CLC

ADVANCING DEMOCRACY THROUGH LAW

July 13, 2026

Via Electronic Mail to RLC@usdoj.gov

Religious Liberty Commission
U.S. Department of Justice
950 Pennsylvania Avenue NW
Room 5706
Washington, DC 20530

Re: Comment Opposing the Recommendations Regarding the Johnson Amendment in Chapter 8 of the Religious Liberty Commission's June 2026 Draft Report

Dear Chair Patrick, Vice Chair Carson, and members of the Religious Liberty Commission:

Campaign Legal Center ("CLC") respectfully submits these comments in response to the Religious Liberty Commission's draft final report (the "Draft Report"). CLC writes specifically to oppose the recommendations in Chapter 8, which argue that the federal government should support the repeal of the Johnson Amendment, that the Department of the Treasury should issue guidance narrowing the Amendment's reach, and that the Department of Justice should support litigation challenging its constitutionality.[1]

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening the American democratic process, including through the defense of campaign finance laws that ensure voters can identify who is attempting to influence their votes.

CLC has direct experience with the precise question Chapter 8 asks the Commission to resolve. For example, together with Public Citizen and Common Cause, CLC filed an amicus brief in *National Religious Broadcasters v. Long* opposing a proposed consent decree that would have exempted two churches from the Johnson Amendment's

1 *See* Draft Report, ch. 8, pp. 122-29, https://www.justice.gov/religious-liberty-commission/media/1449896/dl?inline.

prohibition on political-campaign intervention.[2] The district court ultimately dismissed that case for lack of jurisdiction, without reaching the constitutional and policy questions the litigation had presented.[3] Chapter 8's recommendations now ask the federal government to resolve those same questions, this time through wholesale repeal of the Johnson Amendment.

For the reasons set forth below, CLC urges the Commission to remove the recommendations to narrow and repeal the Johnson Amendment from its final report. First, such action would trigger a new flood of secret election spending by religious 501(c)(3) organizations, undermining the right of American voters to know who is spending to influence their votes.

Second, the constitutional premise underlying Chapter 8's recommendations is incorrect: the Johnson Amendment is a lawful condition on a taxpayer subsidy, not a restriction on speech, and thus it does not violate the Free Speech Clause. The Supreme Court has repeatedly upheld similar provisions.

I. Narrowing or Repealing the Johnson Amendment Would Trigger a New Flood of Secret Election Spending by Religious 501(c)(3) Organizations

A. Voters Have a Right to Know Who Is Spending to Influence Their Votes

Disclosure of election-related spending serves compelling governmental interests and is foundational to the federal campaign finance system. As the Supreme Court has explained, "enlightened self-government" depends on voters knowing who is speaking about a candidate shortly before an election, so that they can make informed choices in the political marketplace.[4] In addition, "disclosure can deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[5] Congress accordingly built a two-tiered disclosure regime into the Federal Election Campaign Act ("FECA"): organizations whose major purpose is federal campaign activity must register as political committees and file detailed, regular reports, while other groups must file event-driven reports when they engage in certain electoral spending.[6]

[2] Brief of Amici Curiae Campaign Legal Center, Public Citizen, and Common Cause Opposing the Parties' Joint Motion for Entry of Consent Judgment, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-311-JCB (E.D. Tex. Aug. 4, 2025).

[3] *Nat'l Religious Broadcasters v. Bessent*, No. 6:24-cv-311, --- F. Supp. 3d ---, 2026 WL 884020 (E.D. Tex. Mar. 31, 2026).

[4] *Citizens United v. FEC*, 558 U.S. 310, 339, 367, 369 (2010).

[5] *Nat'l Republican Senatorial Comm. v. FEC*, No. 24-621, 609 U.S. ---, 2026 WL 1868932, at *10 (U.S. June 30, 2026) (internal quotation marks omitted); *see also Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam).

[6] 52 U.S.C. §§ 30101 *et seq.*, 30102, 30103, 30104(a)-(b); *see also SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc).

That regime, however, has significant gaps. Although FECA requires entities whose major purpose is federal campaign activity to register and report as political committees, the Federal Election Commission ("FEC") has interpreted those rules to allow groups to dedicate up to half of their spending on elections without triggering FECA's political committee disclosure requirements.[7] Even then, the FEC has shown little interest or ability to enforce these already permissive rules thanks to structural partisan gridlock.[8]

Section 501(c)(4) "social welfare" organizations have exploited this FEC dysfunction, along with minimal IRS reporting requirements that do not require donor disclosure,[9] to become a dominant vehicle for anonymous "dark money" spending—spending that reached record levels in the 2024 election cycle and that has undermined the public's ability to trace who is funding political messaging.[10]

Chapter 8's recommendations would not merely widen this existing gap; they would create an entirely new and even less accountable category of dark-money spender: religious 501(c)(3) organizations, which today are barred by the Johnson Amendment from any campaign intervention at all.

B. The Johnson Amendment Protects Voters and Taxpayers by Preventing Subsidization of Anonymous Campaign Activity by 501(c)(3)s

Section 501(c)(3) requires that an organization be "operated exclusively" for religious, charitable, or educational purposes, and prohibits it from participating or intervening in any political campaign on behalf of or in opposition to a candidate—including through the publishing or distributing of statements.[11] In exchange for complying with that condition, 501(c)(3) organizations receive federal income-tax exemption, and their donors may deduct their contributions. As the Supreme Court has explained, tax exemption and deductibility "have much the same effect as a cash grant," functioning as a public subsidy administered through the tax code.[12]

Congress enacted the Johnson Amendment in 1954, on the initiative of then-Senator Lyndon Johnson, with little debate or controversy, out of a bipartisan concern that tax-exempt organizations were being used to influence elections while shielding donors from

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[7] *See, e.g.*, *Citizens for Resp. & Ethics in Washington v. FEC*, 236 F. Supp. 3d 378, 394 (D.D.C. 2017).

[8] *See, e.g.*, Adav Noti & Erin Chlopak *et al.*, *Why the FEC Is Ineffective*, Campaign Legal Ctr. (Aug. 8, 2022), https://campaignlegal.org/update/why-fec-ineffective.

[9] 26 U.S.C. §§ 6033, 6103(a), 6104(d)(3)(A); Treas. Reg. § 301.6104(b)-1(b)(1)-(2).

[10] Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Races*, Brennan Ctr. for Justice (May 7, 2025), https://perma.cc/R6YC-KKEE; Taylor Lincoln & Craig Holman, *Fading Disclosure: Increasing Number of Electioneering Groups Keep Donors' Identities Secret*, Pub. Citizen 4-5 (2010), https://perma.cc/7A55-H7JY; Megan McAllen, *Delay, Deadlock, Dismiss: Pras Michel Indictment Exposes How FEC Dysfunction Opens Our Elections to Foreign Meddling*, Campaign Legal Ctr. (May 15, 2019), https://perma.cc/Q7G7-RL3R.

[11] 26 U.S.C. § 501(c)(3).

[12] *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 544 (1983).

scrutiny.[13] The provision applies broadly to every 501(c)(3) organization—religious, charitable, and educational alike—rather than singling out houses of worship.[14] Consistent with that broad text, the IRS and the courts have long treated public communications endorsing or opposing candidates, including newspaper advertisements, candidate ratings, and broadcast appeals, as prohibited campaign intervention regardless of which 501(c)(3) organization makes them.[15]

Critically, 501(c)(3)s receive not only a taxpayer subsidy, but also the ability to raise money without disclosing any of their donors. Most 501(c)(3) organizations must file an annual information return with the IRS, but the names and addresses of their contributors are specifically excluded from public inspection.[16] Churches are exempt from that filing requirement altogether, and so disclose nothing about their finances or their donors to the IRS or the public as a matter of routine practice.[17] The Johnson Amendment was enacted, and has operated for more than 70 years, against this backdrop of donor secrecy: it ensures that the organizations receiving the most generous and least transparent tax treatment in the Internal Revenue Code are also walled off from campaign spending.

In contrast, Congress added Section 527 to the Internal Revenue Code in 1975 specifically to give nonprofits a lawful vehicle for campaign intervention that also protects the rights of voters. A section 527 organization is "operated primarily" for the exempt function of influencing the selection, nomination, election, or appointment of a candidate for public office.[18] Unlike a 501(c)(3), however, a section 527 organization must publicly disclose its donors. Although 527s do not pay income tax on their receipts, donations to them are not tax-deductible for their donors.[19]

Congress, in other words, already built the tool that Chapter 8 of the Draft Report asks the federal government to help recreate: a tax-advantaged vehicle expressly permitted to campaign for or against candidates. Any religious or charitable organization that wishes to engage in campaign intervention today may establish a section 527 organization for that purpose, while continuing to operate its nonpartisan work through a 501(c)(3).[20]

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13 100 Cong. Rec. 9128 (1954); Roger Colinvaux, *The Political Speech of Charities in the Face of* Citizens United*: A Defense of Prohibition*, 62 Case W. Res. L. Rev. 685, 692 (2012).

14 Ann M. Murphy, *Campaign Signs and the Collection Plate—Never the Twain Shall Meet?*, 1 Pittsburgh Tax Rev. 35, 48-49 (2003).

15 *Branch Ministries v. Rossotti*, 211 F.3d 137, 139, 141-44 (D.C. Cir. 2000); *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d Cir. 1989); *Ass'n of the Bar of the City of N.Y. v. Comm'r*, 858 F.2d 876, 880 (2d Cir. 1988); *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 856 (10th Cir. 1972).

16 26 U.S.C. § 6104(d)(3)(A); Treas. Reg. § 301.6104(b)-1(b)(1)-(2).

17 26 U.S.C. § 6033(a)(3)(A).

18 26 U.S.C. § 527(e)(1)-(2).

19 26 U.S.C. § 527(j).

20 *See Regan*, 461 U.S. at 552-53 (Blackmun, J., concurring) (explaining that any First Amendment concerns with conditioning a tax subsidy on refraining from political activity are addressed by an

As the next section details, repealing the Johnson Amendment would thus not bring religious organizations into the transparent framework Congress built for nonprofit campaigning. Instead, it would let them campaign entirely in the dark and to the detriment of American voters, who would be paying for such organizations' tax subsidies.

C. Repeal Would Create a New and More Dangerous Class of "Super Dark Money" Groups

Because of the special advantages enjoyed by religious 501(c)(3) organizations, repeal or narrowing of the Johnson Amendment would only serve to exacerbate the already significant dark-money problem posed today by politically active 501(c)(4) "social welfare" groups.

First, unlike 501(c)(4)s, religious 501(c)(3)s could offer donors seeking to influence elections both secrecy *and* a charitable tax deduction. Empirical research shows that taxpayers respond to the charitable deduction by increasing their giving, and that this is particularly true for higher-income donors who itemize.[21] Repeal would therefore create a perverse incentive for wealthy donors and political operatives to shift dark-money spending out of 501(c)(4)s and into newly politicized churches and religious nonprofits.[22]

Second, religious 501(c)(3)s already face fewer disclosure and oversight obligations than any other tax-exempt entity. As mentioned above, churches are categorically exempt from the annual Form 990 informational return that most 501(c) organizations, including 501(c)(4)s, must file with the IRS.[23] Churches also presumptively qualify for 501(c)(3) status without ever applying to the IRS,[24] and are subject to special audit procedures that further insulate them from oversight.[25] If the Johnson Amendment were repealed, campaign spending by these organizations would be even more opaque than spending by existing 501(c)(4) dark-money groups: donors could not be identified, spending could not be tracked, and the public would have no way to determine who is responsible for significant spending intended to influence their votes.

Third, repealing the Johnson Amendment would enable an enormous amount of new dark-money spending in our elections. There are an estimated 340,000 religious 501(c)(3)

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organization's ability to conduct that activity through an alternative organizational form); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 712 (2014).

21 *See* Congressional Budget Office, Options for Changing the Tax Treatment of Charitable Giving 2 (May 2011).

22 *See* Noah Bookbinder, *Push to Repeal the Johnson Amendment Could Open Pandora's Box for Money in Politics*, CREW (Oct. 4, 2016), https://perma.cc/DS56-Z7K8; Brendan Fischer, *Destroying the Johnson Amendment: How Allowing Charities to Spend on Politics Would Flood the Swamp That President Trump Promised to Drain,* Campaign Legal Ctr. (May 3, 2017), https://perma.cc/A986-RC59.

23 26 U.S.C. § 6033(a)(3)(A).

24 26 U.S.C. § 508(c).

25 26 U.S.C. § 7611.

organizations in the United States, and some already report spending tens of millions of dollars annually on their broader operations.[26] If the Johnson Amendment were repealed, there would be little to stop religious nonprofits from devoting a substantial share of their budgets to campaign activity while remaining eligible for tax-deductible contributions.

While the Johnson Amendment's bright-line rule has historically constrained 501(c)(3) political activity, its removal would erase that barrier. Decades of history show that politically active donors and operatives quickly adapt to new spending options, and the same would happen here, routing money through religious organizations to take advantage of the tax deduction and the lack of disclosure. Liberal and conservative churches alike would be pressured to accept partisan contributions, and their leaders would be incentivized to act as campaign operatives rather than spiritual guides.[27] The same flood of dark money that has overwhelmed the 501(c)(4) space would surge into the newly politicized 501(c)(3) domain, only now, it would be taxpayer-subsidized and largely invisible.

Nor could the FEC or the states be expected to fill the gap. The FEC has shown little interest in or capacity for enforcing FECA's political-committee and disclosure requirements against politically active nonprofits; indeed, since *Citizens United*, the FEC has failed to voluntarily find any nonprofit organization to be a political committee, despite overwhelming evidence in many cases.[28] Many state disclosure regimes, in turn, were drafted against the background assumption that 501(c)(3)s do not spend on elections at all, and specifically exclude 501(c)(3) organizations from their reporting requirements—meaning that newly-active religious nonprofits could be exempt from state-level disclosure by pure happenstance.[29]

In short, repealing the Johnson Amendment (or narrowing its scope through administrative interpretation) would dismantle a central safeguard of the federal campaign finance system and open the door to a new generation of political spending vehicles that are simultaneously tax-deductible, undisclosed, and largely unsupervised. The Draft Report should not recommend that outcome.

II. The Johnson Amendment Is Constitutional

Chapter 8 of the Draft Report frames IRS oversight of tax-exempt religious speech as government invasion of the pulpit, and recommends that the Department of Justice support litigation challenging the Johnson Amendment's constitutionality. That premise does not withstand scrutiny under settled First Amendment doctrine.

[26] *See* National Philanthropic Trust, *Charitable Giving Statistics*, https://perma.cc/K7K6-ZSME.

[27] *See* Brendan Fischer, *Destroying the Johnson Amendment: How Allowing Charities to Spend on Politics Would Flood the Swamp That President Trump Promised to Drain,* Campaign Legal Ctr. (May 3, 2017), https://perma.cc/A986-RC59.

[28] *See* Adav Noti & Erin Chlopak *et al.*, *Why the FEC Is Ineffective*, Campaign Legal Ctr. (Aug. 8, 2022), https://campaignlegal.org/update/why-fec-ineffective.

[29] *See, e.g.*, R.I. Gen. Laws § 17-25.3-1(b); id. §§ 17-25-3(2), (19).

A. The Johnson Amendment Does Not Burden Speech—It Conditions a Subsidy

The Johnson Amendment does not suppress or penalize anyone's speech. It sets a condition on eligibility for a government benefit—federal tax exemption and tax-deductible contributions—which the Supreme Court has recognized as "a form of subsidy that is administered through the tax system."[30] Organizations remain entirely free to engage in political campaign activity; they simply must forgo that taxpayer-funded subsidy if they choose to do so.

This framework is well established. In *Cammarano v. United States*, the Supreme Court upheld the denial of a tax deduction for lobbying expenses, explaining that a taxpayer denied a deduction is not being penalized for constitutionally protected activity but is simply "required to pay for those activities entirely out of [its] own pocket."[31] In *Regan v. Taxation With Representation*, the Court applied the same logic to section 501(c)(3)'s restriction on substantial lobbying, holding that Congress "has not infringed any First Amendment rights . . . [but] has simply chosen not to" subsidize that activity.[32] And in *Branch Ministries v. Rossotti*, the D.C. Circuit applied *Regan* directly to a church, upholding the IRS's revocation of a church's tax-exempt status for publishing full-page newspaper advertisements opposing a presidential candidate, and holding that "Congress has not violated an organization's First Amendment rights by declining to subsidize its First Amendment activities."[33]

The Constitution does not require government to "assist others in funding the expression of particular ideas, including political ones,"[34] and organizations that wish to campaign for candidates retain real options: they may organize or reorganize as for-profit entities, which the Supreme Court has recognized offer "the freedom to participate in lobbying for legislation or campaigning for political candidates,"[35] or they may maintain a 501(c)(3) for their nonpartisan work while operating a separate 527 for campaign-adjacent activity.[36] Because 501(c)(3) status is a voluntary and statutorily-based tax benefit and not a constitutional entitlement, an organization that accepts the benefit cannot plausibly claim that Congress has restricted its speech by defining the benefit's scope.[37]

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30 *Regan*, 461 U.S. at 544.

31 *Cammarano v. United States*, 358 U.S. 498, 513 (1959).

32 *Regan*, 461 U.S. at 546.

33 *Branch Ministries v. Rossotti*, 211 F.3d 137, 139, 141-44 (D.C. Cir. 2000).

34 *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009); *see also Harris v. McRae*, 448 U.S. 297, 318 (1980) (explaining that the Constitution "does not confer an entitlement to such funds as may be necessary to realize all the advantages of" a constitutional right).

35 *Burwell*, 573 U.S. at 712.

36 *See Regan*, 461 U.S. at 552-53 (Blackmun, J., concurring).

37 *See United States v. American Library Ass'n*, 539 U.S. 194, 212 (2003) (plurality op.); *Regan*, 461 U.S. at 545-46.

B. The Johnson Amendment Is Viewpoint-Neutral

The Johnson Amendment applies uniformly to every 501(c)(3) organization and prohibits intervention on behalf of or in opposition to every candidate, "regardless of candidate, party, or viewpoint."[38] That neutrality distinguishes it from the sort of viewpoint-based restrictions that trigger heightened First Amendment scrutiny. Because the Johnson Amendment is a subsidy condition rather than a restriction on speech, speaker-based distinctions of the kind found in the tax code are permissible in a way that outright bans on speech, enforced through criminal penalties, are not.[39] *Citizens United* is not to the contrary: that case invalidated a ban on independent election spending by corporations enforced by criminal penalty, and did not involve a government subsidy or the boundaries of tax exemption at all.[40]

C. The Draft Report's Anecdotes Do Not Establish a Constitutional Violation

Chapter 8 relies heavily on individual testimony to suggest that the Johnson Amendment, or its enforcement, is being used to suppress disfavored religious speech. That testimony does not support the recommendation. Several of the anecdotes Chapter 8 cites do not involve Johnson Amendment enforcement at all: the termination of a fire-department chaplain over a personal blog post, and litigation over a hospital's obligations under state abortion and insurance mandates, concern employment and regulatory disputes wholly unrelated to a religious organization's tax-exempt status.[41] Conflating these episodes with the Johnson Amendment overstates the scope of the alleged problem the report's recommendations claim to solve.

The one anecdote that does involve a genuine Johnson Amendment inquiry (the IRS's review of a Dallas church's 2020 patriotic service) was resolved in the church's favor, with the IRS concluding that no violation had occurred.[42] That the law's own procedures ultimately vindicated the church is, if anything, evidence that the Johnson Amendment's enforcement mechanism functions as intended, not evidence that the statute itself is unconstitutional.

Even crediting the Draft Report's broader suggestion that some politically active organizations have escaped scrutiny while others have faced it, uneven enforcement of a viewpoint-neutral statute does not, without more, establish a First Amendment violation. Courts require a plaintiff alleging selective enforcement to show that similarly situated speakers were treated differently because of their viewpoint, which is a demanding

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[38] *Branch Ministries*, 211 F.3d at 144.

[39] *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 648 (7th Cir. 2013).

[40] *Wisconsin Educ. Ass'n Council*, 705 F.3d at 648.

[41] Draft Report ch. 8 (Statement of Dr. Andrew Fox); *id.* (Statement of Archbishop Salvatore Cordileone).

[42] Draft Report ch. 8 (Statement of Dr. Robert Jeffress).

standard that isolated or anecdotal comparisons cannot satisfy.[43] That standard counsels a call for more consistent enforcement, not repeal of the underlying law.

D. The Johnson Amendment Serves Compelling Governmental Interests

Even if the Johnson Amendment were treated as a speech restriction, which it is not, it would satisfy heightened scrutiny because it serves at least two compelling governmental interests. First, as explained above, the government has a compelling interest in ensuring that tax-deductible contributions do not become a vehicle for financing political campaigns, which would create an unacceptable risk of *quid pro quo* corruption and undermine voters' right to know who is speaking about a candidate before an election.[44]

Second, the government has a strong interest in preserving the integrity and nonpartisan character of the charitable sector, which is justified on the basis that tax-exempt entities confer a public benefit rather than serve private or partisan ends.[45] Permitting 501(c)(3)s—religious or otherwise—to function as partisan campaign vehicles while retaining that status would blur the line between public service and private political advantage and erode public trust in charitable institutions generally.

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Because the Johnson Amendment is constitutional, none of Chapter 8's recommendations premised on doubting that conclusion has any legal footing. There is no constitutional infirmity for Congress to cure by repealing the Johnson Amendment, for the Department of the Treasury to avoid through guidance narrowing its reach, or for the Department of Justice to vindicate through litigation. Each of those recommendations incorrectly treats the Johnson Amendment's constitutionality as if it were an open question.

Conclusion

For the foregoing reasons, CLC respectfully urges the Commission to remove Chapter 8's recommendation that the federal government support repeal of the Johnson Amendment, along with the related recommendations to procure narrowing IRS guidance and Department of Justice litigation support, from its final report. The Johnson Amendment is a constitutional, viewpoint-neutral condition on a taxpayer subsidy that protects the transparency of American elections and the integrity of the charitable sector. Repealing it would not free religious speech from government interference; it would free the wealthiest and most politically active donors to route unlimited, undisclosed, tax-deductible spending through America's houses of worship, at the direct expense of voters' right to know who is trying to influence their votes.

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[43] *See Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141, 1146 (D.C. Cir. 2023); *United States v. Young*, No. 23-CR-241, 2024 WL 3030656, at *2 (D.D.C. June 17, 2024).

[44] *Citizens United*, 558 U.S. at 339, 367, 369.

[45] *Bob Jones Univ. v. United States*, 461 U.S. 574, 586-87, 592 (1983); *Regan*, 461 U.S. at 550; *Branch Ministries*, 211 F.3d at 143-44.

CLC appreciates the opportunity to submit these comments and would welcome the opportunity to discuss them further with the Commission.

Respectfully submitted,

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