



UNIVERSITY OF | School of
SAN FRANCISCO | Management

MASTER OF NONPROFIT ADMINISTRATION

Change the World with Nonprofit Leadership

usfca.edu/mna

Nonprofit Ethics Case

Group: Greg Justice and Kimberly Megna Yarnall
NPA 601: Nonprofit Ethical Leadership
Prof. Marco Tavanti, Ph.D.
Fall / 2017

The Church at Pierce Creek and the Johnson Amendment:

How the First Amendment Intersects with the Tax Code and Present Applications.

Summary

The case of *Branch Ministries, Inc. (BMI) v. Charles O. Rossotti* involves the revocation of tax-exemption of BMI's religious organization, the Church at Pierce Creek—a *nonprofit 501(c)(3)*. On October 30, 1992, BMI purchased a full-page advertisement in USA Today and the Washington Times, advocating 'Christians' not to vote for, then presidential candidate, Bill Clinton. Following an investigation, the IRS revoked BMI's tax exempt status on January 19, 1995. BMI filed suit against the IRS a few months later, arguing that the revocation suppressed BMI's rights to free speech and religious observation, guaranteed under the first amendment. In 2000, the U.S. Court of Appeals for the District of Columbia sustained the IRS's action, acknowledging that no infringement of first amendment rights occurred with BMI's revocation. However, the case of BMI has resurfaced in national politics, with the Trump administration's efforts to repeal the "Johnson Amendment," a move that would permit religious - and other nonprofit - organizations the ability to participate in traditionally prohibited political campaigns.

For the sake of this paper, a "nonprofit organization" is any organization with a 501(c)(3) exemption from the IRS. This includes religious organizations and secular charities. When we refer to a "religious organization," we mean any organization with a 501(c)(3) exemption from the IRS, that is organized and operated for religious purposes.

Applications

1. Nonprofit exemptions and political compliance.
2. IRS enforcement for nonprofit organizations political compliance.
3. Religious liberties and equal protection.
4. First Amendment applications for nonprofit organizations.
5. The ethical balance of First Amendment rights and political participation for exempt organizations.

Outcomes

1. *Develop nonprofit sector knowledge (past, present, future trends):* Understand the events and outcomes of the lawsuits that resulted from the IRS revoking the tax-exempt status of The Church at Pierce Creek. The IRS has not revoked the tax-exempt status of a religious organization since.
2. *Develop nonprofit sector knowledge (past, present, future trends):* Gain a thorough understanding of the Johnson Amendment: its history, how it applied in this case, its status in the current political arena, and the ramifications if it were repealed.
3. *Apply nonprofit management competencies (legal compliance, policy and advocacy):* Demonstrate the legal compliance issues in the case of The Church at Pierce Creek, and the IRS' enforcement of the Johnson Amendment, as it pertains to advocacy versus partisan politicking.
4. *Integrate nonprofit ethical leadership:* Explore the ethical ramifications and social accountability of religious leaders engaging in partisan politics.
5. *Recognize the alignment of personal / organizational values:* The Church at Pierce Creek case and the Johnson Amendment demonstrates the need to understand the balance of institutional (organizational) ethics and values, versus individual (personal) morals and beliefs.
6. *Demonstrate evaluative capacity benefiting organizational development:* The legal case and current political environment provides the understanding for seeing how the development of an organization has, not only systemwide impacts, but creates new social impacts in the society.

Videos

Religious Organizations and Electioneering

<https://www.youtube.com/watch?v=1xLPGA6SkfY>

Dangers of Trump's call to 'totally destroy' Johnson Amendment

<https://www.youtube.com/watch?v=iPxI66oIVis>

Do Politics Belong in the Pulpit?

(This video is used in the presentation because it combines both perspectives.)

<http://www.sandiegouniontribune.com/news/religion/sd-me-religion-politics-20170224-story.html>

Description

Since 1954, nonprofit organizations—including religious and charitable entities—with tax-exempt status have been prohibited in participating in political campaigns, particularly in the endorsements of candidates:

Under the Internal Revenue Code, 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 public office. 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 ([IRS](#)).

The prohibition on political activities is known as the “Johnson Amendment,” named after its author, Lyndon B. Johnson, then a Senator for Texas. Following a propaganda attack by a nonprofit / anti-communist organization, Johnson authored the amendment to make sure no political activities by nonprofit entities “received taxpayers support.” The amendment was passed, “with little fanfare from a Republican-controlled Congress, and signed by President Eisenhower” (Fischer, 2017).

Bipartisan political support for the Johnson Amendment continued through multiple presidential administrations, including two known for their close relationships with religious organizations. In 1987, Reagan’s administration—*through his Treasury Secretary*—strengthened elements of the Johnson Amendment, by adding the text “[and, in opposition to],” as opposed to solely supporting a candidate. Further, in the second Bush administration, the Treasury further enhanced the Johnson Amendment by prohibiting 501(c)(3) organizations whose tax exemption was revoked from political campaigning, to reestablish themselves as a 501(c)(4) entity.

On October 30, 1992, four days before the presidential election, The Church at Pierce Creek—*registered as Branch Ministries Inc. (“BMI”)*—purchased a full-page advertisement in *USA Today* and *The Washington Times* urging “Christians” not to vote for, then presidential candidate, Bill Clinton. The advertisements read in part: “Christians Beware. Do not put the economy ahead of the Ten Commandments” (Regent University Law Review). The advertisement then went on to list policies that Clinton supported, such as reproductive and LGBTQ rights, and the Bible verses that condemn those policies. The advertisement concluded with the following statement: “*This advertisement was co-sponsored by The Church at Pierce Creek, Daniel J. Little, Senior Pastor, and by churches and concerned Christians nationwide. Tax-deductible donations for this advertisement gladly accepted...*” (Regent University Law Review, 1997). Two days later, the New York Times erroneously reported the church ran the advertisement in over 150 newspapers, in addition to the Times and USA Today.

Following an investigation, launched by a complaint filed by the non-partisan watchdog group Americans United for the Separation of Church and State (“Americans United”),

the IRS revoked BMI's tax exempt status on January 19, 1995. BMI filed suit against the IRS a few months later, arguing that the revocation suppressed BMI's rights to free speech and religious observations—guaranteed under the first amendment, and protected from any prosecution, due to fifth amendment protections.

In March of 1999, the Federal District Court for the District of Columbia upheld the IRS' action against The Church at Pierce Creek. The following year, the U.S. Court of Appeals for the District of Columbia, again, sustained the IRS' action, acknowledging that at no point did the IRS infringe on any first amendment rights, and that fifth amendment protections did not apply to the case; hence, BMI's revocation was constitutionally permitted. BMI later reestablished itself as Landmark Church.

The IRS has not revoked the tax-exempt status of a church for political partisan campaigning since the BMI case. In 2004, the IRS reviewed 110 complaints on possible political activity by tax-exempt organizations, 57 percent of which were not religious organizations. In 2006, the IRS reviewed 100 such complaints, with 56 percent of them being non-religious organizations. Americans United, which filed the initial complaint against BMI, files an average of ten complaints with the IRS concerning "egregious political violations by houses of worship," per election cycle. Barry Lynn, the executive director of the non-partisan Americans United, says, "I believe when people break the law willingly, they ought to be penalized" (Humanist, 2011).

Beginning in 2008, the Alliance Defense Fund began sponsoring an annual "Pulpit Freedom Sunday" event, which invites pastors across the country to preach politics from the pulpit. Approximately 4,100 pastors signed up for the event on October 16, 2016. This event came weeks after House Majority Whip Steven Scalise and Jody Hice introduced the Free Speech Fairness Act (H.R. 781), which proposes that an organization will not lose its tax-exempt status for intervening in political campaign activity for statements, "made in the ordinary course of the organization's regular and customary activities in carrying out its exempt purpose," and, "results in the organization incurring not more than de minimis incremental expenses" (Congress.gov, 2017).

During 2016, then presidential candidate, Donald Trump, stated on several occasions that, if elected, he would 'get rid' of the Johnson Amendment, allowing churches to participate in political campaigns. At the first national prayer breakfast in February of this year, President Trump announced his intention of, "destroying the Johnson Amendment." On May 4, Trump issued Executive Order 13798 ("Order"), directing the IRS to be lenient in their calling attention to religious organizations conducting prohibited political activities. The Order, however, involves no discernible policy change; absent Congressional action, the Johnson Amendment remains the law.

Questions

Cross-Sectoral

- Is free speech 'fairer' under the current tax exemption structure?
- If the exemption is implemented, how would nonprofit constitutional rights compare to the public and private sectors?
- What are the latent impacts, or what other systems do you believe would be affected, if religious exemption in politicking was granted?

Systemic / Sector-wide

- How might the reach and effectiveness of the secular nonprofit sector change if all 501(c)(3) organizations were granted partisan politicking?
- Why should just religious organizations be granted an exception on campaigning, and not other 501(c)(3) entities?
- Following 63 years of implementation, and sustained through far more religious political environments, why is the Johnson Amendment now an issue?

Institutional

- Do faith leaders have an ethical and moral responsibility to guide their congregations in matters of policy and politics? To what extent?
- What are the spiritual, social, and personal ramifications for congregations of religious organizations if the Johnson Amendment were repealed? How might it affect the relationship between leaders and followers of these organizations?
- How does the fact that these are religious organizations complicate the ethical debate?
- What are the effects of a potential campaign exemption on religion in America?
- Have churches ever had free speech?

Personal

- What traits or values might cause a leader to break the law and jeopardize the financial and legal health of their organization, when other (legal) pathways are available?
- How are individual freedoms affected by political prohibitions?
- How does a representative of a church balance organizational ethics and individual morals?

Resources

IRS Guides and Court Filings

1. Civil Action No. 95-0724 (PLF)
https://www.irs.gov/pub/irs-utl/branch_ministries.pdf
2. Internal Revenue Service Publication 1828 (Rev. 8-2015) Department of the Treasury. *Tax Guide for Churches & Religious Organizations*.
<https://www.irs.gov/pub/irs-pdf/p1828.pdf>

Websites

3. Americans United for Separation of Church and State: <https://www.au.org>
4. Alliance Defending Freedom: <http://adflegal.org>

Videos

5. Keith Hughes - The Johnson Amendment Explained
https://www.youtube.com/watch?v=otOYnmGHT_s
6. Religious Organizations and Electioneering
<https://www.youtube.com/watch?v=1xLPGA6SkfY>
7. Dangers of Trump's call to 'totally destroy' Johnson Amendment
<https://www.youtube.com/watch?v=iPxI66oIVis>
8. Does Politics Belong in the Pulpit?
<http://www.sandiegouniontribune.com/news/religion/sd-me-religion-politics-20170224-story.html>

Articles

9. Destroying the Johnson Amendment: How Allowing Charities to Spend on Politics Would Flood the Swamp That President Trump Promised to Drain
<http://www.politifact.com/truth-o-meter/statements/2017/jul/18/donald-trump/trump-claims-he-got-rid-johnson-amendment-true/>
10. The Hill - GOP religious freedom bill restores free speech, not 'dark money'
<http://thehill.com/blogs/pundits-blog/civil-rights/332607-gops-religious-freedom-bill-is-all-about-restoring-free>
11. The New York Times - Court Upholds I.R.S. Penalty For Church Ad In '92 Election
<http://www.nytimes.com/1999/04/01/us/court-upholds-irs-penalty-for-church-ad-in-92-election.html>
12. Chronicle of Philanthropy - Appeals Court Says IRS Was Right to Strip Church's Tax Exemption
<https://www.philanthropy.com/article/Appeals-Court-Says-IRS-Was/168591>
13. The Christian Science Monitor - Churches Risk Tax Standing By Becoming Too Political
<https://www.csmonitor.com/1996/0401/01013.html>

Endnotes

CBNNews.com (October 2, 2016) *Pulpit Freedom Sunday: Pastors Say Enough Is Enough*.

<http://www1.cbn.com/cbnnews/politics/2016/october/pulpit-freedom-sunday-pastors-say-enough-is-enough>

Congress.gov All Information (Except Text) for H.R.781 - Free Speech Fairness Act (Retrieved October 21, 2017).

<https://www.congress.gov/bill/115th-congress/house-bill/781/all-info>

Fischer, B. (February 3, 2017). The Campaign Legal Center. *Destroying the Johnson Amendment: How Allowing Charities to Spend on Politics Would Flood the Swamp That President Trump Promised to Drain*.

https://docs.google.com/viewerng/viewer?url=http://www.campaignlegalcenter.org/sites/default/files/Johnson%2520Amendment%2520White%2520Paper_1.pdf

Internal Revenue Service (September 13, 2016) *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*.

<https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

Keller, L. (January 7, 2011) TheHumanist.com *Pastors & Politics: Why is the IRS letting tax-exempt churches play politics?*

<https://thehumanist.com/magazine/january-february-2011/features/pastors-politics>

Regent University Law Review (1997) *Choosing Between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*. Volume 9:219.

https://www.regent.edu/acad/schlaw/student_life/studentorgs/lawreview/docs/issues/v9/9RegentULRev219.pdf