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Insights

IRS Filing Indicates Possible Shift in Enforcement of Restrictions on Political Endorsements by Nonprofits

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In a significant development that could affect the operations and messaging of religious nonprofits, the Internal Revenue Service (IRS) recently filed a court document suggesting that pastors who endorse political candidates from the pulpit should not necessarily endanger their church's tax-exempt status. This move hints at a possible shift in enforcement of the longstanding Johnson Amendment, which prohibits political campaigning by tax-exempt organizations. While the law remains unchanged, the IRS's softened stance on enforcement merits close monitoring by leaders of religious organizations in particular but also by nonprofit leaders across the exempt spectrum.

Background

Since 1954, a provision in the Code known as the Johnson Amendment (after then Senator Lyndon B. Johnson, who introduced the amendment) provides that churches and other nonprofit organizations may lose their federal tax-exempt status if they participate or intervene in "any political campaign on behalf of (or in opposition to) any candidate for public office." The purpose of the amendment was to preserve the integrity and non-partisan nature of charitable and religious organizations, ensuring that tax-deductible donations wouldn't subsidize political campaigning. Violations have technically risked loss of tax-exempt status. However, the IRS has rarely enforced the rule. During his first term, President Trump promised to "get rid of and totally destroy the amendment" and in May of 2017, he signed an Executive Order instructing the IRS to use discretion in its enforcement.[1]

In August of 2024, the National Religious Broadcasters and several churches sued the IRS[2] over the rule, arguing that it infringes on their First Amendment rights to the freedom of speech and the free exercise of religion. On July?7, 2025, the IRS and the plaintiffs jointly filed a motion for consent judgment, proposing a settlement rather than continuing litigation. Under the proposed consent decree, the IRS agreed that: "Endorsements made in good faith during religious services via customary internal communication channels are not 'participation' or 'intervention' in a political campaign as per the Johnson Amendment."

Despite the apparent acquiescence of the IRS to President Trump's campaign promise, this policy shift may not be permitted. On July?10, 2025, *Americans United for Separation of Church and State* (Americans United) filed a motion in the *National Religious Broadcasters* case to intervene as a defendant—or, at minimum, to file an amicus brief—in opposition to the proposed consent decree between the IRS and the religious organization plaintiffs. In its filing, Americans United argues the proposed decree would exempt two specific churches (Sand

Springs Church and First Baptist Church Waskom, the plaintiffs joining Religious Broadcasters in the lawsuit against the IRS) from enforcement of the Johnson Amendment, while leaving secular 501(c)(3) organizations like Americans United still prohibited from endorsing candidates. According to Americans United, the consent judgment, if allowed, would create a “two tier system,” denying them (and other secular nonprofit organizations) equal rights and interfering with their advocacy mission.[3]

Shift or Status Quo?

It is perhaps up for debate whether the settlement from the IRS signals a shift in enforcement approach or simply a formal declaration of what the IRS has historically done in practice with respect to the Johnson Amendment (which the IRS suggests in its filing). Regardless, if approved by the court, the consent judgment will apply to the named plaintiffs—and potentially shape future IRS enforcement policy—but won’t invalidate the Johnson Amendment outright by judicial directive. Broader application will depend on further judicial or legislative action.

Implications for Nonprofits

Exempt organizations have been permitted to engage in general advocacy with elected and government officials on the issues of concern to their exempt purposes. However, direct political activities have been suspect, whether from the pulpit for churches or any other medium of communication. The policy position announced by the IRS’s filings eases these constraints for the religious sector of exempt organizations (at least for the parties subject to the consent decree) and seems linked to the guarantees of religious freedom in the First Amendment of the US Constitution.

However, President Trump’s 2017 Executive Order included references as well to “the freedom of persons and organizations to engage in religious and political speech.” That right flows to those with religious organizations as well as secular. Non-religious exempt organizations may find they have a bit more liberty to become more politically proactive in a direct manner than before, but that will probably not come without a fight. As shown by the Americans United filing, without more, the rights for political engagement could fall into two groups segmented by the existence or absence of a religious nexus – an ironic facet of this ongoing debate and perhaps bringing into play another constitutional axiom – that of equal protection.

Organization Type	What It Means
Churches/Religious	May face less risk for isolated pulpit endorsements - but broad or repeated campaigning remains risky.
Other 501(c)(3)s	No change: political endorsements or campaign activity remain prohibited.
All Organizations	Pending legal documents and future rulings could shift the landscape.

Recommended Next Steps

1. Continue Compliance:
Maintain internal policies and training to prevent campaign intervention by staff or volunteers.

2. Monitor Legal Developments:
Track the court proceedings and future IRS guidance to identify any shifts in enforcement or legal interpretation.

3. Update Internal Guidance:
Revise communications protocols and leadership messaging policies to reflect this evolving regulatory stance—especially for faith-based organizations.

If you have questions about this development or need assistance reviewing your organization's compliance with political activity restrictions, contact Kendall A. Schnurpel, Robert A. Greising or your Krieg DeVault attorney today.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] Executive Order 13798, titled “Promoting Free Speech and Religious Liberty”, directed the Treasury Department (specifically the IRS) and other federal agencies to exercise enforcement discretion regarding the Johnson Amendment. It instructed that agencies should not take adverse actions—such as penalties, denial of tax-exempt status, or revocation of tax deductions—against churches or religious organizations simply for discussing moral or political issues, if similar speech by secular groups would not trigger enforcement.

[2] Procedurally, the suit was filed against “Billy Long, in his official capacity as Commissioner of the Internal Revenue Service".

[3] As of the date of this alert, the court has not issued any order on Americans United’s motion—no ruling granting or denying intervention, nor any order approving the consent decree. The matter remains under judicial review. If granted, Americans United may participate directly in arguing against the consent decree. If denied, the court is expected to allow them to file an amicus brief within 14 days (i.e., by July 24).