

Destroying the Johnson Amendment: *How Allowing Charities to Spend on Politics Would Flood the Swamp That President Trump Promised to Drain*

By Brendan Fischer

In February 2017, at his first National Prayer Breakfast address after taking office, President Donald Trump made headlines for using his remarks to talk about television ratings for his former reality TV show.

But the most important element of President Trump’s comments was his vow “to get rid of and totally destroy the Johnson Amendment.”

The “Johnson Amendment” refers to language in the Internal Revenue Code that bars organizations incorporated under Section 501(c)(3) of the Code—which includes religious entities, but also an array of charities—from “participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”¹

This law, as detailed below, was adopted and has been supported and strengthened on a bipartisan basis by administrations of both political parties since the 1950s.

Although framed in terms of religious liberty, the current effort to roll back limitations on partisan activities by charities and religious institutions could offer wealthy donors a way not only to influence elections anonymously, but also to get a charitable tax deduction for doing so.

In other words, “totally destroying” the “Johnson Amendment’s” prohibition on partisan political activities could lead to the creation of an array of new 501(c)(3) “super dark money groups”—groups organized as charities or religious organizations that will operate as tax-deductible vehicles for wealthy donors to secretly influence elections.

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The reason for the longstanding restriction is simple: 501(c)(3) organizations are subsidized by taxpayers for their charitable, religious and educational work, not partisan political activity.

Donors to charities and religious entities—churches, synagogues, mosques, temples or other institutions—get a tax deduction for their contributions.² And charities and religious institutions are generally exempt from taxes. As the Supreme Court has noted, these tax benefits operate as “a form of subsidy that is administered through the tax system”:

A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual’s contributions.³

In exchange for these substantial tax benefits, these groups agree to abide by certain restrictions—like the prohibition on political intervention.

The provision barring 501(c)(3) organizations from partisan political activities was introduced in 1954 by then-Senator Lyndon B. Johnson (which is why it is referred to as the “Johnson Amendment”). The amendment was passed with little fanfare by a Republican Congress, and signed by a Republican president, Dwight D. Eisenhower.

The mixing of charity and politics had been a concern since Congress created the charitable tax deduction in 1917. So it was uncontroversial in 1954 when Congress formally prohibited charities from partisan political intervention. At the time, conservatives were particularly concerned about Communist infiltration into tax-exempt organizations, and liberals were equally worried about far-right anti-Communists using tax-exempt entities to influence elections. In fact, a House Select Committee investigating tax-exempt groups in 1954 also recommended “the complete exclusion of political activity” for 501(c)(3) organizations.

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Congress has reaffirmed and strengthened the political activities prohibition over time, most recently in 1987, with strong support from President Ronald Reagan’s Treasury Department. And courts have repeatedly upheld the prohibition—as one D.C. District Court noted in 1999, “[t]he government has a compelling interest in maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose.”⁴

This white paper will describe the history of the political activities prohibition, analyze what impact ending the prohibition would have on our campaign finance system, and consider alternative proposals aimed at narrowing the scope of the prohibition.

Ultimately, given the recent inability (or unwillingness) of the IRS and other regulatory agencies to sustain legal limits on political campaign activity by other tax-exempt entities in the wake of U.S. Supreme Court decisions like *Citizens United*, there is every reason to believe that any effort to loosen the Johnson Amendment's strictures would lead to a new flood of dark, unaccountable and tax-deductible campaign funds into our elections.

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What is the history of the political activities prohibition?

In 1954, the Republican-controlled U.S. Senate adopted an uncontroversial measure prohibiting tax-exempt charities from engaging in partisan political activities, and the legislation was signed with little fanfare by a Republican president, Dwight D. Eisenhower.⁵

Religious institutions were not the primary target of the prohibition. The amendment's sponsor, Sen. Lyndon Johnson, had been attacked by a charity, the Committee for Constitutional Government, in his reelection campaign that year—an early example of “dark money,” since charities are not required to disclose their donors.⁶

On June 18, 1954, Johnson sent a letter to the Commissioner of Internal Revenue with evidence of CCG's activities, writing that “I cannot recall any other similar flagrant engagement in political affairs by a tax-exempt organization” and inquiring as to whether electoral intervention may be “properly and legally engaged in by such an exempt organization.”⁷ The Commissioner promptly responded that CCG's activities:

are no less amusing and shocking to me than they are to you, and I can tell you that we are taking appropriate steps to see just what is the effect of the activities of these organizations under the internal revenue laws and what, if anything, can be done about their present status in relation to exemption privileges.⁸

Yet this was not a new issue. According to scholars like Catholic University Professor Roger Colinvaux, concerns about the mixing of charity and politics had been a long-standing issue by 1954, for both

conservatives and liberals, and “had dogged charitable tax status from the inception of the federal income tax exemption for charitable organizations.”⁹

Congress created the charitable tax deduction in 1917 so that the recently enacted income tax would not suppress charitable giving,¹⁰ and in 1919 the Treasury adopted a regulation providing that “associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute.”¹¹ In 1930, then–Second Circuit Judge Learned Hand ruled that the government need not subsidize the political activities of non-profit groups, observing that “[p]olitical agitation as such is outside the statute, however innocent the aim. . . .”¹²

In 1934, Congress amended the tax code by requiring that “no substantial part” of a charitable organization’s activities could be “carrying on propaganda, or otherwise attempting, to influence legislation.”¹³ The Senate version additionally restricted “participation in partisan politics,” but this language was struck in conference.¹⁴ But that was not the end of the debate over tax-exempt partisan political intervention.

As Professor Colinvaux describes, in the years leading up to the 1954 enactment of the Johnson Amendment, Congress held extensive hearings investigating the political activities of charitable organizations.¹⁵ For example, the Reece Committee—which was investigating the degree to which tax-exempt groups were “using their resources for purposes other than the purposes for which they were established” such as “*for political purposes*; propaganda, or attempts to influence legislation”—held 16 hearings, the last of which occurred the day before Senator Johnson proposed the “Johnson Amendment.”¹⁶ In its final report, the Reece Committee recommended the tax code be amended to encompass “the complete exclusion of political activity” for 501(c)(3) organizations—essentially the same proposal that Senator Johnson had put forward.

Professor Colinvaux writes:

Rather than being an ad hoc overreaction to one man’s political problem, the [Johnson Amendment] is more fairly characterized as the product of debate occurring over decades (if not longer). Indeed, the ease of passage and subsequent lack of controversy regarding the Rule support the idea that by the time of its enactment it was a relatively uncontroversial proposition that charities should not be allowed to engage in political activity, broadly defined.¹⁷

Congress has reaffirmed and strengthened the Johnson Amendment over time, most notably in 1987, after extensive hearings on the political activities prohibition.¹⁸ That year, Congress clarified that the prohibition applies to actions “in opposition to” as well as “on behalf of” a candidate,¹⁹ and that an organization that loses its charitable status cannot seek exemption as a 501(c)(4) entity.²⁰ In that year Congress also enhanced the IRS’s audit and enforcement procedures.²¹

Before strengthening the provision, Congress held hearings, and the political activities prohibition was supported by the Reagan administration’s Treasury Department, the current and a former IRS Commissioner, the American Bar Association, and many others.²² For example, Hon. J. Roger Mentz, assistant secretary for tax policy for the Department of the Treasury under Reagan, testified that:

There is little to be said in favor of a general government subsidy of political campaigns by means of allowing tax deductible contributions to organizations participating in such campaigns. It would be difficult to describe most political campaigns as either charitable or educational endeavors.²³

As Professor Ann Murphy has noted, after much deliberation, “Congress decided that the rules prohibiting tax-exempt organization political activity should not only stand, but become more stringent.”²⁴

Today’s Attack on the Political Activities Prohibition

Religious institutions have long played an important role in American civic life without formally engaging in political campaigns.

For example, in the years following the enactment of the political activities prohibition, churches and faith leaders like the Reverend Dr. Martin Luther King, Jr. played a leading role in the civil rights movement, providing a moral and spiritual focus to the task of confronting segregation. That church-led social movement put pressure on President Lyndon B. Johnson (who just a few years earlier had proposed the political activities prohibition), who in turn championed legislation like the Civil Rights Act. Yet Dr. King and other church leaders managed to change the course of history without directly intervening in partisan political campaigns.

Under current law, tax-exempt churches, synagogues, mosques, and other religious institutions have the liberty to criticize or support officeholders, to speak out on policy issues and, of course, to speak freely on matters of faith.²⁵ They may even engage in some nonpartisan get-out-the-vote activities. Yet a handful of religious leaders have objected that churches put their tax-exempt charitable status at risk if they endorse candidates or engage in political campaign activity. During the 2016 campaign, then-presidential candidate Trump publicly opposed the longstanding ban on political activity by tax-exempt religious entities, and was reportedly responsible for having the issue added to the GOP platform.²⁶ When Trump accepted the GOP nomination in July, he said:

An amendment, pushed by Lyndon Johnson, many years ago, threatens religious institutions with a loss of their tax-exempt status if they openly advocate their political views . . . I am going to work very hard to repeal that language and protect free speech for all Americans.²⁷

After taking office, Trump vowed in early February to “get rid of and totally destroy” the political activities prohibition.²⁸

Although his promise was framed in terms of religious liberty, if the Johnson Amendment were “destroyed” it could have an exceptionally broad impact, not only on religious institutions, but on the entire charitable sector and the campaign finance system as a whole.

What Happens if the Political Activities Prohibition Is “Destroyed”?

The Johnson Amendment prohibits political campaign activities by all entities organized under Section 501(c)(3) of the tax code—covering both churches and charities. If it is “totally destroyed,” then churches and charities would be allowed to support and oppose candidates, and potentially even fund political ads, partisan get-out-the-vote efforts, and other partisan political activity.²⁹

As a result, rolling back limitations on political activities by charities and churches could offer billionaire donors a way not only to influence elections anonymously, but also to get a charitable tax deduction for doing so.

According to Robert P. Jones, CEO of the Public Religion Research Institute:

Church members could give tax-deductible donations to a church, which would then be used by the church to campaign for a specific candidate. It could effectively turn churches into campaign offices and pastors into party operatives.³⁰

Just look at what has happened with 501(c)(4) nonprofits. In the years since the Supreme Court’s decisions in *Citizens United* and *Wisconsin Right to Life*, nonprofits organized under a different section of the tax code, 501(c)(4), have raised and spent hundreds of millions of dollars on elections, using funds raised from corporations, unions, and wealthy individuals, all while keeping their donors secret. Donors to these “dark money” groups are offered anonymity, but they do not get a tax deduction.

However, if the Johnson Amendment were repealed and the ban on electoral politics lifted for 501(c)(3) entities, then churches and charities could become “super dark money groups” that offer donors not only anonymity for bankrolling electoral activity, but also a charitable tax deduction.

Indeed, we should expect that most of the anonymous political funds currently flowing to 501(c)(4) entities would instead be routed to an array of newly created 501(c)(3)s formed to influence elections. The ability of donors to deduct their political contributions would be a huge incentive to give to politically-active charities or churches.

And, although the repeal is being promoted by a Republican president and openly supported by conservative churches, there is every reason to expect that liberal religious groups and Democratic “super dark money” charities would take full advantage of a post–Johnson Amendment world.

How Much Political Activity Could 501(c)(3)s Engage in if the Political Activities Prohibition Were Repealed?

Currently, the law states that an entity organized under Section 501(c)(3) must be “operated exclusively” for religious, charitable, or educational purposes, and that “no substantial part” of its activities can go toward lobbying, and that it may “not participate in, or intervene in” political campaigns.

If the prohibition on 501(c)(3)s participating or intervening in political campaigns is repealed, what would the new legal standard be? How much political activity would be permissible?

The IRS treatment of “social welfare” nonprofits organized under Section 501(c)(4) can be instructive. 501(c)(4) organizations are not subject to the same political activity prohibition as 501(c)(3)s, but the law similarly states that they are to be “operated exclusively” for tax-exempt purposes.³¹

However, the IRS has interpreted “exclusively” as “primarily,”³² and has further interpreted “primarily” to allow 501(c)(4) social welfare groups to spend up to 49 percent of their expenditures on non–social welfare activities, such as campaign intervention.

And some 501(c)(4) groups have exceeded the 49 percent threshold without penalty. Crossroads GPS, a 501(c)(4) led by Republican operative Karl Rove, has done little else besides spending hundreds of millions influencing elections and acting as a conduit passing money to other politically active nonprofits (as the Campaign Legal Center and Democracy 21 have pointed out in letters to the IRS). Yet Crossroads GPS has exploited the IRS’s ambiguity about what constitutes political activity, claiming that some of its obviously campaign-oriented ads should instead be classified as lobbying, and claiming that its transfers of funds to other groups (which spend the money on campaign activity) shouldn’t count toward the 49 percent threshold.

Yet the IRS still granted Crossroads GPS 501(c)(4) status.³³

Accordingly, if President Trump manages to “totally destroy” the Johnson Amendment, it is reasonable to presume that the IRS would apply a similar standard to 501(c)(3) entities as it has applied to 501(c)(4)s— that is, to permit up to 49 percent of their expenditures on political campaign activities.³⁴

And, given the IRS’s approach to Crossroads GPS, there is little reason to believe the agency would take action against 501(c)(3)s that exceed that 49 percent threshold.

Although many politically-active 501(c)(4)s have pushed the legal envelope, the prohibition against 501(c)(3)s engaging in campaign activity has been a well-understood bright line that, with limited exceptions (like the churches engaging in “Pulpit Freedom Sunday”), has been respected and enforced. Yet if the Johnson Amendment were repealed, we can expect that the IRS would treat 501(c)(4)s and 501(c)(3)s similarly—indeed, we should expect that more campaign spending would be routed through 501(c)(3)s because doing so offers donors a tax deduction.

How Might President Trump “Destroy” the Political Activities Prohibition?

It is not immediately clear how President Trump would use existing executive branch authority to “destroy” the Johnson Amendment, or how broadly the “destruction” would reach.

He could issue an executive order directing the IRS, for example, to interpret the law narrowly to give churches the ability to endorse candidates. And he might direct the Department of Justice to apply its prosecutorial discretion to give a pass to churches and charities that engage in electoral activities.

However, an executive order would still leave the law on the books, and Trump’s policy could be reversed by subsequent presidents. And such a move would largely maintain the status quo: after all, the IRS rarely takes action against churches that defy the prohibition.

Congress, however, could also send a bill to the president’s desk, either as a stand-alone measure or as part of a broader tax reform package.

A bill introduced last session would amount to a wholesale repeal of the Johnson Amendment, allowing both charities and churches to operate as “super dark money” groups.³⁵

A more narrowly drafted bill (the “Free Speech Fairness Act”), introduced the day before Trump’s prayer breakfast speech, is also problematic.³⁶ The legislation would allow any charity (not just churches) to endorse or oppose candidates, as long as it occurs “in the ordinary course of the organization’s regular and customary activities in carrying out its exempt purpose” and “results in the organization incurring not more than de minimis incremental expenses.”³⁷

But what counts as “the ordinary course of the organization’s regular and customary activities”? And how much cost is “more than de minimis?”

For example, political operatives might incorporate a 501(c)(3) charity, engage regularly in public education activities such as issue-focused TV advertising, and then as election day approaches, focus their ads more acutely on candidates or issues clearly identified with candidates.

Could the group argue that TV ads are already part of its “regular and customary activities,” and making the ads more candidate-focused around elections doesn’t involve “more than de minimis incremental expenses”—and therefore using anonymous tax-exempt funds to influence elections is perfectly legal?³⁸

Likewise, could churches that regularly engage in door-to-door proselytizing argue that endorsing a candidate at each stop is permissible? After all, canvassing is already part of the church’s “regular and customary activities,” and uttering a statement in support of a candidate doesn’t involve “more than de minimis incremental expenses.”

If the “Free Speech Fairness Act” were to become law, it would fall to the IRS to define the bounds of acceptable political activity for churches and charities, and the breadth of terms like “regular and customary activities” and “more than de minimis.” And when organizations push the envelope—which is certain to happen—it would also fall on the IRS to enforce the law against groups that violate it.

Given the IRS’ hands-off approach to regulating politically active “dark money” groups that have abused their 501(c)(4) tax-exempt status, there is little reason to believe that the tax agency will prevent political operatives from exploiting newly created loopholes in Section 501(c)(3).

Can the Repeal Effort Be Narrowed?

If Congress is going to amend the political activities prohibition, there may be ways to do so without leading to an explosion of “super dark money”—but any such effort would be nonetheless fraught with peril.

A proposal limited to houses of worship that excepts only those candidate-related statements made during regular religious gatherings could pose fewer campaign finance problems. The legislation should stress that the exception does not apply to any communications disseminated beyond the congregation, such as over broadcast media or the internet. A church that engages in mailings and TV ads should be prohibited from adding a candidate endorsement to those communications around Election Day. Likewise, churches whose sermons are televised (like “megachurches”) should be barred from making candidate endorsements over such a broadcast.

Yet even such a narrow proposal could create new political and financial pressures for churches.

Once churches may permissibly engage in even limited campaign activity, a donor could use the incentive of financial support (or the threat of withdrawing support) to pressure a church to use its influence to support or oppose a candidate before the congregation.

This is particularly likely in down-ballot and local elections, where churches can pose significant sway over a local community. A longtime church supporter might threaten to withhold future checks if the

church doesn't endorse the supporter's preferred candidate. And as national political interests increasingly focus their attention on local elections, even minor tweaks to the Johnson Amendment could mean there would be little stopping outside special interests from offering financial support to churches that endorse a particular candidate.

And even such a narrow proposal is not without broader risk. If the political activities prohibition were amended only for churches, it could be subject to an Equal Protection challenge by a 501(c)(3) charity that wants to similarly share candidate endorsements with its members. If such a challenge were successful, it wouldn't result in the Johnson Amendment being restored—it would result in both charities and churches being subject to the same less-stringent rules, opening the door to the broader problems described above.

Conclusion

For the last 63 years, the political activities prohibition has helped keep charities focused on charity, and churches focused on matters of faith. Given the inability of the IRS and other regulatory agencies to sustain legal limits on political campaign activity by other tax-exempt entities in the wake of *Citizens United*, there is every reason to believe that any effort to loosen the Johnson Amendment's strictures would lead to a new flood of dark, unaccountable and tax deductible campaign funds into our elections.

Both charities and churches can, and should, engage on matters of public interest—but there is value in freeing both from the corrupting influences of money and partisan politics.

¹ 26 U.S.C. § 501(c)(3) states:

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.**

According to the IRS, 501(c)(3) organizations that directly or indirectly favor or oppose any candidate for elective office may be subject to excise taxes, and could lose their tax-exempt status. See Internal Revenue Service, "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations" (Sept. 13, 2016),

<https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501-c-3-tax-exempt-organizations>. A separate tax code provision, Section 4955, was added in 1987 to impose a tax on any political campaign activity expenditures by a 501(c)(3) organization, even if the entity's tax-exempt status is not revoked. 26 U.S.C. § 4955.

² 26 U.S.C. § 170(c)(2).

³ *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544, 103 S. Ct. 1997, 2000, 76 L. Ed. 2d 129 (1983)

⁴ *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15, 25–26 (D.D.C. 1999), *aff'd*, 211 F.3d 137 (D.C. Cir. 2000).

⁵ 100 Cong. Rec. 9128 (1954).

⁶⁶ See Ann M. Murphy, *Campaign Signs and the Collection Plate—Never the Twain Shall Meet?*, 1 PITTSBURGH TAX REV. 35, 48 (2003). On June 18, 1954, Johnson sent a letter to the Commissioner of Internal Revenue with evidence of CCG's activities, writing that "I cannot recall any other similar flagrant engagement in political affairs by a tax-exempt organization" and inquiring as to whether electoral intervention may be "properly and legally engaged in by such an exempt organization." *Id.* at 48-49. The Commissioner promptly responded that CCG's activities:

“are no less amusing and shocking to me than they are to you, and I can tell you that we are taking appropriate steps to see just what is the effect of the activities of these organizations under the internal revenue laws and what, if anything, can be done about their present status in relation to exemption privileges.” *Id.* at 49.

⁷ *Id.* at 48-49.

⁸ *Id.* at 49.

⁹ 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).

¹⁰ Notably, during the mid- to late-1800s, tax exemptions for churches were discouraged. See Murphy at 44-45. For example, President Ulysses S. Grant used his 1875 State of the Union address to warn of the “evil” of “the accumulation of vast amounts of untaxed church property” and called for “the taxation of all property equally, whether church or corporation” in order to “Declare church and state forever separate and distinct.” President Ulysses S. Grant, Seventh Annual Message, presented in written form to Congress (Dec. 7, 1875).

¹¹ 21 Treas. Dec. Int. Rev. 170, 285 (1919).

¹² *Slee v. Comm’r*, 42 F.2d 184, 185 (2d Cir. 1930).

¹³ 26 U.S.C. § 103(6) (1934) (codified as amended at I.R.C. § 501(c)(3)).

¹⁴ See S. REP. NO. 73-558, at 26 (1934); see also Colinvaux at 693.

¹⁵ Colinvaux, *supra* note 10, at 694-97; see also Murphy, *supra* note 7, at 49-53.

¹⁶ Colinvaux, *supra* note 10, at 694-95 (quoting H.R. Rep. No. 83-2681, at 1 (1954)); see also Murphy, *supra* note 7, at 51.

¹⁷ Colinvaux, *supra* note 10, at 694-95; Murphy, *supra* note 7, at 51.

¹⁸ Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-023, 101 Stat. 1330. Congress clarified that the prohibition applies to actions “in opposition to” as well as “on behalf of” a candidate, *id.* § 10711(a), that an organization that loses its charitable status cannot seek exemption as a 501(c)(4) entity, *id.* § 10711(b), and enhanced the IRS’s audit and enforcement procedures, *id.* § 10713(a).

¹⁹ Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-023, 101 Stat. 1330. Congress clarified that the prohibition applies to actions “in opposition to” as well as “on behalf of” a candidate, *id.* § 10711(a), that an organization that loses its charitable status cannot seek exemption as a 501(c)(4) entity, *id.* § 10711(b), and enhanced the IRS’ audit and enforcement procedures, *id.* § 10713(a).

²⁰ *Id.* § 10711(b).

²¹ *Id.* § 10713(a).

²² Colinvaux, *supra* note 10, at 697-98; Murphy, *supra* note 7, at 62-68.

²³ *Lobbying and Political Activities of Tax-Exempt Organizations: Before the Subcomm. On Oversight, House Comm. Ways and Means*, 100th Cong. at 88 (1987).

²⁴ Murphy, *supra* note 7, at 62.

²⁵ See I.R.S., TAX GUIDE FOR CHURCHES AND RELIGIOUS ORGANIZATIONS, Pub. No. 1828 (rev. 8-2015) at 6-8, available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf> (Church leaders are not “prohibited from speaking about important issues of public policy,” and “churches may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.”).

²⁶ Elizabeth Dias, *Republican Platform Calls for Repeal of Ban on Political Organizing by Churches*, TIME (July 14, 2016), <http://time.com/4406567/republican-platform-johnson-amendment-churches-political-organizing/>.

²⁷ See *Transcript: Donald Trump at the G.O.P. Convention*, N.Y. TIMES (July 22, 2016), <https://www.nytimes.com/2016/07/22/us/politics/trump-transcript-rnc-address.html>.

²⁸ Elizabeth Landers, *Trump: I Will ‘Destroy’ Johnson Amendment*, CNN (Feb. 2, 2017), <http://www.cnn.com/2017/02/02/politics/johnson-amendment-trump/>.

²⁹ As noted above, Sec. 4955 imposes an excise tax on any political expenditures by a 501(c)(3) entity. As a result, if Sec. 501(c)(3) was amended to eliminate the Johnson Amendment prohibition on political activity, but Sec. 4955 was left intact, a charity or church could still be taxed on their political expenditures, even if such expenditures were otherwise permissible.

³⁰ Sophia Tesfaye, *Trump’s plan to “totally destroy” the Johnson Amendment creates a huge campaign finance loophole for churches to exploit*, SALON (Feb. 3, 2017), <http://www.salon.com/2017/02/03/trumps-plan-to-totally-destroy-the-johnson-amendment-creates-a-huge-campaign-finance-loophole-for-churches-to-exploit/>.

³¹ 26 U.S.C. § 501(c)(4)(A) states:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

³² Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

³³ See, e.g. Robert Maguire, *How Crossroads GPS Beat the IRS and Became a Social Welfare Group*, CTR. FOR RESPONSIVE POLITICS (Feb. 12, 2016), <https://www.opensecrets.org/news/2016/02/how-crossroads-gps-beat-the-irs-and-became-a-social-welfare-group/>

³⁴ However, the limitation on 501(c)(3)s spending “no substantial part” of its overall expenditures on lobbying would remain unchanged.

³⁵ H.R. 153, 114th Cong. (2016).

³⁶ H.R. 781, 115th Cong. (2017).

³⁷ The legislation also declares that such political expenditures would not be subject to taxation under Sec. 4955.

³⁸ Relatedly, will the costs of such de minimis activities be aggregated with other non-exempt activity (such as lobbying) in determining whether political activity is more than an insubstantial part of an entity’s overall activities?