

GUIDELINES for POLITICAL ACTIVITIES

by CHURCHES AND PASTORS

by James Bopp, Jr. General Counsel
James Madison Center for Free Speech¹
in association with the Alliance Defense Fund²

September 2004

As the 2004 elections approach, and various groups begin again their intimidation tactics in an effort to silence churches and pastors about the great social and moral issues of our time, churches and pastors need clear guidelines for permissible political activities. In response to that need, the James Madison Center for Free Speech and the Alliance Defense Fund are providing these guidelines³ and will respond free of charge to inquiries by churches, pastors, and priests on permissible political activities through informal e-mails, telephone advice and legal opinion letters.⁴ The Alliance Defense Fund has provided a grant to the James Madison Center for Free Speech for this purpose.

These guidelines summarize the requirements of the Federal Election Campaign Act and the Internal Revenue Code as they apply to churches and pastors. These guidelines should not be construed as legal advice regarding your particular situation. Churches and pastors may obtain legal advice free of charge regarding their particular situation by contacting the James Madison Center for Free Speech or the Alliance Defense Fund.

Many people of faith believe that the soteriological promises of biblical tradition – liberty, peace, justice, reconciliation – require them to assume a responsibility *toward society*. Thus, “it is a limitation and denial of faith not to seek its expression in both a personal and a public manner, in such ways as will not only influence but transform the social order. Faith demands engagement in the secular order and involvement in the political realm.”⁵ Thus, for people of faith, it is theologically incoherent to require them to disconnect their faith from their political lives.

¹James Madison Center for Free Speech, 1 South 6th Street, Terre Haute, IN 47807, voice 812-232-2434, fax 812-235-3685, www.jamesmadisoncenter.org, e-mail madisoncenter@aol.com.

²Alliance Defense Fund, 15333 North Prima Road, Suite 165, Scottsdale, AZ 85260, www.alliancedefensefund.org.

³The James Madison Center for Free Speech encourages you to copy and share these guidelines with anyone who may benefit from their use.

⁴Requests for a formal opinion letter involving substantial legal research are not covered by the grant. If a request falls into this category, the requesting pastor or priest will be notified as soon as possible so that appropriate arrangements may be made to answer this request.

⁵PRESBYTERIAN CHURCH (U.S.A.), GOD ALONE IS LORD OF THE CONSCIENCE: A POLICY STATEMENT ADOPTED BY THE 200TH GENERAL ASSEMBLY 48 (1989).

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

But some groups are trying to drive people of faith from active participation in the great debates on the profound moral issues facing our country. On the one hand, when people of faith speak out about moral issues *in public*, they are accused of attempting to force their religion upon others; but when they speak of moral issues *in church*, they are accused of engaging in politics. The Jeffersonian “wall of separation” doctrine has been twisted to attempt to silence people of faith not only in the public square, but also in their churches. This attitude is an unofficial but outspoken bias against people of faith.

A good example of this bias is the issue of abortion. When people of faith speak out against abortion in the public arena, they are told not to force their religious views upon others. When people of faith speak out against abortion in their churches, they are told not to bring politics into the church. Opposition to abortion is interpreted as support for pro-life political candidates and opposition to pro-abortion candidates, *even when candidates are not mentioned*.

Sometimes churches are also threatened with loss of their tax exempt status, and bogus complaints are filed with the Internal Revenue Service, leading occasionally to IRS investigations. Thus, the possible loss of tax exempt status is used by those hostile to people of faith to chill their right of free speech and to silence them in their own churches.

These are guidelines for action, recommended to insure that churches and pastors conform with the law. While the law may allow variations from these guidelines, experience has shown that the safest and best course for churches and pastors is to act in conformance with these recommendations. One caution – state laws may be more restrictive than these guidelines and, therefore, in applying them to specific situations regarding state candidates or state elections, an attorney should be consulted.

IRS Tax Exempt Status of Churches

Almost all churches are exempt under section 501(c)(3) of the Internal Revenue Code on the basis that they are “operated exclusively for religious, charitable . . .or educational purposes.” As a 501 (c)(3) exempt organization, a church:

- (1) is exempt from paying corporate income taxes and donations to it are tax deductible on federal tax returns, and
- (2) may expend funds for religious, charitable and educational purposes and an insubstantial amount on lobbying and to promote legislation.

A 501(c)(3) exempt organization, however, may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.” Thus, a church may not participate in a political campaign by expenditure of its funds. Still, not all *political activity*, which would influence an election, falls under this prohibition.

Political Activities

Political activities referred to here are activities which influence the election of candidates for public office – most of which are referred to as electioneering. Activities which can influence the election of a political candidate are quite broad and range from contributions to a political candidate to activities such as publishing the voting record of incumbents who are also running for reelection. Only some of these activities are considered active electioneering which

religion protect such statements. We believe that this is not a prudent step for a pastor and do not recommend it.

Churches and pastors may support or oppose the appointment of judicial, cabinet or other nonelected officials. This is considered lobbying, not electioneering.

Item 6. Contributions to political action committees (PACs).

A political action committee is any organization of two or more people whose major purpose is to engage in active electioneering by contributing to candidates or by expressly advocating the election or defeat of candidates for political office. Churches may not organize PACs and contributions to PACs from church funds is forbidden.

Item 8. Appearance of a candidate at a church meeting or service.

A political candidate may appear at a church service. The appearance of a candidate before a church service, however, is limited as follows:

- (1) All legally qualified candidates should be invited;
- (2) The questions should be prepared and presented by an independent nonpartisan panel;
- (3) The topics discussed should cover a broad range of issues of interest to the public;
- (4) Each candidate should have an equal opportunity to present his or her views on the issues discussed; and
- (5) The moderator should not comment on the questions or otherwise make comments that imply approval or disapproval of the candidates. Political candidates may be introduced at a church service or may preach or read scripture without any restrictions.

However, public officials, who are also candidates, may be invited to speak to a church *as a public official*, without complying with the above requirements, if no reference is made to the public official's candidacy, if the public official speaks only in her capacity as a public official, and if there is no campaign activity in connection with the public official's appearance.

In addition, a church may allow political candidates to use church facilities for meetings or campaign appearances on the same basis that other civic groups are allowed to do so. If other civic groups are required to pay some rent for using the church property, the political candidate should be charged the same amount.

Items 9, 10 and 11. Non-partisan voter registration, voter identification, and get out the vote activities.

A church may participate in non-partisan voter registration, voter identification and get out the vote activities. To be non-partisan, these activities may not be directed at the supporters of any particular candidate or political party. A church may, however, direct these activities at certain groups using non-partisan criteria, such as church membership, geographic location or position on certain issues. Furthermore, such activities will not be viewed as non-partisan if they are accompanied by literature praising or criticizing particular candidates or political parties for their positions on issues.

cannot be done by a church, *but some of this activity can even be done by a 501(c)(3) organization*; it depends on the type of activity.

Active electioneering cannot be done by a church. Active electioneering involves actions such as endorsements of candidates and expenditures of funds to expressly advocate the election or defeat of a candidate for political office. Active electioneering is of three types: (1) a direct contribution, which is a monetary contribution given to a candidate, (2) in-kind contributions, which include giving anything of value to a candidate (such as a church mailing list) or paying for a communication that expressly advocates the election or defeat of a clearly identified candidate made in coordination with a candidate, and (3) independent expenditures, which are expenditures expressly advocating the election or defeat of a political candidate made *without* the knowledge of or consultation with any candidate.

Issue oriented speech can also influence elections. Issue advocacy, however, may not be limited by government and can be freely engaged in by churches. Issue advocacy includes the discussion of issues of public concern, the actions of governments officials in office, and the positions of candidates on issues. As long as one does not use explicit words expressly advocating the election or defeat of a clearly identified candidate, one is free to praise or criticize officials and candidates – this is called issue advocacy.

Individuals, however, such as pastors or priests, may participate in political campaigns, as long as they do so as individuals, not in the name of the church. Any individual, including a pastor, may wear different hats at different times and, therefore, be involved in political activity, as long as he *is wearing the right hat*.

The following is a list of activities that may be considered political activities in the broad sense and that a church or pastor, in his individual capacity and using his own funds, may wish to do. A “yes” response means the activity is permissible, a “no” means it is not recommended.

Explanation of Individual Items

Item 1. Discuss the positions of candidates on public issues.

Pastors and churches are free to discuss the positions of candidates on issues – including criticizing or praising them for their positions. This is called issue advocacy.

Item 2. Endorsement of political candidates.

The endorsement of a candidate includes any statement which uses explicit words to expressly advocate the election or defeat of a clearly identified candidate, such as “elect,” “support,” “defeat,” or “oppose.” This is called express advocacy. Distributing campaign literature from a candidate is one form of express advocacy. A church may not engage in express advocacy.

A pastor, however, in his individual capacity, may endorse a political candidate. The pastor may state his affiliation with his church, as long as it is indicated that this is for identification purposes only and that his endorsement is from him personally, not his church.

One controversial area is whether a pastor may personally endorse a political candidate from the pulpit. The IRS has taken the unequivocal position that this is not allowed. Some, however believe that the First Amendment’s provisions on free speech and free exercise of

Item 12. Non-partisan voter education.

A church may participate in non-partisan voter education. Here, voter education involves discussion of the electoral process, such as how to run for public office or delegate, how to register, and where to vote. All these activities are permissible as long as they are not directed at supporters of one particular candidate or political party.

Item 13. Lobbying for legislation.

Churches may spend an insubstantial amount of their funds yearly on lobbying. An insubstantial amount is generally considered 5 to 20 percent of a church's funds. Lobbying is of two types: (1) direct lobbying, which involves direct communications with governmental officials regarding legislative or executive action, and (2) grass roots lobbying, where the church communicates with its members or the general public urging them to contact governmental officials in support or in opposition to legislative or executive action. As a result, a church may discuss legislative issues, support or oppose legislation, encourage its members or the general public to support or oppose legislation, and support other organizations with their lobbying efforts. Furthermore, churches may lobby candidates on their positions on issues and distribute educational material to candidates or at political events, as long as this is being done to get out the organization's message and not to assist any candidate.

Item 14. Expenditures related to state referendums.

Churches may make expenditures in connection with state referendums, including making a financial or in-kind contribution to a referendum effort. Such expenditures are considered direct lobbying. In addition, state election laws should be consulted for any requirements imposed on state referendum activities.

Item 15 (a). Candidate surveys or voter guides.

A church may publish the result of surveys of candidates on public issues (often called "voter guides"). Voter guides should not include an endorsement of a candidate or expressly advocate the election or defeat of any candidate. Further, voter guides should not include advocacy of voting for candidates who support particular issues, i.e., single issue voting.

As a result, church questionnaires should conform to the following guidelines:

- (1) Questionnaires should be sent to all candidates;
- (2) The questions should cover a wide variety of issues;
- (3) The questions should not indicate a bias toward the church's preferred answer;
- (4) The candidate's responses should not be compared to the church's preferred position;
- (5) The responses should be published in the candidate's own words or in a neutral, unbiased and complete summary of the candidate's position; and
- (6) The survey should not be published under the direction or control, direct or indirect, of any candidate.

Item 15 (b). Voting records of incumbents.

Churches may also publish the voting records of incumbent public officeholders. In the case of publication of voting records, the church has more leeway than in publishing candidate

surveys as follows:

- (1) Incumbent's positions should not be compared to the positions of other candidates or the church's position;
- (2) The voting record should be distributed on a regular basis, not just at election time;
- (3) The voting record should be broadly distributed to the general public, not targeted to certain voting blocks;
- (4) A variety of issues of interest to the general public should be presented.

Item 16. Distribution by others of political statements in church parking lots.

Under many state constitutions, if a church parking lot is open for public use, people have a free speech right to distribute literature there. Even if there is no such right, a church is not responsible for political literature distributed by others in their parking lot without their permission or consent and a church has no obligation to bar people from distributing political literature there.

Item 17. Rental of church lists to political candidates (at fair market value).

Lists of members of the church congregation may be rented to candidates for their use in seeking support or raising funds. The candidate must pay the fair market value for the list if it is rented from the church.

Item 18. Church bulletin or newsletter.

(a) & (b) Political ads at regular rates.

A church bulletin or newsletter may publish an ad for a political candidate, as long as the ad is purchased at the regular rate for such ads published in that bulletin or newsletter. If discounts are given regular advertisers under certain circumstances, the same discounts may be extended to the political advertiser. A political ad may not be sold to a candidate at less than the regular rate since this would constitute a financial contribution to the candidate. Churches may accept paid political advertising provided the advertisement is identified as paid political advertising; the church expressly states that it does not endorse the candidate, and advertising is solicited from all candidates on an equal basis.

(c) News stories.

A church bulletin or newsletter may publish news stories on political candidates and political campaigns. The publication of voting records and candidate surveys in bulletins are subject to the limitations delineated in Items 15 (a) and (b).

(d) Editorials.

A bulletin or newsletter, however, may not publish an editorial endorsing a candidate for political office.

DO'S & DON'TS FOR POLITICAL ACTIVITY OF PASTORS

by James Bopp, Jr. General Counsel
James Madison Center for Free Speech⁶
in association with the Alliance Defense Fund⁷

Pastors, as individuals, have the same rights as all other American citizens to involve themselves in political activity. Pastors thus have much greater latitude to involve themselves in political activities than does a church.

Pastors are concerned about the legal effects of political activity on themselves and their churches. Churches are exempt from federal tax only so long as they do not intervene in political campaigns. Federal election law also places restrictions upon political activities regarding federal candidates by individuals and entities, particularly corporations, both profit and non-profit. The scope of proper political activity varies from case to case, but the following do's and don'ts are applicable in many cases.⁸

The following should guide a pastor regarding personal political activities which may relate to his church position:

- (1) A pastor may individually and personally endorse candidates for political office.
- (2) A church may not endorse candidates for political office, and a pastor may not endorse candidates on behalf of the church.
- (3) A pastor may allow his name to be used as a supporter of a candidate in the candidate's own political advertisements. In this connection, the pastor may be identified as pastor of a particular church, if it is indicated that this is for identification purposes only and if it is indicated that the endorsement is by the pastor personally and not by the church.
- (4) Churches may engage in non-partisan voter registration, voter identification, get out the vote, and voter education activities so long as such activities are not intended at the supporters of any particular candidate or political party.

⁶James Madison Center for Free Speech, 1 South 6th Street, Terre Haute, IN 47807, voice 812-232-2434, fax 812-235-3685, www.jamesmadisoncenter.org, e-mail madisoncenter@aol.com.

⁷Alliance Defense Fund, 15333 North Prima Road, Suite 165, Scottsdale, AZ 85260, www.alliancedefensefund.org.

⁸These do's and don'ts summarize the requirements of the Federal Election Campaign Act and the Internal Revenue Code as they apply to churches and pastors. These guidelines should not be construed as legal advice regarding your particular situation. Churches and pastors may obtain legal advice free of charge regarding their particular situation by contracting the James Madison Center for Free Speech or the Alliance Defense Fund.

- (5) A church may distribute a voter guide regarding candidates' positions on various issues or a scorecard reporting on the voting records of incumbents. In such publications, the church or pastor may not state whether the candidate's position or vote is consistent with the church's.
- (6) A church or pastor is free to state the position of a candidate on any issue and may comment on that position (including praising or criticizing the candidate for it).
- (7) A church may allow political candidates to speak on church premises; however, all candidates should be invited and given equal opportunity to speak. A candidate should not be allowed to appeal to a church congregation at a church service for funds to be used in his political campaign and no member of the church should endorse a candidate in conjunction with the candidate's visit.
- (8) Church facilities may be used by political candidates on the same basis that civic groups are allowed to. If civic groups are required to pay some rent for using the church property, a political candidate should be charged the same amount.
- (9) Lists of members of the church congregation may be provided to candidates for use in seeking support or raising funds only if rented at fair market value.
- (10) A church may not establish a political action committee.
- (11) Pastors and other like-minded individuals may establish a political action committee, but care should be taken that the committee is separate from the church and does not use the assets of the church.

political involvement

This chart was developed by James Bopp Jr., Esq., general counsel for the James Madison Center for Free Speech. See the next pages for more detailed explanations.

	Church	Pastor
Discuss the positions of candidates on public issues	Yes	Yes
Endorsement of political candidates	No	Yes
Contributions to political candidates	No	Yes
In-kind contributions to political candidates	No	Yes
Independent expenditures in favor of or against political candidates	No	Yes
Contributions to PACs	No	Yes
Payment of expenses for attendance at caucus of state/national convention	No	Yes
Appearance of political candidate at church services	Yes*	N/A
Distribute candidate surveys or voter guides	Yes	Yes
Voting records	Yes	Yes
Candidate political statement	No	Yes
Rent church list (at market value)	Yes	N/A
Church bulletin or newsletter: political ads at a regular rate	Yes	N/A
Political ads at less than regular rate	No	N/A
News stories	Yes	N/A
Editorials	No	N/A

* Neither the candidate nor the church should mention the political campaign. IRS Publication 1828 (2003).

Questions

If you have legal questions about the ways your church can be salt and light in the culture, call your family policy council.