

September 21, 2017

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Margaret Von Lienen  
Acting Director, Exempt Organizations  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Koskinen and Acting Director Von Lienen:

The Campaign Legal Center (“CLC”) requests an immediate Internal Revenue Service investigation into the activities of the Foundation for Moral Law (“FML”), a Montgomery, Alabama-based organization holding tax-exempt status under Section 501(c)(3) of the Code. FML appears to have violated its tax-exempt status by repeatedly and expressly advocating the election of U.S. Senate candidate Roy Moore, who is the former president of FML, and whose wife is its current president.

CLC asks the Service to determine whether FML’s tax-exempt status should be revoked and whether excise taxes should be imposed on the organization and its managers.

An organization can qualify for tax exemption under Section 501(c)(3) of the Code only if “it does not participate in” or “intervene in” “any political campaign on behalf of” “any candidate for political office,” which includes individuals who have publicly announced an intention to seek election. This ensures that a charitable organization does not use its taxpayer subsidy to engage in political propaganda. However, for the last several months, FML has repeatedly used charitable resources to actively promote Moore’s U.S. Senate candidacy.

#### FACTS

FML is a legal organization that “represents individuals involved in religious liberties cases and files amicus curiae (friend-of-the-court) briefs in state and federal court” and conducts

educational seminars.<sup>1</sup> FML’s website asks for “Tax-deductible contributions,” which it says will “allow Foundation attorneys to continue the fight.”<sup>2</sup>

FML maintains a website, <http://morallaw.org/>, and a Facebook page, <https://www.facebook.com/Foundation-for-Moral-Law-111608153140/>. The Facebook page states that it is “maintained by the staff of Foundation for Moral Law.”<sup>3</sup>

According to FML’s website, Roy Moore was president of the organization until January 2013, when he became Chief Justice of the Alabama Supreme Court, at which point his wife, Kayla Moore, assumed the title of president.<sup>4</sup> However, according to the website, at this time “[i]t was announced that Judge Moore would take the title of President Emeritus of the Foundation for Moral Law.”<sup>5</sup>

On February 16, 2017, according to published reports, Moore indicated through a spokesperson that he “is being asked to run for several offices,” including U.S. Senate, and is “weighing his options for the future.”<sup>6</sup> On April 18, 2017, published reports indicated that Moore would make an “announcement” the following Wednesday, with the expectation that he would announce his candidacy for U.S. Senate.<sup>7</sup>

On April 19, 2017, FML sent an email that told subscribers to “[e]xpect an announcement next week about Chief Justice Moore’s plans for the future” along with a link to the *U.S. News* article titled, “The Latest: Alabama Justice Mulling Run for Higher Office.”<sup>8</sup>

On April 25, 2017, the day before Moore formally announced his candidacy, FML emailed its subscribers with an “UPDATE on our founder, JUDGE ROY MOORE,” along with links to news articles titled, “What Role Will God Play in Alabama’s Elections for Senator, Governor?” and “U.S. Senate Seat Race Heats Up,” and to two articles both titled, “Roy Moore to Announce Plans on Wednesday.”<sup>9</sup>

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<sup>1</sup> See “About the Foundation for Moral Law,” <http://morallaw.org/about/> (accessed September 18, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> Foundation for Moral Law, *About*, Facebook (accessed Sept. 19, 2017), <https://www.facebook.com/pg/Foundation-for-Moral-Law-111608153140/about/>.

<sup>4</sup> “About the Foundation for Moral Law,” <http://morallaw.org/about/> (accessed September 18, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> WAFF 48, Roy Moore Considering New Public Office Options (Feb. 16, 2017), <http://www.waff.com/story/34526993/roy-moore-considering-new-public-office-options>.

<sup>7</sup> J.B. Biunno and Debbie Williams, *Strange Challenger for Senate? Roy Moore to Make “Announcement” Wednesday, Sources Say*, CBS News 5 WKRG (Apr. 18, 2017), <http://wkrg.com/2017/04/18/strange-challenger-for-senate-roy-moore-to-make-announcement-wednesday-sources-say/>.

<sup>8</sup> Exhibit A; also available at Foundation for Moral Law, *From the Desk of Kayla Moore*, The Freedom Report: Official Newsletter of the Foundation for Moral Law (April 19, 2017), <http://us10.campaign-archive2.com/?u=b72e11e92141d4d6306c8aa3e&id=f5f813098e>.

<sup>9</sup> Exhibit B, also available at Foundation for Moral Law, *From the Desk of Kayla Moore*, The Freedom Report: Official Newsletter of the Foundation for Moral Law (April 25, 2017), <http://us10.campaign-archive2.com/?u=b72e11e92141d4d6306c8aa3e&id=06c0873c2a>.

On May 10, 2017, FML sent an email to subscribers titled, “Foundation for Moral Law First Quarter 2017 Report.”<sup>10</sup> The email newsletter stated that “the specially appointed Alabama Supreme Court released its decision in Chief Justice Moore’s case, and they affirmed the sentence suspending him from his office without pay for the rest of his term. But God, in His sovereignty and grace, has opened another door for Chief Justice Moore to run for higher office! What the enemy meant for evil, God worked for good.”<sup>11</sup> FML’s newsletter also provided updates on Moore’s speaking engagements, suggesting FML still considers him as playing an active role in the entity.<sup>12</sup> The May 10 newsletter concluded with a section titled “UPDATE on Our Founder: Chief Justice Moore’s Appeal and Future.”<sup>13</sup> In bold, underlined, italicized font, FML’s newsletter stated:

***The press and the public have been wondering for some time now whether the Chief Justice is going to run for a higher office, such as governor or senator. After prayerful consideration and consultation with many advisors, Chief Justice Moore will announce on Wednesday, April 26, that he will be running for U. S. Senate, replacing Senator Jeff Sessions who is now the U. S. Attorney General! At the Foundation, we believe that God, in His timing, vindicates the righteous. We believe that God has opened the door for Chief Justice Moore and we believe that he is going to win!***<sup>14</sup>

On July 15, 2017, FML’s Facebook page shared an image from “Christian Conservatives for Ted Cruz 2018 #1A” that stated, “Did you know? If Judge Roy Moore for U.S. Senate wins the #ALSen seat...Christian Conservatives gain two fighters for #Religious Freedom,” before proceeding to highlight Kayla Moore’s work as president of the Foundation.<sup>15</sup>

On August 2, FML’s Facebook page shared a post by Kayla Moore with an apparent FML press release responded a Senate Leadership Fund ad that had critiqued Moore’s relationship with FML.<sup>16</sup> The release, attributed to FML board member Judge John Bentley, went beyond challenging the ad’s allegations about FML and Senate Leadership Fund, and instead targeted Moore’s opponent. Bentley declared:

I am calling on Mr. Strange to demand this Ad be pulled from every station. If he fails to do so, he is personally endorsing this lie. In fact, I am personally joining the request to have Governor Ivey have the Alabama Ethics Commission look into all past and current

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<sup>10</sup> Exhibit C, also available at Foundation for Moral Law, Foundation for Moral Law First Quarter 2017 Report, The Freedom

Report: Official Newsletter of the Foundation for Moral Law (May 10, 2017), <http://us10.campaign-archive1.com/?u=b72e11e92141d4d6306c8aa3e&id=65589484cd>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5 (see, e.g., Part D., “Speaking Opportunities and Special Projects”).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (emphasis in original).

<sup>15</sup> Exhibit D, also available at Foundation for Moral Law, *Foundation for Moral Law shared Christian Constitutional Conservatives for Ted Cruz 2018 #1A’s photo*, Facebook (July 15, 2017),

[https://www.facebook.com/permalink.php?story\\_fbid=10155181007658141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155181007658141&id=111608153140).

<sup>16</sup> Exhibit F, also available at Foundation for Moral Law, *Foundation for Moral Law shared Kayla Moore’s post*, Facebook (Aug. 2, 2017),

[https://www.facebook.com/permalink.php?story\\_fbid=10155245178238141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155245178238141&id=111608153140).

dealings of Luther Strange. Luther has dropped to a new low by attacking our Foundation with gross distortions and untruths.<sup>17</sup>

On August 6, 2017, FML's Facebook page shared a campaign image from the "Judge Roy Moore for U.S. Senate" official campaign page.<sup>18</sup> The image prominently included the Moore campaign's official logo.<sup>19</sup>

On August 12, 2017, FML's Facebook page posted a Judge Roy Moore for U.S. Senate campaign advertisement.<sup>20</sup> The ad, posted as a video to the Roy Moore for Senate YouTube page, consisted of an audio recording of Focus on the Family's Dr. James Dobson endorsing Moore for U.S. Senate and encouraging listeners to vote for Moore.<sup>21</sup> The audio recording ends with the statement, "paid for by Judge Roy Moore for U.S. Senate," and the video includes an image of Roy Moore's campaign logo and the statement, "paid for by Judge Roy Moore for U.S. Senate."<sup>22</sup>

Also on August 12, 2017, FML emailed its subscribers the "Official Newsletter of the Foundation for Moral Law."<sup>23</sup> The email included a link to a WVTM-NBC report that contested claims in Senate Leadership Fund's anti-Moore campaign ad.<sup>24</sup> The email also asserted that "Mitch McConnell and the Washington crowd clearly do not want a true conservative in the Senate they cannot manage or control," and stated that "the latest polls show former Alabama Supreme Court Chief Justice Roy Moore with a significant lead in the high-profile race to become Alabama's next U.S. senator."<sup>25</sup> The email also linked to a *New American* article promoting Moore titled, "In Senate Race, Alabama Judge Moore Takes on D.C. Establishment."<sup>26</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> Exhibit I, also available at Foundation for Moral Law, *Foundation for Moral Law shared Judge Roy Moore for U.S. Senate's post*, Facebook (Aug. 6, 2017), [https://www.facebook.com/permalink.php?story\\_fbid=10155256241198141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155256241198141&id=111608153140).

<sup>19</sup> *Id.*

<sup>20</sup> Exhibit J, also available at Foundation for Moral Law, *Foundation for Moral Law shared Judge Roy Moore for U.S. Senate's video*, Facebook (Aug. 12, 2017), [https://www.facebook.com/permalink.php?story\\_fbid=10155275134403141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155275134403141&id=111608153140); video available at Roy Moore for Senate, *Dr. James Dobson Endorses Ray Moore for Senate*, YouTube.com (Aug. 12, 2017), <https://www.youtube.com/watch?v=mecp0krfxOA>. Transcript of video included in Exhibit J.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit K, also available at Foundation for Moral Law, *\$1.2 Million in one week*, The Freedom Report: Official Newsletter of the Foundation for Moral Law (Aug. 12, 2017), <http://us10.campaign-archive1.com/?u=b72e11e92141d4d6306c8aa3e&id=a058ad80f5>.

<sup>24</sup> *Id.*; WVTM-NBC report available at WVTM 13, *Fact Check: Roy Moore Attack Ads Alabama's Senate Race*, (Aug. 10, 2017), <http://www.wvtm13.com/article/fact-check-attack-ads-in-alabama-s-senate-race/11787994>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

On August 13, 2017, FML’s Facebook page shared a post from the official “Judge Roy Moore for U.S. Senate” page that included a quote about events in Charlottesville, Virginia.<sup>27</sup> That same day, FML’s Facebook page shared a post from Kayla Moore that included Moore’s image and that same campaign quote.<sup>28</sup>

On August 17, 2017, FML emailed its subscribers the “Foundation for Moral Law 2<sup>nd</sup> Quarter 2017 Report.”<sup>29</sup> The first paragraph of the FML quarterly report stated that “our Founder retired from serving as Chief Justice of the Alabama Supreme Court and is now running for the office of United States Senator.”<sup>30</sup> The FML email also included a standalone section providing an “Update on Our Founder,” and told subscribers that Moore’s suspension from the Alabama Supreme Court and Jeff Sessions vacating the Alabama U.S. Senate seat “left open a vacancy that our Founder believed God wanted him to pursue.”<sup>31</sup>

### **SUMMARY OF THE LAW**

Section § 501(c)(3) states that public charities may not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” 26 U.S.C. § 501(c)(3).

Treasury regulations note that “Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.” 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

Posts promoting a candidate on a web site controlled by a 501(c)(3) entity, like a Facebook page, are not treated differently from materials promoting a candidate distributed through print or broadcast. As the Service has previously explained:

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization

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<sup>27</sup> Exhibit L, *also available at* Foundation for Moral Law, Foundation for Moral Law shared Judge Ray Moore for U.S. Senate’s post , Facebook (Aug. 13, 2017),

[https://www.facebook.com/permalink.php?story\\_fbid=10155276167433141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155276167433141&id=111608153140).

<sup>28</sup> Exhibit M, *also available at* Foundation for Moral Law, Foundation for Moral Law shared Kayla Moore’s post , Facebook (Aug. 13, 2017),

[https://www.facebook.com/permalink.php?story\\_fbid=10155277726903141&id=111608153140](https://www.facebook.com/permalink.php?story_fbid=10155277726903141&id=111608153140).

<sup>29</sup> Exhibit N, *also available at* Foundation for Moral Law, Foundation for Moral Law Second Quarter 2017 Report , The Freedom Report: Official Newsletter of the Foundation for Moral Law (Aug. 17, 2017), <http://us10.campaign-archive2.com/?u=b72e11e92141d4d6306c8aa3e&id=ca3c9b3947>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Rev. Rul. 2007-41 (June 18, 2007); *see also* Fact Sheet 2006-17 (Feb. 2006).

According to Treasury regulations, "The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local." *See* Treas. Reg. § 1-501(c)(3)-1 (iii). The Service has also made clear that "Individuals who have publicly announced their intention to seek election to public office have clearly offered themselves as contestants for the office and are candidates within the meaning of IRC 501(c)(3)." *See* FY 2002 IRS Exempt Organizations Technical Instruction Program at 342, Judith E. Kindell and John Francis Reilly.

IRS guidance indicates that express advocacy activity is *per se* campaign intervention. *See* Rev. Rul. 2006-04 ("When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2)."). Non-express advocacy activity may be categorized as campaign intervention if it satisfies the Service's multi-pronged "facts and circumstances" inquiry. *See id.*

#### **FML HAS VIOLATED THE PROHIBITION ON A CHARITY INTERVENING IN AN ELECTION**

FML has, on multiple occasions, used tax-exempt resources to participate and/or intervene in Alabama's U.S. Senate election on behalf of, and in support of, Roy Moore—FML's President Emeritus and the husband of FML's current President, Kayla Moore.

FML has repeatedly used mass emails to distribute messages expressly promoting Moore's election to U.S. Senate. In its May 10, 2017 subscriber email, for example, FML declared in bold, underlined, and italicized font that "**Chief Justice Moore will announce on Wednesday, April 26, that he will be running for U. S. Senate, replacing Senator Jeff Sessions who is now the U. S. Attorney General! At the Foundation, we believe that God, in His timing, vindicates the righteous. We believe that God has opened the door for Chief Justice Moore and we believe that he is going to win!**"<sup>32</sup> FML's August 12, 2017 subscriber email asserted that "Mitch

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<sup>32</sup> Exhibit C.

McConnell and the Washington crowd clearly do not want a true conservative in the Senate they cannot manage or control,” and stated that “the latest polls show former Alabama Supreme Court Chief Justice Roy Moore with a significant lead in the high-profile race to become Alabama’s next U.S. senator.”<sup>33</sup> Other email newsletters promoted Moore’s election by previewing his formal announcement and sharing favorable news articles about his candidacy.<sup>34</sup> It does not appear that FML has included any messages favorable to Moore’s opponent, Luther Strange. Nor does it appear that the materials promoting Moore’s candidacy were substantially related to FML’s mission of engaging in litigation and education around religious liberty.<sup>35</sup>

FML’s Facebook page has also reposted official campaign materials from the Judge Roy Moore for U.S. Senate page, including an audio advertisement expressly advocating Moore’s election and paid for by the Moore campaign,<sup>36</sup> and an official campaign image featuring the Moore for U.S. Senate campaign logo.<sup>37</sup> FML’s Facebook page has also reposted official statements from the Judge Roy Moore for U.S. Senate page,<sup>38</sup> and a Facebook post from a third-party group that included the functional equivalent of express advocacy in support of Moore’s election.<sup>39</sup>

FML’s newsletters that include messages expressly advocating for Moore’s election and its reposting of campaign material on its Facebook page unequivocally constitute campaign intervention. It is clear that FML repeatedly used tax-exempt resources for prohibited political intervention purposes.

Accordingly, FML appears to have violated provisions of Section 501(c)(3). Violations of the prohibition against campaign intervention can result in revocation of tax-exempt status and the imposition of excise and other taxes. *See* 26 U.S.C. §§ 4945, 4955; IRS Fact Sheet 2006-17.

Accordingly, the Service could revoke or deny FML’s charitable status. Under Section 4955 of the Code, the Service could also impose a 10% tax on each political expenditure,<sup>40</sup> payable by the organization. *See* I.R.C. § 4955(a)(1). In our view, both actions would be appropriate.

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<sup>33</sup> Exhibit K.

<sup>34</sup> Exhibit A,B.

<sup>35</sup> Additionally, the email newsletters in mid-April promoting Moore’s candidacy before he formally declared, *see* Exhibits A-B, are still prohibited under the Code. An individual is considered a “candidate” if they have announced an intention to be a contestant for office, *see* FY 2002 IRS Exempt Organizations Technical Instruction Program at 342, and Moore had declared such an intention in February 2017, *see supra* note 6.

<sup>36</sup> Exhibit J.

<sup>37</sup> Exhibit I.

<sup>38</sup> Exhibit L,M.

<sup>39</sup> Exhibit D.

<sup>40</sup> The term “political expenditure” is defined in I.R.C. 4955(d)(1) as “any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in . . . any political campaign on behalf of . . . any candidate for public office.”

## CONCLUSION

As set forth above, the Foundation for Moral Law appears to have violated the Section 501(c)(3) prohibition against participating or intervening in a political campaign by using its resources to support and expressly advocate on behalf of Roy Moore. The IRS should promptly investigate the Foundation and take appropriate action, including revocation of the Foundation's Section 501(c)(3) tax-exempt status and imposition of applicable taxes.

Respectfully submitted,

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Attachments