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Nonprofit Nonpartisanship Under Attack

The assaults against the independence of charitable nonprofits, private foundations, and religious congregations launched a few years ago continue to this day. Orchestrated attacks have grown in scope, scale, and sophistication targeting actions in every branch of governments. As these challenges increase, it's important to review the protections charitable organizations currently enjoy, recount the more visible attacks since 2017, and expose the attempts by special interests to expand their power in ways that undercut nonprofit missions, lower the bar for fraudsters, and hide from the public the identity of those trying to influence open elections.

Protecting the Integrity of Charitable Nonprofits

For nearly 70 years, the last part of Section 501(c)(3) of the federal tax code, sometimes called the [Johnson Amendment](#), has required that, in exchange for the privilege of tax-exempt status and the ability to receive tax-deductible donations, 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.”

That language has served to protect organizations – plus the donating public and voters – by ensuring that entities dedicated to the public good in communities remain separate and distinct from partisan politics. The Johnson Amendment protects the overall effectiveness of 501(c)(3) organizations by keeping their focus and funds centered around their missions.

Without the Johnson Amendment, board members in our hyper-polarized country would be fighting constantly over which candidates to endorse in every primary and general election at every level from dog catcher to President and how much money they could divert to political consultants and candidates instead of advancing their missions in the community.

Despite the tremendous benefits to the public and the improved effectiveness of Section 501(c)(3) organizations as a result of the Johnson Amendment, powerful special interests have been launching multiple attacks in all three branches and all three levels of governments to misuse nonprofits to hide from the public and law enforcement exactly who is paying for politicians' political campaigns and influencing public elections in unaccountable, hidden ways.

Assaults Against Independence and Disclosures

Within days of his inauguration in 2017, former President Trump famously declared he would abolish the longstanding statute prohibiting charitable organizations from endorsing candidates for public office or diverting charitable assets to partisan political campaigns. He did not, thanks in large part to [coordinated advocacy in the charitable, philanthropic, and faith communities](#) pushing back on what those communities considered to be an existential threat to the integrity of the sector. Advocates for the wellbeing of charitable organizations won that battle, but renewed assaults are proliferating in this age of heightened partisanship and antagonism.

Late last year, [ProPublica](#) and [The Texas Tribune](#) documented 20 apparent violations of the Johnson Amendment by churches in Texas and other states. Raising concern that some churches continue to flagrantly ignore the law, [ProPublica recently reported that](#) three Texas churches donated to a city council candidate for an election held earlier this month. The candidate subsequently returned the money, opining that the churches made honest mistakes; but according to an expert [ProPublica consulted](#), “The donations represent a new level of brazenness as some

churches across Texas and the United States become more active in political campaigns.”

Expanding the Attacks into New Arenas

Unable to repeal the portion of the law protecting nonprofit nonpartisanship in Congress, the special interests shifted arenas, moving to the federal judiciary and state legislatures. There, they have coordinated efforts to curb legitimate confidential disclosures of donors to government officials that are needed to deter and uproot fraud. These efforts to block legitimate law-enforcement investigations into partisan electioneering inevitably result in the public not knowing who is pulling the financial strings to influence elections and who is masquerading as a real charitable nonprofit.

A 2021 Supreme Court decision ([*Americans for Prosperity Foundation v. Bonta*](#)) prevents states from requiring charitable nonprofits to submit – on a confidential, non-public basis – a copy of their Schedule B to Form 990 that they already filed with the IRS. As the [National Council of Nonprofits wrote in 2021](#), the ruling makes it more difficult for states to prevent fraudsters and scam artists from destroying public trust and hurting the work of nonprofits.

Not content with just blocking state law enforcement from policing against abuse of nonprofit fraud, individual and corporate tax fraud, and illegal attempts to influence elections, a federal lawsuit currently pending in Ohio seeks to [prevent even the Internal Revenue Services from requiring confidential disclosure](#) of the donor information. If successful, the litigation could effectively ensure that donors intent on exploiting what would become untraceable donations could contribute to partisan candidates for public office AND receive a charitable deduction as well. This lawsuit is not going unanswered. The Tax Law Center at NYU Law School has filed a [rebuttal amicus curiae brief](#) that concludes: “A finding that the requirement is unconstitutional would directly undermine the federal tax base and would threaten the integrity of the tax system. The requirement is crucial to the federal government’s revenue collection efforts, and it should be upheld in its entirety.”

Along the same vein as the court challenges aimed at preventing governments from collecting data that can reveal illegal conduct, an orchestrated campaign seeks to enact donor secrecy laws in several states. Most recently [Kentucky](#), [Indiana](#), and [Montana](#) have enacted laws to impose virtually insurmountable obstacles to rooting

out corruption. Legislation to prevent the confidential disclosure of donor and other information often is couched misleadingly by the special interests as “protecting charities” from partisan elected officials who might violate existing law by snooping into the data for their own private goals. That's simply not true – real charitable nonprofits are NOT seeking these measures, and in fact have been opposing them.

Notably, state associations of nonprofits are pushing back on behalf of the sector.

The **Kentucky Nonprofit Network** presented [an analysis of donor secrecy legislation](#) that lays out the problems and reasons for opposition. The **Montana**

Nonprofit Association presented [testimony in opposition to the bill](#) in that state.

And yet, politicians dependent on campaign contributions have tuned out charitable nonprofits and sided with donors.

To sum up, challenges to nonprofit nonpartisanship have been launched in all three branches of government (executive, judicial, and legislative). Continued advocacy in support of the charitable sector's independence from toxic partisanship and the right of voters to see who is influencing elections is needed now as much as ever.