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ERIK STANLEY: Tax exemption churches' right

By Erik Stanley

With all of the discussion swirling about whether church leaders can speak freely about electoral candidates from the pulpit, one question frequently comes to the fore: If a church wants to talk about the positions of electoral candidates, it can just give up the "gift" of tax-exempt status "bestowed" by the government. That would be simple enough -- if it wasn't so completely wrong.

That's because churches receive a tax exemption as a matter of constitutional right, not legislative grace. The U.S. Supreme Court stated decades ago that the power to tax involves the power to destroy, and no surer way to destroy the free exercise of religion exists than to tax it out of existence.

Therefore, tax-exempt status for churches has existed independent of any special grant of privilege from the IRS. Some assume that any tax exemption is a government subsidy. That would be true if the government owned all property and income, but in America, it doesn't.

Americans have always placed a high value on the importance of private property. That's a big difference between the United States and many other nations.

Churches derive their tax exemption from the Constitution, and it is therefore not something the government can withdraw without serious damage to the Constitution itself. For almost the first 200 years of our country's history, that tax exemption was recognized without any stipulations or conditions. Pastors spoke freely from the pulpit, both endorsing and opposing candidates for office without anyone questioning whether they should be tax exempt.

Then, in 1954, Sen. Lyndon Johnson found a clever way to silence some nonprofit groups in Texas who were opposing his candidacy for the Senate. The new tax rule prohibited them from endorsing electoral candidates.

Scholars attest to the fact that the Johnson Amendment was not intended in any way to restrict the free speech of churches on the subject, but it has been used in that manner ever since. It is patently unconstitutional.

If one doubts the impact of this ill-advised piece of legislation, passed by Congress without debate or analysis, one only need take a peek at the activity of organizations like Americans United for Separation of Church and State to see how they wield it as a weapon to keep churches (at least the ones they disagree with) from having a voice. This "keep your opinions to yourself or else" threat has got to go.

The discussion about the extent to which pastors should speak about electoral candidates from the pulpit is a fine one to have, but it is a discussion for the church, not the IRS.

The reality is that the First Amendment provides protection for a pastor's right to speak freely from the pulpit. It is the job of the pastor, not the IRS, to determine the content of his sermon, and no government agency or official has the right to parse the words of it.

When we allow the government to step into the pulpits of America, the free exercise of religion is endangered, and the government steps into the role of a religious monitor. As the Supreme Court stated in 1943, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in religion."

It is time to remove the IRS from its position as the orthodoxy police.

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