

Supplement B: IRS Political Activity Investigations – Publicly Disclosed Cases

Nonprofit Speech Rights
July 2006

The Internal Revenue Service's new approach to enforcing the ban on partisan activities by charities and religious organizations has raised serious questions about the agency's interpretation of the law, about evenhanded enforcement, and about the appropriateness of an approach aimed at deterring speech.

This is a supplement to the report *The IRS Political Activities Enforcement Program for Charities and Religious Organizations: Questions and Concerns* that describes known cases that are currently or have been under investigation.

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IRS investigations, audits, and resolutions are confidential, and the IRS cannot publicly comment on specific cases. Therefore, few details are known about the examinations in the Political Activities Compliance Initiative. Organizations under investigation or people that file complaints with the IRS, however, may and sometimes do publicly disclose information about their specific cases.

This supplement provides details of ten known cases gathered from news reports and complaints, sorted by the type of activity investigated. Taken together, these stories are the best available information about how the IRS is currently interpreting and applying the law.

Statements About Candidates

All Saints Episcopal Church (CA): In Nov. 2004, the IRS initiated an audit into anti-war remarks delivered during a church sermon two days before the 2004 general election.

On Oct. 31, 2004, the Rev. George F. Regas delivered a guest sermon at All Saints, beginning with the disclaimer, “I don’t intend to tell you how to vote” and noting that, “Good people of profound faith will be for both George Bush and John Kerry...” The sermon went on to envision what Jesus would say to both candidates about the issues of peace, poverty and the impact of poverty on abortion choices.

Regas closed his sermon by urging the congregants to “bring a sensitive conscience to the ballot box,” and “vote your deepest values.” The imagined statements of Jesus sharply criticized the war in Iraq, nuclear weapons and noted both candidates “failure and the failure of so many political leaders to help uplift those in poverty...”

On June 9, 2005, the IRS sent All Saints officials a letter notifying them that “a reasonable belief exists that you may not be tax-exempt as a church...” The letter cited a Nov. 1, 2004 Los Angeles Times story that characterized the sermon as a “searing indictment of the Bush administration’s policies in Iraq.” It requested information about church operations and notified church officials of their right to discuss the case with the IRS before the examination began. All Saints hired as counsel the former director of the IRS Exempt Organizations Division, Marcus Owens of Caplin and Drysdale.

A Sept. 22, 2005 conference call was held to allow IRS representatives, church officials and their counsel to discuss the allegations. In a follow-up letter to the IRS, Owens wrote that the IRS action was unsupported by the facts and threatened the church’s core values. Addressing the difference between issue advocacy and partisan electioneering, Owens wrote, “the church takes issue with your suggestion that the mere mention of candidates’ names, coupled with statements regarding the speaker’s personal values, is sufficient to constitute prohibited campaign intervention.”

The letter stated that the IRS told All Saints that the sermon may be an implicit intervention in the election, despite the fact that Regas explicitly

said he was not telling people how to vote and that criticism was directed at both candidates.

Following the call, the IRS offered a deal: if the church would admit wrongdoing and agree not to hold similar sermons in the future, the IRS would not pursue the case further. All Saints rejected the offer, with Rector J. Edwin Bacon explaining, “We have a responsibility to articulate our core values... The IRS is arguing implicit endorsement, and that’s a slippery slope that could do away with the freedom of speech and freedom of religion.”

Leaders in the faith community, from all points on the ideological spectrum, have spoken out against the IRS action. Ted Haggard, president of the conservative National Association of Evangelicals, told the *Los Angeles Times* that his group will work with other church organizations “in doing whatever it takes to get the IRS to stop.” Robert Edgar, general secretary of the National Council of Churches said the IRS action “appeared to be a political witch hunt on George Regas and progressive ideology. It’s got to stop.” A statement from Progressive Christians Uniting said the case “raises important questions about how much latitude IRS field offices have been given to initiate these cases based on murky criteria and no clear understanding of what does or does not constitute impermissible electioneering.”

In December 2005 publicity about the All Saints investigation prompted three members of Congress to call for an investigation by the Government Accountability Office. Rep. Adam Schiff (D-CA), whose district includes All Saints, was joined by Reps. Walter Jones (R-NC) and Joseph Pitts (R-PA) in making the request. To date the GAO has not begun any investigation.

The IRS informed the church in an October 2005 follow-up letter that the agency would be sending a document information request in the near future. Church officials have not heard from the IRS since that time, so All Saints wrote the IRS on March 29, 2006 inquiring as to whether the church was still under investigation.

Charles Street African Methodist Episcopal Church (MA): On April 4, 2004, the Rev. Gregory Groover of Charles Street African Methodist Episcopal Church introduced Sen. John Kerry from the pulpit during the Palm Sunday service as the “next president of the United States.” According to the *Washington Times*, Groover said, “We’re thankful that there’s going to be a revolution in this country ... a new movement...And we say, God, bring him on, the next president of the United States.”

A lawyer for Charles Street, Frederick E. Dashiell, said the complaint was dismissed after the Roxbury church told the IRS that the introduction was not intended as an endorsement. Dashiell called it “a bit intimidating” that the church would be investigated for what he called “an inadvertent statement.”

First Baptist Church of Springdale (AR): The IRS investigated a July 2004 complaint filed by Americans United for Separation of Church and State

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arising from a 4th of July sermon given by the Rev. Ronnie Floyd, in which the pastor endorsed President Bush for re-election. The complaint was reportedly dismissed.

In the sermon in question, Floyd outlined Bush's positions on such issues as "God-ordained" marriage and abortion, and described how faith in Christ helps Bush in government service. Floyd also outlined the positions of Bush's Democratic opponent, Sen. John Kerry of Massachusetts. He did not name the candidates but photographs of them appeared on screens as he described their political stances. He then encouraged church members to register and vote "the way we say we believe, by the authority of God's word, Christian values, convictions and beliefs. In other words, we must vote God."

An attorney for First Baptist, Matthew Staver, said Floyd never told anyone to vote for Bush, so he was never worried about the IRS complaint. Staver said the IRS asked a few questions last fall, to which the church responded.

He told the *Arkansas Democrat-Gazette*, however, that it was obvious who Floyd endorsed in the presidential election, referring to Bush. "If he stood at the pulpit and said nothing, you knew who he was going to vote for," Staver said. "You'd have to be an idiot not to know who he was going to vote for, because the positions the church takes on issues and the positions of the candidates."

Staver told the newspaper in July 2005 that First Baptist had not received written notice that the complaint was dismissed, but the church has been "advised verbally they don't have any desire to pursue this further."

Friendship Missionary Baptist Church (FL): On Feb. 15, 2005, the IRS notified Friendship Missionary Baptist Church that it was under investigation for engaging in partisan political activity. The investigation stemmed from an October 2004 appearance by Democratic presidential candidate Sen. John Kerry (D-MA) at a Sunday service.

In a 10-page letter to the church, the IRS wrote, "a reasonable belief exists that [the church] engaged in political activities that could jeopardize its tax-exempt status as a church." Included with the letter was a 21-question inquiry regarding the pastor's alleged endorsement of Kerry, coordination with the Kerry campaign, and solicitation of contributions.

The inquiry was prompted by an Oct. 13, 2004, request to the IRS by watchdog group Americans United for Separation of Church and State. The IRS, in its letter to Friendship Missionary, also cited an Americans United press release in the publication *Tax Analyst*.

The Rev. Gaston Smith informed his congregation of the inquiry. He stated that visits by political candidates are nothing new and the 75-year-old church did not violate the tax code. He noted that during the previous week, Miami-Dade mayoral candidates Jimmy Morales, a Democrat, and Carlos Alvarez, a Republican who was later elected, made campaign stops there.

According to Friendship Ministry, the service was nothing out of the ordinary. The service schedule consisted of praise and worship, followed by Smith's sermon and altar call. Kerry then spoke for approximately five minutes and was followed by the Rev. Jesse Jackson and the Rev. Al Sharpton.

However, a conflicting report by Americans United stated, "During the service, the church's pastor ... introduced Kerry as 'the next president of the United States' and told the crowd that 'to bring our country out of despair, despondency and disgust, God has John Kerry.'"

While Friendship Ministry declined to ponder the motivation of the IRS inquiry, Rep. Kendrick Meek (D-FL) charged that the complaint came from outsider groups that may be specifically targeting black churches. In a *Miami Herald* article, he stated that two other Miami-area churches received inquiry notices last year, but declined to name them or discuss the probes.

In late Dec. 2005 the IRS told Guy Lewis, attorney for Friendship Missionary Baptist Church, that the case would be closed and resolved favorably for the church. Before the investigation, the church had reduced its formal policy regarding candidate appearances to writing, which helped convince the IRS that there was no attempt to favor one candidate over another, and therefore, no political intervention.

Voter Mobilization

Pennsylvania Pastors Network (PA): On March 22, 2006 a complaint filed against the Pennsylvania Pastors Network (PPN) alleged a get-out-the-vote training it held improperly featured Sen. Rick Santorum (R-PA), without inviting his opponent. PPN, a coalition of four conservative organizations, sponsored get-out-the-vote training held March 6, 2006, in Valley Forge, PA. The network's mission is "to help educate the church regarding the key social and cultural issues of the day." Included in the training agenda were speakers on a variety of church issue advocacy efforts and Santorum, who is running in 2006 for re-election to the U.S. Senate. Bob Casey, his Democratic opponent, was not present or listed as an invited speaker.

Santorum spoke to the 125 participants in a seven-minute video presentation, urging pastors to be vocal on a proposed constitutional ban on same-sex marriage. PPN then gave out copies of Santorum's new book, *It Takes a Family*, which master of ceremonies Colin Hanna praised. One of the speakers, the Rev. Frank Pavone of Priests for Life, stressed that control of the Senate is important when Supreme Court vacancies occur, and "this particular president needs the kind of support that he has today but might not necessarily have after 2006." A few days later, PPN announced that it will hire 10 full-time organizers to help churches get out the vote this year.

PPN is comprised of two 501(c)(3) organizations (the Pennsylvania Family Institute and the Urban Family Council) and two 501(c)(4) organizations (Let Freedom Ring and the Pro-Life Federation). A 501(c)(4) group, unlike a 501(c)(3) group, can endorse candidates, but a joint effort that includes a 501(c)(3) organization must be nonpartisan. The situation is complicated,

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since work on ballot initiatives is considered lobbying and is permissible for 501(c)(3) organizations.

The training was recorded by a member of Americans United for Separation of Church and State, which gave the tape to the *New York Times*. On March 21, Americans United issued a statement, calling the training an “under-the-radar” drive to support Santorum. The following day, Citizens for Responsibility and Ethics in Washington (CREW) filed a complaint against PPN, asking the IRS for an investigation and saying PPN “may be engaged in prohibited electioneering by openly endorsing candidates for public office.” The complaint noted that the IRS 2004 compliance program found that nine organizations had violated the electioneering prohibit by giving “improperly preferential treatment to certain candidates by permitting them to speak at functions.”

World Harvest and Fairfield Christian Church (OH): On Jan. 16, 2006, 31 Ohio religious leaders filed a complaint with the IRS against two Ohio mega-churches and their affiliates, alleging a violation of the tax law’s prohibition on partisan electoral activity. The religious leaders alleged that the mega-churches have been carrying out activities intended to help Republican Secretary of State Kenneth Blackwell in his bid for Ohio’s governorship.

Lead by the Rev. Eric Williams of the North Congregational Church of Christ in Columbus, the pastor’s group sent a 13-page letter to IRS Commissioner Mark Everson, implicating World Harvest and its affiliates Reformation Ohio and the Center for Moral Clarity; and Fairfield Christian and its affiliate the Ohio Restoration Project. All five groups are 501(c)(3) organizations. The letter requested an IRS investigation into whether the groups’ tax-exempt status should be revoked; it also called on the IRS to seek an injunction to stop further flagrant violations. Three categories of activity were cited:

- *sponsoring events featuring Blackwell but no other candidates;*
- *partisan voter registration drives; and*
- *distribution of biased voter guides.*

The Revs. Rod Parsley of World Harvest and Russell Johnson of Fairfield Christian denied their actions were partisan, accusing the complaining pastors of an “unholy alliance” with the secular left. Williams countered, saying, “The law allows church involvement in issues. This goes beyond issue-involvement to partisan politics and we’re simply asking the IRS to uphold the law.”

The pastors filing the complaint acquired assistance from Marcus Owens, an attorney with Caplin and Drysdale in Washington, D.C. and a former director of the IRS-exempt organizations division. On Jan. 16, 2006, Owens told the *Columbus Dispatch* that the complaint was extensively documented, noting, “You have a number of churches and charities involved with a number of road trips for Mr. Blackwell, all of which seem to be aimed at gaining him visibility for his political campaign.”

The day after the complaint was filed the *Columbus Dispatch* reported that Blackwell told the pastors to ignore it, calling the 31 religious leaders who signed it “bullies.” The following day, Blackwell was the only candidate invited to speak to 450 pastors at a luncheon in Canton sponsored by the Ohio Restoration Project.

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The complaint cites nine events where Blackwell was a featured speaker but no other candidates were invited. (Democrat gubernatorial candidate Brain Flannery said he has never been invited to an event organized by the churches or their affiliates.) For example, at an October 2005 event at the Ohio statehouse sponsored by Reformation Ohio, Parsley shared the dais with Blackwell and called for registration of 400,000 new voters statewide.

In addition, Fairfield Christian let the Fairfield County Republican Party Central Committee meet at its facility without charge, with Committee Chair Carl Tatman saying, “The church was nice enough to volunteer the space as a donation.” A Republican fundraiser was held at the church a month later. The IRS requires 501(c)(3) organizations to charge market rates for political use of their space.

On Apr. 7, 2006 the 31 pastors again wrote a letter to the IRS citing further incidents of partisan activity and inquiring as to why no action had been taken. This time they were joined by an additional 25 pastors. As of April 7, 2006, the IRS had not yet contacted the organization about the complaint, according to *The New York Times*. The next day Rev. Parsley told the Canton Repository that his church had no plans for a radio campaign and would not be targeting conservative voters in their registration drive.

Issue Advocacy

National Association for the Advancement of Colored People (NAACP):

In October 2004, the NAACP announced that the IRS had launched an investigation into the organization’s tax-exempt status because Chairman Julian Bond criticized Bush administration policies in his speech to the group’s July convention.

The NAACP received a notice from the IRS on Oct. 8, 2004, saying that an examination of “whether or not your organization has intervened in a political campaign” was commencing. The IRS notice read: “We have received information that during your 2004 convention in Philadelphia, your organization distributed statements in opposition of George W. Bush for the office of presidency. Specifically in a speech made by Chairman Julian Bond, Mr. Bond condemned the administration policies of George W. Bush on education, the economy and the war in Iraq.” (It should be noted that charities have a constitutionally protected right to criticize administration policies.)

The IRS letter also noted a tax of 10 percent can be imposed on the group for “political” expenditures and a tax of 2.5 percent on any manager who agreed to it, a direct threat of personal sanctions for the NAACP’s 64 board members.

Immediately after the NAACP announcement of the IRS audit, several

members of Congress contacted IRS commissioner Mark Everson to remind him that charities have a right to “discuss or oppose various aspects of the Bush administration’s policies.” Rep. Charles Rangel (D-NY) went a step further and issued a statement saying, “This is a tactic of a police state if I’ve ever seen one.”

The same day, Senate Finance Committee ranking Democrat Max Baucus (D-MT) also wrote to Everson asking several questions, including whether the “political activity” limitation imposed on 501(c)(3) organizations had been broadened, what steps led to the decision to examine the NAACP, and if groups critical of Bush’s opponent have also been examined.

On Nov. 12, 2004, IRS Commissioner Mark Everson responded to the letter from Sen. Max Baucus. Everson’s letter said the IRS had not received any request to audit any group from the executive branch, but that two members of Congress requested “we look at one or more organizations in this area.” Everson wrote that those requests were treated the same as any other third party referral. The letter further denied political motivation, saying that “career employees determine whether specific information we review warrants further action.”

Everson went on to describe the IRS enforcement program to oversee the ban on partisan activities by charities, the first time the public was made aware of the program. Everson further noted changes in the law since the Nixon era to prohibit politically motivated audits. Any White House request for IRS action must be signed by the president and reported to Congress’s Joint Committee on Taxation (Internal Revenue Code Section 6103(g)). Executive branch employees and cabinet heads are prohibited from making such inquiries by Section 1105 of the IRS Restructuring and Reform Act of 1998.

The IRS issued an audit summons on Jan. 14, 2005, seeking information from the organization that is normally reported in its annual nonprofit IRS return, Form 990. On Jan. 27, 2005, the NAACP informed the IRS that it would decline to respond, maintaining that the IRS did not follow proper procedures and the agency’s actions are politically motivated. The IRS denied any political motivation and referred the allegation to the Treasury Department’s Inspector General for Tax Administration.

The NAACP responded that the summons was not issued for a legal reason because it was not yet due, noting, “It appears that political pressure, rather than any sound legal authority, motivated the Service to ignore the statutorily-mandated procedures for initiating an examination.” The letter noted the IRS can only take action prior to filing Form 990 if it meets the requirements of Section 6852 of the Internal Revenue Code, which gives the IRS authority to act on flagrant violations. The NAACP wrote, “While criticism of an administration’s policies might constitute intervention under some set of circumstances, it hardly rises to the level of a ‘gross violation’ or a ‘flagrant’ expenditure. Indeed, criticism or praise of government policy is First Amendment speech of a high order in a democratic society.”

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On Feb. 23, 2005, the IRS wrote to attorneys for the NAACP that the agency has legal authority to proceed and enforce the summons, setting a date for the NAACP to respond to the summons, and suggesting a March 2, 2005 meeting to discuss the case.

In a letter to the IRS following up on that meeting, Marcus Owens, of Caplin and Drysdale, attorney for the NAACP, stated the NAACP continued to object to the summons and declined to attend a March 11 meeting. The letter asked the IRS to close the case immediately and issue a letter stating the NAACP continues to be exempt under 501(c)(3) of the tax code. It noted that the IRS had already indicated the NAACP's exempt status is not likely to be at risk.

To force a resolution, the NAACP has paid what it estimates it would owe if the IRS found it had violated the ban on partisan activity. The excise tax rate is 10 percent of the cost of a prohibited communication. In this case the NAACP estimated it spent \$176.48 to disseminate Bond's speech, so it sent the IRS \$17.65. NAACP General Counsel Dennis Hayes said this in no way represents an admission of wrongdoing. Instead, the NAACP has filed for a refund of the \$17.65. If NAACP officials have not received the refund within six months, they will go to court for a review of their claim. The case will test the legality of the new IRS expedited enforcement approach.

Texans for Public Justice (TX): In 2003, Rep. Sam Johnson (R-TX), a member of the House Ways and Means Committee, which oversees the IRS, sent a letter to the agency requesting an investigation of Texans for Public Justice. The group, founded in 1997, tracks the influence of money on politics in Texas and publishes detailed reports on campaign spending and corporate lobbying. The group's 2003 report on illegal corporate spending in the 2002 reelection campaign of Rep. Tom DeLay (R-TX) led to a criminal indictment of DeLay.

The 2003 IRS examination of Texans for Public Justice, which included two auditors reviewing its books, found no violations. Founder Craig McDonald said the audit was "political retaliation by Tom DeLay's cronies to intimidate us for blowing the whistle on DeLay's abuses."

Published Endorsement

Falwell Ministries: Two complaints led to IRS investigations of Jerry Falwell Ministries, a 501(c)(3) organization, but both have been dismissed by the IRS.

The first complaint, filed by the Campaign Legal Center, claimed that an endorsement of President Bush appeared in the *Falwell Confidential* newsletter on the Falwell Ministries website during the 2004 campaign, violating both tax and election laws. The newsletter was also widely circulated in an email that included a solicitation of donations for and link to a conservative political action committee, the Campaign for Working Americans. Americans United against Separation of Church and State also filed a complaint with the IRS over the *Falwell Confidential* endorsement.

The complaint was dismissed because the communication was paid for by a 501(c)(4) organization, the Liberty Alliance and because Falwell was speaking as an individual and publisher and was thus legally entitled to express his views. The communications were made using corporate facilities, including the groups' shared website, which does not clearly distinguish between the 501(c)(3) and 501(c)(4) entities. It bears the name of the Jerry Falwell Ministries, the 501(c)(3), but in the About Us section says it is a project of the Liberty Alliance, the 501(c)(4). Matthew Staver, an attorney for Falwell, said Falwell should not lose his editorial free speech rights simply because he is also a preacher.

The second complaint, filed by Americans United for Separation of Church and State, alleged Falwell gave a speech at the Southwestern Baptist Theological Seminary in Aug. 2004 endorsing President George W. Bush. In dismissing the complaint, the IRS seems to have given latitude for speakers at organizational events in which they are expressing personal opinions.

Additional Resources

FROM THE INTERNAL REVENUE SERVICE

Final Report, Political Compliance Initiative 302
http://www.irs.gov/pub/irs-tege/final_paci_report.pdf

Fact Sheet
<http://www.irs.gov/newsroom/article/0,,id=154712,00.html>

Charities, Churches, and Educational Organizations - Political Campaign Intervention
<http://www.irs.gov/charities/charitable/article/0,,id=155030,00.html>

Memo, Political Compliance Initiative Procedures
http://www.irs.gov/pub/irs-tege/paci_procedures-feb_22_2006.pdf.pdf

Report on IRS Review of Alleged Political Campaign Intervention
<http://www.irs.gov/charities/article/0,,id=135406,00.html>

Tax Talk Today
<http://www.taxtalktoday.tv/>

IRS Publication 1828, Tax Guide for Churches and Religious Organizations
<http://www.irs.gov/pub/irs-pdf/p1828.pdf>

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