Protecting the Johnson Amendment and Nonprofit Nonpartisanship

A charitable nonprofit may “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.”

For nearly 70 years, an important provision in the federal tax code Section 501(c)(3), sometimes called the Johnson Amendment, has provided that in exchange for tax-exempt status, a charitable nonprofit, foundation, or religious organization may “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.”

Since 1954, that language has served to protect charitable nonprofits, houses of worship, and foundations - and the donating public. It helps to ensure that organizations dedicated to the public good in communities remain above the political fray.

Why It Matters
Our society is better today because charitable nonprofit organizations operate as safe havens from the caustic partisanship that is bedeviling our country, places where people can come together to solve community problems. Repeal or revision of the law would damage the integrity and effectiveness of all charitable nonprofits and foundations.

**Where We Stand**

“The National Council of Nonprofits has long held that the public’s overall trust in the sector would diminish and thus limit the effectiveness of the nonprofit community if individual 501(c)(3) organizations came to be regarded as *Democratic charities* or *Republican charities* instead of the nonpartisan problem solvers that they are.”

- Public Policy Agenda

**Support**

The majority of organizations support keeping the Johnson Amendment and protecting nonprofit nonpartisanship, as reflected in the Community Letter in Support of Nonpartisanship, signed by more than 5,800 organizations in all 50 states, in the Faith Voices letter signed by more than 4,300 faith leaders, in the separate letter signed by more than 100 denominations and major religious organizations, and in letters from the law enforcement community. In addition, polls show that 72% of the public support keeping the Johnson Amendment in place and nearly 90% of evangelical leaders say it is wrong for preachers to endorse candidates from the pulpit.

**Threats to Nonprofit Nonpartisanship**

Efforts have been made to repeal or weaken the Johnson Amendment by Executive Order, stand-alone legislation, or attachment to must-pass legislation such as appropriations bills. Although couched as attempts to promote religious freedom and free speech, attempts to repeal or weaken the Johnson Amendment would have the effect of politicizing and thereby erasing the public’s high trust in charities, houses of worship, and foundations to benefit politicians and paid political consultants.

**Executive Order**
In 2017, President Trump issued an Executive Order in an attempt to weaken the Johnson Amendment. By its language, the Order appeared to warn the government against changing its interpretation of what is “participation or intervention in a political campaign” as applied to religious speech.

The Justice Department subsequently submitted a brief admitting, “[The Executive Order] merely directs the Government not to take adverse action against religious organizations that it would not take against other organizations in the enforcement of the § 501(c)(3) restrictions.”

The responses of the charitable nonprofit and foundation communities were united in their opposition to the Executive Order. See statements by BJC, Independent Sector, National Council of Nonprofits, and United Philanthropy Forum.

**Legislation**

An early version of the 2017 federal tax law, Tax Cuts and Jobs Act (H.R. 1), included a loophole that would have allowed charitable nonprofits to endorse candidates for public office when communicating “in the ordinary course of the organization’s regular and customary activities” and when spending “not more than de minimis incremental expenses” (an undefined term).

The nonpartisan Joint Committee on Taxation determined that the language would have cost the U.S. Treasury more than $2 billion because political campaign donations would be shifted to newly partisan churches and charitable organizations to secure – for the first time – a charitable tax deduction for purely political donations. The language was excluded from the final 2017 federal tax law at the eleventh hour due to violation of Senate Rules.

Additional legislation to weaken the Johnson Amendment, named the Free Speech Fairness Act, has been regularly introduced in Congress. Bills such as this would legitimize partisan political statements, such as endorsements, that were “made in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose,” as in speaking from the pulpit or sending out emails to members and the public.

The legislation, unlike the Executive Order, would apply to ALL 501(c)(3) organizations, not just “religious” groups.
Adverse Consequences

If enacted, removal of the Johnson Amendment would politicize charitable nonprofits, houses of worship, and foundations, plunging them into caustic partisanship for the benefit of politicians and political operatives. The consequences, including the following examples, could be irreparable:

- **Donors turn away** from some or all charitable nonprofits as the raw partisan actions of a few undermine the appreciation of the sector as the one place focused on improving people's lives and safe from political discord.
- **Nonprofit effectiveness is lost** as board members with contrary views divert attention away from mission by arguing that the organization should endorse opposing candidates, whether business clients, family members, or college friends, creating ill-will and polarizing the board on other unrelated issues.
- **Nonprofit missions are eroded** when board members and/or wealthy donors demand that the organization take sides in local, state, or federal elections.
- **Nonprofit integrity is destroyed** as local college presidents, hospital executives, or preachers send out emails endorsing political candidates to alumni, former patients, or parishioners, thereby distributing a no-cost message (presumably satisfying the *de minimis* language in the legislation) but inducing candidates, their operatives, and their donors to exert immense pressure (whether lawful and moral, or not) on other nonprofits to follow suit or face repercussions.

More About Protecting the Johnson Amendment

- **Churches are breaking the law and endorsing in elections, experts say. The IRS looks the other way**, Jeremy Schwartz and Jessica Priest, *Texas Tribune* and *ProPublica*, Oct. 30, 2022.
- **The Johnson Amendment's Fate After the 2018 Elections: The Fight Continues**, David L. Thompson, Vice President of Public Policy, National Council of Nonprofits, November 7, 2018.
- **There's a wolf in sheep's clothing hiding in the GOP tax bill**, *The Hill*, Washington, DC, November 8, 2017, Tim Delaney, President and CEO of the National Council of Nonprofits and Amanda Tyler, Executive Director of the Baptist Joint Committee for Religious Liberty.
• Congress, defend the common law and common sense of nonpartisanship, The Hill, Washington, DC, September 7, 2017, Karen Gano, Board President of the National Association of State Charity Officials, and Tim Delaney, President and CEO of the National Council of Nonprofits.

Additional Resources

• Protecting Nonprofit Nonpartisanship | Additional Resources
• Political Campaign Activities - Risks to Tax-Exempt Status