

Religious Institutions and Politics

In the current election the extent to which 501(c)(3) religious institutions may play a role in politics is a relevant and reoccurring issue in the nonprofit sector. Section 501(c)(3) of the Internal Revenue Code (IRC) grants exempt status to organizations organized for religious purposes. A requirement of this section is that the nonprofit may not “participate in, or intervene in (including the publishing or distributing of statements), in any political campaign on behalf of (or in opposition to) any candidate for public office.” IRC §501(c)(3). However, even with this purported absolute ban it appears that 501(c)(3) religious institutions violate this rule, often arguing that the nonprofit is taking a position on a public policy issue, which is allowed.

In some instances it is quite clear that a tax-exempt religious institution is directly intervening in a political campaign. In 1988, as a young child I remember having to go to church with the parents of a girl I knew from grade school. At this church I was given a series of pamphlets that stated that Michael Dukakis was the Antichrist and that the congregation had to do everything in its power to prevent him from being elected. Clearly this explicit attempt to intervene in a political campaign violates the requirements for 501(c)(3) organizations. However, more seriously, this issue of less explicit political intervention among religious institutions appears with some regularity.

On September 2, 2012 the Church of St. Catherine of Siena in New York City published a column in the church newsletter written by a member of the church’s pastoral staff. The stated purpose of the column was to advocate for religious freedom, but the column itself made pro-Mitt Romney statements. The column also reprinted, in full, a letter from several former U.S. ambassadors to the Vatican criticizing the Obama administration and concluding, “We urge our fellow Catholics, and indeed all people of good will, to join with us in this full-hearted effort to elect Governor Mitt Romney as the next President of the United States.”

As stated previously a 501(c)(3) tax-exempt organization can take position on public policy issues, including issues that divide political candidates and political parties. However, these organizations cannot advocate in such a way that they intervene in a political campaign. The issue then becomes how does one determine if an exempt organization is taking a position on a public policy issue or intervening in a campaign?

According to the IRS, in Revenue Ruling 2007-41, all facts and circumstances need to be considered to determine if the advocacy is political campaign intervention. In this Revenue Ruling the IRS identified six “key factors” used to determine if a communication is intervening in a political campaign. These factors are:

1. Whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
2. Whether the statement is delivered close in time to the election;
3. Whether the statement makes reference to voting or an election;
4. Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
5. 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
6. 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.

Based on the statement contained in the column it appears that the Church of St. Catherine of Siena violated at least five of the six key factors. The only one they may not have violated is the fifth factor, and they may in fact have violated that factor. I could not determine whether the church was having an ongoing discussion about religious freedom, but I have no reason to believe that the church was engaging in an ongoing discussion.

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October 1, 2012