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# 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 works to create a culture in support of nonprofit advocacy ... [by] supporting and preserving the longstanding federal policy that reserves the eligibility to receive tax-deductible charitable donations exclusively to 501(c)(3) tax-exempt organizations that refrain from participating in or intervening in any campaign on behalf of or in opposition to any candidate for public office."

- [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.

## **Lawsuits**

In August 2024, two Texas churches and two advocacy groups [filed a lawsuit](#) in federal court in Texas alleging that the nonpartisanship provision violates the First Amendment of the U.S. Constitution because it prevents churches and other charitable nonprofits from speaking out on partisan political matters and the Fifth Amendment because it is allegedly unevenly enforced by the Internal Revenue Service. The organizations challenging the law claim they are not asking the court to take any action prior to the 2024 elections.

The National Council of Nonprofits [published a statement in opposition](#) to the lawsuit stating, “On behalf of charitable nonprofits everywhere, we are deeply troubled that some would attack the bedrock principle that charitable organizations must remain nonpartisan in law, fact, and purpose in order to serve their missions and communities. This law is clear, well understood, and easily followed. In addition to basic factual and legal errors, the new litigation is misguided because it contributes to the further politicization of the charitable sector and society. It will be opposed vigorously by the National Council of Nonprofits and all who are committed to serving communities rather than ideologues, self-serving politicians, and their political operatives.”

## **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.

In September 2023, Republican leaders of the House tax committee published a “[request for information](#)” about “political campaign intervention” by 501(c)(3) charitable nonprofits and 501(c)(4) social welfare organizations. The letter alleged progressive groups take advantage of perceived loopholes and the lack of both law enforcement and transparency for donations to funnel billions of dollars into election activities that favor Democrats and oppose Republican candidates. Read the [National Council of Nonprofits' response](#). The House Ways and Means Committee [held a follow-up hearing](#) in December 2023. Read the [National Council of Nonprofits' testimony](#).

## 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 Nonprofit Nonpartisanship

- [Charitable Nonprofits: Nonpartisan in Law, Fact, and Purpose](#), National Council of Nonprofits, Sept. 9, 2024.
- [Testimony to the Oversight Subcommittee Hearing on Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape](#), National Council of Nonprofits, Dec. 12, 2023.
- [Response to Ways and Means Committee Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code](#), National Council of Nonprofits, Sept. 5, 2023.
- [The Johnson Amendment's Fate After the 2018 Elections: The Fight Continues](#), David L. Thompson, Vice President of Public Policy, National Council of

Nonprofits, Nov. 7, 2018.

- [There's a wolf in sheep's clothing hiding in the GOP tax bill](#), *The Hill*, Washington, DC, Nov. 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, Sept. 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](#)