

November 5, 2015

The Honorable Charles Grassley
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley:

Thank you again for giving me the opportunity to appear before the Committee on July 22, 2015.

I understand that the Committee may have certain concerns about a 2008 letter I co-signed, relating to the so-called "Pulpit Initiative" of the Alliance Defense Fund (ADF). I thought it might be helpful to give you the full background and context of my involvement with that letter.

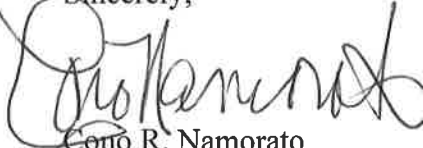
Initially, it should be noted that I am not an Exempt Organization (E.O.) tax attorney and have no particular expertise in that area. In 2008, however, I was approached by my colleague, Marcus S. Owens, who was then a senior member of my firm's E.O. practice group. Mr. Owens represented many churches across the country, and he had received a number of client inquiries regarding the legality of the "Pulpit Initiative." Mr. Owens had drafted the letter in issue, and he asked me, as a former Director of the IRS Office of Professional Responsibility (O.P.R.), and our colleague, former IRS Commissioner Mortimer Caplin, to co-sign it with him. We did.

I signed this letter because I believed the conduct of the ADF lawyers was inconsistent with their ethical obligations. Churches, like all organizations exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, are prohibited from engaging in any partisan political activity. IRC § 501(c)(3). In the letter, I did not express any opinion as to whether the churches' conduct should, or should not, be a violation of the law; that is an issue for others to decide. But, it is the case that a lawyer who advocates an intentional violation of such federal tax law by a client or potential client commits a violation of the lawyer's ethical duties. Section 10.51(7) of the Regulations governing the practice of attorneys and C.P.A.'s before the IRS provides that a practitioner may be sanctioned for "willfully assisting, counseling, [or] encouraging a client or prospective client in violating, or suggesting to a client or prospective client, to violate, any Federal tax law..." Circular 230 (31 C.F.R.) §10.51(7). Based on the information available to me at the time, I concluded that the actions of the ADF were a violation of this provision.

Thus, my principal interest in signing this letter was my concern for the integrity of our tax system. As a former Senior Department of Justice and IRS tax enforcement official, I believe that we should be concerned any time tax practitioners counsel the intentional disregard or outright violation of the tax law. That is why I agreed to sign the letter to O.P.R.

The Honorable Charles Grassley
November 5, 2015
Page 2

If it would be helpful to meet with you or any members of the Committee to discuss this further, I am available to do so.

Sincerely,

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