

SEPTEMBER 24, 2026 | PUBLICATION

Client Alert: U.S. Department of Justice Sides with Religious Groups in Johnson Amendment Appeal

On April 28, 2026, the U.S. Department of Justice (DOJ) filed its brief as defendants-appellees in the U.S. Court of Appeals for the Fifth Circuit in *National Religious Broadcasters v. Bessent*, No. 26-40237, largely siding with the plaintiffs-appellants challenging the Johnson Amendment. Section 501(c)(3) of the Internal Revenue Code generally bars tax-exempt organizations, including churches, from participating in political campaigns. The brief followed a July 2025 consent agreement under which the DOJ would have barred Internal Revenue Service (IRS) enforcement of the Johnson Amendment against the plaintiff churches for political speech to their congregations in connection with religious services.

Judge J. Campbell Barker of the Eastern District of Texas dismissed the case on March 31, 2026, holding that the Tax Anti-Injunction Act (AIA), 26 U.S.C. § 7421, and the Declaratory Judgment Act barred approval of the agreement. Although it filed as an appellee, the DOJ argued J. Barker erred and asked the Fifth Circuit to reverse on the narrow ground that the AIA does not apply to the consent agreement, while declining to endorse every aspect of the religious groups' arguments. The appeal arises amid a DOJ task force report on anti-Christian bias, forthcoming Department of the Treasury and IRS guidance on the Johnson Amendment's application to religious organizations, and the pending Free Speech Fairness Act. The Johnson Amendment remains on the books, and the Fifth Circuit has not yet ruled.

Affected organizations should continue to monitor these developments, and our team is available to help

INDUSTRY SECTOR

Public Sector

SERVICE LINE

Corporate, Tax & Transactions

RELATED PROFESSIONALS

Hannah Clarke Campbell

MEDIA CONTACT

Wendy M. Byrne

wbyrne@shumaker.com

assess potential implications.

For questions or for more information, please contact Hannah Campbell or Felix Pelzer.