

September 8, 2008

Mr. Steven T. Miller
Commissioner, Tax Exempt and Government Entities
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

Dear Mr. Miller:

We, the undersigned clergy and congregants, are writing to express our concerns regarding the Alliance Defense Fund's ("ADF") "Pulpit Initiative," an event designed to encourage churches across America to violate federal law. In the course of organizing and publicizing this project, ADF is clearly encouraging churches to violate section 501(c)(3) of the Internal Revenue Code (the "Code"). In fact, through its manipulation of religious leaders, ADF is organizing perhaps the largest single mass violation of section 501(c)(3) since its enactment. As religious leaders, we have grave concerns about the ethical implications of soliciting and organizing churches to violate core principles of our society, namely, respect for the rule of law and the separation of church and state. Attached are copies of the solicitation materials regarding the Pulpit Initiative for your review.

We respectfully request that you take action to: (I) enjoin ADF from continuing to solicit churches to knowingly violate section 501(c)(3);¹ (II) investigate whether the Pulpit Initiative, as an illegal activity, jeopardizes ADF's own tax-exempt status; and (III) deny tax deductions and benefits to donors and funding organizations who have knowingly contributed to the Pulpit Initiative.

Background

Just as the American people have many different perspectives on faith, we are equally diverse when it comes to electoral politics. We are Republicans, Democrats, Greens, and Independents. We are liberals, conservatives, and moderates. As leaders of communities of faith, it is important for us to engage the important moral and political issues of the day. Our national commitment to diversity and justice for all binds us together across our different convictions, creeds, and practices.

In order to fulfill the role of the faith community in society, it is necessary to understand the difference between political and electoral activity. We need to know the church-state line, and we need to step up to it—but we must avoid crossing it. As leaders and communities of faith, we are called to be God's prophetic and pastoral voices. We can raise difficult issues. We can hold challenging forums. We can champion important causes—but we must not endorse particular candidates, raise money for their campaigns or parties, or offer special favors not extended to others.

¹ See section 7408.

The role of religion in our society—to bring lasting and transforming change, both personally and communally—is always greater than any single candidate, party or election. For leaders and communities of faith to lose perspective of God’s long-term reign of peace with justice by focusing on a single candidate is not only illegal but also shortsighted.

As registered voters, the electoral process belongs to each of us. As leaders and communities of faith, however, we fulfill our role in society by doing acts of mercy, speaking truth to power, educating our members and neighbors about important issues, encouraging all to vote their personal convictions, praying for our public servants, and honoring the separation of religion and state.

As members of the clergy, we respect that some may feel compelled to protest a law they deem unjust or inconsistent with their faith-based beliefs, and we appreciate that the First Amendment protects that sort of expression. However, the Pulpit Initiative is not a mere protest; it is as if a group of lawyers have stepped up to the pulpit to coordinate a mass violation of law. Even if ADF's intentions are understandable, neither we nor the Internal Revenue Service can condone this inappropriate, unethical, and illegal behavior.

Information Regarding ADF and the Pulpit Initiative

We believe that, through its targeted efforts to entice churches to violate Federal tax law, ADF is challenging the role of law in society. According to its website, ADF is exempt from tax under section 501(c)(3) as a charitable organization. The website also explains that 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 the “guarding the sanctity of human life, protecting traditional family values, and defending religious freedom,”³ and, in furtherance of its charitable mission, ADF regularly engages in “direct” litigation.

Through its involvement with the Pulpit Initiative, however, ADF is coordinating a mass violation of the law, rather than conducting its activities within the boundaries of the law. Section 501(c)(3) prohibits charities, including churches, from intervening on behalf of, or in opposition to, any candidate for public office. This prohibition is absolute—there is no de minimis or religious exception. ADF, through the Pulpit Initiative, is encouraging churches to violate section 501(c)(3) by preaching sermons on September 28, 2008 that intentionally violate this law. According to the 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

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

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

opposing candidates for office whose political positions conflict with Scriptural truth.”⁴

In fact, as set forth in the attached documents, ADF employees will help a participating church leader prepare the sermon to ensure that it does, in fact, violate section 501(c)(3).⁵ Furthermore, if the IRS investigates a participating church as a result of the sermon, ADF will assist the church both in defending the examination and in pursuing any subsequent litigation.⁶

ADF’s Pulpit Initiative appears to be targeting numerous churches. We believe that ADF has directly contacted hundreds of churches in America to solicit their participation in the Pulpit Initiative. Additionally, ADF is continuing to publicize the project on its website, which invites interested churches to contact ADF for more information.⁷ According to a Wall Street Journal article from May 2008, ADF “hopes 40 or 50 houses of worship will take part in the action,” and one of the senior legal counsels for ADF stated that about 80 ministers have expressed interest in participating in the Pulpit Initiative.⁸

By Encouraging Churches to Participate in the Pulpit Initiative, ADF is Organizing Illegal Activity

The United States Supreme Court has held that the exempt purpose of charitable organization, such as ADF, may not be to violate the law or any clearly defined public policy doctrine.⁹ Furthermore, even if the underlying purpose of an organization is itself legal, charities are prohibited from engaging in illegal activities. As the IRS has stated, “since exempt purposes may generally be equated with the public good, and violations of law are the ‘antithesis of public good,’ illegal activity does not further exempt purposes.”¹⁰ In short, both the courts and the IRS have a long tradition that precludes charities from engaging in illegal or illicit conduct.

In this case, ADF is actively encouraging the targeted churches to violate a Federal tax law, namely section 501(c)(3) of the Code. Moreover, ADF’s employees will assist the participating churches to ensure that the sermons actually result in illegal conduct. To the best of our knowledge, ADF is organizing the greatest large-scale mass violation of section 501(c)(3) since the provision’s enactment. We firmly believe that

⁴ Letter of Intent, attached as Exhibit A.

⁵ Frequently Asked Questions at 2, attached as Exhibit D (“Each pastor will prepare the sermon with the legal assistance of the ADF to ensure maximum effectiveness in challenging the IRS”).

⁶ Frequently Asked Questions at 2, attached as Exhibit D.

⁷ See <http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4505>.

⁸ Suzanne Staline, *Pastors May Defy IRS Gag Rule: Legal Group Urges Ministers to Preach about Candidates*, WALL ST. J., May 9, 2008, at A5.

⁹ *Bob Jones University v. United States*, 461 U.S. 574(1983); *Synanon Church v. United States*, 579 F. Supp. 967 (D.C. D.C. 1984). See also Rev. Rul. 75-384, 1975-2 C.B. 204 (charities “are subject to the requirement that their purposes may not be illegal or contrary to public policy.”)

¹⁰ 1994 EO CPE Text, Jean Wright and Jay H. Rotz, *Illegality and Public Policy Considerations*, citing G.C.M. 34631 (Oct. 4, 1971).

these types of organized “tax protestor” activities would not survive the scrutiny of the legal authorities described above.

Nor do these activities survive our own moral scrutiny. As members of the clergy, we sincerely object to the manipulation of religious organizations for these improper purposes. Through the years, we have seen “tax protestors” attempt to exploit church classification for their own illicit ends—the Pulpit Initiative is no different from any of those other schemes. As leaders of legitimate religious organizations, we simply cannot condone this kind of organized circumvention of a law that the federal courts have upheld as constitutional.¹¹ It demonstrates a flagrant disregard for the line separating church and state and thereby threatens to undermine the very ethos of the religious community in America.

Furthermore, any individual who donates to a charity knowing that it is engaging in prohibited activity may not claim a charitable contribution deduction for that gift.¹² Likewise, if a foundation or charity makes a grant to an organization knowing that it is engaged in illicit conduct, the IRS may attribute those activities to the donor organization, which in turn may impact the donor’s own exempt status or subject it to penalty excise taxes.¹³ In this case, ADF’s coordination of the Pulpit Initiative’s illegal activities is widely known, and it is possible that all donors to ADF during this time may be precluded from deducting their contributions or, in the case of gifts from other tax-exempt organizations, may be jeopardizing their own tax-exempt status.

For all of these reasons, we respectfully request that you: (I) enjoin ADF from continuing to solicit churches to knowingly violate section 501(c)(3); (II) investigate whether the Pulpit Initiative constitutes illegal activity, which jeopardizes ADF’s own tax-exempt status; and (III) evaluate the tax consequences to potential donors or funding organizations who have knowingly contributed to the Pulpit Initiative.

Given that the Pulpit Initiative will take place on September 28, 2008, time is of the essence, and we appreciate your prompt attention to this matter.

Sincerely,

Name: _____

Signature: _____

Title: _____

Date: _____

Name: _____

¹¹, *Branch Ministries and Dan Little, Pastor v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000); *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), *cert. denied*, 414 U.S. 864 (1973).

¹² Rev. Proc. 82-39, 1982-2 C.B. 759.

¹³ See, e.g., Section 4945; Treas. Reg. § 56.4911-3(c)(3)(i); Rec. Proc. 82-39, *supra*.

Signature: _____
Title: _____
Date: _____

Name: _____
Signature: _____
Title: _____
Date: _____

Enclosures

cc: Ms. Victoria Hanson, Acting Director, EO Examinations