

# Politics & the Pulpit

Board Fiduciary Duties & 2025 Legal  
Landscape

Navigating Tax Implications & Governance Responsibilities



# What You'll Learn

- **Political Activity Rules:** What clergy and churches can/cannot do
- **July 2025 Legal Changes:** New regulations affecting tax-exempt status
- **Board Fiduciary Duties:** Legal responsibilities and liability exposure
- **Compliance Framework:** Protecting church and leadership
- **Real-World Scenarios:** How new laws impact operations



# Legal Foundation: 501(c)(3) Tax- Exempt Status

- **Tax Exemption Privilege:** Churches exempt from federal income tax IF they meet IRS requirements
- **Johnson Amendment (1954):** Prohibits political campaign activity by tax-exempt organizations
- **Quid Pro Quo:** Exemption requires NO partisan political activity (candidate endorsement/opposition)
- **Consequence of Violation:** Loss of 501(c)(3) status, back taxes, penalties



# Critical Distinction: Political Activity vs. Issue Advocacy

## **X PROHIBITED Political Activity**

- Endorsing/opposing candidate
- Campaign contribution (money/in-kind)
- Get-out-vote for specific candidate
  - Distribute partisan materials
  - Host candidate at pulpit

## **✓ ALLOWED Issue Advocacy**

- Teach on biblical principles
  - Discuss policy positions
- Educate on issues (non-partisan)
  - Encourage civic participation
- Host candidates (all candidates equally)



# NEW in July 2025: IRS Regulatory Changes

- ① **Enhanced Reporting:** Tax-exempt organizations must now report political activity engagement in annual filings
- ② **Stricter Documentation:** Churches must maintain detailed records of all potentially political communications
- ③ **Board Oversight:** Board must formally adopt policy on political activity and document approval
- ④ **Increased Scrutiny:** IRS has increased audit rate for organizations with unclear boundaries



# Board of Trustees: Three Core Fiduciary Duties

- **Duty of Care:** Make informed decisions, attend meetings, ask questions, review financial statements
- **Duty of Loyalty:** Act in church's best interest, not personal/political interests; disclose conflicts
- **Duty of Obedience:** Ensure legal compliance, including tax law, employment law, fiduciary law

⚠ **WARNING:** Breach of fiduciary duty can result in personal liability for board members



# Personal Liability Exposure

- **Individual Liability:** Board members can be personally sued for fiduciary breaches
- **IRS Penalties:** Can be assessed to responsible individuals, not just organization
- **Political Activity Violation:** Board liable if church engages in prohibited political activity under their watch
- **D&O Insurance:** Directors and Officers liability insurance can protect (recommended)



# Clergy Personal Political Speech Rights

- **Personal Capacity:** Clergy have same free speech rights as citizens in personal capacity
- **OFF Church Property:** Pastor CAN endorse candidate on personal social media, at home, outside church
- **NOT in Church Role:** Cannot use pulpit, church communications, or church authority for political endorsement
- **Key Distinction:** Personal speech protected; church-platform speech is NOT protected if partisan





# Hosting Political Candidates: Compliance Rules

- ✓ **ALLOWED:** Invite ALL candidates equally to forum/debate (non-partisan event)
- ✓ **ALLOWED:** Candidates speaking on their own time (not church endorsement)
- ✓ **ALLOWED:** Candidate attends service AS CONGREGANT (not featured/endorsed)
- ✗ **PROHIBITED:** Inviting only certain candidates, featuring one, endorsing their campaign

Best Practice: Board must pre-approve any candidate appearance  
and ensure equal treatment policy



# Ballot Measures: Slightly Different Rules

- **Issue-Based Advocacy:** Church CAN advocate for/against ballot measures (ballot propositions, referendums)
- **Why Different:** Issue advocacy  $\neq$  candidate advocacy; less likely to appear as partisan
- **Caveat:** Must be genuinely issue-based, not proxy for candidate
- **Board Oversight Critical:** Ensure ballot advocacy stays issue-focused, not becoming candidate advocacy



# NEW July 2025: Expanded Reporting Obligations

**Schedule E (Form 990-N/990-EZ):** Must now explicitly report ANY political activity engagement

**Documentation Required:** Church must maintain records showing how political activity line was determined

**Board Policy Required:** Board must formally adopt written policy addressing political activity boundaries

**Attestation:** Board must attest that policy was reviewed and understood by leadership



# REQUIRED: Board Political Activity Policy

- Definition of prohibited partisan political activity
- Allowed issue advocacy (with examples)
- Clergy personal speech rights and boundaries
- Approval process for candidate events or advocacy
- Record-keeping requirements
- Consequence of violations

Policy Must Address:

Recommendation: Have attorney review, board votes on, dated and maintained in permanent records



# Board's Compliance Monitoring Role

- **Review Communications:** Periodically review church newsletters, social media, sermons for political content
- **Annual Compliance Certification:** Board certifies annually that political activity was within policy
- **Staff Training:** Ensure all staff understand what is/isn't allowed
- **Documentation:** Keep records of reviews, approvals, any concerns flagged



# Scenario #1: Pastor Endorses Candidate from Pulpit

**Situation:** Pastor uses pulpit to endorse specific candidate for office

**Consequences:** Church loses 501(c)(3) status, owes back taxes, penalties

**Board Liability:** Board members individually liable if they failed to prevent/address

**Prevention:** Board policy, pastor training, monitoring of sermons



# Scenario #2: Church Hosts Campaign Fundraiser

**Situation:** Church building rented for candidate fundraising event

**Violations:** In-kind contribution (facility use), campaign activity at church premises

**Board Liability:** Board liable for approving without proper safeguards

**Compliance:** Facility rental at fair market value, independent event (not church-affiliated)



## Scenario #3: Church Advocates on Marriage Issue (ALLOWED)

- **Situation:** Church teaches biblical perspective on marriage, advocates for specific ballot measure on definition

**Compliance:** Issue-based advocacy, not candidate-based, no partisan campaign activity

**Board Oversight:** Review to confirm issue-focused, not proxy for candidate

**Documentation:** Record decision, rationale, how it fits within policy





# NEW Documentation System Required

- **Board Policy File:** Adopted political activity policy, dated, signed
- **Board Minutes:** Document approval of policy, annual compliance review
- **Communication Records:** Copies of potentially political communications (sermons, newsletters, posts)
- **Approval Log:** Any candidate events or issue advocacy approval with rationale
- **Compliance Certification:** Annual board certification that church complied with policy



# Board Training & Accountability Framework

- **Annual Training:** All board members must understand political activity rules and church policy
- **Role-Specific Training:** Pastor, staff communications, facilities staff on appropriate vs. inappropriate activity
- **Conflict of Interest:** Board members with political affiliations must disclose and may recuse themselves
- **Oversight Committee:** Consider appointing compliance/governance committee to monitor



# Board Action Plan (Implement in Next 90 Days)

**Month 1:** Engage attorney to draft Political Activity Policy

**Month 2:** Board reviews policy, discusses implications, votes on adoption

**Month 3:** Policy training for board, staff, pastor; establish documentation system

**Ongoing:** Annual compliance review, staff training, documentation maintenance



# Key Takeaways

- ✓ Board has fiduciary duty to prevent political activity violations
- ✓ July 2025 rules require written policy and documentation
- ✓ Board members face personal liability if church violates
- ✓ Difference between issue advocacy (allowed) and candidate endorsement (prohibited) is critical
- ✓ Action needed now: Adopt policy, train leadership, establish documentation system

