



Americans United for Separation of Church and State (AU) sends out letter every year near election time purporting to explain the law regarding “electioneering by nonprofit organizations.” Those who receive it need to know that it is full of inaccuracies and misstatements. It is plainly intended to intimidate churches and pastors and to sideline their voices during this election season.

First, the AU letter states that churches “may not intervene directly or indirectly in partisan campaigns,” and that “any activity designed to influence the outcome of a partisan election can be construed as intervention.” These statements are purposefully vague. After all, who can define with any certainty what it means to “indirectly” intervene in a political campaign? To be fair, AU is parroting some of the IRS’ own language on this issue, as the IRS itself has prohibited churches from “directly or indirectly” participating in a political campaign. Yet vague statements like this illustrate the problem churches have in complying with the IRS code. How are pastors supposed to know with any certainty what is prohibited and what is permissible when vague statements like this are the state of the law? AU is taking advantage of this vagueness in the Internal Revenue Code to intimidate churches and pastors. It is telling churches that if they cross the line, then they may face punishment or consequences from the government, but won’t tell them with any certainty where that line is drawn. In so doing, AU is wielding the law as a club to intimidate churches into silence.

After warning churches that violations of the law can result in revocation of tax-exempt status or “significant fines on the house of worship or its leaders,” AU then tries to provide substance for these claims by giving examples of when the IRS has enforced the tax code against churches in the past. *But these examples are not anywhere near what AU makes them to be.* Each of the examples AU includes in its letter are addressed below:

- *The Church at Pierce Creek* – AU states that the IRS “revoked the tax-exempt status of a Binghamton, NY church for buying a full-page ad in *USA Today* opposing a 1992 presidential candidate.” And then it states that the federal courts upheld the revocation. These statements are patently false.

The Church at Pierce Creek did buy a full-page ad before the 1992 election urging Christians not to vote for a particular presidential candidate. But the IRS never revoked the church’s tax-exempt *status*. It revoked the church’s tax-exempt *letter* of determination. The distinction is crucial. Churches do not need a tax-exempt letter to be considered tax exempt. The tax code grants an automatic exemption to churches. Many churches choose to get a tax-exempt *letter* from the IRS that serves as proof that the church is exempt from federal income taxes. But such a letter is not required and churches may function as tax exempt without having such a letter. The Church at Pierce Creek had obtained a letter from the IRS and the IRS revoked the letter after the Church ran the *USA Today* ad. The appeals court upheld the revocation of the Church’s *letter*, but also held that because the Church did not need a letter to be considered tax exempt, the revocation of the letter had little to no effect on the tax-exempt status of the church.



This is where AU is dead wrong. The courts never revoked the tax-exempt *status* of the Church. It only revoked the exemption *letter* that the Church didn't need in the first place. The Church never paid any penalties or taxes as a result of the *USA Today* ad.

This case is the only reported case of any church ever losing its tax-exempt *letter* as a result of political intervention. There is no reported case of any church ever losing its tax-exempt *status* though. And this is true even though the restriction against churches has been law since 1954! AU's statements about the Church at Pierce Creek are flat out wrong and majorly overblown.

- *Pat Robertson and Jerry Falwell* – AU states that “Pat Robertson’s Christian Broadcasting Network and Jerry Falwell’s Old Time Gospel Hour have been subject to audits and retroactive tax payments for violating the ‘no electioneering’ rule.” These statements are disingenuous because neither of these organizations are churches. Both of these organizations did make financial payments in support of candidates during the mid-1980’s and both were audited by the IRS. They did have to pay financial penalties and each had their tax-exempt status revoked for two years as a result of the financial payments. The important points to remember are that the revocation involved financial payments in support of candidates and neither of the organizations were churches.

The misrepresentations used by AU shows that its motivation is to intimidate churches and pastors.

A perfect example of this is the fact that AU claims that churches can talk about “issues,” but yet it has reported churches to the IRS who have done just that. In 2004, AU sent a letter to the IRS complaining that a pastoral letter from Bishop Michael Sheridan of the Catholic Diocese of Colorado Springs violated the tax code. The pastoral letter urged Catholics not to vote for candidates who support legal abortion, stem cell research, or euthanasia. AU’s letter to the IRS complained that “Bishop Sheridan’s letter is code language that says, ‘Re-elect Bush and vote Republican.’” The fact is that the pastoral letter did not violate the tax code. But AU’s letter is a perfect example of how it intentionally distorts the tax code to suit its own agenda of silencing and intimidating pastors and churches.

The AU letter, finally, urges churches to “be especially wary of so-called ‘voter guides’” and warns that the house of worship may be penalized for distributing voter guides. This is, again, a scare and intimidation tactic. Voter guides are acceptable for churches to distribute as long as they are non-partisan and neutral. If you have any questions about whether a particular voter guide is acceptable, visit our website at www.speakupmovement.org/church or contact us to have an attorney review your situation. But no church should be afraid of distributing neutral non-partisan voter guides.

Overall, letters distributed by AU make several misstatements and are intended to intimidate churches and pastors into silence. It should not be relied upon as an accurate statement of the law.



There are resources available on our website at www.speakupmovement.org/church that will help pastors and churches know how to navigate the tricky waters of the tax code this election season.

It is important to note that in our opinion provisions of the tax code are unconstitutional. Specifically, any IRS attempt to censor a pastor's sermon from the pulpit is unconstitutional. That's why Alliance Defending Freedom started Pulpit Freedom Sunday, to protect a pastor's right to speak freely from the pulpit without fearing government censorship or control. After all, it's the job of the pastor and the church leadership not the IRS to decide what is said from the pulpit. No pastor should ever fear IRS censorship or punishment when he stands in the pulpit to preach. For more information on Pulpit Freedom Sunday, please visit www.pulpitfreedom.org.

This letter is intended to offer general principles and should not be construed as legal advice regarding your particular situation. Churches and pastors may obtain legal advice, free of charge, regarding their particular situation from Alliance Defending Freedom. If you have specific questions, please contact Alliance Defending Freedom at 1-800-835-5233.

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