

October 3, 2006

Ms. Marsha Ramirez
Director, EO Examinations
Internal Revenue Service – T:EO:E
1100 Commerce St., MS 4900 DAL
Dallas, TX 75242

Dear Ms. Ramirez

As your records will show, Catholics for a Free Choice has written in the past to urge the Internal Revenue Service (IRS) to take action to revoke the tax-exempt status of Catholic Answers, Inc. (EIN 95-3754404). Since then, the statements of that organization indicate that the IRS has, in fact, investigated the organization's activities (although, of course, the IRS is prohibited by law from confirming or denying that fact). Yet despite some cosmetic attempts to demonstrate compliance, Catholic Answers appears determined to flout the law governing its activities and demonstrates willful defiance of IRS enforcement efforts.

I therefore write to report the organization's continued violation of the ban on campaign intervention by an organization exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Furthermore, there are serious questions about whether the newly created Catholic Answers Action—a related organization that Catholic Answers apparently created in response to the IRS inquiry—qualifies for tax exemption under Section 501(c)(4) of the IRC. Catholic Answer Action also appears to be engaged in a deliberate attempt to mislead churches and other 501(c)(3) organizations into violating their own federal tax-exempt status. I urge you to take action to halt the illegal activities of both Catholic Answers and Catholic Answers Action.

The enclosed letter dated April 1, 2006, from Karl Keating, president of both Catholic Answers and Catholic Answers Action, describes the results of our previous complaint to the IRS and Mr. Keating's response. Mr. Keating denies that the 2004 Catholic Answers' voter guide violated the organization's 501(c)(3) status, despite the fact that, as explained in our previous correspondence to the IRS, the guide provided clear guidance that enabled the reader to know the organization's position on a specific candidate or a specific slate of candidates. Although Mr. Keating's letter continues to assert that his guide was 501(c)(3)-permissible, his April 1 letter announces the creation of a new 501(c)(4) organization—Catholic Answers Action—as a separate entity that will produce and distribute the voter guide in future elections.

The letter states that because the new organization has been created, Mr. Keating and his colleagues “will be able to be more outspoken than we have been,” noting (correctly) that “it's perfectly legal for a 501(c)(4) organization to be overtly political” (assuming, of course, that it complies with relevant federal, state and local election laws).

With the onset of the 2006 election cycle, Mr. Keating's organization has produced various editions of a new voter guide, a copy of which I have enclosed. It is virtually identical to the voter guides produced by Catholic Answers in 2004 and presents the same problems for any 501(c)(3) that promotes or distributes it: The guide is a mechanism by which voters are asked to measure candidates against standards set by the guide. As explained in the IRS professional education article on "Election Year Issues," a 501(c)(3) may not make a communication that "invites its audience to compare a candidate's positions with the organization's own views." (Judith E. Kindell and John Francis Reilly, "Election Year Issues," *IRS Continuing Professional Education Manual for FY 2002* at 376.) That aptly describes this voter guide.

If, as Mr. Keating suggested in his letter, this "overtly political" guide had been published and promoted by his new 501(c)(4) organization, the partisan electoral message of the guide might have been permissible. However it is apparent that the supposed 501(c)(3) Catholic Answers continues to use its charitable resources to promote this 501(c)(3)-impermissible guide.

As you will see in the enclosed image from the Catholic Answers Web site's home page (www.catholic.com), the voter guide, supposedly to be conducted as a 501(c)(4) project, is the central feature promoted by the 501(c)(3) Catholic Answers website. Although the voter guide itself is on the separate Catholic Answers Action Web site, the 501(c)(3) Web site pictured here is a violation of the ban on 501(c)(3) campaign intervention because of its prominent promotion of and links to the 501(c)(3)-impermissible guide.

Catholic Answers provides four links to the voter guide: One directly to the Catholic Answers Action page to buy copies (www.caaction.com/index.php?option=com_virtuemart&Itemid=97); one directly to the Catholic Answers Action page where one can download the guide (www.caaction.com/index.php?option=com_content&task=category§ionid=4&id=33&Itemid=95); and to the Catholic Answers Action homepage (www.caaction.com), where links to the guide are presented in a banner at the top of the page, in a sidebar as a "Featured Item," and elsewhere on the page. The prominent image on the 501(c)(3) home page as shown connects the reference to the voter guide to an instruction to "Vote the Rock." (Note that on the actual Catholic Answers homepage, this image cycles among several similar digitally created advertisements for the voter guide: an urban billboard, a sign on a barn roof and a parody of the Creation from the Michelangelo's Sistine Chapel.)

The IRS released its Fact Sheet 2006-17 in February of this year "to provide information to help section 501(c)(3) organizations stay in compliance with the federal tax law" governing political intervention. The Fact Sheet includes an extensive discussion of political intervention through Web sites, noting that:

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site.

The IRS has indicated that the permissibility of any link to political content from a 501(c)(3) website would be determined by its context. Among the facts and circumstances that the Fact

Sheet states the IRS will take into account when assessing whether a link results in political campaign intervention are the directness of the link between the 501(c)(3)'s website and the Web page that contains the electioneering material and the exempt purpose served by the link.

Here, Catholic Answers links not once, but multiple times, to 501(c)(3)-impermissible content. It links directly to that partisan political content. The language and placement of the link on the 501(c)(3) site clearly indicate the 501(c)(3)'s endorsement and adoption of the communication behind the link. The organization to which the 501(c)(3) links is managed and staffed by the same people who manage and staff the c3, and shares a similar name with the 501(c)(3). There is no apparent 501(c)(3)-permissible rationale for any link at all, much less the prominent multiple links that Catholic Answers provides. In short, the facts and circumstances all indicate a violation of the 501(c)(3) ban on campaign intervention.

I also would like to raise two issues of concern about the activities of the new organization Catholic Answers Action. First, based on the contents of the Catholic Answers Action Web site, it appears that the majority of Catholic Answers Action expenditures are related to the production and distribution of the voter guide. We therefore question whether Catholic Answers Action is complying with IRC Section 501(c)(4) by engaging primarily in social welfare activity. If, as it appears, the majority of Catholic Answers Action's expenditures are related to the publication, distribution and promotion of the voter guides, then it appears that it is primarily engaged in "exempt function activity" as defined in IRC Section 527(e) and thus does not qualify as exempt from federal income tax under Section 501(c)(4). We urge you to examine this issue closely in reviewing the next information return submitted by Catholic Answers Action.

We are also concerned about the "legal advice" that Catholic Answers Action is providing as part of its efforts to mislead churches and other charitable organizations into distributing its voter guides. The Catholic Answers Action website asserts that "[a]ccording to independent legal opinion, tax-exempt IRC 501(3)(c) organizations are able to distribute the CAA Voter's Guide without violating IRS rules." The organization provides a link to that opinion letter, provided by the Indiana law firm of Bopp, Coleson & Bostrom, at www.caaction.com/pdf/Voters-Guide-Legal-Letter.pdf. (The file is protected to prevent printing, so we were not able to provide a copy, but we have saved the electronic file and would be happy to provide it to you if the URL above becomes inactive.) In response to the question of "[w]hether the 2006 edition of the *Voter Guide for Serious Catholics* may be distributed by an organization income tax exempt under IRC 501(c)(3)," the letter asserts that:

[O]rganizations exempt under Internal Revenue Code 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 *Voter's Guide* and identifies the candidates whose voting records or public statements clearly violate the principles of the *Voter's Guide*. This is so since the *Voter's Guide* urges people to vote against candidates whose voting records clearly violate the principles of the *Voter's Guide*. 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 *Voter's Guide* is distributed alone, without any communication identifying candidates, their voting records, and/or their public statements on these issues.

We believe that this advice significantly misrepresents the law governing 501(c)(3) activities. First, the IRS has explicitly rejected the FECA "express advocacy" standard in evaluating whether a communication constitutes campaign intervention by a 501(c)(3). (Judith E. Kindell and John Francis Reilly, "Election Year Issues," *IRS Continuing Professional Education Manual for FY 2002* at 346.) Nor is the mention of a candidate's name necessary for a 501(c)(3) to have engaged in campaign intervention. As explained in Technical Advice Memorandum 1999-07-021 (May 20, 1998), a communication could violate the 501(c)(3) electioneering ban without identifying a specific candidate if it were to "contain some relatively clear directive that enables the recipient to know the organization's position on a specific candidate or a specific slate of candidates." Thus the voter guide is a 501(c)(3)-prohibited communication because it makes clear the organization's preferred position on abortion and other hot-button issues on which the candidates' view are widely known and because it explicitly commands readers to use these preferred views as a litmus test in casting their votes on election day.

Because this advice may mislead churches and other 501(c)(3)s into potentially distributing the Catholic Answers Action voter guides, we urge the IRS to act promptly on the complaint against Catholic Answers to demonstrate that, in fact, 501(c)(3) organizations may not promote or distribute the Catholic Answers Action voter guide. Also, in light of the confusion that may have been caused by this misleading and erroneous advice, it would be valuable to the nation's charities for the IRS to make a yet another explicit public statement that a 501(c)(3) may be found to have intervened in a campaign even if no candidate is expressly endorsed or mentioned by name.

I look forward to your prompt attention to this matter.

Frances Kissling
President

CC:

Mr. Steven T. Miller, Commissioner, TE/GE, Internal Revenue Service, Washington, DC

Ms. Lois Lerner, Director, Exempt Organizations, Internal Revenue Service, Washington, DC