

Friends and Foes of Johnson Amendment Prepare to Square Off

by Fred Stokeld

Republican election victories have inspired hope among those who support repeal of the tax code provision barring charities and churches from political campaign intervention, while advocates for the ban stand ready to defend it.

The 70-year-old law, commonly known as the Johnson Amendment, prohibits section 501(c)(3) entities from endorsing candidates for public office or otherwise intervening in partisan political campaigns, and opponents of the campaign ban are now optimistic that it may soon be history.

“There’s a different dynamic in Congress and in the White House,” Mathew D. Staver of Liberty Counsel told *Tax Notes* December 16, speaking about Republicans’ forthcoming control of the House and Senate and President-elect Trump, a longtime foe of the Johnson Amendment, preparing to return to office.

“We have now . . . a great opportunity to move forward with some efforts to do away with the Johnson Amendment. I’m looking forward to that in the next few years . . . and I’m anticipating success,” Staver said.

Staver doesn’t think the IRS will enforce the Johnson Amendment while the law still exists, regardless of who becomes commissioner under Trump.

On December 4 Trump announced that he will nominate former Rep. Billy Long to serve as commissioner of the IRS and run out the rest of current agency head Daniel Werfel’s term until 2027.

Staver said he anticipates Trump will introduce something similar to the executive order he issued during his first term, directing the IRS not to target churches that make political pronouncements.

Liberty Counsel isn’t the only group continuing to express displeasure with the Johnson Amendment since the election.

“Pastors should be free to preach without fear of government intrusion,” Ryan Tucker of Alliance Defending Freedom said December 9.

“The government simply has no business interfering with the internal affairs of churches, nor should it be able to threaten a church with financial penalties based on a requirement that the church self-censor and surrender its constitutionally protected freedom,” Tucker added.

Defending the Amendment

Supporters of the Johnson Amendment — like Americans United for Separation of Church and State — are committed to defending the political campaign ban from renewed attacks.

“We anticipate Trump will continue to ignore the will of the American people, who overwhelmingly support the law, in an effort to gut its protections and secure greater power for his Christian nationalist allies,” Americans United’s Alessandro Terenzoni said, noting that before the 2024 election, Trump told clergy members he would “try and get rid of it permanently” in an effort to make them more powerful.

A repeal or weakening of the Johnson Amendment “would change the character of nonprofits as we know them and could transform houses of worship into political action committees,” according to Terenzoni, who claimed that polls have shown that a broad cross-section of Americans, including faith leaders, evangelical Christians, and Republicans, don’t want political messaging from houses of worship.

“President-elect Trump and congressional leadership would be wise to remember that the last time the Johnson Amendment was threatened, more than 4,500 faith leaders, 5,500 nonprofit organizations, and 106 religious and denominational organizations weighed in to strongly oppose” such action, Terenzoni said, adding that “Trump should expect a similar backlash” should he make a similar attempt.

The Freedom From Religion Foundation (FFRF) agrees that the amendment could face repeal, and it foresees that Congress could take up a measure to do so.

If that comes to pass, Annie Laurie Gaylor of the FFRF said the foundation’s section 501(c)(4) advocacy arm, the FFRF Action Fund, “will fight legislatively.”

Law Still Intact

Although Trump boasted that his 2017 executive order got rid of the Johnson Amendment, the law remained intact, Gaylor said.

If Trump again makes such false claims, the FFRF will remind the public that his administration twice admitted in court filings that a president cannot repeal an act of Congress by fiat, Gaylor continued. “We believe it is vitally important to correct the record, as Trump’s previous statement encouraged disrespect for the law as well as lawless actions by some churches and Christian nationalist groups.”

The FFRF also might file a lawsuit similar to the one it filed in 2017 challenging Trump’s executive order, according to Gaylor.

“We are waiting to see what will be leaked or revealed in advance of [Trump’s] inauguration and are still studying the situation and all of our options,” said Gaylor, who thinks another executive order on the matter is likely.

“Churches are already black holes when it comes to the IRS regulations exempting them from basic 501(c)(3) reporting duties,” Gaylor said. “If tax-exempt churches are allowed to use their donations for electoral and partisan or political purposes, this would put the results of *Citizens United* to shame, creating a new class of dark money.” ■

Grassley to Keep Heat on IRS Regarding Nonprofit Hospitals

by Fred Stokeld

A Senate taxwriter who has urged the IRS to get tough with nonprofit hospitals that don’t operate in ways that justify their tax-exempt status is planning to continue to pressure the agency on the issue after the new Congress convenes in January.

In the 119th Congress, Senate Finance Committee member Chuck Grassley, R-Iowa, “will continue to investigate the IRS’s oversight of nonprofit hospitals’ compliance with tax-exempt requirements,” Grassley’s office said in a December 19 statement to *Tax Notes*.

Grassley “looks forward to advancing his work to provide solutions for patients and taxpayers,” the statement said.

“Ensuring patient safety and quality care is a long-standing priority for Senator Grassley,” the senator’s office continued. “For decades, he’s worked to hold nonprofit hospitals accountable to their communities, patients and taxpayers, while keeping a close eye on the [IRS’s] oversight and enforcement mechanisms.”

In a November 19 letter, Grassley and fellow Finance Committee member Elizabeth Warren, D-Mass., told the IRS that some nonprofit hospitals are benefiting from tax-exempt status “while shirking their responsibility to provide charity care and engaging in abusive collections practices that harm their patients and communities.”

In the letter, Grassley and Warren recommended that the IRS increase its oversight of exempt hospitals by conducting more audits and reviews of hospitals with regular compliance issues.

The IRS should also establish clear standards for nonprofit hospitals’ financial assistance policies and practices, require hospitals to screen patients for eligibility for financial assistance before starting extraordinary collection actions, prohibit harmful practices and the delay or denial of medically necessary care because of outstanding medical bills, and require nonprofit hospitals to provide charity care to the extent that they can do so financially, the senators said.