



A LEGAL GUIDE FOR CHURCHES

FIVE THINGS TO KNOW



FROM ALLIANCE DEFENDING FREEDOM

WE ARE AN ALLIANCE:

**ADF works with almost 3,400
allied attorneys, and partners with
over 1,000 allied organizations.**

WITH A GOD-GRANTED SUCCESS RECORD:

**ADF has won nearly 80% of all
our cases, and played a role in
56 U.S. Supreme Court victories.**

**ADF EXISTS TO KEEP THE DOORS OPEN FOR THE GOSPEL BY
ADVOCATING FOR RELIGIOUS LIBERTY, THE SANCTITY OF HUMAN LIFE,
FREEDOM OF SPEECH, AND MARRIAGE AND FAMILY.**

**To learn more about ADF
and our work, visit ADFlegal.org**



ALLIANCE DEFENDING
FREEDOM

FOR FAITH. FOR JUSTICE.

ABOUT THIS RESOURCE



We often hear from our network of pastors, clergy, and church leaders about how they feel burdened by issues at the intersection of faith, politics, and citizenship. The leaders we serve are passionate about advancing justice and edifying God's people. But given the nuances of the law, many church leaders are uncertain of what they can or cannot do on behalf of the church when it comes to engaging in the "political arena."

This guide will help you navigate the laws surrounding tax-exempt status for churches.¹ It will equip you to identify what pastors and churches should be aware of before speaking about political issues, supporting a candidate or legislation, engaging in voter education, allowing church facilities to be used for "political" purposes, giving money to a campaign, and more.

The goal of this guide is to empower you to both shepherd God's people and protect your ministry. Keep in mind, every situation is different, so you should not rely on this as legal advice. Please reach out to ADF with any specific questions.

But seek the welfare of the city where I have sent you into exile, and pray to the Lord on its behalf, for in its welfare you will find your welfare.

Jeremiah 29:7 (ESV)

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QUESTIONS?



ADF Church Alliance exists to help churches with a wide range of religious freedom legal issues. Visit ADFChurchAlliance.org to learn more about partnering with us.

OVERVIEW OF POLITICAL ACTIVITIES FOR PASTORS AND CHURCHES



One thing to know before we get started: the five legal guidelines discussed in this resource apply to pastors and churches in different ways. The checklist shown here will be useful to help you understand the differences outlined in the pages to follow.

* “Church” refers to an official position or action of the church, including the pastor when acting as a representative of the church.

* “Pastor” refers to a pastor acting in their personal capacity as an individual, not in their professional capacity as a representative of the church.

<i>POLITICAL ACTIVITY</i>	<i>CHURCH</i> [*]	<i>PASTOR</i> [*]
<i>Discuss political issues</i>	<i>Yes</i>	<i>Yes</i>
<i>Support or oppose candidates for elective public office</i>	<i>No</i>	<i>Yes</i>
<i>Contribute money, services, or non-monetary gifts to candidates</i>	<i>No</i>	<i>Yes</i>
<i>Raise or spend money to support or oppose candidates</i>	<i>No</i>	<i>Yes</i>
<i>Contribute to political action committees (PACs)</i>	<i>No</i>	<i>Yes</i>
<i>Payment of expenses for attendance of a pastor or church member at a caucus or state/national political party convention</i>	<i>No</i>	<i>Yes</i>
<i>Candidate speaks at church (outside context of candidacy or campaign)</i>	<i>Yes</i>	<i>N/A</i>
<i>Nonpartisan voter registration activities</i>	<i>Yes</i>	<i>Yes</i>
<i>Nonpartisan voter identification activities</i>	<i>Yes</i>	<i>Yes</i>
<i>Nonpartisan “get-out-the-vote” activities</i>	<i>Yes</i>	<i>Yes</i>
<i>Nonpartisan voter education</i>	<i>Yes</i>	<i>Yes</i>
<i>Lobby for or against legislation</i>	<i>Yes</i> ²	<i>Yes</i>
<i>Support or oppose ballot measures</i>	<i>Yes</i> ²	<i>Yes</i>
<i>Spend money to advance or defeat ballot measures</i>	<i>Yes</i> ²	<i>Yes</i>
<i>Distribute:</i>		
<i>a) Nonpartisan candidate surveys or voter guides</i>	<i>Yes</i>	<i>Yes</i>
<i>b) Unbiased voting records of candidates</i>	<i>Yes</i>	<i>Yes</i>
<i>c) Candidate campaign literature</i>	<i>No</i>	<i>Yes</i>
<i>Equal distribution of political materials by others in church parking lots</i>	<i>Yes</i>	<i>N/A</i>
<i>Rental of church facilities at regular rates (available to all candidates)</i>	<i>Yes</i>	<i>N/A</i>
<i>Church publications:</i>		
<i>a) Provide link on website to a particular campaign website</i>	<i>No</i>	<i>N/A</i>
<i>b) Publish editorials endorsing or opposing candidates</i>	<i>No</i>	<i>N/A</i>

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SERMONS AND SPEECH



1



THE BOTTOM LINE

Church leaders SHOULD: feel free to speak about political issues in their official capacities, and to support or oppose candidates and/or legislation in their personal capacities.

Church leaders SHOULD NOT: support or oppose candidates for elective public office in their official capacities.

Speech About Candidates

A 1954 law, commonly referred to as the Johnson Amendment, prohibits speech by churches supporting or opposing candidates for elective public office, including sermons from the pulpit. The law also applies to church support of, or opposition to, a political party. Violation of the Johnson Amendment can result in the loss of tax-exempt status.³

While pastors are restricted under the Johnson Amendment when speaking on behalf of the church, pastors can support or oppose a candidate for elective public office when acting in their personal capacity. Pastors do not check their individual First Amendment rights at the door when they agree to lead a ministry.

Alliance Defending Freedom believes the Johnson Amendment unconstitutionally restricts pastors' First Amendment rights under certain circumstances, even when they act or speak in their official capacities.

Speech About Issues

Churches and pastors (in both their personal and official capacities) can speak about the public, social, and moral issues of the day without restriction. As noted previously, the law limits speech supporting or opposing legislation and forbids churches from supporting or opposing candidates for elective public office. Given that the Scriptures discuss much of what is being debated in our culture, churches have a unique role in guiding the discussion. Our Christian witness and testimony can overlap with issues viewed by some as “political”.

Churches and pastors (in both their personal and official capacities) can also discuss the positions of candidates on issues as long as the discussion does not support or oppose a candidate.

Speech About Legislation

Legislation includes any action by Congress, a state legislature, local government, or similar body that makes laws. This also includes ballot initiatives, constitutional amendments, and votes on a public referendum. Legislation does not include actions by executive, judicial, or administrative bodies.

A church – including in sermons – may discuss legislative issues, support or oppose legislation, and encourage its members or the general public to support or oppose legislation so long as the church limits those efforts to what the law terms an “insubstantial amount.” This restriction will be discussed in more detail later in the legal guide.

Pastors, when acting in their personal capacity, can speak in support of, or in opposition to, legislation as much as they like.

GENERAL EDUCATION OF VOTERS



THE BOTTOM LINE

Churches SHOULD: feel free to participate in nonpartisan voter registration, voter identification, and “get-out-the-vote” activities.

Churches SHOULD NOT: engage in partisan support of, or opposition to, candidates for elective public office under the guise of general voter education efforts.

Voter Registration, Identification, and Organization

Churches are allowed to participate in nonpartisan voter registration, voter identification, and “get-out-the-vote” activities.⁵ In order to qualify as nonpartisan, these activities may not be directed at the supporters of any particular candidate or political party. However, these actions may be directed toward groups of people, such as church members or those who live in a particular geographic area.

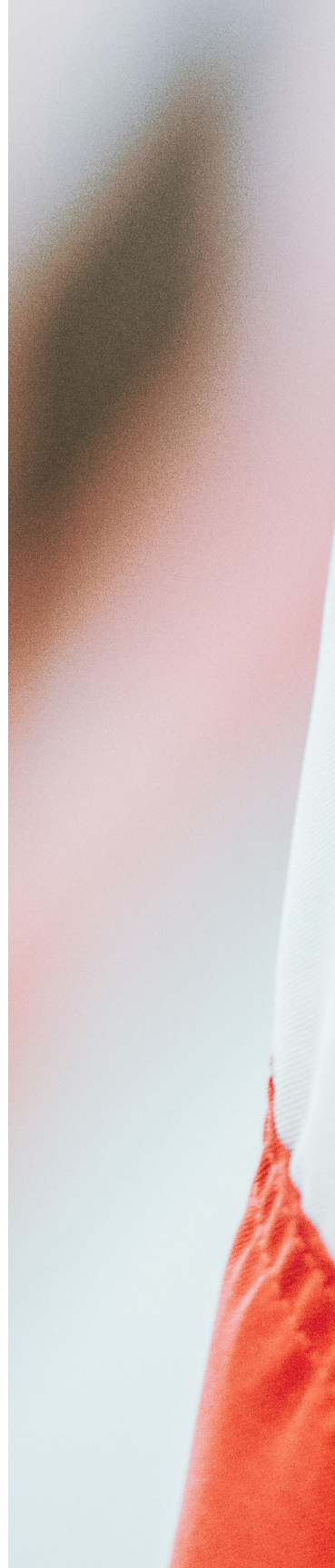
Voter Guides

Churches are also allowed to distribute voter guides, whether they create their own or use guides prepared by other organizations.⁶ Questionnaires used to develop the guide must be unbiased. Questionnaires should be sent to all candidates and the questions should cover a wide variety of issues – without bias toward the church’s preferred answer. Responses should be published in the candidates’ own words or in a neutral, unbiased, and complete way. The candidates’ responses should not be compared to the church’s preferred position, and the survey should not be overseen – in any way – by any candidate.⁷

Local organizations often produce excellent voter guides and make them available to churches. If you would like additional information on obtaining nonpartisan voter guides for your church, consider getting in touch with your local family policy group.



WE'VE TOUCHED
ON SOME AREAS
TO BE CAREFUL,
BUT THERE ARE
FAR MORE AREAS
TO BE CONFIDENT.





YOU HAVE MUCH MORE FREEDOM TO ADDRESS POLITICAL ISSUES
AND THE 2020 ELECTION THAN YOU MAY HAVE THOUGHT.

*If you would like to talk it through with us,
contact us at 1-833-233-2559, or at ChurchAlliance@ADFlegal.org,*

ADFChurchAlliance.org

USE OF CHURCH FACILITIES



THE BOTTOM LINE

Churches SHOULD: feel free to use church facilities for nonpartisan polling, literature distribution, and even speaking activities.

Churches SHOULD NOT: allow church facilities to be used in partisan ways which could be perceived as supporting a particular candidate for elective public office.

Using a Church as a Polling Place

Churches may work with local governments to act as polling places for elections. At times, polling locations are scarce, and using your church building as a polling place can minister to the community.

Candidates Appearing at a Church Meeting or Service

Candidates may be invited to appear at a church service or meeting in order to speak, preach, read Scripture, or otherwise publicly address the church. However, if a church decides to invite candidates to church meetings or services, the church should consider how it will maintain equal opportunity for all political candidates. This means that if one candidate is invited, all candidates should be invited. Indeed, churches can even host political forums in which all candidates are invited to discuss and debate the issues, so long as churches manage such forums in a neutral and unbiased manner.⁸

In addition, the church should also be careful not to indicate any support for, or opposition to, visiting candidates. And finally, candidates' appearances should not facilitate political fundraising on the part of the church.⁹

Distributing Literature in Parking Lots

In general, people may be permitted to distribute political literature in church parking lots so long as such permission is given in a neutral and unbiased manner—which is to say, if literature supporting one candidate is permitted to be distributed, literature supporting other candidates must also be permitted. Conversely, a church may choose not to allow literature distribution on its premises, since the premises are private property.

LOBBYING



THE BOTTOM LINE

Church leaders SHOULD: subject to state laws, feel free to speak about political issues in an unlimited amount and support or oppose legislation up to an “insubstantial amount”.

Church leaders SHOULD NOT: support or oppose legislation with more than an “insubstantial amount” of the church’s annual budget, time, or activities.

Any efforts supporting or opposing legislation, also known as “lobbying”, must be limited to an “insubstantial amount”.¹⁰ Unfortunately, the Internal Revenue Service does not define this term, but instead determines what constitutes an “insubstantial amount” on a case-by-case basis.¹¹ For assistance in deciding what might or might not be considered an “insubstantial amount” in your church’s case, please contact ADF.

Lobbying

When churches and pastors (in their official capacities) undertake efforts to influence legislation, they engage in lobbying.¹² To be clear, churches are permitted to speak with candidates about biblical, social, and even political issues, regardless of any pending legislation on the topic. But as soon as communication begins to support or oppose specific legislation, it becomes subject to the “insubstantial amount” rule and should be accounted for accordingly. For example, a church can share unlimited information about abortion and its view on the issue, including what the Bible teaches about the sanctity of human life. However, the church should limit support of, or opposition to, specific legislation (for instance, referencing a particular legislative or congressional bill) to an “insubstantial amount”. Note too that a church’s public reach might also be a factor the IRS could consider in determining whether it has engaged in more than an “insubstantial amount” of lobbying. Churches with larger audiences inevitably engage in more lobbying than do churches with smaller audiences when they support or oppose specific legislation to those audiences.

State Election Law Warning

Lobbying activities may expose churches in some states to election law registration and reporting requirements as a political committee. Many of these statutes are unconstitutional because they expose churches to intrusive regulations for a very small amount of lobbying. If you find your church exposed to such state election law requirements, contact ADF so an attorney can review your situation.

GIFTS AND MONEY



THE BOTTOM LINE

Churches SHOULD: subject to state law, feel free to spend or raise money to support or oppose ballot measures up to an “insubstantial amount”.

Churches SHOULD NOT: spend or raise money to support or oppose candidates for elective public office.

Church Involvement with Political Organizations

A “political organization” (commonly referred to as a Political Action Committee or PAC) is an organization whose main purpose is to accept contributions and spend money to influence the selection, nomination, election, or appointment of a candidate for elective public office.¹³ Churches are not allowed to provide gifts or money to political organizations.¹⁴ Churches should also avoid political fundraising or facilitating political fundraising – whether on the church campus or not.

Spending to Support or Oppose a Candidate

Churches should avoid spending money to support or oppose a candidate. This includes buying air-time for a commercial, printing and distributing flyers, purchasing advertisements and the like. Finally, churches cannot give money to a candidate.¹⁵

Referendums and Initiatives

Many states (and some cities and counties) allow citizens and organizations to propose a topic or specific legislation to be placed on the ballot. This process is commonly referred to as a referendum or initiative. Though ADF does not advise churches sponsor referendums or initiatives, churches have the legal right to participate in this process. Churches may spend money in support of, or in opposition to, a referendum or initiative, but need to be aware that doing so constitutes “lobbying” and is therefore subject to an “insubstantial amount”.¹⁶

Again, a church should check state election laws to see if there are any restrictions on activities related to ballot measures that could subject the church to registration and reporting requirements as a political committee.

A large, stylized red number 5 is centered within a red circle. The number is thick and blocky, and the circle is a simple outline.

CONCLUSION



Always keep in mind that discussion about or efforts related solely to the issues is not restricted by law. Supporting or opposing candidates and specific legislation is where the regulation begins.

If ADF can answer any questions not clarified in this legal guide, please do not hesitate to reach out to us. You can learn more about ADF Church Alliance membership and its benefits at ADFChurchAlliance.org.

PERMITTED

*Discussion about
issues and
nonpartisan
efforts related to
voter education.*

LIMITED TO AN “INSUBSTANTIAL AMOUNT”

*Supporting or
opposing specific
legislation.*

NOT PERMITTED

*Supporting or
opposing candidates
for elective public
office.*



QUESTIONS ABOUT THIS GUIDE?

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to help churches with a wide range of
religious freedom legal issues.*

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more about partnering with us.*

ALLIANCE DEFENDING FREEDOM

CHURCH ALLIANCE

ENDNOTES

¹ Lobbying activities may expose churches in some states to election law registration and reporting requirements. This guide does not address those issues.

² Churches are limited to an “insubstantial amount”. See Lobbying discussion.

³ See 26 U.S.C. 501.

⁴ *Id.*

⁵ See *Tax Guide for Churches & Religious Organizations* at 14, available at <https://www.irs.gov/pub/irs-pdf/p1828.pdf> (hereafter “Tax Guide”).

⁶ *Id.*

⁷ *Id.* at 15. See also IRS Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17 at 2 (2006).

⁸ See Rev. Ruling 2007-41, I.R. B. 2007-25 at 1423.

⁹ *Id.*

¹⁰ See *Tax Guide* at 6.

¹¹ *Id.*

¹² <https://www.irs.gov/charities-non-profits/lobbying>

¹³ See 26 U.S.C. 527(e)(1), (2).

¹⁴ See 26 U.S.C. 501(c)(3).

¹⁵ *Id.*

¹⁶ See *Tax Guide* at 6; Treas. Reg. 56.4911-2(b)(1).

DISCLAIMER



The provided legal overview and guidelines in this document summarize some of the requirements of the Internal Revenue Code as they apply to churches and pastors. We encourage you to share them with your colleagues and fellow church leaders. As guidelines, they may not address every situation that you face (especially when it comes to the variations in state laws) and should not be construed as legal advice. To obtain legal advice, please contact an attorney at ADF.



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