

## Politics, 501(c)(3)s, and the Clergy

07.26.16 | Linda J. Rosenthal, JD



Now that we're in full-swing presidential-election season, the absolute ban in section 501(c)(3) on political campaign activities moves to center stage.

One of the trickiest parts of this rule is distinguishing when someone associated with a 501(c)(3) organization is acting in his or her individual capacity *alone*, and not as a representative of the group.

We raised this point in "Whose Opinion is It, Anyway?":

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*It's important to remember that the prohibition applies to the organization, and to its personnel while they are "on the clock." But the individuals connected with the organization – even founders, directors, and key employees – have a first amendment right to be involved in political activities and to voice personal opinions on elections and candidates. This can be a treacherous tightrope act: These people must take care to act on their own time and to carefully disassociate these activities and opinions from the organization.*

In that post, we presented (with some creative liberties) several examples provided by the Internal Revenue Service in its Revenue Ruling 2007-41.

### *Add Some Religion Into This Turbulent Topic*

If the issue of politics and 501(c)(3)s is complicated, try throwing in some religion, too. This volatile mix of tax law and First Amendment religious freedom rights boils over regularly as elections draw

near.

In [Publication 1828](#), Tax Guide for Churches & Religious Organizations (Rev. 8-15), the IRS acknowledges that –

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*Congress has enacted special tax laws that apply to churches, religious organizations and ministers in recognition of their unique status in American society and of their rights guaranteed by the First Amendment of the Constitution of the United States.*

Nevertheless, the agency makes an effort to use special sensitivity when evaluating political campaign activities in the religious setting. In the introduction to a section of Publication 1828 titled “Individual Activity by Religious Leaders,” the IRS notes:

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*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.*

### **What Not to Do: Clergy Edition**

Publication 1828 includes hypotheticals applying these rules in the context of religious organizations and their spiritual leaders. With liberties – again – we present them here.

#### *The Case of the Opinionated Officiant*

Each month, a church produces a newsletter that is distributed to all parishioners. It includes a column by the minister called “My Views. In the edition just before a major election, the clergyman writes: “It is my personal opinion that Candidate X should be re-elected.” He personally pays for the

portion of the newsletter's cost attributable to this column.

How does the IRS treat this situation? It isn't enough for the clergyman to put up his personal funds, since the newsletter is an official church publication. The personal endorsement is considered campaign intervention and puts the church's tax exemption in peril. [Pub. 1828, at 8; Ex. 3]

#### *The Case of the Preachy Padre*

During regular worship services, a priest gives a sermon on a number of issues including the importance of voting in the election just a few weeks away. He concludes by stating: "It is important that you all do your duty in the election and vote for Candidate W."

This is a big mistake. An endorsement made during a regularly held activity is an act that will be attributed to the church. [Pub. 1828, at 8; Ex. 4]

#### *The Case of the Holy Hostess*

On the weekend before the big election, a pastor invites Candidate X to preach to her congregation during Sunday services. During these remarks, Candidate X tells the congregation that he is not only asking for their votes, but also for their "enthusiasm and dedication" and "willingness to go the extra mile to get a very large turnout on Tuesday." During the entire campaign, the pastor has not invited Candidate X's opponent or any other candidate to address the church members.

This activity during a regular church activity on church premises is impermissible political activity that puts this religious body's tax exemption in jeopardy. [Rev. Rul. 2007-41, Situation 9]

### *Different Results From Different Results*

#### *The Case of the Ecclesiastical Endorser*

The minister of the largest church in town, along with several other well-known members of the community, personally endorses a candidate in a large newspaper ad paid for by the candidate. In the ad is a disclaimer that the titles and affiliations of each endorser are provided for "identification purposes" only.

What's the result here? The church's tax exemption is safe. The ad isn't paid for by the church, it doesn't appear in an official church publication, and the minister's endorsement is made in a "personal capacity." There is no jeopardy for the church. [Pub. 1828, p. 7, Ex. 1]

#### *The Case of the Prominent Pastor*

The spiritual leader of a church – just a few weeks before an important

election – attends a press conference at a politician’s campaign office. The well-known pastor speaks at the event, endorsing the candidate. He does not say he is speaking on behalf of his church, but the endorsement is reported on the local newspaper’s front page, and he is identified in the article as minister of that church.

Like the Ecclesiastical Endorser, this pastor does the right things: He doesn’t make the endorsement at an official church function, or in an official church publication. He doesn’t use any of the church’s assets, and doesn’t say he is speaking as a representative of the church. Under these facts and circumstances, the church’s tax exemption is not in peril. [*Rev. Rul. 2007-41, at 1422, Situation 5*]

### *Conclusion*

Because of the serious consequences of running afoul of the 501(c)(3) ban on political campaigning activities, religious spiritual and lay leaders must pay attention to the IRS’s interpretation and application of this rule.