

## CHURCHES IN POLITICS

May 01, 2013

### Legal Background

Organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code may not participate or intervene in “any political campaign on behalf of (or in opposition to) any candidate for public office.” IRC 501(c)(3).[1] This rule applies to all 501(c)(3) organizations—including 501(c)(3) churches. Yet, just about every election there are accusations that this or that church has violated the rule by its minister preaching support for a candidate from the pulpit.

### Pulpit Freedom Sunday

The elections in 2012 were no exception. But some churches, rather than covertly violating this rule, openly do so. Since 2008, a religious freedom organization has organized “Pulpit Freedom Sunday” at which religious leaders deliberately break The rules. According to one report of this event, the position of the churches is that the IRS rule violates their First Amendment right to free speech. Their plan is to record and send their rule-breaking sermons to the IRS and, when the IRS revokes their exempt status, seek court relief on the grounds that the law against political participation is unconstitutional.[2] Some 1,500 pastors participated in the October 2012 Pulpit Freedom Sunday.

According to information presently available, there has been no IRS response to Pulpit Freedom Sunday. This is surprising considering that the churches’ position has already been litigated several times in the past.[3] In short, the response of the courts and the IRS is that tax exemption is a privilege—a conditional privilege. And it is not a violation of the First Amendment for Congress to refuse to subsidize first Amendment activities. In other words, if you really want to promote a candidate, you may do so—just not as a 501(c)(3).

### Freedom From Religion Foundation

On November 14, 2012, the Freedom From Religion Foundation filed a lawsuit in the U.S. District Court for the Western District of Wisconsin to enjoin the IRS’ non-enforcement of campaign restrictions against churches and religious organizations. The basis for the Freedom From Religion Foundation’s standing to bring the claim—that it is discriminated against because, as a non-church, it actually needs to follow the law—may be tenuous. But it has managed to get the issue into court.

## Conclusion

The IRS rules prohibiting campaign activities by 501(c)(3) organizations are clear. It is interesting that the IRS has not taken action to enforce such rules in the face of blatant violations of them. The Freedom From Religious Foundation lawsuit may or may not resolve the issue. But given the public policy of only having rules if you are willing to enforce them, sooner or later the prohibition on campaign activity will either need to be revised or enforced against churches.

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[1] Note that the rule pertains to candidates—not legislation. A 501(c)(3) organization may support or oppose as long as it is insubstantial activity of the organization. [cite]

[2] <http://www.foxnews.com/us/2012/09/23/pastors-pledge-to-defy-irs-preach-politics-from-pulpit-ahead-election/>.

[3] See *Branch Ministries v. Rossotti* (D.C. Ct. App. 2000).

## MEET THE TEAM



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