

CATHOLICS  
FOR  
CHOICE

IN GOOD CONSCIENCE

Marsha Ramirez  
Director, Exempt Organization Examinations  
Internal Revenue Service  
SE:T:EO:EX - MS 4900 DAL  
1100 Commerce Street  
Dallas TX 75242

November 20, 2008

Dear Marsha Ramirez:

I write to request that the Internal Revenue Service (“IRS”) take immediate action against the Population Research Institute, Inc. (“PRI,” EIN 54-1819935), which has violated its status as a public charity under Internal Revenue Code (“IRC”) section 501(c)(3) by intervening in campaigns for public office. In the enclosed edition of its *Weekly Briefing* email newsletter that was distributed on October 30, 2008, less than a week before the 2008 federal elections, PRI urged readers to “vote pro-life” in the imminent election and went on to describe in detail how Republican presidential candidate John McCain was “pro-life,” while his opponent, Democratic presidential candidate Barack Obama was not.

### The Newsletter

As its name suggests, the *Weekly Briefing* is a weekly electronic newsletter published by PRI. The newsletter is available on the organization’s website ([www.pop.org](http://www.pop.org)) and emailed to anyone who signs up to receive a copy on the organization’s website. The newsletter is made available in both English and Spanish.<sup>1</sup>

The October 30 PRI *Weekly Briefing* opened with a statement from PRI President Steven Mosher emphasizing the importance of the upcoming election and stating that “The differences between the candidates on the Life issues could not be more dramatic. We at PRI would like to urge each and every one of you to vote in this

<sup>1</sup> As of the date of this letter, the October 30 issue of the newsletter has not been added to the website archives, but it was sent to a PRI mailing list of unknown size.

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election – and to vote pro-life.” The remainder of the newsletter is dedicated to an article by PRI Director of Media Production Colin Mason reemphasizing the importance of the upcoming election and explicitly comparing Republican presidential candidate John McCain and his opponent Democratic presidential candidate Barack Obama. The Mason piece states:

[t]here are stark differences between the two candidates on the life issues. John McCain has a perfect pro-life voting record in his years in the Senate, and has chosen a committed social conservative as his running mate. Barack Obama, for his part, has a record of consistently voting against the unborn.

The article then seeks to illustrate this characterization of the candidates’ positions with specific examples and goes on to discuss the supposed consequences “[i]f the pro-life candidate wins” and “[i]f the pro-abortion candidate wins.” The article concludes with the exhortation to “Vote pro-life.”

In the colophon at the end of the newsletter, the copyright to the material is claimed for PRI, which is described as “a 501(c)(3) educational organization” and which solicits “a tax-deductible donation.”<sup>2</sup>

## **The Law**

Charities are subject to an absolute prohibition that they may 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.”<sup>3</sup> In addition to revocation of its tax-exempt status, an organization violating this restriction and the organization’s managers are subject to excise taxes under IRC section 4955.

A 501(c)(3) organization need not explicitly urge voters to support or oppose a particular candidate for illegal campaign intervention to take place. In Revenue Ruling 2007-41, the IRS explains that:

501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. 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.

As the IRS staff training manual on election-year activities by tax-exempt organizations puts it:

[A] 501(c)(3) organization may avail itself of the opportunity to intervene in a political campaign in a rather surreptitious manner. The concern is

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<sup>2</sup> Strangely, the copyright for this 2008 material is dated 2007, presumably because PRI has failed to update its newsletter template.

<sup>3</sup> IRC section 501(c)(3).

that an IRC 501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate's name in its messages, such as "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," "Democrat," etc., coupled with a discussion of the candidacy or the election. When this occurs, it is quite evident what is happening – an intervention is taking place.<sup>4</sup>

The IRS explains that whether or not a 501(c)(3) organization has intervened in a political campaign depends on all of the relevant "facts and circumstances." Among the key factors that Revenue Ruling 2007-41 identifies as determining whether or not campaign intervention have occurred are:

- 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; [and]
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office.

## Analysis

The October 30 *Weekly Briefing* is an endorsement of John McCain's candidacy. It explicitly describes John McCain as "pro-life" and make is clear that PRI does not consider Barack Obama to be "pro-life." It expressly urges readers to "Vote pro-life." Considering the factors listed in Revenue Ruling 2007-41, almost all of the factors suggest that PRI has intervened in the election in that the newsletter (i) identifies both John McCain and Barack Obama as candidates running for the presidency; (ii) expresses approval of John McCain's positions and disapproval of Barack Obama's; (iii) delivers the message less than a week before the election; (iv) repeatedly refers to the upcoming election and urges readers to vote in the election (in the way prescribed by PRI); and (v) focuses solely on the issue of abortion, an issue on which PRI takes pains to demonstrate the candidates are sharply divided.<sup>5</sup>

The communication is clearly attributable to PRI and not simply the personal views of the authors. The partisan communications appear in the regular newsletter of the

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<sup>4</sup> Judith E. Kindell and John Francis Reilly, "Election Year Issues," *IRS Continuing Professional Education Manual for FY 2002* at 345.

<sup>5</sup> Revenue Ruling 2007-41 does list one factor that PRI might argue suggests a non-electioneering intent: "[w]hether 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." Although PRI does publish a weekly newsletter on abortion issues, a review of the newsletters on its website suggests that this singular focus on the positions of competing candidates for office is not typical, and, in any event, the weight of the other factors clearly shows that PRI's purpose in this issue was to influence the upcoming election.

organization. The language it contains is attributed to two officials of the organization, including its president. The organization asserts a copyright to the material and describes its claimed tax-exempt status in the communication.

In short, the facts and circumstances show that PRI has, without a doubt, produced this newsletter in an attempt to intervene in the presidential election in violation of the organization's 501(c)(3) status. To protect the integrity of the nation's tax laws, to protect the reputation of the charitable sector, and to prevent other organizations from being led astray by PRI's bad example, it is essential that the IRS act swiftly to strip PRI of its tax-exempt status. I look forward to your prompt attention to this matter.

Sincerely,

Jon O'Brien  
President

CC:  
Mr. Steven T. Miller  
Commissioner, Tax-Exempt and Government Entities Division  
Internal Revenue Service

Ms. Lois Lerner  
Director, Exempt Organizations  
Internal Revenue Service

The Honorable Max Baucus, Chairman  
Senate Finance Committee

The Honorable Charles Grassley, Ranking Republican Member  
Senate Finance Committee

The Honorable Charles Rangel, Chairman  
House Ways and Means Committee

The Honorable Jim McCrery, Ranking Republican Member  
House Ways and Means Committee

Enc./ ...

## PRI Weekly Briefing - Vote as if Lives Depend on It

From: [pri@pop.org](mailto:pri@pop.org)

Sent: Thu 10/30/08 2:54 PM

To:



Next Tuesday, the voters will arguably determine, by their choice of candidates, the fate of the pro-life cause for a generation. The differences between the candidates on the Life issues could not be more dramatic. We at PRI would like to urge each and every one of you to vote in this election—and to vote pro-life.

Steven Mosher

### Vote as if Lives Depend on It - Because They Do

by Colin Mason

On Tuesday, we will participate in a historic election.

The stakes are high, and the campaign hard-fought. Already, in states like North Carolina and Florida, early voting has drawn record-smashing crowds. The nation's voters are engaged in this election to a degree rare in American history, and pro-life voters must play their part. It is of paramount importance that values voters go to the voting booth on November 4<sup>th</sup>, and that they bring their pro-life convictions with them.

There are stark differences between the two candidates on the life issues. John McCain has a perfect pro-life voting record in his years in the Senate, and has chosen a committed social conservative as his running mate. Barack Obama, for his part, has a record of consistently voting against the unborn. His radical stance in favor of abortion is illustrated by his insistence, at a Planned Parenthood function, that on the "fundamental issue" of choice, he "will not yield and Planned Parenthood will not yield."

#### If elected, John McCain would:

- Veto the so-called Freedom of Choice Act," which would overturn any and all restrictions on abortion, including parental consent laws, waiting periods, informed consent laws and the like.
- Serve as a check on the Congress, where a pro-abortion majority dominates both the House and the Senate.
- Appoint strict constructionist justices to the Supreme Court, who less likely to distort the meaning of the Constitution to serve their political and ideological ends.
- Issue Executive Orders which protect and defend innocent human life.
- Sign pro-life laws and amendments into law, thus encouraging Congressional pro-lifers to work on

#### If elected, Barack Obama would:

- Sign into law the so-called Freedom of Choice Act."
- Preside over a government dominated by the party of abortion, putting both the executive and the legislative branches in the hands of a single party.
- Appoint justices on the basis of their "empathy," rather than on their adherence to the original intent of the Founders.
- Issue Executive Orders which promote the cause of abortion, and increase its numbers.
- Veto any pro-life laws and amendments that reached his desk.
- Serve with a vice president who shares his determination to promote abortion on demand without

- behalf of such legislation
- Enjoy the support of a staunchly pro-life vice president.

restrictions.

This is, for the pro-life movement, a watershed election. If the pro-life candidate wins, he will be able to protect our gains of past decades, and ensure that the federal judiciary is peopled by judges who will not legislate from the bench. If the pro-abortion candidate wins, not only will all of our gains be undone, abortion-on-demand will be written into national law.

Spread the word. Get involved. And on November 4<sup>th</sup> vote as if millions of lives depend on it. Because they do.

Vote pro-life.

*Colin Mason is Director of Media Production at PRI.*

[Sign up for the Weekly Briefing Here](#)

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PRI is a 501(c)(3) educational organization. If you would like to make a tax-deductible donation to PRI, please go to our [Donations Page](#). All donations (of any size) are welcomed and appreciated.

The pro-life Population Research Institute is dedicated to ending human rights abuses committed in the name of "family planning," and to ending counter-productive social and economic paradigms premised on the myth of "overpopulation." Find us at [www.pop.org](http://www.pop.org)

PRI, PO Box 1559, Front Royal, VA 22630 USA Phone: 540-622-5240

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