

July 15, 2025

The IRS Revisits the Johnson Amendment

Electoral Politics Viewed Through the Lens of Religious Faith

SUMMARY

- IRS submits joint motion to settle lawsuit regarding Johnson Amendment
- IRS states that Johnson Amendment does not prohibit “customary channels of communications on matters of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith”
- Americans United for Separation of Church and State seeks to intervene
- United States District Court for the Eastern District of Texas yet to rule
- A very grey area of the law - will IRS issue guidance?

The Johnson Amendment (enacted into law in 1954, and named after its sponsor, then-Senator Lyndon Johnson) provides that [501\(c\)\(3\)](#) organizations (including churches) may “not 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.” Unlike other activities that may subject a non-profit to lesser penalties, the penalty for violating the Johnson Amendment is revocation of non-profit status.

On July 7, the IRS stated in a court motion that it will not interpret the Johnson Amendment as causing a house of worship to lose its tax-exempt status if it makes certain communications concerning electoral politics. The IRS statement was contained in a joint motion with the plaintiffs in a case brought by several Texas churches arguing that the Johnson Amendment facially and as applied violates their freedom of speech and free exercise of religion rights under the First Amendment, their due process and equal protection rights under the Fifth Amendment, and the Religious Freedom Restoration Act.

The joint motion states:

“When a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services, concerning electoral politics viewed through the

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lens of religious faith, it neither ‘participate[s]’ nor ‘intervene[s]’ in a ‘political campaign,’ within the ordinary meaning of those words. To ‘participate’ in a political campaign is ‘to take part’ in the political campaign, and to ‘intervene’ in a political campaign is ‘to interfere with the outcome or course’ of the political campaign. See *Participate, Merriam-Webster’s Dictionary (2025)*; *Intervene, Merriam-Webster’s Dictionary (2025)*. Bona fide communications internal to a house of worship, between the house of worship and its congregation, in connection with religious services, do neither of those things, any more than does a family discussion concerning candidates. Thus, communications from a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith do not run afoul of the Johnson Amendment as properly interpreted.”

The IRS argued in the joint motion that this interpretation is consistent with existing IRS practice. The IRS also argued that absent this interpretation, the Johnson Amendment would arguably violate the establishment clause of the Constitution by favoring some churches over others. This is because the religious faith of only some churches requires them to teach or instruct their congregants “regarding all aspects of life, including guidance concerning the impact of faith on the choices inherent in electoral politics.” Interpreting the Johnson Amendment to prohibit these churches from doing so would disfavor these churches.

Judge J. Campbell Barker, presiding over the case in the United States District Court, Eastern District of Texas, has not yet ruled on the joint motion. On July 10, Americans United for Separation of Church and State filed a motion to intervene in the case, and failing that, for leave to file an amicus brief, stating it strongly disagrees with the joint motion. Amongst other arguments, the organization claims that if only houses of worship may make political statements, other 501(c)(3) entities “‘will be deprived of equal treatment’ by the federal government.”

It is interesting that the IRS chose to announce its position in litigation instead of issuing regulations or other guidance to this effect. Should the court not accept the joint motion, Treasury and the IRS may nonetheless issue guidance to the same effect.

If the court accepts the IRS motion, a church can speak to its congregation about electoral politics under the, somewhat vague, parameters set out by the IRS without endangering its Federal tax-exempt status. For example, endorsing a candidate for office because the candidate shares the church’s support for or opposition to various causes and issues (for example, abortion or the death penalty) and sharing such endorsement in otherwise scheduled sermons or weekly emails or letters to its congregation seems to come within the bounds of permissible activity. On the other hand, a church advertising that it will accept donations in order to fund campaign activities on behalf of a candidate would not come within the permissible bounds.

There is a lot of activity that falls into a grey area under the IRS motion. The IRS will likely consider issuing further guidance in this area even if the Court approves the joint motion, but it remains to be seen whether and when such guidance will be forthcoming.

PRIOR EXECUTIVE ACTION ON JOHNSON AMENDMENT

The Johnson Amendment prohibition has long been politically controversial, especially as it applies to churches. Opponents of the prohibition argue that it inhibits the free speech and free exercise of religion rights of clergy and churches, and that conservative churches are more likely to run afoul of IRS enforcement of the Johnson Amendment than progressive churches engaged in similar activities. Proponents argue that the prohibition appropriately keeps churches out of politics, and is necessary to prevent churches from effectively becoming political entities through which non-deductible political contributions can be transformed into tax-deductible charitable donations.

On May 4, 2017, [President Trump signed an Executive Order](#) concerning religious liberty and free speech:

“In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as *participation* or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury.”

The Biden Administration did not retract President Trump’s 2017 Executive Order, or otherwise issue guidance in this area.

It seems circular to instruct the Treasury Department not to enforce the Johnson Amendment against churches regarding political speech in circumstances where such speech was ordinarily not treated as violating the Johnson Amendment. However, this language reflected the belief by some (including in the Trump Administration) that the IRS is acting unevenly, enforcing the law against conservative churches while overlooking similar activity by progressive churches.

LEGISLATION ON JOHNSON AMENDMENT

The House-passed version of the 2017 Tax Cuts and Jobs Act would have limited the reach of the Johnson Amendment by including the Free Speech Fairness Act, which provides that a tax-exempt organization would not lose its exempt status “nor shall it be deemed to have participated in, or intervened in any political campaign on behalf of (or in opposition to) any candidate for public office, solely because of the content of any statement which—(A) is made in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose, and (B) results in the organization incurring not more than de minimis incremental expenses.”

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The Committee Report's "Reasons for Change" for the provision stated:

"The Committee believes that the Johnson amendment's prohibition on the making of candidate-related statements creates an undue chilling effect on free speech by curtailing charity employees'--including ministers' and other religious leaders'--expression of their political opinions. The Committee therefore believes that the restriction should be modified to permit charities to engage in certain candidate-related speech in the course of their exempt activities in a manner that would not fundamentally change the nature of what makes them charities under the Code."

The Joint Committee on Taxation [estimated](#) the provision would decrease tax revenue by \$2.1 billion over the 10-year budget window – which assumes that deductible contributions to 501(c)(3) organizations would increase, and might replace some non-deductible contributions to political campaigns. However, the provision was not enacted into law as part of the TCJA because it did not meet the Senate rules for inclusion in a reconciliation bill. The most recent iteration of the Free Speech Fairness Act this Congress is H.R. 2501 / S. 1205.

STATE LAWS

Whatever the IRS and Federal courts may provide in this area, State laws may not follow. For example, in 2019, New York State amended a statute addressing non-profits, Chapter 60, Article 28, Part 3, Section 1116, to copy and paste in the Johnson Amendment, and to provide that:

"The provisions of this paragraph regarding political campaign activity shall be interpreted in the same manner as section 501(c)(3) of the United States internal revenue code [sic] has been interpreted as of the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph;"

New York political leaders stated at the time that the purpose of the amendment was to prevent President Trump from effectively overturning the Johnson Amendment, at least in New York. It is possible that New York State tax enforcement officials would claim that the interpretation of the Johnson Amendment in effect in 2019 for Federal purposes is different from the IRS position set out in the July 7 joint court motion.

Other States may also have laws that differ from Federal tax law in this area.

BOTTOM LINE

The exact parameters of what types of speech and activities are allowed by the Johnson Amendment under current law is not clear.

If approved by the court, the IRS position as spelled out by the joint motion would allow a house of worship to "in good faith speak[] to its congregation, through its customary channels of communication on matters

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of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith” without losing its Federal tax-exempt status.

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