Abortion Rights Mobilization and Religious Tax Exemptions

Charles Capetanakis
ABORTION RIGHTS 
MOBILIZATION AND 
RELIGIOUS TAX 
EXEMPTIONS 

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I. INTRODUCTION

[T]he words of such an Act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport...

Judge Learned Hand

In 1979, lawyers working with the National Abortion Rights Action League (known by the acronym "NARAL") started supplying the Internal Revenue Service with anti-abortion documents distributed by groups connected with the Roman Catholic Church ("the Church"). The lawyers contended that these items proved that the Church had systematically violated the law forbidding tax-exempt institutions from devoting a substantial amount of their activities to influencing legislation. Then, in 1981, nine organizations and twenty individuals supporting a woman’s right to abortion commenced a suit against the Church, claiming the

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3 See id.

Church, through its anti-abortion crusade, systematically violated Internal Revenue Code section 501(c)(3) by substantially participating in "political activities." The plaintiffs also alleged they were disadvantaged politically because only they abided by the section 501(c)(3) limitations, and that the government, through de facto subsidization, gave the Church a benefit over the plaintiffs. The plaintiffs, therefore, called for the revocation of the Church's tax-exempt status.

Because the plaintiffs did not meet the Article III minimum requirements for standing, the underlying issue still exists: To what degree can a religious organization speak out on social issues in the public forum before such speech has the appearance of political lobbying, thus endangering the organization's tax-exempt status?

Recently, events throughout the United States have given rise to what may be future challenges to the tax-exempt status of certain religious organizations, including the Church. In San Diego, a Catholic Bishop barred a candidate for the State Assembly from receiving communion because of her political stance in favor of readily obtainable abortions. In New York, Governor Mario Cuomo, John Cardinal O'Connor and Auxiliary Bishop Austin Vaughan have been involved in a heated public debate on the abortion issue; Auxiliary Bishop Vaughan was later jailed for taking part in an anti-abortion protest. Finally, in Washington, D.C., the National Conference of Catholic Bishops announced they would undergo a new nationwide anti-abortion campaign by hiring a public relations firm and expending approximately five million dollars for related services.

Although the issue of abortion is not a political one according to Church ideology, it cannot be denied that the problem has become increasingly "politicized," to the extent that politicians commonly choose to make their stance on abortion, "pro-choice" or "pro-life," a major plank in their election platforms. Considering the large contributions to religious and private organizations who take a public stance on the issue, it is suggested that disputes over abortion be closely reviewed by religious organizations everywhere for the potential impact on their tax status.

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5 See Catholic Conference, 824 F.2d at 158.
6 See id. at 158-59.
7 See id. at 159.
8 See id.
9 See In re United States Catholic Conference, 885 F.2d 1020, 1021 (2d Cir. 1989), cert denied, 110 S. Ct. 1946 (1990); see infra notes 19-30 and accompanying text.
13 See Houck, supra note 1, at 1428 n.36 (estimated as high as $26 billion as far back as 1984).
This Article will address the sensitive issues concerning the tax-exempt status of religious organizations. First, it will discuss the history of the Abortion Rights Mobilization, Inc. ("A.R.M.") challenge against the Church and the background of tax exemptions to religious organizations. Second, the Article will outline various first and fifth amendment challenges to religious tax exemptions. Third, the Article will examine the constitutional standard of review for such cases. Fourth, the Article will compare the A.R.M. challenge to past challenges. Finally, recommendations to Congress will be made in order to avoid the kind of confusion Judge Hand spoke of in his *Yale Law Journal* article.

II. BACKGROUND OF THE A.R.M. CHALLENGE

In *A.R.M. v. Regan*, the action against the two religious defendants, The United States Catholic Conference ("USCC") and The National Conference of Catholic Bishops ("NCCB") was dismissed because the plaintiffs failed to state a claim that the religious defendants violated Internal Revenue Code section 501(c)(3). The motions to dismiss submitted by the other two defendants in the case, Treasury Secretary Regan and Internal Revenue Commissioner Egger, were denied.

Despite the dismissals in 1982 against the USCC and the NCCB, A.R.M. served deposition subpoenas on the USCC and the NCCB seeking various documents concerning the organizations' alleged political activities in 1983. Then, in 1985, the federal defendants renewed their motion to dismiss based on *Allen v. Wright*, a 1984 United States Supreme Court decision. The *Allen* Court had held that the parents of certain black students had no standing to challenge the tax-exempt status of racially segregated private schools. Finding that *Allen* was not inconsis-
tent with their previous decisions, the federal district court once again denied the defendants' motion to dismiss.26

The USCC and the NCCB failed to produce the subpoenaed materials in a timely manner, so the United States District Court for the Southern District of New York held the religious defendants in civil contempt of court, and imposed sanctions.26 The contempt order was stayed pending appeal, and the Second Circuit Court of Appeals affirmed the district court.27 The Supreme Court later reversed and remanded the holding, and instructed the Second Circuit Court of Appeals to determine whether the district court had subject-matter jurisdiction.28

On remand, the Second Circuit Court of Appeals held that the plaintiffs had not met the article III minimum requirements for standing.29 Thereafter, the Supreme Court denied the plaintiffs' petition for writ of certiorari.30 Thus, it would appear that the Church's tax-exempt status has been preserved for the present time.

III. BACKGROUND OF LIMITATIONS ON TAX-EXEMPT ORGANIZATIONS' LOBBYING ACTIVITIES

A. Background of Limitations

Dating back to 1802, legislatures have exempted religious organizations from taxation.31 For instance, in 1813, Congress issued refunds to religious organizations for import taxes paid by religious societies on religious articles.32 Federal tax exemptions for religious organizations originated with the passage of the Income Tax Act of 1894.33 A similar exemption was included in the Income Tax Act of 191334 and subsequent revenue acts.35

Prior to 1934, the only means of precluding tax-exempt status to or-

30 See In re United States Catholic Conference, 885 F.2d 1020, 1031 (2d Cir. 1989), cert. denied, 110 S. Ct. 1946 (1990). The minimum standards to be alleged by a party seeking such relief are set forth in Allen, 468 U.S. at 751, and include a legally cognizable injury caused by the challenged conduct or law and judicial redressability.
33 See id. at 677.
36 See Taxation With Representation, 676 F.2d. at 736 n.36.
rganizations engaging in political activities was to prove that the circulation of any "controversial or partisan propaganda" was not for tax-exempt reasons. For instance, in Slee v. Commissioner, the United States Court of Appeals for the Second Circuit upheld a district court determination that the American Birth Control League was not eligible to receive tax-deductible contributions because the group distributed propaganda to legislators and the public for the purpose of repealing certain birth control laws.

Lobbying limitations on exempt organizations came about in in 1934, when Congress indicated that I.R.C. section 501(c)(3) organizations could not substantially engage in lobbying activities and remain exempt from taxation. Indeed, discussion on the Senate floor indicated Congress was attempting to curb the possibility of abuse by exempt organizations eligible to use tax-deductible contributions for lobbying activities. For example, Senator Reed of the Senate Finance Committee stated that "there is no reason in the world why a contribution made to [an exempt organization] should be deductible . . . if it is a selfish one made to advance the personal interests of the giver of the money." Senator Harrison, another Finance Committee member, similarly explained that "the attention of the Senate committee was called to the fact that there are certain organizations which are receiving contributions in order to influence legislation and carry on propaganda. The committee thought there ought to be an amendment which would stop that, so that is why we have put this amendment in the bill."

37 42 F.2d 184 (2d Cir. 1930).
36 See id. at 184-86. The League also published a magazine about abortion, maintained a research and development department, and acted as a clinic. In Slee, Judge Hand reasoned that such "political agitation" was outside the purpose of tax exemption and the activities were the exclusive purpose of the association, not ancillary practices. See id. at 185.
34 A section 501(c)(3) organization generally is an entity organized for religious purposes with activities that do not substantially issue propaganda, or otherwise influence legislation. See 26 U.S.C. § 501(c)(3) (Supp. 1990). Section 501(c)(3) was the first statutory limit on lobbying activities of exempt organizations. Taxation With Representation of Washington v. Regan, 676 F.2d 715, 736 (D.C. Cir. 1982), rev'd, 461 U.S. 540 (1983); see infra note 48 and accompanying text (language of section 501(c)(3)).
33 See Taxation With Representation, 676 F.2d at 736.
32 See id.
31 Id. (quoting 78 CONG. REC. 5861 (1934) (statement of Senator Reed)).
30 Id. (quoting 78 CONG. REC 5959 (1934)) (statement of Senator Harrison). Senator Harrison was referring to amendment no. 19. See 78 CONG. REC. 7831 (1934) (statement of Senator Harrison).
The effect of the 1934 amendment was twofold: it permitted insubstantial lobbying; yet it prohibited substantial lobbying activities even if they were promoting the organization’s primary purpose. In the case of a religious organization, the organization risks losing its tax exemption even though the political activities engaged in were religiously motivated and promoted what may be seen as the organization’s “primary purpose.”

B. Internal Revenue Code Section 501(c)(3) and Treasury Regulation Section 1.501(c)(3)-1

Internal Revenue Code section 501(a) exempts from taxation certain organizations described in section 501(c). I.R.C. section 501(c)(3) excludes organizations operated exclusively for religious purposes when 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 or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

This statute does not require governmental approval of an organization's activities, policies, or practices. I.R.C. section 501(c)(3) merely states that the organization has to meet certain requirements to remain tax-exempt. Pursuant to Treasury Regulation section 1.501(c)(3)-1, an organization must meet either an “organizational” or an “operational” test to be exempt from taxation.

Under the “organizational” test, a religious organization must be organized exclusively for exempt purposes. An organization will fail this test if its articles expressly empower it:

(i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(ii) Directly or indirectly to participate in, or intervene in (including

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48 See Schwarz, supra note 36, at 68.
51 Id. § 501(c)(3) (1988). I.R.C. section 501(b)(5) allows certain charitable organizations to elect to be governed by fixed guidelines while lobbying. Religious organizations, however, are excluded from this treatment.
52 See id. (no requirement for governmental approval); see also Note, The Revocation of Tax Exemptions and Tax Deductions for Donations to 501(c)(3) Organizations on Statutory and Constitutional Grounds, 30 UCLA L. Rev. 156, 184 (1982).
53 26 U.S.C. § 501(c)(3); see also Note, supra note 49, at 184.
55 Id. § 1.501(c)(3)-1(b)(1).
the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii) To have objectives and to engage in activities which characterize it as an “action” organization . . . .

The group in Slee organized and declared its objectives “[t]o collect, correlate, distribute and disseminate” information regarding conception, and to “enlist the support and co-operation” of lawyers and legislators to repeal or amend statutes which prevent conception. The Court of Appeals for the Second Circuit upheld a Board of Tax Appeals finding that these political activities were substantial and thus revoked its tax-exempt status. Other than the Slee decision, the “organizational” test has not been extensively litigated. The majority of cases where an organization has had its tax-exempt status revoked have centered on the “operational” test.

An organization is “operated exclusively” for an exempt purpose if it primarily engages in an exempt activity expressed in I.R.C. section 501(c)(3), such as religion. Such organizations will pass the “operational” test. If a group’s primary objective is obtainable only by legislation or defeat of proposed legislation, and it advocates or campaigns for the attainment of that objective, it will be an “action” organization. A group is also an “action” organization if a substantial part of its activities attempts to influence legislation by propaganda or otherwise. “Action” organizations fail the operational test.

In Church of Scientology v. Commissioner, a religious organization’s tax-exempt status was revoked because it engaged in businesses whose earnings directly benefitted certain officials within the organization. The Court of Appeals for the Ninth Circuit reasoned that to qualify for tax-exempt status, a religious organization must show that it is operated not only for a religious purpose, but also exclusively for a religious or charitable purpose.

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53 Id. § 1.501(c)(3)-1(b)(3).
54 See supra notes 37-38, 45-46 and accompanying text.
55 Slee, 42 F.2d at 184.
56 See id. at 184-85.
59 Id. § 1.501(c)(3)-1(c)(3)(iv); see also Christian Echoes, 470 F.2d at 853-56.
60 See Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) (1976); see also Christian Echoes 470 F.2d at 853-56; Slee, 42 F.2d at 185.
61 823 F.2d 1310 (9th Cir. 1987), cert. denied, 486 U.S. 1015 (1988).
62 See id. at 1312-13.
63 See id. at 1315. An example of a church losing its tax-exempt status because it did not
The Church of Scientology court recited four elements which comprise the operational test: (1) An organization's primary activities must accomplish one or more of the tax-exempt purposes in section 501(c)(3); (2) an organization's net income must not benefit private individuals; (3) an organization must not spend a substantial part of its monies on programs intended to influence legislation or on political campaigns; and (4) an organization must operate to serve valid public purposes and provide a public benefit. Non-compliance with one of the four requirements triggers the loss of tax-exempt status.64

A section 501(c)(3) organization,65 therefore, will lose its tax-exempt status if it participates in a political campaign, or devotes a substantial part of its efforts to lobbying.66 An organization will automatically lose its tax-exempt status if it participates in a single political campaign.67 The term "substantial," however, is not statutorily defined, and tax-exempt organizations are left without guidelines.68

Courts have measured "substantiality" by comparing the time and money spent by the organization on lobbying in relation to all of its activities.69 Different approaches were considered to measure the impact of an organization's activities on legislation or the public.70 However, there is no statutory definition of "substantial" with regard to lobbying efforts.

operate exclusively for religious purposes within the meaning of section 501(c)(3) is First Libertarian Church v. Commissioner, 74 T.C. 396 (1980). There, the church's primary activities were to hold meetings before supper, sponsor a supper club and publish a newspaper where some of the content of discussion was not religious, but political. Id. at 400-01. The non-exempt activity was found to be a substantial part of the church's activity. Id. at 403-05; see also Rev. Rul. 74-574, 1974-2 C.B. 161 (exempt religious organization did not jeopardize tax-exempt status by operating broadcasting station which gave equal opportunities to variety of political candidates and viewpoints and made disclaimers that station had no political viewpoint).

64 Church of Scientology, 823 F.2d at 1315; see also Big Mama Rag v. United States, 631 F.2d 1030, 1032-33 (D.C. Cir. 1971) (denying organization's request for tax-exempt status because its newspaper was "ordinary commercial publishing practice" commenting on commerce, politics and promoting lesbianism); Rev. Rul. 62-71, 1962-1 C.B. 95 (organization primarily engaged in teaching and advocating of certain political and economic theories denied section 501(c)(3) status because primary objectives attainable only through legislation).

65 See supra note 48 and accompanying text.


69 See Note, Political Activity and Tax-Exempt Organizations Before and After The Tax Reform Act of 1969, 38 GEO. WASH. L. REV. 1114, 1124 (1970); see also Seasongood v. Commissioner, 227 F.2d 907 (6th Cir. 1955).

The lack of a statutory test caused uncertainty as to whether an organization was engaged in "substantial activities." For example, during student anti-Vietnam war protests, colleges and universities became concerned for their tax-exempt status because their campuses were used for the demonstrations. Similarly, many organizations that participated in the civil rights movement were counseled that any such support would constitute lobbying, placing their tax-exempt status in jeopardy.

The Tax Reform Act of 1976 attempted to remedy the lack of a statutory test by providing that certain charitable organizations can elect to be governed by fixed guidelines as to what constitutes substantial lobbying. Under those guidelines, when a specific percentage of funds is spent to influence legislation, those lobbying activities will be deemed substantial.

Religious organizations, however, are explicitly ineligible to elect this coverage and must meet the organizational and operational tests in order to keep their tax-exempt status. Congress’ failure to define substantiality has left religious organizations to proceed without direction, as Judge Hand described.

IV. CONSTITUTIONAL CONSIDERATIONS

A. The First Amendment

1. Freedoms of Speech and Petition

The first amendment to the United States Constitution provides in part that: "Congress shall make no law . . . abridging the freedom of

71 See id. at 342-43.
72 See Whelan, supra note 68, at 919.
73 See id.
75 26 U.S.C. § 501(h) (1982); see also Note, supra note 70, at 343.
76 See 26 U.S.C. § 501(h)(2)(B) (1988) ("The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911."); id. § 4911(c)(2) (lobbying nontaxable amount is lesser of $1,000,000 or amount determined by applying percentage to amount of exempt purpose expenditures).
77 See id. § 501(h)(6)(B).
79 See 122 Cong. Rec. 13306-07 (1976) (Senate remarks); 122 Cong. Rec. 12254-55, 16883-89 (1976) (House remarks). Congress indicated that section 501(h) does not apply to churches and organizations affiliated with churches; however, the legislative history did not explain why religious organizations were excluded from section 501(h) eligibility.
80 See supra note 1 and accompanying text.
speech . . . or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." Many petitioners have claimed that the first amendment is violated by restricting an organization's tax-exempt status because the organization engages in lobbying. The contention is that the government may not deny a benefit to a person because he exercises a constitutional right such as lobbying. However, in Cammarano v. United States, the United States Supreme Court held that Congress is not required by the first amendment to "subsidize," in effect, those engaged in certain political speech.

The Cammarano plaintiffs tried to deduct as business expenses on their federal income tax returns expenses for publicity programs designed to defeat issues in front of state legislatures. The Supreme Court found no distinction between expenses incurred in attempts to promote or defeat proposed legislation and those expenses incurred in the support or combat of an initiative measure. The Cammarano plaintiffs argued that their case was similar to Speiser v. Randall, in which those who sought property tax exemptions in California were required to sign a declaration stating they did not advocate the overthrow of the United States. The Speiser Court held that the denial of an exemption to someone who engaged in free speech (i.e., the taxpayers who did not sign) was a violation of the first amendment.

In contrast to Speiser, the Cammarano Court reasoned that the plaintiff taxpayers were not denied their business expense deductions because they engaged in constitutionally protected speech. The Court held that the taxpayers were merely required to pay for their lobbying activities on an equal footing with everyone else. The Court stated that Congress determined that "since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community,

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81 U.S. CONST. amend. I.
83 See id. at 542.
85 See id. at 513; see also Hirt, Why the Government is not Required to Subsidize Abortion Counseling and Referral, 101 HARV. L. REV. 1895, 1912 n.81 (1988) ("The Supreme Court has held in many contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe that right and thus is not subject to strict constitutional scrutiny.") (citing Regan v. Taxation With Representation, 461 U.S. 540, 549-50 (1983)).
86 See Cammarano, 358 U.S. at 500-01. Plaintiffs, members of the Washington Beer Wholesalers Association, incurred expenses resulting from an effort to persuade members of the legislature to vote against proposed alcohol prohibition. Id. at 499-502.
87 See id. at 505.
89 See id. at 518.
90 See Cammarano, 358 U.S. at 513.
91 See id.
everyone in the community should stand on the same footing . . . .”

Therefore, “Congress ha[d] not infringed any First Amendment rights or regulated any First Amendment activity,” but had merely chosen not to subsidize de facto an organization’s political activities.

The leading case involving the revocation of a religious organization’s tax exemption due to lobbying activities is Christian Echoes National Ministry, Inc. v. United States. The plaintiff, Christian Echoes, was a nonprofit religious corporation in Oklahoma established to maintain weekly religious programs. To promote its brand of Christianity, the ministry attempted to battle communism, socialism, and political liberalism, which it considered to be enemies of the group’s faith. Christian Echoes established anti-communist groups, and urged its members to be politically active.

The ministry’s tax-exempt status was revoked. However, when the ministry sued for a refund, the United States District Court for the Northern District of Oklahoma held that the first amendment had been violated. The court reasoned that the ministry’s tax-exempt status was revoked without a constitutionally justifiable cause. The United States Court of Appeals for the Tenth Circuit reversed the district court and held that the ministry’s constitutionally guaranteed right of free speech was not limited by section 501(c)(3).

The Christian Echoes group was found to be “substantially active” in its attempts to influence legislation because it urged ministry constituents to write to their congressmen, work in local politics, support or oppose certain legislation, and financially support certain causes. In addition to influencing legislation, Christian Echoes intervened in political campaigns by using broadcasts and publications to attack certain candidates, specifically, President John F. Kennedy, and promote “conservatives” such as Senator Strom Thurmond. The Tenth Circuit Court of Appeals found that the ministry’s lobbying, as balanced against the objectives and circumstances of the organization, proved that “[a]n essential part of the

92 Id.
95 Id. at 851.
96 Id. at 852.
97 Id. at 852, 855.
98 See id. at 852-53.
99 See id. at 856-57.
100 See id. at 856.
101 Id. at 856-57.
102 Id. at 855-56.
103 Id. at 856.
[ministries'] program ... was to promote desirable governmental policies. ..."

Accordingly, the Tenth Circuit Court of Appeals held that the lobbying activities of the ministry were not ancillary practices, but substantial and continuous activities. Despite being religiously motivated, the court held that these were not activities that Congress had intended exempt organizations to engage in. The court reasoned:

The Congressional purposes evidenced by the 1934 and 1954 amendments are clearly constitutionally justified in keeping with the separation and neutrality principles particularly applicable in this case and, more succinctly, the principle that government shall not subsidize, directly or indirectly, those organizations whose substantial activities are directed toward the accomplishment of legislative goals or the election or defeat of particular candidates.

The rationale of Christian Echoes was adopted by the United States Supreme Court in Regan v. Taxation With Representation of Washington. In Regan, the Court held that an organization whose activities substantially consisted of lobbying was not entitled to section 501(c)(3) tax-exempt status. The Court, citing Cammarano, reasoned that Congress was not required, pursuant to the first amendment, to subsidize the plaintiffs' substantial lobbying activities.

Taxation With Representation of Washington ("TWRW") assumed the activities of two non-profit corporations. One of the corporations, Taxation With Representation ("TWR"), was organized to promote what it believed to be the "public interest" of federal taxation through influencing legislation. TWR had tax-exempt status under section 501(c)(4). The other group, Taxation With Representation Fund

104 Id. at 855.
105 Id. at 856.
106 Id.
107 Id. at 857.
108 461 U.S. 540 (1983). Regan involved, inter alia, a fifth amendment challenge to section 501(c)(3), as the taxpayer alleged that section 501(c)(19), which allowed veterans' groups to receive tax-deductible donations and lobby, violated the equal protection clause. See infra notes 191-199, and accompanying text.
109 See id. at 545-47.
110 See supra notes 84-93 and accompanying text.
111 Regan, 461 U.S. at 546 (citing Cammarano, 358 U.S. at 513).
112 See id. at 543.
113 See id. at 541-42.
114 See id. at 543. Section 501(c)(4) provides tax exemption for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable,
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(“TWRF”), was organized to promote TWRW’s goals through publication and circulation of a journal espousing its political philosophy, and through litigation.\textsuperscript{116} TWRF had tax-exempt status under section 501(c)(3).\textsuperscript{116}

TWR was subsequently denied its tax-exempt status and challenged the constitutionality of section 501(c)(3).\textsuperscript{117} The Tax Court, relying on \textit{Cammarano},\textsuperscript{118} held that because TWR’s admitted primary activity was lobbying, no first amendment violation had occurred.\textsuperscript{118} This decision was affirmed by the United States Court of Appeals for the Fourth Circuit, which also cited \textit{Cammarano} and distinguished \textit{Speiser},\textsuperscript{119} holding that TWR failed the “organizational” test under Treasury Regulation 1.501(c)(3)-1.\textsuperscript{121}

TWRW’s attack on section 501(c)(3)’s constitutionality began in 1979.\textsuperscript{122} Again, the Tax Court held that, even though lobbying is protected under the first amendment\textsuperscript{123} and there is a deep national obligation to the principle that debate on public issues should be vigorous and wide-open,\textsuperscript{124} section 501(c)(3) did not require certain speech in order to gain a tax benefit like the violation in \textit{Speiser}.\textsuperscript{125} Thus, there was no denial of a tax benefit for engaging in free speech.\textsuperscript{126}

On appeal, the United States Court of Appeals for the District of

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  \item educational, or recreational purposes.
  \item See \textit{Regan}, 461 U.S. at 543.
  \item See id. For purposes of this Article, taxpayers who contribute to section 501(c)(3) organizations may deduct those contributions for purposes of Federal Income Tax. Contributions to section 501(c)(4) organizations are not deductible. See 26 U.S.C. § 170(c)(2) (1988). Internal Revenue Code section 501(c)(4) allows organizations to promote social welfare and remain tax-exempt. See id. § 501(c)(4). Finally, section 501(c)(3) organizations who can cease to qualify for tax-exemption due to their lobbying activities may not be treated as a section 501(c)(4) organization. See id. § 504(a); see also supra notes 47-60 and accompanying text.
  \item See supra notes 84-93 and accompanying text.
  \item \textit{Taxation With Representation}, 76-2 U.S. Tax Cas. (CCH) at para. 9693.
  \item See supra notes 88-93 and accompanying text.
  \item See Taxation With Representation v. United States, 585 F.2d 1219, 1223-24 (4th Cir. 1978), \textit{cert. denied}, 441 U.S. 905 (1979); See also supra notes 47-60 and accompanying text.
  \item Id.
Columbia affirmed the Tax Court's decision. However, the same court, sitting en banc, reversed the trial court on the ground that section 501(c)(3) violated the equal protection clause of the fifth amendment, rather than reversing the case on first amendment grounds. The Supreme Court, however, held that there was no fifth amendment violation, and found no first amendment violation as well.

It appears then that any attempt by plaintiffs such as A.R.M. to assert that section 501(c)(3) inhibits freedom of speech will be unproductive. Courts to date have consistently held that, though an individual has a right to lobby, Congress has no obligation to fund that right; section 501(c)(3), therefore, does not inhibit free speech.

2. The Free Exercise and Establishment Clauses

The first amendment to the United States Constitution states in part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The plaintiffs in Christian Echoes contended that since their tax-exempt status was revoked without a constitutional reason, the ministry could not freely exercise its religion. The United States Court of Appeals for the Tenth Circuit disagreed and held that section 501(c)(3) did not violate the free exercise clause of the first amendment. The court reasoned that the interest of separating church and state outweighed the denial of the ministry's tax-exempt status. Christian Echoes, additionally, was not unconstitutionally hindered in the promotion of its mission merely because it lost its tax-exempt status.

It is well settled that legislation does not counter "the Establish-

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128 See Taxation With Representation of Washington v. Regan, 676 F.2d 715, 740 (D.C. Cir. 1982), rev'd, 461 U.S. 540 (1983). TWRW's constitutional challenge of section 501(c)(3) was based on the fact that veterans' organizations could remain tax-exempt under section 501(c)(19) regardless of their political activities. Id. at 742; see infra notes 170-199 and accompanying text (discussing fifth amendment challenge).
129 See Regan, 461 U.S. at 548. The Court reasoned that no first amendment violation had occurred because "veterans' organizations that qualify under section 501(c)(19) are entitled to receive tax-deductible contributions regardless of the content of any speech they may use, including lobbying." Id.
130 See supra notes 19-30 and accompanying text.
131 See Regan, 461 U.S. at 546.
132 U.S. CONST. amend. I.
133 See supra notes 94-107 and accompanying text.
134 Christian Echoes, 470 F.2d at 856.
135 Id. at 856-57.
136 Id. at 857.
137 Id. at 854-56.
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ment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive government entanglement with religion.139 Plaintiffs attacking tax exemptions for religious organizations have argued that de facto subsidies to such organizations (through tax exemptions) are prohibited “entanglements.”140 In Walz v. Tax Commission,141 however, the Supreme Court made it clear that this was not the case, at least concerning property tax exemptions.142

The Walz case involved a plaintiff seeking the revocation of property tax exemptions for religious groups.143 The essence of the Walz complaint was that by providing a property tax exemption to religious organizations, the plaintiff, a property owner, was indirectly required to make certain contributions to religious groups and the government was therefore “establishing religion.”144

The Walz Court’s review of religious organizations was limited to the organization’s property tax exemptions. However, the Court’s analysis would also seem to apply to the question of whether the government’s attack on a religious group’s basic tax-exempt status because of the group’s lobbying activities inhibits religion. The Walz Court reviewed the history of tax exemptions for religious institutions to determine whether these tax exemptions were intended to establish or interfere with religion.145 Chief Justice Burger, writing for the majority, held that the legislative purpose of property tax exemptions was not to advance nor inhibit religion.146 The New York property tax exemption at issue was not deemed an attempt at establishing religion, but an accommodation to religious groups from property tax burdens levied on private organizations.

139 Harris v. McRae, 448 U.S. 297, 319 (1980) (quoting Committee for Public Education v. Regan, 444 U.S. 646, 653 (1980)). In Harris, the Court struck down a constitutional challenge to the Hyde Amendment holding that there is no constitutional right to federal funding for an abortion. Harris, 448 U.S. at 369.
141 Id. at 675.
142 Id. at 666.
143 Id. at 667.
144 Id. at 668-72.
145 Id. at 672. As the Chief Justice stated:

[P]roperty tax exemption is neither . . . sponsorship nor hostility . . . . [C]ertain entities that exist in a harmonious relationship to the community at large, and that foster its “moral or mental improvement,” should not be inhibited in their activities by . . . taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship.

Id. at 672-73.
operating for profit.146

The Walz Court also reviewed the effect of the tax exemptions to
determine whether there was “government entanglement.” The Court
held that the elimination of property tax exemptions would lead to ex-
panded government involvement because church property would undergo
tax valuation, and possibly, tax liens, foreclosures, or other related
litigation.147

The Court further reasoned that since tax exemptions were not direct
money payments to the religious institutions, no entanglement existed.148
If the government were to transfer part of its revenue to religious organi-
zations, detailed administrative guidelines for the enforcement of govern-
ment standards would follow.149 With tax exemptions, however, the reli-
gious organizations merely abstain from supporting the government.150

Because there is no direct money subsidy, there is no “relationship
pregnant with involvement,”151 and presumably, no government entangle-
ment. As the Walz Court found no entanglement was created through
property tax exemptions for religious institutions, it is conceivable courts
might similarly find that lobbying restrictions on religious organizations
wishing to remain tax-exempt would not be entanglement. Exemptions
for religious organizations from government regulation do not involve af-
firmative aid or subsidies and do not condone government
endorsement.152

146 Id. at 673.
147 Id. at 674.
148 Id. at 675; but see Regan, 461 U.S. at 544 (“A tax exemption has much the same effect
as a cash grant to the organization of the amount of tax it would have to pay on its income.”
Thus, tax exemptions are similar to subsidies). See supra notes 108-131 and accompanying
text.
149 Walz, 397 U.S. at 675.
150 Id. As Justice Brennan stated in his concurring opinion:
Tax exemptions and general subsidies, however, are qualitatively different. Though
both provide economic assistance, they do so in fundamentally different ways. A sub-
sidy involves the direct transfer of public monies to the subsidized enterprise and
uses resources enacted from taxpayers as a whole. An exemption, on the other hand,
invokes no such transfer. It assists the exempted enterprise only passively, by relieving
a privately funded venture of the burden of paying taxes.
Id. at 690 (Brennan, J., concurring) (footnotes omitted).
151 Id. at 675; see also Schachner, Religion and the Public Treasury After Taxation With
Representation of Washington, Mueller and Bob Jones, 1984 Utah L. Rev. 275, 284-85
152 A prime example would be property taxes. See Marshall & Blomgren, Regulating Reli-
gious Organizations Under the Establishment Clause, 47 Ohio St. L.J. 293, 329 (1986);
Note, supra note 49, at 184; see also NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 507
(1970) (schools that teach both religious and secular class material do not fall within juris-
diction of NLRB due to establishment clause).
3. Government’s Purpose Behind Religious Tax Exemptions

There are many purposes behind religious tax exemptions. One such purpose reflects governmental concern about their potential abuse by charities. As mentioned, Congress was worried that charities would use tax-deductible sums to finance the expression of their personal concerns.183 These apprehensions were eased by Treasury Regulation 1.501(c)(3)-1, which denies tax-exempt status to organizations engaged in substantial lobbying for particular legislation.184

In *Walz*, Justice Brennan, in his concurring opinion, discussed the government’s basic purposes for property tax exemptions to religious groups. Justice Brennan reasoned that religious organizations are exempt from property taxes because the groups “contribute to the well-being of the community in a variety of nonreligious ways . . . .”185 A religious community will often use the same personnel and resources for secular and religious functions.186 The people who gather in religious facilities for worship may also participate in sporting or charity events in those facilities.187 Justice Brennan reasoned that the organizations alleviate the government’s duty to support the religious activities, a duty that would have to be met through taxation. In the alternative, Justice Brennan stated, if the activities were left unsupported, the community would suffer.188

Another legislative purpose behind property tax exemptions to religious organizations is based on the belief that the organizations “uniquely contribute to the pluralism of American society by their religious activities.”189 Justice Brennan reasoned that the government may extend property tax exemptions to religious institutions, for “each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society.”190

These legislative purposes were not designed to impose religious activities into a secular atmosphere, unlike, for example, laws promoting prayer in public schools.191 Justice Brennan reasoned that property tax exemptions do not promote any particular activity of religious organizations, but merely assist such organizations in exchange for their positive impact on American society “by leaving each free to come into existence,
then to flourish or wither, without being burdened by real property taxes.”

Again, the Walz Court’s analysis concerning property tax exemptions for religious institutions would seem to apply to the general tax exemptions of those organizations. In addition to the benefit the public receives from the religious organization, tax exemptions are granted because the relief from using public funds to support those benefits actually has the effect of compensating the government for services it would otherwise be forced to provide. The limitations concerning lobbying in the Treasury Regulations, however, stem from the Congressional policy that the government should not subsidize substantial activities intend to influence legislation or to affect politics.

Indeed, as the Regan Court stated: “Congress . . . has the authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying . . . .” Because the legislative history points to the fact that Congress wanted to avoid exempt organizations using tax-deductible contributions to lobby, and because there is no doubt as to Congress’ authority to enact a statute such as section 501(c)(3), it follows that Congress might logically decide that charities could not engage in political lobbying and remain tax-exempt at the expense of non-exempt taxpaying political organizations.

B. The Fifth Amendment

The fifth amendment to the United States Constitution provides in part: “No person shall . . . be deprived of life, liberty, or property, without due process of law.” Those who protest against section 501(c)(3) have alleged that the statute arbitrarily discriminates in favor of religious organizations. Basically, fifth amendment challenges to the statute have

163 Id. (Brennan, J., concurring). The supplying of such teaching materials, it was determined in Walz, was not manifesting any legislative purpose to aid a religion. Instead, that aid was merely seen as an accommodation to religion. Id. at 671-72 (Brennan, J., concurring).
165 Christian Echoes, 470 F.2d at 854.
166 See supra notes 108-129 and accompanying text.
167 Regan, 461 U.S. at 550.
168 See 78 Cong. Rec. 5861, 5959 (1934).
169 See Regan, 461 U.S. at 550.
170 See id.
171 U.S. CONST. amend. V.
172 See Christian Echoes, 470 F.2d at 857; supra notes 94-107 and accompanying text; see also Regan, 461 U.S. at 546; Americans United, Inc. v. Walters, 477 F.2d 1169, 1181 (D.C.)
been dismissed because there is a reasonable relationship to a proper government objective.\textsuperscript{178}

In \textit{Walz}, Justice Brennan's concurring opinion discussed the government's two secular purposes for granting property tax exemptions to religious groups.\textsuperscript{179} First, religious groups strengthen the community in a variety of nonreligious ways, including bearing burdens ordinarily assumed by the government.\textsuperscript{174} Second, the government grants religious organizations tax exemptions because they characteristically augment the pluralism of American society by their religious endeavors.\textsuperscript{175}

In \textit{Christian Echoes}, the ministry complained that the government had arbitrarily and intentionally revoked its tax-exempt status.\textsuperscript{176} The court held that the taxpayer did not meet its burden of proving it was discriminated against based on religion, race, politics, or any other classification, and dismissed the complaint.\textsuperscript{177} The fact that the Commissioner did not revoke the tax-exempt status of an organization similar to the Christian Echoes ministry did not amount to a fifth amendment violation.\textsuperscript{178}

The organization in \textit{"Americans United," Inc. v. Walters},\textsuperscript{179} was incorporated as "Protestants and Other Americans for Separation of Church and State."\textsuperscript{180} The organization's tax-exempt status was revoked because the organization devoted a substantial part of its activities to influencing public opinion, and worked to repeal aid to private schools and prevent aid to church schools.\textsuperscript{181} The plaintiffs argued that their fifth amendment rights were violated because larger, wealthier organizations could expend the same amount of time and money for activities which

\textsuperscript{172} \textit{See}, e.g., Regan, 461 U.S. at 548; Americans United, 477 F.2d at 1181; Christian Echoes, 470 F.2d at 857.
\textsuperscript{173} \textit{Walz}, 397 U.S. at 687 (Brennan, J., concurring).
\textsuperscript{174} \textit{See id.} at 687-88 (Brennan, J., concurring); \textit{Note, The Tax Code's Differential Treatment of Lobbying Under Section 501(c)(3): A Proposed First Amendment Analysis}, 66 Va. L. Rev. 1513, 1514-15 (1980) (Congress exempted religious charities from federal taxation in belief that such organizations would perform valuable public services); \textit{see also Christian Echoes}, 470 F.2d at 854; H.R. REP. No. 1860, 75th CONG., 3d Sess. 19 (1939) ("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 . . .").
\textsuperscript{175} \textit{Walz}, 397 U.S. at 689 (Brennan, J., concurring); \textit{see also supra} notes 159-162 and accompanying text.
\textsuperscript{176} Christian Echoes, 470 F.2d at 857; \textit{see supra} notes 94-107 and accompanying text.
\textsuperscript{177} Christian Echoes, 470 F.2d at 857.
\textsuperscript{178} \textit{Id.} at 857-58.
\textsuperscript{180} \textit{Id.} at 1172.
\textsuperscript{181} \textit{Id.}
might be classified as lobbying, yet would pass the "substantial activity" test because these activities are insubstantial in relation to the organization's size.\textsuperscript{188}

The District of Columbia Circuit Court of Appeals reversed and remanded the case in order to determine whether the plaintiff was discriminated against.\textsuperscript{189} The court, however, expressed no opinion on the merits of the fifth amendment claim,\textsuperscript{190} and the case was ultimately resolved on jurisdictional grounds.\textsuperscript{186}

This \textit{de facto} distinction between large and small tax-exempt organizations, and the fact that "substantial" has never been defined with respect to religious organizations,\textsuperscript{188} may provide those who wish to attack tax exemptions for religious organizations with a fifth amendment basis to do so. Because there are many purposes behind religious tax exemptions,\textsuperscript{187} it seems unlikely that courts will find a constitutional violation. In light of \textit{Cammarano},\textsuperscript{188} religious organizations who lobby for legislation might not unconstitutionally be denied tax-exempt status, but may be forced to pay for their lobbying activities as with other groups.\textsuperscript{189}

The complaint in \textit{Regan}\textsuperscript{190} centered on section 501(c)(19), which gives veterans' organizations tax-exempt status no matter how much they lobby.\textsuperscript{191} The plaintiff argued that because Congress chose to grant tax exemptions to certain lobbying groups, not the plaintiff's, a fifth amendment violation existed.\textsuperscript{192}

Generally, a non-suspect statutory class will not violate an individual's fifth amendment rights if the class is rationally related to a legitimate government purpose.\textsuperscript{193} The \textit{Regan} Court found that the statute in question was not intended to suppress any thoughts or actions, or create any suspect classifications.\textsuperscript{194} The Court stated: "The distinction between veterans' organizations and other charitable organizations is not at all like distinctions based on race or national origin."\textsuperscript{195} The \textit{Regan} Court dismissed a strict scrutiny test because the "legislature's decision not to

\begin{footnotesize}
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\item \textsuperscript{188} Id. at 1173, 1181-83.
\item \textsuperscript{189} Id. at 1181-83.
\item \textsuperscript{190} Id. at 1183.
\item \textsuperscript{187} See supra notes 69-80, and accompanying text.
\item \textsuperscript{188} See supra notes 158-162, 173-175 and accompanying text.
\item \textsuperscript{189} See supra notes 84-93 and accompanying text.
\item \textsuperscript{190} See \textit{Cammarano}, 358 U.S. at 513.
\item \textsuperscript{191} See supra notes 108-131 and accompanying text.
\item \textsuperscript{192} \textit{Regan}, 461 U.S. at 546.
\item \textsuperscript{193} Id. at 547.
\item \textsuperscript{194} Id.; see also \textit{Harris v. McRae}, 448 U.S. 297, 322 (1980).
\item \textsuperscript{195} \textit{Regan}, 461 U.S. at 548.
\item \textsuperscript{196} Id.
\end{itemize}
\end{footnotesize}
ABORTION AND TAX EXEMPTIONS

subsidize the exercise of a fundamental right does not infringe that right.

The plaintiffs still enjoyed their constitutional rights and could lobby. Congress could rationally "subsidize" lobbying by veterans' organizations due to their service to the United States, because rewarding such service was seen as a legitimate governmental purpose.

C. Vagueness of Section 501(c)(3) and its Regulations

Attacks have been made on section 501(c)(3) on grounds of vagueness. The focus of the discussion centers on the meaning of the term "substantial." Similar ambiguities appear to stem from phrases such as "carrying on propaganda," "attempting to influence legislation," and "participate in . . . any political campaign." The result is that a religious organization is left without any guidelines as to what they can do, and thus, their first amendment rights may be impaired.

When the exercise of a first amendment right is involved, the standards of judging a vague law are narrow. The concerns over vagueness center on giving proper notice, so the organization affected by the law will be informed of the statute's meaning. Secondly, a statute must contain explicit guidelines for the purpose of avoiding arbitrary and discriminatory law enforcement.

In United States v. Big Mama Rag, the plaintiff, a feminist organization, was denied tax-exempt status because the newspaper it published as its primary activity was an ordinary commercial concern, although it served as a vehicle for promoting plaintiff's social and political viewpoints as well as what plaintiff considered the "virtues" of lesbianism. Plaintiff challenged the use of the term "educational" in the treasury regulations as unconstitutionally vague. The Court of Appeals for the District

194 Id. at 549 (citing Buckley v. Valeo, 424 U.S. 1 (1976)); see also Maher v. Roe, 432 U.S. 464, 470 (1977) (equal protection clause of fourteenth amendment did not require state participating in medicaid program to pay expenses incident to non-therapeutic abortions).


196 Regan, 461 U.S. at 550-51; see also, Note, supra note 70, at 355.

197 See supra notes 69-80, 187-199 and accompanying text.

198 See, e.g., Schwarz, supra note 36, at 77.

199 See id.

200 Big Mama Rag v. United States, 631 F.2d 1030, 1035 (D.C. Cir. 1980).


203 631 F.2d 1030 (D.C. Cir. 1980).

204 Id. at 1032-33.

205 Id. at 1035.
of Columbia Circuit found that the term "educational" did not depend on the nature of the organization or the strength of its language.\textsuperscript{208} The court concluded that while the I.R.S. did not discriminate on the basis of sexual preference,\textsuperscript{209} the definition of "educational" was not specific enough to pass constitutional muster.\textsuperscript{210}

The definition of the term "substantial" has also been challenged.\textsuperscript{211} While Congress tried to quantify the meaning of "substantial" by enacting section 501(h),\textsuperscript{212} Congress excluded religious organizations.\textsuperscript{213}

The Supreme Court has not yet considered the vagueness of any part of section 501(c)(3) or its regulations.\textsuperscript{214} It seems unlikely, however, that the statute will be struck down on vagueness grounds, as its constitutionality has previously been upheld on other first and fifth amendment challenges.\textsuperscript{215}

V. STANDARD OF REVIEW

Courts have not agreed on a proper standard for review of lobbying restrictions.\textsuperscript{216} In Taxation With Representation of Washington v. Regan,\textsuperscript{217} the circuit court majority adopted a "heightened" or mid-level scrutiny test,\textsuperscript{218} while the dissent forwarded a "rational basis" test.\textsuperscript{219} The Supreme Court later reversed, holding that the rational basis test applied.\textsuperscript{220} In Taxation With Representation v. United States,\textsuperscript{221} a rational basis test was discussed by the majority,\textsuperscript{222} while Judge Winter, dissenting in part, spoke of an "exacting scrutiny" test.\textsuperscript{223}

A statute will be subject to a "strict scrutiny" test if it impairs upon a fundamental constitutional right or discriminates against a suspect class. A statute not burdening a suspect or quasi-suspect class or interfer-

\textsuperscript{208} Id. at 1038-39.
\textsuperscript{209} Id. at 1039.
\textsuperscript{210} Id. at 1039. The circuit court reversed the district court's decision and remanded the case so the district court could apply a standard other than the "full and fair exposition" test. Id. at 1039-40. The case, however, was settled out of court.
\textsuperscript{211} See supra notes 69-90, 186-198 and accompanying text.
\textsuperscript{213} See id. § 501(h)(5).
\textsuperscript{214} See, Schwarz, supra note 36, at 77.
\textsuperscript{215} See, e.g., Regan, 461 U.S. at 549.
\textsuperscript{216} See Note, supra note 70, at 348.
\textsuperscript{218} Id. at 723-24, 728-30.
\textsuperscript{219} Id. at 757 (MacKinnon, J., dissenting).
\textsuperscript{220} See Regan, 461 U.S. 540, 547 (1983).
\textsuperscript{221} 585 F.2d 1219 (4th Cir. 1978), cert. denied, 414 U.S. 905 (1979).
\textsuperscript{222} Id. at 1224.
\textsuperscript{223} Id. at 1225 (Winter, J., concurring in part and dissenting in part).
ing with a fundamental right will pass constitutional muster, however, if it is rationally related to a legitimate government interest.\textsuperscript{224} The \textit{Regan} Court held that the lobbying restrictions at issue did not interfere with fundamental individual rights.\textsuperscript{225} The Court reasoned that although an individual has a fundamental right to lobby under the first amendment, Congress has no obligation to fund that right,\textsuperscript{226} and a strict scrutiny test was unnecessary.\textsuperscript{227} The \textit{Regan} Court relied in part on \textit{Harris v. McRae},\textsuperscript{228} which upheld the constitutionality of legislation denying federal funding for abortions or abortion counseling.\textsuperscript{229} The \textit{Harris} Court held that although a woman may have a right to an abortion under \textit{Roe v. Wade}, the government is under no obligation to fund that abortion.\textsuperscript{230}

The \textit{Regan} Court held that the lobbying restrictions of section 501(c)(3)\textsuperscript{231} and its regulations do not infringe upon any such classification.\textsuperscript{232} Indeed, as the \textit{Walz}\textsuperscript{233} Court stated, the legislature “has not singled out one particular church or religious group[.] . . . [R]ather, it has granted exemption [from property taxes] to all houses of religious worship. . . .”\textsuperscript{234} The appropriate test, therefore, must be whether the statute and regulations have a rational relation to a legitimate government objective.\textsuperscript{235}

As previously explained, there are many legislative purposes behind the policy of allowing religious groups to remain tax-exempt.\textsuperscript{236} In the A.R.M. scenario, courts have held that I.R.C. section 501(c)(3) and Treasury Regulation 1.501(c)(3)-1 are rationally related\textsuperscript{237} to a legitimate gov-

\textsuperscript{225} See \textit{Regan}, 461 U.S. at 548-49.
\textsuperscript{226} Id. at 548.
\textsuperscript{227} Id. at 548-49. “The distinction between veterans’ organizations and other charitable organizations is not at all like distinctions based on race or national origin.” Id. at 548. A “heightened scrutiny” test, one which falls between the “strict scrutiny” and “rational relation” tests, is similarly unnecessary. See \textit{Kadrmas}, 487 U.S. at 457-58. The heightened scrutiny test has been applied in cases which involved classifications based on sex, religion, race or unacceptable distinctions. Id.; see also \textit{Christian Echoes}, 470 F.2d at 857.
\textsuperscript{228} See \textit{Regan}, 461 U.S. at 547.
\textsuperscript{229} See \textit{Harris}, 448 U.S. at 322.
\textsuperscript{230} See supra notes 47-80 and accompanying text.
\textsuperscript{231} Cf. \textit{Christian Echoes}, 470 F.2d at 857.
\textsuperscript{232} See supra notes 139-151 and accompanying text.
\textsuperscript{233} Walz, 397 U.S. at 673.
\textsuperscript{234} See \textit{Kadrmas}, 487 U.S. at 461-62.
\textsuperscript{236} Social and economic legislation like the statute and regulations at issue carry “a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality.” \textit{Kadrmas}, 487 U.S. at 462 (quoting \textit{Hodel v. Indiana}, 452 U.S. 314, 331-32
vironmental interest. Therefore, as the Regan Court held, section 501(c)(3) does not violate the first and fifth amendments.

VI. THE A.R.M. CHALLENGE AND SIMILAR PROBLEMS

Any future first amendment attack on section 501(c)(3)'s constitutionality will probably fail, because of the precedents set in Cammarano, Christian Echoes, Walz, and Regan. Those courts held that while section 501(c)(3) appeared on the surface to favor the free speech and petition rights of certain organizations over those of other similar entities, possibly impairing the latter's financial well-being, after applying the appropriate legal analysis, the first amendment was not offended.

Fifth amendment equal protection allegations may prove to be challenges to section 501(c)(3)'s constitutionality due to the legislature's failure to define "substantial." It presently appears that section 501(c)(3) does not violate the fifth amendment, because courts have held its enforcement does not discriminate against any specific group and that the government has a legitimate purpose for allowing certain organizations, including religious organizations, to remain tax-exempt.

Organizations that have had their tax-exempt status revoked clearly devote a large part of their finances and activities toward what may properly be characterized as political propagandizing. Again, the fact that lobbying may be a substantial part of an organization's activities while the same amount of such activity would be insubstantial to a larger organization will probably not sustain a fifth amendment challenge.

Tax-exempt organizations, even those with a religious mission, should nevertheless be careful about becoming embroiled in what are essentially political campaigns. Section 501(c)(3) states that religious orga-
nizations must not significantly participate in, or intervene in, the sphere of public politics. Even though tax exemptions for religious organizations have existed for years,\textsuperscript{247} that fact alone is not an impenetrable defense to an attack based upon specific conduct.

VII. CONCLUSION

Courts have not been afraid to uphold the revocation of an organization's tax exemption when its activities blatantly violate section 501(c)(3). Activities including the widespread distribution of propaganda,\textsuperscript{248} large efforts to influence a political candidate's campaign through money\textsuperscript{249} and the media,\textsuperscript{250} and intense political lobbying\textsuperscript{251} have been easy targets for the Internal Revenue Service.

The recent hiring of a public relations firm by the Church to promote its position against abortion might conceivably lead to a reevaluation of its tax-exempt status. Although the issue of abortion transcends mere politics and goes to the heart of Roman Catholic philosophy, as a social phenomenon, the issue has become increasingly politicized. The five million dollars the Church anticipates to spend in its mission against abortion, although not substantial in relation to the Church's entire budget, would probably be a factor in a reconsideration of its section 501(c)(3) status, especially if increased expenditures and other actions are taken in the future.

One forum in which viewpoints on politically charged issues such as abortion could be presented without endangering a religious organization's tax-exempt status is an obvious one—its individual houses of worship. An aggressive attempt to enter the political arena on the abortion (or any other politicized issue) may create difficulties in maintaining an organization's basic federal tax exemption. The real responsibility lies with Congress, as a legislative reexamination of the scheme of lobbying is warranted. Congress can start by proposing specific guidelines to define the term "substantial." Exempt organizations will then be confident that a particular level of activity can be carried on without financial hazard, and non-exempt organizations will know when a suit to challenge an organization's tax-exempt status may be appropriate.

\textsuperscript{247} See \textit{Walz}, 397 U.S. at 667.
\textsuperscript{248} See \textit{Slee}, 42 F.2d at 185.
\textsuperscript{249} See \textit{Church of Scientology}, 823 F.2d at 1312-13.
\textsuperscript{250} See \textit{Christian Echoes}, 470 F.2d at 852, 854.
\textsuperscript{251} See \textit{Regan}, 461 U.S. at 545; \textit{"Americans United"}, 477 F.2d at 1180.