



September 18, 2008

Re: Church Support for Proposition 102

Dear Arizona Pastors:

We write to inform you that your church has broad legal rights to support Proposition 102 without jeopardizing its federal tax exemption.

Specifically, you may publicly support Prop. 102 and encourage the members of your church to vote for Prop. 102 without violating the federal tax code.

These are challenging times. Marriage, ordained by God as the union of one man and one woman from the Creation (see Genesis 1), is on the brink of destruction by activist judges who would redefine it into meaninglessness. But even in the face of out-of-control judicial activism, like the fabrication of same-sex “marriage” in California and Massachusetts, people across the country are standing up for marriage.

Voters in twenty-seven states have already passed constitutional amendments securing marriage from judicial redefinition. Here in Arizona, Prop. 102 is our chance to secure marriage NOW by voting YES.

Many pastors and church leaders have contacted YesForMarriage.com, The Center for Arizona Policy, and the Alliance Defense Fund, asking how tax-exempt churches may support Prop. 102. Unfortunately, confusion abounds because of the misinformation and intimidation used by leftist groups such as the ACLU and Americans United for Separation of Church and State—groups that threaten churches with losing their tax-exempt status, thereby silencing people of faith and the church. Such scare tactics have been used repeatedly in the states where the people have endeavored to secure marriage.

Consider one of the early battles for marriage in California—before the 2008 court ruling—when over a six year period the defenders of marriage worked to bring their Proposition 22 to a vote. During that time, marriage opponents sent some 80,000 threat letters to churches to frighten them away from supporting Proposition 22, which defined marriage as being between one man and one woman. But the California measure passed and no church had its tax-exempt status revoked.

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The scare tactics did not silence the churches then, and it is up to you to ensure similar tactics don't silence your church now.

Here is a summary of the applicable law:

Issue Advocacy

Our nation's Constitution was written to protect the religious freedom this country was founded upon. Under the First Amendment, the government may not limit discussion of issues of public concern by churches. The United States Supreme Court has said it this way:

Adherents of particular faiths and individual churches frequently take strong positions on public issues including . . . vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right.

Walz v. Tax Comm'n of City of New York, 397 U.S. 664, 670 (1970) (emphasis added). This means that you and your church have a constitutional right to speak out on the issue of marriage.

But I thought my church couldn't get involved in a political issue...

As a 501(c)(3) organization, the IRS prohibits your church from intervening or participating in the political campaign of candidates for public office. Thus, your church – under current law—is barred from publicly supporting individual candidates for office or donating to their political campaigns. See I.R.S., *Tax Guide for Churches and Religious Organizations* 7, available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. These restrictions, however, do not apply to statewide ballot initiatives.

So what are the rules for ballot initiatives?

Church involvement in ballot initiatives is classified as lobbying activity. 26 U.S.C. § 501(c)(3) Churches and synagogues can engage in an “insubstantial” amount of lobbying activity. *Treas. Reg.* § 1.501(c)(3)-1(c)(3)(ii). Importantly, courts have decided that “insubstantial” means that a church may use from 5 to 15 percent of its total resources and activity to support legislation without violating the tax code. See *Haswell v. U.S.*, 500 F.2d 1133 (Ct. Cl. 1974) (16% to 20% of total budget considered too much); *Seasongood v. Comm'r*, 227 F.2d 907 (6th Cir. 1955) (less than 5% considered acceptable); and *World Family Corporation v. Comm'r*, 81 T.C. 958 (1983) (5% to 10% of groups resources considered insubstantial).

Again, the “substantial part” test is calculated using a church's overall activities, not by focusing on single events or issues. So it's entirely permissible for churches to devote a lot of time to lobbying during part of the year while doing little or no lobbying throughout the remainder of the year. It would be extremely unusual for a church to spend even 5% of its total resources lobbying. Chances are that as you read this you cannot think of a single instance when your church has used its resources for lobbying, let alone 5% of all your church's resources.

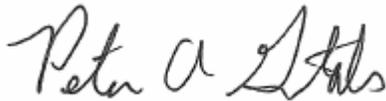
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The time to stand for marriage is now.

Marriage is the central institution of our culture and our nation. Its strength is our nation's strength and our future. It is worth defending. Marriage was created by God, not man. (*See* Matthew 19:4-7.) As the movement to secure marriage in Arizona goes forward, please be in prayer about how the Lord would have you use your voice to speak out for marriage. It is only fair that the voters decide whether marriage will be protected, or if courts will be left free to destroy marriage.

This letter is an overview of the law; if you need legal advice about your specific situation, please contact our organizations. We would be pleased to assist you.

Sincerely,



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