

## Preserve the Johnson Amendment

The Johnson Amendment is a neutrally applied law that properly bars any 501(c)(3) nonprofit, including churches, hospitals, etc., from engaging in partisan politicking or using tax-deductible donations for political purposes. The amendment to Title 26 of the Internal Revenue Code simply states that tax-exempt groups may “not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.”

Tax exemption is a privilege, not a right. The Johnson Amendment ensures equal footing in the political arena and also makes sure that tax-deductible charitable donations go toward charitable works, not political campaigns.

Tax-exempt entities have a free ride because they are expected to provide a public benefit, not intrude in elections. The Johnson Amendment is a wise and equitable rule that preserves the integrity of our nonprofits and churches. It must be protected and enforced.

**Don't Turn Churches into PACs**

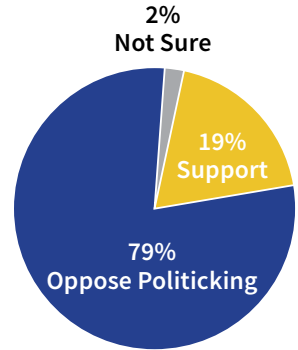
What the Johnson Amendment wisely prevents is intervention in a political campaign by any 501(c)(3) tax-exempt group, including a church.

## Most Americans oppose mixing church & politics

Most Americans, including a majority of religious Americans, prefer that churches stay out of politics. Four out of five Americans oppose politicking from the pulpit, according to a 2015 survey by LifeWay Research, the Southern Baptist Convention's research arm. Fully 79 percent oppose pastors endorsing candidates during a church service. More than 8 in 10 believe it's inappropriate for churches to use their resources for political campaigns.<sup>2</sup>

The Pew Research Center confirms that “most Americans oppose political endorsements from churches.” Pew Research found that only 33 percent of Republican respondents and 26 percent of Democrats approved of churches endorsing political candidates.<sup>3</sup>

Most churches and nonprofits likewise support the Johnson Amendment. More than 5,500 nonprofit organizations signed a letter in April 2017 urging Congress to protect the Johnson Amendment. More than 4,000 faith leaders likewise signed a letter to Congress urging that the safeguard remain intact.



Source: LifeWay Research

## Why is it under attack now?

With 81 percent of white evangelicals voting for Donald Trump, the president has been explicit about his goal to give political power to evangelical churches by overturning the Johnson Amendment.

In a closed-door meeting with hundreds of Christian conservatives on June 21, 2016, Trump acknowledged how “incredibly supportive” evangelicals have been. Trump vowed that overturning the Johnson Amendment as it applies to churches “will be my greatest contribution to Christianity.”<sup>1</sup>

## How would churches be harmed by repeal of the Johnson Amendment?

Currently, churches enjoy virtually no governmental oversight. But if the Johnson Amendment were repealed, the ensuing problems could be expected to force the government to demand the filing of financial, FEC and donor disclosures, IRS returns and licenses. The regulatory list will be long and onerous. Even with the de minimis limits suggested in some proposals, the IRS would need to examine church financials in order to determine what is, in fact, de minimis.

**Churches have no constitutional immunity from taxes — religious exemption is not a constitutional right.** See, e.g., *Walz v. Tax Comm’n of City of N.Y.*, 397 U.S. 664, 707 (1970).

(“Churches, like newspapers also enjoying First Amendment rights, have no constitutional immunity from all taxes.”); *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943) (“We do not mean to say that religious groups and the press are free from all financial burdens of government.”) (citing *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)).

The most pernicious aspect of church politicking is the power that religious leaders hold over the minds of individuals. Absent the Johnson Amendment, church leaders could engage in what is essentially spiritual blackmail, tying their congregants’ religious well-being to their personal voting decisions. This would forever alter our political system, as well as the very nature of churches, which would become partisan entities. As Father Thomas Reese (National Catholic Reporter, 2/9/17) warns: “Money would be diverted from churches and charities to tax exempts devoted to politics.”

## How could repeal of the Amendment turn churches into super PACs?

Church congregations could be transformed into political machines — e.g., church bulletins could be converted into campaign flyers, sermons into political endorsements, church events into campaign events.

If churches are allowed to politick from the pulpit while retaining tax exemption, they would become unregulated super PACs. Congress will create a new category of “dark money.” Churches are financial black holes. Unlike every other 501(c)(3), a church is not required to file annual financial returns (the Form 990) to the IRS. Other (c)(3)s must show the IRS on an annual basis that they deserve to retain their exalted status as tax-deductible groups by showing what money comes in and how those funds are used for tax-exempt purposes.

Church donations to political campaigns would be uniquely untraceable and unregulated. In short, overturning the Johnson Amendment would make the Citizens United decision look trivial.

## What would the so-called ‘Free Speech Fairness Act’ (HR 781 / S 264) allow?

All 501(c)(3) nonprofits (not just churches) could campaign on behalf of candidates — e.g., formerly nonpartisan voter registration drives could endorse specific candidates, equally unwise.

There are an estimated 312,000 churches in the United States and more than 1.5 million nonprofit organizations. It would do irreparable damage to the nonprofit sector, congregations, and our democratic political process if every tax-exempt organization suddenly became partisan, able to endorse political candidates and openly interject themselves into political campaigns.

## Johnson Amendment is not broken — no need to “fix”

The Johnson Amendment isn't a threat to our democracy. But allowing tax-exempt entities to engage in political campaigning would be. Repeal of the Johnson Amendment would also negatively impact churches. Inevitably less tax-deductible contributions would go to churches and charities for their core activities, especially in election years. Ugly political fights would divide congregations and denominations.

Religion and politics are a dangerous mix, as James Madison observed, in advising that “religion and government will both exist in greater purity, the less they are mixed together.”<sup>4</sup>

## What others are saying in support of the Johnson Amendment

“For 60 years, this law has played an essential role in maintaining public confidence in & support for, the charitable community. . . . Allowing the endorsement of political candidates is tantamount to allowing political agents to use the public’s goodwill towards the charitable sector as a vehicle to advance, through financial contributions, their own partisan political will.” — Daniel Cardinali, president and CEO of Independent Sector

“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.” — Tim Delaney, president of the National Council of Nonprofits

“Churches would be smart to oppose repeal.” — Father Thomas Reese, National Catholic Reporter

“Americans already argue about politics outside the church. They don’t want pastors bringing those arguments into worship.” — Scott McConnell, executive director, Lifeway Research (Southern Baptist Convention)

## Johnson Amendment doesn't muzzle free speech

Trump dishonestly claims that pastors have been “silenced.” So untrue. The clergy are free to personally endorse and support candidates, and often do. Under the Johnson Amendment, they can also sermonize or comment on moral issues (war, abortion/contraception access, civil rights, poverty, etc.). They can even comment on the job performance of public officials.

They can engage in nonpartisan “get out the vote” campaigns. But they may not and should not use tax-exempt funds for political purposes. The Johnson Amendment means they may not endorse from the pulpit, tell their congregations who to vote for or who not to vote for, distribute campaign literature through tax-exempt coffers or otherwise use their tax-exempt donations for direct political purposes. If a (c)(3) nonprofit or church desires to wade into politics, it is free to do so — but then it should, like every other political organization, forego the privilege of tax exemption.

Contrary to suggestions made by opponents of this rule, the Johnson Amendment did not stop, and was never intended to stop, Martin Luther King Jr. or other ministers from preaching civil rights from the pulpit. The law does not interfere with any issue-oriented speech that falls short of political campaign intervention.

The amendment is not a ban or even a burden on free speech or religious exercise. The D.C. Circuit, the most influential circuit court, held that the electioneering regulation is constitutional and not a violation of a church's free speech rights, free exercise rights, or rights under the Religious Freedom Restoration Act. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

## Repealing the Johnson Amendment would cost taxpayers billions

According to the chief of staff of the congressional Joint Committee on Taxation, a repeal of the Johnson Amendment would cost taxpayers \$2.1 billion over 10 years in lost revenue. Thomas Barthold testified on Nov. 6, 2017, that repealing the Johnson Amendment would provide incentive to divert political contributions into a deductible form.

1 Washington Post, “Trump vows to lift ban on politicking,” June 22, 2016

2 Lifeway Research, “American Views on Candidate Endorsements and Tax Exemption,” (2015) available at <http://bit.ly/2p8Anyt>

3 <http://pewrsr.ch/16hnC5S>

4 Letter to Edward Livingston, July 10, 1822

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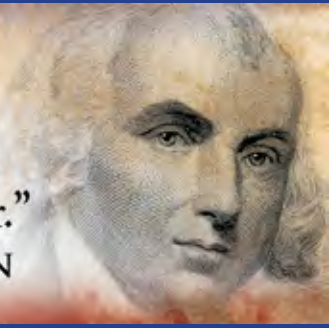
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“Religion and Government  
will both exist in greater purity,  
the less they are mixed together.”

- JAMES MADISON