

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

**Testimony**  
**Before the United States House of Representatives**  
**Committee on Oversight and Government Reform**  
**Subcommittee on Health Care, Benefits, and Administrative Rules**  
**Subcommittee on Government Operations**

**“Preserving and enforcing the Johnson Amendment serves our nonprofits, our political process, and churches”**

**By Andrew L. Seidel and Samuel Grover**  
**Staff Attorneys**  
**Freedom From Religion Foundation**

**May 8, 2017**

“Every new & successful example . . . of a perfect separation between ecclesiastical and civil matters, is of importance. And I have no doubt that every new example, will succeed, as every past one has done, in showing that religion and government will both exist in greater purity, the less they are mixed together.”

– James Madison<sup>1</sup>

Mr. Chairman and Members of the Subcommittee:

Thank you for accepting our testimony on the critical importance of the Johnson Amendment. This is an issue our organization, the Freedom From Religion Foundation, has worked on for decades. FFRF is a national nonprofit with more than 28,000 members, spanning every state. Our purpose is to protect the constitutional separation between religion and government.

For more than three decades, FFRF has asked the IRS for investigations into churches and religious nonprofits that appear to have violated the prohibition on electioneering. Since 2006, FFRF has contacted the IRS about more than 70 churches and religious nonprofits. Our complaints to the IRS are filed without regard to the church or organization's religion or to the political allegiance of the statements. They have included complaints about pastors urging congregations to vote for President Obama, John McCain, Mitt Romney, and, last year, about Hillary Clinton and President Trump campaigning at churches that endorsed them during services.

In 2012, FFRF sued the IRS, when there was widespread agreement it had stopped investigating reports of politicking by churches, to compel it to enforce the Johnson Amendment. We're proud our lawsuit nudged the IRS to agree to continue to investigate errant churches and ensure that the tax code is being enforced evenhandedly. This body should not overturn the Johnson Amendment; it should ask the IRS to enforce it.

**Understanding the contours of the Johnson Amendment is critical and rare, even within the United States Congress.**

The misinformation surrounding the Johnson Amendment is extensive. In a recent town hall meeting, Senator Chuck Grassley fell prone to some of the common misunderstandings:

What I want to make sure is that this minister, or any other minister, can't be jailed just because she makes a political statement — within — from the pulpit. That's what I think the Johnson Amendment restricts, and it violates freedom of speech and free of religion . . . but there is one aspect of it I have not investigated. There was some indication in the press, I don't know whether it's the way the Johnson Amendment actually works so give me this leeway, but if it allows the use of church contributions to promote candidates, I think that goes too far.<sup>2</sup>

In one respect, Senator Grassley's concern is warranted. Repealing the Johnson Amendment would allow use of church contributions to promote candidates, and much more. It would not, has never, and could never, be used to jail a pastor. Nor is it designed to punish a 501(c)(3) organization for making any statement on a political issue.

The Johnson Amendment prevents 501(c)(3) charities from endorsing political candidates or using their tax-exempt donations and tax-free property for partisan political campaigns. Churches are fully permitted to talk about issues—such as gay marriage, abortion, and civil rights—and engage in some nonpartisan lobbying. Contrary to suggestions made by Mr. Tony Perkins in his

highly dubious testimony to this Committee, the Johnson Amendment did not stop, and was never intended to stop, Dr. Martin Luther King, Jr. from preaching civil rights from the pulpit. Such a prohibition has always fallen far outside the law's scope. The Johnson Amendment was passed in 1954, the year prior to the Montgomery bus boycott, and it remained in effect throughout Dr. King's brief but shining career as a leader in the civil rights movement. The law simply means nonprofits and churches may not abuse their tax-exempt status by endorsing a political candidate. It does not interfere with any issue-oriented political speech that falls short of political campaign intervention.

The rule also does not prevent pastors from endorsing candidates in their private capacity as citizens. They simply cannot do so from the pulpit or on church letterhead.

In other words, the Johnson Amendment does precisely what Senator Grassley thinks it should. Repealing it would only accomplish the one thing that he characterized as going too far: "if it allows the use of church contributions to promote candidates, I think that goes too far."

This commonsense rule applies to *all* charities and 501(c)(3) nonprofits. It does not single out or pick on churches. The minority of churches that are pushing so hard for a repeal of the Johnson Amendment are forgetting a basic, yet critical fact: **Tax exemption is a privilege, not a right.** Strings can be attached to that privilege. One string is the Johnson Amendment. If a (c)(3) nonprofit or church desires to wade into politics, it is free to do so—but it must, like every other political organization, then forego the privilege of tax exemption. The Johnson Amendment ensures equal footing on the political battlefield and also ensures that tax-deductible charitable donations, which are meant to serve the community, go to charitable works, not political campaigns.

**The push to repeal the Johnson Amendment is not about free speech.**

The amendment is not a ban or even a burden on free speech or religious exercise. The D.C. Circuit, the second highest court in the land, held that the electioneering ban is constitutional and not a violation of church's free speech rights, free exercise rights, or rights under the Religious Freedom Restoration Act. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

The push to repeal the Johnson Amendment is not about speech or free exercise; churches already possess both. Unfortunately, many churches view tax exemption as a right, not a privilege. This is not the case. Churches have no constitutional immunity from taxes. *See, e.g., Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 707 (1970) "Churches, like newspapers also enjoying First Amendment rights, have no constitutional immunity from all taxes."); *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943) ("We do not mean to say that religious groups and the press are free from all financial burdens of government.") (citing *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)).

Most Americans, including most religious Americans, recognize that this is not about free speech and prefer that churches stay out of politics. According to an evangelical polling group, Lifeway Research, whose slogan is "Biblical Solutions for Life," nearly 80 percent of Americans say it's inappropriate for pastors to endorse a candidate in church and 75 percent do not believe it is appropriate for churches to publicly endorse candidates.<sup>3</sup>

**The push to repeal the Johnson Amendment is about money and power.**

Unlike other 501(c)(3)s, churches do not have to report any financial information to the IRS. Every other charity in this country has to file a Form 990 with the IRS. This form tracks every penny that comes in and goes out. Churches don't report any of this information. They are financial and informational black holes.

This Committee is already familiar with the problems of dark money in politics. Overturning the Johnson Amendment would open the floodgates for that dark money, which could be funneled to political campaigns through churches, without financial transparency. Donors could give or tithe to churches in unlimited, tax-deductible amounts. The church would have no legal obligation to report anything to the IRS and none of that money could be tracked. In short, overturning the Johnson Amendment would make the *Citizens United* decision look trivial and nominal.

If the Johnson Amendment is repealed, millions, possibly billions, will inevitably flow into and out of churches for political purposes. Do we really want churches to become unregulated super-PACs?

**President Trump has made it clear that repealing the Johnson Amendment is about giving power back to churches, specifically evangelical churches.**

As you probably know, 81 percent of white evangelicals voted for Trump, more than supported Mitt Romney, John McCain, or George W. Bush. The president has been explicit that he is trying to give political power to evangelical churches by overturning the Johnson Amendment. In a closed-door meeting with hundreds of Christian conservatives on June 21, 2016, Trump spoke about the Johnson Amendment in audio that was leaked to the Washington Post.<sup>4</sup>

Trump told this group of Christian preachers,<sup>5</sup> “The government has gotten so involved in your religion. **Especially your religion**, that it makes it very difficult. . . . You really don't have religious freedom, if you really think about it, because when President Johnson had his tenure, he passed something that makes people very, very nervous to even talk to preserve their tax-exempt status. And **it's taken a lot of power away from Christianity**,” adding as an afterthought, “and other religions.” [Note: The italicized emphasis appears in the original transcript. Contrary to the above, President Eisenhower signed the Johnson Amendment into law; it was proposed and named after Lyndon Johnson, then a senator.]

Trump also told this group that he attributes the decline of Christianity in America to the Johnson Amendment, which he will get rid of. He told a story he reiterated many times: “I said, ‘**Why is it that the whole thing with Christianity, it's not going in the right direction? It's getting weaker, weaker, weaker from a societal standpoint?**’ . . . . And we are going to get rid of that, because you should have the right to speak.”

In that same meeting, Trump said that overturning the Johnson Amendment “**will be my greatest contribution to Christianity**,” again adding as an afterthought, “and other religions.”

Trump clarified that he was going to get rid of the Johnson Amendment to help stem the decline of American Christianity: “**And we have to get rid of that, and if we don't, I really think**

**you're going to have a continuing spiral. And I don't want to see that, because I've been a Christian and I love Christianity. And the evangelicals have been so incredibly supportive."**

Trump was very explicit about helping Christianity gain power by overturning the Johnson Amendment when addressing a group of evangelical pastors in Orlando, Florida on August 11, 2016, telling the pastors: **"You should be far more powerful. And if you look what's happened to religion, if you look at what's happening to Christianity, and you look at the number of people going to churches—and evangelicals know this also—it's not on this kind of a climb [gesturing to indicate increasing], it's on this kind of a climb [gesturing to indicate decreasing]. Slow and steady in the wrong direction and a lot of it has to do with the fact that you've been silenced. You've been silenced, like a child has been silenced."** He continued, asking these pastors to tell everyone of his goal to repeal the Johnson Amendment, reiterating the huge benefit for evangelicals in particular: **"I hope you can spread the word, this will be so great for religion, but it will be so great for the evangelicals, for the pastors, for the ministers, for the priests, for America, for America. You know, they took away your voice. . . . We'll be able to terminate the Johnson amendment. And you'll have great power to do good things. And religion will start going instead of this way [gesturing to indicate decreasing]—I mean, Christianity, when you think of what's happening, you look at the numbers. I talk about Sunday school and people don't even know what I'm talking about anymore. It's true. They don't know what I'm talking about. When you look—instead of going this way [gesturing to indicate decreasing], you're going to be going this way. [gesturing to indicate increasing] You may be going this way [gesturing to indicate steeply increasing]."**

In short, President Trump has openly proposed repeal of the Johnson Amendment to pander to a small cross-section of religious groups and churches. The charge that churches are being persecuted and muzzled is without foundation, and most churches and the American public approve of the status quo.

### Conclusion

The Johnson Amendment is a common-sense rule that applies equally to all non-profits and churches benefiting from 501(c)(3) tax-exempt status. It ensures that charitable donations are not used for political ends. Overturning the rule would release a flood of dark money with no financial transparency and give unprecedented political power to churches.

The best reason for keeping the law as it stands was recognized early in our country's history: Religion and politics are a dangerous mix, as James Madison noted in the quote that opens this testimony. One law review article put it this way: "political division along religious lines was one of the principal evils against which the First Amendment was intended to protect."<sup>6</sup>

The most pernicious aspect of church politicking is the power that religious leaders hold over the minds of individuals. Absent the Johnson Amendment, church leaders could engage in what is essentially spiritual blackmail, tying their congregants' religious well being to their personal voting decisions. This would forever alter our political system, as well as the very nature of churches, which would become partisan entities. The vast majority of Americans oppose this change, with almost 80% saying it's inappropriate for a pastor to endorse a candidate from the pulpit.

Tax-exempt entities are taxpayer-subsidized. The public pays more taxes because tax-exempt organizations pay none. They have a free ride because they are expected to provide a public benefit. There are an estimated 312,000 churches in the United States and more than 1.5 million nonprofit organizations.<sup>7</sup> It would do irreparable damage to the nonprofit sector, congregations, and our democratic political process if every tax-exempt organization suddenly became partisan, able to endorse political candidates and openly interject themselves into political campaigns. Partisan politicking would undermine the integrity of nonprofits and would divide congregations along political lines. The proposed change would allow unregulated dark money from churches into campaigns, far outstripping the impact of the Supreme Court's ruling that corporations are people.

The Johnson Amendment is a wise and equitable rule that preserves the integrity of our nonprofits and churches. It must be protected and enforced.

---

<sup>1</sup> Letter to Edward Livingston, July 10, 1822.

<sup>2</sup> Remarks by Sen. Chuck Grassley, town hall on February 23, 2017, at the Floyd County Courthouse in Charles City, Iowa.

<sup>3</sup> Lifeway Research, "American Views on Candidate Endorsements and Tax Exemption," (2015) available at <http://bit.ly/2p8Anyt>.

<sup>4</sup> Michelle Boorstein and Julie Zauzmer, "Thrilling Christian conservative audience, Trump vows to lift ban on politicking, appoint antiabortion judges," *The Washington Post* (June 22, 2016) available at <http://wapo.st/1sNMD8W>.

<sup>5</sup> See the full transcript at, Jon Ward, "Transcript: Donald Trump's closed-door meeting with evangelical leaders," *Yahoo News* (June 22, 2016) at <https://yhoo.it/2pFclfl>.

<sup>6</sup> Paul A. Freund, *Public Aid to Parochial Schools*, 82 HARV.L.REV. 1680, 1692 (1969).

<sup>7</sup> National Center for Charitable Statistics, *Quick Facts About Nonprofits* (May 2016), <http://nccs.urban.org/data-statistics/quick-facts-about-nonprofits> (citing infoUSA database for church estimate and exact numbers from the IRS Business Master File for active organizations that have registered for tax-exempt status).