



E. SCOTT PRUITT
ATTORNEY GENERAL

July 13, 2015

John Koskinen
Commissioner
Internal Revenue Service.
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Electioneering Provision under 501(c)(3) of the Internal Revenue Code and Recognition of Tax-Exempt Status of Charitable Organizations after *Obergefell v. Hodges*, No. 14-556, United States Supreme Court

Dear Mr. Koskinen:

The Internal Revenue Code disallows tax-exempt status for charitable organizations that “participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.” Traditionally, the law has been understood to bar tax-exempt status when organizations endorse or disapprove of specific candidates by name. On two prior occasions I have requested clarification from your agency concerning whether that traditional understanding of the law has changed—once by letter on August 5, 2014 and again by letter on October 14, 2014. I am again requesting that you provide information on your agency’s understanding of the law along with the other information requested in those prior letters.

Further, I would like to draw your attention to another concerning matter that has recently arisen. As you know, the United States Supreme Court recently declared in its opinion in *Obergefell v. Hodges* that each state must extend legal recognition to same-sex marriage. During the oral arguments in that case, Solicitor General of the United States Donald Verrilli, Jr., made comments to the effect that charitable organizations—including religious and educational institutions—may face loss of tax-exempt status if they refuse to violate their religious beliefs prohibiting approval of same-sex marriage.

Federal law grants tax-exempt status to organizations existing for “religious, charitable, scientific, testing for public safety, literary, or educational purposes.” 26 U.S.C. § 501(c)(3). Although federal statutes also grant your agency the authority to enforce federal tax law, they do not grant it the discretion to engage in selective or discriminatory treatment of organizations based on their religious beliefs.

Solicitor General Verrilli's comments nonetheless raise the possibility that your agency may revoke the tax-exempt status of the thousands of organizations that disagree with same-sex marriage. The First Amendment expressly forbids actions that would "prohibit the free exercise" of religion—including a policy of hunting down and taking away the tax-exempt status of thousands of religious institutions that refuse to violate their religious beliefs regarding same-sex marriage.

Tax-exempt status is enjoyed by a diverse array of non-profit organizations with wildly different viewpoints, many religious and many not. For your agency to begin denying tax-exempt status to non-profit organizations based on *Obergefell v. Hodges* would imply that your agency could deny tax-exempt status on almost any grounds where it finds a non-profit organization discontented with the outcome of a Supreme Court case. Setting such a precedent would undermine the freedom of all Americans to engage in a lively discourse on the right course for policy and law in this country and would thus threaten the principles of neutrality enshrined in the First Amendment's Free Speech Clause.

In light of Solicitor General Verrilli's troubling comments, I am adding to my request concerning information on the electioneering provision in Section 501(c)(3) to also request that you state the position of your agency as to whether you plan to revoke the tax-exempt status of charitable organizations that refuse to recognize same-sex marriage because of their religious beliefs.

A formal statement of your agency's position would assure tens of millions of Americans and thousands of religious institutions that their religious beliefs are not under attack by their own government. Because of its importance, I would request that you provide such a statement of position by August 31, 2015.

My prior requests sent to you in August and October of last year, which I mentioned at the beginning of this letter, also remain unanswered. Neither letter requests any development of new policy, so I would also ask that you provide me this information by August 31, 2015.

I also request an in-person meeting with you to discuss these matters and ensure appropriate action can be taken to protect religious liberty in the federal tax system. Initial contacts to schedule such a meeting can certainly be completed by August 31, 2015 and would mark a significant step forward.

If none of these steps have been taken by August 31, 2015, I will turn to Congress—in addition to weighing other legal options—in order to seek out information from your agency and to obtain legislative assurances concerning whether tax-exempt status can be revoked just because a religious institution or religiously affiliated educational institution disagrees with same-sex marriage. I

hope instead that your agency will show good faith efforts to adhere to federal law, including the Constitution.

Sincerely,

A handwritten signature in black ink that reads "Scott Pruitt". The signature is written in a cursive, flowing style.

E. Scott Pruitt
Attorney General of Oklahoma

Cc: The Honorable Mitch McConnell
The Honorable John Boehner
The Honorable Chuck Grassley
The Honorable Patrick Leahy
The Honorable Bob Goodlatte
The Honorable Jim Sensenbrenner, Jr.