



ALLIANCE DEFENSE FUND

Defending Our First Liberty

CHURCHES AND POLITICS

Your freedom to speak Biblical truth

Every election season, various groups try to intimidate churches and pastors to be silent on the great social and moral issues of our time. But churches and pastors have a God-given right—protected by our Constitution—to speak to the issues of our day and to be, as Scripture commands, the “salt and light” for our culture.

Recently, we have seen organizations such as *Americans United for Separation of Church and State* send letters to churches in an apparent effort to suppress the speech of churches and pastors on critical social issues. Churches are implicitly or even directly threatened with the loss of their tax-exempt status if they don’t “toe the IRS line” as to permissible speech. Some groups go so far as to file complaints with the IRS, occasionally leading to IRS investigations. The resulting (although very remote) chance that a church could lose its tax-exempt status is used to silence Christians inside their own churches.

Such tactics are not new. For example, in 1996, 1998, and 2000, pro-homosexual activists targeted churches that supported a proposition in California that defined marriage as being between one man and one woman. In one mailing, activists sent out some 80,000 threat letters.¹ Fortunately, those would-be censors failed to suppress Christian speech. The California measure ultimately passed and no church had its tax-exempt status revoked.

Unfortunately, the Internal Revenue Service has muddied the waters by giving unclear guidance and inconsistently enforcing some very vague regulations. ADF believes that some of these IRS actions are unlawful under the First Amendment to the United States Constitution, and one day will be stricken down in court.² Until that day, churches and pastors that prefer to conform to the IRS standards will find ADF’s *Guidelines for “Political Activity” by Churches and Pastors* (enclosed) to be helpful.

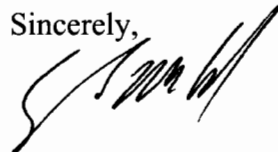
¹ See Erik. J. Ablin, *The Price of Not Rendering to Caesar: Restrictions on Church Participation in Political Campaigns*, 13 Notre Dame J. L. Ethics & Pub. Pol’y 541, 557 (1999).

² Specifically, ADF believes that churches and pastors have the right to speak Biblical truth from the pulpit about candidates for office, even if that means opposing or supporting particular candidates from the pulpit. This was the historical and constitutional norm from the founding of our country until 1954. In 1954 the tax code was amended by a politician intent on silencing a political opponent that happened to be a tax-exempt group. ADF anticipates bringing a federal lawsuit to directly challenge the 1954 amendment and restore full First Amendment rights to churches and pastors. Until then, if your church wishes to remain within current IRS guidance, the enclosed guidelines will help you achieve that goal.

Churches and pastors must not allow the tactics of intimidation and intolerance to succeed in silencing their voices on the critical issues of our day. If any government official or private activist group threatens your church for its speech regarding these issues, please contact ADF at 1-800-TELLADF or www.telladf.org immediately. ADF attorneys will promptly review your situation and, if ADF undertakes your case, will defend your church without charge.

By this letter, we assure you that churches and pastors have broad constitutional rights to express their views on social and moral issues, such as marriage, abortion, and homosexual behavior. The guidelines ADF provides will help you and your church stay within the IRS's rules if you so desire.

Sincerely,



Gary S. McCaleb
Senior Counsel
Alliance Defense Fund

Encl.



GUIDELINES FOR “POLITICAL ACTIVITIES” BY CHURCHES AND PASTORS

May 2008

The following legal overview and guidelines summarize the requirements of the Internal Revenue Code as they apply to churches and pastors.¹ We encourage you to share them with your colleagues. As guidelines, they may not address every situation that you face and should not be construed as legal advice.² Churches and pastors, however, may request legal advice free of charge regarding a particular situation by contacting the Alliance Defense Fund at 1-800-TELLADF or at www.telladf.org.

Federal Tax-Exempt Status of Churches

Almost all churches are exempt from federal income taxes. As a tax exempt organization, a church:

- (1) is exempt from paying corporate income taxes, and donations to the church are tax deductible on individuals' federal tax returns;
- (2) may expend funds for religious, charitable, and educational purposes, as well as an insubstantial amount on lobbying to promote or oppose legislation.

Under section 501(c)(3), however, exempt organizations may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.” Still, not all political activity which would influence an election falls under this prohibition.

Permissible Political Activity and Impermissible Church Campaign Activity

The type of political activity prohibited by the IRS is participating or intervening in a political campaign—also known as “campaign activity.” The Internal Revenue Code requires

¹ Although churches are subject to the rules of the Federal Election Campaign Act (“FECA”) as well as those of the Internal Revenue Code (“IRC”), FECA generally does not impact churches. Because the IRS has concluded that section 501(c)(3) absolutely prohibits any political campaign activity, activities regulated under FECA are already prohibited by the IRC.

² Particularly, state laws may be more restrictive than these guidelines and an attorney should be consulted for state-specific issues.

that churches refrain from supporting or opposing a candidate's campaign. Campaign activity involves endorsements of candidates or expenditures of funds to advocate for the election or defeat of a candidate for political office. The IRS guidelines prohibit direct contributions to a candidate, as well as in-kind contributions, which include giving anything of value to a candidate (such as a church mailing list). Independent expenditures, which are expenditures advocating the election or defeat of a political candidate when made without the knowledge of or consultation with any candidate, are also prohibited.

Speech about public issues may incidentally influence elections, but the government is far more limited in its ability to restrict discussion about issues. Churches may speak out about social and moral issues, the actions of government officials in office, and the positions of candidates on issues. As long as a church does not endorse or oppose a specific candidate for public office, it has broad freedom to praise or criticize officials and candidates outside of the election context.

Pastors' Individual Rights

Pastors and priests, acting as individuals and not as official church representatives, have the same rights as all other American citizens to involve themselves in political activity. Therefore, they have much greater latitude in this area than do churches. They may even endorse or oppose candidates so long as the endorsement is not on behalf of the church and is not made in a way that gives the appearance that the endorsement is made on behalf of the church.

Pastors are understandably concerned about the legal effects of political activity on themselves and their churches, but they should be aware that they are not required to be passive or remain silent. If they follow these basic guidelines, pastors may lift their individual voices without fear.

Checklist for "Political Activities" by Churches and Pastors

<i>Political Activity</i>	<i>Church</i>	<i>Pastor³</i>
1. Discuss the positions of candidates on issues	Yes	Yes
2. Endorse or oppose candidates	No	Yes
3. Financial contributions to candidates	No	Yes
4. In-kind contributions to candidates	No	Yes
5. Independent expenditures supporting or opposing candidates	No	Yes
6. Contributions to political action committees (PACs)	No	Yes
7. Payment of expenses for attendance at a caucus or state/national political party convention	No	Yes

³ Acting as an individual rather than an official church representative.

8.	Appearance of candidate at church meeting or service	Yes	N/A
9.	Non-partisan voter registration activities	Yes	Yes
10.	Non-partisan voter identification activities	Yes	Yes
11.	Non-partisan get-out-the-vote activities	Yes	Yes
12.	Non-partisan voter education	Yes	Yes
13.	Lobbying for or against legislation	Yes	Yes
14.	Expenditures related to state referendums	Yes	Yes
15.	Distribution of:		
	a. Candidate surveys or voter guides	Yes	Yes
	b. Voting records of incumbents	Yes	Yes
	c. Candidate campaign literature	No	Yes
16.	Distribution by others of political materials in church parking lots	Yes	N/A
17.	Rental of church membership lists at regular rates	Yes	N/A
18.	Rental of church facilities at regular rates	Yes	N/A
19.	Church publications:		
	a. Political ads at regular rates	Yes	N/A
	b. News stories about candidates or campaigns	Yes	N/A
	c. Editorials endorsing or opposing candidates	No	N/A

Explanations of Checklist Items

Item 1. Discuss the positions of candidates on public issues. Pastors and churches are free to discuss the positions of candidates on issues—including criticizing or praising them for their positions. This is called issue advocacy.

Item 2. Endorse or oppose candidates. Endorsing or opposing a candidate includes any statement which uses explicit words to expressly advocate the election or defeat of a clearly identified candidate, such as “elect,” “support,” “defeat,” or “oppose.” This is called express advocacy. Distributing campaign literature from a candidate is also prohibited express advocacy.

While churches cannot endorse or oppose a candidate, a pastor in his individual capacity may do so. The pastor may state his affiliation with his church, as long as it is indicated that this is for identification purposes only and that his endorsement is from him personally, not his church.

The IRS has taken the unequivocal position that a pastor may not endorse or oppose a candidate from the pulpit. Nevertheless, ADF believes that the First Amendment to the U.S. Constitution protects these statements from the pulpit, and ADF will vigorously defend the right of pastors to do so.

Churches and pastors may support or oppose the appointment of judicial, cabinet, or other non-elected officials so long as there is no partisan selection process. This is considered lobbying, not active electioneering.

Item 6. Contributions to political action committees (PACs). A PAC is any organization of two or more people

whose major purpose is to engage in active electioneering by contributing to candidates or by expressly advocating the election or defeat of candidates for political office. Contributions to PACs from church funds are forbidden, and churches may not organize PACs.

Item 8. Appearance of a candidate at a church meeting or service. A candidate may appear at a church service. The appearance of a candidate before a church service, however, is limited as follows:

- (1) All legally qualified candidates should be invited;
- (2) The questions should be prepared and presented by an independent non-partisan panel;
- (3) The topics discussed should cover a broad range of issues of interest to the public;
- (4) Each candidate should have an equal opportunity to present his or her views on the issues discussed; and
- (5) The moderator should not comment on the questions or otherwise make comments that imply approval or disapproval of the candidates.

Candidates may be introduced at a church service or may preach or read scripture without any restrictions. In addition, public officials who are also candidates, may be invited to speak to a church as a public official, without complying with the above requirements, if no reference is made to the public official's candidacy, if the public official speaks only in his or her capacity as a public official, and if there is no campaign activity in connection with the public official's appearance.

Items 9, 10 & 11. Non-partisan voter registration, voter identification, and get-out-the-vote activities.

A church may participate in non-partisan voter registration, voter identification, and get out the vote activities. To be non-partisan, these activities may not be directed at the supporters of any particular candidate or political party. A church may, however, direct these activities at certain groups using non-partisan criteria, such as church membership, geographic location or position on certain issues. Furthermore, such activities will not be viewed as non-partisan if they are accompanied by literature praising or criticizing particular candidates or political parties for their positions on issues.

Item 12. Non-partisan voter education. Churches may participate in non-partisan voter education. Here, voter education involves discussion of the electoral process, such as how to run for public office or delegate, how to register, and where to vote. All these activities are permissible as long as they are not directed at supporters of a particular candidate or political party.

Item 13. Lobbying for or against legislation. Churches may spend an "insubstantial" amount of their funds yearly on lobbying. An insubstantial amount is generally considered 5 to 15 percent of a church's funds. Lobbying is of two types: (1) direct lobbying, which involves direct communications with governmental officials regarding legislative or executive action, and (2) grass roots lobbying, where the church communicates with its members or the general public, urging them to contact governmental officials in support of or in opposition to legislative or executive action. As a result, a church may discuss legislative issues, support or oppose legislation, encourage its members or the general public to support or oppose legislation, and support other organizations with their lobbying efforts. Furthermore, churches may lobby candidates about issues and distribute educational material to candidates or at political events, as long as this is being done to get out the church's message and not to assist any candidate.

Item 14. Expenditures related to state referendums. Churches may make expenditures in connection with state referendums, including making a financial or in-kind contribution to a referendum effort. Such expenditures are considered direct lobbying. In addition, state election laws should be consulted for any requirements imposed on state referendum activities.

Item 15. Distribution of:

(a). Candidate surveys or voter guides. Churches may publish the results of surveys of candidates on public issues (often called "voter guides"). Voter guides should not include an endorsement of a candidate or otherwise expressly advocate the election or defeat of any candidate. Further, voter guides should not include advocate voting for or against candidates who support or oppose particular issues, i.e., single issue voting. Churches also may distribute voter guides prepared by other organizations that meet these guidelines. As a result, church questionnaires should conform to the following guidelines:

- (1) Questionnaires should be sent to all candidates;
- (2) The questions should cover a wide variety of issues;
- (3) The questions should not indicate a bias toward the church's preferred answer;
- (4) The candidate's responses should not be compared to the church's preferred position;
- (5) The responses should be published in the candidate's own words or in a neutral, unbiased, and complete summary of the candidate's position; and
- (6) The survey should not be published under the direction or control, direct or indirect, of any candidate.

(b). **Voting records of incumbents.** Churches may also publish the voting records of incumbent public officeholders. In the case of publication of voting records, the church has more leeway than in publishing candidate surveys, as follows:

- (1) Incumbent's positions should not be compared to the positions of other candidates or the church's position;
- (2) The voting record should be distributed on a regular basis, not just at election time;
- (3) The voting record should be broadly distributed to the general public, not targeted to certain voting blocks;
- (4) A variety of issues of interest to the general public should be presented.

Item 16. Distribution by others of political materials in church parking lots. Under some state constitutions, if a church parking lot is open for public use, people have a free speech right to distribute literature there. Even if there is no such right, a church is not responsible for political literature distributed by others in their parking lot without their permission or consent, and a church has no obligation to bar people from distributing political literature there. In the same way, a church may choose to post its parking lot to allow only attendees to use the parking for church activities; the church need not allow literature distribution on its premises.

Item 17. Rental of church membership lists at regular rates. Churches may give candidates or political action committees access to church membership lists on the same basis that other non-church groups are allowed to have them. If other non-church groups are required to pay some cost for using the list(s), the candidate or PAC should be charged the same amount.

Item 18. Rental of church facilities at regular rates. Churches may allow candidates or political action committees to use church facilities for meetings or campaign appearances on the same basis that other non-church groups are allowed to do so. If other non-church groups are required to pay some rent for using the church property, the candidate or PAC should be charged the same amount.

Item 19. Church publications.

(a). **Political ads at regular rates.** Church publications, such as church bulletins and newsletters, may include an advertisement for a candidate or political action committee, as long as the candidate or PAC purchases the ad at regular rates. If discounts are given to regular advertisers under certain circumstances, the same discounts may be extended to a political advertiser. A political ad may not otherwise be sold to a candidate at less than the regular rate, since this would constitute a financial contribution to the candidate. The political ad must be identified as paid political advertising, and the church must include a disclaimer stating it does not endorse the candidate. Advertising must also be solicited from all candidates on an equal basis.

(b). **News stories about candidates or campaigns.** Church publications may include news stories on candidates and political campaigns. The publication of voting records and candidate surveys are subject to the limitations delineated in Items 15 (a) & (b).

(c). **Editorials endorsing or opposing candidates.** Church publication, however, may not publish an editorial that endorses or opposes a candidate for office.