



GOP Platform: Repeal the “Johnson Amendment” Inhibiting Pastors’ Free Speech

The week before he was to give his acceptance speech at the Republican National Convention in Cleveland last Thursday, Donald Trump phoned the president of Liberty University [to tell him](#) that the GOP’s platform called for repeal of the “Johnson Amendment.” Said Jerry Falwell, Jr.:



[Trump] was so excited. After 30 years of the so-called conservative leaders who have been elected by evangelicals, none of them sought to advocate for the repeal of the Johnson Amendment [which would give] evangelical leaders political free speech.

He thinks it is going to be a revolution in the Christian world.

In his acceptance speech, Trump referred to the repeal of the restriction, asserting that the amendment to Section 501(c)(3) of the Internal Revenue Service Code, “pushed by [Texas Senator] Lyndon Johnson, many years ago, threatens religious institutions with a loss of their tax-exempt status if they openly advocate their political views.”

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The language from the GOP platform is clear:

Places of worship ... have reason to fear the loss of tax-exempt status merely for espousing and practicing traditional religious beliefs....

We value the right of America’s religious leaders to preach, and Americans to speak freely, according to their faith.

Republicans believe the federal government, specifically the IRS, is constitutionally prohibited from policing or censoring speech based on religious convictions or beliefs, and therefore urge the repeal of the Johnson Amendment.

In the 60 years since Texas Senator Lyndon Johnson urged that the Senate pass his amendment (which it did without discussion or debate), the IRS has been reluctant to enforce the restriction despite its threat that it might do so at any time. On the IRS website is found that threat:

All Section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective office.

Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.



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During that span the IRS chose only one church to investigate for violation of the Johnson Amendment: the All Saints Episcopal Church in Pasadena, California. In 2004, the preacher had the audacity to speak against the war in Iraq, and the IRS took him and his church to task. After an investigation that lasted nearly two years, costing the church \$200,000 in legal fees, the IRS dropped it.

The Alliance Defending Freedom (ADF) thinks that the reluctance of the IRS comes from knowing that it would lose in court. That's why the ADF has urged pastors to participate in its "Pulpit Freedom Sunday" each year, hoping that someone will complain to the IRS, thus giving them a chance for a hearing. One of those participating was Reverend Gus Booth of the Warroad Community Church in Warroad, Minnesota, who endorsed Senator John McCain in 2008 from the pulpit. Someone did complain, and the IRS demanded that his church turn over documents and minutes from various meetings to determine his guilt or innocence in violating the Johnson Amendment.

Last month Booth got a letter from the IRS saying it was ending its investigation. Booth was disappointed: "We wanted to go to court. This is the First Amendment vs. the IRS ... one standard of the law would win."

Also disappointed was ADF attorney Christiana Holcomb:

We have welcomed the IRS to really enforce this so we can make a challenge to the law, and make the public aware that any regulation of a pastor's sermon is a clear violation of the Constitution.

Another pastor, Reverend Jim Garlow of Skyline Church in San Diego, California, has been even more aggressive: He has been sending his "Pulpit Freedom Sunday" sermons to the IRS for years, hoping for a response. So far there has been none.

Those favoring repeal think that, once in court, the IRS will lose on the basis of Supreme Court rulings in the past. The most relevant is *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, where the Supreme Court ruled unanimously in favor of the church. Chief Justice John Roberts wrote that "the Establishment Clause [of the First Amendment] prevents the Government from appointing ministers, and the Free Exercise Clause [also of the First Amendment] prevents it from interfering with the freedom of religious groups to select their own." Observers note that it is a very short hop from freedom to "select their own" to allowing them to speak freely without government oversight.

The decision was unanimous, including Ruth Bader Ginsburg, Stephen Meyer, Sonia Sotomayor, and Elena Kagan.

The problem with the Johnson Amendment isn't that it isn't being rigorously enforced by the IRS, but the chilling effect it has had on that freedom of speech ever since it became part of the IRS code. Pastors self-censor their sermons out of fear of the IRS, outside anti-religious groups threaten to use the amendment, which intimidates many of the churches, and church members fear losing their precious tax exemption, so they keep their pastors in neutral when addressing sensitive and important political issues.

The ADF remains hopeful that the IRS will decide to take someone expressing their First Amendment rights from the pulpit to court because they are ready. The Johnson Amendment 1) violates the "establishment clause" by requiring the IRS to monitor sermons to make sure that they are not transgressing its restrictions; 2) violates the "free speech clause" because it requires the IRS to discriminate against speech based solely on the content of the speech; 3) violates the "free speech clause" by "conditioning the receipt of a tax exemption on refraining from certain speech"; and 4)



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violates the “free exercise clause” because it burdens the free exercise of religion without a compelling reason.

Most political party platforms are used for public relations purposes, only to be ignored once the party assumes power. In this case, however, it just might raise a question that no one is asking: Why would pastors and churches willingly submit themselves to government sanctions for the sake of tax exemption? Is that tax exemption more important than speaking truth to power — especially the Truth of the Holy Scriptures?

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