

Time for a Bright-Line Standard

Fr. Frank Pavone, National Director, Priests for Life, July 2014

Tax law says that Churches may not intervene in political campaigns. But the definition and boundaries of such intervention are vague and confusing. In its attempt at guidance, the IRS says "all the facts and circumstances" have to be examined. From one point of view, this standard itself is not a standard at all, but a mere statement of the obvious. After all, if a person, in making any kind of judgment, does not consider "facts and circumstances," what, after all, does he or she consider -- crystal balls, astrological signs, dreams and hallucinations?

From another point of view, how can one possibly consider **all** facts and circumstances of any action or decision? In real day to day life, we consider those facts and circumstances of which we are aware in the amount of time we have to make the decision, and which seem important enough to influence the decision. It's a normal fact of life that, looking back on decisions we have made, we come to see facts and circumstances we did not have the time or ability to weigh at the time of the decision. Obviously, a consideration of "all the surrounding facts and circumstances" if it can ever happen at all can only happen *after* the action has been taken, and perhaps a long time after, or indeed never.

The Congressional Research Service has reported, "*In many situations, the activity is permissible unless it is structured or conducted in a way that shows bias towards or against a candidate. Some biases can be subtle and whether an activity is campaign intervention will depend on the facts and circumstances of each case.*" (Lunder & Whitkaker at 3.)

A question obviously arises here. Unless we are to say that Churches *have no freedom* to teach on issues that also happen to correspond to political debates, how are they protected from the accusation of being "partisan" simply because the position of the organization, or the teaching of the Church or the Gospel, corresponds to the position that one particular political party or candidate has, and is diametrically opposed to that of their opposing party or candidate?

The Church opposes abortion and stands up for the rights of the unborn. The Republican Party platform takes a similar position. The Democratic Party platform, on the other hand, supports abortion as a right. So now, is the

Church's pro-life position partisan, and therefore illegal to assert?

That would be both absurd and intolerable.

Erik Stanley states, "*The predictable outcome of this state of affairs has been massive self-censorship among churches and pastors.*" Even the Supreme Court, on more than one occasion, has noted with concern what happens when people aren't given a clear, bright line regarding what speech and activity is forbidden and what is not. "*Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.'*" (Grayned v. City of Rockford, 408 U.S. 104, 109 (1972) (quoting Baggett v. Bullitt, 377 U.S. 360, 372 (1964)).



We at Priests for Life believe there is a solution to all this. We believe it's time to stop censoring ourselves by the risk-averse mentality, often fostered by legal advisors, that wants to not only avoid breaking the law, but also avoid both the *accusation* and the *appearance* of breaking the law. This lack of willingness

to fight leads to sterility and paralysis, keeping the Church's mission from being fulfilled.

Instead, we should rely on legal counsel who are willing to interpret the IRS guidelines in a way that does not stifle our mission, and have the readiness to defend that interpretation. We need to conduct non-partisan activities in a way that *common sense* judges as non-partisan: no candidate or party is endorsed, and the activity is open to all. And we should push for legislation that provides a "bright line" test for Churches and tax exempt organizations so that they know *ahead of time, by a clear, reasonable, andily discernible standard*, what does and does not constitute prohibited political intervention. A perfect example of this is provided in the *Buckley vs. Valeo* Supreme Court decision which, in another context, indicated the bright line to be defined by whether or not one uses "explicit words of advocacy of election or defeat of a candidate." The Court gave examples of such words and phrases: 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for congress,' 'vote against,' 'defeat,' 'reject.'

It is time to apply a clear standard like this in order to interpret the political intervention prohibition on Churches.