

Religious liberty executive order draws mixed reviews

by [David Gibson](#) in the [June 7, 2017](#) issue

In a Rose Garden ceremony at the White House on the National Day of Prayer, President Trump signed a highly anticipated executive order on religious liberty, basking in the praise of religious leaders who blessed his action as an answer to their prayers.

“It was looking like you’d never get here, folks, but you got here!” a triumphant Trump told the May 4 gathering after a series of invocations from Baptist and Catholic leaders and from Paula White, the prosperity gospel televangelist who is one of Trump’s main religious advisers.

Yet social conservatives who had been expecting more expressed sharp disappointment, and [the order itself may not have much real impact on current laws and regulations](#), such as the Johnson Amendment, the 1954 law that threatens nonprofits with the loss of their tax-exempt status if they engage in electioneering.

Trump’s order is “constitutionally dubious, dangerously misleading, and ultimately harmful to the very cause that it purports to protect,” David French wrote in the *National Review*. “In fact, he should tear it up, not start over, and do the actual real statutory and regulatory work that truly protects religious liberty.”

Even the ACLU, which initially vowed to file suit against the order, later reversed course, saying the order had nothing in it that could be challenged. It was, ACLU executive director Anthony Romero said, “an elaborate photo-op with no discernible policy outcome.”

The order does not attempt to provide exemptions for religious groups or businesses that object to LGBT antidiscrimination laws, such as bakers or florists who refuse to provide wedding services for same-sex couples.

Moreover, the new order carefully hedges its language on the two points of policy that it does address, the contraception mandate in health-care regulations and the Johnson Amendment.

For example, it asks the secretary of health and human services to “consider issuing amended regulations” to provide relief from the contraception mandate within the constraints of “applicable law”—that law currently being the health-care law passed under President Obama.

Regarding the Johnson Amendment, the order says: “All executive departments and agencies shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech.” The order asks the Treasury Department, of which the IRS is a part, not to take adverse action against such people and organizations, including removal of tax-exempt status, but again, “to the extent permitted by law.”

Trump has painted a picture of religious believers facing virtual state-sponsored oppression under his predecessor because of the Johnson Amendment and other laws, saying that any pastor who spoke about “issues of public or political importance” was threatened with devastating financial consequences. In reality, the IRS has only investigated houses of worship for political speech a handful of times. And in the past 60 years, only one church has lost its tax exemption for politicking.

Congregations ranging from liberal African-American churches to conservative Catholic parishes have routinely spoken out on political issues, and pastors have openly endorsed candidates without fear of retribution from the IRS or any other federal agency.

Also, surveys show that a majority of Americans—about eight in ten—do not want houses of worship engaging in partisan political campaigning, and opposition to such electioneering is even higher among clergy themselves. In short, few believe the Johnson Amendment is much of a problem, and many of those who do don’t think Trump’s executive order is much of a solution.

[Douglas Laycock, a law professor at the University of Virginia School of Law and a religious freedom scholar who is respected across the political spectrum](#), noted that the order’s language on the Johnson Amendment “does not say that churches should be allowed to endorse candidates. It says only that they should not be found guilty of implied endorsements on facts where secular organizations would not be. I have heard no stories of that happening.” —Religion News Service

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