

CATHOLICPAC: WHY THE UNITED STATES CATHOLIC
CONFERENCE OF BISHOPS SHOULD (PROBABLY)
LOSE ITS 501(C)(3) TAX-EXEMPT STATUS

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“A Catholic *cannot vote* for a candidate who takes a position in favor of an *intrinsic evil*, such as abortion or racism, if the voter’s intent is to support that position. In such cases a Catholic would be guilty of *formal cooperation in grave evil*.”¹

INTRODUCTION

During the 2008 election, now-Vice-President Biden was admonished not to take Communion by Denver Archbishop Chaput on account of Biden’s pro-choice position.² Early in 2009, Archbishop Raymond Burke—now the head of the Vatican’s highest court, the Apostolic Signatura—stated to the media that any pro-choice Catholic *politician* should be refused Holy Communion.³ In late 2009, Rhode Island Bishop Tobin publicly implored U.S. Representative Patrick Kennedy to stop taking Eucharist because of Kennedy’s pro-choice views.⁴ While the Catholic Church is consti-

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1. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, FORMING CONSCIENCES FOR FAITHFUL CITIZENSHIP: A CALL TO POLITICAL RESPONSIBILITY FROM THE CATHOLIC BISHOPS OF THE UNITED STATES 11 (Rev. ed. Oct. 2011) [hereinafter USCCB, FORMING CONSCIENCES], *available at* <http://www.usccb.org/issues-and-action/faithful-citizenship/upload/forming-consciences-for-faithful-citizenship.pdf> (emphasis added).

2. *See Archbishop scolds pro-choice Biden*, WASHINGTON TIMES (Aug. 26, 2008), <http://www.washingtontimes.com/news/2008/aug/26/archbishop-condemns-bidens-pro-choice-stance/?page=all>.

3. *See Hilary White, Vatican’s Archbishop Burke, No Communion for Catholic Politicians who Support Abortion*, CATHOLIC ONLINE (Feb. 5, 2009), http://www.catholic.org/international/international_story.php?id=31984. Archbishop Burke also told John Kerry during the 2004 election that he should not present himself for Communion. *Id.*

4. *See Bishop bars Patrick Kennedy from Communion over abortion*, CNN (Nov. 23, 2009), <http://www.cnn.com/2009/POLITICS/11/22/kennedy.abortion/index.html>.

tutionally entitled to prohibit any Catholic from taking Eucharist, the fact that these member bishops of the United States Conference of Catholic Bishops (“USCCB” or the “Conference”) choose to publicly threaten to exclude any pro-choice Catholic *politician* from the Eucharist, rather than any pro-choice Catholic *person*, could potentially create adverse tax consequences for the USCCB; as a condition of their exemption, 501(c)(3) tax exempt organizations are not allowed to participate in campaigns and electoral politics.

Similarly, the USCCB has also gotten its share of press because of widely reported legislative efforts, which may also have negative ramifications for the USCCB’s tax exemption. For example, Richard Doerflinger, a USCCB Associate Director, admittedly authored at least part of the controversial Stupak Amendment in the 2009-2010 health care debate. Doerflinger also reportedly carried the Bishops’ message that the health care legislation would only pass with their blessing—earning Doerflinger the epithet, the “Man Who Almost Killed Health Care Reform.”⁵ Doerflinger claims unabashedly that the USCCB has “help[ed] lawmakers write anti-abortion bills behind the scenes for decades.”⁶ 501(c)(3) exempt organizations are prohibited from engaging in “substantial” lobbying efforts for or against legislation.

The Catholic Church, through its bishops—each a member of the USCCB,⁷ actively and regularly interact with American politicians.⁸ Sometimes, Bishops simply inject their viewpoint into the public discourse.⁹ On the other hand, this interaction often appears to involve strong-arming politicians in particular, using these politicians’ faith and public position as a wedge. The USCCB’s intervention in the political process is not only indirect, as when it involves constitutionally protected internal matters within the

5. See Nick Baumann, *The Man Who Almost Killed Health Care Reform*, MOTHER JONES (Mar. 29, 2010), <http://motherjones.com/politics/2010/03/richard-doerflinger-man-who-almost-killed-health-care-reform>; Laura Bassett, *The Men Behind the War on Women*, HUFFINGTON POST (Nov. 1, 2011), http://www.huffingtonpost.com/2011/11/01/the-men-behind-the-war-on_n_1069406.html.

6. Bassett, *supra* note 5.

7. *About USCCB*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/index.cfm> (last visited Sept. 24, 2012). The bishops typically also sit on the executive boards and direct the advocacy done through the various state Catholic conferences in the states in which their diocese and archdiocese sit. See *infra* Section III.B.1.iii.

8. See *infra* Section III(A), III(B).

9. See *id.*

Church such as the availability of the Eucharist, but frequently involves active, direct interaction with legislators and elected officials on proposed bills, laws, and public policy.

This ordinarily would not be a problem, except that the USCCB and its affiliated groups – including state Catholic conferences and every organization listed in the current year Official Catholic Directory – enjoy tax-exempt status under the USCCB group exemption pursuant to section 501(c)(3) of the Internal Revenue Code.¹⁰ As a condition of their tax-exempt status, 501(c)(3) entities are forbidden from doing substantial lobbying or participating in political campaign activity.¹¹ It is one thing to participate in the public discourse by adding the voice of an organization or individual to a broad swath of opinions but, as Internal Revenue Service (“IRS”) regulations and the Internal Revenue Code recognize, it is completely another when tax-exempt entities inject themselves into elections by supporting or opposing individuals or groups of candidates, and into legislative politics by supporting or opposing individual bills, laws, and the public policy positions debated in the legislative arena.¹²

Of late, many have joined what seems to be a growing chorus of individuals questioning whether the USCCB has crossed the line from the former to the latter, and whether the IRS should look more closely at the USCCB’s activities;¹³ if so, the IRS could poten-

10. 26 U.S.C. § 501(c)(3) (2006). *See also* Letter from Cindy Thomas, Manager, Exempt Orgs. Determinations— Internal Revenue Serv., to U.S. Conference of Catholic Bishops (June 27, 2012) [hereinafter 2012 USCCB Exemption Letter], *available at* <http://www.usccb.org/about/general-counsel/upload/group-ruling-letter.pdf>; Letter from Cindy Thomas, Manager, Exempt Orgs. Determinations— Internal Revenue Serv., to U.S. Conference of Catholic Bishops (July 12, 2011) [hereinafter 2011 USCCB Exemption Letter], *available at* <http://www.usccb.org/about/general-counsel/upload/group-ruling-2011.pdf>.

11. *See id.*

12. There is an alternative, however. 501(c)(4) status does not come with the lobbying restrictions that burden 501(c)(3) organizations, however, as a condition of such option, donations to 501(c)(4) organizations are not tax-deductible for the donor. For a brief, but more complete treatment of 501(c)(4) status, *see infra* Section II.C.

13. *See* Lynn Woolsey, *IRS should scrutinize bishops*, POLITICO (Nov. 9, 2009, 11:09 PM), <http://www.politico.com/news/stories/1109/29336.html>; Bassett, *supra* note 5. In fact, Citizens for Responsibility and Ethics in Washington recently sent a letter complaint to the IRS challenging the USCCB’s involvement in politicking during the 2012 Presidential Election. *See* Letter from Melanie Sloan, Exec. Dir., Citizens for Responsibility and Ethics, to Douglas Shulman, Comm’n, Internal Revenue Serv. (Nov. 2, 2012), *available at*

tially determine that some of the USCCB's actions are prohibited and revoke its tax-exempt status. To be clear at the outset, this Article has no intention of taking a position or criticizing the merits of the USCCB's positions on any of the substantive issues; rather, the sole purpose of this Article is to lay out the law and regulations forbidding political lobbying and electioneering among exempt organizations, and investigate whether the USCCB could be considered to be in violation of these strictures.

This Article first explains what the USCCB is, its history, current tax-exempt status, and some examples of activities that could potentially jeopardize its tax-exempt status. Next, the second section provides a brief overview of the law of tax-exempt status including the IRS guidance in the area and jurisprudence interpreting the law and regulations. Finally, the Article explores the activities of the USCCB in light of the lobbying restrictions and anti-electioneering requirements of the tax code and how these activities could—in some cases—be plausibly construed as violating the law. Although the law in this area is murky at best, it appears that one or more interpretations thereof could find at least some of the USCCB's activities to be prohibited and, as the title of this Article indicates, the USCCB should (probably) lose its exempt status due to these activities.¹⁴

I. THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS: AN OVERVIEW

The USCCB is exactly what its name implies; the Conference is made up of all the bishops in the United States and U.S. Virgin Islands, and is organized as a corporation under the laws of the District of Columbia.¹⁵ Every bishop is a co-equal member of the

http://www.citizensforethics.org/page/-/PDFs/Legal/Letters/IRS/11_02_12_IRS_Complaint_US_Catholic_Bishops.pdf?nocdn=1.

14. It bears noting here that lay Catholics need not fear that their local church will lose its exemption should the USCCB lose its group exemption. Individual churches that meet the 501(c)(3) requirements “are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.” INTERNAL REVENUE SERVICE, TAX GUIDE FOR CHURCHES AND RELIGIOUS ORGANIZATIONS 3 (IRS Publication 1828, Nov. 2009) [hereinafter IRS TAX GUIDE FOR CHURCHES], available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. See also 26 U.S.C. § 508(c)(1)(A) (2006). Thus, if an individual church had not committed any violative activities, it would likely still be protected (and Catholic parishioners' donations would remain deductible) even if the USCCB's exemption were revoked.

15. See *About USCCB*, *supra* note 7.

Conference, and the various bishops come together during every third annual Fall General Assembly to elect the officers and rotating committee chairs for three-year terms.¹⁶

The USCCB defines its mission as the “support [of] the ministry of bishops with an emphasis on evangelization.”¹⁷ To fulfill this mission, the Conference purports to: (1) “[a]ct collaboratively and consistently on vital issues confronting the Church and society,” (2) “[f]oster communion with the Church in other nations,” and (3) “[o]ffer appropriate assistance to each bishop in fulfilling his particular ministry in the local Church.”¹⁸ The USCCB exists – according to its own materials and as one would expect – to support the Roman Catholic Church in the United States. Every several years, the Conference denotes a number of priorities in their “Priority Plan.” In the 2008-2011 plan, the Conference focused on five priorities: “Strengthening Marriage,” “Faith Formation Focused on Sacramental Practice,” “Recognition of Cultural Diversity,” “Life and Dignity of the Human Person,” and “Priestly and religious vocations.”¹⁹ For two of those priorities – the marriage and human life issues, the USCCB outlines its action plans as “work[ing] for laws and public policies” and “mobiliz[ing] the entire Catholic community,” respectively, to accomplish those priorities.²⁰

In support of its mission, the USCCB and its predecessors have sought and received tax-exempt status from the IRS under section 501(c)(3) each year since 1946.²¹ The USCCB submits an annual request, not merely for its own corporate entity, but for a group tax exemption for itself and all of its subordinate organizations.²² The USCCB’s group exemption letter serves as the official notification of exemption for all these entities; while they must use their own Employer Identification Number (“EIN”), none of the subordinate

16. See Press Release, U.S. Conference of Catholic Bishops, U.S. Bishops Elect Archbishop Dolan New President, Archbishop Kurtz Vice President, Bishop Bransfield Treasurer, Also Vote on Chairs-Elect of Six Comms. (Nov. 16, 2010), available at <http://www.usccb.org/news/archived.cfm?releaseNumber=10-211>.

17. *Mission Statement*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/mission-statement.cfm> (last visited Sept. 24, 2012).

18. *Id.*

19. *Priority Plan*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/priority-plan.cfm> (last visited Sept. 24, 2012).

20. *Id.*

21. See 2012 USCCB Exemption Letter, *supra* note 10, at 1; 2011 USCCB Exemption Letter, *supra* note 10, at 1.

22. See *id.*

entities are issued individual exemption letters.²³ To secure the exemption for itself and all these subordinate entities, the request for exemption affirms to the IRS that the relevant organizations are not-for-profit and that they do not substantially involve themselves in lobbying or politicking.²⁴ Furthermore, these subordinates must be “[a]ffiliated with the central organization [and] . . . [s]ubject to the central organization’s general *supervision or control*.”²⁵

These subordinate entities are determined by inclusion in the “Official Catholic Directory,” which is submitted each year to provide the full list of “names and address of the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States.”²⁶ The directory contains listings for each and every diocese and archdiocese of the Catholic Church in the United States, for various religious orders, missionary organizations, and for the two Apostolates and one Prelature in the United States.²⁷

Numerous other Catholic-affiliated organizations, such as schools, relief organizations, and perhaps most importantly – for the purposes of this Article, the state Catholic conferences are also included.²⁸ In this regard, the USCCB empowers its member bishops in each state to create a state Conference of Catholic Bishops. The USCCB supports these state Catholic conferences as the regional arms of its policy advocacy.²⁹ Thirty-five states and the Dis-

23. See *id.* See also INTERNAL REVENUE SERVICE, TAX-EXEMPT STATUS FOR YOUR ORGANIZATION (IRS Publication 557, Rev. Oct. 2010), available at <http://www.irs.gov/pub/irs-pdf/p557.pdf>.

24. See 2012 USCCB Exemption Letter, *supra* note 10, at 1; 2011 USCCB Exemption Letter, *supra* note 10, at 1.

25. *Group Exemptions, IRS Publication 4573*, INTERNAL REVENUE SERVICE 1 (2007), <http://www.irs.gov/pub/irs-pdf/p4573.pdf> (quoting Rev. Proc. 80-27, 1980-1 C.B. 677) (emphasis added).

26. *Id.*

27. See *About the Directory*, OFFICIAL CATHOLIC DIRECTORY, <http://www.officialcatholicdirectory.com/print-directory.html> (last visited Nov. 22, 2011).

28. See DAVID YAMANE, THE CATHOLIC CHURCH IN STATE POLITICS 114 (2005) [hereinafter YAMANE] (“State Catholic conferences are covered by the blanket IRS tax exemption for Catholic organizations listed in the *Official Catholic Directory* and are therefore subject to these limitations on their political activity.”).

29. See *General Counsel*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/general-counsel/> (last visited Jan. 12, 2012) (noting that the “Office of General Counsel acts as the source of legal advice to the USCCB and its Committees . . . [and] also supports the work of . . . State Catholic Conferences.”); Jerry Filteau, *How to Cover the Catholic Church*, USCCB OFF. OF

trict of Columbia have state-level Catholic Conferences.³⁰ Ten of the remaining fifteen states do not have state conferences due to

MEDIA REL. 38 (2008), <http://www.usccb.org/about/media-relations/upload/how-to-cover-the-catholic-church.pdf>; Letter from Anthony Picarello, Gen. Counsel, USCCB, to Subordinate Orgs. under USCCB Group Ruling, at 3 (July 18, 2011), available at <http://www.usccb.org/about/general-counsel/upload/group-ruling-2011-memo.pdf>.

30. See *Alaska Conference of Catholic Bishops*, ARCHDIOCESE OF ANCHORAGE, <http://www.archdioceseofanchorage.org/alaska/conference/index.html> (last visited Jan. 11, 2013) (**Alaska**); ARIZONA CATHOLIC CON., <http://www.azcatholicconference.org/> (last visited Jan. 11, 2013) (**Arizona**); CALIFORNIA CATHOLIC CONF., <http://www.cacatholic.org/> (last visited Jan. 11, 2013) (**California**); COLORADO CATHOLIC CONF., <http://www.cocatholicconference.org/> (last visited Jan. 11, 2013) (**Colorado**); CONNECTICUT CATHOLIC PUB. AFF. CONF., <http://www.ctcatholic.org/> (last visited Jan. 11, 2013) (**Connecticut**); *D.C. Catholic Conference*, ARCHDIOCESE OF WASHINGTON, <http://www.adw.org/service/dccc.asp> (last visited Jan. 11, 2013) (**District of Columbia**); FLORIDA CONF. OF CATHOLIC BISHOPS, <http://www.flacathconf.org/> (last visited Jan. 11, 2013) (**Florida**); GEORGIA CATHOLIC CONF., <http://www.georgiacc.org/> (last visited Jan. 11, 2013) (**Georgia**); *Hawaii Catholic Conference*, DIOCESE OF HONOLULU, <http://www.catholichawaii.org/diocesan-offices/hawaii-catholic-conference.aspx> (last visited Jan. 11, 2013) (**Hawaii**); CATHOLIC CONF. OF ILLINOIS, <http://www.catholicconferenceofillinois.org/> (last visited Jan. 11, 2013) (**Illinois**); INDIANA CATHOLIC CONF., <http://indianacc.org/> (last visited Jan. 11, 2013) (**Indiana**); IOWA CATHOLIC CONF., <http://iowacatholicconference.org/> (last visited Jan. 11, 2013) (**Iowa**); KANSAS CATHOLIC CONF., <http://www.kscathconf.org/> (last visited Jan. 11, 2013) (**Kansas**); CATHOLIC CONF. OF KENTUCKY, <http://ccky.org/> (last visited Jan. 11, 2013) (**Kentucky**); LOUISIANA CONF. OF CATHOLIC BISHOPS, <http://www.laccb.org/> (last visited Jan. 11, 2013) (**Louisiana**); MARYLAND CATHOLIC CONF., <http://www.mdcathcon.org/> (last visited Jan. 11, 2013) (**Maryland**); MASSACHUSETTS CATHOLIC CONF., <http://www.macatholic.org/> (last visited Jan. 11, 2013) (**Massachusetts**); MICHIGAN CATHOLIC CONF., <http://www.micatholicconference.org/> (last visited Jan. 11, 2013) (**Michigan**); MINNESOTA CATHOLIC CONF., <http://mncc.org/> (last visited Jan. 11, 2013) (**Minnesota**); MISSOURI CATHOLIC CONF., <http://www.mocatholic.org/> (last visited Jan. 11, 2013) (**Missouri**); MONTANA CATHOLIC CONF., <http://www.montanacc.org/> (last visited Jan. 11, 2013) (**Montana**); NEBRASKA CATHOLIC CONF., <http://www.nebcathcon.org/> (last visited Jan. 11, 2013) (**Nebraska**); *Nevada Roman Catholic Conference*, RELIGIOUS ALLIANCE IN NEVADA, <http://www.rainnv.org/> (last visited Jan. 11, 2013) (**Nevada**); NEW JERSEY CATHOLIC CONF., <http://www.njcathconf.com/> (last visited Jan. 11, 2013) (**New Jersey**); *About the New Mexico Conference of Catholic Bishops*, ARCHDIOCESE OF SANTA FE, <http://www.archdiocesesantafe.org/ABSHeehan/Bishops/AboutConf.html> (last visited Jan. 11, 2013) (**New Mexico**); NEW YORK ST. CATHOLIC CONF., <http://www.nyscatholic.org/> (last visited Jan. 11, 2013) (**New York**); NORTH DAKOTA CATHOLIC CONF., <http://ndcatholic.org/> (last visited Jan. 11, 2013) (**North Dakota**); CATHOLIC CONF. OF OHIO, <http://www.ohiocathconf.org/> (last visited Jan. 11, 2013) (**Ohio**); *Oregon Catholic Conference*, ARCHDIOCESE OF PORTLAND IN OREGON, <http://www.archdpdx.org/occl/> (last visited Jan. 11, 2013) (**Oregon**);

the fact that the entire state is encompassed within one Diocese, led by one Bishop.³¹ Of the remaining five states, Alabama, Mississippi, North Carolina, Oklahoma, and South Dakota, all are comprised of only two dioceses, and do not appear to have a unified policy arm – other than through a particular Archdiocese or Diocese.

Essentially, the USCCB's 501(c)(3) group tax exemption applies to every Catholic church and affiliated entity in the United States and its territories including the state Catholic conferences, and the USCCB warrants that no organization in the group engages in political campaign activity and that "no substantial part of their activities is for promotion of legislation."³²

PENNSYLVANIA CATHOLIC CONF., <http://www.pacatholic.org/> (last visited Jan. 11, 2013) (**Pennsylvania**); TENNESSEE CATHOLIC PUB. POLY COMMISSION, <http://www.tncppc.org/> (last visited Jan. 11, 2013) (**Tennessee**); TEXAS CATHOLIC CONF., <http://www.txatholic.org/> (last visited Jan. 11, 2013) (**Texas**); VIRGINIA CATHOLIC CONF., <http://www.vacatholic.org/> (last visited Jan. 11, 2013) (**Virginia**); WASHINGTON ST. CATHOLIC CONF., <http://thewscc.org/> (last visited Jan. 11, 2013) (**Washington**); CATHOLIC CONF. OF W. VIRGINIA, <http://www.catholicconferencewv.org/> (last visited Jan. 11, 2013) (**West Virginia**); WISCONSIN CATHOLIC CONF., <http://www.wisconsincatholic.org/> (last visited Jan. 11, 2013) (**Wisconsin**).

31. See *About the Diocese*, DIOCESE OF LITTLE ROCK, <http://www.dolr.org/about.php> (last visited Jan. 11, 2013) (**Arkansas**); *About the Diocese*, DIOCESE OF WILMINGTON, <http://www.cdow.org/mission.html> (last visited Jan. 11, 2013) (**Delaware**); *About Us*, ROMAN CATHOLIC DIOCESE OF BOISE, <http://www.catholicidaho.org/en/AboutUs/Pages/AboutUs.aspx> (last visited Jan. 11, 2013) (**Idaho**); *About the Diocese*, ROMAN CATHOLIC DIOCESE OF PORTLAND, http://www.portlanddiocese.org/info.php?info_id=3 (last visited Jan. 11, 2013) (**Maine**); *Fact Sheet*, DIOCESE OF MANCHESTER, <http://www.catholicnh.org/about/overview/fact-sheet/> (last visited Jan. 11, 2013) (**New Hampshire**); *Your Diocese*, ROMAN CATHOLIC DIOCESE OF PROVIDENCE, <http://www.dioceseofprovidence.org/?id=3> (last visited Jan. 11, 2013) (**Rhode Island**); CATHOLIC DIOCESE OF CHARLESTON, <http://www.catholic-doc.org/> (last visited Jan. 11, 2013) (**South Carolina**); *Biography*, CATHOLIC DIOCESE OF SALT LAKE CITY, <http://www.utahcatholicdiocese.org/biography> (last visited Jan. 11, 2013) (**Utah**); *A Brief History of the Diocese*, ROMAN CATHOLIC DIOCESE OF BURLINGTON, http://www.vermontcatholic.org/index.php?sid=16&pid=637&subnav_id=0 (last visited Jan. 11, 2013) (**Vermont**); *Diocese of Cheyenne and the State of Wyoming*, DIOCESE OF CHEYENNE, <http://www.dioceseofcheyenne.org/pdfs/history/Cheyennensis.pdf> (last visited Jan. 11, 2013) (**Wyoming**).

32. See 2012 USCCB Exemption Letter, *supra* note 10, at 1; 2011 USCCB Exemption Letter, *supra* note 10, at 1.

II. SECTION 501(C)(3) TAX EXEMPT STATUS: A PRIMER

The Internal Revenue Code provides that: “An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.”³³ Subsection (c) provides a list of twenty-nine organizations or groups that are eligible for the exemption, and includes the well-known 501(c)(3) exemption for charitable activities.³⁴ It is under section 501(c)(3) that the USCCB and its subordinate organizations qualify for tax-exempt status.³⁵

Under the plain language of section 501(c)(3), entities wishing to retain the exemption must refrain from engaging in a “substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does 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.”³⁶ While there is a strict monetary-value lobbying limit available by election under section 501(h) of the Code,³⁷ churches and associations of churches – by their own request at the time this provision was included – are disqualified from making such an election.³⁸ For the USCCB – the head of the Roman Catholic Church hierarchy in the United States – this means a “substantial” portion of its activities may not be lobbying, and it may not engage in any politicking.³⁹

33. 26 U.S.C. § 501(a) (2006).

34. 26 U.S.C. § 501(c)(3).

35. It should be noted that churches technically need not apply to the IRS for recognition of their tax-exempt status; it is automatic provided they meet the requirements of section 501(c)(3). See 26 U.S.C. § 508(c)(1)(A); IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 3. Most churches do apply, however, as a guarantee to donors and their own leadership, that the church is compliant and tax-exempt. See *id.*

36. 26 U.S.C. § 501(c)(3).

37. 26 U.S.C. § 501(h)(1).

38. See *id.* at § 501(h)(5). See also IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 6-7; Deirdre Dessingue Halloran & Kevin M. Kearney, *Federal Tax Code Restrictions On Church Political Activity*, 38 CATH. LAW., 105, 108-09 (1998).

39. One preliminary issue for their enforcement that bears mentioning is that the IRS alone may enforce them. It is fairly clear that third parties do not have standing to challenge inaction on the part of the IRS, even if the claim of such a party seems meritorious. See, e.g., *Allen v. Wright*, 468 U.S. 737, 754, 757 (1984); *In re U.S. Catholic Conf.*, 885 F.2d 1020, 1021 (2d Cir. 1989). A further complication is found in the onerous audit procedures which the IRS is required to use when auditing churches and associations of churches. See 26 U.S.C. § 7611 (2006). See also IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 26. Thus, there

Once the IRS, or the courts when reviewing an IRS determination, reaches the merits of an investigation, the enforcement problem lies in the law of “substantial activity” and “political campaign activity” under the Internal Revenue Code. It is entirely unclear beyond the guidelines given by the IRS itself as to when lobbying activity might become “substantial.”⁴⁰ The dividing line for political campaign activity is also “fuzzy” to say the least.⁴¹ The bottom line is that the IRS has substantial discretion launching an investigation into any 501(c)(3) organization’s exempt status. More importantly because of issues of standing, the only time the courts even get involved is after an adverse decision by the agency, requiring it to initiate the action in the first instance.

A. *Political Campaign Activity by 501(c)(3) Exempt Organizations*

Section 501(c)(3) allows exemption insofar as the entity seeking exempt status “does 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

are significant legal obstacles to overcome merely to reach the merits of a question on the status of an organization such as the USCCB. Effectively, the IRS must initiate the proceedings itself to have any sort of resolution on the merits of the exemption status. A second preliminary issue is the constitutionality of these lobbying and politicking restrictions. While First Amendment challenges have been raised, it is now clear that the restrictions on both political activity and lobbying activity are constitutional. *See, e.g.,* *Regan v. Tax’n with Representation*, 461 U.S. 540 (1983); *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000); *Christian Echoes Nat’l Ministry, Inc. v. United States*, 470 F.2d 849, 857 (10th Cir. 1972), *vacated on other grounds*, 404 U.S. 561 (1972).

40. *See* Brian Galle, *The LDS Church, Proposition 8, and the Federal Law of Charities*, 103 NW. U. L. REV. COLLOQUY 370, 372 (2009) (“There is no clear law on what comprises a ‘substantial’ amount of lobbying. In the leading cases upholding IRS decisions to revoke (c)(3) status, the offending charity either engaged in pervasive lobbying, or could not achieve any of its ends except through lobbying. Because it was obvious in all of those instances that the lobbying was more than insubstantial, we have little guidance about how to decide closer cases.”). The author also recommends Mr. Galle’s article for an interesting and exceptional investigation of the 501(c)(3) strictures in the context of the LDS (Mormon) Church’s participation in California’s Proposition 8 campaign.

41. *See, e.g.,* Mark Totten, *The Politics Of Faith: Rethinking The Prohibition On Political Campaign Intervention*, 18 STAN. L. & POL’Y REV. 298, 301-02 (2007) (“Judicial decisions and several IRS revenue rulings have further clarified the scope of the prohibition, but neither offers much specific guidance as to how the prohibition applies to churches.”); ROBERT J. DESIDERIO, *PLANNING TAX-EXEMPT ORGANIZATIONS* § 13.05 (Matthew Bender, 2011).

office.”⁴² In its guidance to exempt organizations, the IRS clearly points out that the ban is not subject to the substantiality limits of lobbying, but rather is absolute: “[A]ll section 501(c)(3) organizations are *absolutely prohibited* from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”⁴³

IRS guidance explains that 501(c)(3) organizations may not provide contributions to campaigns or public position statements for or against any candidate.⁴⁴ Because other activities may not be as well defined and clear-cut, they “depend[] on the facts and circumstances” in which they are used.⁴⁵ For example, the IRS notes that discussion in public forums and publishing of voter *education* guides are not prohibited political activity so long as they are “conducted in a non-partisan manner.”⁴⁶ Non-partisan get-out-the-vote drives, voter registration, and other methods of encouraging individuals to participate in the electoral process are acceptable, however any evidence of bias that “(a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.”⁴⁷

For churches, the rules on political activity are the same as any other exempt organization. To provide additional aid to churches and their leaders, the IRS has also provided more specific guidance on when individual religious leaders may make political statements without jeopardizing their organization’s tax-exempt status.⁴⁸ According to the IRS, the political activity prohibition is not intended to restrict the freedom of expression of leaders even on political matters or other issues of public policy. However, “religious leaders cannot make partisan comments *in official organization publications or at official church functions,*” and to avoid “po-

42. 26 U.S.C. § 501(c)(3).

43. *The Restrictions of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, INTERNAL REVENUE SERVICE, [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations) (last visited Sept. 24, 2012) [hereinafter *IRS Restrictions*] (emphasis added). See also Treas. Reg. §§ 1.501(c)(3)-1(c)(3)(iii); Rev. Rul. 2007-41, 2007-25 I.R.B.

44. See *id.*

45. See *id.*

46. *Id.*

47. *Id.*

48. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7.

tential attribution of their comments outside of church functions and publications” and the concomitant loss of exempt status, the IRS guidance implores religious leaders who speak or write in their individual capacity to “clearly indicate that their comments are personal and not intended to represent the view of the organization.”⁴⁹

The IRS also gives special guidance to churches on where the line between “issue advocacy” and political campaign activity is drawn. It makes clear that, like all other 501(c)(3) organizations, churches “must avoid any issue advocacy that functions as political campaign intervention, and any statement that demonstrates bias for or against a candidate is forbidden, even if it doesn’t explicitly state for whom to vote.⁵⁰ The statement need not identify any candidate by name – photographs, references to political party affiliation, or other distinctive features of a platform or biography are sufficient.⁵¹ The IRS has provided a list of factors to determine “whether a communication results in political campaign intervention.”⁵² These factors include whether the communication: (a) identifies candidates for office, (b) expresses approval or disapproval for the positions or actions of candidates, (c) was delivered near the time of the election, (d) makes reference to voting or an election, (e) addresses an issue that has been raised as an issue distinguishing candidates, (f) is part of an ongoing series of publications independent of election cycles, and (g) is timed to coincide with a non-electoral event such as a scheduled vote on legislation by any individual officeholder or candidate.⁵³ Context is important, but the IRS points out that any communication “is particularly at risk . . . when it makes reference to candidates or *voting in a specific upcoming election.*”⁵⁴

Also important is the extent to which an exempt organization may interact with the electorate through “voter education” activities. Voter education guides must be non-partisan and unbiased.⁵⁵ The IRS’s understanding of “voter guides” are those publications “distributed during an election campaign . . . [which] provide information on how *all candidates* stand on various issues . . . [and

49. *Id.*

50. *Id.* at 8.

51. *See id.*

52. *Id.*

53. *See* IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 8.

54. *Id.* (emphasis added).

55. *Id.* at 12.

which] may not be used to attempt to favor or oppose candidates for public elected office.”⁵⁶ As it does for “issue advocacy,” the IRS has offered a list of factors for determining the propriety of voter guides: (a) whether candidate positions are compared to the organization’s, (b) whether the guide raises a broad range of issues that the candidates would address if elected, (c) whether the description of the issues is neutral, (d) whether all the candidates for a given office are included, and (e) whether the descriptions of the candidates’ positions are in the candidates own words or are recounted in a neutral manner.⁵⁷

The IRS’s internal guidance described above is particularly helpful in determining permissible activity in light of the muddled case law what qualifies as political campaigning activity by 501(c)(3) entities. Viewing the reported cases, it appears that the courts, when confronted with potential political campaign activity, are highly deferential to the IRS determination.⁵⁸ Likewise, the IRS appears extremely hesitant to revoke a church’s tax-exempt status on this basis.⁵⁹ The courts, like the IRS, reaffirm that the prohibition on political campaign activity is absolute and “exemption is lost . . . by participation in *any political campaign* on behalf of any candidate for public office.”⁶⁰ It matters not whether the political activity was substantial.⁶¹ The question of what qualifies as political campaigning or other prohibited politicking is the challenging one. Courts have given little additional specifics beyond that which has already been provided by the IRS.⁶² Indeed, the courts that have addressed the issue typically do so when the polit-

56. *Id.* (emphasis added).

57. *See id.* at 12-13.

58. *See Branch Ministries*, 211 F.3d at 140 (upholding IRS revocation of tax-exempt status); *Christian Echoes Nat’l Ministry, Inc.*, 470 F.2d at 856; *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981) (deferring to IRS investigation of church activity).

59. It appears the IRS has only revoked a church’s – as opposed to a “religious organization’s” – exemption once. *See Branch Ministries*, 211 F.3d at 140. *See also* Totten, *supra* note 41, at 302 (noting that “only once in its history has the IRS revoked a church’s 501(c)(3) status”); BRUCE R. HOPKINS, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* 611-14 (10th ed. 2011).

60. *Dykema*, 666 F.2d at 1101 (emphasis added). *See also Branch Ministries*, 211 F.3d at 140; *Christian Echoes Nat’l Ministry*, 470 F.2d at 856.

61. *See id.*

62. *See supra* notes 43-57 and accompanying text (describing IRS guidance on political campaign activity).

ical activity is fairly blatant, and merely assume without much discussion that the actions were prohibited.⁶³

Commentators agree, and have pointed out that the IRS guidance drives decisions in this area and provide the most cogent distillations of the law.⁶⁴ While these “factors” elucidated by the commentators and the IRS guidance are very similar on this issue, they are still somewhat expansive, and ignore that politicking can involve groups of candidates rather than one individual. Looking at the commentary, revenue rulings, and limited case law – especially with respect to how these prohibitions will be applied to churches – the underlying tenet in any case of political campaign activity that exempt organizations may not do or say anything that suggests bias for or against a candidate or group of candidates.⁶⁵ If a bias may be read into a church’s activity, it is more likely forbidden political activity rather than permissible issue advocacy or educational activity. Again though, there is no bright line test, and the IRS has a great deal of discretion – a discretion that is likely to be upheld by the courts regardless of the agency determination.

B. Lobbying and Influencing Legislation by 501(c)(3) Exempt Organizations

There are different rules for lobbying activity, and the IRS has also provided some guidance on acceptable activities of 501(c)(3) exempt entities.⁶⁶ Unlike the absolute prohibition on political activity, lobbying is only prohibited if a “substantial part” of an ex-

63. See, e.g., *Branch Ministries*, 211 F.3d at 140 (advertisements four days before the 1992 election describing then-Governor Clinton’s positions as violating Biblical precepts); *Christian Echoes Nat’l Ministry*, 470 F.2d at 856 (urging supporters to vote for conservative candidates, attacking President Kennedy and several senators).

64. See HOPKINS, *supra* note 59, at 611-14; Totten, *supra* note 41, at 301. See also DESIDERIO, *supra* note 41, § 13.05. One such commentator explains: “The prohibition on political campaign activities applicable to tax-exempt charitable organizations embodies four basic elements, all of which must be present for the proscription to be operative. These factors are that a charitable organization may not *participate* or *intervene* in a political campaign, the political activity involved must constitute a political *campaign*, the campaign must be with respect to an individual who is a *candidate*, and the individual must be a candidate for a *public office*.” HOPKINS, *supra* note 59, at 608 (emphasis in original).

65. See Totten, *supra* note 41, at 302. See also Rev. Rul. 86-95, 1986-2 C.B. 73.

66. See Treas. Reg. §§ 1.501(c)(3)-1(c)(3)(ii, iv); *Lobbying*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Charities-&-Non-Profits/Lobbying> (last visited Sept. 24, 2012); IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

empt organization's activity is "attempting to influence legislation."⁶⁷ The IRS has used a broad definition for "legislation" including all forms of legislative activity at the federal, state, or local level.⁶⁸ At the same time, intervention with executive or judicial bodies is not considered lobbying.⁶⁹ The IRS has also produced guidance on what is regarded as lobbying for purposes of the rules: "A church or religious organization will be regarded as *attempting to influence legislation* if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation."⁷⁰ The rule, therefore, clearly encompasses both direct and grassroots lobbying; a church or religious organization cannot urge its constituents to do what it cannot do itself. Involvement in issues of public policy does not constitute lobbying, for purposes of the rule, if done "in an educational manner."⁷¹ Thus, there is a key distinction between describing and educating constituents on a policy position on an issue generally, and advocating specific legislation – whether a bill in existence or a specific, desired legislative agenda or proposal.

There are currently two "tests" for whether a 501(c)(3) organization is violating the "substantial" lobbying requirements – the "expenditure test" and the "substantial part test."⁷² However, as noted above, churches or associations of churches may not elect to use the "expenditure test" as the measure of permissible lobbying.⁷³ As an association of America's Roman Catholic Churches

67. IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

68. *See id.* ("Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure."). Less clear is whether the term 'legislation' includes intervention in non-judicial actions of an administrative agency. *See* DESIDERIO, *supra* note 41, § 13.02[2].

69. *See* IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

70. *Id.*

71. *Id.*

72. *See Measuring Lobbying Activity: Expenditure Test*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying-Activity:-Expenditure-Test> (last visited Nov. 28, 2011); *Measuring Lobbying: Substantial Part Test*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying:-Substantial-Part-Test> (last visited Sept. 24, 2012).

73. *See* 26 U.S.C. § 501(h)(5) (2006); *Measuring Lobbying Activity: Expenditure Test*, *supra* note 72.

and their Bishops,⁷⁴ the USCCB's lobbying activity is measured by the "substantial part test." This test looks at "all the pertinent facts and circumstances in each case" and uses "a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial."⁷⁵ Being a "totality of the facts test," the substantial part test obviously gives the IRS a great deal of discretion in what it considers "substantial," but the key factor is the time and money spent on lobbying as compared to the organization's exempt purpose. Violation of the substantial lobbying prohibitions results in the loss of tax-exempt status for the year in which the violation occurred.⁷⁶

It is likewise challenging to distill any sort of bright line rule – or any type of guidance beyond which the IRS already gives – when confronted with the substantiality inquiry for lobbying and influencing legislation among the courts. It appeared, at first, that the courts were ready to embrace a percentage-based rule that looked at how much time and money an exempt organization spent on lobbying.⁷⁷ In *Seasongood v. Commissioner*, the Sixth Circuit held that 5% of an organization's "time and effort" spent on lobbying activities was "insubstantial."⁷⁸ The courts quickly repudiated any such bright line rule, much as the IRS has done in the preparation of its guidance.⁷⁹

Despite that this broad "facts-and-circumstances" test offers little guidance, most of the cases that eschew the percentage test utilize the percentages spent on lobbying as a very important fac-

74. See *About USCCB*, *supra* note 7.

75. See *Measuring Lobbying Activity: Expenditure Test*, *supra* note 72.

76. *Id.*

77. See *Seasongood v. Comm'r*, 227 F.2d 907, 912 (6th Cir. 1955).

78. *Id.*

79. See *Haswell v. United States*, 500 F.2d 1133, 1142 (Ct. Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975) ("The political efforts of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a substantial part of its activities is to influence, or is an attempt to influence, legislation. A percentage test to determine whether the activities are substantial is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization."). The Tax Court has followed suit in this approach. See, e.g., *Nationalist Movement v. Comm'r*, 102 T.C. 558, 589-90 (1994), *aff'd* 37 F.3d 216 (5th Cir. 1994); *World Fam. Corp. v. Comm'r*, 81 T.C. 958, 967 (1983); *Church in Boston v. Comm'r*, 71 T.C. 108 (1978).

tor – if not the most important factor – in their analysis.⁸⁰ Many commentators agree that the “substantiality” test as used by the courts offers little more guidance than the IRS.⁸¹ Yet, others point out that, while the case law has eschewed the so-called “percentage test,” percentages are very important with 5% to 15% being the “safe zone” for exempt entities’ lobbying activity.⁸² To be sure, there has not been much academic development of this area of the law because most commentators have focused on political campaign activity rather than lobbying.⁸³

Despite what the case law and IRS guidance suggests about the substantiality requirements, one may look at the interplay with the “expenditure test” for lobbying and conclude that 20% expenditure should be the extreme upper bound under the substantiality test. This makes logical sense in light of the 1976 amendments that introduced the “expenditure test” election for most tax-exempt entities.⁸⁴ The section 501(h) election offers up to 20% of exempt purpose expenditures for organizations with less than \$500,000 of total expenditures, and a graduated scale for larger organizations that results in marginally decreased percentages of acceptable lobbying as compared to total exempt purpose expenditures.⁸⁵

Because churches voluntarily excluded themselves from the 501(h) election because they wanted to avoid government involvement in their finances, this should mean then that churches – under the substantiality test – should not be able to exceed that which is the upper limit under the expenditure test. This would minimize the chances for IRS involvement in their finances, and

80. See, e.g., *Haswell*, 500 F.2d at 1145-46; *Nationalist Movement*, 102 T.C. at 590, 590 n.18; *World Fam. Corp.*, 81 T.C. at 96; *Church in Boston*, 71 T.C. at 108; *Christian Echoes Nat'l Ministry, Inc.*, 470 F.2d at 852.

81. See Totten, *supra* note 41, at 300 n.17; David M. Andersen, *Political Silence At Church: The Empty Threat Of Removing Tax-Exempt Status For Insubstantial Attempts To Influence Legislation*, 2006 B.Y.U. L. REV. 115, 125, 136-40 (2006).

82. See Halloran & Kearney, *supra* note 38, at 108 (“Conservatively, ‘insubstantial’ is placed at five percent.”); *id.* at 108 n.18. This 5% to 15% line is what the USCCB actually offers to its subordinate organizations in terms of explaining the amount of permissible lobbying. See *Political Activity Guidelines*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/general-counsel/political-activity-guidelines.cfm#1> (last visited Sept. 24, 2012).

83. See Andersen, *supra* note 80, at 117-18 & n.11.

84. See 26 U.S.C. § 501(h) (2006).

85. *Id.* See also *Measuring Lobbying Activity: Expenditure Test*, *supra* note 72.

would comport with the very goal of these churches in keeping themselves out of the 501(h) election. Indeed, this fits the impression of non-profit experts that those organizations intending to lobby at any higher levels should make the 501(h) election.⁸⁶ Therefore, it seems that some of the commentators are right, and while the percentage test may be dead, percentages matter a great deal when measuring lobbying activity.⁸⁷ If this interpretation is correct, anything over 20% should result in an almost automatic revocation of exempt status, or at least trigger a very serious IRS investigation, and for larger organizations – recalling that the expenditure test has decreasing percentage levels as the organization size increases – it should be correspondingly lower.

C. 501(c)(4) Organizations and Political Action Committees (“PACs”): A Brief Digression

For those organizations that wish to lobby and otherwise participate directly in the legislative process, there is an alternative. 501(c)(4) organizations are exempt from taxation; but unlike their section 501(c)(3) counterparts, contributions to them are not deductible.⁸⁸ Exempt status under 501(c)(4) provides just the alternative for organizations looking to have an impact in the legislative arena; in other words, they may lobby without the restrictions placed on 501(c)(3) entities.⁸⁹ Moreover, 501(c)(4) organizations may provide the ability to engage in the political and electoral process as well. “Although a section 501(c)(4) organization is also subject to the ban on intervening in political campaigns, . . . it may form a political action committee (‘PAC’) that would be free to participate in political campaigns.”⁹⁰

Thus, any organization has available to it a number of varying statuses which it may use to accomplish its goals. Of course, each

86. See *Expansion on the Section 501(h) Election*, NONPROFIT COORDINATING COMMITTEE OF NEW YORK, http://www.npccny.org/Form_990/Exp_Section_501h.htm (last visited Sept. 24, 2012).

87. See Galle, *supra* note 40, at 372.

88. *Id.*

89. See *Branch Ministries*, 211 F.3d at 143. See also *Regan v. Taxation With Representation*, 461 U.S. 540, 552 (1983) (Blackmun, J., concurring) (finding that an organization “may use its present § 501(c)(3) organization for its nonlobbying activities and may create a § 501(c)(4) affiliate to pursue its charitable goals through lobbying.”); *Internal Revenue Manual*, INTERNAL REVENUE SERVICE, § 7.25.4.6(2) (1999), http://www.irs.gov/irm/part7/irm_07-025-004.html#d0e332.

90. *Id.*

has its own requirements and limitations and must be a completely separate legal entity, but the point is that an organization can create a multi-entity structure that allows it to lobby and engage in electoral politics. Indeed, “the availability of such an alternate means of communication is essential to the constitutionality of section 501(c)(3)’s restrictions on lobbying.”⁹¹

Returning to the USCCB (and any of the state Catholic conferences for example were they not covered by the group exemption), it could create a separate 501(c)(4) entity, and a PAC to fully engage in legislative and electoral politics. It does not – presumably because it prefers to avoid any additional administrative costs necessary to creating the separate entities, and the disclosure requirements of each. Instead, it has – since 1946 – preferred to keep the entirety of its operations within a 501(c)(3) entity, with which it can solicit tax-exempt contributions from its members and supporters, and without the added disclosure requirements by which a 501(c)(4) or a PAC must abide. That is its choice, but if it is found to violate the requirements of its 501(c)(3) status, the law requires that the IRS revoke its status – if only for the year(s) in which the violations occurred.

III. THE USCCB ROUTINELY ENGAGES IN POLITICKING AND LOBBYING THAT, UNDER A PLAUSIBLE INTERPRETATION OF THE LAW, VIOLATES THE REQUIREMENTS OF SECTION 501(C)(3)

The USCCB engages politicians in a great many areas of legislative and electoral politics. They have also been willing to advocate for or against various laws ostensibly on the basis of their theological doctrine, some or many of which appear not to have any direct effect on the Catholic Church. Thus, the question on the USCCB’s tax-exempt status revolves around whether they have engaged in *any* political campaign activity, and whether they have participated in substantial lobbying efforts. This article considers each in turn, and concludes that, under the interpretation of the law laid out in Section II above, at least some of the USCCB’s activities appear to violate the restrictions on both political campaign activity and lobbying, and potentially could lose its 501(c)(3) tax-exempt status.

91. *Id.* See also *FCC v. League of Women Voters*, 468 U.S. 364, 400 (1984); *Regan*, 461 U.S. at 552-53.

A. *The USCCB's Political Campaign Activity*

If the USCCB has participated in *any* political campaign activity, the regulations are clear that it should lose its tax-exempt status for the year or years in which the forbidden communications were made.⁹² The USCCB's own Office of the General Counsel ("OGC") acknowledges that the political campaign activity prohibition "has been interpreted as absolute."⁹³ The OGC itself understands that the prohibition "is not an absolute prohibition against political activity by tax-exempt organizations. Rather, it is a condition placed on the receipt of federal tax exemption. Thus, a 501(c)(3) exempt organization has a choice between involvement in political campaign intervention and the benefits of tax exemption."⁹⁴ Finally, the USCCB counsels its member bishops, and subordinate organizations to avoid making partisan comments in official publications or at church functions, lest such statements be attributed to the USCCB.⁹⁵ In the same vein, it reminds its individual members that they may make statements in their personal capacity so long as they "do not in any way utilize the organization's financial resources, facilities or personnel, and clearly and unambiguously indicate that the actions taken or statements made are those of the individuals and not of the organization."⁹⁶ The USCCB correctly states the law when it comes to political campaign activity; it is somewhat surprising, then, that the individual member bishops of the USCCB and the organization as a whole apparently seem quite willing to flout it.⁹⁷

92. See 26 U.S.C. § 501(c)(3) (2006); *IRS Restriction*, *supra* note 43; Treas. Reg. §§ 1.501(c)(3)-1(c)(3)(iii); Rev. Rul. 2007-41, 2007-25 I.R.B. 1421.

93. *Political Activity Guidelines*, *supra* note 82.

94. *Id.*

95. See *id.* See also IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7.

96. *Political Activity Guidelines*, *supra* note 82. See also IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7.

97. Indeed, some USCCB members leave little doubt on their politicking from the pulpit. To wit, Peoria Bishop Daniel Jenky, *from the pulpit*, recently compared President Obama to Adolf Hitler and Joseph Stalin over some of the President's policies. *Peoria bishop compares Obama's actions to Stalin, Hitler*, NBCNEWS (Apr. 19, 2012), http://usnews.nbcnews.com/_news/2012/04/19/11288862-peoria-bishop-compares-obamas-actions-to-stalin-hitler?lite. See also *As churches get political, U.S. IRS stays quiet*, REUTERS (June 21, 2012), <http://www.reuters.com/article/2012/06/21/usa-tax-churches-irs-idUSL1E8HED5Z20120621> ("The IRS has also been silent about the increasingly aggressive political activity of the U.S. Catholic bishops, who have called for their own Fortnight for Freedom this week. Masses, rallies, and parish bulletins are

1. “*Forming Consciences for Faithful Citizenship*”

Perhaps the most obvious target for potential violations of the political campaigning ban comes in “Forming Consciences for Faithful Citizenship,” a purported voter education guide and issue advocacy document released by the USCCB since the mid 1970s every four years in the year leading up to the United States presidential election.⁹⁸ The most recent “Forming Consciences” document was released in October 2011, and was merely a reissue of the 2007 version. The 2011 version did, however, include a new introduction to reinforce to Catholic recipients of the document that the former version “ha[d] at times been misused to present an incomplete or distorted view” of the Catholic positions and some issues spoken of in the document “involve the clear obligation to oppose intrinsic evils which can never be justified.”⁹⁹ Although the document’s introductory note proclaims that it “does not offer a voters guide, scorecard of issues, or direction on how to vote,” it nonetheless offers the guide “to shape their [Catholics] choices in the coming election in light of Catholic teaching.”¹⁰⁰ The important question for exempt-status purposes is whether this document represents an educational guide or issue advocacy, or is a biased or partisan attempt to sway how Catholics actually will vote.¹⁰¹

The “Forming Consciences” guide violates the IRS rules on political campaign activity, and should result in the USCCB’s loss of tax-exempt status. While the document specifies that it is not a “voters guide,” it is replete with language embodying inexorable commands to Catholic voters on issues that have been at the fore-

being mobilized against the Obama administration’s healthcare regulations on contraceptives. . . . ‘It will get worse unless the IRS takes action, and they seem reluctant,’ said Nicholas Cafardi, dean emeritus and professor of law at Duquesne University and the longtime lawyer for the Catholic diocese of Pittsburgh.”).

98. See USCCB, FORMING CONSCIENCES, *supra* note 1. See also William Collinge, *A Contemporary Augustinian Approach to Love and Politics – Pope Benedict XVI’s Deus Caritas Est*, in THE HEART OF CATHOLIC SOCIAL TEACHING: ITS ORIGINS AND CONTEMPORARY SIGNIFICANCE 85, 89 (David Matzko McCarthy ed., 2009).

99. USCCB, FORMING CONSCIENCES, *supra* note 1, at v-vi.

100. *Id.* at v. Compare *id.* at 2 (“[W]e bishops do not intend to tell Catholic for whom or against whom to vote.”), with *id.* (“Our purpose is to help Catholics form their consciences in accordance with God’s truth . . . [and] to make choices in political life . . . in light of a properly formed conscience.”) (emphasis added). The guide later goes on to explain that pro-choice positions are “intrinsically evil” and, logically, could never be a part of a “properly” formed conscience.

101. See *IRS Restriction*, *supra* note 43.

front of the political campaigns of the last several decades.¹⁰² The fact that the USCCB merely reissued the 2007 document in 2011 with an introductory note to press harder on some of their stances belies the point that it was meant to influence voters. One of the primary complaints about the 2007 version was by “[s]ome conservative Catholic groups [who] maintain[ed] that the bishops le[ft] too many ‘loopholes’ in the document, effectively granting permission to liberal Catholics to vote for pro-abortion candidates.”¹⁰³ The USCCB made clear, in the introductory note, that some Catholics were mistaken on their ability to vote, as Catholics, on issues that imposed the “clear obligation to oppose intrinsic evils which can never be justified.”¹⁰⁴

For example, one of these “intrinsic evils” is abortion, according to the USCCB. “A Catholic cannot vote for a candidate who takes a position in favor of an intrinsic evil, such as abortion or racism, if the voter’s intent is to support that position. In such cases a Catholic would be guilty of formal cooperation in grave evil.”¹⁰⁵ The 2011 version of “Forming Consciences” attempts to close loopholes complained of by some of the more conservative wing of Catholicism, and remind Catholics that they may not vote for pro-choice politicians if that is an issue that they intend to support. The USCCB insists it is merely helping people “form their consciences” but at the same time declares that some of the more hot-button issues of public policy can never be a part of a well-formed conscience.

Yet, the USCCB goes further than just abortion. It claims that “some things we must never do, as individuals or as a society, because they are always incompatible with love of God and neighbor.”¹⁰⁶ These “intrinsically evil” actions “must always be rejected and opposed and must never be supported or condoned” and include not just abortion, but also euthanasia, cloning, and “destructive research on human embryos” (which presumably means embryonic stem-cell research).¹⁰⁷ Effectively, “Forming Consciences” instructs voters that they may not vote for a candidate if being in

102. To wit, the USCCB’s predecessor organization first started issuing these purported voter education guides following the U.S. Supreme Court’s decision in *Roe v. Wade*. See 410 U.S. 113 (1973).

103. Theresa Laurence, *Faithful Citizenship’ helps voters weigh moral issues*, TENNESSEE REG., Nov. 25, 2011.

104. USCCB, FORMING CONSCIENCES, *supra* note 1, at vi.

105. *Id.* at 11.

106. *Id.* at 8.

107. *Id.* See also *id.* at 19.

favor of any of these public policy choices is an issue on which the individual is voting.¹⁰⁸

The “Forming Consciences” guide is not permissible “issue advocacy,” nor is it merely a “voter education guide.” Despite the USCCB claim that it does not offer a “direction on how to vote,”¹⁰⁹ the IRS makes clear that communications need not identify a particular individual or group of candidates by name to constitute a forbidden political campaign intervention.¹¹⁰ So long as the communication manifests bias or partisanship for or against any candidate, it runs the risk of being an impermissible intervention.¹¹¹ Nor does “partisanship” mean only for one or the other political party;¹¹² bias or partisanship is much broader than political party for IRS purposes.¹¹³

108. What is particularly notable about this discussion of “intrinsic evils” is that it singles out several issues for which Catholics can never vote with a good conscience, but omits others. *Id.* at 11. For example, Forming Consciences also maintains that torture is an intrinsic evil. *Id.* at 8 (discussing torture in the context of intrinsic evils, explaining that torture “can never be justified”); *id.* at 19 (“Genocide, torture, and the direct and intentional targeting of noncombatants in war or terrorist attacks *are always wrong.*”) (emphasis added). The USCCB and its members, however, have refrained from threatening to restrict Eucharist or otherwise encourage or suggest to Catholics that they should vote against any candidate that “encourages” torture, for example, as some candidates in the 2004 and 2008 elections did when they maintained that water-boarding was not torture and approved of its use, despite the Church’s suggestion that water-boarding was in fact considered torture. See Larry DiPaul, *No justifying water-boarding, other torture*, CATHOLIC STAR HERALD (May 7, 2009), http://www.catholicstarherald.org/index.php?option=com_content&view=article&id=3235:no-justifying-water-boarding-other-torture&Itemid=200194; Loran Nordgren, *Waterboarding isn’t torture? Try it*, CNN (Nov. 16, 2011), <http://www.cnn.com/2011/11/16/opinion/nordgren-waterboarding/index.html> (indicating that GOP Presidential candidates Herman Cain, Michele Bachmann, and Mitt Romney did not consider waterboarding torture).

109. USCCB, FORMING CONSCIENCES, *supra* note 1, at v.

110. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7-8.

111. See *id.*

112. See USCCB, FORMING CONSCIENCES, *supra* note 1, at 17. Nor does it matter how the USCCB characterizes its own document. The IRS is not bound by the legal conclusions of the USCCB as it relates to potentially impermissible activity. See, e.g., *In re Stac Electronics Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (holding that courts need not accept as true conclusory allegations or legal characterizations or unreasonable inferences or unwarranted deductions of fact); *Madonna v. United States*, 878 F.2d 62, 65 (2d Cir. 1989); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

113. See *Haswell*, 500 F.2d at 1144 (“Nonpartisan,” as used in the statute and regulations, need not refer to organized political parties. Nonpartisan analysis, study, or research is oriented to issues and requires a fair exposition of both sides

Indeed, identification of a candidate is only one of the factors the IRS lists in determining whether a communication is considered permissible issue advocacy or impermissible political campaign intervention.¹¹⁴ The IRS also explains that expression of approval or disapproval for positions or actions of candidates is a factor weighing against considering a communication “issue advocacy.”¹¹⁵ Here, the USCCB commands, in no uncertain terms, that voters should not mark their ballots for any candidate that supports abortion rights, euthanasia options, embryonic stem-cell research, and a host of other issues.¹¹⁶ To do so, the USCCB claims, that Catholic voter “would be guilty of formal cooperation in grave evil.”¹¹⁷ Again, it matters not whether the USCCB has named a candidate or a political party; it appears to tell Catholic voters that there are almost no circumstances in which they can conscientiously vote for certain candidates.

Another two factors are whether the purported “issue advocacy” is “delivered close in time to the election” and “whether the statement makes reference to voting or an election.”¹¹⁸ “Forming Consciences” runs against both these factors. For almost three decades, “Forming Consciences” and its predecessor statements have been timed to coincide with the presidential election, released just prior to the start of the primaries in the year running up to the election.¹¹⁹ Moreover, the document has no qualms about referring to voting or the upcoming election.¹²⁰

The final two factors listed by the IRS is whether the communication is “part of an ongoing series . . . independent of the timing of any election,” and is “related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also

of the issue involved. . . . The organization’s position may be nonpartisan in relation to party politics, and still be partisan on a particular issue, and the issue may or may not be politically significant.”).

114. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7-8.

115. See *id.*

116. See USCCB, FORMING CONSCIENCES, *supra* note 1, at 11. See also *id.* at 13.

117. *Id.* at 1, 13.

118. IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 8.

119. See Collinge, *supra* note 98, at 85, 89.

120. See USCCB, FORMING CONSCIENCES, *supra* note 1, at v (“We urge our Catholic pastors and people to continue to use this important statement . . . to shape their choices in the coming election. . .”). See also *id.* at vi, 2, 3 (discussing “coming” election); *id.* at 4, 10, 11, 13, 29 (discussing “voting” in light of Catholic teachings).

happens to be a candidate.”¹²¹ “Forming Consciences” is wholly dependent upon the American presidential electoral cycle. While the USCCB does not explicitly name specific candidates, that is just one factor. Rather than merely naming a number of public policy issues of interest to the Catholic Church, and their positions thereon, “Forming Consciences” is timed to coincide with elections, and makes overt references to how “good” Catholics should vote on a number of important issues of public policies – lest they be considered in cooperation of a “grave evil.”¹²² In the face of this express language in “Forming Consciences,” it is difficult to consider the document mere “issue advocacy.”

The USCCB also maintains that “Forming Consciences” is not “a voters guide.”¹²³ Instead, it is claimed that the document is largely educational, and helpful in exposing Catholics to the issues in light of Church teaching.¹²⁴ However, the IRS guidance on what constitutes a permissible voter “education” guide weighs against this formulation as well. Of primary import, an education guide must be non-partisan and unbiased.¹²⁵ To be considered as such, a guide must “provide information on how *all candidates* stand on various issues . . . [and which] may not be used to attempt to favor

121. IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 8. The IRS points out that any communication “is particularly at risk . . . when it makes reference to candidates or *voting in a specific upcoming election.*” *Id.* (emphasis added).

122. See USCCB, FORMING CONSCIENCES, *supra* note 1, at 11. See also *id.* at 11 (“When all candidates hold a position in favor of an intrinsic evil, . . . [t]he voter may decide to take the extraordinary step of not voting for any candidate or, after careful deliberation, may decide to vote for the candidate deemed less likely to advance such a morally flawed position and more likely to pursue other authentic human goods.”); *id.* (“In making these decisions, it is essential for Catholics to be guided by a well-formed conscience that recognizes that all issues do not carry the same moral weight and that the moral obligation to oppose intrinsically evil acts has a special claim on our consciences and our actions. These decisions should take into account a candidate’s commitments, character, integrity, and ability to influence a given issue.”); *id.* at 13 (“As Catholics we are not single-issue voters. . . . Yet a candidate’s position on a single issue that involves an intrinsic evil, such as support for legal abortion or the promotion of racism, may legitimately lead a voter to disqualify a candidate from receiving support.”).

123. *Id.* at v. Compare *id.* at 2 (“[W]e bishops do not intend to tell Catholics for whom or against whom to vote.”), with *id.* (“Our purpose is to help Catholics form their consciences in accordance with *God’s truth* . . . [and] to make choices in political life . . . in light of a *properly formed* conscience.”) (emphasis added). The guide later explains that pro-choice positions are “intrinsically evil” and, logically, could never be part of a “properly” formed conscience.

124. See *id.* at v-vi, 2.

125. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 12.

or oppose candidates for public elected office.”¹²⁶ As described above in describing issue advocacy, it is clear that the USCCB’s “educational” guidance does provide strong indications on which candidates are disfavored. Moreover, “Forming Consciences” explicitly admits that it does not provide information on how all the candidates stand on all the issues: “It does not offer a quantitative listing of issues for equal consideration.”¹²⁷ The document lists no candidates by name or political party, but rather lists a number of issues that the organization considers of great import to its constituent voters.¹²⁸

In fact, the IRS’s guidance on voter education guides largely concludes that these types of guides typically comprise lists of the various candidates and their positions on the issues.¹²⁹ Often, this is in response to questionnaires, surveys, or recitation of a candidate’s position in other media. “Forming Consciences” may provide comparisons of potential candidate positions with the USCCB’s, offer a broad range of important issues, and implicitly describe “all the candidates” for any public office up for election – indicated to be permissible by the IRS guidance’s first two factors if one assumes that the USCCB need not explain the positions of individual candidates for “Forming Consciences” to be considered a voter education guide.¹³⁰ However, the USCCB’s description of the issues and candidate positions seemingly lack neutrality.¹³¹ And when the underlying inquiry is whether or not bias for or against a candidate or group of candidates is the primary concern, the USCCB’s “Forming Consciences” looks particularly problematic.¹³² “Forming Consciences” can be fairly read (and some may say quite easily) in a way that demonstrates bias against any candidate that does not follow the USCCB’s “moral” guidance on a number of issues – some of which the USCCB describes as “intrinsically evil” and that can “never be justified.”¹³³

Notwithstanding the relatively objective criteria offered by the IRS in ascertaining the permissibility of any particular document

126. *Id.* (emphasis added).

127. USCCB, FORMING CONSCIENCES, *supra* note 1, at v.

128. *See id. passim.*

129. *See* IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 12-13.

130. *See id.*

131. *See id.*

132. *See* Totten, *supra* note 41, at 302 (ascertaining that the underlying principle is one cannot say or do anything that suggests bias among the candidates). *See also* Rev. Rul. 86-95, 1986-2 C.B. 73.

133. USCCB, FORMING CONSCIENCES, *supra* note 1, at v-vi.

or communication, the subjective intent of the USCCB in issuing the “Forming Consciences” guide further supports its potential impermissibly. For example, the late Bishop James McHugh summed up the policy of the USCCB in 1996 when advocating that the entire Conference should vote on the statement rather than a 50-member Administrative Committee:

When we look at the election results . . . we must admit that our great effort [in issuing the predecessor statements to “Forming Consciences”] was a failure. Many of those elected, especially President (Bill) Clinton, took positions directly opposed to church positions on abortion, aid to parents for educational choice, welfare, immigration, the economy and international affairs. And Catholics voted for such candidates without any apparent scruple or concern.¹³⁴

The language of “Forming Consciences,” and the ostensible intent behind the document, gives the impression that the USCCB wants Catholics to vote a certain way in a certain election – namely, the election in the November following its release. For example, one must also take “Forming Consciences” in the context of what the USCCB and its member bishops say about the issues. When multiple member bishops in multiple elections claim that abortion is a “foundational” issue or “outweighs” all other issues including in “the voting booth,”¹³⁵ the statements in “Forming Consciences” about “intrinsic evils” that “must always be rejected,” and that a voter for a pro-choice candidate “would be guilty of formal cooperation in grave evil,” sheds light on the USCCB’s purported purpose in issuing the guide.¹³⁶ In context, “Forming Consciences” appears to be more about having American Catholics vote according to the USCCB’s determination on what are the important issues, and what are the correct stances on those issues, rather than mere education.¹³⁷

134. Nancy Frazier O’Brien, *Response to bishops’ document gives glimpse of coming political season*, CATHOLIC NEWS SERVICE (Oct. 12, 2011), <http://www.catholicnews.com/data/stories/cns/1104024.htm>.

135. See David D. Kirkpatrick & Laurie Goodstein, *Group of Bishops Using Influence to Oppose Kerry*, N.Y. TIMES, Oct. 12, 2004, available at <http://www.nytimes.com/2004/10/12/politics/campaign/12catholics.html>; Dennis M. Schnurr, *October a Time to Reflect on Human Dignity*, PRIESTS FOR LIFE (Oct. 2008), <http://www.priestsforlife.org/magisterium/bishops/duluth-schnurr.htm>.

136. USCCB, FORMING CONSCIENCES, *supra* note 1, at 8, 11.

137. See *id.* See also Michelle Bauman, *Bishops Clarify Use of Forming Consciences for Faithful Citizenship*, NAT’L CATHOLIC REG. (Oct. 5, 2011), <http://www.ncregister.com/daily-news/bishops-clarify-use-of-forming-consciences->

The bishops are aware of the impact of “Forming Consciences” and seek to disseminate it more widely in light of recent data suggesting that only a minority of American Catholics are aware of the voter guide.¹³⁸ A recent survey commissioned by the Fordham Center on Religion and Culture Questions examines the impact of “Forming Consciences” and is further confirmation of how lay Catholics are using the guide to determine their voting choices. Among those voters who were aware of “Forming Consciences,” a plurality of “43 percent indicated that they felt the bishops outlined the moral principles in a way that left little doubt about which party or candidates they thought Catholics should support.”¹³⁹ By way of comparison, only “[a] third (34 percent) said the bishops stuck to moral principles . . . and left the final choice to Catholic voters.”¹⁴⁰ Furthermore, although only 16% of American Catholics were aware of the existence of “Forming Consciences,” approximately 26% of those say that the guide impacted their voting choices in some manner.¹⁴¹ The USCCB is aware that those that actually receive the guide potentially will act on it, and thus they continue to push it upon their constituents. When Catholics make up approximately a quarter of the U.S. adult population, or

for-faithful-citizenship/ (“With the campaign for the 2012 presidential race gaining speed, the U.S. Catholic bishops are saying that their 2007 statement . . . must not be misused or distorted to justify supporting candidates that do not adhere to Church teaching.”); Bishop William Murphy & Bishop Nicholas DiMarzio, *Letter to the Editor: Catholic Voters and Abortion: 2 Bishops’ View*, N.Y. TIMES (Sept. 23, 2008), http://www.nytimes.com/2008/09/24/opinion/124bishops.html?_r=1&oref=slogin (“[T]he bishops said candidates who promote fundamental moral evils such as abortion are cooperating in a grave evil, and *Catholics may never vote for them to advance those evils.*”) (emphasis added).

138. See O’Brien, *supra* note 134 (suggesting that more Catholics need to be made aware of the statement).

139. MARK M. GRAY, CTR. FOR APPLIED RES. IN THE APOSTOLATE, CARA CATHOLIC POLL 2011: FORDHAM CENTER ON RELIGION AND CULTURE QUESTIONS 4 (Aug. 2011) [hereinafter CARA CATHOLIC POLL 2011], *available at* http://www.fordham.edu/images/undergraduate/centeronreligionculture/faith_citizen_poll%20crc-cara.pdf.

140. *Id.*

141. *Id.* at 7 (chart showing that 74% of Catholics aware of *Faithful Citizenship* said it had no influence on their political choices, and 26% said it had at least some influence – 12% said “a minor influence,” 10% said “something of an influence,” and 4% said “a major influence”).

about fifty-five million voters, this is a potentially far-reaching affect indeed.¹⁴²

In short, the USCCB's "Forming Consciences" can easily be read—whether or not that is what the USCCB intended—as being targeted toward electoral politics, and, if so, likely does not comport to the IRS rules regarding either "issue advocacy" or a permissible "voter guide." It is of little import in light of the IRS's statements on the matter that individual candidates are not named in the document; it fairly may be read to manifest bias against identifiable candidates and parties, who are accused of supporting "intrinsic evils" on various issues.¹⁴³ More importantly, the USCCB seems aware of the potential for shaping voting patterns through its quadrennial statements, an awareness at least partially supported by new empirical data.¹⁴⁴ If all this is so, a fair reading of the law, regulations, and IRS guidelines should result in a revocation of the tax-exempt status of the USCCB for the years in which it impermissibly politicks with "Forming Consciences."

2. USCCB and Member Bishops' Intervention in Elections

In addition to intervention by means of "Forming Consciences," the membership of the USCCB apparently routinely intervenes in political campaigns by various means. First, and perhaps most obvious, is the contentious use of the Eucharist as a political tool.¹⁴⁵ In each of the last few election years, a number of Catholic bishops – members of the USCCB by virtue of their post – have publicly called for pro-choice politicians to be denied Eucharist because of their policy position on that issue.¹⁴⁶ The timing of these public pronouncements—which appear in the national media

142. See, e.g., BARRY A. KOSMIN & ARIELA KEYSAR, AMERICAN RELIGIOUS IDENTIFICATION SURVEY: 2008 3 (Mar. 2009), available at http://b27.cc.trincoll.edu/weblogs/AmericanReligionSurvey-ARIS/reports/ARIS_Report_2008.pdf; PEW F. ON RELIGION & PUB. LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY 12 (Feb. 2008), available at <http://religions.pewforum.org/reports>.

143. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 8 ("Even if a statement does not expressly tell an audience to vote for or against a *specific candidate*, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is *any message favoring or opposing a candidate*.").

144. See CARA CATHOLIC POLL 2011, *supra* note 139.

145. See *supra* notes 2-4 and accompanying text.

146. See *id.*

around election time—can lead to the conclusion that these USCCB members intend to influence an upcoming election.

The USCCB has not repudiated these actions by its members. In fact, it quietly instructed its individual bishops in a guidance document, “Catholics in Political Life,” that they may make their own judgments as to the “worthiness” of Catholic politicians to receive the Eucharist, while in the same breath reminding “Catholic public officials that their acting consistently to support abortion on demand risks making them cooperators in evil in a public manner.”¹⁴⁷ In the same document, the USCCB contended that its bishops should make that decision “in accord with the established canonical and pastoral principles.”¹⁴⁸ This shrewd language obscures that “canonical” principles demand that abortion supporters are living in “manifestly grave sin” and are unworthy to receive the Eucharist¹⁴⁹ – a point made by the Vatican in a letter to the USCCB at the same time that the USCCB was considering its statement in “Catholics in Public Life.”¹⁵⁰ The comments of Cardinal McCarrick in the Interim Reflections of the USCCB Task Force on Catholic Bishops and Catholic Politicians mirror this position.¹⁵¹ While refraining from mandating immediate denial of the Eucharist, he left the option open and intimated that denial may be appropriate for Catholic politicians who refrain from embracing Catholic teaching after being warned by their bishops.¹⁵²

This is not to say that the Catholic Church could not restrict the Eucharist to only the most staunchly pro-life individuals (for example, as to those against abortion even in cases of rape, incest, or to save the life of the mother). The USCCB and its bishops correctly defend their decisions on who may receive the Eucharist by

147. *U.S. Bishops: Catholics in Political Life*, CATHOLIC ONLINE (Mar. 30, 2009), <http://www.catholic.org/politics/story.php?id=32753>.

148. *Id.*

149. See Megan Knowlton, *The Eucharist: An Expressive Sacrament or a Political Tool – Comparing the Effect of 26 U.S.C. 501(c)(3)*, Branch Ministries v. Rosotti and Boy Scouts of America v. Dale on the Catholic Church’s Ability to Deny Pro-Choice Politicians the Eucharist, 10 RUTGERS J.L. & RELIG. 151, 152-53 & n.5 (2009).

150. See *Worthiness to Receive Holy Communion. General Principles*, LIFESITE NEWS (Apr. 19, 2005), <http://www.lifesitenews.com/news/archive/ldn/2005/apr/050419a>.

151. See Cardinal Theodore McCarrick, *Interim Reflections Task Force on Catholic Bishops and Catholic Politicians: Bishops’ Spring Meeting, Denver, U.S. CONF. OF CATHOLIC BISHOPS* (June 15, 2004), <http://old.usccb.org/bishops/intreflections.shtml>.

152. See *id.*

pointing to the government's inability to intervene in ecclesiastical matters.¹⁵³ The First Amendment's religion clauses disallow the government from telling the Catholic Church whether or not a politician, or anyone for that matter, is "fit" to receive the Eucharist.¹⁵⁴ Yet this is not at issue. If the USCCB opts to allow its members to decide, or publicly counsels its members, about when it is appropriate to refuse Communion specifically and explicitly to a *Catholic politician*, rather than any Catholic generally, for having a particular stance on a particular issue – such as abortion rights – the IRS may refuse tax-exempt status consistent with the First Amendment.¹⁵⁵

The key factor for why the USCCB and its member bishops' public denunciation of Catholic politicians violates IRS regulations is that many of the most public denunciations from USCCB bishops come during or just before elections, and are just that, *public*. It would be one thing for the USCCB to say that all supporters of pro-choice positions are living in "manifest sin" and should refrain from taking Communion. But the bishops single out *Catholic politicians*. It should be obvious that singling out elected officials, and then publicly insisting that they refrain from accepting, or not be given, Communion unless they change their policy position comes with the intent that such officials actually change their positions, and more importantly in an election year, that they are impliedly unworthy of the votes of "good" Catholics who are not living in "manifest sin."

The individual members of the USCCB also interact with the public during election years in ways that seem intended to communicate Catholic positions on various candidates. The fact that the bishops refrain from actually using the words "I endorse..." or "Don't vote for..." is irrelevant to the impact of their statements and to the IRS guidance on the matter.¹⁵⁶ In each of the last few elections, various USCCB bishops have all but spelled out for whom Catholics should vote (or rather, vote against). In 2004, for example, Archbishop Charles Chaput – one of twenty-seven active archbishops in the United States,¹⁵⁷ indicated to a group of Catho-

153. See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 698 (1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 664 (1969).

154. See *id.*

155. See, e.g., *Regan*, 461 U.S. 540; *Branch Ministries*, 211 F.3d 137; *Christian Echoes National Ministry, Inc.*, 470 F.2d at 857.

156. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 8.

157. See *Bishops and Dioceses*, U.S. CONF. OF CATHOLIC BISHOPS, <http://usccb.org/about/bishops-and-dioceses/> (last visited Sept. 24, 2012).

lic college students that he could not explicitly endorse a candidate but stated “abortion is a foundational issue” before “he reminded them of [Presidential candidate] Kerry’s support for abortion rights.”¹⁵⁸

Then-Archbishop Raymond Burke, now a Cardinal and the Prefect of the Supreme Tribunal of the Apostolic Signatura – Catholicism’s highest judicial authority other than the Pope himself, and one of the American Cardinals, has gone farther, speaking about the 2008 election of President Barack Obama in no uncertain terms:

If a Catholic knowingly and deliberately votes for a person who is in favor of the most grievous violations of the natural moral law, then he has formally cooperated in a grave evil and must confess his serious sin. Since President Obama clearly announced, during the election campaign, his anti-life and anti-family agenda, a Catholic who knew his agenda regarding, for example, procured abortion, embryonic-stem-cell research, and same-sex marriage, could not have voted for him with a clear conscience.¹⁵⁹

Bishop Michael Sheridan of Colorado Springs and Archbishop John Myers of Newark claimed prior to the 2004 election that the obligation to oppose abortion outweighed all other issues.¹⁶⁰ Other bishops have taken the opportunity in the month before the 2008 election to remind voters that “[a] committed and convinced Catholic is always pro-life on the issue of abortion and euthanasia, and that includes the voting booth.”¹⁶¹ As the IRS has admonished, even if the bishops do not name a particular candidate, evidence of bias that would favor “one candidate over another,” or “oppose a candidate in some manner,” or “have the effect of favoring a candidate or group of candidates,” constitutes prohibited campaign in-

158. Kirkpatrick & Goodstein, *supra* note 135 (“Archbishop Chaput . . . is part of a group of bishops intent on throwing the weight of the church into the elections. . . . In an interview in his residence here, Archbishop Chaput said a vote for a candidate like Mr. Kerry who supports abortion rights or embryonic stem cell research would be a sin that must be confessed before receiving Communion. . . . [N]ever before have so many bishops so explicitly warned Catholics so close to an election that to vote a certain way was to commit a sin.”).

159. Kathryn Jean Lopez, (*Archbishop*) *Ray of Clarity: The prayerful is political*, NAT’L REV. (May 12, 2009), <http://www.nationalreview.com/articles/227481/archbishop-ray-clarity/kathryn-jean-lopez>.

160. Kirkpatrick & Goodstein, *supra* note 135.

161. Schnurr, *supra* note 135 (emphasis added).

tervention.”¹⁶² Thus, when an archbishop says “abortion is a foundational issue,” or is an issue above *all* others, in the context of a presidential election and one of the candidates is pro-choice and the other anti-abortion, a clear bias is manifested regardless of whether the candidate’s name is spoken.¹⁶³

Moreover, a great many of these reports do not include the various USCCB bishops laying out a disclaimer that these are their personal views, which the IRS guidance indicates should be done.¹⁶⁴ The IRS has been clear that religious leaders cannot make partisan comments in official organization publications or at official church functions, but also that they must “clearly indicate that their comments are personal and not intended to represent the view of the organization” outside of that context in order to avoid attribution of their comments to the organization.¹⁶⁵ Noting the above examples, to name just a few, the USCCB’s bishops have shown themselves willing to single out individual politicians—or speak in such a way that listeners more likely than not realize is biased for or against candidates—during elections, and apparently explain how Catholics should vote. Important for purposes of the IRS guidance, they do so garbed in the authority of their post as a bishop and a member of the USCCB, often with no disclaimer and no tempering language.

The IRS need not merely kowtow to the USCCB’s description of their activities as acceptable because they haven’t “endorsed” any candidate; the IRS should independently evaluate whether these actions comport with the IRS’s own guidance. The statements of the USCCB’s members, and leaders, and the timing thereof, may fairly be characterized as in furtherance of an “objective to change the composition of the . . . government.”¹⁶⁶ Because the USCCB receives an exemption from federal income tax, they may not intervene in political campaigns, and as a condition of the USCCB’s group tax exemption, it has the obligation – as it must affirm to the IRS each year to keep its exemption – to “[s]ubject [those covered by the group exemption] to the central organization’s general supervision or control.”¹⁶⁷ If indeed the USCCB’s actions could be interpreted to be violative of the politicking restrictions of 501(c)(3)

162. *IRS Restrictions, supra* note 43.

163. Kirkpatrick & Goodstein, *supra* note 135.

164. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 7.

165. *Id.*

166. *Christian Echoes National Ministry, Inc.*, 470 F.2d at 856.

167. *Group Exemptions, IRS Publication 4573, supra* note 25, at 1.

status, the IRS likely should revoke the USCCB's tax-exempt status, or at the very least, launch a serious investigation, to curb any problematic intervention in electoral politics.

B. The USCCB's Activities in Lobbying and Influencing Legislation

Unlike the absolute prohibition on political campaign activity, lobbying is prohibited only when a "substantial part" of a 501(c)(3) exempt organization's activity is "attempting to influence legislation."¹⁶⁸ For purposes of this limitation, "legislation" includes all legislative action from the federal to the local level regardless of the form in which the legislative activity takes place – for example, by bill, resolution, or ballot referendum to name a few.¹⁶⁹ Therefore, as described above, churches and associations thereof must satisfy the "substantial part test" when engaged in activity surrounding the passage or opposition to any form of legislation.¹⁷⁰ That is, when placed in the context of the "objectives and circumstances of the organization," the part of its activities used "to influence, or is an attempt to influence, legislation" must be insubstantial.¹⁷¹ While there is no hard and fast rule based on percentages, it is widely thought that the dividing line for substantiality exists somewhere between 5% and 15%.¹⁷²

Indeed, the USCCB's OGC offers its constituents guidelines on where to draw the line with lobbying activity.¹⁷³ The OGC explains to its membership that "Catholic organizations may engage in lobbying activities only if they do not constitute a substantial part of their total activities, measured by time, effort, expenditure and other relevant factors," that the line for substantiality "lies somewhere between 5% and 15% of an organization's total activities," and advises that its constituents would "clearly be more com-

168. See Treas. Reg. §§ 1.501(c)(3)-1(c)(3)(ii, iv); *Lobbying*, *supra* note 66; IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

169. IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 6.

170. See *id.* Recall as well that churches may not elect the likely higher-value of permissible lobbying embodied in the "expenditure test" of section 501(h) by their own request.

171. *Haswell*, 500 F.2d at 1142.

172. See Halloran & Kearney, *supra* note 38, at 108 & n.18. This 5% to 15% line is what the USCCB actually offers to its subordinate organizations in terms of explaining the amount of permissible lobbying. See *Political Activity Guidelines*, *supra* note 82.

173. See *id.*

fortable at the lower end of the spectrum.”¹⁷⁴ The OGC also explains that direct and grassroots lobbying are both covered by the lobbying limitation, and the limitation “applies both to lobbying that is germane to an organization’s tax-exempt purposes and to lobbying that is not.”¹⁷⁵ With all this (accurate) guidance, it is somewhat shocking to see the lengths to which the USCCB and its membership will go to influence legislation. While the lobbying limitation is a more challenging test than the politicking prohibition, it is clear that the USCCB puts a substantial amount of its efforts into lobbying and should lose its exempt status on this ground as well.

1. Lobbying by the USCCB: Generally

i. Pew Forum on Religion and Public Life: “Lobbying for the Faithful”

Due to its relatively recent publication, a good place to begin investigating the USCCB’s lobbying activity is with the Pew Forum on Religion and Public Life’s report entitled “Lobbying for the Faithful: Religious Advocacy Groups in Washington D.C.”¹⁷⁶ The Pew Forum’s report raised the USCCB’s hackles and prompted an immediate backlash by the organization, claiming that despite the fact that the Pew Forum “acknowledges that it is speaking about advocacy in broad terms” – rather than the IRS definition of lobbying – and that “its figures . . . are imprecise,” the report produced figures that, according to the USCCB, were “way out of whack.”¹⁷⁷ USCCB Director of Media Relations, Sister Mary Ann Walsh, insists that Pew Forum’s admitted use of the “policy activities” line item from the USCCB’s financial statements “vastly overstates” what the USCCB does, which according to Walsh includes “engag[ing] in government relations – not in electioneering” and

174. *Id.*

175. *Id.*

176. See PEW F. ON RELIGION & PUB. LIFE, LOBBYING FOR THE FAITHFUL: RELIGIOUS ADVOCACY GROUPS IN WASHINGTON, D.C. (May 2011) [hereinafter PEW F., LOBBYING FOR THE FAITHFUL], available at http://pewforum.org/uploadedFiles/Topics/Issues/Government/ReligiousAdvocacy_web.pdf.

177. Mary Ann Walsh, *When Comparing Apples and Oranges Leads to Lemons*, USCCB MEDIA BLOG (Nov. 22, 2011), <http://usccbmedia.blogspot.com/2011/11/when-comparing-apples-and-oranges-leads.html>.

“something beyond lobbying/advocacy.”¹⁷⁸ “Petitioning the Almighty is not lobbying Congress,” according to Sister Walsh.¹⁷⁹

One of the primary researchers for the Pew Forum report, Allen Hertzke, replied to Sister Walsh’s criticism by repeating what had already been written in the report – that the Pew Forum did not use the IRS definition of lobbying, but rather a broader definition of advocacy.¹⁸⁰ He went further to insist that “publicly available financial statements do not break down . . . the various ‘policy activities,’ and thus we did not have the ability to pick and choose what to include and not include. . . . We would welcome efforts by the Bishops Conference to delineate more precisely the financial support behind [their] work.”¹⁸¹ However, the USCCB knows well enough that such an admission in published financial figures could spell trouble with the IRS, so such an admission seems unlikely.

What the Pew Forum did find was that the USCCB spent \$26,662,111 in 2009 on “policy activities” – the amount of the named line item on the USCCB’s financial statements.¹⁸² In the report itself, the Pew Forum acknowledges that the figure is pulled from the USCCB’s own records and encompasses a broader usage of the word “lobbying” than would be used for IRS purposes:

[M]any groups report expenses only for direct lobbying as strictly defined by the Internal Revenue Service . . . [T]his study defines advocacy more broadly, encompassing a wide range of efforts to shape and influence public policy on religion-related issues. . . . The U.S. Conference of Catholic Bishops’ total operating expenses were more than \$143 million in 2009, and *the group did not report any direct lobbying expenditures*. In this instance, the Pew Forum selected the group’s “policy activity” expenses (about \$27 million).¹⁸³

In other words, for lack of better financial reporting from the USCCB, and its failure to report *any* direct lobbying expenditures when it has effectively admitted to lobbying at least in some amount, the Pew Forum did its best to approximate what the USCCB spent (in dollar values, not person-hours) on broadly-

178. *Id.*

179. *Id.*

180. See Allen D. Hertzke, *Religious Advocacy: It’s Not All About Congressional Activity*, HUFFINGTON POST (Dec. 1, 2011), http://www.huffingtonpost.com/allen-d-hertzke/pew-religious-advocacy-response-to-usccb_b_1124422.html.

181. *Id.*

182. See PEW F., LOBBYING FOR THE FAITHFUL, *supra* note 176, at 11.

183. *Id.* at 37 (emphasis added).

defined advocacy. The report also noted that the USCCB was the religious advocacy group with the second-largest increase in “advocacy spending” between 2008 and 2009 with an increase of \$1.4 million dollars.¹⁸⁴ Again, this figure admittedly came from the self-reported “policy activities” expense line item from USCCB’s financial statements.¹⁸⁵

It also bears noting that the USCCB’s financial statements for the year ending December 31, 2010 listed this same “Policy activities” line item at a value of \$31,218,266 – an increase of over \$4.5 million dollars from 2009.¹⁸⁶ Similarly, the USCCB’s financial statements for the year ending December 31, 2011 listed “Communications, Policy & Advocacy activities” — the new line item name for “Policy Activities” on the financial statements — at \$39,528,067, an increase of \$8.3 million from the previous year and a whopping \$12.9 million from 2009.¹⁸⁷ The Pew Forum seems

184. *Id.* at 41.

185. *See id.*

186. *See* U.S. CONF. OF CATHOLIC BISHOPS, CONSOLIDATED FINANCIAL STATEMENTS: DECEMBER 31, 2010 AND 2009 (WITH INDEPENDENT AUDITORS’ [KPMG] REPORT THEREON) 3 (July 25, 2011) [hereinafter 2010/2009 Financial Statements], *available at* http://www.usccb.org/about/financial-reporting/upload/Final-Consolidated-Report_07-25-2011.pdf. *See also* U.S. CONF. OF CATHOLIC BISHOPS, CONSOLIDATED FINANCIAL STATEMENTS: DECEMBER 31, 2011 AND 2010 (WITH INDEPENDENT AUDITORS’ [KPMG] REPORT THEREON) 3 (July 12, 2012) [hereinafter 2011/2010 Financial Statements], *available at* <http://www.usccb.org/about/financial-reporting/upload/2010-and-2011-Statements.pdf>. Under the USCCB’s “Operating Expenses” heading of the Consolidated Statement of Activities, “Policy activities” is one of five subheadings considered “Program Services” (which is renamed “Communications, Policy & Advocacy activities” in the 2011/2010 financial statements, hereinafter referred to also as “Policy Activities”). *See* 2011/2010 Financial Statements, *supra* at 3; 2010/2009 Financial Statements, *supra* at 3. The other subheadings (in both the 2011/2010 Financial Statements and the 2010/2009 Financial Statements) are: “Grants and donations,” “Sub-recipient government contract expenses,” “Pastoral activities,” and “National collections.” *See id.* The costs for “Management and general” are contained under a separate subheading considered “Supporting Services.” *See id.* In 2010, “Policy activities” made up 17.6% of the “Total program expenses” and 16.7% of the “Total operating expenses.” *See* 2010/2009 Financial Statements, *supra* at 3. This is actually a decrease from 2009 – the year looked at in the Pew Forum report – where “Policy activities” made up 20.8% of the “Total program expenses” and 18.6% of the “Total operating expenses.” *See id.* at 4. However, this spiked over 20% again in 2011. *See* 2011/2010 Financial Statements, *supra* at 3. “Communications, Policy & Advocacy activities” — the corollary line item to 2010 and 2009’s “Policy Activities” — made up 21.3% of the “Total program expenses” and 20.2% of the “Total operating expenses.” *See id.*

187. *Compare* 2011/2010 Financial Statements, *supra* note 186, at 3, *with* 2010/2009 Financial Statements, *supra* note 186, at 3, 4.

to accept at face value that the full \$26.6 million in 2009, \$31.2 million in 2010, or \$39.5 million in 2011 is not the full value of lobbying such that the IRS would or should use in an investigation into the USCCB's potential loss of exempt status.¹⁸⁸ After all, Mary Ann Walsh points out, even if the USCCB's financials do not, that the "Policy activities" category includes the "Office for Film and Broadcasting," the "Office of Media Relations," the "Communications Department," and the "Catholic News Service."¹⁸⁹

There is enough anecdotal evidence, however, and inferences which may be drawn from the face of the report, the USCCB financial statements, and a quick search of the Internet to discredit Walsh's rebuttal at least to a large share of these numbers for "Policy activities," and for the IRS to seriously question whether the USCCB is engaging in substantial lobbying. To start, the notes to the consolidated financial statements for 2010 and 2009 list the various departments that are considered a part of "Policy activities."¹⁹⁰ These include: (1) the Communication Department (and its four sub-departments Media Relations, Creative Services, Customer and Client Relations, and the Catholic News Service), (2) Catholic Education, (3) Government Relations, and (4) Migration and Refugee Services.¹⁹¹ Sister Walsh, in her admonition to the Pew Forum, indicates that many of these departments are somehow *per se* outside the IRS definition of lobbying, and therefore, the full value of "Policy activities" cannot be used for purposes of an exempt status investigation.¹⁹² However, the USCCB's explanation seems less convincing once one actually looks at what each of these departments performing "policy activities" is doing.

188. Hertzke, *supra* note 180.

189. Walsh, *supra* note 177.

191. *See id.* The financial statements for the years 2011 and 2010 do not list individual departments, instead stating simply that "Communications, Policy and Advocacy activities broadly categorized include, but are not limited to, the production of news, educational and catechetical content; the sharing of the teachings of the Church that have some bearing on public policy; and advocacy which is realized through the staff of the Government Relations Office." 2011/2010 Financial Statements, *supra* note 186, at 6. Although the individual offices are not listed in the 2011/2010 Financial Statements, the overlap of the statements themselves (the year 2010 in the 2010/2009 Financial Statements) in addition to the description of activities in the 2011/2010 Financial Statement, leads to the conclusion that this line item supports largely the same individual departments between the three years.

192. *See* Walsh, *supra* note 177.

A good first example, the USCCB – through Sister Walsh – admonishes the Pew Forum because Catholic News Service is a part of the listed “Policy activities” and “Catholic News Service (CNS) is no more into lobbying/advocacy than is the Associated Press, NBC, ABC, CBS, PBS, or any other news agency.”¹⁹³ Apparently, any money put into the Catholic News Service is simply outside the definition of lobbying by the USCCB’s estimation. However, the Catholic News Service’s own website indicates that “[w]hile created in 1920 by the bishops of the United States, CNS is editorially independent and a *financially self-sustaining division* of the U.S. Conference of Catholic Bishops.”¹⁹⁴ If CNS is “financially self-sustaining,” presumably it does not receive funds through the USCCB’s general operating expenses budget via “policy activities.”¹⁹⁵

Furthermore, the USCCB claims that the Pew Forum report includes the costs of the communications department’s “Publishing” wing, which has spent “most of this year working on the revised Roman Missal.”¹⁹⁶ While the USCCB does not provide this breakdown either, the explanation rings hollow when it explains that “most of this year” – presumably 2011 – was spent on the Roman Missal, among other projects, while the Pew Forum report was using 2009 data on “policy activities.”¹⁹⁷ Again, the USCCB does not explain what cost this incurred, or why this would be a “Policy activity” rather than a “Pastoral activity,” or any other group of expenses listed on its financial statements.

Perhaps most importantly, when confronted with the fact that a “Government Relations” office exists as a “Policy activity,” Mary Ann Walsh explains: “The USCCB does engage in government relations – not in electioneering – and has three full-time staff assigned to the task. None of them hands out money and the cost of their ef-

193. *Id.*

194. *About*, CATHOLIC NEWS SERVICE, <http://www.catholicnews.com/aboutcns.htm> (last visited Sept. 24, 2012) (emphasis added).

195. *See id.*

196. Walsh, *supra* note 177.

197. *See id.* *See also* PEW F., LOBBYING FOR THE FAITHFUL, *supra* note 176, at 11. Sister Mary Ann Walsh’s explanation may explain the \$8.3 million bump between 2011 and 2010, but it certainly does not resonate with the timing and data used in the Pew Forum report. *See id.*; 2011/2010 Financial Statements, *supra* note 186, at 6.

forts reaches no where near \$26 million.”¹⁹⁸ First, electioneering and lobbying are two different restrictions placed upon 501(c)(3) tax-exempt organizations.¹⁹⁹ Even if the “Government Relations” employees are not engaged in electioneering – which is absolutely prohibited by the Internal Revenue Code, they may still be engaging in substantial lobbying.²⁰⁰ Nor does one have to “hand[] out money” in order for such action to constitute lobbying.²⁰¹ Second, the USCCB’s own website explains that the “Government Relations” department “coordinates and directs the legislative activities of the USCCB staff and other church personnel *to influence the actions of the Congress.*”²⁰² Even if there were only three full-time staff members²⁰³ in government relations, as Mary Ann Walsh explains, the USCCB’s website clearly indicates that these individuals also marshal appropriate resources and “coordinate[] and direct[] . . . USCCB staff and other church personnel” with an aim to affecting legislation.²⁰⁴

Moreover, the Government Relations office has a specific and far-ranging legislative agenda; it publishes a list of “Legislative Issues for the 112th Congress” (and has historical issues for older Congresses) which places various potential legislative proposals under subject-matter headings and places the individual issues in “two categories which are based on the likelihood of Congressional Action” and are referred to as “Lobbying” and “General Advocacy.”

198. Walsh, *supra* note 177. See also 2010/2009 Financial Statements, *supra* note 186, at 7 (listing “Government Relations” as one of four primary subgroups, along with the Communication Department (with its four sub-departments), Catholic Education, and Migration and Refugee Services, under “Policy activities”).

199. See *supra* Parts II(A-B).

200. See *id.*

201. Walsh, *supra* note 177.

202. *Government Relations: Who We Are*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/government-relations/who-we-are.cfm> (last visited Sept. 24, 2012) (emphasis added) (“USCCB Government Relations (GR) represents the USCCB before the U.S. Congress on public policy issues of concern to the bishops. GR coordinates and directs the legislative activities of the USCCB staff and other church personnel to influence the actions of the Congress. A specific set of issues is assigned to each congressional liaison staff person, who in turn, works in collaboration with particular policy departments at the USCCB.”).

203. Moreover, the site lists not three but four individuals, a director and three associate directors, as members of the Government Relations Congressional Liaison Staff, each with assigned sets of issues. See *id.*

204. *Id.*

cy/Monitoring.”²⁰⁵ The USCCB explains the difference between the two categories thus:

Lobbying

Substantively important issue addressed in legislation which either is expected to be approved by Congress or is likely to be introduced at the initiative of USCCB. The USCCB expects to take a formal position and *will commit all appropriate lobbying efforts, including grass roots activity, to influence the disposition of specific legislation addressing the issue.*

General Advocacy/Monitoring

Substantively important issue addressed in legislation which may or may not be considered by Congress which the USCCB intends to track closely in order to determine if and how the USCCB should respond if Congress decides to take action.²⁰⁶

As of March 2011, when the 112th Congress issues list was populated, it encompassed eight subject matter areas, with a total of forty-four issues with a lobbying categorization, and a further forty in the general advocacy/monitoring category.²⁰⁷ The USCCB admits to lobbying. It presumably disputes that such lobbying is substantial but, again, fails to disclose any amount of direct lobbying expenditures, or to list the portion of its “policy activities” which are utilized by Government Relations – one of the four sub-departments listed on its financial statements as a part of the expense classification.²⁰⁸

The same issues arise regarding the USCCB’s explanations of the activities of the other departments listed under “policy activities.” For example, “Migration and Refugee Services,” (“MRS”) which publishes its own annual report, explains that it had operating costs of approximately \$5.4 million in 2010 and \$6.1 million in

205. *Government Relations: Legislative Issues for the 112th Congress*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/government-relations/legislative-issues/legislative-issues-for-the-112th-congress.cfm> (last visited Sept. 24, 2012).

206. *Id.* (emphasis added).

207. *Id.* The subject-matter areas were: “Pro-Life Activities,” “Marriage and Family Life,” “Migration and Refugee Services,” “International Justice and Peace,” “Catholic Education,” “Domestic Justice and Human Development,” “Communications,” and “General Counsel.” *Id.*

208. See 2010/2009 Financial Statements, *supra* note 186, at 7.

2011.²⁰⁹ Yet, MRS apparently only received \$491,360 in 2010 from the line item “USCCB and Private Grants/Contributions.”²¹⁰ In 2011, the USCCB is not even listed on the MRS revenue breakdown; “Private Grants/Donations” provided only \$24,387 of MRS’s revenue in 2011.²¹¹ The vast majority of MRS’s annual revenue comes from government grants and contracts, the sum of which represented 93.1% of the group’s 2010 funding and 92.5% of the group’s 2011 funding.²¹² If the USCCB is only providing \$500,000 to this group (assuming that there were zero “Private Grants/Contributions” in 2010, which looks to be possible based on the small number of “Private Grants/Donations in the 2011 report) – one of the four “policy activities” – the other policy activities of the USCCB still split over \$30 million in 2010 and almost \$40 million in 2011.²¹³

“Catholic Education,” another listed group within policy activities, does not have a published annual report such as that published by MRS. However, the USCCB’s website contains a section dedicated to the office of Catholic Education that stresses its own legislative involvement.²¹⁴ One of its six “key mission responsibilities” is “advocacy in federal public policy.”²¹⁵ While the mere reference to federal policy may not cross the line from issue advocacy to lobbying, Catholic Education – like Government Relations – nonetheless publishes its own issue list for “Lobbying” or “General Advocacy/Monitoring.”²¹⁶ Presumably, Catholic Education works independently of or in concert with Government Relations to lobby for any of the six individual issues listed as “Lobbying” efforts for

209. See U.S. CONF. OF CATHOLIC BISHOPS, MIGRATION AND REFUGEE SERVICES, 2010 ANNUAL REPORT: RENEWING HOPE, SEEKING JUSTICE 12(2011) [hereinafter 2010 MRS Report], available at <http://www.usccb.org/about/migration-and-refugee-services/upload/Migration-and-Refugee-Services-Annual-Report-2010.pdf>; U.S. CONF. OF CATHOLIC BISHOPS, MIGRATION AND REFUGEE SERVICES, 2011 ANNUAL REPORT 20 (2012) [hereinafter 2011 MRS Report], available at <http://www.usccb.org/about/migration-and-refugee-services/upload/mrs-annual-report-2011.pdf>.

210. See 2010 MRS Report, *supra* note 209, at 12.

211. See 2011 MRS Report, *supra* note 209, at 20.

212. See 2010 MRS Report, *supra* note 209, at 12; 2011 MRS Report, *supra* note 210, at 20.

213. See *id.*

214. See *Catholic Education*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/about/catholic-education/> (last visited Sept. 24, 2012).

215. *Id.*

216. See *Catholic Education, Public Policy, Legislative Agenda*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/public-policy/index.cfm> (last visited Sept. 24, 2012).

the “USCCB Education Legislative Agenda – 112th Congress.”²¹⁷ If the heading wasn’t clear enough, the USCCB begins each issue section by claiming that “[w]e support legislation that . . .”²¹⁸ Although Catholic Education may advocate on the issues and engage in some activities which would not be considered lobbying, some of this office’s policy activities are clearly lobbying.

In short, two of the four offices – Government Relations and Catholic Education, which the USCCB lists as recipients of “Policy activities” funds, openly engage in lobbying and list their various lobbying efforts. The third, Migration and Refugee Services, admittedly receives the vast majority of its operating revenue from governmental contracts and a miniscule amount from the USCCB itself.²¹⁹ The fourth, Communications, includes the financially self-sustaining Catholic News Service and presumably helps the other three offices along with the rest of the USCCB in their work. While the full \$26.6 million allotted to policy activities in 2009 (and \$31.2 million in 2010 and \$39.5 million in 2011) may not be used on prohibited activities, it is hard to believe – in light of the discussion above – that the USCCB is not spending a substantial amount of money and – perhaps more importantly – person-hours on lobbying.²²⁰ Furthermore, it is unclear from the USCCB’s financials whether the people who perform these “policy activities” are paid from that category, or whether their paychecks come out of the “Management and general” line item as a “Supporting services” expense from the USCCB’s consolidated statement of activities.²²¹ If this is the case, the potential amounts spent on influencing legislation – including the salaries of those doing the lobbying – may be much more than the amount listed each year for policy activities.

ii. The USCCB Ad Hoc Committee for Religious Liberty

It is not only the monetary expenditures that matter; person-hours expended on influencing legislation by an organization’s staff as well as time expended by non-compensated or volunteer

217. *Id.*

218. *Id.*

219. 2010 MRS Report, *supra* note 209, at 12.

220. Indeed, financial expenditures are not the sole measure of substantiality. *See Haswell*, 500 F.2d at 1147 (“Distribution of expenditures is only one measure of the substantiality of [Plaintiff’s] political activities.”); *id.* at 1145-46.

221. *See* 2010/2009 Financial Statements, *supra* note 186, at 3-4.

individuals at the behest of the organization both matter.²²² The “substantial part” test also looks at the efforts of the USCCB’s bishops themselves and the grassroots lobbying efforts of the constituents who work at their behest.²²³ In this regard, there is an increasing amount of anecdotal evidence that an emboldened USCCB and its bishops have engaged in attempts to influence legislation, and are often successful. These often back-room dealings are beyond the potential dollar amounts listed by the Pew Forum report or the USCCB’s own financial statements.

The USCCB has just “launched a formidable new lobbying unit known as the Ad Hoc Committee for Religious Liberty.”²²⁴ The USCCB apparently is using the new Ad Hoc Committee to transform social and public policy issues, of interest to everyone in the country Catholic or not, into purported attacks on the organization’s First Amendment Free Exercise rights. As one well-known First Amendment scholar explains of the Ad Hoc Committee Chair William Lori’s testimony to Congress, “[Their] description of religious liberty, viewed through the Catholic Church’s lens, part[akes] of the current fashion of treating religious believers as though their beliefs should always trump societal interests.”²²⁵ Critics of the Ad Hoc Committee claim it is less about defending religious liberty and more about the preservation of “taxpayer funding for church-affiliated agencies while maintaining overly broad exemptions from various laws.”²²⁶ Indeed, the purpose of the Ad Hoc Committee – “now comprised of ten bishops, ably assisted

222. See *Haswell*, 500 F.2d at 1147; *id.* at 1145-46. See also *Measuring Lobbying: Substantial Part Test*, *supra* note 72.

223. See *Measuring Lobbying: Substantial Part Test*, *supra* note 72.

224. Simon Brown, *The Top Ten Church-State Threats: A Surging Religious Right Means Daunting Religious Liberty Challenges For Americans United In 2012*, CHURCH & ST. MAG., Jan. 2012, available at <http://www.au.org/church-state/january-2012-church-state/featured/the-top-ten-church-state-threats>. See also Bishop William E. Lori, *Address on Religious Liberty*, U.S. CONF. OF CATHOLIC BISHOPS (Nov. 2011), available at <http://www.usccb.org/about/leadership/usccb-general-assembly/archbishop-lori-religious-liberty-november-2011-address.cfm>.

225. Marci A. Hamilton, *Last Week’s Congressional Hearing on Religious Liberty: A Disturbing Presentation by a Catholic Bishop Raises Questions About the Separation of Church and State*, JUSTIA VERDICT (Nov. 3, 2011), <http://verdict.justia.com/2011/11/03/last-weeks-congressional-hearing-on-religious-liberty>.

226. Brown, *supra* note 224 (“The committee claims to be defending religious liberty, but critics say it actually seeks to preserve taxpayer funding for church-affiliated agencies while maintaining overly broad exemptions from various laws.”).

by excellent consultants” – seems more about influencing legislation by the fact that it has hired its own lawyer and a separate lobbyist to support the relatively small committee.²²⁷

While it remains to be seen what types of legislation the Ad Hoc Committee will support or oppose, if any, it certainly seems that they will be weighing in on public policy issues that arguably have no direct effect on the religious liberty of the church. Bishop Lori, head of the new Ad Hoc Committee, testified to the purpose of the Committee and the USCCB’s position on the various public policy positions it claimed infringed its religious liberty.²²⁸ Bishop Lori indicated to Congress that the Ad Hoc Committee was focusing on several key issues: (1) U.S. Department of Health and Human Services (“HHS”) regulations requiring contraceptive coverage in private health insurance plans; (2) HHS regulations that require “full range” reproductive services, which include abortion and contraceptive options, in government contracts providing support for victims of human trafficking; (3) the U.S. Agency for International Development’s recent requirements that international humanitarian relief programs – notably those in sub-Saharan Africa – provide comprehensive HIV prevention activities, which includes contraceptives; (4) the U.S. Department of Justice’s refusal to defend the Defense of Marriage Act (“DOMA”); (5) the so-called “ministerial exception” to employment discrimination suits involving religious employers;²²⁹ and (6) state laws that do not give religious organizations and individuals carte blanche to ignore valid laws in the various states.²³⁰

Arguably, none of these directly affect the religious freedom of the USCCB and its constituents, but rather are broader discussions on public policy. For the first three focus areas, the USCCB wishes to receive government contracts but avoid the public policy

227. See Lori, *supra* note 224.

228. See Testimony of Most Reverend William C. Lori, Bishop of Bridgeport, On behalf of the United States Conference of Catholic Bishops, Before the Judiciary Committee of the United States House of Representatives, Subcommittee on the Constitution (October 26, 2011), *available at* <http://judiciary.house.gov/hearings/pdf/Lori%2010262011.pdf>.

229. In fact, this is an area that need not concern the Bishops any longer. The Supreme Court ruled on January 11, 2012 in *Hosanna-Tabor* that it agreed as to the existence of the ministerial exception, and adopted a relatively broad reading of who is a minister for purposes of the exception – holding in that case that a “called” teacher of mostly secular subjects was within the exception. See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012).

230. See *id.* at 700-01.

decision that contracts in those areas should include contraceptive services. As Professor Marci A. Hamilton explains, these focus areas are not about religious liberty, but rather to keep the money they receive from federal contracts whilst avoiding the public policy decisions on how it is spent.

The Catholic hierarchy opposes the use of contraception, and does not want Catholics to use it. Of course, it is their prerogative to hold such views, and to try to persuade their members to follow their precepts. However, they now want the federal government to assist them in ensuring that people do not use contraception. . . . If the bishops' religious beliefs make them unfit to serve the [role for which they are contracted by the government], then there is no religious liberty violation if the bishops cannot receive government funding for providing that service. There is no constitutional right to government funding of religious mission.²³¹

With respect to DOMA, the USCCB supports the application of the law (and presumably opposes Senator Feinstein's Respect for Marriage Act, which would repeal DOMA).²³² Yet, the law is a matter of federal public policy, and requires nor asks nothing of the USCCB. Nor would the repeal of DOMA require anything of the USCCB. DOMA's existence or non-existence will not force churches to offer ecclesiastical/religious marriage to any couple; the USCCB merely wishes to involve itself in legislation defining *civil* marriage.

The "ministerial exception" presents a closer case, but ultimately is a judicial interpretation of the First Amendment to the U.S. Constitution, and thus requires no congressional action at all.²³³ This is a relatively uncontroversial proposition in the ab-

231. Marci A. Hamilton, *supra* note 225. Professor Hamilton also points out the USCCB's insistence on receiving funding to combat AIDS in Africa whilst ignoring the best method of combating the horrific epidemic. *See id.* "[I]t is truly remarkable that any religious organization could demand the "right" to receive government funds to address the international disaster that is AIDS, despite the fact that their beliefs prohibit them from employing what scientists have determined are the best means of preventing the spread of the disease." *Id.*

232. *See* Press Release, Senator Dianne Feinstein, Feinstein's DOMA Repeal Bill Passes Judiciary Comm. (Nov. 10, 2011), *available at* http://www.feinstein.senate.gov/public/index.cfm/press-releases?ContentRecord_id=865363e6-2e2b-4a25-ba6a-8afd4570b4ed.

233. The "ministerial exception" is a "First Amendment theory . . . [that] stands for the proposition that religious organizations have the right to determine the criteria for their clergy." Marci A. Hamilton, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC: The Supreme Court Oral Argument, and*

stract. No one seriously suggests that the government should tell the Catholic Church, for example, who is fit to be a priest or bishop. Bishop Lori's objection came in the context of the recently decided Supreme Court case called *Hosanna-Tabor Evangelical Lutheran Church School v. EEOC*.²³⁴ The "ministerial exception" cases, however, are most often fought at the margins of so-called ecclesiastical positions. For example, in *Hosanna-Tabor*, the church-run school fired a teacher who taught mostly secular subjects after she was forced to go on medical leave for several months.²³⁵ The question then is whether a teacher is a "minister" for purposes of using the ministerial exception to avoid application of the Americans with Disabilities Act ("ADA").²³⁶ Again, however, this is a question of whether the judiciary will accept that the First Amendment to the Constitution allows religious exemption from the law. It has nothing to do with congressional action, unless the bishops are lobbying for changes to the ADA, or Title XII, or any of the other anti-discrimination laws currently on the books to which the ministerial exception might apply.

Finally, the sixth area of concern for the Ad Hoc Committee is similar to the others. The USCCB wishes to be able to receive government contracts (for Illinois adoption services, in Bishop Lori's example), and discriminate against whomever they wish (same-sex couples adopting children pursuant to state law, in this example) in providing the services for which they were contracted.²³⁷ They also desire that any individual working in state or local government (a clerk tasked with issuing marriage licenses in upstate New York in Bishop Lori's testimony) be able to refuse service to any individual or group of individuals for which he or she may be able to offer a religious justification for refusing service.²³⁸ Effectively then, the USCCB insists on writing state laws to their benefit as well as federal, even when those laws are secular in nature and require the USCCB itself, or the Catholic Church generally, to do nothing.

What It Revealed, JUSTIA VERDICT (Oct. 6, 2011), <http://verdict.justia.com/2011/10/06/hosanna-tabor-evangelical-lutheran-church-and-school-v-eec>.

234. See *Hosanna-Tabor Evangelical Lutheran Church Sch.*, 132 S. Ct. 694.

235. See Hamilton, *supra* note 225.

236. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 132 S. Ct. at 706-07.

237. See Testimony of Most Reverend William C. Lori, *supra* note 228.

238. See *id.*

iii. State Catholic Conferences

The state Catholic conferences are subordinate organizations of the USCCB and are effectively the state policy arms of the Catholic Church – where the USCCB is the federal branch.²³⁹ State Catholic conferences exist at the discretion of the USCCB's member bishops who exercise control over the dioceses in the various states, and are supported and controlled by the USCCB and its member bishops.²⁴⁰ And where the USCCB lobbies on federal issues, the state Catholic conferences have also shown that they attempt to influence legislation and the passage or rejection thereof on a great many of the same issues, taking their cues from the USCCB on where they should stand on any issue.

In fact, there seems to be little else these state Catholic conferences do other than interact with legislative, executive, administrative, and judicial branches of the state governments.²⁴¹ One scholar, a Professor of Sociology at Wake Forest University, who has extensively studied the state Catholic conferences, describes them thus: “The *raison d'être* of state Catholic conferences is principally to engage in the public policy process—or, more broadly, in the public life—of the state.”²⁴² When surveyed by Professor Yamane, “the *state legislature* was the top-ranked target to which [state Catholic] conferences address themselves, with 78.1 percent of respondents ranking it #1. *The Catholic Church within the state* was a distant second, with 21.9 percent.”²⁴³ “Ninety percent or more of state Catholic conferences testify at legislative hearings, help to draft legislation, attempt to shape implementation of policies, inspire letter-writing or telegram campaigns, consult with government officials to plan legislative strategy, and talk with people from the media.”²⁴⁴ Indeed, the state Catholic conferences are often called the “official voice” and “public policy” arm of the

239. See *supra* notes 25-32 and accompanying text.

240. See *id.* See also *Group Exemptions*, *supra* note 25, at 1 (stating that subordinates must be “[a]ffiliated with the central organization [and] . . . [s]ubject to the central organization’s general supervision or control.”).

241. See generally YAMANE, *supra* note 28 (describing detailed, specific, and extensive interactions between the state Catholic conferences and the legislatures).

242. *Id.* at 58. Indeed, when Professor Yamane surveyed the state conferences, a “full 87.5 percent of conferences responded that state policy making was a *predominant concern*. Only 12.5 percent of conferences . . . responded that it was *one of several concerns*.” *Id.* at 59.

243. *Id.* at 59.

244. *Id.* at 115-16.

bishops in each state.²⁴⁵ They are often very upfront that they are interested in lobbying on behalf of the bishops.²⁴⁶ Furthermore, they march in lockstep with the USCCB on the issues of importance to the Catholic Church as they arise in each state.

For example, the California Catholic Conference has recently urged support for two specific initiatives appearing on the 2012 ballot in California – a parental notification bill for a minor to secure an abortion, and an anti-death penalty bill.²⁴⁷ The Catholic Conference in California also produces a legislative report with twenty-three existing bills denoted “Major and Significant Legislation, 2011/2012,” which covers a broad arrange of topics that the Conference supports, opposes, or requires amendment before doing either. The issues range from opposition to regulation of hydrolysis facilities, opposition to the imposition of an additional \$3 penalty on traffic violations to be earmarked for a spinal cord injury research fund, opposition to the Uniform Parentage Act which would make an artificially-inseminated woman’s non-sperm-donor husband the “natural father” in the eyes of the law, to support for additional abortion restrictions, support for sentencing reform for minors, and support for a written parental consent requirement for students leaving school before the end of the day.²⁴⁸

Other state Catholic conferences also get involved in similar issues. Florida’s Catholic Conference most recently lobbied the state

245. See CALIFORNIA CATHOLIC CONF., <http://www.cacatholic.org/> (last visited Jan. 12, 2012). See also *Mission and Vision*, FLORIDA CONF. OF CATHOLIC BISHOPS, <http://www.flacathconf.org/aboutus/missionvision.php> (last visited Jan. 12, 2012) (serve as the “public policy voice on behalf of the Catholic Bishops of Florida”); MASSACHUSETTS CATHOLIC CONF., <http://www.macatholic.org/> (last visited Jan. 12, 2012) (“public policy office”); *About*, MINNESOTA CATHOLIC CONF., <http://mncc.org/about/> (last visited Jan. 12, 2012) (“public policy activities”); NEW YORK ST. CATHOLIC CONF., <http://www.nyscatholic.org/> (last visited Jan. 12, 2012).

246. See *About*, MINNESOTA CATHOLIC CONF., <http://mncc.org/about/> (last visited Jan. 12, 2012) (“coordinates the Catholic Church’s non-partisan lobbying and public policy activities”); NEW YORK ST. CATHOLIC CONF., <http://www.nyscatholic.org/> (last visited Jan. 12, 2012) (“working with government to shape laws and policies”).

247. See *California Bishops Support Life and Family Initiatives: Measures Will Require Parental Notification and End the Use of the Death Penalty*, CALIFORNIA CATHOLIC CONF., <http://www.cacatholic.org/index.php/issues2/reverence-for-life/respect-life/272-california-bishops-support-life-and-family-initiatives-2> (last visited Jan. 13, 2012).

248. See *Major and Significant Legislation, 2011/2012*, CALIFORNIA CATHOLIC CONF., <http://www.cacatholic.org/index.php/take-action/legislative-reports> (last visited Jan. 13, 2012).

legislature to oppose passage of an immigration reform bill, and define the contours of the state Medicaid program.²⁴⁹ Massachusetts's Catholic Conference recently urged the Governor to veto the bill they had heretofore opposed expanding gambling access in the state,²⁵⁰ and "worked hard to urge the passing of anti-human trafficking legislation" and the reconciliation of the House and Senate versions.²⁵¹ The Minnesota Catholic Conference's 2011 "Legislative Agenda" encouraged lay Catholics and legislators to amend Minnesota's Constitution defining marriage as between a man and a woman, support antibullying legislation that "protects students from bullying and upholds traditional family values" (whatever that means), and oppose legislation allowing a physician to determine the suitability of life-sustaining treatment.²⁵² The New York State Catholic Conference has published a 2012 legislative agenda which encourages all Catholics in New York to pursue the Conference's "moral priorities and legislative objectives" in 2012. The agenda includes – among others – pursuing legislation that would prohibit embryonic stem cell research, repeal the death penalty, require parental notification for minors seeking an abortion, support greenhouse gas emissions and climate change bills, and, of all things, support the enactment of campaign finance reform.²⁵³ The Texas Catholic Conference's "82nd Legislative Session Priorities" include similar items such as the opposition of embryonic stem cell research, support for "Choose Life" license plate legislation, immi-

249. See *Correspondence and Testimony*, FLORIDA CONF. OF CATHOLIC BISHOPS, <http://www.flacathconf.org/correspondtestimony/index.php> (last visited Jan. 13, 2012).

250. See *Massachusetts Catholic Conference Urges Governor Patrick to Veto Expanded Gambling Legislation*, MASSACHUSETTS CATHOLIC CONF., <http://www.macatholic.org/news-article/massachusetts-catholic-conference-urges-governor-patrick-veto-expanded-gambling> (last visited Jan. 12, 2012).

251. *Massachusetts Legislature Passes Human Trafficking Ban*, MASSACHUSETTS CATHOLIC CONF., <http://www.macatholic.org/news-article/massachusetts-legislature-passes-human-trafficking-ban> (last visited Jan. 12, 2012).

252. See *Legislative Agenda 2011*, MINNESOTA CATHOLIC CONF., <http://mncc.org/wp-content/uploads/2009/02/2011-Legislative-Agenda-Final.pdf> (last visited Jan. 13, 2012).

253. See *2012 Legislative Agenda*, NEW YORK ST. CATHOLIC CONF., <http://www.nyscatholic.org/wp-content/uploads/2012/01/2012LegAgenda010412.pdf> (last visited Jan. 13, 2012).

gration reform, abstinence-only education in Texas schools, and abolishing the death penalty, to name just a few.²⁵⁴

The examples are quite extensive and incredibly easy to find, and it is apparent that the USCCB's state bishops lobby extensively for the passage or rejection of specific legislation, and that many of their legislative proposals become a reality. These legislative agendas obviously vary from state to state depending on the political climate of any given state, but it is clear that the state Catholic conferences follow the policies of the USCCB and push the issues in identical directions when they arise in each state. While the monetary expenditure may not be extensive in the state Catholic conferences, such a factor may be irrelevant when compared to the apparently vast efforts the USCCB's bishops put into non-monetary direct and grassroots legislative efforts through the state conferences.

2. Lobbying by the USCCB: Specific Issues

The USCCB's bishops have spent considerable time, money, and effort lobbying legislators on any number of issues. These efforts to influence legislation are not limited to traditionally conservative or liberal issues. The USCCB seems to be willing to engage legislators for any issue upon which the organization has made a policy position. While the specific issues are laid out in more detail *infra*, it is sufficient here to explain that there is a bevy of reports of the USCCB and its member bishops engaging in both public and private, back-room dealings with legislators, as well as with the general public through grassroots lobbying, to get their way.

Same-Sex Marriage

One of the USCCB's predominant issues is its attempt to define civil marriage laws according to its own theological tradition. Importantly, this is despite the fact that no one seriously suggests that religious institutions would be forced to change their policies or provide services to those who would not follow their own ecclesiastical requirements for a religious marriage. The bishops have

254. See *82nd Legislative Session Priorities*, TEXAS CATHOLIC CONF., <http://www.txcatholic.org/documents/82ndSession/82nd-Legislative-Agenda.pdf> (last visited Jan. 12, 2012).

been active in their attempts, often successful, at influencing legislation at both the federal and the state levels.

At the federal level, the USCCB actively supports the enforcement of DOMA, as indicated by Bishop Lori's remarks to both Congress,²⁵⁵ and the USCCB's constituents.²⁵⁶ And while "lobbying" the executive branch is not considered influencing legislation for IRS purposes,²⁵⁷ the USCCB actively lobbies legislators to oppose the "Respect for Marriage Act," which would repeal DOMA.²⁵⁸ In fact, the USCCB – through Bishop Salvatore J. Cordileone, Chairman of the USCCB Subcommittee for the Promotion and Defense of Marriage – sent a letter to each member of the Senate Judiciary Committee, in an attempt to kill the bill before it could reach the Senate floor for a vote.²⁵⁹ The letter urged its recipients to "oppos[e] the Respect for Marriage Act (S. 598) and any other measure seeking DOMA's repeal."²⁶⁰ Lest its effort in the Senate Judiciary Committee fail (as it ultimately did),²⁶¹ the USCCB hedged its bet and engaged in a massive system of grassroots lobbying, calling on "citizens to urge the U.S. Senate to reject a bill that would repeal the federal Defense of Marriage Act."²⁶² Individual parishes from across the country appear to be following the Bishop's stance and encouraging parishioners to intervene in Washington D.C. in support of DOMA and against the Respect for Marriage Act.²⁶³

255. See Testimony of Most Reverend William C. Lori, *supra* note 228.

256. See *Bishop Lori to Brief Bishops on Religious Liberty*, U.S. CONF. OF CATHOLIC BISHOPS (Nov. 2011), <http://www.usccb.org/about/leadership/usccb-general-assembly/archbishop-lori-religious-liberty-november-2011-address.cfm>.

257. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

258. See *Bishops Urge Senate Judiciary Committee to Oppose Bill That Would Repeal Defense Of Marriage Act*, U.S. CONF. OF CATHOLIC BISHOPS (Nov. 2, 2011), <http://usccb.org/news/2011/11-215.cfm>.

259. Letter from Bishop Salvatore J. Cordileone, Chairman, USCCB Subcomm. for the Promotion and Def. of Marriage, to the U.S. Senate Judiciary Comm. (Nov. 2, 2011), *available at* <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/upload/Cordileone-to-Senate-Judiciary-Committee-DOMA-Nov-2-2011.pdf>.

260. See *id.*

261. See Press Release, Feinstein's DOMA Repeal Bill Passes Judiciary Comm., *supra* note 232.

262. *Bishops Call on Faithful to Oppose Bill That Would Repeal DOMA*, NAT'L CATHOLIC REG. (Nov. 2, 2011), <http://www.ncregister.com/daily-news/bishops-call-on-faithful-to-oppose-bill-that-would-repeal-doma/>.

263. See, e.g., CHURCH OF NOTRE DAME, <http://thechurchofnotredame.org/> (last visited Jan. 3, 2012); *eNews*, ARCHDIOCESE OF OMAHA,

The USCCB has also been vociferous in its support for the Federal Marriage Amendment, a proposed amendment to the United States Constitution that would define marriage as between one man and one woman. The amendment has been proposed four times in the last decade (2003, 2004, 2005/2006, and 2008) and the USCCB has repeatedly engaged legislators, and encouraged lay Catholics to do the same, in attempts to pass the amendment.²⁶⁴

The USCCB has also been active at the state levels, both in opposing same-sex marriage legislation, and in supporting state constitutional bans on same-sex marriage. President of the USCCB and New York Archbishop Timothy Dolan was active during the summer of 2011 in attempting to persuade the New York legislature not to pass same-sex marriage legislation.²⁶⁵ The various bishops of the USCCB, both on their own and through their state Catholic conferences, had also actively lobbied legislators against same-sex marriage in Vermont, New Hampshire, Washington

http://www.archomaha.org/eNews_eVents/newsletter/eNews_eVents_11082011.html (last visited Jan. 3, 2012).

264. See, e.g., *Catholic Bishops Strongly Urge The U.S. Senate To Support The Federal Marriage Amendment*, U.S. CONF. OF CATHOLIC BISHOPS (July 6, 2004), <http://old.usccb.org/comm/archives/2004/04-128.shtml>; *Promote, Preserve, Protect Marriage: Statement of the Administrative Committee*, U.S. CONF. OF CATHOLIC BISHOPS (Sept. 9, 2003), <http://old.usccb.org/comm/archives/2006/06-052.shtml> (reaffirmed on March 14, 2006); *U.S. Bishops urge support for Federal Marriage Amendment*, CATHOLIC NEWS AGENCY (June 28, 2004), http://www.catholicnewsagency.com/news/u.s._bishops_urge_support_for_federal_marriage_amendment/ (“Bishop Wilton D. Gregory, president of the [USCCB], has written to *all* Catholic bishops, asking them to personally urge their senators to support an amendment to the U.S. Constitution, which would define marriage as exclusively between one man and one woman. *Pastors and parishioners are urged to do the same.*”) (emphasis added).

265. See, e.g., John Burger, *Archbishop Dolan on Same-Sex ‘Marriage’ Vote: Speaks of David and Goliath fight, Catholic politicians and the ‘heresy’ of ‘personally opposed but,’ and the role of conscience*, NAT’L CATHOLIC REG. (June 24, 2011), <http://www.ncregister.com/daily-news/archbishop-dolan-on-same-sex-marriage-vote/> (“The state’s most prominent Catholic, New York Archbishop Timothy Dolan, has been lobbying lawmakers on the issue.”); Michael Paulson, *Archbishop Calls Gay Marriage Bill an ‘Ominous Threat,’* N.Y. TIMES (June 17, 2011), <http://cityroom.blogs.nytimes.com/2011/06/17/archbishop-calls-gay-marriage-bill-an-ominous-threat/> (“Archbishop Dolan . . . said that *Bishop Nicholas A. DiMarzio of Brooklyn had been dispatched from Seattle to Albany in a last-ditch effort to influence the Senate Republican majority*, which will determine the fate of the proposed same-sex marriage bill. . . . Archbishop Dolan said that ‘we are still working for the defeat of this bill.’”) (emphasis added); Glenn Blain & Kenneth Lovett, *NY’s top Catholic officials seek to halt Senate vote on legalizing gay marriage*, N.Y. DAILY NEWS (June 14, 2011), http://articles.nydailynews.com/2011-06-14/news/29678213_1_gay-marriage-marriage-activists-ross-levi.

State, Maryland, and the District of Columbia – the five jurisdictions which have passed same-sex marriage legislatively.²⁶⁶ Even after these bills have passed, USCCB bishops actively lobby to repeal same-sex marriage legislation in some jurisdictions.²⁶⁷ The Bishop in Maine was reportedly instrumental in repealing same-sex marriage there – which had passed the legislature, was signed by the Governor, stayed, and then repealed by referendum – by reaching out across the USCCB network of bishops and soliciting funds to directly support the referendum to repeal same-sex marriage.²⁶⁸ In the states that currently have same-sex marriage by judicial decision, USCCB’s bishops have engaged in direct and grassroots lobbying in an attempt to reverse those decisions by state constitutional amendment.²⁶⁹

266. See, e.g., Joe Siegel, *Catholic bishops lobby against marriage legislation*, EDGE BOSTON (Apr. 29, 2009), <http://www.edgeboston.com/index.php?ch=news&sc=&sc3=&id=90466> (New Hampshire); *Vermont becomes fourth state to legalize same-sex marriage*, CATHOLIC NEWS AGENCY (Apr. 7, 2009), http://www.catholicnewsagency.com/news/vermont_becomes_fourth_state_to_legalize_samesex_marriage/; *Same Sex Marriage*, ARCHDIOCESE OF WASHINGTON, <http://site.adw.org/same-sex-marriage> (last visited Jan. 3, 2012) (District of Columbia); Elyse Siegel, *Catholic Church Supports D.C. Gay Marriage Ban*, HUFFINGTON POST (Oct. 18, 2009), http://www.huffingtonpost.com/2009/09/02/catholic-church-supports_n_275126.html; Kevin J. Jones, *Washington archbishop testifies against state’s ‘gay marriage’ bill*, CATHOLIC NEWS AGENCY (Jan. 25, 2012), <http://www.catholicnewsagency.com/news/washington-archbishop-testifies-against-states-gay-marriage-bill/>; Luke Broadwater, *Md. Bishops call on Catholics to oppose same-sex marriage*, BALTIMORE SUN (Nov. 9, 2011), http://articles.baltimoresun.com/2011-11-09/news/bs-md-catholic-call-20111109_1_roman-catholic-bishops-religious-freedom-marriage-law.

267. See, e.g., Garry Rayno, *Gary Rayno’s State House Dome: Lawmakers expect heat in January*, UNION LEADER (Dec. 31, 2011), <http://www.unionleader.com/article/20120101/NEWS0604/701019997> (New Hampshire); Igor Volsky, *Catholic Bishops Call on Parishioners to Support ‘Critically Important’ Effort to Repeal Marriage Equality*, THINKPROGRESS (Apr. 6, 2012), <http://thinkprogress.org/lgbt/2012/04/06/459426/catholic-bishops-washington-repeal/> (“Two Catholic bishops of the Archdiocese of Seattle have written a letter asking parishioners to take part in a campaign to repeal Washington state’s recently enacted marriage equality law.”).

268. See Chuck Colbert, *Dioceses major contributors to repeal same-sex marriage: Maine’s Bishop Malone asked for help from around the country*, NAT’L CATHOLIC REP. (Nov. 25, 2009), <http://ncronline.org/news/politics/dioceses-major-contributors-repeal-same-sex-marriage>.

269. See, e.g., *Mass. Bishops call marriage amendment vote tragic*, CATHOLIC NEWS AGENCY (June 15, 2007), http://www.catholicnewsagency.com/news/mass._bishops_call_marriage_amendm

At the same time, the USCCB's bishops have been a powerful force behind the successful efforts in thirty states to constitutionally define marriage as between a man and a woman.²⁷⁰ Similar ac-

ent_vote_tragic/; *Mass. bishops urge action from Catholics re marriage amendment*, CATHOLIC NEWS AGENCY (Nov. 1, 2006), http://www.catholicnewsagency.com/news/mass_bishops_urge_action_from_catholics_re_marriage_amendment/; *Connecticut Bishops Protest Legalization of Same-Sex "Marriage,"* CATHOLICS FOR THE COMMON GOOD (Oct. 12, 2008), <http://ccgaction.org/family/protectionofmarriage/ConnecticutBishopsProtestSameSexMarriage>; *Bishops Say Voters Can Reject Ruling on Same-Sex Marriage*, CATHOLIC TRANSCRIPT (Oct. 24, 2008), <http://www.catholictranscript.org/home/1-latest/610-bishops-say-voters-can-reject-ruling-on-same-sex-marriage.html>; Michael J. Crumb, *Iowa Catholic leaders push for marriage amendment*, VENTURA COUNTY STAR (Sept. 21, 2010), <http://www.vcstar.com/news/2010/sep/21/iowa-catholic-leaders-push-marriage-amendment/>.

270. See, e.g., *Catholic bishops support initiative banning same-sex marriage*, JUNEAU EMPIRE (Sept. 9, 1998), <http://juneauempire.com/stories/090998/bishops.html> (**Alaska**); *Archbishop's column: Colorado state marriage Amendment 43 urgently needs your support*, DENVER CATHOLIC REG. (Sept. 27, 2006), <http://www.archden.org/dcr/news.php?e=385&s=2&a=8128> (**Colorado**); *The Union of One Man and One Woman: Bishops of Florida Support Amendment 2 – Marriage Protection*, FLORIDA CATHOLIC CONF. (Sept. 16, 2008), <http://www.flacathconf.org/socialconcerns/marriageandfamily/Marriage.htm> (**Florida**); *Voters in 11 states to vote on same-sex marriage referendum today*, CATHOLIC NEWS AGENCY (Nov. 2, 2004), http://www.catholicnewsagency.com/news/voters_in_11_states_to_vote_on_samesex_marriage_referendum_today/ (**Georgia and Michigan**); *Kansas Voters Approve Marriage Amendment*, KNIGHTS OF COLUMBUS (Mar. 18, 2005), <http://www.kofc.org/un/en/news/legislative/detail/4413.html> (**Kansas**); Archbishop Thomas C. Kelly et al., *Constitutional Amendment Promotes, Preserves, and Protects Marriage*, CATHOLIC CONF. OF KENTUCKY (Aug. 24, 2004), http://ccky.org/wp-content/uploads/2011/10/Marriage_Amendment_Endorsement.pdf (**Kentucky**); Joseph Kenny, *Missouri's bishops urge 'yes' vote on Amendment 2*, CATHOLIC KEY (July 23, 2004), http://www.catholickey.com/index.php3?gif=news.gif&mode=view&issue=20040723&article_id=3001 (**Missouri**); *Catholic Bishops Support Initiative Measure 416*, NEBRASKA CATHOLIC CONF. (Sept. 15, 2000), http://www.nebcathcon.org/press_releases.htm (**Nebraska**); *The Marriage Protection Amendment, State Issue 1: Questions and Answers & the Position of the Catholic Bishops*, CATHOLIC CONF. OF OHIO (Oct. 2004), <http://www.ohiocathconf.org/D/famlife/qaiss1.pdf> (**Ohio**); *Tennessee marriage amendment passes overwhelmingly*, DIOCESE OF KNOXVILLE (Nov. 2006), <http://dioknox.org/1847/etcnews/tennessee-marriage-amendment-passes-overwhelmingly/> (**Tennessee**); Tom Pauken, *Commentary: Big Winners in Prop 2 Campaign*, DALLAS BLOG (Nov. 10, 2005), http://www.dallasblog.com/index2.php?option=com_content&do_pdf=1&id=308773 (**Texas**); Michael F. Flach, *Virginia Bishops Applaud Results of Marriage Amendment*, CATHOLIC HERALD (Nov. 9, 2006), <http://www.catholicherald.com/stories/Virginia-Bishops-Aplaud-Results-of-Marriage>

tivities by the bishops have already begun in anticipation for the two states, Minnesota and North Carolina, which will have a state constitutional marriage amendment on the ballot in 2012.²⁷¹ While much of the efforts of the bishops are focused on grassroots lobbying by encouraging their parishioners to solicit funds and pass (or oppose) legislation, the USCCB has also donated funds directly to various referenda. For example, the USCCB itself was one of the top donors in support of California's Proposition 8 in 2008 – donating \$200,000 directly to the campaign.²⁷² The USCCB was one of the top twenty donors in the entire effort.²⁷³

Despite that these pieces of legislation and referenda would not require any Catholic institution to recognize, support, or provide services in furtherance of a same-sex union, and pertain only to civil marriage, not religious marriage within the Catholic Church, the USCCB and its member bishops have been active in supporting same-sex marriage bans and opposing same-sex marriage legislation throughout the entire country. More importantly, they do so on a regular basis, and have recently engaged not only in grassroots lobbying, but have also overtly donated significant amounts of money to referenda.²⁷⁴ The fact that the USCCB and its bishops engage the public and the legislatures in both grassroots and direct lobbying is of little moment. The IRS regulations explain that “[l]egislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation

Amendment,824?content_source=&category_id=&search_filter=unions&event_mode=&event_ts_from=&list_type=&order_by=&order_sort=&content_class=&sub_type=stories&town_id= (Virginia): *One Man, One Woman, One Union: Questions and Answers on Wisconsin's Constitutional Amendment to Define Marriage*, WISCONSIN CATHOLIC CONF. (2006), <http://www.wisconsincatholic.org/One%20Man,%20One%20Woman,%20One%20Union.pdf> (Wisconsin).

271. See *Catholic bishops back Minnesota marriage amendment*, EWTN NEWS (Apr. 30, 2011), <http://www.ewtnnews.com/catholic-news/US.php?id=3095>; *Bishops gear up efforts to protect marriage through N.C. amendment*, CATHOLIC NEWS HERALD (Dec. 19, 2011), <http://www.charlottediocese.org/n/component/content/article/53-roknewspager-local/1205-state-marriage-amendment-campaign-gears-up>.

272. See *Proposition 8: Who gave in the gay marriage battle?*, L.A. TIMES, <http://projects.latimes.com/prop8/donation/98082/> (last visited Jan. 3, 2012).

273. See *id.*

274. See *id.*

of appointive office), or *by the public in referendum, ballot initiative, constitutional amendment, or similar procedure.*²⁷⁵

Abortion and Contraception

The USCCB is strident on its stance on abortion. The USCCB explains that even in cases where a child is “conceived as a result of an evil act, such as rape . . . [a] child is always a great good . . . and a source of joy and love to his . . . family.”²⁷⁶ Therefore, a woman having an abortion after being raped, according to the USCCB, merely “answers violence and injustice with *even greater* violence and injustice.”²⁷⁷ In cases where the woman’s life is at risk from birth, the USCCB draws a finer distinction claiming it is “morally licit” to remove a cancerous uterus or a Fallopian tube during an ectopic pregnancy even if it is foreseeable that the fetus will not survive “as an indirect and unintended effect” of the surgery, yet reminds that a “direct and intentional” abortion is “never morally licit,” and even during a medical crisis, the woman has no greater right than the fetus as they both have “equal human dignity and possess the same right to life.”²⁷⁸ In other words, the only circumstance where abortion is acceptable is as an unintended consequence of a medical crisis where a woman’s life is at risk.

Of course, the USCCB is absolutely entitled to its position as a matter of both free speech, and religious liberty. It is welcome to attempt to persuade its members, and non-Catholics alike, through its issue advocacy efforts. Unfortunately, much like its efforts to define civil marriage laws based on its theological precepts, the USCCB has systemically lobbied and attempted to influence legislation on all issues involving abortion – quite successfully according to many accounts.²⁷⁹ The same is true with respect to the recent state constitutional personhood amendments, a potential federal constitutional anti-abortion amendment, and many aspects of contraceptive availability and use in the United States.

Most recently, the USCCB was directly involved in influencing the content and, if some accounts are credited, the passage of the Patient Protection and Affordable Care Act – colloquially known as

275. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 6 (emphasis added).

276. *Life Matters: Abortion*, U.S. CONF. OF CATHOLIC BISHOPS 1 (2011), <http://www.usccb.org/about/pro-life-activities/respect-life-program/2011/upload/life-matters-abortion.pdf>.

277. *Id.*

278. *Id.*

279. See, e.g., Baumann, *supra* note 5; Bassett, *supra* note 5.

“Obamacare” – over abortion.²⁸⁰ Richard Doerflinger, the USCCB’s Associate Director of the Secretariat of Pro-Life Activities, was reportedly inserted into the health care fray between 2009 and 2010 by the USCCB, and carried the bishops’ preferred amendments to the legislation and the message that the bill would only pass with their blessing.²⁸¹ On behalf of the USCCB, Doerflinger apparently was an *author* of the controversial Stupak Amendment:

Doerflinger helped write the Stupak amendment in the House bill that placed tight restrictions on insurance coverage of abortion. He amplified spurious charges that the Senate bill would use government money to fund abortions. Doerflinger fought to the bitter end for the Stupak amendment to be included in the final legislation—even after Stupak himself had abandoned the fight. By refusing to compromise on what was, in the end, a minor difference between the House and Senate bills, Doerflinger—the man behind the curtain of the abortion imbroglio—very nearly killed health care reform.²⁸²

Representative Bart Stupak himself admitted that the creation of his amendment relied on the bishops.²⁸³ In addition to helping author the amendment, the USCCB directly wrote every United States Representative to encourage them to pass the amendment.²⁸⁴ After “eleventh-hour discussions with legislators,” Cardinal Justin Rigali of the USCCB’s Pro-Life Secretariat wrote in his letter that “[p]assing this amendment allows the House to meet our criteria . . . in the new legislation.”²⁸⁵ Even after Stupak himself had abandoned the amendment and supported an Executive Order solution to the impasse, Doerflinger continued to lobby for the amendment even as he “amplified spurious charges that the

280. See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

281. See Baumann, *supra* note 5.

282. *Id.* See also Laura Parker, *Powerful Catholic Quietly Shaping Abortion, Health Bill Debate*, KAISER HEALTH NEWS (Mar. 10, 2010), <http://www.kaiserhealthnews.org/Stories/2010/March/10/Powerful-Catholic-Quietly-Shaping-Abortion-Health-Bill-Debate.aspx>; Bassett, *supra* note 5 (“Doerflinger said they actually helped Reps. Bart Stupak (D-Mich.) and Joe Pitts (R-Pa.) write the controversial anti-abortion amendment.”).

283. See Baumann, *supra* note 5.

284. See *Bishops Urge Passage of Stupak-Ellsworth Anti-Abortion Amendment for Health Reform Bill*, U.S. CONF. OF CATHOLIC BISHOPS (Nov. 7, 2009), <http://uscbbmedia.blogspot.com/2009/11/bishops-urge-passage-of-stupak.html>.

285. Kathleen Gilbert, *USCCB Spokesman: “Definitely Not True” that Bishops Support Bill as It Stands*, LIFESITENEWS (Nov. 7, 2009), <http://www.lifesitenews.com/news/archive/ldn/2009/nov/09110702>.

Senate bill would use government money to fund abortions.”²⁸⁶ At one point, Doerflinger remarked that “[t]he Senate may have to figure out whether it wants its abortion position or if it wants a health care bill.”²⁸⁷ When the United States health care system is estimated to encompass approximately twenty percent of the GDP by 2021, the USCCB’s supposedly powerful role in challenging “Obamacare” had the potential to impact a significant chunk of the United States economy.²⁸⁸

A number of Congresspersons at the time criticized the strong lobbying tactics utilized by the USCCB during the health care debate. Representative Lois Capps claimed the USCCB was “a very effective lobby” which had allied itself with the Republican majority throughout the legislative process.²⁸⁹ Representative Rosa DeLauro spoke more emphatically, claiming that “[t]he Catholic bishops were willing to bring down the health care bill over the issue of abortion – even though the bill did not expand access to abortion.”²⁹⁰ Representative Lynn Woolsey felt that the bishops had “managed to bully members of Congress” into voting for the Stupak Amendment.²⁹¹ The bishops made similar overtures to the Senate, calling the Senate version of the bill “morally unacceptable” and insisting that the Senate bill must include the Stupak Amendment for their support.²⁹²

The USCCB did not only engage in direct lobbying during the health care debate of 2009; they engaged in a massive campaign of grassroots lobbying to ensure that the bill’s language was to their approval.²⁹³ Reportedly, the USCCB “instructed all Catholic priests to talk about the Stupak Amendment during Mass, issued church bulletins and strongly urged Catholics and the clergy to oppose the entire health care bill if the abortion provision didn’t

286. Baumann, *supra* note 5.

287. Parker, *supra* note 282.

288. See Alex Wayne, *Health-Care Spending to Reach 20% of U.S. Economy by 2021*, BLOOMBERG (June 13, 2012), <http://www.bloomberg.com/news/2012-06-13/health-care-spending-to-reach-20-of-u-s-economy-by-2021.html>.

289. Bassett, *supra* note 5.

290. *Id.*

291. Woolsey, *supra* note 13.

292. *USCCB: Senate health care bill ‘morally unacceptable,’* CATHOLIC NEWS AGENCY (Nov. 20, 2009), http://www.catholicnewsagency.com/news/usccb_senate_health_care_bill_morally_unacceptable/.

293. See Bassett, *supra* note 5.

pass.”²⁹⁴ In short, the USCCB did everything in its power to make sure the health care bill said exactly what it wanted the bill to say.

Obamacare isn’t the only recent example of the USCCB apparently attempting to influence legislation on abortion. The same man who was at the heart of the Obamacare debates, the USCCB’s Richard Doerflinger, has claimed to have “help[ed] lawmakers write anti-abortion bills behind the scenes for decades.”²⁹⁵ At the federal level, the USCCB is heavily involved in every bill plausibly involving abortion. The USCCB’s Secretariat of Pro-Life Activities regularly reaches out to legislators to encourage them to support or oppose bills, and to influence upcoming legislative proposals.²⁹⁶ These communications are more than merely informative, and typically end with the USCCB urging Congress to support or oppose specific bills or amendments.²⁹⁷ The issues range from challenging elective abortion funding in the District of Columbia,²⁹⁸ to eliminating foreign aid appropriations to the “United Nations Population Fund” because of its abortion policy,²⁹⁹ to defunding any foreign aid appropriations to foreign non-governmental organizations that accept abortion as a family planning method,³⁰⁰ to urging passage of the “Protect Life Act” (H.R. 358) – dubbed the “Let Women Die Act” by opponents,³⁰¹ and the “No Taxpayer Funding

294. *Id.* See also David M. Herszenhorn & Jackie Calmes, *Abortion Was at Heart of Wrangling*, N.Y. TIMES (Nov. 7, 2009), <http://www.nytimes.com/2009/11/08/health/policy/08scene.html>.

295. Bassett, *supra* note 5.

296. See Abortion, Testimony and Letters, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/> (last visited Jan. 6, 2012) (listing five letters from 2011, among others, from Cardinal DiNardo, Chair of the Pro-Life Secretariat, to all members of Congress directly encouraging the passage or opposition to specific legislation).

297. See *id.*

298. See Letter from Cardinal Daniel N. DiNardo, Chairman, Comm. on Pro-Life Activities, USCCB, to Members of the U.S. Senate (Nov. 14, 2011), *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/upload/hr-2354-letter.pdf>.

299. See *id.*

300. See *id.*

301. See Letter from Cardinal Daniel N. DiNardo, Chairman, Comm. on Pro-Life Activities, USCCB, to Members of the U.S. Congress (Oct. 12, 2011), *available at* <http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/protect-life-act-letter-2011-11.pdf>. See also Jon O’Brien, *United States Conference of Catholic Bishops Influential in Passage of Let Women Die Act 2011*, CATHOLICS FOR CHOICE (Oct. 14, 2011), <http://www.rhrealitycheck.org/article/2011/10/14/united-states-conference-of-catholic-bishops-influential-in-passage-of-let-women-die-act-2011>.

for Abortion Act” (H.R. 3),³⁰² to urging Congress to defund Planned Parenthood.³⁰³ Also, since *Roe v. Wade* was decided, the USCCB has also been at the forefront of advocating for a “Human Life Amendment” to the United States Constitution.³⁰⁴ To wit, the USCCB’s predecessor founded the National Committee for a Human Life Amendment in 1974, an organization with an overarching purpose of amending the U.S. Constitution and which “works closely with the Secretariat for Pro-Life Activities of the United States Conference of Catholic Bishops.”³⁰⁵

The USCCB’s membership is also active in the states. The National Organization for Women’s president, Terry O’Neill, noted that more than 100 anti-abortion laws were signed in 2011, an unprecedented increase over past years.³⁰⁶ With respect to the recent uptick in anti-abortion legislation, O’Neill claims that the effect of

302. See Letter from Cardinal Daniel N. DiNardo, Chairman, Comm. on Pro-Life Activities, USCCB, to Members of the U.S. Congress (Jan. 21, 2011), *available at* <http://old.usccb.org/prolife/DiNardo-HR3.pdf>.

303. See Letter from Cardinal Daniel N. DiNardo, Chairman, Comm. on Pro-Life Activities, USCCB, to Members of the U.S. House of Representatives (Apr. 13, 2011), *available at* <http://old.usccb.org/prolife/DiNardo-HR1473.pdf> (“The final Continuing Resolution for Fiscal Year 2011 (H.R. 1473) . . . does not include several pro-life policies we support . . . [including that] it does not deny federal funding to the Planned Parenthood Federation of America and its affiliates. Congress will have an opportunity to address this . . . issue by voting for H. Con. Res. 36 . . . Please vote for H. Con. Res. 36.”). Apparently, the USCCB is perfectly willing to lobby Congress to cut off government contracts for other non-profit organizations with which it disagrees. Particularly troubling is the fact that the USCCB will blatantly misstate facts, if not outright lie, when lobbying for such results. For example, Cardinal DiNardo claimed that “[a]bortions also account for over a third of Planned Parenthood’s income,” when insisting it be defunded. *Id.* Notwithstanding that the Hyde Amendment precludes any of Planned Parenthood’s federal funding from being used for abortion, the bishops’ allegations are patently false, and cite no source for that falsity. Actually, abortion services account for only 3% of the services provided by Planned Parenthood. See Ezra Klein, *What Planned Parenthood actually does*, WASHINGTON POST (Apr. 8, 2011), http://www.washingtonpost.com/blogs/ezra-klein/post/what-planned-parenthood-actually-does/2011/04/06/AFhBP2C_blog.html; Erik Eckholm, *Planned Parenthood Financing is Caught in Budget Feud*, N.Y. TIMES (Feb. 17, 2011), <http://www.nytimes.com/2011/02/18/us/politics/18parenthood.html>. It is true that approximately one-third of Planned Parenthood’s budget comes from federal, state and local government sources, but the bishops seem to believe that every dollar received from any government source is funding abortion.

304. See Abortion, Testimony and Letters, *supra* note 296.

305. See *Mission Statement*, NAT’L COMMITTEE FOR A HUM. LIFE AMENDMENT, <http://nchla.org/mission.asp> (last visited Jan. 6, 2012).

306. Bassett, *supra* note 5.

the USCCB's bishops is noticeable.³⁰⁷ NARAL Pro-Choice America, a 501(c)(4) organization whose members' contributions are not tax-deductible, sees their two biggest opponents in legislative battles across the country as the National Right to Life – also a 501(c)(4) organization – and the USCCB and its member bishops.³⁰⁸ Indeed, reports of the bishops' involvement in attempting to influence legislative efforts are not hard to find.³⁰⁹ Almost every state Catholic conference has anti-abortion and abortion restriction measures very high on its legislative agenda, and acts on those priorities.³¹⁰

Similarly, the USCCB and its member bishops have been actively engaged in the opposition to the use and availability of contraception. Recalling Bishop Lori's testimony to Congress, a full half of the areas of concern for the USCCB involved contraceptive use and availability.³¹¹ On the USCCB Ad Hoc Committee for Religious Liberty's agenda is opposition to coverage of contraceptives in private health insurance plans (despite a religious exemption) under the new health care law, opposition to requirements mandating government-contracted organizations offer "full range" reproductive services including abortion and contraceptive options to victims of human trafficking, and opposition to requirements that government-contracted organizations include contraceptives in their HIV prevention activities through international humanitari-

307. *Id.*

308. *See id.*

309. *See, e.g.*, Erik Eckholm, *Anti-Abortion Groups are Split on Legal Tactics*, N.Y. TIMES (Dec. 4, 2011), <http://www.nytimes.com/2011/12/05/health/policy/fetal-heartbeat-bill-splits-anti-abortion-forces.html?pagewanted=all>; Press Release, Minn. Catholic Conference, Minn.'s Catholic Bishops Ask Legislature and Governor to Put the Common Good First in Budget Negotiations (July 12, 2011), *available at* <http://www.priestsforlife.org/magisterium/bishops/11-07-08-minnesotacatholic-conference.pdf>; *Florida Catholic Conference's 'Offenses Against Unborn Children' bill introduced in state Legislature*, WASHINGTON INDEP. (Sept. 27, 2011), <http://washingtonindependent.com/112523/florida-catholic-conferences-%E2%80%98offenses-against-unborn-children%E2%80%99-bill-introduced-in-state-legislature>; Benjamin Yount, *Catholic leaders lobby for anti-abortion measure, textbook funding*, ILLINOIS STATEHOUSE NEWS (Apr. 6, 2011), <http://illinois.statehousenewsonline.com/5616/catholic-leaders-lobby-for-anti-abortion-measure-textbook-funding/>; Steve Kilar, *Health department proposes abortion regulations*, BALTIMORE SUN (Dec. 3, 2011), http://articles.baltimoresun.com/2011-12-03/health/bs-hs-abortion-regulations-20111202_1_abortion-providers-abortion-regulations-abortion-law.

310. *See supra* notes 246-255 and accompanying text.

311. *See* Testimony of Most Reverend William C. Lori, *supra* note 228.

an relief programs.³¹² Similar to the anti-abortion legislation, the USCCB's Richard Doerflinger has reportedly had success in influencing anti-contraceptive legislation as well.³¹³

In short, the USCCB wants its government contracts but does not want to accept the policy decisions as to the most effective way to carry out those contracts. Thus, the USCCB appears to be lobbying to change the policy decisions to comport with their theological opposition to contraceptive use. Simply put, "there is no religious liberty violation if the bishops cannot receive government funding for providing that service [to which they object] . . . [and] [t]here is no constitutional right to government funding of religious mission."³¹⁴ However, this does not prevent the USCCB from attempting to alter legislative positions. The USCCB's government relations office lists active lobbying efforts in opposition to any new mandate for contraceptives in federally funded programming.³¹⁵ As any observer of the recent contraceptive debacle knows, the USCCB has been at the forefront of challenging the Department of Health and Human Services insurance requirements, despite the fact that churches were already exempted from the requirements; to wit, when it was unsuccessful in lobbying the executive branch, it turned to Senator Blunt to attempt to overturn the regulation legislatively.³¹⁶

The USCCB itself confirms that it lobbies on a dearth of issues relating to its pro-life activities – listing them individually in their "Legislative Issues for the 112th Congress."³¹⁷ It is clear that the

312. *See id.* at 4-5.

313. *See* Bassett, *supra* note 5 ("[Bishop] Lori urged subcommittee members to support three bills currently in Congress that would help to codify their agenda: the Protect Life Act (H.R. 358), the Abortion Non-Discrimination Act (H.R. 361) and the Respect for Rights of Conscience Act (H.R. 1179) -- all anti-abortion and anti-contraception bills that Doerflinger says he directly influenced.").

314. Hamilton, *supra* note 225.

315. *See* Government Relations: Legislative Issues for the 112th Congress, *supra* note 205 ("Contraceptive and Abortifacient Mandates" under "Lobbying" for "Pro-Life Activities").

316. *See* Michelle Bauman, *Senate rejects Blunt amendment to defend religious freedom*, CATHOLIC NEWS AGENCY (Mar. 1, 2012), <http://www.catholicnewsagency.com/news/senate-rejects-blunt-amendment-to-defend-religious-freedom/>.

317. *See* Government Relations: Legislative Issues for the 112th Congress, *supra* note 205 (listing under "lobbying" for "Pro-Life Activities" that the USCCB supports "Abortion Funding Bans" in "domestic and international health programs, military hospitals, District of Columbia, and federal prisons," supports the "Pregnant Women Support Act," opposes any laws requiring health care providers to provide comprehensive sexual reproductive care, opposes any humanitarian

USCCB engages in a great many efforts to oppose pro-choice measures, and further restrict the availability of abortion. Unfortunately, because the USCCB's finances are not further broken down – for obvious reasons – it is difficult to discern whether their lobbying activities are “substantial.” What seems clear, however, is that the USCCB's activities can be significant, powerful, and, at least some of the time, successful. At the very least, such reports as those described above should be sufficient to cause concern and for the IRS to initiate an investigation.

Stem-Cell Research

For the sake of brevity, the remaining discussion of individual issues will outline the USCCB's lobbying efforts in each specific area. The issues of abortion/contraception and same-sex marriage, described above, are long-standing, hot button issues for the USCCB, and so are covered in more detail. Suffice to say, even a brief overview of the remaining issues indicates that the USCCB engages in regular legislative activity—which the IRS should investigate to determine if it is “substantial”—designed to influence laws on issues across the political spectrum.

When it comes to stem cell research, the USCCB has intervened directly with Congress in opposing almost every single piece of legislation over the past two decades that could potentially allow or fund embryonic stem cell research.³¹⁸ The USCCB maintains its

foreign aid for organizations offering abortion, and supports “the unborn child rule in the Children's Health Insurance Program”; listing under “general advocacy/monitoring” that the USCCB supports “rescinding Food and Drug Administration (FDA) approval for RU-486,” supports added abortion regulations, opposes the “Freedom of Choice Act,” supports abstinence education programs, and opposes any increased funding for Title X programs until there is “more effective exclusion of abortion from the program”).

318. See, e.g., *Oppose Destructive Stem Cell Research*, U.S. CONF. OF CATHOLIC BISHOPS, <http://old.usccb.org/stemcellcampaign/> (last visited Jan. 9, 2012) (“Following President Obama's March 9 [2009] executive order, the National Institutes of Health (NIH) has proposed guidelines for federally funded embryonic stem cell research. . . . Oppose Funding of Destructive Embryonic Stem Cell Research!”); Letter from Cardinal Justin Rigali, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. House of Representatives (June 6, 2007), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/s5hr2560letter.pdf> (urging Representatives to vote against Senate Bill 5 relating to federal funding of embryonic stem cell research); Letter from Cardinal Justin Rigali, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. Senate (Apr. 4, 2007), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/s5letter.pdf> (urging Senators to vote against Senate Bill 5 relating to federal funding of em-

opposition to embryonic stem cell research as a leading legislative issue, and lists it as an issue upon which the USCCB intends to lobby before the 112th Congress.³¹⁹ Similar to its position on abortion, the USCCB has a strict policy against the use of embryonic stem cells purely on moral grounds (although it attempts to scientifically support its position by falsely claiming adult and embryonic stem cell research potential is the same).³²⁰ The USCCB's member bishops also attack any potential embryonic stem cell funding (or legalization) in various state governments as well, fur-

bryonic stem cell research); Letter from Cardinal Justin Rigali, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. Congress (Jan. 9, 2007), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/hr3letter.pdf> (urging members of Congress to reject H.R. 3 relating to federal funding of embryonic stem cell research); Letter from Cardinal William H. Keeler, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. House of Representatives (July 19, 2006), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/hr810veto.pdf> (urging Representatives to “sustain the President’s veto of H.R. 810, the ‘Stem Cell Research Enhancement Act.’”); Letter from Cardinal William H. Keeler, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. Senate (July 12, 2006), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/keelerhr810.pdf> (urging Senators to oppose H.R. 810 (Stem Cell Research Enhancement Act), and support S.2754 (Alternative Pluripotent Stem Cell Therapies Enhancement Act) and S. 3504 (Fetus Farming Prohibition Act)); Letter from Cardinal William H. Keeler, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. Senate (July 11, 2005), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/keeler711.pdf> (urging Senators to reject H.R. 810/S. 471 “and any similar proposal” relating to federal funding of embryonic stem cell research); Letter from Cardinal William H. Keeler, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. House of Representatives (July 11, 2005), *available at* <http://old.usccb.org/prolife/issues/bioethic/stemcell/keeler517.pdf> (urging Representatives to vote against H.R. 810 relating to federal funding of embryonic stem cell research); Letter from Cardinal William H. Keeler, Chairman, Comm. for Pro-Life Activities, USCCB, to Members of the U.S. Senate (Mar. 3, 2000), *available at* <http://old.usccb.org/prolife/issues/bioethic/keeler0300.shtml> (urging Senators to “oppose legislation such as S. 2015 as well as the NIH stem cell guidelines themselves.”).

319. See Government Relations: Legislative Issues for the 112th Congress, *supra* note 205 (listing as “lobbying” for “Pro-Life Activities” opposition to embryonic stem cell research).

320. See, e.g., *Myths and Misconceptions About Stem Cell Research*, CALIFORNIA INST. FOR REGENERATIVE MED., http://www.cirm.ca.gov/StemCellBasics_Questions#5 (last visited Jan. 11, 2012).

thering the USCCB's national campaign to prohibit embryonic stem cell research.³²¹

Social Security, Welfare & the Economy

Not all of the USCCB's positions fit the "conservative" mold, as do its stances on marriage equality, abortion, and stem-cell research. Its position could be described as "liberal" on other issues if compared to the traditional Republican/Democrat positions on matters. The USCCB maintains left or center-left positions on social security, welfare, and the economy – driven mainly by its work for the poor. Nonetheless, lobbying does not mean lobbying for one political party's or the other's positions; it means lobbying generally. The USCCB has not been shy from flexing its muscle when attempting to influence legislation in this area as well.

For example, under "Domestic Justice and Human Development" in its 112th Congress Legislative Issues, the USCCB lists its plan to engage in lobbying in seven specific areas.³²² First, the USCCB indicates that it lobbies for "priority for the poor in discretionary funding and entitlement programs and deficit reduction" in the federal budget.³²³ It also lobbies to change various "budget and tax provisions" for the benefit of "poor families," and for the "targeting of subsidies, the interests of small farms, and nutrition

321. See, e.g., *Catholic bishops voice concern over state funding for embryonic stem cell research*, CATHOLIC DIOCESE OF TOLEDO, <http://www.toledodiocese.org/index.php/home/149-archived-news-releases/1034-catholic-bishops-voice-concern-over-state-funding-for-embryonic-stem-cell-research> (last visited Jan. 9, 2012) (Ohio Bishops sent letter to Governor and General Assembly of Ohio urging passage of bill banning state funding of embryonic stem cell research); Andy Birkey, *Catholic church pushes for ban on stem cell research funding in shutdown deal*, MINNESOTA INDEP. (July 18, 2011), <http://minnesotaindependent.com/84721/catholic-church-government-shutdown-stem-cell-research> (lobbying - directly and through grassroots efforts - to ban stem cell research in Minnesota); Archbishop John C. Favalora et al., *Resolution of the Florida Bishops: Opposition to Public Funding of Embryonic Stem Cell Research & Cloning*, FLORIDA CATHOLIC CONF. (Mar. 9, 2005), <http://www.flacathconf.org/health/stemcellandresearch/StemcelResolution13-9-05.htm> (authorizing the Florida Catholic Conference to oppose any embryonic stem cell research and public funding thereof in Florida). See also *supra* notes 246-255 and accompanying text (listing state Catholic conferences and legislative agendas).

322. See Government Relations: Legislative Issues for the 112th Congress, *supra* note 205.

323. *Id.*

programs in the Farm Bill.”³²⁴ The breadth of issues which the USCCB and its bishops attempt to influence even in this one subject-matter area is expansive and includes everything from directly urging Congress to extend unemployment insurance in the latter months of 2011,³²⁵ to encouraging alterations to proposed federal budgets to “take[] into account the church’s social teaching.”³²⁶ In short, the USCCB is not shy in attempting to influence Congress on any number of economic and social welfare issues whether that be pressuring legislators on how to implement farm subsidies, on priorities for discretionary funding, on tax credits and extensions, or the morality of the entire annual federal budget generally.

All of these are issues upon which political leaders across the spectrum hold a wide-ranging number of views. Nonetheless, it is the very fact that the USCCB supports or opposes specific bills and specific policy positions, and shows no qualms about approaching legislators to come around to its position when crafting legislation, that is problematic for an exempt entity.

Education

The USCCB is also active in lobbying for education policies and programs. The USCCB, as it does in many of its offices, supports and opposes legislation as a key component of its Office of Catholic Education. Its position largely appears to be designed to keep money flowing into Catholic-affiliated private schools, and once it is there, to keep it there.³²⁷ To wit, its 112th Congress educational lobbying agenda includes a number of action issues that supports existing or increased funding for private and religious schools.³²⁸ The USCCB also supports reauthorization of the Elementary and Secondary Education Act and specific key components thereof, in-

324. *Id.*

325. See Letter from Bishop Stephen E. Blaire, Chairman, Comm. on Domestic Justice and Human Dev., USCCB, to Members of the U.S. House of Representatives (Dec. 12, 2011), *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/labor-employment/upload/UI-letter-12-11-2011-final.pdf> (urging the House of Representatives to pass any bill to extend unemployment insurance).

326. Michael O’Brien, *Boehner and Ryan tout letter from head of US Catholic bishops*, THE HILL (June 19, 2011), <http://thehill.com/blogs/blog-briefing-room/news/162239-boehner-and-ryan-tout-letter-from-head-of-us-catholic-bishops>.

327. See USCCB Education Legislative Agenda – 112th Congress, Public Policy, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/public-policy/> (last visited Sept. 24, 2012).

328. *Id.*

cluding legislative provisions that keep any money generated in private or religious schools from going back out into the public education system, revising funding formulas to secure greater support for private and religious schools, and set up state and federal frameworks to advocate on behalf of private and religious schools, to name just a few.³²⁹ A large part of the recent push in education, the USCCB and its member bishops support both federal and state voucher programs – framed by the USCCB as parental choice programming – which are widely understood to support mostly religious schools.³³⁰

Aside from the more self-interested portions of its education lobbying, the USCCB also supports a number of general educational efforts, and if its legislative issues agenda is any indication, it is lobbying Congress to make those happen. Under the heading labelled “Lobbying,” the Office of Catholic Education supports some specific and some general legislation including any bill that “reauthorizes and funds the D.C. Opportunity Scholarship Program,” “provides tax credits for . . . donations to organizations providing scholarships for children,” and “provides refundable tax credits/deductions for families with children to help pay . . . educational expenses.”³³¹ As to benefits for teachers, the USCCB’s Catholic Education Office supports any legislation that “provides tax credits to teachers in public, private, and religious schools to cover educational expenses,” and “provides for programs of professional

329. *See id.*

330. *See, e.g.*, USCCB Education Legislative Agenda – 112th Congress, Public Policy, *supra* note 327; *Elementary & Secondary Education Department*, PENNSYLVANIA CATHOLIC CONF., <http://www.pacatholic.org/about-the-pcc/elementary-secondary-education-department/> (last visited Jan. 11, 2012); Marianne Medlin, *Pennsylvania bishops praise governor’s school voucher plan*, CATHOLIC NEWS AGENCY (Oct. 12, 2011), <http://www.catholicnewsagency.com/news/pennsylvania-bishops-praise-governors-school-voucher-plan/>; Scott Elliott, *Religious Schools dominate vouchers*, INDY STAR (Aug. 18, 2011), <http://blogs.indystar.com/education/2011/08/18/religious-schools-dominate-vouchers/> (Indiana); Guillermo X. Garcia, *Bishops pushing school vouchers*, EXPRESS NEWS (May 19, 2005), <http://texasedequity.blogspot.com/2005/05/bishops-pushing-school-vouchers.html> (“Texas Catholic bishops have launched a statewide effort targeting lawmakers . . . whom the bishops believe can be persuaded to vote for an expanded school voucher program, lobbyists for the church acknowledged Wednesday. . . . Two lawmakers who oppose voucher programs said they were disappointed by the tone in [an] archbishop’s letter, which they termed threatening and intimidating.”).

331. USCCB Education Legislative Agenda – 112th Congress, Public Policy, *supra* note 327.

development for teachers in public, private, and religious schools.”³³²

Whatever one thinks about the constitutionality of the voucher programs specifically, and government involvement with private, religious schools generally, it seems clear that the USCCB has an agenda in the education industry. Looking broadly at the USCCB’s self-described “lobbying” efforts on its legislative agenda for this year as well as at past instances of the bishops’ activities, it appears that the USCCB will do what it can with legislators to ensure that taxpayer money is flowing into the Catholic education system, prevent it from flowing out, and be subject to none of the rules which public schools must follow.

Immigration

The USCCB is a strong proponent of immigration reform, and considers itself a champion in the area, utilizing the auspices of morality to justify its engagement of legislators in crafting both federal and state immigration policy. There is no question that the bishops engage in both direct and grassroots lobbying when it comes to immigration policy.³³³ For example, in its 2010 annual report, the MRS even proudly admits that it “was central to the drafting of this bill [Refugee Protection Act of 2010] and to the inclusion [of] provisions increasing protections for asylum seekers, reforming the expedited removal process, revising the terrorism bars to admissibility, strengthening family unity, and increasing protections for refugees and asylees,” and lobbied for its passage.³³⁴ The MRS further acknowledges that it “is tasked by the bishops to advocate on behalf of migrants and *support the passage of migration-related legislation* that is consistent with the moral vision of the Catholic Church,” and is “actively engaged” in pursuit of that goal.³³⁵

Indeed, the USCCB corresponds directly with legislators frequently in an effort to get them to pass or reject various immigration bills. Recently for example, the USCCB launched both a direct and grassroots effort to oppose the federal E-Verify pro-

332. *Id.*

333. *See, e.g.*, Government Relations: Legislative Issues for the 112th Congress, *supra* note 205 (listing nine issue areas under “Lobbying” and six under “General Advocacy/Monitoring” in the “Migration and Refugee Services” subject area).

334. *See* 2010 MRS Report, *supra* note 209, at 8.

335. *Id.*

gram,³³⁶ a federal immigration policy that was recently at the forefront of the GOP Presidential Primary debates.³³⁷ Moreover, the USCCB launched a dedicated website and action platform in 2010, “Justice for Immigrants,” which includes information about current immigration policy in the United States, the USCCB’s position on immigration, and a variety of legislative action materials for USCCB constituents to lobby Congress.³³⁸ The website promotes grassroots lobbying by its constituents by offering several action alerts, sample letters and postcards to Congress.³³⁹ The USCCB, through Justice for Immigrants, also supports specific immigration legislation – more recently, directly intervening with Congress and calling for the passage of the Development, Relief, and Education for Alien Minors (DREAM) Act.³⁴⁰ Another example in a different area of immigration law, the USCCB has also explicitly supported the Agricultural Job Opportunity, Benefits, and Security (AgJOBS) Act, which was designed to reform the H-2A Visa Program for temporary foreign agricultural workers.³⁴¹

The USCCB and its subsidiary state Catholic conferences have also routinely engaged state legislators in the state-law immigration debacle of the past few years. The USCCB’s Chairman of the Migration Committee has recently encouraged Alabama bishops to attempt to repeal the new Alabama immigration law.³⁴² The USCCB’s member bishops across the country have likewise been

336. See *US bishops’ immigration campaign urges opposition to E-Verify expansion*, CATHOLIC WORLD NEWS (June 16, 2011), <http://www.catholicculture.org/news/headlines/index.cfm?storyid=10692>.

337. See Catalina Camia, *GOP candidates spar over immigration, health care*, USA TODAY (Sept. 22, 2011), <http://content.usatoday.com/communities/onpolitics/post/2011/09/gop-debate-fox-news-orlando-1>.

338. See JUST. FOR IMMIGRANTS, <http://www.justiceforimmigrants.org> (last visited Jan. 11, 2012).

339. See, e.g., *Send a Justice for Immigrants postcard to Congress*, JUST. FOR IMMIGRANTS, <http://www.capwiz.com/justiceforimmigrants/issues/alert/?alertid=14503781&type=CO> (last visited Jan. 11, 2012).

340. See Archbishop Jose Gomez, *Statement on the Dream Act*, U.S. CONF. OF CATHOLIC BISHOPS (June 28, 2011), <http://www.justiceforimmigrants.org/documents/2011-06-28-Archbishop-Gomez-Statement-on-Dream-Act.pdf>.

341. See Archbishop Jose Gomez, *Statement on the H-2A Visa Program*, U.S. CONF. OF CATHOLIC BISHOPS (Apr. 13, 2011), <http://www.justiceforimmigrants.org/documents/Archbishop-Gomez-April-2011-H2A-Visa-Statement.pdf>.

342. See *Migration Committee Chair Expresses Support For Alabama Bishops’ Efforts To Reverse Unjust State Immigration Law*, U.S. CONF. OF CATHOLIC BISHOPS (Sept. 8, 2011), <http://www.usccb.org/news/2011/11-173.cfm>.

busy opposing immigration laws in state legislatures.³⁴³ In short, the USCCB has adopted a position on immigration policy in the United States and has not been shy at trying to get legislators to come around to it.

International Relations & Affairs

The USCCB also regularly engages legislators in matters of international relations and foreign affairs under the auspices of a Catholic moral imperative. These activities run the gamut of foreign policy issues from trade preferences to travel restrictions. In addition to the immigration lobbying noted *supra*, the USCCB's legislative lobbying priorities for the current Congress include, to name a few, “[s]upport[ing] trade preferences for poor countries . . . in legislation relating to U.S. bilateral and regional trade agreements,” as well as country-specific foreign aid funding for Afghanistan, Pakistan, Sudan, Haiti, Iraq, and Israel/Palestine.³⁴⁴ Interestingly, the USCCB has also been actively engaged in encouraging lawmakers to overturn the travel restrictions to Cuba, and to open Cuba to agricultural commodity exports.³⁴⁵

343. See, e.g., Jim Cunningham, *Bishops direct Catholic Conference to oppose immigration proposal*, CATHOLIC VOICE (Jan. 10, 2012), <http://www.catholicvoiceomaha.com/main.asp?SectionID=7&SubSectionID=7&ArticleID=15584> (Archdiocese of Omaha); Dave Gibson, *Catholic Church meddling in politics of immigration...again*, EXAMINER (Nov. 13, 2011), <http://www.examiner.com/immigration-reform-in-national/catholic-church-meddling-politics-of-immigration-again>; *Texas Catholic Bishops Oppose House Passage of HB12*, TEXAS CATHOLIC CONF. (May 6, 2011), <http://www.txcatholic.org/index.php/component/content/article/72-testimony-and-letters-82nd-legislative-session/1167-texas-catholic-bishops-oppose-house-passage-of-hb-12>; Martin Barillas, *Catholic bishops condemn Arizona immigration bill*, SPERONEWS (Mar. 10, 2010), <http://www.speroforum.com/a/28721/Catholic-bishops-condemn-Arizona-immigration-bill>.

344. Government Relations: Legislative Issues for the 112th Congress, *supra* note 205 (listing under “Lobbying” heading for “International Justice and Peace”). See also *id.* (under the “General Advocacy/Monitoring” heading in the same issue, supporting debt cancellation for poor countries, and monitoring implementation of public accounting for resource-rich developing nations, to name a few).

345. See Letter from Howard J. Hubbard, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Members of the U.S. House of Representatives (Mar. 8, 2010), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/cuban-refugees/upload/2010-03-08-ltr-hubbard-house-cuba-hr4645.pdf> (encouraging the passage of H.R. 4645, a bill to allow travel between the United States and Cuba, and to lift embargo on agricultural commodities sold to Cuba); Letter from Howard J. Hubbard, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Representative Howard L. Berman,

On many of these foreign policy issues, the USCCB supports and opposes specific and general bills, laws, and/or legislative proposals. With respect to specific bills, the bishops have encouraged congressional leadership to write and pass the Andean Trade Preferences Extension Act of 2008, the Haitian Hemispheric Opportunity through Partnership Encouragement Act, H.R. 3905 – the New Partnership for Development Act, and even amendments to the U.S.-Columbia Free Trade Agreements.³⁴⁶ In some cases, the USCCB admits that it “actively worked for enactment” of various pieces of legislation.³⁴⁷ Generally, the USCCB’s legislative involvement in the realm of international relations includes a great many issues both including and in addition to the few mentioned above.³⁴⁸

Chairman, Comm. on Foreign Affairs, U.S. House of Representatives (Nov. 18, 2009), *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/cuban-refugees/upload/2009-11-18-ltr-hubbard-hr874-berman-cuba.pdf> (encouraging the passage of H.R. 874).

346. *See* Letter from Bishop Thomas G. Wenski, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Henry M. Paulson, Jr., Sec’y of the Treasury, et al. (Feb. 25, 2008), *available at* <http://old.usccb.org/sdwp/international/2008-02tradeletter.pdf> (outlining support for trade preferences for Haiti, Bolivia, Ecuador, Colombia, Peru, and other developing countries).

347. *Id.*

348. Indeed, there seems to be little rhyme or reason to the USCCB’s involvement in any particular piece of legislation, and it seems not unfair to suggest that it seeks to influence any piece of legislation or its eventual passage whenever it sees fit. *See, e.g., supra* notes 345-348 and accompanying text; *Trade*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/issues-and-action/human-life-and-dignity/global-issues/trade/> (last visited Sept. 24, 2012); Letter from Bishop Howard J. Hubbard, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Senator Christopher Dodd, Senator Richard C. Shelby, & Members of the Senate Comm. on Banking, Hous. & Urban Affairs (May 3, 2010), *available at* <http://old.usccb.org/sdwp/international/2010-05-03-ltr-usccb-crs-senate-energy-s1700.pdf> (encouraging the “Senate to support [the Energy Security through Transparency Act (S. 1700)] and to move its swift passage); Letter from Bishop Howard J. Hubbard, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Senate Foreign Relations Comm. & Members of the Senate Comm. on Banking, Hous., & Urban Affairs (Feb. 19, 2010), *available at* <http://old.usccb.org/sdwp/international/2010-02-19-letter-joint-S891.pdf> (supporting the Congo Conflict Minerals Act (S. 891) and asking members of the committees to “cosponsor the bill so that it moves quickly through the legislative process” and encouraging the Senate to “strengthen” the bill by adding three specific amendments); Letter from Bishop Howard J. Hubbard, Chairman, Comm. on Int’l Justice and Peace, USCCB, to Members of the U.S. Senate (Nov. 29, 2010), *available at* <http://old.usccb.org/sdwp/international/2010-11bishop-hubbardto-senateon-new-start.pdf> (urging Congress to ratify the new Strategic Arms Reduction Treaty); Letter from Bishop Thomas G. Wenski, Chairman, Comm. on Int’l

Environmental Policy

Of the many religious organizations in America, the USCCB takes quite a progressive view of climate change and environmental policy. For example, it lauded the recent new Environmental Protection Agency mercury and air toxics standards,³⁴⁹ while much of the Republican Party condemned them as a “major burden on the economy” which could “threaten the reliability of the power grid.”³⁵⁰ Nonetheless, the USCCB can and does make its voice heard. The USCCB has issued guidelines for “any legislative action on climate change” and encouraged its constituents to engage their legislators to implement the Catholic priorities in legislation.³⁵¹ The USCCB also has its own legislative agenda on more specific areas ranging from regulation of private property and “takings” legislation to urban sprawl and foreign aid.³⁵² It has also taken many actions encouraging legislators to support, reject, or amend specific pieces of legislation.³⁵³ Regardless of whether any

Policy, USCCB, to Byron L. Dorgan, Chairman, Senate Appropriations, Energy, & Water Dev. Subcomm. (Dec. 5, 2007), *available at* http://old.usccb.org/sdwp/international/2007-12_rrw_dorgan.pdf (urging the Senate committee to delete all funding for the Reliable Replacement Warhead program from an omnibus funding bill).

349. See Press Release, U.S. Conference of Catholic Bishops, Bishops Welcome New Mercury and Air Toxics Standards to Protect Human Life and God’s Creation (Dec. 21, 2011), *available at* <http://www.usccb.org/news/2011/11-247.cfm>.

350. Andrew Restuccia, *EPA to unveil air pollution limits that Republicans say are threat to power grid*, THE HILL (Dec. 20, 2011), <http://thehill.com/blogs/e2-wire/e2-wire/200621-epa-to-unveil-power-plant-mercury-rules-wednesday>.

351. See *Legislative Response to Climate Change, Issues and Action*, U.S. CONF. OF CATHOLIC BISHOPS, <http://www.usccb.org/issues-and-action/get-involved/legislative-response-to-climate-change.cfm> (last visited Jan. 11, 2012).

352. See *Environmental Justice Program*, U.S. CONF. OF CATHOLIC BISHOPS, <http://old.usccb.org/sdwp/ejp/climate/ejpbrochure.pdf> (last visited Jan. 11, 2012).

353. See, e.g., Letter from Bishop Nicholas DiMarzio, Chairman, Domestic Policy Comm., USCCB, et al., to David R. Obey, Chairman, U.S. House Comm. on Appropriations (Jan. 8, 2007), *available at* <http://old.usccb.org/sdwp/ejp/news/20070108csltr.pdf> (urging \$69 million funding for children’s environmental health study); Letter from Bishop John H. Ricard, Chairman, Comm. on Int’l Policy, USCCB, to Members of the U.S. Senate (June 16, 2005), *available at* <http://old.usccb.org/sdwp/international/Climatesenatefinal6-16-05.pdf> (urging the Senate to amend the Energy Policy Act of 2005 (S.10)); Letter from Bishop Nicholas DiMarzio, Chairman, Domestic Policy Comm., USCCB, to Members of the U.S. House of Representatives (May 19, 2005), *available at* <http://old.usccb.org/sdwp/national/hastings.shtml> (urging support for two specific amendments to the 2006 Interior, Environment and Related Agencies Appropriations Bill).

particular legislator – Republican or Democrat – happens to agree with any particular legislative proposal in which the USCCB places its support or opposition, the bare fact that the USCCB regularly encourages legislators to pass, reject, or amend legislation is the problematic one for any tax-exempt status inquiry.

Death Penalty

Finally, although by no means an exhaustive subject matter listing of the areas in which the USCCB intervenes in legislative politics, the bishops routinely lobby both federal and state legislators to abolish the death penalty or – failing that – curtail its use.³⁵⁴ The USCCB has challenged not only the use of capital punishment at the federal level, but also even the procedures used for review – opposing specific acts dealing with habeas corpus.³⁵⁵ At the state level, the bishops encourage state legislators to vote for, and governors to sign, any bill abolishing or limiting use of the death penalty.³⁵⁶

Whether one agrees with the death penalty or finds its use abhorrent (as this author does), the real question is whether the

354. See *Death Penalty*, U.S. CONF. OF CATHOLIC BISHOPS (Feb. 2011), <http://old.usccb.org/sdwp/national/Death-Penalty-Backgrounder-2011.pdf>.

355. See Letter from Bishop Nicholas DiMarzio, Chairman, Domestic Policy Comm., USCCB, to Members of the U.S. Senate (July 13, 2005), *available at* <http://old.usccb.org/sdwp/national/habeas.shtml> (urging opposition to S. 1088, the Streamlined Procedures Act of 2005, limiting federal habeas corpus review of death row inmates conviction or sentence).

356. See, e.g., Press Release, U.S. Conference of Catholic Bishops, Bishops Urge Ill. Governor to Sign Bill Ending Death Penalty (Mar. 3, 2011), *available at* <http://old.usccb.org/comm/archives/2011/11-041.shtml> (“On behalf of the United States Conference of Catholic Bishops, I join the Catholic bishops of Illinois and urge you to sign SB 3539, which would end the use of the death penalty in Illinois and provide funds for training for law enforcement and services to families of murder victims.”); Kevin Clarke, *U.S. bishops to launch major new campaign to abolish death penalty*, SALT OF THE EARTH (Mar. 2005), <http://salt.claretianpubs.org/sjnews/2005/03/sjn0503c.html>; Press Release, U.S. Conference of Catholic Bishops, USCCB Congratulates N.M. on Repeal of the Death Penalty (Mar. 19, 2009), *available at* <http://old.usccb.org/comm/archives/2009/09-065.shtml>; Daniela Altimari, *Catholic Lawmakers Weigh Conscience, Church Teachings as Death Penalty Hangs in the Balance*, HARTFORD COURANT (Mar. 26, 2012), http://articles.courant.com/2012-03-26/news/hc-catholics-death-penalty-0325-20120326_1_capital-punishment-death-penalty-repeal-bill (“[T]he [Catholic] church has mounted a vigorous lobbying effort in support of the bill [repealing the death penalty]. . . . [Senator] McLachlan said he has been ‘lobbied pretty hard’ on the death penalty . . . including his bishop, William Lori, the head of the Bridgeport diocese.”).

USCCB, over the broad swath of issues of interest, engages in substantial lobbying. It is clear that on this issue, the USCCB is willing to act on a legislative possibility of affecting the usage of capital punishment at the federal or state level.

* * * * *

As a condition of its 501(c)(3) status, the USCCB (and, by virtue of the group exemption, its subordinate organizations such as state Catholic conferences) agreed that no “substantial part” of its activities would be “attempting to influence legislation.”³⁵⁷ Whether one agrees with the policy position advocated by the USCCB as described in each of the many issues listed above, it is clear that the USCCB takes a position on a great many issues. These positions often do not fit the traditional left/right or Democrat/Republican mold. However, the lobbying prohibition does not require that the positions be consistent with our partisan political system, only that the exempt organization “attempt[s] to influence legislation [by] contact[ing], or urg[ing] the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.”³⁵⁸ Partisanship is not relevant to this inquiry.

While advocacy done “in an educational manner” does not run afoul of the lobbying prohibition, the USCCB’s activity—documented only in small part above—involves detailed positions on specific legislation, and even, in some cases, entails the USCCB suggesting specific language within legislation.³⁵⁹ Such involvement in the legislative “sausage-making” process appears to be beyond “educational.” And when one considers the breadth and depth of the USCCB’s involvement in the legislative process, one could fairly consider such effort to be “substantial” in relation to the levels the admittedly muddled case law and IRS guidelines set forth.

CONCLUSION

The USCCB has become what one could consider a well-connected, powerful lobbying group active at every level of the

357. IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 5-6.

358. *Id.*

359. *Id.*

state and federal governments. While it does not fit into the traditional Democrat-Republican dichotomy, it apparently acts politically on both sides of the aisle. The USCCB and its member bishops have admitted, at least to some degree, that they are a legislatively-driven “policy arm” of the Catholic Church that will intervene both for general and specific pending legislation, and for or against various ‘unnamed’ candidates who happen to support or oppose “intrinsic evils.”

Indeed, it is popularly known that the USCCB “maintains an active lobbying arm that testifies before Congress at every level of some legislative bills’ career, suggests at times specifically worded amendments to legislation, and enters into alliances with other lobby groups to affect policy.”³⁶⁰ The IRS has never called the group’s activities into question in order to dissuade them from politicking, lobbying, and electioneering. Perhaps this is precisely *because* the group is so well connected, and the IRS would be berated by accusations of anti-Catholic animus from lay Catholics, co-religionists, and politicians from across the political spectrum.³⁶¹ However, as noted previously, lay Catholics need not fear a USCCB revocation and should not treat the threat of revocation as an attack on their worship. Individual churches do not even have to apply to the IRS for an exemption, and so long as they were not individually violating 501(c)(3) requirements, they would retain their exemption (and tax deductibility of parishioner donations) even if the USCCB lost its group exemption.³⁶²

It is important to address, in closing, what this Article *is not*. Even if the author of this Article may have an opinion on any

360. John A. Coleman, *The Future of Catholic Social Thought*, in MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES & INTERPRETATIONS 522, 535 (Kenneth R. Himes et al. eds., 2005).

361. See *As churches get political, U.S. IRS stays quiet*, REUTERS (June 21, 2012), <http://www.reuters.com/article/2012/06/21/usa-tax-churches-irs-idUSL1E8HED5Z20120621> (“The IRS has also been silent about the increasingly aggressive political activity of the U.S. Catholic bishops, who have called for their own Fortnight for Freedom this week. Masses, rallies, and parish bulletins are being mobilized against the Obama administration’s healthcare regulations on contraceptives. . . . ‘It will get worse unless the IRS takes action, and they seem reluctant,’ said Nicholas Cafardi, dean emeritus and professor of law at Duquesne University and the longtime lawyer for the Catholic diocese of Pittsburgh. . . . At the United States Conference of Catholic Bishops meeting last week in Atlanta, bishops vowed to keep up their criticism of Obama administration policies on employer-provided birth control and other controversies.”).

362. See IRS TAX GUIDE FOR CHURCHES, *supra* note 14, at 3. See also 26 U.S.C. § 508(c)(1)(A) (2006).

number of the issues discussed above, this Article has no objection nor takes any position with regard to any actions or policies that the Catholic Church wishes to impose upon its own adherents or within its faith community. The Catholic Church however, through the USCCB in the United States, seems to insist on the ability to unilaterally define its religious mission, which the rest of American society should accept at face value, and that it is entitled to have the American taxpayer support those decisions by virtue of their 501(c)(3) status. It is this problem which this Article seeks to address, if only to point out the expansive involvement of the USCCB in the nuts-and-bolts of government and civil society.

It seems clear from the record that the USCCB has and continues to engage in a massive effort to affect the laws of the United States and assist those who they feel will support their causes in coming into political office.³⁶³ If their religious liberty is truly being infringed, they may avail themselves of the First Amendment through the judicial system with no tax law consequences. However, the ‘religious liberty’ mantra, which the USCCB recites to enter a dizzying array of legislative politics, can sound hollow in the face of the evidence of the USCCB’s involvement. A reasonable interpretation of the laws and regulations governing 501(c)(3) exempt entities may lead one to the conclusion that the USCCB is flouting the politicking and lobbying rules, and that the IRS would be justified in revoking the USCCB’s tax-exempt status. If all this is true, the USCCB is not welcome to ask the taxpayer to foot the bill for their lobbying efforts, as a condition of their 501(c)(3) status. Even if this reading is correct and the USCCB has crossed the

363. Moreover, this is nothing new. For decades, outside observers have noted the potential impropriety of the USCCB’s massive efforts to influence legislation. See, e.g., Denise Shannon, *The bishops lobby - The Political Power of the Catholic Church*, HUMANIST MAG., Sept.-Oct. 1993, available at http://findarticles.com/p/articles/mi_m1374/is_n5_v53/ai_13255809/ (“With resources as large as those of the Catholic church, even a small percentage of the total constitutes considerable financial support for lobbying. And lobby they do. . . . On any legislative matter, the bishops or their representatives might testify at congressional hearings, write letters to members of Congress, or act as one of the many behind-the-scenes coaxers and cajolers on Capitol Hill. As of 1991, the NCCB/ USCC employed four full-time federal lobbyists in the office of government relations. The lobbyists have at their disposal the resources of the entire organization. The lobbying budget, however, does not reflect the efforts of the office of general counsel, which provides legal assistance, or of the other offices with which the lobbyists regularly work. Staffers from all USCC departments have some knowledge of legislative matters, and some of them also perform lobbying activities.”).

line, Catholics everywhere—bishops and laity alike—need not fear that their message will not reach the ears of the American public. There are alternatives for the USCCB. If the USCCB wants to set up a 501(c)(4) entity and/or a political action committee through such an entity, they are more than welcome to it.