From:	Mark Goldberg
To:	Preston Christie A
Subject:	Comment Request for Form 990
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September 11, 2015

To Whom it May Concern:
I am writing in response to the request for comment on the 990 filing requirement for certain non-profits by the Internal Revenue Service and the Treasury Department. I write for myself nd my husband Christopher E. Smith.

We understand that the IRS and Treasury Department have asked whether the collection of 990 information "is necessary for the proper performance of the functions of the [IRS]," including whether the information has "practical utility." The IRS and Treasury Department have also asked for "ways to enhance the quality, utility, and clarity" of the 990 information collected. we agree with the Freedom From Religion Foundation on its salient points on this topic!

Allowing churches and related church groups to enter political action yet remained untaxed is a form of tyranny and illegal under many laws further pacing unequal treatment
and the burden on secular non-profits. While the IRS places significant burdens on educational and charitable non-profit
organizations, churches are exempt from reporting requirements. The organizations that do the most good and provide concrete benefits to society have to spend significant resources to prepare and submit 990 informational returns. At the same time, churches and religious organizations evade even minimal reporting requirements.
All other groups must file "an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe." 26 U.S.C. §6033(a)(1). Churches and religious organizations are exempt from these requirements. This discrepancy amounts to a governmental advancement and endorsement of religion, specifically churches, over nonreligion.

Requiring all other 501(c)(3) groups to file 990 returns, while religious organizations are exempt by default, means churches are given special, favored status. It is well settled that religion must not be treated more favorably than non-religion. See County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 592 (1989); See also Engel v. Vitale, 370 U.S. 421, 436 (1962); Wallace v. Jaffree, 472 U.S., 38, 60; Edwards v. Aguillard, 482 U.S. 578, 593 (1987); School Dist. of Grand Rapids v. Ball, 473 U.S. 373, 389–392 (1985); Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 17 (1989); Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires that government ... effect no favoritism among sects or between religion and nonreligion").
The unequal treatment by the IRS of secular 501(c)(3) organizations is not just limited to the 990. These organizations also must file Form 1023 and pay onerous one-time fees just for the privilege of applying for non-profit status. Churches are exempt. This disparate treatment puts major barriers in the way of numerous education and charitable organizations.

Recommendation: The IRS's oversight over 501(c)(3) organizations must be equally enforced to satisfy the First Amendment. As it stands, any IRS enforcement of 990 informational return requirements against secular 501(c)(3) groups would violate the Establishment Clause of the First Amendment as well as the Equal Protection Clause of the Fourteenth Amendment.
990 exemptions granted to churches are overinclusive

The IRS is given the responsibility of enforcing the tax laws of this country. It relies heavily on information provided in the annual Form 990. The IRS would afford greater protection to the public by limiting exemptions to the 990 filing requirement to the fewest entities possible. Construing statutory exemptions for churches in a narrow fashion not only allows the IRS to do its job, it will put all those taking unlawful advantage of this system on notice.

There is a serious risk that people will take advantage of any regulatory vacuum that exists for personal gain. Those who are less scrupulous seek out gaps and exploit gaps in the law. The loophole for churches is an easy means to abuse the tax system. The threat of enforcement, the simple knowledge that someone is watching, is often enough to curb illegal activity.

This has occurred numerous times!

This lack of oversight and accountability not only discriminates against non-church non-profits, but encourages precisely the kind of scams and crime that the IRS seeks to stop and prevent. It encourages predators, con artists, and those who, in the name of religion, would prey on the most devout. “Church status” should not be a camouflage or cover for religiously themed scams. If Rev. Jim Jones and his ministry had been required to account for the donations, armaments, and government payment for foster children, etc., it could well have averted the Jonestown massacre. Only religious ministries are granted the ability to evade accountability for their tax-exempt donations.

But generally, the danger is simpler: Where public subsidy goes, public accountability should follow. Tax exemption is a privilege and an enormous benefit, subsidized by the public. Any group that seeks and maintains tax-exemption should not only be required to account to the public for this subsidy, but should be delighted to fill out such a form. The inaptly and ironically named Evangelical Council for Financial Accountability, and many other religious organizations, instead argue for ever more privilege and ever less public accountability. Notably, an ECFA commission is lobbying Congress for the right of churches, which are already failing to report to the public on their tax-exempt finances, to engage in partisan politicking from the pulpit while retaining tax exemption —setting up a scenario that would make Citizens United look like child’s play. Such action would turn churches into political money-laundering operations, with absolutely no public accountability for tax-exempt donations used for partisan political purposes, since churches are exempt from filing regulations.

The IRS is complicit in allowing abuse of the church exemption to the 990 filing requirement. It seems that the IRS has given little attention to entities that proclaim they are churches and do not file Form 990, but are not actually “churches, their integrated auxiliaries, and conventions or associations of churches” or are “the exclusively religious activities of any religious order.” Because of lacking accountability measures, the public has no means to verify what organizations would even claim church status.

Recommendation: The IRS should at least implement a bare bones process requiring entities claiming exemption from the 990 filing requirement to inform the IRS through a letter (or via a prescribed form). This would be similar to federal regulations requiring employers to notify the government if they seek exemption from contraceptive coverage requirements under the Affordable Care Act.
The IRS may implement administrative regulations that impact
entities claiming to be religious non-profits
Administrative regulations that apply to religious entities are both sound and constitutionally permissible. Because organizations claiming to be religious have never been required to comply with any tax accountability measures, it can be expected that they will oppose any changes to the Internal Revenue Code. While this opposition may

be expected, as a legal matter, it is settled that the IRS may require religious entities receiving tax-exempt status to follow administrative procedures.
Tax exemption is a privilege, not a right. Strings can be attached to that privilege without violating the Constitution. See, e.g., Murdoch v. Pennsylvania, 319 U.S. 105, 130 (1943); Walz v. Tax Comm'n, 397 U.S. 664 (1970); Bob Jones Univ v. United States, 461 U.S. 574 (1983); Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989); Jimmy Swaggert Ministries v. Bd. of Equalization, 493 U.S. 378 (1990). In Jimmy Swaggert Ministries, the Supreme Court specifically stated that the Free Exercise Clause does not require governments to exempt churches from generally applicable taxes. 493 U.S. at

392. Similarly, requiring all 501(c)(3) organizations, including churches, to either fill out Form 990 or inform the IRS of a claimed exemption, is constitutional.
Government regulation of the purely non-religious aspects of a religious organization has never been held to violate the Lemon test. For instance, in Troy and Susan Alamo Found. v. Secretary of Labor, the Court considered whether the Fair Labor Standards Act (FLSA) – which required religious organizations to keep and disclose records "of … persons employed…[along with] their wages, [and] hours" constituted excessive entanglement. 471 U.S. 290, 305 (1985). Such requirements, the Court found, "do not pose an intolerable risk of government entanglement with religion"

Id est: The Establishment Clause, they continued, "does not exempt religious organizations from such secular governmental activity as fire inspections and building and zoning regulations…and the recordkeeping requirements of the [FLSA], while perhaps more burdensome in terms of paperwork, are not significantly more intrusive into religious affairs." Id.The "burden" placed on churches by requiring the filing of a Form 990 or notice of claimed exemption is both minimal and justified. If the payment of a generally applicable tax "imposes no constitutionally significant burden" on religion, than it can hardly be said that gathering tax information is a substantial burden. Jimmy Swaggert Ministries 493 U.S. at 392. "Even a substantial burden would be justified by the 'broad public interest in maintaining a sound tax system' free of 'myriad exceptions flowing from a wide variety of religious beliefs.'" Hernandez v. Comm'r, 490 U.S. 680, 699-700 (1989)(quoting United States v. Lee, 455 U.S. 252, 260 (1982).) The true burden will be on illegal operations. Lawful churches would have to minimally report that they are claiming an exemption or file a 990 Form that all other non-profits must complete on an annual basis.

SO, IN CONCLUSION
The IRS needs to take a broad view when examining requirements that force only some non-profits to file costly and burdensome 990 informational returns. While the ultimate solution is for Congress to take notice and make legislative changes, the IRS must not continue to discriminate against secular non-profits. A more complete examination of the 990 return requires the IRS to start treating all non-profits the same. At a minimum, the IRS should require any organizations that claim to be religious organizations exempt from 990 filing requirements to file an annual notice with the IRS that they exist and are claiming the exemption. Ultimately, FFRF and its members look forward to the day when our government stops discriminating against secular non-profit organizations.
Respectfully, Sincerely,

Mark H. Goldberg and Christopher Smith