

New lawsuit asks why nonprofit newspapers can endorse candidates but churches can't

by [Bob Smietana](#)

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Republican presidential candidate former President Donald Trump speaks at the National Religious Broadcasters convention in Nashville, Tennessee, on February 22. (AP Photo/George Walker IV)

A group of evangelical broadcasters who [hosted](#) Donald Trump at their national conference earlier this year is suing the Internal Revenue Service over the so-called Johnson Amendment, a tax law that bars nonprofits from supporting political candidates.

Lawyers for the National Religious Broadcasters, along with two Baptist churches and a conservative group called Intercessors for America, argue in their suit that the ban on engaging in politics restricts their freedom of speech and freedom of religion. They further argue that the IRS ignores the politicking of some charities, while threatening to punish others.

In particular, lawyers for the groups claim that newspapers and other news outlets that have become nonprofits in recent years, such as the *Philadelphia Inquirer*, endorse candidates. Why can't churches or other Christian groups, they want to know, do the same?

"Plaintiffs believe that nonprofit newspapers have a clear constitutional right to make such endorsements or statements," read the complaint filed August 28 in the United States District Court of the Eastern District of Texas, Tyler Division. "Plaintiffs simply contend that they should also have the same freedom of speech."

The lawsuit is the latest challenge to the Johnson Amendment, [a 1954 law](#) that has long been the bane of conservative groups and, in particular, preachers seeking to become more involved in politics. The ban on taking sides in campaigns—including endorsements or campaign contributions—applies to nonprofits that fall under section 501(c)(3) of the IRS code.

For years Alliance Defending Freedom, a conservative legal group, [organized](#) "pulpit freedom" Sundays designed to have preachers violate IRS rules by endorsing candidates from the pulpit.

As president, Donald Trump [signed](#) an executive order designed to give more leeway under IRS rules.

The current lawsuit pitches its argument toward similar religious freedom principles. "For too long, churches have been instructed to remain silent on pressing matters of conscience and conviction during election season or risk their 501(c)(3) status," said NRB President Troy A. Miller in a statement announcing the lawsuit.

But the growing number of nonprofit newsrooms has added a new twist to the arguments over the Johnson Amendment that has to do with fairness. Those newsrooms, the complaint argues, should be required to abide by the same rules as other charities.

“Hundreds of newspapers are organized under § 501(c)(3), and yet many openly endorse political candidates,” lawyers for NRB and its co-plaintiff argued in their complaint. “Others make statements about political candidates that constitute forbidden statements under the IRS’ interpretation of the statutory prohibition against supporting or opposing candidates.

The Institute for Nonprofit News, with about 450 member organizations does not accept members that endorse candidates.

“Nonprofit news organizations do not endorse candidates and, under IRS guidelines, should not favor any candidate for public office in coverage or other action,” the INN’s [guidelines](#) for members state.

Karen Rundlet, the CEO and executive director of the INN, said in an email that grants made to nonprofits often bar those funds from being used for political activity.

The complaint points specifically to the *Inquirer’s* candidate endorsements, as well as articles critical of candidates in other nonprofit publications from 2012 to the present, claiming all violated IRS rules with impunity.

While nonprofit newspapers such as the [Salt Lake Tribune](#) and [Chicago Sun-Times](#) no longer make political endorsements, the *Inquirer* does, in part because it has a different ownership structure.

“The Philadelphia Inquirer is owned by the nonprofit Lenfest Institute for Journalism, but the newspaper remains a for-profit public-benefit corporation,” Jim Friedlich, CEO of the Lenfest Institute for Journalism, said in an email. “As a for-profit entity, The Philadelphia Inquirer is permitted to publish political endorsements, as it has for decades. It does so following thoughtful research on candidate policy positions, qualifications, integrity, and track record.”

In their complaint, lawyers for the NRB and its fellow plaintiffs said that, despite the *Inquirer’s* structure, dollars from a nonprofit are funding political endorsements.

A spokesman for the IRS declined to comment, citing the pending litigation. The NRB did not respond to a series of questions about the lawsuit.

Darryll K. Jones, a professor of law at Florida A&M University who [blogs](#) about nonprofit law, agrees that the IRS is allowing the Lenfest Institute to “have its cake

and eat it too,” he said by email.

“Other exempt charities can farm out their political speech to subsidiary organizations without diminishing their tax-exempt efforts,” he said. “Churches cannot do so because farming out political activity necessarily diminishes or even precludes the accomplishment of the church’s tax-exempt and (oh, by the way) constitutionally protected effort.”

If the IRS refused to bite on ADF’s pulpit actions, said Jones, it is because the IRS likely knows the Johnson Amendment would not hold up on constitutional grounds. On their part, many nonprofits appreciate the rule, Jones said, because the restriction keeps them out of politics.

“They can say, look, we’re not going to be involved in that. We’re not going to be involved in politics. We are out here to do our charitable deeds, and we don’t want to be on one side or the other,” Jones said.

Jones believes courts are likely to dismiss most of the NRB’s claims, especially its due process and equal protection assertions, which he said obscure the main point of their lawsuit.

But, he said, “Once you get through all the unnecessary weeds, the complaint makes a legally irresistible argument, the logic of which can’t possibly be avoided.”

He added that politicking by nonprofits would likely have negative outcomes. “Everybody’s going to do it, and then there’ll be sort of a race to the bottom,” he said.

A 2019 [survey](#) from Pew Research found that people in the US would prefer to keep religion and politics separate. Nearly two-thirds (63 percent) want houses of worship to stay out of politics, while three-quarters (76 percent) say churches and other congregations should not endorse candidates.

The NRB hosted Donald Trump at its annual convention in Nashville this past February, where the former president promised to return Christians to power if elected for a second term. Before Trump spoke, Miller told those in the audience that the group was hosting a presidential forum and that the speakers did not represent the official views of the NRB.

The former president appealed to religious broadcasters to join his side.

“If I get in, you’re going to be using that power at a level that you’ve never used before,” Trump told a gathering of National Religious Broadcasters at Nashville’s Gaylord Opryland Resort and Convention Center. —Religion News Service