

Do you believe in the Easter Bunny?

The IRS begins to monitor the pulpit, but promises to safeguard churches' religious rights

by attorney **Richard C. Baker**

Late in July, 2014 the IRS settled a lawsuit filed against it by Freedom From Religion Foundation (FFRF). Citing a 1954 amendment to the IRS Code that created political restrictions for tax-exempt organizations, the atheist group sued the IRS for failing to crackdown on churches that spoke about moral or political issues from the pulpit and for the monitoring of the content of sermons. Oddly, the IRS has refused to disclose the details of that settlement or what its new policies to monitor sermons for political content will be. However, according to FFRF, as part of the secret agreement, the IRS agreed to take a tougher stance against pastors exercising their First Amendment rights.

This is just the latest of a number of troubling actions taken by the IRS to restrict the work of organizations, including churches, which hold views opposite those of the Administration. When Obamacare was enacted, the IRS was appointed to enforce the new law and thousands of new agents were hired to insure compliance. Though many don't realize it, churches and other religious organizations are subject to its provisions and failure to comply with it can result in fines and penalties.

Further, under the HHS mandate of Obamacare, also enforced by the IRS, religious organizations (except churches and those directly connected to a church) face closure, again due to severe fines and penalties for failure to comply with its contraception require-

ments. Around one hundred lawsuits have been filed by beleaguered religious organizations from colleges and schools to hospitals and other charities in order to stop the enforcement of the Mandate. The vast majority of them have been successful in staying enforcement and the Administration has been forced in the wake of

this litigation to amend its regulations nine times thus far as the matter works its way to the U.S. Supreme Court. The current version still fails to protect the right of conscience of religious organizations.

So what of this secret agreement reached between FFRF and the IRS? If the recent Congressional investigation into the IRS' targeting of conservative political and religious organizations is any indication, then churches are in trouble. As the investigation has thus far disclosed, not only was tax exemption denied or held up, but there were even plans to

discuss with the Department of Justice possible criminal prosecution of certain conservative nonprofit groups. How skewed was the IRS' targeting? It audited tea party donors ten times more than the average citizen.

As Rep. Jim Jordan (R-Ohio), stated during the ongoing House investigation of the Oversight Committee: "This is about the violation of your most fundamental right... to speak out in a political fashion against your government, and that was systematically targeted by this ad-



ministration.” Majority Leader Eric Cantor (R-Va.) summed it up: “There are few government abuses more serious than using the IRS to punish American citizens for their political beliefs.” Why would the IRS harass and intimidate donors to conservative organizations? Tony Perkins of Family Research Council responds that it is to silence opposition to the Administration’s policies and in effect, create an “information blackout, where candidates won’t be held as accountable for their votes on unpopular policies like ObamaCare.”

And what has become of this investigation? The White House has insisted that the investigation hasn’t produced “a smidgeon of corruption.” Given what has already surfaced, this stretches the imagination. Nevertheless, it is true that the investigation has been slow going. First Lois Lerner, the former IRS chief at the heart of the conservative targeting scandal refused to testify, “taking the Fifth”. Eventually, she was found in contempt of Congress. Still, others have followed her example. And in response to Congressional subpoenas, after first claiming the emails were stored, her department then claimed that it inadvertently deleted 24,000 emails and that there was no back up. Lerner also erased all of the data on her cell phone at the onset of the investigation. Now, under pressure, the IRS is claiming there is backup, but it is too hard to access. Among the missing emails are two years of Lois Lerner’s correspondence and other correspondence to and from the White House, Treasury, Department of Justice, FEC, and Democrat Congressional offices. As John King of CNN commented: “Do you believe in the Easter bunny? Do you believe in Santa Claus? Do you believe that Lois Lerner’s emails suddenly went poof?”

The lack of transparency of this Administration and its willingness to go around the law to “get things done” is now the subject of litigation. And when it comes to protection of religious freedom, the Administration has had a particularly poor record. From what has already been uncovered in the IRS investigation and with this secret agreement between FFRF and the IRS, it should

be evident just how dangerous the IRS is since it not only has the power, but the will to target, threaten, and punish those who dare to disagree with the Administration, whether from the ballot box or the pulpit.

A letter sent in June 2014 to the U.S. Department of Justice’s tax division by Mary Epps, the acting director of the IRS’s Exempt Organizations Examinations, tends to confirm FFRF’s claims as to the ominous nature of the secret agreement between it and the IRS. In it Epps states that the IRS not only has in place the process for reviewing and approving investigations of churches, but that 99 churches are already on the list for high priority investigation.

What is at stake with the FFRF settlement was pointed out by Oklahoma’s Attorney General, Scott Pruitt (R) during an interview with Fox News. “There is a concern that this has now reached content -- that, if a pastor engages in scriptural teaching around the sanctity of life or the sanctity of marriage, that this organization (the IRS) believes that that is considered electioneering or politicking under the IRS Code and has referred it to enforcement to the IRS. If this settlement reaches that level, that is a wholly new level of enforcement and we need to know about that because that shouldn’t be something done in secret.”

As Attorney General Pruitt states, the secrecy of the whole affair raises further grave concerns. As a government agency, the IRS’ enactment of its policies should be subject to public scrutiny, especially when First Amendment concerns are raised. Secondly, churches have the right to know how they will be treated, what procedures the IRS will use to investigate churches and who will authorize the investigations?

We are left with the question: can the IRS be trusted to protect a church’s constitutional rights to free speech and free exercise of religion? Or maybe the question should be rephrased: “Do you believe in the Easter bunny? Do you believe in Santa Claus? ■