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February 23, 2004

Fr. Frank Pavone
Priests for Life - Dept. F
P.O. Box 141172
Staten Island, NY 10314

Re: Distribution of campaign
literature in church parking lots

Dear Fr. Pavone:

You have requested our opinion on whether pastors may permit distribution by others of candidate political statements in their church parking lot. There are two issues here.

First, it is our opinion that the distribution of campaign material by others in the church parking lot will not jeopardize the church's tax exempt status. The mere permission of distribution of campaign materials by others in the church parking lot is not regulated by the Internal Revenue Code. The Code and its regulations are designed to limit only the *activities and expenditures* of non-profit organizations. Distribution of campaign materials *by others* outdoors, in a public parking lot, is not an activity or expenditure of the church. Thus, the distribution of campaign material by others in the church parking lot will not jeopardize the church's tax exempt status.

Second, it is our opinion that in most states there are state court decisions holding that such activity is protected by the First Amendment to the U.S. Constitution and/or the State Constitution, and therefore, the church will suffer no adverse consequences as a result of this activity. There are many cases recognizing the free speech rights of individuals and protecting speech and petitioning, reasonably exercised, in public areas, even when the property is privately owned. Many of these cases pertain to privately owned shopping centers and malls. *See, e.g., Michael Robins v. Pruneyard Shopping Center*, 592 P.2d 341 (Cal. 1979) (soliciting at a shopping center of signatures for a petition to the government is an activity protected by the California Constitution), *affirmed sub nom. Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980) (state constitutional provisions construed to permit individuals reasonably to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, do not violate the shopping center owner's property rights under the Fifth and Fourteenth Amendment). Thus, state and federal constitutions may not only protect such distributions in public places, but may also prohibit property owners from forbidding the exercise of free speech on their property in public areas, subject to reasonable time, place, and manner restrictions. In other words,

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churches not only may permit campaign statements to be distributed in their public parking lots, they cannot prohibit such distributions because the parking lots are open to the public.

If you have further questions please contact us. Thank you.

Sincerely,

BOPP, COLESON & BOSTROM

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