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EXAMINING A CHURCH'S RIGHT TO FREE SPEECH

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE,
BENEFITS AND ADMINISTRATIVE RULES

AND THE

SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

MAY 4, 2017

Serial No. 115–29

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://oversight.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

26–624 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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EXAMINING A CHURCH'S RIGHT TO FREE SPEECH

Thursday, May 4, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND ADMINISTRATIVE RULES JOINT WITH THE SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 10:03 a.m., in Room 2154, Rayburn The Capitol, Hon. Jim Jordan [chairman of the Subcommittee on Health Care, Benefits, and Administrative Rules] presiding.

Present: Representatives Jordan, Meadows, Walker, Hice, Issa, Massie, Grothman, DeSantis, Blum, Krishnamoorthi, Connolly, Norton, Clay, and Plaskett.

Also Present: Representative Raskin.

Mr. JORDAN. The Subcommittee on Health Care Benefits and Administrative Rules and the Subcommittee on Government Operations will come to order.

Without objection, the chair is authorized to declare a recess at any time, and we will certainly have to do that in a few minutes, because votes are going to be coming.

And we want to thank our witnesses, and we'll get to you in just a minute. You know how this works. We do the opening statements, then we get to your important statements, but even before that, the chair notes the presence of our colleague, Congressman Raskin of Maryland. We appreciate your interest in this topic and welcome your participation today.

I ask unanimous consent that Congressman Raskin be allowed to fully participate in today's hearing. Without objection, so ordered.

We'll do a quick opening statement and then I'll turn to our ranking member for the same, and then we'll try and get through as many of you as we can before we have to recess for votes.

I want to thank everyone for joining us today. We convened this hearing to highlight the First Amendment and examine those places in our great country where that right, that right to free speech is being stifled and sometimes even silenced by government. And unfortunately this is nothing new. In the recent past, we've seen the IRS bogging down conservative social welfare organizations, that's a nice way of saying it, with an endless application process, holding them in bureaucratic limbo for years and thereby curbing their First Amendment rights. Never forget what they did, systematically and for a sustained period of time targeted people

for their political beliefs. That should not happen in our great country.

We have seen public universities not allowing conservative voices to be heard and we've seen government agencies levy enormous fines for small, many times even returned, campaign donations for candidates who might not have even made it on the ballot.

The First Amendment is the First Amendment for a reason. Our founders knew the ability to criticize our government was of paramount importance. We must never forget those great words: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press or the right of the people to peaceably assemble, and to petition the government for redress of grievances.

To be clear, this freedom doesn't just protect a citizen's right to speak out in the town square; it also protects speech. Maybe it's a poster you draw, maybe it's where you choose to give your money, maybe even what you wear.

Since our founding, nonprofits, like churches, have had the ability to speak freely and educate their membership about candidates or policies that align or contradict their interest and values. That was until 1954, when as a political retribution, then Senator Johnson, with no real debate, had inserted language into a tax law that would bar nonprofits from speaking in a political manner.

Since then, churches and other c(3)'s have had to decide whether or not to directly violate the law and risk potentially losing their tax status altogether or to practice a, quote, studied vagueness or self-censorship trying to carefully navigate what would or would not draw the attention of the IRS speech cop.

Today we begin what I hope will be a series of hearings on the First Amendment and where government agencies may in fact be infringing and limiting individual's First Amendment liberties. So we look forward to this series of hearings and look forward to what we're going to hear today from our witnesses.

And with that, I'd like to recognize our ranking member, Mr. Krishnamoorthi.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chairman. And welcome to our witnesses.

Mr. Chairman, I strongly support the exercise of free speech by all, including churches and other charitable organizations. In fact, there is a news item today, it has been reported that President Trump will issue an executive order to redirect or direct the IRS to use its discretion in enforcing the Johnson amendment.

In fact, this order will have little effect. IRS rarely brings enforcement actions against houses of worship that engage in political activity, but this hearing is about something far more significant than the President's actions. Only Congress can make changes to the law, and today's hearing is about what changes the Republican majority will attempt to make to the tax deductibility of political contributions, and whether those changes are justified, furthermore, what would be the intended and unintended consequences of those changes. That will be the subject of this hearing.

This hearing is not about free speech. It is about a scheme to flood political campaigns with dark money. Let's be clear. Current law does not prevent churches or charities from speaking out on

any issue. They can speak about all the hot button issues of the day. They can lobby the government. In fact, a group of 99 religious and denominational organizations recently sent a letter to congressional leadership explaining that they are currently able to, and I quote, 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.

I'd ask unanimous consent that the letter written by 99 religious and denominational organizations be entered into the hearing record.

Mr. JORDAN. Without objection, so ordered.

Mr. KRISHNAMOORTHI. In other words, current law does not restrain the freedom of speech of houses of worship. However, and this is important, current law does prohibit fat cat political spenders from laundering their contributions through churches and nonprofits and getting a tax deduction to boot, but that is what some in this room want to do. They want to funnel dark money into the political system through churches. In short, this hearing is about money, not speech, pure and simple.

Over 1,000 national and State nonprofit organizations wrote a letter to Congress saying that current law, quote, shields the entire 501(c)(3) community against the rancor of partisan politics so the charitable community can be a safe haven where individuals of all beliefs come together to solve community problems free from partisan divisions.

It screens out doubts and suspicions regarding ulterior partisan motives of charitable organizations, as undoubtedly would occur if even just a few charitable organizations engaged in partisan politics.

I'd ask unanimous consent that the letter written to us by nonprofit organizations be entered into the hearing record.

Mr. JORDAN. Without objection, so ordered.

Mr. KRISHNAMOORTHI. Given that nonprofit organizations, including charities, churches, and other houses of worship support existing law, which prevents churches and charities from becoming politicized, why would anyone want to alter the existing law? The answer? To extend the avenues through which dark money can flow into political campaigns. That is what this hearing is really about. The consequences would be severe.

According to the nonprofit's letter, allowing political money into churches and nonprofits would, and I quote, damage the integrity and effectiveness of all charitable organizations, and spawn litigation as innovative partisans seek to expand gray areas in the proposed legislation.

In addition, the proposal, I quote, would damage the Federal Treasury as people take tax deductions for political contributions they could then funnel through charitable nonprofits, undercut fair elections by providing a loophole to avoid campaign contribution

disclosure laws, and empower politicians to exert pressure for access to charitable foundation assets and charitable funds for their own partisan campaigns rather than the public good.

So today's hearing is not about free speech, it is about a plan to inject more dark money in politics through churches and nonprofit organizations. This is a very, very bad idea. It will have a corrosive effect on the churches that become super-PACs and passthroughs for these campaign contributions and it will further corrode our democracy.

Thank you, Mr. Chairman. I yield back.

Mr. JORDAN. I thank the gentleman.

I now recognize the chairman the Subcommittee on Government Operations, the gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. I thank the chairman. I thank him for his leadership. I thank all of you for being here.

Rabbi, it's good to have you back, I guess, in your nonofficial capacity, but it's great to have you back as well.

I couldn't disagree more with the ranking member in terms of the intent. You know, when we look at this particular issue, it's about making sure that the churches have no voice at all. And if we do not address it, the way that it goes, and many of you can speak to this far more eloquently than I can. But this is not about dark money. This is not about anything other than free speech and making sure that what has historically been the moral compass of this country from its very founding continues to be the voice for the American people, and so I would disagree with the characterization that is there.

As we look at this, I look forward to hearing your expert testimony. And I'm going to yield the balance of my time to the gentleman from Georgia, Mr. Hice.

Mr. HICE. Thank you very much, Chairman Meadows and Chairman Jordan for having this joint hearing today. This is a critically important topic. It has to do with the Federal Tax Code and the prohibitions therein directed towards 501(c)(3), organizations including churches and nonprofits and charitable organizations, from engaging in any political speech. It's been referred to as the Johnson amendment.

As the chairman referred to earlier, this amendment is an accident in our Nation's history. It came about, even under the full admission of the IRS, as an attempt to get back to the opposition of a legislator. That's where this came from, and it has been used now for over 60 years as a bully stick to intimidate churches and charitable organizations into silence.

Most of us are not aware of the selfish motive behind this amendment. Most people probably think that this is part of our Tax Code because it's rooted in the Jeffersonian principle of separation of church and State, but that's not where it came from. While it's true that our founders believed that our country should not establish a national church, they did establish the First Amendment, which prohibits any law from curbing the free exercise of religion, which has as its core the freedom of speech.

So let's agree that even if the Jeffersonian wall exists, which today is, in my opinion, widely misinterpreted and misapplied, but

even if that wall exists, it works both ways. When government acts as the gatekeeper of speech, there is no free speech.

The IRS should not be allowed to violate the Constitution. And for over 60 years now, they have done just that by being the gatekeeper, unfairly targeting pastors, churches, nonprofits, et cetera, with the tax exempt status of those organizations being used as leverage to get these organizations not to speak on certain issues.

Prior to being a Member of Congress, I was a pastor. I know full well the extent to which the intimidation and the cloud of doubt that is laid over our heads on this issue censors so many individuals from being engaged. And not only is this whole thing unconstitutional, but the Johnson amendment itself is extremely vague, which results in many people and organizations just censoring themselves right out of any involvement.

And our system of government does not work without involvement of the people, and yet the Johnson amendment has such a chilling effect, through fear and intimidation from IRS threats, even the U.S. Supreme Court acknowledged the harm that is produced by the vagueness of this law. And they stated in Virginia v. Hicks that many persons will choose simply to abstain from protected speech, harming not only themselves, but society as a whole, and that is indeed what has happened. A church's mission is undercut, not improved, when the IRS or the government comes in and begins editing what can and cannot be said.

So let me be very clear on my final point, Mr. Chairman. Politicians should not get a free pass when it comes to moral scrutiny, and that takes place largely as people have the freedom to express their opinions and to weigh that scrutiny up to their religious beliefs.

The absence of the Johnson amendment does not mandate nor certainly license or allow a church to become a political action committee. The issue plainly is the choice to speak according to the dictates and convictions of one's heart without interference, or threat, or punishment, or harassment from our government.

To speak the conscience of an issue, especially in its relationship to the exercise of religion, is a cherished belief and foundation that we share as Americans, and it's simply not the role of government to police speech.

While this is not a legislative hearing, it is for these reasons that Majority Whip Steve Scalise and I introduced H.R. 781, the Free Speech Fairness Act, which would provide a carve-out to the Johnson amendment and allow 501(c)(3) organizations to engage in political discourse in the normal course of business with de minimus associated expenses.

And while I greatly appreciate the President's executive order today directed to the Department of the Treasury and Justice on the Johnson amendment, I believe it's time that we rid our Nation of this unconstitutional law by way of legislative action.

And with that, I look forward to this hearing. Thank you for being here today. And I yield back.

Mr. JORDAN. I thank the gentleman.

I thank Mr. Meadows as well and Mr. Hice and—Congressman Hice for his leadership on this issue for a number of years and his involvement with this particular issue.

I now recognize the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. I'm sure the title of this hearing, Examining a Church's Right to Free Speech, didn't mean to exclude my Hindu colleague next to me or my Jewish colleague in front of me, Mr. Raskin, I'm sure it was just an oversight, because we're not just talking about churches.

I'm a Roman Catholic. I studied for the priesthood too, Mr. Hice, and my church is protected by this amendment. Your church wasn't accused of being a foreign entity or having allegiance to a foreign leader. Mine was. Your church has never been questioned in America about whether someone was qualified to be President of the United States. Mine was.

We've suffered the sting of prejudice, religious prejudice. And, frankly, if we'd been seen as a political agent, that prejudice would have magnified exponentially. So I have a different point of view based on my own experience growing up in Irish Catholic Boston as a kid at 10 years old having to read a headline in Time Magazine and Newsweek Magazine asking the question, can a Catholic be President, meaning, our loyalty was subject to question. And that gentleman who became President had to go down to Texas and defend himself in front of a group of protestant ministers. I don't want to return to that era. If people want to express themselves morally, great.

There's no evidence proving that any houses of worship are unable to exercise free speech or that any member of a house of worship, including clergy, aren't able to speak freely on any social and moral issue they want to address. In fact, we hear a lot from them.

Certainly Ms. Ancalle, if I'm pronouncing your name, right, I've been with Tony Perkins on a platform. He didn't seem inhibited to me. In fact, despite what the misleading title of today's hearing is meant to suggest, the issue is not one of free speech.

Under current law, churches and other houses of worship can speak freely and engage in partisan political activity. That's under current law. This hearing is not about free speech, it's about money. Under current law, churches do not pay taxes. Individuals who donate can claim deductions for their donations. Churches do not have to reveal publicly who they are.

If the Johnson amendment were to be repealed, as some are suggesting, 501(c)(3) tax exempt entities and their contributors would apparently be allowed to participate in political campaigns with tax deductible donations. Under their new status, America would have more than 340,000 new political action committees.

The new PACs that self-identify those houses of worship could maintain the anonymity of their donors, and the size of each donor's contribution would remain a secret. The repeal of the Johnson amendment would not change the tax deductibility of donations of houses of worship. This means taxpayers would be subsidizing partisan political contributions. In other words, my colleagues are proposing to allow tax deductions now for those political contributions.

Congress has examined this issue before, and ultimately decided to rescind the tax deductibility of political contributions. That was during the Reagan years. Under Republican proposals, billionaires like Sheldon Adelson or the Koch brothers could give unlimited contributions to houses of worship to be directed toward their fa-

vorite candidates, and democratic-leaning donors could do the same for Democrats, and all those billionaires could claim tax deductions for their political contributions, what they cannot do now.

Of course, this would also put the ministers and leaders of houses of worship, I think, in untenable positions, because now they're not seen as moral men or women of faith, they're seen as political directors, partisan political directors. And I think in the long-run, be careful what you ask. That will undermine religion in America in terms of confidence of the public.

They would be clergy members and simultaneously treasures of PACs, they would be faith leaders and political operatives soliciting and maintaining and distributing millions of dollars to political campaigns. How would clergy members balance these competing roles and how would churches, mosques, temples, synagogues, meeting houses, and cathedrals balance their members' interests in questions of faith and questions of campaign donations?

Would they self-select into Republican and Democratic houses of worship so you know if this denomination is speaking, it is a Republican, and if this one's speaking, it is a Democrat? That's what happened in the Civil War, and it took 100 years to heal those wounds.

What we're really discussing is opening the floodgates to allow the flow of unlimited amounts of tax deductible money from anonymous donors into political campaigns to houses of worship and diluting the mission and purpose of those religious institutions all under the guise of free speech. I believe we should keep those floodgates firmly closed. According to a February 2017 Pew Research study, thousands of houses of worship as well as the public at large agree.

Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

I want to thank you. And we'll hold the record open for 5 legislative days for members who would like to submit a written statement.

Let's now turn to our panel of witnesses. Again, I want to thank you all for being here this morning, and I'm pleased to welcome Ms. Ancalle.

Ms. ANCALLE. Ancalle.

Mr. JORDAN. Ancalle. All right. General counsel for the Family Research Council. Thank you for being with us.

We have Ms. Catherine Engelbrecht for citizens—a citizen of Cat Spring, Texas.

And we have Ms. Christina Holcomb, legal counsel for the Alliance Defending Freedom.

And we have Rabbi David Saperstein, former director and counsel of Religious Action Center.

Welcome to you all.

And pursuant to committee rules, I'd like you to now stand, raise your right hand. We'd have to swear you in, and then we'll get right to our testimony.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show that each of our witnesses answered in the affirmative.

And let's go to Ms. Ancalle. You you're familiar how it works? You get 5 minutes, more or less; prefer a little let, but that's fine. You take your 5 if you want, and then we'll move right down the dais there.

WITNESS STATEMENTS

STATEMENT OF MANDI ANCALLE

Ms. ANCALLE. Chairman Jordan and members of the subcommittee, thank you for convening this hearing regarding the importance of protecting free speech rights of churches and other nonprofit organizations and their leaders.

Churches and other 501(c)(3) organizations have important roles in society: helping the sick, feeding the poor, counseling the downtrodden, ministering to people in need. Because of their special role in society, they are tax exempt.

For almost 200 years, their work and tax exempt status did not compromise their ability to speak freely about political candidates and issues; that is, until 1954, when then Senator Lyndon Johnson used his political power to weaken organizations politically opposed to him by conditioning nonprofit organizations' tax exempt status on their remaining silent on political candidates.

The Johnson amendment bars 501(c)(3) organizations from, quote, participating in or intervening in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office.

Since its passage, the Johnson amendment has been used to muzzle and censor pastors and leaders of nonprofit organizations and to chill the political speech of tax exempt organizations, religious and nonreligious, on both sides of the aisle in a variety of ways. No one knows precisely what spoken or written comments on a candidate will draw an investigation by the IRS. This vagueness chills free speech.

In 2005, All Saints Episcopal Church in California received a letter from the IRS, because in 2004, a pastor there criticized President George Bush and the Iraq war. After 2 years of investigation, in 2007, the IRS closed the case without revoking the IRS tax exempt letter, but indicated it thought the pastor's statements violated the law. I should note that FRC strongly opposed the Bush administration's targeting of All Saints Episcopal Church.

In addition, the IRS has a history of enforcing the law in cases only to later refund the penalty paid by the tax exempt organization. For example, in 2004, an organization called Catholic Answers posted two E–Letters questioning whether then presidential candidate John Kerry, also a Catholic, should present himself for Holy communion, because of his position on abortion. The IRS investigated the comments and imposed excise taxes against the organization. However, the IRS later refunded the tax with interest, finding the organization's political activity was, quote, not willful and flagrant.

This inconsistency causes confusion for tax exempt organizations, is a wasteful use of IRS resources, and is why 501(c)(3) nonprofit

organizations should be able to engage in low cost political communications free from the threat of government prosecutions and harassment.

Pastors have historically been heavily involved in political matters. Since the birth of our Nation, pastors and churches have been at the forefront of shaping public debate and voters' choices regarding their public servants. This began in 1776 with the black robe regiment of pastors, who also served as militarily leaders, and was forged during the desegregation movement when pastors like Dr. Martin Luther King, Jr., spoke out forcefully from the pulpit on political matters.

Now, some pastors and organizational leaders may favor the Johnson amendment. However, these pastors currently have the freedom to operate how they see fit. It is pastors who wish to make political campaign statements who are being muzzled. Pastors and nonprofit leaders who wish to speak out about political candidates should be free do so. It is imperative that the free speech rights of pastors and nonprofit leaders be restored.

In order to restore the First Amendment free speech rights of nonprofit organizations, including churches, it is necessary for Congress to act. February 1 of this year, Senator Lankford and Representatives Scalise and Hice reintroduced the Free Speech Fairness Act to roll back the unconstitutional impact of the Johnson amendment while still preventing churches from becoming about the money or political action committees.

The Free Speech Fairness Act amends the Johnson amendment to allow for political campaign speech that is made in the ordinary course of a 501(c)(3) organization's regular and customary activities, so long as the activities carry out the tax exempt organization's purpose and so long as the organization does not incur more than de minimus incremental costs or trivial costs for the activity.

Amending the Johnson amendment in this way will allow 501(c)(3) organizations, religious and nonreligious, conservative and liberal, and regardless of their organizational mission, breathing room to communicate about candidates for public office. At the same time, the law will continue to prevent tax exempt organizations from financing a candidate or buying political advertisements to get the candidate elected.

Doing good in society should not engender a muzzle and the political speech rights of churches and nonprofit leaders should be restored by rolling back the Johnson amendment through the Free Speech Fairness Act.

Thank you.

[Prepared statement of Ms. Ancalle follows:]

ADVANCING FAITH, FAMILY AND FREEDOM

Written Statement of Mandi Ancalle

Submitted to the Oversight Subcommittee on Health Care, Benefits, and Administrative Rules

May 4, 2017

Hearing on Rights of Churches to Free Speech

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Introduction

Chairman Jordan and Members of the Sub-Committee: Thank you for convening this hearing regarding the importance of protecting the free speech rights of churches and other not-for-profit organizations and their leaders.

Churches and other non-profit organizations have important roles in society – helping the sick, feeding the poor, counseling the down-trodden – ministering to people in need. Because of their special role in society, they are tax exempt. For almost two hundred years, their work and non-profit status did not compromise their ability to speak freely about political candidates and issues. That is until 1954, when then-Senator Lyndon Johnson used his political power to weaken organizations politically opposed to him by conditioning non-profit organizations' tax-exempt status on their remaining silent on political candidates.

The Johnson Amendment, Section 501(c)(3) bars "[c]orporations… organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Since its passage, the Johnson Amendment has been used to muzzle and censor pastors and leaders of non-profit organizations and to chill the political speech of tax-exempt organizations, religious and nonreligious, on both sides of the aisle.

Thus, in order to restore the First Amendment free speech rights of non-profit organizations, including churches, it is necessary for Congress to permit 501(c)(3) organizations to make statements regarding political campaigns (which may urge the election or defeat of a candidate) in the ordinary course of the non-profit's regular and customary activities, as it carries out its tax exempt purpose, so long as the non-profit does not incur more than minimal costs in making the statement.

Background

The First Amendment to the U.S. Constitution provides in part, "Congress shall make no law… abridging the freedom of speech." While courts have determined over the years that this right is not absolute, the spirit of the amendment affirms the participation of all persons in political discourse, even pastors and leaders of non-profit organizations. The Johnson Amendment undermines the First Amendment rights of pastors and other non-profits in a variety of ways: IRS guidance is vague and fails to clearly establish what speech violates the law, the law is selectively enforced, and the law is enforced and then that enforcement is rescinded.

The vagueness of the IRS guidance is clear through IRS regulations which state, "[c]ertain activities or expenditures may not be prohibited depending on the facts and circumstances," underscoring that no one knows precisely what kind of spoken or written comment on a candidate will draw the attention of the IRS. This vagueness chills free speech. For example, a non-profit organization focused on environmental issues, and that regularly publishes a newsletter on conservation projects, may want to briefly highlight a candidate's efforts in connection with a conservation effort. But if the entity does not know if its statement will cause

the IRS to withdraw its tax-exempt status, it will err on the side of caution and self-censor. This is unfortunate because many tax-exempt organizations have much to contribute to the public policy debate in their areas of expertise. Moreover, to this day, the IRS has remained secretive about "new procedures" it has adopted to monitor churches' political involvement.

In addition to the vague guidance, the IRS has secret rules for investigating churches, rules that were developed in a legal settlement the IRS made with an atheist group. These secret rules have reportedly been applied in almost one hundred investigations the IRS has initiated in response to a program led by Alliance Defending Freedom and championed by Family Research Council called "Pulpit Freedom Sunday," which encourages pastors to speak from the pulpit on political matters and political candidates. Despite churches being investigated for their sermons, the IRS has not withdrawn the tax-exempt status of these churches. Whether that is due to the IRS being frightened by the public perception of prosecuting churches, or because the agency knows the Johnson Amendment is unconstitutional when applied in this context, is unclear. Either way, the chilling effect of the Johnson Amendment is unconstitutional and requires a legislative fix from Congress.

The stifling effect of the Johnson Amendment is exacerbated by the fact that some activist organizations rely on the Johnson Amendment in letters to churches warning of impending doom at the hands of the IRS if they make political statements that violate their 501(c)(3) requirements. These activist organizations have also reported churches to the IRS, which have led to investigations by the IRS that can overwhelm the administrative staff of small churches, even though the IRS has not ultimately revoked the church's tax-exempt status. These types of IRS actions also chill the speech of pastors. In fact, in 2005, All Saints Episcopal Church, in California, received a letter from the IRS because in 2004, a pastor there criticized President George Bush and the Iraq war. After two years of investigation, in 2007, the IRS closed the case without revoking the IRS letter, but indicated it thought the pastors' statements violated the law. The Johnson Amendment may not have been intended to suppress pulpit speech when it was passed, but it certainly has the unfortunate effect of being used in this way today.

The IRS has also selectively enforced the law, targeting certain non-profit organizations while ignoring others who engage in similar behavior, causing significant confusion regarding how the Johnson Amendment will be applied. The IRS also has a history of enforcing the law in cases, only to later refund the penalty paid by the tax-exempt organization. For example, in 2004, a charity called Catholic Answers posted two e-letters questioning whether then-presidential candidate John Kerry, also a Catholic, should present himself for Holy Communion because of his support for abortion. After investigating, the IRS imposed excise taxes against the church. However, the IRS later refunded the assessment, with interest, finding the church's political activity was not "willful and flagrant." The IRS similarly initiated an investigation of the NAACP after its chairman gave one speech that included negative commentary on George W. Bush's presidential candidacy. The investigation concluded with the IRS issuing a tax against the NAACP. While the IRS subsequently closed the investigation and refunded the excise tax the NAACP paid, the organization was dragged through an unnecessary two-year investigation. The fact that the IRS would spend resources on such investigations, and impose penalties against churches and non-profits, only to refund them later, causes confusion for tax-exempt organizations and is a wasteful use of IRS resources. Churches and non-profits are forced to

spend their limited resources complying with and defending against IRS inquiries into alleged violations of the Johnson Amendment. The IRS's enforcement of the Johnson Amendment is unjust and inequitable. All 501(c)(3) nonprofit organizations, religious and otherwise, should be able to engage in low-cost political communications free from the threat of government prosecution or harassment.

Pastors' Historical Involvement in Politics

Pastors have historically been heavily involved in political matters. Since the birth of our nation, pastors and churches have been at the forefront of shaping public debate and voters' choices regarding their public servants. This began in 1776 with the Black Robe Regiment of pastors who also served as military leaders. One such pastor and service member, Peter Muhlenberg said, "I am a clergyman it is true, but I am a member of the society as well as the poorest layman, and my liberty is as dear to me as any man." His brother, Frederick Augustus Muhlenberg, also a minister of the gospel, was elected as the first Speaker of the US House of Representatives in 1789. In fact, the Bill of Rights, which guarantees our First Amendment freedoms of religion and speech, bears just four signatures: the clerk of the House of Representatives, the Secretary of the Senate, John Adams, Vice President of the United States and President of the Senate, and Frederick Muhlenberg, Speaker of the House of Representatives.

The participation of pastors in political movements was also forged during the desegregation movement when Dr. Martin Luther King, Jr., and others spoke out forcefully from the pulpit on political matters. Dr. King once wrote, " The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, never its tool." Requiring churches and non-profit organizations to choose between their tax-exempt status and political speech relegates the church to a servant of the state. We must ask ourselves, what would America look like today had the Black Robe Regiment, Dr. King, or the likes of Rev. Lyman Beecher, a leading abolitionist, been muzzled by the IRS? It is imperative that the speech rights of pastors and non-profit leaders be restored.

Free Speech Fairness Act

February 1, 2017, Senator James Lankford (R-Okla.) and Congressmen Steve Scalise (R-La.) and Jody Hice (R-Ga.) introduced the Free Speech Fairness Act (S. 264, H.R. 781) in order to roll back the unconstitutional impact of the Johnson Amendment, while preventing churches from becoming political action committees or lobbying organizations. The Free Speech Fairness Act amends the Johnson Amendment to allow for political activity that is made in the ordinary course of a 501(c)(3) organization's regular and customary activities, so long as the activities carry out the organization's tax exempt purpose, and so long as the organization does not incur more than de minimis incremental costs, or minimal costs, for the activity.

Amending the Johnson Amendment in this way will allow all 501(c)(3) organizations breathing room to communicate about how candidates for public office have addressed issues important to the non-profit organization. At the same time, the law will continue to prevent tax-exempt

organizations from financing a candidate or buying political advertisements to get the candidate elected. These protections are extended to all 501(c)(3) organizations, religious and non-religious, conservative and liberal, and regardless of their organizational mission. These changes are not only a win for churches and other tax-exempt organizations, but also for all people who want an educated electorate. The Free Speech Fairness Act is a win for voters as a whole.

Why Should the Free Speech Fairness Act Apply Beyond Churches?

While churches need protections, other 501(c)(3) organizations also need speech protections, as it is impractical to parse protections for churches and their integrated auxiliaries and conventions, from other non-profits. In fact, many of the radio stations and television broadcasting organizations that air the sermons of pastors are non-profit organizations that would not qualify as a church-affiliated organization, and would not receive protection if the legislation only protect churches. Thus, these organizations would not be permitted to air sermons in their entirety, but would have to censor sermons of pastors if they were to mention political candidates. This would have the effect of continuing to chill the speech of pastors whose sermons are broadcast through other non-profit organizations. In addition, it is inequitable, and perhaps even unconstitutional, to allow churches and their integrated auxiliaries to engage in some political campaign activities without also allowing other religious ministries and secular 501(c)(3) charities to do the same. Thus, the speech of all non-profits should be liberated through the Free Speech Fairness Act.

Churches and Non-Profit Leaders Disinterested in Political Speech

How and whether a particular pastor or non-profit leader engages in political speech on behalf of or in opposition to a particular political candidate is not the focus of the Free Speech Fairness Act and should not be the focus of this hearing. Rather, the focus should be ensuring the law does not prohibit speech protected by the Constitution. Pastors and non-profit leaders who wish to speak about political candidates should be free to do so, even though some may elect to abstain from such engagement. The government allowing the type of speech that was permitted for almost two hundred years, before the passage of the Johnson Amendment, does not effectuate a requirement that non-profit entities engage in political speech. The Free Speech Fairness Act simply provides a safe space for pastors and other non-profit leaders to speak, without the fear of being harassed, singled out for discriminatory treatment, or losing their tax-exempt status, and thus, their ability to operate.

Conclusion

Penalizing pastors and leaders of other 501(c)(3) organizations, and muzzling them because of their non-profit status, is likely an unconstitutional restriction on speech. At the very least, it is a problematic censoring of the speech that affects the religious and non-religious alike, and ultimately, the very fabric of American culture and politics. Doing good in society, whether as a church, a homeless shelter, a refugee resettlement organization, or any other charitable, religious, educational, or similar 501(c)(3) organizations, should not engender a muzzle, and the political speech rights of churches and non-profit leaders should be restored. While Congress and the Administration has much more work to do to restore religious liberty for Americans, addressing

the Johnson Amendment's stifling of free speech is an essential component of restoring a robust understanding of American's First Amendment freedoms.

FAMILY RESEARCH COUNCIL
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Mr. JORDAN. Thank you so much.

Ms. Engelbrecht, you're recognized for your 5 minutes.

STATEMENT OF CATHERINE ENGELBRECHT

Ms. ENGELBRECHT. Thank you. Good morning, Mr. Chairman and members of the committee. My name is Catherine Engelbrecht, citizen of Cat Spring, Texas. I am also the founder of True the Vote, a national 501(c)(3) organization dedicated to the advancement of voters' rights and election integrity.

Given that the topic for today's hearing is Examining the Church's Right to Free Speech, I particularly thank you for the invitation to participate, because although I am A Christian, I am not here to speak on behalf of the church. As it happens, religious organizations and charitable organizations, like True the Vote, share the same nonprofit class designation, which means we are held to the same standard in the eyes of the IRS.

So that is what brings me to this chamber, to share the story of my experiences with the Internal Revenue Service, an agency that I have found to be so emboldened through the years of partisan exploitation, that it now presumes itself to be America's arbiter of free speech.

So in 2010, I filed a 501(c)(3) nonprofit application with the IRS on behalf of True the Vote. Since that filing, my private businesses, my nonprofit organization, and I personally have been subjected to more than 15 instances of audit, inquiry, or investigation by Federal agencies, including the IRS, OSHA, the ATF, and the FBI. These inquisitions began only after my filing of True the Vote's application for tax exemption, an act that unwittingly put me and my organization on the radical radar of a political machine that seemed to place its own survival above the rights of its citizens.

Politicians have long used the IRS to intimidate their enemies, and an entrenched agency bureaucrat is all too willing to play the enforcer. So it is now, and so it was in 1954 when the Johnson amendment became part of the IRS revenue code.

Today, abetted by the Johnson amendment, the IRS can and does dictate who can speak, what they can say, and to whom they can say it. Under the current code, if your 501(c)(3) organization operates to further purposes of religion or charity or science or education, then this vaguely worded passage baked into a 46,000-page Federal code lays in wait for you to muzzle you and to rescind your nonprofit status should you say something that the government doesn't like.

In my case, the IRS sought to control my organization's speech from the outset even before they had given us our 501(c)(3) tax designation. In a letter dated February 8, 2012, one of the many letters we received from the IRS over nearly 3 years of our inextricably protracted application process, the IRS commanded True the Vote to submit the time, date, location, and to whom we would be delivering detailed contents of speeches for all events, all events that we had held since the inception of the organization and for every future event to be held over the next 2 years.

They said that this information was necessary in order to complete their consideration of our application for exemption. It was necessary, in their view, to examine everything we had ever said

and to control everything we had yet to say. We declined to comply, and in return, our exemption was withheld for another year and a half.

Finally, we had no choice but to file a lawsuit against the IRS in the hopes of bringing an end to the abuse. This battle has now gone on for 7 very long years, and it continues to this day. In fact, just 3 weeks ago, my attorney and I went back into court to face 21 IRS attorneys and staffers, who in legion continued to argue that they've done nothing wrong.

And that is why the Johnson amendment must be repealed, and by extension, why the Tax Code must be overhauled, because bureaucrats must be stripped of their deluded belief that they are sovereign, because they are not.

An American citizen's right to free speech is immutable. Tax exempt status cannot be given or taken away in exchange for that right. That's not how the Constitution should work.

True the Vote's story is a clear example of how the Johnson amendment purposely was used to silence opposition, but make no mistake, we are one of many who live with this ever present threat. It's the reason nonprofits across this country are fast becoming endangered species. They are fearful of organizing. People are scared of their government, and that is just what the autocratic deep state wants. Freedom is anathema to a government body that operates with impunity outside of our representative system.

And so my recommendations to you are these. First, repeal the Johnson amendment, and do not replace it. Any replacement is only an opportunity to create more confusing loopholes.

Next, amend the tax code to include a policy which clearly and unquestionably prohibits viewpoint discrimination, and holds accountable any government employee or contractor who violates that policy. Make it known that the old ways have come to an end.

Free speech must be preserved. It's worth testifying to, it's worth fighting for, because in the end, this is all about liberty, and it is never wrong to return liberty to the people.

Thank you, Mr. Chairman.

[Prepared statement of Ms. Engelbrecht follows:]

Testimony of Catherine Engelbrecht
Presented on May 4, 2017
to the
Subcommittee on Health Care, Benefits, and Administrative Rules of the
Committee on Oversight and Government Reform

Good morning, Mr. Chairman and Members of the Committee. My name is Catherine Engelbrecht. I am the founder of True the Vote, a national 501(c)3 organization dedicated to the advancement of voters' rights and election integrity.

The stated topic for today's hearing is "Examining a Church's Right to Free Speech," so I thank you for the invitation to participate, because, though I am a Christian, I am not here to speak on behalf of religious organizations. As it happens, religious organizations and charitable organizations like True the Vote share the same non-profit class designation, so that is what brings me to this chamber; to share the story of my experiences with the Internal Revenue Service, an agency so emboldened through years of partisan exploitation that now it presumes itself to be America's arbiter of free speech. In fact, it concerns me that we should need to examine any American's right to free speech. Free speech is a Constitutional right. Not a privilege. It cannot be taken away, and those who try will, ultimately, always fail.

In 2010, I filed a 501c3 non-profit application with the IRS on behalf of True the Vote. Since that filing, my private businesses, my nonprofit organizations, and I, personally, have been subjected to more than fifteen instances of audit, inquiry, or investigation by federal agencies, including IRS, OSHA, ATF, and the FBI. These inquisitions began only after my filing of True the Vote's application for tax-exemption, an act that unwittingly put both my organization and me on the radical radar of a political machine that places its own survival above the rights of its citizens.

Politicians have long used the IRS to intimidate their enemies. Entrenched agency bureaucrats are their all-too-willing enforcers. So it is now, and so it was in 1954 when the Johnson Amendment became part of the IRS Revenue Code. Today, abetted by the Johnson Amendment, the IRS can and does dictate who can speak, what they can say, and to whom they can say it.

Under the current code, if your 501c3 organization is operated to further the purposes of religion, charity, science, or education, then this vaguely worded passage, baked into a 46,000 page federal tax code, is laying in wait for you, to muzzle you and rescind your non-profit status, should you say something the government does not like.

In my case, the IRS sought to control my organization's speech from the outset, even before they had given us our 501c3 tax-exempt designation. In a letter dated February 8, 2012, one of many letters we received over nearly three years, the IRS commanded True the Vote to submit the time, date, location, and detailed contents of speeches

for all events held since the inception of the organization and for every future event to be held for the next two years. This information was, they explained, necessary in order to complete their consideration of our application for exemption.

We declined to comply and our exemption was withheld for another year and a half. Finally, we had no choice but to file a lawsuit against them. My fight with the IRS has gone on for seven very long years and continues to this day. Just two weeks ago my attorney and I were in court with twenty-one IRS attorneys and staffers, who in legion argued that they've done nothing wrong.

This is why the Johnson Amendment must be repealed and by extension why the tax code must be overhauled. Bureaucrats must be stripped of their deluded belief that they are sovereign. They are not.

Tax-exempt status cannot be granted or revoked in exchange for our rights. That's not how our Constitution works.

True the Vote's story is a clear example of how the Johnson Amendment is purposely used to silence opposition ... but make no mistake, we are one of many who live with this ever-present threat. It's the reason non-profits across this country are fast becoming an endangered species. They are fearful of organizing. People are scared of their government. And that is just what the autocratic deep state wants. Freedom is anathema to a government body that operates with impunity outside our representative system.

My recommendations to you are these: First, repeal the Johnson Amendment and do not replace it. Any replacement is only an opportunity to create more confusing loopholes.

Next, amend the tax code to include a policy which clearly and unquestionably prohibits viewpoint discrimination and holds accountable any government employee or contractor who violates that policy.

Make it known that the old ways have come to an end.

Free speech must be preserved. It's worth testifying to; it's worth fighting for. This is about liberty and it is never wrong to return liberty to the people.

Thank you again for this opportunity.

Mr. JORDAN. Well said. Thank you, Ms. Engelbrecht.

Ms. Holcomb.

We're going to try—they just called votes, but I think we can get through the next—our next two witnesses and then get to votes.

STATEMENT OF CHRISTIANA HOLCOMB

Ms. HOLCOMB. All right. Mr. Chairman——

Mr. JORDAN. Hit that button.

Ms. HOLCOMB. Excuse me. Let's try this again.

Mr. Chairman and members of the committee, for the first 200 years of our Nation's history, America's churches enjoyed their right to free speech. They guided their people on the important issues of their day, religious, cultural, and, yes, even political. They applied scripture to every aspect of life, including candidates and elections.

But since 1954, that right has been denied to America's churches. With one last-minute amendment, one voice vote, and one stroke of the pen, the church's voice was silenced, and instead, one of the most powerful and unaccountable bureaucracies in the Federal Government, the IRS, was given the authority to censor the church.

For over 60 years, the Johnson amendment has caused pastors to chill their speech. They're fearful. They want to faithfully preach the whole council of God, but don't want to risk intrusive IRS audits, crippling financial penalties, and even their church's tax exempt status, so they stay silent.

Alliance Defending Freedom has been involved in the effort to free the pulpit from IRS censorship for nearly a decade now. We've concluded that not only does the Johnson amendment harm real people, real churches, but it violates the Constitution as well, and I want to highlight just two of those constitutional violations.

First, the Johnson amendment is unconstitutionally vague. No one, including tax experts, legal experts, and certainly not busy pastors, know with any real certainty where the boundaries of that law are. Of course, explicit candidate endorsements are prohibited, but as explained in greater detail in my written testimony, just about anything beyond that is a mystery.

The IRS guidance on this issue is increasingly vague and confusing. And to make a bad situation worse, IRS enforcement has been sporadic and inconsistent. Some churches openly endorse or oppose political candidates, and the IRS says nothing. Other churches make a passing reference to how Jesus might view a particular policy issue, and they trigger IRS harassment and audits. The Constitution requires that its citizens be reasonably informed of what the law requires, and the Johnson amendment fails this standard abysmally.

Second, the Johnson amendment violates free speech. Churches have a right to speak freely without fearing government censorship. No one surrenders their constitutional rights simply by walking through the church doors, and no church should be forced to surrender its free speech in exchange for a tax status.

The IRS has been transformed into the speech police, censoring even what a pastor preaches from the pulpit. For example, as my colleague mentioned earlier, a pastor at All Saints Episcopal

Church in Pasadena, California, preached a sermon that included critiques of the President's policies, based on that minister's deeply held religious convictions. The IRS pounced and started harassing the church with an investigation, forcing that church to hire tax attorneys to defend itself.

But then after nearly 2 years of this ordeal, the IRS abruptly closed out the file without explanation. It left the church with no greater clarity on the legal boundaries of the law than when the whole ordeal started. All of this has resulted in pervasive chill and self-censorship among America's churches, in violation of their right to free speech.

In conclusion, the status quo is untenable, and America's churches are looking to you, their elected Representatives, for help. We cannot leave this to the judicial branch to resolve. No court has yet ruled on the constitutionality of the Johnson amendment's application to a pastor's sermon, likely because Federal law allows the IRS to control when and with whom and how it gets into Federal court.

Since 2008, Alliance Defending Freedom has encouraged a legal challenge to the Johnson amendment through our Pulpit Initiative, but the IRS has refused. So it's time for Congress to act.

The Free Speech Fairness Act is the best solution that we at Alliance Defending Freedom have seen to these constitutional problems. The bill creates a much needed relief valve for free speech, it allows churches to once again speak as they would in the ordinary course of their ministries without fearing IRS retribution, and such a legislative fix would allow America's churches to once more guide their congregations, as the Constitution permits and as their religious beliefs require.

Thank you.

[Prepared statement of Ms. Holcomb follows:]

Testimony
Before the United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Health Care, Benefits, and Administrative Rules
Subcommittee on Government Operations

"Examining a Church's Right to Free Speech"

By
Christiana Holcomb, Legal Counsel
Alliance Defending Freedom

May 4, 2017

Testimony of Christiana Holcomb
Examining a Church's Right to Free Speech
May 4, 2017

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify on the important issue of a Church's Right to Free Speech.

For the first 200-plus years of our nation's history, America's churches enjoyed their constitutional right to free speech. They guided and shepherded their people on the important issues of their day—religious, cultural, and, yes, political. They applied Scripture to every aspect of life, including candidates and elections. They were, as Dr. Martin Luther King, Jr., once said, "the conscience of the state." And as a result, churches were at the forefront of some of the most dramatic social and political changes in our nation's history.[1]

But since 1954, that right to free speech has been denied to America's churches. With one last-minute amendment, one voice vote, and one stroke of a pen, the Church's voice was silenced. Her pastors, muzzled. And instead, one of the most powerful and unaccountable bureaucracies in the federal government—the Internal Revenue Service (IRS)—was given the authority to censor churches.

Remarkably, the Johnson Amendment was passed without any consideration of the constitutional rights of churches. Perhaps this can be partly explained by the fact that churches simply were not the amendment's intended target. Then-Senator Lyndon Johnson was looking for a way to silence two secular nonprofits who were jeopardizing his chances for reelection. So he sponsored an amendment to a tax bill designed to shut down his political opponents. And, thus, without debate, without legislative analysis, and without congressional hearings, the Johnson Amendment was enacted into federal law.

Even though churches were not the target of the Johnson Amendment, they have been in its cross-hairs ever since. For over sixty years, the Johnson Amendment has hung like Damocles sword over America's churches. Pastors are fearful. They want to faithfully preach the whole counsel of God and apply Scripture to every aspect of life. But they fear that one misstep could incur intrusive IRS audits, crippling financial penalties, and risk their church's tax-exempt status. These pastors want to be law-abiding citizens, but they are confused about the law's parameters and so they self-censor out of fear of violating the law.

Put simply, the status quo is untenable. And it is time for Congress to act.

Alliance Defending Freedom has been involved in the effort to free the pulpit from IRS censorship for nearly a decade now. As our attorneys reviewed the Johnson Amendment, we came to the conclusion that not only does this tax law harm real people—real churches—but it violates the United States Constitution as well.

I want to highlight just two of those constitutional violations.

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[1] *See, e.g.*, Deirdre Dessingue, *Prohibition in Search of Rationale: What the Tax Code Prohibits; Why; To What End?*, 42 B.C. L. Rev. 903, 923 (2001) (listing national independence, abolition of slavery, gambling, child labor, prostitution, abortion, civil rights, etc.).

I. The Johnson Amendment is unconstitutionally vague and unevenly enforced in violation of the Due Process Clause, leaving churches and legal experts alike to guess at the law's requirements.

The first problem with the Johnson Amendment and its implementing regulations is that no one knows with any certainty what the law requires. The Congressional Research Service, in a 2008 report to Congress on the Johnson Amendment, stated: "The line between what is prohibited and what is permitted can be difficult to discern."[2]

The Johnson Amendment states that Section 501c(3) tax-exempt entities (including churches) may not

> participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.[3]

The law clearly prohibits direct endorsements, that much is certain. But it is anyone's guess what else the law prohibits. After all, what does it mean to "participate in" or "intervene in" a campaign?

Theoretically, the federal agency charged with interpreting and applying this law should have enacted clarifying regulations. But the IRS has only muddied the waters. Over the past sixty years, the IRS has issued what can charitably be described as increasingly vague and confusing guidance.

For example, IRS regulations prohibit directly or *indirectly* participating in or intervening in a campaign for political office.[4] No one knows what exactly Congress meant by participating or intervening in a campaign, but it is far less certain what those activities look like when done "indirectly."

Additionally, the IRS uses a "facts and circumstances test" for evaluating whether a church has violated the Johnson Amendment.[5] In essence, the agency says it will consider all the facts and circumstances of an incident in determining whether it violates the law. Such a method sounds nice in theory, but is a political bludgeon in fact. Federal bureaucrats have the power to apply the law at their own whim, leaving citizens with little clue as to the law's parameters. The IRS refuses to produce clear guidelines that the average person can follow with reasonable certainty, preferring to instead police violations after the fact in an ad hoc manner.

Worse, the IRS has gone so far as to say that a church could violate the Johnson Amendment without even mentioning a candidate by name. It asserts that a nonprofit can "surreptitiously"

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[2] ERIKA LUNDER & L. PAIGE WHITAKER, CONG. RESEARCH SERV. RL 34447, CHURCHES AND CAMPAIGN ACTIVITY: ANALYSIS UNDER TAX AND CAMPAIGN FINANCE LAWS 2 (2008).

[3] 26 U.S.C. § 501(c)(3).

[4] *See* Treas. Reg. 1.501(c)(3)-1(c)(3)(iii).

[5] *See, e.g.*, Rev. Ruling 78-248. Note that this "facts and circumstances" language is also available in the Tax Guide for Churches and Religious Organizations available on the IRS' website.

intervene in a political campaign by using "code words" such as "pro-life," "pro-choice," "conservative," or "liberal."[6]

Complicating matters further is the IRS's vague, sporadic, and inconsistent enforcement of the Johnson Amendment. Some churches openly endorse or oppose candidates for political office, and hear nothing from the IRS. Other churches make a passing reference to how Jesus might have viewed the Iraq war, and trigger a 22-month audit.[7]

Adding to the confusion are a host of legal scholars and tax experts who disagree about the law's boundaries. If the experts cannot decide what the law requires, how can the average citizen or busy pastor discern what conduct is permitted by the law?

Every election cycle, we at Alliance Defending Freedom receive numerous calls from concerned pastors, who are fearful of violating the law and inviting intrusive IRS audits, incurring financial penalties, and even risking their church's tax-exempt status. These pastors want to be law-abiding citizens, they want to honor God by obeying their governing authorities, but they are confused about the law's parameters.

The Johnson Amendment is unconstitutionally vague in violation of the Fourteenth Amendment's due process guarantee. The Fourteenth Amendment requires that citizens be informed with a reasonable degree of certainty of what the law requires so that they can conform their conduct accordingly. As the Supreme Court has noted, "Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone...than if the boundaries of the forbidden areas were clearly marked."[8] But the Johnson Amendment is a black hole. Rather than gaining clarity as the decades roll by, churches have received increasingly vague guidance from the federal agency charged with enforcing the law against them. As a result, churches are in legal limbo, unable to determine what the law proscribes and permits.

II. The Johnson Amendment unconstitutionally authorizes federal bureaucrats to muzzle a church's speech in violation of the Free Speech Clause.

This legal limbo and vagueness fosters an atmosphere of fear among churches who do not want to find themselves in the IRS's crosshairs. This results in pervasive chill and massive self-censorship among America's church leaders. Because when speech restrictions are vague, "[m]any persons...will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas."[9]

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[6] *See* Judith E. Kindell & John F. Reilly, *Election Year Issues*, *in* EXEMPT ORGANIZATIONS CONTINUING PROFESSIONAL EDUCATION TECHNICAL INSTRUCTION PROGRAM FOR FY 1993, at 400, 411 (1992), *available at* www.irs.gov/pub/irs-tege/eotopicn93.pdf.

[7] *See* ERIKA LUNDER & L. PAIGE WHITAKER, CONG. RESEARCH SERV. RL 34447, CHURCHES AND CAMPAIGN ACTIVITY: ANALYSIS UNDER TAX AND CAMPAIGN FINANCE LAWS 9-10 (2008) (discussing All Saints Episcopal Church).

[8] *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal cites and quotation marks omitted).

[9] *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (citation omitted).

Which leads to the second constitutional violation—the Johnson Amendment violates the First Amendment's free speech guarantee.

Churches have a right to speak freely without government censorship. No one surrenders their constitutional rights simply by passing through the church doors. And no church should be forced to surrender its freedom of speech in exchange for a particular tax status.

Imagine if the government required churches to give up their Fourth Amendment right to be secure against unreasonable searches and seizures in exchange for a particular tax status—it would be absurd. Yet the Johnson Amendment demands the equivalent of churches: give up your right to free speech, or the IRS will revoke your tax-exempt status. Yet religious speech is at the core of First Amendment protection,[10] and it is difficult to think of any speech more at the heart of religious speech than that which comes from the pulpit.

Yet even America's pulpits are not sacrosanct. The IRS specifically asserts its right to censor pulpit speech. The IRS's *Tax Guide for Churches and Religious Organizations* includes specific examples of situations that violate the Johnson Amendment, and included within the list is a minister preaching a sermon and endorsing a candidate from the pulpit.[11]

One notorious example of the IRS applying the Johnson Amendment to a pastor's sermon from the pulpit is the 2005 IRS audit of All Saints Episcopal Church in Pasadena, California.[12] A pastor preached a sermon at All Saints entitled "If Jesus Debated Sen. Kerry and President Bush" that included critiques of the president's policies based on that minister's deeply-held religious conviction on the issues. The IRS launched a months-long investigation into the incident, but took no punitive action.

Adding to confusion are advocacy groups that use the Johnson Amendment as a bludgeon to intimidate pastors and churches into silence on all things political. For example, Americans United for Separation of Church and State (AU) is notorious for sending threatening letters to churches each election cycle, warning them against "politicking" and misrepresenting the law's boundaries.[13] This cultivates and exacerbates an atmosphere of fear among churches who then further retreat from fully declaring the whole counsel of God on current cultural issues.

These threats, legal vagueness, inconsistent enforcement, and muzzle on church speech have resulted in a pervasive chill and self-censorship among America's pastors. Pastors want to be law-

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[10] *See, e.g.*, *Capitol Square Rev. & Adv. Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (religious speech, "far from being a First Amendment orphan," enjoys full and robust protection under the Free Speech Clause).

[11] *See* INTERNAL REVENUE SERV., PUB. NO. 1828, TAX GUIDE FOR CHURCHES AND RELIGIOUS ORGANIZATIONS 8 (2009), *available at* https://www.irs.gov/pub/irs-pdf/p1828.pdf (example 4).

[12] *See* ERIKA LUNDER & L. PAIGE WHITAKER, CONG. RESEARCH SERV. RL 34447, CHURCHES AND CAMPAIGN ACTIVITY: ANALYSIS UNDER TAX AND CAMPAIGN FINANCE LAWS 9-10 (2008).

[13] By way of example, one such threatening letter can be found here: https://au.org/files/pdf_documents/14-9-25_ReligiousLeaderLetter.pdf. Alliance Defending Freedom's response to this letter is available here: http://www.adfmedia.org/files/2014ADFAUResponse.pdf.

abiding citizens, but they cannot determine with any certainty the bounds of the law. And as a result, they steer so far away from any remotely political statements that they chill a substantial amount of protected speech in the process.

III. Conclusion

In conclusion, it is time for Congress to act. The status quo is untenable, and America's churches need a legislative fix.

We cannot leave this to the judicial branch to resolve. No court has ever addressed these constitutional questions related to the IRS's ability to monitor and censor what a pastor preaches from the pulpit. And, as you may know, the IRS holds all the cards in determining when it gets into court, how, and with whom. Federal law prohibits anyone from affirmatively suing the IRS outright to contest the Johnson Amendment's constitutionality.[14]

In 2008, Alliance Defending Freedom launched its Pulpit Initiative, designed to encourage pastors to exercise their constitutional freedoms to apply Scripture to every aspect of life—including candidates and elections—and invite the IRS to test the constitutionality of the Johnson Amendment in federal court. Beginning in 2008 with 33 churches, pastors preached sermons about the candidates running for office and made specific recommendations about how the congregation should vote based on their scriptural evaluation. As a courtesy, they then mailed those sermons to the IRS. Each year since, the Pulpit Freedom movement has grown and expanded to thousands of participating churches.

The goal was to trigger an IRS enforcement action so that ADF could then challenge the Johnson Amendment in federal court. In the nine years since this project began, the IRS has not brought any action against a Pulpit Freedom pastor. Only one pastor—of thousands—was briefly harassed and audited, but the IRS later dropped that investigation without penalty. At the conclusion of that ordeal, the pastor commented that he knew no more about what violated the Johnson Amendment than when he started.

So, the untenable status quo continues. The Johnson Amendment has not changed, nor has the IRS guidance. At any given point, the IRS may resume targeting churches. A few years ago, it told one atheist group that it had a list of 99 churches that merited high-priority investigation.[15]

Alliance Defending Freedom's primary concern is to protect the rights of churches. The Johnson Amendment has already done incalculable damage to the constitutional rights of America's churches to speak and teach their faith freely. If federal bureaucracies are allowed to continue censoring the speech of pastors and intruding into America's pulpits, it is anyone's guess what they might attempt to control next.

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[14] *See* 26 U.S.C. § 7421 *et seq.* (Tax Anti-Injunction Act); *see also* 28 U.S.C. § 2201(a) (authorizing declaratory judgments "except with respect to Federal taxes").

[15] *See* Letter of Mary A. Epps, Acting Director, EO Examinations, to The Honorable Tamara W. Ashford, Acting Assistant Attorney General (June 27, 2014), *attached as* Exhibit A to Plaintiff's Memorandum in Support of Motion to Dismiss, *Freedom From Religion Foundation, Inc. v. Koskinen*, No. 12-cv-0818 (D. Wis. July 29, 2014), *available at* https://ffrf.org/images/A19508.PDF.

Therefore, it is time for Congress to act. The Free Speech Fairness Act (H.B. 781) is the best solution that we at Alliance Defending Freedom have seen to these constitutional problems. The bill simply creates a relief valve for free speech, while leaving in place the remaining nonprofit boundaries. It allows churches to speak as they would in the ordinary course of their ministries without fear of IRS retribution. And such a fix would allow America's churches to once more be that conscience of the nation, contributing to the public discourse and national debate as the Constitution permits and as their religious beliefs require.

Mr. JORDAN. Thank you.
Rabbi, fire away.

STATEMENT OF RABBI DAVID SAPERSTEIN

Rabbi SAPERSTEIN. Mr. Chairman, Ranking Member, and members of the committee, really I'm honored to be here with you today.

And I thank you all for your support of my work as serving as the U.S. Ambassador for International Religious Freedom. I do want to single out Mr. Meadows who is extraordinary in the work that he has done in that field.

Let me just lift out a few of the key concerns here, and the concerns for the houses of worship, for the clergy. First, how divisive this will be to bring into our houses of worship the notion of endorsing candidates and dividing those houses of worship along political lines. We have enough divisions of the theology, music, sermons, et cetera, without adding this into the mix here.

Where do you draw the line? What is a pastor to do if a congregant who is a major donor says, I'll give you a gift this year, but only if you endorse such a candidate? What do you do if the pastor endorses one candidate who he thinks is worthy, and then someone else wants someone else, or a member of the congregation asks? What if two members of their congregations are running against each other, and this is a pastor having responsibilities to both sides? What do you do in these situations? It takes us down a very divisive and dangerous path in terms of the well-being of congregations, which is why there's so many polls that show overwhelmingly clergy don't want this.

National Association of Evangelicals 2 months ago in its evangelical leaders poll, 90 percent don't want this. The LifeWay Christian polling entity polls, 90 percent of clergy don't want this. You can go down the polling data. 66 percent of Trump voters don't want it, 62 percent of identified Republicans say this would be bad. That shouldn't be determinative, but it should—you should, I would hope, ask, why, and how do we deal with what their concerns are.

Secondly, do we agree on the description there? I don't know where the line is between the argument that right now pastors have and clergy have, of all kind, free speech and churches have free speech in the sense they can talk about issues, they can speak out on moral issues on the day, on political issues, they can talk about issues that candidates raise, they can talk about anything that they want to do.

They can hold candidate forums, they can get people to the polls, they can do all kinds of activities as individuals. Clergy can do what everyone else can do, endorse, oppose a candidate, run for office, many clergy serve in office while they're serving their churches. I understand what this debate is over, but it sound to me it is over a very limited area where it's being described as being a pervasive area. Do we agree on that limit? And if so, then it's a respectful difference between those who say this is speech and those who say you have that speech. What isn't involved is the right of people to do that electoral work with subsidies from the government.

The Supreme Court has held that tax exemptions and deductible gifts constitute subsidies by the government. That is the law right now. And it has upheld that such restrictions apply to what we're talking about today.

If that is the debate to us, this is about subsidies and whether or not people have a right to have subsidies. Dr. King served his entire career with the Johnson amendment in effect. He was never restrained in what he could do, he never complained about infringements of his religious freedom because of the Johnson amendment, and I don't know many clergy who do in that regard, other than the question whether they can endorse candidates with government subsidies paying for it.

Third, this idea of whether or not, if you do away with the Johnson amendment altogether, whether nonprofits and churches become slush funds. Do we all agree that these would be campaign contributions that could be given through a house of worship getting a tax deduction with no reporting to the government, or are we going to take away some of the exemptions that houses of worship now have and force them to report the contributions of their members?

Finally, there are these efforts to restrict this to just speech, but what kind of speech are we talking about? Just sermons? Is de minimus—Mr. Hice, is de minimus one sermon, is it one sentence in every sermon, is it 50 sermons, is it 50 bulletin articles, is it 50 emails going out? That doesn't cost additional money to do it anyway. De minimus will be no clearer than the current system is in that regard.

The 501(c)(3) partisan restrictions are not just bad—are protective of our religious communities, and changing that is not just bad legal policy, it is bad religious policy as well.

And I urge you to maintain the Johnson amendment that served so well to protect our nonprofits and houses of worship from being turned into campaign slush funds, and dividing their members along partisan political lines.

[Prepared statement of Rabbi Saperstein follows:]

Testimony of
Rabbi David Saperstein
Before the
Committee on Oversight and Government Reform
Subcommittees on Health Care, Benefits, and Administrative Rules and Subcommittee on Government Operations
on
The Johnson Amendment
March 4, 2017

President Trump has publicly stated that one key priority for him in the area of religion is to "totally destroy" the so-called "Johnson Amendment," a provision of the federal law that prohibits houses of worship, like all tax-exempt organizations, from endorsing or opposing political candidates and political parties or spending money for such purposes.

The President has given different explanations for this policy. One is that churches "will lose their tax-exempt status if they openly advocate their political views." Not so. They may express their views on political issues as they see fit. They may even lobby on those views, albeit the amount of money they can spend on such activities is regulated in the same way it is regulated for secular tax-exempt organizations.

The President has said: "I think maybe that will be my greatest contribution to Christianity – and other religions—is to allow you, when you talk religious liberty, you have the right to do it. You don't have any religious freedom, if you think about it." Clearly a bit of an exaggeration in light of the restrictions on religious worship, attacks on houses of worship, blasphemy laws, ethnic cleansing and genocidal actions from non-state actors faced by billions across the globe, which I had to address over the past two years as the U.S. Ambassador at Large for International Religious Freedom. I take seriously any sincere claim about infringement of religious liberty in the United States or around the world, including those religious liberty concerns expressed by colleagues here, but to suggest that there is no religious freedom if electioneering is not allowed from the pulpit, in a country that is the envy of most religious communities elsewhere,

diminishes the vastness of the struggle for religious freedom in too many countries.

There are eight compelling reasons why the Johnson Amendment should not be changed and the current restrictions left in place.

First, repealing current law would almost certainly have a divisive impact on houses of worship. There are enough divisions over theology and music and liturgy and pastors, without importing America's explosively divisive electoral differences. Our houses of worship are among the few places that people of different cultural, political, ethnic divides can find the sense of unity and comity so desperately needed in our nation today. What is a pastor to do if a congregant who is major donor now makes his church gift contingent on an endorsement from the pulpit for his or her preferred candidate? What if a congregant asks a pastor for an endorsement when the pastor has endorsed other candidates in other elections? Once down that path, painful pressure to endorse any congregant running for office arises. What if two congregants are running against each other for the same office? Does the pastor have to choose between who will get her endorsement and who won't – even as the pastor is trying to minister to the needs of the candidates and their families?

As Leith Anderson, President of the National Association of Evangelicals, observed:

> "Most pastors know the parishioners have diverse political opinions and fear being pressured to choose and endorse some while alienating others. They are grateful for the rule that keep them out of political endorsement differences and battles."

Second, relatedly, while constitutional rights are not subject to majoritarian view, if we are talking rather about wise versus unwise or counterproductive legislation, the will of the people ought to be considered as one factor in your decision-making.

Polls overwhelmingly demonstrate that the public, parishioners and clergy are opposed to such partisan politicking from houses of worship. They don't want their houses of worship plunged into our current partisan arms races nor a

pasrtisan political wedge dividing their sense of comity and community. And overwhelmingly clergy do not want this for their parishioners or their houses of worship either.

In one recent poll (Sept. 2016) on the subject, done by the Christian polling company Lifeway, they found that 8 in 10 people said it is inappropriate for pastors to endorse candidates in church. Among clergy, 9 out of 10 oppose it. A more recent Public Religion Research Institute poll found only 22% of Americans favor such a policy. Looked at through the lens of party affiliation, 62% of Republicans and 78% of Democrats reject this idea.

A Feb. 2017 National Association of Evangelicals "Evangelical Leaders Survey" upheld the Lifeway survey findings: 90% of evangelical leaders do not think that pastors should endorse politicians from the pulpit. As George O. Wood, general superintendent of Assemblies of God (hardly a liberal denomination, theologically or otherwise) commented on the poll:

> "Our focus should be on the gospel. If we begin to endorse candidates, then we are politicizing the Church, diluting our message, and bringing unnecessary division among our people. It is sufficient that we can speak on issues without endorsing specific candidates for office."

These views are affirmed by a letter you received last month from 4,500 non-profit groups cutting across religious, political, ideological lines urging strongly that the Johnson Amendment be maintained. So too a letter you received from 99 national, regional and state denominations and faith groups.

Now I mention these polls, these letters, these statements from prominent religious leaders because there are three witnesses on the opposing view and I urge that this Committee take seriously the breadth of the denominations and religious leaders who support maintaining the restrictions.

Third, pastors and other clergy have free speech right now. Under the current rules, they can speak right now on policy issues and moral issues as they see fit, even during election season. In a personal capacity, without the use of church funding, clergy have the same citizen rights to endorse or oppose candidates or

parties as anyone else. They can run for public office (and many have) and, if elected, serve in public office (some having done so even while continuing to serve as the pastors of their churches.). Churches can hold candidate fora and educate their members and communities on the issues that arise in a campaign.

Clergy even have the free speech right to endorse from the pulpit. What they cannot do is engage in partisan political activity using a government subsidy in the form of tax exemptions and tax-deductible contributions for their houses of worship. The only restriction on any of these actions is that if the house of worship wishes to enjoy tax-exempt status, the house of worship cannot engage in electioneering activity (opposing or supporting specific candidates or parties), cannot spend any funding for such activity and its clergy or other leaders cannot engage in such activity in their official capacity.

The key case upholding this standard on constitutional grounds is *Regan v. Taxation with Representation of Washington* (461 U.S. 540 (1983) (*TWR*). Justice Rehnquist, hardly a liberal on such issues, classified the tax exemptions and tax deductions given to contributions to 501(c)(3)s as government subsidies. Differentiating these from the holding in *Walz v. Tax Commission* (which held that lifting the burden of taxation is different than directly supporting the non-profit), the Court stated that "...in stating that exemptions and deductions, on the one hand, are like cash subsidies, on the other, we of course do not mean to assert that they are in all respects identical." (TWR 461 U.S. at 544 n.5.) The position that tax exemptions convey government support has been reaffirmed by other cases since that time.

And in those very rare cases where the IRS has acted against a church for electioneering, as with the full page ads against President Clinton taken out by the Pierce Creek church, the court has upheld such restriction against free speech claims holding that revoking the church's tax exemption as a consequence of violating the endorsement prohibition was not a substantial burden since first, free exercise of religion would not be limited, but rather electioneering simply would be unsubsidized, and second, the church had an "alternate channel" for its messages.

Fourth, the prohibition against electioneering by non-profits prevents undermining the structure of campaign finance regulations. If the Johnson

Amendment is repealed entirely and political donors can bypass other restrictions by giving their campaign contributions through a church AND get a tax deduction for it, we will see a massive diversion of campaign funding to houses of worship, which will become slush funds for local, state, and national campaigns. And since churches do not report who their donors are, funneling campaign donations through houses of worship would greatly reduce transparency in election campaigns, thus becoming conduits for dark money and undermining sensible campaign finance rules,

Fifth, therefore, if houses of worship become involved in campaigning, they run the risk of extensive government regulation and monitoring of their religious activities. Right now, religious autonomy is protected in pervasively sectarian entities (houses of worship, parochial schools, etc.) by a range of exemptions from various reporting requirements, including 990s and lobby disclosure requirements, as well as by tougher standards to trigger IRS audits, etc. If we insist to be treated like every other entity for electioneering purposes, then the government has two choices. It may say "yes, we will treat you like everyone else" and impose campaign finance rules, regulations and monitoring on houses of worship. Alternatively, it will continue exemptions from reporting contributions and contributors, and allow houses of worship to spend their funds on partisan politics without any transparency – thereby opening up a channel for more electoral funding abuses.

Sixth, if, as he implied, this about religious freedom, and the President intends to revoke the Johnson Amendment not in its entirety but only insofar as religious groups are concerned, then a slew of other constitutional issues arise in favoring religious over non-religious non-profits. Under the ruling of the High Court in *Texas Monthly v. Bullock* 489 U.S. 1, 14 (1989), the Constitution bars providing special tax benefits to religious entities that would not be provided to similarly situated secular non-profits. Courts would require the same treatment for all non-profits as were given to houses of worship.

Seventh, there are those who take the position of the Free Speech Fairness Act (H.R. 781). This legislation would change the Johnson Amendment such that any statement made in the course of the organization's regular and customary activity, so long as no more than a de minimis incremental expense is used, would

not violate an organization's tax-exempt status. (By "de minimis incremental" I presume the legislation means additional expenses beyond its normal expenses.

While this sounds like H.R. 781 is aimed at securing and enhancing freedom of the pulpit, in its actual language, it applies to all non-profits and it affects all statements by anyone connected with the house of worship or non-profit. The concerns and criticisms I made of changing the rules for houses of worship would apply to all (c)3s.

Further, it sounds like proponents envision a single sermon.

But let me offer some hypotheticals of the implications of a proposal that says any statement is allowed that does not involve extra expenses:

Suppose instead of one sermon, in every scheduled sermon for the half-year running up to the election, the pastor(s) endorses various candidates and reiterates those endorsements?

Suppose in every regular bulletin and regular email over those six months, the pastor or church leaders focus on endorsements of a party or a candidate(s)?

Suppose with the costs of local calls being de minimis these days, they allow their phones to be used for campaign phone banks?

Suppose a church has their congregants fill out cards for the offerings for later tax verification (putting their money and card in an envelope which they hand in) — and the church then adds envelopes and cards to fill out for contributions to the candidates they endorse and collect those with the offerings and someone from the campaign comes by every week and collects them.

Or suppose the President of Notre Dame or Catholic University adds a single sentence to their regular email to their scores of thousands of alumni : "I believe based on sound religious reasoning you should all vote for Candidate A and oppose Candidate B." Certainly de minimis but is that how tax deductible money should be used?

In each of these there is no extra funding. They are doing (giving sermons, sending

bulletins or emails, collecting offerings) what they would normally do.

Are proponents of this legislation arguing that although you might disapprove on other grounds, that as far as the law is concerned, this ought to be allowed because it really doesn't constitute using tax exempt and tax deductible funding for partisan political purposes? What is the cumulative value of the salaries and the overhead of the congregation in making this electioneering possible? If the church is funded by tax deductible contributions, are not these contributions subsidizing this electoral activity? If the church has the benefit of tax exemption to support its eleomosynary work, does not the tax exemption support everything the church does including its endorsement activities? Everything about the church is subsidized by tax exempt and tax deductible money. And that is as true of one sermon as six months of sermons; of one bulletin as six months of bulletins.

Eighth, you have a complicated problem as to what constitutes "free speech" or "a statement" in terms of this legislation. Since the court has held in the *Buckley v. Valeo*, *Boston v. Belotti*, *Citizens United* thread that giving money to candidates is expressive conduct protected under the First Amendment, there will certainly be those who argue that lifting the Johnson Amendment through this free speech legislation would need to include speech expressed through campaign contributions and churches should likewise be allowed to engage in such activities. How will you write the legislation to prevent the application of *Texas Monthly* in this manner? Again, unless the courts would require the church to report under campaign contribution legislation, there are arguably no more than de minimis additional costs. The money would have been spent for something else, so why not for this expressive purpose? So, if the form of endorsement speech as described in this legislation were allowed, it would open the Pandora's box of tax-deductible funds being used for campaign contributions discussed above.

Lifting the 501(c)(3) partisan politicking restrictions are not just bad legal policy and bad public policy, but bad religious policy as well. I urge the committee to maintain the Johnson Amendment that has served so well to protect our non-profits and houses of worship from being turned into campaign slush funds and dividing their members along partisan political lines.

Mr. JORDAN. Thank you, Rabbi.

The committee will stand in recess 30 minutes more or less. And you can—we've got coffee and stuff, you can—you can—but we'll be back in 30-minutes.

[Recess.]

Mr. JORDAN. The committee will reconvene.

Rabbi, we believe in free speech so much we were waiting for you to speak to the press. That's our commitment to the First Amendment.

So we're going to start with the gentleman from Georgia, Congressman Hice.

Mr. HICE. Thank you, Mr. Chairman.

Ms. Holcomb, your organization, an outstanding group, actually put forth the Pulpit Initiative and Pulpit Freedom Sunday. As you know, I was one of the original pastors that were a part of that group in 2008. Can you briefly explain to this committee what that event is and what's its purpose?

Ms. HOLCOMB. Absolutely. Mr. Chairman, members of the committee, thank you.

The Pulpit Initiative was designed to bring this issue to a head and to provide a legal challenge to the Johnson Amendment because, as you know, and I'm sure you're well aware, Federal law prohibits us from affirmatively suing the IRS outright to deal with this issue.

So we started what's called Pulpit Freedom Sunday where we encourage pastors across the Nation to exercise their constitutional rights to free speech and the free exercise of religion. And many of them endorse or oppose candidates on that day, and a number of them provide courtesy copies of their sermons to the IRS and send them in so that they're fully aware of what's going on.

We've encouraged, as I mentioned, a legal challenge, wanting to go head-to-head with the IRS on this issue and allow a court to rule on the Johnson Amendment's constitutionality or a lack thereof, in our opinion, but the IRS has been unwilling to take the bait.

It did harass and intimidate one of our pastors for approximately 11 months of an audit, and we defended him throughout that process. But, otherwise, it has been unwilling to allow a Federal court to address this issue, which is why we're now recommending that Congress go ahead and fix that which was enacted over 60-plus years ago.

Mr. HICE. So why do you believe the IRS did not respond?

Ms. HOLCOMB. It's all speculation. I think it could be a number of different things. But one thing is, the IRS may recognize that it's on tenuous constitutional grounds. It probably does not want to have a Federal judge actually examine the constitutional violations, both those that I've mentioned in my written testimony, but those that I did not. In addition to vagueness and free speech, the Johnson Amendment is constitutionally questionable in the areas of free exercise in the Establishment Clause, potentially even Federal RFRA.

So I think that would be one primary reason why the IRS might be reluctant to allow a court to look into this.

Mr. HICE. So you believe it is an unconstitutional code?

Ms. HOLCOMB. Absolutely, it's an unconstitutional code, and, frankly, has no legitimate basis in law either, having been enacted as a political ploy.

Mr. HICE. Okay. Ms. Ancalle, let me ask you about the vagueness aspect of the Johnson Amendment. How is that complicating the interpretation?

Ms. ANCALLE. That's a great question. I'm sure you're very aware as a pastor of the fact that many activist organizations actually use that vagueness and the lack of consistency with how the IRS has enforced this statute to chill the speech of pastors, to threaten them into submission, essentially scaring pastors out of making political statements generally, not just about political candidates, but about, as Mr. Connolly mentioned, moral issues and Biblical issues that really affects the life of the church and the life of individual believers.

Mr. HICE. What about the accusation that somehow this, if it's repealed or changed in any way, the Johnson Amendment, that it would make churches become political action committees where dirty money could be laundered?

Ms. ANCALLE. Well, the Free Speech Fairness Act is specific in that it doesn't allow more than de minimis incremental costs. So the de minimis factor is not related to the length of the statement, is not related to how many times the statement is made, but it is related to the cost of the statement. So the whole purpose of that provision within the Free Speech Fairness Act, as I understand it, is to eliminate the ability for churches to become political action committees.

Mr. HICE. How would you respond to that, Ms. Holcomb?

Ms. HOLCOMB. I would absolutely agree. With the Free Speech Fairness Act, it is extremely simple. All it does is create a release valve for free speech so that 501(c)(3) organizations, particularly churches, which is my primary concern in this instance, would be allowed to once again fully exercise their First Amendment freedom to speak freely without having the IRS burst through their church doors and censor their sermons.

Mr. HICE. So it's not legal for churches to give candidates or is it?

Ms. HOLCOMB. No, no.

Mr. HICE. Give money to candidates.

Ms. HOLCOMB. Absolutely not.

Mr. HICE. Or would that change?

Ms. HOLCOMB. It would not change. The Free Speech Fairness Act does not in any way eviscerate current campaign finance laws, so those concerns really are not applicable in this context.

Mr. HICE. And, Ms. Engelbrecht, let me ask you, are you aware that the veterans organizations are also 501(c)(3) organizations that are both tax exempt and receive charitable donations?

Ms. ENGELBRECHT. There's all kinds of organizations that are (c)(3)s beyond just churches, and that's one of the reasons this is such a critical debate.

Mr. HICE. Okay. So my question here has to come with fairness of law. Is there a discrepancy in the way that different 501(c)(3)s are treated?

Ms. ENGELBRECHT. I would hope not. All I can say is in our experience the Johnson Amendment seemed to be a gateway to a type of abuse that I don't think any American citizen should have to endure, including visits from the Domestic Terrorism Unit of the FBI, the repeated audits by the IRS, OSHA showing up, Bureau of Alcohol, Tobacco and Firearms showing up twice.

Mr. HICE. Let me ask Ms. Ancalle or this whole committee, there seems to me to be a broad discrepancy in the way 501(c)(3)s are treated here and there's direct discrimination?

Ms. HOLCOMB. I think that's exactly right, if I may jump in. You've got some 26 different organizations that are exempt under the IRS code. Only (c)(3)s have this explicit speech restriction. And, frankly, it's unfair, and that's what the Free Speech Fairness Act is designed to do, is restore that fairness for all.

Mr. HICE. Thank you, Mr. Chairman.

Mr. JORDAN. Thank the gentleman.

I now recognize the ranking member for his 5 minutes.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chair.

Despite the title of this hearing, the Tax Code does not constrain the freedom of speech of churches and other houses of worship. In fact, the majority has studiously avoided any extensive discussion of the real purpose of taking away the Johnson Amendment, which is to allow money, political money, to enter the system through houses of worship.

Rabbi Saperstein, churches and members of the clergy are free to speak out on any social issue, aren't they?

Rabbi SAPERSTEIN. They are indeed.

Mr. KRISHNAMOORTHI. And acting in their personal capacities, members of the clergy, like all members of houses of worship, can legally endorse or oppose political candidates. Isn't that true?

Rabbi SAPERSTEIN. They can. They do. They can run for office. They can do anything politically that anyone else can do.

Mr. KRISHNAMOORTHI. Certainly. In fact, acting in their personal capacities, members of the clergy, like all members of all houses of worship, can even serve as the treasurers of political campaigns, or PACs, can't they?

Rabbi SAPERSTEIN. Yes.

Mr. KRISHNAMOORTHI. Now, let's be clear, the only thing that the current tax laws restrain is the use of churches to collect and funnel tax-deductible contributions from anonymous donors into political campaigns.

Folks, churches and houses of worship have a special place in the Tax Code. They don't have to disclose their donors, and those donors can take deductions for their contributions to houses of worship. That is the special place that houses of worship have in our Tax Code.

We have a rich history of churches and other houses of worship engaging in pressing social and moral issues. For example, Tony Perkins with the Family Research Council has eloquently written, and I quote: "Dr. Martin Luther King, Jr., spoke out forcefully from the pulpit on political matters that required change, and we are all glad he did so. It benefits all of us to have such change agents speaking freely from the pulpit. Since the birth of our Nation, pastors and churches have been at the forefront of shaping public de-

bate and our choice of public servants. What would America look like today had King or Reverend Lyman Beecher, a leading abolitionist, been muzzled by the IRS?"

Of course, the laws that the Family Research Council seeks to alter have been part of the Tax Code since 1954, before even the Montgomery bus boycott which Dr. King helped to lead.

Rabbi Saperstein, did tax laws prevent Dr. King from speaking out and standing up during the civil rights movement?

Rabbi SAPERSTEIN. It certainly did not. And, as I said, the Johnson Amendment was in effect the entire time.

Mr. KRISHNAMOORTHI. And you're absolutely correct about that. Our tax laws do not restrain the freedom of speech. Perhaps that is why 99 faith and denominational groups wrote a letter to Congress opposing efforts to allow dark money to flow into American political campaigns through churches and charities.

Now, let's be very clear what this hearing is about. It's about money, money, money. That is what this hearing is about. It is not about the restraint of free speech.

I ask unanimous consent to insert into the record the statements from the following organizations. Statement of Tim Delaney on behalf of the National Council of Nonprofits. Statement of Amanda Tyler on behalf of the Baptist Joint Committee for Religious Liberty. Statement of Maggie Garrett on behalf of Americans United for Separation of Church and State. And, finally, the statement of Michael De Dora on behalf of the Center for Inquiry.

Mr. JORDAN. Without objection, so ordered.

Mr. KRISHNAMOORTHI. Now, folks, we all must remember the separation of church and state is foundational to our democracy. And the reason why houses of worship and churches and religious institutions have a special tax exemption under the code is because we want to encourage folks to be able to donate to their churches and houses of worship and nonprofits to do good for our society, and to do it in a nonpartisan, nonpolitical way.

People who are affiliated with these churches and houses of worship and nonprofits in their personal capacities can do whatever the heck they want politically. But they cannot use their resources, which have been derived in a tax-exempt way, from pursuing partisan political purposes. And that is something that's sacrosanct in our Tax Code, and that's what the vast majority of Americans believe in.

Thank you. And I yield back.

Mr. JORDAN. I thank the gentleman.

I now recognize another pastor. The gentleman from North Carolina, Mr. Walker, is recognized.

Mr. WALKER. Thank you, Mr. Chairman. It's a privilege to be with you guys today.

Thank you, panel, for coming out as well.

I want to take some time to get to some questions, but just some of the comments that I hear I feel like that need to be addressed.

We stand for synagogues, temples, churches. So the misnomer that we heard earlier, this is just about churches, is certainly offensive to me. My friend, Rabbi Fred Guttman in Greensboro, we don't agree many times politically, but he's one of my dearest friends. Rabbi Andy Koren was in my office yesterday.

But I also stand for my friends Dr. Mohammed Farooqui, Shahzad Akbar, and those great people, not just because they're friends of mine, but because they have every right to speak according to their religious beliefs as anybody else.

Another comment that was just recently mentioned was talking about a pastor as long as he is, I believe, operating in his personal capacity. And I thought about, once again, this is a place where what laymen, what pastors, what the American public, the rules they have to play by are so often different than what Congress gets to play by.

In this capacity, if we were to endorse someone, it wouldn't be in our private. We would probably say, in any kind of billing, it would say, Congressman so-and-so endorses so-and-so.

And I just think it's kind of humorous that we put limitations as far as a pastor on what he can do if it's under the guise of a church. If so-and-so is this pastor, make sure he is saying that's in his personal capacity as opposed to representing a certain church body.

And, Rabbi Saperstein, you had talked about a little bit earlier and talked about two people running in the same church, what would the pastor do? I had two thoughts on that. One is local churches should have the autonomy to be able to make whatever decisions they believe as long as it's within the confines of the law.

And I will tell you as a former pastor, you talked about that being such a crises. And as you've probably experienced as well, crises are when you're in the room with somebody breathing their last breath and struggling to give words to a family. Crises is when you have a home falling apart and you're looking for guidance to be able to put that back together. I trust pastors to make the decisions well when it comes to politically in this capacity.

So let me ask a couple of questions. And I want to start with—and I was out—Ms. Ancalle? Is that——

Ms. ANCALLE. Ancalle.

Mr. WALKER. Ancalle. Okay. Thank you for the pronunciation.

The Federal Tax Code in regards to a tax-exempt charitable organization, among other things, must not participate in or intervene in—which is including publishing or distributing of statements—any political campaign on behalf or in opposition to any candidate for public office.

"Indirectly" is the key word I want to focus on there. What does it mean to indirectly intervene in a campaign? And if you, a legal expert, can't tell me, how in the world are pastors supposed to know what kind of conduct is legal and what isn't?

Ms. ANCALLE. That's a fabulous point, and that's exactly the point that I believe and the ADF is making today, is that the vagueness of these rules and regulations, the secrecy behind some of the regulations that the IRS uses to investigate churches and other nonprofit organizations is just baffling. And it's very difficult for attorneys, and certainly lay people, to understand.

Mr. WALKER. I don't think this fear is unfounded, whether it's your Hindu background, Muslim background. But I do find it very interesting that 81 percent of the American public—81 percent of evangelicals—voted for President Trump. This fear is real, it exists

out there, that there are some restrictions that are trending this direction.

Another question I would have for you, you used the word "chilling effect" in your testimony. Can you describe how the Johnson Amendment has a chilling effect on speech?

Ms. ANCALLE. Certainly. Precisely because of the vagueness and the inconsistency with how the IRS applies the law, with whether the IRS is going to actually continue to apply the law in the same ways when the IRS imposes a penalty and then actually rescinds that penalty or refunds that penalty with interest, it causes a lot of confusion for pastors and leaders in nonprofit organizations, which is unfortunate. But it is what causes a chilling effect. Because pastors are uncertain of how the Johnson Amendment will be applied to them, they, in fact, do not make political statements, not just about candidates, but about issues that do affect the church.

Mr. WALKER. I just had a meeting recently with about 50, 55 pastors. We do these breakfasts about once a month, and we invite all of our friends from different places, synagogues, temples, whatever it might be. And one of the current concerns they continue to bring up is this mass confusion as far as what they can and cannot say. It's very unclear.

Ms. Holcomb, some believe an amended Johnson Amendment would politicize the 501(c)(3) organizations, or in this case synagogues, temples, or churches. Would nonprofit organizations be forced to stand in support or opposition to any political candidate?

Ms. HOLCOMB. Mr. Chairman, members of the committee, thank you for that question.

No, absolutely not. If you don't want to speak about these issues, you certainly do not have to. But right now we have the heavy hand of government coming down on one side of this equation saying that you may not. That's fundamentally a theological decision and should be left to the churches.

Mr. WALKER. Thank you, Mr. Chairman. Yield back.

Mr. JORDAN. Thank the gentleman.

I now recognize the gentlelady from the District of Columbia for her 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

You know, if the heavy arm of government were coming down on ministers and rabbis, they're a very powerful institution, they would be here in our faces. And we haven't seen them. And I can't imagine why we now want to take the only part of American life that is not polarized and put it right into the thick of the ugliest part of our life.

The religious institutions are the only institutions I know not asking for taxes or a tax break. So now you want them up here, essentially, doing the same thing.

It's interesting that none of the minority witnesses directly lead a church or a synagogue. But what the majority witnesses want to do is to spread Citizens United to houses of worship. It's not about free speech. It's about political money.

There's been great wisdom on the part of the Framers and the Johnson Amendment in protecting our houses of worship, our political institutions, from the corrosive effects of political money. Of

course, the churches and the synagogues and religious institutions have spoken for themselves asking for the money. So I don't know who in the world you think you represent.

There is a repeal bill here offered by Congressman Hice and Congressman Scalise. I'd like you, Rabbi Saperstein, to listen to how they would frame it as far as churches, religious institutions, and charities. Remember that, charities. It's a wide-open word.

Partisan political activity would be allowed if it is made in the ordinary course of an organization's regular and customary activities—that's the biggest hole I've seen anybody has ever tried to write into law, if you try to figure what a minister and a rabbi do every day—that results in the organization incurring not more than de minimis incremental expenses.

Rabbi Saperstein, does that language, does that approach taken in this pending legislation allay the concerns you raised in your testimony?

Rabbi SAPERSTEIN. Indulge me to make two very brief comments before responding.

First, in the Tim Delaney letter that was put into the record here earlier, it represents 4,500 nonprofits. I checked briefly. It looks like there are nonprofits from each of the districts of the people who are here today on this.

Secondly, I just had—Mr. Walker talked about Rabbi Koren, because we brought 800 leaders in to advocate for policies that they were concerned about. But, at the same time, totally coincidentally, I see a group of Jewish women behind me who with people, I'm sure, in each of your districts, wanted to get involved in electoral politics and created a Jewish woman's PAC—that's a national political action committee—rather than doing it through their synagogues.

So what we're not sure of is what de minimis means here. The idea that endorsement, you're allowed to endorse someone, you can do it from the pulpit, you just can't do it with tax-deductible money and tax-exempt money. And that's the money that pays that salary of the person making the statement that underwrites the cost of the church——

Ms. NORTON. Rabbi Saperstein, you and I know that some of the most political figures we know are ministers and rabbis, and they don't feel that they can't speak out. Often they are leaders, and, indeed, the ones that make us understand what we have to do up here. That's why you don't see them sitting as a whole crowd with people of collar, with collars on, saying, please change the law.

How about the de minimis standard, do you think the language I quoted to you before would start us down a slippery slope?

Rabbi SAPERSTEIN. I have no idea. I posed that question to Mr. Hice before. I don't know what it means. It would be as vague as the current standards and will not help at all, and I think it will open up a Pandora's box that we will deeply regret.

And, Representative Norton, my colleagues can correct me if I'm wrong, I don't know a single national, major national denomination that is calling for the repeal of the Johnson Amendment. Overwhelmingly, the polls show 90 percent of clergy do not want this touched, that they feel it protects their religious freedom.

Ms. NORTON. That's why I don't know who the minority—majority witnesses could possibly represent.

Thank you very much, Mr. Chairman.

Mr. JORDAN. I thank the gentlelady for her questions.

We'll now turn to the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Just a general question. I have heard ministers say that they're—or people in churches say that ministers are not speaking out because they're afraid of the Johnson Amendment on a variety of issues that they're afraid to talk about.

Deep down inside, do you think the biggest problem we have, as far as ministers not speaking out on certain issues, is it the Johnson Amendment or is it cowardice on the part of the ministers?

It's a big issue. It's a huge issue.

Ms. ANCALLE. Yeah. I'll just mention that I know that every election cycle activist organizations send letters to churches—my church back in Georgia received these letters every year—threatening to turn them in to the IRS. And especially the smaller churches, this is a significant threat. They don't have tax experts and tax lawyers in their churches that can step up to the plate and provide defenses and guidance through audit and 2-year investigations.

And so I do think that it's a significant threat, the Johnson Amendment is a significant threat to pastors.

Mr. GROTHMAN. What's the bigger problem? Is it the Johnson Amendment or when ministers tell me they can't speak out on abortion or can't speak out on gay issues or can't speak out on premarital sex, is the bigger problem the Johnson Amendment or is it cowardice on the part of the clergy?

Ms. ANCALLE. Well, I'm actually also very glad that you asked that question because, in fact, Family Research Council has a significant church ministries team. And there are a number of pastors from those churches from around the country that are heavily engaged in the political process, both on the local and the national level. And I'm here representing, you know, some of those churches that are a part of our church ministries team.

And so I do think that pastors, many pastors, would like to be more engaged and are just not sure how they can do that with the Johnson Amendment intact.

Mr. GROTHMAN. Ms. Engelbrecht, Ms. Holcomb, do you have any comments on that?

Ms. HOLCOMB. Yes. Mr. Chairman, members of the committee, I appreciate the question.

I think it's a false dichotomy. It's kind of a question of which comes first. Alliance Defending Freedom receives hundreds of calls every year from pastors across the country who want to know what the legal boundaries of the Johnson Amendment are and what they can and cannot legally do.

Again, they're law-abiding citizens. They don't want to risk the IRS intrusion into their pulpits and ministries. And so they're trying to be very careful and cautious about how they go about leading their congregations and navigating these moral issues.

And so it's so important that we deal with the issue of the Johnson Amendment so the pastors again feel at liberty to, as they did

for the first 200 years of American history, guide their people in all aspects of life.

Rabbi SAPERSTEIN. The other option would be for all of us to simply tell them what they're entitled to do, entitled to speak out on all of these things, so long as they don't endorse candidates and use money for partisan political purposes. Pretty simple concept here. And all of those letters you get, we could just tell them what they're allowed to do and empower them to do it.

Mr. GROTHMAN. Yeah. Well, this is a fine bill. I'm not sure it's the biggest problem we face in the clergy today.

But, Ms. Engelbrecht, I'll give you a question.

Ms. ENGELBRECHT. Well—go ahead.

Mr. GROTHMAN. Go ahead. You can respond to my last question.

Ms. ENGELBRECHT. You know, I am a leader of a 501(c)(3) organization. So this is not academic to me. This is not a sort of empirical study of what might happen. It happened.

And I'm eternally glad, as our country should be, that it didn't happen when civil rights greats like Martin Luther King spoke out underneath the Johnson Amendment, but it doesn't mean that it couldn't. And I think we have just come to a very ugly chapter in this country when we saw the IRS take full liberty—liberty, that's a funny use of that word—to abuse the rights citizens.

So there's no half measure of freedom. There's no half measure of free speech. You either have it or you don't. And I think that's the fundamental question. I do realize that this is a difficult situation to sort through, but I don't think you can start at a place that delegitimizes the Constitution.

Mr. GROTHMAN. Okay. Either you're avoiding or didn't get what I was trying to get at. But, okay.

I'll give you another question. Other than True the Vote, are you aware of any other organizations that are silenced or harmed by the Johnson Amendment?

Ms. ENGELBRECHT. Absolutely.

Mr. GROTHMAN. Could you list them?

Ms. ENGELBRECHT. Well, sadly, I don't have the list with me. But I would say that America got a first glimpse when the BOLO list, be-on-the-lookout list came out in the USA Today, I believe it was, that listed over 200 groups that had been singled out for investigation by the IRS.

Mr. GROTHMAN. Okay. Thank you very much.

Mr. JORDAN. I thank the gentleman.

Rabbi, do you—and let's just talk in the abstract first—do you think that government can, in fact, have a chilling effect on individual liberties?

Rabbi SAPERSTEIN. I do.

Mr. JORDAN. And then let's get specific. Do you think the government can have a chilling effect on people's First Amendment free speech liberties?

Rabbi SAPERSTEIN. I do.

Mr. JORDAN. Yeah. And part of that is driven by what we've heard from the other witnesses, the vagueness of the Johnson Amendment. Do you agree with that?

Vagueness of the Johnson Amendment, every election year countless number of churches, typically evangelical churches, get letters from the left—is that right, Ms. Holcomb?

Ms. HOLCOMB. That is correct.

Mr. JORDAN. Letters from left-wing organizations say: Hey, hey, hey, be careful, big brother is watching.

Rabbi SAPERSTEIN. Does that have to do with the ambiguity or does that have to do with they're endorsing candidates?

Mr. JORDAN. No, it has to do with the fact organizations are sending them a letter and the vagueness of this law.

Rabbi SAPERSTEIN. Saying in the past you've endorsed candidates, and you shouldn't do that. The Johnson Amendment and the law is clear, don't do it.

Mr. JORDAN. Saying whether it's true or not. My colleague from the District of Colombia mentioned just a few minutes ago, the heavy arm of government. If anyone knows about the heavy arm of government, my guess is it's Ms. Engelbrecht, right?

If I get this right, looking at your fact pattern, the two organizations you were involved in forming, True the Vote and King Street Patriots, back in 2010 you applied for your tax-exempt status, right?

Ms. ENGELBRECHT. Correct.

Mr. JORDAN. And after 2010, for the next 3 years, if I counted this up right, you got six phone calls or visits by the FBI.

Ms. ENGELBRECHT. Correct.

Mr. JORDAN. Twice you were visited by the Bureau of Alcohol, Tobacco and Firearms. OSHA stopped by to say hello. The Texas EPA stopped by to say hello. The ranking member of this full committee sent you letters, went on national television, and criticized you and your organization. And, oh, just to add insult to injury, eight times the IRS contacted you and audited you both personally and in your business. Is that accurate?

Ms. ENGELBRECHT. That's accurate. And I would add to that, that all the while our 501(c)(3) application was in play. At any point the IRS could have said, you know, thumbs up or thumbs down, you either meet the criteria or you don't. But they used it for what over time began to feel like opposition research.

Mr. JORDAN. Did you feel a little nervous? Did that chill some of the activities that True the Vote and King Street Patriots might want to get involved in?

Ms. ENGELBRECHT. Absolutely.

Mr. JORDAN. Would you agree with that, Rabbi, that that would probably have a chilling effect on any organization, had there been eight contacts from the IRS, six from the FBI? Again, finding nothing wrong, she didn't do anything wrong. She was just waiting on a pending application.

Rabbi SAPERSTEIN. The application of any of these rules should never depend on the content of what is happening here. That is a principle I hope we all agree on.

Mr. JORDAN. So let me ask you a question, Ms. Holcomb, because—well, let me get back to Ms. Engelbrecht.

Did the IRS ask for anything specific? Did they ask, like, what you're doing in these meetings, the content of what you're doing? Did they do that?

Ms. ENGELBRECHT. Yes, sir. They asked for copies of every tweet I'd ever tweeted, every Facebook posting I'd ever posted, everywhere I'd spoken since the inception of the organization and to whom, and what I said. And they asked for any advanced scheduling for the next 2 years. There was no doubt in my mind that they were looking to censor my speech.

Mr. JORDAN. So if that's not the heavy arm of government chilling First Amendment liberties, I don't know what is. I don't know what is.

Ms. Holcomb, have pastors ever had their—had the government ask for the content of their sermons? Has that ever happened?

Ms. HOLCOMB. Thank you, Mr. Chairman.

Yes, unfortunately, it has. One extremely notorious——

Mr. JORDAN. And it happened in——

Ms. HOLCOMB. Houston.

Mr. JORDAN. —it happened to happen in Ms. Engelbrecht's State, right?

Ms. HOLCOMB. It did.

Mr. JORDAN. Not too far from where she lives. Imagine that.

Ms. HOLCOMB. That's exactly right. The mayor of Houston subpoenaed the sermons of five local pastors all because they had simply spoken out and preached about their Biblical views on human sexuality

Mr. JORDAN. They hadn't endorsed a candidate, had they?

Ms. HOLCOMB. They had not endorsed a candidate whatsoever.

Mr. JORDAN. They hadn't opposed a candidate?

Ms. HOLCOMB. They had not.

Mr. JORDAN. It was about an issue, wasn't it?

Ms. HOLCOMB. It was about an issue.

Mr. JORDAN. Issue central to their tenets, their beliefs?

Ms. HOLCOMB. That's exactly right.

Mr. JORDAN. Think that chills speech, Rabbi?

Rabbi SAPERSTEIN. I don't know the circumstances, but my answer is going to be yes. A mayor shouldn't be asking for the content of this. It may be such, but just because——

Mr. JORDAN. On a central issue, a social issue that is central to the beliefs of those individuals at that church, that the mayor, I mean, the heavy arm of government, the mayor of a city of several million people, Houston, if I remember right, Ms. Holcomb, asked for the content. You just said earlier we shouldn't be doing that.

So this is what happens, and this is why Mr. Hice's legislation is so important, this issue is so important.

Rabbi SAPERSTEIN. But the question is, are there times, legitimately, that speech can be regulated here? And you quoted Virginia v. Hicks before, did I hear you correctly, Mr. Hice?

Mr. HICE. That I did what?

Rabbi SAPERSTEIN. You quoted Virginia v. Hicks, the Supreme Court case.

Mr. HICE. Yes.

Rabbi SAPERSTEIN. So in that case Justice Scalia said there comes a point at which the chilling effect of an overbroad law, significant though it might be, cannot justify prohibiting all enforcement of the law.

And I think that this law works in the proper way, the Johnson Amendment——

Mr. JORDAN. You may think but——

Rabbi SAPERSTEIN. —to say you just can't have the speech with government subsidies.

Mr. JORDAN. I respectfully disagree, and so do a lot of other Americans. That's why we're having this hearing. And what we know is it did happen. It happened. The heavy arm of government asking for content for sermons that pastors preached regarding an issue, not endorsing candidates.

Rabbi SAPERSTEIN. You and I agree on this.

Mr. JORDAN. And the slippery slope that my colleague also talked about is pretty darn slippery when you view it in the context that Ms. Engelbrecht knows firsthand.

When you view it in the context of the very organization charged with administering this amendment, this law, the Johnson Amendment, was caught, systematically, for a sustained period of time, in Ms. Engelbrecht's situation 7 years, harassing groups, keeping them in limbo, chilling their activities, because they didn't like their political beliefs. Unbelievable that happened in the United States. Unbelievable.

And we also know what took place in Houston where the government was saying: We want pastors' sermons. You've got to be kidding me. And to say that we don't need this, and to say, oh, it's about campaign finance. It's not. It's about no law abridging freedom of speech, the plain language of the First Amendment.

Rabbi SAPERSTEIN. I'm sorry. And endorsing candidates will help that situation?

Mr. JORDAN. I didn't say that. I'm just—I'm talking about the example here. But, frankly, that's free speech too. But what I'm talking about—so I'm talking what took place in Texas and what took place in Houston.

Rabbi SAPERSTEIN. They just don't have the right to have a government subsidy for that speech. That's the only restriction.

Mr. JORDAN. Ms. Ancalle, you are just dying to get in and then I'll have to move on to our next——

Ms. ANCALLE. I'm very excited to chime in on this topic, if you don't mind, because a church does not receive government subsidies. A church is tax exempt. And that's because churches and these charities, these nonprofit organizations are giving out more than $1 trillion, a recent study said, in goods and services. So the idea that churches are subsidized by the government is inaccurate at best.

Rabbi SAPERSTEIN. But you know as well as I do that in the legal case that Justice Rehnquist wrote the opinion that—I quoted Justice Scalia before—another liberal judge, Justice Rehnquist, held that that is, these are subsidies. And that is the law of the land right now, right?

Mr. JORDAN. I don't think many churches think they're getting subsidies from their parishioners. I think they're getting——

Ms. ANCALLE. And I believe that if a church did receive government subsidies——

Mr. JORDAN. —a tithe from their parishioners because they believe in the work that they are doing in that church, and the min-

istry they are receiving, and the ministry they are giving to the community, and to the families who worship there. That's what it is. It's not a subsidy from the government, for goodness sake.

With that, I'll recognize my good friend, the ranking member from the great State of Virginia.

Mr. CONNOLLY. Thank you.

Mr. JORDAN. Knows something about the First Amendment, that founding colony and all that.

Mr. CONNOLLY. Right.

Mr. JORDAN. God bless you, Brother. You're up.

Mr. CONNOLLY. I thank you. And we even know something about religious freedom, because I also come from Massachusetts where John Adams enshrined that concept into the first Constitution of Massachusetts, which continues to this day.

And, of course, Mr. Jefferson and Mr. Madison, both of whom came from my State of Virginia, believed in a pretty strong firewall between church and state. Mr. Madison, for example, took on a lot of unpopular religious causes to fight for the religious freedom of Anabaptists, because the State religion as a colony was the Church of England. And it was not a popular cause, although, it helped him beat James Monroe for the first congressional election—but that's a different story—because the other Anabaptists came out in droves to support him.

So we have a little bit of history in the Commonwealth of Virginia. I remember going to Williamsburg for a mock trial from an original verbatim and, again, was surprised to learn, Rabbi Saperstein, that Catholics were not welcome on the jury. And we could be fined if we refused to go to Sunday services at the Church of England because of the political dominance of that particular denomination. For some reason, they were a little more squishy about Jews. Apparently, Jews could maybe, kinda, sorta, sometimes serve on a jury. But not us.

What could go wrong with—I mean, this is just First Amendment rights. We're stifling churches and other religious institutions. Although we only in our title talk about church, I hope you didn't feel left out. But if we repeal the Johnson administration, it would be more than churches affected, would it not, Rabbi?

Rabbi SAPERSTEIN. The damage that can be done is to bring our corrosive, divisive, partisan splits in this country into one of the few institutions that people with different political, ideological, even religious differences are able to come together in community and comity. It is why the denominations want this protection. It is why 90 percent of clergy want this protection.

The damage is it can flood—if you've got a choice between—think of the hundreds of millions of dollars that went into political campaigns. If you have a choice of getting a tax deduction for it—now, this doesn't apply to your version. But in repealing the Johnson Amendment, hundreds of thousands, millions of dollars going in and getting a tax deduction or not, you're going to be flooding the churches.

I don't want to have Republican churches and Democratic churches, Republican mosques and Democratic mosques. And bringing partisan politics into this is going to damage this.

So this isn't just a constitutional—it's not a constitutional question that free speech exists. The only question is whether it can be done with the subsidy of tax-exempt and tax-deductible money.

Mr. CONNOLLY. So, for example, a house of worship or a denomination or just an individual entity, Muslim, Hindu, Jewish, Christian, could voluntarily say, you know, I just don't—I'm going to give up the tax deduction, the tax exemption, and do my thing.

Rabbi SAPERSTEIN. It can. And there are some that do it. I gave the example, a group of Jewish women here who created a Jewish women's PAC that's very effective and very respected across the country, because they wanted to do it freely and without dividing their congregations.

Mr. CONNOLLY. So far from being a matter of the exercise of free speech, it's really about your tax status. And if you really want to engage in that kind of partisan political activity and accept donations, why not just give up your tax exemption?

Rabbi SAPERSTEIN. It's not giving up your tax exemption. You would remain tax exempt. You would create a (c)(4) that would create a PAC. It just means that there's no tax-deductible funds.

Mr. CONNOLLY. So there's no impediment to forming a 501(c)(4), another entity, for that purpose if they wanted to.

Rabbi SAPERSTEIN. Correct.

Mr. CONNOLLY. Is that correct?

Rabbi SAPERSTEIN. Correct.

Mr. JORDAN. The IRS is taking forever to give you——

Mr. CONNOLLY. Sorry, Mr. Chairman, still got my time.

So what's wrong with doing that, Rabbi? Why wouldn't people want to do that instead of repealing the Johnson administration which gets us into this real sticky mess? And, frankly, it's going to, I think, create enormous division in the faith community in America.

Rabbi SAPERSTEIN. You ask what's wrong with that. Legally, there's nothing wrong with it. If I had my druthers, I'd much rather do it the way those women sitting in the back of the room did, create an entirely different entity that brings those religious people together to do it and keep it away from the houses of worship altogether. But, legally, they have the right to do it.

Mr. CONNOLLY. All right. My time is up. Thank you all for being here.

Mr. JORDAN. I'd just ask unanimous consent to submit into the record a statement from the Ethics and Religious Liberty Commission, which is part of the Southern Baptist denomination, expressing their support for Mr. Hice's legislation.

Without objection, so ordered.

Mr. CONNOLLY. In the spirit of the First Amendment, we have no objection.

Mr. JORDAN. Okay. I appreciate it. God bless you.

Mr. Meadows, the gentleman from North Carolina, is recognize.

Mr. MEADOWS. Thank you, Mr. Chairman. And I thank the gentleman from Georgia for his leadership.

Ms. Holcomb, we are not asking for tax-exempt political donations to be made available to every church in America, are we?

Ms. HOLCOMB. Mr. Chairman and members of the committee, no, we absolutely are not. And thank you for the opportunity to clarify.

The Free Speech Fairness Act, again, very simple, simply a relief valve for speech. It does not eviscerate current campaign finance laws. Contributions, expenditures are already regulated. No, look, all we're talking about, again, is a pastor's freedom to speak freely from the pulpit.

And it's a complete misnomer to think that we're just talking about candidate endorsements here. No. Politics has intruded on moral issues. So we're talking about a pastor's freedom to address issues like the sanctity of human life, like marriage, without fear of IRS retribution.

Mr. MEADOWS. So this whole narrative that talks about dark money going to churches in order to actually support candidates that may or may not be there is not only a red herring, but it is a red herring of unbelievable crimson red. Wouldn't you agree with that?

Ms. HOLCOMB. Respectfully and politely, it's fear-mongering. It is not what is at issue here. And, frankly, if we would like to discuss history, as was raised earlier, pastors for the first 200 years of American history had this freedom. They exercised it responsibly.

The Johnson Amendment was not enacted in order to address any issue with churches. Frankly, it does not appear Senator Johnson was even aware it would apply to them.

Mr. MEADOWS. Well, so, Ms. Holcomb, would you not agree that in this very Capitol building, that we have clergy who have statues erected in their honor for what they've done for the founding of our country and battling for those religious liberties, and they were the clergy that came from the pulpit?

And I would suggest that those political interventions, maybe before we had the IRS, the long arm of the IRS reaching into Ms. Engelbrecht and others—but did they not—the clergy was not without a voice from the very founding of this Judeo-Christian Nation.

Ms. HOLCOMB. That's exactly right. And they spoke out on the most important issues of the day, including the Revolutionary War, civil rights, so on and so forth.

But if I may, I'd like to also address one of these other accusations that I've heard tossed around here, that it's divisive to churches. With all due respect, that's quite paternalistic. Churches are more than capable of handling their own issues without the heavy hand of government coming in and trying to prevent division within the church. No, these are fundamentally theological decisions that should be made within the church body itself.

Mr. MEADOWS. Well, I thank you for clarifying that.

Mr. Saperstein, Rabbi, I will come to you. You and I go way back, and we have a passion on a number of areas. We happen to disagree in terms of your premise here today and mine. So let me put it in a vernacular that perhaps I can share from a Christian perspective on what I'm hearing from many of our pastors that may translate a little bit closer to home.

Some have suggested that I'm so pro-Israel that I make Bibi Netanyahu look moderate. And so you know that my passion for Israel is genuine and the Jewish people.

Rabbi SAPERSTEIN. I do indeed.

Mr. MEADOWS. And so I say that.

If a rabbi with a tax-exempt status starts to get involved in any political discussions that may not have to do with marriage or life, but let's say it gets involved in Palestinian versus Jewish, or who should be a leader, or that we should make sure that we elect more pro-Jewish Members of Congress, do you think that that should be permitted in a synagogue?

Rabbi SAPERSTEIN. I think that that right exists right now all across America.

Mr. MEADOWS. I agree. I agree it does. I agree it exists. But do you believe that it should be there? Not that it exists.

Rabbi SAPERSTEIN. Yes.

Mr. MEADOWS. So, based on that premise, anything that would provide for a chilling event that suggests that I should support a candidate that is more pro-Israel, would you not think that that should be across the board on any denomination or any religion?

Rabbi SAPERSTEIN. I'm actually confused. Forgive me.

Mr. MEADOWS. I was hoping that you would be.

Rabbi SAPERSTEIN. I'm confused as to whether you're talking about the issue or——

Mr. MEADOWS. I'm talking about the issue.

So let me tell you what's happening, is that we've gone to a narrative that would suggest that we want churches to be political endorsers and money pots for others, and that's not really what we're talking about. What we want them to be able to do is have the ability—and I think you and I agree on this—to have the ability of free speech, direct from the pulpit, without fear of retribution or losing their tax-exempt status, deeply held religious beliefs that you and I both will seek to defend. And that's what we're trying to get at here today.

And so what I look forward to from you is some suggestions on how we can do that. And I'm willing to put a prohibition on moneys going through 501(c)(3)s to make sure. But if we take this very far, we're going to have a chilling effect on free speech, and I'm sure that's not what you want.

Rabbi SAPERSTEIN. You said this was a red herring. Put aside Mr. Hice's proposal here.

Mr. MEADOWS. I don't know that you can. But go ahead.

Rabbi SAPERSTEIN. If we simply undo the Johnson Amendment, is it not clear that then nonprofits would be able to give money into—and because churches have exemptions from reporting 990s and contributions on it—there would be this dark money that would flow through that. Either you take away the exceptions from the church, God forbid, or you actually allow it to continue and churches, religious institutions alone, would have the ability to fund things without it being transparent. Is that not a valid concern?

Mr. MEADOWS. I think it is a jump, a logical fallacy. I mean, I'll just speak bluntly. I think that's a logical fallacy. But I'm willing to have the debate.

And I guess what I'm saying, Rabbi, is this. If you will come to this committee with ways to protect free speech, you will have someone who is very willing to make sure that a 501(c)(3)'s tax-exempt status does not get used in an inappropriate manner finan-

cially, with at the same time allowing for complete free speech to happen from the pulpits and other areas of worship. Sound fair?

Rabbi SAPERSTEIN. Again, I think we differ on whether that free speech exists today or not.

Mr. MEADOWS. We do differ on that.

I'll yield back.

Mr. JORDAN. Real quickly before turning to Mr. Raskin.

Ms. Holcomb, can a church contribute to a political candidate's campaign today?

Ms. HOLCOMB. No.

Mr. JORDAN. No. And if the Johnson Amendment is gone, would a church be able to contribute to a political candidate's campaign?

Ms. HOLCOMB. Look, we're talking about the Free Speech Fairness Act. No, absolutely not.

Mr. JORDAN. No, no. But they could be able to speak, right? That's all we're talking about. They could be able to exercise their First Amendment liberty where it says Congress shall not abridge freedom of speech. That's all that happens. Well, imagine that, we'd actually have the First Amendment the way it's supposed to be.

Mr. Raskin.

Mr. RASKIN. Mr. Chairman, thank you very much and for waiving in and allowing me to participate this hearing.

I want to start with just two questions of nomenclature. One is the so-called Johnson Amendment was, of course, introduced by Senator Johnson, but it passed on a bipartisan, overwhelming bipartisan basis, in a Republican Congress, and signed into law by President Eisenhower. So this has been standard American law for decades.

Secondly, the First Amendment Fairness Act, I believe that's what it's called, you know, with all due respect, the First Amendment doesn't need a fairness act. The First Amendment is supreme to any statute we might pass. The First Amendment is its own fairness act. If someone is violating the First Amendment, go and sue under the First Amendment.

So let me start with that. Are any of you aware of any constitutional litigation since 1954, in the last 60-plus years, challenging the so-called Johnson Amendment or the Eisenhower Amendment as unconstitutional and what its success has been?

And forgive me for going fast, but we just have so little time. Are you aware of any? Have you ever brought a case on it or no?

Ms. ANCALLE. I'll defer to Ms. Holcomb.

Mr. RASKIN. Ms. Engelbrecht, are you aware of any decisions striking it down?

Ms. ENGELBRECHT. Not any decisions, no. But we sued the IRS in 2013 just to prove the point.

Mr. RASKIN. Ms. Holcomb?

Ms. HOLCOMB. Mr. Chairman, members of the committee, we cannot affirmatively sue the IRS due to Federal law.

The Anti-Injunction Act, we are not allowed, pursuant to Federal law——

Mr. RASKIN. The Anti-Injunction has to do with Federal spending.

Ms. HOLCOMB. We can't—no, I respectfully disagree. We cannot——

Mr. RASKIN. Are you saying the church cannot sue the Federal Government?

Ms. HOLCOMB. We cannot, without having been penalized, come out and sue the IRS to challenge the constitutionality of the Johnson Amendment. Happy to provide you with briefings——

Mr. RASKIN. Okay. Well, let's discuss that.

Rabbi Saperstein, are you aware——

Rabbi SAPERSTEIN. That's what the Branch Ministries case was, wasn't it——

Ms. HOLCOMB. Respectfully disagree once again. No, that's not the case whatsoever. Branch Ministries——

Mr. RASKIN. All right. We'll have to litigate it after.

In any event, I was a little surprised to hear this repeatedly described as an unconstitutional law that's been on the books for six decades and it's never been struck down before. I mean, that's——

Ms. HOLCOMB. Because we can't——

Mr. RASKIN. —that's a miracle of nature. That's remarkable in the United States of America. There are churches that win suits all the time in the U.S. Supreme Court.

But, okay, let me ask you this. Have any of you as private citizens ever been stifled in your own political speech, your ability to go out and say you believe X, Y, or Z, for moral, religious, philosophical, or political reasons? Have any of you ever been restrained in your speech or your spending?

Ms. HOLCOMB. Respectfully, sir, I'm not a church or a nonprofit.

Mr. RASKIN. Okay. As a citizen I was asking you. As a citizen, have you ever been stifled because of your religious views?

Ms. HOLCOMB. [nonverbal response.]

Mr. RASKIN. Okay.

So let me ask you this—were you going to say, Ms. Engelbrecht? Have you?

Ms. ENGELBRECHT. Well, you qualified at the end based on religious views. And I would just say that in my instance I was interested in the advancement of election integrity, and that seemed to draw the ire of a great many Federal agencies. And, yes, I do believe that I was being suppressed because of my speech.

Mr. RASKIN. Okay. Well, you know, at some point I'd love to talk to you about that. I actually have some family history, because my father, who worked in President Kennedy's administration was on Nixon's enemies list, and the IRS went after him. So there's abuse of government all the time. But what we're here to talk about is the law, and what is the law going to be.

So let me ask you this. Do all of you agree that corporations and citizens should not be able to funnel dark money through churches in order to get into political campaigns? Like, if I wanted to support the Mark Meadows for President campaign, hypothetically speaking, I should not be able to give $10 million to a church to go out and spend that money on an anonymous basis. Do all of you agree or do some of you think that is First Amendment protected? Any answers on that?

Ms. HOLCOMB. Respectfully, sir, it's currently prohibited by law, and the Free Speech Fairness Act does not change that.

Mr. RASKIN. No, I understand. But I'm a law professor, so don't fight the hypothetical. Imagine a world without hypotheticals.

You know, what I'm saying is, do you think it's constitutional for us to prevent people from channeling money through churches on an anonymous dark basis to put into political campaigns? Is that a First Amendment problem or not?

Rabbi SAPERSTEIN. In a word, yes.

Mr. RASKIN. You think it's constitutional to ban that.

Do you believe it's constitutional to ban it?

Ms. HOLCOMB. Respectfully, again, that's just not what's at issue here.

Mr. RASKIN. Okay. Do you guys think it's constitutional to ban conduit contributions through churches to political candidates?

Ms. ANCALLE. In my statement, we have endorsed the Free Speech Fairness Act, and that's what we're advocating for, and that's what we're here to advocate for today. And, like Ms. Holcomb said, that's not the intent of the Free Speech Fairness Act.

Mr. RASKIN. Okay. Well, you know, it was fascinating to me that it was something like 90 or 100 religious organizations or churches have come to lobby against this. In other words, on the terms that I heard described before, they're here to lobby against, theoretically, their own free expression rights, and it doesn't make any sense to me.

But I think that what they perceive is that the repeal of the so-called Johnson Amendment is an attempt to open up a gaping hole in the law for super divine dark money to pour through into the political system. And if it's not, then it should be very explicitly amended to say that nobody should be able to give money to a church for the purposes of putting it into a political campaign.

If all this is about is somebody being able to say what they want from the pulpit, I guess I'm with Rabbi Saperstein, I haven't seen any evidence that that's actually in danger. But do any of you have any cases where somebody has not been able to state their political views from the pulpit?

Ms. ANCALLE. I'll just say that I was actually very excited to hear the statement of the ERLC, which is the policy arm of the Southern Baptist Convention, one of the largest denominations in this country, and they actually do support the Free Speech Fairness Act.

Mr. RASKIN. Right. But my question is, are you aware of any IRS persecution or prosecution of anybody for making a political statement at the pulpit?

Ms. HOLCOMB. Yes, absolutely so. All Saints Episcopal Church was one example provided. It is also in my written testimony.

But, respectfully, I would just like to point out, we don't silence the minority just based on the whim of the majority. So we're going to do what's right. And there are pastors across the country asking for this relief from Congress right now.

Mr. RASKIN. Yeah. Okay.

Well, we seem to have differences to the facts, because some people seem to think that the First Amendment is working great, that the Johnson Amendment has worked great for decades, and we seem to have a difference as to values. Some people believe that churches are actually much better off not being able to be dragged

into TV sound bite wars and negative advertising, and others think that that's perfectly fine, that churches should be involved there.

But let me ask you this. If a church does want to get involved, it can set up a (c)(4) right now. It's just that it can't receive tax-deductible contributions to do it. Is that right?

Ms. HOLCOMB. Respectfully, churches aren't asking for (c)(4)s. All they want is just to be able to freely apply Scripture to every aspect of life without having the IRS on their backs, censoring their speech.

Mr. RASKIN. Well, Ms. Holcomb, do you believe the church can freely apply millions of dollars of dark money contributions to advance its view of Scripture in the political process?

Ms. HOLCOMB. That's not what they're asking for. Certainly not.

Mr. RASKIN. But I'm asking you, do you believe that millions of dollars should be able to channeled to churches?

Mr. JORDAN. The time of the gentleman has expired.

Mr. RASKIN. All right, saved by the bell.

Mr. JORDAN. The gentlelady can respond if she would like.

You weren't really saved by the bell. You were given a minute and 40 seconds past the bell.

Ms. HOLCOMB. Respectfully, I will just point yet again that campaign finance laws are in place that address those concerns. The Free Speech Fairness Act does not eviscerate those campaign finance laws, and that's simply not what America's pastors are asking for.

Thank you.

Mr. JORDAN. Ms. Engelbrecht, Professor Raskin asked about the stifling of free speech. He qualified it, as you said, based on your religious beliefs. But certainly there was an attempt by the government to stifle your free speech rights so much so that—and I don't know if the professor was here for your testimony and for some of the earlier questioning—eight visits from the IRS, six visits from the FBI, two visits from the Bureau of Alcohol, Tobacco and Firearms. OSHA visited your business. Texas EPA visited your business. A letter from Mr. Cummings, couple letters from Mr. Cummings, and TV appearances where he specifically called you and your organizations out.

All this happens, coincidentally, right after you filed for tax-exempt status for King Street Patriots and True the Vote.

Why do you think that—I mean, that's an awful of lot of government getting involved in your life and coming after you and looking into what's going on. If that doesn't have a chilling effect and stifling effect, and if that's not the heavy arm of government, I don't know what is.

Why do you think that happened? Why did they do it?

Ms. ENGELBRECHT. I think it happened because they saw the Johnson Amendment as a gateway through which they could attempt to silence those who dissented from their perspectives.

Mr. JORDAN. So you think it happened because they just didn't like your point of view? You think that was the main reason?

Ms. ENGELBRECHT. I think that was the primary reason, yes. They saw a pro-liberty election integrity organization growing, and growing quickly, and they wanted it gone.

Mr. JORDAN. Yeah. I would actually say it's a little more than that, frankly, respectfully. I would say it's not just that they didn't like what you were speaking out about, that they didn't just disagree with your political point of view. They did it because you were effective, right?

Ms. ENGELBRECHT. Absolutely.

Mr. JORDAN. Because you were making a difference, right? You were focused on election integrity and, like, "Whoa, whoa, we can't have that. We disagree with this speech. And, oh, by the way, she's having an impact." Imagine that. And they said, "Time out. Time out. Time for the heavy arm of government."

Ms. ENGELBRECHT. That's right.

Mr. JORDAN. Right?

And now we know, in your same town, pastors, the heavy arm of government weighed in on them and said, "Hey, by the way, you know, you're tax exempt, you can preach what you want, you can have your church, but can you send us your sermons? We, the government, want to look at what you're preaching on Sunday." Are you kidding me?

Ms. ENGELBRECHT. And I can tell you, having lived through that in Houston, Texas, when that happened in our churches, it turned the community upside down.

Mr. JORDAN. Sure did. Sure did.

Mr. RASKIN. Would the chairman yield?

Mr. JORDAN. I'm going to give the gentleman from Georgia a round here. And then, if the professor would like another short round, then we'll let our witnesses be dismissed and close the hearing.

Mr. HICE. Thank you.

Mr. JORDAN. Gentleman from Georgia is recognized.

Mr. HICE. Thank you, Mr. Chairman.

And I do have a letter that came out last Congress by a host of organizations supporting the Free Speech Fairness Act and—for the Johnson Amendment. I'd ask unanimous consent for it to be added, included in the record.

Mr. HICE. And I find great offense that we continue hearing that this is all about laundering dirty money through the churches. Nothing could be further—that's nothing but fear-mongering. And it's false. It's shameful. This is about free speech. And there are laws to prevent laundering, and nothing in that regard changes.

Rabbi, have you ever endorsed a candidate from your synagogue?

Rabbi SAPERSTEIN. No.

Mr. HICE. Okay. Have you ever received a threatening letter from the IRS——

Rabbi SAPERSTEIN. No.

Mr. HICE. —for whatever you said in your synagogue?

Rabbi SAPERSTEIN. No.

Mr. HICE. Okay. I have. I've received a number of them. And I've received them before I ever endorsed a candidate from the pulpit. And they are intimidating. They are threatening. They tell me that I can be sued, that my church can be sued, that we can lose tax-exempt status if I address certain issues from the pulpit.

Rabbi SAPERSTEIN. The IRS sent such a letter?

Mr. HICE. No. I receive them from left-wing organizations that are proclaiming what the IRS has the right to do. And whether it's coming from the IRS or not, the fact is those letters are chilling and they distort a very vague Johnson Amendment that is being used as a bully pulpit to self-censor people right out of involvement.

And the fact that you have not received a letter says to me you have no business even addressing what the content of those letters consist of.

It's amazing and ironic to me that people here today who claim to be supporters of separation of church and state are the very ones demanding that the government censor what's said in churches. And it just—it's contradictory in every sense of the word.

It ought to be the pastor, it ought to be the church that has a right to determine what is spoken from the pulpit, not the government. When government starts determining the content of sermons, we are in major trouble.

So let's go back to the basics, the bird's-eye view of why we're here today.

Ms. Holcomb—I don't know who to address this to, so you all just chime in, but let's go relatively quickly.

The purpose why the Johnson Amendment came about in the first place, was it enacted to stop political speech from political opponents?

Ms. HOLCOMB. Mr. Chairman, members of the committee, it was designed as a political ploy by then-Senator Lyndon Johnson to shut down two secular nonprofits.

Mr. HICE. There we go. That was the purpose. And I made the quote from the IRS itself acknowledging. That's the purpose. Right there is the purpose. That is why we're here today.

Mr. HICE. It is because the Johnson amendment was enacted for the distinct purpose of silencing political opponents who happen to be leading nonprofit organizations. That's why we're here. And that, over 60 years ago, has now become a massive tool of intimidation for 501(c)(3) organizations, and that precisely is what—it's not about money; it's about free speech, it's about deliberately, purposefully, intentionally trying to silence the beliefs in the public square of those who are in nonprofit 501(c)(3) organizations. And that must change. That is unconstitutional. That is un-American, and it needs to change.

All right. The importance of 501(c)(3) organizations in our society, in 10, 15 seconds, how important are they?

Ms. ANCALLE. They're very important. I was going to mention that a study, a recent study showed that 501(c)(3) organizations provide more than $1 trillion a year in the United States alone in goods and services. These are the people in need. 501(c)(3) organizations are very important. And they're not just getting—they're not subsidized by the government. They're actually giving a lot to the American people.

Mr. HICE. Ms. Engelbrecht, you mentioned in your testimony that 501(c)(3)s are an endangered species. Can you elaborate?

Ms. ENGELBRECHT. Absolutely. I started my organization in a time when there were many organizations being started, in pursuit of liberty and trying to—in ways that had not been seen for years,

engage citizens in political speech and the ability to speak freely. And when the IRS began singling groups out, that shut down, and it hasn't come back. It hasn't come back like it was, because who wants to be put through that? I'm still in court. Who wants that? That's why the Johnson amendment has to be repealed, replaced. Something has to be done, because we don't want that stain on the fabric of our country.

Mr. HICE. Mr. Chairman, I yield—and I will just say, perhaps we ought to add 501(c)(3)s to the endangered species list, because I agree with you wholeheartedly, and it would be the one time that I would support the endangered species list.

But thank you very much. I yield back.

Mr. JORDAN. Thank you, Jody. And thank you—or, Congressman Hice, for all your great work over—not just in Congress, over the years on this important, important issue.

I just want to ask one—a couple questions here, again, to Ms. Engelbrecht. So I want you to tell this committee and for the record just what it feels like——

Oh. Yeah, I'm coming back to you. Yeah.

— just what it feels like when you get eight contacts from the FBI, six from the IRS, two from the BATF, OSHA, EPA, you have an important member, influential member, ranking member of Congress go on TV, say things about you personally, send you letters. What's that feel like.

Ms. ENGELBRECHT. It's terrifying. And for 2 years, I didn't tell anybody, because there was such a stigma that I felt would be associated. And we were already trying hard enough to get our (c)(3), so we were being held in—in limbo.

Mr. JORDAN. I'm just talking the personal, emotional side of things.

Ms. ENGELBRECHT. But on the personal and emotional side, it was—it was terrifying.

Mr. JORDAN. Yep.

Ms. ENGELBRECHT. And I didn't see it coming, because I knew what—what our motives were, and that was just to get citizens to engage in the electoral process.

Mr. JORDAN. Since you were just starting a local tea party group.

Ms. ENGELBRECHT. Yes, just starting a local group to say, you know, we are not enough volunteers in the polls. Let's encourage people to volunteer.

Mr. JORDAN. When you filled out that application and sent it in, did you even——

Ms. ENGELBRECHT. No.

Mr. JORDAN. Never crossed your mind, did it?

Ms. ENGELBRECHT. No.

Mr. JORDAN. No idea this was going to happen?

Ms. ENGELBRECHT. No.

Mr. JORDAN. And suddenly, the heavy arm of government, as Ms. Holmes Norton talked about, is all over the Engelbrecht family.

Ms. ENGELBRECHT. Yeah.

Mr. JORDAN. Right?

Ms. ENGELBRECHT. Yes. But I'll say, if I may, one of the quotes that I held dearest during that time was from Deitrich Bonhoeffer, who said not to act is to act and not to speak is to speak, and that

is what made me realize that I had to stand up and speak, because I would suspect very similar to what the churches try to do when they get together collectively and speak out in defiance of the Johnson amendment.

Mr. JORDAN. Yep. I imagine there were some pastors in your neighborhood who saw what you were going through, and they had to kind of wonder, man, maybe I better tone it down a little bit next Sunday, right?

Ms. ENGELBRECHT. Without question.

Mr. JORDAN. I mean——

Ms. ENGELBRECHT. Without question.

Mr. JORDAN. I mean, pastors won't—they're going to preach, but some of them, it was probably in the back of their mind, I'm guessing.

Ms. ENGELBRECHT. Absolutely. Or other group leaders who would come up to me and say, I don't—I don't want to go through what you're going through. We're going to shut this thing down.

Mr. JORDAN. Right. And you weren't the only conservative group around the country who was——

Ms. ENGELBRECHT. No. One of hundreds.

Mr. JORDAN. There were hundreds.

Ms. ENGELBRECHT. One of hundreds.

Mr. JORDAN. Hundreds.

Ms. Holcomb, I bet you've had clients who had to go through the same kind of experience Ms. Engelbrecht went through, right?

Ms. HOLCOMB. We most certainly have. And, again, we hear from pastors all across the country who are fearful of going through that process.

Look, we can't trust the IRS with emails. What are we doing trusting it with our fundamental First Amendment freedoms?

Mr. JORDAN. All right.

Mr. Raskin, we're going to give you the last word, and you can have as much time as you want.

Mr. RASKIN. Mr. Chairman, thank you so much. And this has been a very clarifying hearing. I want to thank Mr. Hice especially for his comments. And I want to start with that.

Mr. Hice is very reassuring to me. He disclaims any interest in creating a divine dark money loophole in the law. This is not about being able—George Soros being able to channel millions of dollars from a not-for-profit through churches or synagogues or mosques into politics, it's not about allowing the Koch brothers to put hundreds of millions of dollars into churches on an anonymous, undisclosed basis in order to make that money tax deductible.

Okay. So everybody agrees that—at least some of you—do all of you agree you'd have no problem with an amendment to his bill saying that nothing here assures any—nothing here gives anybody the right to put any money into a church for the purposes of spending it on a political campaign? Would all of you agree?

Ms. ANCALLE. Sure.

Ms. HOLCOMB. Absolutely.

Mr. RASKIN. Yeah.

Ms. ENGELBRECHT. With all due respect, I think that separation of church and State just means that the government should stay out of churches, and I think the churches should be able to do what

they want to do and the way they want to do it in the moral fiber of that church and the leaders of the church, and all of the religious institutions should be—should be allowed to do what they want to do.

Mr. RASKIN. Okay. So if I'm a church, I'm the Jim Jones Church, whatever his church was called. I can have people give me millions of dollars in money that's tax deductible for them and I'm tax exempt, and then I can go out and say, let's elect Ms. Holcomb to Congress or let's defeat Ms. Holcomb for Congress, and there's no problem with that. And I can recruit people to give me money for those purposes. Is that right, just in your view?

Ms. ENGELBRECHT. I would say that I would hope that the true north of any religious institution or nonprofit would stand clear in their——

Mr. RASKIN. But it's up to them. We agree under the First Amendment, they define their religion any way they want. I've got the religion of dark money. That's my religion. In America, you can create whatever religion you want, right? So my religion is I want to collect dark money and put it into a campaign and save my donors having to pay taxes on it. So that's okay on your view. I understand Ms. Ancalle's not there. I think—I don't—I think Ms. Holcomb's with me on this. I think Rabbi Saperstein's with me on this. You would like an amendment which says we're going to prevent a dark money loophole from emerging. But you think that that's guaranteed by the First Amendment?

Ms. ENGELBRECHT. I recognize this is a difficult situation, but in my experience, less government is always better.

Mr. RASKIN. Let me ask you about your situation, because I—forgive me. I had another meeting and I missed it, but you're not a church. Your 501(c)(3) is secular, right? There's nothing religious about it, right?

Ms. ENGELBRECHT. Correct.

Mr. RASKIN. Okay. So whatever rights you're asserting for yourself, either constitutionally or as a matter of policy, would go for United Way or Harvard University or Liberty University, right? In other words, Harvard University could say, not only do we think we've got the smartest people in the country here, we're going to take money out of Harvard's corporate treasury, which is, I think, $17 billion now, and put it into political campaigns to support people for President or U.S. Senate or Governor, and you've got no problem with that, right? You think that's the right as a 501(c)(3) organization?

Ms. ENGELBRECHT. I do not profess to be an expert on whether or not repealing the Johnson amendment would have such a global impact on——

Mr. RASKIN. I'm asking your views about 501(c)(3) organizations, which are charitable, religious, and educational. And yours is charitable, right, or is it educational?

Ms. ENGELBRECHT. Well, it's a little bit of both, but, yeah.

Mr. RASKIN. Okay. But you're asserting for yourself the right to collect money to put into political campaigns, to get politically active, and that would apply also for the United Way——

Ms. ENGELBRECHT. Right.

Mr. RASKIN. —Harvard University, Howard University, every university in the country, which traditionally have been totally nonpolitical and nonpartisan. Now, they can have someone come and speak like from the pulpit at graduation, and it could be President Trump, it could be President Obama, what have you, nobody's revoking their 501(c)(3) status for making a political statement there, right? That's offering a little micro speech forum, but it's another thing to take money out of the corporate treasury of the university and put it into politics. But you think that's their First Amendment right. I'm just trying to clarify here intellectually.

Ms. ENGELBRECHT. Again, with all due respect, I recognize that this is a multifaceted discussion. I think fundamentally that less government is better. And if we want to point the finger of abuse, I think the finger should be pointed directly at the Internal Revenue Service.

Mr. RASKIN. I agree. Then you might be talking about administrative abuse—I don't know what the facts are; I'd love to get more about them—but that's administrative abuse and harassment, but that's different from what the law is. We've got to determine what the law is going to be, right?

Ms. ENGELBRECHT. I——

Mr. RASKIN. Would you agree, for example, that government itself cannot spend money on political campaigns? Like, we don't want the Department of Education or the Department of State going out and spending money in Raskin for Congress or Meadows for President. Would you agree to that?

Ms. ENGELBRECHT. I believe the government should govern itself, yes.

Mr. RASKIN. Okay. Well, so the First Amendment doesn't guarantee somebody who's in government the right to spend money in that way, and I don't think it guarantees the right of a not-for-profit corporation, which collects tax deductible contributions and itself is tax exempt, to participate in politics. And that's basically the line that was drawn with the Johnson-Eisenhower amendment back in the 1950s that we've had. And it's never been struck down. And most people think that it tracks perfectly the separation of church and State. And nothing that I've heard disproves that, but I want to ask a tough question for Rabbi Saperstein.

Do ministers and rabbis and imams and, you name it, do they have a right or do they not have a right to go through their whole theological disquisition on whatever it might be, Easter or Passover, you name the holiday, and then say, and therefore, everybody should vote for Donald Trump for President? Can they say that or can they not?

Rabbi SAPERSTEIN. They have a free speech right to say that.

Mr. RASKIN. They have a First Amendment right to say that.

Rabbi SAPERSTEIN. Right.

Mr. RASKIN. And do you know of any cases where they're being put in jail for doing that or the 501(c)(3) status of the church is being revoked for doing that?

Rabbi SAPERSTEIN. Again, the Pierce Creek Church and the Branch Ministries case, which they took out a full page ad——

Mr. RASKIN. They took out an ad. That was spending, right?

Rabbi SAPERSTEIN. But I don't know of anyone——

Mr. RASKIN. Okay.

Rabbi SAPERSTEIN. —who's facing that——

Mr. RASKIN. This to me isolates the critical issue. Okay. I would have a serious problem with the IRS or any other government entity entering a church and dissecting someone's sermons or trying to castigate or chase them or punish them for saying something, even if it's something that's political, and therefore, everybody go vote on Tuesday against Donald Trump or for Donald Trump. I just—you know, and—I've got a problem with that. But I think that the vast majority of the American people have accepted the idea that churches should not be political slush funds, and we should not be able to take tax deductible money given to churches for charitable and educational purposes and put directly in a political campaign.

And I haven't heard anything today—and I'll close with this: If anybody wants to convince me why churches or Harvard University or any other, United Way, should be involved in our political campaigns on the money basis.

Rabbi Saperstein.

Rabbi SAPERSTEIN. Yeah. I just want to be sure, Mr. Hice, I don't know if you were out of the room when I was very clear about this. The money issue I was dealing with on the broader question of the repeal of the Johnson amendment, I exclusively said that your bill is aimed at obviating that. Although I would ask you, under the Buckley v. Valeo and Citizens United case, thread of cases that says that campaign money is expressive conduct that is deserving of constitutional protection here, if you open the door to free speech in the—in the churches with tax deductible money, does that then become another form of expression, another form of speech here that—I certainly think we will get lawsuits to that effect from people. So even there, I have concerns, but I explicitly differentiated your——

Mr. RASKIN. Just to reclaim my time for a second, if I might. I mean, the Hobby Lobby case dangerously opens the idea that churches are political organizations, and that's why I wanted to make sure that everybody, with the exception of Ms. Engelbrecht, believes that the 501(c)(3) exemption should stand. Because if it doesn't, understand what's going to happen. The moment that you say that churches are just like the Democratic Party or the Republican Party or any other political organization, it might last for a year or two, it might be great for the churches that want to do it, but then everybody's going to say, well, why are they tax exempt, and why can people give money to them on a tax deductible basis? Because all the money's going to start to flow in that direction. I'd be an idiot to give my money, $100 to the Democratic Party instead of giving it to the Unitarian Church and let them spend it that way if they had the right to do it, you see.

So that's why I assume all of these churches and religious organizations are saying, no, don't go there, be aware what you wish for.

Rabbi SAPERSTEIN. I explicitly raise that fear and concern. We have special protections in the religious community and in the houses of worship that other entities don't have, a number of exemptions on the basis we are not like everyone else; only we have an establishment clause that affects the religious entities of this

country. And if you start asking to be treated like everyone else in this regard, we really endanger those exemptions. So I'm very glad that you raised that issue.

Ms. HOLCOMB. Mr. Chairman, if I may.

Mr. HICE. [Presiding.] Please.

Ms. HOLCOMB. Thank you.

Well, Mr. Raskin, I just wanted to say, I'm delighted to hear that it sounds like we agree on the fundamental premise that the IRS should not be censoring pastors' sermons. And that's really relieving to me, because that's really all that the Free Speech Fairness Act is going to do, again, is just create that free speech valve, and it allays—it should allay your concerns about campaign finance law, because it doesn't touch it.

Mr. RASKIN. Well, that's what you're saying, but that's not what the language of the bill says at this point. The reason why everybody's talking about dark money is because the way it's written is it completely opens up a vast reservoir of divine dark money to pour into the political process. But you're saying that's not the purpose here.

Ms. HOLCOMB. Respectfully——

Mr. RASKIN. And I understand that the sponsor's not saying that. So that's all a question of draftsmanship in the legislation.

Ms. HOLCOMB. Respectfully, all the language of the bill actually does, it says within the ordinary course of your ministry and as long as it incurs no more than de minimus or incremental expenses, which is an extremely common phrase——

Mr. RASKIN. But what if my ministry——

Ms. HOLCOMB. —in tax law, easy to apply——

Mr. RASKIN. Ms. Holcomb, let me ask you, what if my ministry—see, in America, we have such radical, expansive, wide open, robust freedom of religion, that everybody can define their religion as they please, right? And what if my ministry is my theology tells me I've got to get involved in politics however I can, and then we repeal the Johnson amendment, and so suddenly we say, I can take all of the money that's coming in to me and go spend it in a campaign, because that's what my theology tells me to do?

Ms. HOLCOMB. Under the Free Speech Fairness Act, they're going to have a really rough time of it, because it's only de minimus expenditures, again, and only speech that can be done in the ordinary course of their normal ministry.

This is not a cataclysmic event. We're simply talking about a relief valve for free speech.

Mr. JORDAN. Mr. Chairman——

Mr. RASKIN. Okay.

Mr. JORDAN. —I just want to let the record show that the professor, who's not a member of either subcommittee, got more time than anyone else, and we appreciate——

Mr. RASKIN. I'm very grateful for it——

Mr. JORDAN. —you being here.

Mr. RASKIN. —being a professor and all. Thank you very much.

Mr. HICE. I'd like to thank our witnesses for taking time out of your schedule to be with us here today, we deeply appreciate it, and for all the participation from the committees.

We're good? All right.

If there's no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 12:38 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of Tim Delaney, on behalf of the National Council of Nonprofits

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

Chairmen Meadows and Jordan, Ranking Members Connolly and Krishnamoorthi, and members of the Subcommittees, I write to present the views of the National Council of Nonprofits on the longstanding third condition in Section 501(c)(3) of the Internal Revenue Code, which provides that, to be eligible for tax-exempt status and the right to receive tax-deductible contributions, charitable nonprofits, religious groups, and foundations may "not participate in, or intervene in (the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office" (a provision of law sometimes called the Johnson Amendment). The National Council of Nonprofits opposes efforts to repeal or otherwise tamper with that important protection because such legislation would disrupt and fundamentally undermine the work of the charitable, religious, and philanthropic communities – a segment of the economy that employs more than 10 percent of the workforce and serves tens of millions of Americans daily.

At the outset, I point out that our views are informed by the law, facts, and insights of Americans working in local community-based charitable nonprofits, houses of worship, and foundations around the country who have provided real-world context on the issues before your subcommittee through information delivered in this letter and these Appendices:

1. The **Community Letter in Support of Nonpartisanship**, signed by nearly 4,500 charitable, religious, and philanthropic organizations and for-profit businesses – from all 50 states and collectively representing tens of thousands of organizations – expressing strong opposition to efforts to weaken and/or repeal the current law that for six decades has successfully protected the integrity and effectiveness of charitable nonprofits, religious institutions, and foundations by keeping them apart from partisan electioneering; and

2. A sampling of the informed views of American voters – including your constituents – who shared insightful comments when signing the above letter, including these observations about the importance of protecting the nonpartisanship of charitable, religious, and philanthropic organizations by keeping them separate from any "political campaign on behalf of (or in opposition to) any candidate for public office":

- *"Protecting the Johnson Amendment isn't a free speech issue; advocacy and candidate endorsement are not the same. Partisan politics have no place in charitable nonprofits and faith communities."* **Life Adventure Center**, Versailles, KY
- *"No political party embodies the fullness of the gospel, while both embody aspects of it. It is impossible for churches to become partisan without watering down the good news of Jesus."* **Commonwealth Baptist Church**, Alexandria, VA
- *"The full Board of Habitat For Humanity [of Burke County] voted to oppose the repeal of the Johnson Amendment at its Board meeting of March 20th. This will create major problems for the organization causing increased difficulty with fund raising, possibly splitting the board about who, what to endorse. The potential is there to destroy the organizational structure of nonprofits in general and Habitat specifically."* **Habitat For Humanity of Burke County**, Morganton, NC

Legal and Factual Background

Since at least 1894, the federal government has exempted from taxation the income of entities "organized and conducted solely for charitable, religious, or educational purposes."[1] Today, the exemption – codified in Section 501(c)(3) of the tax code – is available to groups "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition ..., or for the prevention of cruelty to children or animals."

But tax exemption is not automatic. In the words of one court, it is "a matter of grace rather than right."[2] To be eligible for that exemption – and the ability to receive tax-deductible donations – Section 501(c)(3) provides that organizations cannot do three things:

1. In 1909, Congress declared the first condition: 501(c)(3) organizations cannot pay out "profits": "no part of the net earnings of which inures to the benefit of any private shareholder or individual." [Hence, "no profit" became "nonprofit."]
2. In 1934, Congress added the second condition: 501(c)(3) organizations cannot use their full First Amendment rights to petition their government – "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."
3. In 1954, the Republican-controlled Congress passed legislation, signed by President Eisenhower, that established the third condition for tax exemption: 501(c)(3) organizations

[1] See Wilson-Gorman Tariff Act of 1894.

[2] Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972) (expressly rejecting the "proposition that the First Amendment right of free exercise of religion, *ipso facto*, assures no restraints, no limitations and, in effect, protects those exercising the right to do so unfettered. We hold that the limitations imposed by Congress in Section 501(c)(3) are constitutionally valid"), *cert. denied*, 414 U.S. 864 (1973). See also *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983) (the Supreme Court rejected the claim that Section 501(c)(3) violated First Amendment rights, holding that Congress can require organizations to comply with conditions to qualify for tax-deducible donations, because the government is not required to subsidize political ideology through tax benefits).

> may "not participate in, or intervene in (the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[3]

Organizations can, of course, do all or any of those acts – but doing so breaches the conditions so they will no longer be exempt from taxation or eligible to receive tax-deductible contributions.

Congress and other governmental bodies have put similar legal provisions in place to guard against taxpayers subsidizing partisan political activities. For instance, the Hatch Act (and "mini-Hatch Acts" at the state level) prevent government employees from using the public's resources – including the government employees' time – to engage in partisan political activities.[4] Congressional ethics rules prevent Members of Congress and their employees from engaging in partisan electioneering using public resources or while on government grounds.[5] And judicial canons ban judges from engaging in partisan electioneering, including the statement that a judge may not "publicly endorse or oppose a candidate for public office."[6]

Congress has put other restrictions in place on partisan political activities in yet additional contexts. For instance, even though AmeriCorps, VISTA, and similar programs are designed to introduce young leaders to serving their communities, those programs prohibit participants from engaging in partisan politics while on duty.[7] Moreover, federal law prohibits government contractors and grant recipients from using government funds to intervene in partisan elections.[8]

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[3] In 1987, Congress added the language of "(or in opposition to)" to fill a loophole that groups were exploiting by actively opposing candidates. See Revenue Act of 1987.

[4] See 5 U.S. Code § 7324(a): "An employee [employed or holding office in an Executive agency other than the Government Accountability Office] may not engage in political activity while the employee is on duty, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; while wearing a uniform or official insignia identifying the office or position of the employee; or using any vehicle owned or leased by the Government of the United States or instrumentality thereof."

[5] See U.S. House of Representatives House Ethics Manual, Committee on Standards of Official Conduct, 110th Congress, 2d Session, 2008 Edition, page 135: "Once House employees have completed their official duties, they are free to engage in campaign activities on their own time, as volunteers or for pay, as long as they do not do so in congressional offices or facilities, or otherwise use official resources." See also, United States Senate Select Committee on Ethics: Campaign Guidance: "Senate employees are free to engage in campaign activity on their own, as volunteers or for pay, provided they voluntarily do so on their own time, outside of Senate space, and without using Senate resources."

[6] See Code of Conduct for United States Judges Canon 5(A)(2): "A judge should not (1) act as a leader or hold any office in a political organization; (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate."

[7] See Memorandum from Frank R. Trinity, General Counsel of the Corporation for National and Community Service, Feb. 12, 2007; "You should keep in mind the following rule: Grantee staff and program participants may not ... participate in, or endorse, political events or activities, if they are doing so while charging time to a Corporation-supported program, accumulating service or training hours towards an education award, or otherwise performing activities supported by the [Corporation for National and Community Service]."

[8] Jack Maskell, CRS Report for Congress, "'Political' Activities of Private Recipients of Federal Grants or Contracts," Oct. 21, 2008; "Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their *own*, private, non-

That is not to say that the foregoing groups and their employees can never intervene in partisan elections for or against candidates for public office. As Members of Congress know, one must leave government property before engaging in fundraising activities.[9] Congressional staff are trained that while they cannot engage in partisan politicking while on duty or using government resources, they can take personal leave to join a campaign.[10]

The same is true of charitable, religious, and philanthropic groups. The Internal Revenue Service (IRS) has published free resources to inform charitable nonprofits and houses of worship of the time and place restrictions on when they can and cannot intervene in efforts in support of or opposition to candidates for public office. For instance, while the IRS website warns, "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," the Service also provides a variety of nonpartisan activities that are permissible.[11] The IRS provides more details in other publications.[12] Similarly, the IRS identifies where the lines are drawn between permissible and impermissible activities by religious institutions and clergy in its helpful publication, "501(c)(3) Tax Guide for Churches & Religious Organizations."[13]

Communities Rely on the Nonpartisan Work of 501(c)(3) Organizations

The work of charitable nonprofit organizations ("nonprofits") throughout the United States improves lives, strengthens communities and the economy, and lightens the burdens of government, taxpayers, and society as a whole. Your constituents recognize the vital and ongoing work of nonprofit organizations in delivering essential services, enhancing their quality of life, and uplifting the spirit of faith, innovation, and inspiration in local communities across America. Indeed, the incredible diversity of nonprofits touches and benefits Americans virtually every day of their lives.

For the past couple of months, the network of the National Council of Nonprofits has been proactively listening to the public and the nonprofit community about the potential impact of politicizing 501(c)(3) organizations by allowing them to endorse or oppose candidates for public

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federal resources for 'political' activities because of or as a consequence of receiving such federal funds. However, such organizations are uniformly prohibited from using the federal grant or contract money for such political purposes, unless expressly authorized to do so by law."

[9] According to the U.S. House of Representatives House Ethics Manual, "The House buildings, and House rooms and offices – including district offices – are supported with official funds and hence are considered official resources. Accordingly, as a general rule, they may not be used for the conduct of campaign or political activities." *Supra* at page 127. Similarly, "Senate resources may only be used for official purposes. No official resources (e.g., Senate space, equipment, staff time) may be used to conduct campaign activities." United States Senate Select Committee, *supra*.

[10] See footnote 5 *supra*.

[11] See "Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," IRS website.

[12] See "Exemption Requirements - 501(c)(3) Organizations," on the IRS website, and "Lobbying Issues" by Judith E. Kindell and John Francis Reilly (1997), also on the IRS website.

[13] 501(c)(3) Tax Guide for Churches & Religious Organizations (Rev. 8-2015), IRS Publication 1828.

office. During this time, we have received more than a thousand concerned comments that demonstrate the deep opposition to the proposals to repeal or weaken the Johnson Amendment. Below are just four of these heart-felt comments from charitable nonprofits dealing with challenges at the frontlines in our communities:

> *"We intend to advance the Gospel in our ministry of healing, reconciliation, and renewal. Neither major political party currently does that or promises to do that. Therefore, we do not want any of our moneys going to the support of a political party. We cannot financially or ethically afford that kind of investment."* **St. Francis Spirituality Center**, Tiffin, OH

> *"We accomplish so much more because our board meetings are not filled with disruptive arguments about which political candidate to endorse. And we don't have people questioning our motives and whether funds they donate to our missions will be redirected to a politician's election campaign. Protecting nonpartisanship protects charitable organizations and our communities from partisan politics and division that causes strife among and within those safe places."* **Alliance for Strong Families and Communities**, Milwaukee, WI

> *"Nonprofits need to serve their constituents first and foremost in an unbiased manner, not be pawns of or beholden to a political party. This political independence keeps organizations open to all administrations, and more genuinely open to new ideas and policies, as well as objectively critical of policies which undermine their organization's mission and the wellbeing of their constituents."* **Hamtramck Community Initiative**, Hamtramck, MI

> *"As a community foundation, we focus on philanthropy in its broadest form. We encourage all people to be engaged within our community, and to give back financially and with their time. Being nonpartisan enables us to be independent and work closely with people on all sides of the political aisle. Additionally, we - as with all 501(c)(3) organizations - are governed by a board of volunteers. Under current law, our volunteer board members work together for common purpose without permitting partisan elements to enter the conversation. If the protection that the law provides were to be diminished in any way, the focus of a common purpose for the common good could easily dissipate."* **Oak Park-River Forest Community Foundation**, Oak Park, IL

In **Appendix 2**, members of the Subcommittees can read these and scores of additional comments from your districts and states that explain how repealing or weakening current law on nonpartisanship would adversely affect their organizations and communities. These represent a small sampling of voices we have heard from grassroots nonprofits in every state.

Misunderstandings or Misinformation about the Current Law on Nonpartisanship

The current law on nonpartisanship, which protects charitable, religious, and philanthropic organizations from demands for political endorsements and opposition, is seen by the vast majority of 501(c)(3) organizations and by the general public as sound policy that should be retained for the

public good.[14] Many of the challenges to current law seen in pending legislation and public statements appear to be based on either a misunderstanding of what the law actually permits and restricts, or communications that conflate the legally and distinctly different items of advocacy regarding public policy positions, versus partisan, election-related activities. It is this misunderstanding or misinformation that has led some to believe that charitable nonprofits, religious institutions, and foundations are forced to sit on the sidelines rather than engage on important public policy debates. The truth has little or no relationship to the misunderstandings or confused communications.

The Freedom to Engage in Policy Advocacy Is Starkly Different Legally from Banned Partisan Electioneering

As made clear in the ***Community Letter In Support of Nonpartisanship*** found in **Appendix 1**, charitable nonprofits, including religious congregations, are free to speak on important matters of the day and advocate on public policy issues and legislation. This means that pastors can preach on policy issues important to their faith, such as the sanctity of all human life, marriage, and religious freedom with the clear knowledge that their voice is unfettered by government. Likewise, a food bank is in its rights to speak up on hunger-related issues, arts organizations can and do urge support for funding and freedom of expression, and virtually every charitable nonprofit can treat advocacy as core to advancing its mission. When it comes to advocacy rights, only private foundations are barred from most lobbying activities, yet they too are free to engage in public debates, promote public education efforts, and fund a wide range of issue-focused activities.

The relevant language in Section 501(c)(3) merely prohibits partisan campaign intervention, defined to include endorsing or opposing candidates for public office, publishing or distributing statements for or against candidates, or using tax-deductible and other resources to support partisan campaign activities.

Protestations to the contrary, the law on lobbying rights and candidate endorsements/opposition are distinct; failure to maintain clarity on this question is misguided or disingenuous.[15]

Personal Capacity

The protections against partisanship in Section 501(c)(3) apply to the organization, but not to the person in her or his individual capacity. Federal tax law does not limit the partisan activities of

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[14] The public overwhelmingly supports current law and wants to keep politics out of charitable nonprofits, religious institutions, and foundations. A poll conducted in March 2017 found that nearly three out of four American voters (72 percent) want to keep current rules protecting 501(c)(3) organizations from the rancor and divisiveness of partisan political activity. "National Poll Finds That Americans Support the Johnson Amendment to Protect Nonprofit Nonpartisanship," Independent Sector, Mar. 20, 2017.

[15] See, *e.g.*, April 5, 2017 letter from the Governor and Attorney General of Texas sent to 23 Republicans in Congress, in which the letter that they signed asserts: "the Johnson Amendment ... threatens churches with the loss of their tax-exempt status if they support or oppose legislation or candidates." A related footnote then intermixes the 1934 language with 1954 language in a way that suggest inaccurately that the Johnson Amendment covers both. It does not. Similar misinformation is floating around by proponents of repeal and weakening of proven law. We suggest that the elected officials who have been asked to sign letters prepared by others hold the ghost-writers accountable for preparing statements that are legally and factually incorrect.

individuals because individuals do not earn an exempt status under the law. This means that the CEOs of private foundations, pastors, imams, and rabbis of religious institutions, and all employees and volunteers of 501(c)(3) organizations can endorse or oppose any candidate. The only condition is that he or she does not seek to invoke the good name and tax status of the organization while expressing personal views. This is very much akin to elected officials leaving public buildings to solicit campaign contributions and congressional staffers taking time off from their public jobs to work on partisan campaigns. The rules are unambiguous and leave little room for creative re-interpretation by the IRS, partisans, or others.

Alternatives Abound

As stated at the outset, exemption from federal taxation and eligibility to receive tax-deductible contributions are not entitlements, and must be earned. But there are alternatives to 501(c)(3) status. First, as noted above, individuals can act in their individual capacity to engage in partisan electioneering, provided that they do not use 501(c)(3) resources or name. Second, 501(c)(3) organizations enjoy multiple options, including having like-minded people create an organization that can be both tax exempt and be permitted to endorse or oppose candidates for elective office or help to raise money for political campaigns. These include social welfare organizations[16], labor unions[17], and business organizations[18], such as chambers of commerce. While exempt from paying federal taxes, these organizations are distinct from charitable, religious, and philanthropic entities in that contributions to them to not entitle the donor to a federal tax deduction. Private individuals and businesses may subsidize the operations and partisan activities of these groups, but – as the courts have repeatedly said – taxpayers do not.

Forming an entity is neither new nor difficult. Indeed, it is an American tradition, chronicled in the 19th Century by de Tocqueville in *Democracy in America.*[19] Individuals in our country naturally combine to form associations to address problems, express opinions, and seek action.

The Necessity of Nonpartisanship

Legislation has been proposed that would repeal or weaken the longstanding protection from partisan demands for political endorsements and campaign contributions that 501(c)(3) organizations enjoy.[20] If enacted, the legislative proposals would politicize charitable nonprofits,

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[16] Section 501(c)(4), 26 U.S.C. 501(c)(4); see IRS summary, Social Welfare Organizations.

[17] Section 501(c)(5), 26 U.S.C. 501(c)(5); see IRS summary, Labor and Agricultural Organizations.

[18] Section 501(c)(6), 26 U.S.C. 501(c)(6); see IRS summary, Business Leagues.

[19] *Democracy in America*, Alexis de Tocqueville, edited and translated by Harvey C. Mansfield and Delba Winthrop, published by the University of Chicago (2000). See pages 489-92: "Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small; Americans use associations to give fêtes, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools. Finally, if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate. Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you will perceive an association in the United States."

[20] H.R. 172 and S.264/H.R. 781.

houses of worship, and foundations, plunging them into the caustic partisanship that bedevils our country. It would hurt the public and damage the capacity of organizations in a wide variety of ways, including this sampling (explained in the words of frontline charitable, religious, and philanthropic organizations):

- Eroding missions: When nonprofit board members – and donors – demand that the organization take sides in a local, state, or federal election.

  "Nonprofits are increasingly the only entity in our community with the ability to convene disparate partners, solve problems, and broker decisions of critical importance. Our neutrality to partisan politics is an essential factor in our ability to build trust and demonstrate objectivity. A repeal or weakening of the current protections and lobbying restrictions will neuter this ability and I fear, will weaken attempts to build a stronger sense of local community." **Community Foundation of Lorain County**, Elyria, OH

  "The repeal of the Johnson amendment could open up our affordable housing nonprofit and others to partisanship and in-fighting among board members and members. Our donors want the security of knowing their contributions will be used to further the good work of the organization, and not for partisan politics." **Lexington Community Land Trust**, Lexington, KY

- Corroding public trust and threatening charitable contributions: When donors demand that the organization endorse certain local, state, or federal candidates – and then they or other donors stop supporting the organization if it remains neutral or supports the other side.

  "This would be a travesty if nonprofits are forced to declare their political affiliation. It would certainly affect our ability to make un-biased decisions." **McDowell Mission Ministries, Inc.**, Marion, NC

  "Donors contribute to the Community Foundation because they believe their charitable dollars will be used only for charitable purposes in our community. Repeal of the Johnson Amendment will blur the line between charitable work and partisan political activities, weakening the public's trust in our foundation. That lack of trust will inevitably result in a reduction in donations, lessening our ability to carry out our charitable mission." **Capital Region Community Foundation**, Lansing, MI

  "Unreasonable partisan politics are destroying the democratic fabric of this country and the same will happen to nonprofits if we allow them to be engulfed by the dirty tentacles of politicians and their personal and biased motives." **Resource Education Awareness by Latinos**, Teaneck, NJ

  *"Our organization is trusted by donors to do charitable work and advocacy, *not* partisan politicking. We strongly oppose a repeal of the Johnson Amendment."* **Jewish Family Service of San Diego**, San Diego, CA

- Limiting effectiveness: When board members with contrary views demand that the organization endorse their preferred candidates, whether because they are business clients, family members, or college friends, thereby creating ill-will and polarizing the board on other unrelated issues.

  "The collaborative private, public partnership of early childhood work is successful largely because of the inclusive and bi-partisan nature of our work. Without the assurance of this bi-partisan approach, our success will be challenged and therefore the outcomes for children and families threatened. We are responsible for educating legislatures about the ways in which children and their families depend on the shared efforts of all community stakeholders in an holistic approach to delivering services to children according to their specific needs from the earliest stage of their development through their adulthood. We would become much less effective in engaging necessary stakeholders if we campaigned for one group or another rather than focusing on our mission. Our success on behalf of families depends on broad support, not political partisanship." **Region A Partnership for Children**, Sylva, NC

  "The mission of the Friends of the Carr Refuge is 'To promote the conservation of sea turtles and natural resources of the Archie Carr National Wildlife Refuge and engage in such educational, scientific partnership, and civic activities as will support the mission of the refuge.' We are Democrats, Republicans and Independents all working together as volunteers to support and advocate for the refuge and the sea turtles we all love. Our leaders chose to organize as a 501(c)(3) specifically because being nonpartisan is critical to achievement of our mission. We don't wish to ever find ourselves in a position of resisting pressure from one side or the other to endorse candidates or make campaign contributions." **Friends of the Carr Refuge**, Indian Harbour, FL

  "We are good stewards of our time, treasure and talents. Our mission focuses on improving the quality of life for the most vulnerable. We do this through providing services, advocacy on those issues that impact the poor and community building. Changes to this Act could potentially force us to participate in partisan politics. Some more fully engaged in politics may expect us to since there would be no rules prohibiting such activity. This would distract us from our purpose." **Catholic Charities, Diocese of Trenton**, Trenton, NJ

- Reducing resources: Pressure on 501(c)(3) organizations to redirect charitable resources (money, staff time, facilities, member lists, fundraising help -- as well as their brand value) to help promote partisan political campaigns.

  "We intend to advance the Gospel in our ministry of healing, reconciliation, and renewal. Neither major political party currently does that or promises to do that. Therefore, we do not want any of our moneys going to the support of a political party. We cannot financially or ethically afford that kind of investment." **St. Francis Spirituality Center**, Tiffin, OH

  "Partisanship on the part of nonprofit organizations could be very detrimental to our mission and to the efforts we put forth to assist others. Being nonpartisan allows us the

freedom to work with all organizations without fear of offending possible donors because of positions that their candidate may take that is in conflict with what we are trying to accomplish. This could place at jeopardy our independence to work across the community in helping those in need." **King Outreach Ministry**, King, NC

- Increasing dark money: Partisan donors start to misuse charitable nonprofits and religious groups the same way they have been using some 501(c)(4) social welfare organizations since the *Citizens United* decision to anonymously funnel money into partisan, election-related activities. But now they would be able to take a tax deduction for purely partisan spending.

  "Nonprofits serve a valuable purpose in their communities. Their role has always been to serve the community and stay above the fray of partisan politics. Repealing the Johnson Amendment would endanger the impartiality of the nonprofit sector and threaten it with the seduction of dark money from partisan donors. Nonprofits are not asking for this repeal." **Forward Community Investments**, Madison, WI

  "The arts depend on the generosity of individuals and a long-standing American tradition of Philanthropy to survive. As a return for their generosity and understanding of the cultural fabric of our country, arts donors trade their immediate funds for the ability to list charitable contributions as tax deductions. To remove this clear exchange is to topple the very base from which the arts in the United States are surviving. Please deeply consider ALL of the ways weakening the Johnson Law will: pour money into dirty politics, not remove it (which has been the promise), LOSE THE TRUST of your constituents and continue to tear at the delicate fabric of arts and culture in the United States." **Kinesis Project Dance Theatre**, New York, NY

- Eliminating a desired safe refuge: Americans are fed up with hyper-partisanship, and view their houses of worship and charitable nonprofits as safe havens where they can escape the acrimony and division. Indeed, the only true beneficiaries of removing the protection would be politicians and paid political consultants.

  "It is critical to our work that supporters perceive us to be 'cause'-based rather than political, partisan or ideologically based. Please do not remove the very safeguards that ensure supporters of the integrity of nonprofit organizations' motives and modes of conducting business." ***Matthew Reardon Center for Autism***, *Savannah, GA*

  "A repeal of the Johnson Amendment would hamper our mission and render us less effective to those we serve." ***Schenectady Inner City Ministry***, *Schenectady, NY*

  "Nonprofits need to be a refuge of acceptance and not represent an outgrowth of a political belief system." Arts organization in Northern Virginia

  "Efforts to repeal or weaken the 'Johnson Amendment,' the provision of the law that protects charitable nonprofits from partisan demands for endorsements and campaign

contributions, would significantly injure the ability of organizations to provide a safe haven from politics." **Hosparus Health**, Louisville, KY

Conclusion: Americans Want to Protect Nonpartisanship

Simply put, our society is better today because 501(c)(3) organizations operate as safe havens from caustic partisanship. Americans don't want to see any part — not even a *de minimis* amount — of their charitable donations redirected by someone else towards a partisan campaign. Nor do they want to see more anonymous, and in this case tax deductible, dark money flowing into political campaigns. Less still do they want some of the few remaining places where they can escape — their sacred houses of worship and trusted community gathering places — invaded and plunged into the mire and muck of polarizing partisanship. Therefore, we urge Members of the Subcommittee to oppose any attempts to repeal, weaken, or otherwise tamper with the Johnson Amendment that has proven to be a necessary and effective protection for the last 60-plus years for America's charitable, philanthropic, and religious communities and those we all serve.

Respectfully submitted,
National Council of Nonprofits

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National Council of Nonprofits

The National Council of Nonprofits (Council of Nonprofits) is a trusted resource and advocate for America's charitable nonprofits. Through our powerful network of State Associations and 25,000-plus members – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.

Appendix 1

Community Letter in Support of Nonpartisanship

April 5, 2017

Community Letter in Support of Nonpartisanship

April 5, 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:

The undersigned organizations strongly oppose proposals that would politicize the charitable nonprofit and philanthropic community by repealing or weakening current federal tax law protections that prohibit 501(c)(3) organizations from endorsing, opposing, or contributing to political candidates.

Nonpartisanship is a cornerstone principle that has strengthened the public's trust of the charitable community. In exchange for enjoying tax-exempt status and the ability to receive tax-deductible contributions, 501(c)(3) organizations – charitable nonprofits, including religious congregations, and foundations – agree to not engage in "any political campaign on behalf of (or in opposition to) any candidate for public office."

That provision of law protects the integrity and independence of charitable nonprofits and foundations. It shields the entire 501(c)(3) community against the rancor of partisan politics so the charitable community can be a safe haven where individuals of all beliefs come together to solve community problems free from partisan divisions. It screens out doubts and suspicions regarding ulterior partisan motives of charitable organizations, as undoubtedly would occur if even just a few charitable organizations engaged in partisan politics. Nonpartisan 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.

Charitable nonprofits, including religious congregations, are free to speak on important matters of the day and advocate on public policy issues and legislation. Private foundations, while barred from most lobbying activities, are free to engage in public debates, promote public education efforts, and fund a wide range of issue-focused activities. The relevant language in Section 501(c)(3) merely prohibits partisan campaign intervention, defined to include endorsing or opposing candidates for public office, publishing or distributing statements for or against candidates, or using tax-deductible and other resources to support partisan campaign activities.

We are united in opposing any and all efforts to weaken or repeal this longstanding protection in the federal tax code (sometimes called the Johnson Amendment) that President Eisenhower signed into law in 1954. Weakening the law by allowing leaders of individual 501(c)(3) entities to endorse candidates for public office and engage in some partisan electioneering activities would damage the integrity and effectiveness of all charitable organizations and spawn litigation as innovative partisans seek to expand gray areas in the proposed legislation. Repealing the Johnson Amendment, an approach promoted by the President and some in Congress, would damage the federal Treasury as people take tax deductions for political contributions they could then funnel through charitable nonprofits, undercut fair elections by providing a loophole to avoid campaign contribution disclosure laws, and empower politicians to exert pressure for access to foundation assets and charitable funds for their own partisan campaigns rather than for the public good.

We urge you to join us in opposing efforts to weaken and/or repeal the current law that for six decades has successfully protected the integrity and effectiveness of charitable nonprofits and foundations by keeping them apart from partisan politics.

Respectfully,

National Organizations

Abila
Accreditation Council for Psychoanalytic Education, Inc.
AdoptAClassroom.org
Alliance for Strong Families and Communities
Alfred P. Sloan Foundation
American Alliance of Museums
American Association of Anatomists
American Association of Physics Teachers
American Association of Teachers of German
American Bladder Cancer Society
American Board of Venous & Lymphatic Medicine
American Brass Chamber Music Association
American Conference of Academic Deans
American Heart Association
American Historical Association
American Jewish Committee
American Medical Association Foundation
American Physiological Society
American Podiatric Medical Association, Inc.
American Red Cross
Americans for the Arts
Americans Promoting Study Abroad
Americans United for Separation of Church and State
Amyloidosis Foundation
Annie E. Casey Foundation
Asian Pacific American Legal Resource Center
Association for Jewish Outreach Professionals
Association of American Colleges and Universities
Association of Art Museum Directors
Association of Direct Response Fundraising Counsel
Association of Fundraising Professionals
Association of Immunization Managers
Association of Nature Center Administrators
Astraea Lesbian Foundation for Justice
Baptist Joint Committee for Religious Liberty
Baptist Women in Ministry
Barr Foundation
BoardSource
Brady Campaign and Center to Prevent Gun Violence
Camp Fire
Campion Foundation
Catholic Charities USA
Catholic Mobilizing Network
Center for Health, Environment & Justice
Center for Inquiry
Charles Stewart Mott Foundation
Citizen Schools
CleanSlateNow
Commonwealth Fund
Council on Foundations
Council for Global Equality
Dance USA
Dementia Society, Inc.
Democracy 21
Destination & Travel Foundation
Dietel Partners, LLC
Disability Rights Advocacy Fund
Ecology Project International
Engineering Conferences International
Feed the Children
Feeding America

Community Letter in Support of Nonpartisanship
April 5, 2017
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Food & Water Watch
Ford Foundation
Forum of Regional Associations of Grantmakers
Freedom From Religion Foundation
Free Press
Girl Scouts of the USA
Girls Inc.
Global Integrity
Goodwill Industries, International
Grantmakers for Effective Organizations
Greater Nonprofits
GuideStar
Habitat for Humanity International
Harbor Compliance
HawkWatch International
Hindu American Foundation
Histiocytosis Foundation
Horizons National
Human Science Institute
Independent Sector
International Essential Tremor Foundation
International Hearing Dog, Inc.
International Performing Arts for Youth
International Primate Protection League
Issue One
Jessie Ball DuPont Fund
Jewish Council for Public Affairs
Jewish Federations of North America
Leadership USA
League of American Orchestras
League of Women Voters
Leukemia Research Foundation
Local Learning: The National Network for Folk Arts in Education
Lumina Foundation
Lymphoma Foundation of America
Migraine Research Foundation
Mentors International
Morino Ventures, LLC
National Association of Charitable Gift Planners
National Association of Health Data Organizations
National Association of State Boating Law Administrators (NASBLA)
National Association of Watch and Collectors
NAMI, National Alliance on Mental Illness
National Center for Appropriate Technology
National Center for Fire and Life Safety
National Committee for Responsive Philanthropy
National Council of Behavioral Health
National Council of Churches
National Council of Nonprofits
National Dance Education Organization
National Hartford Centers of Gerontological Nursing Excellence
National Human Services Assembly
National Indian Child Welfare Association
National LGBTQ Task Force
National Organization for Albinism and Hypopigmentation
National Runaway Safeline
National Safe Place Network
National Tongan American Society
NEO Law Group
North American Bramble Growers Research Foundation
OPERA America
Partnership for America's Children
Pension Fund of the Christian Church
Philanthropy for Active Civic Engagement
Project Wet Foundation
Project Managers Without Borders
Public Citizen
Rockefeller Brothers Fund
Secular Coalition for America
Senior Executives Association
Seva Foundation
Skillman Foundation
Silicon Valley Community Foundation
Smith's Food and Drug
Social Velocity
The Arc of the United States
The Aspen Institute
The Commonwealth Fund
The Dibble Institute
The Educational Foundation of America
The Honor Society of Phi Kappa Phi
The Michael J. Fox Foundation
The Ocean Foundation
The Pulmonary Fibrosis Foundation
The Voter Participation Center
TIDES
Unemployment Services Trust
Union for Reform Judaism
United Way Worldwide
University Professional & Continuing Education Association
US Lacrosse
Vasculitis Foundation
Volunteers of America
Voto Latino

Wallace Global Fund
WasteWater Education
Weingart Foundation
William and Flora Hewlett Foundation
Words Without Borders
World Day of Prayer USA
World Neighbors, Inc.
Youth Services America
YWCA USA

All Signers Organized by State

Go to www.GiveVoice.org to see the list of nearly 4,500 organizational signers from all 50 states

Appendix 2

House Committee on Oversight and Government Reform
Hearing on Examining a Church's Right to Free Speech

In March 2017, charitable, religious, philanthropic and other organizations were given the opportunity to sign onto the **Community Letter in Support of Nonpartisanship,** reproduced in Appendix 1. Nearly 4,500 organizations signed the letter. Signers were also given the option to submit comments on how changes to current law on nonpartisanship (Johnson Amendment) might affect their organizations and their work. More than a thousand individuals wrote comments on behalf of their organizations. In this Appendix, members of the Subcommittees on Government Operations and Health Care, Benefits, and Administrative Rules can read some of the comments from your districts and states that explain how repeal or weakening of current law on nonpartisanship would adversely affect their organizations and communities. The comments presented here represent a small sampling of voices heard from grassroots nonprofits in every state.

California

"Our organization is trusted by donors to do charitable work and advocacy, *not* partisan politicking. We strongly oppose a repeal of the Johnson Amendment."

Jewish Family Service of San Diego,
San Diego, CA

"Allowing politics to be part of the Nonprofit Process will cause divisions within board rooms across the country. Now more than ever there needs to be places of common interest from both sides of the political spectrum. Introducing politics into the nonprofit process will be counterproductive to the mission. I urge the administration to reconsider repeal of the Johnson amendment."

Speech and Language Development Center,
Buena Park, CA

"I strongly recommend keeping current nonprofit rules in place. This will maintain the integrity of our sector and prevent political corruption!"

Family Care Network, Inc.,
San Luis Obispo, CA

"In my experience as a board member for several nonprofits, the Johnson amendment is essential in ensuring nonpartisanship. Deleting this amendment would invite the misuse of charitable funds in use of candidates and politicians."

Galileo Coaching,
Santa Barbara, CA

District of Columbia

"We cannot allow pulpits to become partisan. That would divide churches. We can also not allow for vital social services to be threatened by taking away 501(c)(3) status."

Franciscan Action Network,
Washington, DC

"The League believes that the definitions of prohibited political activity should not be narrowed in any way."

League of Women Voters,
Washington, DC

"The Forum of Regional Associations of Grantmakers supports the continued full enforcement of current law that prohibits 501(c)(3) charitable organizations from endorsing, opposing or contributing to political candidates and engaging in partisan campaign activities – also known as the 'Johnson Amendment.' We are troubled by recent proposals in Washington to weaken or repeal this longstanding protection in the federal tax code."

Forum of Regional Associations of Grantmakers,
Washington, DC

"Without this rule, nonpartisan charities and places of worship would be open to manipulation for political ends. Up to now, charities and religious organizations have been insulated from electioneering, and instead have been committed to doing good work, like alleviating poverty, ministering to the spirit, curing disease, and addressing other basic human and social needs. Changing the law jeopardizes the public's confidence that their charitable contributions would be used for these universally valued purposes rather than mere partisan politics."

Public Citizen,
Washington, DC

Florida

"The mission of the Friends of the Carr Refuge is 'To promote the conservation of sea turtles and natural resources of the Archie Carr National Wildlife Refuge and engage in such educational, scientific partnership, and civic activities as will support the mission of the refuge.' We are Democrats, Republicans and Independents all working together as volunteers to support and advocate for the refuge and the sea turtles we all love. Our leaders chose to organize as a 501(c)(3) specifically because being nonpartisan is critical to achievement of our mission. We don't wish to ever find ourselves in a position of resisting pressure from one side or the other to endorse candidates or make campaign contributions."

Friends of the Carr Refuge,
Indian Harbour, FL

"Local market research in our community tells us that nonprofits are the most trusted entity, while government comes in last on the trust scale. We know that part of that trust is dependent on nonprofits being seen as nonpartisan and apolitical. It's critical to nonprofits credibility in local communities, in weighing in on policy issues, and in fundraising, that we be seen as independent and without political agendas. Please help us maintain our trust and our credibility among the people we serve and depend on. Refuse to repeal the Johnson Amendment."

Nonprofit Center of Northeast Florida,
Jacksonville, FL

"Keep nonprofits out of the political arena. We don't need our purity of intent sullied by political in-fighting and partisanship. There needs to be at least one area of society that can deal with the world's issues peacefully and productively without any governmental interference."

RemediOcean Inc.,
Clearwater, FL

Georgia

"It is critical to our work that supporters perceive us to be 'cause'-based rather than political, partisan or ideologically based. Please do not remove the very safeguards that ensure supporters of the integrity of nonprofit organizations' motives and modes of conducting business."

Matthew Reardon Center for Autism,
Savannah, GA

"We in the nonprofit sector ask you to weigh the gravity of not existing for folks who desperately need us."

Savannah Center for Blind and Low Vision,
Savannah, GA

"Small nonprofit organizations like ours already face a constant struggle for funding. If tax deductions are allowed for partisan activity then more donations will flow to those organizations engaging in political rhetoric, making sustainability for non-partisan organizations even more difficult.

"This effort is antithetical to the spirit of charitable work; nonprofit groups should not have to choose between partisanship and survival."

Jennifer Ann's Group,
Atlanta, GA

"The repeal of the Johnson Amendment would weaken the integrity of our organization and for all nonprofits."

Mainspring Conservation Trust,
Young Harris, GA

"On Behalf of our membership of over 1500 nonprofit organizations, we oppose efforts to weaken and/or repeal the current federal tax law protections that prohibit 501(c)(3) organizations from endorsing, opposing, or contributing to political candidates."

Georgia Center for Nonprofits,
Atlanta, GA

Illinois

"Evanston Community Foundation supports local nonprofits in their everyday efforts to provide services. They have done so effectively within the guidelines of the Johnson Amendment. Nonprofit organizations effectively speak on the issue without endorsing candidates in a nonpartisan method. We fully support this method of advocacy - as the issues that affect the disproportionate disadvantaged clients that most nonprofits serve is not a partisan political issue."

Evanston Community Foundation,
Evanston, IL

"Our mission - of developing responsible, conscientious and effective leaders - is a non-partisan one, and one that we hope will remain as such."

Arthur J. Schmitt Foundation,
Northbrook, IL

"It is critical for Children's Home Society of America to educate policy members about the issues impacting the children and families our members serve. The Johnson amendment protects the ability to advocate in a nonpartisan way without being asked for personal or organizational support in return of support of an issue."

Children's Home Society of America,
Chicago, IL

"Changes to this decade's old legislation would threaten nonprofit nonpartisanship + threaten public trust in the charitable sector as politically neutral problem solvers."

Forefront,
Chicago, IL

"We need to keep politics out of our work so that resources are directed toward our mission not politics."

Gene Siskel Film Center,
Chicago, IL

"As a community foundation, we focus on philanthropy in its broadest form. We encourage all people to be engaged within our community, and to give back financially and with their time. Being nonpartisan enables us to be independent and work closely with people on all sides of the political aisle. Additionally, we - as with all 501(c)(3) organizations - are governed by a board of volunteers. Under current law, our volunteer board members work together for common purpose without permitting partisan elements to enter the conversation. If the protection that the law provides were to be diminished in any way, the focus of a common purpose for the common good could easily dissipate. "

Oak Park-River Forest Community Foundation,
Oak Park, IL

Iowa

"Nonpartisanship helps to create and sustain the credibility of our organization. Removing the legal protection of this status would be very damaging. We rigorously maintain a posture of being non-denominational, non-discriminatory, and non-partisan. It is what helps to keep our image in the community strong and respectable."

Habitat for Humanity of Clinton County,
Clinton, IA

"Please - consider the future of philanthropy and nonprofit organizations - do not repeal in any way that which makes nonprofits unique and able to support so much good work in this country.

Dubuque Mercy Health Foundation,
Dubuque, IA

Kentucky

"The Kentucky Council of Churches joins other nonprofit organizations in urging Congress and the President to keep the Johnson Amendment in act. Protect congregations and

other charitable institutions from partisan politics.

"Nonprofit organizations and faith groups need to remain nonpartisan and neutral to best service their constituents. Without the Johnson Amendment these entities risk their integrity and could put partisanship and finances above the mission and people they serve."

Kentucky Council of Churches,
Lexington, KY

"The Johnson Amendment is working well. It doesn't need to be repealed or changed."

Christian Appalachian Project,
Paintsville, KY

"The Johnson Amendment protects us from partisanship and preserves our ability to work on issues that matter to our communities without regard to political parties."

United Way of Mason County,
Maysville, KY

"The repeal of the Johnson amendment could open up our affordable housing nonprofit and others to partisanship and in-fighting among board members and members. Our donors want the security of knowing their contributions will be used to further the good work of the organization, and not for partisan politics."

Lexington Community Land Trust,
Lexington, KY

"Efforts to repeal or weaken the 'Johnson Amendment,' the provision of the law that protects charitable nonprofits from partisan demands for endorsements and campaign contributions, would significantly injure the ability of organizations to provide a safe havens from politics."

Hosparus Health,
Louisville, KY

"Endorsing or contributing to candidates, even if by only a few organizations, would destroy the non-partisanship necessary for nonprofits to effectively solve problems in our communities. Allowing people to make tax-deductible contributions to groups who endorse or oppose candidates would erode the integrity of the nonprofit sector.

"Protecting the Johnson Amendment isn't a free speech issue; advocacy and candidate endorsement are not the same. Partisan politics have no place in charitable nonprofits and faith communities."

Life Adventure Center,
Versailles, KY

"The Henry Clay Memorial Foundation exists because the legacy of Henry Clay is relevant to a broad spectrum of people interested in American and Kentucky History. His legacy of leadership and his ability to strike compromises to further the greater good continues to inspire leaders on both sides of the aisle. The Foundation could not exist and accomplish its goals without broad, non-partisan support – its work, and the work of other heritage-focused nonprofits, would be compromised and marginalized if it were perceived to be partisan and/or engaged in politics representing a particular brand of political ideology."

Henry Clay Memorial Foundation,
Lexington, KY

"As the statewide advocacy group for homeless and housing providers in Kentucky, we work with lawmakers on both sides of the aisle on policy, not politics. Repealing the Johnson Amendment could damage the relationships we have developed over the years and jeopardize our future work on housing issues."

Homeless & Housing Coalition of KY,
Frankfort, KY

Michigan

"Please do not allow charitable dollars and politics to become entangled."
Community Foundation of St. Clair County,
Port Huron, MI

"Nonprofits need to serve their constituents first and foremost in an unbiased manner, not be pawns of or beholden to a political party. This political independence keeps organizations open to all administrations, and more genuinely open to new ideas and

policies, as well as objectively critical of policies which undermine their organization's mission and the wellbeing of their constituents."

Hamtramck Community Initiative,
Hamtramck, MI

"Political agendas could place our nonprofit organization in a compromising or precarious situation when acquiring and providing support of educational services. We operate in community centers, halls, varying religious entities and educational entities. It is our quest to promote equal academic support for all people regardless of political party, religious affiliation, creed, color."

reQuest-Ed Learning Institute,
Troy, MI

"The provisions provided by the Johnson Amendment keeps the nonprofit and foundation community honest to debate important policy issues, without trudging into partisan politics. This distinction is crucial to our civil society and allows our social sector to enable democratic behaviors to exist and thrive. The repeal of the Johnson Amendment will erode our sector and our society."

The Skillman Foundation,
Detroit, MI

"Donors contribute to the Community Foundation because they believe their charitable dollars will be used only for charitable purposes in our community. Repeal of the Johnson Amendment will blur the line between charitable work and partisan political activities, weakening the public's trust in our foundation. That lack of trust will inevitably result in a reduction in donations, lessening our ability to carry out our charitable mission."

Capital Region Community Foundation,
Lansing, MI

Missouri

"I believe it is important for nonprofits to keep their ability to remain nonpartisan. There are more pros to keeping this amendment in place than there are cons."

Episcopal City Mission,
St. Louis, MO

"VisionServe Alliance is a coalition of 111 nonprofit organizations providing services to people who have lost their sight or who are born without sight. Daily living skills, Braille, job training and placement, technology training and more are provided from babies to grannies. Without the ability to fundraise from individuals, foundations, etc., these services could not be provided. Unemployment amongst blind people is 70% - the CDC tells us that 15.9 million Baby Boomers will lose their vision. We must not lose our ability to raise money!"

VisionServe Alliance,
St. Louis, MO

"Southeast Missouri Food Bank addresses food insecurity in sixteen counties of Missouri by working to provide supplemental food supplies to families who aren't able to put enough meals on the table for their families day to day. Hunger shouldn't be a problem in America, the land of plenty, but it is. Food banks need bipartisan support and we shouldn't risk be penalized for talking to our political leaders about the role government should play in addressing this important issue."

Southeast Missouri Food Bank,
Sikeston, MO

"The 501(c)(3) charity organizations should not politicize their activities."

Shia Islamic Education Center,
Wildwood, MO

"The fact that politics is not our driving force allows us to retain our mission without political ambiguity. The history of this country reveals that the nonprofit sector has equipped and empowered our nation in ways that supported the Government social policies without political allegiances. I implore you to respect that nonpartisan stance of Nonprofits across this Nation."

The Hope Center KC,
Kansas City, MO

New Jersey

"We are good stewards of our time, treasure and talents. Our mission focuses on improving the quality of life for the most vulnerable. We do this through providing services, advocacy on those issues that impact the poor and community building. Changes to this Act could potentially force us to participate in partisan politics. Some more fully engaged in politics may expect us to since there would be no rules prohibiting such activity. This would distract us from our purpose."

Catholic Charities, Diocese of Trenton,
Trenton, NJ

"We strongly believe that foundations should not be connected with specific candidates. Foundations have goals they promote and need acceptance by all to successfully promote those goals. Different foundations have significant different goals. Aligning goals with specific parties or candidates ensures further conflict among lawmakers and guarantees that large foundations with huge endowments will dictate which goals are promoted."

Pascale Sykes Foundation, Inc.,
Red Bank and Vineland, NJ

"Nonpartisanship is essential to the function of a not-for-profit. Remember; churches are not-for-profits. Remember the separation of church and state."

Society In The Ekos, Inc.,
Boonton, NJ

"Unreasonable partisan politics are destroying the democratic fabric of this country and the same will happen to nonprofits if we allow them to be engulfed by the dirty tentacles of politicians and their personal and biased motives."

Resource Education Awareness by Latinos,
Teaneck, NJ

New York

"It would be dangerous to blur the current clear language that conditions tax-exempt status and the ability to receive tax-deductible donations in part on not engaging in partisan, election-related activities for or against candidates for public office. Nonprofits must be above the political fray in order to focus on solving problems in our communities. Nonpartisan 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. Please do not repeal or weaken the 'Johnson' amendment."

The Century Foundation,
New York, NY

"We have always been bi-partisan and have received support from the most liberal and the most conservative. I would hate to see nonprofits become political. It serves no purpose and can only make them less productive. We are living in very sad times."

The Raoul Wallenberg Committee of the United States,
New York, NY

"This bill will allow the wealthy to donate huge sums to nonprofits that will advocate for their political views and they will be able to get a tax deduction at the same time. It will corrupt charitable organizations as it has corrupted our elections."

Westbeth Artists Residents Council,
New York, NY

"The arts depend on the generosity of individuals and a long-standing American tradition of Philanthropy to survive. As a return for their generosity and understanding of the cultural fabric of our country, arts donors trade their immediate funds for the ability to list charitable contributions as tax deductions. To remove this clear exchange is to topple the very base from which the arts in the United States are surviving. Please deeply consider ALL of the ways weakening the Johnson Law will: pour money into dirty politics, not remove it (which has been the promise) LOSE THE TRUST of your constituents and continue to tear at the delicate fabric of arts and culture in the United States. "

Kinesis Project Dance Theatre,
New York, NY

"Our founding fathers were wise enough to understand that religion has no place in government for the same reason that government has no place in religion other than to protect our inalienable right to freely practice the religion of our choice."

JCC of Binghamton,
Vestal, NY

"It would be divisive, and abusive of the trust that binds us together as a Christian community, for me to endorse any candidate from the pulpit, where members of the congregation have no opportunity to engage in dialog. In addition, I don't, and could never, speak on behalf of everyone in the church I serve. We seek to form people in Christian faith and ask them to vote their conscience."

First Presbyterian Church,
Rome, NY

"A repeal of the Johnson Amendment would hamper our mission and render us less effective to those we serve."

Schenectady Inner City Ministry,
Schenectady, NY

"Repealing or substantially weakening the Johnson Amendment will erode the public's trust in nonprofits. We work hard to earn our reputations, to be good stewards of donor dollars, and to be transparent in meeting our mission. I see nothing good to come from repealing/weakening. We are currently able to advocate for our causes; playing partisan politics is not within our missions."

St. Paul's Center,
Rensselaer, NY

North Carolina

"The collaborative private, public partnership of early childhood work is successful largely because of the inclusive and bi-partisan nature of our work. Without the assurance of this bi-partisan approach, our success will be challenged and therefore the outcomes for children and families threatened. We are responsible for educating legislatures about the ways in which children and their families depend on the shared efforts of all community stakeholders in an holistic approach to delivering services to children according to their specific needs from the earliest stage of their development through their adulthood. We would become much less effective in engaging necessary stakeholders if we campaigned for one group or another rather than focusing on our mission. Our success on behalf of families depends on broad support, not political partisanship."

Region A Partnership for Children,
Sylva, NC

"The full Board of Habitat For Humanity [of Burke County] voted to oppose the repeal of the Johnson Amendment at its' Board meeting of March 20th. This will create major problems for the organization causing increased difficulty with fund raising, possibly splitting the board about who, what to endorse. The potential is there to destroy the organizational structure of nonprofits in general and Habitat specifically."

Habitat For Humanity of Burke County,
Morganton, NC

"Our organization represents a very diverse group of 280+ volunteers, 170+ health and community partnering organizations, and 700+ donors who provide care for almost 2000 vulnerable persons each year. We bridge politics, theological, and social spectrums and collectively share a commitment to caring for our neighbors in need. We are a highly cost-effective organization, returning $8.33 worth of care for every dollar invested.

"Removing or weakening the law would do irreparable damage to our organization and our ability to care for 2000 vulnerable persons."

Henderson County Free Medical Clinic d/b/a The Free Clinics,
Hendersonville, NC

"Nonprofits play an important role in keeping people focused on community needs and linking those to policy advocacy by staying focused on issues - not partisan politics. Weakening the restrictions on partisan electoral activities in any way will undermine the community trust of the nonprofit sector

and potentially weaken resources that nonprofits have to help address critical community issues."

Children First/Communities in Schools of Buncombe County,
Asheville, NC

"To allow 501(c)(3) organizations to be political would undermine public confidence and would divide a charitable community organization like ours. "

Kiwanis Club of Black Mountain Swannanoa Foundation,
Black Mountain, NC

"It is a dangerous and slippery slope to allow nonprofits to enter the political realm. Mental health challenges affect all types of people; rich, poor, Republican, Democratic, etc. To risk the integrity of nonprofits by allowing them to endorse political candidates is pure insanity."

Mental Health Association in Greensboro, Inc.,
Greensboro, NC

"This would be a travesty if nonprofits are forced to declare their political affiliation. It would certainly affect our ability to make un-biased decisions."

McDowell Mission Ministries, Inc.,
Marion, NC

"Partisanship on the part of nonprofit organizations could be very detrimental to our mission and to the efforts we put forth to assist others. Being nonpartisan allows us the freedom to work with all organizations without fear of offending possible donors because of positions that their candidate may take that is in conflict with what we are trying to accomplish. This could place at jeopardy our independence to work across the community in helping those in need."

King Outreach Ministry,
King, NC

"Without the benefits that a 501(c)(3) organization can access, we would be unable to provide the pro bono services to the many people we treat in our outpatient clinics, provide residential services to, and crisis and mobile crisis services as well. The many dollars that nonprofits such as ours save the local communities and hospital emergency departments was upward of $4M dollars last year. We are strongly urging the Legislature and the President not to weaken or repeal long standing protections in the federal tax codes."

Freedom House Behavioral Health Care/Recovery Center,
Ten locations throughout NC

"Please do not politicize the charitable nonprofit and philanthropic community by repealing or weakening current federal tax law protections that prohibit 501(c)(3) organizations from endorsing, opposing, or contributing to political candidates. Our nonprofit, as well as many others, work especially well without having to compete even more for dollars in support. The public trust in our organization would be shaken if this measure passes."

Children's Theater Festival,
Tryon, NC

"The full board of Burke Charitable Properties, Inc. is opposed to the repeal of the Johnson Amendment. It will compound issues across the board for the organization; namely, interjecting any political issue into this environment would split the board and create additional difficulties in fund raising. This is a very bad idea!"

Burke Charitable Properties, Inc.,
Morganton, NC

"Bullington Gardens is a horticultural education center and public garden open to all. We receive funding from both our state and county governments and primarily from the general public. Partisanship would hurt our ability to raise funds and attract volunteers. It would damage our image as a place that welcomes all residents, visitors, and especially children to our facilities and programs."

Bullington Gardens, Inc.,
Hendersonville, NC

"Preventing child abuse and neglect is a non-partisan issue. We are more effective in sharing that message free from politics and would be severely hampered in our work if the Johnson Amendment was repealed. "

Prevent Child Abuse North Carolina,
Raleigh, NC

"We work with a variety of children and families and are supported by people across the political spectrum. We are not political and do not want our mission to be viewed through a political lens. This would be a bad idea that will distort our mission and potentially undermine the credibility we have in the community."

Loaves and Fishes Ministry,
Raleigh, NC

"Serving others in need is always a bipartisan issue!"

Loaves & Fishes, Inc.,
Charlotte, NC

Ohio

"We intend to advance the Gospel in our ministry of healing, reconciliation, and renewal. Neither major political party currently does that or promises to do that. Therefore, we do not want any of our moneys going to the support of a political party. We cannot financially or ethically afford that kind of investment."

St. Francis Spirituality Center,
Tiffin, OH

"Nonprofits are increasingly the only entity in our community with the ability to convene disparate partners, solve problems, and broker decisions of critical importance. Our neutrality to partisan politics is an essential factor in our ability to build trust and demonstrate objectivity. A repeal or weakening of the current protections and lobbying restrictions will neuter this ability and I fear, will weaken attempts to build a stronger sense of local community."

Community Foundation of Lorain County,
Elyria, OH

"The neutrality required to create positive change by a foundation would be lost under partisan action in elections."

Toledo Community Foundation,
Toledo, OH

"Weakening the Johnson Amendment is a bad idea and risks undermining the trust that the public places in well-run, ethically managed nonprofits. There is no upside to the erosion of important barriers that keep the nonprofit sphere nonpartisan, legally protected from electioneering, and focused on what is most beneficial to the communities we serve."

Cleveland Zoological Society,
Cleveland, OH

"The Multifaith Campus Alliance (MCA) works on the campus of Sinclair Community College to facilitate respectful conversation among people of different faith traditions. Our goal is to foster inclusiveness and mutual accommodation, making room for as many different perspectives as possible. Repealing the Johnson amendment would discourage voices like ours, which seek to build connections, and encourage those which seek to build and maintain barriers between people and groups."

Multifaith Campus Alliance of the Miami Valley,
Dayton, OH

South Carolina

"Repealing the Johnson Act is not only bad for government, it would be terrible for congregations and nonprofits. Allowing congregations and the clergy to be bought or sold for political gain would be a cancerous affliction. We are healthier when we observe and live within the boundaries of the 'wall' between Church and State that Thomas Jefferson described in his oft-quoted letter."

South Carolina Christian Action Council,
Columbia, SC

"We are compelled by God's call to us to speak up in defense of all human life from the moment of conception until natural death. In addition, the Constitution of the United States of America also empowers all persons the

right to the freedom of speech. Repealing or weakening the verbiage of Johnson Amendment would violate our freedoms and even worse, the unborn children would be deprived of their inalienable rights and protection from harm."

Pregnancy Center and Clinic of the Lowcountry,
Hilton Head Island, SC

"Nonprofits are another form of checks and balances on the government. Our grassroots work should influence our passion and advocacy not getting embroiled in the political fervor of the moment."

Black River United Way,
Georgetown, SC

Tennessee

"Repealing the Johnson Amendment would open the flood gates and subject 501(c) 3 organizations to partisan politics that would alter, limit, and be detrimental to its Mission and the members it serves. Should changes in the Johnson Amendment be necessary, it should be done using a common sense approach rather than imploring rigid extremes."

Habitat for Humanity of Anderson County,
Oak Ridge, TN

Virginia

"No political party embodies the fullness of the gospel, while both embody aspects of it. It is impossible for churches to become partisan without watering down the good news of Jesus. The Johnson amendment allows congregations to engage in politics without becoming political pawns."

Commonwealth Baptist Church,
Alexandria, VA

"The repeal of the Johnson Amendment, which allows a tax exemption for donors to nonprofit charitable organizations, would significantly damage our ability to raise funds needed to serve those in our communities in need of safe, decent and affordable housing. With every new homeowner, our community benefits through the families' paying of property taxes. Furthermore, the families become donors to their communities by moving out of poverty housing to a more stable and healthy environment as they invest in their future through home ownership. Children grow and enjoy educational improvements. As each family thrives, so too our communities of Farmville, Prince Edward, Buckingham, Cumberland and Charlotte Counties thrive. Please do not repeal this protection in the federal tax code so critical to our ability to serve those in need and to keep our charitable efforts free from unwanted political partisanship."

Farmville Area Habitat for Humanity,
Farmville, VA

"Charitable foundations serve to channel the generosity of private citizens towards the causes and issues that resonate with their passions and experiences. For them to continue to fulfill this purpose, it is crucial that the public trust they have earned over the years is not diminished by partisan labels or influence."

Council on Foundations,
Arlington, VA

"Traveling Players is an educational theatre company serving children 8-18 from families that represent a spectrum of political beliefs. It is imperative that nonprofits remain above the political fray. Nonprofits need to be a refuge of acceptance and not represent an outgrowth of a political belief system."

Traveling Players Ensemble,
Great Falls, VA

"As a community foundation, our role is to bring all sectors of our local community together to support our hometown. It is important for Community Foundations to be able to serve as a neutral party and convener within our community. Maintaining our status as a non-partisan group is crucial to that effort."

Williamsburg Community Foundation,
Williamsburg, VA

Wisconsin

"Nonprofits do work that is crucial to the social fabric of society. COPE supports people who are vulnerable and keeps people out of jails and hospitals by giving people suffering from mental illness a place where they can connect to a caring person and receive support. Please do not weaken our structure by nonprofit status."

COPE Services,
Grafton, WI

"As advocates for those that often have little to no voice, implementing such a policy would effectively silence those who would be fearful of retaliation by politicians who may disagree with the position of these agencies. The world of politics continues to erode on a daily basis with an full onslaught of bills and actions that look to diminish and/or silence those who would oppose the new leadership. Today's politicians needs to work harder at creating more transparency and forget about introducing new bills that would instead look to erode the integrity of open and honest transactions in political campaign financing. Nonprofits would also not benefit from a bill that would allow for the potential of misguided decisions by few nonprofit leaders to negatively brand all of us as "available and for sale if the price is right". We therefore respectfully ask that you strongly oppose any action to repeal the Johnson Amendment in the best interest of the millions of families that rely on all nonprofits to preserve and enhance their quality of life."

La Causa,
Milwaukee, WI

"Nonprofits are hailed as safe spaces in our communities because we bring people together to solve problems, help each other, and enrich the lives of many. We accomplish so much more because our board meetings are not filled with disruptive arguments about which political candidate to endorse. And we don't have people questioning our motives and whether funds they donate to our missions will be redirected to a politician's election campaign.

"Protecting nonpartisanship protects charitable organizations and our communities from partisan politics and division that causes strife among and within those safe places. Bills pending in Congress would repeal or significantly weaken the current law's longstanding protections by inviting charitable and philanthropic organizations to endorse or oppose candidates for elected office and divert some of their assets away from their missions to instead support partisan campaigns. This legislation would subject charitable nonprofits and foundations to demands for political endorsements and campaign contributions (diverting donors' money away from mission-related work to benefit politicians) and damage public trust in the work of nonprofits.

"Further, it's completely unnecessary. Nonprofits - and their individual staff, board members, and volunteers - already have many legal avenues to freely express their views on a wide range of public policy issues through existing laws that allow for advocacy of our missions to policymakers."

Alliance for Strong Families and Communities,
Milwaukee, WI

"Nonprofits serve a valuable purpose in their communities. Their role has always been to serve the community and stay above the fray of partisan politics. Repealing the Johnson Amendment would endanger the impartiality of the nonprofit sector and threaten it with the seduction of dark money from partisan donors. Nonprofits are not asking for this repeal.

"The separation of politics and charity keeps the charitable sector charitable and has served us well. Groups that want to intervene in political campaigns have choices other than repeal of the Johnson Amendment, which would only hurt the charitable sector at large.

"Forward Community Investments prides itself on being an independent organization that operates outside of the political environment. While we take issue positions and, to some degree, wear our politics on our sleeve by the very nature of the work we do, we do not support or validate one political candidate over another. A repeal of the

Johnson Amendment brings partisan politics to nonprofits and that is dangerous for so many reasons. As a 20+ year-old nonprofit, we are not in support of repealing the Johnson Amendment; trust that no good can come of politicizing nonprofits more than they already are (by the very nature of the work they do, their constituents and the communities in which they work).'"

Forward Community Investments,
Madison, WI

"It is imperative advocacy continue valuable efforts to assist the multitude of causes we champion. It is also imperative we continue to maintain current effective legislation regarding non-partisan energy toward those efforts. Those who want to utilize partisan action to further their causes should get out of the nonprofit sector and become politicians."

Association for Pelvic Organ Prolapse Support,
Mukwonago, WI

Statement for the Record of Travis Wussow
Vice President for Public Policy
General Counsel
Ethics & Religious Liberty Commission of the Southern Baptist Convention

In response to claim repealing Johnson does not have support from major denomination:

"We support the Free Speech Fairness Act. It's not our top religious liberty priority, and as an organization working with local churches we do have concerns about the politicization of the pulpit. But it's fundamentally not the government's job to make that decision for churches; how much politics is too much is a decision for churches and other houses of worship to resolve themselves."

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,

Amanda Tyler
Executive Director
Baptist Joint Committee for Religious Liberty

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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

Written Statement of

Maggie Garrett

Legislative Director,
Americans United for Separation of Church and State

Submitted to the

U.S. House of Representatives
Committee on Oversight and Government Reform

for the Hearing Record on

"Examining a Church's Right to Free Speech"

May 4, 2017

On behalf of Americans United for Separation of Church and State, thank you for the opportunity to submit this statement for the record of the hearing titled "Examining a Church's Right to Free Speech." Founded in 1947, Americans United is a nonpartisan advocacy and educational organization dedicated to preserving the constitutional principle of church-state separation, which is the foundation of true religious freedom for all Americans. We fight to protect the right of individuals and religious communities to practice religion—or not—as they see fit without government interference, compulsion, support, or disparagement. We have more than 120,000 members and supporters across the country.

This hearing will address the Johnson Amendment, which is a provision in the tax code that protects the integrity of tax-exempt organizations, including houses of worship, by ensuring they do not endorse or oppose political candidates. This law, which has been in place for six decades, provides a valuable safeguard that prevents political parties and candidates seeking power from using houses of worship as their tool. At the same time, faith leaders and houses of worship have the ability to fully engage in free speech activities.

Churches and Other Houses of Worship Currently Have Robust Free Speech Rights that Allow Them to Engage on Political Issues.

Churches have strong speech rights that allow them to use their prophetic voice to speak truth to power and fulfill their call to act for social justice. Houses of worship, denominational organizations, and faith leaders have always been active participants in the American political process. Passage of the Johnson Amendment six decades ago did not change that.

Under current law, tax-exempt houses of worship and the faith leaders who represent them can speak to any issue they choose, no social and political issue of the day is off limit. Pastors can speak out on political issues from the pulpit or in Bible study. They can write about issues in bulletins, in newsletters, or on a website. And, with a few boundaries that apply equally to all nonprofits, houses of worship can lobby on specific legislation. When it comes to elections, they can host candidate forums, hold voter registration drives, encourage people to vote, and help transport people to the polls.

The only limit: they cannot endorse or oppose candidates or political parties.

Under the Johnson Amendment, for example:

- A priest can address his congregation from the pulpit about his views on whether same-sex couples should be permitted to marry;
- A pastor can speak or write to a Member of Congress, expressing her church's opposition or support for a particular bill being considered;
- A church can add a page to its website that addresses its position on the country's immigration or abortion laws;
- A synagogue can march as a congregation at the March for Life or the Women's March on Washington; and

- A rabbi can testify before the House Oversight and Government Reform Committee about his position on the Johnson Amendment.

In addition, faith leaders can endorse candidates in their personal capacity or run for office themselves. For example, South Carolina pastor Mark Burns,[1] Texas-based pastor and televangelist Mike Murdock, [2] Dallas mega-church pastor Robert Jeffress,[3] and Florida pastor Paula White[4] all endorsed, and in some instances, campaigned for Donald Trump in the last election. Because these religious leaders endorsed and supported Trump in their personal capacity, rather than as pastors of their churches, they did not violate the Johnson Amendment in any way. And of course, there is no bar on faith leaders running for and serving in public office. Representative Jody Hice (R-GA), who serves on this Committee, is just one example.

Given all the ways in which houses of worship and their leaders can engage in politics and even in elections, it is clear that churches and church leaders already have robust free speech rights.

The Johnson Amendment Protects the Integrity and Independence of Houses of Worship.

The Johnson Amendment ensures that sanctuaries remain sacred and that houses of worship focus on fostering community and performing good works. Allowing churches and nonprofits to endorse and oppose political candidates, in contrast, would transform houses of worship into a tool for political parties and candidates, and split communities and congregations.

Houses of worship are spaces for members of religious communities to come together, not be divided along political lines. Indeed, they ought to be a source of connection and community, not division and discord. Permitting electioneering in churches would give partisan groups incentive to use congregations as a conduit for campaign activity and expenditures. Furthermore, changing the law would make houses of worship vulnerable to individuals and corporations who could offer large donations or to a politician promising social service contracts in exchange for taking a position on a candidate.

Repeal or Weakening of the Johnson Amendment Would Dismantle the 501(c)(3) Non-Profit Structure As We Know It.

The rules in section 501(c)(3) of the tax code that restrict tax-exempt organizations from endorsing or opposing candidates apply equally to houses of worship and secular organizations. Tax exempt charities are granted tax-free status because they serve the community and perform work for the common good—they are not granted this status so they can endorse candidates.

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[1] Candace Smith, *Meet the Pastors Who Support Donald Trump*, ABC News (Apr. 14, 2016).
[2] Kevin Cirilli, *Prominent Televangelist Says He Will Endorse Donald Trump*, Bloomberg (Feb. 14, 2016).
[3] *Pastor Robert Jeffress Explains His Support for Trump*, *NPR's All Things Considered*, (Oct. 16, 2016)..
[4] Katie Glueck, *Donald Trump's God Whisperer*, Politico (July 11, 2016).

Under the religious freedom protections provided by the First Amendment of the U.S. Constitution, Congress cannot treat houses of worship more favorably than secular organizations.[5] Any changes made by Congress to the current law, therefore, would have to apply to both religious and secular organizations. As a result, any changes Congress makes would affect all of the estimated 1.5 million organizations—both religious and secular—currently registered as 501(c)(3) organizations.[6] Changing the law would have a massive impact on charitable organizations across the country.

Repealing or weakening the Johnson Amendment would dismantle the 501(c)(3) non-profit structure as we know it. Habitat for Humanity, the YWCA, Feeding America, the Arc, and thousands of other community organizations would suddenly be under pressure to endorse and oppose political candidates. In addition, the reputation of 501(c)(3) organizations would be tarnished—donors will no longer see these organizations as reputable organizations that perform charitable work for the common good, but instead see them as partisan tools used by political campaigns and candidates.

Campaign operatives could also anonymously funnel unlimited campaign funds through houses of worship and other tax-exempt organizations, essentially transforming charitable organizations into political action committees (PACs). This could also result in decreasing the amount of time and resources the organizations can dedicate to good works

Moreover, changing current law would invite many organizations to pop up to serve solely as a mechanism to funnel money to political candidates.

Reserving Tax-Exempt Status to Organizations that Do Not Endorse or Oppose Candidates Does Not Violate Free Speech Rights.

Because the government can choose what it will and will not subsidize, it can, consistent with the Free Speech Clause of the First Amendment, limit 501(c)(3) tax-exempt status to organizations that refrain from endorsing or opposing candidates. And, as explained above, Congress has compelling reasons to maintain this limitation.

Section 501(c)(3) of the tax code provides preferential tax treatment to organizations that perform charitable work and serve the common good: these organizations may operate tax-free and individuals may deduct from their taxes any donation to such an organization. In return for this preferential tax treatment, organizations may "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[7]

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[5] *See Texas Monthly v. Bullock,* 489 U.S. 1, 11 (1989) (finding that benefits conferred only to religious organizations would constitute state sponsorship of religion and would lack a secular purpose necessary to be constitutional under the Establishment Clause).
[6] *How Many Nonprofit Organizations Are There in the U.S.?*, Grantspace (last visited May 3, 2017).
[7] 26 U.S.C. § 501.

In *Regan v. Taxation With Representation of Washington*,[8] the Supreme Court, in a ruling written by Justice Rehnquist, rejected arguments that the lobbying limits imposed on 501(c)(3) tax-exempt organizations violate the Free Speech Clause of the First Amendment. The Court explained that "both tax exemptions and tax deductibility [under Section 501(c)(3)] are a form of subsidy"[9] and that the government has the authority to determine what activities it does and does not subsidize. Thus, "Congress is not required by the First Amendment to subsidize lobbying."[10] In short, the Court, rejected "the 'notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State.'"[11]

Indeed, the Court noted that tax-exempt organizations that wish to lobby in a substantial manner can still do so, they just have to incorporate a separate 501(c)(4) organization. Although not tax exempt, 501(c)(4)s are not restricted by limits on lobby expenditures.[12]

Relying on this Supreme Court precedent, the U.S. Court of Appeals for the District of Columbia in *Branch Ministries v. Rossotti*,[13] upheld the Johnson Amendment against claims that it violates the Free Speech Clause. In the same way that the government may choose not to subsidize certain lobbying activities, it may also choose not to subsidize partisan campaign endorsements. Thus, the court held that Congress may limit 501(c)(3) tax-exempt status to organizations that do not endorse or oppose candidates.

Some claim that *Citizens United v. FEC*,[14] undermines the rulings in *Taxation With Representation* and *Branch Ministries*. But *Citizens United* is easily distinguishable. In *Citizens United*, the Court struck down a campaign finance law banning corporations from making independent expenditures in support of candidates, even though corporations could purchase political ads by forming a PAC.[15] Citizens United, however, was not a tax-exempt organization and, thus, was not receiving a tax subsidy like the organizations in *Taxation With Representation* and *Branch Ministries*.[16] The rationale in those cases—that the government can limit the speech it subsidizes—therefore, did not apply.

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[8] 461 U.S. 540 (1983).

[9] *Id.* at 544. Subsequently, numerous courts have reiterated this understanding of preferential tax treatment as subsidy. *See, e.g., Branch Ministries v. Rossotti*, 211 F.3d 137, 144-45 (D.C. Cir. 2000); *Dep't of Texas, Veterans of Foreign Wars of U.S. v. Texas Lottery Comm'n*, 727 F.3d 415, 424 (5th Cir. 2013), *on reh'g en banc*, 760 F.3d 427 (5th Cir. 2014).

[10] *Taxation With Representation*, 461 U.S. at 540.

[11] *Id.* at 546 (internal citation omitted); *see also Cammarano v. United States*, 358 U.S. 498, 513 (denial of tax deduction did not violate speech rights because business owners were "simply being required to pay for [lobbying] activities entirely out of their own pockets").

[12] Social Welfare Organizations, Internal Revenue Service (last visited May 3, 2017).

[13] *Branch Ministries*, 211 F.3d at 142.

[14] 558 U.S. 310 (2010).

[15] *Id.* at 337.

[16] *See Dep't of Texas, Veterans of Foreign Wars of U.S.*, 727 F.3d at 424 (over the course of two rehearings, the Fifth Circuit thrice reiterated that *Taxation With Representation*'s subsidy doctrine had not been supplanted by *Citizens United*); *Parks v. C.I.R.*, No. 7043-07, 2015 WL 7280916, (T.C. Nov. 17, 2015) (distinguishing the conditions on the subsidies at issue in *Parks* and *Taxation With Representation* from the criminal ban on political speech at issue in *Citizens United*).

The Johnson Amendment, which insulates the taxpayer from having to fund political endorsements of non-profit organizations, does not violate the Free Speech Clause.

The Pushback Against the Johnson Amendment Has Come from a Handful of Organizations Seeking Political Power.

President Donald Trump recently pushed the Johnson Amendment into the spotlight by vowing to "get rid of and totally destroy the Johnson Amendment."[17] He has falsely boasted that repealing the current law "will be [his] greatest contribution to Christianity," because with the Johnson Amendment, Christians "don't have any religious freedom, if you think about it."[18] And it has been reported that he is likely to sign an executive order today that would limit the ability of the Internal Revenue Service to enforce it.[19]

It is noteworthy, however, that not a single major denomination has come out in favor of repealing or weakening current law. Instead, 99 religious and denominational organizations recently penned a letter urging Congress to reject efforts to repeal or weaken the law.[20] In addition, 4,500 tax-exempt organizations joined a letter urging the same.[21]

Recent polls show the American public supports the Johnson Amendment too. For example, a March 2017 Independent Sector poll shows 72% of Americans support the Johnson Amendment, including 66% of Trump voters, 78% of Clinton voters, and 77% of independent voters.[22]

Similarly, a March 2017 PRRI poll found that 71% of Americans—including 62% of Republicans and 56% of white evangelical Christians—oppose allowing churches and places of worship to endorse political candidates while retaining their tax-exempt status.[23] And a February 2017 survey conducted by the National Association of Evangelicals confirmed that 90% of evangelical leaders do not support political endorsements from the pulpit.[24] Indeed, all major religious groups in the country support the Johnson Amendment.[25]

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[17] Julie Zauzmer, *Trump Said He'll 'Totally Destroy' the Johnson Amendment. What Is It and Why Should People Care?* Wash. Post (Feb. 2, 2019).
[18] *Id.*
[19] *E.g.*, Louise Radnofsky and Ian Lovett, *Trump to Ease Restrictions on Religious Groups*, Wall Street Journal (May 3, 2017); Michael Shear, Laurie Goodstein, and Maggie Haberman, Trump Is Expected to Relax Tax Rules on Churches Taking Part in Politics, N.Y. Times (May 3, 2017).
[20] Letter to Congress from 99 Faith Organizations (April 4, 2017).
[21] Letter to Congress from 4500 Nonprofit Organizations (Apr. 5, 2017).
[22] *Poll: Americans Support the Johnson Amendment*, Independent Sector (Mar. 30, 2017).
[23] Daniel Cox and Robert Jones, *Majority of Americans Oppose Transgender Bathroom Restrictions*, PRRI (Mar. 10, 2017) (PRRI poll).
[24] *Pastors Shouldn't Endorse Politicians*, National Association of Evangelicals (Feb. 2017).
[25] PRRI poll.

Furthermore, the IRS has not investigated a single house of worship for a Johnson Amendment violation since 2009, making claims that the law is an imminent threat to the free speech of houses of worship even less credible.

The Free Speech Fairness Act (S. 264 / H.R. 781) Threatens the Independence and Integrity of 501(c)(3) Organizations.

In January 2017, Representatives Steve Scalise (R-LA) and Jody Hice (R-GA) and Senator James Lankford (R-OK) introduced the "Free Speech Fairness Act." The bill does not fully repeal current law, but significantly undermines it.

The Bill Would Allow Vast Amounts of Endorsement Activity
The bill would allow tax-exempt organizations—both houses of worship and secular nonprofits—to make statements endorsing or opposing candidates for public office so long as those statements are made in the "ordinary course" of carrying out their tax-exempt purpose and do not incur more than "de minimis incremental expenses."

Upon first glance, this appears like a narrow exemption to current law, but it would actually significantly gut current protections. In fact, a house of worship could endorse a candidate in any activity it carries out or materials it shares as long as there is ostensibly another purpose for engaging in those activities or creating those materials.

Permissible activities would include:

- While preaching to his congregation, a pastor could endorse a presidential candidate. The church could then post a video of that sermon on its website, email it to parishioners, and distribute it publicly on social media.
- A church could include a written endorsement of a candidate in every church bulletin, email, or newsletter, on its website, and in every other correspondence or document it plans to create or distribute.
- The president of major university could use its weekly newsletter to email current students and a massive alumni network to endorse a candidate.
- A rabbi could endorse a candidate during the welcoming message provided to those attending a community service event.

All of these activities could easily take place in the "ordinary course" of carrying out their tax-exempt purpose and likely would not incur more than "de minimis incremental expenses"; yet they could provide an invaluable benefit to a candidate. In addition, even with the stated limits in the bill, endorsements could invade every activity, written document, correspondence, and event held by the house of worship, ultimately dominating the house of worship's activities.

The Bill Would Open the Church to Greater—Not Less—IRS scrutiny
Opponents of the Johnson Amendment claim the current restriction on candidate endorsements is vague and open to IRS interpretation (even though the restriction is actually

quite unambiguous). This alternative proposal, however, creates even more ambiguity and invites an even greater likelihood of IRS investigations and entanglement with the church. To determine whether houses of worship are complying with the law, the IRS will have to determine both whether an endorsement occurred during the "ordinary course" of carrying out their tax-exempt purpose and whether it amounted to a "de minimis incremental expenses." Churches would have to open their books to the IRS. And the IRS will be forced to make judgments about the churches' activities. Inviting that type of scrutiny of church documents, this bill actually threatens, rather than upholds, the autonomy and independence of houses of worship.[26]

For example, to determine whether the church only made de minimus expenses, the IRS would have to inquire into how much time and money was spent on each endorsement, as well as look into the churches overall expenses. Then it would have to make a determination of whether that cost was de minimus.

The IRS would also have to make judgments as to what the organization's tax-exempt purpose was and whether each activity performed by the church fell in line with that purpose.

Conclusion

In addition to being a place to worship, pray, and praise for their congregations, churches provide a space for community, engagement, and interaction on issues important to many in the community. Opening up houses of worship to political endorsements would be detrimental to their ability to operate outside of the political fray and would run counter to the wishes of congregants. In addition, repealing or weakening the Johnson Amendment would dismantle the non-profit structure as we know it.

[26] *See Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

PRESS RELEASE
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Trump's Religious Privilege Order a Cynical Pander to Evangelical Base

May 04, 2017

The Center for Inquiry denounced President Trump's executive order easing the restrictions on politicking by tax exempt religious institutions, decrying the order as a cynical pander to the religious right. The order was signed on the National Day of Prayer, itself an unconstitutional endorsement of religious belief.

The executive order is intended to weaken the strictures of the Johnson Amendment, which prohibits tax exempt organizations, such as houses of worship and advocacy organizations like CFI, from using their privileges to endorse, oppose, or campaign for or against candidates for public office in their official capacities.

"This order is more troubling for what it represents than what it actually accomplishes," said Michael De Dora, director of government affairs for the Center for Inquiry. "Despite the president's claims today, religious leaders are already free to speak openly, and religious groups spend hundreds of millions of dollars per year lobbying, on all political issues. To maintain their institutions' tax exempt status, they are barred from partisan electioneering, a rule that is already woefully under-enforced."

"Instead of bone-throwing to the fringes of the religious right, President Trump should listen to the vast majority of the American people — including the majority of clergy — who oppose politicking from the pulpit and support the Johnson Amendment," said De Dora.

"While this executive order won't accomplish much in practical terms, it sends a signal that Trump is looking to reward his conservative evangelical base. But this political payback is divisive and dangerous, blurring the line between church leadership and political operatives."

The new order also purports to "provide regulatory relief" to those who hold religious objections, such as to the contraceptive coverage provisions of the Affordable Care Act, in line with the Hobby Lobby Supreme Court decision. Trump's willingness to sacrifice access to contraceptive care in employer-sponsored health insurance is another gift to his conservative evangelical base, at the expense of women's rights and health.

"America has largely avoided the religious conflict and strife that afflict other parts of the world by keeping religion and government separate," said De Dora. "President Trump doesn't seem to know or care about this founding principle."

# # #

The Center for Inquiry (CFI) is a nonprofit educational, advocacy, and research organization headquartered in Amherst, New York, with executive offices in Washington, D.C. It is also home to the Richard Dawkins Foundation for Reason & Science, the Committee for Skeptical Inquiry, and the Council for Secular Humanism. The mission of CFI is to foster a secular society based on science, reason, freedom of inquiry, and humanist values. Visit CFI on the web at www.centerforinquiry.net.

Campaign for Liberty Supports Ending IRS Censorship

campaignforliberty.org

As Dr. Paul points out in his column this week, we have seen an increase in efforts to use government power to silence groups like Campaign for Liberty that organize opposition to big government.

This is not a new phenomenon, as the assaults on the First Amendment go back to the early days of the Republic and the Alien and Sedition Act.

A more recent example is the Johnson Amendment. Named after then-Senator Lyndon Johnson, this amendment prohibits any 501(C)(3) organization, such as a Church, from engaging in any activity that may directly or indirectly be interpreted as "participating in a campaign". The ban includes handing out literature regarding a candidate's positions.

Campaign for Liberty has joined an effort to overturn the Johnson Administration by supporting the the Free Speech Fairness Act of 2016 (H.R. 6195), legislation introduced by House Majority Whip Steve Scalise and Representative Jody Hice (GA-10), that overturns the Johnson amendment.

While Congress has adjourned for the year, hopefully the bill will be reintroduced and will pass in the next Congress.

Some will say that the solution is for charitable activities to refuse to accept tax-exempt status. The problem with that is that doing so means their donors cannot legally deduct their donations. This could place those groups at a "competitive disadvantage" with organizations that do operate as 501(C)(3)s.

In any case, all those who value freedom should agree that charitable and religious organizations shouldn't be forced to choose between tax-exempt status and their First Amendment rights.

Here is the letter in support of the Free Speech Fairness Act:

October 24, 2016
The Honorable Paul Ryan
Speaker of the House
H-232, The Capitol
Washington DC 20515
The Honorable Kevin McCarthy
Majority Leader
H-329, The Capitol
Washington DC 20515
Dear Speaker Ryan and Leader McCarthy:

We, the undersigned, representing hundreds of thousands of Americans, want to thank you for your commitment to preserving the rights secured in the First Amendment of the Constitution, specifically the rights to freedom of religion and speech. Unfortunately, since its passage, the Johnson Amendment has effectively squelched both of those rights in the context of activities that could be construed by the IRS as on behalf of or in opposition to a candidate for public office. That is why we support the Free Speech Fairness Act of 2016 (H.R. 6195, "Fairness Act"), introduced by Whip Steve Scalise (R-La.) and Representative Jody Hice (R-Ga.) to protect the speech and religious freedom rights of 501(c)(3) organizations and their leaders. We encourage you to prioritize hearings and votes on this important bill.

Under Section 501(c)(3) of the IRS code, tax exempt organizations, including churches, may not engage in any activity that might be interpreted as directly or indirectly participating in a campaign on behalf of or in opposition to a candidate for public office, including handing out literature. The Johnson amendment changed the tax code in 1954 without any debate, and is still restricting the free speech of churches, religious institutions, and other tax exempt organizations today.

Not only is it unconstitutional, but the Johnson Amendment has been inconsistently enforced by the IRS causing many non-profits confusion over how and when they may speak about political issues and candidates. In fact, on numerous occasions, the IRS has initiated investigations of tax exempt organizations without imposing penalties, or has imposed penalties only to later reimburse the fines. These inconsistencies have had the effect of significantly chilling the freedom to believe and speak that is protected by the First Amendment to the Constitution.

For the last decade, many churches have participated in Pulpit Freedom Sunday and have spoken from the pulpit on political matters. They in turn have sent their sermons to the IRS to elicit a response and a court challenge of the Johnson Amendment. The IRS has not investigated these churches but its guidance has not changed and churches are left in limbo.

In addition, every year, organizations hostile to religious liberty threaten churches with letters promising to report them to the IRS, which has also contributed to the stifling of speech under the Johnson Amendment.

In order for the free speech rights of pastors and 501(c)(3) leaders to be restored, the Fairness Act provides for limited political activity that 1) is made in the ordinary course of the 501(c)(3) organization's regular and customary activities, so long as those activities carry out the organization's tax exempt purpose, and 2) does not incur more than de minimis incremental costs.

Thus, this legislation provides for speech without allowing tax exempt organizations to purchase political ads for or against a candidate for public office. Passage of the Fairness Act is necessary to restore the free speech and freedom of religion rights of America's pastors and churches and to remove the role of the IRS in chilling free speech.

We urge you to support the Fairness Act.
Sincerely,
Tony Perkins
President
Family Research Council
Gary L. Bauer
President
American Values
Erik Stanley
Senior Counsel
Alliance Defending Freedom
Mat Staver, Esq.
Founder and Chairman
Liberty Counsel
Jonathan Alexandre, J.D.
Director of Public Policy
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Dan Weber
President and Founder
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Michael J Bowen
CEO
Coalition For a Strong America
Willes K. Lee
President
National Federation of Republican Assemblies
Melissa Ortiz
Founder & Principal Able Americans
Lisa B. Nelson
CEO
American Legislative Exchange Council
Jerry A. Johnson, Ph D. President and CEO National Religious Broadcasters
Tom McClusky
Vice President
March for Life Action
Penny Young Nance
CEO and President
Concerned Women for America
Valerie Huber
President/CEO
Ascend
Jamison Coppola
Legislative Director
American Association of Christian Schools
Susan Carleson
Chairman/CEO
American Civil Rights Union
Bill Walton
Chairman
Center for National Policy Action, Inc.
Norm Singleton
President
Campaign for Liberty
Linwood Bragan
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3
William J. Murray
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Dee Hodges
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Ronald D. Rotunda The Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence
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Kent Ostrander
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Nebraska Family Alliance
Phil Burress
President
Citizens for Community Values
Curt Smith
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Indiana Family Institute
Len Deo
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Alaska Family Action
Rev. Jason J. McGuire
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