

SESSION 4: THE RULES - *Everything you wanted to know, but were afraid to ask*
BACKGROUND

This project is committed to your engagement in the issues that the United States and the world face. You are or will be leaders in faith communities and, as such, you can have constructive, positive impact on the ways Americans participate in the public arena. Your calling asks you to speak from within your tradition in a wise and moral voice that is so needed as we confront so many tough issues. As this program has stated over and over again, we hope that you will choose to see civic engagement as one very important aspect of your religious calling and mission. It is for that reason that we add this very important unit on how to navigate the laws pertaining to religious institutions, religious leaders and the public sphere. Our goal is to help you be effective and stay within the bounds of the law as it is constructed and enforced today. There is nothing that should be threatening here. We believe that America needs you, so the law should and does support the many ways you can serve as teacher and guide, advocate and mobilizer.

As a religious leader, you have many ways to serve. You may have your own church or synagogue, mosque or temple, where you preach and teach and provide pastoral care. You may choose to teach in a school or at a university or perhaps run a faith-based not-for-profit organization rather than a brick and mortar church. All of these roles and all these institutions need you to be an expert on IRS rules. We are here to help you do that.

Assuming leaders of faith act within the public sphere, an understanding of the legal structure of nonprofit organizations serves to guide how a leader of faith will chart their course. While there are many classifications of nonprofit organizations as defined by the IRS, we want to focus on the:

501(c)(3) and 501(c)(4) designations which are by far the most common.

All churches, synagogues, temples and mosques are automatically considered 501(c)(3) organizations even if they do not apply for tax-exempt status because the quality of churches in our societal context fulfills the governmental purpose of maintaining tax-exemption: they exist to do good in the world. Most religious organizations and churches do engage the world beyond their institutional walls, advocating for policies that reflect their value systems. This guide explains how the IRS regulates and considers political activity among organizations that receive tax-exemption.

THIS GUIDE WILL provide a description of 501(c)(3)'s and (c)(4)s, what tools for action in the public square are supported, and lastly, will give each of you an opportunity to better understand the information presented by engaging with case studies to help guide you as a religious leader.

What defines a tax-exempt organization?

Are there limitations to what tax-exempt organizations can do?

What is the difference between 501(c)(4) and 501(c)(3) status and when to choose one over the other?

Our goal is for you to learn the answers to all of these questions and more, therefore feeling confident in your role as a resource for your community in the ways it will engage in the public square.

OF COURSE, THIS GUIDE DOES NOT serve to provide legal advice for how to conduct the business and operations of your organization, or a comprehensive review of **all** legal code or nonprofit tax code. In the appendices, you will find links to further relating to political financing and political activity regulations and tax-exemption for nonprofits.

THINK ABOUT WHAT YOU KNOW ALREADY

You may be comfortable answering these questions, which is great. If not, you will know all the answers very soon.

Q1: Must all nonprofits operate exclusively for religious, educational, scientific, or other charitable purposes or are there exceptions?

A1: **All nonprofit organizations receiving tax exemptions must work primarily** for the purposes of religious, educational, scientific or some other charitable purpose.

Q2: How much or how often can a church lobby in a given year?

A2: Organizations receiving tax exemption are required by law, to commit less than 15% of total activities and expenditures to lobbying.

Q3: Are religious leaders prohibited from speaking about important issues of public policy?

A3: The political campaign activity prohibition is not intended to restrict the free expression of **individuals, who happen to be religious leaders, when it comes to political matters on public policy issues. How and where you speak is another matter we will address.**

Q4: Does the IRS differentiate between churches and other nonprofits?

A4: For the most part, no. Churches, do, however, have a different auditing process, but religious organizations do not.

Here is the most helpful piece of advice:

YOU NEED TO ALWAYS KEEP YOUR FOCUS ON THE PURPOSE OF THE RELIGIOUS ORGANIZATION, TO KNOW AND PROMOTE ITS MISSION- ANY ADVOCACY OR LOBBYING YOU DO NEEDS TO BE UNDER THE UMBRELLA OF THE MISSION OF YOUR RELIGIOUS INSTITUTION, THE GOOD WORKS AND RELIGIOUS EDUCATION AND, OF COURSE, TEACHING, PREACHING AND LIVING THE WAYS YOUR FAITH UNDERSTANDS GOD'S WORD AND THE OBLIGATIONS THAT DERIVE FROM THOSE BELIEFS.

The second thing you need to know, which we write carefully, is that the IRS has no interest in challenging the tax-exempt status of religious institutions nor does it want to threaten religious leaders. There are very few cases where questions are asked. So fear of reprisal should not scare you and freedom of religion remains a strong value in American society and jurisprudence these days. So while you need to respect the law and know the limitations well, there is no reason to be intimidated and refrain from doing what you know is the religious mission for which you are committed to pursue.

So here are the core facts you need to know straight from the IRS code about 501(c)(3)'s:

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be [organized](#) and [operated](#) exclusively for [exempt purposes](#) set forth in section 501(c)(3), and none of its earnings may [inure](#) to

any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation **as a substantial part** of its activities and it may not participate in any campaign activity for or against political candidates.

Organizations described in section 501(c)(3) are commonly referred to as *charitable organizations*. Organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170.

The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any organization managers agreeing to the transaction.

Section 501(c)(3) organizations are restricted in how much political and legislative (*lobbying*) activities they may conduct. For a detailed discussion, see Political and Lobbying Activities. For more information about lobbying activities by charities, see the article Lobbying Issues; for more information about political activities of charities, see the FY-2002 CPE topic Election Year Issues.

So this tells us that religious institutions – churches and synagogues, schools, seminaries, charitable organizations and even service organizations – all could qualify because they:

- Are organized and operated exclusively for religious, educational, scientific or other charitable purposes
- All that qualify are exempt from federal taxes. States accept the federal category of 501(c) for similar exemptions. 501(c)'s can receive unlimited donations
- Are classified by the Internal Revenue Service (IRS) under Internal Revenue Code section 501(c)(3)

NOW, THIS IS WHAT YOU CAN DO..... AND THIS IS WHAT YOU SHOULD NOT DO·

- Do not intervene or participate in any political campaigns on behalf of (or against) any candidate for public office
 - Do not allow net earnings to be for the benefit of any private individual or shareholder
- You do exist for purposes or activities that are legal and do not violate fundamental public policy
- Do not employ substantial activities involving attempts to influence legislation (5-15% of total activities & expenditures). If you decide that the political issue is of such importance that your community will invest a much larger percentage of your budget/people time to direct lobbying and advocacy, you would need to declare that on an IRS tax form 5768. That does not affect your 501(c)3 status but it may cost you in tax payments.
- Do sponsor events where all candidates are invited and you expect that more than one candidate will be present

- Do invite candidates, representatives and political parties to forums & speaking engagements
- Do advocate loud and clear about issues that concern your community
- Because of issues of perception, you should not allow your facility, fax machine or telephones, or email lists to be used by partisan political groups or politicians.
- As a religious leader, you can express your views in settings outside your institution as long as it is clear you speak as an individual and not as a representative of your own institution and 501(c)3 community, that you do so as a personal expense and in your role as a citizen of the United States although you can use your religious title (but not your religious 501(c)3 affiliation)
- The use of social media is now a major issue as what you say there can be transmitted virally across the globe. So anything you write must be entirely personal, never in the name of your 501(c)3 institution. In fact, you should make sure that very clear parameters are set for anyone on payroll as to what and when they can communicate using any form of social media.

PUTTING THIS TOGETHER - A REMINDER FOR YOU TO BE AWARE:

Keep in mind that there are stipulations that govern 501(c)(3) political and organizational activity as well as external communication. You cannot:

- Provide financial support or in-kind support for any candidate, political party or PAC.
- Show indirect bias toward any candidate, political party or PAC (this is hard, especially if a candidate has a strong, stated view on controversial issues such as abortion, marriage and what constitutes religious freedom. This is especially true the closer we are to an election.
- Offer what would be deemed any overt indication of support or opposition to a particular candidate (same caveat as above)
- Communicate in ways that overtly identifies an alliance with a particular candidate (again, same issue as above)
- Communicate from the pulpit or in the church name approval/disapproval of a particular candidate
- Overtly political Communications about issues that would identify candidates or controversial positions cannot occur close in time to an election although voter registration, mobilization and getting people to the polls or fill our absentee ballots are all fine
- Of course, please do not tell congregants or members for whom to vote, even informally.

Lastly,

- Churches do not qualify for Expenditure Test (which we will explain below).
- Churches are automatically tax exempt; there is no need to file
- Religious Organizations must apply for tax-exempt status unless gross receipts do not exceed \$5,000 annually

IN THE UNLIKELY POSSIBILITY THAT THE IRS WOULD CHALLENGE A RELIGIOUS GROUP FOR BEING TOO ENGAGED IN PARTISAN POLITICS, THIS IS WHAT YOU NEED TO KNOW ABOUT THE CHURCH AUDITING PROCESS. AS WE SAID, THERE IS ALMOST NO PRECEDENT, BUT YOU DO NEED TO KNOW:

STEP 1: If the IRS has “reasonable belief”, based on written facts and records, that a church violated tax code, then the government will issue a written explanation of concern. (*Section*

7611 – It must come from a High Level Treasury Official-Regional Commissioner or above - has Reasonable Belief Requirement)

STEP 2 – The accounts we consulted said, of course, immediately **CONSULT WITH QUALIFIED TAX AND LEGAL COUNSEL**

STEP 3– The church/religious institution must respond by furnishing written explanation.

STEP 4 – If the church fails to respond within reasonable period of time or if explanation is insufficient, then the IRS can issue a second notice - within 90 days - to examine the books and records of church.

STEP 5– The church may request a conference with IRS before review of records.

STEP 6 – Generally, examination of church's records must be completed within 2 years of second notice.

ANOTHER OPTION: 501(c)4

IF YOU ARE COMMITTED TO ENGAGE IN POLITICS MORE DIRECTLY AS A RELIGIOUS LEADER (THINK ABOUT NAMES SUCH AS THE CHRISTIAN COALITION OR AIPAC), THEN YOU MAY BE INTERESTED IN A (501)(c)(4), THE ORIGINS OF WHICH DATE BACK TO THE REVENUE ACT OF 1913 (CHECK OUT [HTTP://WWW.IRS.GOV/PUB/IRS-TEGE/EOTOPIC103.PDF](http://www.irs.gov/pub/irs-tege/eotopic103.pdf)). IN THAT CASE, KNOW THE FOLLOWING:

- You must operate for the purposes of **social welfare in a broad sense**. Net earnings must be devoted exclusively to charitable, educational, or recreational purposes
- You want to inform the public on controversial issues from within your religious tradition
- You want to influence legislation that reflects your community's religious views through training, education, lobbying and advocacy
- You want to participate in political campaigns & elections
- As a 501(c)4 you are allowed to withhold the public disclosure of donors
 - You may partake in unlimited lobbying as long as it pertains to the purpose of the organization (*income spent on political campaigns may be taxed and you **MUST** let donors know that their contribution is non-deductible and you share that information with all members.*)
- You may contribute to Federal candidates and endorse Federal candidates in the name of its members.
- You may pay for independent expenditures that expressly advocate for the election or defeat of federal candidates
- You can coordinate communications with a candidate or a political party as long as you are stating your own views based on your mission (no republishing or handing out or transmitting political materials directly from a candidate or political party)
- You may sponsor events where more than one candidate is present and Invite candidates, representatives and political parties to forums & speaking engagements
- Your organization has tax-exempt status but contributions/donations to them are subject to gift tax
- Dues may be deducted by the donor as business expenses
- Businesses and unions can donate unlimited money, also tied to Super PACs

-You can utilize Super Pacs

- You can do all of this not only for your members but you also can express your beliefs and mission as advocacy for candidates, policy issues, bills before legislatures, Supreme Court rulings and to the general public.

· 501(c)(4)'s require IRS [Form 1024](#). 501H IS A "SAFE HARBOR" ELECTION (A FORM FOR THE GOVERNMENT) THAT YOU WILL CONDUCT LOBBYING AND WILL LIMIT YOUR LOBBYING EXPENSES BASED ON THE CODE. You can locate instructions on a [form](#) that allows you to measure lobbying:

HERE IS A SUMMARY OF WHAT YOU NEED TO KNOW ABOUT 501(c)(3)'s & 501(c)(4)'s.
CHECK OUT THE GRID

CHARACTERISTICS	501(c)(3)	501(c)(4)
Engage in Politics	Yes with clear limitations (must be EDUCATIONAL AND INFORMATIVE- NOT SUPPORT OR OPPOSITION	Yes – as long as it is not the primary purpose
Endorse Candidates	No	Yes – restricted to members & small % of nonmembers
Campaign Spending	No	Yes – taxed
Lobbying	5-15% of total activities but not the substantial focus	Substantial but there still are limits – keep focus on your primary mission
Political Activity	Yes – Educational	Yes – not primary
Contributions	Unlimited – tax deductible	Unlimited – informed that the percentage that is political activity not tax deductible;
Donor Reporting	Anonymous	Public anonymous; list of donors sent to government

THERE MAY BE TIMES WHEN YOU AND YOUR COMMUNITY WANT TO GO TO WASHINGTON, TO THE STATED CAPITAL OR PERHAPS YOUR LOCAL CITY COUNCIL TO SPEAK ON BEHALF OF AN IMPORTANT CAUSE. SO THIS IS ABOUT LOBBYING ACTIVITY^[Ww1]

Substantial Part Test (no form necessary)	Expenditure (501H) Test
Churches/Foundations/religious social service and educational, seminaries (501(c)3s	Religious Organizations committed to advocacy and lobby as their mission (FILES AN IRS FORM 990)
Time + Resources (Volunteer hours included) no more that 15%	Expenditures below \$1,000,000, though dependent on size of organization. No more than 25%
Can fill out form and portion of income taxed	Must fill out Form 1024
Excise Tax = 5% of lobbying expense over the 15%.	Excise Tax = 25% of excess. Act over 4 years

DON'T BE ANXIOUS OR AFRAID TO ACT – FAITH MEANS SPEAKING TRUTH TO POWER WHILE ALSO BEING A SOURCE OF HEALING AND COMPASSION. THIS IS SOMETHING AMERICA AND THE WORLD NEEDS. SO LEARNING HOW TO NAVIGATE THE LEGALE CODE NEEDS TO BE PART OF OUR TRAINING

Now, go to the video of session 4 for s wonderful animated set of case studies. After each one, pause the video and then decide what and how you would respond to the case. When you have completed all eight cases, you can then read the cases below and our recommended responses. Do yourselves a favor and watch the video first.

(MAKE THE SECTION BELOW START WITH A NEW PAGE)

Below are case studies for you to work on. Your task is to come up with the best responses that show you understand the law and could guide your community. If you are doing this as part of a group, it would be great if you work with partners. As you work through each of the cases, you will be ever better informed and more capable of playing the crucial civic role that comes with being a faith community leader.

CASE STUDIES

1. Our Church takes our role as a place to talk about what matters: from spiritual growth and biblical text study to the most challenging issues facing our town, country, and the world. Recently we ran a candidate forum for our city council race. Of course all of the candidates where invited and they all agreed to come. The room was filled when we got word that two of the candidates were “unable” to attend –

they were the ones who would have faced the toughest questions. We held the event anyway. Was that all right? Was it the right thing to do?

2. Our congregation takes a very strong and unequivocal stance on abortion. If there is dissent among congregants- or the clergy- no one hears it. In fact, in the last election, we held a rally in the sanctuary to support the cause and speaker after speaker implored congregants to go out and vote for candidates who uphold our principles about abortion. Was this all right for us to do?

3. We are an urban congregation very aware of our responsibility to the community around us. Unfortunately there is too much poverty and homelessness- something we as people of faith and servants of God cannot accept. We are not bystanders. Our leadership has decided to open our facility as a shelter for 20 individuals during the winter months. We also want to provide bag lunches for the needy in our community. We have a small facility. What are the legal limitations? What can we do and what is prohibited?

4. I have decided in my role as a prophetic voice, to speak out on the moral danger to our nation and the world. This means speaking about issues for which there is little consensus in my congregation. While I am passionate in my belief, I want to nurture a community that can be respectful and yet openly discuss issues about which we disagree. How can I best create the right environment for such conversation? What limitations are there about what I can and cannot say from the pulpit? At a congregational social action meeting?

5. I am very proud of my congregation- the leadership joins me in speaking out about a bill before Congress that purports to deal with poverty. We are unconvinced and even though we are small, we are going to Washington to lobby against the bill. Our board has decided to rent buses, provide food and lodging, and to print a source packet of religious texts that support our views. To our amazement and joy we need extra buses to get everyone who needs to go on board. We are going to lobby Congress!! Are there any limits to what we can do in this heroic lobbying effort for justice and compassion for the poor?

6. Our congregation takes its civic role very seriously. Congregants turn to our religious community for guidance on the serious social, economic, and political issues we face. An election is coming up that includes ballot measures on a number of critical issues. We have decided to hold a 'learn about the issue' event hosted by our social action committee.

a. Our religious denomination has offered to come and provide us with the church's guidance on the issues at stake. They have brochures and other issue guides to distribute.

b. A political action committee that fully supports our church's stance on the key issues of the day has agreed to run the "learn about the issues" event for us. They can provide brochures and voter issue guides to our congregants.

c. In both cases, is there anything we need to watch out for to make sure we don't cross any legal limits to what our church is allowed to do?

7. As good religious leaders promoting civic engagement and democracy, we are holding a voter registration and get out the vote drive. We are calling congregants, sending out and collecting voter registration forms. We will provide transportation to and from the polls. Congregants driving their cars of course will use their mileage as a tax deduction. We are proud of our congregation's role in promoting voter

participation. Are there any restrictions we need to know before we launch this voter drive?

8. Our congregation is very active in civic affairs. We not only have a food pantry and host thanksgiving and Christmas meals but we offer counseling services, job training, and a job placement center. In fact we have also created an interfaith council to address local issues such as gentrification and redevelopment of abandoned properties. We are wondering if we should create a 501 C(4) that, while fostering our religious values, is independent of a congregation itself. What are the pluses and cons of this decision?

9. Assume you work for a nonprofit organization with a mission, programs, and a constituency that aligns with your faith. What are the implications of having a 501(c)(4) status versus 501(c)(3) in terms of your organization's programs, funding structure, and political activity? Describe which kind of organization [(c)(4) or (c)(3)] is more appropriate by writing a mission statement, describing funding sources and develop a program strategy based on the legal status you choose. Remember to list limitations and advantages.

10. Say you have many years of experience working within and for faith communities and religious organizations. Now, you work part-time as a kind of "faith consultant", advising churches and other religious organizations on how to do good work while addressing technological demands, creating innovative programming, designing new funding structures, and building member constituencies. A small religious organization has recently approached you to advise them on how to generate revenue to supplement their primary funding stream-donations. Because the organization is tax-exempt, there are legal guidelines all tax-exempt organizations must follow when generating revenue. Your goal is to help them develop revenue-generating alternatives for this organization that follow IRS guidelines. Additionally, provide a basis for understanding the audit process so that the leadership will be prepared if asked to explain their programs and allocation of funds.

LEGAL HISTORY

Federal Campaign Finance Legislation (1867)

First law to prohibit federal officers' requests for contributions from navy workers

Tillman Act (1907)

- Prohibited corporations and federal banks from Federal campaigns
- Prohibited corporations and federal banks from contributing money to Federal campaigns.
- The legislation was amended in 1910 and 1911 to affect House elections and Senate elections, and to set spending limits for all congressional candidates.

· **RESCINDED**

Federal Corrupt Practices Act of 1925

- Strengthened requirements and increased expenditure limits
- Affected general election activity only, strengthened requirements and increased expenditure limits.

Hatch Act of 1939

- Gave congress the power to regulate primary elections
- The Hatch Act of 1939 and its 1940 amendments asserted the right of Congress to regulate primary elections and included provisions limiting contributions and expenditures in Congressional elections.

Taft-Hartley Act of 1947

- The Taft-Hartley Act of 1947 barred both labor unions and corporations from making expenditures and contributions in Federal elections.

The Johnson Amendment of 1954

- Origins of tax exemption for nonprofits
- Otherwise known as the Johnson Amendment—prepared by former Senator Johnson--This piece of legislation came out of a time of increased tax regulation and political participation for banks, unions, and other corporations.
- Senator Lyndon B. Johnson during a Senate floor debate on the 1954 Internal Revenue Code. The prohibition was added to the IRS Code without hearings, testimony or comment by any tax-exempt organizations. Although there is no legislative history to indicate definitively why Johnson sought enactment of the political campaign intervention prohibition, neither is there any evidence that the prohibition was targeted at political campaign intervention by religious organizations.

<http://www.pewforum.org/2008/03/07/politics-and-the-pulpit-20086/#q1>

à The clause determined that nonprofit organizations, including churches, receiving tax exemption could not speak or act in favor of or against a specific piece of legislation or candidate.

à All organizations receiving federal tax exemption are subject to prohibition against political campaigns intervention.

SOURCE (to include as reading): <http://www.fec.gov/info/appfour.htm>

“The campaign finance provisions of all of these laws were largely ignored.”

- Because none provided an institutional framework to administer their provisions effectively.
- Spending limits applied only to committees active in two or more States.
- Candidates could avoid the spending limit and disclosure requirements altogether because a candidate who claimed to have no knowledge of spending on his behalf was not liable

Federal Election Campaign Act of 1971 (FECA)

- Required full reporting of campaign contributions and expenditures.
- Limited spending on media advertisements (later repealed)
- Provided a basic framework for separate segregated fund known as political action committees or PAC's.
- Provided corporations and labor unions an exception to contributing to campaigns through treasury funds to establish, operate, and solicit voluntary contributions.
- Established Federal financing of Presidential elections.
- Under the 1974 amendments, the President, the Speaker of the House and the President pro tempore of the Senate each appointed two of the six voting Commissioners. The Secretary of the Senate and the Clerk of the House were designated nonvoting, ex-officio Commissioners.
- Did not provide a single independent body to monitor the regulations until 1974 Amendments.
- The first Commissioners were sworn in on April 14, 1975.