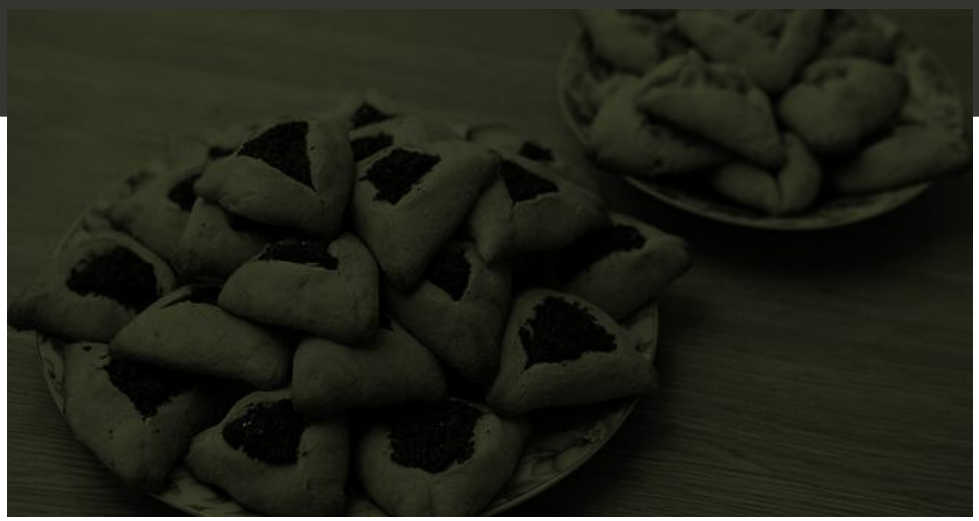
NONPROFITS: POLITICAL ISSUES

Johnson Amendment First Morsel: The Thirty-One Words

03.12.24 | Linda J. Rosenthal, JD



In the United States, there is a never-ending election cycle: New campaigns begin the morning after the polls close on the last races.

In the weeks and months leading up to Election Day 2024, there will be 24/7 media coverage and a slew of political ads clogging our mailboxes. We live in tumultuous and consequential times where "elections matter." And everyone will have opinions.

What about 501(c)(3), tax-exempt, organizations? Are they permitted to express opinions; that is, to take positions one way or another about candidates for public office? Are they allowed to participate in "electioneering" activities or in campaigns? "Myths abound …" about whether 501(c)(3)s with exempt status can get involved in these activities.

Not unreasonably, throughout the charitable community, there is caution, hesitation …. fear. Undeniably, there are risks with a mistake or wrong move. The serious consequences could include loss of tax exemption or at least hefty penalties.

But "the fear factor is not only often unwarranted," it may also "unnecessarily inhibit [organizations] from most fully and effectively furthering their missions."

Bite-Sized is Best

Over the past ten years, we've published *many* long and detailed posts on this critical but challenging topic.

Perhaps right now – in these earliest days of the 2024 general-election cycle – what may be most helpful is a refresher: a back-to-basics review – offered up in small and easily digestible bits. That's what we proposed in *The Johnson Amendment: Bite-Sized Morsels for 2024* (January 24, 2024).

So let's begin.

It's prudent for the key people in 501(c)(3) exempt organizations to learn the general rules: what's allowed during this campaign season and what's *not* allowed at all or is chancy.

You may ask: "What *are* those rules? Is there a link to a single, definitive statute?

You may wonder as well about this "Johnson Amendment" that so many people mention whenever the topic of politics and philanthropy pops up.

Remarkably, there's a single answer for these queries: It's the 31 words tacked onto the tail end of the most well-known tax-exemption statute; namely, section 501(c)(3) of the Internal Revenue Code.

The Thirty-One Words

Here are those stand-alone 31 words; a bite-sized statutory rule, if ever there was one:

- "*… and which does 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." [bolding added,1986 clarification amendment]*

The full and complete 501(c)(3) text is – itself – succinct: only a bit over 130 words.

That's because 501(c)(3) is a *definitional* section in the exempt-organizations part of the federal tax code; namely: 26 U.S. Code section 501 *et seq*. We're adding the full text below because it adds necessary context.

Section 501(c)(3): All of It

Here's a handy roadmap, including only the most relevant bits to get us from our starting point – Section 501, subsection a:

- "**(a) EXEMPTION FROM TAXATION** *An organization described in subsection (c) … shall be exempt from taxation under this subtitle ….*

to our destination, Section 501, subsection c, subparagraph (3):

- **(c) LIST OF EXEMPT ORGANIZATIONS** *The following organizations are referred to in subsection* (a): …. *** ***
- *3) Corporations, and any community chest, fund, or foundation, 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 (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence*

legislation (except as otherwise provided in subsection (h)), and which does 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.

And there it is – the current section 501(c)(3) which has had only minimal changes since its enactment in 1954. Read subparagraph (3) slowly; it's *not* a random run-on sentence. It's an intentional mini-map.

The first several phrases tick off the requirements to qualify for, and maintain, this highly coveted category of tax-exempt status. You'll notice mention of: the Organizational Test, the Operational Test, and the list of recognized "exempt" purposes. Stay on this main highway.

Beginning almost halfway through, you'll come to the four off-ramps to avoid: the No Private Benefit Rule, the No Inurement of Net Earnings Rule, the No Excessive Lobbying Rule; and – voila – The Thirty-One Words which are commonly referred to –

….How?

Shorthand, Anyone?

Among the ways that people commonly refer to The 31 Words are: "the politics ban" or "the political restrictions" or some variation of that shorthand.

But most often, it's simply "the Johnson Amendment."

Why? Because of a high-ranking Congressional leader named Johnson who drafted the language.

"No. Not *him*. Not the one sitting uncomfortably behind the President last week.

It was an entirely *different* Johnson fellow in the sweltering summer of 1954. Lyndon Baines Johnson, a decade before he moved into the White House, was already a powerful and aggressive Senate Minority Leader. He took a leading role in the badly needed massive overhaul and restructuring of the federal tax code.

LBJ was almost single-handedly responsible for the eleventh-hour floor amendment – with no discussion or debate – that inserted The 31 Words into the final version of the brand-new Section 501(c)(3).

It's a fascinating – and disturbing – tale that we first told you about in *The Political Ban in 501(c)(3): Its Odd History* (June 23, 2016). Many details became public long after that legislative session. There are well-founded allegations that LBJ's actions may have been prompted by: (a) a desire and plan to harm a political opponent by making trouble for that man's favorite charity or (b) the mistaken belief that the language he insisted on inserting at the tail end of the new 501(c)(3) pertained *only* to lobbying restrictions. Or both! And there are other tidbits indicating or at least alleging negligence or other nefarious conduct including his trademark hard-ball legislative style.

Conclusion

So there you have it.

The governing statute is 31 words long. And for over 70 years, despite continual rumors about its imminent demise, it's still there – mostly intact from its enactment in 1954.

– Linda J. Rosenthal, J.D., FPLG Information & Research Director