DOJ asks appeals court to allow churches to endorse political candidates

by Bob Smietana
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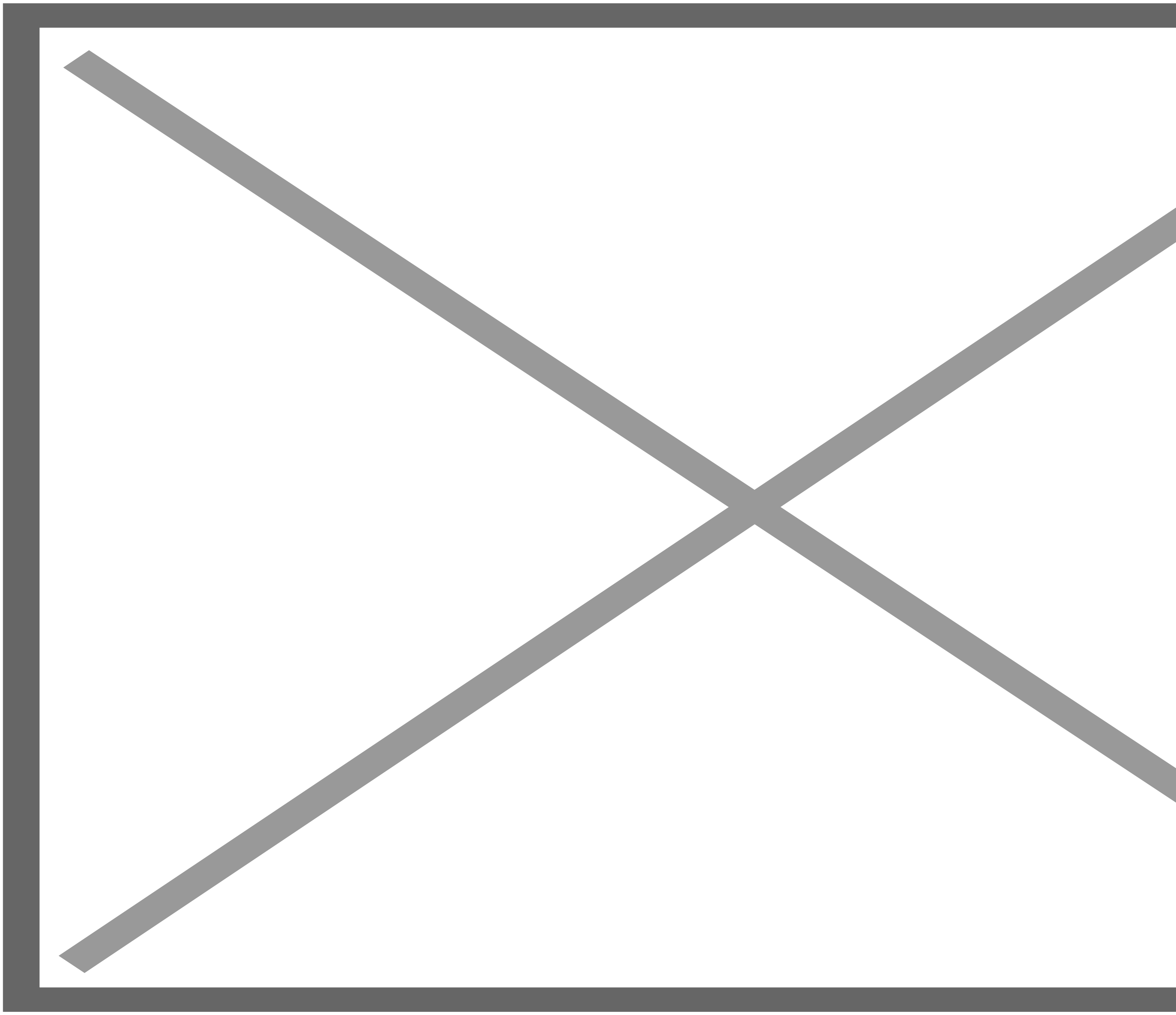

Campaign signs are displayed during the Scott County Democrats annual family picnic, August 16, in Bettendorf, Iowa. (AP Photo/Jospeh Cress)

Department of Justice lawyers have asked a federal appeals court to overturn a lower court decision that kept an IRS ban on nonprofits endorsing candidates in place—the latest development in a decades-long battle over whether pastors and houses of worship should be allowed to endorse political candidates.

In a brief filed with the US Court of Appeals for the Fifth Circuit on Monday, lawyers for the DOJ argued that a legal principle known as the "church autonomy doctrine" would bar the IRS from enforcing that ban.

That ban is part of a law commonly known as the Johnson Amendment, which bars all nonprofits with 501(c)(3) tax-exempt status from taking part in political campaigns. The name is a reference to former Texas senator and President Lyndon Baines Johnson, who supported the ban.

Lawyers for the IRS said the law was unenforceable under federal law.

"Any IRS enforcement action under the Johnson Amendment against such speech would run headlong into the church autonomy doctrine, which prevents civil courts from adjudicating ecclesiastical matters," they wrote.

A pair of Texas churches and the National Religious Broadcasters, a Christian communicators group, challenged the ban in court and reached a settlement with the IRS in 2025, which would have allowed pastors and church leaders to endorse candidates and discuss campaigns.

But this past March, Judge J. Campbell Barker of the US District Court for the Eastern District of Texas rejected the settlement and dismissed the lawsuit, saying the court lacked the jurisdiction to approve it.

At issue was the timing of the lawsuit, Barker wrote. Neither the NRB or the churches suffered any harm from the Johnson Amendment, nor were they likely to, he wrote. He also said that courts are barred from "providing declaratory relief with respect to federal taxes."

In his ruling, Barker said the proper time to challenge the IRS ban would be after the plaintiffs had been assessed taxes or had lost their tax exemptions.

He also said there was a relatively simple solution for churches that want to endorse candidates.

"Put differently, if the plaintiffs here gave up their 501(c)(3) tax-exempt status, none of the harms they allege could occur," he wrote.

Lawyers for the IRS disagree. They argue Barker had the authority to approve the settlement under an exception to a federal law known as the Declaratory Judgment Act, they wrote in the filing.

Mike Farris, general counsel for NRB, said his organization supports the IRS appeal.

"Although the government takes a different view from our position on certain aspects of the case, both parties agree on two things," he said. "First, the proposed consent decree should be approved by the courts. Second, it is unconstitutional for the IRS to limit what a pastor may say from the pulpit."

Conservative Christian groups have long sought to overturn the Johnson Amendment, saying it interferes with the rights of pastors and churches to discuss how their faith affects voting decisions.

While both liberal and conservative churches have been investigated for allegedly violating the Johnson Amendment, no congregation has lost its tax-exempt status or been punished for political endorsement during church services.

In 1995, the Church at Pierce Creek in Vestal, New York, did lose its tax exemption for running anti-Bill Clinton newspaper ads during the 1992 election.

President Donald Trump has repeatedly promised to do away with the Johnson Amendment, and under his administration, the IRS has backed away from enforcing the law on churches. The IRS and the Treasury

Department are currently working on guidance for churches on how the law might apply to them. —Religion News Service