

Legal Memorandum

To: VoteYesMarriage.com

From: Scott Lively; Richard Ackerman

Date: June 20, 2005

Subject: Participation in Ballot Measure Activities by a Section 501(c)(3) Church

You have asked to what extent a church, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, may participate in, endorse, and discuss a ballot measure in the State of California. This is an issue that has come up before and was particularly predominate during the debate on Proposition 22, which established a statutory, but not constitutional, description of what “marriage” is in the State of California.

Churches, as described in Section 501(c)(3) of the Internal Revenue Code, are organized for religious purposes and are classified as public charities. The following rules apply to public charities.

Internal Revenue Code §501(c)(3) specifies for a public charity that no substantial part of its activities shall constitute carrying on propaganda or otherwise attempting to influence legislation. This limitation applies to ballot measure campaigns. The term “substantial part” was clarified by the case of Season Good v. Commissioner, 227 F.2d 907, which held that the devotion of less than 5% of the entity’s efforts at such attempts to influence did not lead to loss of tax exemption. However, that rule was abandoned and the Internal Revenue Service now looks at each organization’s activities and expenditures on a case by case basis to determine whether or not a substantial part of its activities or annual expenditures constitute grassroots lobbying (i.e., attempts to influence a ballot measure campaign). Generally, our firm and most tax practitioners believe that 5% or less is a fairly safe guideline to follow. Some practitioners even suggest that a range of 5% to 15% of a church’s expenditures and/or activities may also be considered under most circumstances to be insubstantial and safe. For additional information on lobbying and political activity restrictions, interested parties may wish to review the holdings in *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000); *Christian Echoes National Ministry v. U.S.*, 470 F.2d 849, 854 (10th Cir. 1972). A review of the IRS’ perspective on these issues can also be found in IRS Publication #1828 (rev. 7-2002). See <http://www.irs.gov/pub/irs-pdf/p1828>.

Subject to the above restriction, a church may pursue certain attempts to influence a ballot measure campaign if such attempts are consistent with its exempt purposes. Influencing a ballot measure campaign can include, but is not limited to, the following:

1. Supporting ballot measure campaigns with monetary and non-monetary contributions, including the solicitation and receipt of contributions for a specified measure through special collection trays at church functions;
2. Endorsing a particular position in support of or against a particular ballot measure;
3. Setting up voter registration booths on the church site;
4. Having a speaker, such as an attorney, legislator, or representative of a ballot measure committee, speak at the church and distribute literature on the same;
5. Discussing the ballot measure in church services with congregation members, including taking positions in sermons on a particular ballot measure; and
6. Including a position on a ballot measure in a church newsletter or similar publications to congregation members.

Again, these activities are subject to the “insubstantiality” rule discussed above. However, as long as the activities are minimal and do not become a substantial part of the church’s activities or expenditures, they are permissible, valid, and legal under law. As long as such activities do not become “substantial,” a church will not and cannot lose its tax exempt status. We should note that churches are absolutely prohibited from participating in, endorsing, or spending resources or activities to promote or oppose candidates for office. **However, a church may engage in issue advocacy relating to a ballot measure as long as the church does not expressly advocate the election or defeat of a clearly identified candidate and the advocacy is not done at the request of, or in coordination with, a candidate for office or the candidate’s committee. Absent these circumstances, a church may participate in a ballot measure campaign subject only to the insubstantiality rule as the primary limitation.**

Please contact us if you have any questions.