

Congress of the United States
Washington, DC 20515

December 13, 2017

The Honorable Orrin Hatch
Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Chairman
House Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
House Ways and Means Committee
1139E Longworth House Office Building
Washington, DC 20515

Dear Chairman Hatch, Ranking Member Wyden, Chairman Brady, Ranking Member Neal, and Conferees:

We write to express our concern regarding the harmful language in section 5201 of H.R. 1, which would permit all 501(c)(3) nonprofits, including churches, to engage in partisan political activity while maintaining their tax-exempt status. This unpopular provision would repeal the so-called Johnson Amendment, which is vital to American charities. We urge the conferees to remove this provision as part of the joint Senate-House conference negotiation.

The Johnson Amendment ensures that charities are not able to use tax-exempt funds for political purposes. Under the existing tax code, churches and tax-exempt 501(c)(3) nonprofits may not endorse or oppose political candidates. They may discuss and advocate on issues; but they may not come out for or against specific candidates using charitable and tax-deductible resources. Legal experts, including the D.C. Circuit, have found the Johnson Amendment to be constitutionally sound and consistent with the free speech rights, free exercise rights, or rights under the Religious Freedom Restoration Act for religious organizations.

The Johnson Amendment is very popular among religious Americans, nonprofits, and the public generally. Poll after poll shows that the American people want to keep politics out of their nonprofit boardrooms and pulpits. According to Lifeway Research, a research firm dedicated to equipping church leaders with public insight, nearly 80% of Americans oppose pastors endorsing a candidate in church and 75% oppose churches publicly endorsing candidates. Religious leaders support the rule, including more than 4,200 faith leaders and over 100 religious organizations who asked Congress to protect the rule. Nonprofits also support the safeguard, including more than 5,500 nonprofits from all 50 states also asked that the rule remain in place.

We fear that the consequences of repealing this amendment, which has been pushed by a vocal minority in spite of strong contrary public opinion, have not been fully considered. The unintended impacts of eliminating the Johnson Amendment are far-reaching and deserve the consideration of the Conference Committee before negotiations are completed.

To fulfill the goals of transparency and accountability, 501(c)(3) nonprofits are required to file an annual report with the IRS that details specific financial information, and every penny donated to and spent by the organization is tracked by Form 990. Unlike other 501(c)(3)s, churches are explicitly exempt from filing this return under 26 U.S.C. § 6033. If churches are allowed to enter the partisan political fray with this glaring lack of transparency, we will see an infusion of dark money into politics that cannot remain unregulated.

Without the Johnson Amendment, any donor could write a check to the nearest church for any amount, earmark the donation for politicking, and take the tax write-off. The church could then spend the donation on anything, including politicking. Churches will become unregulated, unaccountable, opaque super-PACs. This rule gives PACs an incentive—almost a mandate—to reorganize as churches to compete for donors who will prefer to give tax-deductible donation.

The *de minimis* limiting language in the bill attempts to minimize the impact of the broader provision impacting the Johnson Amendment, but the language is so vague and broad that it is almost meaningless. The provision offers no threshold or guidance for what constitutes a *de minimis* expense, information that would be particularly important when applying the principal to a multimillion dollar megachurch, for example. Further, the *de minimis* language opens the door to a pastor endorsing a candidate during the course of a sermon and subsequently sharing the information electronically to all parishioners and their social media networks has the potential to be more impactful than a large financial expenditure in support of the candidate.

Equally important, the *de minimis* will require the IRS to look into the church finances to determine whether or not the expenditure was tiny relative to the overall budget. Thus, repealing the Johnson Amendment will undoubtedly lead to greater oversight and regulation of churches, not less – a likelihood that is of concern to both religious and secular institutions.

The Johnson Amendment is an important safeguard that ensures tax-deductible charitable donations, meant to serve the community, go to charitable works rather than political campaigns. Accordingly, we urge you to remove Section 5201 of H.R. 1 from the conference report and we thank you for your consideration. We look forward to working with you on this matter.

Sincerely,



Mark Pocan
Member of Congress



Raúl M. Grijalva
Member of Congress



Betty McCollum
Member of Congress



Eleanor Holmes Norton
Member of Congress



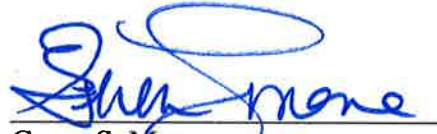
Jerrold Nadler
Member of Congress



John Delaney
Member of Congress



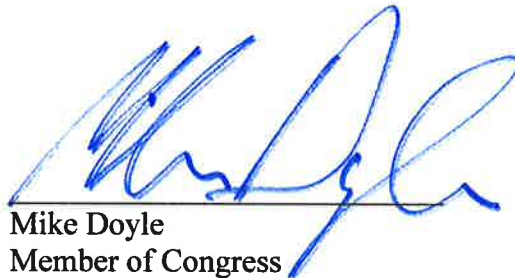
Tony Cardenas
Member of Congress



Gwen S. Moore
Member of Congress



Jared Huffman
Member of Congress



Mike Doyle
Member of Congress



Thomas R. Suozzi
Member of Congress



Carol Shea-Porter
Member of Congress



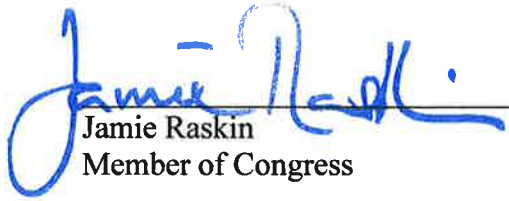
Keith Ellison
Member of Congress



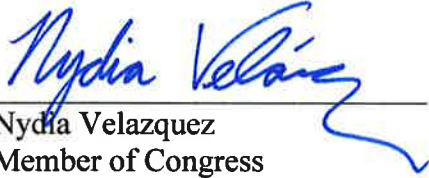
Salud Carbajal
Member of Congress



Dina Titus
Member of Congress



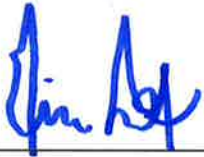
Jamie Raskin
Member of Congress



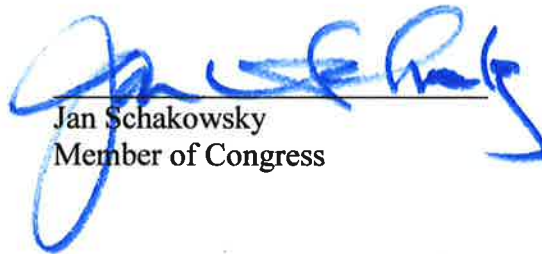
Nydia Velazquez
Member of Congress



Jackie Speier
Member of Congress



Jim Costa
Member of Congress



Jan Schakowsky
Member of Congress



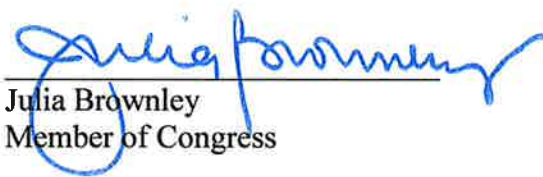
Ted Lieu
Member of Congress



Robert C. "Bobby" Scott
Member of Congress



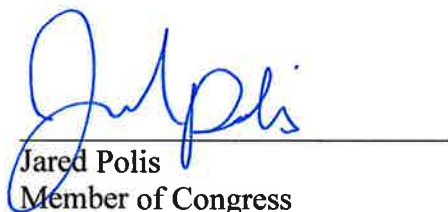
André Carson
Member of Congress



Julia Brownley
Member of Congress



David N. Cicilline
Member of Congress



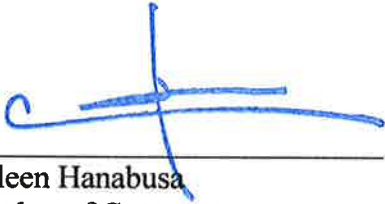
Jared Polis
Member of Congress



Lucille Roybal-Allard
Member of Congress



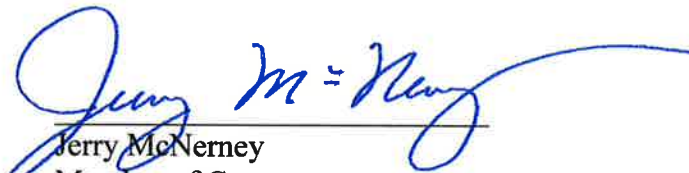
Grace F. Napolitano
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Member of Congress



Jerry McNerney
Member of Congress