

# Free Speech Fairness Act of 2016

*A bill to be introduced by Representatives Steve Scalise & Jody Hice*

## What Does the Bill Do?

The bill restores free speech and religious liberty to churches and other nonprofits by allowing them to make political statements, so long as they are (1) made in the ordinary course of the organization's regular and customary activities in carrying out its exempt purpose, and (2) any expenditure related to this are *de minimis*. For example, the bill ensures that a minister can make comments about a political candidate or issue as part of a sermon. Additionally, if a charity normally sends out a monthly newsletter related to its core purpose, the bill allows them to occasionally include comments on political issues, or candidates. They would not, however, be allowed to create an entirely new direct mail campaign solely for political information. The bill does not allow non-profit organizations or churches to engage in political activities outside the normal scope of their tax exempt work or contribute to political activities or candidates.

## Why is the Bill Needed?

America was built on the principle that free speech and free exercise of religion are unalienable rights. Americans do not give up their right to speech when they go to work for a church or nonprofit. Yet, that is legal state of affairs under the "Johnson Amendment." It puts the IRS in the position of judge and jury on comments made by ministers from the pulpit and all speech from nonprofits. Given the IRS's egregious abuses in recent years, this IRS power is most concerning. The existence of the Johnson amendment has resulted in a silencing of churches and nonprofits. Even without direct action by the IRS, the law creates a chilling effect on speech, especially for religious institutions. Groups like *Americans for Separation of Church and State* regularly send threatening [letters](#) to pastors filled with warnings.

## What's The Background on the Johnson Amendment?

In 1954, Senator Lyndon Johnson inserted an amendment into a larger IRS bill without floor or Committee debate. The Johnson amendment prohibits non-profits and churches from engaging in any activity that might be interpreted as participating in, or intervening in a campaign on or behalf of or in opposition to a candidate for public office, including a simple oral or written statement.

## Has the IRS Gone After Nonprofits For Speaking Out On Political Issues?

We know [99 churches have been singled out](#) for investigation by the IRS, and in 2015 -- in the wake of revelations about Louis Lerner's activities -- the [GAO](#) reported that the IRS lacked the necessary controls to keep nonprofits from being targeted based on political, educational or religious activities.

It is unclear to what degree the IRS is investigating churches and other nonprofits, but they are being pressured by outside groups to do so. In 2012, the IRS settled a suit with the *Freedom From Religion Foundation* (FFRF) which was complaining that the IRS did not enforce the prohibition on political activity. The IRS [created a unit](#) which investigates church violations -- the "Political Activity Referral Committee" (PARC). It has identified 99 churches as having "potential impermissible political campaign intervention activities." Knowing that it is Lois Lerner's former division that is responsible for flagging potential violators is disturbing in itself. Efforts have been made to understand the extent of PARC's investigations, but in April of this year, the IRS withheld more than 10,000 pages of information in a FOIA request by Judicial Watch that would explain the agency's audit process for investigating churches.

So far, pastors from the churches participating in Pulpit Freedom Sundays have been ignored by the IRS. However, it is clear that the IRS sees the fear of losing tax exemption as a tool to curb free speech. This is why a legislative option is the best course of action.

## Who Supports the Bill or the Policies Represented in the Bill?

Family Research Council, Alliance Defending Freedom, Focus on the Family, Evangelical Council on Financial Accountability

## Questions

Contact Laura Trueman on Whip Scalise's staff or Nicholas Brown with Representative Hice.