Statement of Amanda Tyler,
on behalf of the Baptist Joint Committee for Religious Liberty

Before the
House Oversight and Government Reform Committee's
Subcommittee on Government Operations and
Subcommittee on Health Care, Benefits, and Administrative Rules

Hearing on Examining a Church's Right to Free Speech

May 4, 2017

On behalf of the Baptist Joint Committee for Religious Liberty (BJC), an 81-year-old agency serving 15 Baptist bodies on legal and policy matters relating to religious liberty and the separation of church and state, I appreciate the opportunity to submit this statement to be added to the record. Our mission is to defend and extend God-given religious liberty for all, bringing a uniquely Baptist witness to the principle that religion must be freely exercised, and it must not be advanced or inhibited by the government. The BJC has a consistent record of supporting both of the First Amendment's religion clauses—No Establishment and Free Exercise. Our commitment stems from the historical experiences of early Baptists, who suffered the pain of persecution from religious fervor coupled with the coercive power of the state.

We are committed to ensuring that the free speech rights for houses of worship and members of the clergy are respected. We do not share the view that current law prohibiting 501(c)(3) organizations from participating and intervening in partisan candidate campaigns infringes on those free speech rights. We joined with 98 other religious and denominational organizations in a letter to Congress sent last month, saying we "strongly oppose any effort to weaken or eliminate protections in the law that prohibit 501(c)(3) organizations, including houses of worship, from endorsing or opposing political candidates." The full letter is attached to my testimony.

For more than 60 years, all 501(c)(3) organizations have been required to refrain from partisan campaign involvement in exchange for receiving that most-favored tax status. The prohibition has allowed charitable organizations to concentrate on their exempt purposes and not be distracted or co-opted by partisan campaigns.

In 2002, the House voted on legislation offered by Rep. Walter Jones called the Houses of Worship Political Speech Protection Act (H.R. 2357). The BJC co-led the coalition of religious groups opposing that legislation, which failed by a House vote of 178-239 in a Republican-controlled body. We continue to think there is no reason to change the way the law works now, and we are very concerned about the consequences of repeal for houses of worship.

This issue gained notice again last year when Donald Trump spoke about the "Johnson Amendment" at the Republican National Convention. Citing Johnnie Moore, a Christian publicist on the evangelical advisory board created for the Trump campaign, *The New York Times* reported that it was Trump who raised this issue last June at the first meeting of the board. According to the article, "Mr. Trump asked them why they did not have the courage to speak out more during elections. When the pastors informed him they could lose their tax-exempt status, Mr. Trump declared the law unfair."[1] Just because candidates want more support from pastors, that does not reflect what pastors or churches want or what is good for them. This kind of political pressure from candidates and donors to intervene in campaigns could become rampant if the "Johnson Amendment" is repealed or scaled back.

First, there is no need for a change in the law. The separation between the nonprofit sector – including most houses of worship – and partisan candidate campaign involvement has served to protect the integrity of charities from the messy and often ugly world of partisan campaigns.

The tax law prohibition is not a divorcement of politics from houses of worship. Many churches feel that they are called to be "political" and "speak truth to power" on a variety of social issues. Nothing in the tax law prevents pastors from speaking out from the pulpit on issues, no matter how controversial.

Churches also can do a lot of work on voter engagement and education, including organizing voter registration drives, getting voters to the polls, distributing information and scorecards on candidates, and hosting candidates in the churches.

Pastors and other leaders can endorse and oppose candidates in their personal capacities and without using the resources of the church. Whether and how openly they want to do this is a personal decision. Pastors know that their reputations will rise and fall with individuals that they endorse and therefore may be reluctant to publicly endorse and oppose candidates. They also will consider the impact that their endorsements will have in their communities, particularly with those who support another candidate.

But what is not permitted – and what most clergy and churchgoers don't want in any event – is for the tax-exempt 501(c)(3) entity to endorse or oppose candidates. Polling consistently shows that large majorities – 70 or 80 percent depending on the survey – oppose candidate endorsements in church.[2] And when just clergy are asked, the numbers are more like 90 percent.[3]

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[1] Mark Landler and Laurie Goodstein, "President Pledges to Let Politics Return to Pulpits," *The New York Times*, Feb. 3, 2017 at A1, A17.

[2] *E.g.*, Bob Smietana, *Skip the Endorsements in Church, Say Most Americans*, LIFEWAY RESEARCH (Sept. 8, 2016), http://lifewayresearch.com/2016/09/08/skip-the-endorsements-in-church-say-most-americans/ (finding 79% of Americans believe it is inappropriate for a pastor to publicly endorse political candidates during a church service and

These numbers are not surprising given the negative effects endorsements would have on houses of worship. Pastors and churchgoers I talk with think this would be a terrible idea for their congregations, dividing what are rather politically diverse communities and distracting the church from its religious mission. Congregants also choose to worship in faith communities for reasons other than hearing a political ad. There are plenty of places in our culture today to engage in partisan electoral campaigns. Most people I know don't want church to be one of those places.

We also recognize the prophetic voice with which the church speaks to power. That voice is threatened whenever the church associates itself too closely with the government or its officials. When this issue was debated on the House floor 15 years ago, Rep. John Lewis of Georgia – who worked with the Rev. Dr. Martin Luther King Jr. during the Civil Rights Movement – gave a powerful testimony. "The church was the heart and soul of our efforts because ministers had the moral authority and respect to stand against immoral and indefensible laws," he said. "At no time did we envision or even contemplate the need for our houses of worship to become partisan pulpits."

Changing the law would expose churches to political pressure to endorse candidates. The campaign intervention prohibition applies not only to presidential and congressional elections, but to every state and local race, too. Many candidates and donors supporting candidates would have a strong incentive to put pressure on churches to become involved in their campaigns, particularly given the highly-valued tax status churches enjoy. Specifically, churches receive automatic 501(c)(3) tax status and are not required to file the Form 990 information return. Donors to churches, like all other 501(c)(3) organizations, also receive a tax deduction for their contributions.

The legislative "solutions" that have been put forward would threaten great harm to houses of worship. Some of the bills inject a new subjective standard for the IRS to enforce, allowing political campaign involvement if it is "made in the ordinary course of the organization's regular and customary activities in carrying out its exempt purpose, and results in the organization incurring not more than de minimis incremental expenses."[4] What does "ordinary course" mean? What is the organization's "regular and customary activities in carrying out its exempt purpose"? What is "de minimis" compared to the organization's total budget? What is "incremental"? These are all line-drawing questions that would fall on the IRS, which would have a mandate to enforce this new standard with limited resources and with likely much more activity in this area, given the new permissible standard and political pressure to be involved. We would either see lack of enforcement, rendering the statutory limitations meaningless, or we would see troubling

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75% agreeing that churches should steer clear of endorsements); Daniel Cox, Ph.D. and Robert P. Jones, Ph.D. *Majority of Americans Oppose Transgender Bathroom Restrictions*, Public Religion Research Institute (March 10, 2017), http://www.prri.org/research/lgbt-transgender-bathroom-discrimination-religious-liberty/ (finding 71% of Americans and all major religious groups in the county oppose allowing churches to endorse political candidates while retaining their tax-exempt status).

[3] *E.g.,* National Association of Evangelicals, *Pastors Shouldn't Endorse Politicians*, Evangelical Leaders Survey (February 2017), https://www.nae.net/pastors-shouldnt-endorse-politicians/ (finding 89% of evangelical leaders oppose pastors endorsing candidates from the pulpit).

[4] H.R. 781, 115th Cong.; S. 264, 115th Cong.

entanglement of the IRS in a church's affairs. Neither outcome would be an improvement on our current system.

Jesus taught us to render unto Caesar what is Caesar's and to God what is God's.[5] Changing the law to encourage 501(c)(3) organizations to intervene in political campaigns could lead churches to render to Caesar in God's house. This approach does not bode well for religion or religious liberty.

Respectfully submitted,

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[5] *Matthew* 22:21.

April 4, 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:

We, the 99 undersigned religious and denominational organizations strongly oppose any effort to weaken or eliminate protections that prohibit 501(c)(3) organizations, including houses of worship, from endorsing or opposing political candidates. Current law serves as a valuable safeguard for the integrity of our charitable sector[1] and campaign finance system.

Religious leaders often use their pulpits to address the moral and political issues of the day. They also can, in their personal capacities and without the resources of their houses of worship, endorse and oppose political candidates. Houses of worship can engage in public debate on any issue, host candidate forums, engage in voter registration drives, encourage people to vote, help transport people to the polls and even, with a few boundaries, lobby on specific legislation and invite candidates to speak. Tax-exempt houses of worship may not, however, endorse or oppose candidates or use their tax-exempt donations to contribute to candidates' campaigns. Current law simply limits groups from being *both* a tax-exempt ministry and a partisan political entity.

[1] Some have suggested a desire to remove this safeguard only as it applies to houses of worship and to keep all other 501(c)(3) organizations at the status quo. This path, however, is constitutionally problematic under *Texas Monthly v. Bullock*, 489 U.S. 1 (1989).

As religious organizations, we oppose any attempt to weaken the current protections offered by the 501(c)(3) campaign intervention prohibition because:

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. Indeed, the vast majority of Americans do not want houses of worship to issue political endorsements.[2] Particularly in today's political climate, such endorsements would be highly divisive and would have a detrimental impact on civil discourse.

Current law protects the integrity of houses of worship. If houses of worship endorse candidates, their prophetic voice, their ability to speak truth to power as political outsiders, is threatened. The credibility and integrity of congregations would suffer with bad decisions of candidates they endorsed. Tying America's houses of worship to partisan activity demeans the institutions from which so many believers expect unimpeachable decency.

Current law protects the independence of houses of worship. Houses of worship often speak out on issues of justice and morality and do good works within the community but may also labor to adequately fund their ministries. Permitting electioneering in churches would give partisan groups incentive to use congregations as a conduit for political activity and expenditures. Changing the law would also make them vulnerable to individuals and corporations who could offer large donations or a politician promising social service contracts in exchange for taking a position on a candidate. Even proposals that would permit an "insubstantial" standard or allow limited electioneering only if it is in furtherance of an organization's mission would actually invite increased government intrusion, scrutiny, and oversight.

The charitable sector, particularly houses of worship, should not become another cog in a political machine or another loophole in campaign finance laws. We strongly urge you to oppose any efforts to repeal or weaken protections in the law for 501(c)(3) organizations, including houses of worship.

Sincerely,

African American Ministers in Action

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[2] *E.g.*, National Association of Evangelicals, *Pastors Shouldn't Endorse Politicians*, Evangelical Leaders Survey (February 2017), https://www.nae.net/pastors-shouldnt-endorse-politicians/ (finding 89% of evangelical leaders oppose pastors endorsing candidates from the pulpit); Bob Smietana, *Skip the Endorsements in Church, Say Most Americans*, LIFEWAY RESEARCH (Sept. 8, 2016), http://lifewayresearch.com/2016/09/08/skip-the-endorsements-in-church-say-most-americans/ (finding 79% of Americans believe it is inappropriate for a pastor to publicly endorse political candidates during a church service and 75% agreeing that churches should steer clear of endorsements); Daniel Cox, Ph.D. and Robert P. Jones, Ph.D. *Majority of Americans Oppose Transgender Bathroom Restrictions*, Public Religion Research Institute (March 10, 2017), http://www.prri.org/research/lgbt-transgender-bathroom-discrimination-religious-liberty/ (finding 71% of Americans and all major religious groups in the county oppose allowing churches to endorse political candidates while retaining their tax-exempt status).

Alabama Cooperative Baptist Fellowship
Alliance of Baptists
American Baptist Churches USA
American Baptist Home Mission Societies
American Friends Service Committee
American Jewish Committee (AJC)
Anti-Defamation League
Association of Welcoming and Affirming Baptists
B'nai B'rith International
Baptist Fellowship Northeast
Baptist General Association of Virginia
Baptist Joint Committee for Religious Liberty
Baptist Peace Fellowship of North America ~ Bautistas por la Paz
Baptist Women in Ministry
Bend the Arc: A Jewish Partnership for Justice
California Council of Churches IMPACT
Catholics in Alliance for the Common Good
Central Conference of American Rabbis
Christian Life Commission
Christian Methodist Episcopal (CME) Church
Churchnet, a ministry of the Baptist General Convention of Missouri
Colorado Council of Churches
Cooperative Baptist Fellowship
Cooperative Baptist Fellowship Heartland
Cooperative Baptist Fellowship Kentucky
Cooperative Baptist Fellowship of Arkansas
Cooperative Baptist Fellowship of Florida
Cooperative Baptist Fellowship of Georgia
Cooperative Baptist Fellowship of Mississippi
Cooperative Baptist Fellowship of North Carolina
Cooperative Baptist Fellowship of Oklahoma
Cooperative Baptist Fellowship of Texas
Cooperative Baptist Fellowship of Virginia
Disciples Center for Public Witness
Ecumenical Catholic Communion
Ecumenical Ministries of Oregon
The Episcopal Church
Equal Partners in Faith
Evangelical Lutheran Church in America
Evergreen Association of American Baptist Churches
Faith Action Network- Washington State
Faith in Public Life
Faith Voices Arkansas

Faithful America
Florida Council of Churches
Franciscan Action Network
Friends Committee on National Legislation
Greek Orthodox Archdiocese of America
Hadassah, The Women's Zionist Organization of America, Inc.
Hindu American Foundation
Hispanic Baptist Convention of Texas
Interfaith Alliance
International Society for Krishna Consciousness (ISKCON)
Islamic Networks Group
Islamic Society of North America
Jewish Community Relations Council, Greater Boston
Jewish Community Relations Council of Greater Washington
Jewish Council for Public Affairs
The Jewish Federations of North America
Jewish Women International
Kentucky Council of Churches
Mid-Atlantic Cooperative Baptist Fellowship
National Advocacy Center of the Sisters of the Good Shepherd
National Baptist Convention of America
National Council of Churches
National Council of Jewish Women
National Sikh Campaign
NETWORK Lobby for Catholic Social Justice
New Baptist Covenant
North Carolina Council of Churches
Oklahoma Conference of Churches
Pastors for Oklahoma Kids
Pastors for Texas Children
Pax Christi, Montgomery County, MD chapters
Pennsylvania Council of Churches
Presbyterian Church (USA), Washington Office of Public Witness
Progressive National Baptist Convention
Reconstructionist Rabbinical Assembly
Religions for Peace USA
Religious Institute
Rhode Island State Council of Churches
Seventh-day Adventist Church in North America
South Carolina Christian Action Council
South Dakota Faith in Public Life
T'ruah: The Rabbinic Call for Human Rights
Tennessee Cooperative Baptist Fellowship

Texas Baptists Committed
Texas Faith Network
Texas Impact
Union for Reform Judaism
Unitarian Universalist Association
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
United Church of Christ, Justice and Witness Ministries
The United Methodist Church, General Board of Church and Society
Virginia Council of Churches
Women of Reform Judaism
Women's Alliance for Theology, Ethics and Ritual (WATER)

Cc: All Members of Congress