



Written by [Steve Byas](#) on February 3, 2017

## President Supports Congressional Efforts to Free Pulpit Political Speech

Speaking Thursday to the National Prayer Breakfast, President Donald Trump made it quite clear that he supports religious liberty in general — and the repeal of the Johnson Amendment found in the Internal Revenue Service (IRS) tax code, specifically, lending powerful support to the effort in Congress to do just that.



“We are not just flesh and bone and blood. We are human beings, with souls,” Trump told the gathering in the nation’s capital. “Our republic was formed on the basis that freedom is not a gift from government, but that freedom is a gift from God.”

Trump then quoted Thomas Jefferson’s words: “The God who gave us life, gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God?”

“Among those freedoms,” Trump added, “is the right to worship according to our own beliefs. That is why I will get rid of, and totally destroy, the Johnson Amendment and allow our representatives of faith to speak freely and without fear of retribution. I will do that.”

Trump wrote a letter last year to Roman Catholics, pledging, “I will defend your religious liberties and the right to fully and freely practice your religion, as individuals, business owners and academic institutions.”

Speaking Wednesday at a press conference with several religious leaders, Tony Perkins of the Family Research Council explained why the “Free Speech Fairness Act,” now before Congress to repeal the Johnson Amendment to the U.S. tax code, is so important:

The Johnson Amendment prohibits non-profits and churches from engaging in any activity that might be interpreted as “political,” even if it’s a simple oral or written statement. In 2015 alone, we know of 99 different churches singled out by the IRS for violation of the Johnson Amendment.

The 2016 Republican Party platform specifically called for repeal of the Johnson Amendment. “The Johnson Amendment is an obviously unconstitutional restraint on free speech,” Perkins added. “Knowing the IRS has proven to be no friend of religious organizations in the past, it has resorted more frequently to this little-known law in an effort to censor the speech of church and charity leaders.”

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Senator James Lankford (R-Okla.) joined with GOP House members Steve Scalise, the majority whip from Louisiana, Jody Hice of Georgia, and Mike Johnson of Louisiana in introducing legislation in Congress to eliminate the Johnson Amendment. Lankford explained why he considers the repeal so necessary: “The Free Speech Fairness Act is needed to prevent government intrusion and suppression



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of free speech by removing a restriction on speech that has existed since 1954.”

Lankford said his bill would overturn the amendment that was slipped into the tax code by then-Senator Lyndon B. Johnson (D-Texas), designed to prohibit leaders of nonprofits and churches from engaging in any activity that might be interpreted as participating or intervening in a campaign on behalf of, or in opposition to, a candidate for public office. Lankford added that his bill would keep the present prohibition on churches and other non-profits who operate under 501(c)(3) provisions of the tax code from contributing money to candidates or campaigns.

“The First Amendment right of free speech and right to practice any faith, or no faith, are foundational American values that must extend to everyone, whether they are a pastor, social worker or any charity employee or volunteer,” Lankford insisted. “People who work for a non-profit still have constitutional rights to assembly, free speech, and free press.”

The specific provisions of the Johnson Amendment are found in 26 USC section 501(c)(3), wherein certain organizations are exempt from taxation. According to the language, these include “corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition ... or for the prevention of cruelty to children or animals.”

However, in order to keep this tax-exempt status, the organization must be one that does not “[attempt] to influence legislation ... and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

The added benefit of this 501(c)(3) status is that donors to the organization are allowed to itemize and take a tax deduction for their contributions.

But, the IRS warns organization holders of this tax exemption:

Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities are allowed, however: voter education activities such as non-partisan get-out-the-vote drives and public forums, and the publishing of non-partisan voter guides.

In recent years, the Alliance Defending Freedom (ADF) has been a leader in working for the repeal of the Johnson Amendment through the Pulpit Freedom Initiative, which urges Protestant Christian ministers to deliberately violate the statute by making certain political statements in the pulpit. The ADF’s contention is that the Johnson Amendment violates the First Amendment rights of freedom of religious practice, free speech, and freedom of the press.

However, not all Christians, even right-leaning ones, agree with political remarks from the pulpit. Writing in *Liberty Magazine*, Charles Kester argued, “When we go to church, we seek spiritual and not political instruction. For that limited period of time we seek to serve God rather than “man” or Caesar. Efforts to use the pulpit to speak in favor of political candidates are little more than misguided attempts to thrust Caesar into a realm properly reserved for God.”

Kester’s position is quite reasonable; however, that issue is something for churches to work out among themselves. It is not within the province of governmental authorities to determine what can or cannot



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be said by a church, or any other religious organization. A person who does not like what the pastor has to say about a particular candidate, or does not even like a minister discussing politics from the pulpit at all, can take that up within the governing structure of that denomination.

In determining one's position on this issue of the Johnson Amendment, it is instructive to examine the motive of Senator Lyndon B. Johnson when he slipped the change into the tax code over 60 years ago on July 2, 1954. Johnson was up for reelection to the Senate that year, having won the seat by an extremely narrow margin in 1948, in a hotly contested race against Governor Coke Stevenson. In fact, it is now widely conceded that Johnson and his allies simply stole the election from Stevenson.

In any case, Johnson, a master of legislative maneuvering, "forced the amendment out of his anger that [two local] Texas non-profit groups had supported his primary opponent," according to Bruce Hopkins in his *The Law of Tax-Exempt Organizations*. In a study done by Purdue University sociologist James Davidson, "the ban on church electioneering has nothing to do with the First Amendment," but was rather motivated by Johnson's "desire" to challenge Senator Joseph McCarthy (R-Wis.), help the liberal wing of the Texas Democratic Party, and win his own re-election.

Jay Sekulow, chief counsel of the American Center for Law and Justice, has said the Johnson Amendment to the tax code "prevents religious leaders from truly exercising their constitutionally-protected free speech rights when they act in their official capacity as a pastor or head of a religious, tax-exempt organization."

Sekulow noted that the purpose of the IRS was "to collect revenue for the general treasury," but the Johnson Amendment had turned it into the "speech police."

Sekulow is certainly on point; however, the larger issue is the 16<sup>th</sup> Amendment, which handed Congress the power to create the IRS in order to collect the federal income tax. Before 1913, such a tax was not allowed by the U.S. Constitution, and in fact an 1890s federal income tax had been declared unconstitutional by the Supreme Court — thus forcing the need for an amendment to the Constitution to allow Congress to enact one.

Without the federal income tax, this whole problem of IRS abuse would simply vanish. The recent scandal under the Obama administration in which IRS agents chose not to grant tax-exempt status to conservative-leaning groups such as local Tea Party organizations is illustrative of the problems created by the income tax.

The income tax is intrusive of personal privacy. Because it enables the government in D.C. to collect so much money, the threat to withhold "federal" funds leads to increased power by the federal government at the expense of the states. We saw this with the Obama administration edict that local school districts had to allow transgender boy students into girls' restrooms, locker rooms, and even showers, or face the withdrawal of federal funds. Years ago, states were bullied into changing their speed limits, or face the loss of federal highway funds.

In his book *A Texan Looks at Lyndon*, renowned historian J. Evetts Haley devoted an entire chapter to how Senator Lyndon Johnson used the tax code to benefit himself and punish opponents. For instance, while Johnson was a Representative, an IRS agent had the nerve to call Johnson on a violation of the tax code, and then-President Franklin D. Roosevelt ordered the investigation halted and the IRS backed off.

Such "political" decisions by the IRS have occurred repeatedly throughout its history, and not just under Roosevelt. However, if the federal income tax were eliminated, this awesome power of the IRS to



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bully individuals and to pick winners and losers would cease.

While this effort by well-meaning members of Congress and President Trump to repeal the Johnson Amendment is commendable, we can only hope that eventually the root of the problem — the federal income tax — can be abolished.

Until then, we will continue to treat only the symptoms of the problem.



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