

WILL THE CATHOLIC CHURCH'S TAX EXEMPT
STATUS BE THREATENED UNDER THE PUBLIC
POLICY LIMITATION OF § 501(c)(3) IF SAME-SEX
MARRIAGE BECOMES PUBLIC POLICY?

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DEFENSE OF MARRIAGE ACT – 26 U.S.C.A. § 501(C)(3) – EXEMPTION FOR RELIGIOUS ORGANIZATIONS—As a result of the Supreme Court of the United States' decision to strike down the Defense of Marriage Act's definition of marriage as between a man and a woman, there now exists a divide between one of the Catholic Church's established beliefs and an exception to the Internal Revenue Code's grant of tax exempt status to religious organizations. The parameters of the Public Policy Doctrine have not fully materialized in relation to a decentralized definition of marriage, but the growing acceptance of a gender neutral characterization may jeopardize the Catholic Church's claim that, at least on this subject, it is aligned with public interests. This article estimates that the Catholic Church is not likely to lose its tax exempt status regarding this issue. However, as the concept of gender neutral marriage becomes more pervasive, the financial consequences of a disparity between the Catholic Church's philosophies and "well-established" public policy will demand much more attention.

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INTRODUCTION

Under § 501(c)(3)¹ of the Internal Revenue Code, corporations “organized and operated” for an exempt purpose, such as a religious purpose, are exempt from federal income tax so long as they satisfy the four basic tests for maintaining § 501(c)(3) status: operational test, organizational test, private inurement, and political activities test.² Additionally, there are court-imposed limitations, such as the commerciality doctrine and the public policy doctrine, which restrict eligibility for tax exempt status.³ To satisfy § 501(c)(3) status, an organization must serve the public interest. Under the public policy doctrine, organizations do not serve a public interest when they engage in activities that conflict with well-established public policy, thereby disqualifying them from tax exempt status.⁴

Currently, the dioceses and parishes of the Roman Catholic Church (“Church” or “Catholic Church”) is a § 501(c)(3) organization. The Catholic Church favors the traditional union between a man and a woman, and openly opposes same-sex marriage. The Supreme Court recently struck down the Defense of Marriage Act (“DOMA”). Now, same-sex couples from different states all over the country are filing lawsuit to challenge their state’s definition of marriage. If these cases establish same-sex marriage as public policy, then there is a possibility that the Catholic Church’s tax-exempt status will be threatened because its activities will be contrary to public policy.⁵

While same-sex marriage is a “hot topic,” this article will focus more on the impact on the Catholic Church’s tax-exempt status if same-sex marriage becomes public policy. It will also make an argument for the church maintaining its tax-exempt status under § 501(c)(3), even if same-sex marriage becomes public policy.

1. 26 U.S.C.A. § 501(c)(3) (West).

2. Nicholas P. Cafardi & Jaclyn Fabean Cherry, *Tax Exempt Organizations: Cases and Materials* 145 (LexisNexis, 2nd ed. 2008).

3. *Id.*

4. *Id.*

5. “Social conservatives have made religious liberty a rallying cry in their opposition to according same-sex couples the same right to marry enjoyed by mixed-sex couples, going so far to assert that *if gay or lesbian couples can legally marry*, clergy who decline to officiate may be charged with hate crimes, and *their churches and synagogues may lose tax-exempt status.*” Eric Alan Isaacson, *Are Same-Sex Marriages Really a Threat to Religious Liberty?*, 8 *Stan. J. Civ. Rts. & Civ. Liberties* 123, 123-124 (2012) (emphasis added).

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