

WHY CHURCHES CANNOT ENDORSE OR OPPOSE POLITICAL CANDIDATES

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Churches cannot favor or oppose particular candidates for political office. The ban on electioneering has nothing to do with the First Amendment or Jeffersonian principles of separation of church and state. Instead, the ban is based on a provision in the 1954 tax reform act prohibiting all tax-exempt organizations from supporting or opposing political candidates. I show that the provision grew out of the anti-communist frenzy of the 1950s and was directed at right-wing organizations such as Facts Forum and the Committee for Constitutional Government. It was introduced by Lyndon Johnson as part of his effort to end McCarthyism, protect the loyalist wing of the Texas Democratic Party, and win reelection to the Senate in 1954. I also discuss the implications these findings have for contemporary church policy.

It is a well-known fact that churches cannot endorse or oppose political candidates (Kelley, 1977). But, why can't churches favor some candidates and oppose others?

The ban on electioneering has nothing to do with the First Amendment or Jeffersonian principles of separation of church and state. The First Amendment speaks of religious freedom; it says nothing that would preclude churches from aligning themselves with or against candidates for political office (Alley, 1988; Hertzke, 1988; 1992; Finke and Stark, 1992). The courts also have never used Thomas Jefferson's celebrated 1802 metaphor about "a wall of separation between church and state" to stifle churches' support of or opposition to political candidates (Padover, 1943:518-519; Bedell, Sandon, and Wellborn, 1982:70-133).

From a constitutional perspective, then, American churches have had every right to endorse or oppose political candidates. They have not participated in all elections, but they have been actively involved in some. For example, many Protestant churches and church leaders delivered sermons and published religious literature opposing Al Smith's bid to become the nation's first Catholic president in the 1928 (Graham, 1945:181; 198-201; Moore, 1956: 145-200). Constitutional principles have not changed since 1928. Churches still have a constitutional right to endorse or oppose political candidates.¹

If the electioneering ban is not rooted in the constitution, what is it based on? The reason churches cannot endorse or oppose political candidates is that churches are tax-exempt organizations and must abide by the Internal Revenue Code. Under section 501(c)(3) of that code,² churches are exempt from income tax and are entitled to receive tax-deductible contributions from members and other donors.³ As 501(c)(3) organizations, churches must comply with IRS rules

(Godfrey, 1983; Lashbrooke, 1985; Hopkins, 1992). One IRS rule specifically states that an organization under its provisions:

... 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 (Internal Revenue Code, 1996, Volume 1:856).

Thus, if churches come out in favor of or opposition to a particular candidate, they can lose their tax-exempt status. When the Church at Pierce Creek in Vestal, New York, published an anti-Clinton ad in a national newspaper, it lost its tax-exempt status (Stan, 1996:16). Americans for Separation of Church and State also has filed complaints with the IRS against several churches, including Second Baptist Church in Houston, Texas (e.g., Stan, 1996:3). The Second Baptist Church case revolves around the congregation's voter education program, called the Nehemiah Project, which critics claim actually endorses particular candidates and opposes others.

Given the importance of the IRS ban on electioneering and its implications for churches' role in American political life, I wondered about its origin. When did the electioneering ban become part of the federal tax code? What were the social circumstances under which it was developed? Who introduced the ban, and why?

My search for answers to these questions indicates that the ban on electioneering is rooted in the partisan political climate of the 1950s. In an effort to combat McCarthyism and anti-communist organizations that he believed threatened his re-election in 1954, Lyndon Johnson introduced a tax reform amendment preventing all section 501 (c) (3) tax-exempt organizations from endorsing or opposing political candidates. Though Johnson was mostly concerned about right-wing political groups such as Facts Forum and the Committee for Constitutional Government, he worded his amendment so it would apply to all section 501 (c) (3) tax-exempt groups. Thus, the electioneering ban applies to churches because they share the same tax-exempt status as the political groups Johnson was really after — not because of anything having to do with religion or churches per se.

In the next three sections, I present evidence concerning the role that tax reform, McCarthyism, and Texas politics played in the ban on electioneering. After presenting evidence relating to each of these issues, I discuss the implications my findings have for religion scholars and church leaders.

TAX REFORM

The U.S. Senate was considering a major overhaul of the federal tax code in 1954. On July 2, Texas Senator Lyndon Baines Johnson asked to be recognized. Here's what happened next (*Congressional Record*, July 2, 1954:9604; *New York Times*, July 3, 1954:6):

Mr. JOHNSON of Texas. Mr. President, I have an amendment at the desk, which I should like to have stated.

The PRESIDING OFFICER. The Secretary will state the amendment. The Chief Clerk. On page 117 of the House Bill, in section 501 (c) 3, it is proposed to strike out "individuals, and" and insert "individual," and strike out "influence legislation," and insert "influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Mr. JOHNSON of Texas. Mr. President, this amendment seeks to extend the provisions of section 501 of the House bill, denying tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office. I have discussed the matter with the chairman of the committee, the minority ranking member of the committee, and several other members of the committee, and I understand that the amendment is acceptable to them. I hope the chairman will take it to conference, and that it will be included in the final bill which Congress passes.

Mr. MILLIKIN. Mr. President, I am willing to take the amendment to conference. I understand from the minority leader that the distinguished Senator from Georgia [Mr. George] feels the same way about it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas [Mr. Johnson].

The amendment was agreed to. The whole thing was over in a matter of minutes. There was no discussion, and the amendment passed on voice vote.⁴

Why would LBJ introduce such an amendment? There is no reason to believe the amendment had anything to do with churches and their political activities. In personal correspondence with Halloran (1996), George Reedy — Johnson's chief aide in 1954 — said he is "confident that Johnson would never have sought restrictions on religious organizations. . . ." I also find no evidence that Johnson's amendment was specifically directed at religious organizations.

Johnson's amendment was a product of the anti-communist frenzy of the 1950s. It was prompted by Johnson's desire to challenge McCarthyism, protect the liberal wing of the Democratic Party in Texas, and win reelection. His amendment was directed at right-wing groups such as Facts Forum and the Committee for Constitutional Government, which championed anti-communist causes and candidates at the national level and in Texas. The cumulative effect of their political activities, and a nearly incredible convergence of circumstances in 1954, triggered Johnson's amendment banning support of political candidates by tax-exempt organizations.⁵

McCARTHYISM

In the early 1950s, Senator Joseph R. McCarthy, Republican of Wisconsin, led an effort to identify communists in government and other spheres of American life (Schrecker, 1994). One expression of McCarthyism was the formation of a House of Representatives Special Committee to Investigate Tax-Exempt Foundations. The committee was chaired by Republican Carroll Reece of Tennessee. Though

Wayne Hays, Democrat of Ohio, had opposed the formation of the Special Committee, he wound up being its ranking Democratic member. As Republicans on the committee pursued investigations of foundations such as Carnegie, Ford, and Rockefeller (which they felt were peddling left-wing propaganda), Hays looked into a relatively new group called Facts Forum (which he thought was peddling right-wing propaganda).

Facts Forum

One of the first references to Facts Forum was an eight-part series which reporter Ben H. Bagdikian published in the Providence morning *Journal* and evening *Bulletin* in January 1954 (and which was excerpted in the February 16, 1954 issue of *The Reporter*). Bagdikian learned that Facts Forum was created in 1951 by H.L. Hunt, at that time a relatively unknown oil millionaire who believed that communism was a real threat to the American way of life. Hunt personally put up 95 percent of the start-up money. Facts Forum was a tax-exempt organization and claimed that "No substantial part of the activities of Facts Forum shall ever be carrying on propaganda, or otherwise attempting to influence legislation" (*The Reporter*, February 16, 1954:27). However, Bagdikian found that it actually promoted Hunt's views that "the Democratic Party, except for its Dixiecrat wing, is the instrument of socialism and Communism and that the Republican Party as presently constituted displays dangerously radical tendencies" (*The Reporter*, February 16, 1954:22).

Facts Forum promoted these views in a variety of ways. It produced radio and television programs called "Facts Forum," "State of the Nation," and "Answers for Americans." When these shows presented "both sides" of an issue, Bagdikian said, one side included "liberal, moderate, and conservative views, the 'other side' being 'the extremist Right'" (*The Reporter*, February 16, 1954:20). These shows were carried by 222 radio stations and about 58 television stations, which provided over a million dollars worth of free airtime because the shows were considered "public service" programs. Facts Forum also had a monthly newsletter, *Facts Forum News*, which had a circulation of at least 60,000 and perhaps over 100,000. It also published a so-called public opinion poll, full of "loaded" questions and responses expressing Forum members' views, not the views of any representative sampling of Americans. The poll's results were sent to all members of the Congress, 1,800 newspapers, and 500 radio stations. The Forum also created a national library of recommended books, the vast majority of which expressed very "isolationist, ultra-conservative" worldviews (*The Reporter*, February 16, 1954:21); paid selected citizens considerable money to write "letters-to-the-editor" of *Facts Forum News* expressing anti-communist viewpoints; and organized neighborhood discussion groups encouraging citizens to write letters to local newspapers expressing similar views.

With regard to partisan politics, Hunt had supported Republican Senator Robert Taft in 1951, then cast the sole vote for General Douglas MacArthur at the 1952 Republican convention, but finally endorsed Eisenhower (Hill, 1994). He also was a close friend of Senator Joseph McCarthy. Bagdikian learned that

“at least three McCarthy aides were instrumental in organizing a Facts Forum television series, and there is evidence that McCarthy receives favored treatment in Facts Forum programs” (*The Reporter*, February 16, 1954:23). The aides were Jean Kerr (McCarthy’s former assistant and then his wife), Robert E. Lee (one of McCarthy’s friends and close political allies), and Victor Johnson (one of McCarthy’s administrative assistants).

Bagdikian’s analysis of Facts Forum was followed by articles in *TIME* (January 11, 1954:50-52); *U.S. News and World Report* (January 28, 1954:32-37); *The Reporter* (February 16, 1954:19-27; March 16, 1954:4); June 8, 1954; *New Republic* (February 22, 1954:7; March 29, 1954:4); and the *New York Times* (May 21, 1954:14). This flurry of publications triggered many letters-to-the-editor, including one from Hardy Burt, a producer and ardent defender of Facts Forum radio and television programs (*New York Times*, June 17, 1954:28).

Wayne Hays requested an IRS investigation of Facts Forum. Though the IRS told Hays “that the foundation’s books had been misplaced” (Hurt, 1981:173), it ruled that Facts Forum’s tax-exempt status was intact. A *New York Times* article on June 4, 1954 (p. 18) quoted Arnold Koch, associate counsel for the House’s Special Committee to Investigate Tax-Exempt Foundations, as saying that “the Internal Revenue Service, after a full investigation, had continued the tax-exemption of the Facts Forum Foundation.” According to Hurt (1981:162-163), “The reason for the IRS’s leniency toward Facts Forum was never fully revealed.”

The House’s Special Committee ended its work on July 2, 1954 — the very same day Johnson offered his amendment. The committee said it would issue a final report in September or October. However, Hays continued his attack on Facts Forum, charging “that Facts Forum, free from taxation as a nonprofit educational institution reportedly receiving about \$1,000,000 a year in free radio-television time, had not lived up to its exemption” (*New York Times*, September 4, 1954:5). Among other things, Hays claimed that “the free-time airwave programs directed by Dan Smoot of Facts Forum indulged in ‘smear tactics’ and in various ways fed the personal views of H.L. Hunt of Texas to the country” (*New York Times*, September 4, 1954:5).⁶ Hardy Burt responded to Hays, saying that “the violent campaign of vilification against Facts Forum was triggered by the Communist press” (*New York Times* on September 10, 1954:32).

The Special Committee’s report was issued in December (*New York Times*, December 20-21, 1954). It concluded that many tax-exempt foundations promote socialism and collectivist ideas. Hays and several other members of the committee disagreed.

In addition to Facts Forum, there were other groups which also were caught up in the anti-communist frenzy of the 1950s. One of the most aggressive groups was a New York-based organization known as the Committee for Constitutional Government (CCG).

Committee for Constitutional Government

CCG was started in 1937 by Rochester, New York, newspaper publisher Frank E. Gannett in opposition to Franklin Roosevelt’s effort to pack the

Supreme Court (*New York Times*, March 10, 1953:21; November 28, 1964:21). Its executive secretary was Dr. Edward A. Rumely. Rumely was born into a wealthy Indiana family, attended Notre Dame, Oxford, and Heidelberg, and received a medical degree from Freiberg. After moving to New York, he used German money to buy the *New York Evening Mail*, which he published from 1915 to 1918. In 1920, he “was convicted of pro-German activity during World War I [and] was sentenced to a year and a day in jail [though his] sentence was later commuted by President Coolidge, who subsequently pardoned Dr. Rumely” (*New York Times*, November 28, 1964:21).

Though Rumely had written articles favorable to Franklin D. Roosevelt and supported FDR in 1932, he soon turned against FDR and joined forces with Gannett in opposing Roosevelt and, later, Truman. In 1941, CCG was reorganized and rechartered as “an educational, non-profit, eleemosynary corporation” to “uphold constitutional government and the system of free enterprise” (Roy, 1953a:232; 1953b:443). By the late 1940s, it was a very aggressive right-wing organization spending hundreds of thousands of dollars a year lobbying “for lower business taxes, more and better anti-union legislation, reduced appropriations for the Department of Labor and other Federal agencies, etc.” (*New York Times*, August 26, 1948:20). In 1951, for example, CCG spent more money (\$572,019) than any other lobbying organization (*Facts on File*, March 7-13, 1952:79; March 21-27, 1952:97; also see *New York Times*, April 2, 1949:22 and January 2, 1954:18 on CCG spending).⁷

CCG also was one of the nation’s leading anti-communist organizations. In 1949, it distributed a special, reduced-cost, edition of John T. Flynn’s book *The Road Ahead*, hoping that with wide circulation of the book, “socialism in the United States will be stopped short in its tracks” (Flynn, 1949:205). In 1951, Rumely was convicted of contempt of Congress for refusing to reveal the names of persons who had spent more than \$500 purchasing copies of *The Road Ahead* — names which included several very prominent executives. On March 9, 1953, the Supreme Court “cleared [Rumely] of contempt-of-Congress charges stemming from his refusal to tell the House Lobby [Committee] who financed his [Committee for Constitutional Government]” (*Facts on File*, March 13-19, 1953:84; *New York Times*, November 28, 1964:21).

Tyler (1953) reported that, in a seven-year period, CCG distributed over 82 million pieces of literature, over 100,000 radio transcriptions, 350,000 telegrams, and thousands of news releases. One of CCG’s strategies was to donate money to Congressmen such as Ralph Waldo Gwinn, a New York Republican, who acknowledged that “he had received \$5,000 or \$6,000 from the [Committee for Constitutional Government] to finance a weekly column he distributed to newspapers” (*Facts on File*, September 19-25, 1952:304; Reedy, 1954). Tyler (1953:13) also described another method CCG used to spread its anti-communist ideas.

A member of Congress inserts into the Congressional Record as argument an editorial or even a full length tract, generally submitted to him by the CCG. This speech is then reprinted by the Government Printing Office at very low rates. The Congressman pays for this out of funds furnished him by the CCG. The matter is mailed in bulk, sometimes already stuffed and sealed in franked envelopes, to the Committee for Constitutional

Government in New York where it is stored. At the moment deemed most timely and convenient for the Committee, the individual envelopes are addressed and mailed postage-free under the Congressional frank,' the House Lobby Investigating Committee said in its report.

TEXAS POLITICS

Tax reform and McCarthyism represent important keys to understanding Johnson's amendment. But there is another, equally important, factor: Texas politics. Circumstances associated with Texas elections in 1954 are what finally triggered Johnson's move to ban electioneering by tax-exempt organizations.

The Texas political landscape included four factions: the "Loyalists" Democrats (who supported Adlai Stevenson for president in 1952); liberal Democrats who supported Ralph Yarborough (White, 1954; Hardeman, 1956); "Dixiecrats" (a mixture of Republicans and conservative Democrats who bolted from the Democratic Party to support Dwight Eisenhower in 1952; and "a small and respectable Eisenhower branch of the Republican Party" (White, 1954:36). The major conflict was between the Loyalists and liberals on one side and the Dixiecrats on the other (White, 1954; Hardeman, 1956; Young, 1993, 1996).

Dixiecrats

Conservative Democrats and wealthy Republican business elites formed the backbone of the Dixiecrats (White, 1954; Carleton, 1985; Hurt, 1981). Their political leader was Democrat Allan Shivers. Shivers had been elected Texas Lieutenant Governor in 1946 and succeeded Governor Beauford Jester when Jester died of a heart attack in 1949. Shivers was a man of great intellect, charm, energy, and political skill (Hardeman, 1956).

He also was "a Democrat in name only" (Carleton (1985:257). Though he promised Sam Rayburn and Lyndon Johnson that he would be loyal to the party in the 1952 presidential election, he reneged, supporting the Republican nominee, Dwight Eisenhower, and taking a majority of Texas Democrats with him (Dallek, 1991; Parmet, 1972; Ambrose, 1983).

With Eisenhower's victory, Shivers became the most powerful Democrat in Texas. Though he still lacked political stature on the national scene, he was "the undisputed master of Texas politics; he . . . completely controlled the Democratic party machinery; he could make the Texas legislature and the lobbyists do almost as he wished. . . . He had the support of 100 of 103 daily newspapers and of 500 of the state's 550 weekly papers" (Hardeman, 1956:52-54). Shivers was in office long enough to fill "all of the 115 appointive boards and commissions of Texas with nominees from every stratum of his statewide support" (White, 1954:32). His support among Dixiecrats was so strong, they often were called "Shiverscrats".

Shivers eagerly rode the wave of support for McCarthy's anti-communist views (Hurt, 1981:152). He supported McCarthy; ran "a Red Scare-type gubernatorial campaign for reelection" (Carleton, 1985:266, 275); launched an investigation of communists in unions; and proposed the death penalty for communists (Dallek, 1991).

He also attacked loyal Democrats. He made false accusations against New Deal Democrat Jubal R. Parten, who had backed Ralph Yarborough (Carleton, 1985). He also attacked “the political empire of George B. Parr, the wealthy business man [and former Duval County judge] who, according to the *New York Times* (February 5, 1954:1, 12), “is generally credited with having put Texas’ Lyndon Johnson into the United States Senate.” From south Texas, Parr had helped Johnson by making sure that the 87 votes Johnson needed to defeat Coke Stevenson in 1948 “came from Duval County’s Precinct Thirteen — whose ballot box mysteriously disappeared during the ensuing investigation” (*New York Times*, February 5, 1954:12). By 1953 and 1954, “state officials and representatives of the Federal Bureau of Internal Revenue and the Post Office Department [were] investigating the use of state funds and other fiscal aspects of the Duval County administration. Their findings to date, it was officially indicated at the State Capital, might lead to prosecutions” (*New York Times*, February 5, 1954:12).

In short, Shivers was a very powerful political force. He “accumulated a long line of ‘firsts’” (Hardeman, 1956:51):

First to win three elective two-year terms, in addition to serving out Jester’s unexpired term . . .

First Governor to lead Texans into the Republican column. First gubernatorial candidate to run on both the Democratic and Republican tickets.

First major Texas officeholder since the Civil War to bolt the Democratic Party, then win re-election. As perhaps the state’s richest Governor, he shattered the theory that great wealth is a fatal political handicap in Texas. He built up more national influence than any of his predecessors.

In 1953-54, he was supporting McCarthy; seizing control of the state party; successfully challenging Lyndon Johnson’s political base of loyal Democrats; and, like two-term governors before him, giving some thought to running for the U.S. Senate against incumbent Lyndon Johnson. Ultimately, Shivers decided to run for a third term as governor, instead of running against Johnson (Young, 1993; 1996).

When Shivers and other possible candidates bowed out of the Senate race, state Senator Dudley T. Dougherty became Johnson’s main opponent. Dougherty was a “thirty-one year old, first term state legislator from Beeville in south Texas” (Dallek, 1991:449). This “eccentric millionaire” (Dallek, 1991:449) had been a loyal Democrat in 1952, when he was “the largest single contributor in Texas to Adlai Stevenson” (Dallek, 1991:449). Quite expediently, however, he aligned himself with the Dixiecrats in his race against Johnson in 1954. He aggressively espoused Dixiecrats’ anti-communist views:

When he had announced for Johnson’s seat, he had called himself an isolationist, urged U.S. withdrawal from the U.N. and a break in relations with Moscow, and described FDR and Truman as mentally incompetent pro-Communists and Eisenhower as no better (Dallek, 1991:449).

Dougherty “submitted a bill that would prohibit subversives from voting, holding public office, making speeches in public, speaking on radio or television,

or publishing in any periodical" (Carleton, 1985:261). Compared to Shivers, Dougherty was a political lightweight (Young, 1993, 1996). He knew he could not beat Johnson and told people he was only in the race for the publicity (Dallek, 1991:449).

Loyalists and Liberals

Loyalists and liberals were led by Lyndon Johnson, who was running against Dougherty to hold his Senate seat, and Ralph Yarborough, who was running against Shivers in the Democratic primary for governor. Yarborough, who was from "a pioneering east Texas family" (Green, 1979:141), was a University of Texas law school grad, a former district judge, and a veteran of World War II. Politically, he was considered liberal, drawing his support from a "majority of union members, along with most blacks, liberals, and party loyalists" (Green, 1979:155). He had lost to Shivers in 1952, but would be a formidable candidate again in 1954.

Johnson had been elected to the House of Representatives in 1937, riding Franklin Delano Roosevelt's coattails. Without relinquishing his seat in the House, he ran for Senate in 1941, but was defeated in a very narrow race that included some extraordinarily dirty politics on all sides.⁸ Johnson remained in the House until 1948, when he ran again for the Senate. This time he won by only 87 votes in another hotly contested and very controversial campaign against Coke Stevenson. He was planning to run for reelection in 1954.

Johnson was very nervous about the whole political scene (Young, 1993, 1996). He did not like the rising tide of national conservatism, especially McCarthyism. He wanted to confront the Republican right, but did not think that was politically wise, given the support for it among Texas voters (Dallek, 1991:442). He also saw Shivers as a threat to Democratic Party interests nationally, as a threat to his own political base (especially in areas such as Duvall County), and as a potential opponent in the 1954 primary. Johnson's 1941 and 1948 races for Senate had involved considerable scandal and, despite all the benefits he had secured for Texas constituents, polls showed that many voters still did not know who Johnson was or what good he had done for the state (Dallek, 1991:416). Johnson feared the prospect of a Johnson-Shivers race (which would have been a brutal battle between political titans), but was only somewhat relieved when Dougherty became the Dixiecrat candidate in the primary. Though Dougherty was a relative lightweight, Johnson was concerned about the compatibility between Dougherty's anti-communist views and the widespread conservatism in the Texas electorate. Johnson worried that a loss, or even a poor showing against Dougherty, would seriously damage his political future (Dallek, 1991; Young, 1993, 1996). To appreciate how threatening these political challenges were to Johnson, one only needs to recall Johnson's legendary insecurity, his fierce party loyalty, and most of all the extraordinary importance he attached to winning political office (Steinberg, 1968; Rulon, 1981; Provence, 1964; Dugger, 1982; Kearns, 1976; Caro, 1982; Conklin, 1986).

Facts Forum and the Committee for Constitutional Government, which I already have shown were playing a major role in the national frenzy of McCarthyism, also were actively supporting Johnson's political adversaries in Texas.

Facts Forum and Johnson's Amendment

Johnson looked for a way to challenge the political right without undercutting his own chances at reelection. He knew there was a close connection between H.L. Hunt, Facts Forum, and McCarthy. Hunt had befriended McCarthy and became one of his most ardent supporters (White, 1954; Hurt, 1981:154-164). Facts Forum also was giving McCarthy and the national anti-communist movement very favorable coverage in its radio broadcasts, television shows, and newsletters. Facts Forum "became a key source of information for Red Scare activists and witch-hunters at the local level and was especially popular among Houston's right-wing conservatives" (Carleton, 1985:93).

Johnson also wanted to challenge Shivers without losing support among Dixiecrats. He knew that there was a close personal connection between H.L. Hunt and Shivers. According to *The Reporter* (February 16, 1954:22):

Hunt is also a strong supporter of Texas' nominally Democratic Governor, Allan Shivers, who backed Eisenhower largely on the basis of the latter's promise to turn over the oil-rich tidelands to the states. When recently the Shivers state administration awarded tidelands the biggest single awardee was H.L. Hunt, who received more than 100,000 acres at an average of \$6 an acre. Others paid averages as high as \$400 an acre. On fifty-nine of the sixty-five tracts acquired by Hunt, he or his agents entered the only bids.

Bagdikian also established an organizational link between Facts Forum and Shivers. Shivers was a member of Facts Forum's board, along with Robert L. Wood (chairman of Sears and Roebuck's board of directors), John Wayne, General Albert Wedemyer, and football player Doak Walker (*The Reporter*, February 16, 1954:20; *TIME*, January 11, 1954:50).⁹ Shivers also appeared on Facts Forum's television show "State of the Nation." In a December 1953 appearance, he charged that "subversives were involved in the Port Arthur strike and that these 'Reds' were trying to organize the entire Gulf Coast" (Carleton, 1985:258). In another appearance in January 1954, he proposed that a special session of the state legislature consider the death penalty for communists. "I'm in favor of doing anything we can to a Communist," he said. "We're going to crush them under our heels every way we can" (Carleton, 1985:259).¹⁰

Johnson clearly was concerned about Facts Forum and its role in the 1954 election. He asked Booth Mooney to get some information on several matters relating to Facts Forum. In a memo to Johnson on May 5, 1954, Mooney reported the results of a conversation he had had with a Hunt aid. The aid told Mooney that "neither Hunt personally nor any part of his organization was doing anything for Dougherty or against you." He also told Mooney that Facts Forum had not sponsored an article by Willis Ballinger supporting Dudley Dougherty (more on that article later). However, Mooney also learned that Hunt had considered "putting [Facts Forum spokesperson Dan] Smoot in the race." Mooney concluded with the following reflection:

All this, in my opinion, is exactly what [Hunt's aid] would have been expected to say. I do not know how much of [what he said] is true. My opinion of his credibility is not high. I do think, however, that the frank

discussion I had with [him] will be reported to Hunt and might serve as a restraining influence.

If Johnson could put an end to Facts Forum's partisan support for McCarthy and Shivers, and stifle any involvement in his own race against Dougherty, he could challenge the political right on a national level, improve loyal Democrats' chances in the Texas primary, and serve his own political interests all at the same time. Knowing that the IRS had been lenient toward Facts Forum in its earlier investigation, Johnson needed another approach. The anti-electioneering amendment — which he introduced on the same day the House Special Committee to Investigate Tax-Exempt Foundations completed its investigation — would accomplish all of these goals quickly and quietly.

CCG and Johnson's Amendment

According to Young (1993:10), Dudley Dougherty "received contributions from right wing authors Willis Ballinger and Sumner Gerard" and his "campaign attracted attention from far right conservative organizations," including the Committee for Constitutional Government.

CCG circulated an article in which Ballinger (1954) wrote the following:

A vote for Johnson — many Texans feel — will be a vote for more centralization of power and socialism in Washington; for more of the internationalism which is designed to abolish the U.S.A.; and for more covering up of Communist infiltrators. By contrast, Dougherty's program is hailed as collecting under one banner the aspirations of countless disillusioned Americans.

Ballinger then summarized Dougherty's campaign promises and ended with the following remarks:

. . . Texas observers say that if former Governor Coke Stevenson really gets into the battle and if Governor Shivers gives a helping hand to young Dougherty, anything is possible.

. . . Anyway, win or lose, the Dougherty program is likely to make history by the example which he sets for candidates in the rest of the country.

At the end of Ballinger's article, CCG added the following text:

TO THE PUBLIC: The late Senator E.H. More (Okla.) predicted that out of Texas would come "new leadership that would carry this nation away from collectivism and the welfare state, toward economic freedom because in Texas the pioneering spirit, like that of the men who founded the nation, lives and is strong."

Dudley T. Dougherty, with courage, forthrightly states his platform. Which of his planks do you agree with and or oppose? It would, no doubt, interest him to have your frank comment, regardless of whether you support his position or are critical of the stand he takes; regardless of whether you are a fellow citizen of Texas or resident elsewhere in the country. His address is: Hon. Dudley T. Dougherty, Beeville, Texas.

Ballinger's article and CCG's appendix precipitated a flurry of activity in Johnson's camp. Johnson sent a letter to CCG indicating his own opposition to communism (Dallek, 1991:450). He also asked George Reedy for information about CCG. In a May 27, 1954 memo to Johnson, Reedy reported the following about CCG:

It was originally founded by the newspaper publisher Gannett and is the wealthiest and most powerful of the extreme right-wing groups in the United States. It publishes a fantastic amount of literature which is distributed all over the United States .

It is highly unusual for the Committee for Constitutional Government to take a strong stand for or against a candidate for public office as they have done in this instance.

John T. Flynn, one of Ballinger's closest friends, writes a considerable amount of material for this organization and ideologically they are soul-mates. . .

. . . all of [Dougherty's] major supporters appear to be people from outside of Texas. . . . the so-called Dougherty 'platform' as outlined by Ballinger does not include a single plank for Texas . . . Dougherty is running on a platform written in New York and Washington by people who obviously know nothing about Texas' problems.

. . . one of Mr. Dougherty's principal backers (Rumely) is a man once convicted of playing footsey with the German government during World War I and later convicted because he refused to tell Congress the sources from which his organization draws its money.

In another memo to Johnson on June 1, 1954, Reedy offered the following advice:

Personally, I have the feeling that we are all spending too much time talking amongst ourselves about Dougherty . . . Dougherty is just a screwball . . . we have got to equate him with no opposition at all.

Johnson also wrote to Gerald W. Seigel, counsel to the Senate Democratic Policy Committee, urging him to read Ballinger's article and asking if CCG's literature violated the Texas Election Code. In a June 1, 1954 memo to Johnson, Seigel said that CCG and the article "represent an attempt on the part of outsiders to intervene in Texas affairs" and that "it would be a mistake to take any notice or action upon the Ballinger article." Seigel said "it would be unwise to engage in any open conflict with [CCG] and recommended "no action whatsoever".

In a June 15, 1954 memo to Johnson, Seigel offered the following opinion (Halloran, 1996):

The Committee for Constitutional Government has openly solicited corporate contributions to its organization for its so-called educational purposes . . . in distributing this material in Texas it has clearly engaged in an indirect, if not direct, effort to influence a senatorial election by aiding the candidacy of Dougherty and attempting to defeat your candidacy.

He also acknowledged, however, that CCG might reply that its literature addressed issues and not candidates — which tax-exempt groups were allowed to do. "It is in this area," Seigel said, "that the greatest doubt arises as to

whether the Committee and its officers have in fact, violated Texas law”.

On June 18, 1954, apparently after communication with Johnson, Representative John McCormack of Massachusetts wrote to T. Coleman Andrews, Commissioner of Internal Revenue, inquiring about the tax-exempt status of CCG and the Constitutional and Free Enterprise Foundation, Inc. (Halloran, 1996). On June 28, 1954, Andrews wrote back to McCormack, saying:

The documents to which you refer, copies of which you attached to your letter of the 18th, are no less amusing and shocking to me than they are to you, and I can tell you that we are taking appropriate steps to see just what is the effect of the activities of these organizations under the internal revenue laws and what, if anything, can be done about their present status in relation to exemption privileges.

McCormack sent Johnson a copy of Andrews’ letter on July 1, 1954, saying “I know you will read the within that I have received from Commissioner Andrews with interest” (Halloran, 1996). The very next day — which also was same day the House Special Committee to Investigate Tax-exempt Foundations ended its deliberations — Johnson offered his amendment banning tax-exempt organizations from participating in partisan politics.

OUTCOMES

Johnson soundly defeated Dougherty and returned to the Senate, where he led the Congressional vote to condemn McCarthy in November, 1954. Shivers won reelection but, with the demise of McCarthyism, a series of political scandals in 1955, and declining popularity, he announced in March 1956 that he would not seek reelection (Hardeman, 1956:55). In November 1956, H.L. Hunt announced that he would no longer support Facts Forum. After spending at least four million dollars on the group, he shut down all the Forum’s operations (*Newsweek*, November 26, 1956:68; *TIME*, November 26, 1956:80; *The Reporter*, November 29, 1956:4). The decision to close shop ended what Texas Senator Mike Monroney once called “the largest and most ambitious propaganda machine ever set up in this country” (*The Reporter*, November 29, 1956:4).¹¹ The Committee for Constitutional Government persisted into the late 1950s, though at a greatly reduced level of public influence.¹² Rumely retired from CCG in 1959 and died in 1964.

CONCLUSION

I began by asking why churches cannot endorse or oppose political candidates? The ban on electioneering is not rooted in constitutional provisions for separation of church and state. It actually goes back to 1954 when Congress was revising the tax code, anti-communism was in full bloom, and elections were taking place in Texas. In this highly-charged political environment, Lyndon Johnson introduced an amendment banning section 501 (c) (3) tax-exempt organizations from participating in “any political campaign on behalf of any candidate for public office.”

His amendment was directed at anti-communist groups such as Facts Forum and the Committee for Constitutional Government which stood between him and his goals of crippling McCarthyism, thwarting Allan Shivers' efforts to control the Democratic Party in Texas, and defeating Dudley Dougherty. Johnson was not trying to address any constitutional issue related to separation of church and state; and he did not offer the amendment because of anything that churches had done. Churches were not banned from endorsing candidates because they are religious organizations; they were banned because they have the same tax-exempt status as Facts Forum and the Committee for Constitutional Government, the right-wing organizations that Johnson was really after.

These findings challenge religion scholars in at least two ways. Religious researchers need to take another look at churches' involvement in partisan politics prior to 1954. As a rule, churches probably were not very inclined to endorse or oppose political candidates. Church leaders knew that, if they went out on political limbs, their actions would reveal political divisions in all except the most homogeneous churches. Once activated, these divisions would threaten congregational civility, especially in churches with heterogeneous memberships. In churches with democratic politics allowing members to hire and fire pastors, it also could cost church leaders their jobs.

However, the Al Smith case suggests that some churches were willing to be quite political when they felt their values and their self interests were at stake. In terms of values, some Protestant churches felt Al Smith threatened America's Anglo-Saxon (Protestant) way of life. In terms of self interests, they felt Smith would follow the pope's orders, appoint Catholic officials, and limit the economic, political, and social advantages that Protestants enjoyed. Social and religious historians need to examine other elections to see how actively churches participated in partisan politics when similar conditions prevailed.

Religion scholars also should not assume that churches no longer endorse or oppose candidates, simply because the tax code says they cannot. Researchers need to examine the ways in which religious groups still support or oppose particular candidates. John Kennedy's campaign for the presidency in 1960 provides an excellent opportunity to examine the extent to which, and ways in which, churches have participated in politics since 1954. A group of prominent Protestant clergymen, known as the National Conference of Citizens for Religious Freedom, was actively opposed to Kennedy's candidacy. So were evangelical and fundamentalist Protestant churches (Sorenson, 1965:188-195). Brown (1976:201-202), for example, reports that, when Rev. W.A. Criswell, the influential pastor of First Baptist Church in Dallas, Texas, "preached a sermon against a Roman Catholic in the White House, [H.L.] Hunt got a transcript and had it mailed to more than a hundred thousand people." Kennedy won election only after a speech to Protestant leaders, in which he said: "I believe in an America where the separation of church and state is absolute — here no Catholic prelate would tell the President (should he be a Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote" (Sorensen, 1965:190-191).

In the 1960s, religious publications *Christian Century* and *Christianity & Crisis* temporarily lost their tax-exempt status for endorsing Lyndon Johnson's run for the presidency in 1964 (Wright and Rosella, 1981:3). In the early 1970s,

Christian Echoes National Ministry, Inc., “the corporate structure for the radio and publishing enterprises of Billy James Hargis,” lost its tax-exempt status (Wright and Rosella, 1981:3-4). Numerous religious groups, including the National Council of Churches, also were investigated and warned not to support or oppose political candidates (Wright and Rosella, 1981:4), though none of these groups lost their tax-exempt status. In the early 1980s, Abortion Rights Mobilization complained, unsuccessfully, that the Roman Catholic Church was endorsing anti-abortion candidates (Wright and Rosella, 1981:5; Non-Profit Organization Tax Letter, May, 1984:1).

In the 1990s, the Church at Pierce Creek in Vestal, New York, lost its tax-exempt status for publishing an anti-Clinton ad in a national newspaper, and Americans United for Separation of Church and State has filed complaints with the IRS against Second Baptist Church in Houston, Texas. A suit also has been filed by the Federal Election Commission against the Christian Coalition (Simon, 1996:13). Though the Christian Coalition is not a 501 (c) (3) organization, and thus is not subject to the electioneering ban, it is charged with supporting Republican candidates in 1990, 1992, and 1994, but failing to register as a political action committee. All of these cases invite analyses of the conditions under which religious organizations are willing to endorse or oppose political candidates and the various ways in which they go about it.

Finally, by showing that the anti-electioneering amendment is grounded in partisan politics (and not constitutional law), this paper indicates the extent to which tax laws — including those affecting churches — are politically motivated. Just as partisan politics gave birth to the 1954 tax law banning electioneering by tax-exempt organizations, partisan politics also could change it. If there were enough support for changing the IRS code — so churches could endorse political candidates without losing their tax-exempt status — the law could be changed. In my view, however, the chances of getting enough support for such a change are slim to none. Most churches are quite heterogeneous and their leaders know that getting involved in partisan politics would create religious conflicts and, in some faith groups, might cost them their jobs. Most church leaders feel they have enough problems trying to maintain cohesion in their parishes, congregations, and synagogues without introducing partisan political conflicts.¹³

NOTES

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1. Churches also have the right to be involved in all sorts of educational activities relating to particular legislative and public policy issues, such as the Equal Rights Amendment, abortion rights, school prayer, and economic justice (e.g., Liebman and Wuthnow, 1983; Johnson and Tamney, 1986; Corbett, 1990).

2. Section 501 (c) includes 27 subsections describing different types of nonprofit organizations that may receive tax-deductible gifts. Section 501(c)(3) describes “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children and animals.” Though the Internal Revenue Service does

not define what it means by "religious," the deductibility of contributions extends to religious organizations such as "Churches, conventions of churches, associations of churches, church-run organizations such as schools and hospitals, religious orders, apostolic groups, integrated auxiliaries of churches, missionary organizations, and Bible and tract societies" (Lashbrooke, 1985:178-179). While it is relatively easy for mainline religions to maintain their tax-exempt status, some fringe groups or "cults" — such as the "Moonies" — experience greater difficulty (e.g., Richardson, 1991; Robbins and Robertson, 1987; Robbins, Shepherd, and McBride, 1986). Secular nonprofits must apply for tax exemption, but churches and certain other religious organizations are exempt from this requirement. Deductibility for churches and religious organizations is established under section 170 of the code.

3. These two benefits are often confused. When people refer to tax-exempt status, sometimes they mean an organization's exemption from income taxes; sometimes they mean the deductibility of contributions. Sometimes they mean both, but do not fully appreciate the difference (Kelley, 1977:34). Tax exemption and deductibility of contributions serve to encourage voluntary activities that contribute to the overall wellbeing of society (Kelley, 1977; Godfrey, 1982; Caron and Dessingue, 1985; Lashbrooke, 1985; Hopkins, 1992).

4. Johnson's original wording was changed to include the phrase "(or in opposition to)" as part of the Revenue Act of 1987.

5. Hopkins (1992) also claims that the amendment was politically motivated, a claim which Hone (1989) repeated in the *Case Western Reserve Law Review*. In a personal telephone conversation with the author on March 18, 1996, Hopkins reiterated his claim, saying it was based on a conversation with a former Congressional staff person who worked with Lyndon Johnson on the language used in amendment. Hopkins said that staff person died before he was able to obtain any more specific information about the group or groups that Johnson had in mind when he introduced the amendment.

6. A complete copy of Hays' study was entered into the *Congressional Record* (September 3, 1954:6632-6634). Hays also wrote an article criticizing Facts Forum in the October 23, 1954 issue of *Nation* (pp. 362-364).

7. Tyler (1953:12) claims that "Through subsidiary organizations, the CCG gets huge donations that are tax deductible." I suspect — but cannot document with absolute certainty — that the Constitution and Free Enterprise Foundation, Inc. — to which I refer later — is one such subsidiary groups. The title "Constitution and Free Enterprise Foundation, Inc." is very similar to CCG's reference in Flynn (1949:198) to its goal of "safeguard[ing] our constitutional system of freedom and free enterprise."

8. LBJ did not contest the outcome, fearing that an investigation might reveal that his campaign also had violated campaign rules (Dallek, 1991).

9. A story in *The Reporter* (March 10, 1955:5) says: "Ben H. Wooten, president of the First National Bank of Dallas, has presented fourteen thousand [Facts Forum] gift certificates (\$2 each) to the presidents of all the banks in the nation."

10. Shivers also was featured in a later *Facts Forum News* article arguing that "The federal government has no constitutional authority to meddle in [the field of fair employment practices]" (December 1954:18-21).

11. Two years later, after Hunt became active in W.A. Criswell's First Baptist Church, he "resurrected his Facts Forum propaganda apparatus in the form of a new tax-exempt 'educational' and 'religious' organization called LIFE LINE. Basically a reincarnation of Facts Forum in religious clothing, LIFE LINE became Hunt's new main passion, his new mission, as well as the means for his personal rejuvenation" (Hurt, 1981:179-180).

12. CCG should not be confused with the Federation for Constitutional Government, which was started in 1955 (*New York Times*, December 30, 1955:1 and December 31, 1955:6, 12). Two CCG activities illustrate the nature of its political involvement after 1954. Using the very same *Congressional Record* tactic Tyler (1953) described earlier, Senator Richard Russell of Georgia inserted an anti-school integration speech by CCG's W.E. Michael into the *Congressional Record*. Copies were then put in Senate envelopes and mailed to the CCG for mailing to its members. Russell claimed that the Seaboard White Citizens Council got 3,000 copies, which it then distributed in its own envelopes (*New York Times*, January 17, 1958:11). In another action, CCG put an ad in the *Wall Street Journal* accusing Walter Reuther of being "a third generation Socialist" (*New Republic*, October 6, 1958:5). Rumely then sent copies of the ad and a letter to political

leaders urging them to make tax-deductible contributions to CCG so the ad could be published more widely in the key states of California, Arizona, Kansas, Ohio, Indiana, Illinois, and Wisconsin during the 1958 elections. Senator Theodore Francis Green and Democratic Party chairman Paul M. Butler asked the IRS, the Attorney General, and the Secretary of the Treasury to look into the matter (*New York Times*, October 24; October 23, 1958:16; October 24, 1958:26; October 25, 1958:10).

13. Religiously and politically homogeneous churches and special purpose groups might support a change in the tax code, especially if they feel their values and interests are at stake. Though such religious organizations are probably in the minority, homogeneously liberal and homogeneously conservative groups might want to endorse particular candidates.

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