CAN A CHURCH TAKE A POSITION ON BALLOT PROPOSITIONS?

Houses of worship have the right to address political issues through lobbying, which includes the right to support or oppose legislation, propositions, initiatives, and referendums. This right is often confused with the position held by the Internal Revenue Code (IRS) that nonprofit organizations are prohibited from supporting or opposing individual candidates or parties. The IRS argues that clergy cannot support or oppose political candidates from the pulpit. We believe that pastors have a right to speak freely from the pulpit and that the IRS's view on this issue violates the First Amendment. Nevertheless, because no candidates are at issue in Proposition 1, this will not be an issue for houses of worship. While you should have confidence in your right as a religious organization to express a position on legislation, propositions, initiatives, and referendums, this right has some limitations.

The IRS provides that no substantial part of the activities of tax-exempt organizations can consist of "carrying on propaganda, or otherwise attempting, to influence legislation." For purposes of the ballot initiative at issue today, this means that churches are not permitted to spend a substantial part of their activities attempting to oppose Proposition 1. This should not, however, deter houses of worship from participating in the campaign to oppose Proposition 1 because it is highly unlikely that the activities related to this measure would constitute a substantial part of the activities of a normal house of worship.

In determining whether a religious organization's politically related activities are "substantial," legal practitioners generally recommend that organizations spend no more than 5% of their gross income on such activities. In some circumstances, courts have held that lobbying activities totaling less than 10% do not amount to a "substantial part" of the activities. On the other hand, courts have held that spending more than 20% of the organization's total receipts was "substantial." Therefore, it should be safe to assume that so long as a religious organization spends no more than 5% of its revenues and no more than 5% of its activities (in terms of time) on lobbying activities, the organization should not fear that it will lose its tax exempt letter from the IRS. For purposes of opposing Proposition 1, religious organizations should follow the 5% "rule of thumb."

Religious organizations are often laden with unnecessary fear that the IRS will remove their tax-exempt status for involving themselves in politics. In actuality, however, only one religious organization is known to have lost its tax-exempt status from the IRS in relation to political involvement. The Church of Pierce Creek, a/k/a Branch Ministries, paid for full page ads in the Washington Times and USA Today attacking then Governor Bill Clinton's moral character during the 1992 Presidential Campaign. This church was in violation of the rule that prohibits a nonprofit organization from participating or intervening in any political campaign for,

or against, any candidate for public office. In the end, nothing prohibited the church from reapplying for tax exempt status in the future. This single case should not be worrisome to religious organizations because they are not prohibited from being involved in a ballot initiative, whereas a strict prohibition is written into the Internal Revenue Code prohibiting nonprofit organizations (religious and nonreligious) from supporting individual candidates - and that is exactly what got The Church of Pierce Creek into trouble.

Is A Church Subject To Campaign Finance Disclosures?

If a religious organization in California incurs expenditures exceeding $1,000 due to its support of an initiative or referendum within a calendar year, the organization may be required to make campaign finance disclosures under the Political Reform Act of 1974. It is not likely, however, that a typical house of worship would incur more than $1,000 in expenditures in support of the effort to stop Proposition 1. We would expect that the normal activities of a house of worship supporting the opposition to Proposition 1 would include (1) a statement from the pastor, priest or rabbi supporting the opposition of Proposition 1 during a regularly scheduled service; (2) a voter registration drive conducted by volunteer members; (3) a statement in the bulletin, newsletter or other regularly scheduled communication; (4) announcements regarding the campaign to vote “No” on Proposition 1; and/or (5) assisting in recruiting volunteers to help on the campaign. As a result, the cost to the church for any such efforts would likely be negligible and, therefore, exempt from the campaign finance disclosure laws.

An obvious question arises as to the scope of the meaning of “expenditure.” The California Government Code provides that “[t]he amount of an expenditure reportable pursuant to this subsection shall include all costs directly attributable to the communication, including but not limited to, salaries, production, postage, space or time purchased, agency fees, printing, and any additional administrative or overhead costs attributable to the communication.” However, “[t]he expenditure does not include any of the regular ongoing business overhead which will be incurred in similar amounts regardless of the communication.” This provision, therefore, will certainly protect most houses of worship in relation to the activities identified in items (1), (3), and (4) above because those activities can typically occur in the normal course of a meeting or service without any additional expenditure.

In some cases, religious organizations regularly publish and send newsletters and email communications to their congregations. These communications are appropriate tools for an organization to use to encourage congregants to vote “No” on Proposition 1 where no additional costs are incurred as a result of opposition to the ballot measure. An “expenditure” under the disclosure laws does not occur where the support of the ballot measure is communicated in “[a] regularly published newsletter or regularly published periodical . . . whose circulation is limited to an organization’s members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication. This paragraph applies only to the costs regularly incurred in publishing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or substantially altered in style, size, or format, the additional costs are expenditures.”

It is worth noting that campaign finance disclosure laws have been challenged and in some cases have been ruled unconstitutional in relation to a church's rights to the free exercise of religion and the right to free speech under the First Amendment. However, because California's laws specify a $1,000 threshold before the disclosure and reporting requirements apply, it is less likely that California's Political Reform Act will be deemed unconstitutional when generally applied to religious organizations.

Conclusion And Summary

Religious organizations have a First Amendment right to free speech and free exercise of religion. Churches, Temples, and Synagogues in California must assert their role as the "conscience of the state" if we are going to be able to push back against the radical agenda that is being forced upon the unborn by politicians and special interest groups. A church can support the effort to oppose Proposition 1 so long as its support does not amount to a "substantial part of the activities" of the organization. In terms of finances, a house of worship should generally have no problem with the IRS if it spends up to 5% of its revenues in support of the opposition efforts. The closer a religious organization gets to 10% or more, the less safe the church will be in protecting its tax-exempt letter from revocation. Finally, if a religious organization spends more than $1,000 toward costs that are solely incurred because of its support of the opposition of Proposition 1, it may be subject to campaign finance disclosure requirements under the California Political Reform Act.

In the event that your organization has any questions, please contact Advocates for Faith & Freedom and the lawyers will endeavor to provide you with legal assistance. Although Advocates for Faith & Freedom is willing to attempt to assist you with legal advice, no attorney/client relationship will arise until such time that you or your religious organization contacts the legal organization and the legal organization consents to providing such advice in your individual case. Please also be advised that this letter is being provided for general information only and you must contact an attorney for legal advice relating to your individual circumstances because all situations are unique, and the application of the general principles discussed above may not be directly applicable in your case.

Sincerely,

ADVOCATES FOR FAITH & FREEDOM
/s/
Robert H. Tyler
General Counsel