

CHURCH POLITICAL ACTIVITY

I. THE POLITICAL CAMPAIGN INTERVENTION PROHIBITION

Under the Internal Revenue Code, all § 501(c)(3) organizations (including churches and other ministries) 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.

The prohibition applies to all campaigns (Federal, State, County, City, Town, Village, or Borough level).

Violation of this prohibition may result in revocation of tax-exempt status or the imposition of excise taxes, or both.

A. The IRS Has Targeted Possible Political Campaign Activity of 501(c)(3) Organizations.

1. The IRS Has Launched a New Enforcement Program Called the “Political Activity Compliance Initiative”.
2. The IRS Has Investigated More Than 200 Organizations Nationwide Since 2004.
3. The IRS found 62 violations (31%).
4. The IRS currently has at least 40 churches under investigation.

B. What is Political Campaign Intervention?

1. Political campaign intervention is any activity that favors or opposes one or more candidates for public office.
2. The prohibition extends beyond candidate endorsements. The prohibition includes:
 - a) Contributions to political campaign funds;

CHURCH POLITICAL ACTIVITY

- b) Public statements of position (verbal or written) made by or on behalf of a ministry in favor of or in opposition to any candidate for public office;
 - c) Distributing statements prepared by others that favor or oppose any candidate for public office; and
 - d) Allowing a candidate to use a ministry's assets or facilities (unless other candidates are given an equivalent opportunity);
3. Ministries may engage in the following activities, if done in a non-partisan (strictly neutral) manner:
- a) Promote voter registration,
 - b) Encourage voter participation, and
 - c) Provide voter education (*e.g.* voter guides).

These activities require an evaluation of all the facts and circumstances to determine whether they result in political campaign intervention.

Example: Faith Church sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the church, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. Faith Church is not engaged in political campaign intervention when it operates this voter registration booth.

Example: Family First is a § 501(c)(3) organization that educates the public on Christian family issues. Candidate Cassell is running for the state legislature and an important element of his platform is challenging the proposed state marriage amendment position of the incumbent. Shortly before the election, Family First sets up a telephone bank to call registered voters in the district in which Candidate Cassell is seeking election. In the phone conversations, Family First's representative tells the voter about the importance of the proposed state marriage amendment and asks questions about the voter's views on the issue. If the voter appears to agree with the

CHURCH POLITICAL ACTIVITY

incumbent's position, Family First's representative thanks the voter and ends the call. If the voter appears to agree with Candidate Cassell's position, Family First's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. Family First is engaged in political campaign intervention when it conducts a get-out-the-vote drive in this manner.

Individual Activity by Ministry Leaders.

1. The political campaign intervention prohibition does not restrict free expression on political matters by leaders of ministries speaking for themselves, as individuals.
2. Ministry leaders are not prohibited from speaking about important issues of public policy.
 - a) Leaders cannot make partisan comments in official ministry publications
 - b) Leaders cannot make partisan comments at official functions of the ministry.
 - c) To avoid potential attribution of their comments outside of ministry functions and publications, leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the ministry.

Example: Pastor Demeter is the pastor of First Church. With the permission of five prominent pastors in the area, including Pastor Demeter, who have personally endorsed Candidate Hoffman, Candidate Hoffman publishes a full page advertisement in the local newspaper listing the names of the five pastors. Pastor Demeter is identified in the advertisement as the pastor of First Baptist Church. The advertisement states, "*Titles and affiliations of each individual are provided for identification purposes only.*" The advertisement is paid for by Candidate Hoffman's campaign committee. Because the advertisement was not paid for by First Church, the advertisement is not in an official publication of First Church, and the endorsement is

CHURCH POLITICAL ACTIVITY

made by Pastor Demeter in a personal capacity, the advertisement does not constitute campaign intervention by First Church.

Example: President Mathis is the president of Bible College, a § 501(c)(3) organization. Bible College publishes a quarterly alumni newsletter that is distributed to all alumni of the college. In each issue, President Mathis has a column titled “My Views.” The month before the election, President Mathis states in the “My Views” column, “It is my personal opinion that Candidate Ames should be re-elected.” For that one issue, President Mathis pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, because the endorsement appeared in an official publication of Bible College, it constitutes campaign intervention by Bible College.

Example: Pastor Charis is the pastor of Grace Church and Pastor Charis is well known in the community. Three weeks before the election, he attends a press conference at Candidate Moran’s campaign headquarters and states that Candidate Moran should be re-elected. Pastor Charis does not say he is speaking on behalf of Grace Church. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the pastor of Grace Church. Because Pastor Charis did not make the endorsement at an official church function, in an official church publication or otherwise use the church’s assets, and did not state that he was speaking as a representative of Grace Church, his actions do not constitute campaign intervention by Grace Church.

Example: Deacon Jones is the chairman of the Board of Directors of Lamb Missions. During a regular meeting of Lamb Missions shortly before the election, Deacon Jones spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, “It is important that you all do your duty in the election and vote for Candidate Weisman.” Because Deacon Jones’s remarks indicating support for Candidate Weisman were made during an official organization meeting, they constitute political campaign intervention by Lamb Missions.

CHURCH POLITICAL ACTIVITY

Candidate Appearances.

1. A church, depending on the circumstances, may invite political candidates to speak at its events without jeopardizing its tax-exempt status.
 - a) Political candidates may be invited in their capacity as candidates
 - b) Political candidates may be invited in their individual capacity (not as a candidate).
 - c) Candidates may also appear without an invitation at organization events that are open to the public.
2. Do not rely on a candidate's assurance that it is permissible for the organization to do certain things in connection with the candidate's appearance.
 - a) The candidate may not be familiar with the organization's tax-exempt status and
 - b) The candidate may be focused on compliance with the election laws that apply to the candidate's campaign rather than the federal tax law that applies to the organization.

Speaking as a Candidate.

When a candidate is invited to speak at a ministry event as a political candidate, the ministry must take steps to ensure that:

1. It provides an equal opportunity to political candidates seeking the same office;
2. It does not indicate any support for or opposition to the candidate (this should be stated explicitly when the candidate is introduced and in communications concerning the candidate's attendance); and
3. No political fundraising occurs.

CHURCH POLITICAL ACTIVITY

Equal Opportunity to Participate.

In determining whether candidates are given an equal opportunity to participate, a ministry should consider:

1. The nature of the event to which each candidate is invited, and
2. The manner of presentation.

Example: Victory Church invites Candidate Milligan to speak at its well attended annual banquet. The church is told that it must give “equal time” to the opposing candidate so it invites Candidate McCauley to speak at a sparsely attended general meeting. It is likely that Hope Church has violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Public Forums.

1. A public forum involving several candidates for public office may qualify as an exempt educational activity. However, the forum must be operated in an unbiased manner.
2. When a ministry invites several candidates for the same office to speak at a forum, it should consider the following factors:
 - a) Whether questions for the candidate are prepared and presented by an independent nonpartisan panel,
 - b) Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
 - c) Whether each candidate is given an equal opportunity to present his or her view on the issues discussed,
 - d) Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
 - e) Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

CHURCH POLITICAL ACTIVITY

Example: Pastor Caruso is the pastor of Word Church. In the month prior to the election, Pastor Caruso invites the three Congressional candidates for the district in which Word Church is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Word Church's publicity announcing the dates for each of the candidate's speeches and Pastor Caruso's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Word Church's actions do not constitute political campaign intervention.

Example: The facts are the same as in the previous example except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Word Church includes a statement that the order of the speakers was determined at random and the fourth candidate declined the church's invitation to speak. Pastor Caruso makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Word Church's actions do not constitute political campaign intervention.

Example: Pastor Burgon is the pastor of Truth Church. The Sunday before the November election, Pastor Burgon invites Senate Candidate Jansen to preach to the congregation during worship services. During his remarks, Candidate Jansen states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Pastor Burgon invites no other candidate to address the congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Truth Church. By selectively providing church facilities to allow Candidate Jansen to speak in support of his campaign, Truth Church's actions constitute political campaign intervention.

CHURCH POLITICAL ACTIVITY

Speaking or Participating as a Non-Candidate.

Candidates may appear or speak at ministry events in a non-candidate capacity.

1. A political candidate may be a public figure who is invited to speak because the candidate:
 - a) Currently holds, or formerly held, public office;
 - b) Is considered an expert in a non political field; or
 - c) Is a celebrity or has led a distinguished military, legal, or public service career.
2. A candidate may choose to attend an event that is open to the public, such as a lecture, concert, or worship service.
3. If the candidate is publicly recognized by the ministry, or if the candidate is invited to speak, the ministry must ensure that:
 - a) The individual is chosen to speak solely for reasons other than candidacy for public office;
 - b) The individual speaks only in a non-candidate capacity;
 - c) Neither the individual nor any representative of the ministry makes any mention of his or her candidacy or the election;
 - d) No campaign activity occurs in connection with the candidate's attendance; and
 - e) The ministry maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present.
4. The ministry should clearly indicate the capacity in which the candidate is appearing.
 - a) The ministry should not mention the individual's political candidacy, and
 - b) The ministry should not mention the upcoming election in its communications announcing the candidate's attendance at the event.

CHURCH POLITICAL ACTIVITY

Example: Pastor Dendron is the pastor of Calvary Church. Calvary Church is located in the state capital. Pastor Dendron customarily acknowledges the presence of any public officials present during services. During the state gubernatorial race, Lieutenant Governor Knickman, a candidate, attends a meeting of the historical society. Pastor Dendron acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Knickman." Pastor Dendron makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Calvary Church has not engaged in political campaign intervention as a result of Pastor Dendron's actions.

Example: Christian College is a § 501(c)(3) organization. It publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter. After receiving an update letter from Alumnus Sepkowski, Christian College prints the following: "Alumnus Sepkowski, class of '74 is running for mayor of Linthicum." The newsletter does not contain any reference to this election or to Alumnus Sepkowski's candidacy other than this statement of fact. Christian College has not intervened in a political campaign.

Example: Mayor Northcraft attends a concert performed by Harmony Church in City Park. The concert is free and open to the public. Mayor Northcraft is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the pastor of Harmony Church addresses the crowd and says, "I am pleased to see Mayor Northcraft here tonight. Without his support, these concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor Northcraft in November as he has supported us." As a result of these remarks, Harmony Church has engaged in political campaign intervention.

CHURCH POLITICAL ACTIVITY

II. ISSUE ADVOCACY VS. POLITICAL CAMPAIGN INTERVENTION.

A ministry may take positions on public policy issues, including issues that divide candidates in an election for public office.

A. Ministries Must Avoid Any Issue Advocacy That Functions as Political Campaign Intervention.

1. Statements can identify a candidate not only by stating the candidate's name but also by other means such as:
 - a) Showing a picture of the candidate,
 - b) Referring to political party affiliations, or
 - c) Referring to other distinctive features of a candidate's platform or biography.

B. Key Factors in Determining Whether an Issue Advocacy Statement Constitutes a Political Campaign Intervention Include the Following:

1. Whether the statement identifies one or more candidates for a given public office;
2. Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
3. Whether the statement is delivered close in time to the election;
4. Whether the statement makes reference to voting or an election;
5. Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
6. Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
7. Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

CHURCH POLITICAL ACTIVITY

C. An Issue Advocacy Statement is Particularly at Risk of Political Campaign Intervention When it Makes Reference to Candidates or Voting in a Specific Upcoming Election.

Example: Lion of Judah, a § 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in its state shortly before an election in which Senator Aaron is a candidate for nomination in a party primary. The advertisement states that Senate Bill 19, a pending bill in the United States Senate, would provide greater religious liberty for churches, but that Senator Aaron has opposed similar measures in the past. The advertisement ends with the statement “Call or write Senator Aaron to tell him to vote for Senate Bill 19.” Religious liberty issues have not been raised as an issue distinguishing Senator Aaron from any opponent. Senate Bill 19 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator Aaron’s position on the issue as contrary to Lion of Judah’s position, Lion of Judah has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator Aaron, religious liberty issues have not been raised as distinguishing Senator Aaron from any opponent, and the timing of the advertisement and the identification of Senator Aaron are directly related to the specifically identified legislation Lion of Judah is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator Aaron, is an officeholder who is in a position to vote on the legislation.

Example: Candidate Strain and Candidate Kemp are candidates for the state senate. The issue of state funding for the display of the national motto on public buildings is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate Strain supports for display of the national motto. Candidate Kemp opposes it. Pastor Delph is pastor of Charity Church, At Charity

CHURCH POLITICAL ACTIVITY

Church's annual stewardship dinner, a month before the election, Pastor Delph gives a lengthy message about Christian witness in the public arena. Pastor Delph does not mention the name of any candidate or any political party. However, at the conclusion of the speech, Pastor Delph makes the following statement, "For those of you who care about proclaiming the truth and holding up a standard of righteousness in public, there is a very important choice coming up next month. We need the display of our national motto. The refusal to acknowledge God in our public buildings is contrary to our founding principles. You have the power to do something about that. Use that power when you go to the polls and cast your vote in the election for your state senator." Charity Church has violated the political campaign intervention as a result of Pastor Delph's remarks at Charity Church's official function shortly before the election, in which Pastor Delph referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

III. IRS POLITICAL CAMPAIGN INTERVENTION TARGET AREAS.

A. Distributing Voters' Guides That Encourage Readers To Vote For Particular Candidates.

1. The following factors are key considerations in determining whether the voter's guide is neutral or partisan:
 - a) Are the questions and the description of the issues clear and unbiased?
 - b) Are the questions in the voter's guide identical to those provided to the candidates?
 - c) Are the candidates given a reasonable amount of time to respond to the questions?
 - d) Does the candidate have an opportunity to explain his position beyond "yes/no, support/oppose" and is the explanation included in the voter's guide?
 - e) Are the answers in the voter's guide the unedited responses of the candidates to the questions?

CHURCH POLITICAL ACTIVITY

- f) Are all candidates for a particular office covered?
 - g) Are there a sufficient number of questions and subjects covered, to encompass most major issues of interest to the entire electorate?
2. The voters' guide's format, content and distribution must also be neutral.
 3. The position of the ministry on one or more issues cannot be set out in the voter's guide.
 4. The ministry that distributes the voters' guides is responsible for the content of the voters' guides.

B. Using the Church's Website or Links To Another Website To Endorse or Oppose a Candidate.

1. Website postings are treated the same as printed materials or oral statements.
2. The ministry is responsible for the content of links to other websites, because the ministry controls the link, if not the content of the link.

Example: Redeemer Church maintains a website and posts an unbiased, nonpartisan voter guide. For each candidate covered in the voter guide, Redeemer Church includes a link to that candidate's official campaign web site. The links to the candidate websites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." Redeemer Church has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

C. Using the Pulpit To Endorse or Oppose a Particular Candidate.

CHURCH POLITICAL ACTIVITY

Example: Two days before the 2004 presidential election, a guest preacher delivered a sermon that pictured Jesus in a debate with the presidential candidates. Although the guest preacher didn't endorse a candidate, he said Jesus would have told Bush that his preemptive war policy "has led to disaster." The IRS sent the church a letter to the church, stating that "a reasonable belief exists that you are not be tax-exempt as a church."

D. Making Cash Contributions To a Candidate's Political Campaign.

E. Placing Signs on Church Property That Shows Support For a Particular Candidate.

F. Giving Improper Preferential Treatment To Certain Candidates By Permitting Them To Speak at Functions.

IV. ATTEMPTS TO INFLUENCE LEGISLATION.

Political campaign intervention is *prohibited*. Attempts to influence legislation are merely *limited*.

A. "Legislation."

1. It includes actions by Congress, state legislatures, or any local council, or similar governing body.
2. It relates to acts, bills, resolutions, or legislative confirmation of appointive office, referendums, ballot initiatives, or constitutional amendments.
3. It does not include actions by executive, judicial, or administrative bodies.

B. Attempts to Influence Legislation.

1. To constitute an attempt to influence legislation the activity must:
 - a) Refers to specific legislation,

CHURCH POLITICAL ACTIVITY

- b) Reflect a view on that legislation (for or against), and
 - c) Include a “call to action.”
2. To be impermissible, the activity must include all three of these aspects. Therefore, if any one of the three aspects is missing, the activity becomes permissible.
3. The call to action must encourage the recipient to take one of four specific actions with respect to the legislation. If none of these four actions is included, the activity is not considered a call to action. The four specific actions which constitute a call to action are:
- a) Asking the recipient to contact legislators or other government officials;
 - b) Stating how to reach the legislators or officials by supplying addresses or telephone numbers;
 - c) Providing a response mechanism such as a tear-out card or petition to facilitate the contact; or
 - d) Specifically identifying one or more legislators who will vote on that legislation.

C. Measurement of “Substantial.”

1. The IRS considers both:
- a) The amount of time devoted by both compensated and volunteer workers to lobbying; and
 - b) The amount of money expended by the ministry for the lobbying activity.
- c) The standard expenditure “safe harbor” is still the “5% Rule.”
2. Excessive lobbying may result in the loss of tax-exempt status, (making the ministry’s income subject to tax).
3. A church is subject to an excise tax equal to 5% of its lobbying expenditures for the year in which it ceases to qualify for exemption.

CHURCH POLITICAL ACTIVITY

4. An excise tax equal to 5% of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status.

V. EXEMPT ENTITY RELATIONSHIPS.

A. A § 501(c)(3) (*i.e.* a church) Entity Can Establish and Control a § 501(c)(4) [Social Welfare] Entity To Engage in Attempts To Influence Legislation.

The IRS will recognize the § 501(c)(4) subsidiary as separate from the § 501(c)(3) parent if:

1. Both entities are separately organized;
2. Both entities keep separate records and bank accounts;
3. The time of any overlapping paid employees is allocated between the entities based on the activities they work on for the respective entities.
4. The entities reasonably allocate other shared goods, services, and facilities.

B. A § 501(c)(3) Entity CANNOT Establish a § 527 [Political Action Committee] Entity To Conduct Political Campaign Intervention Activities.

C. A § 501(c)(4), Entity May Conduct SOME Political Campaign Intervention Activities.

1. It must establish and control a separate segregated fund for the § 527 activities; and
2. Political campaign intervention activity cannot be its primary activity.

CHURCH POLITICAL ACTIVITY

D. Officials of a § 501(c)(3) Entity, in Their Capacity as Individuals, Can Establish a § 527 Entity To Conduct Political Campaign Intervention Activities.

1. The § 501(c)(3) entity cannot control the § 527 entity.
2. None of the § 501(c)(3) entity's assets can be used to set up or operate the § 527 entity. Assets include:
 - a) Its funds and investments;
 - b) Its facilities;
 - c) Its equipment;
 - d) Its personnel;
 - e) Its mailing lists; and
 - f) Its name or goodwill.
3. Any official of a § 501(c)(3) entity that assists a § 527 entity must truly be acting only in his individual capacity. The following statements/acts would be attributable to the § 501(c)(3) entity:
 - a) Transaction of business of the § 527 entity on stationery bearing the letterhead of the § 501(c)(3) entity;
 - b) Transaction of business of the § 527 entity signed by a § 501(c)(3) official in such capacity (*e.g.*, "John Doe, Pastor of First Church").
 - c) Any action explicitly authorized by the § IRC 501(c)(3) entity's board of directors.
 - d) Statements published by the § 501(c)(3) entity in its official publications (including Internet sites) or in mass media advertisements or programs acknowledged as produced by the entity;
 - e) Statements made by officials at official events of the § 501(c)(3) entity;
 - f) Joint fundraising mailings or events;
 - g) Coordinating the content, timing, or distribution of information materials; or
 - h) Distribution by the § 501(c)(3) entity of materials prepared by the § 527 entity.

CHURCH POLITICAL ACTIVITY

E. A § 501(c)(3) Parent May Have a § 501(c)(4) Subsidiary Which Itself Has a § 527 Separate Segregated Fund.

1. The § 501(c)(4) subsidiary may not use any funds it receives from the § 501(c)(3) parent to support political campaign intervention activities.
2. The § 501(c)(3) parent must ensure that any funds it grants to the § 501(c)(4) entity are used for educational/charitable activities, or for lobbying activities (provided the lobbying activity of the § 501(c)(3) entity including these grants are not a substantial activity of the § 501(c)(3) entity).