

Challenging the Johnson Amendment: Pulpit Freedom Sundays

On October 7, 2012 nearly 1,500 ministers from various faiths participated in an organized challenge to the “Johnson Amendment.”¹ “Pulpit Freedom Sunday,” organized by the Alliance Defending Freedom, involved the endorsement or opposition of political candidates by religious leaders from all over the country.² Pastors who participated in the organized event were to preach on the upcoming election, endorse candidates for office, and send video copies of their sermons to the IRS.

The goal of the event, according to the Alliance, is to mount a constitutional challenge to the political ban under the Johnson Amendment. Sponsored by then Senator Lyndon B. Johnson, the 1954 Amendment to §501(c)(3) bans the participation or intervention of nonprofits in political campaign activities. The Alliance, hoping to entice the IRS to revoke participating churches’ tax-exempt status, argues the Amendment violates both rights to freedom of speech and freedom of religion. It is the Alliance’s stance that politics are an inherent part of religious activity. Furthermore, the Alliance argues that limiting what a pastor can say during his sermon is a violation of the First Amendment.

Thus far, the Alliance’s tactics have not succeeded. The IRS may threaten to enforce the political ban against the event’s participants, but to-date there has been no action to do so. It is somewhat unclear why the IRS has failed to pursue such blatant

¹ <http://ideas.time.com/2012/10/16/should-churches-endorse-political-candidates/>

² <http://www.speakupmovement.org/church/LearnMore/details/4702>. 20 churches across Oregon participated. To see a list of these churches visit http://www.speakupmovement.org/Church/Content/pdf/PFS_2012_Churches_Final_list.pdf

violations of §501(c)(3). In light of the decision in *Citizen's United*,³ the IRS may not want to commence a legal battle over endorsement in the form of speech. Additionally, the IRS may be unable to adequately respond to the violations. In fact, it has been reported that the proposed regulations to the church tax inquiry rules have not been finalized.⁴ Once the rules have been set, the IRS may begin pursuing pulpit freedom participants. Regardless of the outcome of the upcoming election, it will be interesting to follow the IRS's decision.

Britt Birkenbuel

October 17, 2012

³ *Citizen's United v. Federal Election Commission*, 558 U.S. 310 (2010).

⁴ <http://lawprofessors.typepad.com/nonprofit/>. Thursday, October 4, 2012. "Pulpit Freedom Sunday to Again Challenge Political Campaign Prohibition".