National Association of State Charity Officials – 2017 Conference

Enhancing Communications Between Charity Regulators and the Charitable Sector

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I. Why the Need for Better Communications?
   A. Shared Priorities: Protect the Public’s Trust (see Attachment A)
   B. When Aligned: Strength in Numbers (federal examples)
      2017: Keeping Partisan Electioneering Out of the 501(c)(3) Community (Attachment B)
      2015: Opposition to Proposed Gift Substantiation Rules
      2014: Opposition to Proposed Form 1023-EZ
   C. When Aligned: United Front (state examples)
      1. Joint advisory groups (when done meaningfully)
      2. Joint messaging (e.g., AG prefices to state “Principles & Practices”; press releases re scams)
      3. Coordinated training/promotion of “best practices” (e.g., when sending confirmation of registering or renewing charitable solicitation, include a link to resources in the state)

II. Requests
   A. Communicate with Us So We All Can Collaborate Whenever Possible
      1. Let us know how we might help you advance our shared priorities.
      2. Identify problematic trends you see – so we can help via targeted training.
   B. Focus on Bad Actors; Don’t Punish the Good Actors, Acknowledge They Are the Norm
   C. Help Dispel/Destroy the “Overhead Myth”
   D. Understand Operational Challenges Nonprofits Face
      1. External Public Policy Threats (Attachment C)
      2. Internal Challenges/Efforts – alphabetical sampling:
         • Conflicting Demands (chasing the “new shiny”)
         • Disparity of Resources
         • Diversity, Inclusion, Equity
         • Ethics & Accountability
         • Fear in communities
         • Fundraising registrations with inconsistent requirements and application
         • Performance outcomes demands, but with no common way to measure
         • Survivability

III. Offers
   A. We’ll Communicate Proactively to Advance Our Shared Priorities – example:
      • Please update NASCO’s website – it will help compliance; we’ll help identify desired content
   B. We’ll Collaborate Whenever Possible
VI. Public Accountability and Nonprofit Independence: Ensuring Public Trust

The charitable nonprofit community recognizes that mission-driven nonprofits can be successful only by earning and maintaining public trust through appropriate transparency, which can be guided by reasonable regulation that recognizes the unique role of these organizations in communities. For these reasons, the National Council of Nonprofits supports reasonable and non-burdensome regulations and policies that already make the nonprofit community the most transparent sector of the U.S. economy. An appropriate balance must be struck that recognizes and respects the independent activities of nonprofits as public-spirited yet still private organizations. The National Council of Nonprofits also supports:

**Federal**
1. Maintaining the proper balance between protecting and informing the public and preventing excessive and disruptive regulatory burdens that hinder the missions of charitable nonprofits.
2. Adequate funding for quality education, and transparent oversight of charitable nonprofit organizations and fair enforcement of nonprofit laws by the IRS.
3. Maintaining state primacy in the regulation and enforcement of consumer protections related to charitable nonprofit organizations.

**State**
1. Adequate funding for quality education, transparent oversight, and fair enforcement activities by state regulators charged with promoting charitable nonprofit compliance and protecting the public.
2. Setting reasonable thresholds for mandatory audits of nonprofit finances.
3. Developing clear, uniform and cost-free or inexpensive registration requirements, such as streamlining/standardizing multi-state charitable registration requirements, for nonprofits that engage in fundraising in more than one state. State registration requirements should not be triggered via “donate now” or similar passive links on a website, social media, or other electronic means until receipt of a significant amount of donations, e.g., the $25,000 annual threshold under Colorado law.
4. Protecting the decision-making autonomy and self-governance authority of charitable nonprofits.
5. Programs that promote volunteering activities that mutually benefit individuals and the people served through nonprofits, but opposes proposals to condition receipt of government-provided benefits on requirements that individuals volunteer at nonprofit organizations, a policy known as “mandatory volunteerism,” that impose increased costs, burdens, and liabilities on nonprofits by an influx of coerced individuals.
What could possibly go wrong if our country’s more than 1.5 million charitable nonprofits, houses of worship, and foundations were authorized to engage in partisan electioneering?

Almost everything. And from our perspectives leading nationwide organizations tasked with protecting and serving the public, we can definitively say: The American people would suffer as a result.

The National Association of State Charity Officials (NASCO) – representing state charity regulators across the country, including those in state Attorney General Offices, Secretary of State offices, and other state offices charged with preventing the misuse of charitable assets – late last month sent a letter to congressional leaders opposing efforts to repeal or weaken the “Johnson Amendment.”

That’s the part of Section 501(c)(3) in the federal tax code providing this eligibility requirement for the unique privilege of receiving tax-deductible donations: a charitable nonprofit, religious organization, or foundation may “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.”

Through its letter – only the third such action in NASCO’s 38-year history – NASCO’s board joined these groups and individuals who have rallied to protect public trust by signing letters supporting the Johnson Amendment and expressing their “strong opposition” to efforts to politicize the charitable nonprofit, religious, and philanthropic community:

- More than 5,500 charitable nonprofits, houses of worship, foundations, and for-profit entities;
- More than 4,000 religious leaders from all faiths; and
- Nearly one hundred religious denominations and organizations.

Plus, 89 percent of evangelical leaders want to keep partisan electioneering out of their pulpits, and 72 percent of American voters want to keep the Johnson Amendment’s protections in place.

The Johnson Amendment has been on the books for 63 years, and genuinely nonpartisan and noncontroversial most of that time. (President Reagan signed the bill strengthening it.) Yet the law banning electioneering by charitable nonprofits is much older and relates directly to the role state law enforcement officials play in protecting the public. “It is the duty of Attorneys General, often in cooperation with other state agencies, to protect the public’s interest in the proper use of the funds raised and held by charitable organizations,” according to the authoritative treatise, State Attorneys General: Powers and Responsibilities.
Importantly, “electioneering is not considered a charitable purpose under common law, and many state charities regulators would consider expenditure of charitable funds on such purposes to be inappropriate, possibly illegal,” NASCO’s letter explains.

Thus, altering the Johnson Amendment – as multiple proposals before Congress, including a rider on an appropriations bill, seek to do – would create perilous inconsistency between federal and state laws. Under both federal law and common law, charitable nonprofits, houses of worship, and foundations have an obligation not to use any resources of any kind to influence partisan elections.

NASCO warns: “Removing the prohibition on electioneering from the tax code could give charitable organizations the misimpression that they could use their resources supporting or opposing candidates for office. Under common law, they may not.” If a 501(c)(3) organization engaged in partisan electioneering, it could violate state law and be subjected to state investigations and liabilities.

The Johnson Amendment also preserves even-handed administration of justice. By keeping nonprofits free from partisan electioneering, it helps ensure that state charities regulators focus on protecting charitable assets and combatting fraud, regardless of the political affiliation of their elected and appointed Attorneys General, Secretaries of State, or other officials.

The American people rely on nonprofits in endless ways, from nurturing souls to protecting the young and elderly, and from inspiring creative minds to helping people during natural disasters. Tampering with the Johnson Amendment will harm the public by eroding nonprofit effectiveness.

Among other things: Attention will be diverted from missions as politicians and their operatives hound 501(c)(3) organizations for endorsements and resources; board governance will falter as board meetings become shouting matches about who to endorse in the primary and then general elections for every office at every level of government; donations for missions will fall when current or potential donors see that an organization endorsed this candidate or that; partisan donors will pressure organizations to endorse the donors’ preferred candidates; and the only real refuge for many Americans to escape caustic partisan politics – charitable nonprofits, houses of worship, and foundations – will disappear.

The Johnson Amendment is sound public policy and works in harmony with state charities laws. Efforts to repeal or weaken it should be rejected.

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During the last six years, extreme partisan gridlock in the nation’s capital acted like a shield protecting nonprofits and foundations against federal policy threats: Republican majorities in Congress could ignore harmful proposals from President Obama (such as limits on charitable deductions), and he could veto damaging bills from Congress (such as cutting critical domestic spending).

That protection will be gone on January 20, when the White House, Senate, and House will all be controlled by one party. We can expect a flood of federal legislative and regulatory changes that could directly and indirectly affect the work of virtually all nonprofits and foundations.

This transition in political power requires nonprofits to act completely differently than they have in the past. We cannot fixate on just one issue, such as the charitable tax deduction, which spurs donors to give. While such policies are vital, they are hardly the only change that could severely alter the work of the nation’s nonprofits. Nor can we afford to focus solely on Congress when public policies are likely to be altered by all three branches of government and at the federal, state, and local levels.

Individual nonprofits can no longer sit quietly on the policy sidelines hoping someone else will speak up for particular organizations. It’s time for us all to step forward and work together as advocates for sound public policies that advance all nonprofit missions and help all of the people we serve.

Working Together

Corporate America is as varied as the nonprofit world and can be even more fractured at times. But on certain issues, cut-throat business competitors come together to coordinate and speak with a unified voice. Nonprofits must similarly recognize their shared interests and come together to inform policy makers, defeat emerging threats, and seize new opportunities.

Following are important steps nonprofits and foundations can take to deal with six major federal issues they collectively face, regardless of their separate missions:

**Fight back against cuts in spending that would hurt the public.**

President-elect Trump and majorities in Congress say they want to increase defense spending, but it would be at the expense of domestic programs. Significant cuts to key domestic spending would hurt the public — and hinder the work of nonprofits in multiple ways. After all, reducing government budgets doesn’t lower the number of people in need of social services; it just adds more pressures on nonprofits to keep up with ever-growing demands. Federal policy makers assume foundations will step in to subsidize government shortfalls, but most grant makers are already stretched thin.

The impact of federal cuts would be felt especially hard by state governments, which receive on average 30 percent of their revenue from the federal government. Half the states currently have deficits, so if they have lower revenue, they will need to cut back even further on programs and limit how much they fund counties, cities, and school districts. The ripple effects will hurt many nonprofits and the people they serve.
Expand, don’t limit, tax laws that encourage giving.

Policy makers are already shaping plans to overhaul the tax code, including proposals to reduce incentives designed to spark giving, along with many other tax provisions that affect the work of nonprofits. To be sure, charitable-giving incentives have strong support in Congress and in statehouses across the country. But that has not stopped state legislators from proposing caps on charitable and other deductions, some so they can increase spending and others so they can cut tax rates.

It is beyond dispute that tax incentives for charitable giving prompt more people to donate and encourage them to make bigger contributions. Now nonprofits must demonstrate what difference this money makes by showing elected officials how donations spurred by tax incentives go to work in their hometowns.

Beyond showing why current policies matter so much, nonprofits should also tell their members of Congress to consider other incentives — such as allowing people who don’t itemize on their tax returns to get a deduction. Expanding the number of people who get a tax donation would do a lot to encourage every American to give back to their communities through the work of nonprofits of their choosing.

Engage in the debate on the Affordable Care Act.

Nonprofits have much at stake in the outcome of debates to repeal and replace the health-care law passed under President Obama. Many have missions focused on promoting the health and welfare of Americans, and as employers they are concerned about the well-being of their workers. What’s more, state budgets rely in part on a steady flow of federal health-care funds; any disruption or reduction will have ripple effects throughout state budgets, causing potential problems for nonprofits far beyond health-care providers.

Regardless of what Congress does to change the law, rising health-care costs are likely to add significantly to the expenses of nonprofits, depleting resources they could otherwise use to provide vital programs and services.

That’s why nonprofits should promote policy changes designed to lower the cost of health insurance and ensure high-quality coverage. It’ll be especially important to remind lawmakers to enact the same rules for businesses and nonprofits. In the past, lawmakers have failed to treat all employers the same.

Respect the legal independence of nonprofits to allocate their own resources.

Proposals in the House would dictate how some nonprofit colleges and universities spend their endowment income.

It might be tempting for many nonprofits to lay low and consider such legislation to be just a problem for a few dozen rich colleges. But it’s not. Such an action is like Congress telling Boeing, Citibank, and IBM — or small businesses — how to spend their money. Corporate America would never allow governments to infringe on their independence like this, nor should we allow it to happen to nonprofits.

We must remind lawmakers that well-managed nonprofits maintain reserves so they can adjust to changes or seize new opportunities. Foundations rely on earnings from investment funds to fulfill their obligations to provide grants for charitable works. Boards of organizations, and not politicians, must remain the decision makers when it comes to charitable and philanthropic assets.

Keep partisan politics far away from charitable organizations and foundations.
The public has a significant stake in preserving the nonpartisanship, and indeed the integrity, of charitable organizations. 

That is why it is essential to preserve the current law, which forbids organizations that have tax-exempt status under Section 501(c)(3) of the tax code from taking partisan stances. If Congress advances campaign pledges to allow churches and other nonprofits to get involved in politicking, the public’s overall trust in nonprofits would drop. 

Nobody wins if organizations are seen as Democratic charities or Republican charities instead of the nonpartisan problem solvers they are. What’s more, changing the tax code this way could subject foundations to relentless demands from partisan political operatives seeking endless campaign contributions from foundation assets.

Simplify federal rules and contracts.

Like every new administration since Jimmy Carter’s, the Trump transition office has promised to improve the federal regulatory system. Such action could produce significant benefits for the work of nonprofits, as it has at the state level. In New Jersey, for example, ideas nonprofits proposed have resulted in significant cost savings for both state agencies and nonprofits over the past five years. 

Nonprofits will certainly need to be vigilant to ensure that proposed regulatory changes are in the public’s best interest, but they also can promote improvements to rules that advance the ability of nonprofits to serve communities. In particular, they should promote efforts to further strengthen the Office of Management and Budget’s Uniform Guidance to ensure nonprofits are properly paid for their indirect costs. Nonprofits should also encourage the Trump administration to press state and local governments to follow the rules OMB laid out for cost reimbursement. 

Governments at all levels — and all Americans — rely on nonprofits to provide services and deal with pressing problems. That hasn’t changed because of the elections.

But it is vital that all of us who are involved in charitable work remind government officials to adopt public policies that advance the ability of nonprofits to serve people in their communities and around the world. We need to make sure nobody takes for granted that nonprofits will always be available to improve lives, uplift faith and culture, and raise our collective quality of life. 

Nonprofits with diverse missions will need to protect their own causes in the years to come — whether to encourage policies that deter climate change or promote the arts or provide housing to people in need. But at the same time, we must also join together to work on policies that allow every nonprofit to do what Americans expect: solve problems in our communities.

Tim Delaney is chief executive of the National Council of Nonprofits, and David L. Thompson is vice president of public policy at the National Council of Nonprofits. The organization recently published its Public Policy Agenda for 2017, which offers more details on the issues discussed in this piece.

https://www.philanthropy.com/article/Opinion-Nonprofits-Need-to/238802