

## IRS Gives Christian Coalition a Green Light for New Voter Guides

By Gregory L. Colvin

Gregory L. Colvin is a principal with Silk Adler & Colvin, San Francisco. In this viewpoint, Colvin writes that the IRS and the Christian Coalition have settled their dispute regarding the coalition's tax-exempt status and that the coalition has new standards for the voter guides it distributes in churches.

We have recently learned of a major development affecting how tax-exempt organizations can educate voters about the views and positions of candidates for public office. The IRS has recognized the Christian Coalition and its distribution of voter guides as tax-exempt and non-partisan under section 501(c)(4) of the Internal Revenue Code. We have been waiting for guidance from the IRS on this subject for a long time.

This could have significant implications, not only for the further activation of Christian conservative voters, but for many section 501(c)(3) charitable groups concerned with the issues debated in American elections across the political spectrum, including environmentalists, tax activists, health reformers, antiwar groups, and foundations. It also portends the opening of another front in election contests, as candidates pay more attention to answering voter guide questionnaires and voters are bombarded with a variety of charts comparing the candidates, from ideological interest groups of every stripe.

The Christian Coalition International (CCI), the IRS, and the Justice Department have finally settled their dispute over the coalition's section 501(c)(4) tax status, so that the coalition can go forward in 2005 with new standards for the voter guides it distributes in 501(c)(3) churches. The settlement was reached on March 31, but the details were not made public until after the coalition reapplied for its exemption in August and received IRS approval on September 15. The exemption documents were recently reprinted in full in Paul Streckfus's *EO Tax Journal* (vol. 10, no. 5, September/October 2005, p. 48).

Candidate questionnaires are not expected to move into high gear until the 2006 election cycle, but can become a hot topic at any time. In October, *The New York Times* reported that former judicial nominee Harriet Miers had answered yes to an antiabortion question when she was running for Dallas City Council in 1989. The survey question from Texans United for Life was: "if Congress passes a Human Life Amendment to the Constitution that would prohibit abortion except when it was necessary to [prevent] the death of the mother, would you actively support its ratification by the Texas legislature?"

On the Form 1024 exemption application submitted by the Christian Coalition, 11 criteria are presented for nonpartisan voter guides that may be distributed through churches or other 501(c)(3) organizations, as follows (verbatim):

(a) The voter guide candidate surveys will include a broad range of issues selected solely on the basis of their importance and interest to the electorate as a whole and will not, in content or structure, evidence a bias or preference with respect to the views of any candidate or group of candidates.

(b) The questions will be asked and presented in a clear, complete and unbiased manner.

(c) CCI may use different surveys or questionnaires for different races. For example, all House candidates will receive the same candidate surveys or questionnaires, while all Senatorial candidates may receive another survey or questionnaire. Each version of a survey or questionnaire prepared for a race, however, will have the same questions, that is, all House surveys or questionnaires will be identical and have the same questions.

(d) The candidate survey will be distributed to candidates and allow no less than 21 days for the candidate to respond.

(e) The surveys will require each question to be answered with either "support," "oppose" or "undecided" (or yes, no or undecided) and only then will the candidate be afforded an opportunity to provide additional comment of up to 25 words on the subject of the question. The survey will inform the candidates that only the first 25 words on any response will be printed. CCI will not edit or alter candidate statements except to remove profane or scandalous words. Complete candidate surveys and responses will be made available on CCI's Web site.

(f) Questions displayed on the voter guide shall use the same words as the questions to which the candidates were asked to respond.

(g) Responses will be adjacent to the question or conspicuously displayed on the same page in a manner that clearly relates the response to the question.

(h) The printed voter guides will be initially distributed no later than the second Sunday before the upcoming election to which they apply, and be posted on CCI's Web site on or before that date.

(i) If permitted under applicable election law, the voter guide will include the candidates' Web site addresses.

(j) The printed voter guides will display no fewer than six questions asked of the candidate.

(k) If a candidate does not respond, CCI will put on the voter guide a statement that no response was provided. CCI will attempt to determine the position of that candidate on each issue present in the voter guide, and represent that position by stating "supports" "opposes" or "undecided" in response to the question. In determining the candidate's position, CCI will prepare a neutral, unbiased, and complete compilation of a candidate's position. CCI will look to sources such as the candidate's stump speeches, newspaper articles, campaign literature, published positions described on the candidate's

Web site and legislative votes and legislative votes on single-issue bills. If all or some of the candidate's positions are determined from sources other than the candidate's survey responses, an asterisk or similar symbol will be used on the voter guide and will state that the sources of these positions are available upon request. CCI will display the sources on its Web site. If CCI cannot clearly or reasonably determine a candidate's position on the issue, it will reflect the candidate's position as "unknown" or "unclear."

The first two criteria, (a) and (b), basically repeat standards that have been in place under Rev. Rul. 78-248, 1978-2 C.B. 154, requiring a "broad range of issues" and no "bias or preference" in the questions posed to the candidates. In the past, the Christian Coalition has been notorious for asking loaded questions on topics such as "unrestricted abortion on demand," "educational choice for parents (vouchers)," and "permanent elimination of the death tax." How much the Christian Coalition will need to tone down its questions to satisfy the IRS now remains to be seen.

Under (c), all candidates for the same type of office (for example, House and Senate) will be asked the same questions, which should prevent the tailoring of questions to particular states or districts to embarrass or promote candidates in those races who are known to have views that the coalition likes or dislikes.

Criterion (d) requires that candidates be given at least 21 days to reply to the survey, but it doesn't require that the survey go to all candidates for an office. It appears that the coalition could direct its questions only to the major-party candidates and publish only their answers.

Criterion (e) may be the most important, because it not only requires the candidates to answer "support," "oppose," "yes," "no," or "undecided," but it permits the candidate to make additional comments of up to 25 words, which the coalition must print on the voter guide. That gives candidates the opportunity to deal with difficult questions by explaining their answers and pitching their views to the target audience. Suppose the question is: Should our Constitution define marriage as only between a man and a woman? The liberal candidate might answer, "Yes, but I support recognition of civil unions. Married couples have hundreds of legal rights and benefits that other domestic partners don't have, and that's unfair." Or she might answer, "No, because our Constitution is not the place to discriminate against people based on who they love." In other words, the nonprofit organization can demand a yes or no answer, but the candidates get a 25-word "print bite" to make their case. Voter guides could become more like mini-debates and less like partisan traps.

Under (f), the voter guide must present the questions asked in full, to avoid abbreviated voter charts that reduce "Should physicians be required to notify, except for a medical emergency, a parent of a pregnant minor 48 hours before performing an abortion?" to a phrase such as "parental notice."

Criterion (g) ensures that the candidate's explanation of his answer of up to 25 words will appear conspicu-

ously on the same page as the question, not hidden elsewhere or on the back in gray ink.

The timing of distribution is addressed by (h). Requiring "initial" distribution and Web site posting no later than the second Sunday before the election gives the candidates, the news media, opposing groups, and the IRS an opportunity to challenge the content of the voter guide before Election Day.

By including Web addresses under (i), readers of the voter guide can link to the candidates' fuller presentation of their views and positions.

Criterion (j) is interesting. At least six of the questions asked of candidates must be displayed. As Deirdre Dessingue, associate general counsel, U.S. Conference of Catholic Bishops (*EO Tax Journal*, vol. 10, no. 5, September/October 2005, p. 5), points out, many more questions could have been asked, and this "seems to permit 'cherry-picking' of issues to make certain candidates appear favorable or unfavorable." On the other hand, the minimum requirement of six questions and answers would help combat the use of television ads and other limited forms of communication to compare the candidates head-to-head on only one or two issues.

Finally, (k) provides a means for the organization to handle a candidate who does not respond. That has been a big area of questionable practice. Many voter guides have been published with one candidate responding favorably and the other shown only as "did not respond." Or the organization has attempted to determine the candidate's stance in the absence of an answer by resorting to third-party sources, without clearly stating that the answer did not come directly from the candidate. Under the settlement, the coalition must state that the candidate did not respond if no response was received. Further, the coalition is obliged to determine the position of that candidate by preparing a neutral, unbiased examination of other sources, to show that position on the guide (unless it is unknown or unclear), and to indicate the sources used. The criterion apparently does not permit the coalition to create a voter guide from outside sources without first asking the candidate for his response and giving him 21 days to answer. Nor does (k) allow the coalition to use external sources to contradict the answer given by the candidate.

What is not here? There is no requirement that the organization avoid those issues on which it has a known position. Thus, as long as the questions are worded in an unbiased fashion and the voter guides are not distributed with other materials stating the organization's own views, the voter guide will be treated as nonpartisan.

The settlement reflected in the Christian Coalition's exemption application is not the final word or the only word on voter guides. The coalition is a multi-issue ideological group with a broad range of issues of concern. A single-issue organization might have more difficulty creating a nonpartisan voter guide. Also, just because the settlement indicates that the coalition agreed to these 11 criteria doesn't mean that all 11 requirements must be met by all organizations under all circumstances. Other groups may be able to produce nonpartisan voter guides with different safeguards. However, the Christian Coalition is the most well-known promoter of voter guides,

and the settlement is likely to be held up as an example of a safe harbor for the nonprofit sector generally.

In a highly competitive arena, this formula for a nonpartisan voter guide may become a standard of fair play. By emphasizing the process used to create the guide, this solution should encourage more candidates to participate and to answer the questions, not only to avoid having the Christian Coalition characterize their views, but also to get their 25-word print bite in front of the voters.