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A federal judge in Texas has ruled that a prominent group defending the separation of church and state can't take an active role in a case involving political endorsements during sermons.

Americans United for Separation of Church and State had asked the U.S. District Court for the Eastern District of Texas for permission to defend the so-called Johnson Amendment, an IRS rule that bars nonprofits from taking sides in political campaigns, in the case filed by religious groups opposed to the amendment. In its motion to join the suit, Americans United said a proposed settlement to the lawsuit, which would allow churches to make political statements during services, violates federal law and would give religious nonprofits rights that secular groups don't have.

The group also argued that the federal government has refused to defend the Johnson Amendment in court.

In mid-December, U.S. District Judge J. Campbell Baker turned Americans United down, saying the lawsuit in question was not the right place to air the group's concerns. But, he added, "(I)f a nonprofit has an equal-protection challenge to its own anticipated treatment under the Johnson Amendment, that separate dispute as to a separate transaction can be litigated in an appropriate forum."

For years, conservative legal groups have sought to challenge the Johnson Amendment in court, organizing groups of pastors to endorse candidates during services and then mailing recordings of the endorsements to the IRS in hopes of provoking a legal battle. The IRS had long declined to respond. President Donald Trump has claimed from early in his first presidency that he wants to get rid of the Johnson Amendment, saying it harms pastors.

In a court filing last summer, the IRS said that the Johnson Amendment ban on nonprofit political endorsements does not apply to comments made during religious services. That filing came in response to a 2024 lawsuit filed by two Texas churches and two religious nonprofits — the National Religious Broadcasters Association and Intercessors for America — which claims that the bar on endorsements during sermons was unconstitutional. The IRS hopes to settle the lawsuit, filed in the U.S.

District Court for the Eastern District of Texas.

Groups like Americans United for the Separation of Church and State oppose the settlement that would allow endorsements during sermons, saying it will open the door for so-called dark money to flow between campaigns and churches.

"Christian Nationalists, with help from the Trump administration, are attempting to eviscerate the popular Johnson Amendment so that they can misuse charitable donations for partisan political campaigns," Americans United said in a statement. "We're disappointed that the court didn't allow Americans United to intervene to defend this federal law since the Trump administration will not."

The settlement needs final approval from a judge in order to take effect. Americans United has not decided whether to appeal, it said.

"We remain hopeful the court will reject the proposed settlement agreement that attempts to usurp Congressional power to write our laws," Americans United said in its statement.

In a response to the concerns raised by Americans United, the plaintiffs said the settlement applies only to speech during religious services. Other bans in the Johnson Amendment, the plaintiffs argue, such as those barring financial contributions to campaigns, remain in place.

"While the consent decree addresses only worship services, it is inaccurate to claim that the line drawn by the decree is between religious and secular organizations," the plaintiffs wrote in a December court filing. "All nonprofits, religious and secular alike — including churches in other contexts — must still adhere to the Johnson Amendment."

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The proposed settlement makes no mention of allowing churches to spend money on political campaigns. However, critics argue the settlement would result in a flood of partisan donations to churches, with no way of tracking the donations or how those funds are spent.

"Liberal and conservative churches alike would be pressured to accept partisan contributions, and their leaders would be incentivized to act as campaign operatives rather than spiritual guides," lawyers for the Washington, D.C.-based Campaign Legal Center argued in an amicus brief filed in the case.

Alexandra Zaretsky, litigation counsel at Americans United, said that while the proposed settlement doesn't allow for political contributions, the settlement could open the door to such contributions in the future.

"One of the many problems with the proposed settlement agreement is that it is unclear," Zaretsky said in an email. "The parties themselves don't seem to agree on the parameters of precisely what speech the settlement agreement covers. While the decree does not facially authorize political contributions, we're concerned that the parties — or others — could try to interpret this language broadly."

The Washington, D.C.-based Campaign Legal Center also filed an amicus brief opposing the settlement. Kevin Hancock, the group's director for Campaign Finance Litigation, argues that if approved, the settlement could turn video feeds from worship services into ads for campaigns—especially if a service containing an endorsement was broadcast online.

"The sermon isn't just taking place live, but they're publishing it later over on their website," Hancock said. That could be considered a contribution to a campaign, in the same way that taking an ad in the newspaper or on TV would be.

Under the terms of the settlement, comments about politics or candidates — if they take place in service or through a church's "customary channels of communication on matters of faith" — would not be considered a violation of the Johnson Amendment.

That phrase, "customary channels of communications," leaves a lot of wiggle room, said Hancock.

"The language of this consent decree, I think, is not actually that narrow," he said.

Endorsing candidates during worship services has long been controversial among Americans. Most (77%) disapprove of political statements during services, a 2022 Pew Research Center survey found. And few Protestant pastors say they have endorsed candidates at church, according to Lifeway Research.

While the IRS has investigated churches for political statements — including a church led by Pastor Robert Jeffress, a Trump ally — those investigations are rare. In 1992, the Church at Pierce Creek, a congregation in New York, lost its tax exemption after taking out an anti-Bill Clinton ad. It remains the only congregation to lose its tax-exempt status for violating the Johnson Amendment.

If the court does approve the proposed settlement, Americans United said it might push for the right to make political endorsements as well.

"AU views endorsing or opposing political candidates as a valuable benefit and would begin conversations about doing so if other nonprofits were permitted to engage in these activities," the group said.