

Westboro Baptist Church: Tax-Exempt Hate Group?

The Westboro Baptist Church (WBC) of Topeka, Kansas, does not appear to be a typical church that has been historically granted § 501(c)(3) tax exemption under the Internal Revenue Code. The church is best known for its anti-homosexual stance and protests at the funerals of soldiers and the funerals of victims of mass shootings, such as Sandy Hook. In a time of political divide, “[o]ne thing that seems to unite most Americans is the collective disgust for the members of the Westboro Baptist Church and their antics.”¹ Regardless of the seemingly universal hatred for the WBC, it is still exempt from federal taxes under § 501(c)(3). This summer, the White House responded to two petitions concerning the WBC’s tax-exempt status and potential classification as a hate group, but it is not in the president’s power to revoke tax-exempt status.²

Critics of the WBC argue that it does not meet the requirements of § 501(c)(3) even though it functions as a church. Although a church is normally an exempt purpose, some believe that the WBC is not operating exclusively as a church because of its protests and activism, which do not appear to advance religion.³ Charitable organizations should operate for some public benefit, and it is unclear how the WBC qualifies.

An organization can quickly lose its tax exemption if it engages in overtly political activities, such as supporting a campaign. However, despite its many protests, the WBC has been very careful not to cross into the realm of politics.⁴ Any criticism of political figures, such as

¹ Tiffany Willis, *White House’s Amazing Response to Westboro Baptist Church Petitions*, Sept. 8, 2013, <http://www.liberalamerica.org/2013/09/08/white-houses-amazing-response-to-westboro-baptist-church-petitions-video/>.

² Daniel Strauss, *White House Condemns Westboro Protests in Petition Response*, July 3, 2013, <http://thehill.com/blogs/blog-briefing-room/news/309097-white-house-responds-to-we-the-people-petitions-on-westboro-baptist-church>.

³ Jacob Pillsbury, *Why is the Westboro Baptist Church Tax-Exempt?*, Dec. 19, 2012, <http://www.dolmanlaw.com/westboro-baptist-church-tax-exempt-2/>

⁴ J. Bryan Lowder, *Subsidized Hate*, Mar. 4, 2011, http://www.slate.com/articles/news_and_politics/explainer/2011/03/subsidized_hate.html.

Hillary Clinton and Al Gore, is directed at the person rather than a campaign.⁵ Furthermore, the WBC does not mention specific legislation, declaring an anti-homosexual message rather than directly confronting Proposition 8 or same-sex marriage generally.⁶ Most members of the WBC are attorneys and family members of the founder, Fred Phelps, who was a former civil rights attorney.⁷ Based on their legal knowledge, they have been able to come close to the line of what charitable organizations may do without actually crossing it.⁸ Despite their familiarity with the law, a 2008 Kansas State Board of Tax Appeals ruling declared that the WBC truck that was used to transport signs to the protests was “too involved” in political, non-church-related activities to be exempt from taxes.⁹

It is clear that the government cannot revoke an organization’s tax-exempt status simply based upon its viewpoint because that would violate the First Amendment.¹⁰ The Supreme Court even ruled in 2011 that the First Amendment protects protests at military funerals.¹¹ The majority opinion in the eight-to-one decision cited two reasons for its ruling: the speech was about matters of public concern and the protesters complied with the legal buffer zone.¹² Under freedom of speech, the protesters “cannot be restricted simply because [their speech] is upsetting or arouses contempt.”¹³

⁵ *Id.*

⁶ *Id.*

⁷ Stephen Clark, *Church Status Allows Funeral Protesters to Avoid Taxes*, Apr. 17, 2010, <http://www.foxnews.com/politics/2010/04/17/church-status-allows-funeral-protesters-avoid-taxes/>.

⁸ *Id.*

⁹ Lowder, *supra* note 4.

¹⁰ Eugene Volokh, *Can the Westboro Baptist Church (the Funeral Picketers) Be Stripped of Their Tax-Exempt Status Because of Their Views?*, Dec. 17, 2012, <http://www.volokh.com/2012/12/17/can-the-westboro-baptist-church-the-funeral-picketers-be-stripped-of-their-tax-exempt-status-because-of-their-views/> (citing *Rosenberger v. Univ. of Va.*, 515 U.S. 819 (1995) and *Speiser v. Randall*, 357 U.S. 513 (1958)).

¹¹ Adam Liptak, *Justices Rule for Protesters at Military Funerals*, Mar. 2, 2011, http://www.nytimes.com/2011/03/03/us/03scotus.html?pagewanted=all&_r=0.

¹² *Id.*

¹³ *Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2011).

Interestingly enough, the WBC does not appear to have a mission statement. After searching its website as well as the Internet, all that resulted was a WBC sermon alluding to someone else with the same question, asking for a mission statement.¹⁴ The response was: “[t]he church of the Lord Jesus Christ does NOT do mission statements. What we do is search the scriptures daily to learn what God requires of us and then we do it.”¹⁵

The best argument for revoking the WBC’s tax-exempt status is not its protests, but private benefit; most of the church congregants are members of the Phelps family and attorneys for the family’s law firm, “which makes them seem more like a home-grown activist group with a vested financial interest in political outcomes than a religious organization.”¹⁶

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¹⁴ Westboro Baptist Church, Sermon Outline, Mar. 13, 2011, http://www.godhatesfags.com/sermons/outlines/Sermon_20110313.pdf

¹⁵ *Id.*

¹⁶ Lowder, *supra* note 4.