Religion versus Politics:
Can an organization circumvent the U.S. tax code as a *political cult?*

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Abstract

Internal Revenue Code §501(c)(3) grants preferential treatment to religious organizations allowing tax exempt status, exemption from certain filing requirements, and the ability to receive tax deductible donations. Political organizations can also receive some preferential tax treatment; however, they are subject to tax on some income, are not exempt from filing requirements, and do not receive tax deductible donations. In this paper, we ask if a political group can claim church status and circumvent §501(c)(3)'s limitations on political activity by framing their political beliefs as their religion? We conclude that the IRS needs to be careful in any expansion of their definition of a church, and watch for potential abuse in terms of political lobbying and campaign participation by specific organizations.

KEYWORDS: §501(c)(3); political activity of tax-exempt organizations; taxation of a church

INTRODUCTION

Internal Revenue Code §501(c)(3) grants preferential treatment to religious organizations "*in recognition of their unique status in American Society and of their rights guaranteed by the First Amendment of the Constitution of the United States*."[1] Section 501(c)(3) status is extremely

[1] Publication 1828 (Rev. 8-2015) Tax Exempt and Government Entities: 501(c)(3) Tax Guide for Churches & Religious Organizations, Department of the Treasury, Internal Revenue Service, available at https://www.irs.gov/pub/irs-pdf/p1828.pdf

valuable for three main reasons. First, a §501(c)(3) organization is exempt from income tax. Second, a church is exempt from a variety of filing requirements that are generally imposed on other nonprofit organizations. Third, donations to the organization are classified as tax deductible charitable contributions, which may provide some added tax saving to its donors. However, §501(c)(3) greatly restricts the organization's political activities. Failure to comply with the restrictions results in the loss of §501(c)(3) status and the associated preferential tax treatment.

Political organizations may also benefit from preferential tax treatment. While the investment and business income of political groups are subject to income tax, *exempt function income* (including contributions, dues, political fundraising activities[2]) is specifically exempt from taxation under Internal Revenue Code §527(c)(3). However, in contrast to churches, political organizations must comply with strict filing requirements,[3] which may sometimes require quarterly reporting.[4] Failure to file the required forms may subject *exempt function income* (including political contributions) to federal income tax.[5] Further, in contrast to donations to recognized churches, contributions to political organizations are not tax deductible by the donor.

Therefore, both religious and political organizations enjoy preferential treatment under the Internal Revenue Code. Churches are provided greater tax benefits, relative their political counterparts. In contrast, political organizations are provided greater freedom regarding their political activities, relative their religious organization counterparts. We ask the question, *can a*

[2] §527(c)(3)
[3] §527(j)
[4] §527(j)(2)(A)(i)(I)
[5] https://www.irs.gov/charities-non-profits/political-organizations/taxable-income-political-organizations

political group claim church status and circumvent §501(c)(3)'s limitations on political activity by framing their political beliefs as their religion?

In 2019, the Internal Revenue Service (IRS) recognized *The Satanic Temple* as a church, granting it status as a §501(c)(3) organization. *The Satanic Temple* (TST) refers to itself as "a non-theistic religious organization dedicated to Satanic practice and the promotion of Satanic rights" (Browning 2019). Being non-theistic, TST does not worship or promote a belief in any *deity*. TST's religion is founded on *satanic practice and rights*. Section 501(c)(3) organizations are allowed some political activities, but their activities cannot be substantially political.[6] While we expressly acknowledge that we do not know all of TST's activities, TST has gained media attention for some seemingly political activities. Specifically, TST has sought to limit public displays of traditional Judeo/Christian symbols and to eliminate all restrictions on abortions. Because TST expressly links unregulated access to abortion to its religious practices (associatedpress 2020), are TST's activities in support of abortion political or non-political religious activities? In other words, has TST effectively circumvented the political activity restrictions by classifying abortion as a religious practice?[7]

We examine what types of organizations qualify as religious organizations or churches under §501(c)(3), the political restrictions imposed on tax-exempt religious organizations, and the potential to exploit the definition of a religious organization. Section II discusses the

[6] §501(c)(3)

[7] We again expressly acknowledge that we do not know all of TST's activities. As an IRS recognized church, TST is exempt from annual filing requirements. It is possible that TST has sufficient other nonpolitical activities, such that its political actions (including its attempts to influence legislation) are not substantial. We recognize that TST's political activities may be more likely to gain political attention than its non-political actions. Because spokesmen for TST have expressly linked abortion rights to its religious practice (associated press 2020), we believe that it is reasonable to investigate whether TST considers the activity is religious or political and whether these actions are substantial.

definition of a religious organization and a church. Section III presents the requirements of a religious organization and the limits on political activity. Section IV examines the potential implications associated with TST's recognition as a church. Section V concludes.

DEFINITION OF A RELIGIOUS ORGANIZATION OR CHURCH

Does a group need to believe in a Supreme Being to be a religious group? (Boyan 1968). The founders of the U.S. and writers of the U.S. Constitution would have likely stated yes. James Madison referred to the "Supreme Law-Giver of the Universe" and defined religion as "the duty which we owe to our creator, and the manner of discharging it." (Madison (1784), quoted in Boyan at 483 (1968)).

The question has arisen in the context of conscientious objectors, discussed in Boyan (1968). Some courts have ruled that the answer to the question is *yes*, stating that the objection must be based on "responsibility to an authority higher and beyond any worldly one." *Berman v. U.S.*[8] However, the move to a non-theistic definition of religion began during the second world war. In *U.S. v. Kauten*,[9], the Court stated that religion may be "*a belief finding expression in a conscience which categorically requires that believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenant. … call it conscience or God*."[10]

In 1965, the Supreme Court of the United States (SCOTUS) directly addressed the question, *does religion require the belief in a god?* Congress amended the 1940 Selective Training and Service Act in 1948, defining "*religious training and belief*" to be "*an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human*

[8] 156 F.2d 377, 380 (9th Cir. 1946), *cert. denied*, 329 U.S. 795 (1946).
[9] 133 F. 2d 703 (2d Cir. 1943).
[10] *Id* at 708, followed in *U.S. ex rel. Reel v. Badt*, 152 F.2d 627 (2d Cir. 1945), *cert. denied*, 328 U.S. 817 (1946); *U.S. ex rel. Phillips v. Downer*, 135 F.2d 521 (2d Cir. 1943).

relation." [11] Claiming various levels of religiosity, but not necessarily firm adherence to an organized religious organization, the three defendants in the case of *U.S. v. Seeger*[12] claimed conscious objector status. Finding in favor of the defendants, SCOTUS held that the term "Supreme Being" does not require that the individual believe in "God," but that the individual hold a sincere belief system that effectively rises to the level of belief in a God, i.e., a belief system that is so meaningful in the individual's life to parallel that of a belief in God.[13]

Just a few years later in *Welsh v. U.S.*,[14] SCOTUS reaffirmed the proposition that "religion" does not require a belief in God by providing:

> *If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual "a place parallel to that filled by . . . God" in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a "religious" conscientious objector exemption under § 6 (j) as is someone who derives his conscientious opposition to war from traditional religious convictions*.[15]

In *Kaufman v. McCaughtry*,[16] the Seventh Circuit held that atheism may be a religion (Davis 2005). In other words, a belief system may be a religion, even when that belief system rejects a belief in a supreme being.

The question has also arisen in the group context, specifically when a group applies for tax exempt status. In *U.S. v. Ballard*,[17] SCOTUS held that a religion need not demonstrate the

[11] 50 U.S.C.S. §456(j)
[12] 380 U.S. 163 (1965).
[13] *Id*. at 166.
[14] 398 U.S. 333 (1970).
[15] *Id.* at 340.
[16] 419 F.3d 678 (7th Cir. 2005)
[17] 322 U.S. 78 (1944).

"truth" of their religious doctrine, expressly banning courts from requiring that churches demonstrate the accuracy of their beliefs. Instead, courts may only question the sincerity of their belief. Specifically, courts may ask "*whether or not the defendants honestly and in good faith believed* (their religion)."[18] Citing *Ballard*, the California First District Court of Appeals found that theism is not essential for a religious group in *Fellowship of Humanity v County of Alameda*[19] (Fellowship). In recognizing this non-theism group as a religious organization, the Court stated:

> *Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment. Assuming this definition of "religion" is correct, then it necessarily follows that any lawful means of formally observing the tenets of the cult is "worship," within the meaning of the tax exemption provision.*[20]

Providing some indication of its support for the decision, SCOTUS cited *Fellowship* in *Torcaso v. Watson*.[21] In *Torcaso*, the Court declared unconstitutional Maryland's requirement that some public officials declare their belief in *God*. In the opinion, the Court states the following in footnote 11:

> *Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others. See ... Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 315 P. 2d 394 ...*[22]

[18] *Id*. at 84.
[19] *Fellowship of Humanity v County of Alameda*, 153 Cal. App. 2d 673, 315 P.2d 394 (1957).
[20] *Id.* at 693, or 406
[21] 367 U.S. 488 (1961).
[22] *Id*. at 496.

The IRS recognized *The Satanic Temple* not as only a religious organization, but as a church. Both religious organizations and churches may qualify under §501(c)(3). However, preferential tax rules apply to churches, which are not available to non-church religious organizations. These benefits include the following:

- Churches are automatically considered tax-exempt and not required to apply for and obtain recognition of tax-exempt status from the IRS.

- Churches are exempt from the annual filing requirement filing generally required of all religious organizations, which must file an annual Form 990, Form 990-EZ or Form 990-N.

Certain characteristics, developed by the IRS and by court decisions, are generally attributed to churches. These attributes include:

- distinct legal existence;
- recognized creed and form of worship;
- definite and distinct ecclesiastical government;
- formal code of doctrine and discipline;
- distinct religious history;
- membership not associated with any other church or denomination;
- organization of ordained ministers;
- ordained ministers selected after completing prescribed courses of study;
- literature of its own;
- established places of worship;
- regular congregations;
- regular religious services;
- Sunday schools for the religious instruction of the young; and
- schools for the preparation of its ministers.

The IRS generally uses a combination of these characteristics, together with other facts and circumstances, to determine whether an organization is considered a church for federal tax

purposes. An example of a non-church religious organization might be a religious radio station or media publication.

REQUIRMENTS AND RESTRICTIONS

The U.S. first exempted religious organizations from taxation in the Wilson-Gorman Tariff Act of 1894 (Newman 2019). The Internal Revenue Code of 1954 expressly excluded religious organizations from federal income taxation, which practice has continued and is preserved in the current tax code, the Internal Revenue Code of 1986. To qualify for tax exempt status under §501(c)(3), the organization must satisfy the following two fundamental categories:

General Charitable Purpose:

- The organization must be organized and operated exclusively for religious, education, scientific or other charitable purposes;
- Net earnings do not inure to the benefit of any private individual or shareholder; and
- The organization's purposes and activities may not be illegal or violate fundamental public policy.

Restrictions on Political Activity:

- No substantial part of its activity may be attempting to influence legislation; and
- The organization may not intervene in political campaigns.[23]

Section 501(c)(3) limits the activity of a qualified organization. First, the organization is required to operate pursuant to a benevolent purpose. Because the organization is required to be organized for "good," it is natural to expect that the organization would be banned from serving

[23] IRS Publication 1828 (Rev. 8-2015): Tax Guide for Churches & Religious Organizations.

for someone's personal gain or for an illegal purpose. Second, while charitable organizations are mandated to function for a variety of good services, political activity is strictly limited. Further, that limit is dependent on the type of political activity.

General Charitable Purpose

A §501(c)(3) group's purpose and activity must be in fulfillment of its qualified charitable mission, not for any individual's personal benefit or gain. For example, the Southern Church of Universal Brotherhood Assembled (SCUBA), with five-members, claimed status as a church. The IRS examined SCUBA and determined it failed to qualify as a religious organization under §501(c)(3).[24] The Court agree with the service, finding that SCUBA did not serve a public purpose, but the private purposes of the minister whose family resided in the parsonage.[25]

While a belief in a deity may be unnecessary to be a religious organization, the basic character and activities of the organization are extremely important because of the associated tax benefits. By providing tax benefits, the government is effectively supporting religious groups. The goal of supporting public welfare justifies the preferential tax treatment.[26] In other words, because the activities of religious organizations generally benefit society, it is these good public works that the tax benefit supports, not any particular religious belief. The *Fellowship* Court summarized the justification as follows:

> *It is sound public policy to encourage, by tax exemption as well as by direct subsidy, private undertakings in the fields that are properly within the realm of governmental responsibility. Thus, welfare, charitable and private educational grants and subsidies are valid. All churches that warrant the exemption perform some of these tasks. Therefore, churches can be indirectly subsidized for the performance of these tasks. But this indirect subsidy is not for the activities that*

[24] *Southern Church of Universal Brotherhood Assembled, Inc. v. Commissioner*, 74 T.C. 1223 (1980).
[25] *Id*. at 1227.
[26] *Lundberg v. County of Alameda*, 46 Cal. 2d 644, 298 P. 2d 1 (1956), *cert. denied,* 352 U.S. 921 (1956).

> *are peculiarly religious in the sense of dogma or doctrine, but for the many other things all churches do which are properly cognizable by the state*.[27]

Therefore, the benevolence or value of the group may be important and subject to evaluation by the government. The government will not question the legitimacy of a religious belief or require the belief in a deity, but it is within the government's realm to question the value of the group.

A group's activities must not violate public policy.[28] For example, SCOTUS denied tax exempt status to Bob Jones University (BJU) because of BJU's admission policy.[29] BJU denied admission to those who married or dated outside of their race. Finding that this discriminatory practice violates public policy, SCOTUS affirmed the IRS's decision to deny BJU tax-exempt status.

Political Activity Restrictions.

Section 501(c)(3) limits the political involvement of qualified organizations. The extent of the limitation depends on the activity. While "no substantial part" of the group's activities may be dedicated to *influencing* legislation, the group is absolutely banned from *participating* in any political campaign. Both types of activity place the group within the political arena, but the character of the types is quite distinct.

Legislation Limitation.

[27] *Fellowship*, 153 Cal. App. 2d at 696-397, 315 P.2d at 408-409.
[28] Revenue Ruling 71-447 (1970) provides that the activities of a §501(c)(3) organization must not be contrary to public policy.
[29] *Bob Jones University v. United States*, 461 U.S. 574 (1983).

The limitation on a religious organization's ability to influence legislation dates back to 1934. While "substantial" is not defined, §501(h) provides a safe harbor, referred to as the *Expenditure Test*. Tax exempt organizations who elect to report their expenditures to the IRS, may spend up to 20 percent of their expenditures on *direct* lobbying and 5 percent of their expenditures on *grass-roots* lobbying (Johnson 2001). *Direct* lobbying involves communicating on "specific legislation" to legislators, their staffs, and/or other governmental officials that participate in the formulation of legislation.[30] *Grass-roots* lobbying involves communicating a specific view regarding legislation to members of the general public and urging them to take specific action regarding that legislation.[31]

Efforts to influence legislation do not include provisions for nonpartisan studies, communications regarding legislation that affects the organization's existence, communications with the group's membership regarding proposed legislation (but not direct encouragement to lobby), routine communications with governmental officials, or discussions regarding social or political problems that may be the subject of future legislation (Johnson 2001).

Section 501(h)'s safe harbor may not make sense for some nonprofit organizations (Grasse, Ward and Miller-Steven 2019). Lobbying expenditures are capped at $1 million, which may be too limiting for some large organizations. Some organizations may simply attempt to avoid additional scrutiny (Grasse et al. 2019).

Further, while the safe-harbor rules apply to religious organizations, they do not apply to churches.[32] Consequently, there is no *bright-line* to provide a safe-harbor definition for churches.

[30] Tres. Reg. §56.4911-2(b)(1)(ii).
[31] Tres. Reg. §56.4911-2(b)(2)(ii).
[32] I.R.C. Section 501(h)(5)(B).

The determination of whether a church surpasses the substantial expenditure test must be based on all the relevant facts and circumstances and determined on a case-by-case basis (Cook 2004).

Campaign Limitation

Congress added the ban regarding political campaigns in 1954, when then Senator Lyndon Johnson introduced the legislation after a conservative political group activity supported his opponent, Dudley Dougherty (Blair 2009). While this regulation may have been politically motivated, the regulation is may be a valuable regulation aimed at preventing individuals from circumventing the law. Specifically, if a charity actively participates in a political campaign on behalf of a candidate, an individual could support the candidate not by donating to his/her campaign, but by donating to the charity (Johnson 2001). While the former is not tax deductible and is subject to limitations and disclosure requirements, the latter may provide a tax deduction and avoids political contribution regulations.

Revenue Ruling 2007-41 provides that the question of "*whether an organization is participating … in a political campaign … depends on all of the facts and circumstances in each case.*" For example, Branch Ministries, Inc. operated the *Church at Pierce Creek*. Four days before the election in 1994, Branch Ministries placed advertisements in the *USA Today* and the *Washington Times* against then candidate Bill Clinton, stating "Christians Beware" (Blair 2009). On November 20, 1992, the IRS notified Branch Ministries that the IRS was launching an inquiry. Branch Ministries argued that the political activity limitation applies only to religious organizations, not to churches. The Court rule against Branch Ministries, stating that all churches

are religious organizations – even though not all religious organizations are churches, and upheld the IRS's revocation of its tax-exempt status.[33]

While Branch Ministries' actions resulted in the revocation of its §501(c)(3) status, there have been some very public cases of churches' endorsing candidates from both sides of the aisle without invoking a response from the service (Blair 2009). The pastor of the Trinity United Church of Christ openly endorsed presidential candidate Barack Obama (Blair 2009). The pastor of the Warroad Community Church endorsed presential candidate John McCann, stating that no Christian can support Barack Obama.[34] Branch Ministries may have lost its tax-exempt status because it extended its sermon beyond the church walls by placing the ads in external newspapers. However, when churches are able to post sermons on line, in blogs, or in podcasts, identifying those pastors who have expanded their political message beyond their congregation may not be so easily identifiable in the future.

CAN POLITICS BE A RELIGION?

There is a tax advantage associated with being a church as opposed to being political organization, both for the organization and for the contributors. Further, a religion must be founded on a belief system, not necessarily founded on a belief in a deity. Perhaps this most recent presidential election illustrated how political beliefs may be quite powerful, whether referring to conservatism, liberalism, progressivism, socialism, libertarianism, communism, capitalism, fascism. Regardless of which ideology, political beliefs can be a very strong belief system that motivates individuals' actions and political support.

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[33] *Branch Ministries v. Rossotti*, 211 F.3d 137, 141 (D.C. Cir. 1998).
[34] B. B. Haggerty, *Pastors to Preach Politics from the Pulpit*, npr online, September 24, 2008. Available at: https://www.npr.org/templates/story/story.php?storyId=95003709

An example on a broad scale is the former Soviet Union. The system attempted to post a doctrine-based political criteria on all aspects of functioning society, including economic, social, and cultural (Boiter 1987). The dismantling of religion dates back to 1918, when Lenin decreed the confiscation of all church property, banned religious organizations from owning property, and prohibited formal religious education, i.e., no training new clergy.[35] In the 1930s, the Soviet Union achieved almost the total annihilation of organized religion within its borders (Boiter 1987). The former Yugoslavia followed similar principles, striving for the fading away of traditional religion (Mojzes 1986). Both governments, now failed systems, appear to have worked under the assumption that their political ideology required the elimination of all traditional, faith-based religion. This implies that these regimes believed that their political system provided a belief system that was so all-encompassing that there was no room for belief in a god, i.e., their political ideology was their national religion.

The Satanic Temple (TST) was founded in 2013. TST describes itself as "a non-theistic religious organization dedicated to Satanic practice and the promotion of Satanic rights" (Browning 2019). In its website, TNT provides its mission statement, presents its seven fundamental tenets, solicits donations, and sells merchandise.[36] The group hoped to create an organization that could provide its members with the sense of community associated with traditional religious organizations (Lapin 2019). Discussions about repealing the campaign restriction inspired the group to seek tax-exempt status according to Lucien Greaves,[37] a co-founder of TST (Browning 2019). The IRS officially recognized TST as a church in 2019.

[35] Lenin's degree on January 23, 1918, entitled "On Separation of Church from State and School from Church," We refer readers to Boiter 1987 for a more detailed discussion.
[36] Available at thesatanictemple.com.
[37] An alias (Lapan 2019).

Because TST is non-theistic and it pursued tax-exempt status because of the discussion of repealing the campaign restriction repeal, we inquire whether TST is primarily political in nature. We expressly acknowledge that we do not know all of TST's activities. Further, we acknowledge that TST's political activities may gain the media attention while their religious activities are ignored. However, TST has indeed received some media attention for its political activities.

First, TST has been active challenging public displays of Christian symbols (Richardson 2020). In 2018, TST placed a statute of the goat-headed creature at the state capital in Little Rock, Arkansas. The statute was intended as a protest, voicing TST's support for the removal of a Ten Commandments statute (Browning 2019).

Second, TST has also been active supporting abortion. In multiple state and federal court cases, TST has claimed that its members who are seeking abortions should be exempt from any regulation. TST professes that "One's body is inviolable," such that any regulatory requirement associated with abortion "violates their sincerely-held religious beliefs" (Cohen 2020). As of the writing of this article, TST has been unsuccessful in its claims. However, TST continues to argue for freedom from abortion regulations for its members and may eventually appeal to the U.S. Supreme Court (Cohen 2020).

Lobbying to influence abortion legislation is generally considered a political activity. However, TST appears to link abortion to the exercise of its belief system, i.e., its religious practice. For example, a TST reproductive rights spokeswoman stated that, "*Our members are justly entitled to religious liberty in order to practice our rituals as well*" (Cohen 2020). Additionally, TST attempted to display billboards that promoted its "religious abortion ritual"

(associatedpress 2020). TST describes abortion as a "sacramental act that confirms the right of bodily autonomy" (associatedpress 2020).

One other example of a highly criticized "church" with somewhat questionable political activities is the Westboro Baptist Church (WBC) in Topeka, Kansas. While the group uses "Baptist" in its name, they have been denounced by Baptist and other Christian organizations. The group is known for regular protests at funerals where they mostly denounce events related to the LGBTQ community and antisemitism. While it doesn't appear that the group seeks to influence legislation, they were vocal in protesting Obama's inauguration in 2013 (Miller, 2013). While the protests may not be considered lobbying activities, similarly to TST, the WBC uses their "religious" tenets and beliefs to define the reasoning behind their protests and public events.

If TST's political activity, lobbying to ban public displays of Judeo/Christian symbols and to affect abortion regulations, are a non-substantial part of TST's activities, then TST is within its legal right to some limited political involvement. If however this political activity exceeds the substantial threshold, then TST is at risk to lose its §501(c)(3) classification. If TST considers its political actions as the exercise of its religion, this has major implications for churches, religious organizations, and political organizations. Not only does this open the door for political organizations to restructure their group as a church (to actively promote their strong beliefs), this expands the ability of churches to broaden the use of their pulpit to the political arena.

CONCLUSION

The separation of church and state is a long-established principle in the constitution and the federal tax system. This principal is a core foundation of the U.S. and helps to guarantee the

free exercise of religion outside of government control. However, the increased, seemingly flexible definition of religion opens the potential for abuse. As organizations and the IRS open the door to allow for the expansion of the definition of a religious organization and all of the associated financial benefits, regulators and the IRS should consider potential abuse. The limitation on lobbying activities and campaign participation should not be applicable only for traditional religious organizations/churches and avoidable by those organizations which have identified a creative mechanism to avoid limitations on political activity.

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