

LEGAL UPDATES

Understanding the Proposed IRS Settlement Regarding the Johnson Amendment and Churches' Political Speech Rights

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To settle a case challenging the Johnson Amendment, the IRS has proposed to allow at least two churches to endorse candidates from the pulpit. This proposal has received widespread attention, but many questions remain unanswered.

Background

Since 1954, the Johnson Amendment – which is a portion of Section 501(c)(3) of the Internal Revenue Code – has absolutely prohibited churches and other 501(c)(3) charities from participating or intervening in any political campaign, including, but not limited to, by making statements on behalf of or in opposition to a candidate for public office. In August 2024, two churches and an organization called National Religious Broadcasters sued the IRS and sought a ruling that the Johnson Amendment violates the First Amendment's protections of speech and the free exercise of religion. [1]

Status of the Litigation

On July 7, 2025, the two plaintiff churches and the IRS agreed to a "consent judgment" that would settle the plaintiffs' challenge to the Johnson Amendment in a manner that would appear to allow the plaintiff churches to endorse candidates from the pulpit. To take effect, the consent judgment must receive approval of a federal district court in the Eastern District of Texas. That approval might not be immediate as the court has given Americans United for Separation of Church and State until July 25 to file an amicus brief opposing the consent judgment, and the court is considering whether to allow that organization to intervene as a party to the case and defend the enforceability of the Johnson Amendment given the government's decision not to enforce it in this context.

Although the Johnson Amendment places a restriction on 501(c)(3) organizations, many groups that advocate for nonprofits have issued [statements](#) supporting the amendment, as have religious organizations such as the [U.S. Conference of Catholic Bishops](#) and the [Evangelical Lutheran Church in America](#).

Related People

Wade S. Hauser

Partner

Minneapolis

612.632.3061

wade.hauser@lathropgpm.com

Sarah Duniway

Partner

Minneapolis

612.632.3055

sarah.duniway@lathropgpm.com

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Effect of the Proposed Settlement and Open Questions

Even before this litigation, the IRS generally did not enforce the Johnson Amendment against churches or other houses of worship due to statements in support of or opposition to candidates made during religious services. [2] The proposed consent judgment may make enforcement even less likely. Yet, by its terms, the consent judgment would only prohibit the IRS from enforcing the Johnson Amendment against the two plaintiff churches who are parties to the *National Religious Broadcasters* case. The IRS is free to take other positions in matters involving other parties.

If approved, the consent judgment would not give 501(c)(3) organizations – or even churches – carte blanche to engage in partisan politics. The consent judgment provides that the IRS agrees not to enforce “the Johnson Amendment against *Plaintiff Churches* based on 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” [emphasis added].

The meaning of this language is far from clear. How much latitude does a religious organization have to define its “congregation” and its “religious services”? Do “customary channels” include television broadcasts and internet communications that are widely available to the general public?

In the past, the IRS has been clear that a church violates the Johnson Amendment if the church endorses a candidate on the church’s website or in a public advertisement. [3] So far, the IRS has not issued any guidance or clarification of past rulings or precedent in light of the proposed consent judgment.

While the proposed consent judgment focuses on churches and other houses of worship, an additional open question is whether it will have any implications for secular nonprofits. Americans United for Separation of Church and State and others contend that excepting religious nonprofits, but not secular nonprofits, would be unconstitutional. Thus, if approved, the proposed consent judgment may lead to additional litigation seeking to weaken the Johnson Amendment.

Finally, even if permitted by the IRS, churches and other nonprofits should be aware that spending money to expressly advocate for or against candidates often triggers campaign finance reporting obligations and disclaimer requirements.

Summary

For decades, the IRS has indicated that it will consider all the facts and circumstances when evaluating a potential violation of the Johnson Amendment. The ambiguities of the proposed consent judgment are unlikely to change this. If your religious or nonprofit organization needs help navigating this uncertain and evolving landscape, please contact [Wade Hauser](#) or [Sarah Duniway](#), or your regular Lathrop GPM attorney.

[1] *National Religious Broadcasters v. Comm’r of Internal Revenue Service*, E.D. Tex., No. 6:24-cv-00311.

[2] The IRS has, at least on occasion, enforced the Johnson Amendment against churches that have made public statements (such as with an ad in a newspaper) in support or opposition to candidates, and this enforcement has survived constitutional challenges. See, e.g., *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000).

[3] See *id.*; see also Rev. Rul. 2007-41.