



June 12, 2020

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RE: June 23, 2020 Address to America's Youth event

Dear Pastor Barnett and Pastor Baker,

I'm writing on behalf of the Secular Communities for Arizona (SCA) regarding a violation of the IRS rules for 501 (c) 3 organizations in your church. SCA is a statewide non-profit organization whose purpose is to protect the constitutional principle of separation between church and state.

As you can see from the enclosed Media Advisory, Students for Trump have booked a rally for Trump on June 23, 2020 in your church. Such activity would be a violation of federal law, a violation of the IRS rules, and a violation of the Constitution.

The ban on political campaign activity by charities and churches was created by Congress more than a half century ago. The Internal Revenue Service administers the tax laws written by Congress and has enforcement authority over tax-exempt organizations. Here is some background information on the political campaign activity ban and the latest IRS enforcement statistics regarding its administration of this congressional ban.

In 1954, Congress approved an amendment by Sen. Lyndon Johnson to prohibit 501(c)(3) organizations, which includes charities and churches, from engaging in any political campaign activity. To the extent Congress has revisited the ban over the years, it has in fact strengthened the ban. The most recent change came in 1987 when Congress amended the language to clarify that the prohibition also applies to statements opposing candidates.

Currently, the law prohibits political campaign activity by charities and churches by defining a 501(c)(3) organization as one **"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."**

The IRS has published Revenue Ruling 2007-41, that outlines how churches, and all 501(c)(3) organizations, can stay within the law regarding the ban on political activity. Also, the ban by Congress is on political campaign activity regarding a candidate; churches and other 501(c)(3) organizations can engage in a limited amount of lobbying (including ballot measures) and



advocate for or against issues that are in the political arena. The IRS also has provided guidance regarding the difference between advocating for a candidate and advocating for legislation.

Each election cycle, the IRS reminds 501(c)(3) exempt organizations to be aware of the ban on political campaign activity. The IRS published its most recent reminder in a public news release.

The division within the IRS responsible for overseeing churches and charities is the Tax Exempt and Government Entities Division. TEGE has created a Web page entitled Charities, Churches, and Educational Organizations – Political Campaign Intervention. It is dedicated to the IRS most recent activities related to 501(c)(3) and political activity.

A definitive court case on the issue of free speech and political expression is *Branch Ministries Inc., v. Rossotti*. In that case, the court upheld the constitutionality of the ban on political activity. The court rejected the plaintiff church's allegations that it was being selectively prosecuted because of its conservative views and that its First Amendment right to free speech was being infringed.

The court wrote: "The government has a compelling interest in maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose." Instead, the IRS asserts that it revoked the Section 501(c)(3) advance determination because the church undertook partisan political activity in direct violation of Section 501(c)(3). That is precisely what you are doing here.

Section 501(a) in turn provides that an "organization described in subsection [501](c) . . . shall be exempt from taxation under this subtitle . . ." Subsection (c)(3) describes "[c]orporations . . . organized and operated exclusively for religious . . . purposes . . . 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." 26 U.S.C. § 501(c)(3).

In 1964, the IRS revoked the tax-exempt status of Christian Echoes National Ministry, Inc., a religious corporation, in part because "it had directly and indirectly intervened in political campaigns on behalf of candidates for public office." See *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 853 (10th Cir.), cert. denied, 414 U.S. 864 (1973). The other case involved The Way International. After a three-year audit from June 1, 1975 through August 31, 1978, the IRS in 1985 revoked the Section 501(c)(3) tax-exempt status of The Way International retroactively, in part because The Way had engaged in political activity.

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes. Any payments you may have received for agreeing to host this rally must be disgorged and donated to a bona fide 501 © 3 organization.

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Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as **political campaign intervention**. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of **violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate**. The flier clearly is sending a message in favor of Trump.

It is quite clear from the facts that your church will be violating the law, IRS rules, and the Constitution should you continue with this rally on June 23. You must take immediate steps to: 1) refuse any further candidate rallies; 2) disgorge all payments from Students for Trump; 3) promulgate a policy to ensure that the IRS requirements are followed. These ill-gotten monies must be donated to a valid 501(c)3. Secular Communities is a 501(c)3 and a donation to us would be most appropriate.

Please inform me in writing that you have cancelled this illegal rally, what steps you have taken to disgorge the profits you received from this illegal rally (with proof of payment), and the procedures you have adopted to prohibit any future illegal rallies (with a copy of the policy), so that I may notify our complainants. Failure to cancel the rally will result in a complaint to the IRS. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Dianne Post".

Dianne Post
Legal Director
Secular Communities rizona
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