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Keep the Johnson Amendment

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Charitable organizations, including religious organizations, that are tax exempt should not be engaged in partisan political activity. Tax deductible charitable contributions should not be used to fund campaigns. That has been the law for over 60 years and it should stay that way. But Donald Trump repeatedly has said that he would seek repeal of the Johnson Amendment that imposes this restriction. That is a terrible idea.

The Johnson Amendment has been mentioned often in Trump's speeches and was much discussed at the Republican Convention. The Johnson Amendment was enacted in 1954 and is named after former President Lyndon Johnson, who introduced the amendment while serving as the Democratic Minority Leader. The Amendment modifies section 501(c)(3) of the federal tax code. The section, as amended, provides that charitable, religious, scientific, literary and educational organizations that qualify for a tax exemption under section 501(c)(3) may not "[p]articipate 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."

The Johnson Amendment was not enacted to target religious groups, although the current campaign by religious groups against the amendment frames it that way. Johnson introduced the amendment after a right-wing political group – "Facts Forum and the Committee for Constitutional Government" – had opposed him publicly, while "parading" as a charity to obtain the 501(c)(3) tax benefit. Johnson wanted the amendment enacted in order to clarify that tax-exempt organizations cannot lobby nor electioneer.

The amendment also applies to a broad range of organizations that are not religious. In the same way that a religious organization cannot maintain its tax-exempt status while publicly endorsing a Democratic or a Republican presidential candidate for office, charitable groups of all types cannot endorse a candidate for office. The amendment thus preserves the impartiality of charitable, religious, scientific, literary and educational organizations, while also protecting the government from providing a tax benefit to organizations that are publicly participating in partisan politics.

Tax exempt organizations, religious and non-religious, get a tremendous financial benefit from the government. But the condition is that they do not use their funds, which in part effectively come from the government providing a significant tax benefit, for political purposes. Of course,

any organization can opt out of this tax benefit in order to participate in partisan politics. Or it can create another, non-tax exempt organization to do so.

As a practical matter, religious organizations have very little to worry about in terms of IRS investigation and enforcement of the Johnson Amendment. In a recent Pew Research Center survey, 14 percent of churchgoers said they had heard their clergy speak directly in support of or against a presidential candidate. Yet, the IRS has investigated an almost miniscule number of religious organization for political activities and has penalized even fewer.

There was an instance of IRS action in 1992, when a church took out full-page advertisements in the Washington Times and USA Today newspapers urging votes against Bill Clinton. The advertisements encouraged Christian voters not to vote for Bill Clinton, stating: “Christian Beware. Do not put the economy ahead of the Ten Commandments,” “Bill Clinton is promoting policies that are in rebellion to God’s laws,” and concluding, “How then can we vote for Bill Clinton?” At the bottom of the advertisement, the church also solicited donations: “Tax-deductible donations for this advertisement gladly accepted. Make donations to: The Church at Pierce Creek.”

The IRS commenced an investigation into the church’s political activities and ultimately revoked its tax-exempt status. The church challenged the actions of the IRS claiming that it been targeted based on the conservative views it expressed in the advertisements. The federal district court upheld the constitutionality of the ban on political activity because it found the government has a sufficiently compelling interest in “maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose.” The court also rejected the church’s allegations that it had been targeted and found no constitutional rights violations.

I favor much stricter enforcement of the Johnson Amendment, not its repeal. If a group wants the enormous financial benefits of being a charitable organization, it should be one and not engage in partisan political activity. It is constitutional and desirable to keep tax deductible charitable contributions from being used for political purposes.

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