "501" *et. al.* status, for churches. Our founding fathers, many of them men of faith, would have seen this as a direct assault on the First Amendment. With "free speech" in America, anything goes, but with Freedom of Religion, ONLY that endorsed, approved, and stamped with the IRS 501 approval qualifies.

Yet there is no "compelling state interest" for regulating the political speech of churches through backdoor means, through a 501, or any other IRS status;

"[T]he Supreme Court has applied "strict scrutiny" to government actions burdening free exercise of religion, requiring the government to show that its action serves a compelling state interest and is the least restrictive means for achieving the government objective . . ."[6] *"If there is any fixed star in our constitutional constellation, it is that no official, high or petty,* **can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion** *or force citizens to confess by word or act their faith therein."*[7]

Yet this continued encroachment on "political speech" and restriction on "endorsing political candidates" is precisely what the IRS designations aim to assert. As if to imply that in a DEMOCRACY the people hearing a message from the pulpit are too stupid, too frail, or too intimidated to exercise an opinion contrary to the utterances from the pulpit. These restrictions are simple anti-Christ[ian] exercises of restriction on free speech by banning certain types of speech by a religious institution. Of course under threat of losing their tax-exempt status. I am constantly amazed by the "ACLU's" (I question how "American" they really are) incessant attacks on anything even remotely resembling Christianity, yet proclaiming that perversions such as NAMBLA (the North American Man Boy Love Association who believes in homosexual sex with little boys by 8 years old) as "Free Speech." Apparently there are few if any restraints on free speech AS LONG AS IT DOES NOT OCCUR IN A CHURCH!

What if a pastor, with sincere conviction and belief, were to speak a particularly pointed message against a particular politician, or a particular bill in the context of;

For we wrestle not against flesh and blood, but against principalities, *against powers, against the rulers of the darkness of this world,* **against spiritual wickedness in high places**.[8]

What of those times when a pastor, near election time, considers the particular actions of a legislator, where that legislator has endorsed a particularly reprehensible proposition? Say for example, the partial birth abortion debate where a baby's head is exposed from the womb, stabbed in the head with a sharp object, and then its brains are sucked out until the head collapses. What if a minister of a faith considers this a particularly reprehensible evil that must be spoken against, from the pulpit, naming specifically those individuals, considering them "rulers of darkness" or practicing "spiritual wickedness in high places"? What of a Bill introduced in that would allow for homosexual marriages, or the right to consortium with animals, or with children such as that NAMBLA espouses, or other reprehensible legislation. Must they IGNORE their conscience, and their religious beliefs, and the tenets of their faith to satisfy an IRS that would now DICTATE this is impermissible speech?

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[1] Wendall Hall. March 28, 2001

[2] Sherbert v. Verner, 374 U.S. 398, 402 (1963) citing Cantwell v. Connecticut, 310 U.S. 296, 303

[3] Sherbert at 402 citing Torcaso v. Watkins, 367 U.S. 488

[4] Sherbert at 402 citing Fowler v. Rhode Island, 345 U.S. 67

[5] Sherbert at 402 citing Murdock v. Pennsylvania, 319 U.S. 105; Follett v. McCormick, 321 U.S. 573; cf. Grosjean v. American Press Co., 297 U.S. 233

[6] Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872, 881–82 (1990); Yoder, 406 U.S. at 233 (1972); Sherbert v. Verner, 374 U.S. 398, 402 (1963).

[7] West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

[8] Ephesians 6:12

Why is the IRS, an arm of the Federal government, entangled in the regulation of religion to dictate and determine what is acceptable political speech? Is this not a "breach" in the fictitious "wall of separation"?

Or the reverse, where a particular politician or legislator is openly praised through "supplications, [public] prayers . . . and giving of thanks . . ."

> "I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks, be made for all men; For kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty. For this is good and acceptable in the sight of God our Saviour . . ." [9]

So we now have codified provisions, that based on the honest, sincere, rights of conscience, free exercise of religion, and freedom of speech where these ideals may be attacked. And where men and women of conviction or virtue may have their speech silenced BECAUSE of their religious affiliation which allows them the "tax-exempt" status.

How can we have "free speech" and "freedom of religion" with a few IRS bindings and shackles on religious speech? WHY do we use the IRS to regulate supposedly "free" speech in the "free exercise of religion"? [10]

What "Separation of Church and State"?

We have erected anti-Christ[ian] barriers to religion in America under the fraudulently constructed guise of "Separation of Church and State". This often quoted phrase is used as an excuse to ATTACK every display of anything founded upon the Judeo-Christian Biblical beliefs. Yet it is a LEGAL FRAUD!

Thomas Jefferson WAS NOT IN THE COUNTRY FOR THE CONSTITUTIONAL DEBATES OVER THE FIRST AMENDMENT MAKING EXCERPTS FROM A LETTER OF HIS VOID. "Of [the Constitutional] convention Mr. Jefferson was not a member, he being then absent as minister to France." [11] In fact, as noted in the US Supreme Court case just quoted from, Jefferson "expressed his disappointment at the absence of an express declaration insuring the freedom of religion." Somehow Jefferson's idea of "freedom OF religion" has been twisted and perverted into a legal fiction almost demanding "freedom FROM religion" in politics. Our legal system has inappropriately given weight to the anti-Christ[ian] "separation of church and state" phrase. In according so much "authority" to this phrase, equal weight must be given to the remaining letters lest the legal system finally seen as declaring open war on Judeo-Christian beliefs. Most especially one in which Jefferson strictly forbid the use of his own letters as a source of Constitutional interpretation;

> *"On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or intended against it, conform to the probable one in which it was passed."* [12]

Even more distressing and exposing the passionate anti-Christ[ian] perspective of the modern "American" legal system, and the proponents of the often taken out of context "separation of church and state" are the sheer number of state legislatures whose Constitutions openly endorsed Judeo-Christian principles AFTER THE FIRST AMENDMENT WAS PASSED. Mysteriously, they found no conflict in their own Constitutional constructions;

> *Massachusetts; First Part, Article II (1780) "It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. . . The governor shall be chosen annually; and no person shall be eligible to this office, unless. . .he shall declare himself to be of the Christian religion."; Chapter VI, Article I (1780) "[All persons elected to State office or to the Legislature must] make and subscribe the following declaration, viz. 'I, _____, do declare, that I believe the Christian religion, and have firm persuasion of its truth. . .'"*
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> *New Hampshire; Part 1, Article 1, Section 5 (1784) ". . .the legislature . . . authorize . . . the several towns . . . to make adequate provision at their own expense, for the support and maintenance of public protestant teachers of piety, religion and morality. . ."; Part 2, (1784) "[Provides that no person be elected*

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[9] 1 Timothy 2:1–4

[10] Constitutional rights, such as liberty, are not suitable objects for taxation **or encumbrances**. West Virginia v Barnette, 319 US 624; US v Euge, 444 US 707.

[11] Reynolds v. U.S., 98 U.S. 145, 163 (1878)

[12] Thomas Jefferson, letter to Justice William Johnson, June 12, 1823, The Complete Jefferson, p.322

governor, senator, representative or member of the Council] who is not of the protestant religion."

Pennsylvania; Article IX, Section 4 (1790) "that no person, who Acknowledges the being of a God, and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth."

Tennessee; Article VIII, Section 1 (1796) ". . .no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either house of the legislature . . ."; Section 2 ". . . no person who denies the Being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State."

Are we as American people to believe that Massachusetts, New Hampshire, Pennsylvania, and Tennessee endorsed Judeo-Christian principles in their Constitutions but somehow ratified the US Constitution with this implicit "freedom FROM religion" as practiced in the legal system today? Or what of the other colonies who already had Constitutions with similar provisions BEFORE the adoption of the US Constitution and then did not set about to immediately change their Constitutions? The question for every person of faith in this country is why there is such a passionate hatred for Christianity and Judeo-Christian beliefs that this country was founded upon? And why there has been such a concerted effort to encroach upon the domain of the church by REGULATING A CHURCH'S POLITICAL SPEECH.

Even other legal scholars, and Federal Judges know of the outright legal FRAUD perpetrated on the Christian faith in America. Judge Brevard Hand, a Federal District Judge stated the "Supreme Court erred in its reading of history."[13] In fact, after this rather embarrassing expose, the US Supreme Court left off relying on the intent of the framers, clearly demonstrating their anti-Christ[ian] bent and re-created the original Legal Fraud under a principle called the "crucible of litigation."[14] As applied in this case, the "crucible of litigation" in laymen's terms is translated to mean that; whether we have constructed an anti-Chrit[ian] fraud or not, we will not back down from our improper interpretation of the historical foundations[15] of this country's Christian heritage. In fact, in analyzing this case, Rhenquist noted;

> *"But the greatest injury of the "wall" notion is its mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights. The "crucible of litigation," is well adapted to adjudicating factual disputes on the basis of testimony presented in court, but* **no amount of repetition of historical errors in judicial opinions can make the errors true**. *The "wall of separation between church and State" is* **a metaphor based on bad history**, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned."[16]

America was founded as a Christian nation,[17] "one nation under God," with coins that read "In God We Trust." Before the US Supreme Court, and the US legal system became so antagonistic toward Christianity, it declared "[w]e are a Christian people[18] according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God."[19]

The US Supreme Court, in all of its anti-Christ[ian] zqeal, has recently struck down the Religious Freedom Restoration Act[20] insisting that Congress had violated the separation of powers doctrine. Yet it has ignored its previous precedents to en-

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[13] Jaffree v. Board of School Comm. of Mobile Co., 554 F. Supp. 1104, 1128 (1983)

[14] Wallace v. Jaffree, 472 U.S. 38, 52 (1985)

[15] "[N]o understanding of the eighteenth century is possible if we unconsciously omit, or consciously jam out, the religious theme just because our own milieu is secular." . . . "[R]eligion was a fundamental cause of the American Revolution."—Mitre and Sceptre, Oxford University Press, 1962.

[16] Wallace v. Jaffree, 472 U.S. 38, 52 (1985)

[17] Common Law is the traditionally accepted means of interpreting the US Constitution consistent with the intent of the framers. **The following are judicial authority for the proposition that Christianity is part ofthe common law in the United States**: Shover v.State, 10 Ark. 259 (1850); State v. Chandler, 2 Har. 553 (Del. 1837); State v. Bott, 31 La. Ann. 663 (1879); Pearce v. Atwood, 13 Mass. 324 (1816); Lindenmuller v. People, 33 Barb. 548 (N. Y. 1861); Updegraph v.Comm., 11 5. & R. 394 (Pa. 1882); Charleston v. Benjamin, 2 Strob. 508 (S. C. 1846); Bell v. State, 1 Swan 42 (Tenn. 1851); Grimes v. Harmon, 35 Ind. 198 (1871); Melvin v. Easley, 52 N. C. 356 (1860); Judefind v. State, 78 Md. 510, 28 Atl. 405 (1894).

[18] U.S. v. MacIntosh, 283 U.S. 605 (1931) citing Holy Trinity Church v. United States 143 U.S. 457, 470, 471 S., 12 S. Ct. 511

[19] U.S. v. MacIntosh, 283 U.S. 605 (1931)

[20] City of Boerne v. Flores, 521 U.S. 507 (1997)

sure the legal fraud; Congress "remains free to alter what [this Court has] done;"[21] and the Judiciary has enacted its own legislation to guarantee that it can break the law at will[22] by giving itself "immunity." Yet there is no rush in the Judiciary to abandon its own self-legislated immunity to break the law as it sees fit (all the while somehow declaring the violating the law must be some form of "judicial function").

Until the unprecedented attack on Christian morals, values, and beliefs in the US Legal system in the last 40 +/- years, it was well understood that "[c]hristianity and democracy are not separable if democracy is to persist."[23]

And WHY do we use the IRS to regulate supposedly "free" speech in the "free exercise of religion"?[24]

Why attack the Christian Foundations of America?

Many of those (though unfortunately not all), who wage war on the Christian foundations of this country do so out of ignorance, or a predisposition to creating and generating more government power and control. Most judges and elected representatives do not consciously conceive of ways to undermine the country's foundations and values. In fact, the greatest problem in all three branches of government is a lack of basic principles and understandings that our founding fathers were well aware of.

In evaluating the recent Wallace v. Jaffree opinion undermining the Religious Freedom Restoration Act, an interesting legal philosophy emerges—, the replacement of unalienable rights with civil rights. The court relied heavily on "Civil Rights" contained in the 14th Amendment. In the last 40+ years there has been an accelerated use of "Civil Rights" as a means to undermine and destroy our Founder's concept of unalienable rights.

This whole concept of unalienable rights comes from the Declaration of Independence where our Founding Fathers sought to throw off the bands of tyranny and oppression;

> *"We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable rights . . ."*

Inalienable (or unalienable) rights "cannot be transferred or surrendered"[25] and include "natural rights" which "*exist independently of rights created by government* or society, such as the right to life, liberty, and property,"[26] as well as "natural law" which contains "*legal and moral principles . . . [or] divine justice rather than from legislative or judicial action*; moral law embodied in principles of right and wrong."[27]

And then the 14th Amendment was created, after the 13th Amendment (which abolished slavery) noting;

> *"No State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The 14th Amendment became the basis of Civil Rights, or Civil law for the United States. Civil Rights are "the individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation . . . Civil rights include especially . . . the right of due process, and the right of equal protection under the law."[28] Civil Liberty is a part of Civil Rights denoting "freedom from UNDUE governmental interference or restraint [as determined by government of course]. This term usually refers to freedom of speech or religion."[29] Civil Rights are also part of the Civil Law which is "*the body of law IMPOSED BY THE STATE, as OPPOSED to moral law*. "[30] One of the signers of the Constitution noted the intention of American law stating "[f]ar from being rivals or enemies, religion and law are twin sisters, friends, and mutual assistants. Indeed, these two

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[21] Patterson v. McLean Credit Union, 491 U. S. 164, 173 (1989).

[22] "[O]fficial immunity doctrine, which "has in large part been of judicial making "Doe v. McMillan, 412 U.S. 306, 318–319 citing *Barr* v. *Matteo*, 360 U.S. at 569. Yet this concept was rejected by Mr. Thomas Jefferson as well when he stated "It is error [or abuse] alone which needs the support of government. Truth can stand by itself."

[23] Stephens, School, Church and State (1928) 12 MARQ. L. REV. 206

[24] "A (government) may not impose a charge for the enjoyment of a right granted by the federal constitution." *Murdock v Pennsylvania*, 319 US 105; 113.

[25] Black's Law Dictionary (2000 abridged edition) p. 1060 and 1061

[26] Black's p. 1061

[27] Black's p. 841

[28] Black's p. 195

[29] Ibid.

[30] Ibid. definition 3.

sciences run into each other. The divine law, as discovered by reason and the moral sense, forms an essential part of both."[31]

As the 14th Amendment is applied today, it is in direct opposition to the "Creator endowed unalienable rights" guaranteed by our originally enacted Constitution. Where there are "creator endowed unalienable rights" there is the requirement to determine the Creator who endowed them so that the rules are clear. This principle was widely understood and clearly known throughout the early history of our country, until it came under direct attack by the lawyers in black robes in our courts today. As Thomas Jefferson noted "[n]othing. . . . is unchangeable but the inherent and inalienable rights of man."[32] To the extent that they are changeable, such as under Civil Rights interpretations by the lawyer led courts, they are no longer unalienable rights. The clearest example of this can be seen with the whole abortion debate. A brand new "Civil" right was created to allow the killing of babies on demand, even to the point of stabbing a partially born human child in the head, and then sucking its brains out. This is a "state" created, state endorsed, and state sponsored right which can be altered at any time. That is why we hear shrieks of horror at the prospect of a Supreme Court Justice who might not be favorable to this state created right. Under "Creator endowed unalienable rights" stabbing a partially born human child in the head and sucking its brains out would be a seditious evil demanding of criminal prosecution for those carrying out such heinous acts.

To gain and keep power and control, the black robed lawyer led judiciary MUST maintain and promote Civil Rights as opposed to unalienable rights. Civil Rights give the courts their power over issues that our Founding Fathers would be horrified to see today. Civil Rights allow the "back door control" of churches through state created "statuses" such as the IRS code in question here. The exercise of unalienable rights takes power and control away from both the state and the courts. So frightening is the prospect of unalienable rights to the lawyer led Judiciary that all vestiges of unalienable rights MUST be drawn under their control and domain. To gain Civil control Bibles MUST be banned from the classroom (the very rule book for the unalienable rights), political speech MUST be stopped from the pulpit (to stifle and stop morality, values, and any virtuous influence in politics), and the 10 Commandments and every Biblical reference in our Nation MUST be torn down and removed from EVERY place in the Nation.

As a direct result of the blatant attack on the Foundations of this Nation's religious history, America now enjoys an unprecedented place in history, of the industrialized nations we are now;

#1 In Teen Pregnancy
#1 In Violent Crime
#1 In Prison and Jail incarcerations
#1 In illiteracy
#1 In Suicide
#1 In Divorce
#1 In Drug Use

And the list goes on and on. Yet the frightening part of all of this is that it serves a CIVIL government well. The more social disorder, chaos, immorality, violence, crime, and other ills suffered by society, the greater need for more and more government control. And the greater and greater need for the growth of government to "combat" the ills that its attack on America's foundations created to begin with.

"Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?"[33]

The principles of our Founding Fathers were simple, they believed that if one abided by the "golden rule" and preserved a sense of community based in common morals, values, and virtues, that little government would be needed.

Please take a moment and read some of the quotes from our Founding Fathers and then ask yourself, would THEIR interpretation of the Constitution allow the IRS to regulate a church's political speech?

> *[O]nly a virtuous people are capable of freedom. As nations become corrupt and vicious, they have more need of masters.*[34]

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[31] James Wilson, *The Works of the Honourable James Wilson* (Philadelphia: Bronson and Chauncey, 1804), Vol. I, p. 106

[32] Thomas Jefferson to J. Cartwright, 1824

[33] Thomas Jefferson: Notes On Virginia, 1782

[34] Benjamin Franklin, *The Writings of Benjamin Franklin*, Jared Sparks, editor (Boston: Tappan, Whittemore and Mason, 1840), Vol. X, p. 297, April 17, 1787

[N]either the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt.[35]

[I]t is religion and morality alone which can establish the principles upon which freedom can securely stand. The only foundation of a free constitution is pure virtue.[36]

[I]f we and our posterity reject religious instruction and authority, violate the rules of eternal justice, trifle with the injunctions of morality, and recklessly destroy the political constitution which holds us together, no man can tell how sudden a catastrophe may overwhelm us that shall bury all our glory in profound obscurity.[37]

"Religion, morality, and knowledge . . . [are] necessary to good government and the happiness of mankind."—Northwest Ordinance (1787)

[W]e have no government armed with power capable of contending with human passions unbridled by morality and religion . . . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.[38]

The law given from Sinai was a civil and municipal as well as a moral and religious code; it contained many statutes . . . of universal application-laws essential to the existence of men in society, and most of which have been enacted by every nation which ever professed any code of laws.[39]

No free government now exists in the world, unless where Christianity is acknowledged, and is the religion of the country.[40]

The doctrines of Jesus are simple, and tend all to the happiness of mankind.[41]

And WHY do we use the IRS to regulate supposedly "free" speech in the "free exercise of religion"?[42]

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[35] William V. Wells, *The Life and Public Service of Samuel Adams* (Boston: Little, Brown, & Co., 1865), Vol. I, p. 22, quoting from a political essay by Samuel Adams published in The Public Advertiser, 1749.

[36] John Adams, *The Works of John Adams, Second President of the United States*, Charles Francis Adams, editor (Boston: Little, Brown, 1854), Vol. IX, p. 401, to Zabdiel Adams on June 21, 1776

[37] Daniel Webster, *The Writings and Speeches of Daniel Webster* (Boston: Little, Brown, & Company, 1903), Vol. XIII, p. 492. From "The Dignity and Importance of History," February 23, 1852

[38] *The Works of John Adams, Second President of the United States*, Vol. IX, p. 229, October 11, 1798

[39] John Quincy Adams, *Letters of John Quincy Adams, to His Son, on the Bible and Its Teachings* (Auburn: James M. Alden, 1850), p. 61.)

[40] Pennsylvania Supreme Court, 1824. *Updegraph* v. *Cmmonwealth*; 11 Serg. & R. 393, 406 (Sup.Ct. Penn. 1824)—such a modern profession by a judge would be ridiculed, criticized, and the judge making such a statement would be attacked and maligned.

[41] Thomas Jefferson, *The Writings of Thomas Jefferson*, Albert Bergh, editor (Washington, D.C.: Thomas Jefferson Memorial Assoc., 1904), Vol. XV, p. 383

[42] The exercise of religion is not a suitable basis for taxation. *Follett v McCormick*, 321 US 573. The mere chilling of a constitutional right is held oppressive. *Shapiro v Thompson*, 374 US 618.