

## POLITICS IN CHURCH

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Congress and the IRS have made it clear that 501(c)(3) organizations 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). (Note that the rule does not prohibit all support or opposition to *legislation*; that is permitted as long as it is insubstantial. This rule prohibits all support or opposition to a *candidate*.) This prohibition includes churches exempt under Section 501(c)(3). Yet, just about every election there are accusations that this or that church has violated the rule by preaching support for a candidate from the pulpit.

A recent news story reports that several churches, rather than covertly violating this rule, are planning to openly do so. According to the story, 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 rule is unconstitutional.

If I were advising these churches, I would point out that their position has already been litigated several times. See, for example, *Branch Ministries v. Rossotti* (D.C. Ct. App. 2000). The basic position of 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. If you really want to promote a candidate, you may do so—just not as a 501(c)(3). So, in my mind, the legal result here is not in doubt; but it will be interesting to see how this plays out for the churches.

## MEET THE TEAM



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