

JOHNSON AMENDMENT HISTORY

In 1954, the U.S. Congress amended (without debate or analysis) Internal Revenue Code §501(c)(3) to restrict the speech of non-profit, tax-exempt entities—including churches. Before the amendment passed, there were no restrictions on church speech concerning government and voting, with the exception of a 1934 law preventing non-profits from using a substantial part of their resources to lobby for legislation.

The 1954 amendment, offered by then-Senator Lyndon Johnson, stated that non-profit tax-exempt entities could 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.” Since the amendment passed, the IRS has steadfastly maintained that *any* speech by churches that the IRS could construe as supporting or opposing candidates for government office, including sermons from the pulpit, can result in loss of tax exemption.

Historically, churches frequently and fervently spoke for and against candidates for government office. Such sermons date from the founding of America, including sermons against Thomas Jefferson for being a deist; sermons opposing William Howard Taft as a Unitarian; and sermons opposing Al Smith in the 1928 presidential election. Churches have also been at the forefront of most of the significant societal and governmental changes in our history including ending segregation and child labor, and advancing civil rights.

After the amendment, churches faced a choice: speak freely on all issues addressed by Scripture and potentially risk their tax exemption, or remain silent and protect their tax exemption. Unfortunately, many churches have allowed the 1954 Johnson amendment to silence their speech, even from the pulpit. Ironically, after 60-plus years of strict interpretation by the IRS, *there is no reported situation to date where a church lost its tax-exempt status or was punished for sermons delivered from the pulpit.* Nonetheless, the law remains unchanged, and many churches continue to default to the IRS’s interpretation of the Code and remain silent.

Alliance Defending Freedom firmly believes that the Johnson amendment unconstitutionally restricts speech by censoring the content of a pastor’s sermon. Pulpit Freedom Sunday is designed to restore freedom to the pulpit by allowing pastors to speak out on important issues of the day.

There are many reasons why the 1954 Johnson amendment violates the Constitution. Here are some of the key reasons why the amendment is unconstitutional:

- The amendment violates the Establishment Clause by requiring the government to excessively and pervasively monitor the speech of churches to ensure they are not transgressing the restriction in the amendment. The amendment allows the government to determine when truly religious speech becomes impermissibly “political.” The government has no business making such decisions.
- The amendment violates the Free Speech Clause because it requires the government to discriminate against speech based solely on the content of the speech. In other words, some speech is allowed, but other speech is not. The Supreme Court has invalidated this type of speech discrimination for decades.

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- The amendment also violates the Free Speech Clause by conditioning the receipt of a tax exemption on refraining from certain speech. Put simply, if a church wants the tax exemption, they cannot speak on any and all issues addressed by Scripture. This is an unconstitutional condition on free speech.
- The amendment violates the Free Exercise Clause because it substantially burdens a church's exercise of religion. The government does not have a compelling reason to burden religion in this way.

Churches have too long feared the loss of tax-exempt status. Rather than risk confrontation, pastors have self-censored their speech, ignoring blatant immorality in government and foregoing the opportunities to praise moral government leaders. Pastors who long to be relevant to society, to preach the Gospel in a way that has meaning in modern America, often studiously ignore much that goes on in politics lest they draw attention of the IRS.

Alliance Defending Freedom believes that the IRS restriction on religious expression from the pulpit is unconstitutional. After 60-plus years of threats and intimidation, churches should reclaim the expressive rights guaranteed to them in the United States Constitution. If you are interested in participating in Pulpit Freedom Sunday, contact Alliance Defending Freedom today at 1-800-835-5233 or visit our website at www.pulpitfreedom.org to learn how you can stand boldly for the faith.¹

¹ Alliance Defending Freedom does not endorse or oppose political parties or candidates, nor does it urge allegiance to any political party or candidate. Alliance Defending Freedom does believe that churches and pastors have the freedom to speak Scriptural truth about the qualifications of candidates for public office regardless of the candidate's political affiliation.