

July 10, 2016

The Honorable Rodney P. Freylinghuysen
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Freylinghuysen and Ranking Member Lowey:

The undersigned organizations, representing nonreligious Americans, including atheists, agnostics, secular humanists, and many others, write to strongly oppose Section 116 of the 2018 Financial Services and General Government Appropriations Bill. It is our deeply held opinion that this provision is contrary to the interests of all nonprofits, is discriminatory toward nonreligious Americans, and is damaging to democracy in America as a whole. This provision compels the Internal Revenue Service to selectively enforce a long-standing federal law known as the Johnson Amendment, effectively preventing the agency from investigating alleged violations by houses of worship, while holding all other nonprofits accountable to the law.

In 1954 the Johnson Amendment was passed, adding a requirement to the Internal Revenue Code that in order to maintain 501(c)(3) nonprofit status, an organization may not “participate in, or intervene in (including the publication and distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.”¹ Organizations which take advantage of the tax exemptions provided to those with 501(c)(3) status can therefore neither endorse, nor fund individual candidates.

Despite the claims of its opponents, the Johnson Amendment does not restrict free speech for anyone. The organizations signing this letter are among the fiercest proponents of the First Amendment, and its protection of free speech. All nonprofit organizations, religious or not, are free to speak out on political and social issues of interest across the spectrum. There can be no doubt that nonprofits can and do speak loudly and publicly on issues of concern. During election campaigns, nonprofit organizations may organize voter registration drives, hold candidate debates,² publish voter guides, and even lobby on specific legislation with few restrictions. All they may not do, in exchange for their voluntary, privileged tax exempt status under 501(c)(3), is directly endorse, oppose, or donate money to candidates.

The Johnson Amendment has been in place for over 60 years, and has worked to the benefit of democracy and to that of nonprofit organizations. Nonprofits are kept above the partisan political fray, focusing on issues of concern to their membership rather than backing or opposing individual candidates. The overwhelming consensus in both the nonprofit world as a whole, and also amongst religious nonprofits, is that the Johnson Amendment is valuable, should remain in place, and should be

¹ 26 U.S.C.S. §501(c)(3)

² Indeed, the Commission on Presidential Debates itself is a 501(c)(3) organization.

enforced. A recent open letter from the nonprofit community, pledging support for the Johnson Amendment and requesting Congress to leave it intact, garnered almost 4,500 signatures from groups as wide ranging as Girl Scouts of the USA, to Habit for Humanity, to the League of Women Voters.³ Religious groups too are near united in their opposition to eliminating or making the amendment unenforceable. The above letter was signed by religious groups of nearly every denomination, including the Baptist Joint Committee for Religious Liberty, Catholic Charities USA, the Jewish Council for Public Affairs, the Shia Islamic Education Center, and the Hindu American Foundation. Currently over 3,000 individual faith leaders have signed a further letter requesting that the Amendment be preserved.⁴

The nonprofit community does not believe its rights to free speech are limited by the Johnson Amendment, and overwhelmingly opposes repeal or weakening of that legislation. The people of America also have no desire to see the end of the Johnson Amendment. Nearly 90% of Evangelical Christian leaders agree that it would be inappropriate for pastors to endorse a candidate from the pulpit.⁵ A clear majority, 72%, of American voters support the Johnson Amendment and the idea that nonprofits should not be spending tax exempt donations on endorsing candidates or giving money to their campaigns.⁶ The view of the people is clear – they have no desire for their churches and charities to become just another battleground in partisan electoral politics.

Even if there was public support, or support in the nonprofit community for weakening the Johnson Amendment, Section 116 of this bill is a particularly inappropriate way to go about achieving that aim. Such a significant change in the governance of nonprofits, changing more than six decades of settled law, and permitting the tax-exempt donations of citizens to be channeled to candidates and campaigns, deserves to be fully and publicly debated, rather than added on as part of a budgetary measure and pushed through without full and fair consideration. The signatories to this letter oppose repeal or weakening of the Johnson Amendment. However, if Congress is to undertake such a step, it should be done in the public eye. Adding a nonrelated provision to a funding bill to undertake significant and controversial changes is contrary to good governance, and should not become the norm.

As representatives of the nonreligious community, we have particular concerns regarding the weakening of the Johnson Amendment as proposed by Section 116. The tax code already gives significant privileges to religious groups; privileges which are unavailable to our organizations. For example, religious nonprofits are exempt from filing a full Form 990, unlike all other 501(c)(3) organizations who are required to under the Tax Reform Act of 1969. This disclosure form allows the public to see how a nonprofit organization spends the money it receives as tax exempt donations, and aids the government in ensuring that the organization is not violating the rules under which nonprofits are required to operate. Because religious groups are exempt from this requirement, the public cannot know with any degree of certainty whether such a group is conducting itself in accordance with the regulations set forth by the IRS; nor can it determine where or how such a group's money is being spent. If the IRS is

³ <https://www.givevoice.org/sites/default/files/community-letter-in-support-of-nonpartisanship.pdf>

⁴ <https://www.faith-voices.org/>

⁵ <https://www.nae.net/pastors-shouldnt-endorse-politicians/>

⁶ <http://independentsector.org/resource/poll-americans-support-keeping-amendment/>

prevented from enforcing the Johnson Amendment as to houses of worship, then this exemption from filing a full Form 990 will result in truly dark money, untraceable as to its source or direction, flowing through houses of worship into our political system.

Section 116 is very specific – it applies to churches and churches alone.⁷ This provision hands a specific benefit, virtual immunity from enforcement of a particular section of the IRS code, to one group only, the religious. None of the signatories to this letter can receive such a benefit, and the reason we cannot receive this benefit is that we express no belief in a divine being. If Section 116 is enacted, churches will be granted a free hand to give tax exempt donations to political candidates, and to endorse those candidates. Secular nonprofit organizations, including the specifically nonreligious groups that are the signatories to this letter, will not. If this is, as is claimed, a matter of free speech, then how can our free speech be valued less than that of a house of worship? This preference for religious groups strikes to the heart of the Establishment Clause of the First Amendment.

We therefore firmly urge you to reject Section 116 of the 2018 Financial Services and General Government Appropriations Bill, and to resist any attempts to weaken or eliminate the Johnson Amendment, especially when such attempts apply solely to religious groups.

Sincerely,

American Atheists

American Humanist Association

Black Nonbelievers, Inc.

Center For Inquiry

Ex-Muslims of North America

Freedom From Religion Foundation

Military Association of Atheists & Freethinkers

Secular Coalition for America

Secular Student Alliance

Social Action Committee of the Congress of Secular Jewish Organizations

Society for Humanistic Judaism

⁷ IRS regulations require that any such benefit given to churches be given to all houses of worship.