A CONSTITUTIONAL ANALYSIS OF TAX EXEMPTION FOR CHURCHES AND THE SECULAR COALITION OF AMERICA'S PROPOSED CHANGES

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I. THE HISTORY OF TAX EXEMPTION FOR CHURCHES

James Madison, in the Memorial and Remonstrance Against Religious Assessments, expressed the view that the separation between church and state was both absolute and absolutely necessary to the preservation of freedom.

> [I]f Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and viceregents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people.[1]

Indeed, the Supreme Court has expressed the view that the structure of American government "has secured religious liberty from the invasion of the civil authority."[2]

Yet, ignoring both Madison's fundamental principle excluding religion from the jurisdiction of the government and the Supreme Court's sense of the boundaries between religious liberties and civil government, the Secular Coalition for America (hereinafter Coalition) has recommended intrusive changes to churches' tax exempt status. The Coalition's recommendation is an invasion of civil authority into religious affairs that is expressly proscribed

[1] JAMES MADISON, A MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS art. VII (1785), *available at* http://www.constitution.org/jm/17850620_remon.htm. *Id.* at art. II.
[2] *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (quoting *Watson v. Jones*, 80 U.S. 679, 730 (1872)).

by the First Amendment. Such changes threaten the Free Exercise rights of every religious congregation in the Nation by the proposed precedential, unwarranted, and unbridled government intrusion into the religious affairs of churches. Specifically, putting the government in a position of authority over churches, by being able to grant or deny their tax exempt statuses, threatens the protections set forth in the Establishment Clause. Furthermore, such authority constitutes religious oppression because it places the government in the position to judge whether or not an institution's beliefs constitute its claim as a church. To entertain such an inquiry into the internal affairs of a church would foster impermissible government entanglement with religion.

Therefore, increasing the burden on churches by forcing them to apply for tax-exempt status, to file intrusive annual forms, and to be vulnerable to unrestricted tax inquiries and investigations cannot be justified as the least restrictive means of furthering the government's interest in preventing financial abuses of tax-exempt organizations. Because the Coalition's recommendations cannot pass muster under the religious liberties clauses of the First Amendment, its recommendation should be denied in its entirety.

II. SECULAR COALITION FOR AMERICA'S RECOMMENDATION PROMOTES EXCESSIVE GOVERNMENT ENTANGLEMENT WITH RELIGION AND THREATENS RELIGIOUS LIBERTY.

The Coalition recommends the following changes to the tax code: (1) churches must apply for tax exempt status, (2) churches must file a 990 series return annually, and (3) the government will no longer be restricted by the Church Audit Procedures Act[3] (CAPA), in its tax inquiries and examinations of churches. Such changes to the tax code will require excessive government entanglement in the affairs of churches and will threaten individual citizens' First Amendment rights of free association and free exercise of religion.

[3] 26 U.S.C. § 7611

A. ESTABLISHMENT CLAUSE

As a matter of settled law, the government may not interpose itself in the affairs of religious organizations. In 1872, the Supreme Court held that courts may not review a religious body's determinations on points of faith, discipline, and doctrine.[4] Almost one hundred years later, the Supreme Court reiterated this point by explaining that government action runs afoul of the Establishment Clause when it fosters "an excessive government entanglement with religion."[5] Just one year prior to *Lemon v. Kurtzman*, the Supreme Court held that any government involvement with religion that requires official or continuous surveillance leads to government entanglement with religion that is prohibited by the Establishment Clause.[6]

While the government clearly lacks the constitutional authority to evaluate a religious body's determinations of doctrine and faith, it also lacks the *capacity* to do so. In *Hernandez v. Commissioner*, the Supreme Court found that when determining whether government action has substantially burdened religious exercise, the judiciary cannot consider whether the burdened practices are legitimate or valid: "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."[7] The Supreme Court reaffirmed this constitutional principle in *Employment Division v. Smith*, in which the possession and use of peyote, a controlled substance, for sacramental purposes was at issue.[8] The Supreme Court specifically found that, under the First

[4] *Watson v. Jones*, 80 U.S. 679 (1872).
[5] *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971) (citation omitted).
[6] *Walz v. Tax Comm'n of New York,* 397 U.S. 664, 675 (1970).
[7] 490 U.S. 680, 699 (1989) (citing *Thomas v. Review Bd.*, 450 U.S. 707, 716 (1981)).
[8] 494 U.S. 872.

Amendment, it was simply not within the competency of the judiciary to question the legitimacy of a religious belief, the exercise of which entailed the ingestion of peyote.[9]

The Supreme Court's non-entanglement jurisprudence has been further exemplified in the equal access cases of the last thirty years. For instance, in *Widmar v. Vincent*, the Supreme Court noted that a public university's policy, which strictly excluded religious speech and worship, actually *fostered* government entanglement with religion by requiring the school, a government actor, to "determine which words and activities fall within 'religious worship and religious teaching.'"[10] As stated previously, it is simply not within the government's purview to determine what is or is not a "valid" religious practice or belief. The *Widmar* Court further explained that such a policy would require continuous surveillance of religious groups—a violation of the principle established in *Walz*.[11] Additionally, in *Board of Education v. Mergens*, the Supreme Court relied on *Widmar* to find that a school more effectively avoids the risk of government entanglement by implementing an open use policy rather than one that excludes religious uses and thus requires an assessment of whether certain uses are indeed religious or not.[12] For this reason, as has been practice for over 200 years, the U.S. government has implemented an open policy regarding the tax-exempt status of churches by not requiring an application process. Such practice alleviates the government's need to assess whether or not certain beliefs or practices are religious. In addition, while some may argue that treating churches differently than other organizations acts as the government's establishment of religion, "freedom from taxation has

[9] *Smith*, 494 U.S. at 887, 890 (upholding the controlled substance law criminalizing possession of peyote on the premise that it was not designed to infringe upon the free exercise of religion and as such was consistent with the Free Exercise Clause of the First Amendment).
[10] 454 U.S. 263, 272 n.11 (1981).
[11] *Id.*
[12] 496 U.S. 226, 248 (1990).

[not] given the remotest sign of leading to an established church or religion and on the contrary it has operated affirmatively to help guarantee the free exercise of all forms of religious belief."[13]

The Supreme Court has clearly demonstrated that government review of religious doctrine, government monitoring of religious entities, or government assessment of a program's religious nature cannot withstand a First Amendment challenge. Government action simply cannot foster excessive entanglement between the government and religion. Under the Coalition's recommendation, the government would have to evaluate every church's application for religious legitimacy before approving its tax-exempt status, which starkly violates Supreme Court rulings regarding the Establishment Clause of the First Amendment. Just as the school district in *Widmar* could not "determine which words and activities f[e]ll within 'religious worship and religious teaching,'" [14] the IRS cannot determine what beliefs and activities qualify as religious for the purposes of tax-exempt status. Clearly, the established protection in the First Amendment cannot tolerate such blatant government entanglement with religion.

B. FREEDOM OF ASSOCIATION

Implicit in the rubric of the First Amendment's Free Speech Clause is the right to freely associate with others toward common purposes or for shared reasons. This freedom of association is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society."[15] In fact, the Supreme Court has explained that "[t]he right to associate . . . is an integral part of this basic constitutional freedom."[16] The Supreme Court has also stated that the freedom of association protects fundamental personal liberties and the

[13] *Walz*,, 397 U.S. at 678.
[14] 454 U.S. at 272 n.11.
[15] *Shelton v. Tucker*, 364 U.S. 479, 486 (1960).
[16] *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973).

freedom to engage in protected First Amendment activities such as speech, assembly, petition for the redress of grievances, and the free exercise of religion:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. *De Jonge v. Oregon*, 299 U.S. 353, 364; *Thomas v. Collins* 323 U.S. 516, 530. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See *Gitlow v. New York*, 268 U.S. 652, 666; *Palko v. Connecticut*, 302 U.S. 319, 324; *Cantwell v. Connecticut*, 310 U.S. 296, 303; *Staub v. City of Baxley*, 355 U.S. 313, 321.[17]

Furthermore, the freedom of association may serve as a privilege against congressional investigations or inquiries that require an organization to answer questions or produce documents that might disclose the identity of its members, donors, or other affiliations.

One highly important aspect of the right to freedom of association guaranteed by the First Amendment is the right to privacy in one's associations. The Supreme Court highlighted the "vital relationship between freedom to associate and privacy in one's associations . . . [and that] [i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."[18]

The Supreme Court has recognized that disclosing the fact that a person is a member of, or contributes to, a particular group or organization may deter the person from becoming a member or contributing to the group and, therefore, may have unconstitutionally deterring effects on associational freedom.[19] Regulatory measures may not be employed to stifle, penalize, or curb the exercise of the right to freedom of association.[20]

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[17] *NAACP v. Ala. ex rel Patterson*, 357 U.S. 449, 460 (1958).
[18] *Id.* at 462.
[19] *See Id.* at 460-62.
[20] *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961).

Presently, the Coalition's proposal threatens citizens' right to freely associate with religious organizations, particularly in the area of monetary donation. As it stands, the Coalition's proposal requiring churches to file 990 series forms annually will foster constitutional violations of these protections against donor disclosure, and such violations are not supported by a compelling government interest.

1. *The Supreme Court Consistently Has Protected an Organization's Right to Not Divulge the Names of Members or Donors.*

In *NAACP v. Alabama*, the NAACP tried to dissolve a temporary injunction issued by the trial court, arguing that the state's suit violated the Association's freedom of speech and assembly under the Fourteenth Amendment. Before the hearing on that motion, the state moved for "the production of a large number of the Association's records, and papers, including bank statements, leases, deeds, and records containing the names and addresses of all Alabama 'members' and 'agents' of the Association," and the court ordered that production.[21] When the Association did not comply with the production order, the court held it in civil contempt with a fine of $10,000 to be reduced within five days upon compliance. The Association then "produced substantially all the data called for by the production order except its membership lists."[22]

The Supreme Court upheld the Association's right to withhold such membership lists, explaining that forced disclosure of membership would have a deterrent effect upon the freedom of association rights of NAACP members because it might induce members to withdraw from the organization and might dissuade others from joining it because of their fear of exposure.[23] Noting the "vital relationship between freedom to associate and privacy in one's associations," the Supreme Court stated that "inviolability of privacy in group association may in many

[21] 357 U.S. at 451.
[22] *Id*. at 454.
[23] *Id*. at 462-63.

circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."[24] The Supreme Court further stated that "[c]ompelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order" as "[a] requirement that adherents of particular religious faiths or political parties wear identifying arm-bands."[25]

Since *NAACP v. Alabama*, the Supreme Court has expanded the First Amendment freedom of association beyond just an organization's members but also to its donors when revealing donors would essentially be revealing members.[26] The Supreme Court has not drawn fine lines between contributors and members but has treated them interchangeably.

Presently, the requirements of Form 990, Schedule B would violate church members' rights to freely associate with religious organizations and would likely deter many from donating much-needed funds that churches rely upon for survival. Specifically, Schedule B requires as a general rule that "an organization filing Form 990, 990-EZ, or 990-PF that received, during the year, $5,000 or more (in money or property) from any one contributor" provide the name, address, zip code, total contribution, and type of contribution of each contributor.[27] Additionally, for noncash donations, the Schedule requires a description of the property, the fair market value, and the date the church received the donation.[28] Such detailed, identifying information would cause the type of deterrent that the Supreme Court has clearly ruled as violative of one's Freedom of Association.[29]

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[24] *Id.* at 462.
[25] *Id.* at 462-63 (citation omitted).
[26] *See Shelton v. Tucker*, 364 U.S. 479 (1960) (invalidating a statute which required public school teachers to reveal to the state their contributions to or memberships in any organization during the previous five years).
[27] DEPT. OF THE TREASURY, INTERNAL REVENUE SERVICE, OMB No. 1545-0047, SCHEDULE B, Schedule of Contributors 1, 1-2 (2012) [hereinafter SCHEDULE B], *available at* http://www.irs.gov/pub/irs-pdf/f990ezb.pdf.
[28] *Id.* at 3.
[29] *See NAACP v. Ala. ex rel Patterson*, 357 U.S. 449 (1958).

Furthermore, churches' being forced to file a Schedule B causes other constitutionally violative problems under the Freedom of Association. For example, in some cases, Schedule B must not only be submitted to the IRS, but all of the information therein will also be available for public inspection.[30] In addition, even if the donor wishes to remain anonymous, the church must submit the name of the donor on the Schedule B form unless the church does not know the donor's identity.[31] Because some donations cannot be made in a completely anonymous fashion, such a disclosure requirement would likely deter many donors who wish to remain anonymous from making donations they otherwise would have made. Again, requiring churches to make such disclosures clearly violates Supreme Court precedent, which states that one's privacy in group association is an "indispensable . . . preservation of freedom of association."[32]

2. The Government Cannot Compel Disclosure of Information Protected by the Freedom of Association Absent a Compelling Government Interest.

The Supreme Court has, time and again, held that Government encroachments on fundamental rights are subjected to the most stringent standard of scrutiny. Therefore, when the Government endeavors to encroach upon the fundamental right to associate freely, the Government's actions are subject to a strict scrutiny analysis.[33]

Under the strict scrutiny analysis, the requirements for Government action to be constitutionally conforming are twofold. First, the Government must be acting upon a valid compelling interest when it infringes upon a fundamental right.[34] Second, the Government must undertake the least restrictive means of achieving the compelling interest. A law that infringes

[30] SCHEDULE B at 5.
[31] *Id.* at 6.
[32] *NAACP*, 357 U.S. at 462.
[33] *Fed. Election Com. v. Machinists Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981) ("Current first amendment jurisprudence makes clear that before a state or federal body can compel disclosure of information which would trespass upon first amendment freedoms, a 'subordinating interest of the State' must be proffered, and it must be 'compelling'") (quoting *NAACP v. Alabama*, 357 U.S. at 463); *NAACP v. Alabama*, 357 U.S. at 460-461 (an "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny").
[34] *See Sherbert v. Verner*, 374 U.S. 398 (1963); *see also Wisconsin v. Yoder*, 406 U.S. 205 (1972).

the freedom of association "must be highly selective in order to survive challenge . . . . [and] '. . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.'"[35]

In Bates v. Little Rock, for example, the Supreme Court applied the principles of *NAACP v. Alabama* and reversed convictions for failure to comply with a city ordinance that required the disclosure of "dues, assessments, and contributions paid, by whom and when paid."[36] The Supreme Court held that the organization did not have to turn over its membership list because the government failed to show a compelling interest that would override the right of the members and donors of the NAACP to remain anonymous.[37]

Arguably, the drastic changes recommended by the Coalition would not survive such strict scrutiny because CAPA already provides a less intrusive means for the government to ensure churches are not misusing their tax-exempt statuses. With a less intrusive solution already in place, the Coalition cannot justify a compelling government interest exists for its recommended changes.

C. FREE EXERCISE CLAUSE

The Free Exercise clause affords the American people the right to freely exercise religion without fear of government intrusion. The Supreme Court noted in *McCulloch v. Maryland* that "the power to tax involves the power to destroy."[38] Accordingly, requiring churches to apply for,

[35] *Louisiana*, 366 U.S. at 296 (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)).
[36] 361 U.S. 516, 518 (1960),
[37] *Id*. at 525-27. *See also United States v. Rumely*, 345 U.S. 41 (1953) (setting aside a contempt conviction of an organization official who refused to disclose names of those who made bulk purchases of books sold by the organization); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (overturning a contempt conviction and ruling that the NAACP could deny the Government access to its membership lists on the basis of its right of association). *But see Buckley v. Valeo*, 424 U.S. 1 (1976) (concluding the substantial public interest in disclosure outweighed the harm generally alleged).
[38] 17 U.S. 316, 431 (1819).

and thereby possibly be denied, tax exemption violates the Free Exercise clause because "the government would be empowered to penalize or shut [churches] down if they default on their payments."[39]

Even in the foundational time of American history, Thomas Jefferson understood that the civil magistrate was, frankly, constitutionally incompetent to make judgments:

> I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines . . . . Every religious society has a right to determine for itself the times for these exercises and the objects proper for them according to their own particular tenets; and this right can never be safer than in their own hands where the Constitution has deposited it . . . Everyone must act according to the dictates of his own reason, and mine tells me that civil powers alone have been given to the President of the United States, and no authority to direct the religious exercises of his constituents.[40]

In Jefferson's view, this freedom was not a mere matter of polite disinterest on the part of the public regarding the religious scruples of others. In his view, the public was without a right to inquire and interfere. "Religion is a subject on which I have ever been most scrupulously reserved. I have considered it as *a matter between every man and his Maker in which no other, and far less the public, had a right to intermeddle.*"[41]

The Supreme Court has since held that the government and its agents are without authority to determine that a particular religious practice of a particular religious group does not qualify for First Amendment protection.[42] In the same way, the government should not be in a place to pass judgment on whether a particular religious group qualifies for tax-exempt status. As recently as 2005, the Supreme Court explained that "the Free Exercise Clause[] requires

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[39] *Churches and Taxes*, PROCON.ORG (May 08, 2013) http://churchesandtaxes.procon.org/#background.
[40] Letter of Thomas Jefferson to Samuel Miller, 1808 *in* 11 WRITINGS OF THOMAS JEFFERSON 429 (Memorial Edition, Lipscomb & Bergh eds., 1903-04).
[41] Letter from Thomas Jefferson to Richard Rush, 1813, in THE JEFFERSONIAN CYCLOPEDIA 744 (John P. Foley ed., 1900) (emphasis added).
[42] *Fowler v. Rhode Island*, 345 U.S. 67 (1953).

government respect for, *and noninterference with*, the religious beliefs and practices of our Nation's people."[43]

To the Supreme Court, nothing but a history of religious persecution "could have planted our belief in liberty of religious opinion any more deeply in our heritage."[44] Noting that this high regard for religious freedom was consequently incorporated into the United States Constitution, the *Schempp* Court explained that the "freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion."[45] Accordingly, religious freedom under the First Amendment necessarily requires "absolute equality before the law, of all religious opinions and sects."[46]

The Supreme Court described the government's role in the face of religious freedom as "neutral, and, while protecting all, it prefers none, and it *disparages* none."[47] Capturing the overlapping nature of the Free Exercise and Establishment Clauses of the First Amendment (and the government's consequent role), the Supreme Court explained that the "great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, *lying outside the true and legitimate province of the government*."[48]

The Supreme Court ultimately agreed, affirming that the First Amendment requires government neutrality towards differing religious beliefs and concluding that "[w]hile the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to

[43] *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005) (emphasis added).
[44] *Id.*
[45] *Id.*
[46] *Id.* at 215 (internal quotations omitted).
[47] *Id.*
[48] *Id.* (emphasis added).

anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs."[49]

The current practice of allowing all religious entities automatic tax exemption successfully keeps the government from applying value judgments to the religious beliefs and practices of the American people, which closely follows Supreme Court precedent on the government's role in relation to religious matters. Clearly, the unavoidable government entanglement with religion that would occur under the recommendations of the Coalition would jeopardize the Free Exercise of religion in the United States. First, the government would have the authority to judge what organizations "qualify" as religious for tax-exempt status. Second, the government would have the power to penalize or close churches for not paying taxes if they were not approved for tax-exempt status. Such governmental power over and entanglement with churches across the country would greatly hinder congregations of American people who have a constitutional right to exercise their religions freely.

Lastly, whether or not churches are approved for tax-exempt status, the additional burden of applying for tax-exempt status and filing the annual forms would unduly hinder the survival of many smaller churches that already struggle because of limited resources. Specifically, according to the instruction packet for Form 990, the estimated number of hours required for each step of preparing the 990 form (not including any additional schedules that may be required) is over 158 hours: Recordkeeping—119 hr., 6 min.; Learning about the law or the form—16 hr., 4 min.; Preparing the form—22 hr., 26 min.; Copying, assembling, and sending form to the IRS—1 hr., 4 min.[50] In effect, many churches may be indirectly forced to close because of the additional financial burden of either being forced to pay taxes or being forced to hire additional personnel

[49] *Id.* at 226.
[50] DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, INSTRUCTION FOR FORM 990 RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, 50 (2012), *available at* http://www.irs.gov/pub/irs-pdf/i990.pdf.

to manage the new filing requirements. Such government-imposed burden on religious entities cannot stand in harmony with the Free Exercise Clause.

To safeguard against financial abuses of tax-exempt organizations, the government, through the Internal Revenue Service (IRS), may audit such organizations to ensure that they are not unlawfully engaging in activities subject to taxation. Recognizing the constitutional obligation to simultaneously protect the Free Exercise rights of churches in the midst of an audit, Congress enacted the Church Audit Procedures Act (CAPA)[51]. CAPA provides a vast array of legal safeguards to protect a church against impermissible government interference with its Free Exercise rights, while also permitting the IRS to determine whether a church has engaged in activities that are subject to taxation.

At least in theory, CAPA only burdens religious exercise to the extent necessary to further this interest. While protecting society from such abuses may constitute a compelling government interest, the Coalition seeks to remove this protection entirely, which has been established to avoid violating the Free Exercise Clause. Such a change in procedure will not withstand the vast amount of Supreme Court precedent that strictly scrutinizes the alleged compelling government interest against the citizens' rights of free exercise under the First Amendment.

III. CONCLUSION

The Coalition's recommendation ignores the line between church and State and violates the Establishment Clause by suggesting the allowance of severe government entanglement with religion through the IRS. Moreover, because the Coalition suggests increasing the tax-exempt application and compliance burden on all churches, even those already struggling financially, the implementation of those recommendations would violate the Free Exercise Clause because many

[51] 26 U.S.C. § 7611(a)(1).

churches would be forced to close, unable to withstand the added financial burden. Such church closure would hinder numerous congregations from freely exercising their right to worship because of this government intrusion on churches' finances. The Father of the First Amendment, James Madison, in succinct terms, expressed what we now see is the problem with the Coalition's recommendation:

> I must admit moreover that it may not be easy, in every possible case, to trace the *line of separation between the rights of religion and the civil authority* with such distinctness as to avoid collisions and doubts on unessential points. The tendency to a usurpation on one side or the other or to a corrupting coalition or alliance between them will be best guarded against by entire abstinence of the government from interference in any way whatever, beyond the necessity of preserving public order and protecting each sect against trespasses on its legal rights by others.[52]

In like vein, Thomas Jefferson, whose work for religious freedom in Virginia laid the theoretical groundwork for Madison's approach to religious liberties, said:

> I consider the government of the United States as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the states the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise or to assume authority in religious discipline has been delegated to the General Government. It must then rest with the states, as far as it can be in any human authority.[53]

Together, Madison and Jefferson explain just how far out of constitutional bounds the Coalition's recommendations are.

Just as troubling is the likelihood that many churches would be forced to file a Form 990, Schedule B, which requires disclosure of donors and the values donated. Such requirements of disclosures is unconstitutional, violating the Freedom of Association. Additionally, the

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[52] Letter from James Madison to Rev. Adams (1832), *in* 9 *THE WRITINGS OF JAMES MADISON, (1819-1836) (*Gaillard Hunt ed.,1900), *available at* http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1941&Itemid=27 (emphasis added).

[53] Letter from Thomas Jefferson to Reverend Samuel Miller (1808), *in* 11 THE WRITINGS OF THOMAS JEFFERSON 428 (Andrew Adgate et al. eds., Memorial ed., 1903-04).

protection of CAPA, which serve to protect churches from unlimited government intrusion and IRS investigation, is in jeopardy under the Coalition's recommendations. Such unwarranted removal of protections set forth to protect the line between church and State cannot be tolerated. While some may support the Coalition's motivation to recommend these changes to the U.S. tax code, our discussion of its manifold constitutional and legal defects shows that the Coalition's recommendations cannot withstand First Amendment scrutiny.