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In this article, Aprill examines the reasoning in the proposed order in *National Religious Broadcasters*, explaining

that the case has been widely misinterpreted as potentially allowing all exempt religious organizations to ignore the Johnson Amendment.

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Media headlines regarding the proposed settlement of *National Religious Broadcasters* (NRB)¹ have suggested that the IRS has adopted a new substantive rule of general applicability regarding the application of the Johnson Amendment to houses of worship.² That characterization is not accurate. The “[Proposed] Order and Final Judgment” submitted by the plaintiffs’ and Justice Department’s lawyers for consideration by Judge J. Campbell Barker of the U.S. District Court for

the Eastern District of Texas would apply only to the two church plaintiffs in the case.³ If the judge adopts the proposed consent order, it would enjoin enforcement of the Johnson Amendment against only those two churches.

The proposed order asserts that “speech by a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith,” does not run afoul of the Johnson Amendment as properly interpreted.⁴ The language known as the Johnson Amendment is part of section 501(c)(3) and states that entities exempt under that provision cannot “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.”⁵

Many churches would undoubtedly see such language in a final order as permission to ignore the Johnson Amendment in a variety of church settings.⁶ For supporters of the Johnson Amendment, this possible reading of the case has triggered concerns.⁷ The proposed order from the parties and any final order from the court cannot — and would not purport to — announce a new IRS understanding of general applicability

³ “[Proposed] Order and Final Judgment,” ECF No. 35-1, NRB, No. 6:24-cv-00311 (E.D. Texas July 7, 2025) (on file with author). The language in the proposed order is also in the Joint Motion for Entry of Consent Judgment, NRB, No. 6:24-cv-00311 (E.D. Texas July 7, 2025).

⁴ [Proposed] Order, *supra* note 3, at 3.

⁵ Section 501(c)(3). It is known as the Johnson Amendment because Lyndon Johnson introduced it on the floor of the Senate in 1954. See Judith E. Kindell and John F. Reilly, “Election Year Issues,” IRS Exempt Organizations Continuing Professional Education Text, at 401 (1993).

⁶ See Deepa Bharath and Fatima Hussein, “A Surprise IRS Move on Political Endorsements Leaves Faith Leaders and Legal Experts Divided,” AP News, July 9, 2025; Leonardo Blair, “IRS Says Pastors Endorsing Political Candidates Doesn’t Violate Johnson Amendment,” *The Christian Post*, July 8, 2025.

⁷ Bharath and Hussein, *supra* note 6; Blair, *supra* note 6.

¹ *National Religious Broadcasters v. Commissioner*, No. 6:24-cv-00311 (E.D. Texas).

² See, e.g., Daniel Burke, Bob Smietana, and Jack Jenkins, “IRS Says Churches Can Now Endorse Political Candidates,” NPR, July 8, 2025; Michelle Boorstein and Sabrina Rodriguez, “IRS Says Churches Should Be Allowed to Make Political Endorsements,” *The Washington Post*, July 8, 2025; David A. Fahrenthold, “I.R.S. Says Churches Can Endorse Candidates From the Pulpit,” *The New York Times*, July 7, 2025.

regarding the Johnson Amendment. The proposed order does reflect the IRS's long practice of not enforcing the Johnson Amendment for statements made during worship services⁸ — a task that would be difficult and expensive for the IRS to undertake with its limited resources. If the judge accepts the proposed order, he will not be announcing any new criteria for enforcement; he will simply be formalizing existing policy for these two plaintiffs.

Still, if adopted, the language in the proposed order may well presage an IRS pronouncement of a general rule reinterpreting the Johnson Amendment in the way the proposed order sets forth. Such a new rule from the IRS would be consistent with President Trump's long-standing position. In July 2016, before his election to his first term, Trump bemoaned to the Republican National Convention that the Johnson Amendment "threatened religious institutions with a loss of their tax-exempt status if they openly advocate their political views" and pledged to repeal that language.⁹ In February 2017 he assured attendees of the National Prayer Breakfast that he would "get rid of and totally destroy the Johnson Amendment and allow our representatives of faith to speak freely and without fear of retribution."¹⁰ Later that same year he issued an executive order "promoting free speech and religious liberty" directing that, "to the extent permitted by law," Treasury "not take any adverse action against any individual, house of worship, or other religious organization" for speech "about moral or political issues from a religious perspective where such speech of similar character has, consistent with law, not

ordinarily been treated as participation or intervention in a political campaign."¹¹ When informed about the recent developments in *NRB*, he reportedly commented, "I love the fact that churches can endorse political candidates."¹²

A national rule with legal effect would need to be issued by the IRS itself in the form of a revenue ruling, revenue procedure, or at least a notice, if not a proposed regulation. That possibility calls for a critical evaluation of the reasoning in *NRB*'s proposed order and joint motion. I question it on several grounds — its interpretation of statutory language, the analogy to a family discussion, its selective use of Supreme Court precedent, and the practical effect of the rule as articulated.¹³

The proposed order asserts that when a house of worship makes a communication that meets the announced standard, it does not "participate" or "intervene" in a political campaign within the ordinary meaning of those words. Citing a 2025 dictionary, it asserts that "participate" means "to take part" and "intervene" means "to interfere with the course" of a political campaign. Leaving aside my long-standing concerns with relying on dictionary definitions (much less from a newly published dictionary) for statutory language some 70 years old,¹⁴ I do not see how endorsing candidates fails "to take part" in a political campaign, the definition given for "participate."

The chosen definition of "intervene" as "interfere" is both unnecessarily narrow and inconsistent with the context in which it appears. The quoted definition of "intervene" is only one of the many possible. The Oxford English Dictionary gives one definition of the term as "to come in . . . so as to affect . . . or prevent a result." *Roget's International Thesaurus* (2010) offers to "involve oneself" as one of many synonyms. Further, the proposed order fails to quote the language in the Johnson Amendment that intervention includes "the publishing or distributing of statements." This language signals

⁸ In the mid-2000s the IRS did undertake a political activity compliance initiative. Its reports of Johnson Amendment violations in 2004 and 2006 included those by churches. None resulted in the revocation of exemption. See Ellen P. Aprill and Lloyd Hitoshi Mayer, "21st Century Churches and Federal Tax Law," 2024 *U. Ill. L. Rev.* 939, 973-974 (2024). Of the incidents investigated, a sermon given in 2004 at All Saints Episcopal Church in Pasadena, California, by its retired pastor shortly before the George W. Bush and John Kerry presidential election received considerable press coverage. See James Fishman, Stephen Schwarz, and Mayer, *Nonprofit Organizations: Cases and Materials* 533-535 (2021).

⁹ See Blair, *supra* note 6.

¹⁰ See Catherine Lucey, "Trump Pledges to End Political Limits on Churches," AP News, Feb. 2, 2017.

¹¹ Executive Order 13798, "Promoting Free Speech and Religious Liberty" (May 4, 2017).

¹² See Bharath and Hussein, *supra* note 6.

¹³ A July 18 letter to IRS Commissioner Billy Long from the House Congressional Freethought Caucus underscored many of these points. See Letter from House Freethought Caucus (July 18, 2025).

¹⁴ See Aprill, "The Law of the Word: Dictionary Shopping in the Supreme Court," 30 *Ariz. State L. J.* 277 (1998).

that the meaning of “intervene” is broader than “interfere.” More fundamentally, if the statutory language has the meaning attributed to it by the proposed order, it is hard for me to see how any communication from a section 501(c)(3) organization — at least those to its members and related to its exempt purposes — would violate the Johnson Amendment.

The comparison to a family discussion concerning candidates also troubles me. I do not understand what characteristics the members of a congregation and the members of a family share in ways that matter in this context. The Johnson Amendment applies not to individuals but to entities exempt under section 501(c)(3). Both members of a congregation and members of a family can discuss, among themselves, the qualifications of candidates to advise others on whether to support or oppose them. But should a family create a section 501(c)(3) family foundation, the leaders of the foundation speaking in that role, albeit representing the views of the family, would be prohibited from offering that advice. The same is true of churches that claim exemption under section 501(c)(3). I find it especially difficult to see how this analogy holds for megachurches that may have tens of thousands of worshippers attending services virtually or worship services televised to even larger numbers.

Equally disquieting is the proposed order’s selective citation of Supreme Court precedent. The proposed order relies on the establishment clause and cites the 2025 Supreme Court case *Catholic Charities Bureau*.¹⁵ In that case, the Court did indeed find that the Wisconsin statute at issue impermissibly “imposed a denominational preference by differentiating between religions based on theological lines.”¹⁶ As a result, the provision had to survive strict scrutiny and failed to do so.¹⁷ To reach that decision, however, the Court detailed relevant Catholic teachings.¹⁸ In contrast, the proposed order nowhere indicates the required level of review, nor does it detail how

the plaintiffs’ religious practice requires communication during worship services to support or oppose a named candidate, as opposed, for example, to reminding its congregants of its stand on various issues that figure in an electoral campaign. *Catholic Charities Bureau* differentiated the Wisconsin statute at issue from the conscientious objector status at issue in *Gillette*, in which the statute did not on its face discriminate on the basis of religious affiliation.¹⁹ Like the conscientious objector statute, the Johnson Amendment does not discriminate between denominations on its face.

The Court in *Catholic Charities Bureau*, quoting *Larson*, issued a reminder that the establishment clause’s “prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause.”²⁰ But nowhere does the proposed order consider relevant Supreme Court free exercise jurisprudence. The proposed order overlooks *Texas Monthly*, in which the Court decided that a sales tax exemption for religious periodicals violated both the establishment and free exercise clauses of the First Amendment.²¹ In *Employment Division*, a case involving individuals’ use of peyote during a religious ceremony of a Native American church, the Court held that the free exercise clause does not bar enforcement of neutral, generally applicable law to religiously motivated action.²² The Johnson Amendment is precisely such a neutral, generally applicable law.

The proposed order also fails to consider the possible relevance of the Religious Freedom Restoration Act,²³ which was enacted in response to *Smith*. It prohibits the federal government from substantially burdening religious exercise unless it can demonstrate a compelling interest. The proposed order says plaintiff churches “claim that their religious beliefs compel them to take a position on electoral politics, and that the Johnson Amendment imposes an impermissible burden

¹⁵ *Catholic Charities Bureau Inc. v. Wisconsin Labor and Industry Review Commission*, No. 24-154 (U.S. June 5, 2025) (slip op.).

¹⁶ *Id.*, slip op. at 2.

¹⁷ *Id.*

¹⁸ *Id.*, slip op. at 4.

¹⁹ *Id.*, slip op. at 11-12, distinguishing *Gillette v. United States*, 401 U.S. 437 (1971).

²⁰ *Catholic Charities Bureau*, No. 24-154, slip op. at 8, quoting *Larson v. Valente*, 456 U.S. 228, 245 (1982).

²¹ *Texas Monthly v. Bullock*, 489 U.S. 1 (1989).

²² *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

²³ 42 U.S.C. section 2000(b)-1 et. seq.

on their ability to do so,”²⁴ but it does not further examine the claim.

In short, any official change from the IRS to the understanding of current law that the Johnson Amendment applies to any house of worship exempt under section 501(c)(3) needs to consider carefully both establishment clause and free exercise clause precedents.

The standard announced in the proposed order also raises a number of practical issues. How narrowly or widely does “concerning electoral politics viewed through the lens of religious faith” reach? Does it allow a minister during a worship service to simply endorse or oppose a candidate by name, or must any such statement be explicitly tied to particular religious beliefs? Should there be a different rule for virtual attendance or an exclusively online house of worship? Do customary channels of communication include the posting of videos or audio files of worship services or sermons delivered on the congregation’s website or broadcast on television or streaming channels, where any member of the public could access them? Does a customary channel of communication reach to inviting a candidate who shares the congregation’s views on issues to speak during a worship service, so long as the congregation regularly invites speakers to do so? Does further exposure of the campaign communication by dispersion through mass media coverage or by members of the congregation through their own social media engagement affect the protection?

Any new rule along the lines of the proposed order will invite gaming. Houses of worship do not have to apply for exemption;²⁵ do not have to file Form 990, “Return of Organization Exempt From Income Tax”;²⁶ and are subject to audit only under a special set of procedures.²⁷ How then would the IRS guard against abuse in the form of fraudulent churches organized to take advantage of garnering deductible contributions to

campaign for or against a candidate for public office?

Those who oppose a change to the current understanding that the Johnson Amendment applies to houses of worship have work ahead of them.²⁸ They need to marshal their supporters and their arguments regarding the proper reach of the Johnson Amendment as a matter of both policy and constitutional law.²⁹ Americans United for Separation of Church and State filed a motion to intervene or file an amicus brief in *NRB* to undertake this role in the case.³⁰ The judge has granted the motion to file an amicus brief.³¹ Other groups, particularly religious ones, would be well advised to reiterate their support for the Johnson Amendment and the reasons for it.

Those who support a change along the lines of the proposed order also face an important task: They can offer detailed suggestions on the best ways to craft changes to the current understanding of the Johnson Amendment. Any change to the reach of the Johnson Amendment calls for thorough consideration and care; it should not rely on arguments in one particular case involving two houses of worship. ■

²⁸ See, e.g., Office of Public Affairs, “The Catholic Church Maintains Its Stance of Not Endorsing or Opposing Political Candidates,” U.S. Conference of Catholic Bishops (July 8, 2025); Religious Action Center of Reform Judaism, “Reform Jewish Leader Condemns IRS Decree Allowing Houses of Worship to Endorse Candidates” (July 8, 2025); Baptist Joint Committee for Religious Freedom, “BJC Executive Director on the IRS’s Decision to Allow Churches to Endorse Candidates From the Pulpit” (July 8, 2025).

²⁹ Federal appellate courts have upheld the constitutionality of revoking the exemption of religious organizations for activities involving campaign intervention. In *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000), a church had run full-page advertisements in two newspapers opposing Bill Clinton as a presidential candidate. *Christian Echoes National Ministry Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1972), focused on the religious organization’s substantial lobbying but also considered radio and television broadcasts that attacked candidates.

³⁰ Proposed Intervenor’s Opposed Motion to Intervene as Defendant or, in the Alternative, Unopposed Motion for Leave to File as Amicus Curiae, *NRB*, No. 6:24-cv-00311 (E.D. Texas July 10, 2025). The motion contends, “The Proposed Consent Decree contains sweeping legal analysis and language that Americans United rejects as procedurally improper, legally unsound, and deeply harmful to the interests it seeks to protect.” *Id.* at 13.

³¹ Order, *NRB*, No. 6:24-cv-00311 (E.D. Texas July 17, 2025). The motion to intervene remains under consideration as of the date of publication.

²⁴ [Proposed] Order, *supra* note 3, at 1.

²⁵ See section 508(c).

²⁶ See section 6033(a)(3)(A).

²⁷ See section 7611.