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Protecting Nonprofit Nonpartisanship | Initial Commentary

By: Tim Delaney

For more than 60 years, an important provision in the federal tax code has successfully protected charitable nonprofits, religious congregations, and foundations from being hounded by politicians, political operatives, and paid political consultants seeking financial contributions, endorsements, and more. That provision is being threatened by President Trump, who recently vowed to “get rid of and totally destroy” the protection, and legislation in Congress seeking to completely repeal ([H.R.172](#)) or substantially weaken it ([S.264](#); [H.R.781](#)). Those promoting the three bills couch them as attempts to promote religious freedom and free speech. But the bills would have the effect of politicizing and thereby erasing the public’s high trust in charities, religious congregations, and foundations to benefit politicians and political operatives.

The National Council of Nonprofits [issued a statement expressing “strong opposition”](#) to these attacks on civil society. “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. Indeed, current law is the reason that charitable nonprofits are safe havens from politics, a place

where people can come together to actually solve community problems rather than just posture and remain torn apart.” The statement continues, “Nonprofits are already free to exercise their First Amendment rights to advocate for their missions. Allowing political operatives to push for endorsements would put nonprofits in a position where they become known as *Democratic* charities or *Republican* charities and put missions at risk.”

A sampling of leaders from around the country already shows the deep and widespread concerns about and firm opposition to the proposals.

The [Baptist Joint Committee for Religious Liberty](#) warns, “Politicizing churches does them no favors. ... It would usher our partisan divisions into the pews and harm the church’s ability to provide refuge. To change the law would hinder the church’s prophetic witness, threatening to turn pulpit prophets into political puppets.”

On the East Coast, the [New Jersey Center for Non-Profits](#) calls to not weaken the existing ban on electioneering as the "current ban provides an important buffer between partisan politics and charitable or philanthropic works" and a "[r]epeal would all but guarantee the infusion of 'dark money' into charitable work and would undermine public trust in the integrity of charitable organizations." Also, "[Independent Sector is troubled](#) by any proposal to repeal the Johnson Amendment, a law that ... ensures that charities remain a nonpartisan haven, separate from politics, in our civil society. 501(c)(3) organizations, as the public trust demands, should remain above the political fray, advocating and informing leaders, but not engaging in political activity. We urge all policymakers to reject any proposal to insert partisan politics into our sector, which will ultimately undermine the public trust in charitable organizations and do more harm than good."

In the Midwest, the [Michigan Nonprofit Association](#) "opposes any proposals that would benefit politicians and paid political operatives, rather than the communities we serve. Nonprofits are trusted in part because we are resolutely nonpartisan. Those who support our work rely on us to use their donations to help our communities, not engage in electioneering." The "[Minnesota Council of Nonprofits believes that this is a bad idea](#). ... U.S. nonprofit organizations, which includes religious organizations, are best able to advance their missions when they are nonpartisan. ...The Johnson Amendment does not unfairly limit the speech of churches or nonprofits. Religious institutions and other nonprofit organizations who want to give up their public charity status are free to expend their funds for or

against political candidates and partisan election activity and keep their tax exempt status as a (c)(4), or Section 527 organization."

On the West Coast, the [California Association of Nonprofits](#) swiftly offered cogent analysis: "We are concerned because having nonprofits and congregations engage in electioneering would confuse the public about the charitable, nonpartisan role of nonprofits. It would allow individuals to pass their political contributions through nonprofits and obtain tax deductions for supporting a political party (currently donations to political parties are not tax-deductible). Nonprofits could be pressured by donors to abandon nonpartisanship and endorse candidates for mayor, state office, etc." Similarly, the [Hawai'i Alliance of Nonprofit Organizations opposes the repeal](#) of this important protection.

And in the South, the [Arkansas Nonprofit Alliance](#) sees nonprofits as "safe spaces where people can turn for services, support, comfort, and inspiration regardless of their political beliefs," and the [Kentucky Nonprofit Network](#) believes "remaining nonpartisan is vital to the work of nonprofits." The [North Carolina Center for Nonprofits](#) cautions, "While the President's remarks focused on political speech by religious institutions, the underlying law he proposes to eliminate is essential to preserving the integrity of all charitable nonprofits... The current law on nonpartisanship is a major reason why charitable nonprofits are safe havens from politics, a place where North Carolinians from across the political spectrum can come together to actually solve community problems rather than simply posture and attack people from different viewpoints. Eliminating or restricting this law would have significant negative ramifications for nonprofits, their donors, and communities that they service." Likewise, the [Oklahoma Center for Nonprofits](#) announced it has concerns about the proposed legislation that could politicize charitable nonprofit organizations and foundations. "Nonprofit engagement in education of the public and advocacy is issues-based rather than focusing on particular candidates or political parties. ... That work is vital to supporting the work of nonprofits; being involved in electioneering is not."