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# Congress, defend the common law and common sense of nonpartisanship

By: Karen Gano and Tim Delaney

What could possibly go wrong if our country's more than 1.5 million charitable nonprofits, houses of worship, and foundations were authorized to engage in partisan electioneering?

Almost everything. And from our perspectives leading nationwide organizations tasked with protecting and serving the public, we can definitively say: The American people would suffer as a result.

The National Association of State Charity Officials (NASCO) — representing state charity regulators across the country, including those in state Attorney General Offices, Secretary of State offices, and other state offices charged with preventing the misuse of charitable assets — late last month sent a [letter to congressional leaders](#) opposing efforts to repeal or weaken the “Johnson Amendment.”

That's the part of Section 501(c)(3) in the federal tax code providing this eligibility requirement for the unique privilege of receiving tax-deductible donations: 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.”

Through its letter — only the third such action in NASCO’s 38-year history — NASCO’s board joined these groups and individuals who have rallied to protect public trust by signing letters supporting the Johnson Amendment and expressing their “strong opposition” to efforts to politicize the charitable nonprofit, religious, and philanthropic community:

- More than [5,500 charitable nonprofits, houses of worship, foundations, and for-profit entities](#);
- More than [4,000 religious leaders from all faiths](#); and
- [Nearly 100 religious denominations and organizations](#).

Plus, [89 percent of evangelical leaders](#) want to keep partisan electioneering out of their pulpits, according to an Evangelical Leaders Survey, and [72 percent of American voters](#) want to keep the Johnson Amendment’s protections in place, according to another poll.

The Johnson Amendment has been on the books for 63 years, and was genuinely nonpartisan and noncontroversial most of that time. (President Reagan signed the bill strengthening it.) Yet the law banning electioneering by charitable nonprofits is much older and relates directly to the role state law enforcement officials play in protecting the public. “It is the duty of Attorneys General, often in cooperation with other state agencies, to protect the public’s interest in the proper use of the funds raised and held by charitable organizations,” according to the authoritative treatise, [“State Attorneys General: Powers and Responsibilities.”](#)

Importantly, “electioneering is not considered a charitable purpose under common law, and many state charities regulators would consider expenditure of charitable funds on such purposes to be inappropriate, possibly illegal,” NASCO’s letter explains.

Thus, altering the Johnson Amendment — as multiple proposals before Congress, including a rider on an appropriations bill, seek to do — would create perilous inconsistency between federal and state laws. Under both federal law and common law, charitable nonprofits, houses of worship, and foundations have an obligation not to use any resources of any kind to influence partisan elections.

NASCO warns: “Removing the prohibition on electioneering from the tax code could give charitable organizations the misimpression that they could use their resources supporting or opposing candidates for office. Under common law, they may not.” If a 501(c)(3) organization engaged in partisan electioneering, it could violate state law and be subjected to state investigations and liabilities.

The Johnson Amendment also preserves even-handed administration of justice. By keeping nonprofits free from partisan electioneering, it helps ensure that state charities regulators focus on protecting charitable assets and combatting fraud, regardless of the political affiliation of their elected and appointed attorneys general, secretaries of State, or other officials.

The American people rely on nonprofits in endless ways, from nurturing souls to protecting the young and elderly, and from inspiring creative minds to helping people during natural disasters. Tampering with the Johnson Amendment will harm the public by eroding nonprofit effectiveness.

Among other things: Attention will be diverted from missions as politicians and their operatives hound 501(c)(3) organizations for endorsements and resources; board governance will falter as board meetings become shouting matches about who to endorse in the primary and then general elections for every office at every level of government; donations for missions will fall when current or potential donors see that an organization endorsed this candidate or that; partisan donors will pressure organizations to endorse the donors’ preferred candidates; and the only real refuge for many Americans to escape caustic partisan politics — charitable nonprofits, houses of worship, and foundations — will disappear.

The Johnson Amendment is sound public policy and works in harmony with state charities laws. Efforts to repeal or weaken it should be rejected.

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