

Churches and political campaigns

Contributed by K. Hollyn Hollman, BJC General Counsel

In an election year, many people feel the heightened sense of responsibility that comes with living in a democracy. We all should. Despite the problems of excessive partisanship, negative campaigning and corporate influence over our elections, the right to vote and get involved in campaigns is a privilege that shouldn't be taken for granted.

For church leaders, election season brings special challenges. While church members often differ on specific political issues and candidates, some congregants put their pastor in a tough position by bringing their politics to church with the expectation that he or she will bless their views. That said, the First Amendment's religious freedom guarantees limiting the government's involvement in religious institutions — separating the institutions of church and state — do not mean that churches and their members have no role in influencing the law. Navigating the waters of political influence and church leadership may not always be easy, but doing so carefully is necessary for the benefit of the churches and the state. Fortunately, good resources are available to help chart a reasonable course.

Any time a church gets involved in a public policy debate, it should be careful to maintain an independent voice and avoid partisanship. In addition to ethical and practical reasons, there are legal considerations. While the First Amendment protects the freedoms of religion and speech that churches enjoy, tax laws govern entities that receive favorable tax treatment by limiting lobbying and banning electioneering. The ban on electioneering comes from the statutory language that provides for the nonprofit status that most houses of worship claim.

Internal Revenue Code 501(c)(3) defines tax-exempt organizations as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, ... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided ...), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

For years, Rep. Walter Jones, R-N.C., has made various, and unsuccessful, attempts to remove the restrictions on electioneering. He and his allies have persisted in mischaracterizing the prohibition as an assault on churches' First Amendment rights of free speech, free association and free exercise of religion. The BJC has opposed such attempts and has encouraged our supporters, including church leaders, to educate themselves on the many ways to communicate their political convictions in the marketplace of ideas within legal and ethical boundaries.

In reality, the First Amendment broadly protects religious organizations' rights to free speech and expression. Church leaders are free to speak openly about matters of important public policy, even from the pulpit, and there are a number of other ways church members can get involved in the political process — including voter registration drives, hosting nonpartisan candidate forums, and — as the statute recognizes — even a certain amount of issue lobbying. Churches, however, may not directly intervene in a political campaign (e.g., by using church resources to

support or oppose a specific candidate or formally endorse or oppose a candidate for office).

A pastor who uses the church to urge congregants to vote for a particular candidate jeopardizes the church's tax-exempt status. This does not mean that a pastor cannot urge political action on a moral or social issue. The complexity arises when issue advocacy leads to participation in a political campaign on behalf of (or in opposition to) any candidate for public office. Recently, in light of President Obama's statement of support for marriage equality, some churches turned their issue advocacy about marriage into a campaign to defeat the president, resulting in a call for IRS investigations.

The assertion is false that the 501(c)(3) prohibitions amount to "targeted censorship of churches." The ban on electioneering does not single out houses of worship; it applies to all similarly organized charitable organizations. Opponents of the law rarely mention that tax-exemption is a special benefit — not a right — that churches are free to decline if they wish to engage in political campaigning. You can read more in the IRS church guide, available online at www.BJOnline.org/electioneering.

Despite some high-profile counterexamples, most worshippers do not wish for their religious leaders to instruct them on how to vote or use their tithes to support partisan politics. Church leaders do well to exercise their freedom responsibly to preserve their public witness.