

Findings



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Churches and the Political Process *Guidelines for Education, Lobbying, and Political Campaign Activity*

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Churches and religious organizations occupy a unique position in American society. They have all the freedoms associated with the First Amendment to the Constitution—freedom of speech, the freedom to exercise their religion, and the freedom from having the government establish what form of religion must be followed. However, with freedom comes responsibility, and the Internal Revenue Service (IRS) has enacted rules to govern the circumstances under which tax-exempt churches and religious organizations can exercise their freedoms in politics.

Many churches are reluctant to participate in the political process because they misunderstand what is and is not permitted under the law. Rather than risk legal entanglements, many churches refrain from educating their members about issues and the positions of political candidates. They also fail to encourage members to participate in activities that are vital to America's elective form of government.

Moreover, many churches are receiving misleading letters from groups such as Americans United for Separation of Church and State as part of its so-called "Project Fair Play," that attempt to keep churches, priests, and ministers silent on critical social issues and elections.¹ Filing complaints with the IRS and threatening that churches could lose their tax-exempt status are common tactics of some groups. Their goal is to intimidate people of faith into fearfully failing to exercise their Constitutional rights of free speech and free exercise of religion, thus undermining the church's impact in the public policy arena.²

Contrary to popular belief, there are numerous ways in which churches, priests, and ministers may engage public policy and many lawful ways they may encourage their congregants to participate in the public debate without fear of legal repercussions. The political process involves two main activities: (1) the enactment of public policy into law, and (2) the election of public officials. Generally, churches, priests, and ministers can participate in both of these activities as long as they stay within boundaries set by the IRS.

The following are answers to questions about what is and is not permissible activity for churches, priests, and ministers when it comes to involvement in the process of making public policy and electing public officials. The information set forth comes primarily directly from IRS publication number 1828: Tax Guide for Churches and Religious Organizations, which is based on section 501(c)(3) of the Internal Revenue Code (IRC).

Tax-Exempt Status of Churches

Almost all churches are exempt under section 501(c)(3) of the IRC. The primary benefits of being exempt are: (1) the church is exempt from paying corporate income tax; and (2) donations to the church are tax deductible on contributors' federal tax returns.³ To qualify for tax-exempt status, a church or religious organization must meet these qualifications:

- The organization must be organized and operated exclusively for religious, educational, scientific, or other charitable purposes,
- Net earnings may not inure to the benefit of any private individual or shareholder,

- No substantial part of its activity may be attempting to influence legislation,
- The organization may not intervene in political campaigns, and
- The organization's purposes and activities may not be illegal or violate fundamental public policy.⁴

Q: How does a church obtain tax-exempt status?

A: "Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS."⁵ However, many churches do seek formal recognition of their tax-exempt status just to assure church leaders and members. Unlike churches, religious organizations (such as nondenominational ministries and non-profit organizations with a religious purpose) must apply to the IRS for tax-exempt status unless their gross receipts do not exceed \$5,000 annually.⁶

Education

One of the most basic rights that churches, priests, and ministers have is the right to educate their congregants about issues, even if those issues are considered "political." Issues that constitute public policy and eventually are enacted into law have the potential to greatly impact Christians; therefore, it is important for Christians to be fully informed about them so they can meaningfully participate in government. Likewise, it is important for Christians to be informed about candidates' positions on issues, so that they can be informed voters.

Q: Are churches allowed to educate their members about issues that may be political without losing their tax-exempt status?

A: The IRS allows churches unlimited freedom in educating members about issues and candidates' positions on issues, as long as the discussion is nonpartisan and does not favor or oppose specific candidates for public elected office. Churches, priests, and ministers have broad Constitutional rights to express their views on an array of social issues such as marriage, abortion, and homosexual behavior. They can even conduct educational meetings and prepare and distribute educational materials to congregants on public policy issues. This freedom to educate church congregations even applies to specific bills and pending legislation. The only limitation is that the discussion may not favor or oppose one political party or one candidate for public office over another.⁷

Lobbying

Attempting to influence legislation takes many forms: it can be influencing the contents or language of the legislation, or it can be influencing whether the legislation is passed or defeated. This is commonly known as "lobbying" and is utilized by many different groups of people interested in business, social, political, and religious issues.

Q: What does the IRS require of churches and other 501(c)(3) organizations in order to keep tax-exempt status in relation to lobbying?

A: Although churches may engage in some lobbying, the IRS requires that "no substantial part" of a 501(c)(3) organization's activities include "attempting to influence legislation" (lobbying).⁸

Q: What does "substantial" activity mean?

A: The IRS has not explicitly defined this term, choosing instead to consider all the relevant facts on a case-by-case basis, including "the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity."⁹ However, court cases have often based their decisions on a percentage test, stating that expenditures of less than five percent of an organization's time and finances are not substantial.¹⁰ Religious organizations other than churches may elect to use an alternative

test under IRC section 501(h) based solely on expenditures related to lobbying activity, which do not exceed a specified amount based on the size of the organization.¹¹ Regardless of the precise percentage, these tests are fact-based and therefore somewhat subjective, so it is important to have a competent attorney evaluate the situation if there is any uncertainty.

Q: What is included in the term "legislation"?

A: The IRS Tax Guide for Churches and Religious Organizations defines legislation as "action by Congress, any state legislature, any local council, or similar governing body, with respect to acts,

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bills, resolutions, or similar items (such as legislative confirmation of appointive offices) or by the public in a referendum, ballot initiative, constitutional amendment or similar procedure. It does not include actions by executive, judicial, or administrative bodies."¹²

Q: What is included in lobbying activities?

A: There are two methods of influencing legislation: (1) grassroots lobbying and (2) direct lobbying. In grassroots lobbying, an individual expresses an opinion on a specific piece of legislation and calls on the audience to contact their legislators and encourage either support or opposition to that legislation. In direct lobbying, an individual expresses an opinion on a specific piece of legislation directly to the lawmaker.

Q: In what lobbying activities may the church engage?

A: Churches may engage in both grass-

roots and direct lobbying, but they are more likely to engage in the former. Church leaders may participate in grassroots lobbying through such means as bulletin inserts, fact-sheets, and outright endorsement or opposition of a specific issue from the pulpit. In addition, churches may circulate petitions for the purpose of influencing legislation. Priests and ministers can also engage in direct lobbying with lawmakers. The only limitation is that all of these activities must not constitute a "substantial part" of the church's time and resources.

Q: What are some other examples of permissible lobbying activity?

- A church tells its congregation about specific abortion legislation moving through the state legislature, announces its opposition, and urges the congregation to contact their state representatives and request that the bill be defeated. This is permissible "grassroots lobbying" activity and is subject to the "substantial" limit imposed by the IRS.
- The same church tells its congregation about specific abortion legislation moving through the state legislature and announces its opposition without urging them to contact their state representatives. This is merely educational activity; it may be done without limit.¹³
- A priest spends two hours a week encouraging his congregation to contact legislators and contacting state legislators directly himself, urging them to defeat the abortion legislation. As long as this does not exceed a "substantial part" (usually 5%) of the church's total employee time for the year or the church's budget for the year, he can freely participate in such "grassroots lobbying" and "direct lobbying." For example, a priest who is the only employee of a church and works an average of 40 hours per week could presumably engage in 104 hours of lobbying per year within IRS guidelines, still a huge opportunity to influence legislation. Churches with numerous employees can average lobbying time and expenses over the entire church budget.

Q: What can the IRS do to a church that devotes an excessive amount of its time and expenditures to lobbying activity?

A: Churches risk losing their tax-exempt status if they engage in substantial lobbying, resulting in all of their income being subject to tax and other penalties, and resulting in donors being unable to deduct their contributions to the church.¹⁴ “However, the IRS has never revoked a bona-fide church’s tax-exempt status exclusively for violating the lobbying restrictions.”¹⁵ But, the IRS did revoke a non-church religious ministry’s tax-exempt status because its lobbying efforts were so extensive that they became a substantial part of its activities.¹⁶ An appellate court upheld the revocation, finding that the organization’s activities (which included writing to members of Congress, supporting and opposing certain amendments and statutes, and urging the legislators to end biased media reporting) were not impermissible in and of themselves. What the Court found problematic was the amount of lobbying, which had reached such an extent that the primary activities of the ministry were political. The point is that, in relation to lobbying, the amount, not the nature, of the activity is the determining factor.

Political Campaign Activity

Churches often seek to be involved in political campaigns. “Electioneering” or “campaigning” is active involvement in a political campaign and can take many forms: donations to particular political parties or candidates, donations to political action committees (PACs), candidate forums or debates, voter guides, voter registration drives, or inviting individual candidates to speak in church. The IRS has adopted very specific rules governing what churches, priests, and ministers can and cannot do in political campaigns.

Q: What are churches prohibited from doing?

A: “Under the Internal Revenue Code, all IRC section 501(c)(3) organizations, including churches and religious organizations, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organiza-

tion in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity.”¹⁷

Q: What activities are allowed?

A: “Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities

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intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner. On the other hand, voter education or registration activities with evidence of bias that: (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.”¹⁸

Q: May a church distribute voter guides?

A: A church may distribute voter guides or surveys “with the purpose of educating voters; however, they may not be used to attempt to favor or oppose candidates for public elected office.” A church may mention that a candidate refused to respond to a survey if that is the case. Factors that influence the IRS in determining whether a church’s voter guide constitutes prohibited political campaign activity are:

- Whether the candidates’ positions are compared to the organization’s position,

- Whether the guide includes a broad range of issues that the candidates would address if elected to the office sought,
- Whether the description of issues is neutral,
- Whether all candidates for an office are included, and
- Whether the description of candidates’ positions are either:
 - the candidates’ own words in response to questions, or
 - a neutral, unbiased and complete compilation of all candidates’ positions.¹⁹

Q: May a church contribute finances or other resources to a political campaign?

A: A church may never contribute money to a political campaign or participate in fundraising for a PAC.²⁰ In addition, a church may not offer a mailing list or advertisement to any candidate unless this is an ongoing activity of the church and is done for all candidates on an equal basis. A church may provide a political party or candidate with a mailing list or advertisement at the organization’s customary and usual rate.²¹

Q: May a church endorse candidates?

A: A church may never endorse a candidate or political party, nor include editorials about political parties or candidates in its publications.²² However, while churches may not endorse political candidates, a church may support or oppose nominees to appointed positions such as those in the cabinet or judiciary and may lobby on their behalf according to the constraints listed in the above section.

Q: May a church invite candidates to attend official church events?

A: A church may invite candidates to attend and speak at official church events, such as annual banquets, but it must ensure that the invitation is open to all candidates seeking the same office who may desire to attend. Such events must be neutral in treatment of the candidates, and the candidates should be introduced by

indicating that the church neither supports nor opposes any of the candidates and without commenting on their qualifications or indicating a preference for any candidate. If the candidates attend different events, the church must ensure that the events are similar in nature in order to avoid showing any favoritism, and no candidate fundraising may occur at the events. A candidate may participate in a religious service by reading Scripture, praying, or preaching.²³

Q: May a church invite a candidate to speak in a non-candidate capacity?

A: A church may desire a political candidate (including church members) to speak in a non-candidate capacity because he or she is already a public figure (for example, he or she holds public office, is a celebrity, is an expert in a nonpolitical field, or has a distinguished military, legal, or public service career). In this case, the church may invite that person to speak without extending the invitation to other candidates, but the church must ensure that neither the candidate nor any representative of the church mentions his or her candidacy or the election, no campaign or candidate fundraising activity occurs, and the individual is identified as speaking only in this non-candidate capacity. If the individual already holds elective office, he or she may be introduced as that officeholder, but not as a candidate for re-election.²⁴

Q: May a church host a public forum that includes political speeches?

A: A church may host a public forum for the purpose of educating the community, at which candidates may discuss campaign issues in response to neutral questions from a nonpartisan panel. A forum must cover a broad range of issues and must allow each candidate an equal opportunity to respond. It is not permissible to ask candidates to agree or disagree with positions or doctrines of the church, and the moderator should not comment on the questions or imply approval or disapproval of the candidates or their answers. Remember that this event may never include campaign fundraising.²⁵

Q: What about individual activity by religious leaders?

A: According to the IRS Tax Guide for Churches and Religious Organizations,

“the political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of churches or religious organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy.”²⁶ Religious leaders are therefore free to express their opinions or endorsements for candidates in nonofficial church settings

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and may even be identified as the priest or pastor of a particular church, but they should be careful to indicate clearly that their comments are personal and not intended to reflect the views of their church or organization. However, “religious leaders cannot make partisan comments in official organization publications or at official church functions.”²⁷ Therefore, in official church settings (including services, events, and church publications), a priest, minister, or church leader may discuss social issues or political activism in a nonpartisan manner, but he or she can never make partisan comments or indicate support or opposition of particular candidates for elected office.²⁸

Q: What are the consequences of engaging in prohibited political campaign activity?

A: “When it participates in political campaign activity, a church or religious organization jeopardizes both its tax-exempt status under IRC section 501(c)(3) and its eligibility to receive tax-deductible contributions. In addition, it may become subject to an excise tax on its political expenditures.”²⁹ Also, the church or religious organization should correct the violation by recovering the expenditure, to the extent possible, and by establishing safeguards that will prevent future political expenditures. The IRS has only once revoked the tax-exempt status of a church for engaging in prohibited political campaign activity.³⁰ “Four days before the

1992 presidential election, Branch Ministries, a tax-exempt church, placed full-page advertisements in two newspapers in which it urged Christians not to vote for then-presidential candidate Bill Clinton because of his positions on certain moral issues. The Internal Revenue Service concluded that the placement of the advertisements violated the statutory restrictions on organizations exempt from taxation and, for the first time in its history, it revoked a bona fide church’s tax-exempt status because of its involvement in politics.”³¹ The Court of Appeals in Washington, D.C. agreed with the IRS, and upheld the revocation of Branch Ministries’ tax-exempt status, although the court said “the impact of the revocation is likely to be more symbolic than substantial.”³² The IRS had apparently confirmed that the revocation is not permanent and does not apply to future donations or tax-exempt activities of the church, as long as it meets the requirements of section 501(c)(3). “If the church does not intervene in future political campaigns, it may hold itself out as a 501(c)(3) organization and receive all the benefits of that status,” according to the Court.³³ This case was an extreme example of political campaign activity that serves to remind churches to neither support nor oppose particular candidates for public office.

Conclusion

As long as churches, priests, and ministers abide by the guidelines outlined by the IRS for lobbying and political campaign activity, they can exercise broad freedoms to influence public policy, to make laws, and to encourage participation by their congregants in the political process. Churches must only abide by two particular requirements: (1) devote less than five percent of their time and expenditures to lobbying activities, and (2) refrain from advocating for or opposing particular political parties or particular candidates for elected public office. They can, however, conduct some lobbying activity as long as it is not “substantial,” and they do have broad rights to educate congregants through voter guides, candidate forums, voter registration drives, or any other means of nonpartisan education. Additionally, ministers and priests can always exercise their individual rights of free speech, as long as, when they are supporting or opposing candidates, they do so in nonofficial church settings and do not represent their personal views to be the views of their churches.

Staying within these guidelines allows churches to participate in shaping the public debate without fear of losing their tax-exempt status or jeopardizing their tax-deductible contributions. With the knowledge of current IRS guidelines, priests and ministers should not be intimidated by groups that seek to silence the church in the public square.

Disclaimer

The information provided above was derived from the IRS's publication entitled "Tax Guide for Churches and Religious Organizations" (IRS Publication 1828). This document and other relevant information can be found online at <http://www.irs.gov/charities/churches/index.html>.

Information in this paper is not intended to constitute legal advice, and the factual issues that arise in a particular situation must be considered in context. This paper does not purport to cover each and every factual situation that may arise. If the reader or church leader has any specific questions, please consult the IRS publication mentioned above, contact the NCFPC, or seek the services of a competent attorney.

Churches, priests, and ministers may obtain legal advice free of charge regarding your particular situation by contacting the Alliance Defense Fund at 1-800-

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TELLADF or www.Telladf.org or the James Madison Center at (812) 232-2434 or www.jamesmadisoncenter.org. ❖

Endnotes

- 1 <http://projectfairplay.org/>; http://www.au.org/site/PageServer?pagename=issues_churchelectioneering; In 1998, for example, Americans United for the Separation of Church and State mailed 80,000 letters to pastors across the nation warning them that churches risked losing tax-exempt status if they distributed voter guides prepared by the Christian Coalition. See, Laurie Goodstein, "The 1998 Campaign: Religion," N.Y. Times, Oct. 29, 1998, at A27, <http://query.nytimes.com/gst/fullpage.html?res=9406E0DF1F3CF93AA15753C1A96E958260&sec=&spn=&pagewanted=print>.
- 2 See, e.g., Teresa Baldas, "A Bully Pulpit, or Bullying the Pulpit," *Nat'l L.J.*, Oct. 18, 2004, at 22 ("Religious watchdogs are monitoring churches closely, in some cases hiding out in pews and spying on pastors ..."); Hank Merges, "Pastors Bound to Rules if Backing Candidates," *York Dispatch*, July 29, 2004 (explaining that "left-wing groups are suddenly springing into action ... sending 'spies' into churches on Sunday mornings"); Mathew D. Staver, "Pastors, Churches and Politics: What May Pastors and Churches Do?," Liberty Counsel, http://www.lc.org/Resources/pastors_churches_politics.htm.
- 3 IRC §501(c)(3).
- 4 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 3.
- 5 *Ibid.*
- 6 *Ibid.*
- 7 *Ibid.* at 6.
- 8 IRC §501(c)(3).
- 9 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 6.
- 10 See, e.g., *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955).
- 11 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 6.
- 12 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 6.
- 13 "Political and Legislative Guidelines for Churches and Pastors." Focus on the Family (November 12, 1999).
- 14 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 5.
- 15 Andersen, David M, "Comment: Political Silence at Church: The Empty Threat of Removing Tax-Exempt Status for Insubstantial Attempts To Influence Legislation," 2006 B.Y.U.L. Rev. 115.
- 16 *Christian Echo National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972).
- 17 *Tax Guide for Churches and Religious Organizations*, Internal Revenue Service, Publication 1828, Pg. 7.
- 18 *Ibid.*
- 19 *Ibid.* at 10.
- 20 *Ibid.* at 7.
- 21 *Ibid.* at 10-11.
- 22 *Ibid.* at 7.
- 23 *Ibid.* at 8-9.
- 24 *Ibid.* at 9-10.
- 25 *Ibid.* at 8-9.
- 26 *Ibid.* at 7.
- 27 *Ibid.*
- 28 *Ibid.* at 7-8.
- 29 *Ibid.* at 11.
- 30 Andersen, David M, "Comment: Political Silence at Church: The Empty Threat of Removing Tax-Exempt Status for Insubstantial Attempts To Influence Legislation," 2006 B.Y.U.L. Rev. 115.
- 31 *Branch Ministries v. Rossotti*, 341 U.S. App. D.C. 166 (2000).
- 32 *Id.* at 172.
- 33 *Id.*

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