

JAMES BOPP, JR.<sup>1</sup>

*Senior Associates*

RICHARD E. COLESON<sup>1</sup>

BARRY A. BOSTROM<sup>1</sup>

*Associates*

RAEANNA S. MOORE<sup>1</sup>

JEFFREY P. GALLANT<sup>2</sup>

ANITA Y. WOUDENBERG<sup>1</sup>

SUSAN L. LEE<sup>14</sup>

## **BOPP, COLESON & BOSTROM**

ATTORNEYS AT LAW

(not a partnership)

1 South Sixth Street

TERRE HAUTE, INDIANA 47807-3510

Telephone 812/232-2434 Facsimile 812/235-3685

E-MAIL ADDRESSES

jboppjr@aol.com

rcoleson@bopplaw.com

bbostrom@bopplaw.com

rmoore@bopplaw.com

jpgallant@bopplaw.com

awoudenberg@bopplaw.com

slee@bopplaw.com

tmarzen@bopplaw.com

*Of Counsel*

THOMAS J. MARZEN<sup>3</sup>

<sup>1</sup>admitted in Ind.

<sup>2</sup>admitted in Va.

<sup>3</sup>admitted in Ill.

<sup>4</sup>admitted in Texas

May 26, 2006

Fr. Frank Pavone  
Priests for Life - Dept. F  
P.O. Box 141172  
Staten Island, NY 10314

Re: Voting with a Clear Conscience

Dear Fr. Pavone:

You have requested our opinion on whether the booklet entitled *Voting with a Clear Conscience* may be published and distributed by an organization income tax exempt under Internal Revenue Code section 501(c)(3).

First, we have reviewed the booklet and it is our opinion that it may be published by Priests for Life and distributed by churches and other organizations income tax exempt under IRC 501(c)(3). The Internal Revenue Service considers all the facts and circumstances in determining whether a communication is political campaign intervention. Some of the factors included in analyzing advocacy communications relating to public policy issues include:

- a. Whether the communication identifies a candidate for public office;
- b. Whether the timing of the communication coincides with an electoral campaign;
- c. Whether the communication targets voters of a particular election;
- d. Whether the communication identifies a candidate's position on the public policy issue that is the subject of the communication;
- e. Whether the position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- f. Whether the communication is part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The booklet does not identify particular candidates for public office and therefore is similar to issue advocacy communications. It does not target voters of a particular election, but will be distributed nationwide. It does not identify candidate positions on public policy issues

and, therefore, will not distinguish one candidate from another. It is part of an ongoing series of substantially similar advocacy communications by Priests for Life on the same issue. For these reasons, it is issue advocacy and not political intervention pursuant to the Internal Revenue Code.

Second, the booklet is not an electioneering communication under the Federal Election Campaign Act, because, by definition, the Act regulates only broadcast, cable and satellite communications. Thus, this provision does not apply and there are no restrictions on distribution of the booklet prior to an election.

Third, organizations exempt under IRC 501(c)(3) (e.g., churches, schools, foundations, charities) are prohibited from expressly advocating the election or defeat of candidates for public office. This would occur if, *in the same communication*, the organization both distributes the booklet *and identifies candidates whose voting records or public statements clearly violate the principles of the booklet*. This is so since the booklet urges people to vote against candidates whose voting records violate the principles explained in the booklet. Such statements may be viewed as opposing clearly identified candidates and thus may be political intervention under the Internal Revenue Code or express advocacy in opposition to federal candidates under the Federal Election Campaign Act (FECA). Since organizations exempt under IRC 501(c)(3) are prohibited from engaging in political intervention, such activities may result in loss of tax exempt status. This issue does not arise if the booklet is distributed alone, without any communication identifying candidates, their voting records, and/or their public statements on these issues.

There may be communications that a 501(c)(3) organization wishes to make separate and apart from the booklet. It would be permissible for a spokesman for the organization to praise or criticize public officials for their adherence or lack thereof to Catholic principles as long as the spokesman does not also urge people to vote only for those candidates that adhere to those principles. Furthermore, someone associated with a 501(c)(3) organization may discuss these matters in their individual, rather than representative capacity, and thus what they say would not be attributable to the organization they are affiliated with. We urge such organizations to obtain specific legal advice regarding any such communication, which we would be happy to provide.

If we may be of further assistance, please contact us.

Sincerely,

BOPP, COLESON & BOSTROM

James Bopp, Jr.  
Barry A. Bostrom

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