

What Can Churches Do Regarding Civil Elections and Legislation?

The American Family Association Center for Law & Policy offers the following guidance to assist Christians and churches in following God and American law in carrying out their civic responsibilities. For further information, contact us at clp@afa.net.

Inalienable Rights and Tax exempt Status

The rights to freedom of conscience, freedom of speech, freedom of assembly, free exercise of religion and the right to petition the government for redress of grievances are guaranteed by the U.S. Constitution. Consequently, the government cannot deprive Christians or churches of those rights without their consent. However, when a Church accepts tax exempt status, it falls under the IRS restrictions regarding lobbying and political activity.

Distinction Between Preaching and Teaching / Lobbying / Political Activity

The IRS cannot restrict a church's preaching or teaching on topics of civic concern, such as abortion, homosexual marriage or economic justice, even if they are hot-button issues in a current political campaign. IRS restrictions only apply when reference is made to specific legislation or to an announced candidate for public office.

Understanding the difference between what the IRS means by “*lobbying activity*” and what the IRS means by “*political activity*” is important, since a tax exempt organization can engage in some lobbying but no political activity. For IRS purposes, *lobbying* means attempting to influence legislation. The IRS defines the word *political* much more narrowly than it is used in normal conversation. For IRS purposes, *political* refers only to supporting or opposing a candidate for office.

Lobbying

A church can lobby for or against legislation, the passage of a referendum, or the confirmation of a political appointee, and can spend no more than an “insubstantial” amount of its budget for such lobbying. *Seasongood v. Comm’r*, 227 F.2d 907, 912 (6th Cir. 1955).

At least one court has found that if a church’s lobbying efforts are “substantial and continuous;” if combined direct and grassroots lobbying efforts absorb 20% or more of the church’s budget; or if the church spends 5% or more of its budget on “grassroots” lobbying, the church may lose its tax exemption. *See, Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 855 (10th Cir.) *cert. denied*, 414 U.S. 864 (1973).

However, internal IRS guidelines state that the agency will consider “all the pertinent facts and circumstances in each case” to determine whether a group’s lobbying activities are “substantial” or not. This will include consideration of “the time devoted by the organization to

the activity” as well as “assets devoted to the activity” and expenditures. *See* I.R.S. Tax Guide for Churches and Other Religious Organizations (1994). Thus, it appears that the IRS does not offer any clear guidelines on this subject, but will act only on a case by case basis.

IRS Rules Distinguish between Direct Lobbying and Grassroots Communications

Direct Lobbying is communication to a legislator, staffer, or any other government employee who may participate in the formulation of legislation if the following three conditions are met:

- A. The purpose of the communication is to influence specific legislation.
- B. The communication refers to *specific legislation, i.e.*,
 - 1) a bill,
 - 2) proposed legislation, or
 - 3) any policy proposal requiring a legislative response; and
- C. The communication expresses a view on that legislation.

Communication with the public on an initiative, referendum or constitutional amendment is also *direct* lobbying. (In those cases, the public does the legislating.)

Grass roots lobbying is an attempt to influence legislation by affecting public opinion. 26 U.S.C.A. § 4911 (d)(1)(A). In order to constitute *grass roots lobbying*, the following three elements must be present:

- A. The communication refers to specific legislation;
- B. The communication reflects a view on that legislation; and
- C. The communication encourages the recipient to take lobbying action on that specific legislation (*e.g.*, *asking a Sunday School class to, “call your Representative and tell him to support the Federal Marriage Amendment.”*)

Lobbying is not Political Activity

Political campaign activity - An organization that “participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office” does not qualify for tax exempt status. 26 U.S.C.A. § 501(c)(3). Unlike the “substantial” test for lobbying activity, the prohibition against political campaign activity is absolute, if an organization is to qualify as tax exempt under § 501(c)(3) of the tax code.

Participation or Intervention by the Organization

An organization is deemed to participate or intervene in a political campaign if it contributes, endorses, or distributes “partisan” propaganda. A tax-exempt organization may prepare and distribute “educational” materials that advocate a particular viewpoint or position relevant to political issues, so long as a “full and fair exposition of the pertinent facts is also

presented.” 26 CFR § 1.501(c)(3)-1(d)(3)(1).

Political campaign

In order to constitute a *political campaign*, a candidate must be running a campaign for public elective office. “Campaign” should be given its common meaning, as understood by the man on the street. *Norris v. United States*, 86 F.2d 379 (8th Cir. 1936), *rev’d on other grounds*, 300 U.S. 564 (1937).

Candidate

Unless a person is a candidate, the prohibition against support or opposition does not apply. No clear standard exists for when a person becomes a candidate. “On the one hand, once an individual declares his candidacy for a particular office, his status as a candidate is clear.” *“Lobbying and Political Activities of Tax exempt Organizations”* Joint Comm. on Taxation, (JCS-5-87), March 11, 1987, at 14. “On the other hand, the fact that an individual is a prominent political figure does not automatically make him a candidate, even if there is speculation regarding his possible future candidacy for particular offices.” *Id.*

Public Office

If a job is filled through the general election ballot, it should be treated as a public office. Such an office may perform an executive, legislative or judicial function at a federal, state or local level. An attempt to influence a federal judge’s confirmation by the U.S. Senate is lobbying, not political campaign activity. IRS Notice 88-76, 1988-2 C.B. 392.

CONSEQUENCES - If an organization operating under § 501(c)(3) engages in any political campaign activity, the IRS can revoke the organization’s tax exempt status and assess punitive taxes against both the organization and its managers.

IRS Regulations do not Restrict Private Lobbying Activity

The prohibition against participation by a tax-exempt organization in a political campaign does not extend to the private actions of individuals who work for the organization. However, an individual may not use exempt organization resources, including letterhead or postage to publicize that endorsement. (*Advice to Pastors: Do not use the pulpit or a Sunday School class to give a candidate your personal endorsement.*)

Therefore, as an individual, a pastor may endorse a candidate, make a political contribution, join a PAC, volunteer as a campaign worker, run for office, or hold elective office. However, a pastor cannot engage in those activities on behalf of his church. (When speaking from the pulpit, the pastor is generally perceived to be in an official role and acting on behalf of his church.) The pastor must not use church resources for what he intends to be private political activity.

What can a Church do to equip its members to vote as Christian citizens without violating IRS rules?

1. Preach and teach what the Bible says regarding the issues of the day. Train your congregation to evaluate a candidate's platform and behavior in light of biblical principles.
2. Teach your congregation what the Bible says about the role of government and the responsibilities of Christian citizens. Train your congregation to discern how a candidate's campaign promises reflect his or her view of the role of government.
3. Preach on the character required for godly leadership. Train your congregation to evaluate a candidate's character.
4. Pray for our leaders. Pray for the candidates. Pray over the problems facing our nation and communities. Pray for conviction, repentance, restoration, wisdom, guidance, judgment, revival, obedience, righteousness, justice, humility and peace.
5. Conduct nonpartisan voter registration at a church function.
6. Announce impending elections and encourage your congregation to be good stewards of their voting rights.
7. If a church sells ads in its bulletin or other publications, it may publish the political ads of all candidates who request to purchase them at the regular rate for such an ad.
8. Distribute nonpartisan voter guides such as those prepared by Right to Life or the Christian Coalition (see guidelines below.)
9. Allow a candidate to give a testimony, request prayer, lead in prayer, read Scripture, preach or give a biblical exhortation as part of a worship service. (This should be a religious activity - not a political one. A congregation is free to determine the spiritual qualifications for such participation in its religious services. A similar opportunity need not be extended to another candidate who lacks the requisite spiritual qualifications, *i.e.*, church membership, profession of faith in Christ or submission to the authority of Scripture.) However, if a church chooses to have a candidate merely greet the congregation or make a political speech, the church must provide the same opportunity to other candidates upon request.
10. Host a candidate Forum or Issues Forum where all viable candidates are invited and allowed to speak and answer questions.
11. Consider renting your church mailing list to candidates at the market rate. However, if you decide to rent your list to one candidate, you cannot refuse to rent it to any other candidate.
12. Consider allowing all candidates to distribute campaign literature in the church parking lot.

13. Provide transportation to the polls for church members who need it.
14. Assist church members who need to vote absentee in obtaining a ballot.
15. Pray for the election.

Election Activities a Church Must Avoid

1. A church cannot endorse or oppose a candidate, either directly or indirectly.
2. A church cannot contribute to a candidate or political committee (neither money nor in-kind donations such as free use of mailing lists, space or office equipment.)
3. A church cannot distribute election campaign materials that clearly favor a candidate or party. (A church would not be required to stop someone who, acting on his own, was distributing such materials on church property.)
4. A church cannot allow a candidate to use its facilities to solicit campaign contributions.

Voter Guides

A church or other tax-exempt organization may distribute a nonpartisan voter guide. The guide must be “neutral” and not reflect an endorsement of a candidate or party. The following guidelines should be followed in preparing a permissible voter guide:

1. The questions asked of candidates must cover a broad range of issues
2. Let an incumbent’s voting record speak for itself.
3. Do not bias your presentation of the candidates’ voting records so that a *Yes* means they voted the way you like and a *No* means they disagreed with your position.
4. Although political action committees can use plus or minus percentages to characterize a candidate’s voting record as “pro-family” or “pro-life” or “anti-gun control,” a tax-exempt organization cannot.
5. Do not use loaded terms such as “baby killer” or “pro-family.” A nonpartisan voter guide should be a tool that a member of either the AFA or the ACLU could use to evaluate candidates.
6. If a candidate refuses to respond to your questionnaire, the voter guide may report that refusal and give that candidate’s telephone number.

A Biblical Perspective on Church/State Issues

A Christian's citizenship is, first of all, in heaven. (*For our citizenship is in heaven, from which also we eagerly wait for a Savior, the Lord Jesus Christ. Philippians 3:20.*) In a sense, as Christian Americans, we reside in the United States as resident aliens. While we live under the laws of the United States and it is our right and responsibility to participate in the government as citizens, we endure as foreigners America's refusal to recognize the crown rights of King Jesus. We obey the civil laws, but our way of life surpasses the laws. (*I Peter 2:13-17*). Christ has posted us in America as his ambassadors. (*Therefore, we are ambassadors for Christ, as though God were entreating through us; we beg you on behalf of Christ, be reconciled to God. 2 Corinthians 5:20*). We must not neglect or desert our posts.

The Bible declares that God has ordained civil governments and has put rulers in place to carry out his purposes. (*Let every person be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Romans 13:1. ... The Most High is ruler over the realm of mankind, and bestows it on whom He wishes, and sets over it the lowliest of men. Daniel 4:17b*). The Bible provides some direct commands to Christians regarding the civil government and provides broader principles on how a Christian should live in society:

1. Pray for elected officials, judges and administrative officers. (*First of all, then, I urge that entreaties and prayers, petitions and thanksgivings, be made on behalf of all men, for kings and all who are in authority, in order that we may live a tranquil and quiet life in all godliness and dignity. I Timothy 2:1,2*).
2. Pay your taxes, honor government officials and obey civil laws unless to do so would require you to violate God's commands. (*Romans 13:1-7; I Peter 2:13-17; Proverbs 24:21; Acts 5:29*).
3. Pursue peace with all men. (*Hebrews 12:14*) Love your neighbor. (*Luke 10:27*).
4. Preach the Word . . . reprove, rebuke, exhort with great patience and instruction, be sober in all things, endure hardship, do the work of an evangelist . . . (*2 Timothy 4:2-5; Matthew 5:14, 15*).
5. Exercise dominion and stewardship over the part of creation that is under your control. (*Genesis 1:28*).

Analyze Your Views Regarding Involvement in Society and Culture

In the book, *Christ and Culture*, H. Richard Niebuhr identified five views that Christians have taken regarding involvement in society and culture. The spectrum of these views ranges from the Amish through various Protestant traditions and Roman Catholicism to modern Liberalism. Analyze which view matches your understanding and whether that same view describes your actions:

- (1) **“Christ against culture”** urges Christians to shun cultural and political life because

these activities are corrupted by sin. Believers should instead concentrate their efforts on cultivating a deep spiritual life and preparing for heavenly existence.

(2) **“Christ and culture in paradox”** holds that since human selfishness, sin and ungodliness are pervasive in the world, Christians cannot create a righteous society by engaging in cultural activity. Rather, Christians ought to retard the spread of evil in their countries by promoting evangelism and discipleship.

(3) **“Christ the transformer of culture”** holds that although sin pervades all human action, Christ is our Redeemer and is sovereign over all human activity. Therefore, Christians should work to restructure cultural life based upon biblical standards.

(4) **“Christ above culture”** holds that Christians should work to bring all social institutions under the jurisdiction of the Church.

(5) The **“Christ of culture”** view sees little tension between the church and the world, emphasizing Christ’s teachings and actions and those doctrines about Him that seem consistent with the best in civilization.¹

¹ Gary Scott Smith, *Introduction to Consultation on the Biblical Role of Civil Government* 1, 2 (Geneva College) 1987.