



Recent Litigation Highlights Debate About IRS Enforcement of Prohibition on Political Campaign Activity Against Churches

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Congress has granted federal income-tax exemptions to groups defined as religious, educational, or public-interest organizations under [Section 501\(c\)\(3\)](#) of the Internal Revenue Code, but restricts those groups (known as “Section 501(c)(3) organizations”) from participating in political campaign activity as a condition to receiving an exemption. On March 31, 2026, the U.S. District Court for the Eastern District of Texas [dismissed](#) a case (*National Religious Broadcasters v. Bessent*) in which the government and [plaintiffs](#) (two churches and two religious nonprofits) [sought](#) a [consent decree](#) barring the Internal Revenue Service (IRS) from enforcing Section 501(c) in a way that would prohibit the two plaintiff churches from engaging in political campaign activity. The court dismissed the case for [lack of jurisdiction](#) under the [Tax Anti-Injunction Act](#) and the [Declaratory Judgment Act](#). The case generated debate on the enforcement of the prohibition on political campaign activity (sometimes called the “[Johnson Amendment](#)”) against churches and the appropriateness of consent decrees in litigation as a means for policy making.

This Legal Sidebar discusses the legal background on the Johnson Amendment; details the procedural history of *National Religious Broadcasters v. Bessent*, including arguments made by the parties, amici, and outside commenters; and describes how the government has responded to the court’s decision. Finally, it discusses congressional responses and provides considerations for Congress.

Background on the Johnson Amendment and Its Application to Churches

Section 501(c)(3) tax-exempt organizations are prohibited from “[participat\[ing\]](#) in, or [interven\[ing\]](#) in . . . any political campaign on behalf of (or in opposition to) any candidate for public office” as a requirement to receive tax exemption. This prohibition is sometimes called the Johnson Amendment because then-Senator Lyndon Johnson [added](#) the provision as a floor amendment. Section 501(c)(3) organizations are also subject to a [limitation](#) on [lobbying](#). In 1983, the Supreme Court considered the constitutionality of the lobbying limitation in *Regan v. Taxation With Representation of Washington* (*Regan*). An organization

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in that case argued, in part, that the lobbying limitation violated its right to freedom of speech under the [First Amendment](#). The Supreme Court rejected that argument, explaining that, in enacting the lobbying limitation, Congress had not prevented the organization from speaking or otherwise acted in a way that would suppress ideas, but had simply chosen not to subsidize such speech by means of the tax exemption and tax-deductible contributions. The Supreme Court has yet to consider a First Amendment challenge to the Johnson Amendment. The [U.S. Court of Appeals for the DC Circuit](#) cited *Regan* in upholding the Johnson Amendment against First Amendment challenges, although the plaintiff in that case raised [religious exercise](#) claims rather than claims under the [Free Speech Clause](#). *Regan* is [sometimes](#) invoked to support Congress's power to set restrictions on tax exemptions other than the lobbying limitation, including in [amici curiae briefs](#) in *National Religious Broadcasters* in support of the Johnson Amendment.

[Churches](#) are a subset of Section 501(c)(3) organizations. ("Church," as interpreted by the IRS, [is not limited](#) to a particular faith, denomination, sect, ritual, or practice, and can include several houses of worship.) Churches receive additional [tax benefits](#) not available to other Section 501(c)(3) organizations, including receipt of tax exemption automatically [without](#) having to apply for it, exemption from [filing](#) annual returns, and certain [procedural protections](#) during audits.

IRS's [Revenue Ruling 2007-41](#) provides examples to illustrate when IRS considers whether a Section 501(c)(3) organization violated the Johnson Amendment. According to the guidance, a church intervenes in a political campaign if endorsements by a minister are made "at an [official church function](#), in an official church publication or otherwise use the church's assets."

Because the Johnson Amendment does not have an explicit exception for churches, at least textually, it would appear to apply equally to churches as to other Section 501(c)(3) organizations. CRS is not aware of any statistical analysis of audit rates on churches specifically for Johnson Amendment violations. On church audit rates generally, a [2021 report](#) from the Treasury Inspector General for Tax Administration calculated that for FY2019, churches were audited at a lower rate than exempt organizations as a whole, and exempt organizations were audited at a lower rate than businesses and individuals. The Government Accountability Office (GAO) [reported](#) that during FY2010 through FY2017, the IRS investigated 205 Section 501(c)(3) organizations for alleged political campaign activity. The GAO report did not specify how many of those audits involved churches. From approximately 2004 to [2008](#), the IRS conducted the [Political Activities Compliance Initiative](#). From IRS reports on the initiative, [forty-seven churches](#) in 2004 and [forty-four churches](#) in 2006 were investigated for political campaign activity.

Some churches claim to have been investigated by the IRS for political campaign activity, including two churches in an [amicus brief](#) in *National Religious Broadcasters*. On April 30, 2026, a Department of Justice Task Force released a [report](#) entitled "Eradicating Anti-Christian Bias within the Federal Government." The report [discusses](#) the allegations in the amicus brief and the [complaint](#) in *National Religious Broadcasters*, along with other allegations.

Efforts to Limit the Johnson Amendment

Since 2008, an [advocacy group](#) has organized "[Pulpit Freedom Sunday](#)" in which churches are encouraged to preach from their pulpits about "the moral qualifications of candidates seeking political office" with the stated [intent](#) of spurring a constitutional challenge to the Johnson Amendment. According to a 2012 [law review article](#), of the more than thirty churches that participated in the first Pulpit Freedom Sunday event in 2008, one was investigated by the IRS, but the IRS dropped the investigation shortly after it was initiated without taking enforcement action.

Some congressional [bills](#) have sought to [repeal](#) the Johnson Amendment entirely. Other bills have sought to limit the Johnson Amendment. The [Free Speech Fairness Act](#) was introduced in the 114th Congress and

has been [reintroduced](#) multiple times since, including in the [current Congress](#). The bill would create an exception to the Johnson Amendment for political campaign activity of de minimis expense that is “made in the [ordinary course](#) of the organization’s regular and customary activities.” The bill text does not explicitly mention churches, but [groups](#) supporting it, including [National Religious Broadcasters](#), contend that the bill would reaffirm churches’ right to political speech. In 2017, Congress [introduced a version](#) of the Tax Cuts and Jobs Act that contained an [amendment](#) that would have created an exception to the Johnson Amendment specifically for churches. The proposed exception was [broadened](#) to include all Section 501(c)(3) organizations in the version [reported in the House](#), which resembled the Free Speech Fairness Act. The proposed exception was later [removed](#) entirely and does not appear in the [enacted law](#). A [bill](#) in the 107th Congress would have permitted churches to engage in a limited amount of political campaign activity. That bill failed to pass a [full vote](#) of the House.

In his first term, President Trump issued an [executive order](#) (E.O.) directing the Secretary of the Treasury not to 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.” While defending a [case](#) filed against the E.O., the government [asserted](#) that the Johnson Amendment was controlling and characterized the E.O. as “direct[ing] the Government not to take adverse action against religious organizations that it would not take against other organizations” in enforcing the Johnson Amendment.

National Religious Broadcasters v. Bessent

In August 2024, two churches and two religious nonprofits (plaintiffs) [sued](#) the IRS and its Commissioner [contending](#), in part, that the Johnson Amendment, both on its face and as applied to them, violates their First Amendment rights to freedom of speech and free exercise of religion. The complaint asked for “[a] declaratory judgment that the Johnson Amendment is unconstitutional” and an injunction against the defendants. The complaint did not explicitly [ask for relief](#) specifically for churches, but asserted that churches are [uniquely](#) harmed by the Johnson Amendment. In December 2024, the government [moved](#) to dismiss the complaint. Citing *Regan*, the government [argued](#) in the motion that, “It is fundamental that Congress’s refusal to subsidize lobbying and other political activity through tax benefits does not infringe the First Amendment to the United States Constitution.”

In February 2025, with the [consent](#) of the government (now under a new Administration), the plaintiffs filed an [amended complaint](#). The plaintiffs and the government also agreed to [moot](#) the government’s motion to dismiss. The government then joined the plaintiffs in [moving](#) for entry of a [consent judgment](#) as final resolution of the plaintiffs’ claims. In the motion, the government advanced a different interpretation of the Johnson Amendment than argued in the previous motion to dismiss. It asserted that standard [communications](#) in connection with religious services “do not run afoul of the Johnson Amendment as properly interpreted” and “[i]nterpreting the Johnson Amendment to reach such communications would create serious tension with the First Amendment’s Establishment Clause.” The proposed consent judgment would [permanently enjoin](#) the IRS from enforcing the Johnson Amendment against the two plaintiff churches.

The motion for entry of a consent judgment attracted multiple amici curiae briefs, including [from](#) Americans United for Separation of Church and State (Americans United), who also [moved to intervene](#) as the defendant in the case. While the court ultimately [denied](#) the motion to intervene, Americans United participated in a [hearing](#) and argued against entry of the consent decree.

The amici briefs and commentary on the case highlight policy arguments for and against the Johnson Amendment. [Briefs](#) in support of the consent decree [emphasized](#) the historical practice of churches

engaging in political activity, and argued that this historical practice should inform a court’s interpretation of the First Amendment. Some briefs also argued that the Johnson Amendment is too [vague](#) and could result in [discriminatory](#) enforcement against churches. On the other side, supporters of the Johnson Amendment [argued](#) that failing to enforce it against churches would result in money from undisclosed sources [flowing](#) into churches to influence elections. Others—including [some](#) religious [organizations](#)—[have expressed concerns](#) about the “politicization of the charitable sector” eroding [public trust](#).

On March 31, 2026, the court [dismissed](#) the case for lack of jurisdiction, finding that it was [barred](#) from entering the requested consent judgment by the [Tax Anti-Injunction Act](#) and the [Declaratory Judgment Act](#). The Tax Anti-Injunction Act forbids a court from issuing injunctive relief in a “suit for the purpose of [restraining](#) the assessment or collection of any tax,” and the Declaratory Judgment Act excludes declarations “with respect to [Federal Taxes](#)” from a court’s power to issue declaratory judgments as a judicial remedy.

The court concluded that the relief sought in the consent decree is barred by the acts [because](#) “[r]elief enjoining the Johnson Amendment’s enforcement or declaring that it does not apply to specific conduct would . . . directly bear on the amount of tax that could be collected.” The court rejected the argument that the acts do not apply because the relief concerns speech, not tax payments. The court called the argument a “[false dichotomy](#)” and [explained](#) that “the relief sought is from the allegedly threatened enforcement of a condition for *tax benefits*: an organization’s tax-exempt status and a donation’s tax deductibility. It is the potential enforcement of *tax conditions* (the Johnson Amendment) that allegedly infringes the legal rights invoked.” The court also [explained](#) that if the plaintiffs’ tax-exempt status were revoked, including for Johnson Amendment violations, they could contest the revocation under other statutory procedures, including a [tax refund suit](#) or a [declaratory suit](#) for determination of tax-exempt status. In making its decision to dismiss the case for lack of jurisdiction, the court did not address the merits of the arguments regarding the relationship between the Johnson Amendment and the First Amendment.

The plaintiffs have [appealed](#) the dismissal of the case to the U.S. Court of Appeals for the Fifth Circuit. The plaintiffs’ brief is due [July 7, 2026](#).

The IRS has some discretion in its [enforcement](#) and [interpretation](#) of federal tax laws. Referring explicitly to the *National Religious Broadcasters* dismissal, the Department of the Treasury and the IRS [announced](#) “plans to develop and issue additional guidance on the application of the Johnson Amendment to religious organizations,” which will “will provide clear, administrable standards for houses of worship, including how the law applies to certain communications made within the context of religious services.” The announcement asserted that

[B]ona fide communications internal to a house of worship, including communications between the house of worship and its congregation in connection with religious services and communicated through customary channels on matters of faith, do not constitute the type of political campaign intervention prohibited under current law. Such communications are distinguishable from broader political activity and are consistent with longstanding protections for religious exercise.

The announcement follows the IRS’s [priority guidance plan](#) for 2025–2026, which [identified](#) the Johnson Amendment as a topic for new guidance.

Consent Decree as Means for Policymaking

National Religious Broadcasters has also resulted in renewed debate about the appropriateness of consent decrees in litigation as a vehicle for policy change and the so-called “[sue and settle](#)” [strategy](#). The plaintiffs’ [proposed consent judgment](#) was limited to the two plaintiff churches. However, it was [reported](#) that at oral argument plaintiffs stated that the proposed consent judgment would have broader precedential

value outside the case. The plaintiffs also reportedly said that they viewed the proposed consent decree to be forever binding between the government and the plaintiffs.

Americans United similarly [warned](#) that the consent decree could have broader precedential effect or at least be publicly perceived as such. It [argued](#) that the plaintiffs were using a consent decree to bypass Congress and standard [rulemaking](#) processes. It [noted](#) that Congress has considered many bills to limit the Johnson Amendment—some specifically excepting churches—but none have passed.

A [commentator](#) has stated that contrary to [assertions](#) of broader effect in the [media](#), the proposed consent decree would enjoin enforcement of the Johnson Amendment against only the two plaintiff churches, and “[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.”

Congressional Responses and Considerations

The proposed consent decree in *National Religious Broadcasters* has elicited responses from some in Congress, including public statements in [support](#) by House Speaker Mike Johnson and [letters](#) from [Members](#) to the IRS expressing opposition to the consent decree.

As discussed above, Congress has considered previous bills that would have repealed or limited the Johnson Amendment. At least one [bill](#) to limit the Johnson Amendment has been introduced in the current Congress.

The court’s order in *National Religious Broadcasters* stated that through the [Tax Anti-Injunction Act](#) and the [Declaratory Judgment Act](#), Congress [chose](#) to shepherd challenges to the revocation of tax-exempt status to an [alternative, post-enforcement procedure](#) from consent decrees, and, as such, Congress “is the [appropriate body](#) to weigh the relevant, policy-laden considerations, such as the harshness of the present law, the consequences of an unjustified revocation of Section 501(c)(3) status, [and] the number of organizations in any year threatened with such revocation.” Congress could choose to amend these statutes to provide the pre-enforcement relief the plaintiffs seek, or alternatively, Congress could amend the statutes to clarify the restrictions to pre-enforcement relief. Congress could also keep the statutes as is and leave the scope of allowable pre-enforcement relief for courts to resolve.

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