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September 8, 2008

Via Federal Express and Facsimile

Mr. Michael Chesman
Director, Office of Professional Responsibility
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

Dear Mr. Chesman:

We wish to bring to your attention concerns regarding the Alliance Defense Fund (“ADF”), a tax-exempt alliance of attorneys. Through its “Pulpit Initiative,” ADF is explicitly soliciting churches across America to violate Federal law, specifically section 501(c)(3) of the Internal Revenue Code¹. We understand that the solicitation is dramatically broad in scope and appears to involve hundreds of churches in virtually every state. Attached are copies of solicitation materials relating to the Pulpit Initiative for your review.

In the course of organizing and publicizing this project, ADF’s staff of attorneys is inducing churches to engage in conduct designed to violate Federal tax law in a direct and blatant manner. This activity — coordinating mass violation of Federal tax law — is clearly “incompetent and disreputable conduct” defined in and subject to sanction under Circular 230. In our view, these ADF efforts presents a direct threat to the integrity of our tax system.

Background Information Regarding ADF and the Pulpit Initiative

ADF is a nonprofit organization exempt from Federal income tax as a charity under section 501(c)(3). Both ADF’s President, Alan Sears, and the Chairman of the Board of Directors, Chapman Cox, are attorneys. According to the organization’s website, ADF was formed in 1994 as “a legal alliance defending the right to hear and speak the Truth through strategy, training, funding, and litigation.”² ADF’s primary issues include “guarding the

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

² <http://www.alliancedefensefund.org/about/Default.aspx>

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sanctity of human life, protecting traditional family values, and defending religious freedom.”³ As reflected in its public materials, the organization considers the Pulpit Initiative to be part of this program.⁴ In furtherance of its overall mission, ADF regularly engages in “direct” litigation. A staff of attorneys, operating in six field offices, conducts these activities.

ADF, through its staff, designed the Pulpit Initiative to assist churches in violating section 501(c)(3) which expressly prohibits charities from intervening on behalf of, or in opposition to, any candidate for public office. ADF’s Pulpit Initiative openly incites religious leaders at churches to transgress this rule by preaching sermons on September 28, 2008 that constitute outright political campaign intervention. According to the ADF Letter of Intent:

[ADF is] seeking pastors to preach from the pulpit a sermon that will address the candidates for government office in light of the truth of Scripture....The sermon is intended to challenge the Internal Revenue Code’s restrictions by specifically opposing candidates for office whose political positions conflict with Scriptural truth.⁵

In fact, as set forth in the attached documents, ADF lawyers will help a participating church prepare its sermon so as to ensure that it clearly and explicitly violates section 501(c)(3).⁶ As part of the Initiative, ADF lawyers will also assist any participating church with its legal defense in any Internal Revenue Service (“IRS”) examination or litigation. The following language appears on ADF’s website:

³ <http://www.alliancedefensefund.org/issues/Default.aspx>

⁴ We note that section 501(c)(3) organizations are prohibited from engaging in nonexempt activities, which includes those that are illegal or contrary to public policy. *See generally* 1994 EO CPE Text, Jean Wright and Jay H. Rotz, *Illegality and Public Policy Considerations*. In light of this rule, we question whether, for the reasons explained below, the Pulpit Initiative may endanger ADF’s own exempt status.

⁵ Letter of Intent at 1.

⁶ Frequently Asked Questions at 2. (“Each pastor will prepare the sermon with the legal assistance of the ADF to ensure maximum effectiveness in challenging the IRS”).

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Should the IRS investigate the church, the church may then participate as a client in lawsuit against the IRS and will assist the ADF in winning the lawsuit by communicating with the ADF and following counsel's advice concerning litigation strategy.⁷

In summary, the materials demonstrate that ADF's lawyers are orchestrating a campaign designed to induce religious leaders across America to engage in electioneering activities and offering their legal expertise should a church (or many churches) be audited by the IRS for these activities.

ADF's Promotion of the Pulpit Initiative is a Violation of the Ethical Rules Governing Practice before the IRS

Circular 230 governs the rules for anyone who practices before the IRS, and, according to section 10.2 thereof, "practice" includes:

all matters connected with a presentation to the Internal Revenue Service...relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service.

Because ADF's lawyers are advising churches about their rights, privileges and liabilities under the Code and planning to assist in the presentation of that information to the IRS, the individuals affiliated with ADF are clearly practicing before the IRS and thus subject to Circular 230.

Section 10.30 places limits on the kinds of solicitations that practitioners may make to potential clients. Specifically:

A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim.

Also, under section 10.50, lawyers practicing before the IRS may be sanctioned for actions, including "incompetent and disreputable conduct"; and section 10.51 defines "incompetent and disreputable conduct" to include:

Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or

⁷ Frequently Asked Questions at 2.


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knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

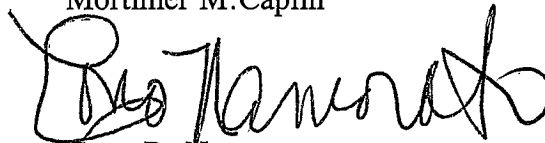
In the course of advertising the Pulpit Initiative, ADF has offered legal services to any church that participates in the program; in other words, ADF has "solicited" the targeted churches as "potential clients." Furthermore, in advocating that these "churches should confront the IRS directly,"⁸ the Pulpit Initiative is encouraging these potential clients to violate Federal tax law—namely section 501(c)(3) of the Code; and ADF, through its attorneys, is offering assistance to ensure that the intervention clearly violates Federal tax law.

In light of these concerns, we request that your office: (i) investigate whether, in the course of promoting and conducting the Pulpit Initiative, those lawyers working for ADF on the Pulpit Initiative have violated Circular 230, and (ii) take immediate and appropriate action to address this flagrant disregard of the ethical rules for practice before the IRS. We appreciate your timely action in this matter.


Sincerely,



Mortimer M. Caplin



Cono R. Namorato



Marcus S. Owens

Enclosures

cc (w/encls): Steven T. Miller, Commissioner, Tax-Exempt and Government Entities
Carolyn H. Gray, Deputy Director, Office of Professional Responsibility

⁸ White Paper at 5.