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THE IRS V. THE FIRST AMENDMENT What I May Say From the Pulpit

Internal Revenue Code 501(c)(3) prohibits tax-exempt organizations from 2 activities:

1. Influencing legislation (must not be substantial part of total activity)
2. Campaigning in elections (must not engage in this activity at all)

INFLUENCING LEGISLATION

1. What is “legislation?”
 - A. Laws enacted by legislative body
 - B. Not:
 - (1) Calling for enforcement of current laws
 - (2) Decision of court, executive official, or administrative body
 - (3) Appointment of official
2. What is “influencing?”
 - B. What it is:
 - (1) Direct lobbying
 - (2) Indirect lobbying
 - B. What it is not:
 - (1) Informational activity
 - (2) Technical advice (information given at legislator’s request)
 - (3) Self-defense
 - (4) Communication to members that
 - (a) Goes only to members
 - (b) Concerns legislation of special interest to your church
 - (c) Does not encourage action
3. What is “substantial?”
 - A. IRS Regulation 1.501(c)(3)(1)(c): “more than insubstantial”
 - B. No precise mathematical formulas, but generally:
 - (1) Under 5%: probably ok

- (2) 5-20%: questionable
- (3) Over 20%: probably not ok

INFLUENCING ELECTIONS

1. No “substantial” test here; total prohibition
2. What are “elections?”
 - A. National, state, or local voting for public officers or legislators
 - B. Partisan and nonpartisan
 - C. Appointments not included
3. Candidates’ forum probably ok if open to all candidates
4. Voter registration drive ok if nonpartisan
5. Passing out literature for one candidate, refusing others, probably not ok
6. Voting record surveys probably ok if:
 - A. Only incumbents surveyed
 - B. Not timed to election
 - C. No commentary
 - D. Status of law is unsettled if survey goes beyond this

GENERAL OBSERVATIONS

1. Rules pertain to churches, not pastors, or members
 - A. Pastor may endorse candidate, using title and position
 - B. Endorsement from pulpit? Not clear yet.
2. Church can’t give money to candidate; individuals can
3. Giving your membership list to a candidate: Probably ok if charge a fair price for it, and/or make it available to all
4. When addressing political issue, use Scripture as your basis
5. Civic Concerns Class or Committee
 - A. Part of church
 - B. Independent
6. Consider 2 Corporations:
 - A. Church: 501(c)(3) corporation
 - B. Political Action Committee (PAC): 501(c)(4) corporation
7. Houses of Worship Free Speech Restoration Act of 2005 (HR 235)