



June 16, 2021

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

*Via FedEx*

Re: Christians Engaged  
[REDACTED]  
Form 1023: Protest of Proposed Denial of Tax-Exempt Status

Dear Sir or Madam:

First Liberty Institute represents Christians Engaged, a nonprofit organization located at the address below, with respect to the proposed denial of its application for recognition of exemption under § 501(c)(3).

Christians Engaged  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

This letter protests the proposed determination<sup>1</sup> denying its application for tax exempt status under 26 U.S.C. § 501(c)(3). Form 2848, Power of Attorney and Declaration of Representative, is enclosed. Please direct any communication regarding this protest to my attention.

### **Statement of Facts**

Christians Engaged was incorporated on July 22, 2019, as a Texas nonprofit corporation “formed exclusively for charitable, religious, educational, or scientific purposes.”<sup>2</sup> As a Christian organization, it sincerely holds the religious beliefs set out in its Doctrinal Statement.<sup>3</sup> From its religious perspective, Christians Engaged provides nonpartisan religious and civic education, focusing on encouraging and educating Christians to be civically engaged as a part of their religious practice.

Christians Engaged’s mission statement articulates three goals: “to awaken, motivate, and empower ordinary believers in Jesus Christ to: pray for our nation regularly, vote in every election

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<sup>1</sup> Letter from Stephen A. Martin to Christians Engaged (May 18, 2021) (hereinafter “Letter” or “Proposed Determination Letter”), enclosed.

<sup>2</sup> Certificate of Formation, Art. III, enclosed.

<sup>3</sup> Christians Engaged Amended Bylaws Attachment A (Dec. 5, 2019), enclosed.

to impact our culture, [and] engage our hearts in some form of political education or activism for the furtherance of our nation.”<sup>4</sup> To accomplish the first, Christians Engaged provides a weekly Bible study, sends out weekly prayer alerts, and organizes statewide and area prayer gatherings.<sup>5</sup> It works with churches and pastors to facilitate annual church prayer meetings for local, state, and national government.<sup>6</sup> Through articles, a blog, social media, videos, educational tracts and booklets, church outreach, and live speaking opportunities, Christians Engaged educates the public on the importance of praying regularly for government and elected officials.<sup>7</sup>

Second, Christians Engaged educates the public on the importance of voting in every election and provides tools to enable them to do so.<sup>8</sup> Its voter outreach teams with voter registrars visit festivals, public events, Christian concerts, and churches.<sup>9</sup> Christians Engaged invites individuals to pledge to pray regularly for the nation, vote in every election, and “commit to some form of political education or activism for the furtherance of our nation.”<sup>10</sup> It also follows up with election reminders, but it does not produce voter guides or otherwise suggest that recipients should vote for or against any particular candidate or candidates.<sup>11</sup>

Finally, Christians Engaged empowers ordinary Christians who are generally unfamiliar with civic and public policy processes and issues to become actively involved by 1) “educat[ing] believers on the national issues that are central to our belief in the Bible as the inerrant Word of God,” and 2) providing training, resources, and mentorships that help them navigate the political process in order to “promote [their] values or get involved with [their] passion.”<sup>12</sup> It offers an online educational course in political activism and is developing an online educational course on Texas government.<sup>13</sup>

The goal of Christians Engaged’s political activism course “is to build Christian servant leaders who feel called to engage in the world of politics” by creating “an interactive mentoring community where you can learn how to find your place in political involvement in your city, state, and nation.”<sup>14</sup> The course teaches how “major political parties are organized,” “how to get involved . . . and make a difference in the political party of your choice,” how to engage with

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<sup>4</sup> Christians Engaged, <https://christiansengaged.org> (last visited June 15, 2021).

<sup>5</sup> See Christians Engaged, It’s Time to Pray, <https://christiansengaged.org/pray> (last visited June 15, 2021); Christians Engaged, Virtual Bible Study, <https://christiansengaged.org/bible-study> (last visited June 15, 2021).

<sup>6</sup> See Christians Engaged, Vote, <https://christiansengaged.org/vote> (last visited June 15, 2021).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See Christians Engaged, Pledge, <https://christiansengaged.org/pledge> (last visited June 15, 2021).

<sup>11</sup> See Christians Engaged, Vote, <https://christiansengaged.org/vote> (last visited June 15, 2021). The Letter’s assertion that Christians Engaged instructs individuals “how they should vote,” Proposed Determination Letter at 4, is incorrect. Christians Engaged “educate[s] the public on the processes of voting and how the Bible speaks to civic duty,” but it does so “[w]ithout advocating for specific issues or candidates [and] encourage[s] the public to research and search the scriptures for their own answers.” Letter from Bunni Pounds to Robert Vance re: Response to Second Information Request (Aug. 25, 2020), enclosed.

<sup>12</sup> See Christians Engaged, Engage, <https://christiansengaged.org/engage> (last visited June 15, 2021).

<sup>13</sup> Christians Engaged, Educational Classes, <https://christiansengaged.org/classes> (last visited June 15, 2021).

<sup>14</sup> Christians Engaged, On-Ramp to Political Activism, <https://ce-academy.teachable.com/p/on-ramp-to-political-activism-class-1> (last visited June 15, 2021).

elected officials and their offices.<sup>15</sup> The class also “discusses issues in our national conversation from a Biblical perspective” and teaches students how to engage in politics as a “Christian with integrity.”<sup>16</sup> The class is taught from a nonpartisan perspective “to educate and minister to all Texans.”<sup>17</sup> None of Christians Engaged’s activities involve supporting or opposing political parties, candidates, or legislation;<sup>18</sup> rather, it “educate[s] the public on the processes of voting and how the Bible speaks to civic duty . . . [w]ithout advocating for specific issues or candidates [and] encourage[s] the public to research and search the scriptures for their own answers.”<sup>19</sup>

Christians Engaged applied for tax exempt status under 26 U.S.C. § 501(c)(3) in late 2019. On May 18, 2021, Exempt Organizations Director Stephen A. Martin denied the application, contending that Christians Engaged “engage[s] in prohibited political campaign intervention” and “operate[s] for a substantial non-exempt private purpose and for the private interests of the D<sup>20</sup> [Republican] party.”<sup>21</sup> This conclusion pointed specifically to Christians Engaged’s education of “believers on national issues that are central to their belief in the Bible as the inerrant M [Word of God]”<sup>22</sup>; namely, “the sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and [sic] borders and immigration, [and] U.S. and Israel relations.”<sup>23</sup> Because Director Martin believes that “bible [sic] teachings are typically affiliated with the D [Republican] party and candidates,” the Proposed Determination Letter found that “[t]his disqualifies [Christians Engaged] from exemption under IRC Section 501(c)(3).”<sup>24</sup>

## Legal Argument

26 U.S.C. § 501(c)(3) exempts from taxation:

Corporations . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See, e.g.*, Christians Engaged, On-Ramp to Political Activism, *supra* note 14. (“Christians Engaged is a nonpartisan, nonprofit ministry. We are here to educate and minister to all Texans. This class is taught from that perspective and we do not endorse candidates or political parties.”).

<sup>19</sup> Letter from Bunni Pounds to Roger Vance, *supra* note 11; While some of the materials used by Christians Engaged make specific reference to the Republican Party and its leaders have sometimes spoken at Republican Party events, references to the Republican Party are not intended to be exclusive. Christians Engaged’s leadership sometimes uses examples from their own experience, and like any other organization Christians Engaged takes the speaking opportunities afforded to it. Christians Engaged’s leadership would certainly accept invitations to speak at Democratic Party events. *See id.*

<sup>20</sup> Please note that the Letter employed a cryptic abbreviation methodology. *See* Proposed Determination Letter at 1. Mystifyingly, Director Martin abbreviates “Republican” as “D.” For clarity and accuracy, this letter will follow the abbreviation with the corresponding term in bracketed text when quoting the Proposed Determination Letter.

<sup>21</sup> Proposed Determination Letter at 4.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.*

subsection (h)), 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.

26 C.F.R. § 1.501(c)(3)-1 requires an exempt organization to fulfill both the organizational test, which requires certain language in the organization's formative documents, and the operational test, which requires an organization's primary activities to seek to accomplish exempt purposes. The Proposed Determination Letter does not contest that Christians Engaged's formative documents comply with the organizational test.<sup>25</sup>

However, by finding that Christians Engaged does not meet the operational test, Director Martin errs in three ways: 1) he invents a nonexistent requirement that exempt organizations be neutral on public policy issues; 2) he incorrectly concludes that Christians Engaged primarily serves private, nonexempt purposes rather than public, exempt purposes because he thinks its beliefs overlap with the Republican Party's policy positions; and 3) he violates the First Amendment's Free Speech, and Free Exercise, and Establishment clauses by engaging in both viewpoint discrimination and religious discrimination.

### *Neutrality*

First, Director Martin improperly interprets the requirement that an exempt organization not intervene for or against any candidate for public office as requiring neutrality on public policy issues. While exempt organizations must maintain neutrality with respect to political campaigns,<sup>26</sup> they do not have to maintain strict neutrality on controversial public policy issues. *See* 26 C.F.R. § 1.501(c)(3)-1(d)(2) ("The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) . . . ."); Internal Revenue Service, *Compliance Guide for 501(c)(3) Public Charities* at 5 ("Some Section 501(c)(3) organizations take positions on public policy issues, including issues that divide candidates in an election for public office.").<sup>27</sup>

Revenue Ruling 2007-41 explains the difference between permissible issue advocacy and impermissible political campaign intervention. Rev. Rul. 2007-41, 2007-25 I.R.B. at 8 (June 18, 2007). While "section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention," they "may take positions on public policy issues, including issues that divide candidates in an election for public office." *Id.* As a result, advocating positions on

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<sup>25</sup> *See* Proposed Determination Letter at 4; Certificate of Formation, Art. III, VI–VII; Amended Bylaws Art. II.

<sup>26</sup> 26 C.F.R. § 1.501(c)(3)-1(d)(2) (allowing a 501(c)(3) organization to engage in issue advocacy so long as it is not an action organization); *id.* § 1.501(c)(3)-1(c)(3) (defining action organizations as including, as relevant here, an organization that "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office").

<sup>27</sup> Available at <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>; *see also* Internal Revenue Service, "Lobbying," <https://www.irs.gov/charities-non-profits/lobbying> (last visited June 15, 2021) ("Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.").

issues that may also be generally associated with political party platforms is not enough, standing alone, to disqualify an organization from exempt status. Rather, whether an organization's communication constitutes political campaign intervention depends on several factors:

- [1] Whether the statement identifies one or more candidates for a given public office;
- [2] Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- [3] Whether the statement is delivered close in time to the election;
- [4] Whether the statement makes reference to voting or an election;
- [5] Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- [6] Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election;
- [7] Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

*Id.* at 8–9. Even a statement referring to a particular candidate or to voting in a specific upcoming election does not automatically constitute political campaign intervention and “must still be considered in context before arriving at any conclusions.” *Id.* at 9.

Director Martin considers none of these factors, instead deciding that Christians Engaged is an action organization solely because of its religious education on issues including “the sanctity of life, the definition of marriage, and biblical justice,” which are issues that Director Martin believes to “generally distinguish candidates and [to be] associated with political party platforms.”<sup>28</sup> This directly contradicts Revenue Ruling 2007-41 and 26 C.F.R. § 1.501(c)(3)-1(d)(2). Considering the above factors demonstrates that Christians Engaged may engage in issue advocacy, but it does not intervene in political campaigns. Its communications do not identify candidates for office and thus do not express approval or disapproval of them. Its communications related to specific elections provide only general election information.<sup>29</sup> Christian Engaged encourages and organizes prayer meetings to pray for elected officials without regard to the election cycle or their candidacy status. Its efforts to educate the public respecting civic engagement, political process, and national issues occur as an ongoing series of communications independent of the timing of any particular election.

The Proposed Determination Letter's analogy to Revenue Ruling 2007-41's Situation 16 is inapt.<sup>30</sup> Situation 16 describes a scenario in which a § 501(c)(3) community development organization hosts an annual fundraiser a month prior to an election in which funding for a new mass transit project is a prominent issue.<sup>31</sup> One of the two competing candidates supports the project, while the other opposes the project in favor of highway improvements.<sup>32</sup> The organization's executive

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<sup>28</sup> Proposed Determination Letter at 4.

<sup>29</sup> See Christians Engaged, Pledge, *supra* note 10.

<sup>30</sup> Proposed Determination Letter at 4.

<sup>31</sup> Rev. Rul. 2007-41 at 10.

<sup>32</sup> *Id.*

director’s speech emphasizes the need for mass transit, criticizes highway improvements, and exhorts the event attendees to “improve [their] quality of life” in the particular state senate district by voting accordingly in the upcoming state senate election.<sup>33</sup> The revenue ruling explains that this scenario constitutes political campaign intervention,<sup>34</sup> but Christians Engaged’s activity is not analogous. Among its activities, it engages the public in discussing a variety of broad national public policy issues from its religious perspective and belief in the Bible. These communications do not necessarily lead to one (“for” or “against”) conclusion on specific candidates and consistently occur independent of any particular election’s timing. In contrast, the hypothetical listeners to the speech in Situation 16 cannot help but understand that the organization supports a specific candidate in a specific election and is asking them to support him as well.

Director Martin compares Christians Engaged’s effort to “educate voters on what the bible [sic] says about issues” to Situation 16 by arguing simply that “these topics typically are affiliated with distinct candidates and specific political party platforms.”<sup>35</sup> But this description lacks the key factors present in Situation 16: proximity to a particular election, support for a specific position on a prominent campaign issue on which the particular candidates had spoken in opposite ways, and a call to action to vote for the corresponding candidate.<sup>36</sup>

Moreover, Director Martin’s discussion of Situation 19 demonstrates that he may have confused the requirements for voter guides, which must be neutral among candidates and parties, with the requirements for educational activity, which need not be neutral on public policy issues.<sup>37</sup> Situation 19 describes how an exempt organization may permissibly publish voter guides and links to candidate information on its website.<sup>38</sup> Christians Engaged does neither, so Situation 19 is irrelevant.

In sum, Director Martin’s conclusion that Christians Engaged engages in political campaign intervention relies on the mistaken assumption that an exempt organization may not engage in issue advocacy. Indeed, if exempt organizations may only articulate public policy positions on issues as to which no political party or candidate has an opinion, then the regulations recognizing that exempt organizations may advocate positions on public policy issues<sup>39</sup> have no meaning. Under the appropriate standards, Christians Engaged’s activities fall well within permissible boundaries.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Proposed Determination Letter at 4.

<sup>36</sup> See Rev. Rul. 2007-41 at 10; see also *Compliance Guide for 501(c)(3) Public Charities* at 5 (“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. A statement can identify a candidate not only by stating the candidate’s name but also by other means such as showing a picture of the candidate, referring to political party affiliations or other distinctive features of a candidate’s platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.”).

<sup>37</sup> See generally Rev. Rul. 78-248, 1978-1 C.B. 154 (1978) (explaining the requirements for voter guides); 26 C.F.R. § 1.501(c)(3)-1(d)(3) (discussed *infra*).

<sup>38</sup> Rev. Rul. 2007-41 at 12.

<sup>39</sup> See, e.g., 26 C.F.R. § 1.501(c)(3)-1(d)(2).

## *Exempt Purposes*

Second, Director Martin incorrectly applies the operational test to conclude that Christians Engaged primarily serves private, nonexempt purposes rather than public, exempt purposes. His analysis fails to apply the required standard for determining whether an organization serves exempt educational purposes and rests on the same erroneous assumption that exempt organizations cannot take positions on public policy issues.

The operational test regards an organization “as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).” 26 C.F.R. § 1.501(c)(3)-1(c)(1). Exempt purposes include, as relevant here, religious, charitable, and educational purposes. *Id.* § 1.501(c)(3)-1(d)(i). In fulfilling these purposes, the organization must serve a public interest rather than a private interest. *Id.* § 1.501(c)(3)-1(d)(ii).

Director Martin concluded that Christians Engaged “serv[es] the private interests of the D [Republican] party more than incidentally,” because it “educate[s] believers on national issues that are central to their belief in the Bible as the inerrant Word of God.”<sup>40</sup> He faults Christian Engaged’s educational activity as “not neutral,” pointing specifically to Christians Engaged’s efforts to “educate Christians on what the bible [sic] says in areas where they can be instrumental including the areas of sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and [sic] borders and immigration, [and] U.S. and Israel relations.”<sup>41</sup> Because “[t]he bible [sic] teachings are typically affiliated with the D [Republican] party and candidates,” Director Martin concludes that Christians Engaged “operate[s] for a substantial non-exempt private purpose” and serves the “private interests of the D [Republican] party.”<sup>42</sup>

This erroneous conclusion results from an analysis that ventures far afield from the applicable regulatory test.<sup>43</sup> Organizations that serve exempt purposes do not cease to serve public interests when they advocate positions on public policy issues or share opinions on controversial issues. “The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3).” *Id.* § 1.501(c)(3)-1(d)(2) (defining “charitable”).<sup>44</sup> Similarly, educational organizations may “advocate[] a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion” and its “principal function” does not merely present “unsupported opinion.” *Id.*

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<sup>40</sup> Proposed Determination Letter at 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> As explained *supra*, Director Martin may have confused the neutrality requirements for voter guides with the requirements for educational activities.

<sup>44</sup> Director Martin does not (and could not) contend that Christians Engaged does not seek to accomplish religious purposes or charitable purposes (the term “charitable” includes “advancement of religion,” 26 C.F.R. § 1.501(c)(3)-1(d)(2)). Accordingly, this section focuses on the Letter’s argument regarding educational purposes.

The methodology standard, adopted after the D.C. Circuit struck down the “full and fair exposition” standard as unconstitutionally vague in isolation,<sup>45</sup> determines whether an organization’s advocacy is educational based on “the method used by an organization in advocating its position, rather than the position itself.”<sup>46</sup> The “viewpoint or position” of the beliefs an organization advocates is irrelevant to determining whether the organization is educational.<sup>47</sup> This standard evaluates four criteria: 1) whether “[t]he presentation of viewpoints or positions unsupported by facts is a significant portion of the organization’s communications,” 2) whether “[t]he facts that purport to support the viewpoints or positions are distorted,” 3) whether “[t]he organization’s presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations,” and 4) whether “[t]he approach used in the organization’s presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.”<sup>48</sup> However, even if “one or more such factors” are present, “[t]he Service will look to all the facts and circumstances to determine whether an organization may be considered educational.”<sup>49</sup>

Director Martin woefully fails to apply this standard. He makes no mention of these criteria, and none of his analysis corresponds to them. He does not consider Christians Engaged’s methods at all; to the contrary, Director Martin considers *only* Christians Engaged’s positions and the religious viewpoint it holds in advocating them. That is, Director Martin deems Christians Engaged’s purpose not educational because he evidently associates biblical positions on national issues with Republicans, not because of the methodology Christians Engaged employs. This directly contradicts the IRS’s procedure and regulations.

Moreover, the Proposed Determination Letter’s analogy to *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), is misplaced. *American Campaign Academy* found that an organization developed by the National Republican Congressional Committee (“NRCC”) to train career political campaign professionals “conducted its educational activities with the partisan objective of benefiting Republican candidates and entities.” *Id.* at 1055, 1070. The court in that case noted that the organization’s curriculum studied a variety of partisan topics, including “Growth of the NRCC,” “Why are people Republicans,” “Other Republican givers lists,” “How some Republicans have won Black votes,” and “NRCC/RNC/NRSC/State Party naughtiness,” while failing to “counterbalance the Republican party focus” with comparable studies of other political parties. *Id.* at 1070–71. As a result, the court found the organization operated to advance the private interests of the Republican party rather than a public interest. *Id.* at 1072.

Director Martin erroneously compares Christians Engaged to *American Campaign Academy* solely because he believes that Christians Engaged’s “bible [sic] teachings are typically affiliated with the D [Republican] party and candidates.”<sup>50</sup> But educating the public on policy issues from a

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<sup>45</sup> *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030 (D.C. Cir. 1980); *Nationalist Movement v. Comm’r*, 102 T.C. 558, 583, *aff’d*, 37 F.3d 216 (5th Cir. 1994); *see also Nat’l Alliance v. United States*, 710 F. 2d 868 (D.C. Cir. 1983).

<sup>46</sup> Rev. Proc. 86-43, 1986-2 C.B. 729 § 2 (1986).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* § 3.

<sup>49</sup> *Id.*

<sup>50</sup> Proposed Determination Letter at 4.



position that a political party may happen to share is not the same thing as primarily serving that party's private interests. Unlike *American Campaign Academy*, Christians Engaged's political activism course is taught from a nonpartisan perspective "to educate and minister to all Texans."<sup>51</sup> It does not single out a particular political party; instead it teaches ordinary citizens how "major political parties are organized," "how to get involved . . . and make a difference in the political party of your choice," and how to engage with elected officials and their offices.<sup>52</sup> These subjects fit within the definition of educational: "relat[ing] to (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community." *Id.* § 1.501(c)(3)-1(d)(3).<sup>53</sup>

That the class also "discusses issues in our national conversation from a Biblical perspective" does not conscript it into the service of private interests.<sup>54</sup> Indeed, similar organizations with similar missions and policy positions are recognized as exempt under § 501(c)(3).<sup>55</sup> Director Martin is also evidently unaware that Christians discussing biblical perspectives on national issues often arrive at different political and policy conclusions.<sup>56</sup> This very possibility is why the methodology test exists—to "minimize the potential for any public official to impose his or her preconceptions or beliefs in determining whether the particular viewpoint or position is educational,"<sup>57</sup> because allowing such "latitude for subjectivity" is constitutionally problematic.<sup>58</sup> Applying the appropriate standard demonstrates that Christians Engaged qualifies for 501(c)(3) status.

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<sup>51</sup> See *supra* note 18.

<sup>52</sup> *Id.*

<sup>53</sup> See Rev. Rul. 72-512, 1972-2 C.B. 246 (determining political science course may require students to participate in the political campaign of their choice without jeopardizing the university's exemption under § 501(c)(3)).

<sup>54</sup> See Rev. Proc. 86-43 § 3.

<sup>55</sup> See, e.g., American Majority, <https://www.americanmajority.org/> (last visited June 14, 2021) ("As a 501c(3) non-partisan, nonprofit, American Majority continually trains, organizes, mobilizes, and equips new grassroots conservative leaders.") (tax exempt status granted Aug. 19, 2008); My Faith Votes, <https://www.myfaithvotes.org/about> (last visited June 14, 2021) ("My Faith Votes calls Christians to "Pray, Think and Vote" in order to protect four core pillars of faith which are religious freedom, the sanctity of life, strong families and marriages, and compassion and support for those in need. We reach Christians to stand boldly for these values in every election and in every community and city across our nation.") (exempt under 501(c)(3), EIN: 48-6393123); And Institute, Inc., <https://www.andcampaign.org/about> (exempt under § 501(c)(3), EIN: 81-3991404) ("To educate and organize Christians for civic and cultural engagement that results in better representation, more just and compassionate policies and a healthier political culture.")

<sup>56</sup> See, e.g., Asma Khalid, *How Joe Biden's Faith Shapes His Politics*, NPR (Sept. 20, 2020), <https://www.npr.org/2020/09/20/913667325/how-joe-bidens-faith-shapes-his-politics> ("Biden, who carries a rosary in his pocket and attends Mass every Sunday, is known as a deeply devout person of faith, and his campaign sees electoral implications in that.") ("[P]eople who know him well say his Catholic faith is central to how he sees the world."); Evangelical Environmental Network, <https://creationcare.org/who-we-are/> ("Our mission is to inspire, equip, educate, and mobilize evangelical Christians to love God and others by rediscovering and reclaiming the Biblical mandate to care for creation and working toward a stable climate and a healthy, pollution-free world.") (exempt under § 501(c)(3), EIN: 23-2827214). Christians who are Democrats may disagree that biblical teachings are affiliated with the Republican party.

<sup>57</sup> Rev. Proc. 86-43 § 2.

<sup>58</sup> *Big Mama Rag*, 651 F.2d at 1037.

## *Viewpoint Discrimination*

Director Martin’s proposed denial of Christians Engaged’s application for exemption under § 501(c)(3) discriminates against its viewpoint in violation of the First Amendment. “The IRS may not discriminate on the basis of viewpoint” when administering the tax code. *Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015); *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983) (noting in a 501(c)(3) status denial challenge that the IRS would violate the First Amendment if it “discriminate[s] invidiously . . . in such a way as to aim at the suppression of dangerous ideas.” (internal quotation marks and alteration omitted)). Viewpoint discrimination “is an egregious form of content discrimination” that targets “particular views taken by speakers on a subject” and is presumptively unconstitutional. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829–31 (1995) (holding that a subsidy program excluding religious publications violated the First Amendment by “select[ing] for disfavored treatment those student journalistic efforts with religious editorial viewpoints”). Discrimination against religious perspectives is itself a form of viewpoint discrimination. *Id.* at 830 (holding that rejecting content because it is from a “religious standpoint” is impermissible viewpoint discrimination (citing *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993))).

As discussed above, Director Martin’s reasoning in denying tax exempt status relies entirely on Christians Engaged’s positions and its religious perspective in articulating them. Denying tax exempt status for Christians Engaged while recognizing the exempt status of other organizations who encourage civic engagement from different viewpoints demonstrates the IRS’s impermissible viewpoint discrimination. For example, the IRS recognizes § 501(c)(3) status for Civic Nation, whose “When We All Vote” initiative, started by Michelle Obama, has as its mission<sup>59</sup>:

[T]o change the culture around voting and to increase participation in each and every election by helping to close the race and age gap. Created by Michelle Obama, When We All Vote brings together individuals, institutions, brands, and organizations to register new voters across the country and advance civic education for the entire family and voters of every age to build an informed and engaged electorate for today and generations to come. We empower our supporters and volunteers to take action through voting, advocating for their rights, and holding their elected officials accountable.

Similarly, the IRS granted tax exempt status to The Libertarian Christian Institute, whose mission is<sup>60</sup>:

[T]o make the Christian case for a free society and provide the best content to proclaim that libertarianism is the most consistent expression of Christian political thought. We aim to persuade Christians that the political expression of our faith inclines us toward the principles of individual liberty and free markets.

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<sup>59</sup> When We All Vote, “About Us,” <https://www.whenweallvote.org/about-us> (last accessed June 14, 2021).

<sup>60</sup> Libertarian Christian Institute, “Our Mission, Vision, & Core Values,” <https://libertarianchristians.com/mission/> (last accessed June 14, 2021).

The IRS also recognizes the tax exempt status of Faith in Texas, “a nonpartisan, multi-racial, multi-faith grassroots movement of people united in values working together to achieve economic, racial, and social justice for all people” that works to end mass incarceration, gun violence, and “profiting off of the suffering of immigrant families” and to support a “moral economy” through voter mobilization.<sup>61</sup>

The IRS recognizes each of these organizations as tax exempt under § 501(c)(3). Each of these organizations is functionally similar to Christians Engaged, but each organization approaches civic engagement from a different viewpoint. Director Martin’s objections to Christians Engaged, however, are equally applicable to these organizations, yet they received tax-exempt status while Christians Engaged did not.

The Proposed Determination Letter’s blatant disregard for regulatory requirements and the IRS’s granting of tax-exempt status to similar organizations with different viewpoints demonstrates that the IRS is discriminating against Christians Engaged’s religious viewpoint. Indeed, the IRS has an enduring track record of discriminating against conservative organizations’ applications for 501(c)(3) status.<sup>62</sup> Consequently, the denial of Christians Engaged’s application for tax exemption violates the First Amendment’s prohibition on viewpoint discrimination.

#### *Free Exercise Clause and Establishment Clause*

Likewise, Director Martin’s discrimination against particular religions—here, all religions whose beliefs are grounded in the Bible—violates the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. In the Proposed Determination Letter, Director Martin states that Christians Engaged “educate[s] believers on national issues that are central to their belief in the Bible as the inerrant Word of God. . . . The bible [sic] teachings are typically affiliated with the D [Republican] party and candidates. This disqualifies [Christians Engaged] from exemption under IRC Section 501(c)(3).”<sup>63</sup>

First, Director Martin’s bald assertion that “bible [sic] teachings are typically affiliated with the D [Republican] party and candidates” constitutes an impermissible governmental interpretation of religious doctrine and one with which Christians Engaged strongly disagrees. Christians Engaged believes that the Bible is for persons of any political party and that conscientious Christians may support different public policy proposals and candidates. Indeed, President Biden, who is not a member of the Republican Party, quoted the Bible as recently as last month, saying in his remarks at the 153rd National Memorial Day Observance, “The Bible teaches, ‘Blessed are they that mourn, for they shall be comforted.’”<sup>64</sup> Director Martin’s analysis of “the bible [sic] teachings,” however, presupposes that the only valid interpretations of the Bible are those that comport with policy positions of the Republican party. Such determinations—indeed, even such inquiries—are

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<sup>61</sup> Faith In Texas, “The Power of Faithful People,” <https://faithintx.org> (last accessed June 14, 2021).

<sup>62</sup> See *True the Vote, Inc. v. I.R.S.*, 831 F.3d 551, 556 (D.C. Cir. 2016) (citing a 2013 Inspector General audit report explaining that the IRS systematically targeted conservative organizations for discriminatory treatment and finding that the IRS, though improved, had not ceased that practice).

<sup>63</sup> Proposed Determination Letter at 4.

<sup>64</sup> Joseph Biden, “Remarks by President Biden at the 153rd National Memorial Day Observance,” *available at* <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/05/31/remarks-by-president-biden-at-the-153rd-national-memorial-day-observance/> (May 31, 2021).

constitutionally prohibited. *See Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (“It is well established . . . that courts should refrain from trolling through a person’s or institution’s religious beliefs.”); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (“It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.”); *see also Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1261 (10th Cir. 2008) (“Properly understood, the doctrine protects religious institutions from governmental monitoring or second guessing of their religious beliefs and practices, whether as a condition to receiving benefits . . . or as a basis for regulation or exclusion from benefits . . .”).

Second, the Proposed Determination Letter obviously departs from the neutrality towards religion from which even a “subtle departure” is prohibited. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (“The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993))). Director Martin’s stereotyping of those who believe the Bible to be “the inerrant M [Word of God]” and his treatment of Christians Engaged in a manner that is inconsistent with the IRS’s treatment of other organizations who engage in comparable conduct indicate that Christians Engaged’s application for tax exempt status “was not considered with the neutrality that the Free Exercise Clause requires.” *Masterpiece Cakeshop*, 138 S. Ct. at 1731–32 (noting that expressions of hostility towards religion and “disparate consideration” of a religious organization are “inconsistent with what the Free Exercise Clause requires”).

By Director Martin’s reasoning, any church that teaches these commonly-held religious beliefs and encourages its parishioners to fulfill their civic duty to vote would violate the restrictions on campaign intervention, because the IRS views the religious beliefs as overlapping with a particular party’s positions. We hope that the Proposed Determination Letter does not imply such a drastic and sweeping shift in how the IRS views encouragement to civic engagement by those who believe the Bible.

## Conclusion

For these reasons, Director Martin wrongly concludes that Christians Engaged is ineligible for tax-exempt status under 26 U.S.C. § 501(c)(3). Accordingly, Christians Engaged respectfully requests that the Office of Independent Appeals rescind the Proposed Denial Letter and issue a favorable determination letter. Christians Engaged requests Independent Appeals Office consideration and conference. Please direct all communications regarding this protest to my attention. You may contact me by email at [lepatterson@firstliberty.org](mailto:lepatterson@firstliberty.org), by phone at 469-440-7598, or by fax at 972-941-4457.

Sincerely,



Lea Patterson  
Counsel

Enclosures:

Form 2848, Power of Attorney and Declaration of Representative

Declaration of Lea Patterson

Declaration of Bunni Pounds

Letter from Stephen A. Martin to Christians Engaged (May 18, 2021)

Christians Engaged Certificate of Formation

Christians Engaged Amended Bylaws (Dec. 5, 2019)

Letter from Bunni Pounds to Robert Vance re: Response to Second Information Request (Aug. 25, 2020)