

WHITEHEAD LAW
An Affiliation of Limited Liability Companies

MICHAEL K. WHITEHEAD
Mike@TheWhiteheadFirm.Com
Cell 816-210-4449

229 SE DOUGLAS STREET, SUITE 210
LEE'S SUMMIT, MISSOURI 64063-2301
(816) 389-8305 TEL
(816) 278-9131 FAX

JONATHAN R. WHITEHEAD
Jon@WhiteheadLawLLC.com
Cell 816-835-3577

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VOTE NO ON AMD #3
Pulpits, Pews and Public Square Protected by First Amendment Freedoms.

Pastors and lay leaders in Missouri Churches should have every confidence in their First Amendment right to proclaim God's Truth as applied to public policy issues, from their pulpits, pews, and in the public square. This includes the right to seek to persuade Missourians to **VOTE NO on AMD #3**, the proposed Abortion Rights Amendment on the November 5 ballot.

In 1954, "the Johnson Amendment" * was added to the federal Internal Revenue Code §501c3. ¹ There are two rules which aim to regulate political activity by tax exempt organizations including Churches. ² **The first rule says** tax-exempt organizations must not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Church advocacy about a ballot measure does not trigger this rule.

The second rule says that a part of the lawful activities of a Church may be attempting to influence legislation, but it must not be a "substantial part." There is no bright-line test for what is "substantial," either as a dollar amount or a percentage of budget or staff time.

Whatever time or money a local Church may spend opposing AMD #3, it is very unlikely the IRS would find a Church exceeded the "substantial part test" when compared to the other activities and expenses of the Church during the year.

¹ National Religious Broadcasters has filed a federal lawsuit against IRS on 8/28/24, in Tyler, Texas, alleging that the "Johnson Amendment" (501c3) is unconstitutional because it chills free speech by pastors and Churches who believe they should name names when applying biblical principles to public policies and officials. One Southern Baptist local Church in East Texas has joined the suit. See story here. Even Churches who do not want to endorse candidates believe the government should not coerce preachers or Church leaders about what they can or cannot say about candidates. *

² "Church" action refers to an official position or action taken by or on behalf of the Church, including by a pastor or leader, when acting as a representative of the Church.

There are no reported cases where the IRS has revoked a Church's tax exempt status because it spent too much money or time opposing a ballot measure regarding a core religious belief. There would be obvious constitutional problems if IRS were to try to interfere with a Church's speech, budget or personnel priorities regarding a ballot measure like AMD#3.

Of course, the above IRS rules apply to organizational activity, not individual citizen activity. Official statements by the Church corporation or approved expenditures from the Church budget regarding the ballot campaign are in focus. Individual Christians may exercise their freedoms of speech and association to talk and work together as private citizens on matters of mutual concern, even when employed as pastors or staff members. And when the issue advocacy occurs during official Church services or ministry activities, the government cannot possibly interfere without violating Free Exercise rights of the Church and its members.

Churches, pastors and other leaders should feel free to engage in the following kinds of activities, without risking the church's tax exempt status or violating other laws:

1. Preach in the pulpit, urging Church members to register to vote and to VOTE NO on AMD#3, urging them to talk to friends and neighbors and social media contacts about the reasons to VOTE NO on AMD#3.
2. Speak in public meetings, rallies, on television and radio, and on social media about reasons to VOTE NO on AMD#3.
3. Host meetings at the Church inviting outside speakers to make non-partisan presentations about VOTE NO on AMD#3.
4. Provide a Voter Registration table in the Church lobby, and a literature distribution table, providing non-partisan information about VOTE NO on AMD#3
5. Write letters to the editor of religious and secular newspapers, homeowner's associations, social club newsletters or email blasts, urging the public to VOTE NO on AMD#3 and providing reasons why.
6. Pass a Church Resolution declaring the official Church support for VOTE NO on AMD#3, urging members to share the Resolution with friends and contacts, and distribute copies of the resolution to social media and print media contacts, denominational media, etc.
7. Propose a Motion for official Church action that authorizes an expenditure of funds from the Church budget to be contributed to other organizations like Missouri Right to Life or Reason for Life, et al., to help with the expenses of their campaign to VOTE NO on AMD#3; or to be spent for campaign purposes by the Church directly (printing, mailing, social media content creation, etc.) Purchase, post and distribute yard signs on church and private property, urging the public to VOTE NO on AMD#3.

8. Write and publish articles by Church staff or members, or re-post articles by others, urging citizens to VOTE NO on AMD#3.
9. Allow the pastor's name to be listed in public advertising by non-partisan organizations supporting VOTE NO on AMD#3. The pastor or leaders may be identified with the Church's name for identification purposes, or the Church may be officially identified if its governing body has officially adopted this position and authorized publication of its name.
10. Share this memo with other pastors or ministry leaders who may have questions or concerns about legal risks of being involved in the campaign to VOTE NO on AMD#3.

[Michael K. Whitehead](#) is an attorney who has practiced law for nearly 50 years in Kansas City and across the US. He has served as general counsel for several religious institutions and non-profit organizations, including the Southern Baptist Convention ERLC., Midwestern Baptist Seminary (interim president, 1999-2000) and the Missouri Baptist Convention. He also has served as trial counsel, consulting counsel, or *amicus curiae* counsel in trial and appellate courts around the country, including the U.S. Supreme Court. He is an ADF allied attorney and serves on the Board of Directors of Alliance Defending Freedom. [ADF](#) is the world's largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage and family, and parental rights. He was ordained as a deacon and as a minister of the gospel by Southern Baptist churches, and is a member of Fellowship Greenwood Church.

[Jonathan R. Whitehead](#). A 2004 graduate of Harvard Law School, Jon returned to Kansas City, where he worked for one of America's largest law firms and a smaller, regional firm. In 2008, he started his own firm. He has represented clients at all levels of the litigation process, from local courts to the Supreme Court of the United States. He is an ADF allied attorney and a Blackstone Fellow. He is a member of Abundant Life Baptist Church in Lee's Summit. He serves on the Board of Trustees of [SBC ERLC](#).

The Whiteheads have appeared in the U.S. Supreme Court as merits counsel in the following cases: [Widmar v. Vincent](#), 454 US 263, (1981). [Trinity Lutheran Church of Columbia, MO, v. Comer](#), 137 S. Ct. 2012 (2017) [Carson v. Makin](#), 596 U.S. 767 (2022).

DISCLAIMER: NOT LEGAL ADVICE. This memo is provided for education and general information only. If you have specific questions, please contact [ADF](#) or similar legal ministries to provide individual legal advice for your particular facts and laws. [**Alliance Defending Freedom believes the Johnson Amendment unconstitutionally restricts pastors' First Amendment rights under certain circumstances, even when they act or speak in their official capacities.] The opinion of the authors are their own, and not those of affiliated groups or clients.