

# TREASURY AND IRS PLAN TO ISSUE FORMAL GUIDANCE ON RACIAL DISCRIMINATION AND POLITICAL CAMPAIGN INTERVENTION BY 501(C)(3) ORGANIZATIONS

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## Treasury and IRS Plan to Issue Formal Guidance on Racial Discrimination and Political Campaign Intervention by 501(c)(3) Organizations

By Mike Batts, CPA

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On September 30, 2025, the Department of the Treasury (which includes the Internal Revenue Service (IRS)) issued its “Priority Guidance Plan” (PGP) for its 2025-2026 fiscal year.<sup>1</sup> The IRS’s PGP serves as an expression of intent regarding areas of tax law in which the IRS and the Treasury Department plan to issue formal guidance in the near future.

Among the areas of tax law for which the Treasury Department says it plans to issue near-term guidance are the following, related to 501(c)(3) organizations:

1. Guidance on the application of the fundamental public policy against racial discrimination, including consideration of recent case law, in determining the eligibility of private schools for recognition of tax-exempt status under Section 501(c)(3).
2. Guidance on the statutory prohibition in Section 501(c)(3) against participation or intervention in political campaigns (the “Johnson Amendment”).

**Regarding item #1 above,** we expect that any guidance issued by the current administration will be consistent with the administration’s other communications in this area. The

administration’s position is illustrated by the Executive Order issued by President Trump on January 21, 2025, entitled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” The order states that numerous organizations “have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called ‘diversity, equity, and inclusion’ (DEI) or ‘diversity, equity, inclusion, and accessibility’ (DEIA) that can violate the civil-rights laws of this Nation.”

*Recent actions and communications by agencies of the administration make it clear that the administration considers most race-based programs and initiatives to be discriminatory.*

One example is a Department of Education press release dated February 15, 2025, entitled “U.S. Department of Education Directs Schools to End Racial Preferences.” The administration’s stance comes on the heels of a US Supreme Court decision in 2023,<sup>2</sup> ruling against the use of race in admissions programs by Harvard College and the University of North Carolina.

*[We note that the Supreme Court ruled in 1983 that Bob Jones University was not entitled to federal 501(c)(3) tax exemption due to its policies and practices at the time related to certain matters involving race.<sup>3</sup> The decision was not based on any specific prohibition in Section 501(c)(3), but rather was based on the premise that the university’s practices were “contrary to public policy.”]*

<sup>1</sup> Source: <https://www.irs.gov/pub/irs-counsel/2025-2026-initial-pgp.pdf>

<sup>2</sup> Source: [https://www.supremecourt.gov/opinions/22pdf/20-1199\\_hgdj.pdf?inf\\_contact\\_key=9d2328cfadff85d10b29a5f526af8b80680f8914173f9191b1c0223e68310bb1](https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf?inf_contact_key=9d2328cfadff85d10b29a5f526af8b80680f8914173f9191b1c0223e68310bb1)

<sup>3</sup> Source: <https://supreme.justia.com/cases/federal/us/461/574/>

### **Observations and Recommendations**

- We note that the requirements of Revenue Procedure 75-50 and related pronouncements are still in effect and still apply to educational institutions. (Revenue Procedure 75-50 and related pronouncements address the prohibition of racial discrimination by private schools and require certain policies, practices, and documentation to support a private school's position that it is racially non-discriminatory.) However, some programs and activities that may have historically been viewed as acceptable (e.g., those intended to benefit certain minority groups) may not be deemed acceptable by the current administration.
- We recommend that nonprofit organizations evaluate their programs and activities to determine if any of them may present risk in this area...and consider whether modifications may be appropriate.
- We recommend that organizations filing Form 990 exercise care in describing their programs and initiatives.
- We recommend that nonprofit leaders stay alert and vigilant with respect to new developments in this important area. We certainly will!

**Regarding item #2 above**, we expect that any guidance issued by the current administration will be consistent with President Trump's stated desire to see the so-called "Johnson Amendment" (the statutory prohibition in Section 501(c)(3) against participation or intervention in political campaigns) weakened or eliminated.

On July 7, 2025, the IRS filed a joint motion in a federal district court case, together with several 501(c)(3) religious organizations,<sup>4</sup> which included the following statement:

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.

*Such a statement represented a significant shift in position by the IRS, and it appears to directly contradict formal guidance published by the IRS.*

For example, IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, contains the following statement:

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.

### **Observations and Recommendations**

- It seems that the administration may use regulatory action or other formal guidance to define certain terms in Section 501(c)(3)

<sup>4</sup>Source: [https://storage.courtlistener.com/recap/gov.uscourts.txed.232590/gov.uscourts.txed.232590.35.0.pdf?inf\\_contact\\_key=d4b7637d4916c6e8276d9a01aeb4092c680f8914173f9191b1c0223e68310bb1](https://storage.courtlistener.com/recap/gov.uscourts.txed.232590/gov.uscourts.txed.232590.35.0.pdf?inf_contact_key=d4b7637d4916c6e8276d9a01aeb4092c680f8914173f9191b1c0223e68310bb1)

in a manner that would allow more freedom of political expression than the IRS has historically deemed permissible for certain organizations. Section 501(c)(3) states that a 501(c)(3) organization may 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.”

- o The administration may, for example, plan to issue Regulations or other formal guidance stating that the content of religious worship services or certain other activities of 501(c)(3) organizations do not constitute participating in or intervening in a political campaign...even if such activities include communications or expressions of approval, endorsement, or opposition to one or more political candidates.
- We recommend that nonprofit leaders stay alert and vigilant with respect to new developments in this important area. We certainly will!

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