

LAW OFFICES  
**WEBSTER, CHAMBERLAIN & BEAN**  
1747 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006

ARTHUR L. HEROLD  
ALAN P. DYE  
EDWARD D. COLEMAN  
JAY H. ROTZ  
FRANK M. NORTHAM  
JOHN W. HAZARD, JR.  
HUGH K. WEBSTER  
DAVID P. GOCH  
CHARLES M. WATKINS  
DOUGLAS W. MACDONALD  
HEIDI K. ABEGG  
DAVID M. ABRAHAMS\*

(202) 785-9500  
FAX: (202) 835-0243

GEORGE D. WEBSTER (1921 - 1996)  
CHARLES E. CHAMBERLAIN (1917 - 2002)

OF COUNSEL  
J. COLEMAN BEAN  
KENT MASTERSON BROWN\*  
JAMES BOPP, JR.\*  
\* NOT ADMITTED TO D.C. BAR

## **ELECTIONS, CHURCHES, AND MINISTERS: PLAYING BY THE RULES**

**Charles M. Watkins, Esq.**  
**Webster, Chamberlain & Bean**  
**Washington, D.C.**

Churches, like other organizations that are exempt from federal income tax under §501(c)(3) of the Internal Revenue Code, may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”<sup>1</sup>

In every election year, many churches and pastors who are genuinely concerned about the future of the United States, and about fulfilling the responsibilities of citizenship for themselves and their parishioners, ask how they can be involved in the electoral process without endangering the tax-exempt status of their church.

### **Political vs. legislative activity**

The prohibition against participating or intervening in a political campaign applies only to elections for public office, and does not apply to attempts to influence legislation.<sup>2</sup> (Churches and other §501(c)(3) exempt organizations may engage in such attempts to influence legislation as an insubstantial part of their activities.)

In addition, unlike the restriction on lobbying, the prohibition on political activity is absolute. Exemption under §501(c)(3) may be revoked for even the smallest amount of prohibited political activity.<sup>3</sup>

---

<sup>1</sup> I.R.C. §501(c)(3). IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, available at [www.irs.gov](http://www.irs.gov), discusses these issues on pages 7-11.

<sup>2</sup> “Legislation” includes ballot initiatives or referenda, and the legislative confirmation of executive and judicial nominations.

<sup>3</sup> Pursuant to I.R.C. §4955, the IRS can also assess excise taxes on the church and its leadership.

## **Per Se Prohibited Activities**

Three types of activities are prohibited *per se*: Candidate endorsements or denouncements; candidate ratings; and contributions of cash, goods, or services to a campaign.

**Candidate endorsements and denouncements.** A church may not, as a matter of its official position, endorse or oppose a candidate for public office. Thus, a pastor speaking from the pulpit or otherwise in his capacity as the pastor, may not urge his audience to vote for or against a particular candidate. Likewise, a church may not publish an article in its newsletter, or place an advertisement exhorting readers to vote for or against a particular candidate.<sup>4</sup>

**Candidate ratings.** Another form of endorsement is the rating of candidates, usually based on the extent to which the candidates' views or qualifications align with those of the organization on those issues that the organization views as important. These, too, are prohibited *per se*, because they both endorse those candidates who are rated favorably, and implicitly oppose those candidates who are rated unfavorably.

**Campaign contributions.** Finally, although it may seem to be so obvious as to be unnecessary to address, churches and other charities may not contribute cash, goods, or services in support of a candidate for public office.<sup>5</sup> Thus, for example, a church may not contribute money, nor permit a campaign committee to use its office equipment or supplies without charging an amount at least equal to the value provided. Likewise, the church may not permit its employees to provide services to a campaign during their work time, or to use church resources in the course of their work for the campaign. Of course, this would not preclude an employee from working for a campaign after hours, on weekends, or while taking normal vacation or other leave from his duties for the church.

## **Other Activities—Neutrality is Required**

Aside from the three activities described above, whether an organization has engaged in prohibited participation of a political campaign depends on all of the facts and circumstances focusing specifically on whether an activity, or some significant aspect of it, is “biased” in favor of or against one or more candidates.

**Voter guides.** The most contentious area that arises when a church seeks to involve itself in the political process without violating the Internal Revenue Code is the extent to which voter guides may be considered to evidence bias in favor of or against a candidate. Churches may publish their own voter guides, or distribute voter guides prepared by others, provided the information they contain covers a wide range of issues (at least 6-8 issues, such as tax issues, defense, foreign affairs, civil rights, environment, government spending, gambling, abortion),

---

<sup>4</sup> G.C.M. 39414 (Feb. 29, 1984).

<sup>5</sup> A recent informal survey of reports filed by candidate committees in Florida noted many contributions by churches.

and the information in the guide is presented in a manner that does not evidence any bias regarding the candidates.<sup>6</sup>

**Candidate forums and debates.** Another way in which churches may influence public opinion during election campaigns is to sponsor candidate forums and debates where candidates can address issues of interests to the electorate. By having one or more candidates present in the same event, those attending are better able to compare and contrast the candidates' views.

The IRS issued guidelines regarding the conduct of such forums and debates in Rev. Rul. 86-95.<sup>7</sup> Such forums or debates must provide fair and impartial treatment of candidates, and may not promote or advance one candidate over another. When there are many candidates for an office, some candidates may be excluded, but only on the basis of objective criteria, such as a minimum level of support in polls, that are consistently applied.<sup>8</sup>

**Candidate appearances and speeches.** Appearances by individual candidates at churches—apart from a multi-candidate forum or debate—can pose thorny issues for the church. Again, the “neutrality” principle must be used to determine whether the activity is prohibited.

**Constituent activity.** A church may encourage its members and other constituents to be active in the political process. To this end, it may generally teach about the importance of democracy, engagement in the electoral process, activity in political campaigns, and campaigning for public office.<sup>9</sup>

**Voter registration drives and “get-out-the-vote” activities.** The IRS has not issued any rulings regarding conduct of voter registration activities by churches or other public charities.<sup>10</sup> In any event, like most other activities voter registration drives must be conducted in a nonpartisan manner, without bias towards or against any candidate or party.<sup>11</sup>

A church may use voter registration lists to identify unregistered voters, provided that it does not target voter registration efforts to those who will register with a particular party.

---

<sup>6</sup> Rev. Rul. 78-248, 1978-1 C.B. 154. Legislative scorecards, reporting votes by incumbent legislators on various issues may also be distributed by §501(c)(3) organizations, provided they satisfy the same two standards. Rev. Rul. 80-282, 1980-2 C.B. 178. *considered in* GCM 3844 (July 15, 1980); Rev. Rul. 78-248 (*Situation 1*). Such a guide should not be timed to be published during an election campaign, should not refer to the election or which legislators are candidates for re-election or for election to another office, and should note other factors that may be important in assessing a legislator's performance.

<sup>7</sup> Rev. Rul. 86-95, 1986-2 C.B. 73.

<sup>8</sup> Technical Advice Memorandum 9635003 (Apr. 19, 1996).

<sup>9</sup> *See* Rev. Rul. 72-512, 1972-2 C.B. 246 (political science course may require students to participate in the political campaign of their choice without jeopardizing university's exemption under §501(c)(3)).

<sup>10</sup> Special rules govern private foundations, but not churches. I.R.C. §4945(d)(3), (f); 26 CFR §53.4945-3.

<sup>11</sup> Election Year Issues, FYE 2002 CPE Text, page 379.

**Internet-related activities.** The “neutrality principle” also applies to a church’s communications on its website. For example, if the church includes statements by candidates regarding their position on abortion, it should include statements, insofar that they are available, from all candidates for the office in question. Likewise, if a church provides a link to a candidate’s website, a link should also be provided to the website of all other candidates for the office.

**Business activities.** As noted above, the church may not contribute money, or goods or services, such as the use of its mailing list, to a candidate. However, a church may sell or rent goods, or sell services, or the use of facilities, to candidates, provided it deals with all candidates on the same terms and, preferably, on the same terms that it deals with other non-political customers.

### **Political vs. Legislative Activities**

When do activities that, on the surface, are attempts to influence legislation (lobbying), become prohibited election activity because they conducted in a manner that is designed to influence an election?

In Rev. Rul. 2004-6,<sup>12</sup> the IRS published a non-exclusive list of the factors that it will consider in determining whether an ostensibly legislative activity should be treated as a political activity that is subject to tax under §527(f), and reviewed their use in evaluating six examples of advocacy communications. Although the ruling expressly addresses only non-§501(c)(3) organizations, it is also instructive for those churches and other religious organizations that engage in lobbying at or near the time of elections.

A review of the IRS’ evaluations of the activities discussed in the six examples discussed in the ruling indicates that the IRS is significantly more likely to conclude that a communication is legislative advocacy, and not political advocacy, if the communication is part of an ongoing series of communications about the issue, if specific legislation is identified, or if the communication is timed to coincide with an impending event, such as a legislative hearing or vote on legislation related to the topic of the communication.

### **Who Is Acting? Personal vs. Church Activities**

The prohibition on political activities by churches does not extend to the activities of individuals who are officials or volunteer leaders of the church. Individuals do not check their First Amendment and other personal rights at the door when they step into a leadership position in the church. Accordingly, pastors and other church leaders may fully exercise their individual rights to participate in the political process without jeopardizing the church’s income tax exemption. However, it is important to ensure that the individual is not acting as an agent of the church, and is not using the church’s resources while engaging in protected individual political activity.<sup>13</sup>

---

<sup>12</sup> 2004-4 I.R.B. 328 (Jan. 26, 2004).

<sup>13</sup> See IRS Field Service Advice 1998-209 (Sept. 21, 1993), for a discussion of this issue.

For example, a candidate publishes a full-page ad in the local newspaper listing prominent ministers, including Father Ryan, who have endorsed the candidate. Father Ryan is identified in the ad as the pastor of St. Patrick's Church. The ad states: "Titles and affiliations are provided for identification purposes only."

Because the ad was not paid for by the church, the ad is not otherwise in an official publication of the church, and the endorsement is made by Father Ryan in his personal capacity, the ad does not constitute campaign intervention by St. Patrick's church. In contrast, if Father Ryan had endorsed the candidate in the church's newsletter or from the pulpit (even with a disclaimer that this is just his "personal opinion"), those activities, because they were conducted in the context of Father Ryan's duties as pastor of the church, would be treated as prohibited political activity by the church.

Likewise, a pastor or other church leader may contribute to a political candidate's campaign committee from personal funds, and may, on his own time and at his own expense, attend party conventions and other political meetings, and engage in volunteer activities in support of a candidate's campaign, provided that church resources, such as its mailing list, facilities, and equipment, are not used in those efforts.

## **Conclusion**

A church may be very active in informing and influencing its parishioners and the community about elections, candidates, and the electoral process. Aside from the prohibitions on contributions to candidates, and candidate endorsements and ratings, the church's involvement must be carefully neutral and unbiased in order to avoid jeopardizing its exemption under §501(c)(3). Unfortunately, the IRS has given no guidance on how to avoid bias in voter guides, which are the most common area in which controversy arises.

A church may also encourage its members to be active in political campaigns, provided it does not recommend any particular candidate or party. Finally, the pastor or other employees and volunteer leaders of a church have the right to participate in political activities, provided they do not use the church's resources, and they are not acting as the church's agents, when they do so.

Rev. August 3, 2004