

# FREEDOM FROM RELIGION *foundation*

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September 21 , 2020

**SENT VIA U.S. MAIL AND EMAIL:**  
**CommissionerTrainor@fec.gov**

The Honorable James E. Trainor III  
FEC Chairman  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

Re: Misleading the public during “Church Militant” interview

Dear Commissioner Trainor:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to object to a series of deeply misleading statements you made during a recent media interview. FFRF is a national nonprofit organization with more than 32,000 members across the country, including members in all 50 states. FFRF protects the constitutional separation between state and church and educates about nontheism.

It is our understanding that you gave an interview to the far-right media group Church Militant on September 16, 2020. During the interview, you complained about Catholic bishops obeying IRS regulations known as the Johnson Amendment, which prohibits tax-exempt nonprofits from endorsing political candidates.

The Federal Election Commission is meant to be an independent regulatory agency charged with ensuring that campaign finance laws are obeyed. Church Militant is a far-right fringe organization, reportedly denounced by the Catholic Church. It publishes radical articles that promote positions similar to that of Steve Bannon’s Breitbart, consistently anti-LGBTQ, anti-woman and strongly opposed to parts of the First Amendment.<sup>1</sup> The power and prestige of an independent public office should not be used to promote the propaganda of such a dangerous, un-American group. This ill-advised appearance was made even worse by the dishonest discourse.

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<sup>1</sup> Robert Allen, “How a right-wing Ferndale fringe group is building a multimedia empire,” *The Detroit Free Press* (Feb. 18., 2017).

You attacked Catholic bishops for *not* endorsing political candidates, saying that they “hide behind” their non-profit status.<sup>2</sup> In so doing, you are using the power of your federal office to encourage Catholic leaders to endorse a political candidate in violation of the law. This is an egregious abuse of your office and of the public trust.

You cited President Trump’s “religious liberty” executive order as evidence that churches could ignore the Johnson Amendment and endorse candidates: “The churches can absolutely engage in that activity now.”<sup>3</sup> You failed to mention that, in response to a lawsuit by the Freedom From Religion Foundation, **the Justice Department twice told a federal court that the executive order did not, and could not, repeal the Johnson Amendment.**<sup>4</sup> Trump lied about the Johnson Amendment, and by repeating that lie you have misrepresented the law and encouraged church leaders to break it.

While violations of the Johnson Amendment itself do not fall under the jurisdiction of the FEC, by appearing as a government representative and expert, you deliberately misled houses of worship about the law and risked tax exemptions.

You also suggested that the Johnson Amendment treats religious organizations less favorably than secular organizations.<sup>5</sup> This, too, is a lie. The Johnson Amendment has always applied equally to *all* nonprofits, both secular and religious. If anything, churches have received favorable treatment through a lack of enforcement.

You also falsely suggested that political endorsements are protected speech under the First Amendment, and therefore cannot be prohibited by the Johnson Amendment.<sup>6</sup> No court has ever agreed with this position and courts have held churches responsible for political endorsements.

You should immediately correct the record and apologize for telling church leaders to violate the law.

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<sup>2</sup> At 7:55, available at <https://www.churchmilitant.com/news/article/exclusive-interview-trey-trainor> (“The bishops are using their nonprofit status as a shield to hide behind from having to make a decision about who to support.”).

<sup>3</sup> At 7:40.

<sup>4</sup> *Freedom From Religion Foundation v. Trump*, 3:17-cv-00330-jdp (W.D. Wis., 2017) (voluntarily dismissed after the government admitted that the challenged order had no legal effect)

<sup>5</sup> At 0:40.

<sup>6</sup> At 1:00.

You also badly mischaracterized the concept of state/church separation, enshrined in the U.S. Constitution. Recycling long-debunked revisionist history, you claimed that this constitutional principle “started with” the letter in which Thomas Jefferson coined the phrase, “wall of separation between church and state.”<sup>7</sup> This was Jefferson’s description of *both* of the religion clauses in the First Amendment—the Establishment Clause and the Free Exercise Clause—and not, as you stated, only about the former, as though churches were entitled to all the benefits of “Jefferson’s wall” without any of the responsibilities.

The greatest danger to true religious liberty is the attempt to undermine this founding American principle. The wall of separation guarantees a secular government, in part, to guarantee religious freedom. There is no freedom *of* religion without a government that is free *from* religion.

This is a founding American value that predates Jefferson’s letter to the Danbury Baptists. It was widely discussed by the Framers prior to the ratification of the Constitution, and was codified in laws such as the Virginia Statute for Religious Freedom, which was authored by Jefferson, before the formation of the current federal government. The intent was unambiguously to keep the government out of religion, *and* to keep religion out of the government. James Madison, for instance, later called the “alliance or coalition between government and religion” the “old error” that America had learned from, noting such a union’s “corrupting influence on both parties” and concluding that “religion and government will both exist in greater purity, the less they are mixed together.”<sup>8</sup>

We have addressed just a sampling of the hurricane of misinformation you and Church Militant put out in this interview. As a lawyer and chair of an independent regulatory body, you have a duty of candor to the American people. This interview deliberately misled churches and encouraged them to violate the law. Please correct the record.

Very truly,



Annie Laurie Gaylor & Dan Barker  
Co-presidents

ALG/DB:rdj/als

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<sup>7</sup> At 1:23 (“So it actually starts with a letter from Thomas Jefferson to the Danbury Baptists.”).

<sup>8</sup> James Madison, *Letter to Edward Livingston*, July 10 1822.