

RELIGION, PARTISAN POLITICS AND TAX EXEMPTION:

WHAT
FEDERAL
LAW
REQUIRES
AND WHY



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OF CHURCH AND STATE

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Every weekend, millions of Americans attend houses of worship to hear sermons, study scripture and participate in other religious activities. If some politicians and Religious Right activists have their way, however, people in the pews might soon be doing other things during services – listening to partisan political speeches, being solicited for campaign contributions and getting instructions about whom to vote for on Election Day. Here’s why that would be a disaster.

Proposals have been introduced in Congress that would permit houses of worship to engage in partisan politicking – including endorsing or opposing candidates – yet allow the religious institutions to retain their tax-exempt status. One measure, which has been pushed repeatedly by U.S. Rep. Walter Jones, was drafted with input by attorneys from TV preacher Pat Robertson’s American Center for Law and Justice and is backed by numerous Religious Right organizations.

Supporters of these proposals say a change is necessary because clergy are afraid to speak out on political issues. But this argument is mistaken. The free speech rights of religious leaders are already broadly protected by the U.S. Constitution. Clergy can and do address public policy concerns, ranging from abortion, gay rights and gun control to poverty, civil rights and the death penalty. Indeed, discussion of public issues is a common practice in religious institutions all over America.

The only thing houses of worship may not do is endorse or oppose candidates for public office or use their resources in partisan campaigns. This restriction, which is found in federal tax law, is not limited to churches and other religious ministries. In fact, it is applied to every non-profit organization in the country that holds a tax exemption under Section 501(c)(3) of the Internal Revenue Code.

Contrary to the claims of many in the Religious Right, the IRS is not singling out houses of worship for special regulation. Thousands of educational, scientific, charitable and literary organizations hold the 501(c)(3) status, and all must abide by the legal requirement barring involvement in elections.

Why does this rule exist? The answer is obvious upon a moment’s reflection: Non-profit organizations receive tax exemption because their work is charitable,

educational or religious. That tax benefit comes with conditions. One requirement is that tax-exempt organizations refrain from involvement in partisan politics. This is a reasonable rule, since tax-exempt groups are supposed to work for the public good, not spend their time and money trying to elect or defeat candidates.

This regulation is also designed to protect the integrity of the election process. Special types of organizations already exist to help political hopefuls win public office. Those groups, such as Political Action Committees (PACs), have a different tax status and are organized under a different set of rules than 501(c)(3) groups, rules designed to ensure that the nation’s campaign finance laws are followed. Blurring the distinction between these two types of organizations would harm both religion and politics.

Due to misinformation spread by advocates of church-based electioneering, some clergy are confused about federal tax law and how it impacts political activity in houses of worship. For example, some religious leaders might wonder what constitutes an endorsement of a candidate. Prohibited activities include letters of endorsement printed on the letterhead of the church, synagogue, temple or mosque. Distribution of campaign literature, pulpit endorsements of candidates, display of campaign signs on religiously owned property and other similar activities also clearly indicate partisan involvement in an election. (It should be noted, however, that clergy may endorse candidates as individuals in forums outside the church or work on behalf of candidates during their personal time.)

Penalties for violating federal law include loss of tax-exempt status or financial penalties imposed on officials of the house of worship in question. This is more than a theoretical concern; the IRS does enforce the law

in this area. The Church at Pierce Creek near Binghamton, N.Y., lost its tax-exempt status in 1995 after the IRS determined it had violated federal tax law by publishing a full-page ad in *USA Today* in late October of 1992 advising people that voting for presidential candidate Bill Clinton was a sin and soliciting tax-exempt donations to defray the cost of the ad. The church sued in federal court to regain its tax-exempt status, but a federal appellate court ruled unanimously that the IRS had the authority to revoke the church's tax-exempt status.

So what are the election-related activities that a house of worship may engage in? There are many. For

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example, houses of worship may sponsor nonpartisan voter registration drives. They may encourage voting and transport people to the polls on Election Day. They may also sponsor non-partisan candidate forums at which all legally qualified candidates for a given office are invited to appear.

What about "voter guides" produced by outside groups? Houses of worship should be extremely wary of voter guides produced by outside groups, especially partisan Religious Right groups. Many of these organizations hold a tax status that permits them to engage in partisan activities that religious organizations are not permitted to take part in. Also, when a guide has been produced by an outside group, religious leaders have no way of knowing if the answers are accurate or if the guide has been stacked to favor certain candidates.

Some of these organizations have been accused of

both intentionally slanting their guides and including inaccuracies about candidates' positions. If a voter guide produced by an outside group is determined to be partisan and is distributed in a house of worship, the IRS has the legal right to assess penalties even though the house of worship did not produce the guide.

Aside from the points already mentioned, there are several other reasons why partisan politicking in houses of worship would be dangerous and bad public policy:

- **Mixing religion and partisan politics could lead to religious majoritarianism and divisiveness.** If the church electioneering bills become law, a large church, or a number of churches working together, could form a political machine. Religious groups could select candidates and support their campaigns. This would inevitably allow the largest denomination in each community to dominate political life.

A quick survey of conflict around the globe shows how dangerous it can be when religion and politics are injudiciously mixed. The last thing America needs is to take a step in that direction.

- **The church electioneering bills would open a dramatic loophole in the nation's campaign finance system.** Houses of worship are given tax-exempt status because the government assumes that their work is charitable, not political. As such, contributions to them are tax deductible, while donations to political candidates and parties are not.

To undo the tax law's ban on religious politicking – allowing religious groups to act as partisan institutions while maintaining their tax-exempt status – would wreak havoc on the nation's campaign finance system.

The likely result is unappealing, to say the least. Candidates could shill for contributions right from the pulpit, turning what are supposed to be sacred services into political fund-raisers. Religious leaders could spend their time in the pulpit talking not about faith but the need to write checks for certain candidates.

- **The American people oppose politicization of our houses of worship.** Survey results released by LifeWay Research in September 2008 found that 75 percent of Americans do not believe "it is appropriate for churches to publicly endorse candidates for public office." What's more, 85 percent think it is not "appropriate for churches to use their resources to campaign for candidates for public office."

A separate 2008 poll by the Pew Forum on Religion and Public Life found similar results. Church partisanship

was unpopular among all tested demographic groups. For example, the report indicates that Catholics and mainline Protestants reject church political endorsements by more than a two-to-one margin. Although TV preachers are crusading for a change in the tax law, many evangelical Christians in the pews do not agree with them. According to the Pew survey, evangelicals opposed church endorsements by a 64 to 34 percent margin.

When Americans drop their money in the collection plate, they don't expect it to wind up being used to pay for bumper stickers or attack ads on behalf of some politician.

- **America's religious leaders have not asked for change.** Despite the rhetoric from Religious Right groups such as the Alliance Defense Fund, leaders of the religious community are not clamoring for radical changes to existing tax law. Nor do most religious leaders view the IRS regulations as curbing their freedom to speak. Most clergy willingly obey the law as it currently exists and have little interest in taking on the responsibility of serving their flocks as both spiritual leader and political boss.

That's why a diverse array of groups ranging from the National Council of Churches to the Baptist Joint Committee for Religious Liberty and the Central Conference of American Rabbis has expressed opposition to the bills in Congress that would change the IRS Code.

The Alliance Defense Fund has prodded pastors to openly defy the law by endorsing or opposing candidates from the pulpit. While a handful of ministers have endorsed this so-called "Pulpit Freedom Sunday," the overwhelming majority of religious leaders want nothing to do with such a misguided crusade. They realize that the scheme is ethically dubious, reckless and ultimately divisive to the church.

- **Partisan politicking in pulpits could foster divisiveness within communities of faith.** The membership of most religious communities spans the political spectrum. Congregants from one political party would almost certainly become upset if their religious leader endorsed a candidate from a different party. Other people of faith could get angry if their member of the clergy refused to endorse their favored candidate. Religious leaders should be wary of wading into partisan disputes.

- **Houses of worship have the right to refuse tax-exempt status if they want to endorse candidates.** Religious leaders already have a clear legal right to use their pulpits to address public issues. If congregations decide they want to go further

and raise funds for campaigns and endorse candidates, they can give up their tax exemption and create an explicitly partisan organization. Current law simply limits groups from trying to be *both* tax-exempt ministries and partisan political outfits at the same time.

- **Houses of worship shouldn't get special political privileges.** Under current law, restrictions on partisan politicking apply equally to all 501(c)(3) tax-exempt organizations. The church politicking bills favored by the Religious Right seek to change the law to allow *only houses of worship* to engage in partisan political efforts. This creates an uneven playing field, in which secular charities would be denied a legal benefit offered to ministries of the same tax status. This favoritism raises serious legal questions about the constitutionality of these proposals.

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Federal tax law is serving our nation's religious community well, preventing houses of worship from being sullied by partisan politicking or from becoming cogs in political machines. With that in mind, members of Congress should leave the law alone. The current system serves the best interests of both religion and government. For more information about religion and politics, contact Americans United for Separation of Church and State. Our mailing address, phone number, e-mail address and Web site can be found on the back panel of this brochure.

Speaking Out

"We need to maintain this strong, solid wall, this separation of church and state. I knew Martin Luther King; he was a friend of mine. He never, to my knowledge, endorsed a political candidate."

—U.S. Rep. John Lewis, member of Congress and veteran civil rights activist

