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Political Activities: Churches/Charities Should Be Cautious

In his remarks before signing his [Presidential Executive Order Promoting Free Speech and Religious Liberty](#), President Donald Trump touted the order as a move to unshackle religious organizations from the strictures of the “Johnson Amendment” — a reference to the language in Section 501(c)(3) of the Internal Revenue Code that prohibits all organizations described in that section, including churches and charities, from intervening in political campaigns — and give them greater freedom to engage in political activity. “We are giving our churches their voices back and we are giving them back in the highest form,” President Trump said before signing the May 4 order.

But while the order was heralded as a limitation on the enforcement authority of the IRS, the language of the order actually does the opposite: it reinforces existing restrictions on political activities by faith-based organizations and charities, rather than weakening them.

More specifically, while the order prohibits the IRS from penalizing religious organizations that engage in political speech from “a religious perspective,” this prohibition only applies “where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury.” In essence, the order directs the IRS to enforce restrictions on political campaign activity by religious organizations using the same standards as are uniformly applied across the full range of tax-exempt organizations.

In so ordering, the language of the executive order puts the weight of the White House behind existing Treasury and IRS guidance of general applicability, such as [Revenue Ruling 2007-41](#), which contains a series of examples of actions, including speech by church leaders and charity officials, that the IRS believes constitute campaign intervention. Historically, the IRS has undertaken both civil and criminal enforcement actions based on violations of the “Johnson Amendment,” and nothing in the executive order undercuts those enforcement actions.

In light of the contradictions between the president’s public statements and the actual language of the executive order, churches and charities should exercise great caution before engaging in activities that could be construed as campaign intervention, and should consult with knowledgeable tax professionals before moving forward with any of those activities.

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Loeb & Loeb's Nonprofits and Exempt Organizations Practice

LAURA B. BERGER	LBERGER@LOEB.COM	310.282.2274
LEAH M. BISHOP	LBISHOP@LOEB.COM	310.282.2353
DEBORAH J. BROSS	DBROSS@LOEB.COM	310.282.2245
TARIN G. BROSS	TBROSS@LOEB.COM	310.282.2267
REGINA I. COVITT	RCOVITT@LOEB.COM	310.282.2344
LINDA N. DEITCH	LDEITCH@LOEB.COM	310.282.2296
PAUL N. FRIMMER	PFRIMMER@LOEB.COM	310.282.2383
ELIOT P. GREEN	EGREEN@LOEB.COM	212.407.4908
RACHEL J. HARRIS	RHARRIS@LOEB.COM	310.282.2175
DIARA M. HOLMES	DHOLMES@LOEB.COM	202.618.5012
JASON R. LILIEN	JLILIEN@LOEB.COM	212.407.4911

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ANNETTE MEYERSON	AMEYERSON@LOEB.COM	310.282.2156
MARCUS S. OWENS	MOWENS@LOEB.COM	202.618.5014
RONALD C. PEARSON	RPEARSON@LOEB.COM	310.282.2230
ALYSE N. PELAVIN	APELAVIN@LOEB.COM	310.282.2298
PRESTON QUESENBERRY	PQUESENBERRY@LOEB.COM	202.524.8470
TZIPPORAH R. ROSENBLATT	TROSENBLATT@LOEB.COM	212.407.4096
CRISTINE M. SAPERS	CSAPERS@LOEB.COM	212.407.4262
JENNIFER TAM	JTAM@LOEB.COM	202.618.5023
STUART P. TOBISMAN	STOBISMAN@LOEB.COM	310.282.2323
JESSICA C. VAIL	JVAIL@LOEB.COM	310.282.2132
DANIEL M. YARMISH	DYARMISH@LOEB.COM	212.407.4116