

CHURCH and THE GOVERNMENT

Today’s “cancel culture” tolerates no opposition—making religious Americans its first target. Many churches and church leaders are hesitant to engage in political activity out of a fear that they will lose their critically important tax-exempt 501(c)(3) status. This fear becomes a driving force for the enemies of Jesus Christ. However, like all darkness, this too retreats from the light of information.

There are a lot of misconceptions about what rights and freedoms pastors and churches have on political matters. As a result, pastors, and worship leaders fear legal ramifications if they mention or participate in politics. However, the truth is there is very little the church is prohibited from doing under the law while still maintaining its 501(c)(3) designation.

This document is written to support pastors in their goal of helping their church members be good stewards for our communities, freedoms, and to fulfill their civic duties in a Christ-centered way.

PERMITTED ACTS¹

You may speak directly about specific legislation.

You may invite candidates to speak so long as all candidates are invited.

You may create or distribute legislative scorecards.

You may speak about specific issues (i.e., gender identity, gun control, abortion, etc.).

You can engage or assist a Get Out the Vote effort.

You may register members to vote.

You may pass out Voter Guides.

You may lobby your legislators.

PROHIBITED ACTS

The church **CANNOT** endorse a candidate in a race.

The church **CANNOT** oppose a candidate in a race.

The church **CANNOT** contribute to one candidate over another.

The church **CANNOT** use church resources for one candidate over another.

The church **CANNOT** display a candidate’s sign on its property.

¹ These guidelines only apply if the church is a 501(c)(3) non-profit under the Internal Revenue Code.

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Churches have been and continue to be actively involved in ballot initiatives and referenda across the country. If the church's lobbying and political activity does not constitute a substantial part of your church's activities, your church will not be in jeopardy of losing its 501(c)(3) status.

GENERAL RULES

RULE #1: THE CHURCH CANNOT ENDORSE, SHOW FAVORITISM, OR OPPOSE ONE CANDIDATE OVER ANOTHER.

EXAMPLE A: First Baptist Church is a section 501(c)(3) organization. First Baptist regularly publishes a member newsletter. Individual church members are invited to send in updates about their activities, which are printed in each edition of the newsletter. After receiving an update letter from member Joe Smith, First Baptist prints the following: "Joe Smith is running for Benton city council." The newsletter does not contain any reference to this election or to Joe Smith's candidacy other than this statement. Notably, the newsletter does not call for or imply that church members should vote for Joe Smith, but only repeats Smith's announcement. Church X has not intervened in a political campaign.ⁱ

EXAMPLE B: Rev. Sam Shepard is the minister of Second Baptist Church, a section 501(c)(3) organization. In the month prior to the election, Rev. Shepard invited the three Congressional candidates for the district in which Second Baptist is located to address the congregation, one each on three successive Sundays, as part of regular worship services. Each candidate was given an equal opportunity to address and field questions on a variety of topics from the congregation. Rev. Shepard's introduction of each candidate included no comments on their qualifications or any indication of a preference for any candidate. The actions do not constitute political campaign intervention by Second Baptist.ⁱⁱ

EXAMPLE C: Third Baptist Church publishes an ad in a newspaper urging voters not to vote for Joe Biden because he is pro-abortion. Additionally, from the pulpit on Sunday at Third Baptist, Reverend Wright calls on his congregation to not vote for Joe Biden because of his pro-choice stance. Both instances are illegal and will result in a revocation of Third Baptist's tax-exempt status. With the loss of its 501(c)(3) status, Third Baptist closes and its congregation disperses.

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RULE #2; CHURCHES MAY LOBBY YOUR LEGISLATORS AS LONG AS LOBBYING DOES NOT CONSTITUTE A SUBSTANTIAL PART OF YOUR CHURCH'S ACTIVITIES.

EXAMPLE: A proposed bill seeks to outlaw the “morning after” pill. The Pastor and church staff of First Baptist Church calls their legislators and tells them that they support this bill and asks their legislators to vote in favor of it. First Baptist is not in jeopardy of losing their 501(c)(3) status.

RULE #3 CHURCHES MAY SPEAK IN FAVOR OR AGAINST AN INITIATIVE OR REFERENDUM AS LONG AS THE POLITICAL ACTIVITY DOES NOT CONSTITUTE A SUBSTANTIAL PART OF YOUR CHURCH'S ACTIVITIES.

EXAMPLE A: First Baptist Church opposes the abortion amendment. It takes out an ad in the newspaper advocating for the sanctity of life and urges the electorate to choose and pass good laws that protect life. Rev. Shepard says the same thing at the pulpit on Sunday. However, this advocacy is de minimis compared to its evangelism, mission work, and helping the needy as the hands and feet of Christ. Neither the ad nor the statement is substantial in relation to its overall work as a church and this political advocacy is not a regular course of conduct. As such, it does not impact First Baptist's tax-exempt status.

EXAMPLE B: Third Baptist Church has a righteous passion for ending abortion. In furtherance of its passion, it routinely pays for advertisements calling for an end to abortion. It supports all anti-abortion campaigns with ads, signs, and messaging. It does the same thing in opposing pro-choice movements. As part of its strategy, Third Baptist routinely calls for the voters to not only vote against pro-choice bills, but to vote against those who support pro-choice legislation. Third Baptist's abortion advocacy is more than simply adhering to the Christian principles against abortion and shifted to more widespread campaign against abortion. This alone would cause Third Baptist to lose its tax-exempt status. Campaigning against pro-choice politicians is a separate violation that would also cause the loss of tax-exempt status.

PASTOR'S INDIVIDUAL CAPACITY

Pastors, there are no limitations on you in your individual capacity. You may endorse candidates and contribute to candidate's campaigns as long as you do so only in your individual capacity.ⁱⁱⁱ

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Example A: Rev. Shepard at Second Baptist, a section 501(c)(3) organization, is respected in the community and known for leading most of its members to follow Christ. With his permission, candidate Dave Onhust publishes a full-page ad in the local newspaper listing five prominent ministers who have personally endorsed him, including Rev. Shepard, who is identified in the ad as the pastor of Second Baptist. The ad states, “titles and affiliations of each individual are provided for identification purposes only.” The ad is paid for by Dave Onhust’s campaign committee. Since the ad was not paid for by Second Baptist, it is not an official publication of Second Baptist, and the endorsement is made by Rev. Shepard in a personal capacity, the ad doesn’t constitute political campaign intervention by Second Baptist.^{iv}

Example B: Reverend John Wright is the pastor of Third Baptist Church, a Section 501(c)(3) organization, and is well known and respected in the community—having personally baptized many of its members. Three weeks before the election, he attends a press conference at candidate Paul Peters’ campaign headquarters and states that Paul Peters should be elected as Governor. Rev. Wright doesn’t say he is speaking on behalf of Third Baptist. He also makes no statements about Peters’ opponent in the gubernatorial race, Pontius Pilate. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the pastor of Third Baptist. Because Rev. Wright didn’t make the endorsement at an official church function, in an official church publication, use the church’s assets, and did not state that he was speaking as a representative of Third Baptist, his actions don’t constitute political campaign intervention by Third Baptist.^v

Historical Background

Until 1954, there was no restriction on political speech by pastors from the pulpit. With the passage of the Johnson Amendment, named after then Senator Lyndon B. Johnson, churches and other 501(c)(3)s have been prohibited from supporting a specific political candidate.^{vi} In 1987, Texas Democrat J.J. Pickle added to the prohibition to include not only supporting a political candidate, but also opposing one.

The relevant portion of the Johnson Amendment reads:

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from participating in, or intervening in, (including the publishing or

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distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.^{vii}

It's important to note that the prohibition refers directly to candidates, not issues.

A “substantial part” of a 501(c)(3) organization’s activities may not be directed at influencing legislation (including regulatory rulemaking). A church is allowed to take positions on issues that are important to it and its congregation. Such “issue advocacy” can even touch on topics that are central to a political campaign without running afoul of the rules. But the line between issue advocacy and candidate endorsement is often blurry, and churches need to think carefully about how their specific context may affect the appropriateness of devoting significant resources or time to an issue that may be construed as partisan.

CONCLUSION

Not every instance of political advocacy will result in loss of the tax-exempt status. While it is abundantly clear that churches should never endorse or oppose a candidate for office, the same is not true about issue-based advocacy. Issue based advocacy is permitted but it cannot become a substantial part of the work of the church.

It would be wise for any pastor to look at both the time and money spent by the church on issue-based advocacy. Issue-based advocacy should always be the item that gets the least amount of time and money. If you find that issue-based advocacy is getting more money or time than anything in the church—including building maintenance—then it is time to scale back the advocacy or risk losing the church’s tax exempt 501(c)(3) status.

However, there should be some advocacy present. Please do not neglect your duty to shepherd your flock on cultural issues out of fear of losing your 501(c)(3) status. You are encouraged to educate your congregation in a way that they can best represent Christ at the voting booth.

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Cases and Resources

The IRS has published Revenue Ruling 2007-41 which outlines how churches, and all 501(c)(3) organizations, can stay within the law regarding the ban on political activity.

The IRS also has provided guidance regarding the difference between advocating for a candidate and advocating for legislation. See political and lobbying activities.^{viii}

The presentation of public forums or debates is a recognized method of educating the public.^{ix} Providing a forum for candidates is not, in and of itself, prohibited political activity.^x

Activities which are minor, and not substantial, do not disqualify charitable and educational organizations from the benefit of the exemption nor do they disqualify individual contributors to such organizations from a deduction. *Haswell v. United States*, 500 F.2d 1133, 1142 (Ct. Cl. 1974).

A religious organization that engages in substantial activity aimed at influencing legislation is disqualified from tax exemption, whatever the motivation. *Christian Echoes Nat. Ministry, Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972).

The limitations in Section 501(c)(3) stem from the Congressional policy that the United States Treasury should be neutral in *political affairs and that substantial activities directed to attempts to influence legislation or affect a political campaign should not be subsidized*. *Christian Echoes Nat. Ministry, Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972).

It should be noted that exemption is lost by participation in any political campaign on behalf of any candidate for public office. It need not form a substantial part of the organization's activities. *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981).

Branch Ministries, a tax-exempt church, lost its 501(c)(3) status when it placed full-page advertisements in two newspapers in which it urged Christians not to vote for then-presidential candidate Bill Clinton because of his positions on certain moral issues. *Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000).

The political efforts of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a substantial part of its activities is to influence, or is an attempt to influence, legislation. A percentage test to determine whether the

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activities are substantial is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization. *Haswell v. United States*, 500 F.2d 1133, 1142 (Ct. Cl. 1974).

Organization claiming tax exempt status is properly regarded as attempting to influence legislation contrary to provision granting exemption if it contacts or urges public to contact members of legislative body for purpose of proposing, supporting, or opposing legislation, or itself advocates adoption or rejection of legislation *Christian Echoes Nat. Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972).

Attempts to elect or defeat certain political leaders reflected Christian Echoes' objective to change the composition of the federal government. *Christian Echoes Nat. Ministry, Inc. v. United States*, 470 F.2d 849, 856 (10th Cir. 1972).

Disclaimer

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Works Cited

- ⁱ Internal Revenue Service. *Tax Guide for Churches & Religious Organizations*. “Individual Activity by Religious Leaders.” Pg 14. <https://www.irs.gov/pub/irs-pdf/p1828.pdf>
- ⁱⁱ Internal Revenue Service. *Tax Guide for Churches & Religious Organizations*. “Individual Activity by Religious Leaders” pg 8. <https://www.irs.gov/pub/irs-pdf/p1828.pdf>
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- ^{iv} Internal Revenue Service. *Tax Guide for Churches & Religious Organizations*. “Individual Activity by Religious Leaders.” Pg 8. <https://www.irs.gov/pub/irs-pdf/p1828.pdf>
- ^v *Id.* pg 8.
- ^{vi} Vile, John R. “Johnson Amendment.” Free Speech Center. February 18, 2024. <https://firstamendment.mtsu.edu/article/johnson-amendment/>
- ^{vii} Internal Revenue Service. *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*. <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section501c3-tax-exempt-organizations>
- ^{viii} Internal Revenue Service. *Political and Lobbying Activities*. <https://www.irs.gov/newsroom/charities-churches-and-politics>. Accessed 10 March 2024.
- ^{ix} *See* Rev. Rul. 66-256, 1966-2 C.B. 210 (nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption from federal income tax under section 501(c)(3)). Accessed 8 March 2024.
- ^x *See* Rev. Rul. 74-574, 1974-2 C.B. Accessed 9 March 2024.