

## IRS Permits Politics from the Pulpit

Alert

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By Charles Jensen & Molly Maurin

In a joint motion filed on July 7 in the U.S. District Court for the Eastern District of Texas, the Internal Revenue Service (IRS) stated that religious organizations may speak about political campaigns and candidates to their congregations without jeopardizing their Internal Revenue Code (Code) section 501(c)(3) exempt status. See *National Religious Broadcasters v. Long*, E.D. Tex., No. 6:24-cv-00311.

The Johnson Amendment, which is set forth as part of Code section 501(c)(3), prohibits churches and other tax-exempt organizations from endorsing or opposing political candidates or engaging in political activities. Specifically, churches and nonprofits are not allowed to “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” The Johnson Amendment has generally been viewed by nonprofit executives and tax practitioners as an absolute prohibition on political activity by Code section 501(c)(3) organizations. The IRS shared this view, as evidenced by a Technical Advice Memorandum from 1995 in which it explained, “Intervention in a political campaign may be subtle or blatant. It may seem to be justified by the press of events. It may even be inadvertent. The law prohibits all forms of participation or intervention in ‘any’ political campaign.” See TAM 9609007 (Dec. 6, 1995).

In *National Religious Broadcasters v. Long*, the plaintiffs challenged the Johnson Amendment as a violation of their First Amendment rights, arguing that the IRS inconsistently enforced violations of the Johnson Amendment contained in Code section 501(c)(3) in a manner that disfavored conservative, religious organizations.

The proposed consent decree concludes that “the Johnson Amendment does not reach speech by a house of worship to its congregation, in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith.” The proposed consent explains that such communication is not considered to be participation or

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intervention in a political campaign.

The filing of the joint motion on July 7 appears to be a sea change in the IRS's interpretation of the Johnson Amendment and induced a flurry of commentary among nonprofit organizations, particularly those advocating for church-state separation. On July 10, one such organization, Americans United for Separation of Church and State, filed to intervene in the case.

It is uncertain whether the court will approve the parties' joint motion. Religious organizations and other section 501(c)(3) organizations that wish to introduce political speech should exercise caution, as the consent judgment, if approved, would only apply to the plaintiffs in the case, and the change in the IRS's position could be viewed as contradicting the plain language of the statute, Code section 501(c)(3). It is also possible the IRS may again change its interpretation of the Johnson Amendment at a later date.

For more information on the IRS's evolving interpretation of the Johnson Amendment, please contact [Charles Jensen](#), [Thomas Molins](#), [Jay Simpson](#), [Harry Teichman](#), [Charles Hutchison](#), [Molly Maurin](#) or the Stinson LLP contact with whom you regularly work.

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