



**TODD ROKITA**  
ATTORNEY GENERAL

September 9, 2024

To the Churches and Church Leaders of Indiana:

As Election Day approaches and political candidates intensify their campaign activities, churches and church leaders may be uncertain about what kinds of election-related conduct they are permitted to engage in without running afoul of the Internal Revenue Code or other laws. In this letter, I offer guidance to churches and church leaders to help elucidate the limits that exist on the political activities of tax-exempt churches.

In brief, there are many ways in which churches may participate in the electoral process, including by helping register voters, educating the public on election-related issues, inviting candidates to speak before their congregations or at other church events, and expressing their views on matters of public policy. Further, the Internal Revenue Code and the First Amendment of the U.S. Constitution provide safeguards to ensure that the restrictions on tax-exempt churches' political activities are not abused by government bureaucrats and investigators.

Churches may not engage in "partisan" activities that favor one candidate or party over another in an election if they wish to maintain their tax-exempt status. But, as noted, that does not bar churches from engaging in a variety of activities related to elections. Once familiar with the limits on their politically related conduct, churches should be confident that they can robustly engage in many election activities without violating the law.

Churches can and should consider being part of our country's electoral process.

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**Churches' Eligibility for Tax-Exempt Status**

Generally speaking, churches are exempt from taxation and are not required to file federal tax returns. *See* 26 U.S.C. § 6033(a). This is true whether or not a church seeks recognition as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. *See* 26 U.S.C. § 508(c)(1). Churches and their eligibility for tax-exempt status under the Internal Revenue Code are therefore unique as compared to other organizations that wish to obtain 501(c)(3) status. "Although most organizations seeking tax-exempt status are required to apply to the Internal Revenue Service . . . for an advance determination that they meet the requirements of section 501(c)(3), a church may simply hold itself out as tax exempt and receive the benefits of that status without applying for advance recognition from the IRS." *Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000) (citations omitted).

However, to be exempt from taxation, churches still must satisfy the criteria for tax exempt status under Section 501(c)(3). Thus, “[t]o qualify for exemption, a church must show that it is (1) organized, and (2) operated, exclusively for religious or charitable purposes.” *Church of Scientology of California v. Comm’r*, 823 F.2d 1310, 1315 (9th Cir. 1987).

Many courts apply a four-part test to determine whether an organization is operated exclusively for a religious or charitable purpose. *See, e.g., St. David’s Health Care Sys. v. United States*, 349 F.3d 232, 235 (5th Cir. 2003); *Church of Scientology*, 823 F.2d at 1315 (“Four elements compose the operational test.”); *Asmark Inst., Inc. v. Comm’r*, 486 F. App’x 566, 570 (6th Cir. 2012) (“The operational test is met by satisfying four requirements.”). As the U.S. Court of Appeals for the Fifth Circuit has explained:

First, the organization must engage primarily in activities which accomplish one or more of the exempt purposes specified in § 501(c)(3). Second, the organization’s net earnings may not inure to the benefit of private shareholders or individuals. Third, the organization must not expend a substantial part of its resources attempting to influence legislation or political campaigns. Courts have imposed a fourth element. Organizations seeking exemption from taxes must serve a valid purpose and confer a public benefit.

*Nationalist Movement v. Comm’r*, 37 F.3d 216, 219–20 (5th Cir. 1994) (quoting *Church of Scientology*, 823 F.2d at 1315).

Similarly, Internal Revenue Service (“IRS”) regulations describe three criteria an organization must satisfy to qualify for 501(c)(3) status: (1) the organization must “engage[] primarily in activities which accomplish one or more . . . exempt purposes;” (2) “its net earnings [must not] inure in whole or in part to the benefit of private shareholders or individuals;” and (3) it must not be an “action organization,” which means, among other things, an organization that “participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.” 26 C.F.R. § 1.501(c)(3)-1(c).

Thus, the “exemption is lost . . . by participation in any political campaign on behalf of any candidate for public office.” *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981). Moreover, the “prohibition against partisan activity in section 501(c)(3) bars more than the partisan promotion of certain candidates over other candidates, and . . . an organization’s selective promotion of certain *parties* over others would be inconsistent with its section 501(c)(3) tax-exempt status.” *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d Cir. 1989) (emphasis in original).

### **Election-Related Activities in Which Churches May Engage**

Nonetheless, there remain a variety of politically related activities in which a church may engage without losing its tax-exempt status. Just because a church must satisfy the criteria of Section 501(c)(3) to preserve its tax exemption does not mean that it is barred from having any involvement in elections or speaking out on political and public policy matters.

Critically, while “no degree of support for an individual’s candidacy for public office is permitted” under Section 501(c)(3), churches remain free to express their views on matters of public policy. *Ass’n of Bar of City of New York v. Comm’r*, 858 F.2d 876, 881 (2d Cir. 1988) (quoting H.R.Rep. No. 413, 91st Cong., 1st Sess. 32 (1969)). The “fact that an organization . . . advocates social or civic changes

or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3).” 26 C.F.R. § 1.501(c)(3)-1(d)(2).

Indeed, a church may express its position on a policy issue even where the issue is closely intertwined with an election or associated with a particular party or candidate. An “organization may take positions on public policy issues, including issues that divide candidates in an election for public office as long as the message does not in any way favor or oppose a candidate.” Internal Revenue Service, Frequently Asked Questions About the Ban on Political Campaign Intervention by 501(c)(3) Organizations: Organization Position on Issues, (May 21, 2020).

Further, activities directly related to an election that are “conducted in a non-partisan manner, or which do not favor a particular political candidate, are permitted.” *New York ex rel. TZAC, Inc. v. New Israel Fund*, 520 F. Supp. 3d 362, 368 (S.D.N.Y. 2021). For example, churches may engage in a wide variety of voter education activities in anticipation of an upcoming election. See Rev. Rul. 78-248, 1978-1 C.B. 154 (1978) (“Certain ‘voter education’ activities conducted in a nonpartisan manner by an organization recognized as exempt under section 501(c)(3) of the Code will not constitute prohibited political activity disqualifying the organization from exemption.”). A church therefore may publish materials that describe political candidates’ positions on issues important to the church so long as the materials “contain[] no express statements in support of or in opposition to any candidate.” *Id.*

“In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner.” Internal Revenue Service, Tax Guide for Churches and Religious Organizations 7 (2015), available at <https://www.irs.gov/pub/irs-pdf/p1828.pdf>. Likewise, a church may invite a political candidate to speak before its congregation, provided that it also offers other candidates in the election in question an equal opportunity to speak. See Rev. Rul. 74-574, 1974-2 C.B. 160 (1974).

Through guidance, the IRS has provided a variety of examples of activities in which a church may engage without losing its tax-exempt status, including:

- Publishing newspaper advertisements encouraging individuals to contact a senator who is also a candidate for re-election to urge him to support a legislative measure that is up for a vote and noting that the senator was opposed to the measure in the past, but not mentioning the election in which the senator is a candidate.
- Setting up a booth at a state fair where citizens can register to vote, where the banners in and around the booth give only the name of the church, the date of the next upcoming statewide election, and notice of the opportunity to register, and the volunteers staffing the booth make no reference to a candidate or political party.
- Allowing political candidates to speak before the church’s congregation, even if not all of the candidates in the election in question speak, so long as all candidates were invited.

Internal Revenue Service, Tax Guide for Churches and Religious Organizations 10–14 (2015), available at <https://www.irs.gov/pub/irs-pdf/p1828.pdf>.

Ultimately, whether an activity constitutes participation in a political campaign on behalf of a candidate that could jeopardize a church’s tax-exempt status is a fact-specific inquiry. *See* Rev. Rul. 86-95, 1986-2 C.B. 73 (1986) (“Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case.”). The context in which politically related activities are undertaken is key to determining whether such activities are consistent with an organization’s tax-exempt status, and churches should not assume that an activity is categorically off-limits simply because it is related to a political campaign. *See Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d Cir. 1989).

### **Protections for Churches Under the Constitution and Internal Revenue Code**

The unique status of churches for purposes of federal tax law carries other consequences beyond the automatic tax exemption for which churches qualify. Specifically, there are “special restrictions on the IRS’s ability to investigate the tax status of a church.” *Branch Ministries*, 211 F.3d at 139.

Under the Church Audit Procedures Act, the IRS may investigate a church’s tax-exempt status only if a “high-level [U.S. Department of] Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church” engaged in activities that are inconsistent with its tax-exempt status and the Treasury Department “provides written notice to the church” that the Department is undertaking an investigation. 26 U.S.C. § 7611. In the ten-year period between 2011 and 2021, the IRS undertook a total of 16 investigations into the tax-exempt status of churches pursuant to this authority. *See* Grant Atkinson, *No Strings Attached: Why the Government Shouldn’t Tax Churches*, Alliance Defending Freedom (Oct. 5, 2023), available at <https://adlegal.org/article/no-strings-attached-why-government-shouldnt-tax-churches>.

Moreover, “[b]ecause of the unique treatment churches receive under the Internal Revenue Code, the impact of [a] revocation” of tax-exempt status “is likely to be more symbolic than substantial.” *Branch Ministries*, 211 F.3d at 142. Because a church is not required to seek the IRS’s approval to operate as a tax-exempt entity, a church that is found by the IRS to have engaged in impermissible partisan activity may later “hold itself out as a 501(c)(3) organization and receive all the benefits of that status” so long as it “does not intervene in future political campaigns.” *Id.*

Finally, churches are also protected by the First Amendment in various ways when they engage in election-related activities. In particular, the First Amendment ensures that a church will not be subject to discriminatory treatment in the event the IRS decides to investigate a church’s actions. *See Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015) (“[I]n administering the tax code, the IRS may not discriminate on the basis of viewpoint.”); *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030, 1034 (D.C. Cir. 1980) (“[A]lthough First Amendment activities need not be subsidized by the state, the discriminatory denial of tax exemptions can impermissibly infringe free speech.”).

For instance, the IRS would violate the First Amendment were it to single out certain organizations applying for tax-exempt status for more intense scrutiny because they hold “conservative” or “anti-administration” views. *True the Vote, Inc. v. Internal Revenue Serv.*, 831 F.3d 551, 555 (D.C. Cir. 2016). Thus, a church could claim the protection of the First Amendment if, for example, it had reason to believe that an IRS investigation of its election-related activities was motivated by the church’s position on social or cultural issues.

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Although a church must refrain from engaging in partisan activities that favor one political candidate over another if the church wishes to retain its tax-exempt status, that does not mean that churches are entirely shut out from participating in the electoral process. Non-partisan voter education and registration efforts, inviting candidates to speak before their congregations, and taking a stand on matters of public policy that matter to the church and its members are all activities in which churches are permitted to engage.

“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Churches can and should play a robust role in contributing to the democratic process, which is the rock on which our Republic is built.

Sincerely,

A handwritten signature in black ink that reads "Todd Rokita". The signature is written in a cursive, flowing style with a large initial "T" and "R".

Todd Rokita  
Attorney General of Indiana