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THE SERMON ON THE MOUNTAIN OF CASH: HOW TO CURTAIL THE PROSPERITY SCHEME AND PREVENT OPPORTUNISTS FROM “PREYING” ON VULNERABLE PARISHIONERS

JACOB M. BASS*

Abstract: Many televangelists in the United States preach the “prosperity gospel,” a doctrine which teaches that a religiously faithful person who continually donates money to church ministries can expect God to grant material improvements to their finances, health, and relationships. Americans who participate in prosperity gospel churches often donate thousands of dollars to these churches, despite their difficulty financing such large donations and the lack of the promised material improvement to their lives. Televangelists who preach the prosperity gospel secretly use these donations to finance their extravagant lifestyles, instead of using the funds to support the faithful masses who continue to donate. The U.S. Constitution’s Free Exercise Clause makes it difficult to regulate this religiously-based scheme. This Note argues that to rectify the abuses of prosperity preachers, prosecutors and private individuals should work within the framework of existing criminal and tax law to seek convictions for fraud and tax evasion.

INTRODUCTION

Bonnie Parker spent tens of thousands of dollars trying to treat her breast cancer.¹ She did not tell her children or family about her diagnosis, but opted to keep it to herself.² Throughout most of her illness, Parker’s personal struggles were captured only in her diary, in which she penned, “God heal me. God heal me. God heal me.”³ Despite the monetary amount

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¹ *News 8 Reporting Featured in ‘Last Week Tonight’ Segment*, WFAA (Aug. 19, 2015), <http://www.wfaa.com/story/news/local/2015/08/19/news-8-reporting-featured—last-week-tonight-televangelists-segment/31999057/> [<http://perma.cc/VB6Z-MG7G>]; SUFFER THE CHILDREN (Trevor Glass 2006), <https://www.youtube.com/watch?v=2X5dpfzXUus> [<http://perma.cc/5CDX-M472>].

² SUFFER THE CHILDREN, *supra* note 1.

³ Jamie Stengle, *Measles Cases Put Texas Megachurch Under Scrutiny*, YAHOO! NEWS (Aug. 31, 2013), <http://news.yahoo.com/measles-cases-put-texas-megachurch-under-scrutiny-165150724.html> [<http://perma.cc/ABV8-X2JC>]; see SUFFER THE CHILDREN, *supra* note 1.

she was spending to cure herself, Parker was not getting any better.⁴ This is because Parker was not paying a hospital or a physician for her treatment.⁵ Instead, she was sending money to televangelists who preached that “faith” was the best medicine for treating diseases.⁶

Like many Americans, Parker was an adherent to a Christian religious movement known as the “prosperity gospel,” which teaches that donating money to a specific church or pastor will lead to God’s blessing of health, improved relationships, and financial prosperity.⁷ These prosperity “churches” have services that are frequently broadcast on television stations across the country and are easily searchable on the Internet; they enjoy a weekly domestic viewership in the millions.⁸ Parker, one of these viewers, had spent countless mornings on her couch watching broadcasts of prosperity gospel televangelist Kenneth Copeland and his wife, Gloria Copeland, both of whom mesmerized Parker and millions of other Americans with their promises of divine health and financial success for those who donated to the church.⁹

⁴ See *Televangelists: Last Week Tonight with John Oliver* (HBO Broadcast Aug. 16, 2015) [hereinafter *Last Week Tonight*], <https://www.youtube.com/watch?v=7y1xJAVZxXg> [<http://perma.cc/AH8F-5UMM>].

⁵ See *id.* Parker believed that seeking professional medical treatment was sinful. Stengle, *supra* note 3.

⁶ See *Last Week Tonight*, *supra* note 4. Televangelists often repeat the phrase “if you use your faith” without elaborating what this means or how to precisely do so. See, e.g., *id.* The Merriam-Webster Dictionary defines faith as “belief and trust in and loyalty to God.” *Faith*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/faith> [<http://perma.cc/7DA5-9L3B>]. The word “faith,” as used by televangelists, represents a belief in and loyalty to God. See *Last Week Tonight*, *supra* note 4; SUFFER THE CHILDREN, *supra* note 1. It also means “faith that repeatedly donating money will lead to the receipt of money.” See *Last Week Tonight*, *supra* note 1. A “televangelist” is defined as “a person and especially a preacher who appears on television in order to teach about Christianity and try to persuade people to become Christians.” *Televangelist*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/televangelist> [<http://perma.cc/DEP5-UEKQ>].

⁷ Eric Gorski, ‘Gospel of Wealth’ Facing Scrutiny, USA TODAY (Dec. 27, 2007, 2:56 PM), http://usatoday30.usatoday.com/news/nation/2007-12-27-64745293_x.htm [<http://perma.cc/NRF5-9TKY>]; see *Last Week Tonight*, *supra* note 4. The “prosperity gospel” is not its own denomination of Christianity but rather is a religious interpretation of the Bible taught in various Christian churches. See KATE BOWLER, BLESSED: A HISTORY OF THE AMERICAN PROSPERITY GOSPEL 183, 256 (2013) (noting that about two-thirds of those who participate in prosperity churches state that they are non-denominational, with the remaining third belonging to Pentecostal, Evangelical, Methodist, or other denominations). Because of this disparity, this Note—as well as other academics—use the term “prosperity” for a convenient shorthand to denote the theology. See *id.* at 128. The prosperity gospel has been called “seed-faith”; the idea being that the more “seeds”—prosperity preachers’ euphemism for financial donations—one sows, the higher the returns. See *Last Week Tonight*, *supra* note 4.

⁸ See JAMES A. ROBERTS, SHINY OBJECTS: WHY WE SPEND MONEY WE DON’T HAVE IN SEARCH OF HAPPINESS WE CAN’T BUY 192 (2011).

⁹ See *News 8 Reporting Featured in ‘Last Week Tonight’ Segment*, *supra* note 1. Gloria Copeland once said during a sermon:

The Copelands' assertions that "faith healing" and the contribution of large amounts of money would cure cancer more effectively than prescribed drugs and medical treatment directed Parker to donate tens of thousands of dollars out of her personal budget to Copeland Ministries.¹⁰ The donations, however, did not bring Parker the relief she desperately sought.¹¹ The photographs of Parker prior to her death that depict a frail, old woman lying in bed with a respirator suggest that Parker had softened her reluctance of modern medicine—albeit too late.¹² Parker's family members recounted the profound disappointment Parker had felt prior to her death in 2004; after experiencing no "faith healing" from her previous donations, Parker believed that she had not spent enough money to cure herself.¹³ In response to her mother's grief, Kristi Beach sent two unanswered letters to the Copelands inquiring about her mother's donations to their ministry.¹⁴ In an interview, a representative for the Copelands responded that the Copelands do not send response letters to "demits," a term they use for people they consider to be "demented."¹⁵ Despite all of their broadcasts about the powers of "faith healing," the Copelands left Parker's family without explanation for their loss, or a chance to get their money back.¹⁶

We know what's wrong with you; you've got cancer. The bad news is, we don't know what to do about it, except give you some poison that'll make you sicker [sic]. Now which do you want to do? Do you want to do that? Or do you want to sit here on a Saturday morning, hear the word of God, and let faith come into your heart and be healed.

Last Week Tonight, *supra* note 4. Note that although "promise" is a term of art in contract law, it is used in the colloquial sense throughout this Note. See generally RESTATEMENT (SECOND) OF CONTRACTS § 2 (AM. LAW INST. 1981) ("A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.").

¹⁰ See *Last Week Tonight*, *supra* note 4; *News 8 Reporting Featured in 'Last Week Tonight' Segment*, *supra* note 1. "Faith healing" ranges from the belief that prayer aids in recovery to the position that faith, rather than medical science, is what cures people of their afflictions. See BOWLER, *supra* note 7, at 161. An advertisement for *God's Prescription for Divine Health*, one of Gloria Copeland's numerous books on faith healing, promises that "[t]here is a medicine so powerful it can cure every sickness and disease known to man. . . . Sound too good to be true? It's not! Gloria proves by the word of and confirms by personal experience that such supernatural medicine exists." *God's Prescription for Divine Health: Product Description*, KENNETH COPELAND MINISTRIES, <https://my.kcm.org/p-317-gods-prescription-for-divine-health.aspx> [<https://perma.cc/SK8Q-TV3Y>]. Despite the Copelands' claims about the power of faith healing, Kenneth Copeland's son said that his father goes to the doctor. SUFFER THE CHILDREN, *supra* note 1.

¹¹ See SUFFER THE CHILDREN, *supra* note 1.

¹² See *id.*

¹³ See *id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *id.*

Parker's story is not unique.¹⁷ She is one of roughly sixteen million Americans who donate to, and follow the teachings of the prosperity gospel with the hopes of being repaid spiritually and financially.¹⁸ In recent years, the doctrine has seen an increase in followers, particularly from individuals with low- and middle-income backgrounds.¹⁹ The promises these churches extol are particularly alluring because these low- and middle-income adherents view the scheme as a quick way to riches.²⁰ As one commentator stated: "[T]he appeal of prosperity theology is obvious. The faith movement sells a compelling bill of goods: God, wealth, and a healthy body to enjoy it."²¹ Moreover, followers are taught this belief by wealthy televangelists who hold out their successes as proof that following the prosperity gospel can be incredibly fruitful.²² Unbeknownst to most followers, these pastors did not gain wealth by reaping the purported benefits of the prosperity gospel; instead, they made their millions by retaining their followers' donations and masking those donations as proof that "faith" can make a person richer.²³

The prosperity gospel and its preachers have been criticized by numerous secular and religious commentators for using God and faith to financially exploit impoverished adherents.²⁴ The lifecycle of a prosperity gospel dona-

¹⁷ See DAVID WAYNE JONES & RUSSELL S. WOODBRIDGE, *HEALTH, WEALTH & HAPPINESS: HAS THE PROSPERITY GOSPEL OVERSHADOWED THE GOSPEL OF CHRIST?* 13 (2011).

¹⁸ Bradley A. Koch, *Who Are the Prosperity Gospel Adherents?*, 36 J. IDEOLOGY 1, 2–3 (2014); see *Last Week Tonight*, *supra* note 4. This figure was estimated from the year 2006; at the time, approximately five percent of all Americans were members of the prosperity movement. Koch, *supra*, at 21. Prosperity preachers typically vary the specific relationship between donation and reward, but they generally proclaim that consistent donation will allow the follower to live the same extravagant lifestyle the preachers have. See BOWLER, *supra* note 7, at 134–35.

¹⁹ See Gorski, *supra* note 7. *But see* BOWLER, *supra* note 7, at 233 (noting it is difficult to correctly gauge precise statistics regarding the wealth of the followers of the prosperity gospel and the number of those followers). Scholars debate whether the Great Recession of 2008 caused prosperity pastors to thrive. Compare ROBERTS, *supra* note 8, at 185 (noting that prosperity theology was being taught at more churches during the 2008 recession and that the recession was possibly even fueling the movement), with BOWLER, *supra* note 7, at 214–16 (stating that pastors changed their fundraising approach during the recession, but that many pastors were financially damaged by the recession).

²⁰ See JOHNATHAN L. WALTON, *WATCH THIS! THE ETHICS AND AESTHETICS OF BLACK TELEVANGELISM* 95 (Peter J. Paris et al. eds., 2009). The movement preaches that Jesus was wealthy and that he wishes for believers to be the same. *Id.* Similarly, adherents believe that poverty and sickness arise because people do not have enough faith. *Id.*

²¹ BOWLER, *supra* note 7, at 232.

²² See ROBERTS, *supra* note 8, at 191–93. Although prosperity preachers hold themselves out as proof that adherents can become wealthy, they refuse to disclose pastors' and members' salaries, as well as their operating budgets. BOWLER, *supra* note 7, at 233. Thus, it is difficult to determine the true financial condition of prosperity theology as a whole. See *id.*

²³ See BOWLER, *supra* note 7, at 232; ROBERTS, *supra* note 8, at 191–93; *Last Week Tonight*, *supra* note 4.

²⁴ See Leonardo Blair, *Creflo Dollar Will Get \$70 Million Gulfstream G650 Jet Says Church; World Changers Board Says It Is 'Necessary' for Ministry*, CHRISTIAN POST (June 2, 2015), <http://www.christianpost.com/news/creflo-dollar-will-get-70-million-gulfstream-g650-jet-says>

tion is shrouded in secrecy; few, if any, prosperity churches explain what happens to donations made by devout followers after they reach ministerial treasuries.²⁵ Despite the pastors' assertions that the donations are for church operations, many commentators suspect that the money is instead routed directly to the televangelist pastors, considering their opulent lifestyles.²⁶

Kenneth Copeland, the "godfather" of the prosperity gospel, and one of the most well-known televangelists in the nation, has benefitted extensively as a preacher of the prosperity gospel, and is a paradigmatic example of how prosperity preachers live and run their ministries.²⁷ Copeland lives in a \$6 million mansion in Texas.²⁸ He frequently flies around the country in a \$20 million private jet to enjoy excursions like ski trips in Colorado and exotic game hunts in southern Texas.²⁹ Though the lack of transparency in prosperity churches makes it difficult to know for sure, many critics of the prosperity movement have argued that the Copelands' immense wealth comes largely from donations.³⁰ The danger with the prosperity scheme lies in the fact that these pastors portray this wealth to their viewers as being a result of the prosperity gospel, and not a result of the millions of dollars in donations the viewers send in each year—the latter being the more realistic explanation.³¹ Unsuspecting followers, like Parker, are led to believe that their donations are going directly to the church, and that their opportunity to be

church-world-changers-board-says-it-is-necessary-for-ministry-139858/ [http://perma.cc/6NVR-ANSL] (noting criticism from early 2015 when pastor Creflo Dollar asked for a \$300 donation from each of his ministry's two hundred thousand international parishioners so he could purchase a \$65 million luxury private jet); see also Gorski, *supra* note 7 (noting Senate investigation into prosperity gospel). Catholic priest Reginald Martin and other religious leaders criticize the prosperity gospel because it runs counter to the traditional notion that Jesus lived a simple life and commended those who embraced voluntary poverty. Reginald Martin, *Prosperity Gospel?*, OUR SUNDAY VISITOR (Sep. 7, 2015), <https://www.osv.com/Article/TabId/493/ArtMID/13569/ArticleID/18119/Prosperity-Gospel.aspx> [http://perma.cc/KWN3-EMW7].

²⁵ See BOWLER, *supra* note 7, at 233; *Last Week Tonight*, *supra* note 4.

²⁶ See *Last Week Tonight*, *supra* note 4.

²⁷ ROBERTS, *supra* note 8, at 191; see *Last Week Tonight*, *supra* note 4. Though not the first prosperity preacher, Copeland is considered to be a pioneer of the modern prosperity movement, and has supporters worldwide. See ROBERTS, *supra* note 8, at 191; Stenge, *supra* note 3.

²⁸ *Last Week Tonight*, *supra* note 4; *News 8 Reporting Featured in 'Last Week Tonight' Segment*, *supra* note 1. The mansion sits on a 1500-acre compound and includes a church, a private airstrip, and a hangar. Gorski, *supra* note 7.

²⁹ *Last Week Tonight*, *supra* note 4. On one particular hunt, Copeland and his son hunted two deer native to India and Sri Lanka. *Id.* Copeland also owns two other planes. Van Biema, *Huckabee Stands by a Televangelist*, TIME (Nov. 15, 2007), <http://content.time.com/time/politics/article/0,8599,1684330,00.html> [https://perma.cc/QG3P-LHPR].

³⁰ See *Last Week Tonight*, *supra* note 4.

³¹ See BOWLER, *supra* note 7, at 232–33; MICHAEL S. HAMILTON, *More Money, More Ministry: The Financing of American Evangelicalism Since 1945*, in MORE MONEY MORE MINISTRY 104, 115–16 (Larry Eskridge & Mark A. Noll eds., 2000).

rewarded by God for their dedication to the prosperity gospel is just around the corner.³²

Televangelist ministries, such as the one run by the Copelands, rely on the Free Exercise Clause of the First Amendment to the U.S. Constitution in order to enjoy an almost complete absence of government regulation.³³ The statements made, and actions taken, by televangelist pastors often go unquestioned because, under U.S. Supreme Court case law, the government is effectively forbidden by the Free Exercise Clause from challenging the validity of religious beliefs.³⁴ When the government does inquire into the actions of these ministries, the pastors criticize the government for invading upon their religious liberty.³⁵ Furthermore, the funds these pastors receive from their viewers often go unreported because these ministries are considered “churches” under the U.S. Tax Code and are thereby not required to disclose their finances.³⁶ Investigations into the financial portfolios of these “churches” do not reveal where the parishioner contributions are being allocated, or how much is actually being donated.³⁷ The prosperity scheme, and the televangelist pastors who preach it, are successful in exploiting money

³² See HAMILTON, *supra* note 31, at 115; *Last Week Tonight*, *supra* note 4. Televangelists’ legitimacy is supported in part by their endorsements from notable politicians. Van Biema, *supra* note 29. In 2007, then-presidential candidate Mike Huckabee said the Copelands “are about the most gracious, authentic, and humble people I know They have brought hope to millions” *Id.*

³³ See U.S. CONST. amend. I; 2 DAVID M. O’BRIEN, CONSTITUTIONAL LAW AND POLITICS: CIVIL RIGHTS AND CIVIL LIBERTIES 800–01 (Dexter Gasque ed., 6th ed. 2005); *Last Week Tonight*, *supra* note 4. The Free Exercise Clause of the First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I (emphasis added to distinguish Free Exercise Clause from Establishment Clause). The Free Exercise Clause has been held to apply to the states by incorporation into the Fourteenth Amendment. U.S. CONST. amend. XIV; *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 876–77 (1990). Though the intricacies of the legal privileges and limitations of the Free Exercise Clause will be discussed later in this Note, there are salient political disincentives to challenging religious institutions. See Van Biema, *supra* note 29.

³⁴ See *United States v. Ballard* (*Ballard II*), 322 U.S. 78, 86 (1944).

³⁵ See Eric Gorski, *Analysis: Copeland’s Religious Empire Benefits His Family*, USA TODAY (July 27, 2008), http://usatoday30.usatoday.com/news/religion/2008-07-27-copeland-evangelist-finances_N.htm [<http://perma.cc/VJL5-APZW>] (paraphrasing Copeland Ministries’ view that a 2007 Senate inquiry into its organization, led by Iowa Senator Grassley, was an attack on the ministry’s religious liberty); Van Biema, *supra* note 29 (mentioning one Evangelist observer’s concern that Senator Grassley’s inquiry was a “saint hunt”).

³⁶ See Matthew Encino, *Holy Profits: How Federal Law Allows for the Abuse of the Church Tax-Exempt Status*, 14 Hous. BUS. & TAX L.J. 78, 85–87 (2014). See generally Patrick Sternal, *The Business of Religion: Current Legal Issues Facing Religious Organizations*, 18 BUS. L. TODAY 47 (2009) (providing a useful background on current issues in religious tax law).

³⁷ See Laurie Goodstein, *Tax-Exempt Ministries Avoid New Regulation*, N.Y. TIMES, Jan. 8, 2011, at A12, http://www.nytimes.com/2011/01/08/us/politics/08churches.html?_r=1 [<https://perma.cc/9ULE-66N8>].

from their parishioners because they are able to hide under the guise of religious liberty.³⁸

Part I of this Note first addresses the mechanics of the prosperity gospel and how its preachers entice followers to donate money. This section also analyzes the demographics of the movement and why those who follow it—particularly poor and uneducated Americans—are more inclined to believe in the gospel. Part II discusses the judicial and legislative history of the Free Exercise Clause of the First Amendment. This section also addresses the case law leading up to the Religious Freedom Restoration Act (RFRA) of 1993 and how the Act relates to the prosperity gospel. It then addresses how generous tax-reporting loopholes have allowed prosperity churches to continue being unregulated. Part III analyzes three possible ways to hold prosperity preachers accountable, including a discussion of how criminal fraud, tax evasion, and civil fraud should be employed by the government or by private individuals. The circumstances surrounding the demise of past prosperity pastors are also analyzed as guidance for holding today's prosperity preachers similarly accountable.

I. FINANCING THE PROSPERITY GOSPEL: HOW TELEVANGELISTS MAKE THEIR MONEY AND FROM WHOM THEY TAKE IT

One of the most salient criticisms of the prosperity gospel is the striking similarity between the ways in which prosperity churches and corporations operate.³⁹ A prosperity church's fundamental message is similar to that of a business: investing money in the business (the prosperity church) will cause the investor (the parishioner) to gain more money.⁴⁰ Despite their Christian tradition, however, prosperity ministries often do not reinvest funds back into the community.⁴¹ Instead, the money lines the coffers of televangelist preachers who claim to be using the funds for ministerial purposes.⁴² The prosperity gospel encourages this concentration of wealth at

³⁸ See *id.*

³⁹ See BOWLER, *supra* note 7, at 183, 215 (analyzing the ways in which prosperity churches made changes to their revenue models in response to the 2008 recession). Even the physical presentations of megachurches resemble a business structure more so than they do traditional houses of worship. WALTON, *supra* note 20, at 96. Pastors of one prosperity gospel denomination, the Word of Faith, go so far as to not have traditional Christian symbols, such as crosses or stained glass images of Jesus, in the building. *Id.* These pastors eschew more traditional robes or bright colors and dress as if they “belong on the pages of a Brooks Brothers catalog.” *Id.*

⁴⁰ See *Last Week Tonight*, *supra* note 4.

⁴¹ See WALTON, *supra* note 20, at 96.

⁴² See *Kenneth Copeland Ministries Online Giving*, KENNETH COPELAND MINISTRIES, <https://giving.kcm.org/> [<http://perma.cc/QNL9-L6SH>]; *Last Week Tonight*, *supra* note 4; see also ROBERTS, *supra* note 8, at 192–93 (detailing lifestyles of wealthy televangelists). While prosperity preachers do ask for donations for traditional charitable purposes, such as natural disaster relief, their emphasis is largely on raising more money by spreading the word of the prosperity gospel.

the expense of the poor.⁴³ The preachers of the prosperity gospel emphasize that a person is rich and healthy because he or she is faithful to God and gives money to the televangelist church, and, likewise, a person is poor or ill because he or she is not faithful enough or does not contribute enough.⁴⁴

A. How the Prosperity Scheme “Preys” on Its Adherents

The prosperity scheme is a spiritual movement in which televangelist pastors preach more than just making money; they encourage self-empowerment through increased “participation” in the church.⁴⁵ According to televangelist pastors, individuals can only become more successful when they realize that they are the reason for their poor financial situation or unhappy life conditions.⁴⁶ Prosperity preachers teach followers that they have the ability themselves—through faith and donations—to rise above any seemingly hopeless situation.⁴⁷ For instance, one follower of the movement, Cindy Fleenor, stated that she donated hundreds of dollars to the movement because she “wanted to believe God wanted to do something great with [her] like he was doing with [the televangelists]”.⁴⁸ Although Fleenor initially felt empowered, she eventually had to borrow money from friends and family in order to recoup her losses and pay her daily expenses, after her promised wealth never arrived.⁴⁹ Fleenor’s reasons for donating capture the feelings of so many other prosperity followers.⁵⁰ Fleenor’s experience is illustrative of the prosperity theology’s dangerous and costly cycle; by appealing to feelings of empowerment and self-responsibility, prosperity pas-

See David Van Biema & Jeff Chu, *Does God Want You to Be Rich?*, TIME (Sept. 10, 2006), <http://content.time.com/time/magazine/article/0,9171,1533448,00.html> (noting that while prosperity preacher John Osteen gave \$1 million in relief money after Hurricane Katrina, there were far more examples of prosperity preachers, including Osteen, using the prosperity doctrine for personal gain).

⁴³ See ROBERTS, *supra* note 8, at 192–94.

⁴⁴ See WALTON, *supra* note 20, at 95; SUFFER THE CHILDREN, *supra* note 1. Kenneth Copeland has explained away apparent failures of his doctrine by asking rhetorically, to a laughing audience, “Could it be, by some stretch of the imagination—oh probably not—but could it be, that it’s your fault and not God’s? Oh yeah!” SUFFER THE CHILDREN, *supra* note 1.

⁴⁵ See BOWLER, *supra* note 7, at 232; WALTON, *supra* note 20, at 95. This “participation” includes financially contributing to the success and well-being of the televangelist church. See SUFFER THE CHILDREN, *supra* note 1.

⁴⁶ See BOWLER, *supra* note 7, at 232–33; WALTON, *supra* note 20, at 95.

⁴⁷ See BOWLER, *supra* note 7, at 232; WALTON, *supra* note 20, at 95.

⁴⁸ Gorski, *supra* note 7. Material wealth did not come to Fleenor, who had to ask for money from friends and take out payday loans in order to purchase her groceries. *Id.*

⁴⁹ See *id.*

⁵⁰ See BOWLER, *supra* note 7, at 232–33; HAMILTON, *supra* note 31, at 115–16; Gorski, *supra* note 7.

tors can keep their flocks donating money even when the divinely promised health and wealth do not arrive.⁵¹

Donating financially to the televangelist church is not the only contribution that is expected of prosperity parishioners; prosperity pastors also take advantage of their parishioners by convincing them to invest in fraudulent secular schemes.⁵² Notably, in the 1980s, televangelist and prosperity preacher Jim Bakker sought donations from his followers to fund a Christian family retreat center by advertising the sale of lifetime timeshare-partnerships through his television network.⁵³ Interest in the timeshare-partnerships was so strong that the donations Bakker received totaled more than \$158 million.⁵⁴ Despite strong sales from approximately 150,000 partnerships, only one hotel and one bunkhouse were constructed.⁵⁵ Bakker used the rest of the donations to fund his extraordinarily lavish lifestyle, including the purchase of a forty-two foot houseboat, a mink coat, “gold-plated fixtures and a \$570 shower curtain in his bathroom, transportation in private jets and limousines, an air-conditioned treehouse for his children and an air conditioned doghouse for his pets.”⁵⁶

Televangelists preaching the prosperity gospel have employed other strategic techniques to exploit their followers for money, particularly by using common ethnic ties or by publicly praising or humiliating members.⁵⁷ For example, prosperity pastors have appealed to a kinship of race to foster a sense of trust with their parishioners, in the hopes that they will donate to the televangelist church.⁵⁸ African American prosperity preacher Frederick Prince offered his reason for preaching: “I’m only doing it so that you can see that there’s somebody the same color that you are, breathing the same contaminated air, paying the same outrageous prices for everything else,

⁵¹ See BOWLER, *supra* note 7, at 232–33; HAMILTON, *supra* note 31, at 115–16; SUFFER THE CHILDREN, *supra* note 1.

⁵² See *United States v. Bakker*, 925 F.2d 728, 731–32 (4th Cir. 1991); BOWLER, *supra* note 7, at 142.

⁵³ *Bakker*, 925 F.2d at 731.

⁵⁴ *Id.* Many of the people who purchased partnerships in the retreat center could barely afford them. See *id.*

⁵⁵ *Id.* Although the actual number of lodging spots in the center is not reported, it can be inferred that 150,000 lodging spots would not fit in just one hotel. See *id.*

⁵⁶ *Id.*; BOWLER, *supra* note 7, at 108. Bakker’s malfeasance in drastically overselling the timeshares caught up with him. See BOWLER, *supra* note 7, at 107–08. Other prosperity pastors, led by Bakker’s televangelist rival Jimmy Swaggert, discovered Bakker’s gross financial mismanagement and accused him and their programs of having homosexual encounters. See *id.* In 1989, Bakker was sentenced to forty-five years imprisonment and fined \$500,000 for mail fraud, wire fraud, and conspiracy for overselling timeshares. *Bakker*, 925 F.2d at 731–32.

⁵⁷ See *Last Week Tonight*, *supra* note 7.

⁵⁸ See BOWLER, *supra* note 7, at 134; Hanna Rosin, *Did Christianity Cause the Crash?*, THE ATLANTIC (Dec. 2009), [http://www.theatlantic.com/magazine/archive/2009/12/did-christianity-cause-the-crash/307764/\[http://perma.cc/4KX2-PP78\]](http://www.theatlantic.com/magazine/archive/2009/12/did-christianity-cause-the-crash/307764/[http://perma.cc/4KX2-PP78]).

and I'm prospering because of the book."⁵⁹ In addition, prosperity preachers often target specific members of their following, confronting them in front of the rest of the church for not donating enough money, in the hopes that others will be encouraged to donate more.⁶⁰ A speaker at a Maryland prosperity church asked each of his followers who did not donate during a "pastor's appreciation month" to stand during the service and pledge at least \$1000.⁶¹ Other prosperity pastors take the opposite approach, and instead choose to glorify those who donate.⁶² For example, pastor Marvin Winans of the Perfecting Church Detroit praised donors who had given more than \$30 by only asking those members of the church to rise and take the traditional walk around the collection bucket.⁶³ Parishioners who had not donated that specific amount were left seated for the entire congregation to observe their lack of participation in the church.⁶⁴ Given the financial success of these prosperity preachers, it is apparent that these strategic and manipulative tactics are very successful.⁶⁵

B. Believers of the Prosperity Scheme

Bonnie Parker's experience with the prosperity gospel exemplifies the unfortunate consequences of the prosperity scheme.⁶⁶ Parker died after refusing modern medical treatment for her illness, because she believed that donating to the prosperity ministry would result in good health and financial success.⁶⁷ That widely held belief, coupled with the fervent satisfaction of donating to a Christian organization, enables televangelist pastors and their ministries to raise hundreds of millions of dollars with relative ease.⁶⁸ Many low-income Americans perceive the prosperity gospel as a way to potentially solve financial difficulties.⁶⁹ Such difficulties, however, are only exacerbated by the repeated contributions that they realistically cannot afford.⁷⁰ Prosperity preachers encourage this perception by promising unrealistic benefits for grand monetary donations.⁷¹ For example, televangelist Mike

⁵⁹ BOWLER, *supra* note 7, at 134.

⁶⁰ *See id.* at 130.

⁶¹ *Id.* One man stood up and said that he would give what he could afford, to which the speaker admonished the parishioner for his feebleness in his faith. *Id.*

⁶² *See id.* at 128–29.

⁶³ *Id.* at 128.

⁶⁴ *See id.*

⁶⁵ *See Last Week Tonight, supra* note 4.

⁶⁶ *See id.*

⁶⁷ *See id.*; *News 8 Reporting Featured in 'Last Week Tonight' Segment, supra* note 1.

⁶⁸ *See* HAMILTON, *supra* note 31, at 116; ROBERTS, *supra* note 8, at 192–93.

⁶⁹ *See* HAMILTON, *supra* note 31, at 116.

⁷⁰ *See id.* at 115; *Last Week Tonight, supra* note 4.

⁷¹ *See Last Week Tonight, supra* note 4.

Murdock once requested a \$1000 donation to his ministry from each of his followers with the promise that God would wipe out each donor's credit card indebtedness—a result that would never actually occur.⁷² In many respects, donating to a prosperity church is comparable to buying lottery tickets; donors are enticed by an expectation of a quick-fix to their financial problems, without realizing that the payoff is highly unlikely.⁷³

Although prosperity theology does not result in immense financial benefits for those to whom it is preached, it does for those who preach it.⁷⁴ The vast disparity between the wealth of the televangelist pastors and their faithful followers has raised questions as to where the donations are actually going.⁷⁵ Although a lack of financial transparency has made it difficult to completely assess the financial status of the prosperity churches, multiple church pastors are estimated to be multi-millionaires.⁷⁶ Compared to the estimated significant wealth of the church pastors, the communities in which these pastors preach are often impoverished.⁷⁷ For instance, Creflo Dollar, a prosperity pastor of a mega-church in College Park, Georgia, had an estimated net worth of \$27 million as of 2014.⁷⁸ Despite Dollar's personal success, however, the average annual income in College Park at that time was only \$29,640.⁷⁹

⁷² See *id.* Comedian John Oliver satirized this proposition by stating that it was similar to claiming “the key to you losing weight lies at the bottom of this giant Costco bulk bag of peanut butter M&M’s”. *Id.* Another commentator has noted that a typical story about a person’s divine enrichment falls “somewhere between metaphor and a literal image of barefoot Jesus handing [a prosperity adherent] a pile of cash.” Rosin, *supra* note 58. Such nebulous promises escape critique by followers because adherents frequently attribute any achievement in wealth, regardless of actual source, to God. See *id.*

⁷³ See HAMILTON, *supra* note 31, at 115; SUFFER THE CHILDREN, *supra* note 1. In fact, it has been alleged that pastors go so far as to send parishioners anonymous gifts of cash to give the appearance that their trust in the prosperity gospel is paying off. See BOWLER, *supra* note 7, at 133.

⁷⁴ See *Last Week Tonight*, *supra* note 4.

⁷⁵ See BOWLER, *supra* note 7, at 233; ROBERTS, *supra* note 8, at 191–93. Although the precise wealth of various televangelists is not known, commentators have estimated that their ministries’ operating budgets run in the tens of millions of dollars. See, e.g., BOWLER, *supra* note 7, at 101 (noting that prosperity preacher Oral Roberts had an annual budget of \$125 million in 1990); ROBERTS, *supra* note 8, at 192–93 (noting that prosperity preachers Joel Osteen and Creflo Dollar have prosperity ministries that have budgets of \$60 million and \$80 million, respectively).

⁷⁶ See *8 Black Pastors Whose Net Worth Is 200 Times Greater Than Folks in Their Local Communities*, ATLANTA BLACK STAR (June 26, 2014), <http://atlantablackstar.com/2014/06/26/8-black-pastors-whose-net-worth-is-200-times-greater-than-folks-in-their-local-community> [<http://perma.cc/H9EY-A4YG>]; *Last Week Tonight*, *supra* note 4.

⁷⁷ See *8 Black Pastors Whose Net Worth Is 200 Times Greater Than Folks in Their Local Communities*, *supra* note 76.

⁷⁸ See *id.* Dollar claims, “I own two Rolls-Royces and didn’t pay a dime for them. Why? Because while I’m pursuing the Lord those cars are pursuing me.” BOWLER, *supra* note 7, at 134.

⁷⁹ *8 Black Pastors Whose Net Worth Is 200 Times Greater Than Folks in Their Local Communities*, *supra* note 76.

This disparity is not a coincidence; scholars have noted that Americans with low income and less education are more likely to be adherents to prosperity theology than their wealthy, more educated counterparts.⁸⁰ One study that compared Hispanic Christians from varying income levels found that a majority of Hispanic Christians whose annual income was less than \$30,000 agreed with the position, “God will grant wealth and good health to believers with enough faith,” whereas only a quarter of Hispanic Christians whose annual income was more than \$75,000 held that same position.⁸¹ Limited financial resources are not the only indication that an individual will hold a belief in the prosperity gospel; individuals with a lower level of education are also more likely to adhere to the doctrine than those with a higher level of education.⁸² For instance, twenty-four percent of American adults with an eighth grade education, or less, agree with the statement “poverty is a sign that God is unhappy.”⁸³ Amongst college graduates however, that number is only one percent.⁸⁴ These statistics suggest that Americans with more education are far less likely to accept the central tenants of the prosperity gospel than those with a lower level of education.⁸⁵ A lack of wealth and education contributes to an individual’s belief in the prosperity gospel, and the willingness to take risks with health and financial resources in order to obtain “prosperity” through the televangelist church.⁸⁶

⁸⁰ BOWLER, *supra* note 7, at 233; PEW RESEARCH CTR., THE SHIFTING RELIGIOUS IDENTITY OF LATINOS IN THE UNITED STATES 91 (Tracy Miller ed., 2014), <http://www.pewforum.org/2014/05/07/the-shifting-religious-identity-of-latinos-in-the-united-states/> [<https://perma.cc/T7C8-KXFD>] (to access PDF, follow “Complete PDF Report” hyperlink); *cf.* Koch, *supra* note 18, at 25 (arguing education is the correlating factor in prosperity gospel adherence but disclaiming income’s effect on prosperity gospel adherence).

⁸¹ PEW RESEARCH CTR., *supra* note 80, at 91. Note that among all Hispanics in the United States, forty-nine percent agree with this position. *Id.*

⁸² Koch, *supra* note 18, at 25.

⁸³ *Id.* at 21. About seventy percent of black Americans surveyed with an eighth grade education or less believed that “poverty is a sign that God is unhappy.” *Id.* at 28.

⁸⁴ *Id.* at 21. The percentage was again higher for blacks than the rest of Americans at approximately ten percent for college graduates surveyed, however, the racial divide over this position narrows significantly as education increases. *Id.* at 28.

⁸⁵ *Id.* at 25.

⁸⁶ See ROBERTS, *supra* note 8, at 188; Koch, *supra* note 18, at 25. Black Americans are proportionally the largest adherents to the prosperity doctrine. See Koch, *supra* note 18, at 21, 27. While approximately five percent of all Americans are members of the prosperity movement, sixteen percent of all black Americans are members of the movement. *Id.* Some scholars place less of an emphasis on the correlation between wealth and belief in the prosperity gospel. See BOWLER, *supra* note 7, at 233 (noting some prosperity preachers have in the past sought out those who are already financially prosperous but conceding that scholars view the “prosperity gospel as a poor people’s movement”). Others go so far as to claim that there is no relationship between one’s adherence to the prosperity gospel and one’s wealth. Koch, *supra* note 18, at 23–24. This position is refuted by several critics of the movement. BOWLER, *supra* note 7, at 233 (“Scholars often portray the prosperity gospel as a poor people’s movement, an expression of believers’ longing for (and distance from) socio-economic stability.”); HAMILTON, *supra* note 31, at 115 (noting that the

II. AVOIDING REGULATION: HOW TELEVANGELISTS USE THE U.S. CONSTITUTION AND TAX SYSTEM TO KEEP THEIR MONEY

The deceptive tactics used by the prosperity preachers, if employed by non-religious organizations, would raise red flags for government regulators and prosecutors.⁸⁷ As religious organizations, however, prosperity churches operate largely without government oversight and have no legal obligation to disclose their finances to the Internal Revenue Service (IRS).⁸⁸ These organizations benefit from governmental deference to religion under the First Amendment to the U.S. Constitution, and certain loopholes in the tax code that conceal their finances from regulators.⁸⁹

A. *The Free Exercise Clause and the Religious Freedom Restoration Act*

The principle of freedom of religion is deeply rooted in the nation's history.⁹⁰ The First Amendment prevents the government from establishing a state religion under its Establishment Clause, and from restricting individuals' religious beliefs under its Free Exercise Clause.⁹¹ Despite the guarantees of the First Amendment, religious freedom in the United States is far from absolute.⁹² In order to elucidate the level of First Amendment protection endowed upon religious ministers, including prosperity gospel preachers, a truncated history of religious freedom in the United States is appropriate.⁹³ Three significant Supreme Court cases, *Reynolds v. United States*, *United States v. Ballard*, and *Employment Division Department of Human Resources of Oregon v. Smith*, and a review of the Religious Freedom Restoration Act (RFRA) of 1993 and its subsequent case law, shed crucial light on the limiting standards placed on the government when policing religious practices.⁹⁴

poor are particularly drawn to the prosperity gospel because they "often believe that betting on God's generosity is more likely to pay off than betting on, say, government lottery tickets"); ROBERTS, *supra* note 8, at 188 (noting prosperity theology's roots were in poor U.S. Evangelical communities and that the doctrine has since spread to poor Christians everywhere).

⁸⁷ See *United States v. Rasheed*, 663 F.2d 843, 846–47 (9th Cir. 1981); *Last Week Tonight*, *supra* note 4.

⁸⁸ *Last Week Tonight*, *supra* note 4.

⁸⁹ See O'BRIEN, *supra* note 33, at 798; John Montague, *The Law and Financial Transparency in Churches: Reconsidering the Form 990 Exemption*, 35 CARDOZO L. REV. 203, 206–07 (2013).

⁹⁰ See *Reynolds v. United States*, 98 U.S. 145, 162 (1878); O'BRIEN, *supra* note 33, at 798.

⁹¹ U.S. CONST. amend. I; O'BRIEN, *supra* note 33, at 688. The Establishment Clause creates what is often referred to as the separation of church and state. O'BRIEN, *supra* note 33, at 688.

⁹² O'BRIEN, *supra* note 33, at 798.

⁹³ Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb (2012), *invalidated in part by* *City of Boerne v. Flores*, 521 U.S. 507 (1997); *United States v. Ballard (Ballard II)*, 322 U.S. 78, 79–80 (1944); *Reynolds*, 98 U.S. at 166.

⁹⁴ 42 U.S.C. § 2000bb; *Ballard II*, 322 U.S. at 79–80; *Reynolds*, 98 U.S. at 166. Additional cases further explore the issue of religious freedom in the United States. See, e.g., *Burwell v.*

Decided in 1878, *Reynolds* was a landmark case in determining just how far protection under the Free Exercise Clause extended to individuals who had, for religious reasons, performed acts that were otherwise in violation of federal law.⁹⁵ In the mid-1870s, George Reynolds was indicted and charged in the Third Judicial District of the Territory of Utah under a federal statute prohibiting bigamy.⁹⁶ Reynolds, who had two wives, was a devout member of the Church of Jesus Christ of Latter-day Saints, which required polygamy; failure to marry multiple women, according to the church, was punishable by eternal damnation in hell.⁹⁷ Reynolds argued that his beliefs were protected under the Free Exercise Clause, and that he was entitled to an exception to the statute because of his religious duty.⁹⁸ The U.S. Supreme Court disagreed, and held that although laws could not constitutionally interfere with religious beliefs, they could interfere with religious practices.⁹⁹ The Court reasoned that permitting the unrestrained free exercise of beliefs would allow for the unfettered creation of exceptions to criminal laws.¹⁰⁰ The Court's decision serves as a historical benchmark for the proposition that although the content of religious beliefs cannot be regulated,

Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2770 (2014) (holding that "person" within meaning of RFRA extends to for-profit and non-profit corporations); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423 (2006) (holding Controlled Substances Act's ban on hallucinogen found in sacramental tea did not meet burden required by RFRA); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 538 (1993) (overturning municipal ban on animal sacrifice because it specifically targeted members of the Santeria faith).

⁹⁵ See *Reynolds*, 98 U.S. at 146; O'BRIEN, *supra* note 33, at 800.

⁹⁶ *Reynolds*, 98 U.S. at 146. The statute in relevant part states:

Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than \$500, and by imprisonment for a term not more than five years.

Id. (citations omitted). Bigamy is defined as "the crime of marrying while one has a spouse still living, from whom no valid divorce has been effected." *Bigamy*, DICIONARY.COM, <http://www.dicionary.com/browse/bigamy> [https://perma.cc/WM6S-QENV]. Polygamy, a concept that can subsume bigamy, is defined as "the practice or condition of having more than one spouse, especially wife, at one time." *Polygamy*, DICIONARY.COM, <http://www.dicionary.com/browse/polygamy?s=t>.

⁹⁷ *Reynolds*, 98 U.S. at 161. The Mormon Church currently does not preach the practice of polygamy, which is now punishable by excommunication. *Do Mormons Practice Polygamy?*, MORMON.ORG WORLDWIDE, <https://www.mormon.org/faq/practice-of-polygamy> [http://perma.cc/EE6Z-8JNQ].

⁹⁸ *Reynolds*, 98 U.S. at 161–62. The district court, however, convicted and sentenced him to a two-year term of hard labor. *Id.* at 150.

⁹⁹ *Id.* at 167. The Supreme Court did not affirm the hard labor imposition of imprisonment because it was inconsistent with the portion of a congressional act regarding sentencing. *Id.* at 168–69.

¹⁰⁰ See *id.* at 167. In the Court's words, such an exception would "permit every citizen to become a law unto himself." *Id.*

conduct inspired by such beliefs is not necessarily free from legal regulation.¹⁰¹

Reynolds laid the foundation for the principle that religiously-inspired conduct could be regulated by the State; subsequent cases, however, tempered the extent to which the government could regulate such conduct.¹⁰² *Ballard*, decided in 1944, hindered the government's ability to regulate religion.¹⁰³ *Ballard* concerned the "I Am" movement, led by Edna and Donald Ballard.¹⁰⁴ The pair, much like current televangelists, preached the doctrine of "faith healing" and solicited donations from the public to build their ministry.¹⁰⁵ Given the allegedly deceitful donation scheme, they were charged with mail fraud in violation of 18 U.S.C. § 338.¹⁰⁶ At trial, the judge assigned to the case in the Southern District of California instructed the jury that "[t]he question of the defendants' good faith is the cardinal question in this case. You are not to be concerned with the religious belief of the de-

¹⁰¹ See *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990); *Reynolds*, 98 U.S. at 166–67. As applied here, Reynolds was free to believe the failure to take on multiple wives would lead to eternal damnation under the teachings of his church, but he was not free to practice that belief by taking on multiple wives. *Reynolds*, 98 U.S. at 167. Freedom of belief is legally synonymous with freedom of thought. See *United States v. Ballard (Ballard I)*, 322 U.S. 78, 86 (1944). In an opinion written almost a century later, U.S. Supreme Court Justice Antonin Scalia best surmised what is meant by the phrase "religious practices." *Smith*, 494 U.S. at 877–78. According to Justice Scalia, these include, but are not limited to, "the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation." *Id.*

¹⁰² See O'BRIEN, *supra* note 33, at 803, 810.

¹⁰³ See 322 U.S. at 87.

¹⁰⁴ *Id.* at 79–80. The movement, an independent religion, was founded on Guy Ballard's claim that he was the messenger of the supernatural "Master Saint Germain." O'BRIEN, *supra* note 33, at 800. Edna was Guy Ballard's widow and Donald was their son. *Id.* Guy, who went by the aliases Saint Germain, Jesus, George Washington, and Godfre Ray King, believed that he had been selected by a divine group of figures, the "ascertained masters," to serve as a medium through which the "masters" could be in contact with mankind. *Ballard II*, 322 U.S. at 79–80.

¹⁰⁵ *Ballard II*, 322 U.S. at 79–80.

¹⁰⁶ *Id.* at 79. At the time the Ballards were charged, the statute stated:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office . . . of the United States . . . to be sent or delivered by the post-office establishment of the United States . . . or shall knowingly cause to be delivered by mail according to the direction thereon . . . any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than \$1000, or imprisoned not more than five years, or both.

defendants.”¹⁰⁷ In other words, the judge urged the jury to focus not on whether the beliefs espoused by the “I Am” movement were true, but rather, on whether the Ballards sincerely believed in the movement, or were simply using it as an avenue to make money.¹⁰⁸ Under this instruction, the jury found the Ballards guilty of mail fraud.¹⁰⁹

The U.S. Supreme Court affirmed the district court’s ruling that the validity of the “I Am” doctrine was not a triable issue of fact, and thus, was properly excluded from the jury trial instruction.¹¹⁰ The majority opinion expressed concern that if the truthfulness of religious beliefs were submitted to a jury, then *any* religious doctrine could be put on trial, which would violate the First Amendment’s Free Exercise Clause.¹¹¹ The majority remained silent on whether or not the trial judge was correct in charging the jury to determine whether the Ballards sincerely believed in the “I Am” movement.¹¹² The Supreme Court in *United States v. Seeger* later concluded that although a judge may not charge the jury with finding whether or not a religious doctrine is true, a judge may charge the jury with finding whether or not a defendant *believed in* the religious doctrine.¹¹³

¹⁰⁷ *Ballard II*, 322 U.S. at 82.

¹⁰⁸ *See id.* at 88.

¹⁰⁹ *Ballard v. United States (Ballard I)*, 138 F.2d 540, 541 (9th Cir. 1943), *rev’d*, *Ballard II*. The U.S. Court of Appeals for the Ninth Circuit reversed the district court, ordering a new trial on the grounds that the truthfulness of the representations regarding the defendants’ religious beliefs *should* have been submitted to the jury. *Ballard II*, 322 U.S. at 83, 85–86. This would have been a significantly lower standard for the prosecution to convict, because, as noted by Justice Douglas, “[m]en may believe what they cannot prove.” *Id.* at 86–87.

¹¹⁰ *Ballard II*, 322 U.S. at 88. The “sincerity of belief” is shorthand for the principle that the Ballards *actually* had faith in the doctrine they taught as opposed to merely *representing* that they believed in the doctrine, solely in order to defraud followers who followed their teachings. *See United States v. Seeger*, 380 U.S. 163, 185 (1965); *Ballard II*, 322 U.S. at 88.

¹¹¹ *Ballard II*, 322 U.S. at 87. The Court noted that “no interference [of the free exercise of religion] can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.” *Id.* (quoting *Davis v. Beason*, 133 U.S. 333, 342 (1890), *rev’d on other grounds*, *Romer v. Evans*, 517 U.S. 620 (1999)).

¹¹² *See id.* at 88. Justice Jackson stated that it was impossible to sever “belief” into the truth of the belief and the sincerity of the believer. *Id.* at 92–93 (Jackson, J., dissenting) (“How can the [g]overnment prove these persons knew something to be false which [the government] cannot prove to be false?”).

¹¹³ *Seeger*, 380 U.S. at 185; *Ballard II*, 322 U.S. at 88. In *Seeger*, the Court heard the cases of various petitioners who had been convicted for failure to submit to induction in the armed forces. 380 U.S. at 166–69. The men claimed they were “conscientious objector[s]” to the war. *Id.* at 165–69 (conscientious objectors are those who are religiously opposed to war). Writing for a majority of eight justices, Justice Clark clarified *Ballard II* in the following way: “while the ‘truth’ of a belief is not open to question, there remains the significant question whether it is ‘truly held.’ This is the threshold question of sincerity which must be resolved in every case. *It is, of course, a question of fact . . .*” *Id.* at 185 (emphasis added).

Fifty years after *Ballard*, the U.S. Supreme Court in *Smith* clarified the limits of religious exemption from criminal statutes.¹¹⁴ The case involved two respondents, Alfred Smith and Galen Black, who were fired from their jobs at a private company in Oregon after taking a controlled substance, the hallucinogen known as peyote.¹¹⁵ As a result, the pair was denied unemployment benefits by the Oregon employment division, and subsequently filed suit.¹¹⁶ In 1990, the case reached the Supreme Court, where Justice Scalia, writing for the majority, held that the denial of Smith and Black's unemployment benefits was lawful.¹¹⁷ The majority determined that religion-neutral laws, such as a prohibition on hallucinogens, do not require a compelling government justification to be upheld, even if those laws intrude upon one's exercise of religion.¹¹⁸ The Court reasoned that it would be unconstitutional to ban a physical act solely to prevent a particular religious practice, however, a blanket ban on actions irrespective of any religious application would not be invalid on free exercise grounds.¹¹⁹ *Smith* serves as a tool for drawing a distinction between permissible secular regulations that affect religious practices, and prohibited anti-religious regulations.¹²⁰

¹¹⁴ See Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 890 (1990).

¹¹⁵ *Id.* at 874.

¹¹⁶ *Id.* The pair appealed the determination of the employment division to the Oregon Court of Appeals. *Id.* The court reversed the decision of the employment division, holding that the denial of unemployment benefits violated Smith and Black's right to the free exercise of religion. *Id.* The Oregon Supreme Court affirmed the judgment, and the U.S. Supreme Court granted certiorari. *Id.* at 875.

¹¹⁷ *Id.* at 872, 890.

¹¹⁸ *Id.* at 885. This is a judicial standard of review for laws referred to as strict scrutiny. See Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 VAND. L. REV. 793, 800 (2006). In order for a law or regulation to survive strict scrutiny, the government must have a compelling objective for passing the regulation and the law must use narrowly tailored means of furthering that governmental interest. See *id.* Another test of constitutional review is rational basis review. See *id.* at 799. Most laws pass rational basis review, which evaluates whether the law is a rational way of furthering a legitimate government interest. See *id.*; see also Jeremy V. Smith, Note, *The Flaws of Rational Basis with Bite: Why the Supreme Court Should Acknowledge Its Application of Heightened Scrutiny to Classifications Based on Sexual Orientation*, 73 FORDHAM L. REV. 2769, 2772 (2005) (noting that "[t]he rational basis test in its traditional form is extremely deferential to any proffered governmental interest").

¹¹⁹ See *Smith*, 494 U.S. at 877-78. As a result, the Court concluded that denying Smith and Black unemployment compensation was constitutional. See *id.* at 890.

¹²⁰ See *id.* at 877-78, 885. To illustrate the distinction, a law prohibiting male circumcision for the purpose of promoting male health would likely be constitutional under *Smith*. See *id.* The same law, drafted for the purpose of burdening the Jewish faith, would likely be found unconstitutional. See *id.*; *The Circumcision Ceremony in a Nutshell*, CHABAD.ORG http://www.chabad.org/library/article_cdo/aid/1472861/jewish/The-Circumcision-Ceremony-in-a-Nutshell.htm [<http://perma.cc/D4BC-C79A>] (noting importance of male circumcision in the Jewish faith).

Smith's ruling left the sacred practices of many minority religions vulnerable to legal regulation.¹²¹ Congress, unhappy with what it perceived to be an infringement on the free exercise of religion, passed RFRA in response.¹²² Under RFRA, Congress aimed to restore the requirement of a more rigorous justification for any governmental action that burdened religious exercise.¹²³ In relevant part, RFRA states that the "[g]overnment may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person[] is in furtherance of a compelling governmental interest[] and[] is the least restrictive means of furthering that compelling governmental interest."¹²⁴ In other words, RFRA changed the landscape that *Reynolds*, *Seeger* and *Smith* set forth by requiring secular regulations that affect religious practices to pass a strict scrutiny standard of review, which is often too high a burden to meet.¹²⁵ Although the Supreme Court has limited RFRA to apply only to the federal government and not the states, several states have signed similar bills into law.¹²⁶

In addition, state courts hearing cases regarding the fraudulent actions of prosperity preachers have chosen to independently interpret relevant Su-

¹²¹ See *Smith*, 494 U.S. at 908–09 (Blackmun, J., dissenting) (arguing that the Framers' intent in drafting the Free Exercise Clause was to prevent prosecution resulting from intolerance of a minority's practices); Peter Steinfelds, *Clinton Signs Law Protecting Religious Practices*, N.Y. TIMES (Nov. 17, 1993), <http://www.nytimes.com/1993/11/17/us/clinton-signs-law-protecting-religious-practices.html> [<https://perma.cc/YZM5-GT97>]. This issue was brought to the fore in *Montgomery v. County of Clinton, Michigan*, 743 F. Supp. 1253, 1255 (W.D. Mich. 1990), when Joan Montgomery's sixteen-year-old son was killed in an automobile accident following a police chase. Pursuant to Michigan law, an autopsy was performed to determine the cause of death. See *id.* at 1260. The State failed to inform the mother about the autopsy until after it had already happened. See *id.* at 1255. She subsequently brought suit, arguing that she would not have consented to the autopsy on her son's body because of her Jewish beliefs. See *id.* The court held that because the law authorizing the autopsy was religion neutral, the mother's constitutional rights were not violated. See *id.* at 1259–69.

¹²² Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb (2012), *invalidated in part by* *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Flores*, 521 U.S. at 511–12. After a unanimous vote in the House of Representatives and a ninety-seven to three vote in the Senate, the bill was signed into law on November 16, 1993 by President Bill Clinton. Steinfelds, *supra* note 121.

¹²³ 42 U.S.C. § 2000bb(a)(3)–(4) (Congress found “in [*Smith*] the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion . . .”). The discussion section of the Senate report on RFRA states, “we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order.” S. REP. NO. 103-111, at 6 (1993). The political rhetoric surrounding the passage of the bill was quite strong, with one state representative calling the Act a way to “remedy a decision[*Smith*,] which posed great risk to the religious rights of all Americans.” 139 CONG. REC. H8713 (1993).

¹²⁴ 42 U.S.C. § 2000bb-1(b).

¹²⁵ *Id.*; see Winkler, *supra* note 118, at 800.

¹²⁶ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2761 (2014); *Flores*, 521 U.S. at 511; Christopher C. Lund, *Religious Liberty After Gonzales: A Look at State RFRAs*, 55 S.D. L. REV. 466, 466–67 (2010) (noting that sixteen states have bills similar to RFRA).

preme Court case law, which has created further obstacles for plaintiffs who bring civil actions against their prosperity preachers.¹²⁷ Plaintiffs in the 1996 case *Tilton v. Marshall* brought charges of fraud against prosperity preacher Robert Tilton, who made national news for dumping prayer requests into the garbage after stripping the requests of cash.¹²⁸ Tilton sought a writ of mandamus from the Texas Supreme Court to dismiss all claims against him, arguing that *Ballard* foreclosed consideration of his religious practices.¹²⁹ The court reasoned that under *Ballard*, the misrepresentation of a religious doctrine would not constitute grounds for civil fraud, regardless of whether or not the actor held a sincere belief in the doctrine.¹³⁰ As such, the court rejected the plaintiffs' claims for fraud because the claims were related explicitly to the failure of the teachings of the prosperity gospel.¹³¹ The court held that a jury could, however, consider whether Tilton had fulfilled promises to read, touch, and pray over the plaintiffs' prayer requests.¹³² Failure to fulfill such promises could constitute actionable fraud because they were not based on a religious doctrine, but were based on concrete actions.¹³³

The decisions of the U.S. Supreme Court in *Reynolds*, *Ballard*, *Seeger*, and *Smith* opened the door to government regulation of certain religious practices, including the regulation of the fraudulent practices of prosperity preachers.¹³⁴ For example, under *Smith*, it would be permissible for a legislature to pass a law that requires any non-profit organization, including prosperity churches, to disclose annual tax returns, because such a law is a general ban on a secular action.¹³⁵ Furthermore, under the Supreme Court's decisions in

¹²⁷ *Tilton v. Marshall*, 925 S.W.2d 672, 675 (Tex. 1996).

¹²⁸ *Id.*; BOWLER, *supra* note 7, at 137. The plaintiffs sought to recover both because Tilton promised acts such as touching and praying over the prayer requests and because they alleged Tilton did not truly believe in the prosperity message that he preached. *Tilton*, 925 S.W.2d at 679.

¹²⁹ *Tilton*, 925 S.W.2d at 676.

¹³⁰ *Id.* at 678. The Texas Supreme Court in *Tilton* arguably misconstrued U.S. Supreme Court case law. See *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). The Supreme Court has been very vocal against a blanket religious immunity for churches, which *Tilton* essentially grants, because such immunity would also apply to pastors who did not even believe in the gospel they preached. See *id.* ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public."). Furthermore, the Supreme Court's ruling in *Seeger* indicates that the Court would permit a lack of sincere belief in the religion preached as evidence of fraud. See *United States v. Seeger*, 380 U.S. 163, 185 (1965).

¹³¹ *Tilton*, 925 S.W. 2d at 678. The constitutional issue is the same for civil and criminal cases. See *id.* (determining Supreme Court's *Ballard* doctrine considered in a criminal appeal was applicable to a civil appeal).

¹³² *Id.* at 679.

¹³³ See *id.*

¹³⁴ See *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877–78 (1990); *United States v. Seeger*, 380 U.S. 163, 185 (1965); *United States v. Ballard (Ballard II)*, 322 U.S. 78, 88 (1944); *Reynolds v. United States*, 98 U.S. 145, 168–69 (1878).

¹³⁵ See 494 U.S. at 877–78.

Reynolds, Ballard, and Seeger, an investigation into prosperity preachers' own beliefs in the prosperity doctrine, would be permissible.¹³⁶ Federal and state government regulation of the fraudulent practices of prosperity preachers would not be without challenges.¹³⁷ Under RFRA, any permissible federal government regulation of prosperity preachers' practices would need to overcome the often impossible hurdle of strict scrutiny.¹³⁸ Similarly, civil actions against prosperity preachers at the state level would likely face obstacles overcoming state court misinterpretations of Supreme Court case law, as evidenced in *Tilton*.¹³⁹

B. How Tax Law Allows Prosperity Preachers to Avoid Criminal Investigation and Civil Litigation

Although the fundraising tactics employed by prosperity preachers are often dubious, and the destination of those funds appears to be the pastors' pocketbooks, prosperity churches enjoy various tax loopholes that allow them to operate without government interference.¹⁴⁰ Churches and other religious organizations in the United States have long enjoyed tax-free status, meaning that they are not subject to federal corporate taxes.¹⁴¹ As "churches," prosperity ministries are thus exempt from the responsibility of paying federal taxes each year.¹⁴² Under federal law, this tax-exempt status is predicated on the fact that the net earnings of religious organizations do

¹³⁶ See SUFFER THE CHILDREN, *supra* note 1. As evidenced by the Copelands' own hypocrisies, particularly the fact that the family seeks medical treatment for their ailments despite their professed belief that faith healing can replace modern medicine, such an investigation could be quite damaging to the continuing success of the prosperity gospel. See *Ballard II*, 322 U.S. at 88.

¹³⁷ Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb (2012), *invalidated in part by City of Boerne v. Flores*, 521 U.S. 507 (1997); *Flores*, 521 U.S. at 511–12.

¹³⁸ 42 U.S.C. § 2000bb; *Flores*, 521 U.S. at 511–12.

¹³⁹ *Tilton v. Marshall*, 925 S.W.2d 672, 678 (Tex. 1996); see Winkler, *supra* note 118, at 800.

¹⁴⁰ See John Montague, *supra* note 89, at 206–07; *Last Week Tonight*, *supra* note 4. While this Note focuses on federal tax collection, many states also exempt religious organizations from filing tax returns. See, e.g., 26 C.F.R. § 1.6033-2(g)(1)(i) (2015); 940 MASS. CODE REGS. § 2.02 (2016).

¹⁴¹ 26 U.S.C. § 501(a), (c)(3) (2012); Wanda F. Reed, Note, *Revenue Ruling 77-290—Recent Interpretations of Agency Law Inequitably Taxes Members of Religious Orders*, 23 VAL. U. L. REV. 179, 179 (1988).

¹⁴² 26 U.S.C. § 501(a), (c)(3); see *Last Week Tonight*, *supra* note 4. Organizations "operat[ing] exclusively for religious . . . purposes" qualify for tax-exempt status. 26 U.S.C. § 501(a), (c)(3). It is remarkably easy for an organization to qualify as a church or religious organization for tax purposes. See *Last Week Tonight*, *supra* note 4. In order to satirize the IRS and various prosperity preachers, John Oliver created the Our Lady of Perpetual Exemption church and filed paperwork with the IRS to establish his church. See *id.* Our Lady claimed the filming studio was its place of worship and that its weekly audience members were the parishioners. *Id.* Oliver pledged to donate all the "seed donations" Our Lady received to the non-profit organization Doctors Without Borders. *Id.*

not “inure” to an individual.¹⁴³ Internal Revenue Service (IRS) literature provides several examples of prohibited inurement, including “the payment of dividends, *the payment of unreasonable compensation to insiders* and transferring property to insiders for less than fair market value.”¹⁴⁴ The IRS claims that the prohibition against inurement to organizational insiders is dispositive of tax-exempt status.¹⁴⁵ This means that, at least in theory, a prosperity church would lose its tax-exempt status if the pastors were truly being given unreasonable compensation.¹⁴⁶

Unfortunately, there is effectively no way of knowing where or to whom “seed donations” go after they are donated.¹⁴⁷ Unlike other charitable organizations, the IRS exempts all churches, including prosperity churches, from filing tax return Form 990—a form specifically designed to keep track of the finances of tax-exempt organizations—thus precluding donors from knowing where precisely their money ends up.¹⁴⁸ Moreover, the IRS rarely audits churches.¹⁴⁹ There are approximately three hundred thousand Christian churches in the United States, yet in 2013 and 2014, the IRS only au-

¹⁴³ 26 U.S.C. § 501(a), (c)(3). Although there is quite a lot of latitude in the word “inure” as a term of art, “inure” colloquially means “to become of advantage.” *Inure*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/inure> [<http://perma.cc/W23P-EJU4>]; see also Darryll K. Jones, *The Scintilla of Individual Profit: In Search of Private Inurement and Excess Benefit*, 19 VA. TAX REV. 575, 593–95 (2000) (providing a discussion on examples of what courts have construed as inurement). The rule against inurement does not preclude an organization from paying reasonable amounts for services rendered, such as salaries to its employees. See INTERNAL REVENUE SERV., U.S. DEP’T TREASURY, PUBLICATION 1828: 501(C)(3) TAX GUIDE FOR CHURCHES & RELIGIOUS ORGANIZATIONS 5 (2015) [hereinafter TAX GUIDE].

¹⁴⁴ TAX GUIDE, *supra* note 143, at 5 (emphasis added).

¹⁴⁵ *Id.*

¹⁴⁶ See *id.*

¹⁴⁷ See Montague, *supra* note 89, at 206–07. This is by no means a small exception. *Id.* at 206. Montague estimates that contributions to Christian churches in the United States were more than \$34 billion in 2010. *Id.*

¹⁴⁸ 26 U.S.C. § 6033(a)(1),(3) (2012); Montague, *supra* note 89, at 206–07. Section 6033 in part states:

Except as provided in paragraph (3), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe

§ 6033(a)(1). Churches are listed as one of the exceptions to paragraph (a)(1): “Mandatory exceptions[.] . . . [(a)(1)] shall not apply to [.] . . . churches, their integrated auxiliaries, and conventions or associations of churches.” § 6033(a)(3)(A)(i). Note that while pastors must file tax returns, the potential for them underreporting their income is present because their employer, their church, need not annually report how much it pays them. See § 6033(a)(1), (3)(A)(i); *United States v. Jinwright*, 683 F.3d 471, 477 (4th Cir. 2012).

¹⁴⁹ See, e.g., *Last Week Tonight*, *supra* note 4.

dited three churches.¹⁵⁰ This is largely due to burdensome political and procedural hurdles.¹⁵¹ An audit can only happen if notice is given to the church and an “appropriate high-level Treasury official” believes that the church is in violation of its tax-exempt status.¹⁵² Legally, it is unclear who qualifies as an appropriate high-level Treasury official, and the lack of audits only further confounds this issue.¹⁵³

The IRS is not the only governmental organization that has failed to prevent the abuses of the prosperity movement.¹⁵⁴ In 2007, the U.S. Senate Committee on Finance (the “Committee”) gave six media-based prosperity ministries the option to provide the Committee with certain financial information, including “expenses, compensation, and amenities given to executives.”¹⁵⁵ Only two of the ministries cooperated and provided complete information to the chair of the Committee.¹⁵⁶ After its review, the Committee recommended that self-regulation by the prosperity churches would be preferable to legislative action, and suggested that existing IRS rules prohibiting churches from engaging in lobbying and campaigning be repealed.¹⁵⁷ The recommendation by the U.S. Senate Committee on Finance was surprising given its findings of managerial financial mismanagement by

¹⁵⁰ *Fast Facts About American Religion*, HARTFORD INST. FOR RELIGION RESEARCH (2006), http://hrr.hartsem.edu/research/fastfacts/fast_facts.html#growlose [http://perma.cc/Q338-AMBU]; *Last Week Tonight*, *supra* note 4.

¹⁵¹ See 26 U.S.C. § 7611(a)–(b) (2012); Peter J. Reilly, *John Oliver Should Not Blame IRS for Televangelist Tax Abuse*, FORBES (Aug. 23, 2015), <http://www.forbes.com/sites/peterjreilly/2015/08/23/john-oliver-should-not-blame-irs-for-televangelist-tax-abuse/#448f7ac7f12bba425f87f12b> [http://perma.cc/LJL2-Y9UV] (noting political hurdles to auditing churches).

¹⁵² See 26 U.S.C. § 7611(a)(2). The term “appropriate high-level Treasury official” is defined as: “the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.” *Id.* § 7611(h).

¹⁵³ See Elizabeth J. Kingsley, *Religion, Politics, and Taxes—What Could Possibly Go Wrong?*, 27 TAX’N EXEMPTS 42, 42–43 (2015). The position of principal internal revenue officer for an internal revenue region was abolished in 1998; however, the definition and statutory requirement did not change, and there is great uncertainty over which extant officer qualifies to sign off on church audits. *Id.*; see also *United States v. Living Word Christian Center*, No. 08-MC-37, 2009 WL 250049, at *3 (D. Minn. 2013) (holding the position of “Director of Exempt Organizations, Examination” did not qualify as an authorized “high-level Treasury official”).

¹⁵⁴ See Goodstein, *supra* note 37; *Grassley Seeks Information from Six Media-based Ministries*, U.S. SENATE COMMITTEE ON FIN. (Nov. 6, 2007), <http://www.finance.senate.gov/newsroom/ranking/release/?id=baa4251a-ee70-48af-a324-79801cd07f18> [http://perma.cc/S3C9-QTFN].

¹⁵⁵ *Grassley Seeks Information from Six Media-based Ministries*, *supra* note 154. Senator Charles Grassley of Iowa investigated prosperity preachers Joyce Meyer, Benny Hinn, Kenneth Copeland, Paula White, Creflo Dollar, and Bishop Eddie Long. Goodstein, *supra* note 37. The inquiry began after various Evangelical Christians petitioned Senator Grassley over their concern that the six ministries appeared to be using donations for various luxury purchases, including airplanes, jewelry, and expensive homes. *Id.*

¹⁵⁶ Goodstein, *supra* note 37.

¹⁵⁷ *Id.*

both churches.¹⁵⁸ Rather than recommending more regulation to prevent future mismanagement, the Committee recommended that churches be afforded yet another tax exemption—one that effectively permits prosperity churches to solicit monetary endorsements.¹⁵⁹

Recognizing the legal loopholes offered by U.S. tax law, a cottage industry has formed to help pastors, including prosperity preachers, avoid government regulation by offering seminars that educate pastors on how to legally maximize their own wealth.¹⁶⁰ Advertisements for these seminars claim to teach the mechanics of church tax law, including instructions on how to set up funds that pay pastors and avoid IRS scrutiny.¹⁶¹ These seminars also offer advice on how churches can avoid being audited by the IRS.¹⁶² Although considered non-profit for tax purposes, prosperity churches have utilized the liberties afforded to them under the tax code to effectively run a successful for-profit scheme.¹⁶³

III. HOW CRIMINAL INVESTIGATIONS AND CIVIL LITIGATION COULD BRING AN END TO THE ABUSES OF THE PROSPERITY GOSPEL

A lack of government oversight and financial transparency has allowed prosperity preachers to swindle millions of dollars from their vulnerably faithful adherents without consequence.¹⁶⁴ Although the government has legal precedent to prosecute the fraudulent conduct of the prosperity ministries, it rarely does given the difficulty in successfully prosecuting religious organizations.¹⁶⁵ Furthermore, history demonstrates that a government inquiry into the finances of prosperity preachers would be unpopular amongst religious leaders and political figures, and as such, prosperity

¹⁵⁸ See *id.* For example, many ministries gave minister housing allowances to friends and family members. See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ See BOWLER, *supra* note 7. One such seminar is titled “How to Setup a Love Offering Program LEGALLY.” *Id.*

¹⁶¹ CHURCH MGMT. & TAX CONFERENCE, IT’S OFFICIAL . . . IT’S SERIOUS . . . THE IRS IS TRACKING CHURCHES BY A SPECIAL IDENTIFICATION NUMBER! (2016), <http://www.cmtc.org/c/TaxLawConference.pdf> [<http://perma.cc/9BUA-93MA>].

¹⁶² See *id.* Their brochures highlight pastors who have been indicted or convicted for tax fraud. *Id.* Advertisements dubiously declare that “[a]ccording to the American Bar Association’s own statistics, if you’re an average Pastor you have a 37% chance of having a legal problem in the next 12 months.” *Id.* However, of more than three hundred thousand churches in the United States, only three were audited in 2013 and 2014, far below a rate of the thirty-seven percent claimed by this advertisement. See *id.*; *Fast Facts About American Religion*, *supra* note 150; *Last Week Tonight*, *supra* note 4.

¹⁶³ See *Last Week Tonight*, *supra* note 4.

¹⁶⁴ See *id.*

¹⁶⁵ See 26 U.S.C. § 6033(a)(1), (3) (2012); *United States v. Jinwright*, 683 F.3d 471, 477 (4th Cir. 2012); *United States v. Rasheed*, 663 F.2d 843, 47 (9th Cir. 1981); *Tilton v. Marshall*, 925 S.W.2d 672, 680 (Tex. 1996); BOWLER, *supra* note 7, 101, 136–38.

preachers continue to exploit the tax-exempt status their “churches” have been awarded.¹⁶⁶ To remedy these abuses, this Note proposes that criminal investigations for fraud and tax evasion, as well as civil lawsuits for fraud, be employed by the government and private citizens, respectively, to curtail the power of prosperity preachers.¹⁶⁷

A. Securing Criminal and Civil Convictions for Fraud Against Prosperity Preachers

The defense in *United States v. Ballard* is a burdensome challenge for a plaintiff or the government to overcome when bringing charges of fraud against a prosperity preacher if those charges relate solely to the preacher’s religious doctrine.¹⁶⁸ In order to succeed in both criminal and civil cases for fraud, a prosecutor or a plaintiff would have to demonstrate that the prosperity preacher did not sincerely believe in the prosperity gospel; merely challenging the validity of the gospel would be insufficient and impermissible.¹⁶⁹ In *United States v. Rasheed*, the United States successfully obtained an indictment against Reverend Hakeem Rasheed for mail fraud by providing damning evidence that Reverend Rasheed did not sincerely believe in the gospel he preached.¹⁷⁰ The pastor’s eponymous Church of Hakeem preached a belief based on his interpretation of Christian scripture called “The God Within You,” which taught that if an individual gave money to the Church, he or she would be blessed with financial returns greater than the original gift.¹⁷¹ There was no divine intervention at play; Hakeem simply used new donations to pay older donors.¹⁷² The Ninth Circuit held that although *Ballard* foreclosed consideration as to whether Hakeem’s religious beliefs were valid, it still allowed inquiry into whether or not his beliefs were sincere.¹⁷³ In order to provide retribution to the vulnerably faithful

¹⁶⁶ See Van Biema, *supra* note 29.

¹⁶⁷ See *Jinwright*, 683 F.3d at 477; *Rasheed*, 663 F.2d at 847; *Tilton*, 925 S.W.2d at 680.

¹⁶⁸ See *United States v. Ballard (Ballard II)*, 322 U.S. 78, 86 (1944) (holding trier of fact may not consider validity of a defendant’s religious belief); *Tilton*, 925 S.W.2d at 678.

¹⁶⁹ See *Ballard II*, 322 U.S. at 88; *Rasheed*, 663 F.2d at 847.

¹⁷⁰ 663 F.2d at 847–48.

¹⁷¹ *Id.* 845.

¹⁷² *Id.* at 845, 847. As a defense, Rasheed argued that the “Dare to be Rich” program was a religious tenant of his organization and was protected by his Free Exercise rights under *Ballard*. *Id.* at 847.

¹⁷³ *Rasheed*, 663 F.2d at 847. In other words, the Ninth Circuit allowed the factual inquiry of whether Rasheed actually believed in what he preached. See *id.* The court also noted that several factors showed the fraudulent nature of the operation. *Id.* at 848. Rasheed had instructed other ministers in his church to not use words like “promise,” “guarantee,” “investment,” or “security.” *Id.* Rasheed also told ministers that the return on investment was coming from foreign investments in gold, diamonds, and oil, of which there were none. *Id.* Finally, Rasheed never mentioned that there was doubt, chance, or faith connected with the organization. *Id.* Ultimately, the Ninth Circuit

followers of the prosperity gospel, under *Rasheed's* guidance, federal prosecutors and private individuals should bring charges of criminal and civil fraud, respectively, against prosperity preachers, focusing on evidence that the prosperity preachers do not hold sincere beliefs in the prosperity gospel.¹⁷⁴

In order to successfully indict a prosperity preacher for criminal mail fraud, federal prosecutors would need to establish that the prosperity preacher (i) used the mail (ii) with a specific intent to defraud.¹⁷⁵ Individuals can recover in a civil case for mail fraud if they prove the same two elements required in the criminal case.¹⁷⁶ In a federal case, the first element is easily satisfied, as prosperity gospel preachers often use the mail in order to solicit and receive monetary donations from their parishioners.¹⁷⁷ In order to prove that a prosperity preacher had a specific intent to defraud, a prosecutor or private citizen would need to demonstrate that the prosperity preacher did not have a sincere religious belief in the prosperity gospel.¹⁷⁸

Evidence of a specific intent to defraud, even if circumstantial, could take many forms.¹⁷⁹ Prosecutors and private citizens could seek to subpoena a prosperity preacher's tithing records—records of church donations representing one-tenth of the preacher's income—to demonstrate that the preacher was not personally donating to the church as he or she was requesting his

concluded that Rasheed lacked sincere religious belief in the movement and upheld his conviction for mail fraud. *See id.* at 847–48, 855. The Supreme Court denied certiorari. *Phillips v. United States*, 454 U.S. 1157 (1982) (Phillips was a co-defendant to Rasheed's fraud case and was involved in his organization; only Phillips appealed).

¹⁷⁴ *See* 663 F.2d at 847–48. Various other statutes criminalize certain types of fraud over which the federal government may exercise jurisdiction. *See, e.g.*, 18 U.S.C § 1341 (2012) (criminalizing mail fraud).

¹⁷⁵ *See* 18 U.S.C § 1341; *Rasheed*, 663 F.2d at 847 (requiring intent to defraud in mail fraud conviction case).

¹⁷⁶ *See* *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 647 (2008). This Note evaluates the actions of prosperity preachers through the lens of mail fraud because mail fraud can lead to both civil and criminal liability. *See id.* Other various statutes protecting against fraud exist. *E.g.*, 31 U.S.C. § 3802(a)(1)(A) (2012) (providing “any person who makes, presents, or submits . . . a claim that the person knows or has reason to know is false, fictitious, or fraudulent . . . shall be subject to . . . a civil penalty of not more than \$5,000 for each such claim”). The analysis of such claims turns largely on intent to defraud. *See Rasheed*, 663 F.2d at 847.

¹⁷⁷ *See, e.g.*, Gerrit V. Betz, Note, *Megachurches and Private Inurement: Are Some Faiths Taxable?*, 44 NEW ENG. L. REV. 733, 753–54 (2010) (noting that the Copeland Ministries' donation letter states on the envelope, “I am sowing \$ ____ and believing for a hundredfold return”).

¹⁷⁸ *See Rasheed*, 663 F.2d at 847–78.

¹⁷⁹ *Id.* Circumstantial evidence is sufficient to convict a person for fraud. *Id.* at 848; *see also Circumstantial Evidence*, FREE DICTIONARY, <http://legal-dictionary.thefreedictionary.com/circumstantial+evidence> [<https://perma.cc/N8XG-LG7K>] (defining circumstantial evidence as “[i]nformation and testimony presented by a party in a civil or criminal action that permit conclusions that indirectly establish the existence or nonexistence of a fact or event that the party seeks to prove”).

or her parishioners to do.¹⁸⁰ Demonstrating an inconsistency in, or complete lack of, personal donations to the prosperity church from a prosperity preacher would serve as a clear red flag to the jury that the pastor did not sincerely believe that devout dedication and contribution to the prosperity church would result in great financial success, despite such proclamation being central to the prosperity gospel.¹⁸¹

A prosecutor or private citizen could also demonstrate that a prosperity preacher's own personal behavior contradicts the gospel he or she preaches.¹⁸² For example, to successfully bring charges against the Copelands, a prosecutor or private citizen would demonstrate that although the Copelands advocate that people rely on religious programming rather than medical treatment to cure illnesses, they themselves seek doctors to treat their ailments.¹⁸³ A jury could infer this hypocrisy to indicate that the Copelands do not truly believe in faith healing, which is the central tenant of the prosperity gospel.¹⁸⁴ Demonstrating that prosperity preachers lack sincere belief in their own doctrine is evidence of specific intent to defraud; this is a criminal violation of the law for which televangelist prosperity pastors should be held accountable.¹⁸⁵ Furthermore, inquiries into religion tend to draw significant press coverage.¹⁸⁶ Even if a prosperity preacher would not be found guilty for fraud in a court of law, exposing the scam may cause supporters to lose confidence in the prosperity gospel.¹⁸⁷ By uncovering evidence that prosperity preachers lack sincere belief in their message, lawsuits would help prove to adherents that it is not the case that prosperity preachers are wealthy because they are faithful; rather, prosperity preachers are wealthy because they are scamming their adherents.¹⁸⁸

¹⁸⁰ See *Rasheed*, 663 F.2d at 847–48; *Tilton v. Marshall*, 925 S.W.2d 672, 676 (Tex. 1996); *Tithe*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/tithe> [<http://perma.cc/L24R-YBLE>]. For example, in *Tilton*, plaintiffs attempted to compel discovery of Reverend Tilton's tithing records as evidence that he had not tithed as was required by his professed doctrine, and therefore must not believe in his professed doctrine. See 925 S.W.2d at 676.

¹⁸¹ See *Tilton*, 925 S.W.2d at 676; BOWLER, *supra* note 7, at 134.

¹⁸² See *Rasheed*, 663 F.2d at 847–48; *Last Week Tonight*, *supra* note 4.

¹⁸³ *Last Week Tonight*, *supra* note 4; SUFFER THE CHILDREN, *supra* note 1.

¹⁸⁴ See *Rasheed*, 663 F.2d at 847–48; *Last Week Tonight*, *supra* note 4; SUFFER THE CHILDREN, *supra* note 1. As a further example, Kenneth Copeland has implied that he reads over prayer requests sent to him. See *News 8 Reporting Featured in 'Last Week Tonight'*, *supra* note 1. But Copeland Ministries has acquired a specialized printer that can produce reply letters that appear "100% personalized," and former employees of Copeland Ministries have alleged that Copeland may not see any letters written by his followers. *Id.* Even though the *Tilton* court interpreted *Bal-lard* narrowly, it noted that this specific behavior could be grounds for civil fraud. See *Tilton*, 925 S.W.2d at 679.

¹⁸⁵ See *Rasheed*, 663 F.2d at 847–48.

¹⁸⁶ See BOWLER, *supra* note 7, at 109.

¹⁸⁷ See *id.*

¹⁸⁸ See *Rasheed*, 663 F.2d at 847–48; BOWLER, *supra* note 7, at 109.

B. Tax Laws Should Be Enforced and Expanded to Include Churches

Another way to successfully prosecute prosperity preachers is to charge them with tax evasion.¹⁸⁹ Typically, a new non-profit organization is required to fill out a financial disclosure form—IRS Form 1023—in order to request tax-exempt status.¹⁹⁰ This form is reviewed by the IRS, which in turn grants or denies the organization’s tax-exempt status request.¹⁹¹ Under the Internal Revenue Code however, churches and other religious organizations are exempt from this requirement.¹⁹² A new church’s failure to submit IRS Form 1023 does not strip it of its tax-exempt status.¹⁹³ Because churches, including prosperity churches, are not required to file yearly tax returns, they effectively enjoy audit-free status; there is no review of their non-profit status at their formation, nor is there a review of their non-profit status during their operation.¹⁹⁴

Despite this exemption, the IRS encourages new churches to submit Form 1023 in order to “self-designate” their tax-exempt status.¹⁹⁵ Some prosperity churches that heeded the advice of the IRS and filled out Form 1023 were subsequently investigated for tax fraud, indicating that such fil-

¹⁸⁹ See *United States v. Jinwright*, 683 F.3d 471, 477 (4th Cir. 2012). Tax evasion is defined by 26 U.S.C. § 7201 (2012) as “any manner to evade or defeat any tax imposed by this title or the payment thereof” Filing a false tax return is similarly prohibited:

Any person who . . . [w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . . shall be guilty of a felony

26 U.S.C. § 7201. The Supreme Court has outlined that the elements of tax evasion under 26 U.S.C. § 7201 are “willfulness; the existence of a tax deficiency, and an affirmative act constituting an evasion or attempted evasion of the tax.” *Sansone v. United States*, 380 U.S. 343, 351 (1965) (internal citations omitted).

¹⁹⁰ Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (OMB No. 1545-0056) (Rev. Dec. 2013), <http://www.irs.gov/pub/irs-pdf/f1023.pdf> [<https://perma.cc/8YUK-LHMA>]; Encino, *supra* note 36, at 85–86 (2014). The form is also called a 501(c)(3) application. See *Jinwright* 683 F.3d at 477.

¹⁹¹ See Encino, *supra* note 190, at 85–86. Despite its tax-free status, a non-profit organization must still file annual tax returns declaring its revenue and expenses. See *id.* at 87.

¹⁹² 26 U.S.C. § 508(a) (2012) (“New organizations must notify [the] Secretary that they are applying for recognition of section 501(c)(3) status [e]xcept as provided in subsection (c)”). Churches are one of the exceptions to this notice requirement. § 508(c)(1)(A). The Supreme Court has held that exempting an organization from taxation is a valid practice not barred by the Establishment Clause. See *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 675–76 (1970).

¹⁹³ See discussion *supra* Section II.B.

¹⁹⁴ See discussion *supra* Section II.B.

¹⁹⁵ Encino, *supra* note 36, at 85–86. The IRS claims—arguably self-servingly because it is tasked with regulating non-profits—that churches benefit from filling out Form 1023 because leaders and members can be assured their church qualifies for tax-benefits. See *id.*

ings demonstrate the fraudulent practices of televangelist churches.¹⁹⁶ For example, Anthony Jinwright, a prosperity preacher in North Carolina, was investigated for tax fraud after the IRS noted a discrepancy between the compensation reported on his personal tax return and the compensation reported on his church's Form 1023.¹⁹⁷ The subsequent investigation revealed that Jinwright had understated his personal taxable income by more than \$2 million.¹⁹⁸ Jinwright was indicted and convicted on charges of conspiracy to defraud the United States, tax evasion, aiding and abetting tax evasion, and filing false tax returns.¹⁹⁹ Like Jinwright, the IRS could investigate other prosperity preachers—all of whom, as church employees, are not exempt from filing personal tax returns—by comparing their personal tax returns with their church's Form 1023.²⁰⁰

Unfortunately, under current tax law, audits of prosperity preachers' finances would be limited to churches that have filed Form 1023.²⁰¹ Therefore, Congress should amend the Internal Revenue Code to require all churches file both Form 1023 and annual tax returns.²⁰² Repealing the exemptions churches currently receive would allow more transparency into whether prosperity churches actually have a legal right to tax-exempt status.²⁰³ Legislatively, this would require Congress to remove the exceptions awarded to churches under 26 U.S.C. § 508(c)(1)—which exempts churches from filing Form 1023—and § 6033(a)(3)—which exempts churches from

¹⁹⁶ See *United States v. Jinwright*, 683 F.3d 471, 477 (4th Cir. 2012); Rhiannon Fionn-Bowman, *Bully at the Pulpit*, CHARLOTTE MAG. (Apr. 15, 2011), <http://www.charlottemagazine.com/Charlotte-Magazine/May-2011/Bully-at-the-Pulpit/?cparticle> [<https://perma.cc/KK8N-8NP3>].

¹⁹⁷ *Jinwright*, 683 F.3d at 477; Fionn-Bowman, *supra* note 196.

¹⁹⁸ *Jinwright*, 683 F.3d at 477. These unreported benefits paid out by his church included tropes quite similar to other prosperity leaders, such as housing allowances in excess of \$130,000 per year, travel funds between \$19,000 and \$48,000 per year, and the use of a luxury car in addition to a personal vehicle stipend. *Id.* at 475; see BOWLER, *supra* note 7, at 134; *Last Week Tonight*, *supra* note 4.

¹⁹⁹ *Jinwright*, 683 F.3d at 477. The conspiracy and aiding and abetting charges resulted from Jinwright's collusion with his wife, who was also convicted for conspiracy to defraud the United States, tax evasion, and aiding and abetting tax evasion. *Id.*

²⁰⁰ See *id.* Note that pastors have to file tax returns and pay personal income tax because they are treated as church employees. See *id.* at 481; *Topic 417—Earnings for Clergy*, IRS, <https://www.irs.gov/taxtopics/tc417.html> [<https://perma.cc/FBX5-AZGG>]; see also *Ministers Audit Techniques Guide*, IRS, <https://www.irs.gov/pub/irs-utl/ministers.pdf> [<https://perma.cc/DB4E-D9RL>] (noting that there are various tax exemptions unique to ministers, such as their parsonage allowance). They are subject to audit just like any other employee for misreporting income. See *Ministers Audit Techniques Guide, supra*.

²⁰¹ See *Jinwright*, 683 F.3d at 477. In particular, the six televangelist ministries that Senator Grassley investigated, which included Copeland Ministries, did not file 501(c)(3) applications. See Encino, *supra* note 36, at 86–87.

²⁰² See Encino, *supra* note 36, at 86–87.

²⁰³ See *id.* at 85–86.

filing annual returns.²⁰⁴ If Congress amended the Internal Revenue Code, the IRS would be able to investigate whether prosperity preachers were receiving inurement from their churches in violation of tax law.²⁰⁵ In the past, the IRS has revoked various churches' tax-exempt status on grounds that the revenue was inuring to a preacher or other church official, rather than to the church.²⁰⁶ Requiring prosperity churches to disclose their financial records would allow adherents to learn what their donations actually fund.²⁰⁷

Politically, however, an amendment to the Internal Revenue Code is not that likely.²⁰⁸ Approximately ninety percent of congressional members and about three-quarters of their constituencies are Christian.²⁰⁹ Because of these religious ties, Congress is not motivated to, and would most likely be unable to, garner enough support to reform the tax code, because such reform would affect all churches, not just prosperity churches.²¹⁰ Fortunately, even without an amendment to the tax code, the government and private citizens still have the opportunity to hold televangelist prosperity preachers accountable for their practices.²¹¹

CONCLUSION

The Free Exercise Clause, its case law, and the Religious Freedom Restoration Act (RFRA) of 1993 have allowed numerous religions to flourish in the United States; however, they have also enabled prosperity preachers to exploit millions of faithful victims without recourse. These preachers accentuate their wealth as proof that their theology works, and collectively command vast financial assets from their often poor and uneducated followers. The fraudulent nature and massive size of the prosperity scheme evidently needs to be remedied. Strong political pressure against laws unfavorable to religion suggests that such changes are not likely to come from Congress. Under current laws, the government should still take action through its investigative agencies by bringing criminal actions for fraud and

²⁰⁴ 26 U.S.C. §§ 508(c)(1), 6033(a)(3) (2012).

²⁰⁵ TAX GUIDE, *supra* note 143, at 5.

²⁰⁶ *See, e.g., Church of Scientology of Cal. v. Comm'r*, 823 F.2d 1310, 1313, 1321–22 (9th Cir. 1987) (affirming revocation of the Church of Scientology's tax-exempt status on the grounds that a portion of the church's income inured to the benefit of the founder, L. Ron Hubbard).

²⁰⁷ *See Encino, supra* note 36, at 85–87; *Last Week Tonight, supra* note 4.

²⁰⁸ *See Antonia Blumberg, A Look at the Religious Make-Up of the 114th Congress*, HUFFINGTON POST (Jan. 5, 2015), http://www.huffingtonpost.com/2015/01/05/congress-religious-affiliation_n_6417074.html [<http://perma.cc/J7TW-NE8C>].

²⁰⁹ *See id.*

²¹⁰ *See id.*; Goodstein, *supra* note 37.

²¹¹ *See United States v. Jinwright*, 683 F.3d 471, 477 (4th Cir. 2012); *United States v. Rasheed*, 663 F.2d 843, 847–48 (9th Cir. 1981); *Encino, supra* note 36, at 86–87; *Kingsley, supra* note 153, at 42–43.

tax evasion against these pastors. If the government fails its electorate in taking these steps, parishioners should still bring civil suits against those who swindle them. Such a revolt may be the best solution of all. If the government were to indict prosperity pastors, those pastors would be championed as martyrs to their followers. If, however, the *followers* were to sue their prosperity pastors, then the pastors would begin to lose their wealth and influence, which is ultimately dependent on the inflow of cash from their parishioners.