

President Trump Signs “Johnson Amendment” Executive Order Limiting Treasury’s Actions Against Religious Organizations Engaged in Political Campaign Activities



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On May 4, 2017, **President Trump** signed an [executive order](#) that directs the executive branch to limit its enforcement of the “**Johnson Amendment**.” As [previously reported](#), the Johnson Amendment prohibits organizations that are exempt under section 501(c)(3) of the **Internal Revenue Code** from engaging in political campaign activities.¹ The executive order limits enforcement of the Johnson Amendment or any other adverse action against any individual or religious organization for speaking about moral or political issues from a religious perspective. The executive order is unlikely to have any meaningful practical effect because, as has been widely reported, the Johnson Amendment is not currently being enforced.

The executive order also directs the Secretaries of Treasury, Labor, and Health and Human Services to write regulations to address objections to the requirement in the Affordable Care Act that employers fund contraceptive health services for their employees.

The Johnson Amendment

The executive order provides that all executive departments and agencies must, “to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech.” Specifically, the Department of Treasury should not take any “adverse action” against any individual, house of worship or other religious organization because the individual or organization speaks on moral or political issues from a religious perspective if similar speech has not generally been treated as participating or intervening in a political campaign on behalf or against a politician by the Department of Treasury. “Adverse action” includes imposition of tax, penalties, delay or denial of tax-exempt status and disallowance of tax deductions for contributions made to organizations that are exempt under [section 501\(c\)\(3\)](#) of the Code.

The Johnson *Amendment* prohibits section 501(c)(3) organizations from participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. An organization that violates the prohibition is subject to excise taxes,² loss of exemption, and a civil injunction.³ In *Ass’n of the Bar of N.Y. v. Commissioner*,⁴ the Johnson Amendment was used to revoke the section 501(c)(3) status of the Association of the Bar of New York City for publishing nonpartisan ratings of candidates for elective judgeships. In *Branch Ministries v. Commissioner*,⁵ a church lost its Section 501(c)(3) status for placing anti-Bill Clinton ads in newspapers before the 1992 presidential election

Before the Internal Revenue Service (“IRS”) may begin any inquiry that may lead to revocation of a church’s section 501(c)(3) status, [section 7611](#) requires an “appropriate high-level Treasury official” to first reasonably believe that the church may not be exempt under Section 501(c)(3). In *United States v. Living Word Christian Center*,⁶ a federal district court held that the IRS’s Director of Exempt Organizations Examination was insufficiently high-ranking to qualify under section 7611. No other person has been designated, and all tax inquiries for religious organizations have been suspended since 2009. [Proposed regulations](#) that would designate the Director, Exempt Organizations as the appropriate high-level Treasury official have been issued, but not finalized. Nevertheless, just hours after President Trump signed this executive order, Freedom from Religion Foundation [filed a lawsuit](#) in the U.S. District Court for the Western District of Wisconsin seeking an order that would prohibit the IRS from implementing the executive order and directing President Trump and the IRS Commissioner to enforce the Johnson Amendment equally on all non-profit organizations, whether religious or not.

It has been widely reported that the Johnson Amendment is not currently being enforced. In this light, the executive order is unlikely to have any practical effect.

¹ All references to section numbers are to the Internal Revenue Code.

² See [section 4955](#).

³ See [section 7409](#).

⁴ 858 F.2d 876 (2d Cir. 1988).

⁵ 211 F.3d 137 (D.C. Cir. 2000).

⁶ Civil No. 08-MC-37 ADM/JJK, 2009 WL 250049, at *4 (D. Minn. 2009).

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