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A new consent judgement approved by the IRS may suggest 501(c)(3) organizations can begin taking political positions.

### The \$5 Million Oxford Comma

Nuances of drafting contracts and other legal agreements can become important, even down to the comma. Read about how one missing comma that cost a company millions of dollars.

### Contract Term to Know: *Force Majeure*

If a major catastrophe prevents you from performing your obligations under a contract, are you still in breach even if there was no possible way you could perform it? A "force majeure" provision may alleviate your exposure in some situations.

## DID YOU KNOW?

A judge can overrule a jury's verdict if the evidence and the law clearly leave no room for disagreement. In civil cases, this is called a "*judgment notwithstanding the verdict*." The rule acts as a safety net for the justice system ensuring the jury's decision still complies with the law.

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## Politics From the Pulpit? Examining Recent Developments on the Johnson Amendment

By: Attorney Zander Chonka

Named after its legislative sponsor, then-Senator Lyndon B. Johnson, the Johnson Amendment is a provision in the U.S. tax code that prohibits all 501(c)(3) tax-exempt organizations from endorsing or opposing political candidates. The penalty for a violation is the loss of tax-exempt status. A recent settlement has created ambiguity into the scope of the law.

In 2024, two churches and two nonprofits brought a lawsuit against the IRS (*Nat'l Religious Broadcasters v. Comm'r of IRS*, E.D. Tex., No. 6:24-cv-311) claiming the government's restrictions on their political speech under the Johnson Amendment violated their constitutional rights under the First and Fifth Amendments. The lawsuit claims the threat of losing tax-exempt status amounts to an unconstitutional restraint on free speech. And the IRS agreed, at least partially.

In July of 2025, the parties filed a Joint Motion for Entry of Consent Judgment, *i.e.*, a request for the court to approve a settlement. The proposed settlement would enjoin the IRS from enforcing the Johnson Amendment against the plaintiffs in that case, specifically as to "speech by a house of worship to its congregation through its customary channels of communication on matters of faith in connection with religious services." The terms of the proposed settlement would only apply to the parties in the case. However, the case has garnered national attention because the settlement may constitute a de facto policy change given that the IRS is voluntarily entering into the settlement.

So, how will the terms of this settlement affect 501(c)(3) organizations? For the first time in over 70 years, the settlement may suggest pastors or churches *may* be able to publicly address electoral politics through the lens of faith from the pulpit, through emails or newsletters, or other communications that are intended for the church's congregation. The Consent Judgment likens such communications to "a family discussion concerning candidates."

The proposal has drawn criticism from some religious bodies, including the U.S. Conference of Catholic Bishops and the Evangelical Lutheran Church in America (ELCA), who expressed concern that the policy change "could enable political candidates to exert pressure on churches for endorsements and introduce or magnify partisan political debate in congregational life." Many church leaders and free speech advocates have celebrated the potential policy change as the lifting of an unconstitutional restraint on pastors and churches.

There is no doubt that as pastors, churches, and other 501(c)(3) organizations begin to wade into partisan politics new questions will arise. For instance, is the IRS's consent intended to be a generalized policy position applicable to all 501(c)(3) organizations, or just applicable to the particular plaintiffs in that case? If a generalized position, will a new administration reverse the policy position of the IRS? All of these questions remain unanswered at this time but we expect to hear more guidance from the IRS in the coming months. A hearing has been set for November 7, 2025 to determine whether the Court will approve the Joint Motion. Many questions remain including what constitutes "customary channels of communication"? Does this include sermons from the pulpit, YouTube videos, or others? Most likely, the IRS will take a narrow approach to this settlement and find that the facts of that particular case are consistent with the Johnson Amendment.

Before our pastoral, church, non-profit, and ministry clients begin to consider entering the political fray, we would recommend you call and consult with Wesley R. Carter of the firm at 918-494-6868, so that you navigate this uncharted territory carefully.



## The \$5 Million Oxford Comma

By: Attorney Laura Smittick

Every word in a contract matters. Sometimes, even a single misplaced comma can tip the scales. In the infamous case of *O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017), a single missing Oxford comma in a labor law provision created enough ambiguity to spark costly litigation.

In *O'Connor*, truck drivers for Oakhurst Dairy filed a lawsuit seeking unpaid overtime wages. Oakhurst Dairy denied the truck drivers were entitled to overtime pay stating the law in Maine exempted the truck drivers from overtime pay because the exemption stated overtime did not apply to:

The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Oakhurst Dairy argued that “packing for shipment or distribution” meant two independent exempt tasks: (i) packing for shipment, and, (ii) packing for distribution. On the other hand, the drivers argued that “distribution” was not a part of the “packing” phrase- it was a separate activity because there was no comma after the word “shipment”. The trial court agreed with the drivers. The court ruled that without the Oxford comma, the law was ambiguous, and where there was ambiguity, the wording must be construed in favor of the drivers. Oakhurst Dairy ultimately settled the case for \$5 million.

The *O'Connor* case is more than a cautionary tale about punctuation and grammar. It is a reminder that contractual language may live and die in the details. Every comma, clause, and conjunction carries legal weight, and courts will not hesitate to enforce language exactly as written. This also means even a particular stylistic writing

choice in a contract may alter obligations, shift liability, and cost millions. For businesses, the *O'Connor* case underscores the importance of employing an attorney to carefully draft and review contracts before execution to ensure the contract reflects the parties’ true intent.

If you have contract-related questions for yourself or your business, please do not hesitate to contact any of the attorneys with the Firm for further guidance.



## Contract Terms to Know: *Force Majeure*

By: Shareholder Spencer C. Pittman

A force majeure provision is a clause in a contract that excuses a party’s performance when unforeseen events beyond their control make it impossible or impracticable to perform. The purpose of the clause is to avoid risk in the event of extraordinary events that neither party could anticipate or prevent. It usually covers serious incidents, like natural disasters, war, or terrorism. It may also include government actions or pandemics, force majeure events that many legal practitioners saw applied for the first time when COVID-19 shut down the country. If one of these force majeure events occurs, the contract may allow for a party to suspend their obligations until the event lifts, or allow for the party with the obligation to terminate the contract. Courts usually narrowly construe force majeure provisions, meaning the specific unforeseen events must be listed in the clause’s scope.

**Example:** A company signs a written contract to deliver building materials to a construction site. The contract has a “force majeure” provision that says:

*Neither party shall be liable for any failure or delay in performance under this contract to the extent caused by events beyond its reasonable control, including acts of God, fire, flood, war, or pandemics. The affected party shall promptly notify the other and use reasonable efforts to resume performance as soon as possible.*

Before delivery, a massive flood destroys nearby roads making transportation/delivery impossible. The company notifies the buyer that the flood is a “force majeure” event under the contract. Because the flood was beyond the supplier’s control, the supplier is temporarily excused from delivering the materials under the contract. However, once the roads become navigable, the supplier must resume the delivery or risk being in breach of the contract.