

Recent Legislative and Finance Developments Impacting Christian Ministries

Christian Legal Society – General Counsel Forum 2022

1. **Speaker Name.** Michael Martin, J.D., CPA
2. **Speaker Bio.** Michael Martin became ECFA's president in 2020. Both an attorney and a CPA, he had previously served on ECFA staff for nine years, most recently as Executive Vice President. An accomplished communicator, Michael has written on both scholarly and popular levels. His authorship is probably best known from the annual *Minister's Tax & Financial Guide* and the *Church and Nonprofit Tax & Financial Guide*, both of which he co-authored with former ECFA President Dan Busby, beginning with the 2013 editions. Michael is passionate about helping churches and Christ-centered ministries maintain high standards of financial integrity through ECFA membership, as well as through addressing legal and tax-related issues. He is a frequent speaker on ECFA's webinars, videos, and podcasts, as well as a regular contributor to ECFA's library of eBooks and other written publications. He has spoken at numerous conferences and workshops across the country, and he has served as a guest on webinars, videos, and podcasts for numerous Christ-centered ministries and churches. Michael lives in Winchester, Virginia, with his wife and four daughters.
3. **Workshop Description.** The political environment on Capitol Hill continues to be dynamic, and the potential impacts on religious, nonprofit organizations are numerous. Join Michael Martin, president and CEO of ECFA, for this informative session focusing on the latest legislative and finance developments from our nation's capital with practical takeaways for general counsels of Christian ministries.
4. **Length of Workshop.** 45 minutes

Workshop Outline

IRS Updates

IRS Defends Charity Approval Process but Signals Changes

- IRS's recent comments standing by the benefits of its streamlined Form 1023-EZ tax exempt organization application (introduced several years ago to speed the approval process for new organizations seeking tax-exempt status).
- The IRS published an article titled "Streamlining the 1023 – A Success Story" making the case for the success of the 1023-EZ: <https://www.irs.gov/about-irs/streamlining-the-1023-a-success-story>.
- However, after pushback about the legitimacy of the IRS approval process, IRS leadership is signaling that it may consider expanding the simplified form by beginning to require governing documents to accompany the form.

IRS Discovers Disclosure of Confidential 990-T Filings

- Just before Labor Day, the IRS announced its discovery that confidential Form 990-T filings with information on roughly 120,000 individuals had been inadvertently posted for bulk download by the public.
- According to the letter, the IRS immediately took steps to remove the data and is working to correct the mistake with groups that routinely access and utilize such public files on its Tax Exempt Organization Search (TEOS) platform.

Scrutiny of Church Status

- Many religious organizations have pursued recognition of church status or association of churches status as a strategy because of the heightened legal protections and benefits available to organizations with this classification but not without controversy.
- The latest criticism – ProPublica article taking aim at Family Research Council for being recognized with church status.
- Resulted in an August 1, 2022 letter by concerned members of Congress to the Treasury Secretary and IRS Commissioner - [https://huffman.house.gov/imo/media/doc/Huffman%20DeIBene%20IRS%20FRC%20Final%20Letter%20\(PDF\)%20\(002\).pdf](https://huffman.house.gov/imo/media/doc/Huffman%20DeIBene%20IRS%20FRC%20Final%20Letter%20(PDF)%20(002).pdf).

The Congressional Landscape

- Just a few weeks away from the 2022 mid-term elections and approaching 2 years into the Biden Administration.
- As we've all seen in these last couple of years, the President's more ambitious legislative agenda has been limited by tight margins in Congress.
- What to Watch for in Mid-Term Elections... Whatever the exact outcome of these elections, expect a highly partisan environment on the Hill over the next 2 years and the legislative gridlock that comes with divided government.

The Overturn of *Roe v. Wade*

- The *Dobbs* decision will have a major effect on legislative and regulatory debates in Washington, DC, and state capitals in the months and years ahead.
- Be mindful of legislation and regulatory proceedings that would carve out religious freedom protections... or otherwise place religious ministries in difficult situations.
- For example, in the Women's Health Protection Act (H.R.8296) there is a provision that would specifically preclude the Religious Freedom Restoration Act (RFRA) as a potential defense for ministries.

SEC. 5. APPLICABILITY AND PREEMPTION.

In General.—

Except as stated under subsection (b), this Act supersedes and applies to the law of the Federal Government and each State government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the Federal Government nor any State government shall administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of Federal law, including the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

- RFRA is simply a balancing test to ensure government does not “substantially burden” the free exercise of religion without demonstrating a “compelling government interest” achieved by “the least restrictive means.”

§2000bb–1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103–141, §3, Nov. 16, 1993, 107 Stat. 1488.)

Action for the LGBT Community

- President Biden signed an LGBT-related Executive Order on June 15: “Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals” (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/15/executive-order-on-advancing-equality-for-lesbian-gay-bisexual-transgender-queer-and-intersex-individuals/>)
- It is a very broad order, and its eventual effect is to be determined, but it intends “to combat unlawful discrimination and eliminate disparities that harm LGBTQI+ individuals and their families, defend their rights and safety, and pursue a comprehensive approach to delivering the full promise of equality for LGBTQI+ individuals.”
- In the order’s attention to “discriminatory legislative attacks” (which seem to have state and local efforts in view) it tasks federal agencies to take actions to counter such efforts.
- Among its other provisions, it takes aim at “conversion therapy” while purporting to bolster health programs.
- It is also worth noting the Order’s attention to recent battlegrounds for religious ministries like foster care and homelessness, among others.

Foster Care:

Section 5(b)

(b) The Secretary of HHS shall direct the Assistant Secretary for Family Support to establish an initiative to partner with State child welfare agencies to help address and eliminate disparities in the child welfare system experienced by LGBTQI+ children, parents, and caregivers, including: the over-representation of LGBTQI+ youth in the child welfare system, including over-representation in congregate placements; disproportionately high rates of abuse, and placements in unsupportive or hostile environments faced by LGBTQI+ youth in foster care; disproportionately high rates of homelessness faced by LGBTQI+ youth who exit foster care; and discrimination faced by LGBTQI+ parents, kin, and foster and adoptive families. The initiative, as appropriate and consistent with applicable law, shall also take actions to:

(i) seek funding opportunities for programs and services that improve outcomes for LGBTQI+ children in the child welfare system;

- (ii) provide increased training and technical assistance to State child welfare agencies and child welfare personnel on promising practices to support LGBTQI+ youth in foster care and LGBTQI+ parents and caregivers;
 - (iii) develop sample policies for supporting LGBTQI+ children, parents, and caregivers in the child welfare system;
 - (iv) promote equity and inclusion for LGBTQI+ foster and adoptive parents in their interactions with the child welfare system;
 - (v) evaluate the rate of child removals from LGBTQI+ families of origin, in particular families that include LGBTQI+ women of color, and develop proposals to address any disproportionate rates of child removals faced by such families;
 - (vi) assess and improve the responsible collection and use of data on sexual orientation and gender identity in the child welfare system to measure and address inequities faced by LGBTQI+ children, parents, and caregivers, while safeguarding the privacy, safety, and civil rights of LGBTQI+ youth; and
 - (vii) advance policies that help to prevent the placement of LGBTQI+ youth in foster and congregate care environments that will be hostile to their gender identity or sexual orientation.
- (c) The Attorney General shall establish a clearinghouse within the Office of Juvenile Justice and Delinquency Prevention to provide effective training, technical assistance, and other resources for jurisdictions seeking to better serve LGBTQI+ youth using a continuum-of-care framework. The clearinghouse shall include juvenile justice and delinquency prevention programs addressing the needs, including mental health needs, of LGBTQI+ youth.

Homelessness:

Sec. 9. Preventing and Ending LGBTQI+ Homelessness and Housing Instability. (a) The Secretary of Housing and Urban Development (HUD) shall establish a Working Group on LGBTQI+ Homelessness and Housing Equity, which shall lead an initiative that aims to prevent and address homelessness and housing instability among LGBTQI+ individuals, including youth, and households. As part of that initiative, the Secretary of HUD shall, as appropriate and consistent with applicable law:

- (i) identify and address barriers to housing faced by LGBTQI+ individuals, including youth, and families that place them at high risk of housing instability and homelessness;
 - (ii) provide guidance and technical assistance to HUD contractors, grantees, and programs on effectively and respectfully serving LGBTQI+ individuals, including youth, and families;
 - (iii) develop and provide guidance, sample policies, technical assistance, and training to Continuums of Care, established pursuant to HUD's Continuum of Care Program; homeless service providers; and housing providers to improve services and outcomes for LGBTQI+ individuals, including youth, and families who are experiencing or are at risk of homelessness, and to ensure compliance with the Fair Housing Act, 42 U.S.C. 3601 et seq., and HUD's 2012 and 2016 Equal Access Rules; and
 - (iv) seek funding opportunities, including through the Youth Homelessness Demonstration Program, for culturally appropriate services that address barriers to housing for LGBTQI+ individuals, including youth, and families, and the high rates of LGBTQI+ youth homelessness.
- (b) The Secretary of HHS, through the Assistant Secretary for Family Support, shall, as appropriate and consistent with applicable law:
- (i) use agency guidance, training, and technical assistance to implement non-discrimination protections on the basis of sexual orientation and gender identity in programs established pursuant to the Runaway and Homeless Youth Act (Public Law 110-378), and ensure that such programs address LGBTQI+ youth homelessness; and

(ii) coordinate with youth advisory boards funded through the Runaway and Homeless Youth Training and Technical Assistance Center and the National Runaway Safeline to seek input from LGBTQI+ youth who have experienced homelessness on improving federally funded services and programs.

- Also of note, government agencies continue to implement one of President Biden's earliest executive orders to extend sexual orientation and gender identity provisions in the name of the *Bostock* ruling in 2020. ("Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" (January 2021) - <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>).
- One of the more recent was USDA's application of it to the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, which could have harmed schools and ministries providing meals to children in need in school or during the summer months. (<https://www.usda.gov/media/press-releases/2022/05/05/usda-promotes-program-access-combats-discrimination-against-lgbtqi>)

Charitable Choice

- The House advanced a bill (HR 5129) to reauthorize the Community Services Block Grant (CSBG) without Charitable Choice language.
- The Charitable Choice language was added to the CSBG program back in 1998 after bipartisan efforts led by Sens. Ted Kennedy (D-Mass.) and Dan Coats (R-Ind.). It clarified that groups with overt religious character and practices are eligible to receive CSBG funding to offer relevant services.
- Senate Republicans seem steadfast that the decades-old language not be tossed. Also, the House maintained similar Charitable Choice language in another bill related to substance abuse in June.

42 U.S.C. § 9920

(a) Religious organizations included as nongovernmental providers

For any program carried out by the Federal Government, or by a State or local government under this chapter, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, so long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under this chapter shall discriminate against an organization that provides assistance under, or applies to provide assistance under, this chapter, on the basis that the organization has a religious character.

(b) Religious character and independence

(1) In general

A religious organization that provides assistance under a program described in subsection (a) shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance, except (for purposes of administration of the community services block grant program) as provided in section 9910 of this title; or

(B) to remove religious art, icons, scripture, or other symbols;

in order to be eligible to provide assistance under a program described in subsection (a).

(3) Employment practices

A religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a).

(c) Limitations on use of funds for certain purposes

No funds provided directly to a religious organization to provide assistance under any program described in subsection (a) shall be expended for sectarian worship, instruction, or proselytization.

(d) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing assistance under any program described in subsection (a) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such program into a separate account. Only the government funds shall be subject to audit by the government.

(e) Treatment of eligible entities and other intermediate organizations

If an eligible entity or other organization (referred to in this subsection as an "intermediate organization"), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a), the intermediate organization shall have the same duties under this section as the government.

Financial Trends in Christian Ministries

- Overall trends and concerns
 - Financial uncertainty and inflation
 - Staffing issues
- Giving Trends – ECFA State of Giving
 - Next ECFA State of Giving report to be released in fall...
 - What we're seeing so far this year:

- Increase of .8% in cash donations/giving across the last year
- Annualized increase of 2.3% in cash donations/giving through the pandemic
- Foundations are reporting major increases in giving
- No clear signs of donations decreasing

Inflation Reduction Act

- Major legislation titled the Inflation Reduction Act (HR 5376 - now Public Law 117-169) enacted a number of environmental, health care, and tax priorities of the Biden administration.
- This bill (signed into law on August 16) was the result of a deal brokered between Senate Majority Leader Chuck Schumer (D-N.Y.) and Senator Joe Manchin (D-W.Va.), who had earlier disappointed progressives by sinking its expansive “Build Back Better” predecessor.
- This law projects raising \$737 billion in new government revenues via a new 15 percent minimum tax on major corporations, as well as prescription drug pricing changes. Its proponents also expect hundred of billions of dollars to come from a 1 percent excise tax on stock buybacks and enhanced tax enforcement after an \$80 billion investment in the IRS.
- The anticipated new money will go primarily into energy security, efforts to combat climate change, and an extension of Affordable Care Act insurance exchange subsidies — as well as \$300 billion in deficit reduction.
 - Organizations may wish to take a closer look at its authorizations to see if facilities and vehicle upgrade incentives or other programs like the bill’s tree-planting initiative could benefit ministry operations.
- Sadly, the Inflation Reduction Act sadly did not address other key tax matters, such as the extension of the successful **Universal Charitable Deduction**.

Universal Charitable Deduction

- The universal charitable deduction (UCD) is a provision for taxpayers who do NOT itemize on their income tax returns. Near the onset of the pandemic, Members of Congress decided to experiment with this idea by allowing individuals up to a \$300 above-the-line benefit for cash gifts to qualified nonprofits (\$600 for married couples filing jointly).
- This small step helped fuel increases in giving in 2020 and 2021 - with a notable increase in year-end \$300 gifts — according to reports by the Charitable Giving Coalition.

- Universal Giving Pandemic Response and Recovery Act (S.618, H.R.1704) would greatly expand this available deduction amount to more than \$4,000 for individuals and over \$8,000 for married couples filing jointly (one-third the standard deduction).
- Unfortunately, Congress neither expanded nor extended the UCD before its expiration at the end of last year.
- An important policy solution for stirring a culture of giving in our society that democratizes giving.

ACE Act

- Background on Donor Advised Funds (DAFs)
 - Popular giving vehicles pioneered in the 1930's and formally defined in the Internal Revenue Code in 2006.
 - Allow contributions donated irrevocably for charitable purposes to generally entitle the giver to an immediate tax deduction.
 - Funds can be invested for tax-free growth and later distributed to charities.
 - Philosophical differences between “warehouse” and “greenhouse” views of DAFs.
 - Debate has led to proposed legislative reforms.
- What is in the ACE Act?
 - The ACE Act (S.1981/H.R.6595) replaces current DAFs with a choice of
 - a new DAF allowing donors an immediate income tax deduction provided funds are released within 15 years to charities, or
 - a 50-year payout DAF that allows an income tax deduction when funds are distributed.
 - New written reporting requirements.
 - 50 percent tax penalty on funds not appropriately distributed.
 - Complex assets valued at immediate cash — rather than appraised — value,
 - Donor disclosure requirements for DAF donations to count toward a charity's public support percentage.
 - New rules for community and private foundations, too. For example, neither a private foundation's distributions to DAFs nor its expenditures on family salary or travel expenses would count toward their payout obligations.

Closing

- To stay in touch with ECFA on Recent Developments, [subscribe to ECFA's Pulse email](#) and [to our YouTube channel](#). Questions? Email President@ECFA.org.