

Nonpartisan Nonprofits Vital In Today's Rancorous Marketplace

By SHERRY MAGILL

For more than 60 years, the Johnson Amendment has been a little-known but important provision in the U.S. tax code that shapes America's nonprofit sector. But on February 2, President Trump declared that he would "get rid of, and totally destroy, the Johnson Amendment."

What is this amendment that causes such ire in the current administration? And why do we at the Jessie Ball duPont Fund think it is important to keep the Johnson Amendment intact?

Let's take a look at the amendment.

Though named for a Democrat — then-Sen. Lyndon B. Johnson — the Johnson Amendment was passed without controversy by the Republican-controlled Congress in 1954 and became part of the U.S. tax code that year. It also was included in revisions to the tax code made in 1986 under the administration of Ronald Reagan.

The amendment draws a bright line between 501(c)(3) nonprofits and candidates for public office, prohibiting those (c)(3) nonprofits from directly supporting (or opposing) any "candidate for elective public office."

Two things are important here:

- ◆ The amendment addresses only the activities of 501(c)(3) nonprofits — those nonprofits where contributions earn their donors a tax deduction. It does not address other types of nonprofits — 501 (c)(4)s, for example, which have been active in providing financial support to campaigns in recent years and which, generally, do not provide individuals a tax deduction for contributions.
- ◆ The amendment only addresses support (or opposition) for candidates. It does not address issue-based support or opposition, voter education or get-out-the-vote drives.

The 501(c)(3) nonprofit has a unique status in the landscape of American business. "C3s" are considered community

assets. By definition, they are prohibited from "private inurement" — meaning no individual may benefit financially from the activities of a c3. They may not have shareholders or owners — the community is considered the owner and the c3s work must benefit the community. Donors are allowed to deduct the amount of their contributions to c3s as an incentive to encourage support for these community institutions.

Current law allows c3s to inform the community on issues of community interest, from gun control and immigration to safe driving and the arts. These institutions are free to engage in or sponsor robust debate about the merits of issues and to encourage voters to turn out and vote on the issues.

The one thing c3s may not do under current law is advocate for or spend money in support of an individual candidate.

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And that is the one thing that would change if the Johnson Amendment is repealed — c3s would become conduits for money to individual candidates and donors would receive tax deductions for those contributions.

Supporters of repeal argue that this would enhance free speech on the part of c3s and their leaders.

Opponents worry about the political pressures that would be brought to bear on nonprofits, resulting in the notion of "red" and "blue" nonprofits.

At the Jessie Ball duPont Fund, we feel that c3 nonprofits and their communities benefit from the Johnson Amendment. Nonprofits have ample opportunities to address and inform communities on issues that matter, without becoming embroiled in partisan politics.

We are deeply concerned about the prospect of politicizing organizations that are intended to benefit the entire community. As the National Council of Nonprofits recently wrote:

Nonpartisanship is vital to the work of charitable nonprofits. It enables organizations to address community challenges, and invites the problem-solving skills of all residents, without the distractions of party labels and the caustic partisanship that is bedeviling our country.

The Council on Foundations expressed similar views in its letter to Congress:

For charities to continue to fulfill this [charitable] purpose, it is crucial that the public trust they have earned over the years is not diminished by partisan labels or influence.

In this era of extreme ideologies, polarizing politics, hostility and hate-mongering, we need civility. We need neutral zones, cool spaces where opponents can respectfully grapple with ideas, resources that are primarily interested in the community and not the political actors.

The Johnson Amendment preserves this space for c3 nonprofits and their constituents.

Our current landscape is overflowing with platforms and channels for partisan rhetoric and the money that supports it. We do not need more noise. We need more quiet.

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Sherry Magill is president of the Jessie Ball duPont Fund.

How the IRS Describes the Impact of the Johnson Amendment

The IRS offers the following explanation for the limitations on political activity by 501(c)(3) nonprofits:

The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

Source: www.irs.gov

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