

Congressional Oversight of the Nonprofit Sector:
Senator Grassley's Review of Six Tax-Exempt Ministries

Charlene D. Orchard
University of Utah

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Abstract

In a 2011 press release, Senator Charles Grassley stated, “The tax-exempt sector is so big that from time to time, certain practices draw public concern. My goal is to help improve accountability and good governance so tax-exempt groups maintain public confidence in their operations.” Since his election to the Senate in 1980, the Iowa Republican has developed a reputation for being a “good government guy,” and one instance of his work in this area was a multi-year review of six tax-exempt ministries. This paper discusses challenges faced in providing oversight of the nonprofit sector generally and of churches in particular. The case of Grassley’s investigation of tax-exempt ministries reveals the promise but mostly the perils of such a crusade, especially if reelection is a goal.

Key Words: nonprofit organizations, nonprofit sector, governance, accountability, the electoral connection

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Private jets, \$350,000 Bentleys, multiple vacation homes, Rolls Royces, cosmetic surgeries, a \$23,000 marble top for a commode, \$20 million headquarters, and multi-million dollar mansions for CEOs. These are not characteristics one would expect of tax-exempt, nonprofit organizations and certainly not of religious institutions. Yet reports of lavish lifestyles among leaders of some churches have come into Senator Charles Grassley's office over the years. As a leading member and former chair of the Senate Finance Committee, Grassley investigated nonprofits such as the Nature Conservancy, the United Way, and the Red Cross, and has been the go-to member of congress for all things nonprofit and tax-exempt. On November 6, 2007, he published a press release announcing his investigation of six media-based ministries after fielding complaints from the public and news organizations.¹ In the release, Grassley states, "The allegations involve governing boards that aren't independent and allow generous salaries and housing allowances and amenities such as private jets and Rolls Royces. . . . People who donated should have their money spent as intended and in adherence with the tax code."

Three years after initiating the investigation, Grassley released his report and stated in the accompanying press release, "The tax-exempt sector is so big that from time to time, certain practices draw public concern. My goal is to help improve accountability and good governance so tax-exempt groups maintain public confidence in their operations." Since his election to the Senate in 1980, the Iowa Republican has developed a reputation for being a "good government guy," and one instance of his work in this area was a multi-year review of six tax-exempt ministries. After discussing the nonprofit sector and regulations that have grown up around it,

¹ Full text of the press release is available at http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=12011

this paper discusses challenges faced in providing oversight of the sector generally and of churches in particular. The case of Grassley's investigation of tax-exempt ministries reveals the promise but mostly the perils of such a crusade, especially if reelection is a goal.

Background: Nonprofit Sector

The nonprofit sector has had a large and increasing impact on all aspects of life in the United States. The important role it has played in the country was notably highlighted by the Frenchman Alexis de Tocqueville in *Democracy in America* after his travels in the country during nine months in 1831-1832. Tocqueville observed numerous instances of Americans voluntarily forming associations, writing, "Americans of all ages, all conditions, all minds constantly unite" (Tocqueville 2000, 489) for occasions great and small. He continues, "Americans use associations to give fetes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools." Unlike France and England, where government initiated the efforts to create public institutions, Tocqueville saw that role being filled by voluntary associations. Furthermore, "if it is a question of bringing to light a truth or developing a sentiment with the support of a great example" (Tocqueville 2000, 489), Americans will look to each other, and in this, among others, way the cause of democracy is furthered.

Even today, the range of activities undertaken by organizations in the sector is vast. In addition to those listed by Tocqueville, there are family service organizations, community health groups, orchestras, theater companies, environmental advocacy organizations, and civil rights groups, to name just a few. Lester M. Salamon, Director of the Johns Hopkins Center for Civil Society Studies and a long-time scholar of the nonprofit sector, identifies five important functions nonprofits perform. They are service providers and deliver much of the health care, higher education, community development, emergency response, cultural, and low-income

housing in the country. Second, they perform an important advocacy function, and many of our social movements evolved out of the work of community nonprofits. Third, they provide opportunities for artistic, cultural, recreational, and religious expression. Fourth, they help build social capital, the “connections among individuals, as manifested in social networks, trustworthiness, and acts motivated by the norm of reciprocity” (Smith, Stebbins, and Dover 2006, 33). Finally, they serve as guardians of the national values of individual initiative and the principle of solidarity. Salamon explains that nonprofits

give institutional expression to two seemingly contradictory principles, both important parts of American national character: the principle of individualism, the notion that people should have the freedom to take the initiative on matters that concern them; and the principle of solidarity, the notion that people have responsibilities not only to themselves, but also to their fellow human beings and to the communities of which they are part. By fusing these two principles, nonprofit organizations reinforce both, establishing an arena of action through which individuals can take the initiative not simply to promote their own well-being but also to advance the well-being of others. (Salamon 2012, 13)

Indeed, political theorists (O’Connell 1999; Putnam 1993, 2000, Skocpol and Fiorina 1999; Verba, Schlozman, and Brady 1995; and Walzer 1995) maintain that voluntary associations and the nonprofit sector are important to developing and sustaining democracy. Through involvement with nonprofits, citizens develop important skills in community and political engagement. They build social capital which contributes to the trust necessary for collective action and community problem-solving. Also referred to collectively as civil society, nonprofits provide avenues for the expression of civic, cultural, and religious values and are often pathways to civic engagement. In voluntary associations, members practice cooperation, debate, organizing, leading and following. The views and practices of one

nonprofit may differ in significant ways from another. It is important to successful democracies that the passions ignited through the opportunities provided by civil society organizations are able to burn brightly without extinguishing those around them. In order for civil society to flourish in the public sphere, the freedom to associate, debate and organize needs to be protected. It is an ongoing process of balancing interests, a process becoming more challenging as the sector grows.

According to the Urban Institute², the sector has grown substantially over the past few decades. From 2001 and 2011 in particular, the number of nonprofits increased from more than 1.2 million to almost 1.6 million. The sector contributed \$779 billion, or 5.4 percent, to the nation's gross domestic product in 2010. About nine percent of the workforce was employed in the sector during that year. The fact is, however, that no one knows how big the sector is for two main reasons. First, most organizations that would qualify as being nonprofit are not incorporated which means that there is no official record of them to mine for data. In addition, the data available on those that are registered with states and those that have been designated as tax-exempt are well-known to be incomplete (Salamon 2012, 8). Of the 1.6 million public-serving, formally constituted, tax-exempt organizations, one million are service and expressively oriented. Over 100,000 are social welfare and advocacy groups. There are some 114,000 foundations and other supporting organizations. Finally, over 300,000 are religious congregations.

Despite its ubiquitous and growing presence, it can be hard to comprehend just what the sector is. Nonprofit scholar Kirsten A. Grønbjerg outlines five aspects of the sector that make it distinctive. First, nonprofits are private, not public organizations. In this way, they are similar to for-profit businesses. Some theorists argue that donations provide benefit to the donors in units

² Statistics are from the Urban Institute (<http://www.urban.org/nonprofits/more.cfm>). The Urban Institute's website periodically updates statistics on the sector and houses the country's major repository of data on nonprofits, the National Center for Charitable Statistics, through its Center on Nonprofits and Philanthropy Projects.

of altruism that “buy” enhanced social status or trust (Posner 1997, 574-578). Others, however, point to an unquantifiable expressive benefit that accrues to the donor as motivation. What is important for this analysis is that there are financial transactions taking place and the receiving organization is private, presenting issues of accountability and authority.

This leads to the second distinctive feature. Unlike businesses with identifiable owners, there are no formal ownership rights to a nonprofit. Since there are no owners, any excess earnings or profit cannot be distributed to them. Referred to as the nondistribution constraint (Hansmann 1980, 838), it means more broadly that nonprofits are prohibited from distributing net earnings to individuals who manage or oversee the organizations, including board members, staff and executive directors. This does not mean that nonprofits are prohibited from making a profit; on the contrary, many nonprofits do, in fact, end their fiscal year with a surplus. The profit, however, cannot be distributed to stakeholders; rather, it is expected that the surplus will be used to further the mission of the organization. The nondistribution constraint extends to private inurement to individuals in a position to influence or control the nonprofit. Private inurement includes employee compensation, employee benefits, sale of an asset to an insider, use of facilities or other assets by an insider, renting property from an insider or to an insider, or purchase by the nonprofit of an asset owned by an insider.³ This also has implications for how property rights are exercised and results in a “lack of access to equity finance (but compensated in part by access to broad variety of nonmarket revenue streams, such as charitable donations” (Grønbjerg 2012, xiii). Not having formal owners leads to thorny principal-agent problems made more complex by the fact that a single nonprofit will have multiple stakeholder groups and constituencies.

³The U.S. Internal Revenue Service provides more guidance on private inurement in Internal Revenue Bulletin: 2008-18. http://www.irs.gov/irb/2008-18_IRB/ar14.html

The third feature is its grounding in voluntarism. Many, though not all, nonprofits rely on volunteers, from their boards of directors to the numerous individuals who take on tasks large and small. As varied as human beings are, so too are their motives, values, and behaviors. As any nonprofit executive director will attest, much of the day is taken up with people issues.

The fourth feature is the one most people associate with the sector. Grønbjerg names it as its “substantive rationality” (xiii), others talk about the missions of nonprofits. It is the mission that draws volunteers and donors to the organization, “the cause.” Individuals who decide to work for a nonprofit often talk about wanting to make a difference in the world. Grønbjerg points out, though, that “substantive goals change over time and reflect not only environment conditions, such as the state of technology, but also the state of the political economy” (xiii). Furthermore, the individuals involved with the nonprofit change, communities change, personal networks change, and problems change.

Finally, Grønbjerg identifies a distinctive technology employed by the sector. “By and large it does not produce things or process cases or transactions but rather seeks to change people—their views, values, behaviors, and/or knowledge” (xiii). This means that while one nonprofit will inspire passion and eleemosynary impulses, another will bring out feelings of a different sort, such as anxiety or suspicion.

Religious Organizations

As noted above, there are more than 300,000 formally constituted religious congregations. Most, 56 percent, congregations are small, with fewer than a hundred adults and children participating, but 71 percent are small if only adults are counted.⁴ Thirty-five percent of congregations have no paid staff, and “the vast majority operate on the money raised each year”

⁴ Statistics in this section are from Salamon (2012).

(Chaves 2012, 363). Most income comes from individual donations. According to Chaves (2012), “Three-quarters of congregations receive at least 90 percent of their income from individual donations, and about 85 percent of all the money going to religious congregations comes from individual donations” (372). This heavy dependence on individual contributions distinguishes churches from other kinds of nonprofits.

Although most churches are small, the number of very large congregations has been growing, according to a group that tracks megachurches.⁵ Megachurches are defined as having 2000 or more weekly participants, a charismatic senior minister, an active religious community with opportunities to participate throughout the week, multiple sub-ministries, and a complex organizational structure. The growth prompted ABC News to report, “While Americans have been shying away from religion, and church attendance has been slipping, at least one brand of worship has been bucking the religious trend, getting bigger in every way (Libaw 2011). Willow Creek Community Church in the Chicago area, for example, will see up to 20,000 congregants every weekend. According to the ABC News sources, between five and ten percent of churches average more than 1,000 attendees.

Nonprofit Law and Regulation

The modern legal concept of charity in the United States is a descendant of the English 1601 Statute of Charitable Uses.⁶ The preamble provides that funds should be set aside for certain charities and enumerates what constitutes eleemosynary purposes:

⁵ The Leadership Network and Hartford Institute for Religion Research.
http://hrr.hartsem.edu/megachurch/megachurches_research.html

⁶ Stat. 43 Elizabeth 1, ch. 4 (1601)

for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways, some for education and preferment of orphans, some for marriages of poor maids, some for supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants (43 Eliz. 1, ch.4, 1601)

The Elizabethans thus began the modern legal system for oversight of the nonprofit sector. Nonprofit law scholar Evelyn Brody noted, “Unfortunately, the enforcement mechanism in the Statute of Elizabeth proved difficult to carry out, and fell into disuse” (Brody 2006, 243). In the United States, she characterizes the law regarding charities as being weak. “To this day and in the United States, the law provides at best an incomplete solution to problems of nonprofit governance and the protection of the public interest” (Brody 2006, 243).

States and Nonprofit Law

Substantive nonprofit law is found at the state level and differs across the country. There are laws regarding wills and trusts,⁷ on how nonprofits are incorporated, on taxes, and on charitable solicitations. There is, however, no overarching law of nonprofit organizations. Nevertheless, nonprofits and their fiduciaries are subject to government oversight. At the state level, attorneys general do investigate reports of wrongdoing by nonprofits such as fraudulent fundraising schemes and whether charities spend donors’ funds as represented. Few states, however, fund investigative and enforcement efforts (Fremont-Smith and Lever 2004). What

⁷ These, along with other state laws, came about as a result of court cases. For example, a case involving heirs contesting a will donating property or funds to a charity will raise legal issues that a state then regulates.

states have done is to increase public disclosure. Nonprofits register with the state and obtain a certificate of incorporation. Like other kinds of corporations, they are also required to submit an annual report. While the requirements for the annual report had been very brief and perfunctory, some states have broadened the requirements to match those at the federal level.

Federal Tax-Exemption for Nonprofit Organizations

At the federal level, the Internal Revenue Service is the primary enforcer of charitable activities because of how the sector is treated in the tax code. Generally speaking, charities are exempt from paying federal taxes. The structure of the tax exemption developed through legislation enacted primarily over a 75-year period, 1894 to 1969 (Arnsberger et al. 2012, 126). In 1894, Congress passed the Wilson-Gorman Tariff Act and included language that exempted charitable organizations. Though the act was subsequently ruled to be unconstitutional by the Supreme Court, the language was revived and included in the Corporation Excise Tax Act of 1909. It provided an exemption “to any corporation or association organized and operated exclusively for religious, education, or charitable purposes, no part of the net income of which inures to the benefit of any private shareholder or individual” (Arnsberger et al. 2012, 126).

The Sixteenth Amendment gave Congress the power to levy income tax, and the Revenue Act of 1913 created the federal income tax system. Using the same language, but adding the word “scientific” and reordering the list,⁸ as the 1894 Tariff Act, Congress granted exemption to charities. The Revenue Act of 1917 gave individuals the tax deduction for contributions made to tax-exempt organizations.

In the 1940s, concerns grew about tax-exempt organizations’ business activities. Enterprising nonprofits found ways to increase their financial resources through traditional

⁸ U.S. Internal Revenue Service. “The Concept of Charity.” <http://www.irs.gov/pub/irs-tege/eotopicb80.pdf>

business ventures but were exempt from paying taxes on income. Seeing this as unfair competition for businesses that were not organized for eleemosynary purposes, Congress passed the Revenue Act of 1950 which included taxes on “unrelated business income.” Known as UBIT, the tax has been imposed on income produced from any activity determined to not be “substantially related” to the tax-exempt organization’s purpose, even if the income is used to advance the organization’s mission. The Tax Reform Act of 1969 (TRA69) expanded rules related to UBIT. The TRA69 also increased the limits for charitable deductions and tightened definitions for eligible organizations (Arnsberger et al. 2012, 128).

In 1954, Congress passed the Revenue Code which established the current structure of the Code, including section 501(c) describing tax-exempt entities. Charitable organizations are described in section 501(c)(3). The 1954 Revenue Code also included language that prohibits charities from participating or intervening in political campaigns on behalf of candidates running for public office (Arnsberger et al. 2008, 124). Today, nonprofits are often referred to as 501(c)(3) organizations.

In sum, an organization is eligible for tax-exemption if it meets four broad criteria. First, it must be organized for charitable purposes. Second, it must adhere to the nondistribution constraint. Third, it cannot engage in electioneering. Finally, “it cannot earn too much net revenue from activities that are unrelated to the charitable or mutual benefit purpose that was claimed when filing for tax exemption” (Ott and Dicke 2012a, 117).

The Rationale for Favorable Tax Treatment

By granting organizations tax exemption and giving taxpayers deductions for contributing to nonprofits, the government is foregoing receipt of those tax dollars. Tax exemptions are really tax-expenditures. Through tax-expenditures, the government is subsidizing

the nonprofit sector, and Congress has defended the subsidy argument because of the contributions nonprofits provide the larger community. Charities reduce the need for government intervention and associated costs (Simon, Dale and Chisolm 2006, 274). “[G]overnment in essence ‘pays for’ services that contribute to the quality of life and that advance the well-being of communities, states, and the nation. At least in concept, government agencies would otherwise need to provide these “public good” services themselves—or provide more of them than they do currently” (Ott and Dicke 2012a, 118).⁹ In giving individual taxpayers deductions for charitable contributions, public policy makers are encouraging the support of nonprofits and the benefits they bring to individuals and communities (Bittker 1972). Deductions are also seen as a way to correct for the free-rider problem that obtains when public goods or services are available to the public generally. The deduction benefits the supporter of the service but not the free rider (Gergen 1988).

Nonprofit Oversight

Governmental oversight of nonprofit organizations is exercised through regulation of charitable fiduciaries. Regulation of those who manage and direct nonprofits, the fiduciaries, is through state and federal laws. Currently, however, the federal tax code has taken on the primary regulatory role (Brody 1998; Fremont-Smith 2004; Simon, Dale, and Chisolm 2006).

As noted above, the code prohibits private inurement and excessive benefits. Fiduciaries cannot use the nonprofit to benefit themselves or their associates, either inside or outside the organization. A finding that an organization has violated the Code results in revocation of their

⁹ According to an IRS educational document, “[t]he rationale behind the granting of exemption from tax to private entities has been and continues to be based on the theory of shared social responsibility. The government and its citizens jointly share the responsibility for the well-being of the entire nation. Early governmental authorities granted tax exemption because they were either unable or unwilling to satisfy obvious social needs. Later, exemption was extended or continued for organizations whose purposes and activities were socially desirable.” U.S. Internal Revenue Service. “The Concept of Charity.” <http://www.irs.gov/pub/irs-tege/eotopicb80.pdf>

tax-exempt status. Concerns were raised about the harshness of the penalty and the fact that it may deter the IRS from invoking it. Congress conducted hearings and amended the Code to allow for intermediate sanctions. The rules now provide for significant penalty excise taxes to be incurred by any insider who receives excess benefits from a public charity. In addition, any manager inside the organization who is aware that excess benefits have been provided is also subject to the penalty taxes. Insiders are those who can “exercise substantial influence” over the nonprofit. “An ‘excess benefit’ arises from any transaction in which the organization provides an economic benefit to an insider if the value of the benefit exceeds the value of the consideration received by the organization” (Simon, Dale, and Chisolm 2006, 283). The statute punishes the individuals involved and not the organization.¹⁰ Nonprofits that violate the proscription against private inurement also violate state law, although the IRS cannot inform states that an investigation has been undertaken unless the nonprofit’s tax-exempt status has been revoked.

In addition to revocation of tax-exempt status and penalty excise taxes, oversight occurs through public disclosure of financial information. Federal tax law requires nonprofits to furnish their exemption applications, also known as IRS Determination Letters, and the last three tax returns (Form 990, discussed in the next section) to any person asking for the documentation. There are now third party providers of 990 forms, including www.guidestar.org, and www.charitynavigator.org.

Churches and Religious Organizations

For the first decades after the Revenue Act of 1913 established our modern system of federal income taxes, the government relied on voluntary compliance with the law, and there

¹⁰ Simon Dale and Chisolm (2006) add that there are caveats. A presumption of reasonableness “may cover a transaction if (1) it is approved by the board of directors or a committee, (2) the approving body is composed entirely of independent individuals, (3) the approval relied by ‘appropriate comparability date,’ and (4) the approval is ‘adequately document’ (Treas. Reg. §53.4958-6(a))” (283).

were no reporting requirements. In 1942, the U.S. Treasury Department began requiring all tax-exempt organizations to file annual information returns. Form 990 was two pages in length and included the nonprofit's income statement and balance sheet (Fishman 2010, 802). After complaints about the new regulation, the Treasury Department asked Congress to give them the authority to require disclosure of the financial information (Fishman 2010, 802), and Congress enacted the Revenue Act of 1943 which included the requirement that certain tax-exempt organizations, such as private foundations, file the Form 990.¹¹ Exempted from the requirement were religious organizations, most schools, and certain publicly supported charitable organizations (Arnsberger et al. 2008, 124).

In 1954 the IRS, through the rule promulgating process, began requiring organizations to obtain a determination from the Service that they qualify to be so designated. There are two tests an entity must meet to obtain tax-exempt status, an Organizational Test and an Operational Test.¹² For the first, the IRS relies on two primary sources: “the *statement of purpose* in the documents creating the organization (usually called ‘articles of organization’ or something similar) and the organization’s *plan to dispose of its assets when it eventually dissolves*” (emphasis in original, Bennett 2012, 37-38). For the second, the entity must show that its primary activities are in line with an exempt purpose listed in section 501(c)(3), that it will not distribute profits to benefit private individuals, and that it will not devote more than an “insubstantial” portion of its activities for the purposes of influencing legislation.¹³ Churches were and continue to be exempted from the requirement to apply for a determination by the IRS

¹¹ Fishman (2010) adds in a footnote, “One purpose of the 1943 legislation was to provide Congress with sufficient information to determine if further legislative restrictions were needed.”

¹² 26 C.F.R. § 1.501(c)(3)-1(a)(1)(2010).

¹³ Id. § 1.501(c)(3)-1(c)(3)(ii)

that they are in compliance with the law granting them tax-exempt status. By stating they are a church, an entity qualifies.

The Tax Reform Act of 1969 expanded filing requirements for all tax-exempt entities, except churches and their auxiliary organizations. If religious organizations engaged in activities that were not religious in nature, those activities were not exempt.

Interestingly, the provision in the Revenue Act of 1950 that established the unrelated business income tax for exempt organizations excluded churches. Simon, Dale, and Chisolm (2006) explain this as “a congressional favor that allowed commercial activities run by the Mormon Church, the Christian Brothers order, and other entrepreneurial church groups to finance their expansion with untaxed business profits” (293). During debates on the TRA69, the National Council of Churches and the U.S. Catholic Conference objected to the special treatment, and Congress ended the exemption as part of the TRA69.

There had been debate over the constitutionality of religious tax exemptions. In *Walz v. Tax Commission*, the Supreme Court held that a New York law exempting from property taxation the land and buildings owned by churches and used solely for religious purposes did not violate the establishment clause of the first amendment. Given the wide range of eleemosynary institutions granted tax exemption, the court found that the law neither favored nor disfavored religion. It is important to note, however, that the court declined to rule on the question of whether religious tax exemptions are constitutionally required.

The facts that churches are not required to apply for tax-exempt status and are exempt from filing annual financial returns (Form 990) mean that there is a large information gap in our understanding of the nonprofit sector generally and religious congregations specifically. It is difficult to understand how oversight and accountability of tax-exempt organizations can occur

without information. Adding to the difficulty is the exemption of churches from audit procedures required of other nonprofits (Simon, Dale and Chisolm 2006, 293).

Nonprofit Governance and Accountability

Founders of a nonprofit incorporate¹⁴ the organization according to the law in their state, and there is variation across states (Brody 2006, 246-248). Some states, such as New York, give founders multiple options. Others follow the American Bar Association's Model Act and offer "public benefit," "mutual benefit," and "religious" corporation options. A few provide just one form of incorporation that covers both business and nonprofit corporations. In all states, the statutes of nonprofit incorporation state that the board of directors (or trustees) has responsibility and accountability for the nonprofit. In addition, the nonprofits articles of incorporation and bylaws must specify how the board is composed and the rules under which it will govern. "The legal objective is to ensure that the board of trustees abides by applicable laws, makes certain that the organization's activities are directed toward the purposes stated in the articles of incorporation, and protects the organization and its assets through oversight activities" (Ott and Dicke 2012b, 1).

While it seems straightforward to state that a board of directors has responsibility and accountability for the nonprofit, thinking about how this is actualized presents some challenges. In many cases, nonprofit boards meet infrequently, the board members are volunteers, and a majority of charities have difficulty filling board positions (Ott and Dicke 2012b, 2). The executive director, the individual on the ground handling the daily operations, of the organization should seek advice and information from the board, and the board should "steer" the nonprofit.

¹⁴ There is, of course, the decision to not incorporate, and there are countless informal organizations. Once an organization engages in activities which may bring risk or that involve finances, incorporating provides members liability protection.

Research has shown, however, that “the gap between what boards are supposed to do and what they actually do is considerable” (Ostrower and Stone 2006, 613) and that board composition and actions vary a great deal across the sector.

Another challenge concerns what accountability means in the nonprofit context. In one sense, nonprofit corporations are similar to their for-profit counterparts in that there is a separation between the board (owners in the case of a business) and those doing the work of the organization. The problem principal-agent theorists ponder is how those who are responsible (the principals) can manage or control those doing the work (the agents) so that the goals of the organization are realized (Moe 1984; Ostrower and Stone 2006). Problems can arise when the agents have more information than their principals which can impact the quality of decision-making on the part of the principals. Agents may act against the directions of the principals and contrary to the goals of the organization. For businesses, the owners and the market steer the organization toward profitability goals. For nonprofits, it is not clear who the principals are and even less clear is how market forces play a role, if at all.

As noted above, nonprofits do not have the same ownership structure as businesses, so thinking about principals as owners is problematic. Ben-Ner and Van Hoomissen (1994) note that while the founders of a nonprofit function as owners initially, the charity takes on a life of its own with new trustees bringing their perspectives on the organization’s mission. Some scholars (Caers et al. 2006; Ben-Ner and Van Hoomissen 1994; Hyndman and McDonnell 2009; Katz 2000; Miller 2002) draw on a growing body of normative literature on boards and trusteeship to broaden the concept of owner to include “clients, staff, taxpayers, the general citizenry, peer agencies, suppliers, or other interested parties” (433). Also important are donors, both those who contribute time and financial resources. As we have seen, this group is especially important for

religious organizations. These different “owners” may, and probably do, have claims and expectations for the nonprofit’s performance and resources that vary and conflict.¹⁵ As Ostrower and Stone (2006) contend, the difficulty in establishing the identity of a nonprofit’s principal or principals leads to challenges in determining accountability.

Another aspect of accountability is legal. The Internal Revenue Service has the authority to enforce compliance with the regulations governing tax-exempt status. Unfortunately, research indicates “that the IRS lacks the resources and management capacity to effectively perform its oversight role” (Kearns 2012, 588).¹⁶ As noted above, churches and religious organizations pose even greater challenges to potential IRS oversight efforts. Information is essential to any accountability system, and the exemptions afforded to churches from having to apply for tax-exempt status and from submitting information returns severely limits the ability of the Service to hold them accountable.¹⁷

Senator Charles Grassley Seeks Information

The dearth of information also impeded Senator Charles Grassley’s attempts to respond to complaints from the public about the practices of a handful of prominent Christian ministers. He certainly could not ask for information from one of the agencies, the IRS, he oversaw as a ranking member of the Senate Committee on Finance because the Service would have little to give. Instead, on November 5 in 2007 he sent letters to six media-based ministries asking for information regarding their expenses, how executives were compensated, their personal assets, and amenities.

¹⁵ One might also add the case of a church whose members may contend the principal is a higher authority of a celestial nature.

¹⁶ See also: U.S. Government Accountability Office. 2005. “Tax-Exempt Sector: Governance, Transparency, and Oversight are Critical for Maintaining Public Trust.” Testimony by David M. Walker. GAO-05-561T. (Washington, DC: U.S. Government Printing Office, April 20, 2005), 17.

¹⁷ I recognize that accountability is also about adherence to mission, but that is an issue for a different paper.

He opens the letters using basically the same language in each, language which reflects themes noted in this paper:

The Finance Committee has a long tradition of reviewing tax-exempt organizations. It is important that the Congress and the public have confidence that public charities, which benefit from very significant tax breaks, are operated in a manner that promotes continued trust and that these charities adhere to guidelines established by the Internal Revenue Service. Historically, Americans have given generously to religious organizations, and those who do so should be assured that their donations are being used for the tax exempt purposes of the organizations

Recent articles and news reports regarding the possible misuse of tax-exempt donations made to religious organizations have caused some concern for the Finance Committee. Since your organization is not required to file Form 990 with the Internal Revenue Service, I am requesting that you answer the following questions and provide the following information for my review.¹⁸

The letters then go on to list the kinds of information Grassley is requesting.

Senator Charles Grassley

Grassley, a Republican from Iowa, was elected to the U.S. Senate in 1980 on the coattails of Ronald Reagan.¹⁹ In addition to his life-long career in public service, he is the only working farmer in the Senate, and he makes a point of traveling home most weekends to tend to the fields. Grassley was a protégé of H.R. Gross, a major conservative force in Iowa who served 13 terms

¹⁸ See Appendix A for his letter to Joyce Meyer, as an example of one of the letters.

¹⁹ See Appendix B for Senator Grassley's election history.

in the U.S. House of Representatives. Gross was known for being a watchdog of the Treasury and for opposing any spending measure he deemed wasteful. Grassley had been called his "heir and disciple" (King 1980) and admired Gross' political instincts. When Gross retired rather than run again in 1974, Grassley ran and served in the House until running for and winning a seat in the Senate in 1980.

Grassley's First Run for U.S. Senate

His first run for the Senate was the toughest, and few ventured predictions on the outcome. By the time it was over, it was the second most expensive senatorial race in the country and was Iowa's most expensive Senate race to date.²⁰

Evangelical Christians mobilized as never before and affected elections at the local, state, and Federal levels, including helping Ronald Reagan win the Republican nomination for president in 1980. As Robert D. Putnam and David E. Campbell describe in *American Grace*, these evangelical activists were motivated by a belief that they were called to stand up for their moral and religious values. "For them, heaven, hell, and judgment day are realities, not metaphors, and moral issues are framed in absolute, black-and-white terms" (Putnam & Campbell 2010, 114). They heeded the call that reverberated loudly from the pulpits and by television preachers to register to vote and support candidates who were mostly conservative and Republican. Interestingly in August of 1980, pundits were uncertain of their ultimate impact but saw a trend. Writing in *The New York Times*, John Herbers stated,

The highly motivated evangelical activists are working to mobilize millions of other Americans who hold similar religious beliefs, but leaders in both major political parties say that it is too early to judge with precision how deeply they

²⁰ Fundraising reports showed Grassley was the largest beneficiary of PAC contributions among all the candidates running in 1980. " PACs gave him \$735,867, or 39 percent of his total contributions (Mintz December 26, 1980).

will influence the general election in November, or how they will help shape the future political life of the nation. (Herbers 1980)

The evangelical activists and single-issue groups were mobilizing in Iowa.²¹ *The New York Times'* Herbers called Iowa "a bellwether state that frequently is a laboratory in American political developments, offers an example of what is happening. That state has a long conservative tradition, but it has clean, competitive politics and in recent years it has sent to Washington and to Des Moines both conservatives and liberals" (Herbers 1980).²²

The newly politicized evangelicals joined with the conservative special interest groups in supporting Grassley. "The Moral Majority was active registering voters. No one has measured how many new voters were added in Iowa, but Republican registration showed an upsurge and estimates of the number of evangelicals who had never registered before ranged as high as 80,000" (Herbers 1980). Grassley had the personal support of Rev. Falwell, who made a point of calling Grassley a "dear friend" and "fine Christian" during a Moral Majority rally in Des Moines in 1980 (Mayer 1980), but it is important to note that he is himself a lay preacher who worked the churches, not appealing for votes but testifying to his faith. Grassley "won the primary by almost 2 to 1, which probably would not have been possible without the help of the evangelicals" (Herbers 1980). Also important is Grassley's strong work ethic and passion for the hustings; he

²¹ Some writers believed that they had, in concert with conservative interest groups that had recently emerged, taken over the Republican Party. A number of single-issue groups had emerged, mobilizing voters around issues such as abortion, gun control, and taxes. Importantly, the Moral Majority was founded by the Rev. Jerry Falwell in June of 1979, and Richard Viguerie published *The New Right: We're Ready to Lead* in 1980. Viguerie had been working for years behind the scenes to develop techniques and strategies that what became as the New Right used to great advantage for more than a decade. He is particularly well known for his use of direct mail as a powerful weapon, and he had been accumulating targeted lists for years. By the 1980 election cycle, they were playing a large role in leading the Republican party and writing the platform which included building up the military establishment, defeating the proposed equal rights amendment for women, limiting the Federal government's activities in education, and enacting legislation that would prohibit abortion and pornography, restrict gay rights, mandate prayer in school, and strengthen the family.

²² In 1978, the conservative special interest groups helped defeat Senator Dick Clark and elect a moderate Republican, Roger Jepsen. In 1980, the same groups supported "the most conservative candidate" (Herbers 1980), Grassley, who was then representing Iowa in the U.S. House.

famously visits all 99 Iowa counties each election cycle. The work and momentum helped him win the seat against the incumbent Democrat, Senator John C. Culver with 54 percent of the vote.

Among the many interesting points about Grassley's first Senate election campaign, there are three that particularly pertain to this paper. First, though Iowans have sent both a Republican (Grassley) and a Democrat (Senator Tom Harkin²³) to represent them for the past three decades, the state has strong conservative strains running throughout. Grassley knows this and is proud of staying true to his conservative roots and to his Midwestern values while also maintaining a degree of independence, a recognition that being seen as extreme would be detrimental in a swing state. Second, an important part of his base is composed of traditional Christians who lean toward the conservative, evangelical end of the religious spectrum. Finally, Grassley continues to reach out to constituents throughout the state, and there have never been rumors of him aspiring toward a higher office. From the first, he has stressed constituent contact and service.

Grassley and the Nonprofit Sector

After 9/11 and the outpouring of support for relief efforts, reports emerged regarding problems with how financial contributions were being used. The Red Cross in particular became a focus of concern. As a member of the Senate Committee on Finance, Senator Grassley participated in hearings regarding those concerns, and he has continued to watch the nonprofit sector ever since. One *New York Times* reporter described Grassley as a man who "has made it his mission to wade into some of the nonprofit world's most embarrassing public controversies: misuse of funds by the United Way and the Red Cross; land sales by the Nature Conservancy;

²³ Harkin announced late January in 2013 that he will retire. Jeff Zeleny wrote in *The New York Times*, "The announcement from Mr. Harkin sets the stage for one of the most competitive Senate races in the country in the 2014 midterm elections. It will be a crucial contest in the Republican Party's quest to win control of the chamber from Democrats."

lavish, questionable spending by an American University president. Even televangelists aren't safe from the senator's scrutiny" (Strom 2006). Because of his role, citizens will send him reports about potential abuses. As a result of his investigations, he has either introduced legislation of a limited (his own characterization) nature, encouraged the IRS to follow up and educate citizens and abusers, or his inquiries resulted in tax-exempt entities correcting their own behavior.²⁴

The Grassley Six

What became known as the Grassley Six were ministries under the leadership of Kenneth Copeland, Creflo Dollar, Benny Hinn, Eddie L. Long, Joyce Meyer, and Paula White. The *New York Times* characterized them as "some of the flashiest preachers now popular on television and the Internet, many of them proponents of the prosperity gospel – that God will reward believers who open their hearts and wallets" (Goodstein and Aguayo 2007). Grassley opined to the *New York Times* reporters, "Jesus comes into the city on a simple mule, and you got people today expanding his gospel in corporate jets. Somebody ought to raise questions about is it right or wrong" (Goodstein and Aguayo 2007).

Grassley's investigation focused on these ministries because of reports from watchdog groups. According to CBS News, one of groups, Trinity Foundation, had been giving Grassley and the Senate Finance Committee information for two years. Trinity's leader, Ole Anthony, said that they "have furnished them with enough information to fill a small Volkswagen" ("Senate Panel Probes 6 Top Televangelists" 2007). Ministrywatch.com also provided Grassley with information, and its director of research, Rod Pitzer, told CBS News that he welcomed the investigation. He is concerned that ministries lack accountability, and he said that this gives "a

²⁴ A November 20, 2007 press release from the Senate Finance Committee provides details: <http://www.finance.senate.gov/newsroom/ranking/release/?id=83f6b20e-3327-4619-8b92-36ce643ef5fe>

black eye to churches and Christians who are trying to do things in the right manner” (“Senate Panel Probes 6 Top Televangelists” 2007). In addition to watchdog groups, newspapers such as the *Tampa Tribune*, *St. Louis Post-Dispatch*, and the *Atlanta Journal Constitution* had conducted investigations into the ministries in their areas.

Senator Grassley’s request included a deadline. He asked that the requested information be made available on searchable disks or electronically by December 6, 2007. When several ministries asked for more time, the senator was willing to oblige. It was becoming clear early on, however, that Grassley was not going to get answers from all of the organizations. In the end, only two would cooperate (see Table 1 for a summary).

[Insert Table 1]

It was also becoming clear that Grassley’s move stunned the Christian community, but they were not stunned into silence. The reaction was a mix of concern about where the investigation would lead, worries about religious freedom, and the kind of outrage one might expect from the religious right. Heavy hitters among the religious right sent a letter to the Senate Finance Committee expressing their anger. Among the signers were Paul Weyrich, a founder of The Moral Majority; the Rev. Donald E. Wildmon, chairman of the American Family Association; Ken Blackwell, chairman of the Coalition for a Conservative Majority; and the Rev. Rick Scarborough of Vision America. *Time* reported just a few weeks after Grassley’s initial press release that the “larger conservative Christian community has not been supportive” (Van Biema 2007). A headline in *Church & State* proclaimed, “'Prosperity Gospel' Minister Steps Up

War of Words with Republican Senator." The editor of *World*, an evangelical weekly, told *Time*, "Grassley has a shotgun, and lead is spraying all over the place."

But some of the Christian media, though alarmed by the investigation, were wary of giving too much support to the ministries and had even reported on their financial excesses prior to Grassley's announcement. The editor of *Charisma* lamented to the *Christian Century*, "We charismatics certainly are in an awkward spot these days" but added, "Something needs to be said. Questions need to be asked" ("Senator Probes Finances" 2007).

Grassley also heard from his colleagues in the Senate. He told *Time*, "Fellow Senators—'I won't give their names'--have asked what they should tell the preachers. . . .My answer was, 'Tell them to do what all the other nonprofits do--answer my letter'" (Van Biema 2007).

One week later, Grassley sent out a press release addressing the criticisms.²⁵ He starts by recognizing the importance of charitable giving, calling it a "noble and worthy sacrifice to help those in need." He notes that American donated more than \$295 billion to worthy causes in 2006, and Grassley reviews the arguments noted in this paper for giving "financial breaks" to charities and religious organizations. He states that he takes his oath to uphold the U.S. Constitution seriously, adding that the oath includes the Bill of Rights and the freedoms of press, speech and religion. He then describes his more than 30 years of work "to hold the federal government accountable to taxpayers and the American public," work that included investigations into abuse by tax-exempt organizations. "Tax-exempt organizations do not receive impunity by qualifying for preferential treatment. They must be held to high standards of accountability to keep the tax breaks. My five-year investigation of the nonprofit sector has revealed its membership is not infallible." He ends the release in a defiant manner and tone:

²⁵ Grassley, Senator Charles. 2007, December 3. Looking at Tax Questions with Nonprofit Media-Based Ministries. Federal Document Clearing House Press Release.

As the former chairman and now Ranking Member on the tax-writing Senate Finance Committee, I have an obligation to protect the integrity of U.S. tax laws. If tax-exempt organizations, including media-based ministries, thumb their noses at the laws governing their preferential tax treatment, the American public, their contributors and the Internal Revenue Service have a right to know. Considering tax-exempt media-based ministries today are a billion-dollar industry with minimal transparency, it would be irresponsible not to examine this tax-exempt part of our economy.

Shortly thereafter, in January of 2008, news reports indicated²⁶ that Grassley would not hold hearings, nor was he interested in changing the law. Rather, his interest is in the ministries voluntarily instituting reforms. A member of Grassley's staff told *Christianity Today*, "It's often the case that such investigations yield actions that are perfectly legal but shock the conscience."²⁷

The Report on the Grassley Six

Three years after initiating his investigation, Grassley released his report, and the *New York Times* headline is a concise summary: "Tax-Exempt Ministries Avoid Regulation" (Goodstein 2011, 12). The report says²⁸ that Pastor Hinn and Joyce Meyer complied with Grassley's request and instituted reforms, while the other four either did not respond at all or did so incompletely. All of the ministries classify themselves as churches, and they consequently have no reporting requirements to the IRS. The staff searched for voluntary reports of filing

²⁶ See for example: "Grassley plans no hearings on alleged lavish spenders." 2008, January 15. *Christian Century* 125 (1):18-19. "Grassley said many of the nonprofits he's investigated have voluntarily made changes in their operations after probes demonstrated inadequacies. "We didn't have to force anything down their throat," he said. "We've .., made very little change in law. I would hope that the ministries would be self-correcting."

²⁷ "Oversight Overstep." 2008, January. *Christianity Today*, p. 22.

²⁸ Theresa Pattara and Sean Barnett. 2011, January 06. "Review of Media-Based Ministries." Senate Finance Committee. The report can be accessed here: <http://www.finance.senate.gov/newsroom/ranking/release/?id=5fa343ed-87eb-49b0-82b9-28a9502910f7>

Form 990 or other reports and found very little. This was true even for the multiple for-profit, nonprofit, and doing-business-as entities related to the churches. Particularly troubling to the Senate Finance Committee staff were the number and diversity of the associated entities such as private airports and aircraft leasing companies that raised concerns about how the churches are using their tax-exempt status. Given the four ministries refusal to provide financial information, the staff was unable to determine if they report or pay tax on income earned by the many associated entities.

Despite the four churches' lack of cooperation, staff tried to gather information through informants but ran into roadblocks. The ministries require staff to sign confidentiality agreements and had clearly pressured their staff to not talk or face being sued, "while others were too frightened to speak with us even anonymously" ("Review of Media-Based Ministries" 2011, 1). The Committee can subpoena testimony; however in the end, the staff "believed that issuing subpoenas to informants would be counterproductive" ("Review of Media-Based Ministries" 2011, 1).

As news regarding the investigation spread, the Senate Finance Committee fielded reports from constituents throughout the country about potential wrongdoing by other churches and religious organizations. Though staff followed up on reports, their time was being diverted to other Committee business. The decision was made to close the investigation and issue the report.

Issues for Consideration and the Evangelical Council for Financial Accountability

The report concludes with several "Issues for Consideration." Though the tax regulations regarding churches "have not been updated in decades" ("Review of Media-Based Ministries" 2011, 3), there have been other cases of wrongdoing that came to the attention of Congress. One case in the mid-1970s regarding fraudulent fundraising activities by a Catholic order of priests

resulted in legislation being proposed and started discussions on the creation of a financial accreditation organization. In 1979, the Evangelical Council for Financial Accountability (ECFA) was formed. According to its web site, “In the late 1970s, Senator Mark Hatfield addressed a group of key Christian leaders and challenged them to police their own mission agencies as a "Christian Better Business Bureau" or face the potential of government intervention. Consequently, ECFA was formed, standards were established, and a chartering process was initiated for applicant ministries.”²⁹ After more than thirty years, only 1,700 churches (of some 300,000 formally constituted religious organizations) have become members of ECFA.

In 1987, the House Ways and Means Committee conducted hearings into the practices of Jim and Tammy Fay Bakker. The staff noted,

then-Congressman Dorgan posed the following question: ‘What kind of accountability is now required; what kind of information is required, is information sufficient now, is it available to allow those to whom the appeal for funds is directed to make reasonable decisions about the advisability of contributions?’ (“Review of Media-Based Ministries” 2011, 3).

Those questions are just as relevant today as they were twenty-five years ago. The House Ways and Means Committee considered requiring churches to follow the practices in the nonprofit sector generally by submitting annual financial returns to the IRS. During those hearings, then board chair of the ECFA, Gordon D. Loux, stated, “We would feel that the IRS form 990 is a minimal requirement that ought to be met by those that are operating in the public service.”³⁰

²⁹ <http://www.ecfa.org/Content/GeneralBackground>

³⁰ U.S. Senate Committee on Finance. “Grassley-ECFA Correspondence.”

<http://www.finance.senate.gov/newsroom/ranking/release/?id=5fa343ed-87eb-49b0-82b9-28a9502910f7>

While the committee was conducting its investigation, the ECFA became concerned about possible legislation that would be proposed, and in particular about new reporting requirements. In correspondence with Grassley, they argued against requiring churches to file the Form 990. In their April 21, 2009 letter, they state that “efforts to require annual church reporting to the IRS—even with only large churches required to complete Form 990 and smaller churches required to complete Form 990-N—or to more narrowly define a ‘church’ (as has been whispered on the Hill) is not a positive path for Congress or churches” (Grassley-ECFA Correspondence). Given the 1987 testimony by Loux, clarification was requested. ECFA’s president, Dan Busby, spoke to Loux and reported to Grassley that Loux’s comment was misinterpreted. “Mr. Loux confirmed that during his tenure on ECFA’s board, ECFA never took a position suggesting that churches should file the Form 990 either on a voluntary or a mandatory basis” (Grassley-ECFA Correspondence). Mr. Busby went further and described the hundreds of churches he has addressed and the “thousands of ministers and church administrators” and concluded “that nearly all ministers and churches desire to comply with the law” (Grassley-ECFA Correspondence).

Even though most churches do not engage in questionable financial and solicitation practices, the few that do prompted the Senate Finance Committee staff to suggest “tax policy issues for consideration” (“Review of Media-Based Ministries” 2011, 3), which they discuss in a broad way in appendices to the report and which are summarized in Table 2.

[Insert Table 2 here]

When Grassley released the report, he also sent a formal request to the ECFA, asking for a review of the report and the issues it raised, with an eye to determining how the concerns can be addressed. In a press release, Grassley said, “The challenge is to encourage good governance and best practices and so preserve confidence in the tax-exempt sector without imposing regulations that inhibit religious freedom or are functionally effective.”³¹ The ECFA formed an 80-member commission of leaders from faiths across the religious spectrum and submitted their report to Grassley on December 4, 2012. Not surprisingly, they recommended continued self-regulation and compliance with existing law, adding, “The Internal Revenue Service is responsible for enforcing those laws and educating the public about them. State laws and regulations also address proper conduct by nonprofit organizations and their leaders.”³² The Commission will issue a second report in 2013 to discuss political expression by churches and religious organizations.

Discussion

Despite his history of concern over practices among tax-exempt entities, Grassley’s announcement was “a move that surprised many observers” (“Senator Seeks Info” 2007). Particularly surprised were those in the Christian community. *Church & State* reporter Rob Boston (2008) reported, “The move sent shock waves through the evangelical community. Grassley is a conservative Republican whose votes on social issues usually please the Religious Right. (His 2006 rating from the Family Research Council was 87 percent.). But the senator has long had an interest in preserving the integrity of the tax laws and has in the past complained about secular non-profits violating the law.”

³¹ <http://www.finance.senate.gov/newsroom/ranking/release/?id=5fa343ed-87eb-49b0-82b9-28a9502910f7>

³² <http://www.ecfa.org/PDF/Commission-Report-December-2012.pdf>

It is important to remember how the evangelical community flocked to support Grassley during his first and closest race for the Senate in 1980. His actions and votes while in office have earned their continued support, as evidenced by his high ratings by conservative, both religious and secular, groups throughout his tenure in office. The Christian community is not united in their attitudes toward the doctrine preached by the Grassley six. A *Christianity Today* editorial derisively referred to the ministries as “the health-and-wealth crowd” and their teachings as “heresies.”³³

At the same time, the Republican party in Iowa has moved more to the right, and some claim that evangelical Christians now dominate the party and did so in 2008 (Brown 2012; Hallow 2008). A presidential election year that brought party activists out in full force (Wayne 2012), the 2008 election mobilized evangelicals and the Christian Right in Iowa because, in part, of their faith in candidate McCain. As noted above, leaders of the Christian Right expressed their concern, which bordered on outrage, over the investigation shortly after it began. A conservative blogger who served as a liaison to the evangelical community for President George W. Bush told the *Washington Post*, “The timing is not good for the Republican Party” (Salmon 2008). When Grassley was denied a place in Iowa’s delegation to the Republican convention in 2008, some commentators, such as columnist Robert Novak, believed that the conflict between the senator and the Christian Right had spilled over into GOP politics (Hulse 2008).

Given the controversy, Grassley’s investigation had the potential to come back and bite him when he ran for reelection in 2010. Political science scholars (Carson and Jenkins 2011; Mayhew 1974) would expect Grassley to temper his position on the investigation and any legislative action that might be proposed as a result, especially when talking to key constituents such as Christian conservatives (Fenno 1978). As noted above, Grassley does not disappoint.

³³ "Oversight Overstep." 2008, January, p. 22.

After pushback by Religious Right leaders and the ECFA, he talks more about wanting the ministries to self-correct and says he is not interested in introducing legislation.

The electoral connection may help to explain a small puzzle and address a question. Despite strong statements that he will not introduce legislation, when Grassley released the results of his investigation in January of 2011, he also recommended repealing or changing the IRS regulations that prohibit churches from endorsing political candidates. Although *New York Times* reporter Laurie Goodstein (2008) called this “a move that is sure to spur controversy,” it is also a move that will please religious conservatives in his base. “Pulpit Freedom Sunday,” an annual event organized by the conservative Christian group Alliance Defending Freedom (ADF) founded by James Dobson of Focus on the Family, calls for the prohibition to be eliminated and the event has seen increased interest and participation across the country. ADF lawyers organized a meeting with Grassley’s staff in May of 2008 to request that the IRS restriction be eliminated. The National Religious Broadcasters group has lobbied for years to have the IRS rules changes.

Grassley’s recommendation is not, however, mentioned anywhere at the senator’s extensive web site, which is a question the electoral connect may also help to explain. Neither is a statement by Grassley made when the ECFA Commission released their report. The *Chronicle of Philanthropy*, *USA Today*, and the Gannett News Service, among others, reported that Grassley issued a statement saying, “The report gives less attention to resolving some of the thornier questions, such as how to build accountability from entities that exploit vagueness in current laws and regulations for individual benefit rather than the greater good” (Perry 2012). The statement was also not found to be reported in Iowa papers. What the senator emphasizes instead is his role in encouraging wrong doers to correct their own actions and for accountability

groups such as the ECFA to take the proactive role in educating and monitoring nonprofits, rather than issue rules that may inhibit or burden religious organizations.

Conclusion

The nonprofit sector has been and continues to be an important influence in the United States. Its increasing size, scope, ubiquitous nature, distinctiveness from business and government, and financial intricacies pose significant challenges for scholars and for those entrusted with its oversight. Churches represent another layer of complexity within the sector, and to put it simply, religion is a sensitive issue. Because of how the federal tax code evolved, the IRS is the primary agency regulating nonprofits, but it has few tools to oversee the sector as a whole and virtually none to use with churches. Congress is, in turn, responsible for overseeing the federal bureaucracy and agenda-setting conundrums abound. Into this thorny thicket steps Senator Grassley.

In some respects, Grassley is one of the few, if not the only senator, who could take on the six ministries. He is a conservative Republican, a practicing Baptist, and a Midwestern farmer. He was the ranking Republican member of the Senate Committee on Finance when he began the investigation, and the only member with a track record of asking questions about nonprofits. Imagine for a moment a liberal, East or West Coast Democrat launching the probe; it's difficult, if not impossible, to do. The very qualities that make Grassley a good watchdog of charities, including religious entities, also make him vulnerable. An important part of his electoral base is composed of evangelical Christians. He retreated in 2008-2009 from taking a strong stand for reform of the tax-exemption for churches, undoubtedly seeing the fallout that could arise during his 2010 reelection campaign. After the ECFA Commission's report is released in late 2012, Grassley hints that he would have preferred a stronger commitment to

reform, but settles for self-correction. After Senator Harkin announced his intention to retire, questions arose about Grassley, and he has indicated he will run in 2016.³⁴

This case reveals just how overwhelming it is to provide oversight of the financial and management practices of organizations benefitting from being tax-exempt. Churches prove to be impervious. Even though there is no free exercise right to tax-exemption for churches, they do not have to apply for tax-exempt status, demonstrating they meet the requirements with a formal record that can be examined. Because they are not required to file information returns, Form 990s, there is no financial information to review. Some of the churches and related religious organizations, however, wield significant financial, media, and political clout which they are not shy about using to fight reform efforts. They are aided by longstanding concerns about freedom of speech and religion, and about government interference in religious matters. As Brody argues, “we do not want the state to run charities” (Brody 2006, 243), let alone churches. What this picture leaves out are the millions of donors, most of whom are middle to lower income earners, who entrust their dollars to church leaders. Who speaks for them?

³⁴For example, see http://siouxcityjournal.com/news/local/state-and-regional/grassley-laying-groundwork-for-run/article_88c14a36-9c26-5d00-877b-e04ca97040cf.html

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Table 1: The Grassley Six Media-Based Ministries

Leader(s)	Name of Religious Organization	Where Based	How Responded to Grassley's Request	Member of the ECFA
Kenneth Copeland and Gloria Copland ¹	Kenneth Copeland Ministries	Newark, TX	Submitted incomplete responses.	
Rev. Creflo A. Dollar, Jr. and Taffi Creflo ¹	World Changers Church International	College Park, GA	Declined to provide any information.	
Benny Hinn	World Healing Center Church	Grapevine, TX	Answered the questions.	
Bishop Eddie L. Long	New Birth Missionary Baptist Church	Lithonia, CA	Submitted incomplete responses.	
Joyce Meyer and David Meyer ¹	Joyce Meyer Ministries	Fenton, MO	Answered the questions	Joined in March, 2009
Paula and Randy White ²	Without Walls International Church and Paula White Ministries	Tampa, FL	Submitted incomplete responses.	

¹ Spouse.² Now divorced.

Table 2: Questions Raised by the Grassley Report and the ECFA’s Commission Response

Issues and Questions	Commission’s Response
1. IRS Advisory Committee: Recommendation that “that the IRS sponsor an advisory committee comprised of representatives of churches and religious organizations, including practitioners or other experts, and that would consider only issues related to churches and religious organizations.”	The committee is not needed.
2. Clergy Housing Exclusion: Should the income tax exclusion for housing allowances paid to clergy be limited in dollar amount and/or in number of residences?	No.
3. IRS Filing Requirements: Should churches and religious organizations be required to apply for tax-exempt status? Should they be required to file annual returns (Form 990)?	No.
4. Excise Taxes: Should an excise tax be imposed on nonprofit organizations that engage in excess benefit transactions?	No.
5. Audit Protection: Should the current IRS audit protection for church leaders be repealed?	No.
6. Standards for Due Diligence: Should the “rebuttable presumption” of reasonableness for transactions between nonprofit organizations and their leaders be eliminated and replaced with “minimum standards for due diligence?”	No.
7. Is legislation needed to remove uncertainty about the taxability of “love offerings” paid by church members to ministers? Some ministers consider "love offerings" to be nontaxable gifts and not compensation related to their work.	No.

Appendix A: Letter from Senator Grassley to Joyce Meyer

MAX BAUCUS, MONTANA, CHAIRMAN
 JOHN D. ROCKEFELLER IV, WEST VIRGINIA
 KENT CONRAD, NORTH DAKOTA
 JEFF BINGAMAN, NEW MEXICO
 JOHN F. KERRY, MASSACHUSETTS
 BLANCHE L. LINCOLN, ARKANSAS
 RON WYDEN, OREGON
 CHARLES E. SCHUMER, NEW YORK
 DEBBIE STABENOW, MICHIGAN
 MARIA CANTWELL, WASHINGTON
 KEN SALAZAR, COLORADO

RUSSELL SULLIVAN, STAFF DIRECTOR
 KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

November 5, 2007

David and Joyce Meyer
 Joyce Meyer Ministries
 700 Grace Parkway
 Fenton, MO 63026

Dear David and Joyce Meyer:

The Finance Committee has a long tradition of reviewing tax-exempt organizations. It is important that the Congress and the public have confidence that public charities, which benefit from very significant tax breaks, are operated in a manner that promotes continued trust and that these charities adhere to guidelines established by the Internal Revenue Service. Historically, Americans have given generously to religious organizations, and those who do so should be assured that their donations are being used for the tax-exempt purposes of the organizations.

Recent articles and news reports regarding the possible misuse of donations made to religious organizations have caused some concern for the Finance Committee. Since your organization is not required to file Form 990 with the Internal Revenue Service, I am requesting that you answer the following questions and provide the following information for my review.

Please provide the requested information on searchable disks or electronically by December 6, 2007.

General

1. The audited financial statements for Joyce Meyer Ministries (JMM) and any related tax-exempt entities for years 2004, 2005 and 2006.
2. The names of all integrated auxiliaries of JMM.
3. The names and addresses of members of the JMM board of directors for years 2004 to present and an explanation of their relationship/affiliation to Joyce and David Meyer.
4. The names and addresses of JMM compensation committee members for years 2004 to present and an explanation of their relationship/affiliation to Joyce and David Meyer.
5. The dates and locations of all board meetings and the names of the persons in attendance from 2004 to present. Provide the total cost associated with conducting each meeting, including, but not limited to, lodging, meals, travel, entertainment and any extracurricular activities.

Executive Compensation

1. A detailed explanation of the compensation paid to Joyce Meyer, David Meyer and any related persons from JMM and any integrated auxiliaries and related tax-exempt entities including, but not limited to, cash and non-cash gifts, housing allowances (to include a detailed break-down of expenses paid to maintain housing), and loans (including the terms of the loans and a schedule of repayment) for years 2004 to present.
2. A detailed explanation of the personal use of assets of the tax-exempt organization (i.e. jets, employees, facilities) and an accounting of any repayments made to the tax-exempt organization for the personal use of stated assets for years 2004 to present.
3. Any other payments to Joyce Meyer, David Meyer and any persons related to or affiliated with the Meyers, including all cash or cash equivalent **excluded** from income reported to the IRS on Form W-2 or Form 1099 for years 2004 through 2006.
4. Copies of any compensation recommendations received by JMM and the names and addresses of any person(s) that provided the recommendations.
5. A detailed accounting of total housing allowances paid by JMM and any other related tax-exempt entity for the purpose of providing housing for Joyce Meyer, David Meyer and all persons related to or affiliated with the Meyers for years 2004 to present.
6. A detailed accounting of the total monthly expenses to maintain the personal residence(s), including any vacation homes, of Joyce and David Meyer for 2004 to present.
7. Credit card statements for all credit cards used by Joyce and David Meyer for years 2004 to present for expenses paid by JMM or any other related entity. An explanation of all credit card expenses paid by the organization on behalf of Joyce and David Meyer for years 2004 to present.
8. A detailed accounting of all expense account items for Joyce and David Meyer for years 2004 to present, including, but not limited to, clothing expenses and cosmetic surgery for years 2002 to present.
9. A list of all vehicles (Year, Make and Model) purchased, leased or maintained by JMM or any other tax-exempt entity for the benefit of Joyce Meyer, David Meyer and any other related person. A detailed accounting of the yearly expense to purchase and maintain each vehicle for years 2000 to present. This accounting should also include date(s) of purchase, purchase amount(s), date(s) of disposition and an explanation of the disposition.

Real and Personal Assets

1. A list of all domestic and overseas bank accounts and investments belonging to JMM and any of its integrated auxiliaries and related tax-exempt entities for years 2004 to present.

2. A list of all real property purchased by JMM from ministry inception to present, to include the square footage and tax-exempt purpose of each property. Provide the names and address of all persons who reside(d) in residences owned and/or maintained by the ministry from 1999 to present. Provide an explanation of each person's position with the organization and their relationship to David Meyer and Joyce Meyer. Provide a detailed accounting of the purchase cost of each property, the cost of any renovations and the yearly maintenance cost of each property from 2000 to present.
3. Detailed information (Year, Make, Model and Number) of any aircraft owned, used or leased by JMM or any related or integrated auxiliary, including amounts paid for the purchase and/or lease of the aircraft and all maintenance expenses from 2004 to present. Copies of the flight records of any aircraft owned, used or leased by JMM or any related or integrated auxiliary 2004 to present. Copies of Joyce Meyer's itinerary from 2004 to present.

Other

1. Provide a copy of all employment agreements between Joyce Meyer and JMM in effect from 2004 to present.
2. Provide a copy of all employment agreements between David Meyer and JMM in effect from 2004 to present.
3. A detailed list of all cash and/or non-cash payments received by each board member and compensation committee member for years 2002 to present. Copies of Form 1099 or Form W-2 issued to these persons.
4. The written contract between Joyce Meyer and JMM regarding the publishing of her works. If there is no written contract, but a verbal contract exists, provide the date and the persons who were part of that verbal agreement, the terms of the agreement and the amount to be paid to Joyce Meyer.
5. The written contract between David Meyer and JMM regarding the publishing of his works. If there is no written contract, but a verbal contract exists, provide the date and the persons who were part of that verbal agreement, the terms of the agreement and the amount to be paid to David Meyer.
6. The name and address of the person and/or company that prints, tapes and records Joyce Meyer's material. The name and address of the person and/or company that owns the titles, copyrights, royalties or similar interests in sermons, videotapes, books, CDs, DVDs, or other materials prepared by JMM. Are any of the ministry's paid employees involved in the printing, publishing, recording and distribution of the books, videotapes, CDs, or DVDs?

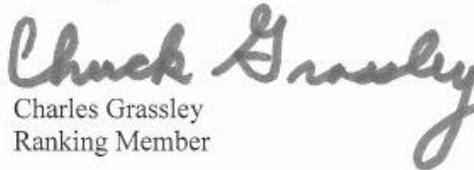
7. The names and addresses of the persons who decide how the funds of JMM are spent. Are these decisions, both operational and financial, subject to oversight by any body within the organization? If so, is this body elected or appointed? If appointed, by whom and on what basis are members of this body appointed? Who has voting rights within JMM? From 2000 to present, have Joyce Meyer, David Meyer or any persons related to them ever voted on the compensation they receive, their parsonage allowances or any other benefits they received from JMM? If so, provide the names and their relationship to Joyce and David Meyer.
8. Provide a detailed list of all entities operated by related parties that received payment from JMM from 2004 to present. Provide a detailed list of all persons related to Joyce Meyer and David Meyer that received any form of payment or benefit from JMM for years 2004 to present.
9. For years 2004 through 2006, provide a detailed list of all payments, including any honorariums and love offerings, paid to visiting ministers, musicians or guests. Include the name and address(es) of each person and copies of Form 1099 that were issued.
10. The names of all affiliated churches/ministries that have made personal donations and/or gifts to Joyce Meyer from years 2004 to present and the amounts of each gift or donation. If the donation or gift was a non-cash item, provide a list of the donations/gifts.
11. It has been reported to the committee that David Meyer and Joyce Meyer receive personal monetary gifts and jewelry from donors. Explain the procedures for handling the monetary gifts and provide the amounts of these gifts for years 2004 to present. Explain the valuation procedures for jewelry received, including the name and address of the person performing the valuation. Provide a statement indicating whether these gifts have been included in the income reported to the Internal Revenue Service for David Meyer and Joyce Meyer for years 2004 through 2006.
12. Explain the procedures for handling cash received during crusades, meetings or conferences held outside of the United States, including bank deposits that are made prior to returning to the United States.
13. The names and addresses of speakers who were paid for their participation in any conferences sponsored by JMM for years 2003 through 2006. Provide a list of the amounts paid to each speaker and copies of Form 1099 issued.
14. A detailed list of all the donations/gifts made to other ministers, ministries/churches from JMM, to include the name of each recipient, address and amount of each donation/gift for years 2004 to present.
15. The names and addresses of any persons who provided executive compensation recommendations for Joyce Meyer and David Meyer.

16. According to Jefferson County real estate assessor's office, the following items were purchased for the headquarters of JMM. Please verify the cost of each item and explain the tax exempt purpose:

- | | |
|-----------------------------|----------|
| (a) Commode with Marble Top | \$23,000 |
| (b) Malachite Round Table | \$30,000 |
| (c) Conference Table | \$30,000 |
| (d) Reception Desk | \$20,741 |
| (e) Coach | \$17,420 |
| (f) Pair of Dresden Vases | \$19,162 |
| (g) French Clock | \$11,219 |

Thank you for your time and assistance on this matter.

Sincerely,



Charles Grassley
Ranking Member

CC: The Honorable Max Baucus
Chairman
U.S. Senate Committee on Finance

Appendix B: Senator Charles Grassley's Election History³⁵

Election Year	Candidate	Votes	Percent
2010	Charles Grassley (R)	718,215	64.4%
	Roxanne Conlin (D)	371,686	33.3%
	John Heiderscheid (L)	25,290	2.3%
2004	Charles Grassley (R)	1,038,175	70.2%
	Arthur Small (D)	412,365	27.9%
	Christy Welty (L)	15,218	1%
	Darryl Northrop (GR)	11,121	0.8%
	Edwin Fruit (SW)	1,874	0.1%
1998	Charles E. Grassley (R)	648,480	68.4%
	David Osterberg (D)	289,049	30.5%
	Susan Marcus (NL)	7,561	0.8%
	Margaret Trowe (SW)	2,542	0.3%
1992	Charles E. Grassley (R)	899,761	69.6%
	Jean Lloyd-Jones (D)	351,561	27.2%
	Stuart Zimmerman (NL)	16,403	1.3%
	Sue Atkinson (I)	6,277	0.5%
	Mel Boring (I)	5,508	0.4%
	Rosanne Freeburg (I)	4,999	0.4%
	Carl Eric Olsen (GR)	3,404	0.3%
	Richard O'Dell Hughes (I)	2,918	0.2%
	Cleve Andrew Pulley (SW)	1,370	0.1%
1986	Charles E. Grassley (R)	588,880	66%
	John P. Roehrick (D)	299,406	34%
1980	Charles E. Grassley (R)	683,014	54%
	John C. Culver (D)	581,545	46%

³⁵ Source: Roll Call; <http://www.rollcall.com/members/150.html>