

THOUGHT LEADERSHIP

News

POLITICAL ACTIVITIES BY CHURCH ARE NOT ADVERTISING & CARRIER HAS NO DUTY TO DEFEND

Newsbrief

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A federal judge in El Paso recently granted summary judgment in favor of State Farm Lloyds, holding State Farm had no duty to defend or indemnify its insured, a conservative church who was sued for violating the Texas Election Code. In *Word of Life Church v. State Farm Lloyds*, EP-17-CV-00049-DCG, 2018 WL 297617 (W.D. Tex. Jan. 4, 2018) (slip copy), the church and its pastor began circulating a recall petition against the mayor of El Paso after the mayor broke a tie vote of the City Council to restore city benefits to same-sex partners of city employees. (The City Council vote came after a public referendum, supported by a PAC created by the pastor, in which voters of El Paso voted to rescind the existing grant of benefits.) The mayor sued the church and the pastor for violating the Texas Election Code by misusing church resources to file and circulate recall petitions. The court found that the church and pastor had violated the statute, and the parties agreed that the church owed the mayor \$475,000 in damages.

The church sought defense and indemnity under its insurance policy with State Farm, which State Farm denied on the ground that the suit did not allege a potentially covered “advertising injury” under the policy’s Coverage B. State Farm contended, and the court agreed, that the church’s posting on its website announcing the recall petition and soliciting its members and the public to sign it did not meet the definition of an “advertisement” because it was not a marketing device designed to inform the public about the church’s goods, products, or services. The church argued it was a strategy to solicit like-minded members, but the court observed that the notice listed six locations where people could go to sign the petition, and only one of them was the church, and rejected the idea that it was an advertising strategy to get people in the door. The court also rejected the church’s argument that the mayor’s suit alleged disparagement would have triggered coverage.

The suit also named the pastor individually, and he argued the allegations against him triggered coverage because he allegedly committed a covered “wrongful act.” The policy covered negligent acts, errors, or omissions **directly related to the operations of the church**, and the pastor could not get around the disclaimer he had put on the church website, which stated it was owned by himself personally and not the church, and that in his official capacity as pastor, he neither encouraged nor discouraged the recall of the mayor. His own self-serving affidavit stating that the entire campaign was a church ministry and therefore “directly related to the operations” of the church, without corroborating evidence, was not considered competent summary judgment evidence. Thus, State Farm’s decision to completely deny defense and indemnity to both church and pastor was ratified by the court. Because the court found no coverage and no breach of contract, the court also summarily disposed of all extra-contractual claims.

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[Editor's Note: In an era in which some churches appear to be increasingly engaging in direct political activities such as forming PACs to pursue specific public policy goals and backing or opposing specific candidates, this timely case is a valuable lesson in both ecclesiology and coverage. It strongly suggests that when churches and their representatives engage in political activities, the very steps they take to try to protect themselves from improperly injecting the church too directly into politics, such as disclaimers and official statements of political neutrality, may simultaneously remove the resulting actions of church members and officials from liability coverage.]