



**NATIONAL COUNCIL OF  
NONPROFITS**

National voice. State focus. Local impact.

December 7, 2017

The Honorable Cory Gardner, Chair  
National Republican Senatorial Committee  
425 2nd St. NE  
Washington, D.C. 20002

The Honorable Chris Van Hollen, Chair,  
Democratic Senatorial Campaign Committee  
120 Maryland Ave. NE  
Washington, DC 20002

The Honorable Steve Stivers, Chair,  
National Republican Congressional Committee  
320 First St. SE  
Washington, DC 20003

The Honorable Ben Ray Lujan, Chair,  
Democratic Congressional Campaign Committee  
430 S Capitol St. SE  
Washington, DC 20003

**RE: House Tax Bill Provision (Sec. 5201) Would Damage Campaign Committees and Charitable Nonprofits**

Dear Campaign Committee Chairs:

You probably don't hear from charitable nonprofits very often, if ever, in your capacities as campaign committee chairs. There is good reason for that: as tax-exempt 501(c)(3) organizations, we are nonpartisan in law and fact. The longstanding law that protects our nonpartisanship (sometimes called the **Johnson Amendment**) would be severely undermined through a provision in the House version of H.R. 1, the Tax Cuts and Jobs Act. That same provision also threatens the success of each of your organizations. We urge you to work with your colleagues in the House and Senate to remove the offending provision before it harms your organizations and America's charitable nonprofits, houses of worship, and foundations – as well as the American people.

That provision, Section 5201 of the House bill, would radically change how people engage in political campaigns, and not in ways that either the nonprofit community or the political parties desire. The Joint Committee on Taxation (JCT) estimates that Section 5201 would cost the U.S. Treasury \$2.1 billion for the five years it would be in effect. When questioned during his testimony before the House Ways and Means Committee about how a provision directing the IRS not to enforce longstanding law could cost so much, Thomas Barthold, Chief of Staff for JCT, testified: "And so it's a diversion of some of the substantial growth in political contributions into a deductible form that is not deductible today." See 00:54:39 to 00:57:07 of his [JCT testimony](#).

A cost to the Treasury and taxpayers of \$2.1 billion means deductions of between \$6 billion and \$8 billion for political contributions that donors would be able to list as itemized deductions. Indeed, presented the choice of contributing to your campaign committees, where donations aren't tax deductible, and going around you to contribute to a 501(c)(3) organization to get a tax deduction, which option will your donors choose? That is \$6 billion to \$8 billion, as Mr. Barthold testified, that would be diverted from candidate committees, your party committees, and other legitimate political organizations in favor of newly politicized churches, charitable nonprofits, and foundations. We do not want the politicization of 501(c)(3) organizations. We trust that you do not want moneys on which you rely to be siphoned away from political parties to flow to unregulated, undisclosed, and uncontrollable entities that emerge right before and disappear right after elections (think pop-up churches that don't even have to register with the IRS) to support unvetted and embarrassing candidates because of this dangerous provision.

We know the importance to you of the stories about ever-increasing totals of contributions to your campaign committees, along with those to the candidates you are supporting. The news stories demonstrate the success of your efforts and are measures of support for your parties' and your

candidates' views on issues that affect voters all across the country. But, if this provision were to be included in the tax bill conference report, those fundraising totals will start declining – and those articles will start telling a different story.

Section 5201 of the House version of the tax bill would radically change the longstanding, vital protection in law that keeps partisan politics out of charitable, religious, and philanthropic organizations. This part of Section 501(c)(3) of the tax code was signed into law by President Eisenhower and again by President Reagan in 1986 and strengthened in 1987. Known as the Johnson Amendment, it establishes a powerful protection and clear tradeoff: in exchange for exemption from taxation and the ability to receive tax-deductible donations, 501(c)(3) organizations agree not to support or oppose candidates for public office or divert charitable assets from mission to fund partisan campaigns. Section 5201 would effectively repeal that vital protection and ignore the tradeoff. If enacted it would –

- Allow political operatives – with or without party authorization – to pressure 501(c)(3) organizations to endorse or oppose candidates for public office;
- Empower influential donors to exert even more pressure by giving or threatening to withhold charitable contributions to get 501(c)(3) organizations to endorse or oppose candidates the donors prefer; and
- As noted above, make political donations – for the first time ever – tax-deductible when funneled through charitable nonprofits, houses of worship, and foundations.

Even if the provision from the House bill is not included in the final tax conference report, a rider on the House-passed [Government-Wide Funding Legislation](#) (Section 116 at page 382) takes a different tack on this same issue by making enforcement of the Johnson Amendment virtually impossible against even the most egregious conduct by churches. The appropriations language is actually worse than the tax provision because it's not limited to endorsing or opposing candidates; rather, it would allow recipients of tax-deductible donations to funnel dollars to outside groups that are accountable to no one.

We in the broad charitable, religious, and philanthropic communities vehemently oppose any attempt to repeal or weaken the protections afforded us through the Johnson Amendment, whether in tax or appropriations legislation. Already more than 100 mainline [religious denominations](#), [4,300 faith leaders](#), [state law enforcement](#) officials, and [more than 5,600 charitable nonprofits and foundations](#) from every state have signed their names to joint letters to Congress opposing any changes to existing law. The vast [majority of the American public](#) also supports existing law.

We believe you will agree once you recognize how Section 5201 will incentivize rogue candidates and operatives to go around your structures and undermine party committees and political fundraising. We urge you to immediately communicate to your colleagues on the tax conference committee insisting they leave Section 5201 of the House bill out of the final negotiated bill and ensure Section 116 of the Financial Services and General Government title of the year-end appropriations bill ends up on the cutting room floor. Otherwise, that radical language will have very serious negative consequences for the ability of political parties to raise the funds needed to elect candidates aligned with your parties' agendas.

Respectfully,



**Tim Delaney**  
President & CEO  
National Council of Nonprofits



**David L. Thompson**  
Vice President of Public Policy  
National Council of Nonprofits