

IN A SHOCKING TURN OF EVENTS, IRS AGREES IN COURT FILING THAT CHURCHES MAY ENGAGE IN POLITICAL COMMUNICATIONS WITHOUT VIOLATING THE LAW

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By Mike Batts, CPA

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In a dramatic turn of events yesterday, the IRS filed (together with National Religious Broadcasters and three other religious organizations [including two churches]) a “Joint Motion for Entry of Consent Judgment” with a US District Court in Texas¹...which, if accepted by the Court, would settle a pending lawsuit by the religious organizations against the IRS related to political communications. The plaintiff organizations previously filed a lawsuit claiming that the IRS’s interpretation and application of the political campaign intervention prohibition in Section 501(c)(3) of the Internal Revenue Code (commonly referred to as “the Johnson Amendment” – named for then-Senator Lyndon B. Johnson who proposed it) is faulty and unconstitutional.

In what can fairly be described as a shocking change in its position, the IRS filed the motion jointly with the plaintiff organizations, agreeing with the core argument made by the religious organizations in the lawsuit.

The joint motion states, among other things:

When a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith, it neither “participate[s]” nor “intervene[s]”

in a “political campaign,” within the ordinary meaning of those words...Thus, 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.

While not abundantly clear, the phrase “through its usual channels of communication” appears to be intended to accommodate the dissemination or broadcast of a church’s religious message to “its congregation” via media (such as television, radio, and internet broadcasts). That would be a logical conclusion, given the involvement of National Religious Broadcasters in the litigation.

The joint motion further states:

This interpretation of the Johnson Amendment is in keeping with the IRS’s treatment of the Johnson Amendment in practice. As recounted in Plaintiffs’ Amended Complaint, the IRS generally has not enforced the Johnson Amendment against houses of worship for speech concerning electoral politics in the context of worship services.

(While the above statement has an element of truth in it, it is not true that the IRS has been hands-off with respect to political communications by churches in the context of religious worship services. I have first-hand knowledge that the IRS has definitively engaged with churches in that area in recent years.)

Interestingly, this position, now taken publicly by the IRS, contradicts decades of IRS commentary and published guidance on the topic as it relates to churches and political communications.

¹ Source: <https://storage.courtlistener.com/recap/gov.uscourts.txed.232590/gov.uscourts.txed.232590.35.0.pdf>

In fact, the IRS's current Publication 1828 (Tax Guide for Churches and Religious Organizations) includes the following statement:²

However, for their organizations to remain tax exempt under IRC Section 501(c)(3), religious leaders can't make partisan comments in official organization publications or at official church functions.

And that same publication (Tax Guide for Churches and Religious Organizations – Publication 1828) contains the following example:

Minister D is the minister of Church M, a Section 501(c)(3) organization. During regular services of Church M shortly before the election, Minister D preached on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, "It is important that you all do your duty in the election and vote for Candidate W." Because Minister D's remarks indicating support for Candidate W were made during an official church service, they constitute political campaign intervention by Church M.

Clearly, the IRS's new position, as described in the joint motion, directly contradicts the guidance cited above from Publication 1828.

This new court filing by the IRS is sure to send shockwaves through the legal system as its implications are analyzed and vetted in the coming days.

If the filing truly represents an embodiment of new IRS policy in this controversial area of tax law, the IRS will need to revoke and/or amend quite a significant amount of its published guidance on the topic.

Additionally, time will tell exactly how much weight this new development will carry in this important area of public policy. For now, it is a filing with a US District Court stating the opinion of the IRS in the matter at hand. We will closely monitor this issue to evaluate the broader potential implications of this significant new development.

² Source: <https://nonprofitcpa.com/major-new-house-tax-bill-would-resurrect-the-nonprofit-parking-tax-with-new-exemptions-includes-other-significant-proposed-changes-impacting-nonprofits/>