



Commentary:

Keep Charities Out of Politics

Don't put more "dark money" into elections —and make it tax-deductible

President Donald J. Trump has promised to “destroy” the so-called “Johnson Amendment” that prohibits 501(c)(3) charities from participating in election campaigns. Several Republicans in Congress have introduced bills to do just that.

And yet, the National Council of Nonprofits, the Independent Sector, the Council on Foundations and many operating charities have taken strong positions against a change. Is this an issue that makes much of a difference? Is it really something to get worked up about?

We think it is. It would undermine the trust in the charitable sector and make them less effective in pursuing their missions. But equally important, it would put more unaccountable “dark money” into our political system —and make it *tax-deductible!*

The impetus to eliminate the prohibition has come primarily from religious organizations that argue that their freedom to promote their religious views is impaired by not being able to support candidates who will promote their views in legislation and oppose those who won't. But the principal legislative proposals presently pending in Congress do not limit the change to churches and other religious organizations. They cover all organizations exempt under Section 501(c)(3).

There are many reasons important to the charitable sector for keeping the current limitation in place. It has been effect for more than 60 years, and, as described by the National Council of Nonprofits, “has a proven track record of working well to protect against politicization.”

Ironically, a provision that was allegedly passed to protect politicians like Lyndon Johnson from attack by charities is now being defended as a provision to protect charities from an onslaught by politicians.

Charities like the rule because it protects them from demands by candidates for campaign contributions that would divert limited funds from mission-related work. Many charity leaders want to avoid appearing partisan because they know that their issues are likely to outlast any incumbents in office and they want to be able to deal with all elected officials on the basis of the public interest, not narrow political interest. They recognize how hard it might be to get a sympathetic audience with someone they had unsuccessfully opposed in the last election.

They view their nonpartisan role as a “safe haven” in a sea of partisan rancor, where parties of all beliefs can work together to resolve community problems. Some point out that public trust in charities is usually higher than the public trust in politicians.

They recognize that the Tax Code allows them to advocate on issues, and also allows individual officers or directors of charities to endorse or oppose candidates on their own time and in their private capacity. But the organizations try to avoid the partisan taint that would come with putting the organization behind or against specific candidates.

There would be even broader implications for our society if the rule were to be repealed, however. It would allow more unaccountable “dark money” in politics and would make it tax-deductible, unlike any other political contributions.

One of the pending bills ([H.R. 172](#)) would eliminate the restriction entirely. Two other bills ([S. 264](#) and [H.R. 781](#)) would provide that an organization would not be deemed in violation of the prohibition if a statement is made “in the ordinary course” of “regular and continuing activities” and requires “not more than *de minimis* incremental expense.”

If the provision were eliminated entirely, it would have a significant impact on politics in the country. We have already seen the rush of political money into 501(c)(4) social welfare organizations since the Supreme Court’s decision in the *Citizens United* case allowed corporations to spend unlimited amounts of money in political campaigns so long as it is not coordinated with a candidate. This rush of money is not because (c)(4) organizations don’t have to pay tax on their income. Political parties and political action committees are likewise exempt. The rush is because (c)(4) organizations do not have to reveal the names of their donors.

As a result, this kind of “dark money” is totally unaccountable and not subject to the disclosure requirements for candidates, political parties and political action committees. The IRS has not even ruled on the question of how much political activity is permitted within the social welfare exemption ([See Ready Reference Page: “IRS Proposes New Regulations for 501\(c\)\(4\) Social Welfare Organizations”](#)) and was prohibited by Congress from making such a ruling before the last election. ([See Nonprofit Issues®, 1/1/16](#))

If charities are released from their prohibition on participation in political campaigns, they are likely to see a flood of new unaccountable money, not only because the donors don’t have to be disclosed to the public, but also because the “charitable” contributions to 501(c)(3)s would be tax-deductible, unlike contributions to (c)(4)s and political organizations. It would be a seismic change in our tax policy of keeping tax-deductible charitable money entirely separate from non-deductible political money. The opportunities for abuse, through the creation of new “charities” or the capture of existing ones, would be huge.

The potential for abuse with churches is even greater. “Churches” don’t have to obtain recognition of exemption from the IRS. Anyone can create a church and claim exempt status without the IRS even knowing that it exists. In addition, churches don’t have to file tax returns of any type. At least with (c)(4)s, we have some idea of the total amount spent on political activities to the extent that they accurately report on their Form 990 tax returns. We are unlikely to ever know anything about the extent of political activity of a church. They have no reporting requirements at all.

The bills permitting statements in the ordinary course of regular activities are not a whole lot more protective. They would be almost impossible to administer. Every activity would become an opportunity for supporting or opposing candidates, undermining all of the reasons charities like to be non-partisan. “Regular” activities could be amped up during election season. The increased activity could be funded with tax-deductible charitable contributions and would presumably be okay so long as making a political statement didn’t cost significantly more than making a non-political statement. The IRS certainly doesn’t have the personnel to police this effectively. With churches, it would be almost impossible to tell whether a political statement cost any more because they don’t have to disclose their costs.

The proposals to eliminate the prohibition on charitable participation in election campaigns may sound benign. But they would seriously undermine the long-term trust, and therefore effectiveness, of charities, and would significantly and adversely affect our political system.