

Charitable Nonprofits: Nonpartisan in Law, Fact, and Purpose

Preserving the Third Proviso of Sec. 501(c)(3)

September 9, 2024

As Congress reevaluates the tax laws and their relationship to the U.S. economy and society, it is essential policymakers and the public recognize charitable nonprofits¹ – 501(c)(3) organizations that are nonpartisan in law, fact, and purpose – as vital service providers, employers, and economic drivers. Charitable organizations exist to serve the public good – providing essential services on which people depend in every community across the country. The current tax-law mandate of charitable nonprofit nonpartisanship is necessary to enabling and maintaining this nonprofit impact.

The indispensable work of nonprofits must be done without a partisan agenda. Nonprofit leaders, workers, board members and volunteers agree that partisan politics, factions, and animosity cannot be allowed to undermine charitable missions. Regrettably, policymakers at times do not fully appreciate the economic and workforce impact of the charitable sector on America’s main streets, working families, and individuals. That impact is only possible because charitable nonprofits are, and must remain, nonpartisan in all of their work in communities.

As the largest network of 501(c)(3) charitable nonprofits in the United States, we embrace this chance to highlight the core beliefs and activities of nonprofit organizations and to correct common misperceptions about the “why” and “how” of charitable operations. The National Council of Nonprofits champions, connects, and informs nonprofits across the country. Our network is committed to, and indeed pioneered, effective trainings and materials on nonpartisan engagement

¹ The National Council of Nonprofits typically refers to 501(c)(3) organizations as “charitable nonprofits” to distinguish them from all other forms of 501(c) organizations (that we and others occasionally refer to as “non-charitable nonprofits”). Current law does not prohibit the more than 25 other categories of 501(c) non-charitable nonprofits from engaging in some partisan, election-related activities. For example, groups with tax-exempt status under 501(c)(4) (civic leagues and social welfare organizations), 501(c)(5) (labor unions), and 501(c)(6) (chambers of commerce and trade/professional associations) may engage in partisan politics; 501(c)(3) (charitable, religious, and philanthropic organizations) may not.

in communities to promote civic engagement. It is from this deep experience and engagement that we lay out overarching principles that guide the approach and thinking of frontline charitable nonprofits about the benefits of current law and seek to avert adverse consequences of policy changes.

Overarching Principles:

1. Nonpartisan, Now and Forever.

Many allegations have been leveled about the politicization of the charitable nonprofit sector, whether through brazen disregard for the law, surreptitious evasion, or claims of uncertainty about what the law proscribes. There must be no doubt about the position of the charitable nonprofit community. The overwhelming majority of 501(c)(3) organizations – frontline charities, churches, and foundations – are nonpartisan in law, fact, and purpose, and are committed to remaining that way to ensure their integrity and impact.

Since 1954, section 501(c)(3) of the tax code has protected charitable, faith-based, and philanthropic organizations from partisan, election-related activities. That is when Congress added the third proviso, sometimes called the “Johnson Amendment,” which reserves tax-exempt status and the ability to receive tax-deductible charitable donations only to organizations that do “not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” 26 U.S. Code § 501(c)(3).

With only a few outliers, the 501(c)(3) nonprofit community stands strongly united in support of the federal law requiring nonpartisanship and in opposition to those attempting to politicize the charitable sector in their quest for partisan, personal, and financial gains.² People who donate their money to charitable, religious, and philanthropic organizations do so to support missions important to them and do not want their resources siphoned off for other purposes.³ People who donate their time to serve on governing boards want to – and should – focus on advancing the organization’s

² See, for example, [Should Pastors Endorse Politicians From the Pulpit?](#), May/June Evangelical Leaders Survey, National Association of Evangelicals, July 31, 2024 (98% of evangelical leaders say pastors should not endorse politicians from the pulpit). Learn more about the unified position of the 501(c)(3) community – frontline charities, churches, and foundations – by reviewing the materials posted at [Protecting the Johnson Amendment and Nonprofit Nonpartisanship](#) and [Additional Resources](#).

³ When reporters get too loose with the word “nonprofit” in their stories about 501(c)(4) and 501(c)(6) (chambers of commerce) making partisan campaign expenditures (as non-charitable nonprofits are allowed to do), invariably people post comments to those articles declaring that they’ll “never give to another charity again,” noting that if they’d wanted their money to go to politics, they’d have given to the candidate directly.

mission, not arguing with each other over which candidates for public office in local, state, and federal races up and down each ballot the organization should support (or oppose) and how much money to divert from mission to do that.

2. Greater Enforcement of the Law is Needed.

For at least the past decade, the Internal Revenue Service has not had the resources or will to adequately enforce the law on nonprofit nonpartisanship. This has led to misrepresentations about the viability of the law and allegations of selective enforcement. Neither undermines the fundamental value of the ban on partisan, election-related activities by charities, but both must be clarified and rectified if the sector and the public are to receive the protections they deserve.

The gutting of the IRS budget over the past decade, plus the 2019 termination of required donor disclosures to the IRS for some non-charitable nonprofits, and a Supreme Court decision and recent state laws blocking reasonable access to evidence of fraud have significantly hindered the ability of federal and state law enforcement to detect and stop bad actors seeking to funnel hidden “dark money” to influence partisan elections. Charitable nonprofits are deeply disturbed by efforts – from the left and the right – to misuse them to abuse public trust, violate the law, and stain the goodwill of charitable organizations for partisan purposes.

Charitable nonprofits are not alone in demanding protection and effective enforcement. Strong support comes from state law enforcement officials,⁴ the news media,⁵ and/or the public.

It cannot be stated enough that charitable nonprofits rely on public trust. Earning and retaining the public’s trust requires constant ethical leadership, consistently responsible practices, and ongoing training and reinforcement. That is why charitable organizations devote special attention to

⁴ See, e.g., [National Association of State Charity Officials letter](#) to Congressional leaders “express[ing] deep concern about efforts to repeal or weaken a long-standing provision in federal law – the so-called ‘Johnson Amendment’” – because, among other reasons cited in the letter, doing so “would adversely impact [the states’ law enforcement] abilities to protect the integrity of charitable assets and charitable solicitations.” Aug. 23, 2017.

⁵ In 2019, the *News Tribune* in Missouri’s capital of Jefferson City received [from the Missouri Press Foundation](#) an “honorable mention for an [editorial supporting the Johnson Amendment](#), a federal tax code ban on religious and other nonprofit organizations endorsing/opposing political candidates.” The newspaper’s editorial expressed its view: “Repeal of the Johnson Amendment would allow political organizations/donors to use churches as dark-money pipelines, because they, as 501(c)(3) organizations, don’t have to disclose their donors.” The editorial concluded, “Repealing the Johnson Amendment would be bad for politics, bad for churches and bad for America.”

complying with all laws and behaving appropriately.⁶ And that's why it is grievously offensive when partisans try to take, and risk destroying, charitable nonprofits' well-earned trust.⁷ But charitable nonprofits cannot completely police ourselves from bad actors seeking to profit and/or politicize the sector for personal gain; we need more help from federal and state officials.

3. Conflation Breeds Confusion.

In the field of nonprofit law, words matter. When vague, undefined terms are bandied about, like “political advocacy” and “political nonprofits,” which understandably confuses the public. It compounds the confusion when the news media, politicians, and activists mislabel organizations using terms that suggest violations of the law that, if labeled more correctly, would lead to accuracy and understanding. For example, some people may see issues like abortion, immigration, and climate change as “political,” but at their core these are *public policy* issues that may or may not happen to align with specific political parties at any given time.⁸ Taking a position on a public policy issue should not be confused as a form of improper partisan activity, and it is harmful and disingenuous to imply otherwise.

The distinction between the types of nonprofits also matters. Federal law has long recognized the fundamental distinction for charitable nonprofits between partisan political electioneering (which is expressly forbidden) and permissible nonprofit advocacy, which comes in many forms, including

⁶ See generally, [Ethical Leadership for Nonprofits](#), National Council of Nonprofits, and [Ethics and Accountability for Nonprofits](#), National Council of Nonprofits. Many of our member state associations of nonprofits provide guidance on state-specific legal requirements and promote “best practices” to raise awareness about how ethical, accountable, and transparent practices – including remaining nonpartisan – make nonprofits more effective and trustworthy. See, e.g., Maryland’s [Standards for Excellence®: An Ethics and Accountability Code for the Nonprofit Sector](#) (“In promoting public participation in community affairs, charitable nonprofits must be diligent in assuring they do not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office”), and Minnesota’s [Principles and Practices for Nonprofit Excellence](#) (“501(c)(3) organizations must not take positions or spend funds to support or oppose a candidate for political office or coordinate their activities with a candidate, political party, or other organization supporting or opposing political candidates”).

⁷ See [Nonprofit Impact Matters](#), National Council of Nonprofits, Fall 2019, at 11: “Nonprofits can promote civic engagement such as voting, but they must always avoid endorsing or opposing any candidates for public office or using charitable assets for partisan campaign activity. Remaining nonpartisan is both the law and common sense. **People trust nonprofits as problem-solvers because they know nonprofits are working for the common good rather than a political party.**” (Emphasis added.)

⁸ For example, the [campaign by the Catholic Church](#) of Ohio to oppose an abortion-rights amendment to the Ohio constitution is within its advocacy rights, as clearly articulated by the IRS, to raise and spend money on the ballot measure because that is considered lobbying on a public policy issue rather than engaging in partisan, election-related activities.

lobbying, engaging in ballot measures (such as initiatives, referenda, and public bonding issues, which the law technically treats as lobbying), and promoting public engagement through nonpartisan election-related activities. While charitable nonprofits can, do, and should advance their missions through advocacy, charitable nonprofits must remain entirely nonpartisan.

4. Charitable nonprofits and civic engagement are synonymous.

Charitable nonprofits operate in local communities throughout America. They feed, heal, shelter, educate, inspire, enlighten, and nurture people of every age, gender, race, and socioeconomic status, and they foster civic engagement and leadership development, drive economic growth, and strengthen the fabric of our communities. Every single day. Their particular missions may appear divergent when looking at the individual subsectors, such as the arts and culture, education, environment and animals, faith-based, health care, human services, philanthropy, and so much more, but collectively they share common broader missions of improving lives, strengthening communities, and often advancing cherished American values of individual freedoms of expression and beliefs.

As Alexis de Tocqueville observed in 1840, the American spirit is manifested in “associations,” his term for what today are known as charities.⁹ As with their work on the census, social services, and community healing after tragic events, charitable nonprofits have the closest connection to the people in communities, serving as trusted partners. When there is a deficit in democracy, as in large populations of eligible voters remaining unregistered and disengaged, it is logical for the groups in their communities to connect and engage.

We call on politicians from across the political spectrum to reject the premise that an organization must be biased and/or partisan for focusing on registering low-income people or other demographic groups. Quite the contrary, it should be a bedrock principle for all that every person eligible to vote in our democracy should be registered and encouraged to get to the polls.¹⁰ It’s a basic civic virtue that’s been espoused by chambers of commerce, faith-based groups, community leaders, and charitable

⁹ *Democracy in America*, Alexis de Tocqueville, 1840. It is noteworthy that De Tocqueville also appears to have been an ardent supporter of nonpartisanship: "I have a passionate love for liberty, law, and respect for rights." he wrote. "I am neither of the revolutionary party nor of the conservative. [...] Liberty is my foremost passion."

¹⁰ See [Nonprofit Nonpartisan Voter Engagement Guide](#), National Council of Nonprofits and Nonprofit VOTE, July 2024; [Keeping Our Republic: The Roles of Charitable Nonprofits](#), *Nonprofit Champion*, July 24, 2022. See also, IRS Exempt Organization CPE texts for “[Election Year Issues](#)” (1993-N, 91 pages) and “[Political Campaign Prohibition](#)” (1996-O, 18 pages).

nonprofits that traces back to the Athenian Oath. A major charitable organization in the U.S. requires all beneficiaries of its services to register and vote when they become eligible. This is based on their mission of helping to bring disadvantaged persons into the mainstream of American life, and like paying taxes, voting is about as mainstream as a person can get. Some people need more help than others. Helping people is what charitable nonprofits do.

While we recognize that the rough and tumble of partisan politics may cause some to discourage voting by perceived opponents, we in the charitable nonprofit world continue to hold true to the long-respected virtue of full voter participation.

A Special Note on “Political Campaign Intervention”

Before concluding, we feel it is important to address confusion – real or manufactured – over what constitutes improper “political campaign intervention” as compared to legitimate civic engagement and issue advocacy.

From the perspective of the vast majority of charitable organizations, the rules on what is and is not partisan, election-related activities are readily apparent to frontline 501(c)(3) organizations and the ordinary reasonable person. No additional legislation by Congress or rulemaking by the IRS is needed to provide clarity to aid charitable organizations as they effectively engage in their communities. Charitable nonprofits already have ready access to information and assistance for remaining nonpartisan as they engage in election-related activities.

This clarity is provided in the form of the definition of “political campaign activity” on the Form 990.¹¹ Also, the IRS already provides sufficient formal guidance,¹² including drawing distinctions between

¹¹ The Glossary in the [instructions to the Form 990](#) completed annually by 501(c) organizations defines “political campaign activities” in a way that, we believe, clearly delineates what charitable nonprofits can and cannot do. It warns against “All activities that support or oppose candidates for elective federal, state, or local public office. It doesn't matter whether the candidate is elected. A candidate is one who offers himself or herself or is proposed by others for public office. Political campaign activity doesn't include any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn't directly or indirectly support or oppose any candidate.”

¹² See, e.g., [IRS Fact Sheet FS-2006-17](#) (February 2006); [IRS Revenue Ruling 2007-41](#) (June 2007); and generally, [The Restriction of Political Campaign Intervention by Section 501\(c\)\(3\) Tax-Exempt Organizations](#), Internal Revenue Service, last updated on June 9, 2023.

appropriate “issue advocacy” vs. banned “political campaign intervention.”¹³ Further, the networks of the National Council of Nonprofits, and in particular our member state associations of nonprofits, have developed, often in conjunction with [Nonprofit VOTE](#), extensive educational materials, checklists, and how-to guides, and regularly provide trainings for charitable organizations and professionals.¹⁴

Conclusion

In September 2023, the National Council of Nonprofits informed the House Ways and Means Committee¹⁵ of the following in response to questions about nonpartisanship and perceptions of illegality: “based on our personal and extensive, near-daily involvement with charitable nonprofits over the past few decades, we have not seen and we do not believe there is systemic or widespread abuses by 501(c)(3) nonprofit organizations engaging in prohibited activities to influence partisan elections.” The same remains true today; it is essential that nonpartisanship in the sector remains protected.

Increasing numbers of Americans view the polarizing nature of politics today as being too toxic. Charitable nonprofits work hard to earn and retain the public’s trust to advance their mission every day. To have partisan political operatives leach off that goodwill ultimately undermines the trust earned by charitable nonprofits and thus hurts the public in local communities throughout the county as nonprofits lose donations and can no longer meet the public’s needs.

The networks of the National Council of Nonprofits remain steadfastly committed to assisting Congress, the IRS, state law enforcement, and the public in identifying challenges and solutions that will help ensure the charitable sector remains a safe haven from caustic, partisan politics that Congress has intended it to be and the American people want it to be.

¹³ [IRS Revenue Ruling 2007-41; 501\(c\)\(3\) Tax Guide for Churches and Religious Organizations](#), Internal Revenue Service, Publication 1828 (Rev. 8-2015), pp. 8-9.

¹⁴ See generally, [Nonprofit Nonpartisan Voter Engagement Guide](#). See also [In Praise of Nonpartisan Electioneering](#), *Nonprofit Champion*, May 2, 2022, highlighting nonpartisan activities in Arizona, Connecticut, Kentucky, and Minnesota; [Nonprofits Promoting Democracy and Nonpartisan Engagement](#), *Nonprofit Champion*, Sept. 5, 2022, highlighting similar nonpartisan activities in Maine, Massachusetts, New York, and North Carolina.

¹⁵ [National Council of Nonprofits Response](#) to House Ways and Means Committee Request for Information, Sept. 5, 2024.