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Dear Religious Leader:

Have you been threatened with loss of your institution's tax-exempt status if you engage in anything remotely resembling "political activity"? If you haven't yet, you no doubt will. Every election year, well-funded groups that oppose true freedom of speech and religious exercise attempt to gag leaders like you, usually by sending letters that contain tendentious statements about federal tax law and your constitutional rights.

The Becket Fund for Religious Liberty is a non-profit, non-partisan public interest law firm dedicated to protecting the free expression of *all* religious traditions.

We are writing for three reasons: (1) to debunk these exaggerated threats, especially as they relate to preaching *from the pulpit* and preaching *on moral and political issues*; (2) to invite you to visit our website, www.freepreach.org, for more information; and (3) to urge you to contact us immediately if the IRS threatens you for either type of preaching, so that we can give you *legal assistance, free of charge*.

Neither the Supreme Court nor any other court has *ever* upheld denying government benefits — such as 501(c)(3) tax-exempt status — merely for preaching sincerely held religious beliefs from the pulpit. While the Supreme Court has upheld tax penalties for nonreligious charities' political activity, we believe there is a difference of constitutional significance when religious ministers speak *from the pulpit to their own congregations*.

There is little to suggest otherwise. In support of their view that such sermons may be prohibited, the IRS and others rely heavily on a single lower court decision in which a church was successfully sanctioned for placing full-page ads in *USA Today* and *The Washington Times* that opposed a particular presidential candidate by name. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000). That is, of course, very different from preaching from the pulpit. Indeed, to our knowledge, there is only a single instance in which the IRS has even proceeded administratively against a sermon from the pulpit explicitly endorsing a candidate by name. And unfortunately, the clergyman in that instance backed down without a fight, before the IRS action could be tested in court.

We believe there is good reason for the IRS's reticence. Any religious group punished for preaching from the pulpit would have a strong First Amendment defense, under a combination of the Free Speech and Free Exercise Clauses. *See, e.g., Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 109 (1943) (emphasizing the "high estate under the First Amendment [of] worship in the churches and *preaching from the pulpits*") (emphasis added). There is a long tradition of such preaching stretching back to, and before, the election of Abraham Lincoln.

Moreover, even as a question of tax law itself, we believe that words spoken from the pulpit should be viewed as a 501(c)(3) organization speaking to itself, rather than “interven[ing]” in a political campaign, which is what 501(c)(3) addresses. Like professors, who routinely express political views to their students without threat of IRS sanctions to their academic institutions, clergy speaking from the pulpit are an important part of an internal ferment of ideas within their religious institutions.

We recognize that the IRS disagrees. See *IRS Tax Guide for Churches and Religious Organizations* at 8, Ex. 4 (the “*IRS Tax Guide*,” available at www.freepreach.org/IRStaxguide). So religious leaders who violate their guidelines run some risk of IRS action against them. However, the IRS doesn’t have the last word. The courts do. And we are fully prepared to defend our views in court.

Even the IRS guidance, stingy as it is, specifically allows you room for some types of politically related expression. Clergy “as individuals” may endorse candidates or parties, so long as you “clearly indicate that [your] comments are personal and not intended to represent the views of the organization.” The guidance is (perhaps purposely) vague on whether such “individual” endorsements may be made from the pulpit, but seems to suggest not. See *IRS Tax Guide* at 7. Nevertheless, attempting such an “individual” endorsement from the pulpit certainly seems a safer course than announcing an “official” one.

Safest of all, however, is to focus on **moral or political issues**, while avoiding advocacy specifically for candidates or parties. There can be little doubt that the First Amendment protects preaching on any moral **issue** and its social consequences from the pulpit or elsewhere, even if the position taken on that issue happens to correspond to the position of a particular party or candidate. The IRS guide itself affirms this principle. *IRS Tax Guide* at 7 (“Nor are [religious] leaders prohibited from speaking about important **issues of public policy**.”) (emphasis added). And the last time the federal government tried to squelch this sort of preaching — then in the context of the military — The Becket Fund sued on behalf of an inter-religious coalition of ministers and won. *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997).

This letter, of course, is both brief and general. It’s not legal advice. To learn more, please visit our website at www.freepreach.org or contact us by fax or email (freepreach@becketfund.org). And as you consider how to exercise your rights, please also consider supporting this project to defend them. If you would like to help us with this project, and our other efforts on behalf of religious liberty, please contribute to The Becket Fund at the website above or using the enclosed envelope. Let’s be clear, though: we are here for you whether you contribute or not.

So, most importantly, we urge you to contact us **immediately** if the IRS threatens your institution’s tax-exempt status for anything you say from the pulpit. (This does **not** apply to other sorts of statements, such as church bulletins, flyers, radio broadcasts—even of regular services or sermons—newspaper advertisements, etc.) We will defend **free of charge** any good faith religious message—left, right, or center, wisdom or nonsense—preached from the pulpit.

Sincerely,



Kevin J. Hasson
Chairman
The Becket Fund for Religious Liberty