



1640 Rhode Island Ave., NW, Ste. 650 / Washington, DC 20036
tel (202) 736-2200 / fax (202) 736-2222
<http://www.campaignlegalcenter.org>

July 27, 2004

Hon. Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

RE: Endorsement of Presidential Candidate by Jerry Falwell Ministries, Inc.

Dear Commissioner Everson:

The Campaign Legal Center urges you to take immediate action to enjoin the endorsement of George W. Bush for President of the United States, by the Jerry Falwell Ministries, Inc. and to issue guidance to other religious organizations reminding them that no organization claiming exemption under section 501(c)(3), including churches, may endorse candidates for public office.

The endorsement of George W. Bush began appearing on the website (www.falwell.com) of the Jerry Falwell Ministries, Inc. on or about July 1, 2004, in the section of the website entitled "Falwell Confidential," which is a communication from Jerry Falwell, the founder and current leader of the Jerry Falwell Ministries, Inc. The website contains the following messages:

For conservative people of faith, voting for principle this year means voting for the reelection of George W. Bush. The alternative, in my mind, is simply unthinkable.

To the pro-life, pro-family, pro-traditional marriage, pro-American voters in this nation, we must determine that President Bush is the man with our interests at heart. It is that simple.

The distressing fact regarding this election is, however, that President Bush stands at a political crossroads, with John Kerry ostensibly running neck-and-neck with him in many polls. In addition, Mr. Kerry has raised an astounding \$150 million for his campaign.

So the vote of every conservative is imperative. However, simply voting may not be enough. I believe it is the responsibility of every political conservative, every evangelical Christian, every pro-life Catholic, every traditional Jew, every Reagan Democrat, and everyone in between to get serious about re-electing President Bush.

This message was not only posted on the website of the Jerry Falwell Ministries, Inc., but it was also emailed to any member of the general public who has signed up to receive without charge Falwell Confidential each week.

This is not a difficult case. It is controlled by the plain language of section 501(c)(3), which provides that an organization may claim exemption under that section only if it “does not participate in, or intervene in (including the publishing or distribution of statements), any candidate for public office.” The presidency of the United States is clearly a “public office,” George W. Bush is clearly a “candidate” for this public office, and the Jerry Falwell Ministries, Inc., has clearly published or distributed statements in support of George W. Bush and in opposition to John Kerry, the Democratic Party candidate for President.

The Internal Revenue Service has consistently taken the position that endorsement of a candidate for public office is inconsistent with continued exemption under section 501(c)(3). In Revenue Ruling 67-71, 1967-1 C.B. 125, the Service ruled that an organization that endorsed a particular slate of candidates in a school board election did not qualify for exemption as an organization described in section 501(c)(3) even though it intended its endorsement to enhance the quality of the public schools in its area. General Counsel Memorandum 39811 takes the position that an organization that urged its members to seek election as precinct committee persons in the Republican Party or Democratic Party did not qualify for exemption under section 501(c)(3). General Counsel Memorandum 34267 took the position that an organization running editorials opposing the election of John F. Kennedy on grounds that the election of a Roman Catholic was inconsistent with the separation of church and state did not qualify for exemption as an organization described in section 501(c)(3) because the editorials constituted direct participation or intervention in a political campaign in support of or opposition to a candidate for public office.

There is no exception that would permit churches or other religious organizations to endorse a candidate for public office while retaining their exempt status as organizations described in section 501(c)(3). The Service revoked the exemption of the Jimmy Swaggart Ministries because Jimmy Swaggart explicitly endorsed Pat Robertson for president in 1986. The explicit endorsement appeared in the organization’s newspaper. In Announcement 95-29, 1995-15 I.R.B. 30, the Service revoked the exempt status of the Church at Pierce Creek, which had purchased advertisements in USA Today and the Washington Times four days before the 1992 general election urging readers not to vote for Bill Clinton for President. The advertisement began with the headline, “Christians Beware.”

The courts have found that churches are not exempt from the requirements of section 501(c)(3). Both the district court and the court of appeals upheld the Service’s revocation of the exempt status of the Church at Pierce Creek. *Branch Ministries, Inc. v. Rossotti*, 40 F. Supp. 15 (D.D.C. 1999), *aff’d* 211 F.3d 137 (D.C. Cir. 2000).

The present case of the explicit endorsement of George W. Bush for president of the United States falls squarely under these precedents. This is not a close or difficult case.

In addition to the endorsement of George W. Bush, the Jerry Falwell Ministries, Inc., has called upon anyone who reads its website to contribute financially to the effort to election George W. Bush and defeat John Kerry. The Falwell Confidential message cited above continues as follows:

That is why I am utilizing this column to urge you to support the Campaign for Working Families, which is headed by Gary Bauer. It is the organization that I believe can have the greatest impact in re-electing Mr. Bush to the Oval Office.

I am urging everyone reading this column today to take a moment to send a financial gift to the Campaign for Working Families in order to help in the crucial election of President Bush and conservative leaders across this nation.

I honestly believe that it is essential that we flood Campaign for Working Families with financial help in order to secure our future. This organization that is on the frontlines on our behalf can accept contributions up to \$5,000 per person, but even smaller gifts are important and quickly add up when we join together.

Please, right now, pick up your phone and call 703-671-8800 or visit the Campaign for Working Families website (https://www.cwfpac.com/cwf_contribution.htm) to make a generous donation by credit card. In addition, may we pray fervently each day for the re-election of George W. Bush at this critical time in our nation's history.

This solicitation of financial contributions to a federal political action committee that is registered with the Federal Election Commission is impermissible participation or intervention by the Jerry Falwell Ministries, Inc. All sums contributed in response to this appeal should be attributed to the Jerry Falwell Ministries, Inc. under the well-established doctrine of constructive receipt. The contributions should be treated as made to the organization that solicited them and then as a contribution by the Jerry Falwell Ministries, Inc., to the Campaign for Working Families. Such a contribution is inconsistent with exemption as an organization described in section 501(c)(3). The Service has treated fundraising on behalf of a candidate as inconsistent with the requirements of section 501(c)(3) in Technical Advice Memorandum 9609007.

The Service's positions with respect to explicit endorsements and direct fundraising appeals are well-established. The Campaign Legal Center calls upon the Internal Revenue Service to invoke its authority under section 7409 to enjoin the Jerry Falwell Ministries, Inc., from engaging in further direct express endorsements of any candidates for public office. We note that the action taken against the Church at Pierce Creek occurred three years after the election and that the action taken with respect to the Jimmy Swaggart Ministries occurred five years after the election in question. Section 7409 provides the Service and you as Commissioner authority to take more timely action. While the Campaign Legal Center urges you to use the authority granted to you under section 7409, we note that the Service has other alternatives available to it that would also result in revocation of the exempt status of the Jerry Falwell Ministries, Inc. and imposition of appropriate financial penalties on the organization and its officers and directors under section 4955. These actions would not be public, and we are not suggesting that they should be. However, we request that the Service, if it chooses to act slowly in this matter, immediately issue a revenue ruling or a notice based on the facts of this case without identifying the Jerry Falwell Ministries. This action would at least put other

organizations on notice that express endorsements are not consistent with exemption under section 501(c)(3).

The Campaign Legal Center has filed a formal complaint with respect to the actions of the Jerry Falwell Ministries, Inc., with the Federal Election Commission ("FEC") alleging clear and serious violations of the Federal Election Campaign Act ("FECA"). We believe that it is incumbent on both the Internal Revenue Service and the FEC to take immediate and appropriate actions to enforce the statutes for which each is responsible.

Respectfully,

Frances R. Hill
Tax Program Director
CAMPAIGN LEGAL CENTER

cc: Steven T. Miller
Commissioner, TE/GE

Sarah Hall Ingram
Deputy Commissioner, TE/GE