

News for Churches and Religious Organizations

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There are several recent developments of interest for tax-exempt churches and religious institutions.

Johnson Amendment

In December's whirlwind attempt to write and pass a tax overhaul law that could win enough votes in the House of Representatives as well as in the Senate, it was unclear until just before the final conference-reconciliation voting whether the proposed legislation would include a total or partial repeal of the Johnson Amendment. Although Senate conferees accepted the House's modified-repeal version, the Senate Parliamentarian rejected it, and that was that – at least for the time being.

Lawmakers remain interested, though, in making a significant change to the 501(c)(3) ban on political-campaign activity; some have already indicated they intend to write new bills in this new year. There is a consensus in the charitable sector at large opposing any change at all; in the various religious communities around the U.S., there are proponents as well as opponents.

[Updates: 3/20/18; 3/23/18: Legislators are, indeed, moving this matter back into active consideration, but it was not included in the budget package enacted this week.]

FEMA Aid for Religious Organizations

In the aftermath of the devastating late-summer hurricanes in Texas, Florida and the Caribbean, individuals and organizations who needed (and gave) help sought reimbursement from the Federal Emergency Management Agency.

There has been an existing FEMA agency policy not to grant relief to churches and religious groups, even those who provide important community relief assistance. In the immediate aftermath of the Texas disaster, several churches submitted claims for relief, which were rejected.

In [Hurricanes, Houses of Worship, and FEMA Help](#), we reported that they filed lawsuits to challenge the FEMA rule, arguing that churches should not be denied assistance on the ground of religious affiliation alone. Under the rationale of the recent [Trinity Lutheran](#) landmark decision of the U.S. Supreme Court, these organizations argue that denying relief claims of religious organizations while granting relief to other entities, similarly situated, is unconstitutional.

There have been several developments in recent months.

First, the plaintiffs filed an immediate request for injunctive relief, alleging irreparable harm if they had to wait for FEMA money until after a trial. The federal agency conceded the merits of their claim, and asked the court for more time to revise its policy, but – nevertheless – refused the claim.

In December, a federal district court in Texas ruled against the plaintiff-churches. They filed an emergency appeal to the Fifth Circuit Court of Appeal. That court agreed to hear the appeal on an expedited basis but denied the injunction after allowing the parties to brief and argue their positions.

Then, in a major policy shift in the first week of January 2018, the Administration announced a change. In a [new manual](#), the Federal Emergency Management Agency wrote that [its rule will no longer disqualify](#) religious groups from reimbursement under the “community centers subcategory of [Public Assistance] nonprofit applicants.”

Religious Discrimination

In early October 2017, U.S. Attorney General Jeff Sessions [published a broad memo](#) in the Federal Register instructing all federal departments and agencies on the “[Principles of Religious Liberty](#).” In a marked change in policy from earlier administrations, “religious organizations [may choose to employ](#) only persons whose beliefs and conduct are consistent with the organizations’ religious precepts.”

The memo described 20 principles based on the current [Justice Department’s interpretation](#) of existing federal laws, specifically the 1993 Religious Freedom Restoration Act. The deadline for public comments was November 24, 2017.

This proposed new policy, titled *Removing Barriers for Religious and Faith-Based Organizations To Participate in HHS Programs and Receive Public Funding*, has [caused alarm in many groups](#) including the LGBTQ community who fear this will sanction discrimination against them.

Conclusion

There were interesting developments in October 2017 and then again just before Christmas on the future of the clergy “parsonage allowance.” The bottom line is that it appears this particular tax break is “safe for the present,” as explained by Forbes Magazine’s Peter C. Reilly, CPA. We’ll cover this issue separately in a later post.

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