

Church Action and the IRS

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There are three primary reasons why pastors do not lead their church and encourage active citizenship, policy advocacy and “political” engagement. First, are theological and philosophical reasons, second are internal church politics and third are legal reasons. I will address mainly the legal issues surrounding Church action and the IRS regulations.

As a starting point there is a critical distinction between the tax exempt status (which is automatic from the founding of the Republic) and a tax exempt letter ruling (which is applied for and granted). As a Church, you cannot lose your Tax Exempt “Status”. As soon as you organize, operate, and act like a church, you are tax exempt. (NOTE: this is not so with other 501c3 non-profits organizations that are not churches.) This automatic presumption only applies to churches. Why do you need a tax exempt letter? Well, you don’t need one. Most churches get one for convenience sake. Dr. Jerry Falwell and Thomasville Road Baptist and a growing number of other churches never got one and never will. Losing a letter is extremely rare and highly unlikely. But hypothetically, what happens if you did cross the line and the IRS removed your tax letter ruling? Answer: Cure the violation and just apply for another one!

There three types of activities to be aware of in this discussion: 1) Education, 2) Lobbying, 3) Electioneering. First, education is consists of things like preaching and teaching on citizenship, importance of registering to vote and what the Biblical has to say on any moral, social and other policy issues like-- abortion, adoption, marriage, poverty, welfare, homosexuality, euthanasia, evolution, taxes, national defense, immigration, capital punishment, health care, elder care, Islam, government’s role, the environment, & the importance of elections and voting. There are no limitations on education. (In a sense, this is the reason you exist!)

The second category is lobbying. Lobbying is defined as influencing the outcome of legislation. Legislation is defined as any Federal, State or Local Referendum, Initiative or Constitutional Amendment. See Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) For example state statutes, state constitutional amendments, city ordinances, ballot questions, federal law etc all apply to lobbying. Churches can only do an “insubstantial” amount of lobbying. The general rule is five to fifteen per cent of organization’s total activities are insubstantial. One IRS Revenue Ruling says less than 5% time and effort was insubstantial. See *Murray Seasingood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955). Another IRS Revenue Ruling says that 16-20% of budget was substantial. See *Haswell v. U.S.*, 500 F.2d 1133 (Ct.Cl. 1974), cert. denied, 419 U.S. 1107 (1975). The IRS has a balancing test for lobbying. Technically, you could preach and teach on upcoming legislation and ask your members to call their legislators and congressman at every single service and in every single Sunday school class and never violate the limitation on lobbying because of the balancing test. See *Christian Echoes Nat’l Ministry, Inc. v. U.S.*, 470 F.2d 849 (10th Cir. 1972) (balancing test – substantial part of objectives).

The third area is “electioneering” or “express advocacy”. Churches (and other non-profits) are prohibited from attempting to influence the outcome of an election. See 26 U.S.C. § 501(a)(c)(3); 21 Okl.St.Ann. § 187.2 (prohibiting corp. campaign contrib.) Other prohibited activities in this category include endorsing a candidate, giving money to a candidate or supporting or opposing a candidate or a political party. There are only two hard and fast rules in this area. 1) Churches can’t give money to political candidates and 2) Churches can’t endorse candidates. NOTE: This limitation on political campaigns and candidates only applies to churches but not to individuals. Pastors as private citizens get involved in political campaigns (or even run for office) as long as they do not use the churches organization’s financial resources, facilities or personnel.

Pastors can even list their name, title and church name if the proper IRS approved disclaimer is given. This is an example of what it should look like: "Look who is endorsing Bill Smith for Governor: John Smith, Pastor of Mayberry Baptist Church* (Lower down the page state) * For Identification Purposes Only". Indicate your individual capacity. See Judith Kindell & John Reilly, Election Year Issues, FY 2002 IRS Exempt Organizations Technical Instruction Program at 363-4 (August 2001) (hereinafter "Election Year Issues").

Where did this limitation on churches and political campaigns originate? In 1954, the U.S. Congress amended (without debate or analysis) Internal Revenue Code §501(c)(3) to restrict the speech of non-profit tax exempt entities, including churches. Before the amendment was passed, historically there were no restrictions on what churches could or couldn't do with regard to speech about government and voting. 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 distributing 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 about candidates for government office, including sermons from the pulpit, can result in loss of tax exemption letter.

In summary, let's review. What churches can do without limitation includes preaching, teaching and or studying any issue related to policy, politics and morality. You can also do unlimited voter registration drives, hand out voter guides contrasting issues; start a social issues committee; educate on viewpoints of candidates; have candidates appear at church services; and introduce candidates at church (as long as you give all candidates the same deference). What churches can not do include endorsing or oppose candidates or political party, make contributions to political candidates or PAC's; make in-kind expenditures to candidates; use of the churches name to endorse a candidate; supporting or oppose an elected judicial candidate. What can pastors do as private citizens? ANYTHING! Remember you are still a citizen of the United States and can fully engage the process in any way in that private capacity.

In my opinion, the application of most of these IRS Rules are simply unconstitutional. And each year dozens of pastors around the country come forward to humbly, respectfully but boldly step across the line and challenge these so called rules. And not once yet has the IRS taken the bait. I want you to know about the ADF Pulpit Freedom Project. In this project, 83 churches from 30 states and the District of Columbia participated in the Alliance Defense Fund's second annual Pulpit Freedom Sunday on Sept. 27, 2009. Pastors at those churches preached biblically-based sermons about the positions of electoral candidates and current government officials. More than twice the number of pastors participating in last year's inaugural event exercised their constitutional right to free religious expression this year, despite a controversial rule often used by the Internal Revenue Service and activist groups to silence churches. For more information on the pulpit freedom project go to www.SpeakUpMovement.org. After 55 years, unfortunately, many churches have allowed the 1954 Johnson amendment to effectively silence their speech, even from the pulpit. Ironically, after 55 years of strict interpretation by the IRS, there is no reported situation to date where a church has lost its tax exempt status or been directly punished for sermons delivered from the pulpit. Nonetheless, the law remains unchanged. Thus, many churches in false fear recoil from a bad interpretation of the code and become silent.

Here is the good news. You have a virtual ARMY of attorneys at your disposal to represent you and or your church on any of these issues for FREE. The two leading religious liberty advocate organizations in the country are: 1) Alliance Defense Fund www.TellADF.org, 2) Liberty Counsel www.LC.org.

Florida Family Policy Council is associated with Focus on the Family

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