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Pretending It's 1995 | Breaking Down the IRS Changes for 501(c)(3) Status for Churches – Transcript

Jess 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions. I ain't scared. Ready to rock? Let's dive in. Hey hey hey, it's Charity therapy, your favorite nonprofit podcast. I'm here today with my partner in crime, Megan Heitkamp. Hey, Megan. What crimes are we committing today, Jess? I don't know, you're committing the crime of looking adorable or. Thanks.

Meghan 00:01:00 Appreciate it. Adorable.

Jess 00:01:07 Love it. We're not talking.

Meghan 00:01:09 About crimes, but today we are talking about some breaking news.

Meghan 00:01:14 Or at least as breaking as it's going to get on charity therapy, because it's usually like several weeks after the fact. But one would hope we're not your main source of news.

Jess 00:01:23 Hopefully not.

Meghan 00:01:25 Okay, good good good. Although, considering how insane the news cycle has been for the last, I don't know since 2016 you might have missed this one. So there's been some big changes from the IRS about some five one C3 tax exempt organizations. But before we get into it, Jess, can you give us just a really quick reminder about what five one C3 status really means?

Jess 00:01:48 Yeah. So what does a C3 status really mean? Well, it means you don't have to pay income tax. Know what you want. What do you want from me on this answer? I mean.

Meghan 00:02:03 People are just sort of like, oh, you have non-profit status. The end. And it's like, they don't understand what you are giving up and what you're getting.

Jess 00:02:14 Yeah, it's an exchange. Right. So in exchange for not paying income tax on the revenue that comes into your organization, you essentially sign a contract with the government that says, we are going to follow all of your rules.

Jess 00:02:34 We are not going to do any insider dealing. We are going to serve the public or we're going to, you know, deliver on our. Not every charity serves the public. Sometimes it's like a trade association. We're going to deliver on our exempt mission, and that's going to be our primary activity. And then when we go out of business, we are going to make sure none of our money goes to private business. And we are not going to engage in any political activity, and we are not going to participate in a substantial amount of lobbying. But that's kind of the gist of the contract terms that you agree to when you become tax exempt.

Meghan 00:03:15 Exactly. It's a give and take. And just, you know, a very large asterisk on that political activity moment there. Because I have a question for you today, Jess. Normally it's a listener question, but today it's my question. What the heck is going on with churches? I read the other day that the IRS has reversed its previous requirement that churches and religious institutions cannot endorse political candidates.

Meghan 00:03:41 What does that even mean? Like what's going on?

Jess 00:03:44 Yeah. So, okay, this thing with churches is sort of a long standing back and forth. Republicans and conservatives have been arguing for a long, long, many years that what's called the Johnson Amendment from 1954. Should be repealed. And churches, pastors and the pulpit should be able to endorse whatever candidate they want their people to think is most appropriate for their group or whatever. The Johnson Amendment basically changed the tax code, and it says that non-profits, including churches, can lose their tax exemption if they participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. So you're not as a tax exempt organization, church or otherwise. You're not supposed to come out and say, don't vote for Biden. We hate Biden. Don't vote for Trump. We hate Trump. You can't, like, just come out and say we're for or against any particular candidate that would be considered political activity on behalf of or in opposition to a candidate.

Jess 00:04:56 But now there's been a lawsuit brought by the National Religious Broadcasters and a bunch of Texas churches. They sued the IRS over this rule, this Johnson Amendment, and they argued that the Johnson Amendment infringes on their First Amendment rights to free speech and the right to freedom of religion. And these are core rights in America, obviously, and they're always getting brought up as like, we should be able to say whatever we want on the internet, etc.. So this lawsuit happens. And in the court paperwork in July this month, we're sitting here recording in July 2025. The court documents have effectively undone the ban on making endorsements from the pulpit for churches, but not for any other nonprofits.

Meghan 00:05:47 Right. So I have it here. Like here's what the IRS court filing actually said. Churches are allowed to speak to a congregation in good faith through its customary channels of communication on matters of faith in connection with religious services concerning electoral politics viewed through the lens of religious faith. And basically that if they do that, it's not political activity.

Jess 00:06:10 Yeah. So essentially, if you can find a way to connect it to Jesus to endorse a candidate, go right ahead.

Meghan 00:06:18 So we're saying that the Johnson amendment is like still there. It's just.

Jess 00:06:24 Oh.

Meghan 00:06:24 Yeah. Still doesn't apply to churches anymore.

Jess 00:06:26 It's still part of the code. And apparently only one church has ever lost its tax status over it. And that was in 1992 for opposing Bill Clinton. And I mean, if you're, I know, like the news cycle is crazy, but if you are in the nonprofit space and you're paying attention to nonprofit related news, Trump administration has been saying, we're going to get rid of and totally destroy the Johnson Amendment and, like, allow our faith based representatives to speak freely and without any sort of fear of punishment. Now, the thing that's interesting is, remember in episode 139, we did that whole breakdown of the IRS commissioners and how they cycled through a whole bunch of people. And the commissioner on this court filing is Billy Long, who let's just remember his background and experience is he's a real estate broker, I think.

Jess 00:07:27 And an auctioneer.

Meghan 00:07:29 Going once, going twice.

Jess 00:07:31 Civil political activity. Trump administrations.

Meghan 00:07:35 Yeah.

Jess 00:07:36 So I mean, obviously who knows. But it feels like this was a friendly lawsuit. It feels like people on the same side are in charge at the IRS and in charge at the National Religious Broadcasters. And what a convenient time to bring a suit demanding that churches be exempted from the Johnson Amendment when you have this like. Stooze essentially serving as the IRS commissioner. So obviously you can tell what I think about that.

Meghan 00:08:05 So okay, we say that only one church has ever lost its tax exempt status over this if they haven't been enforcing this. And, you know, I mean, I personally know there's a lot of churches that like make political statements all the time. Why does this matter? Like, why does it matter that it's officially allowed?

Jess 00:08:23 Yeah. I mean, this is true, right? Like, I saw this story and I was like, yeah, well, it's not like they've been radically enforcing the Johnson Amendment anyway, but it's been a deterrent at least.

Jess 00:08:34 And the reason I think that it really matters is, well, first of all, it's not being deployed fairly. So I don't know that I'm a fan of this at change at all, but at least it should apply to all nonprofit, tax exempt entities equally, not just religious ones. So I'll be curious to see if we see any other litigation around the disparate treatment of different missions and whatever. That's not the important part. The important part is churches don't file a 990.

Meghan 00:09:03 Yeah. So there's no way to see what they're doing with their money.

Jess 00:09:05 Yeah. There's literally no information return that goes to the IRS that shows how much money they're getting. They have no schedules of like donors who made big donations. There's nothing. They have no paperwork. There's no transparency to the public on who makes donations, how they make donations, how much. And this is going to change campaign finance. They this effectively changes campaign finance laws and creates a vehicle for dark money that's unseen to start flowing to these megachurches.

Jess 00:09:39 And you can basically buy the votes of any congregation you want. And we shall see many giant mansions with cross-shaped pools where the pastor is a multi-millionaire Millionaire because they're on the take, essentially. Yep. That's my cynical. But that's really what's realistic. Yeah, that's what's going to happen is the new super PAC is churches.

Meghan 00:10:06 Yep. So yeah. So it's it's the change obviously affects the nonprofit sector. But the really important downstream effect is in politics. It's like in your campaign finance is where we're going to see all these changes. And what it means is that, you know, these churches can get much more involved in all of these things. You know, it's it'll be interesting to see what this actually looks like because they, you know, do specifically say that it has to be through their customary channels of communication on matters of faith. So I'm curious how specific we're going to get with that.

Jess 00:10:40 I mean, who knows. Like they've they've took away the status of one church since 1992.

Meghan 00:10:47 But how old are you going to get? Because the 1 in 92, when I was looking at this, they were taking out TV ads opposing Bill Clinton.

Meghan 00:10:54 Like it was like bold. Like it was not some church like, distributing flyers in the service or something like that. And so I'm curious whether we're going to see a lot more like actual, you know, like traveling and speaking and, you know, like what mediums this all happens. I'll.

Jess 00:11:14 I'll be very curious if we start to see if you're old enough to remember Tesla evangelism in the 80s. I'll be curious if we start to see preaching on TV again as a media form of media that churches adopt as reaching their flock through customary means. Now it's customary because we hold services this way and we're going to have all these streaming channels or it'll be interesting, just TV.

Meghan 00:11:43 It can be podcasts. It can be social media. It can.

Jess 00:11:46 Be. Well, that's what I'm saying. I'm like.

Meghan 00:11:47 Churches are very savvy.

Jess 00:11:49 Yeah. The 1980s equivalent of evangelism was literally on the TV, but now we literally.

Meghan 00:11:56 Live stream all the time.

Jess 00:11:57 YouTube, live stream whatever and call it a sermon.

Jess 00:12:02 We'll see. It's going to be interesting, but they're going to have unlimited funding to do it, because you know that there are plenty of people who are going to want that dark money outlet, and they're going to want to effectively influence the votes of these communities. And so I think the biggest churches are going to see big dollars to influence those communities, and then probably other congregations in key districts as well.

Meghan 00:12:30 So absolutely. Yep. Just another day in Paradise.

Jess 00:12:33 Good times.

Meghan 00:12:34 All right. I got a couple of, takeaways here. If you sort of dissociated through the middle of that episode and understand, here's the TLDR. Too long. Didn't listen. So first, there's been a change to how the IRS is interpreting and enforcing one part of the tax code called the Johnson Amendment. And effectively, what that does is allow churches and religious institutions to endorse political or political candidates through the means of their faith, so whatever that looks like through their own channels. So the big example people are giving is like from the pulpit endorsing a candidate.

Meghan 00:13:19 This change does not apply to non-religious entities. So all other C3 non-profits are still prohibited from directly engaging in a political campaign. And the real outcome of what this is going to look like is just that a lot more political activity, money campaigning is going to start flowing through churches because they do not have to file a 990 and do not have to show where their money is coming from and where it is going. So some things are going to change drastically, potentially in the way that our our campaigns work.

Jess 00:14:02 Yep. And I'll just put in a totally unrelated plug for going back in time and getting a physical newspaper, because if you did dissociate in the middle of this episode, it's probably because you are experiencing compassion fatigue from like, reading all of the crazy news or seeing it in your feed and seeing 100 people's takes and first person videos of everything happening everywhere. I recently started getting the daily newspaper delivered to my house, and I read it for 15 minutes every morning and I'm like, that's it. That's all I'm getting.

Jess 00:14:40 And it actually is sort of life changing to opt out of the 24 over seven news cycle. So if you found yourself Having an internal crisis in the middle of this episode can consider. Consider pretending it's 1995 and get yourself the paper full support.

Meghan 00:15:03 Shout out to the Pioneer Press.

Jess 00:15:05 Yeah, right. Yeah. Good old Pioneer Press and Star Tribune. All right, folks, if you're not already signing up for your local paper, why don't you go ahead and leave us a five star on Apple podcast? It really helps people find the show. If you have something interesting to share about churches endorsing candidates from the pulpit or any other hot topic or anything that's ever happened in your nonprofit world, please send it to me online at Charity therapy. And as always, keep up the good work and thanks for listening.

About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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