

September 21, 2006

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
950 L'Enfant Plaza, S.W.
5th Floor
Washington D.C. 20024

Re: Minnesota Family Institute, EIN # 41-1439560

Dear Commissioner Everson:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests an immediate Internal Revenue Service investigation into the activities of Minnesota Family Institute ("MFI"), a nonprofit corporation exempt from taxation pursuant to Internal Revenue Code ("IRC") § 501(c)(3). Because of the serious nature of the tax law violations, it would be appropriate for the Internal Revenue Service ("IRS") to revoke the tax-exempt status and impose appropriate excise taxes and penalties on both organizations.

As set forth more fully below, MFI has engaged in prohibited electioneering by implying the endorsement of a favored candidate in a recent mailing. Pursuant to IRS procedures, CREW is also submitting this complaint to the IRS field office in Dallas.

IRC Section 501(c)(3) Restrictions

Public charities are granted special privileges under federal tax law. Among these are exemption from most income tax, and the ability to confer tax-deductibility to donor contributions. In order to qualify for these desirable attributes, a public charity must be exclusively organized to engage in charitable activities, demonstrate a minimum level of public support, ensure that its lobbying activities are not a substantial part of its overall activities, and strictly avoid intervening in the elections of public officials. IRC § 501(c)(3). Should a public charity fail to meet these basic terms, the law states that it is not qualified to remain tax exempt. 26 C.F.R. § 1.501(c)(3)-1(c)(3). The IRS is solely responsible for enforcing the provisions of IRC § 501(c)(3). See IRC § 7801(a)(2).

Prohibition on Campaign Intervention

Tax law absolutely prohibits public charities from participating or intervening in any political campaign on behalf of, or in opposition to any candidate for public office. 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii); United States v. Dykema, 666 F.2d 1096, 1101 (7th Cir. 1981), cert.

denied, 456 U.S. 983 (1982); Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989).¹ A candidate for public office is defined as an individual who offers himself or herself, or is proposed by others, as a contestant for an elective federal, state, or local office. G.C.M. 39811 (June 30, 1989). A public charity participates or intervenes in a political campaign if it does anything that supports or opposes a candidate through any method of distribution, including but not limited to, oral statements, or distribution of written or printed materials. Id. See also 26 C.F.R. § 53.4945-3(a)(2).

The IRS considers all of the facts and circumstances in determining whether a public charity has illegally intervened or participated in a political campaign. See Rev. Rul. 78-248, 1978-1, C.B. 154. A public charity violates the prohibition on participating in political campaigns even if it never formally endorses specific candidates, but only uses its publications and broadcasts to attack some candidates and support others. See Christian Echoes Nat'l Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972).

Background

MFI and the 501(c)(4) social welfare organization Minnesota Family Council (“MFC”), are affiliated Minneapolis, Minnesota-based exempt organizations. In early September, 2006, the organizations recently sent a joint-mailing entitled, *Pro-Family News* in which it stated the following:

In a June 2005 City Pages article, state Sen. Paul Koering, GOP District 12, stated that he supported same-sex civil unions.

His statement, and his refusal to sign the Marriage Protection Pledge, have caused supporters of one-man, one-woman marriage alarm.

Koering’s voting record on the amendment has been unpredictable as well. Koering has flip-flopped, voting both for and against bringing the Marriage Amendment to the senate floor for a vote.

In a related story, Koering’s challenger in the Sept. 12, District 12 GOP primary, Kevin Goedker, has signed the Marriage Protection Pledge and says he supports the Minnesota Marriage Amendment.

“GOP primary voters have a clear choice between a candidate who supports gay

¹ In Dykema, the Seventh Circuit stated, “It should be noted that exemption is lost... by participation in any political campaign on behalf of any candidate for public office. It need not form a substantial part of the organization’s activities.” 666 F.2d at 1101. In Association of the Bar of the City of New York, the Second Circuit more bluntly rejected an argument that tax law allows public charities to engage in an insubstantial amount of campaign intervention by stating, “Congress did not write the statute that way,” and “no degree of support for an individual’s candidacy is permitted.” 858 F.2d at 881.

civil unions and one who is committed to protecting marriage,” said Chuck Darrell, director of communications for the Minnesota Family Council.

MFI and MFC, *Pro-Family News* (September 2006)(Attached as Exhibit A).

Although, according to the document footer, MFC paid for the mailing, the content indicates that the document was also endorsed and produced by MFI. *Id.* The masthead and return address of the *Pro-Family News* includes MFI, and the article immediately below the Koering -Goedker piece focused on MFI activities. *Id.* MFI is tightly integrated in the production of this document, and its content, including the quotation by an MFC spokesperson, should be attributed to MFI. *See, e.g. Regan v. Taxpayers With Representation of Washington*, 461 U.S. 540 (1983)(activities are not attributed to an affiliated organization so long as activities are separately conducted); *See also* Judith Kindell and John Reilly, *Exempt Organizations Continuing Professional Education Technical Instruction Program*, (1997) at 438.

On its face, the jointly-released *Pro-Family News* mailing extolled the values of Mr. Goedker as a candidate for the state senate, while simultaneously criticizing the positions of his opponent, Sen. Koering. *See* Exhibit A. Recent IRS guidance regarding campaign intervention states that the key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office

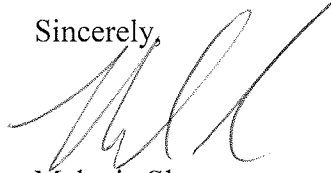
IRS FS-2006-17, February 2006. The prohibition on electioneering by public charities extends beyond explicit endorsements to include slanted educational communications that support a candidate using code-words to show support. *See* TAM 91-17-001 (September 5, 1990). MFI’s comparison of the candidates using the phrase “protecting marriage” was apparently designed to provide a tacit endorsement of Mr. Goedker’s candidacy. Although the *Pro-Family News* stopped short of expressly advocating for the election of Mr. Goedker, the facts and circumstances clearly show that MFI supported his candidacy, in violation of the law. *See Christian Echoes*, 470 F.2d at 856.

Conclusion

Based on the facts and circumstances described above, CREW respectfully requests that the IRS conduct a full-scale investigation to determine whether MFI engaged in prohibited electioneering. We further request that the IRS revoke MFI’s tax exempt status, impose all applicable fines and penalties, and pursue all other available remedies it deems appropriate.

Thank you for your consideration of this important matter. Please contact me if I can provide additional information or be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'MS', written in a cursive style.

Melanie Sloan
Executive Director
Citizens for Responsibility and Ethics
in Washington

Enclosures

cc: IRS – EO Classification, Dallas

EXHIBIT A



Pro-Family News

To Defend and Strengthen Families...

Minnesota Family Council/Minnesota Family Institute

Special Primary Edition

SEP-10-2006 19:16 FROM:3

Koering supports same-sex unions refuses MN Marriage Amendment

Primary challenger Kevin Goedker signs Marriage Protection Pledge, supports amendment

In a June 2005 City Pages article, state Sen. Paul Koering, GOP District 12, stated that he supported same-sex civil unions.

His statement, and his refusal to sign the Marriage Protection Pledge, have caused supporters of one-man, one-woman marriage alarm.

Koering's voting record on the amendment has been unpredictable as well. Koering has flip-flopped, voting both for and against bringing the Marriage Amendment to the senate floor for a vote.

In a related story, Koering's challenger in the Sept. 12, District 12 GOP primary, Kevin Goedker, has signed the Marriage Protection pledge and says he supports the Minnesota Marriage Amendment.

"GOP primary voters have a clear choice between a candidate who supports gay civil unions and one who is committed to protecting marriage," said Chuck Darrell, director of communications for the Minnesota Family Council.



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Sen. Paul Koering faces primary challenge from Kevin Goedker.

Register, and vote your values in September primary Sponsor a voter registration drive in your church

The Sept. 12 primary will be the first time Sen. Koering has to face reelection since his vote to block the Marriage Amendment and failure to vote against promotion of homosexuality in schools.

In July the Minnesota Family Institute (MFI) announced Election IMPACT 2006, a non-partisan, church-based effort to

educate, register and mobilize people of faith to vote in the November elections.

For churches interested in hosting a Voter Registration Drive, the MFI offers Election IMPACT Kits, a complete resource of talking points, get-out-the-vote posters, display set, voter registration cards and absentee ballots.

Citizens may go to the Election Resource Center at www.mnvoter.com and link to candidates' web sites and organizations that focus on issue of concern to people of faith. To organize a voter registration drive in your church, or if you have any questions, contact the MFI at (612) 789-8811 ext. 21 or visit www.mnvoter.com.

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2455 Anthony Lane, S. Suite 150
Minneapolis, MN 55418-3256

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ORGANIZATION
U.S. POSTAGE PAID
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CAMBRIDGE, MN 55008

18/37

OR CURRENT RESIDENT

FORT RIPLEY MN 56449-1318

Education

NEA to teach homosexuality in schools

By Barb Anderson

Over the Fourth of July weekend the National Education Association (NEA) Convention had a few fireworks of its own as gay activists opposed the Ex-Gay teachers Caucus (EGTC).

Under the banner of tolerance and diversity, the NEA demanded the right to teach school-age children about gender identification, homosexuality and homophobia.

What they don't want taught is that gays can change and become ex-gays.

In a groundbreaking move, the EGTC (former homosexuals) had an exhibit of their own.

Ex-gay teacher Greg Quinlan and ex-lesbian Janet

Boynes were verbally harassed by hostile opponents who told them they were liars and didn't belong there.

One gay man (who believed his mission was to spread the homosexual agenda to children) tried to engage Quinlan in a physical altercation.

The sheriff's department arrested the anti-ex-gay activist for disorderly conduct.

Both Boynes and Quinlan were pleased to have the opportunity to share the truth that homosexuals can change from gay to straight.

Boynes wants students and



Learn more about Janet Boynes' ministry at www.janetboynesministries.com.

teachers struggling with same sex attraction to know that they too, can be called out of the darkness into the light.

Subscribe to the Pro-Family News

To subscribe to the Pro-Family News contact Chuck (chuck@mfc.org) and include your name, mailing address, phone and e-mail address.