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SAN JUAN DISTRICT COURT
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20 UNITED STATES DISTRICT COURT
21 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

22 **Catholic Answers, Inc., and Karl Keating,**
23 *Plaintiffs,*

24 v.

25 **United States of America,**
26 *Defendant.*

27 '09 CV 0670 IEG AJB
28 Case No.

Complaint for Tax Refund

ORIGINAL

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1 **Complaint for Tax Refund**

2 1. This is an action by Catholic Answers, Inc. for a refund of excise taxes. At issue
3 in this case is whether two “E-letters” posted by Catholic Answers on its website explaining the
4 Catholic Church’s teachings as to the authority to withhold Holy Communion from politicians
5 and/or candidates who obstinately persevere in manifest grave sin by voting for a law permitting
6 abortion constitute “political expenditures.” Catholic Answers also challenges the statute and
7 corresponding regulations on the ground that they violate its constitutional right of free speech in
8 violation of the First Amendment to the United States Constitution.

9 **Jurisdiction and Venue**

10 2. This is an action for the recovery of internal revenue taxes and this Court has
11 jurisdiction by reason of 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422.

12 3. Venue in this district is proper under 28 U.S.C. § 1401(a)(1) and (2) because the
13 case is a civil action against the United States for the recovery of internal revenue taxes, Plaintiff
14 Catholic Answers, Inc. has its principal place of business within the Southern District of
15 California, and Plaintiff Karl Keating resides in the Southern District of California.

16 **Parties**

17 4. Plaintiff **Catholic Answers, Inc.** (“**Catholic Answers**”) is a nonprofit religious
18 corporation organized and existing under the laws of California and authorized to do business in
19 such State, with its principal office and place of business at 2020 Gillespie Way, El Cajon,
20 California 92020.

21 5. Plaintiff **Karl Keating** (“**Keating**”) is the founder and president of Catholic
22 Answers. He is a prominent and well respected Catholic apologist and author.¹ He resides in San
23 Diego, California.

24 6. Pursuant to 26 U.S.C. § 7422(f)(1), the United States is the designated Defendant
25 in this cause of action.

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¹ “Apologetics” is “a branch of theology devoted to the defense of the divine origin and authority of Christianity.” Merriam-Webster’s Collegiate Dictionary 54 (10th Ed. 2000).

Statement of Facts

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2 7. Catholic Answers was incorporated in the state of California under the California
3 Nonprofit Religious Corporation Law, Cal. Corp. Code § 9110 *et seq.*, and is exempt from
4 federal income taxes pursuant to section 501(a) as a section 501(c)(3) public charity.²

5 8. The IRS recognized Catholic Answers as a section 501(c)(3) organization exempt
6 from federal income taxes pursuant to sections 170(b)(1)(A)(vi) and 509(a)(1) on or about
7 September 28, 1982.

8 9. Catholic Answers is a fiscal year taxpayer (as opposed to calendar year), with its
9 fiscal year beginning on July 1 and ending on June 30 of the subsequent year.

10 10. On April 13, 2004, Catholic Answers posted an "E-letter" (hereinafter "April 13
11 E-letter") written by Keating on its website. The April 13 E-letter stated in relevant part:

JOHN KERRY TAKES COMMUNION(S)

12
13 On Easter Sunday John Kerry took Communion at a Catholic Mass. A
14 week earlier, on Palm Sunday, he took the equivalent at an African Methodist
Episcopal church. He was rebuked for neither by Church authorities.

15 Kerry is nominally Catholic, and he is vociferously pro-abortion. So far as
16 I can tell, he flunks the test given in Catholic Answers' "Voter's Guide for
Serious Catholics": He is wrong on all five "non-negotiable" issues listed there.

17 He is precisely the kind of politician who should be denied Communion at
18 Catholic parishes because his strong endorsement of abortion qualifies him as a
"notorious sinner."³] And he should be rebuked for the sin (which it is) of

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22 ² All statutory references are to the Internal Revenue Code, Title 26 of the United States
23 Code, unless otherwise noted.

24 ³ See 1983 Code c.915 ("Those who have been excommunicated or interdicted after the
25 imposition or declaration of the penalty and other obstinately persevering in manifest grave sin
26 are not to be admitted to holy communion."). Accord Joseph Cardinal Ratzinger, *Worthiness to
27 Receive Holy Communion*, (July 2004), (Cardinal Ratzinger was Prefect of the Congregation for
the Doctrine of Faith and was elected Pope Benedict XVI on April 19, 2005). See also, Pontifical
28 Council for Legislative Texts, Declaration, *Concerning the Admission of Holy Communion of
Faithful Who Are Divorced and Remarried*, (June 24, 2000) (describing other situations in which
Catholics are to be denied Holy Communion).

1 receiving "the Lord's Supper" at a Protestant church.^[4] But his bishop has not
2 forbade him to receive Communion and has not told him to mind his ecclesiastical
manners when visiting non-Catholic churches.

3 What a difference four decades makes! In 1962 Leander Perez and several
4 other Catholic politicians in Louisiana were excommunicated by New Orleans
Archbishop Joseph F. Rummel. Their offense? Opposing Rummel's pleas to end
5 racial segregation in schools.

6 Segregation was a Bad Thing. As bad as it was, at least it wasn't a species
of homicide. But abortion is homicide, which means it is a Worse Thing. You will
7 look in vain to find an analogue to Archbishop Rummel in today's American
episcopate.

8 Even the level of the umbrage has changed. The discussion hasn't been
9 about excommunicating politicians who, through their votes, end the lives of
unborn children. No, the discussion has been whether these politicians should
10 undergo the inconvenience (which is about all it would be for them) of not being
able to receive Communion.

11 If the leaders of the Church refrain from giving even a slap on the wrist,
12 who can take them seriously? Bishops who don't "bish" undermine their own
authority, and everyone under their care suffers from that.

13 Maybe it's a matter of political calculation on the part of the bishops.
14 They might be remembering what happened in San Diego a couple of decades
ago, when, not long before election day, Bishop Leo T. Maher instructed pro-
15 abortion state senator Lucy Killea not to receive Communion.^[5]

16 She was re-elected, and some said she would have been defeated had she
not received the sympathy vote. Maybe so, but Maher did the right thing (though
17 it would have been smarter if he had done it much in advance of election day).

18 November 2 is still half a year off, plenty of time for things to cool down
after bishops all over the country read the sacramental riot act to hundreds of
19 Catholic politicians. How grand it would be to see the bishops corporately doing
such a thing! But don't place any bets.

20 G.K. Chesterton remarked that, while it would be possible for all
21 Englishmen to take and keep a vow of silence for 24 hours, one should not wager

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23 ⁴ See 1983 Code c.844 ("Catholic ministers administer the sacraments licitly to Catholic
24 members of the Christian faithful alone, who likewise receive them licitly from Catholic
ministers alone."). See also Pope John Paul II, *Ecclesia de Eucharistia*, ¶ 46 (2003) ("Catholics
25 may not receive communion in those communities which lack a valid sacrament of Orders.").

26 ⁵ See *supra* n. 3. See also 1983 Code c.1398 ("A person who procures a completed
27 abortion incurs a *latae sententiae* excommunication."); Catechism of the Catholic Church ¶¶
2271-73 (1997) ("Formal cooperation in an abortion constitutes a grave offense"); Pope John
28 Paul II, *Evangelium Vitae* ¶¶ 73 (1995) ("In the case of [a law] . . . permitting abortion . . . it is
ever licit . . . to take part in a propoganda campaign in favor of such a law or vote for it.").

1 on such an eventuality. I have a sinking feeling that GKC offered better odds than
2 we're facing.

3 Until next time,

4 Karl

5 **11.** At the time the April 13 E-letter was published, Senator Kerry was the
6 presumptive Democratic nominee for President of the United States. The April 13 E-letter does
7 not mention Senator Kerry's status as a candidate, nor did it encourage any reader to vote for or
8 against Senator Kerry or any other politician in any election.

9 **12.** On May 11, 2004, Catholic Answers posted a second "E-letter" (hereinafter "May
10 11 E-letter"), again written by Keating. The May 11 E-letter stated in relevant part:

11 Rachael Jebaily helps demonstrate the adage "like father, like daughter":

12 "It is interesting to read what you said about sen. Kerry. My father
13 [Ronald J. Jebaily] wrote a few weeks ago in protest to the 'Voter's Guide,'
14 saying that it is the heresy of our time that abortion is the last remaining sin. [Mr.
15 Jebaily was quoted in the March 16 E-letter.] You brushed him off quite easily
16 when he shared that thought, quickly dismissing that abortion is the main focus of
17 your plight. However, abortion seems to be the sole focus of your political
18 activism. Today I must point out that you have done it again.

19 "When describing the reasons John Kerry is not worthy of receiving the
20 Eucharist [April 13 E-letter], you fail to list more than one reason (although one is
21 plenty). In fact, you made reference to abortion four times and merely mentioned
22 that he broke the other 'non-negotiable' issues. Are euthanasia, stem-cell
23 research, cloning, and a slew of other sins no longer important? I have to call a
24 spade a spade. It seems as though my father's point was quite accurate."

25 First, I didn't "brushed off" Mr. Jebaily. I said that "No one ever claimed
26 that 'abortion is the last remaining sin.'" I noted that "abortion is such a heinous
27 sin that people advocating it should forfeit our votes. If a candidate is wrong on
28 such a basic issue, what trust can be put in his judgment when it comes to a lesser
29 matter, such as what tariff rate, if any, should be applied to sugar? We would not
30 reward a racist with our vote, so why should we reward someone who is wrong on
31 abortion or the other non-negotiables?"

32 To the extent Sen. Kerry has been in the news concerning morality, the
33 topic has been abortion. Yes, as I mentioned on April 13, he's wrong on the other
34 non-negotiables too, but abortion is what has been making the headlines. As Miss
35 Jebaily herself notes, "one [reason] is plenty" to declare someone ineligible for
36 Communion. So what's the problem?

37 Thomas Morelli has a parallel complaint:

38 "Who are you to question how the bishops choose to pastorally care for
members of their flocks? What would you prefer they do with politicians who do
not vote according to Catholic teaching when it comes to the question of
abortion? Publicly humiliate them and denounce their political stand?"

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“Gimme a break, Karl. That would only divide the Church and demoralize good Catholics who, in real everyday life, have to deal with very difficult moral issues. This is a private issue and should be handled privately and pastorally. . . . Shouting at one another with labels and barking at our bishops is not going to produce the results you’re after. Shame on you.”

Le me respond to Mr. Morelli’s points in turn:

1. We are no longer (if we ever were) in what I sometimes call the Bing Crosby Church, where all oversight was handled by the clergy and where they never erred. Every Catholic has a right – even a duty, I’d say – to observe, evaluate, and comment.

2. Yes, I would prefer that bishops “publicly humiliate” politicians who promote abortion (and, yes, Miss Jebaily, the other non-negotiables too). It’s clear that the bishops have been entirely unsuccessful in working behind the scenes with such politicians. Meanwhile, many laymen, seeing no public disciplining, conclude that the politicians’ positions are at least marginally acceptable.

3. As for the Church in this country being divided and good Catholics being demoralized – well, good Catholics already are demoralized, and a strong, public stand by the bishops will boost their morale. Will some Catholics become more disaffected, more “divided”? Will a few jump ship? Probably, but they have been dangling their feet over the gunwales for years.

4. When abortion is advocated by politicians, it is no private matter. These are precisely the people who have the power to extend or restrict abortion, so what they say matters. Again, the problem has not been “handled privately and pastorally.” While there have been noteworthy exceptions, as a group, the bishops have played hookey on the issue, and there is precious little evidence that anything done privately or pastorally has altered the behavior of pro-abortion Catholic politicians.

In the March 16 E-Letter I said the “Voter’s Guide for Serious Catholics” might not be so well received if it had been titled “Voter’s Guide for Airhead Catholics.” David Wagner responded: “Well, Karl, there have been extremely successful books marketed under titles such as ‘. . . for Dummies’ and ‘Complete Idiot’s Guide . . .’ Kidding. Seriously, I like the way you handle the seamless-garmenters, though I fear that many in that camp are just – what is the word I want? – airheads.”

...

[The May 11 E-letter then goes on to discuss Archbishop Michael J. Sheehan of Santa Fe, New Mexico. The May 11 E-letter then returns to a discussion of Senator Kerry.]

...

Back to John Kerry. Tanadra Spellman complains:

“To say it was a sin for him to receive communion at an AME [African Methodist Episcopal] church is ridiculous. If he’s a Catholic and believes he’s actually receiving the body and the blood, how is he committing a sin? . . . Wake

1 up and stop crying about little things. You want to boot John Kerry out of the
2 Church yet you'll shuffle pedophiles from church to church."

3 1. I don't want to boot Kerry – or any other pro-abortion politician – out
4 of the Church. I just want them to live up to the Church's moral teachings and,
5 when they are obstinate in not doing so, not to be treated as though nothing were
6 wrong.

7 2. This isn't a "little thing" to those who think abortion is a big thing.
8 Kerry and other politicians do not just hold opinions in favor of abortion. Through
9 their legislative powers they determine whether abortion is widespread or
10 restricted or (in theory) abolished, and through their public statements they
11 influence public opinion.

12 3. I never have said that I think we should "shuffle pedophiles from
13 church to church," but I have no problem with shuffling them from prison cell to
14 prison cell. (Everyone, I think, is entitled to an occasional change of scenery.)

15 4. And, yes, it is sinful for a Catholic to receive what passes for
16 Communion in a Protestant church. The Catholic Church (and the Orthodox
17 churches, for that matter) have the Real Presence. No Protestant church does. To
18 treat Protestant "Communion" as one treats Catholic Communion is to engage in
19 the sin of idolatry, which is worshiping as God something that isn't God.

20 Like some other readers, George Morgan hesitates to restrict reception of
21 Communion:

22 "Those who would withhold Communion from Catholic politicians would
23 be well advised to read the Vatican list of 28 grave abuses against the Eucharist,
24 one of which states 'It is not licit' to deny Communion to 'any baptized Catholic
25 who is not prevented by law' from receiving the sacrament."

26 But, Mr. Morgan, promoting abortion is an excommunicable offense, and,
27 by definition, those who are liable to excommunication shouldn't communicate,
28 even if they have not yet been excommunicated.

Unfortunately, Mr. Morgan will not read this reply because he ended his
note by saying, "Take my name off your mailing list. It's sad and counter-
productive to our faith that your group is not more Christian." Oh, well – another
person self-deprived of his weekly corrective.

But then there's Tom Otten, who wrote: "I am never disappointed when I
read your E-Letter. Keep up the good godly work."

Thanks, Tom, and thanks to all those who write in, even the complainers.

Until next time,

Karl

13. Like the April 13 E-letter, the May 11 E-letter does not mention Senator Kerry's
status as a candidate, nor did it encourage any reader to vote for or against Senator Kerry or any
other politician in any election.

1 **14.** By letter dated January 3, 2005, the IRS notified Catholic Answers that it was
 2 investigating Catholic Answer’ activities. The letter stated that the IRS had received information
 3 regarding Catholic Answers’ activities and that the examination was limited solely to whether
 4 Catholic Answers had engaged in any prohibited acts of political intervention.

5 **15.** On May 6, 2008, after an extensive audit, the IRS notified Catholic Answers that
 6 it had determined that the April 13 E-letter and the May 11 E-letter (collectively “E-letters”)
 7 constituted “political expenditures” within the meaning of section 4955(d) because they “oppose
 8 the election of a specific candidate running in the November 2004 presidential election.” Letter
 9 from Theron C. Wing, Revenue Agent, to Catholic Answers, Inc. (Mar. 6, 2008). Accordingly,
 10 the IRS assessed excise taxes pursuant to section 4955(a) in the following amounts:

	For tax year ending 06/30/2004	For tax year ending 06/30/2005
Section 4955 Tax	\$46.81	\$36.33
Interest	\$12.00	\$7.09
Total Tax	\$58.81	\$43.42

15 **16.** Furthermore, pursuant to section 4955(f)(3), the IRS required Catholic Answers
 16 to attempt to correct the political expenditure. That is, Catholic Answers was required to attempt
 17 to recover the expenditure from Keating and to establish safeguards to prevent future political
 18 expenditures. The IRS determined that the total amount of the expenditures was \$831.41.

19 **17.** On or about March 17, 2008, Keating reimbursed Catholic Answers for the
 20 expenditures related to the two E-letters in the amount of \$831.41.

21 **18.** On or about March 19, 2008, Catholic Answers submitted Form 870-E, Waiver of
 22 Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment;
 23 including payment for the aforementioned excise taxes. Catholic Answers also included proof
 24 that the expenditures had been recovered in full from Keating.

25 **19.** On or about September 24, 2008, Catholic Answers filed Form 843, Claim for
 26 Refund and Request for Abatement, requesting a refund of excise taxes paid for tax years ending
 27 June 30, 2004 and June 30, 2005. Pursuant to Treasury Regulation § 301.6402-1, Catholic
 28 Answers included a statement setting forth the grounds for the claim and the facts supporting the

1 grounds. The returns reported refunds owing to Catholic Answers in the following amounts:

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For tax year ending 06/30/2004	\$58.51
For tax year ending 06/30/2005	\$43.42

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4 **20.** The claims for refund set forth above were based upon Catholic Answers’
5 assertion that the E-letters are not “political expenditures” as that term is defined in section
6 4955(d) and the supporting regulations.

7 **21.** The taxes paid for the years set forth above resulted in overpayments in the
8 amounts set forth above because Catholic Answers did not make political expenditures within
9 the meaning of section 4955(d) and, therefore, the taxes assessed pursuant to section 4955(a)
10 were erroneously and wrongfully collected by Defendant United States under the Internal
11 Revenue Code.

12 **22.** Furthermore, because Catholic Answers did not make political expenditures
13 within the meaning of section 4955(d), Catholic Answers is not required to “correct” the alleged
14 political expenditures and should be permitted to return \$831.41 to Keating. Catholic Answers
15 would like to return the \$831.41 and Karl Keating would like to receive the \$831.41.

16 **23.** By letter dated March 27, 2009, the IRS indicated that it was abating the excise
17 taxes and granting a refund with interest for both tax years pursuant to I.R.C. § 4962. A true and
18 correct copy is attached as Exhibit A.

19 **24.** Under section 4962, the Secretary is granted the authority to abate and refund
20 excise taxes imposed under I.R.C. § 4955 if: (1) a taxable event was due to reasonable cause and
21 not to willful neglect, and (2) such event was corrected within the correction period for such
22 event.

23 **25.** The IRS continues to maintain that the two E-letters are political expenditures
24 within the meaning of section 4955.

25 **26.** Because the abatement and refund are granted pursuant to section 4955, it is
26 conditioned on the fact that Catholic Answers has “corrected” the instances of political
27 intervention within the statutory period (i.e., recovered the amount of the expenditures from
28 Keating). Therefore, Catholic Answers is prohibited from returning the \$831.41 to Keating.

1 27. Furthermore, because the IRS has reaffirmed its prior opinion that any discussion
2 about a politician or candidate's ability to receive Holy Communion constitutes political
3 intervention, Catholic Answers is chilled from engaging in speech that is otherwise permissible
4 by a section 501(c)(3) organization.

5 28. Furthermore, because the IRS relies upon vague and overbroad rules and
6 regulations to determine what constitutes political intervention, Catholic Answers is further
7 chilled from engaging in speech that is otherwise permissible under section 501(c)(3)
8 organization and thus violates Catholic Answers' right to free speech under the First Amendment
9 to the United States Constitution.

10 29. Catholic Answers has not filed any other suit for credit or refund of taxes assessed
11 pursuant to section 4955 of the Internal Revenue Code, and no petition regarding the same has
12 been filed in the Tax Court. *See* I.R.C. § 7422(g)(2).

13 Legal Arguments Common to Plaintiff's Claims

14 30. Although the First Amendment does not require the government to subsidize
15 activities such as those engaged in by Catholic Answers, *Regan v. Taxation With Representation*,
16 461 U.S. 540, 550 (1983), the discriminatory application of the tax laws can impermissibly
17 infringe free speech. *See Big Mama Rag, Inc. v. United States*, 631 F.2d 1030, 1034 (D.C. Cir.
18 1980) (*citing Speiser v. Randall*, 357 U.S. 513, 518 (1958)).

19 31. The "void-for-vagueness" doctrine requires notice of proscribed conduct and
20 explicit standards for Government officials, who might otherwise engage in arbitrary and
21 discriminatory enforcement. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). A law
22 must be struck down if "men of common intelligence must necessarily guess at its meaning."
23 *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976) (quoting *Connally v. General Constr. Co.*,
24 269 U.S. 385, 391 (1926)). The law must be objective and "eschew the open-ended rough-and-
25 tumble of factors, which invites complex argument in a trial court and a virtually inevitable
26 appeal." *F.E.C. v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652, 2666 (2007) ("*WRTL IP*")

1 (internal citations omitted)⁶. Laws “wholly lacking in ‘terms susceptible of objective
2 measurement’” must be invalidated. *Keyishian v. Board of Regents*, 385 U.S. 589, 601 (1967)
3 (quoting *Cramp v. Board of Public Instruction*, 368 U.S. 278, 286 (1961)). In an area as sensitive
4 as the First Amendment, a law must not be so uncertain that it inevitably leads “citizens to steer
5 far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly
6 marked.” *Buckley v. Valeo*, 424 U.S. 1, 41 (quoting *Grayned*, 408 U.S. at 109) (internal citations
7 omitted).

8 **32.** Thus, regulations prohibiting proscribed conduct by exempt organizations must
9 not be so unclear as to afford latitude for subjective and discriminatory application by the IRS.
10 *Big Mama Rag*, 631 F.2d at 1040 (“In this area the First Amendment cannot countenance a
11 subjective ‘I know it when I see it’ standard.”). *See also North Carolina Right to Life v. Leake*,
12 525 F.3d 274, 282 (4th Cir. 2008) (“*NCRL III*”) (noting that “when protected political speech is
13 involved[,]” a “we’ll know it when we see it’ approach simply does not provide sufficient
14 direction to either regulators or potentially regulated entities.”)

15 ***Vagueness***

16 **33.** Section 4955, both facially and as applied by the IRS with respect to Catholic
17 Answers and its activities, is unconstitutionally vague and lacking of terminology susceptible to
18 objective assessment.

19 **34.** The IRS regulations pertaining to Internal Revenue Code section 4955 are also
20 unconstitutionally vague and lacking of terminology susceptible to objective assessment.

21 **35.** Treasury Regulation section 53.4955-1(c) amplifies its definition of “political
22 expenditure” by incorporating Treasury Regulation section 1.501(c)(3)-1(c)(3)(iii). Treasury
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26 ⁶ The cited opinion is by Chief Justice Roberts, joined by Justice Alito. As the controlling
27 *WRTL II* opinion, the principal opinion states the holding of the Court and will herein simply be
28 referred to as *WRTL II*. *See Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a
fragmented Court decides a case and no single rationale explaining the result enjoys the assent of
five Justices, ‘the holding of the Court may be viewed as that position taken by those Members
who concurred in the judgments on the narrowest grounds’” (citation omitted)).

1 Regulation section 1.501(c)(3)-1(c)(3)(iii), pertaining to action organizations, is also
2 unconstitutionally vague and lacking terminology susceptible to objective assessment.

3 36. The IRS has stated that “[w]hether an organization is participating or intervening,
4 directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for
5 public office depends on all of the facts and circumstances of each case.” Rev. Rul. 2007-41,
6 2007-25 I.R.B. 1421. This is exactly the type of subjective “I know it when I see it” approach
7 cautioned against in *Big Mama Rag*, 631 F.3d at 1040.

8 37. With respect to the definition of “political intervention,” a term defined in part by
9 Treasury Regulation section 1.501(c)(3)-1(c)(3)(iii), the Congressional Research Service has
10 said, “As to what types of activities are prohibited, the regulations add little besides specifying
11 that they include ‘the publication or distribution of written or printed statements or the making of
12 oral statements on behalf of or in opposition to such a candidate.’ Thus, *the statute and*
13 *regulations do not offer much insight as to what activities are prohibited.*” U.S. Congressional
14 Research Service, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure*
15 *Requirements* (RL33377; Sept. 11, 2007), by Erika Lunder.

16 ***Overbreadth***

17 38. “Under the overbreadth doctrine in the context of the First Amendment, a court
18 may find a law void on its face for sweeping too broadly and thereby restricting or punishing
19 speech that is constitutionally protected.” *The Nationalist Movement v. C.I.R.*, 102 T.C. 558,
20 584-85 (1994) (citing *Airport Commissioners v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987)).

21 39. The overbreadth doctrine “demands a greater degree of specificity” in its First
22 Amendment applications because of the potential chilling effect on constitutionally protected
23 expression. *Smith v. Goquen*, 415 U.S. 566, 573 (1974). *NAACP v. Button*, 371 U.S. 415, 432-33
24 (1963). There are two inherent risks in a case such as this when the overbreadth doctrine applies:
25 (1) self-censorship by speakers in order to avoid the imposition of excise taxes, and (2) the
26 “difficulty in detecting, reviewing, and correcting content-based censorship ‘as applied’ without
27 standards by which to measure the [decision maker’s] action.” *See City of Lakewood v. Plain*
28 *Dealer Pub. Co.*, 486 U.S. 750, 759 (1988).

1 **40.** A law that grants overly broad discretion to the decision maker creates an
2 “impermissible risk of suppression of ideas” in every situation. *Forsyth County v. Nationalist*
3 *Movement*, 505 U.S. 123, 129 (1992). “A law subjecting the exercise of First Amendment
4 freedoms” must contain “narrow, objective, and definite standards.” *Id.* at 130-31. “[W]here the
5 defect in the statute is that the means chosen to accomplish the State’s objectives are too
6 imprecise, so that in all its applications the statute creates an unnecessary risk of chilling of free
7 speech, the statute is properly subject to facial attack.” *Sec. of State of Md. v. J.H. Munson Co.,*
8 *Inc.*, 467 U.S. 947, 967-68 (1984).

9 **41.** Section 4955 of the Internal Revenue Code, and the regulations thereunder, are
10 unconstitutionally overbroad under the First Amendment because portions of the statute and
11 regulations lack the requisite specificity and appear, or are subject to interpretation by the IRS, to
12 reach expressive activities and speech that are not political expenditures that may be regulated or
13 considered by the IRS in determining if an organization has engaged in prohibited activities.

14 **42.** Furthermore, the portion of Treasury Regulation section 1.501(c)(3)-1(c)(3)(iii)
15 that reads in pertinent part, “participates or intervenes, directly or indirectly, in any political
16 campaign on behalf of or in opposition to any candidate for public office,” is overbroad under
17 the First Amendment because it can, and has been, interpreted by the IRS as encompassing
18 speech that is not limited to such activities and communications such as express advocacy of the
19 election or defeat of clearly identified candidates or direct or in-kind contributions to candidates.

20 **43.** Furthermore, the portion of Treasury Regulation section 1.501(c)(3)-1(c)(3)(iii)
21 that reads in pertinent part, “the publication or distribution of written or printed statements or the
22 making of oral statements on behalf of or in opposition to such a candidate,” is overbroad under
23 the First Amendment because it can, and has been, interpreted by the IRS as encompassing
24 speech that is not limited to such activities and communications such as express advocacy of the
25 election or defeat of clearly identified candidates or direct or in-kind contributions to candidates.

26 ***Narrowing Construction***

27 **44.** In the alternative, the Court is required to give a narrowing construction to
28 Treasury Regulation section 53.4955(d) and section 1.501(c)(3)-1(c)(3)(iii) to remove the

1 overbreadth and vagueness inherent in this statute. "Political expenditures" should be construed
2 to be limited to "communications that include explicit words of advocacy of election or defeat of
3 a candidate." See *Buckley*, 424 U.S. at 43 (1976); *ACLU v. Heller*, 378 F.3d 979, 985 (9th Cir.
4 2004).

5 45. Such a bright-line "express advocacy" test is required to protect First Amendment
6 Speech from the unconstitutional chill which results from the overbreadth and vagueness of
7 these regulations. See *McConnell v. F.E.C.*, 540 U.S. 93, 126 (2003); *Heller*, 378 F.3d at 985
8 (noting, after *McConnell*, that a court may limit the scope of a statute to express advocacy to
9 cure vagueness and over-breadth concerns); *NCRL III*, 525 F.3d at 282.

10 46. The policy of the IRS in enforcing this regulation under its "facts and
11 circumstances" test violates the First Amendment because it is vague by failing to give proper
12 notice as to the nature of the proscribed conduct or speech, and by being susceptible of
13 application in an unreasonable, arbitrary, capricious, and discriminatory manner. This "we'll
14 know it when we see it approach simply does not provide sufficient direction to either regulators
15 or potentially regulated entities." *NCRTL III*, 525 F.3d at 290. In essence, the IRS is "handing
16 out speeding tickets without telling anyone the speed limit." *Id.*

17 47. Based upon the foregoing, Catholic Answers was improperly assessed taxes
18 pursuant to section 4955 for making political expenditures because of the unconstitutionality of
19 section 4955 of the Internal Revenue Code, and the regulations thereunder, and the improper
20 application of those statutes and regulations by the IRS in an arbitrary, capricious, and
21 discriminatory manner.

22 48. Thus, Catholic Answers did not make "political expenditures" as that term is
23 described in section 4955, and as such, should be allowed to return \$831.41 to Keating.

24 Count I

25 **Catholic Answers, Inc. Did Not Make Political Expenditures Within the**
26 **Meaning of Section 4955(a) for the Tax Year Ending June 30, 2004 and**
should be allowed to return any amount "corrected" to Keating.

27 49. Plaintiff re-alleges and incorporates by reference all allegations contained in
28 paragraphs one (1) through forty-eight (48) set forth above.

1 **50.** Based upon the foregoing, Catholic Answers was improperly assessed taxes
2 pursuant to section 4955 for making political expenditures because of the unconstitutionality of
3 section 4955 of the Internal Revenue Code, and the regulations thereunder, and the improper
4 application of those statutes and regulations by the IRS in an arbitrary, capricious, and
5 discriminatory manner.

6 **51.** Thus, Catholic Answers did not make “political expenditures” as that term is
7 described in section 4955, and as such, should be allowed to return the payment for the costs of
8 the expenditures to Keating.

9 **52.** WHEREFORE, Catholic Answers, Inc. requests the following relief:

- 10 **a.** Judgment that the April 13 E-letter is not a “political expenditure” within
11 the meaning of section 4955(d);
- 12 **b.** Judgment that the May 11 E-letter is not a “political expenditure” within
13 the meaning of section 4955(d);
- 14 **c.** Judgment that Plaintiff Catholic Answers is entitled to return any monies
15 collected from Keating for the cost of the E-letters;
- 16 **d.** Judgment that section 4955 is unconstitutional, both facially and as-
17 applied to the April 13 E-letter and the May 11 E-letter, because it is
18 overbroad and vague;
- 19 **e.** Judgment that Treas. Reg. § 53.4955 is unconstitutional, both facially and
20 as-applied to the April 13 E-letter and the May 11 E-letter, because it is
21 overbroad and vague;
- 22 **f.** Judgement that Treasury Regulation section 1.501(c)(3)-1 is
23 unconstitutional, both facially and as-applied to the April 13 E-letter and
24 the May 11 E-letter, because it is overbroad and vague;
- 25 **g.** Such other relief as the Court may deem just and equitable.
- 26
27
28

Count II

Catholic Answers, Inc. Did Not Make Political Expenditures Within the Meaning of Section 4955(a) for the Tax Year Ending June 30, 2005 and should be allowed to return any amount "corrected" to Keating.

53. Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs one (1) through forty-eight (48) set forth above.

54. Based upon the foregoing, Catholic Answers was improperly assessed taxes pursuant to section 4955 for making political expenditures because of the unconstitutionality of section 4955 of the Internal Revenue Code, and the regulations thereunder, and the improper application of those statutes and regulations by the IRS in an arbitrary, capricious, and discriminatory manner.

55. Thus, Catholic Answers did not make "political expenditures" as that term is described in section 4955, and as such, should be allowed to return the payment for the costs of the expenditures to Keating.

56. WHEREFORE, Catholic Answers, Inc. requests the following relief:

- a. Judgment that the April 13 E-letter is not a "political expenditure" within the meaning of section 4955(d);
- b. Judgment that the May 11 E-letter is not a "political expenditure" within the meaning of section 4955(d);
- c. Judgment that Plaintiff Catholic Answers is entitled to return any monies collected from Keating for the cost of the E-letters;
- d. Judgment that section 4955 is unconstitutional, both facially and as-applied to the April 13 E-letter and the May 11 E-letter, because it is overbroad and vague;
- e. Judgment that Treas. Reg. § 53.4955 is unconstitutional, both facially and as-applied to the April 13 E-letter and the May 11 E-letter, because it is overbroad and vague;

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- f. Judgement that Treasury Regulation section 1.501(c)(3)-1 is unconstitutional, both facially and as-applied to the April 13 E-letter and the May 11 E-letter, because it is overbroad and vague;
- g. Such other relief as the Court may deem just and equitable.



Respectfully submitted,

Charles S. LiMandri
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P.O. Box 9120
Rancho Santa Fe, CA 92067
(812) 759-9930
Counsel for Catholic Answers, Inc.
Attorney of Record
Local Counsel for All Plaintiffs

James Bopp, Jr.*
Barry A. Bostrom*
Scott F. Bieniek*
JAMES MADISON CENTER FOR FREE SPEECH
BOPP, COLESON & BOSTROM
1 S. Sixth Street
Terre Haute, IN 47807
(812) 232-2434
Lead Counsel for All Plaintiffs
** Pro Hac Vice Application Pending*



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAR 27 2009

Catholic Answers, Inc.
2020 Gillespie Way
El Cajon, CA 92020

Employer Identification Number:
95-3754404
Tax Return:
4720
Tax Period:
June 30, 2004 & June 30, 2005
Contact Person/ID Number:
Theron Wing / 78-00191
Contact Telephone Number:
Tel: (559) 443-7674
Fax: (559) 443-7565

Dear Sir or Madam:

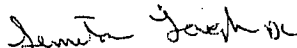
We are pleased to tell you that we have approved your claim for the tax years(s) shown above. We have determined that the political intervention subject to tax under section 4955 of the Internal Revenue Code was not willful and flagrant and was corrected within the correction period. Accordingly, under section 4962, we have abated the tax. We will change your account accordingly.

If you do not owe other amounts that the law requires us to collect, we will issue you a refund including interest.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,



Sunita Lough
Director, EO Examinations



JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 Catholic Answers, Inc. and Karl Keating

(b) County of Residence of First Listed Plaintiff San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 See Attached Sheet

DEFENDANTS 09 APR -3 PM 12:40
 United States of America

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
'09 CV 0670 IEG AJB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Immigration		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. 7422

Brief description of cause:
Complaint for refund of federal excise taxes and constitutional challenge to tax statutes and regs.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 4/3/09 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
 RECEIPT # 14688 AMOUNT 350 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ORIGINAL

OK

**United States District Court
Southern District of California**

**Civil Cover Sheet
Attachment**

Question I(c):

James Bopp, Jr.*
Barry A. Bostrom*
Scott F. Bieniek*
JAMES MADISON CENTER FOR FREE SPEECH
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**Pro Hac Vice Application Pending*

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Local Counsel for All Plaintiffs

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

161688 - SR

**April 03, 2009
12:42:23**

Civ Fil Non-Pris

USAO #: 09CV0670

Judge.: IRMA E GONZALEZ

Amount.: \$350.00 CK

Check#: BC#26365

Total-> \$350.00

**FROM: CATHOLIC ANSWERS V. USA
CIVIL FILING**

Kathy Denworth

From: efile_information@casd.uscourts.gov
Sent: Friday, April 03, 2009 3:00 PM
To: bcc_only@casd.uscourts.gov
Subject: Activity in Case 3:09-cv-00670-IEG-AJB Catholic Answers, Inc et al v. United States of America
Complaint

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U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered on 4/3/2009 at 2:43 PM PDT and filed on 4/3/2009

Case Name: Catholic Answers, Inc et al v. United States of America

Case Number: 3:09-cv-670

Filer: Catholic Answers, Inc
Karl Keating

Document Number: 1

Docket Text:

COMPLAINT against United States of America (Filing fee \$ 350 receipt number 161688.), filed by Catholic Answers, Inc. and Karl Keating.(knh)

3:09-cv-670 Notice has been electronically mailed to:

Charles Salvatore LiMandri climandri@limandri.com, kdenworth@limandri.com

U S Attorney CV Efile.dkt.civ@usdoj.gov

3:09-cv-670 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/3/2009] [FileNumber=3273150-0]
[afaec9cc188ae1a5c334ab6602c680972b878bf92cc84d26e93644dcb7055ba2f33b
613787abd7502946e950f06526d2509196600680692bac421ee3bddb7a4d]]

4/3/2009