

Inquiring Minds topic – 17 March 2017

Floyd Jamison, Moderator

The Johnson Amendment

So, right from the horse's mouth: <https://www.irs.gov/uac/charities-churches-and-politics>

This is the basic IRS set-up on the issue. The links in the document take you to more specific language. You'll want to look at the last link which refers to the court decision which sustained the constitutionality of the Johnson Amendment.

The Johnson Amendment: the following are my thoughts to invoke discussion but the complexity, I find, is overwhelming. Please share your thinking on the Johnson Amendment.

- What is it?
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- Why is it?
-
- Does it accomplish what it purports to?
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- Is it overly restrictive of speech?
-
- Does it restrict religious practice?

I think we can confine our discussion to the above without going too far afield although the discussion plows some fertile ground about the value of non-profits, the different type of non-profits, whether we need to adjust/adapt our treatment of non-profits to our modern tax/financial/legal environment.

Charities, Churches and Politics

The ban on political campaign activity by charities and churches was created by Congress more than a half century ago. The Internal Revenue Service administers the tax laws written by Congress and has enforcement authority over tax-exempt organizations. Here is some background information on the political campaign activity ban and the latest IRS enforcement statistics regarding its administration of this Congressional ban.

In 1954, Congress approved an amendment by Sen. Lyndon Johnson to prohibit 501(c)(3) organizations, which includes charities and churches, from engaging in any political campaign activity. To the extent Congress has revisited the ban over the years, it has in fact strengthened the ban. The most recent change came in 1987 when Congress amended the language to clarify that the prohibition also applies to statements opposing candidates.

Currently, the law prohibits political campaign activity by charities and churches by defining a 501(c)(3) organization as one **"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 IRS has published Revenue Ruling 2007-41, which outlines how churches, and all 501(c)(3) organizations, can stay within the law regarding the ban on political activity. Also, the ban by Congress is on political campaign activity regarding a candidate; churches and other 501(c)(3) organizations can engage in a limited amount of lobbying (including ballot measures) and advocate for or against issues that are in the political arena. The IRS also has provided guidance regarding the difference between advocating for a candidate and advocating for legislation. See political and lobbying activities.

Each election cycle, the IRS reminds 501(c)(3) exempt organizations to be aware of the ban on political campaign activity. The IRS published its most recent reminder in a public news release which you can read here.

The division within the IRS responsible for overseeing churches and charities is the Tax Exempt and Government Entities Division. TEGE has created a Web page entitled Charities, Churches, and Educational Organizations - Political Campaign Intervention. It is dedicated to the IRS most recent activities related to 501(c)(3) and political activity.

A definitive court case on the issue of free speech and political expression is Branch Ministries Inc. versus Rossotti. In that case, the court upheld the constitutionality of the ban on political activity. The court rejected the plaintiff church's allegations that it was being selectively prosecuted because of its conservative views and that its First Amendment right to free speech was being infringed.

The court wrote: "The government has a compelling interest in maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose."

Updated July 12, 2007

How Repealing the Johnson Amendment Could Ruin Politics

Monday, August 08, 2016 By [Robin Marty](#).

Donald Trump is the Republican nominee and despite his previous time as a Democrat and his Johnny-come-lately stances on many of the social conservative issues that the religious right has come to love, he has managed to get a myriad of Christian leaders to back him in his battle for the White House. Exactly what magical spell has he worked that has brought around the values voters and made them believe that a business mogul with multiple ex-wives is now the person who should lead their country?

Simple. He's promised to repeal the Johnson Amendment.

MSNBC's Steve Benen aptly explains this somewhat obscure political rule that keeps religious groups from directly using their churches to campaign on behalf of politicians during elections.

"I've been covering this obscure fight for a while, so let's unwrap the controversy," [he writes](#). "Under federal tax law, tax-exempt houses of worship are not allowed to intervene in partisan political campaigns. Ministries can obviously speak out on moral and spiritual issues of the day, and can even get involved in ballot referenda related to various policies, but churches and other houses of worship can't take steps to help (or hurt) candidates or political parties. This law was created [in 1954](#), thanks to the efforts of then-Sen. Lyndon Johnson, and for the most part, it hasn't been especially controversial."

It is the reason why Catholic churches could send mailers out demanding their parishioners not vote in favor of same sex marriage when it was placed on a ballot, but would officially be under fire if they said the same thing about voting for or against a particular candidate.

Churches have long found ways to work around that ban -- allowing candidates to come in and address their congregations about their "faith journeys" or placing voter guides to remind members where candidates stand on issues that matter to the body, even preaching sermons on war, the sanctity of life, or other key policies. As long as the fig leaf of it being non-partisan and not a direct candidate endorsement remained, the IRS was unlikely to get involved in yanking tax exempt status.

But that is no longer good enough for the religious right. Alliance Defending Freedom has long tried to get churches to challenge the constitutionality of the amendment by having pastors endorse candidates from the pulpit. The result has been inconclusive -- even when the IRS did take the time to finally investigate a church, they eventually dropped the case. Still the ADF and others want all religious groups to be able to politic without any fear of punishment, and have rallied to have an official repeal of the Johnson Amendment added to the GOP platform.

"The church must be free to speak from her pulpits and in the public square," [writes Deacon Keith Fournier](#). "The Johnson Amendment is a gag order backed by the guns and jails of the state, which threatens that churches which step out of line will have their savings confiscated and their leaders crippled by fines. As a member of the Catholic Clergy and a constitutional lawyer, I have seen this Amendment abused. In the hands of a president like Hillary Clinton it would be even more dangerous."

Of course all people have freedom of speech and the right to campaign. Not all people have the right to use government resources to support them in that endeavor, and when churches have tax exempt status that is exactly what they are using.

If the amendment were repealed, religious organizations would play even more dominant roles in politics, with political backers able to provide endless streams of funding to their churches to allow

them to host rallies, organize voters, leaflet and phone bank and go well beyond just endorsements. Not only would the church not have to pay taxes on the dollars, but the donors would get to take a deduction, too. The churches themselves would be superPACs and official arms of party candidates, making the political field even more uneven than ever before.

"Few would suggest that religious views have no place in the public square or that religious views should not inform one's political decisions. Indeed, the problem isn't that churches want to become politically involved. To a large extent, they already are. It's that they want to make use of government subsidies to do so," explains [Adam Chardorow at Slate](#). He adds, "Unless and until we decide to subsidize *all* political speech (via, say, campaign finance reform), we need to think long and hard about allowing churches and other 501(c)(3) organizations to become more politically active. Making it easier for churches to tie themselves to political parties and politicians could lead to even greater entanglement between church and government than now exists, and it could ultimately do serious harm to them both."

Many on the right who bemoan the idea of the separation of church and state would be thrilled to see the Johnson Amendment repealed, and Trump has agreed to do just that. At least now we know why the religious right finally decided to support the Republican nominee.

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Thank you for the time you spent on this material. - Floyd.

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