



August 20, 2018

Via E-Mail

Russell A. Suzuki
Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

RE: Guidance for Charitable Organizations and Political Activity

Dear Attorney General Suzuki:

This letter concerns your recent News Release 2018-43 entitled “Attorney General Provides Guidance for Charitable Organizations and Political Activity.” The release is troubling because it overstates the law in an area where you have no enforcement authority. The release is clearly an intimidation tactic leveled at Hawaii’s houses of worship to frighten them into silence on the upcoming elections for political office.

First, as the Attorney General for the State of Hawaii, you have no authority to enforce federal tax law. The tax code restrictions you reference in your “guidance” are federal and may only be enforced by the Internal Revenue Service not a state attorney general. The fact that you released guidance on a law you have no authority or ability to enforce leads to the conclusion that the “guidance” was nothing more than a tactic to intimidate houses of worship from speaking during this election season.

In addition, the “guidance” in the news release was lopsided; focusing more on what houses of worship cannot do than on what they have a constitutional and statutory right to do during an election season. For example, houses of worship may:

- Discuss issues of public importance without fear of jeopardizing federal tax-exempt status;
- Discuss candidates’ positions on various issues;
- Host candidate forums;
- Distribute non-partisan voter guides;
- Urge their congregants to get out and vote; and
- Rent out their facilities to candidates on the same terms as any other public group.

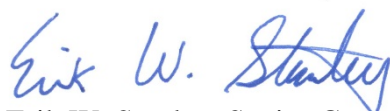
Hawaii Attorney General
Russell A. Suzuki
August 20, 2018
Page 2

Houses of Worship are permitted to do many more activities short of endorsing or opposing candidates for office without endangering their federal tax-exempt status.

Additionally, religious leaders do not surrender their First Amendment freedoms by entering the pastorate. Acting individually, they enjoy the same right to speak as any other citizen. They may freely support or oppose political candidates without violating federal tax law or implicating their church's 501(c)(3) tax status.

Finally, Alliance Defending Freedom believes that the federal tax law is unconstitutional to the extent that it is applied—or threatened to be applied—against a religious leader's speech at official functions. Put simply, pastors and church leaders have a constitutional right to speak freely from their pulpits without fearing government intimidation or enforcement. ADF believes so strongly in this constitutional principle that we have offered—and reiterate that offer now—to defend, free of charge, any pastor or church leader who is threatened or punished for something that is said from the pulpit during a church service. Church services are the province only of the church and no government official, state or federal, has the right to intrude into a house of worship and censor religious speech.

Houses of worship need not be silent during elections out of a misplaced fear that simply participating in the life of their communities and their state, they will somehow run afoul of federal tax law. Your vague and misleading "guidance" is nothing more than an attempt to use federal tax law to silence the voice of houses of worship. It is not the province of the Attorney General for the State of Hawaii to act as an IRS agent seeking to enforce federal tax law. Nor is it your within your duties as Attorney General to opine on the meaning and application of federal tax law, and certainly not in such a one-sided manner that attempts to intimidate houses of worship and religious leaders in Hawaii.



Erik W. Stanley, Senior Counsel
ALLIANCE DEFENDING FREEDOM

cc: James W. Walther, Special Assistant to the Attorney General