



# **The Church and Politics**

**What Ministers and Churches Can Do to  
Affect Public Policy with Christian Principles**

**Pacific Justice Institute**

PROTECTING FAITH, FAMILY AND FREEDOM

# The Church and Politics

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**Pacific Justice Institute**

**P.O. Box 276600**

**Sacramento, CA 95827**

**[www.pji.org](http://www.pji.org)**

# An Open Letter to Pastors and Churches

We at the Pacific Justice Institute are dedicated to the defense of religious freedom, parental rights, and other civil liberties. Since PJI's inception in 1997, we have had an opportunity to assist hundreds of pastors and churches, and as a result, our legal team has become knowledgeable about what pastors can do to educate their congregations, as well as what churches can do to advance Christian principles in civil government. As the leader of a religious organization, you may have received false information from activist groups attempting to silence pastors by threatening the loss of church tax-exempt status if an effort is made to discuss issues



of a civic nature. This booklet will provide you with information about what a church can do to advocate biblically based positions on issues and legislation while still preserving its tax-exempt status.

In light of the important issues facing our nation today, it has become increasingly critical for Christians to let their voices be heard. As people of faith prepare to vote, it is vital for church

leaders to take a stand and be ready with all the tools legally available to them to further the moral principles created by God. You, as a pastor, should be equipped to educate your congregation on what a church body can do to support particular legislation and viewpoints.

Running the Race,

A handwritten signature in black ink that reads "Brad Dacus". The signature is written in a cursive, flowing style.

Brad Dacus, President

## **Voter Registration Drives**

***“Churches can conduct non-partisan voter registration drives.”***

Churches have tremendous freedom to register their members and others to vote.<sup>1</sup> A non-partisan voter registration drive means that there is no implied or explicit endorsement of a specific party or candidate and all people are encouraged to register to vote equally, regardless of their political affiliation. In order to ensure that you do not imply an endorsement, we advise that you refrain from naming any specific politician, or if politicians are named, ensure that *all* politicians running for that office are named. This way no particular politician is favored or set apart.<sup>2</sup> Voter registration drives may also include setting up a voter registration table in your church lobby or mailing registration cards to your members.

It is unacceptable for a church to only register and educate voters to support one particular candidate or party.<sup>3</sup> Voter registration drives should also not be conducted with the participation of any political party.<sup>4</sup> It is permissible, however, to target a specific geographic area for a voter drive, even if that geographic area is known for holding a particular political belief.<sup>5</sup> When encouraging voter registration within a targeted area it is important to keep in mind that it is not permissible to specifically ask people particular questions to determine their political affiliation before encouraging them to register.<sup>6</sup>

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<sup>1</sup> See, *Internal Revenue Manual*, Section 7.25.3.7.11.5 (February 23, 1999)

<sup>2</sup> Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007)

<sup>3</sup> T.A.M. 9117001

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Voter-registration cards are available from a number of sources, including the County Registrar of Voters, Libraries, Department of Motor Vehicles, and certain internet sites. In California, any individual, group or organization requesting 50 or more voter registration cards from the Secretary of State's Office must complete and submit a "Statement of Distribution" form as well as a plan of distribution to the Secretary of State. The Statement of Distribution form is available in PDF format at the following website:

<https://elections.cdn.sos.ca.gov/vrdis.pdf>

The completed form should be mailed or faxed to:

California Secretary of State  
Elections Division  
1500 11th Street, 5th Floor  
Sacramento, CA 95814  
FAX: (916) 653-3214

In states other than California, churches should check with their Secretary of State to determine whether there are any special regulations governing large scale voter registration drives.

## **Distributing Materials**

***“Churches may allow the distribution of non-partisan voter education materials.”***

Churches may allow the distribution of non-partisan voter education materials (e.g., voter guides and scorecards) that do not imply an endorsement for any particular candidate.<sup>7</sup> To accomplish this, ***objective voter guides***: 1) should address some of the issues in which the church does not have a stated position (e.g., the environment, foreign policy, taxes,

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<sup>7</sup> TAM 9117001.

immigration, healthcare); 2) must not favor any particular party or candidate over the others; and 3) must not use labels such as “conservative” and “liberal” because this can imply a preference for certain candidates. It is important to remember that even limited participation in a political campaign on behalf of, or in opposition to, a candidate for public office by a church is strictly prohibited.<sup>8</sup>

A church can legally prepare and make generally available to the public a compilation of *voting records* of all members of Congress and other elected bodies on major legislative issues involving a wide range of subjects.<sup>9</sup> To ensure that this qualifies as legal activity: 1) the publication should contain no editorial opinion; 2) its content and structure should not imply approval or disapproval of any member or their voting record; and 3) those candidates up for reelection should not be listed as incumbents.<sup>10</sup> If the publication shows bias towards particular candidates or parties, or if only a narrow selection of issues is addressed, then this activity is prohibited.<sup>11</sup>

Churches may also send questionnaires to all candidates requesting a brief statement of their views on a variety of issues.<sup>12</sup> This is not prohibited activity if the church includes all candidates’ answers when it distributes the material to the congregation and the questions “do not evidence a bias on certain issues.”<sup>13</sup> Thus, it is prohibited if the church edits the answers of candidates in such a way that indicates bias for or against a specific candidate.<sup>14</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> 1978-1 C.B. 154; Rev. Rul. 78-248.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

## **Providing Political Forums for Candidates**

***“Churches may host candidate or issue forums where all candidates are invited and allowed to speak.”***

Churches are absolutely allowed to provide political forums for candidates, so long as all candidates running are invited to attend.<sup>15</sup> “A forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office.”<sup>16</sup>

A forum for candidates should not be operated in a manner that would show a bias or preference for or against a particular candidate. Questions to forum participants need to be prepared and presented by a nonpartisan, independent panel of knowledgeable persons composed of representatives of the media, educational organizations, community leaders, and other interested persons. Each candidate must be allowed an equal opportunity to present his or her views on each of the issues discussed. The church should select a moderator for each forum whose sole function will be limited to assuring that the general ground rules are followed.<sup>17</sup>

These candidate forums should be sure to include invitations to all legally qualified candidates for a particular office and should cover a broad range of issues, although as few as three important issues are sufficient.<sup>18</sup> If it is impractical to invite all legally qualified candidates, churches

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<sup>15</sup> See Rev. Rul. 74-574.

<sup>16</sup> 1986-2 C.B. 73.

<sup>17</sup> *Id.*

<sup>18</sup> *T.A.M.* 9635003.

may invite fewer candidates if reasonable and objective criteria are used to determine which candidates will be invited.<sup>19</sup> For example, it is permissible to invite all candidates who have received a certain percentage of the popular vote in the primary election.<sup>20</sup> However, the criteria must be objective, and courts have found criteria such as “significant candidates” or those candidates “actively participating” too subjective and are therefore prohibited.<sup>21</sup>

A primary debate is nonpartisan under the Federal Election Campaign Act even if participation is restricted to candidates seeking the nomination of one party.<sup>22</sup> This means that for a primary debate, as long as all members of a particular party are invited, it is not a prohibited activity for churches. The court case on which this finding was based also held that when holding a primary debate there is no obligation to hold a debate for every party.<sup>23</sup> For an analysis of proposed questions for a candidate forum, please contact the Pacific Justice Institute.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Fulani v. Brady*, 809 F. Supp. 1112 (S.D.N.Y. 1993).

<sup>22</sup> *Fulani v. League of Women Voters Educ. Fund*, 684 F. Supp. 1185 (S.D.N.Y. 1988); *affirmed*, 882 F.2d 621 (2nd Cir. 1989).

<sup>23</sup> *Id.*



## **Speaking at Church Services “*Churches may allow candidates and elected officials to speak at church services.*”**

*Churches may invite candidates to speak at church services either in their capacity as candidates, or as individuals.*<sup>24</sup>

If the purpose of the presentation is political in nature, for example a candidate forum or campaign speech, the church must invite all candidates seeking the same office. The church cannot endorse any of the candidates appearing, and no fundraising activities may occur.<sup>25</sup> However, if the presentation is politically nonpartisan (e.g. given *solely* as personal testimony of faith or conversion), invitations to opposing candidates are not required.<sup>26</sup> In this situation, we strongly advise the church to make it clear that it is not endorsing any political candidate, and that the speaking engagement is for testimonial purposes only.<sup>27</sup>

When a politician speaks in a non-political capacity, neither the candidate nor the church should make any mention of their campaign, even if it is part of their testimony. Additionally, no fundraising activities can take place.<sup>28</sup> Also please note that even if the politician’s campaign is not mentioned, if the primary purpose in inviting the candidate to speak is to imply *endorsement* for the candidate, this may be considered a violation of the political prohibition.<sup>29</sup> Thus, churches should not invite candidates to speak solely as a pretext to indicate an endorsement of the church for that individual’s candidacy, but the church is welcome to invite the

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<sup>24</sup> *IRS Publication 1828*; pg. 8.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Kindell and Reilly, *Election Year Issues*, 431 (1993)(emphasis added).

individual so long as the underlying purpose is not political in nature.

## **Churches and Issue Advocacy**

***“Churches may engage in issue advocacy, spending no more than an insubstantial amount of the church’s budget”.***

*Public charities, churches and synagogues are permitted to engage in an “insubstantial” amount of lobbying activity.<sup>30</sup>*

The definition of lobbying activities includes voter initiatives, ballot propositions, constitutional amendments, and measures. The IRS defines “lobbying expenditures” as any expenditure for the purpose of influencing legislation.<sup>31</sup> The IRS has not given a specific definition of what “insubstantial” means, but courts have held that spending less than 5% of the organization’s time and money is within acceptable limits.<sup>32</sup> Another court held that spending as much as 10% of an organization’s budget still qualified as an insubstantial amount of lobbying expenditures.<sup>33</sup>

Many churches have inquired about whether they may circulate petitions without jeopardizing their tax-exempt status. Based on the foregoing analysis, if after incorporating the petition drive into lobbying activities, the overall lobbying activity is less than 5-10% of the organization’s total activity, it seems likely that courts would find this activity to be “insubstantial lobbying activity.”

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<sup>30</sup> 26 U.S.C. §501(c)(3).

<sup>31</sup> 26 U.S.C. §501(c)(3).

<sup>32</sup> *Seasongood v. Commissioner*, 227 F2d 907 (6th Cir. 1955).

<sup>33</sup> *World Family Corp. v. Commissioner*, 81 T.C. 958 (1983).

## **Educating Your Congregation**

***“Churches may educate members of the congregation about pending legislation.”***

Attempting to influence legislation by contacting or urging others to contact members of a legislative body with the purpose of proposing, supporting, or opposing legislation, initiatives and ballot measures is considered lobbying and can only be done with an “insubstantial” amount of the church’s total resources.

However, educating the public without any form of advocacy is not restricted.<sup>34</sup> “Church leaders are not prohibited from speaking about important issues of public policy.”<sup>35</sup> Church leaders are allowed to educate members of the congregation by speaking about important legislation/ initiatives and ballot propositions and offering facts and materials, as long as the information is educational and is not designed to support a particular party or candidate.<sup>36</sup> Members of the clergy may preach on biblical truths, identify legislation or ballot items that deal with those truths, and ask members of their congregation to prayerfully consider God’s views on the subject as they let the Holy Spirit lead them to take whatever actions they deem appropriate. This would not constitute lobbying within the IRS definition so long as the pastor did not take an actual position on the legislation or specifically urge the congregants to take any particular action.

The federal restrictions on nonprofit corporations in engaging in support or opposition to political candidates and limitations on lobbying is commonly known as the Johnson Amendment. In May of 2017, an executive order was issued by President Trump which clarifies and provides a narrow interpretation of the Johnson Amendment. The language is important and is provided at length below.

All executive departments and agencies shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury.<sup>1</sup>

The stated purpose of this executive order is to promote a federal policy of free speech and religious liberty.

It is important to note that this discussion involves IRS rules. There may be laws in your state, county or city which require a church to register as a “political committee” or perhaps an “incidental political committee” when engaging in

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<sup>34</sup> *IRS Publication 1828.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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<sup>3</sup> Executive Order 13798 § 2 (May 4, 2017).

activities which could influence legislation.<sup>37</sup> Thus, in addition to IRS rules, it is important to check state and local laws.

## **Pastors and Candidate Endorsements**

***“Pastors may privately endorse a candidate.”***

Although ministers **cannot** publicly endorse candidates on behalf of the churches they work for, they **can** do so in their capacity as private individuals.<sup>38</sup> Ministers do not lose their protected right to free speech simply because they are an employee of a church. As long as the political endorsement is not made at official church functions, it is not prohibited.<sup>39</sup> To this extent, for purposes of identification, a pastor may even identify himself or herself as a member of the clergy in a public endorsement so long as they make clear that the endorsement is not that of the church for which they work.<sup>40</sup>

It is acceptable for a pastor’s name and the name of the church he or she represents to be used in a political advertisement as long as the advertisement is paid for by the candidate or party and states that it is only the view of the minister and not the official position of the church.<sup>41</sup>

It is not acceptable, however, for a pastor to say at church, even with the disclaimer that it is only their personal opinion, that he or she endorses a particular candidate or party.<sup>42</sup> Moreover, it is also not acceptable for a clergy

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<sup>37</sup> For example, Montana Code Annotated Section 13-37-225.

<sup>38</sup> *IRS Publication 1828*; pp. 7-8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* That notwithstanding, in recent years hundreds of pastors have endorsed or opposed candidates running for office from the pulpit. As of the date of this publication, the IRS has not taken action to remove any church's nonprofit status for this speech activity.

member to put his or her personal endorsement of a candidate on church letterhead, in a church bulletin, or other church literature.<sup>43</sup>

Ministers are allowed to speak publicly endorsing a particular candidate or party, as long as it is not a church function.<sup>44</sup> Further, pastors are also allowed to speak at community gatherings and political meetings as long as they make it clear that it is only their personal endorsement and not the endorsement of the church.<sup>45</sup>

## **Ministers and Personal Politics**

***“Pastors can participate fully in political committees that are independent of the church for which they work.”***

When pastors participate in political committees and events, they should make sure that they state clearly that they are acting as an individual, and not as a representative of a particular church.<sup>46</sup> These guidelines are very similar to those regarding a private endorsement by a member of the clergy. The line between the minister acting as a representative of the church, in which case there are limits on political involvement, and the minister acting as an individual, in which case he can act freely, must be clearly defined.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *IRS Publication 1828.*

## Churches as Polling Places

***“Churches may be used as polling places on Election Day.”***

Courts have clearly held that “the burden on free exercise of religious beliefs is so slight that it does not begin to outweigh the interest of the state in having available to it the additional polling places which the use of the churches affords.”<sup>47</sup> Hence, courts have routinely held that using churches as polling places does not violate the prohibition on political activity.

**The Church and Political Finances** ***“Churches can NOT make donations to a political campaign as a church.”***

Churches are not allowed to donate any money to a political campaign or a political party.<sup>48</sup> The definition of what constitutes such a donation includes: 1) direct financial campaign contributions, 2) setting up a committee to do so; or, 3) allowing candidates to solicit contributions while speaking in the church.<sup>49</sup> However, members of a church, **acting on their own behalf**, are free to establish separate political action committees (PACs) that can financially support candidates and initiatives.<sup>50</sup> Note that no church assets can be used for the PAC.

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<sup>47</sup> *Otero v. State Election Bd.*, 975 F.2d 738, 741(10<sup>th</sup> Cir. 1992); *Berman v. Board of Elections*, 420 F.2d 684, 686 (2<sup>nd</sup> Cir 1969).

<sup>48</sup> *Id.*

<sup>49</sup> *IRS Publication 1828*.

<sup>50</sup> *Compare* 26 U.S.C. § 501(c)(4) (2004) (tax exemption for "civic leagues or organizations not organized for profit but operated exclusively for the

## Pastors and Political Finances

*“Pastors may donate money to a political campaign as a private individual.”*

Again, when a minister is acting as an individual he or she may act freely, just as any citizen can. As long as the money for the donation is coming out of the pastor’s personal salary, then he or she is treated as an individual and is allowed to make an individual contribution to those candidates and parties he or she supports.<sup>51</sup>

## Final Thoughts

The Pacific Justice Institute has written this booklet in order to provide you with important information about a church’s ability to speak biblical truth in the areas of public concern. In an election year, we are aware that many churches want to educate their members on political issues, but are afraid of jeopardizing their tax- exempt status.

Our purpose for providing this information is to clear up any misunderstandings about participation by churches in discussing public policy. Part of our mission is to shed the light of truth on the fact that non-partisan church participation in shaping the great moral issues of the day will **not** result in any threat to its non-profit 501(c)(3) status (e.g., protecting innocent life and opposing societal immorality).

Please note that this is a complicated area of the law and this booklet should not be construed as legal advice regarding any specific situation your church may be facing. However, if we can ever serve you or your church in any way, please feel free to contact us at (916) 857-6900 or [info@pji.org](mailto:info@pji.org) for legal assistance at no charge. The purpose of the Pacific Justice Institute is to assist you in

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promotion of social welfare”), with 26 C.F.R. § 1.527-6(f)(g) (“An organization described in section 501(c) that is exempt from taxation under section 501(a) may, [if it is not a section 501(c)(3) organization], establish and maintain such a separate segregated fund to receive contributions and make expenditures in a political campaign”).



<sup>51</sup> *IRS Publication 1828.*

working to advance moral principles in all three institutions created by God: family, church, and civil government.

## **Pacific Justice Institute Special Projects**

- **Pastor’s Legal Seminars:** These seminars provide clergy and church or para-church administrators with practical information on the law affecting churches and other faith-based organizations. These include moral issues involving employees and attendees, religious land use and First Amendment rights.
- **Speakers Bureau:** PJI offers dynamic speakers on a variety of subjects, including parents’ rights, church rights in the political process, and evangelizing in public schools.
- ***Reclaim Your School! 10 Strategies to Practically and Legally Evangelize Your School*** -- our 134 page book gives practical advice to students, parents, teachers, and clergy on standing up for traditional values and evangelizing in today’s school environment.
- **Opt-Out Forms** -- available in Spanish and English, these forms allow parents to have their children dismissed from comprehensive sex education in California public schools.
- **“Faith in the Workplace: The Religious Freedom Rights of Employers and Employees”** -- a booklet that clarifies religious rights in the workplace as defined by federal statutes.
- **“Public Education: Religious Rights & Values in California Schools”** - - a booklet that clarifies the importance of religious rights and responsibilities of parents, students, teachers and school administrators in public education.
- **TEAM Volunteers:** working as office assistants, volunteers do data entry, mailings, and various other tasks in our Sacramento office.

# Pacific Justice Institute Information

## Request Form

Pacific Justice Institute is a non-profit 501(c)(3) ministry that depends on the prayers and donations from churches and people just like you! If you are interested in receiving our free newsletter and press releases, please fill out the following information and return (Please print legibly)

Name (Mr./Mrs./Miss/Ms.) \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Email Address \_\_\_\_\_

Phone \_\_\_\_\_

### **In addition to our free newsletter and press releases:**

\_\_\_ Please send me more information about \_\_\_\_\_

\_\_\_ I am interested in having Brad Dacus, the president of Pacific Justice Institute, speak at my church.

\_\_\_ I want to share the vision of PJI, please send me a PJI Informational DVD.

## Become A Member Of Pacific Justice Institute

Pacific Justice Institute is supported through donations and individuals becoming members. Annual membership is as low as \$10 per month. Visit [PJI.org](http://PJI.org) to become a member.



# PACIFIC JUSTICE INSTITUTE

Defending Religious Freedom, Parental Rights, and Other Civil Liberties

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P.O. Box 276600  
Sacramento, CA 95827

Phone (916) 857-6900  
Fax (916) 857-6902

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