

August 23, 2017

The Honorable Paul Ryan  
Speaker  
H-232 The Capitol  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Senate Majority Leader  
S-230 The Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
House Democratic Leader  
H-204 The Capitol  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Senate Democratic Leader  
S-221 The Capitol  
Washington, D.C. 20510

The Honorable Kevin Brady  
Chairman, House Ways and Means  
Committee  
1102 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Orrin Hatch  
Chairman, Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Richard Neal  
Ranking Member, House Ways and Means  
Committee  
1139E Longworth House Office Building  
Washington, D.C. 20515

The Honorable Ron Wyden  
Ranking Member, Senate Committee on  
Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Speaker Ryan, Majority Leader McConnell, Leader Pelosi, Leader Schumer, Chairman Brady, Chairman Hatch, Ranking Member Neal, and Ranking Member Wyden:

As President of the Board of Directors of the National Association of State Charities Officials, I write on behalf of the Board to express our deep concern about efforts to repeal or weaken a long-standing provision in federal law – the so-called “Johnson Amendment” – that prohibits 501(c)(3) tax-exempt organizations from endorsing, opposing, or contributing to the campaigns of candidates for public office. We believe that weakening or repealing the Johnson Amendment would adversely impact our member offices’ ability to protect the integrity of charitable assets and charitable solicitations. We urge you to oppose these efforts. These efforts include H.R. 172, the Act to Restore the Free Speech and First Amendment Rights of Churches and Exempt Organizations by Repealing the 1954 Johnson Amendment (the “Act to Restore Free Speech”) and H.R. 781, the Free Speech Fairness Act. The Act to Restore Free Speech strikes out language from the Internal Revenue Code that prohibits tax-exempt organizations from participating in or intervening in any political campaign (“electioneering”). The Free Speech Fairness Act seeks to deem certain statements made in the ordinary course of an organization’s activities as not in violation of the Johnson Amendment.

NASCO is an association of state charities officials, including state Attorney General offices, Secretaries of State offices, and other state offices charged with preventing the misuse of charitable assets, ensuring that trustees of charitable trusts fulfill their fiduciary duties, and enabling donors to make informed choices about which charitable causes to support.<sup>1</sup> 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.<sup>2</sup> The Johnson Amendment is consistent with this tenet of common law.

Eliminating or weakening the Johnson Amendment could create the appearance of a conflict between obligations charities have under federal tax law (for purposes of retaining tax-exemption) and obligations they have under common law. Removing the prohibition on electioneering from the tax code could give charitable organizations the impression that they may spend their resources supporting or opposing candidates for office. Under common law, they may not.

Further, removing that prohibition would undermine the charitable sector in many ways and would be bad policy. First, permitting charities to endorse, oppose, or contribute to political candidates would open the door to pressure being put on charities to devote their resources to such election-related uses rather than to their charitable purposes. In addition, charitable giving has traditionally enjoyed broad popular support in this country. Private citizens, foundations, and corporations collectively donated \$390 billion to charity in 2016.<sup>3</sup> The Johnson Amendment helps give donors confidence that their donations will be used for charitable purposes and not electioneering or other private, non-charitable purposes. If schools, hospitals, land trusts, museums, poverty relief organizations and the like were permitted to endorse and support candidates for office, philanthropy would acquire a political dimension rather than serving as the vehicle for public good that it is today.

Importantly, thousands of the same organizations that would be affected by efforts to weaken or repeal the Johnson Amendment have spoken out to oppose those efforts.<sup>4</sup> Churches, religious leaders, national, regional and state and local nonprofit organizations have voiced strong support for maintaining the independence from partisan politics that the current law protects. These organizations emphasize that the Johnson Amendment “has enabled nonprofits

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<sup>1</sup> This letter reflects the views of the NASCO board. It does not necessarily reflect the views of any individual Attorney General, Secretary of State or other state official.

<sup>2</sup> See, e.g., *Workmen’s Circle Educational Center of Springfield, Inc. v. Board of Assessors of City of Springfield*, 314 Mass. 616 (1943) (using a building to primarily support a particular political party is not a charitable purpose).

<sup>3</sup> Giving USA 2017: *The Annual Report on Philanthropy*. (Giving USA Foundation).

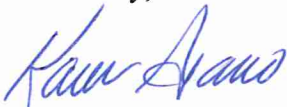
<sup>4</sup> See, e.g., April 5, 2017 Community Letter in Support of Nonpartisanship, available at <https://www.givevoice.org/sites/default/files/community-letter-in-support-of-nonpartisanship-5-12-update.pdf>; July 12, 2017 Letter from the Afya Center, African American Ministers in Action, African Methodist Episcopal Church, and 105 other organizations (including many religious organizations) to House Committee on Appropriations Chairman Mr. Rodney Frelinghuysen and Ranking Member Ms. Nita Lowey, available at <https://static1.squarespace.com/static/568e979c40667a5cc6a4eaf1/t/59663edde45a7c1a7cc21615/1499872989789/07-12-17+FSGG+Johnson+Sign+On+Letter+FINAL.pdf>; July 13, 2017 Statement from Tim Delaney, President and CEO of National Council of Nonprofits, available at <https://www.councilofnonprofits.org/article/nonprofits-congress-dont-politicize-houses-of-worship>.

to focus on serving their communities, rather than catering to the desires of political candidates and their powerful donors.”<sup>5</sup> Further, they have emphasized that “[n]onpartisan credibility is critical to the ability of 501(c)(3) organizations to work with elected officials of all parties at the local, state, and federal levels to address community needs.”<sup>6</sup> Research and polling by multiple and diverse entities consistently and overwhelmingly has shown that the majority of Americans, by a wide margin, support maintaining the nonpartisan protections that the Johnson Amendment provides.<sup>7</sup>

Repealing or weakening the Johnson Amendment would also compromise the ability of state charities officials to identify and take action against fraud and abuse of charitable solicitations and use of charitable assets. NASCO operates as a nonpartisan association by which states may share information and undertake collective educational and non-partisan enforcement efforts to protect the integrity of charitable assets. The duty of our respective state offices to prevent and take action against fraud in charitable solicitations and mismanagement of charitable assets is universal and nonpartisan. The Johnson Amendment ensures that nonprofits may be independent of electioneering and political campaigning, which also helps ensure that charities regulators can work cooperatively to combat charities fraud and protect charitable assets, regardless of the political affiliation of our elected and appointed Attorneys General, Secretaries of State or other officials.

Public trust is critical to the vitality and continued success of the charitable sector. For sixty-three years, the Johnson Amendment has preserved the integrity and independence of charitable organizations and foundations by creating a partisan-free public forum for people of all beliefs and interests to collaborate and exchange ideas on solving community problems, fostering art and culture, and promoting the public good without the distractions of party labels and political rhetoric. The Johnson Amendment is sound policy and works in harmony with charities law. The NASCO Board of Directors joins the thousands of nonprofit and religious organizations urging Congress to maintain the Johnson Amendment. Efforts to repeal it should be opposed.

Sincerely,



Karen Gano

President, National Association of State Charities Officials (NASCO)

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<sup>5</sup> July 13, 2017 Statement from Tim Delaney, President and CEO of National Council on Nonprofits.

<sup>6</sup> April 5, 2017 Community Letter in Support of Nonpartisanship.

<sup>7</sup> See e.g. Poll Results for polls by Independent Sector, PRRI, National Association of Evangelicals, Pew Research Center, and Lifeway Research, collected at <http://projectfairplay.squarespace.com/polls>