



July 25, 2017

The Honorable Shelley Moore Capito
Chairman
Financial Services and General
Government Subcommittee
Senate Appropriations Committee
United States Senate
Washington, DC 20510

The Honorable Christopher Coons
Ranking Member
Financial Services and General
Government Subcommittee
Senate Appropriations Committee
United States Senate
Washington, DC 20510

RE: Protecting Nonprofit Nonpartisanship
(Johnson Amendment)

Dear Chairman Capito and Ranking Member Coons:

On behalf of the West Virginia Nonprofit Association and the Delaware Alliance for Nonprofit Advancement, and the charitable nonprofits across our states that we represent, we write to urge you to make a clear statement in support of nonprofit nonpartisanship by refusing to include or accept an extraneous rider to the Financial Services and General Government Appropriations bill for fiscal year 2018 that would effectively prevent Internal Revenue Service enforcement of the longstanding Johnson Amendment in Section 501(c)(3) of the federal tax code.

For more than six decades, federal law has protected charitable nonprofits, houses of worship, and foundations from being pulled away from their community-building missions and plunged into divisive partisan politics. This protection is found in the third condition for eligibility for tax-exempt status in Section 501(c)(3) of the federal tax code, sometimes called the Johnson Amendment. But on July 13, the House Appropriations Committee approved its version of the [Financial Services and General Government Appropriations bill](#) that includes a harmful rider (Section 116) that, if enacted, would make it virtually impossible for the IRS to enforce that law against a church for even the most egregious violations, such as diverting charitable contributions that have been deducted as gifts for the church and funneling those funds to partisan political campaigns. As discussed more fully below and in the enclosed letter, this extraneous rider is strongly opposed by the broad nonprofit community and must not become law.

The rider would prevent the IRS from spending any funds to make a final determination that a “church, an integrated auxiliary of a church, or a convention or association of churches” (hereinafter, “church”) has violated the Johnson Amendment unless the IRS meets three conditions: (1) the IRS Commissioner personally consents to a determination of unlawful conduct; (2) the IRS gives the House and Senate tax committees 30-days' notice of the law-enforcement determination; and (3) the IRS provides an additional 90-days' notice before enforcement can commence. The complexity of the provision is no accident; in the words of the primary sponsor of Section 116, the language is designed “to make it much more difficult for the IRS to take away the tax-exempt status of a church, a synagogue, or religious organization for involving themselves in some way, form or fashion, in a political campaign.” By any analysis, “some way, form or fashion” of political activities by a church would entail not just endorsing candidates from the pulpit, but funneling to candidates for public office the tax-deductible contributions intended to support the work of the church, selling endorsements in the form of ads on religious broadcasting programs, and more – all in

contravention of campaign finance laws, public trust, and the wellbeing of the vast nonprofit community.

During the House Appropriations Committee markup, an amendment was proposed to strike Section 116 from the bill. Eight Representatives spoke in support of removing the rider, expressing concern about the negative impact of partisan politics on the integrity of houses of worship and nonprofits, while pointing out that 501(c)(3) organizations have always been free to speak to the issues of the day. When votes were cast, the amendment to remove the harmful rider failed by a relatively close vote of 24 to 28. In our view, it is significant that the vote in support of nonpartisanship was one of the few bipartisan votes of the day, as two Republicans, Charles Dent (R-PA) and Scott Taylor (R-VA), joined with their Democratic colleagues to support removing the measure that would make it virtually impossible for the IRS to enforce the Johnson Amendment for even the most egregious violations.

For at least four compelling reasons, we feel strongly that the House rider (Section 116) should not be countenanced in the Senate or final FSGG appropriations bill:

- 1) Although couched as a spending restriction, Section 116 improperly seeks to legislate on an appropriations bill in contravention of Senate rules and in violation of the jurisdiction of the Committee on Finance.
- 2) Section 116 is unworkable. It provides that the IRS cannot expend funds to “make a determination” that a church violated the Johnson Amendment unless the IRS Commissioner signs off. However, funds would have had to be expended to conduct hundreds of hours of investigation leading up to the recommendation that the Commissioner make her or his determination. Thus, the provision either retroactively denies funding for conducting the initial investigation or authorizes funding at the end of the process only after the Commissioner is compelled to consider political, rather than legal factors.
- 3) The extraneous rider is unconstitutional in that it provides special benefits to churches denied to all other 501(c)(3) organizations – the ability to violate the conditions for eligibility to maintain tax-exempt status and continue to receive tax-deductible contributions by allowing churches to channel those contributions to partisan political campaigns with virtual impunity. Further, in likely violation of separation of powers of the distinct branches of the federal government, the provision would require executive branch employees to give the House and Senate tax committees 30-days' notice of the law-enforcement determinations.
- 4) Most importantly, Section 116 would undermine the entire nonprofit community by empowering the leaders of a few churches to place personal partisan preferences – and the financial resources of the organizations for which they serve as stewards – above the missions of their organizations.

The vast majority of nonprofits, and certainly the ones we represent in your states, feel strongly that current law protects the integrity and independence of charitable nonprofits, including houses of worship, and foundations by shielding the entire 501(c)(3) community from the rancor of partisan politics. Under current law, nonprofits can and must refuse to endorse politicians and decline requests to syphon charitable assets away from mission to fund political campaigns. This view is clearly expressed in the attached letter, signed by colleague organizations from 47 states, expressing strong objection to the inclusion of Section 116 regarding Johnson Amendment enforcement in the House FSGG Appropriations Act of 2018. We also share the views of the National Council of Nonprofits, which issued a [news release](#) after the House Appropriations Committee voted to retain this extraneous rider:

“There are many problems bedeviling our country, but unleashing partisan politics into our houses of worship will not solve any of them. For charitable nonprofits, houses of worship,

and foundations that work every day to solve problems in their communities, nonpartisanship is not merely a concept; it is a way of life. That way of life came under direct assault today when the House Appropriations Committee voted to keep an unconstitutional and unworkable provision (Section 116) in the Financial Services appropriations bill....”

We must add that this isn't just a solution in search of a problem; it is an inappropriate response to a narrow interest that ignores the will of those being hurt, as expressed by nearly [one hundred religious denominations and organizations](#), more than [3,000 religious leaders](#), [89 percent of evangelical pastors](#), more than [4,800 charitable nonprofits](#), houses of worship, and foundations and [72 percent of American voters](#).

We ask that you resist all efforts to include the text of Section 116 or any harmful rider that would undermine the ability of charitable nonprofit organizations, including houses of worship, to serve their communities. We ask further that you make clear to your House counterparts that Section 116 of the House FSGG appropriations bill is unacceptable and shall not be included in the final appropriations bill that Congress enacts.

We stand ready to assist in any way we can.

Sincerely,



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Enclosure

July 11, 2017

The Honorable Rodney Frelinghuysen
Chairman
House Appropriations Committee
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
House Appropriations Committee
Washington, DC 20515

**RE: Section 116 of the FSGG Appropriations Act of 2018
relating to Johnson Amendment Enforcement**

Dear Chairman Frelinghuysen and Ranking Member Lowey:

The undersigned nonprofit organizations write to express strong objection to the inclusion of Section 116 regarding Johnson Amendment enforcement in the Financial Services and General Government Appropriations Act of 2018 and request that it be removed before the bill is considered by the House of Representatives.

Charitable nonprofits, including houses of worship, and foundations vigorously object to any and all efforts to weaken the provision in tax law that protects them from being polarized and diverted from their proper missions by the manipulative pressures of partisan politics. The provision is Section 501(c)(3)'s third condition for eligibility to receive tax-deductible donations and tax-exempt status: a charitable nonprofit, religious organization, or foundation 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." It is sometimes called "[the Johnson Amendment](#)" after then-Minority Leader Lyndon Johnson who proposed the amendment in 1954 that the Republican-controlled Senate adopted without controversy. President Reagan signed an expansion of the protection in 1987.

Current law protects the integrity and independence of the entire 501(c)(3) community by shielding organizations from the rancor of partisan politics. Section 116 of the FSGG appropriations bill would take away that longstanding, ironclad protection for houses of worship, potentially subjecting tens of thousands of congregations to overzealous solicitations from politicians, paid consultants, and donors. The provision, according to [Newsweek](#), "would make it exponentially more difficult to enforce" even the most blatant violations of the Johnson Amendment. The rider would prevent the IRS from spending any funds to make a final determination that a house of worship or its affiliate has violated the Johnson Amendment unless the IRS meets three conditions: (1) the IRS Commissioner personally consents to a determination of unlawful conduct, (2) the House and Senate tax committees are given 30-days' notice of the law-enforcement determination, and (3) an additional 90-days' notice is provided before actual enforcement can commence. Notably, Section 116 offers no such restrictions on enforcement against secular organizations and leaders, creating a framework that explicitly encourages selective enforcement of the law. The rider is fatally flawed in that it would erect unconstitutional and unreasonable hurdles on enforcing the law that ensures nonpartisanship.

Nonprofit Letter on Section 116 of the FSGG Appropriations Bill

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The vast majority of Americans and charitable nonprofits, houses of worship, and foundations firmly believe that 501(c)(3) organizations should remain dedicated solely to the public good and should stay away from raw partisan politics. We ask that you consider the following:

- Nearly [three out of four American voters](#) (72 percent) want to keep current rules protecting 501(c)(3) organizations from partisan political activity, according to a poll conducted in March 2017.
- [89 percent of evangelical pastors](#) oppose the idea of clergy mixing partisan politics and religion by endorsing candidates from the pulpit, according to a survey conducted in February 2017 by the National Association of Evangelicals.
- More than [3,000 religious leaders](#) (so far) have signed a letter declaring they are “strongly opposed to any effort to repeal or weaken current law that protects houses of worship from becoming centers of partisan politics,” in part because “issuing endorsements would be highly divisive and have a detrimental impact of congregational unity and civil discourse.”
- Nearly [100 national and state religious and denominational organizations](#) signed a letter to Congress stressing: “People of faith do not want partisan political fights infiltrating their houses of worship. Houses of worship are spaces for members of religious communities to come together, not be divided along political lines; faith ought to be a source of connection and community, not division and discord.”
- So far, more than 4,800 charitable, religious, and philanthropic organizations from all 50 states have signed the [Community Letter in Support of Nonprofit Nonpartisanship](#), demonstrating strong opposition to proposals to politicize our community by repealing or weakening the Johnson Amendment, in part because “nonpartisanship is a cornerstone principle that has strengthened the public’s trust” in the charitable community by screening out “doubts and suspicions regarding ulterior partisan motives ... as undoubtedly would occur if even just a few charitable organizations engaged in partisan politics.”

It is essential that you work to remove Section 116 from the Financial Services and General Government Appropriations Act of 2018. As nonprofits across the country do every day, we are prepared to work with Committee members to address the real challenges in our communities; our desire is that we all work together in the charitable nonprofit way – without regard to partisan identity or political campaign activities. We invite you to learn more about the value and background of nonprofit nonpartisanship by going to www.GiveVoice.org.

Sincerely,

National Council of Nonprofits



Alaska

Foraker Group



Arizona

Alliance of Arizona Nonprofits



Arkansas

Arkansas Nonprofit Alliance



California

California Association of Nonprofits (CalNonprofits)



Colorado

Colorado Nonprofit Association



Connecticut

Connecticut Community Nonprofit Alliance



Delaware

Delaware Alliance for Nonprofit Advancement (DANA)



District of Columbia

Center for Nonprofit Advancement



Florida

Florida Nonprofit Alliance



Hawai`i

Hawai`i Alliance of Nonprofit Organizations



Idaho

Idaho Nonprofit Center



Illinois

Forefront



Indiana

Indiana Coalition for Human Services



Iowa

Nonprofit Association of the Midlands



Kansas

Kansas Association of Community Foundations



Kentucky

Kentucky Nonprofit Network



Louisiana

Louisiana Association of Nonprofit Organizations



Maine

Maine Association of Nonprofits



Maryland

Maryland Nonprofits



Massachusetts

Massachusetts Nonprofit Network



Providers' Council



Michigan

Michigan Nonprofit Association



Minnesota

Minnesota Council of Nonprofits



Mississippi

Mississippi Center for Nonprofits



Missouri

Network for Strong Communities



Nonprofit Missouri



Montana

Montana Nonprofit Association



Nebraska

Nonprofit Association of the Midlands



Nevada

Alliance for Nevada Nonprofits



New Hampshire

New Hampshire Center for Nonprofits



New Jersey

Center for Non-Profits



New Mexico

New Mexico Thrives



New York

New York Council of Nonprofits



Nonprofit Coordinating Committee of New York



North Carolina

North Carolina Center for Nonprofits



North Dakota

North Dakota Association of Nonprofit Organizations



Ohio

Ohio Association of Child Caring Agencies



Ohio Association of Nonprofit Organizations



Oklahoma

Oklahoma Center for Nonprofits



Oregon

Nonprofit Association of Oregon



Pennsylvania

Pennsylvania Association of Nonprofit Organizations



Rhode Island

Rhode Island Foundation



South Carolina

Together SC



South Dakota

Volunteers of America, Dakotas



Texas

Texas Association of Nonprofit Organizations



Utah

Utah Nonprofits Association



Vermont

CommonGood Vermont



Virginia

Center for Nonprofit Advancement



Washington

Washington Nonprofits



West Virginia

West Virginia Nonprofit Association



Wisconsin

Wisconsin Nonprofits Association



Wyoming

Wyoming Nonprofit Network



cc: Members of the House Appropriations Committee