



## **Recommendations of the National Council of Nonprofits on Comprehensive Tax Reform**

**Respectfully submitted to  
Chairman Orrin Hatch  
Senate Finance Committee  
July 17, 2017**

The National Council of Nonprofits and its network of more than 26,000 charitable nonprofits across the United States welcome and appreciate this opportunity to provide recommendations on improving federal tax law by creating a simpler and fairer system that is more conducive to sustained economic growth in the 21<sup>st</sup> Century global marketplace.

Charitable nonprofit organizations throughout the United States are dedicated to the public good; their work improves lives, strengthens communities and the economy, and lightens the burdens of government, taxpayers, and society as a whole. Consistent tax policies at the federal, state, and local levels are critical to the success of charitable nonprofits in pioneering and implementing solutions to community problems and aspirations.

In the second half of this submission, we identify critical public policies that need to be reevaluated and improved. Before that, however, we focus on the need to keep untouched a vital provision in the Internal Revenue Code that several Congresses got right, retained, and strengthened over many decades. That provision is the last clause of Section 501(c)(3) regarding the prohibition on organizations endorsing or opposing candidates for public office or diverting charitable assets to fund political campaigns, a provision sometimes called the Johnson Amendment.

### **Protecting Nonprofit Nonpartisanship**

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.”

This condition for tax-exempt status and receipt of tax deductible donations is sometimes called “the Johnson Amendment” after then-Minority Leader Lyndon Johnson (D-TX) who proposed the amendment in 1954. The amendment was accepted without controversy by Finance Committee Chairman Milliken (R-CO) and Senate Majority Leader Knowland (R-CA), passed by the Republican-controlled Senate and incorporated in the Internal Revenue Act of 1954 that President Eisenhower signed on July 29, 1954. Importantly, the provision was incorporated into the bi-partisan Tax Reform Act of 1986 (P.L. 99-514), and strengthened the following year in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-391), both bills signed by President Reagan. In short, the protection of charitable nonprofits, houses of worship, and foundations has always been a bi-partisan concern, indeed a nonpartisan concern, of Congress. That is, until recently.

Despite longstanding bipartisan support and important proven benefits (discussed below), politically motivated forces are agitating to repeal or weaken the Johnson Amendment. They seek to politicize charitable nonprofits, houses of worship, and foundations. In February, President Trump vowed to “totally destroy” the law. One bill in Congress, H.R. 172, would repeal the protection and thereby open the floodgates for undisclosed and unregulated dark money to flow into partisan election campaigns – all with the bonus of a charitable deduction for the donor, plus untold damage to the Treasury. Two identical House/Senate bills, H.R. 781/S.264, would substantially weaken the law and spawn litigation. On July 13, the House Appropriations Committee approved the Financial Services and General Government Appropriations Act for fiscal year 2018 containing an extraneous rider that would make it virtually impossible for the Internal Revenue Service to enforce even the most egregious violations of the Johnson Amendment if committed by churches or their auxiliary organizations.<sup>1</sup>

### **The Johnson Amendment – A Vital Protection**

For 60+ years, the Johnson Amendment has been a valuable protection that keeps charitable nonprofits, religious institutions, and foundations focused on their missions rather than succumbing to outside pressures to divert their time, money, and other resources to engage in partisan electioneering. Nonprofit, religious, and foundation leaders across the country support the current law because they recognize that politicizing the sector will hurt their ability to deliver on their missions. Consider this sampling of ways that the Johnson Amendment has protected us all for six decades:

- 501(c)(3) organizations now can say “no” to demands for political endorsements and campaign contributions because requests by politicians and their operatives for endorsements and contributions amount to asking the charities, houses of worship, and foundations to break the law.
- We don’t have donors questioning if we are siphoning off their charitable contributions to give to political candidates – because we can’t. If we could, and even if just a few do it, public trust would be broken and donations would go down for all nonprofits.
- We don’t see the division and duplication of the “First Republican Baptist Church” across the street from the “First Democratic Baptist Church.”
- We don’t have churches, synagogues, mosques, or temples using tithes and offerings to broadcast endorsements for candidates or political parties over their radio and television programs.
- We’ve had a reliable refuge to escape toxic partisanship, as 501(c)(3) organizations operate as safe places where people can come together to actually solve community problems rather than just posture and remain torn apart.
- We don’t have our boardrooms divided by one board member saying, “We should endorse Sally in the primary,” while the board chair declares, “No, we should endorse Jack.”
- We live in a world in which our foundation partners don’t endorse political candidates and send not-so-subtle hints that its nonprofit grantees and potential grantees can curry favor by endorsing the same candidates.
- People looking to nonprofits for needed services don’t need to think twice about the potential affiliation of an organization with a particular candidate. Potential volunteers, employees, or donors don’t have to think about the fact that the organization supports Candidate A in a

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<sup>1</sup> For more information on this unnecessary and unconstitutional rider, see [Nonprofits to Congress: Don't Politicize Houses of Worship](#), National Council of Nonprofits news release, July 13, 2017: “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...”

primary or Candidate B in a general election. They can all remain focused on the mission of the organization.

But were Congress to weaken the Johnson Amendment, charitable organizations and religious institutions would be harassed by financial inducements or undue pressure from politicians, operatives, and donors who demand political endorsements. If enacted, any of the pending legislative proposals would politicize charitable nonprofits, houses of worship, and foundations, plunging them into the caustic partisanship that bedevils our country. It would hurt the public and damage the capacity of organizations in a wide variety of ways, including this sampling:

- Insistence on endorsements by candidates and their operatives when “no” no longer means no.
- Erosion of public trust as organizations become known as *Democratic* charities or *Republican* charities.
- Donors “buying” endorsements by withholding contributions from charitable nonprofits until the nonprofit endorses the donor’s favored candidates for public office.
- Diversion of resources from mission as pressure is applied to 501(c)(3) organizations to redirect charitable resources (money, staff time, facilities, member lists – as well as their brand value) to partisan political campaigns.
- Pressure on nonprofits when foundations endorse candidates and let donees know.
- Board turmoil when members or donors insist on endorsement of family members, business colleagues, friends. Politics supplant mission!
- Harm to the public because responsible incumbents who want to focus on crafting meaningful solutions for their constituents and communities can’t do so due to concerns they will “get primaried” and opposed by influential ultra-liberal or ultra-conservative religious congregations and charitable nonprofits in their districts for not being extreme enough.

## Changes to the Johnson Amendment Are Not Needed

The Johnson Amendment has never stopped a discussion of the issues of the day. Nonprofits – and their individual leaders – already have tremendous free speech protection under existing law. As members of the Senate Finance Committee know better than most, charitable nonprofits, houses of worship, and foundations are allowed to advocate on policy issues relevant to their missions and the people they serve. Religious leaders can legally preach on moral and policy issues such as abortion, immigration, social justice, and religious liberty. In their personal capacity, nonprofit board members, volunteers, and staff – including clergy – can freely speak out on partisan issues, make campaign contributions, and even run for office. They just cannot carry out these partisan, election-related activities on behalf of the 501(c)(3) organizations with which they are associated.

Proponents of changing the longstanding protection generally make wild assertions that the Johnson Amendment somehow violates the First Amendment. Those assertions are unfounded. No organization has a constitutional right to receive tax-deductible contributions; the Johnson Amendment is simply the third condition for eligibility for that benefit. Any entity wanting to engage in partisan politics is free to do so – it just won’t be entitled to claim the benefits of being a tax-exempt 501(c)(3) organization. Again, as members of the Senate Finance Committee know well, such conditions are not unique. Federal law prevents federal, state, and local elected officials and their staff members from engaging in partisan politics for or against candidates using the public’s time or resources (e.g., computers, phones).<sup>2</sup> Judicial codes of conduct prevent judges from engaging in

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<sup>2</sup> See, e.g., [U.S. House of Representatives House Ethics Manual](#), Committee on Standards of Official Conduct, 110<sup>th</sup> Congress, 2d Session, 2008 Edition, page 135: “Once House employees have completed their official duties, they are free to engage in campaign activities on their own time, as volunteers or for pay, as long as

partisan politics.<sup>3</sup> Federal law prevents AmeriCorps and VISTA volunteers from engaging in partisan politics. Federal and state laws prevent government contractors from using public resources to engage in partisan politics.<sup>4</sup> Indeed, were Congress to grant greater privileges in this matter to houses of worship than other 501(c)(3) organizations, that act would violate the First Amendment's Establishment Clause by giving preferential treatment.

## The Public Supports Keeping the Johnson Amendment

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 encourage you to consider the following facts:

- Nearly [three out of four American voters](#) (72 percent) want to keep the 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.
- 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."
- 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."
- More than 4,800 charitable, religious, and philanthropic organizations (so far) 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."

The 83<sup>rd</sup> Congress and subsequent Congresses have recognized that charitable nonprofits, including houses of worship, are more effective and can have greater impact in our communities when they are shielded from the rancor of partisan politics. Our society is better today because 501(c)(3) organizations operate as safe havens from the caustic partisanship that currently is bedeviling our

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they do not do so in congressional offices or facilities, or otherwise use official resources." See also, [United States Senate Select Committee on Ethics: Campaign Guidance](#): "Senate employees are free to engage in campaign activity on their own, as volunteers or for pay, provided they voluntarily do so on their own time, outside of Senate space, and without using Senate resources."

<sup>3</sup> See, e.g., [Code of Conduct for United States Judges Canon 5\(A\)\(2\)](#): "A judge should not (1) act as a leader or hold any office in a political organization; (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate."

<sup>4</sup> See "['Political' Activities of Private Recipients of Federal Grants or Contracts](#)," Jack Maskell, CRS Report for Congress, Oct. 21, 2008.

country. Repeal or revision of the law would damage the integrity and effectiveness of all charitable nonprofits and foundations.

**It is with the greatest sense of urgency that we urge you to preserve the protections afforded 501(c)(3) organizations under the Johnson Amendment in current law and resist all efforts to repeal or weaken this vital protection.**

## Promoting Charitable Giving in Tax Reform

As previously stated, the work of charitable nonprofit organizations throughout the United States improves lives, strengthens communities and the economy, and lightens the burdens of government, taxpayers, and society as a whole. Your constituents recognize the vital and ongoing work of nonprofit organizations in delivering essential services, enhancing their quality of life, and uplifting the spirit of faith, innovation, and inspiration in local communities across America. Indeed, the incredible diversity of nonprofits touches and benefits Americans virtually every day of their lives, truly from cradle to grave.

The longstanding policy of the National Council of Nonprofits informs our firm commitment to preserving the tax-exempt status of organizations contributing to the well-being of their communities and strengthening and expanding incentives for individuals to give their time and money to the organizations whose missions they support. We support existing, enhanced, and new tax and other incentives (including a non-itemizer deduction) at the federal, state, and local levels that encourage individuals to volunteer their time and contribute money to the missions of all charitable nonprofits and oppose floors, caps, or limits on existing charitable giving incentives.

As Congress considers comprehensive tax reform, it must secure adequate resources to fund essential and effective programs and obligations, promote economic growth, and ensure that the net effect of tax-law changes strengthen, and do not undermine, the ability of charitable nonprofits to serve their communities. We wholeheartedly endorse these statements in the CHARITY Act: “encouraging charitable giving should be a goal of tax reform” and “Congress should ensure that the value and scope of the deduction for charitable contributions is not diminished during a comprehensive reform of the tax code.”<sup>5</sup> Promoting giving to the work of charitable nonprofits is a bipartisan commitment to communities and constituents. The reasons are simple:

- All Americans rely on charitable nonprofits *every day*.
- Nonprofits of *all sizes* and in *all subsectors* rely on the current charitable giving incentive to help pay for delivering existing services and programs.

Any reconsideration of charitable giving incentives in the Internal Revenue Code must begin with recognition of the increasing need to enhance, rather than limit, the ability of nonprofit organizations to serve those most in need and strengthen our communities. Without support from the public through giving, nonprofits will not be able to continue picking up the pieces and addressing needs in communities suffering from economic hardships, natural disasters, and policy decisions at the local, state, and federal levels that have shifted increasing burdens on the backs of charitable nonprofits.

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<sup>5</sup> See the [Charities Helping Americans Regularly Throughout the Year](#) (CHARITY) Act S. 1343, introduced June 13, 2017.

## Current Proposals Threaten the Tradition of Incentivizing Charitable Giving

Currently, 30 percent of Americans itemize their tax deductions.<sup>6</sup> Leading tax reform plans call for reducing tax rates and significantly increasing the standard deduction. While based in recognized policy goals, these changes could result in harmful unintended consequences: reduced individual support for the work of charitable nonprofits in communities. Studies estimate that only about 5 percent of taxpayers would itemize their deductions when these two changes in tax law are factored in. This would mean that 95% of Americans would have no tax incentive to make charitable contributions.

Further, researchers estimate that these reforms being made for other policy reasons would significantly reduce the amount of charitable dollars given to support work in local communities than our current tax system encourages. The projections for reductions in charitable contributions range from \$13.1 billion per year (Indiana University) to a range of \$13.5 billion to \$26.1 billion per year (Tax Policy Center).<sup>7</sup>

## Changing Incentives Changes Giving

The experience with recent tax policy experiments in the states demonstrates that giving back to communities is highly responsive to changes in tax incentives. In 2011, Michigan repealed targeted tax credits and charitable giving dropped substantially.<sup>8</sup> That same year, Hawai'i capped itemized deductions, including charitable donations, and giving declined by an estimated \$50 to \$60 million per year until the cap on charitable donations was lifted two years later.<sup>9</sup> Several other states have considered and rejected negative changes to giving incentives because legislatures have reached a common understanding: **Communities rely on charitable giving to solve local problems.**

## A Non-Itemizer Deduction Promotes Charitable Giving

As part of tax reform, we encourage the Senate Finance Committee to adopt policies that enhance – rather than reduce – incentives for charitable giving. The Committee and Congress can expand the incentive for giving back to communities by making deductions universally available to all Americans through a non-itemizer deduction for charitable contributions. The addition of a non-itemizer deduction would help overcome the significant decrease in charitable giving that most economists predict will otherwise occur as the number of itemizers decreases.

Extending the charitable deduction to all taxpayers – regardless of whether they itemize or take the standard deduction – would not only cancel out the negative effects on giving, but it would **increase charitable dollars given to strengthen and build communities by \$4.8 billion.**<sup>10</sup>

## Conclusion

We recognize that Congress is trying to determine the right balance of cutting federal spending, reforming tax laws, and altering entitlement programs. We also realize that even an unintended consequences of tax-law changes could undermine the ability of nonprofits to maintain the current level of programs and services, much less to expand them to meet the increased needs as a result of the lagging economy and other policy choices being made at all levels of government. Under these

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<sup>6</sup> [Analysis of SOI Tax Stats](#) – Historic Table 2 for 2014.

<sup>7</sup> [Tax Policy and Charitable Giving Results](#), Study by Lilly Family School of Philanthropy at Indiana University (May 2017); [Both Clinton and Trump would reduce tax incentives for charitable giving](#), Tax Policy Center (November 4, 2016).

<sup>8</sup> [Impact of Tax Credit Repeal](#), Johnson Center at Grant Valley State University, June 2014.

<sup>9</sup> [“The lab results are in on tax reform,”](#) Tim Delaney & Lisa Maruyama, *The Hill*, July 23, 2013.

<sup>10</sup> Lilly School of Philanthropy study.

conditions, nonprofits may not merely be the next place for people in need to turn; we are likely their only place to turn. Charitable nonprofits across America must be able to count on the current tax incentives for charitable giving if there is to be any validity in the presumption of policymakers that nonprofit organizations will be there to help fill the gaps.

Tax reform is long overdue and simplification is an admirable goal, but only when the parts are fair and lead to a greater whole. **Congress should take action to encourage charitable giving rather than discourage individuals from giving to organizations that are making a real difference in our communities – and thereby reducing the burdens on government.** Nonprofits and the communities we serve rely on those incentives to do our vital work. And all Americans rely on charitable nonprofits to enhance their lives, every day.

Thank you again for this unique opportunity to provide insights to the Finance Committee as you perform your important work.

Respectfully submitted,

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### **National Council of Nonprofits**

The National Council of Nonprofits (Council of Nonprofits) is a trusted resource and advocate for America's charitable nonprofits. Through our powerful network of state associations and 26,000-plus members – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.