

Will The 501(c)(3) Politics Ban Be Repealed?

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Seems like lots of folks these days are talking about the Johnson Amendment.

What is it, and why does everyone suddenly have an opinion? Gut it, keep it, tweak or twist it a bit?

In a nutshell, the Johnson Amendment is the “political ban” language in the federal tax exemption law. It’s been a source of controversy and confusion for almost 60 years. From time to time, there have been calls to rethink this statutory prohibition; this talk heated up last year during the political campaigns. The [GOP platform called for repeal](#); that [sentiment was echoed](#) by presidential candidate Trump:

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To a roomful of Christian ‘values voters’ in September, Donald Trump joked that [repealing the so-called Johnson Amendment](#) was his only hope for getting into heaven....

On the campaign trail, though, it was mostly just talk; hardly anyone predicted a GOP sweep of Congress *and* the White House.

Now, it’s for real.

What is the Johnson Amendment?

Last summer, in [“The 501\(c\)\(3\) Politics Ban: Its Odd History,”](#) we told the somewhat bizarre story how this significant prohibition came to be included in the federal tax code.

Long story short: In 1954, Congress wanted a comprehensive overhaul of the tax code, including the parts relating to the federal tax exemption. Most of what’s in 501(c)(3) now was included in the pre-1954 version.

Here’s the full text of 501(c)(3) as it is now in 2017; it defines which organizations qualify for this

category of tax-exempt status:

(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.**

Before the 1954 revision, everything was there except the italicized/underlined phrase about the subsection (h) lobbying election (added in 1976) and the bolded language which is the politics ban; that is, the Johnson Amendment.

That's the Johnson Amendment, 27 words tacked onto the end of newly renumbered section 501(c)(3) of the Internal Revenue Code. The phrase "(or in opposition to)" was added in the 1980s for clarity.

There are some colorful details about how this came about. The 100% ban on political campaign activity was added casually as a floor amendment, not requiring any debate or deliberation.

The person slapping on this wording at the tail end of the newly numbered section 501(c)(3) was none other than Senator Lyndon B. Johnson, recently elevated to the position of Senate Majority Leader.

There is credible evidence that the future president offered this amendment as a way of getting back at the foundation controlled by one of his political opponents. There is also some reason to believe that Johnson didn't read the amendment he offered, because he intended the politics ban to track the "no substantial part" test of the lobbying election that had been added in 1934.

So that's that. When people talk about repealing the Johnson Amendment, they mean those words at the end of section 501(c)(3).

Renewed Focus on Politics Ban

At the National Prayer Breakfast on January 21st, Donald Trump again expressed his intention to "get rid of and totally destroy the Johnson Amendment – in the name of religious freedom."

The action so far, though, has been in the legislative branch. There are two main pieces of legislation; one for total repeal for all 501(c)(3)s including religious organizations; the second, which has gained much more traction is a pair of mirror-image bills in the House and Senate that carve out a narrow exception for limited political activity.

Jones Repeal Bill: H.R. 172

The first was filed by Rep. Walter Jones (R-NC) early in January; it's a simple clean bill to repeal the Johnson Amendment for all exempt and religious organizations. It hasn't attracted much attention; there is just one cosponsor. Its title is: "To restore the Free speech and First Amendment rights of churches and exempt organizations by repealing the 1954 Johnson

Amendment.: The full text, official summary, and tracking information is [here](#). It was referred to the House Ways and Means Committee.

S. 264 (*Lankford*); H.R. 781 (*Scalise*)

On February 1, 2017, identical bills titled “The Free Speech Fairness Act” were introduced into Congress. These are not, however, a total-annihilation approach. Curiously, they don’t touch the Johnson Amendment directly; that remains in 501(c)(3). Instead, these bills add a new subsection (s) to the end of section 501(c) of the Internal Revenue Code. The official summary is helpful in understanding the nature and scope of this proposed legislation:

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This bill amends the Internal Revenue Code to permit a tax-exempt organization to make certain statements related to a political campaign without losing its tax-exempt status. An organization may not lose its tax-exempt status under section 501(c)(3) or be deemed to have participated in, or intervened in any political campaign on behalf of (or in opposition to) any candidate for public office, solely because of the content of any statement that: (1) is made in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose, and (2) results in the organization incurring not more than de minimis incremental expenses.

- The full text, official summary, and tracking information for the Senate bill is [here](#). Sponsored by Sen. James Lankford (R-OK), there are two cosponsors: Rand Paul (R-KY) and Roy Blunt (R-MO).
- The full text, official summary, and tracking information for the House bill is [here](#). Sponsored by Rep. Steve Scalise (R-LA), the principal cosponsor is Jody Hice (R-GA). There are over 40 cosponsors so far.

Conclusion

Comments by Rep. Kevin Brady (R-TX), Chairman of the House Ways and Means Committee, in a speech at the CPAC Conference on February 24, 2017, suggests a possible alternate path for the Johnson Amendment:

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Places of worship across America need to be free to practice their faith without worrying about Washington or the IRS targeting their religious freedom....So in our Republican tax reform, we're going to repeal the damaging effects of the Johnson Amendment once and for all.”

We'll follow these developments closely.