



An Open Letter to Massachusetts Pastors and Religious Leaders

RE: Political Activity & 501(c)(3) Tax Exemption

Dear Pastor:

Citizens across the great state of Massachusetts are currently debating the merits of a referendum that would repeal a new law forcing schools, businesses, and even churches to allow access to locker rooms, restrooms, and other sensitive areas based on gender identity rather than biological sex. You, pastor, have *every* right to join in the discussion without fear of jeopardizing your church's 501(c)(3) tax-exempt status.

Churches are understandably concerned about the legal ramifications of political activity. For decades, government officials have threatened to revoke the tax-exempt status of churches who have dared to speak out on civic issues. Misinformation and scare tactics have all but silenced the church's voice on the important issues of our day, but Alliance Defending Freedom is committed to reversing this trend.

Alliance Defending Freedom is an alliance-building, not-for-profit legal organization that advocates for the right of people to freely live out their faith. We represent pastors and churches nationwide whose religious freedoms have been infringed by government officials, and we vigorously advocate for both an uncensored pulpit and a church with equal access to the public square.

Pastor, do not allow yourself to be intimidated into silence. You have every right to shepherd your congregation through this debate about the ballot initiative. You did not surrender your First Amendment freedoms by entering the pastorate, nor do you endanger your church's tax-exempt status by engaging on civic issues. No church—in any reported case to date—has lost its 501(c)(3) tax-exempt status due to political activity.¹

But despite this fact, misconceptions concerning IRS restrictions on political activity abound. Here is a short summary of what you need to know about political activity and your church's 501(c)(3) status.

The IRS imposes two restrictions on a church's political activity: (1) the lobbying limitation, and (2) the candidate prohibition.

¹ The IRS temporarily revoked a *letter* recognizing the tax-exempt status of one church after it purchased a full-page newspaper advertisement urging Christians to vote against a presidential candidate. But the church's tax-exempt *status* was untouched. This distinction is crucial. Churches do not need a tax-exempt letter to be tax exempt. Churches are automatically exempt under the IRS code. Many churches take the additional step of obtaining a letter from the IRS recognizing tax-exempt status, but it is not required.

I. The Lobbying Limitation

Churches and pastors *can* lobby. For example, pastor, you can urge your elected officials to take a specific position on bills pending in Massachusetts's legislature, and encourage your congregation to do likewise. When referenda and ballot initiatives come up in your area—such as the current referendum related to restroom privacy and safety—you can urge your congregation and community to vote in a specific way. These activities are permissible under federal law.

The IRS simply limits churches to spending no more than an “insubstantial” amount of their resources on lobbying. An “insubstantial” amount is generally considered to be from five to 15 percent of a church's time and funds *in any given year*.

The most important point to recognize about this lobbying limitation is its insignificance. No church has yet come even close to losing its tax-exempt status for substantial lobbying. This is likely because no church has yet come remotely close to expending five percent of all of the time its church doors are open in any given year, or five percent of all its financial expenditures in any given year, on lobbying. This threshold is higher than appears at first glance.

Furthermore, a great deal of activity in support of or opposition to a bill simply does not qualify as lobbying. For example, a pastor may preach on how to evaluate a proposed law from a biblical worldview. Churches may hold educational meetings and distribute educational materials about a proposed ordinance. These activities are not lobbying.

Finally, pastors acting *individually*, and not as official church representatives, enjoy the same right to speak out as any other citizen. They may freely lobby without implicating the lobbying tally of their churches.

II. The Candidate Prohibition

Churches are recognized as exempt from federal income tax under 501(c)(3) of the Internal Revenue Code so long as they do not “intervene” in political campaigns. Political intervention, essentially, is advocating for or against candidates for political office. This means that the IRS prohibits churches from activities such as:

- endorsing or opposing political candidates,
- making financial contributions to political candidates, and
- distributing political campaign literature.

There are two important points to keep in mind regarding the candidate prohibition. First, the candidate prohibition applies to churches and to pastors *in their official capacities as church representatives*. Pastors acting *individually*, and not as official church representatives, enjoy the same right to speak out as any other citizen. They may freely support or oppose political candidates without violating the candidate prohibition, or implicating their church's 501(c)(3) tax status.

Second, the candidate prohibition bans a narrow category of political activity. Churches and their pastors can still discuss candidates' positions on various issues without violating the candidate prohibition. Churches and their pastors can still distribute non-partisan voter guides, urge their congregants to get out and vote, or even rent out their facilities to candidates on the same terms as any other public group. Only advocating for or against a candidate is prohibited.

We at Alliance Defending Freedom believe that even this narrow IRS prohibition unconstitutionally restricts a pastor's speech. The Scriptures address every aspect of life in principle, if not in precept. Thus, pastors and churches must be free to proclaim biblical truth from the pulpit as it applies to candidates and elections. In fact, for the first 200 years in America, such "political" speech was the norm. Pastors boldly named candidates from the pulpit to help their congregants navigate civic life from a biblical worldview.

This drastically changed in 1954 when Congress, without debate or analysis, amended the Internal Revenue Code to condition tax-exempt status on surrendering such speech. That is why in 2008, Alliance Defending Freedom launched the Pulpit Initiative to challenge government censorship of a pastor's speech from the pulpit. To learn more about this initiative, please visit PulpitFreedom.org.

III. Conclusion

Pastor, do not let concerns over tax exemption silence you on important public issues. You have every right to speak out about this referendum in your state—both as a concerned citizen and as a representative of your church. Engaging on civic issues will not jeopardize your church's 501(c)(3) tax-exempt status, and those who suggest otherwise misapprehend the law.

In a culture that is quickly losing its moral compass, your voice is needed now more than ever. Rest assured that should you or your church face the threat of legal action for exercising your right to speak out, Alliance Defending Freedom attorneys stand ready to assist you free of charge.

Respectfully submitted,



Christiana M. Holcomb, Legal Counsel*

*Not licensed in DC, practice limited to federal court

Erik W. Stanley, Senior Counsel