



LEGISLATIVE BRIEF

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An Update on the Effects of Political Statements on Church Tax Exemption

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KEY TAKEAWAYS

The decisive point is that the IRS now correctly recognizes communications between a church and its members as internal communications.

The IRS's decision gives occasion for all churches to discern God's will and to be mindful of their duty to disciple their members and teach the whole counsel of God – preaching the word in election season and out of election season.

The ruling should prevent future rogue IRS officials from feeling empowered or incentivized to target churches with hostile enforcement actions, particularly during election seasons.

What Happened?

The IRS announced that the Johnson Amendment – the portion of the federal tax code [[26 U.S. Code § 501\(c\)\(3\)](#)] which has long been represented as barring churches from endorsing candidates for office – does not prohibit churches from communicating to their members about political issues – including voting, candidates, and elections.

How Did This Happen?

The Johnson Amendment requires that an organization (in this case a church) can be tax-exempt if it (among other things) "does 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." Under the [consent agreement](#) (an agreement to settle a lawsuit enforced by a court order) entered in the case of [NATIONAL RELIGIOUS BROADCASTERS, et al. v. LONG, et al.](#), the IRS

has agreed that the proper interpretation of this language in relation to churches is that the terms of the statute (such as "participate in," "intervene in," "publishing or distributing of statements") indicate external action as opposed to actions internal to the organization.

This paper, in its entirety, can be found at www.MarylandFamily.org

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The decisive point, however, is that the IRS now correctly recognizes communications between a church and its members as internal communications. As the Apostle Paul makes clear in 1 Corinthians 12:12, the church is made up of its members, they are not outsiders or customers but constituent parts. A pastor preaching to his congregation is an internal communication – a communication within the body.

The IRS characterized such communications on electoral campaigns as “a family discussion concerning candidates,” clarifying that, “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.”

Nevertheless, the Johnson Amendment still applies to external communications. For example, in the case of [Branch Ministries v. Rossotti](#). The IRS challenged the church’s normal tax-exempt status because the church explicitly addressed the pro-abortion stances of Bill Clinton, opposing his candidacy during the election. This outlier scenario does not reflect the common practices of churches during election season and is one of only two notable instances of a church’s exemption being challenged for political activity. Even had the present agreement been in place, it would probably not have impacted the case, since the church’s newspaper posting was an external communication not a communication to the church members. Still, given the church’s broader ecclesiological mission—both discipleship in its internal congregation and outward-facing ministry to the world—the definition of its constituency should include both members and non-members alike. The church should be free to advance its message by both traditional and innovative means, without self-censoring for fear of regulatory scrutiny or government interference with its religious function.

What Consequences Will The IRS Announcement Have?

Reactions to this announcement have often been preposterous misrepresentations. Some claim that it will make churches a path to evade campaign finance laws. This is 1. nonsense, since giving money to political campaigns and even public advertising in favor of candidates is not covered by the agreement and 2. a revealing look at the way many people see gagging churches as just a necessary part of campaign finance law. Priorities totally opposite to the Constitution. As our friends at Alliance Defending Freedom [said](#) in 2008:

[C]ontrary to the misunderstandings of many, tax-exempt status is not a “gift” or “subsidy” bestowed by the government.

“Churches were completely free to preach about candidates from the day that the Constitution was ratified in 1788 until 1954. That’s when the unconstitutional rule known as the ‘Johnson Amendment’ was enacted.”

Though many claim that the IRS’s announcement erodes the “separation of church and state” the Constitution’s protections were intended to constrain the power of the *government* – not the church. All the IRS is doing is limit the effect of the government’s self-serving decision to condition church’s traditional tax exemption on protecting

politicians - contrary to the only “separation of church and state” the Constitution endorses: protecting the church from interference by the state.

Importantly, none of this affects the tax code’s requirement – separate from the Johnson Amendment – that a tax-exempt organization operate purely for certain purposes. The relevant one in the case of a church being “purely . . . religious . . . purposes.” The courts have, however, strongly discountenanced efforts by the government to question a religious bodies’ doctrinal decisions. Put simply this should mean that the church acts in accordance with its divine purpose whether or not it is doing the kind of things that the world thinks of as “religious activities.”

The IRS’s decision respects that intent and should be welcomed by all friends of religious liberty. It also gives occasion for all churches to discern God’s will and to be mindful of their duty to disciple their members and teach the whole counsel of God – preaching the word in election season and out of election season.

What’s Next?

Though the IRS’s agreement only applies to houses of worship, the rationale of the interpretation is significantly broader and may form the basis for a reassessment of the Johnson Amendment’s application to other organizations. It is important to remember, however, that this is not a court decision and courts will not necessarily follow the same reasoning in interpreting the law in other cases. The IRS will, however, at least for the present, abide by this interpretation to the extent of the agreement, which should prevent future rogue IRS officials from feeling empowered or incentivized to target churches with hostile enforcement actions, particularly during election seasons. Ultimately, therefore this is a shift in judicial and regulatory interpretation guarding against the imposition of increasingly burdensome or restrictive obligations to prevent religious institutions or church entities from articulating and advocating their political viewpoints. It is notable that this agreement focuses on individual congregations, so the rights of broader ecclesiastical organizations such as the Southern Baptist Convention or the Presbyterian Church in America remains unclear. Hopefully the courts will take this opportunity to clarify and protect the rights of all religious organizations.

SUMMARY

What the IRS standard does not do:

1. It does not eliminate the Johnson Amendment’s rule against endorsement of political candidates. It only clarifies that it does not extend to the internal communications of the church with its members, including in sermons.
2. It does not apply to organizations other than places of worship.
3. It does not address the tax codes requirement – separate from the Johnson Amendment – that a tax-exempt organization operate purely for religious purposes.

What the IRS standard does:

1. Confirms that the Johnson Amendment does not prohibit communicating a faith-based understanding of political issues, candidates, and elections in the internal communications of the church with its members, including in sermons.

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