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## Introduction by the Christian Life Commission:

Churches in the U.S. are granted the special benefit of tax-exempt status. This is in part due to the incredible amount of religious liberty we enjoy in the United States. Religious organizations are free from taxation in order to avoid “excessive entanglement” between government and religion and to foster religious liberty by allowing religious organizations to flourish without the burden of taxation.

Many other types of charitable entities likewise enjoy the benefit of 501(c)(3) tax exempt status under the IRS code. Donors who give to churches and other 501(c)(3) organizations may claim a tax deduction for their gifts. Through this tax deduction, the government encourages support of organizations that promote charity and good works that benefit all of society. However, in exchange for their tax exempt status, these organizations must meet a few conditions.

- One such condition is that they must not directly intervene in political campaigns - they cannot endorse or oppose candidates for office.
- This prohibition applies to all charitable tax-exempt organizations; churches are not singled out.
- Unlike gifts to charities, donations to political campaigns are not tax deductible. In the view of the IRS, the donations are not used for the same public benefit as giving to a charity.
- While churches and other organizations are free to speak out on political issues, the IRS sees a clear difference when it comes to direct intervention into political campaigns (people running for elected office).
- In our current political climate it is easy to see how churches might be taken advantage of by politicians and political parties if their tax deductible contribution could be used to directly support a certain candidate.

This guide is intended to help churches and ministers understand where the legal boundaries lie when it comes to IRS regulations, campaigns and politics. Unfortunately, it is not always clear just what constitutes **campaign intervention**. Each church and each circumstance is different.

- Many factors are considered to determine if a certain activity crosses the line.
- The IRS publishes “Fact Sheets” with detailed examples and common scenarios of activities by tax exempt organizations along with their determination as to whether or not the activity violates the prohibition.
- Recently, the IRS has affirmed its commitment to enforcing the prohibition against campaign intervention and has established the **Political Activity Compliance Initiative**.
- The initiative is sure to be very active during presidential and congressional campaign years.

The information in this guide is compiled from several different IRS publications and “Fact Sheets.” The types of activities and the examples given are selected as those most helpful for churches. The text has been left almost entirely as written by the IRS. Should the following examples not answer a question or concern you might have, please consult an attorney.

While the examples below help to establish the legal parameters of political participation, ministers and church members should also be cognizant of the practical, ethical and moral realities of congregational life. Just because an activity a church or minister is conducting may be legal, that doesn't always mean it is a good idea. You should also consider issues of church harmony and the feelings of fellow church members who may not share your political conviction. Serious, committed Christians will often have very different political convictions.

Tax Guide for Religious and Charitable Organizations –

<http://www.irs.gov/pub/irs-pdf/p1828.pdf>

Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations - FS-2006-17, February 2006

<http://www.irs.gov/newsroom/article/0,,id=154712,00.html>

Internal Revenue Bulletin: 2007-25 - June 18, 2007, Rev. Rul. 2007-41

[http://www.irs.gov/irb/2007-25\\_IRB/ar09.html](http://www.irs.gov/irb/2007-25_IRB/ar09.html)

IRS Resource Page – Charities, Churches and Educational Organizations – Political Campaign Intervention - <http://www.irs.gov/charities/charitable/article/0,,id=155030,00.html>

### **IRS Definition of charitable**

The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

# **Complete Guidance from the IRS Regarding Churches and Political Campaigns**

## **Introduction**

During election campaigns, many churches, universities, hospitals, social service providers, and other section 501(c)(3) organizations are uncertain about the extent to which they can discuss issues of importance in the campaigns or interact with candidates for public office. They are also uncertain about the role they can play in encouraging citizens to register and vote. This fact sheet is intended to help organizations understand what they can and cannot do when an election campaign is under way.

## **Political Campaign Activity**

Under the Internal Revenue Code, all IRC section 501(c)(3) organizations, including churches and religious organizations, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. The prohibition applies to all campaigns including campaigns at the federal, state and local level. Contributions to political campaign funds or 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. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise tax. Those section 501(c)(3) organizations that are private foundations are subject to additional restrictions that are not described in this fact sheet.

## **What is Political Campaign Intervention?**

Political campaign intervention includes any and all activities that favor or oppose one or more candidates for public office. The prohibition extends beyond candidate endorsements. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of an organization in favor of or in opposition to any candidate for public office clearly violate the prohibition on political campaign intervention. Distributing statements prepared by others that favor or oppose any candidate for public office will also violate the prohibition. Allowing a candidate to use an organization's assets or facilities will also violate the prohibition if other candidates are not given an equivalent opportunity. Although section 501(c)(3) organizations may engage in some activities to promote voter registration, encourage voter participation, and provide voter education, they will violate the prohibition on political campaign intervention if they engage in an activity that favors or opposes any candidate for public office. Certain activities will require an evaluation of all the facts and circumstances to determine whether they result in political campaign intervention.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that:

- (a) would favor one candidate over another;**
- (b) oppose a candidate in some manner; or**
- (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.**

### **Consequences of Political Campaign Activity**

When it participates in political campaign activity, a church or religious organization jeopardizes both its tax-exempt status under IRC section 501(c)(3) and its eligibility to receive tax-deductible contributions. In addition, it may become subject to an excise tax on its political expenditures. This excise tax may be imposed in addition to revocation, or it may be imposed instead of revocation. Also, the church or religious organization should correct the violation.

#### **Excise tax**

An initial tax is imposed on an organization at the rate of 10 percent of the political expenditures. Also, a tax at the rate of 2.5 percent of the expenditures is imposed against the organization managers (jointly and severally) who, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The tax on management may not exceed \$5,000 with respect to any one expenditure. In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed \$10,000 with respect to any one expenditure.

#### **Correction**

Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures. Please note that a church or religious organization that engages in any political campaign activity also needs to determine whether it is in compliance with the appropriate federal, state or local election laws, as these may differ from the requirements under IRC section 501(c)(3).

## **Effect of Conducting Multiple Activities**

Although each of the activities described above in this fact sheet is described separately, an organization might combine one or more of the types of activity described above. For example, an organization leader may speak about an issue at an event where a candidate appears, or a voter guide might be distributed at a candidate forum. Where there is a combination of activities, the interaction among them may affect whether or not the organization is engaged in political campaign intervention.

### **Issue Advocacy vs. Political Campaign Intervention**

Like other section 501(c)(3) organizations, some churches and religious organizations take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- **Whether the statement identifies one or more candidates for a given public office;**
- **Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;**
- **Whether the statement is delivered close in time to the election;**
- **Whether the statement makes reference to voting or an election;**
- **Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;**
- **Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and**
- **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.**

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

**Example 1:** Church O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C is the incumbent candidate in a party primary. The advertisement states that a pending bill in the United States Senate would provide additional opportunities for State V residents to participate in faith-based programs by providing funding to such church-affiliated programs. The advertisement ends with the statement “Call or write Senator C to tell him to vote for this bill, despite his opposition in the past.” Funding for faith-based programs has not been raised as an issue distinguishing Senator C from any opponent. The bill is scheduled for a vote before the election. The advertisement identifies Senator C’s position as contrary to O’s position. **Church O has not violated the political campaign intervention prohibition:** the advertisement does not mention the election or the candidacy of Senator C or distinguish Senator C from any opponent. The timing of the advertisement and the identification of Senator C are directly related to a vote on the identified legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

**Example 2:** Church R, a section 501(c)(3) organization, prepares and finances a radio advertisement urging an increase in state funding for faith-based education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Church R on the same issue. The advertisement cites numerous statistics indicating that faith-based education in State X is under funded. While the advertisement does not say anything about Governor E’s position on funding for public education, it ends with “Tell Governor E what you think about our under-funded schools.” In public appearances and campaign literature, Governor E’s opponent has made funding of faith-based education an issue in the campaign by focusing on Governor E’s veto of an income tax increase to increase funding for faith-based education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of faith-based education. **Church R has violated the political campaign prohibition:** The advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Church R on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

**Example 3:** Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for faith-based indigent hospital care in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports funding such care; Candidate B opposes the project and supports increasing State X funding for public hospitals instead. P is the head of the board of elders at Church C, a section 501(c)(3) organization located in District W. At C’s annual fundraising dinner in District W, which takes place in the month before the

election, P gives a long speech about health care issues, including the issue of funding for faith-based programs. P does not mention the name of any candidate or any political party. However, at the end of the speech, P makes the following statement, “For those of you who care about quality of life in District W and the desire of our community for health care responsive to their faith, there is a very important choice coming up next month. We need more funding for health care. Increased public hospital funding will not make a difference. You have the power to respond to the needs of this community. Use that power when you go to the polls and cast your vote in the election for your state senator.” **C has violated the political campaign intervention prohibition as a result of P’s remarks at C’s official function** shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

### **Individual Activity by Religious Leaders**

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of secular non-profit or religious organizations or churches speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under IRC section 501(c)(3), **leaders cannot make partisan comments in official organization publications or at official organization and/or church functions.** To avoid potential attribution of their comments outside of organization and/or church functions and publications, leaders, religious or otherwise, who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization.

The following are examples of situations involving endorsements by religious leaders.

**Example 1:** Minister A is the minister of Church J, a section 501(c)(3) organization, and is well known in the community. With their permission, Candidate T publishes a full-page ad in the local newspaper listing five prominent ministers who have personally endorsed Candidate T, including Minister A. Minister A is identified in the ad as the minister of Church J. The ad states, “Titles and affiliations of each individual are provided for identification purposes only.” The ad is paid for by Candidate T’s campaign committee. Since the ad was not paid for by Church J, the ad is not otherwise in an official publication of Church J, and the endorsement is made by Minister A in a personal capacity, **the ad does not constitute campaign intervention by Church J.**

**Example 2:** Minister B is the minister of Church K, a section 501(c)(3) organization. Church K publishes a monthly church newsletter that is distributed to all church members. In each issue, Minister B has a column titled “My Views.” The month before the election, Minister B states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, Minister B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column.

Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the church. **Since the endorsement appeared in an official publication of Church K, it constitutes campaign intervention attributed to Church K.**

**Example 3:** Minister C is the minister of Church L, a section 501(c)(3) organization, and 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 his church. 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. **Since 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 did not constitute campaign intervention attributable to Church L.**

**Example 4:** Minister D is the minister of Church M, a section 501(c)(3) organization. During regular services of Church M shortly before the election, Minister D preached on a number of issues, including the importance of voting in the upcoming election, and concludes by stating, "It is important that you all do your duty in the election and vote for Candidate W." **Because Minister D's remarks indicating support for Candidate W were made during an official church service, they constitute political campaign intervention attributable to Church M.**

### **Voter Education, Voter Registration and Get Out the Vote Drives**

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) **if they are carried out in a non-partisan manner.** In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, **voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.**

**Example 1:** Church T, a section 501(c)(3) organization, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the church, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. **Church T is not engaged in political campaign intervention** when it operates this voter registration booth.

**Example 2:** Church C is a section 501(c)(3) organization. C's activities include educating its members on family issues involving moral values. Candidate G is running for the state legislature and an important element of her platform is challenging the incumbent's position on family values. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In

the phone conversations, C's representative tells the voter about the moral importance of family issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. **C is engaged in political campaign intervention** when it conducts this get-out-the-vote drive.

### Voter Guides

Like other IRC section 501(c)(3) organizations, some churches and religious organizations undertake voter education activities by distributing voter guides. Voter guides, generally, are distributed during an election campaign and provide information on how all candidates stand on various issues. They are usually pamphlets or other short documents, often in chart form, intended to help voters compare candidates' positions on a set of issues. Guides may be distributed with the purpose of educating voters; however, **they may not be used to attempt to favor or oppose candidates for public elected office.**

Preparing or distributing a voter guide may violate the prohibition against political campaign intervention if the guide focuses on a single issue or narrow range of issues, or if the questions are structured to reflect bias. Although any document that identifies candidates and their positions close in time to an election has the potential to result in political campaign intervention, preparation or distribution of voter guides, because of their nature, present a particular risk for non compliance.

A careful review of the following facts and circumstances may help determine whether or not a church or religious organizations' publication or distribution of voter guides constitutes prohibited political campaign activity:

- **whether the candidate's positions are compared to the organization's position,**
- **whether the questions and any other description of the issues are clear and unbiased in both their structure and content,**
- **whether the guide includes a broad range of issues that the candidates would address if elected to the office sought,**
- **whether the questions posed provided to the candidates are identical to those included in the voter guide,**
- **whether the description of the issues is neutral,**
- **whether all candidates for an office are included,**
- **whether the descriptions of candidates' positions are either**
  - **the candidates' own words in response to questions or**
  - **a neutral, unbiased and complete compilation of all candidates' positions.**
- **whether the candidates are given a reasonable amount of time to respond to the questions. If the candidate is given limited choices for an answer to a question (e.g. yes/no, support/oppose), whether the candidate is also**

**given a reasonable opportunity to explain his position in his own words and that explanation is included in the voter guide.**

- **whether the answers in the voter guide are those provided by the candidates in response to the questions, including whether the candidate's answers are unedited, and whether they appear in close proximity to the question to which they respond.**
- **whether the number of questions, and the subjects covered, are sufficient to encompass most major issues of interest to the entire electorate.**

In assessing whether a voter guide is unbiased and nonpartisan, every aspect of the voter guide's format, content and distribution must be taken into consideration. **If the organization's position on one or more issues is set out in the guide so that it can be compared to the candidates' positions, the guide will constitute political campaign intervention.**

An organization may be asked to distribute voter guides prepared by a third party. **Each organization that distributes one or more voter guides is responsible for its own actions.** If the voter guide is biased, distribution of the voter guide is an act of political campaign intervention. Therefore, **an organization should reach its own independent conclusion about whether a voter guide prepared by itself or prepared by a third party covers a broad scope of issues and uses neutral form and content.**

The following are examples of situations where churches distribute voter guides.

**Example 1:** Church R, a section 501(c)(3) organization, distributes a voter guide prior to elections. The voter guide consists of a brief statement from the candidates on each issue made in response to a questionnaire sent to all candidates for governor of State I. The issues on the questionnaire cover a wide variety of topics and were selected by Church R based solely on their importance and interest to the electorate as a whole. Neither the questionnaire nor the voter guide, through their content or structure, indicate a bias or preference for any candidate or group of candidates. **Church R is not participating or intervening in a political campaign.**

**Example 2:** Church S, a section 501(c)(3) organization, distributes a voter guide during an election campaign. The voter guide is prepared using the responses of candidates to a questionnaire sent to candidates for major public offices. Although the questionnaire covers a wide range of topics, the wording of the questions evidences a bias on certain issues. By using a questionnaire structured in this way, **Church S is participating or intervening in a political campaign.**

### **Inviting a Candidate to Speak**

Depending on the facts and circumstances, a church or religious organization 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 individually (not as a candidate). Candidates may also appear without an invitation at organizational events that are open to the public.

A candidate may seek to reassure the organization that it is permissible for the organization to do certain things in connection with the candidate's appearance. An organization in this position should keep in mind that the candidate may not be familiar with the organization's tax-exempt status and that the candidate may be focused on compliance with the election laws that apply to the candidate's campaign rather than the federal tax law that applies to the organization. The organization will be in the best position to ensure compliance with the prohibition on political campaign intervention if it makes its own independent conclusion about its compliance with federal tax law.

### **Speaking as a candidate**

Like any other IRC section 501(c)(3) organization, when a candidate is invited to speak at a church or religious organization event as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- whether the church provides an equal opportunity to the political candidates seeking the same office,
- whether the church indicates any support of or opposition to the candidate. (This should be stated explicitly when the candidate is introduced and in communications concerning the candidate's appearance.)
- whether any political fundraising occurs,
- whether the individual is chosen to speak solely for reasons other than candidacy for public office,
- whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and
- whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

### **Equal opportunity to participate**

Like any other IRC section 501(c)(3) organization, in determining whether candidates are given an equal opportunity to participate, a church or religious organization should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, a church or religious organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

### **Public forum**

Sometimes a church or religious organization invites several candidates to speak at a public forum. A public forum involving several candidates for public office may qualify

as an exempt educational activity. However, if the forum is operated to show a bias for or against any candidate, then the forum would be prohibited campaign activity, as it would be considered intervention or participation in a political campaign. When an organization invites several candidates to speak at a forum, it should consider the following factors:

- **whether questions for the candidate are prepared and presented by an independent nonpartisan panel,**
- **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,**
- **whether each candidate is given an equal opportunity to present his or her views on the issues discussed,**
- **whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and**
- **whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.**

The following are two examples of situations where a church or religious organization invites a candidate(s) to speak before the congregation.

**Example 1:** Minister E is the minister of Church N. In the month prior to the election, Minister E invited the three Congressional candidates for the district in which Church N 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 wide variety of topics from the congregation. Minister E'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 Church N.

**Example 2:** The facts are the same as in *Example 1* 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, Church N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Church's invitation to speak. Minister E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Church N's actions **do not constitute political campaign intervention**.

**Example 3:** Minister F is the minister of Church O. The Sunday before the November election, Minister F invited Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X stated, "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 invited no other candidate to address her congregation during the Senatorial campaign. Because these activities took 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**.

## Speaking as a non-candidate

Like any other IRC section 501(c)(3) organization, a church or religious organization may invite political candidates (including church members) to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she:

- (a) currently holds, or formerly held, public office;**
- (b) is considered an expert in a non-political field; or**
- (c) is a celebrity or has led a distinguished military, legal, or public service career.**

A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publically recognized by the organization, or if the candidate is invited to speak at an event in a non-candidate capacity, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- **Whether the individual is chosen to speak solely for reasons other than candidacy for public office;**
- **Whether the individual speaks only in a non-candidate capacity;**
- **Whether either the individual nor any representative of the church makes any mention of his or her candidacy or the election;**
- **Whether any campaign activity occurs in connection with the candidate's attendance;**
- **Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and**
- **Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.**

In addition, the church or religious organization should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event. Below are examples of situations where a public official appears at a church or religious organization in an official capacity, and not as a candidate.

**Example 1:** Church P, a section 501(c)(3) organization, is located in the state capital. Minister G customarily acknowledges the presence of any public officials present during services. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attended a Wednesday evening prayer service in the church. Minister G acknowledged the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have worshipping with us this evening Lieutenant Governor Y." Minister G made no reference in his welcome to the Lieutenant Governor's candidacy or the election. **Minister G's actions do not constitute political campaign intervention by Church P.**

**Example 2:** Minister H is the minister of Church Q. Church Q, a section 501(c)(3) organization, is building a community center. Minister H invites Congressman Z, the representative for the district containing Church Q, to attend the groundbreaking ceremony for the community center. Congressman Z is running for reelection at the time. Minister H makes no reference in her introduction to Congressman Z's candidacy or the election. Congressman Z also makes no reference to his candidacy or the election and does not do any fundraising while at Church Q. **Church Q has not intervened in a political campaign.**

**Example 3:** Church X is a section 501(c)(3) organization. X publishes a member newsletter on a regular basis. Individual church members are invited to send in updates about themselves which are printed in each edition of the newsletter. After receiving an update letter from Member Q, X prints the following: "Member Q, is running for city council in Metropolis." The newsletter does not contain any reference to this election or to Alumnus Q's candidacy other than this statement of fact. **Church X has not intervened in a political campaign.**

**Example 4:** Mayor G attends a concert performed by a choir of Church 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, S's minister 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, **Church S has engaged in political campaign intervention.**

### Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

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

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

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. The IRS will take all the facts and circumstances 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 for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

**Example 1:** M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in the voter guide section above. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites 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.

**Example 2:** Church N, a section 501(c)(3) organization, maintains a web site that includes such information as staff listings, directions to the church, and descriptions of its community outreach programs, schedules of services, and school activities. On one page of the web site, Church N describes a particular type of treatment program for homeless veterans. This section includes a link to an article on the web site of O, a major national newspaper, praising Church N's treatment program for homeless veterans. The page containing the article on O's web site does not refer to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. **Church N has not intervened in a political campaign** by maintaining a link on O's web site because the link is provided for the exempt purpose of educating the public about its programs; the context for the link, the relationship between Church N and O, and the arrangement of the links going from Church N's web site to the endorsement on O's web site, do not indicate that Church N was favoring or opposing any candidate.

**Example 3:** Church P, a section 501(c)(3) organization, maintains a web site 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 web site, "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.**

## Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the church or religious organization, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the church or religious organization has engaged in prohibited political campaign activity include the following:

- **Whether the good, service, or facility is available to the candidates on an equal basis,**
- **Whether the good, service, or facility is available only to candidates and not to the general public,**
- **Whether the fees charged to candidates are at the organization's customary and usual rates, and**
- **Whether the activity is an ongoing activity of the organization or whether it is conducted only for the candidate.**

**Example 1:** Church K is a section 501(c)(3) organization. It owns a building that has a large basement hall suitable for hosting dinners and receptions. For several years, Church K has made the hall available for rent to members of the public. It has standard fees for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Church K rents the hall on a first come, first served basis. Candidate P's campaign pays the standard fee for the dinner. **Church K is not involved in political campaign intervention** as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner.

**Example 2:** Church L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Church L has never rented its mailing list to a third party. The campaign committee of Candidate Q, who supports funding for faith-based programs, approaches Church L. Candidate Q's campaign committee offers to rent Church L's mailing list for a fee that is comparable to fees charged by other similar organizations. Church L rents its mailing list to Candidate Q's campaign committee. Church L declines similar requests from campaign committees of other candidates. **Theater L has intervened in a political campaign.**

### **Effect of Conducting Multiple Activities**

Although each of the activities described above in this fact sheet is described separately, an organization might combine one or more of the types of activity described above. For example, an organization leader may speak about an issue at an event where a candidate appears, or a voter guide might be distributed at a candidate forum. Where there is a combination of activities, the interaction among them may affect whether or not the organization is engaged in political campaign intervention.

Churches should also see Publication 1828, Tax Guide for Churches and Religious Organizations.

## **Lobbying Activity**

In general, no organization, including a church, may qualify for IRC section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). An IRC section 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

*Legislation* includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices), or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.

A church or religious organization will be regarded as *attempting to influence legislation* if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Churches and religious organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, churches may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

### **Measuring Lobbying Activity**

#### ***Substantial part test***

Whether a church's or religious organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial. Churches must use the substantial part test since they are not eligible to use the expenditure test described in the next section.

#### ***Consequences of excessive lobbying activity***

Under the *substantial part test*, a church or religious organization that conducts excessive lobbying activity in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, a religious organization is subject to an excise tax equal to five percent of its lobbying expenditures for the year in which it ceases to qualify for exemption. Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in loss of tax-exempt status.

#### ***Expenditure test***

Although churches are not eligible, religious organizations may elect the expenditure test under IRC section 501(h) as an alternative method for measuring lobbying activity. Under the expenditure test, the extent of an organization's lobbying activity will not

jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in IRC section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000.

Religious organizations electing to use the expenditure test must file IRS Form 5768, *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization To Make Expenditures To Influence Legislation*, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed. Religious organizations may wish to consult their tax advisors to determine their eligibility for, and the advisability of, electing the expenditure test.

***Consequences of excessive lobbying activity***

Under the *expenditure test*, a religious organization that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.

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Mr. Reeves is a native of Austin, a member of the State Bar of Texas and the First Baptist Church of Austin. He is a 2000 graduate of the University of Texas and a 2003 graduate of the Texas Tech School of Law. Before joining the CLC, he served as Staff Attorney for the Baptist Joint Committee for Religious Liberty in Washington, D.C.