



Memorandum

To: Shul Leaders
From: Rabbi Moshe Hauer, Nathan J. Diament
Date: July 16, 2025 (Updated)
Re: Endorsements of Political Candidates from the Pulpit Following the Recent IRS Statement

Background: What has been the law and what has changed?

Under the so-called “Johnson Amendment” (a provision of the Federal tax code), a religious organization, such as a synagogue, can lose its tax-exempt status if it participates or intervenes in a political campaign on behalf of (or in opposition to) a candidate for public office. Accordingly, rabbis and their synagogues have refrained from endorsing or opposing candidates from the pulpit or in other official communications.

Recently, a group of churches filed a lawsuit against the IRS seeking to have the Johnson Amendment declared an unconstitutional violation of their First Amendment right to freedom of speech and free exercise of religion and other rights. On July 7, 2025, the IRS and the plaintiffs filed a joint motion for entry of consent judgment enjoining the IRS from enforcing the Johnson Amendment against the plaintiff churches “based on speech by a house of worship to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith.”

Is the joint motion consistent with the Johnson Amendment?

According to the IRS, yes. The joint motion expresses the IRS’ position that:

“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... Bona fide communications internal to a house of worship, between the house of worship and its congregation, in connection with religious services, do neither of those things, any more than does a family discussion concerning candidates. 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.”

Moreover, the joint motion states:

“This interpretation of the Johnson Amendment is in keeping with the IRS’s treatment of the Johnson Amendment in practice,” and avoids a potentially serious tension between the Johnson Amendment and the First Amendment’s Establishment Clause.

On the other hand, the Johnson Amendment remains codified in federal law. Organizations that favor a strong separation between church and state have expressed the view that the IRS' position is a "radical re-interpretation" of the Johnson Amendment "that threatens our democracy by favoring houses of worship over other nonprofits and inserting them into partisan politics." One such organization filed an amicus brief with the court opposing the joint motion. The court has not yet issued a ruling on the joint motion, and there may be further litigation over this law and its interpretation.

Can rabbis and their synagogues safely rely on the IRS' position in the joint motion?

At least for now, with regard to federal law, probably, yes. As a technical matter, only the plaintiff churches who are parties to the joint motion can rely on the IRS' position (assuming the court enters the consent judgment), since the IRS has not (yet) announced this position in a formal notice, revenue ruling or regulation. However, as a practical matter, it appears unlikely that the IRS will retract this position, at least under the Trump Administration.

At the same time, whatever the IRS and federal courts may decide regarding federal law, state laws may be different. In 2019, New York State amended a statute governing non-profits to provide:

"The provisions of this paragraph regarding political campaign activity shall be interpreted in the same manner as section 501(c)(3) of the United States internal revenue code [sic] has been interpreted as of the effective date of the chapter of the laws of two thousand nineteen..."¹

Other States may also have laws that differ from Federal tax law in this area.

Should rabbis and their synagogues be endorsing or opposing candidates?

Notwithstanding this development, the Orthodox Union, as an organization, does not intend to alter its policy of not endorsing candidates for political office. Our long-term effectiveness in advocacy on matters of policy critical to our community depends on our maintaining bipartisan relationships in Congress and across presidential administrations.

From this perspective, the OU recommends that rabbis and their synagogues exercise caution in departing from current practice, and that they endorse or oppose candidates only in rare and highly unusual circumstances (if ever). The following considerations inform our recommendation:

- The IRS correctly describes the congregation as family, equating its internal discussions to those at the family table. Synagogues should always convey the feeling of home and family to all who enter and – whatever the law may allow - avoid introducing divisive political discourse into our congregations. A synagogue is a place where Jews of varied political persuasions should feel comfortable to engage in prayer, Torah study, spiritual growth, *chessed*, and loyally supporting Israel and Jews around the world. Politics can be divisive –

¹ Chapter 60, Article 28, Part 3, Section 1116 (dealing with sales tax). New York political leaders stated at the time that the purpose of the amendment was to prevent President Trump from effectively overturning the Johnson Amendment, at least in New York. It is possible that New York State tax enforcement officials would claim that the interpretation of the Johnson Amendment in effect in 2019 for Federal purposes is different from the IRS position set out in the July 7 joint court motion.

including as to whether a particular candidate or office-holder is “good or bad for the Jews,” and those congregants who don’t share the positions expressed by the synagogue or its rabbi may feel unwelcome.

- A rabbi’s role is to guide his congregation in the aforementioned spiritual endeavors and to provide counsel and support to individual congregants. If the rabbi endorses or opposes a candidate, individual congregants who disagree may refrain from seeking his counsel and support.
- Once a rabbi or a synagogue takes a position on one particular candidate or incumbent, the pressure from some congregants may grow to take positions regarding other candidates, where the merits for supporting or opposing them may not be as clear-cut. This has the potential to cause continued and increased friction and divisiveness within the congregation, and to jeopardize the community’s support from other officeholders on other issues of concern.
- Even without offering specific endorsements, synagogues should take part in communal efforts to “get out the vote.” Strong turnout from the Jewish community is always valuable.

Conclusion

The Orthodox Union recognizes that each rabbi and congregation must make decisions for themselves about policies and practices – especially on a set of issues as fraught as these. We urge you to seek your own legal counsel and to deliberate these important issues carefully and with a long-term perspective.