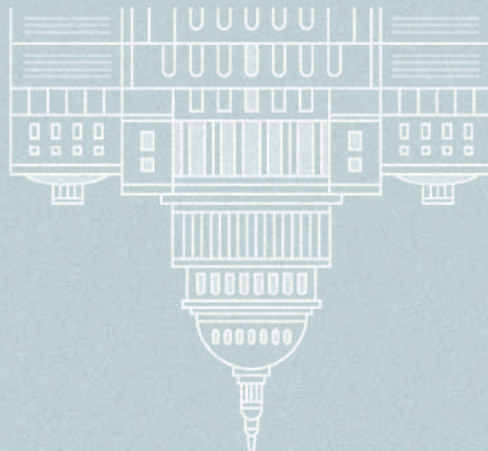




# PASTORS CHURCHES & POLITICS

A LEGAL GUIDE FOR MINISTRIES  
◦ ON POLITICAL ENGAGEMENT ◦



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*But seek the welfare of the city where  
I have sent you into exile, and pray  
to the Lord on its behalf, for in its  
welfare you will find your welfare.*

***Jeremiah 29:7 (ESV)***

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# INTRODUCTION

No matter where you place yourself on the wide spectrum of Christian belief and practice, we understand what it is like to be devoted Christian leaders burdened by issues at the intersection of faith and politics. Often, we hear from our vast network of pastors, clergy, and ministry leaders about how overwhelmed they feel, not just during election season, but navigating the treacherous waters of socio-political, legislative, and tax-exemption questions on a regular basis. Like you, many religious leaders feel as though they are living in the day the prophet Isaiah described:

*Justice is turned back, and righteousness stands far away; for truth has stumbled in the public squares, and uprightness cannot enter. Truth is lacking, and he who departs from evil makes himself a prey.*

**Isaiah 59:14-15a (ESV)**

The leaders we serve are passionate about advancing justice and building up their flocks in truth. But they are worried about becoming “prey” as they lead others through uncharted waters. At times, they may even feel alienated or lost, stuck between warring factions, or uncertain of what they can or cannot do.

Alliance Defending Freedom wants to be a resource for leaders just like you, not by telling them what they should or should not do, but by giving them as much information as possible about the legal parameters in this area. In short, we are not prophets and cannot tell you what is coming next, but we are experts at navigating the uncharted waters you find yourself in regularly. Our hope is to help you navigate them well.

This guide will help you navigate the laws surrounding tax-exempt status for religious organizations—like churches. It will equip you to identify what activities are permitted and prohibited by the Internal Revenue Code (Tax Code) and its regulations, so that you can both shepherd your people and protect your ministry.

When it comes to politics, every church and ministry must decide for itself how specific to be when it comes to biblical guidance and engagement. We believe that decisions about what should or should not be said or done are best left to pastors and church leaders who know their congregations best. But we consistently hear that many pastors and leaders feel unequipped to make these decisions. That is what this guide is designed to fix.



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**49**  
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FOR FAITH. FOR JUSTICE.

ADF legally advocates for religious liberty, the sanctity of life, and marriage and family.

To learn more about ADF and our work, visit [ADFLegal.org](http://ADFLegal.org).



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## Special Feature:

# THE CHURCH AND POLITICS

by **Dr. Russell D. Moore**

*President of the Ethics & Religious Liberty Commission of the Southern Baptist Convention*

I often hear from some Christians who argue that we should disengage from social or political issues. Particularly around election season, these Christians will reason that we shouldn't be speaking to political or cultural topics, since the New Testament seems not to.

These Christians have a point. The New Testament was written almost exclusively to a group of believers who lacked any social or political power, and who thus bore no accountability for decisions made in the cultural and political spheres. But even though Rome was no democracy and the apostles had no say in what the Emperor decided, we can see the New Testament pointing us to callings informed by the Gospel, even in what we might consider "politics."

John the Baptist called the crowds to repentance. A drunk coming to be baptized would have been told to repent of intoxication. An adulterer would have been told to walk forward in fidelity, to "go and sin no more" (Jn. 8:11). Some who held political office responded to John's preaching, notably tax collectors and soldiers, both officers of Caesar's government. They asked the prophet, "Teacher what shall we do?" John's response was not to mark out their "personal" obedience from their "political" obedience. He said to the tax collectors: "Collect no more than you are authorized to do" (Lk. 3:13). He said to the soldiers: "Do not extort money from anyone by threats or by false accusation, and be content with your wages" (Lk. 3:14). These were matters both of personal repentance and of public justice.





A church—and a pastor—that doesn’t form consciences for such a calling will only ensure that those consciences are shaped by something other than the Gospel. The formative role of the Church is one reason the pro-life movement continues to resonate, with growing numbers, among young Christians. Abortion and human dignity are clearly not singularly “political” issues, but issues that demand political, ecclesial, and cultural reform and persuasion. Most importantly, this resonates because younger Christians recognize the Gospel as of first importance, and the pro-life movement has demonstrated why the life issue is a Gospel issue.

As Christians, we can engage politics and culture without becoming either outraged or indifferent. If we believe we are on the losing side of history, we slide into the rage of those who know their time is short. We have no reason to be fearful or sullen or mean. We’re not the losers of history. We are not slouching toward Gomorrah; we are marching to Zion. The worst thing that can possibly happen to us has already happened: we’re dead. We were crucified at Skull Place, under the wrath of God. And the best thing that could happen to us has already happened: We’re alive, in Christ, and our future is seated at the right hand of God, and He’s feeling just fine. ★



# THE CURRENT DILEMMA:

## Legal and Political Confusion

Despite the anchoring authority of Scripture, there is great confusion and disagreement among Christians, and even within congregations, over the role of government in politics and policy. Some are eager to avoid politics as much as possible, saying that politics is too broken and too corrupt for Christians to get involved in without sacrificing faithfulness to the Gospel. Others claim politics is a distraction from more spiritual pursuits. They point to pastors and churches whom they believe have crossed the line into partisan politics, campaigning and lobbying, locking arms with power brokers, issuing statements that feel divisive, and giving non-Christians the distinct impression that Christians are just a spiritualized version of a political party.

Other Christians believe that at a time of rising secularization, when the country at large seems to increasingly hold that Christian principles have no bearing on public life, a political retreat concedes defeat at just the moment our society most needs the faithful. Rather than withdrawal, they argue, our country needs a Christian political witness that treats Christian ideas as precious, good for all, and applicable to today's needs and challenges.

The challenge of leading a Christian church or organization in the muddy waters of politics is not made easier by the laws of the land. Whether it is the application of constitutional law, the vague

sections of IRS Tax Code, or various local and state laws, the legal landscape can feel overwhelming.

Regardless of your views, this pertinent question remains:

*Who is discipling your congregation in the practical theology and Christian witness that overlaps with politics and policy?*

Speaking with pastors and ministry leaders across the country, we have found that many congregations are being disciplined by media conglomerates, political action groups, lobbyists, and others with a worldview untethered from Scripture. These pundits often lack a civil and winsome tone and sidestep any serious conversation about the primary authority of Scripture, as well as the God-given freedoms we enjoy as Americans.

Pastors often find it challenging to know how to position their engagement in order to disciple their congregations while operating within the laws of the land. While there are certainly different ways that congregations have historically operated, it is clear that pastors are called to disciple their congregations in a sometimes divisive and confusing political landscape.

# REFERENCE CHART:

## Guidelines on “Political Activities” for Churches and Pastors

The chart below is designed to give examples of certain “political activities” and whether they are permitted under section 501(c)(3) of the Tax Code. Each of these guidelines is explained more fully in the sections that follow.

<b>Political Activity</b>	<b>Church</b>	<b>Pastor<sup>1</sup></b>
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 of a pastor or church member at a caucus or state/national political party convention	No	Yes
8. Appearance of candidate at church meeting or service	Yes	N/A
9. Nonpartisan voter registration activities	Yes	Yes
10. Nonpartisan voter identification activities	Yes	Yes
11. Nonpartisan get-out-the-vote activities	Yes	Yes
12. Nonpartisan voter education	Yes	Yes
13. Lobbying for or against legislation	Yes	Yes
14. Expenditures related to state referendums <sup>2</sup>	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 of political materials by others 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

# RIGHTS, PROHIBITIONS, AND PROTECTIONS FOR CHURCHES

This section will help you stay within the boundaries of current tax law. It is important for you to know that we believe some of these laws are unconstitutional, imposing restrictions that limit a pastor's right to speak freely from the pulpit.

## Lobbying & Candidate Prohibitions

Federal tax exemption generally means that a church is not required to pay corporate income taxes, and individuals who donate to that church can claim a tax deduction on their federal tax return.<sup>3</sup> Churches are automatically considered tax exempt by federal law and are not required to file for recognition of exemption from the IRS.<sup>4</sup> Other organizations must apply for recognition of tax-exempt status from the IRS by filing an application and demonstrating that the organization qualifies as exempt.<sup>5</sup> Even though churches are not required to apply for tax-exempt status, churches are still subject to the restrictions in section 501(c)(3) of the Tax Code.<sup>6</sup>

There are two pertinent restrictions on churches and other organizations exempt under section 501(c)(3) of the Tax Code:

### **1. Legislative Limitation (Lobbying)**

There are two different types of lobbying described below:<sup>7</sup>

- a. **Direct Lobbying** - direct communications with governmental officials regarding legislative or executive action.
- b. **Grassroots Lobbying** - church communications with its members or the general public urging them to contact governmental officials in support of, or in opposition to, legislative or executive action.

A church may engage in both types of lobbying, 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, as long as the lobbying constitutes an insubstantial part of the church's overall activities and budget. (An "insubstantial amount" is not clearly defined in the law but is generally considered somewhere between 5 to 15 percent of a church's annual funds and activities.)<sup>8</sup>



Churches may also lobby candidates about issues and distribute educational material to candidates or at political events, as long as this is done to share the church's message rather than to assist any candidate.

Legislation includes any action by Congress, a state legislature, local governmental council, or similar body that makes laws. This also includes ballot initiatives, constitutional amendments, and votes on a public referendum. Legislation does not include actions by a court, an executive official (like the President or a governor), or actions by an administrative body (such as the IRS).<sup>9</sup>

## **2. Candidate Prohibition (The "Johnson Amendment")**

The text of the Johnson Amendment appears in the last sentence of section 501(c)(3) of the Tax Code and states that a church must refrain from any action that might be perceived as supporting or opposing a candidate.<sup>10</sup> Some examples of activities that violate the candidate prohibition include directly

endorsing or opposing a candidate or a political party; direct or in-kind contributions to a candidate; and independent expenditures that endorse or oppose a candidate.<sup>11</sup>

It's important to recognize that the candidate prohibition only applies to candidates running for office or to people who are proposed by others as candidates for office. It does not apply to: sitting government officials; speech on public, social, and moral issues; or the actions of government officials in office (as long as they are not also a candidate at the time).

## Special Feature:

# THE LEGAL IMPLICATIONS OF THE JOHNSON AMENDMENT

In 1954, the U.S. Congress amended (without debate or analysis) Internal Revenue Code Section 501(c)(3) to restrict the speech of non-profit, tax-exempt entities, including churches. Before the amendment passed, there were no restrictions on churches speaking about politics and voting, with the exception of a 1934 law preventing non-profits from using a substantial part of their resources to lobby for legislation.

The 1954 amendment, offered by then-Senator Lyndon Johnson, stated that non-profit tax-exempt entities could not “participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.” Since the amendment passed, the IRS has steadfastly maintained that any speech by churches that the IRS could construe as supporting or opposing candidates for government office, including sermons from the pulpit, can result in the loss of tax-exempt status.

Historically, churches frequently spoke for and against candidates for government office. Such sermons date from the founding of the United States, including those against Thomas Jefferson for being a deist and sermons opposing William Howard Taft as a Unitarian. Churches have also been at the forefront of most of the significant societal and governmental changes in our history, including ending segregation and child labor, and advancing civil rights.

Alliance Defending Freedom firmly believes that the Johnson Amendment unconstitutionally restricts speech by censoring the content of a pastor’s sermon. Here are some of the key reasons why the amendment is unconstitutional:

- The amendment violates the Establishment Clause by requiring the government to excessively and pervasively monitor the speech of churches to ensure they are not transgressing their bounds. In so doing, the government must determine when truly



religious speech becomes impermissibly “political.” But the government has no business making such decisions.

- The amendment violates the Free Speech Clause because it requires the government to discriminate against speech based solely on its content. For example, if a church’s speech concerns a retiring politician, it is allowed; but, if it relates to a politician seeking reelection, it is not. The Supreme Court has consistently invalidated this type of discrimination based on speech’s subject matter or content.
- The amendment also violates the Free Speech Clause by conditioning the receipt of a tax exemption on refraining from certain speech. Put simply, if a church wants a tax exemption, it cannot speak freely on any and all issues implicated by Scripture. This is an unconstitutional condition on free speech.

- The amendment violates the Free Exercise Clause as well because it substantially burdens a church’s exercise of religion. The government does not have a compelling reason to burden a church’s religious teaching in this way.

After the 1954 Johnson Amendment, churches faced a choice: speak freely on all issues addressed by Scripture and potentially risk their tax exemption, or remain silent and protect their tax-exempt status. Unfortunately, many churches have silenced their speech, even from the pulpit. Ironically, after 60-plus years of the IRS strictly interpreting the amendment, there is no reported situation where a church lost its tax-exempt status or was punished for sermons delivered from the pulpit. Nonetheless, the law remains unchanged and many churches remain silent due to the IRS’s interpretation of the amendment.\*



## Issue Advocacy

Pastors (in their official capacity) and churches are allowed to discuss the positions of candidates on issues as long as the discussion is neutral and does not support or oppose a candidate. This is called "issue advocacy."

The IRS uses seven different factors to determine whether a church communication is permitted issue advocacy or violates the candidate prohibition:<sup>12</sup>

**1. Whether the statement identifies one or more candidates for a given public office.**

If the statement identifies a candidate, this particular point would likely count against the church in the IRS's evaluation.

**2. Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions.**

This point would likely count against the church if the statement expresses approval or disapproval of a candidate's positions or actions.

**3. Whether the statement is delivered close in time to the election.** The closer to the election the statement is made, the more likely that this point will count against the church.

**4. Whether the statement refers to voting or an election.** If the statement explicitly mentions voting or elections, this point would likely count against the church.

**5. Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office.**

If the statement takes a position on an issue on which the candidates for office disagree, this point would likely count against the church.

**6. Whether the communication is part of an ongoing series on the same issue, distributed by the organization independent of the timing of any election.** If the statement is independent of any election and is part of an ongoing series of communications (such as a sermon series or newsletter article series), this point would likely be considered as permitted issue advocacy and would not count against the church.

**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.** If the statement is not related to elections or a candidacy, this would likely be considered permitted issue advocacy and would not count against the church.

Assessing this area of the law can be complicated. When the IRS is asked to evaluate a church or pastor's statement, it will consider all the "facts and circumstances" and weigh each of the factors in their entirety. This means that if the IRS finds that a statement violates three of the factors listed above but does not violate the remaining four, it might conclude that the statement is permitted issue advocacy and that it does not violate the candidate prohibition. There are no hard and fast rules here, and the law is vague, so if you have questions, contact ADF to have an attorney review your situation.

## Public Statement of Position

### **1. Candidates**

The IRS says that “public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity.”<sup>13</sup> Distributing campaign literature from a candidate by church officials as part of an official church function is also prohibited.<sup>14</sup>

However, pastors may endorse or oppose candidates in their personal capacity. The IRS says: “The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves as individuals.”<sup>15</sup> Pastors may also state their affiliation with their church, as long as it is clear that this is for identification purposes

only and that the endorsement is from them personally, not their church.<sup>16</sup> The example at the bottom of the page is given by the IRS in its guidance material related to a pastor’s personal endorsement.

### **2. Non-elected officials**

Churches and pastors may support or oppose the appointment of judges<sup>17</sup> and cabinet-level, or other, non-elected officials. Communications about officials are legal, as long as the official in question is not involved in a partisan selection process.

### **3. Issues**

Subject to the rules above on “issue advocacy,” churches and their leaders may speak on public, social, and moral issues or the actions of government officials in office, as long as they are not also candidates at the time.

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#### IRS EXAMPLE

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*Minister C is the minister of Church L, a section 501(c)(3) organization, and Minister C is well-known in the community. Three weeks before the election, he attends a press conference at Candidate V’s campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper, and he is identified in the article as the minister of Church L. Because Minister C 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 Church L, his actions do not constitute campaign intervention by Church L.<sup>18</sup>*

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## Special Feature:

# WHY WE DID NOT STAY SILENT ON HOUSTON'S "EQUAL RIGHTS" ORDINANCE

by **Pastor Nathan Lino**

Lead Pastor of Northeast Houston Baptist Church

I was stunned to wake up one 2014 day in Houston, Texas, to discover that our mayor had subpoenaed the sermons of five pastors. These pastors were leading voices in a formidable legal effort to block her so-called Houston “Equal Rights” Ordinance that would allow transgender people access to any locker room, shower facility, restroom, or similar space of their choosing. An ensuing decision by the Supreme Court of Texas set the stage for a citywide vote on the ordinance.

It was a high profile issue in our city and every pastor had a decision to make: Was this a time to speak or a time to be silent?

I believe Christ’s church is His voice to all of society, not just those inside our churches. Therefore, as a pastor, I am called by God not only to shepherd my church, but also my city. As Christ’s shepherds, silence at the wrong time on our part can leave our city void of God’s voice

and send the message to city residents that God has nothing to say on the matter of what a society should value and prioritize.

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*The question is not if a pastor is ever going to have to speak up about issues unfolding in the public square, but when and how?*

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I believe that as a minister of the Gospel, I should certainly speak up about issues that are clearly Gospel matters. For example, the issues of life and marriage are clearly Gospel matters, as life is God’s purpose for the Gospel, and marriage is God’s picture of the Gospel. Likewise, religious liberty is clearly a Gospel issue; it is the freedom for the Gospel to be proclaimed and lived openly in the public square.

There was no doubt the situation in Houston was a religious freedom issue. First, private



business owners would be denied the right to operate according to their personal conscience. A Christian business owner would be forced by the government to allow transgender people to determine which of the business owner's locker rooms or restrooms the transgender person would use. This forced citizens to violate their consciences by allowing men to use the same locker rooms and restrooms as our women and girls. Even beyond that, the mayor was persecuting pastors and violating their right to free speech in an effort to get this ordinance passed.

Christ instructed us to render to Caesar what is Caesar's, but to God what is God's; and certainly our consciences fall into the latter category. I felt compelled to speak out on the matter.

So, I began to publicly address the issue from the platforms that God has provided. Not only did I address this issue from the pulpit, carving out a short segment in our Sunday morning

services to help my people see how this was a Gospel matter and urging them to join a citywide effort to "vote no on Prop 1," but I also blogged about the situation and posted the link to our church's social media accounts for our members to share with others. On top of that, I attended a large press conference of Houston pastors, in which a few trusted pastors of our city were pre-selected to explain why believers and our city should oppose the ordinance.

By Christ's grace, the ordinance was soundly defeated.

If God has called us, as pastors, to bring the truth of the Gospel to our surrounding communities, how can we then stay silent on Gospel issues happening in our cities, states, and our country?

The answer that I and many other pastors who took a stand in Houston would give is: we can't. ★



## Church Involvement with Political Action Committees (PACs)

A “political organization” (commonly referred to as a PAC) is any organization (whether or not incorporated) whose main purpose is to accept contributions or make expenditures to influence the selection, nomination, election, or appointment of any individual for public office.<sup>19</sup> Churches are not allowed to organize or make contributions to political organizations.<sup>20</sup>

## Inviting Candidates and Public Officials to Speak

### **1. Candidates**

Candidates may be invited to appear at a church service or meeting in their capacity as a candidate in order to speak, preach, read Scripture, or otherwise publicly address the congregation. However, if a church decides to invite candidates to church meetings or services, it should abide by the following criteria:<sup>21</sup>

- a. The organization should provide an equal opportunity for all political candidates seeking the same office.** For example, if one candidate is invited to a well-attended Sunday morning church service but a different candidate for the same office is invited to a smaller less-well-attended Sunday evening gathering, the IRS may decide that the church is expressing support for one candidate over another, thus violating the Tax Code.

- b. The organization should not indicate any support for, or opposition to, the visiting candidate.** This applies to candidate introductions and communications concerning the candidate’s attendance.
- c. The church should not use the candidate’s appearance to facilitate political fundraising.** Additionally, churches should avoid all political fundraising in any capacity.

The examples detailed on the following page are offered by the IRS in its guidance materials related to appearances by candidates at the functions of tax-exempt organizations.<sup>22</sup>

### **2. Public Officials**

Public officials who are also candidates may be invited to speak to a church without following the guidelines above if:<sup>23</sup>

- a.** No reference is made to the public official’s candidacy;
- b.** The public official speaks only in his or her capacity as a public official; and
- c.** There is no campaign activity in connection with the public official’s appearance.



*President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three congressional candidates for the district in which Society N 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. Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention.*

*The facts are the same as in the situation above 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, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.*

*Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X 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." Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.*

*Mayor G attends a concert performed by Symphony S, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S's board addresses the crowd and says, "I am pleased to see Mayor G here tonight. Without his support, these free 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 G in November as he has supported us." As a result of these remarks, Symphony S has engaged in political campaign intervention.*

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## Engaging in Voter Education

### **1. Voter Registration, Identification, & Organization**

A church is allowed to participate in nonpartisan voter registration, voter identification, and get-out-the-vote activities. In order to qualify as nonpartisan, these activities may not be directed at the supporters of any particular candidate or political party. However, these actions may be directed toward groups of people, such as church members or those who live in a particular geographic area.<sup>24</sup>

While these activities are permitted, churches are never permitted to hand out literature as part of an official church function that praises or criticizes particular candidates or political parties for their positions on issues. All materials and communications should remain neutral and nonpartisan.

The IRS offers the following example in its guidance in relation to voter registrations:<sup>25</sup>

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#### IRS EXAMPLE

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*B, a section 501(c)(3) organization that promotes community involvement, 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 organization, 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. B is not engaged in political campaign intervention when it operates this voter registration booth.*

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### **2. Nonpartisan Voter Education**

Churches may participate in nonpartisan voter education. “Voter education” involves discussing the electoral process. For instance, churches may educate people about how to run for public office, how to register, and where to vote. All these activities are allowed, as long as they are not directed at supporters of a specific candidate or political party.<sup>26</sup>

### **3. Voter Guides**

Churches are allowed to distribute voter guides, whether they create their own or use guides prepared by other organizations. When distributing a guide, churches need to ensure that they are neutral and unbiased. For example, a voter guide would be biased if the content within the guide shows a preference in content or structure for the views of a particular candidate or particular issue. Before distributing a voter guide, churches should be mindful of the following guidelines:<sup>27</sup>

- a. The voter guide should not compare the church’s preferred position to those of the candidate.
- b. The guide must present information on a wide range of issues instead of focusing narrowly on a select few. It should consider issues that are important to the electorate as a whole. Churches do not have to exclude matters they consider important, but in a voter guide, they cannot emphasize their priority issues above others.
- c. The issue descriptions must be neutral.
- d. All candidates for office must be included. While it’s important to list all candidates, it is also important to remember that a two-party system has long dominated American national politics. So, in some

circumstances, it may be appropriate for a voter guide to focus on the two main candidates for office – especially if it is difficult to determine who else is running besides the two main-party candidates.

- e. Descriptions of the candidates' positions must be neutral and unbiased. A voter guide can use voting record notations and direct quotations from the candidates if they are taken from reliable sources, such as the candidates' websites or campaign materials.

In its guidance materials, the IRS gives the following example regarding voter guides:

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IRS EXAMPLE

*Organization D has been recognized as exempt under section 501(c)(3) of the Code. It is primarily concerned with land conservation matters. The organization publishes a voters guide for its members and others concerned with land conservation issues. The guide is intended as a compilation of incumbents' voting records in selected land conservation issues of importance to the organization and is factual in nature. It contains no express statements in support of or in opposition to any candidate. The guide is widely distributed among the electorate during an election campaign. While the guide may provide the voting public with useful information, its emphasis on one area of concern indicates that its purpose is not nonpartisan voter education. By concentrating on a narrow range of issues in the voters guide and widely distributing it among the electorate during an election campaign, Organization D is participating in a political campaign in contravention of the provisions of section 501(c)(3) and is disqualified as exempt under that section.<sup>28</sup>*

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#### 4. Questionnaires to Candidates

If a church decides to create its own voter guide from surveys or questionnaires sent to the candidates, the questionnaires should conform to the following guidelines:<sup>29</sup>

- a. Questionnaires should be sent to all candidates;
- b. The questions should cover a wide variety of issues;
- c. The questions should not indicate a bias toward the church's preferred answer;
- d. The candidates' responses should not be compared to the church's preferred position;
- e. The responses should be published in the candidates' own words or in a neutral, unbiased, and complete summary of the candidate's position; and
- f. The survey should not be published under the direction or control, directly or indirectly, of any candidate.

## 5. Voting Records of Incumbents

Churches may publish the voting records of incumbent public officials – current public officials who are running for re-election. While a church has more leeway with this than when publishing candidate surveys, it should follow the guidelines below:<sup>30</sup>

- a. Incumbents' positions should not be compared to other candidates' positions or the church's positions;
- b. The voting record should be distributed on a regular basis, not just at election time;

- c. The voting record should be broadly distributed to the general public, not targeted to certain voting blocs; and
- d. A variety of issues of interest to the general public should be presented.

The IRS offers the example below in its guidance materials related to publishing the voting records of incumbents:

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### IRS EXAMPLE

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*Organization A has been recognized as exempt under section 501(c)(3) of the Code by the Internal Revenue Service. As one of its activities, the organization annually prepares and makes generally available to the public a compilation of voting records of all Members of Congress on major legislative issues involving a wide range of subjects. The publication contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any Members or their voting records. The “voter education” activity of Organization A is not prohibited political activity within the meaning of section 501(c)(3) of the Code.<sup>31</sup>*

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## Sponsoring Referendums & Initiatives

Many states (and some cities and counties) allow citizens or organizations to propose a topic or specific legislation to be placed on the ballot. Churches have the legal right to participate in this process, which is commonly referred to as an initiative or referendum. Churches may spend money in support of, or in opposition to, a referendum or initiative, provided they follow the “direct lobbying” guidelines on page 6.

However, the church should check state election laws to see if there are any restrictions on referendum or initiative activities. Some states require organizations that lobby on initiatives and referenda to register as a political committee. As a result, these organizations would also be subject to reporting and disclosure requirements. Some of these state election-law requirements may be unconstitutional as applied to churches if they subject churches to intrusive disclosure and reporting requirements based on a very small amount of lobbying activity. ADF has successfully challenged state election-law reporting requirements as applied to churches. If your church is facing such a requirement, contact us immediately so an attorney can review your situation.

## Utilizing Church Property for Political Activities

### **1. Parking Lots & Literature**

In general, if a church parking lot is open for public use, people may be permitted to distribute literature there. The church has no obligation to bar people from distributing literature in the parking lot. Conversely, a church may choose not to allow literature distribution on its premises.

### **2. Facilities**

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 rent for using the church property, the candidate or PAC should be charged the same amount.<sup>32</sup>

## Use of Church Communications for Political Messages

### **1. Mailing Lists**

Churches can grant candidates or political action committees access to their church membership list. However, churches must ensure that candidates or PACs have access to church membership lists on the same basis as other non-church groups. 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. Additionally, the church must allow the same access for all candidates that request it.<sup>33</sup>

### **2. Advertisements**

Church publications (whether print or digital), 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, the ad is identified as paid political advertising, and the church includes a disclaimer stating it does not endorse the candidate. Advertising must also be solicited from all candidates on an equal basis. If discounts are given to regular advertisers under certain circumstances, the same discounts may be extended to a political advertiser. Otherwise, the church should not sell a political ad to a candidate at a discount, since that would qualify as a financial contribution to the candidate.<sup>34</sup>

### **3. Editorials**

Church publications may not publish an editorial that endorses or opposes a candidate for office.

### **4. News Stories**

Church publications may include news stories on candidates and political campaigns. However, the publication of voting records and candidate surveys are subject to the limitations explained in the voter education section on page 16.

### **5. Websites**

Churches are allowed to use their own websites to disseminate statements and information, including linking to other websites maintained by other organizations as a way of providing additional information that they believe is useful or relevant to the public. However, churches must not post or link to a website that favors or opposes a candidate for public office. The rules for legal issue advocacy, voter education, and lobbying would all apply, as well as the advertisement guidance noted prior.

When a church establishes a link to another website, the church is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. In order to reduce the risk of political campaign intervention, churches should monitor their linked content and adjust their links accordingly.

The IRS offers the following examples in its guidance related to website statements:<sup>35</sup>

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#### IRS EXAMPLES

*M, a section 501(c)(3) organization, maintains a website and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign website. 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].” M 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.*

*Church P, a section 501(c)(3) organization, maintains a website that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. B, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its website, “Lend your support to B, your fellow parishioner, in Tuesday’s election for town council.” Church P has intervened in a political campaign on behalf of B.*

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## Using the Tax Code to Intimidate Churches

In recent years, some private groups have sent letters to churches around election time, warning churches not to speak about the election. These letters are sent to intimidate churches and pastors into silence. One group that frequently sends such letters is Americans United for Separation of Church and State (AU). AU’s letters are usually full of legal inaccuracies and are designed to scare pastors and churches.

Sometimes, in an attempt to make an example of a church and scare other churches, AU will send a “complaint letter” to the IRS and publicize press releases about the church’s activity. In some cases, reporters have contacted churches because of AU’s letters and press releases. This is just another intimidation tactic, and the IRS has not acted upon the vast majority of AU “complaint letters.”

If you or your church find yourself in the middle of a controversy like this, please contact ADF immediately to have an attorney review your situation. ADF or Allied Attorneys are often able to provide guidance on these issues and may even be able to comment to the media on a church’s or pastor’s behalf.

For additional materials on this topic and other legal matters facing churches, visit [www.ADFlegal.org/Church](http://www.ADFlegal.org/Church).

## Special Feature:

# DEBUNKING THE TOP 5 MYTHS ABOUT CHURCHES' 501(C)(3) STATUS

Churches have always been exempt from federal income taxes. But through the years, several misconceptions have arisen about their tax-exempt status. Here are the five myths we hear most often—with the facts.

### **MYTH 1: Churches are not subject to section 501(c)(3) of the federal Tax Code.**

The truth is all churches are subject to section 501(c)(3) of the federal Tax Code whether they apply for recognition as a 501(c)(3) organization or not. Churches are not required to apply for recognition from the IRS, but that does not remove them from the Tax Code requirements.

### **MYTH 2: Churches that do not apply to the IRS for 501(c)(3) recognition are free from government regulation.**

The truth is all churches must abide by the federal Tax Code regardless of whether they have applied for IRS recognition of tax-exempt status. This issue has been litigated, and federal courts have clearly held that churches are subject to section 501(c)(3). The Tax Code was written with the assumption that all income is taxable unless it is exempted by the Code. Thus, even if a church does not apply for recognition

of tax-exempt status, it is still considered subject to the federal Tax Code. The good news is that churches are automatically exempt from income taxes by section 501(c)(3), but this also means churches are subject to the requirements of section 501(c)(3).

### **MYTH 3: Churches that do not incorporate are not subject to regulation by the IRS.**

Some mistakenly believe that if their church never incorporated, then the IRS (and any other state government or federal agency) cannot regulate or control their church. A similar myth is that if a church un-incorporates, creates a “corporation sole,” or some other unique corporate status, that it will remove itself from government control.

The truth is a church’s corporate status has no effect on its regulation by the IRS under the Tax Code. The IRS regulates both incorporated and unincorporated organizations. Just because a church is not incorporated does not mean it gets a free pass from federal tax laws and regulations. The same is true of other federal, state, and local laws and regulations.





**MYTH 4: Churches that incorporate or apply to the IRS for tax exemption give up their freedom.**

The truth is *churches do not give up their constitutional rights by incorporating or applying for a 501(c)(3) letter from the IRS*. Because churches make no “exchange” for a 501(c)(3) letter or to incorporate, they retain their constitutional rights no matter what corporate form or tax letters they receive from the government.

That is not to say that the federal government never overreaches when it comes to churches. The Johnson Amendment in section 501(c)(3) of the Tax Code restricts what a pastor can preach from the pulpit on the issue of candidates in an election. Every church is subject to the Johnson Amendment regardless of whether it incorporates, seeks recognition as a church, or attempts to take on a unique corporate form to prevent government control.

**MYTH 5: Churches should fear the IRS as a powerful agency that can wreak havoc on them.**

Many churches fear the IRS because they have heard stories of abuses of power, or perhaps they

know someone who went through a particularly painful audit.

The truth is the IRS is subject to legal restrictions that curtail its power over churches. For instance, Congress passed the Church Audit Procedures Act in 1984, which requires the IRS to abide by significant restrictions when deciding to audit a church and how to conduct the audit. The IRS is also constrained by the unique status churches have under the federal Tax Code. Churches are considered automatically exempt from income taxes, and this unique status provides beneficial protection for churches.

While government can abuse its powers, churches should not fear the IRS. A healthy mutual respect is appropriate. As Romans 13:3 states, “For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good and you will receive his approval, for he is God’s servant for your good.” If your church does “what is good,” then it has no reason to fear the IRS. This is especially true because ADF stands ready to defend your church, should the need arise. ★

# RIGHTS AND PROTECTIONS FOR PASTORS AND LEADERS

## Endorsement of Candidates by Individuals<sup>36</sup>

The candidate prohibition does not apply to members of the clergy when they are acting as individuals and not as official representatives of their church. Pastors and priests have the same rights as all other American citizens to be involved in political activity, as long as they do not endorse or oppose candidates on behalf of the church and their actions do not appear to be made on behalf of the church.

Pastors may endorse or oppose a candidate in their personal capacity. The IRS says: “The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves as individuals.”<sup>37</sup> Pastors may also state their affiliation with their church, as long as it is clear that this is for identification purposes only and that the endorsement is from the pastor personally, not the church.

## Endorsement of Non-Elected Officials

Churches and pastors may support or oppose the appointment of judges and cabinet, or other non-elected officials. Communications about officials are legal, as long as the official is not involved in a partisan selection process.

## Candidate PACs

Pastors can make contributions to PACs as individuals and participate in organizing candidate PACs. Section 501(c)(3) does not apply to anything pastors do in their personal capacity. It only regulates what pastors do in their official capacity or at an official church function. Outside those parameters, pastors can do as they like (subject, of course, to regulation by the Federal Elections Commission or state campaign finance laws).

# FREQUENTLY ASKED QUESTIONS<sup>38</sup>



## **What does church tax exemption mean?**

Federal tax exemption generally means that a church is not required to pay income taxes, and individuals who donate to that church can claim a tax deduction on their federal tax return. Churches are automatically considered tax exempt by federal law and are not required to file for recognition of exemption from the IRS. Other organizations must apply for recognition of tax-exempt status from the IRS by filing an application and demonstrating that the organization qualifies as exempt.

Even though churches are not required to apply for tax-exempt status, churches are still subject to the restrictions in section 501(c)(3) of the Tax Code.



## **What political restrictions does the Tax Code place on tax-exempt organizations?**

In the area of politics, the Tax Code places two restrictions on churches and other organizations exempt under section 501(c)(3) of the Tax Code:

- 1. The lobbying limitation.** The Tax Code limits the amount of money a church can spend and what activities a church can undertake to support or oppose legislation (commonly referred to as lobbying). The IRS regulations state that a church may not engage in a substantial amount of lobbying.
- 2. The candidate prohibition.** This restriction is commonly referred to as the “Johnson Amendment,” so named for Senator Lyndon Johnson who proposed this restriction as an amendment to a tax overhaul bill in 1954 as a way to silence those opposing his Senate reelection bid. The prohibition was passed into law by Congress that year without debate or analysis. The text of the Johnson Amendment appears in the last sentence of section 501(c)(3) of the Tax Code and states that a church may not: *“participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”*

Simply put, the current Tax Code requires churches and pastors to refrain from any action that might be perceived as supporting or opposing a candidate. But as applied to prohibit a pastor from speaking freely from the pulpit, the Johnson Amendment is unconstitutional. Pastors have a constitutional right to apply Scripture and church teaching to all areas of life, including—if they so choose—the positions of candidates in an election. ADF has consistently offered to represent any church who is threatened with punishment by the IRS for something its pastor said from the pulpit.

For more information, see the “Lobbying & Candidate Prohibitions” section on page 6.

Q

#### **What does and does not qualify as “legislation”?**

Legislation includes any action by Congress, a state legislature, local governmental council, or similar body that makes laws. Specifically, this includes ballot initiatives, constitutional amendments, or votes on a public referendum. This does not include actions by a court, an executive (like the president or a governor), or actions by an administrative body.

Q

#### **What are some examples that violate the candidate prohibition?**

Some examples of activities that violate the candidate prohibition (the Johnson Amendment) include:

1. Directly endorsing or opposing a candidate or a political party;
2. Direct contributions to a candidate;
3. In-kind contributions, which means giving a candidate something they would otherwise have to pay for (such as a church mailing list); and
4. Independent expenditures, which are expenses that endorse or oppose a candidate without the knowledge of or consultation with any candidate.

Q

#### **Does the candidate prohibition apply to specific government positions?**

It’s important to recognize that the candidate prohibition only applies to candidates running for office (or to people who are proposed by others as candidates for office) and not to sitting government officials. It also doesn’t apply to speech on public issues. Churches may speak freely about social and moral issues or the actions of government officials in office (as long as they are not also a candidate at the time).

Q

#### **Do pastors have individual rights outside of their position at the church?**

The candidate prohibition does not apply to pastors when they are acting as individuals and not as an official representative of their church. Pastors and priests have the same rights as all other American citizens to be involved in political activity, as long as they do not endorse or oppose candidates on behalf of the church and their actions do not appear to be made on behalf of the church.





### **What if our church has received letters or phone calls warning us or accusing us of political involvement?**

In recent years, some private groups have sent letters to churches at election time warning churches not to speak about the election. These letters are sent to intimidate churches and pastors into silence. One group that frequently sends such letters is Americans United for Separation of Church and State (AU). AU's letters are usually full of legal inaccuracies and are designed to scare pastors and churches.

Sometimes, to make an example out of a church and scare other churches, the AU will send a "complaint letter" to the IRS and publicize press releases about the church's activity. In some cases, reporters have contacted churches because of AU's letters and press releases. This is just another intimidation tactic, and the IRS has not acted upon the vast majority of AU "complaint letters."

If you or your church find yourself in the middle of a controversy like this, please contact ADF immediately to have an attorney review your situation. ADF attorneys are often able to provide guidance on these issues and may even be able to comment to the media on a church or pastor's behalf.



### **May churches and pastors discuss candidates' positions on public issues?**

Pastors (in their official capacity) and churches are allowed to discuss the positions of candidates on issues as long as the discussion is neutral and does not support or oppose a candidate. This is called "issue advocacy."



### **How do churches ensure that their discussion of candidate positions qualifies as legal issue advocacy?**

The IRS uses seven different factors to determine whether a church communication is permitted issue advocacy or violates the candidate prohibition. When the IRS is asked to evaluate a church's or pastor's statement, it will consider all the "facts and circumstances" and weigh each of the factors in their entirety. This means that if the IRS finds that a statement violates a majority of the factors it takes into consideration, it might conclude that the statement is not permitted issue advocacy and that it violates the candidate prohibition. There are no hard-and-fast rules here, so if you have questions, contact ADF to have an attorney review your situation.

See page 10 for a list of the factors that the IRS takes into consideration when evaluating a church's or pastor's statement.



**Are churches and pastors allowed to endorse or oppose candidates?**

The IRS says that “public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity.” Distributing campaign literature from a candidate is also prohibited.

However, pastors may endorse or oppose candidates in their personal capacity. The IRS says: “The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves as individuals.” Pastors may also state their affiliation with their church, as long as it is clear that this is for identification purposes only and that the endorsement is from the pastor personally, not the church.



**May churches speak about the appointment of judges and cabinet-level, or other, non-elected officials?**

Yes. Churches and pastors may support or oppose the appointment of judges and cabinet-level, or other, non-elected officials. Communications about officials are legal, as long as the official is not involved in a partisan selection process.



**What are candidate political action committees (PACs), and can churches contribute money to them?**

A candidate PAC is any organization of two or more people whose main purpose is to contribute to candidates or expressly advocate the election or defeat of candidates for political office. Churches are not allowed to make contributions to candidate PACs or organize candidate PACs.



**Are churches allowed to invite a candidate to appear at a church meeting or service?**

Yes. Candidates may appear at a church service in their capacity as a candidate. If a church invites candidates to church meetings or services, however, they should abide by the following criteria:

1. The church should provide an equal opportunity for all political candidates seeking the same office. For example, if one candidate is invited to a well-attended Sunday morning church service but a different candidate for the same office is invited to a smaller less-well-attended Sunday evening gathering, the IRS may decide that the church is expressing support for one candidate over another, thus violating the Tax Code.
2. The church should not indicate any support for or opposition to the visiting candidate. This applies to candidate introductions and communications concerning the candidate’s attendance.
3. The church should not use their appearance to facilitate political fundraising. Additionally, churches should avoid all political fundraising in any capacity.

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 without following the guidelines above if:

1. No reference is made to the public official's candidacy;
2. The public official speaks only in his or her capacity as a public official; and
3. There is no campaign activity in connection with the public official's appearance.



**What are the rules regarding nonpartisan voter registration, voter identification, and get-out-the-vote activities?**

A church is allowed to participate in nonpartisan voter registration, voter identification, and get-out-the-vote activities. In order to qualify as nonpartisan, these activities may not be directed at the supporters of any particular candidate or political party. However, these actions can be directed toward groups of people, such as church members or those who live in a particular geographic area.

While these activities are permitted, churches are never able to hand out literature that praises or criticizes particular candidates or political parties for their positions on issues at these events, as the event would then no longer be considered nonpartisan. All materials and communications should remain neutral and nonpartisan.



**Can our church participate in nonpartisan voter education?**

Churches may participate in nonpartisan voter education. "Voter education" involves discussion of the electoral process. For instance, churches can educate people on how to run for public office or delegate, how to register, and where to vote. All these activities are allowed, as long as they are not directed at supporters of a specific candidate or political party.



**Are churches able to participate in lobbying efforts?**

There are two different types of lobbying:

1. **Direct lobbying**, which involves direct communications with governmental officials regarding legislative or executive action; and
2. **Grassroots lobbying**, which involves church communication with its members or the general public, urging them to contact governmental officials in support of, or in opposition to, legislative or executive action.

A church may engage in both direct and grassroots lobbying and 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 as long as the lobbying constitutes an insubstantial part of the church's overall activities and budget. Churches may also lobby candidates about issues and distribute educational material to candidates or at political events, as long as this is being done to share the church's message rather than to assist a candidate.



**How much money can the church spend on lobbying?**

According to the IRS, churches may spend an “insubstantial amount” of their funds on lobbying. An “insubstantial amount” is not clearly defined in the law but is generally considered to be somewhere between 5 to 15 percent of a church’s annual funds and activities.



**What is a referendum or initiative, and how much money can a church spend toward them?**

Many states (and some cities and counties) allow citizens or organizations to propose a topic or specific legislation to be placed on the ballot. Churches have the legal right to participate in this process, which is commonly referred to as an initiative or referendum. Churches may spend money in support of, or in opposition to, a referendum or initiative. This would be considered direct lobbying. A church’s activities and spending in this area are subject to the lobbying limitation (see page 6) that a church only spend an insubstantial amount on lobbying.

However, the church should check state election laws to see if there are any restrictions on referendum or initiative activities. Some states require organizations that lobby on initiatives and referenda to register as a political committee. As a result, these organizations would also be subject to reporting and disclosure requirements. These state election-law requirements may be unconstitutional as applied to churches because they subject churches to intrusive disclosure and reporting requirements based on a very small amount of lobbying activity. ADF has successfully challenged state election-law reporting requirements as applied to churches. If your church is facing such a requirement, contact us immediately so an attorney can review your situation.



**Is the church allowed to distribute voter guides?**

Churches are allowed to distribute voter guides, whether they create their own or use guides prepared by other organizations. When distributing a guide, churches need to ensure that they are neutral and unbiased. For example, a voter guide would be biased if the content within the guide shows a preference in content or structure for the views of a particular candidate.

For more detailed guidelines for distributing a particular voter guide, see page 16.



**Can a church send questionnaires to candidates in order to create its own voter guides?**

Yes. If a church decides to create its own voter guides from surveys or questionnaires sent to the candidates, the questionnaires should conform to a certain set of guidelines.

For detailed information on those guidelines, see page 17.





**Is the church allowed to distribute voting records of incumbents?**

Churches may publish the voting records of incumbent public officials – current public officials who are running for re-election. While a church may have more leeway with this than when publishing candidate surveys, it should follow guidelines outlined by the IRS.

For more information on those guidelines, see page 18.



**Is the church able to allow other people to distribute political materials in the church parking lot?**

In general, if a church parking lot is open for public use, people may be permitted to distribute literature there. The church has no obligation to bar people from distributing literature in the parking lot. On the other hand, a church may choose not to allow literature distribution on its premises.



**Can the church allow candidates or political action committees access to church membership lists?**

Yes. Churches can grant candidates or political action committees access to their church membership list. However, churches must ensure that candidates or PACs have access to church membership lists on the same basis as other non-church groups. 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. Additionally, the church must allow the same access for all candidates that request such access.



**Can candidates or political action committees use church facilities?**

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 rent for using the church property, the candidate or PAC should be charged the same amount.



**Are candidates or political action committees allowed to place advertisements in church publications?**

Yes. 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. Otherwise, the church should not sell a political ad to a candidate at a discount, since that would qualify as a financial contribution to the candidate.



**Do political advertisements in church publications require a disclaimer?**

Yes. Any political ads within a church bulletin or newsletter 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.



**Can the church include news stories about candidates or campaigns in their publication?**

Church publications may include news stories on candidates and political campaigns. However, the publication of voting records and candidate surveys are subject to the limitations explained on page 20.



**Can the church include editorials endorsing or opposing candidates?**

No. Church publications may not publish an editorial that endorses or opposes a candidate for office.



**Can the church invite a candidate to preach or speak?**

Depending on the facts and circumstances, a church may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at church events that are open to the public.

For specific criteria and guidelines, see page 14.



**Can a church host a public forum?**

Yes. When a church invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

1. Whether questions for the candidates are prepared and presented by an independent nonpartisan panel;
2. 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;
3. Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed;
4. Whether the candidates are asked to agree or disagree with positions, agendas, platforms, or statements of the church; and
5. Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.



### **Are there special rules for websites?**

The Internet has become a widely used communications tool. Tax-exempt organizations use their own websites to disseminate statements and information. They also routinely link their websites to websites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A website is a form of communication. If a church posts something on its website that favors or opposes a candidate for public office, the church will be treated the same as if it distributed printed material, oral statements, or broadcasts that favored or opposed a candidate.

A church has control over whether it establishes a link to another site. When a church establishes a link to another website, the church is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. Because the linked content may change over time, a church may reduce the risk of intervening in a political campaign by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context of the link on the church's website, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the church's website and the webpage that contains material favoring or opposing a candidate for public office.

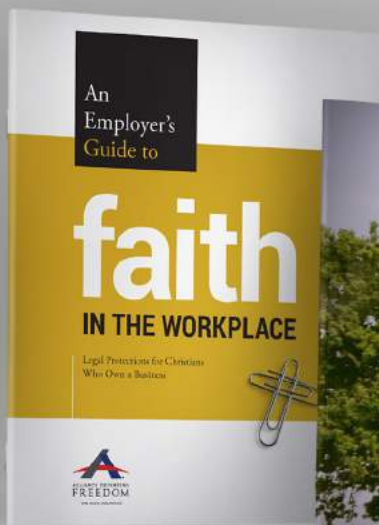
# END NOTES

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- <sup>1</sup> Acting as an individual rather than an official church representative.
- <sup>2</sup> Lobbying activities may expose churches in some states to election-law register and reporting requirements as a political committee. Many of these statutes are unconstitutional because they expose churches to intrusive regulations for a very small amount of lobbying. If you find your church exposed to such state election law requirements, contact Alliance Defending Freedom immediately so an attorney can review your situation.
- <sup>3</sup> See Tax Guide for Churches and Religious Organizations at 2, available at <https://www.irs.gov/pub/irs-pdf/p1828.pdf> (hereafter "Tax Guide").
- <sup>4</sup> See 26 U.S.C. § 508(c)(1)(A).
- <sup>5</sup> See 26 U.S.C. § 508 (a).
- <sup>6</sup> See *Taylor v. Comm'r.*, 79 T.C.M. (CCH) 1364 (2000) (stating: "[S]ection 508(c)(1) simply relieves churches from applying for a favorable determination letter regarding their exempt status as required by section 508(a). Nothing in section 508(c)(1) relieves a church from having to meet the requirements of section 501(c)(3)").
- <sup>7</sup> See Treas. Reg. 56.4911-2(b)(1) & (b)(2).
- <sup>8</sup> See Tax Guide at 6; see also *Seasongood v. Comm'r.*, 227 F.2d 907, 912 (6th Cir. 1955) (suggesting that 5% of an organization's time and money spent on lobbying was an "insubstantial amount" of lobbying).
- <sup>9</sup> See Tax Guide at 6; see also Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii).
- <sup>10</sup> See 26 U.S.C. § 501(c)(3).
- <sup>11</sup> See Tax Guide at 7.
- <sup>12</sup> See Rev. Ruling 2007-41, 2007-25 I.R.B. 1424.
- <sup>13</sup> Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17 (2006).
- <sup>14</sup> See Tax Guide at 7-8.
- <sup>15</sup> Tax Guide at 8.
- <sup>16</sup> *Id.*
- <sup>17</sup> Note that the IRS takes the position that attempts to influence the confirmation by the United States Senate of a federal judicial nominee constitutes lobbying and is subject to the limitations on lobbying described elsewhere in this Guide. See Treas. Reg. 53.4945-2(d)(2)(iii), Examples 5-7.
- <sup>18</sup> Rev. Ruling 2007-41, 2007-25 I.R.B. 1422.
- <sup>19</sup> See 26 U.S.C. § 527(e)(1) & (2).
- <sup>20</sup> Election Year Issues, 2002 EO CPE Text.
- <sup>21</sup> See Rev. Ruling 2007-41, 2007-25 I.R.B. 1423.
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.* at 1423-24.
- <sup>24</sup> See Tax Guide at 14.
- <sup>25</sup> See Rev. Ruling 2007-41, 2007-25 I.R.B. 1422-1423.
- <sup>26</sup> *Id.* at 1422.
- <sup>27</sup> FS-2006-17 (2006).
- <sup>28</sup> Rev. Ruling 78-248, 1978-1 C.B. 154.
- <sup>29</sup> See Tax Guide at 15.
- <sup>30</sup> See Rev. Ruling 80-282, 1980-2 C.B., 178.
- <sup>31</sup> Rev. Ruling 78-248, 1978-1 C.B. 154.
- <sup>32</sup> See Rev. Ruling 2007-41, 2007-25 I.R.B. 1425.
- <sup>33</sup> *Id.*
- <sup>34</sup> *Id.*
- <sup>35</sup> *Id.* at 1425-26.
- <sup>36</sup> *Id.* at 1422.
- <sup>37</sup> Tax Guide at 8.
- <sup>38</sup> Each of these issues is also covered in the sections above with citations to source materials.
- <sup>39</sup> 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.
- <sup>40</sup> Particularly, state laws may be more restrictive than these guidelines, and therefore, in applying them to specific situations regarding state candidates or state elections, an attorney should be consulted.

# Know your legal rights.

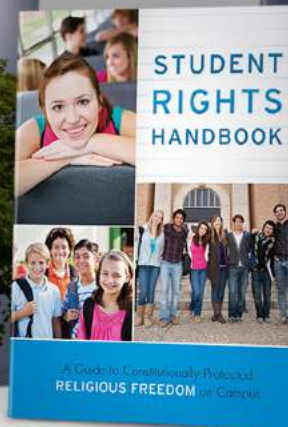
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*Disclaimer: The following legal overview and guidelines summarize the requirements of the Internal Revenue Code as they apply to churches and pastors.<sup>39</sup> We encourage you to share them with your colleagues. As guidelines, they may not address every situation that you face and should not be construed as legal advice.<sup>40</sup> Churches and pastors, however, may request legal advice free of charge regarding a particular situation by contacting Alliance Defending Freedom at 1-800-835-5233 or [www.ADFlegal.org](http://www.ADFlegal.org).*