THE REAL RULES -

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Congregations and the IRS Guidelines On Advocacy, Lobbying, and Elections

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Introduction

Religious individuals and groups have played a prophetic role in public life throughout history by calling attention to oppression, demanding change, and holding leaders and institutions accountable for their actions and policies. While this is still true in the United States today, too many people are under the false impression that religious organizations cannot have a voice in the public policy arena as a result of the Constitutional separation of church and state or Internal Revenue Service (IRS) regulations. In reality, there are many activities that any religious group can do without jeopardizing its nonprofit tax-exempt status. There are restrictions on certain kinds of political actions, but the range of what is acceptable is wide enough to exhaust the time and resources of any congregation without crossing any regulatory lines.

This guide is composed largely of direct quotes from the most recent and relevant IRS publications, organized in a way that is intended to be user-friendly. All references are clearly documented with footnotes. The most authoritative IRS publication on nonprofits and electoral/political activity is Revenue Ruling 2007-41, released June 18, 2007. While an excellent source of information, it is not designed for a general audience. The more accessible IRS resource is publication 1828, *Tax Guide for Churches & Religious Organizations* (Rev. 08-2015). To access these documents, see “Section F: Additional Information and References” on page 21.

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Important Disclaimer

This resource is not intended to be formal legal advice; nor should it be used in place of legal counsel. It is intended to clarify Internal Revenue Service guidelines as they relate to religious organizations in the hope that more congregations will (1) choose to become involved in working for justice; and (2) know when it is important to seek legal advice.

Acknowledgements

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TABLE OF CONTENTS

Introduction 2 **Summary: The Three-Point System** 4 **A. Tax-Exempt Status: What is a 501(c)(3)?** 5

B. Advocacy and Lobbying
1) General Issue Advocacy 6
2) Influencing Legislation (Lobbying) 6
a) Measuring Lobbying: the Substantial Part Test
b) Lobbying During Election Years
c) Nonpartisan Analysis

C. Political Campaign Activities
1) General Guidelines 8
2) Individual Activity by Religious Leaders 8

D. Issue Advocacy v. Political Campaign Intervention
1) General Guidelines 10
2) Inviting a Candidate to Speak 12
a) Equal Opportunity to Participate
b) Public Forum
c) Speaking as a Non-Candidate
3) Voter Education, Voter Registration and Get-Out-The-Vote-Drives 15
4) Business Activity 17
a) Websites
b) Other Internet Communications

E. IRS Enforcement and Consequences
1) Enforcement 20
2) Consequences of Political Campaign Activity 20

F. Additional Information and References 21

SUMMARY: THE THREE-POINT SYSTEM

The IRS regulations on the activities of congregations can be summarized as follows:

1. **ISSUE ADVOCACY: Without limits on time, effort and expense,** congregations and their representatives may engage in **issue advocacy** through activities such as educating and mobilizing congregants and the general public. Example: encouraging the public to show concern for global warming by reducing carbon emissions. Please note that issue advocacy is only acceptable if it does not involve political campaign intervention (see below).

2. **LOBBYING: Within narrow limits on time, effort and expense,** congregations and their representatives may engage in **lobbying**—defined by the IRS as advocating for or against specific pieces of legislation—as an **"**unsubstantial**"** portion of an organization's activities. The IRS has not provided a strict rule for what constitutes "unsubstantial," and evaluates on a case-by-case basis. However, courts and the IRS have ruled in the past that lobbying activity constituting 5% or less of total activities is acceptable. "Total activities" includes the total amount of money, staff, and volunteer time that goes into running the organization. While the 5% amount is not a strict rule, it can be used as a guidepost for an organization's lobbying activities. Example: encouraging a city council, state legislature, and/or Congress to pass a particular law to reduce carbon emissions.

3. **POLITICAL CAMPAIGN INTERVENTION: There is a total limit on partisan activity,** which the IRS calls **political campaign intervention**. Congregations and their representatives can do nothing that advocates for or against candidates for public office or political parties. This includes fundraising on behalf of candidates and donating meeting space, among other things. Example: supporting a particular candidate or party because of their stance on carbon emissions. Election-related activities such as candidate questionnaires and forums may be acceptable if certain guidelines are followed; consult section C., "Political (Electoral) Activities" of this guide for details.

Please Note:

The restrictions on lobbying and political campaign intervention described here apply only to a congregation as a legal entity, or to a person or group speaking in the name of the congregation. A minister or congregation member may freely engage in these activities as an individual. However, if the person(s) are identified by or likely to be associated with the congregation, it may be helpful to clearly state that they are speaking as individuals.

Also, Congress has imposed special limitations, found in section 7611 of the Internal Revenue Code, on how and when the IRS may conduct civil tax inquiries and examinations of churches. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization claiming to be a church or convention or association of churches may not qualify for exemption.[1]

[1]IRS Website "Special Rules Limiting IRS Authority to Audit a Church" Reviewed or Updated June 8, 2016.

A. TAX-EXEMPT STATUS: WHAT IS A 501(c(3)?

Congregations and religious organizations, like many other charitable organizations, qualify for exemption from federal income tax under IRC Section 501(c)(3) and are generally eligible to receive tax-deductible contributions. To qualify for tax-exempt status, the organization must meet the following requirements:

- the organization must be organized and operated exclusively for religious, educational, scientific or other charitable purposes;
- net earnings may not inure to the benefit of any private individual or shareholder; •

no substantial part of its activity may be attempting to influence legislation; • the

organization may not intervene in political campaigns; and

- the organization's purposes and activities may not be illegal or violate fundamental public policy.

Automatic Exemption for Churches

Churches that meet the requirements of IRC Section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because this recognition assures church leaders, members and contributors that the church is recognized as exempt and qualifies for related tax benefits. For example, contributors to a church that has been recognized as tax exempt would know that their contributions generally are tax-deductible. [2]

Please Note:[3]

The term "church" is found, but not specifically defined, in the Internal Revenue Code. IRS Publication 1828 uses the word church, "in its generic sense as a place of worship including, for example, mosques and synagogues." *The Real Rules* uses "congregation," believing it to be a more inclusive term. It should be noted that the IRS makes a distinction between congregations (which includes conventions and associations of congregations as well as integrated auxiliaries of a congregation) and religious organizations. "Religious organizations that are not [congregations] typically include nondenominational ministries, interdenominational and ecumenical organizations and other entities whose principal purpose is the study or advancement of religion." For a complete definition of terms, see the glossary at the end of IRS Publication 1828.

[2]The first portion of Section A is a direct quote from *Tax Guide for Churches and Religious Organizations*. IRS Publication 1828 (Rev. 08-2015), p. 2.

[3]This note is adapted from IRS Publication 1828, p. 1.

B. ADVOCACY and LOBBYING

1) General Issue Advocacy

There is no limit on the amount of time, effort, or expense congregations may devote to working on general issues such as civil rights, civil liberties, economic justice, the environment, or peace. Some of the many acceptable activities include: advocating positions in the media and to elected officials; educating and mobilizing congregants and the general public, and working in local coalitions or partnerships on issues of social justice.

2) Influencing Legislation (Lobbying) [4]

In general, no organization, including a congregation, may qualify for Internal Revenue Code 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). "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
- [Action] by the public in a referendum, ballot initiative, constitutional amendment or similar procedure.

[Legislation] does not include actions by executive, judicial, or administrative bodies.

A congregation 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.

a) Measuring Lobbying: the Substantial Part Test[5]

Whether or not a congregation'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.

According to the Alliance for Justice, "the IRS has provided no absolute guidance on how much lobbying is "substantial," but most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying."[6]

Although most 501(c)(3) organizations are required to report lobbying on Form 990, Schedule C, *Political Campaign and Lobbying Activities*, churches are exempt from having to file a Form 990.[7]

[4]This first section of B2 is a direct quote from IRS Publication 1828, p. 5.

[5]The first paragraph of B2a is a direct quote from IRS Publication 1828, p. 5.

[6]*Public Charities Can Lobby: Guidelines for 501(c)(3) Public Charities*. Alliance for Justice. Accessed September 2016. P. 2.

[7]IRS Publication 4221-PC *Compliance Guide for 501 (c)(3) Public Charities,* Rev. 7-2014, p.10.

b) Lobbying During Election Years[8]

Congregations may support or criticize legislators, lobby them, and work to hold them accountable. However, close to an election, the IRS may view a sudden entry into the political arena as partisan. A track record of consistent activity is the best safeguard against these charges.

Congregations may encourage voting for or against particular ballot measures in an election year—this counts as lobbying and not political campaign intervention. However, "state and local election laws also govern efforts for or against ballot measures. Check with people who know your state and locality's election laws to determine whether your house of worship's activities around a ballot measure trigger any obligations to register or report to state or local election authorities."[9]

c) Nonpartisan Analysis[10]

Congregations may sponsor and distribute to their members, the general public, or governmental bodies, a "nonpartisan analysis, study, or research" of legislation (including ballot measures, referenda, state constitutional amendments, city charter amendments, etc.) without the activity being considered lobbying or partisan. Such nonpartisan analysis must be independent and objective in order to not count as lobbying. However, it "may advocate a particular position or viewpoint so long as there is sufficiently full and fair presentation of the pertinent facts to enable the public or an individual to form an opinion or conclusion, as opposed to the mere presentation of unsupported opinion".

If you plan to produce an analysis that will be used for lobbying, meaning that it will encourage readers to take action on legislation (which is permissible), be sure to include the money and time spent on it in your substantial part calculations.

Please note that some states have different laws that may apply. In particular, some states require reporting of activity and/or expenditures related to lobbying on ballot measures.

[8]Section B2b is derived from *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*. Colvin, Gregory L. and Lowell Finley. Alliance for Justice. (1996), p. 18.

[9]*Vote 2016: A Campaign Season Guide for Houses of Worship*. The Interfaith Alliance. P. 7. [10] Section B2c is derived from *Lobbying Issues in Exempt Organizations*, Judith E. Kindell & John F. Reilly. Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996). p. 274, 302.

C. POLITICAL CAMPAIGN ACTIVITIES[11]

1) General Guidelines

A 501(c)(3) organization is "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. 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 excise tax."

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."

2) Individual Activity by Religious Leaders

The political campaign activity prohibition isn't intended to restrict free expression on political matters by leaders of churches or religious organizations 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), religious leaders can't make partisan comments in official organization publications or at official church functions. To avoid potential attribution of their comments outside of church functions and publications, religious leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the 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 doesn't constitute political campaign intervention by Church J.

[11] Section C is a direct quote from IRS Publication 1828, p.7-8.

EXAMPLE 2

Minister B is the minister of Church K, 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 re-elected. Minister B doesn't say he is speaking on behalf of Church K. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church K. Because Minister B didn't 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 K, his actions didn't constitute political campaign intervention by Church K.

EXAMPLE 3

Minister C is the minister of Church I, a Section 501(c)(3) organization. Church I publishes a monthly church newsletter that is distributed to all church members. In each issue, Minister C has a column titled "My Views." The month before the election, Minister C states in the "My Views" column, "It is my personal opinion that Candidate U should be re-elected." For that one issue, Minister C 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. Because the endorsement appeared in an official publication of Church I, it constitutes political campaign intervention by Church I.

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 concluded 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 by Church M.

D. ISSUE ADVOCACY VS. POLITICAL CAMPAIGN INTERVENTION[12]

1) General Guidelines

Section 501(c)(3) organizations may 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 the incumbent candidate for nomination 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 hasn't been raised as an issue distinguishing -

[12] Unless otherwise noted, all of Section D is a direct quote from IRS Publication 1828, p.9-18

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 doesn't mention the election or the candidacy of Senator C or distinguish Senator C from any opponent. The timing of the advertising 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 underfunded. Although the advertisement doesn't say anything about Governor E's position on funding for faith-based 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 can didate, 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 a 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 the 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 doesn't mention the name of any candidate or any political party. However, at the end of the speech, P states, "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 won't 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 a prominent issue in a campaign that distinguishes the candidates.

2) Inviting a Candidate to Speak[13]

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 candidates). Candidates may also appear without an invitation at organization events that are open to the public.

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:

- 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.

a) Equal Opportunity to Participate

Like any other 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.

b) 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 candi dates to speak at a forum, it should consider:

- whether questions for the candidate are prepared and presented by an independent nonpartisan panel;

[13] Section C2 is a direct quote from IRS Publication 1828, p.11-13.

- 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.

A candidate may seek to reassure the organization that it's 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. The following are examples of situations where a church or religious organization invites candidates to speak before the congregation.

EXAMPLE 1

Minister E is the minister of Church N, a Section 501(c)(3) organization. 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 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 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, a Section 501(c)(3) organization. The Sunday before the 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 by Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute politi cal campaign intervention.

c) Speaking as a Non-Candidate

Like any other 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 a church-sponsored event does not, by itself, cause the organization to be involved in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include:

- whether the individual speaks only in a non-candidate capacity,
- whether either the individual or 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 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 doesn't 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 shouldn't 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.

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 worshiping 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, a Section 501(c)(3) organization. Church Q 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 re-election 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. Church X 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 Q, Church 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 Member Q’s candidacy other than this statement. 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 re-election, and the concert takes place after the primary and before the general election. During the concert, Church S’s minister 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, Church S has engaged in political campaign intervention.

3) Voter Education, Voter Registration, and Get-Out-The-Vote Drives[14]

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.

Like other 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. These 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.

A careful review of the following facts and circumstances may help determine whether a church or religious organization’s publication or distribution of voter guides constitutes prohibited political campaign activity:

- whether the candidates’ positions are compared to the organization’s position,
- whether the guide includes a broad range of issues that the candidates would address if elected to the office sought,
- whether the description of issues is neutral,
- whether all candidates for an office are included, and

[14] Section C3 is a direct quote IRS Publication 1828, p.14-15.

- 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.

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.

EXAMPLE 3

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 volunteers staffing the booth or in the materials available in 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 4

Church C is a Section 501(c)(3) organization. Church C's activities include educating its members on family issues involving moral values. Candidate G is running for state legislature and an important element of her platform is challenging the incumbent's position on family issues. Shortly before the election, Church C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, Church 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, Church C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, Church 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. Church C is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

4) 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. (The tax treatment of income from unrelated business activities follows.) 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:

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

The following are examples of acceptable and unacceptable business activity.

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 the public. It has standard fees for renting the hall based on the number of people in attendance. 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 isn't 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 its members. Church L has never rented the mailing list to a third party. The campaign committee of Candidate A, who supports funding for faith-based programs, approaches Church L and offers to rent Church L's mailing list for a fee that is comparable to fees charged by similar organizations. Church L rents the list to Candidate A's campaign committee, but declines similar requests from campaign committees of other candidates. Church L has intervened in a political campaign.

a) Websites

The Internet has become a widely used communications tool. Section 501(c)(3) 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 relevant to the public.

A website is a form of communication. If an organization posts something on its website 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 website, the organization is responsible for the

consequences of establishing and maintaining that link, even if the organization doesn't 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. 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 for the link on the organization's website, whether all candidates are represented, any exempt purpose served by offering the link and the directness of the links between the organization's website and the Web page that contains material favoring or opposing a candidate for public office.

EXAMPLE 1

Church P, a Section 501(c)(3) organization, maintains a website that includes biographies of its ministers, times of services, details of community outreach programs and activities of members of its congregation. B, a member of Church P's congregation, 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.

EXAMPLE 2

Church N, a Section 501(c)(3) organization, maintains a website that includes staff listings, directions to the church and descriptions of its community outreach programs, schedules of services and school activities. On one page of the website, Church N describes a particular type of treatment program for homeless veterans. This section includes a link to an article on the website of O, a major national newspaper, praising Church N's treatment program for homeless veterans. The page containing the article on O's website doesn't refer to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's website, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that hasn't yet occurred. Church N has not intervened in a political campaign by maintaining a link on O's website 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 website to the endorsement on O's website don't indicate that Church N was favoring or opposing any candidate.

EXAMPLE 3

Church M, a Section 501(c)(3) organization, maintains a website and posts an unbiased, nonpartisan voter guide. For each candidate covered in the voter guide, Church 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]." Church 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.

b) Other Internet Communications

Like a web site, internet activities such as chat rooms, discussion boards, email groups, and listservs are forms of communication. While the IRS has not provided guidance in this area, any organization that uses these or other internet communications in an official organizational capacity would do well to treat them in the same manner as a printed communication, with the same guidelines and prohibitions.

Internet communications used by members of a congregation in a non-official capacity may or may not be subject to the IRS guidelines. Those utilizing technology owned by, maintained by or held in the name of the congregation, such as a listserv program, could be interpreted as an official activity.

Lacking clear guidance, the Unitarian Universalist Association of Congregations, based on consultation with legal counsel and our concern for congregational well-being, recommends that congregations consider the IRS guidelines as applying to any internet communications activity that is owned or supported by the congregation. While the IRS may find that communications fora that originate outside the congregation, such as a free discussion groups, might not be subject to the guidelines, the UUA recommends ensuring that equal access is given to any group that may want to discuss partisan issues. For example, a congregation that allows an unofficial discussion group of members of the congregation who are affiliated with one political party should also allow unofficial groups from other parties. The congregation may also reasonably determine that all partisan communications should be prohibited in these fora.

E. IRS Enforcement and Consequences

1) Enforcement[15]

Congress has imposed special limitations, found in section 7611 of the Internal Revenue Code, on how and when the IRS may conduct civil tax inquiries and examinations of churches. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization claiming to be a church or convention or association of churches may not qualify for exemption.

2) Consequences of Political Campaign Activity[16]

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.

Please note that a congregation that engages in any political campaign activity also needs to determine whether it complies with the appropriate federal, state or local election laws, as these may differ from the requirements under IRC Section 501(c)(3).

For further information about the excise tax, see IRS Publication 1828*, Tax Guide for Churches and Religions Organizations*. Rev. 8-2015, p.18.

-15 IRS Website "Special Rules Limiting IRS Authority to Audit a Church" Reviewed or Updated June 8, 2016. [16] Section E2 is a direct quote IRS Publication 1828, p.18.

F. ADDITIONAL INFORMATION AND REFERENCES

Internal Revenue Service
http://www.irs.gov

Listed in order by date released, reviewed or updated

• *Special Rules Limiting IRS Authority to Audit a Church*. Reviewed or Updated June 8, 2016. • *Tax Guide for Churches & Religious Organizations*. Publication 1828 (Rev. 08-2015). • *Compliance Guide for 501 (c)(3) Public Charities*, Publication 4221-PC (Rev. 7-2014). • Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007).
• *Lobbying Issues in Exempt Organizations* Judith E. Kindell & John F. Reilly. Continuing Professional Education Technical Instruction Program for Fiscal Year 1997, 277 n.20 (1996).

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Phone: 202-822-6070
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- *The Rules of the Game: A Guide to Election-Related Activities for 501(c)(3) Organizations*
- *Public Charities Can Lobby: Guidelines for 501(c)(3) Public Charities*.

The Interfaith Alliance and The Interfaith Alliance Foundation
Phone: 202-639-6370
Email: tia@interfaithalliance.org
Web: http://www.interfaithalliance.org

- *Vote 2016: A Campaign Season Guide for Houses of Worship*