

Johnson Amendment: Backdoor Repeal on the Table

08.01.18 | Linda J. Rosenthal, JD



During the 2016 presidential campaign, the Republican nominee fired up his evangelical supporters with a promise to repeal the Johnson Amendment, the brief phrase at the end of Internal Revenue Code section 501(c)(3) that bans any political-campaign activity.

At the first National Prayer Breakfast of the new Administration, he told the gathered group that he would “get rid of and totally destroy” it. In the middle of 2017, he signed an executive order that he claimed would effectively accomplish the goal without having to bother with Congressional action on this statutorily based prohibition. But it’s so vague that it accomplishes little except to confuse everyone.

Throughout the past two years, the drumbeat on this issue from the GOP in Congress has continued: sometimes only faintly in the background and at other times roaring back into the news. Late last year, during the rapid drafting and passage of the Tax Cut and Jobs Act of 2017, the possibility of a full or partial legislative repeal popped up, but did not make it through the final cut.

Once again, this issue is on the Congressional table with a backdoor sleight-of-hand that would avoid a repeal vote by – instead – prohibiting the IRS from funding enforcement of the Johnson Amendment.

Johnson Amendment “Repeal”: A Different Approach

The House of Representatives has voted on – and passed – “anti-Johnson language” three times within the past year, including the current effort during the third week of July 2018.

It wasn’t a direct attack on the hotly debated political campaign ban; instead, legislators tucked it inside a 457-page spending bill, H.R. 6147, the “Department of the Interior, Environment, and Related Agencies Appropriations Act of 2019. This legislation is characterized as a “minibus” (contrasted with “omnibus”) spending package.

It includes “language that would effectively block enforcement of the Johnson Amendment against religious organizations for even the most egregious violations—including pouring charitable church assets directly into political campaigns.” The bill bars the Internal Revenue Service from revoking the 501(c)(3) tax exemption from a “church” and also mandates the express consent by the IRS commissioner to take any such proposed action. The National Council of Nonprofits reportedly “tried to pressure lawmakers not to include the language in the legislation brought to the floor.” This legislation passed the House by the slimmest possible margin: 217-199. Section 112 of H.R.6147 reads as follows:

None of the funds made available by this Act may be used by the Internal Revenue Service to deny tax exemption under section 501(a) of the Internal Revenue Code of 1986 with respect to a church, an integrated auxiliary of a church, or a convention or association of churches for participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office unless—

(1) the Commissioner of Internal Revenue determines that the exemption should be denied;

(2) not later than 30 days after such determination, the Commissioner notifies the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such determination; and

(3) such denial is effective not earlier than 90 days after the date of the notification under paragraph (2).

“The same basic language was used in last year’s financial services appropriation bill” but – then – it was “stripped from the Senate version of the bill after intense lobbying by a coalition of faith-based and secular nonprofit organizations and associations.”

Next Stop: The Senate

The philanthropic community has long been vehemently opposed to any change to the Johnson Amendment, as have many religious organizations and leaders. Tim Delaney, president and CEO of the National Council of Nonprofits, explains the stakes in *Could This Political Environment Get More Toxic for Nonprofits? The Answer Is Yes—Unless You Act Today.*

Like many other philanthropy leaders, he calls for action to persuade Senators to vote against this provision. This measure, though, “will likely face pushback in the Senate: Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate’ Finance Committee, promised to ‘use every tool at [his] disposal’ to stop Senate Republicans from including it in their version of the bill.”

Conclusion

While the Senate technically remains in session – Senator Mitch McConnell “canceled” the customary August recess – both (GOP) senators from Arizona are absent, effectively depriving the Republicans of a majority of votes needed to pass anything. Sen. John McCain is, sadly, unable to attend because of his serious illness, while Sen. Jeff Flake, is on an entirely voluntary, deliberate, African safari.