No. 26-1779

In The

Supreme Court of the United States of America

February Term 2026

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE, ET AL.,

Petitioners,

v.

COVENANT TRUTH CHURCH,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 10
Counsel for Respondent
January 18, 2026

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QUESTIONS PRESENTED

1. Under the Tax Anti-Injunction Act and Article III of the United States Constitution, does Covenant Truth Church have standing to challenge the Johnson Amendment if the purpose of its suit is to enjoin the IRS from denying tax exemption based on a denominational preference for religious organizations that remain silent during political campaigns?

2. Under the First Amendment, does the Johnson Amendment violate the Establishment Clause if it does not align with this Nation's historical practice and understanding of traditional tax exemptions for religious organizations because it grants a denominational preference to some religions over others and interferes with their faith and internal affairs?

LIST OF PARTIES

Petitioners are Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service.

Respondent is Covenant Truth Church.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Wythe is unreported. R. at 5–6. The opinion of the United States Court of Appeals for the Fourteenth Circuit, written by Judge Bushrod Washington, has been reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and reproduced in the record. R. at 1–11.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fourteenth Circuit was entered on August 1, 2025. The Petitioners timely filed a petition for a writ of certiorari, and this Court granted it on November 1, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST. art. III, § 2, cl. 1; U.S. CONST. amend. I.

The following provisions of the United States Code are relevant to this case: 26 U.S.C. § 501(c)(3); 26 U.S.C. § 7421(a).

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Non-profit organizations, such as religious organizations, enjoy tax-exempt status under the Internal Revenue Code ("IRC"). 26 U.S.C. § 501(a) (2025). But this preferential tax treatment comes at a price! Under the Johnson Amendment, a religious organization enjoys exemption from federal income taxes so long as it does not participate or intervene in a political campaign on behalf of, or opposing, a candidate for public office. *Id.* § 501(c)(3). Since Congress enacted the Johnson Amendment in 1954, it has been the subject of recent controversy among religious organizations, special-interest groups, and politicians who have extensively urged its repeal. R. at 2. Congress had opportunities to repeal it or create an exception for religious organizations—with legislation being introduced to that effect since 2017—but has declined to do so. R. at 2–3.

To ensure full compliance with the Johnson Amendment, the Internal Revenue Service ("IRS") conducts random audits on Section 501(c)(3) organizations. R. at 5. Covenant Truth Church ("Church"), like all other churches in this Nation, is classified as such an organization for tax purposes and was selected by the IRS for such an audit. R. at 3. The Church subscribes to a religion known as The Everlight Dominion. R. at 3. The Everlight Dominion is a centuries-old religion that heralds and advocates progressive social values. *Id.* One of its core tenets mandates that its churches and leaders actively participate in political campaigns and support candidates who align with its progressive views by endorsing them and encouraging others to donate to and volunteer in their campaigns. *Id.* If a church or leader fails to observe this requirement, they shall be banished from the church and The Everlight Dominion. *Id.*

Pastor Gideon Vale ("Vale") is the current head pastor of the Church. *Id.* By 2024, the Church had become the largest church practicing The Everlight Dominion under his leadership

with a congregation of 15,000 members. R. at 3–4. This is chiefly due to Vale's efforts to increase the Church's low membership by making the Church more appealing to younger generations. R. at 3. Vale achieved this by starting a weekly podcast where he delivered sermons, offered spiritual guidance, and educated listeners about The Everlight Dominion. R. at 3–4. His podcast has been downloaded by millions across America and is ranked the 19th-most-listened-to in the Nation. R. at 4. Per the mandate that church leaders actively participate in political campaigns, Vale used his weekly podcast to deliver political messages, endorse candidates, and encourage listeners to vote for those candidates, donate to their campaigns, and volunteer in them. *Id.*

In January 2024, Wythe Congressman Samuel Davis announced that he would run in a special election. *Id.* Vale endorsed Davis on his podcast on behalf of the Church because he, like the Church, embraces progressive social values. *Id.* He discussed how Davis's political stances aligned with The Everlight Dominion doctrine and prompted his listeners to vote for him and donate to—and volunteer with—his campaign. R. at 4–5. He also announced that he would preach sermons on how Davis's stances aligned with the teachings of The Everlight Dominion. R. at 4–5. On May 1, 2024, the Church was randomly selected for an audit and duly notified by the IRS. *Id.* Vale was concerned that the IRS would discover that he and the Church were politically involved with Davis. R. at 5. Two weeks later, before the IRS began its audit, and with its Section 501(c)(3) status remaining intact, the Church initiated this lawsuit. *Id.*

II. PROCEDURAL HISTORY

The Church sought a permanent injunction to enjoin the Johnson Amendment from being enforced. R. at 2, 5. The Church alleged in its complaint that the Johnson Amendment violated the Establishment Clause because it prohibits "religious organizations and their leaders from adhering to their deeply held religious beliefs, which require them to actively support political candidates

whose values align with their faith." R. at 2. The IRS and Acting Commissioner of the IRS Scott Bessent filed their answer with a blanket denial of the Church's claim. R. at 5. Thereafter, the Church filed a motion for summary judgment. *Id.* The District Court for the Eastern District of Wythe granted the Church's motion and entered the permanent injunction. R. at 5. The court held that the Church has standing to challenge the Johnson Amendment, and also that the Johnson Amendment violates the Establishment Clause. R. at 5–6. Bessent and the IRS appealed to the United States Court of Appeals for the Fourteenth Circuit. R. at 6.

The Fourteenth Circuit affirmed the district court's order. *Id.* The court held that the Tax Anti-Injunction Act does not bar the Church's suit because Congress has not provided an alternative remedy for the Church to challenge the Johnson Amendment. *Id.* The court also found that the Church has standing under Article III to challenge the Johnson Amendment because there is a substantial threat or risk of future enforcement—that the IRS, after its audit, will revoke its Section 501(c)(3) status because of its participation in the special election. R. at 7–8. Finally, the court held that the Johnson Amendment violates the Establishment Clause. R. at 8. The court found that the Johnson Amendment favors some religions over others by denying Section 501(c)(3) status to religious organizations whose faith requires them to speak on political issues. R. at 9. After reviewing this Nation's history, the court also held that tax exemptions for religious organizations cannot prohibit them from engaging in political matters. R. at 9–10. The court observed that the Johnson Amendment would impermissibly permit the IRS to decide what religious organizations may and may not discuss in their teachings. R. at 8.

This Court granted certiorari to determine (1) whether the Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment and (2) whether the Johnson Amendment violates the Establishment Clause. R. at 16.

SUMMARY OF THE ARGUMENT

The Tax Anti-Injunction Act does not bar the Church's lawsuit to challenge the Johnson Amendment. The Act does not apply because the purpose of the Church's suit is to challenge the constitutionality of the Johnson Amendment, not to restrain the assessment or collection of taxes. The target of its suit is the campaign restriction on Section 501(c)(3) status, not a tax obligation. Even if the purpose of its suit is to restrain the assessment or collection of taxes, the Act does not bar it because the Church has no alternative legal remedies provided by Congress to challenge the constitutionality of the Johnson Amendment. A refund or declaratory relief under Section 7428 is not an alternative remedy because it does not resolve whether the Johnson Amendment violates the Establishment Clause, nor does it grant the relief that the Church requests.

The Church has standing under Article III of the United States Constitution to challenge the Johnson Amendment. The Church suffers an actual injury because the Johnson Amendment directly harms the Church by prohibiting it from observing its religiously mandated practice for the sake of maintaining its Section 501(c)(3) status. The Church will also suffer an imminent injury because the IRS could potentially deny the Church of its Section 501(c)(3) status for observing its mandated religious practice. Even though the IRS has enforced the Johnson Amendment against a religious organization once, that single instance of enforcement does not invalidate the Church's standing because it was enforced against the same conduct that the Church engaged in and seeks to engage in. The threat of its enforcement is concrete and substantial.

The Johnson Amendment violates the Establishment Clause of the First Amendment. The Johnson Amendment violates the neutrality principle. It favors some religions over others by discriminatorily denying tax exemption for religious organizations whose beliefs require them to be vocal in political campaigns, while granting exemption to those that remain silent in campaigns.

This denominational preference subjects it to strict scrutiny, which it does not survive because it is not closely fitted to Congress's interest in not subsidizing non-profit political activity. The Johnson Amendment also fails the history and traditions test. It does not align with this Nation's historical practice and understanding of traditional tax exemptions for religious organizations. This is because the campaign restriction is a non-traditional condition that favors some religions over others and interferes with their faith and internal affairs.

Therefore, this Court should affirm the judgment of the Fourteenth Circuit.

ARGUMENT

I. THE TAX ANTI-INJUNCTION ACT DOES NOT BAR THE CHURCH'S SUIT TO CHALLENGE THE CONSTITUTIONALITY OF THE JOHNSON AMENDMENT.

Under the Tax-Anti Injunction Act ("AIA"), "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed," with limited exceptions. 26 U.S.C. § 7421(a) (2025). The purpose of the AIA is to allow the federal government to expeditiously assess and collect taxes without pre-enforcement judicial intervention. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). The AIA achieves this by protecting the government's collection of "a consistent stream of revenue" by precluding all suits by taxpayers that obstruct its collection. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 543 (2012).

Despite these rationales, the AIA does not bar the Church's suit for two reasons. First, the AIA does not apply because the purpose of its suit is to challenge the constitutionality of the Johnson Amendment, not to restrain the IRS from assessing or collecting taxes. *CIC Servs., LLC v. IRS*, 593 U.S. 209, 216 (2021). Second, even if the purpose of the Church's suit was to restrain the IRS from assessing or collecting taxes, the AIA does not bar the suit because Congress has not provided an alternative remedy for the Church to challenge the constitutionality of the Johnson

Amendment. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). Therefore, the AIA does not bar the Church's suit, and it can proceed on the merits of its claim.

A. The Tax-Anti Injunction Act Does Not Apply Because the Purpose of the Church's Suit Is to Challenge the Constitutionality of the Johnson Amendment Under the Establishment Clause.

For the AIA to bar a suit, its purpose must be to restrain the IRS from assessing or collecting taxes. 26 U.S.C. § 7421(a). The AIA will bar such a suit, even if the nature of the claim may be constitutional. *Alexander v. "Americans United"*, 416 U.S. 752, 759 (1974). The main point is that if a suit is for that purpose, it will be barred; if it is not for that purpose, it can proceed. *CIC Servs.*, 593 U.S. at 216. To determine the purpose of a taxpayer's suit under the AIA, this Court must look at the face of his complaint and consider its objective aim—the relief requested, or the thing sought to be enjoined, not his subjective motives. *Id.* at 217–18. The AIA will only bar a suit if its target or the thing sought to be enjoined is an impending or eventual tax obligation, or the relief requested is against a disputed tax. *Id.* at 218. The Church's complaint falls outside the ambit of the AIA compared with other complaints that this Court has examined.

In *Bob Jones*, this Court held that the AIA barred a university's suit to enjoin the revocation of an IRS ruling letter granting it Section 501(c)(3) status. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 (1974). The complaint alleged that revoking the letter would cause irreparable injury to the university and violated its First Amendment rights. *Id.* at 735–36. The relief requested was for the IRS to withdraw its revocation of the letter. *Id.* at 738. But this Court observed that its affidavits admitted that it would be subject to substantial federal tax liability if the letter remained revoked ($1.25 million in income taxes over 2 years), which would detrimentally impact its operations. *Id.* In light of this, this Court held that the AIA barred the university's suit because its purpose was to prevent the IRS from assessing and collecting its income taxes. *Id.*

Here, looking at the face of the Church's complaint, it alleges that the Johnson Amendment violates the Establishment Clause "by prohibiting religious organizations and their leaders from adhering to their deeply held religious beliefs, which require them to actively support political candidates whose values align with their faith." R. at 2. Just like the university in *Bob Jones*, the Church alleges a constitutional violation in its complaint. R. at 2. The critical difference is that the complaint in *Bob Jones* sought to prevent federal tax liability, whereas the Church's complaint seeks to enjoin a campaign restriction from infringing upon its beliefs. *Id.* This is because the main target of the Church's complaint is the campaign restriction, not a tax. *Id.*

In *CIC Servs.*, this Court held that the AIA did not bar an LLC's suit to enjoin a reporting requirement backed by civil and criminal penalties. 593 U.S. at 211. The complaint alleged that the requirement was unlawful because it was (1) issued without notice-and-comment procedures and (2) arbitrary and capricious. *Id.* at 214–15. The relief requested was to set aside the requirement to prevent the IRS from assessing tax penalties against it. *Id.* at 215. This Court found that the complaint challenged the procedural and substantive flaws of the requirement, not a tax. *Id.* at 219. This Court also found that the relief requested was against the requirement, not a tax obligation. *Id.* Hence, this Court held that the LLC's suit was not barred by the AIA because the purpose of the suit was to enjoin and contest the legality of the requirement. *Id.*

Similar to the complaint in *CIC Servs.* contesting the legality of the reporting requirement, the Church's complaint challenges the constitutionality of the Johnson Amendment. *Id.* The target of its suit is the substantive flaws of the campaign restriction, not tax liability. Similar to the relief requested by the complaint in *CIC Servs.*, the Church's requested relief is to set aside the campaign restriction to prevent the IRS from denying tax exemptions based on a denominational preference for religious organizations that remain silent during political campaigns. R. at 5, 9. It is clear that

the Church's requested relief is to permanently enjoin the IRS from enforcing the Johnson Amendment, which infringes on the Church's religious practices and autonomy, not to prevent the IRS from assessing or collecting taxes. *Id.*

In his dissent, Judge Marshall argued that the purpose of the Church's suit was to prevent the IRS from assessing or collecting taxes by virtue of challenging the potential revocation of its Section 501(c)(3) status. R. at 12. In other words, he argued that by framing its suit as an attack on the Johnson Amendment, the Church is attempting to evade the AIA through its "artful pleading." *See CIC Servs.*, 593 U.S. at 219. There is no such artful pleading here. The complaint does nothing more than target the Johnson Amendment's campaign restriction by requesting it to be set aside as a violation of the Establishment Clause. R. at 2. Unlike the university in *Bob Jones*, the Church has not filed other legal documents with the district court (if any) that demonstrate that it seeks to avoid any tax liability. R. at 5. Therefore, the AIA does not apply to the Church's suit because its purpose is to challenge the Johnson Amendment under the Establishment Clause.

B. The Tax Anti-Injunction Act Does Not Bar the Church's Suit Because Congress Has Provided No Alternative Remedies For It to Challenge the Constitutionality of the Johnson Amendment Under the Establishment Clause.

In *Regan*, this Court held that the AIA does not bar a suit seeking to restrain the IRS from assessing or collecting taxes where Congress has not provided alternative remedies for a litigant to pursue its claim; that is, an "alternative legal way to challenge the validity of a tax." 465 U.S. at 373, 378; *but see In re Westmoreland Coal Co.*, 968 F.3d 526, 536 (5th Cir. 2020) (holding that the *Regan* exception is not limited to validity challenges). Here, the purpose of the Church's suit is to challenge the constitutionality of the Johnson Amendment under the Establishment Clause. R. at 2. However, even if the purpose of its suit is to restrain the assessment or collection of taxes,

the *Regan* exception would apply because Congress has provided no alternative remedies for the Church to pursue its constitutional challenge against the Johnson Amendment.

Judge Marshall also contended that the issue of whether the Church's suit should proceed despite the AIA's application is governed by the *Williams Packing* exception. R. at 12. In *Williams Packing*, this Court held that the AIA will bar a pre-enforcement action for injunctive relief unless (1) "it is clear that under no circumstances could the Government ultimately prevail" and (2) "equity jurisdiction otherwise exists." 370 U.S. at 7. A taxpayer must prove irreparable injury and certainty of success on the merits. *Id.* He is correct that it will be difficult for the Church to prove that its suit is guaranteed to succeed under the *Williams Packing* exception. R. at 13. But he is incorrect in concluding that the *Williams Packing* exception applies here.

In *Regan*, this Court has rejected the argument that the *Williams Packing* exception applies "regardless of whether other remedies are available." 465 U.S. at 374. Rather, this Court observed that whether the *Williams Packing* exception applies depends on the availability of alternative legal remedies provided by Congress. *Id.* In the presence of such alternative legal remedies provided by Congress, the *Williams Packing* exception applies. *Bob Jones*, 416 U.S. at 746; *Alexander*, 416 U.S. at 762 (holding that the *Williams Packing* exception applied because the litigants could bring a refund suit). In the absence of those remedies, the *Regan* exception applies. This Court—after considering its purpose and the circumstances surrounding its passage—concluded that Congress did not intend the AIA to bar pre-enforcement suits for injunctive relief by "aggrieved parties for whom it has not provided an alternative remedy." *Regan*, 465 U.S. at 378.

Here, the *Regan* exception applies to the Church's suit, not the *Williams Packing* exception. The Church brought a pre-enforcement action for permanent injunctive relief from the campaign restriction of the Johnson Amendment because it violates the Establishment Clause. R. at 5. A tax

refund or a declaration on its Section 501(c)(3) status does not resolve the Church's constitutional challenge against the Johnson Amendment, nor will those remedies grant the relief it requested. Because Congress has provided no alternative remedies to the Church, the *Regan* exception applies to preclude the AIA from barring the Church's suit.

1. A Refund for a Disputed Tax Is Not an Alternative Remedy.

Filing a refund suit does not provide the Church with an alternative remedy to challenge the constitutionality of the Johnson Amendment. Typically, a refund suit constitutes an alternative remedy under the *Regan* exception. *Jarrett v. United States*, 79 F.4th 675, 684 (6th Cir. 2023); *see* 26 U.S.C. § 7422(a) (2025) (a litigant can file a civil action for a tax refund in court after filing a claim for a refund with the IRS). A taxpayer can challenge his tax liability after paying the disputed tax by seeking a refund. *Comm'r v. Zuch*, 605 U.S. 422, 425 (2025). However, the Church cannot file for a refund here since it has not been taxed. It does not dispute any tax or tax obligation, and currently has no tax liability. Even if the Church did, seeking a refund would not ultimately resolve whether the Johnson Amendment violates the Establishment Clause.

In addition, Section 501(c)(3) grants a tax exemption to non-profit organizations; it does not impose a tax. *See* 26 U.S.C. § 501(c)(3) ("An organization described in subsection (c) shall be *exempt* from taxation."). Other IRC provisions impose taxes on Section 501(c)(3) organizations that engage in political activities prohibited by the Johnson Amendment. *See* 26 U.S.C. §§ 527(f) (2025) (taxes for influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a public office or office in a political organization), 4955 (2025) (taxes on political expenditures for participating or intervening in a political campaign). The Church is not liable for any such taxes here, nor has it alleged that it seeks to avoid tax liability for

them. Therefore, a refund suit does not provide the Church with an alternative remedy to challenge the constitutionality of the Johnson Amendment.

2. A Section 7428 Declaration Is Not an Alternative Remedy.

For claims by non-profit organizations concerning whether it qualifies or still qualifies for Section 501(c)(3) status, Section 7428 provides declaratory relief. Judge Marshall suggested that this remedy is available to the Church. R. at 14. Under Section 7428, in a case of actual controversy where the IRS determined the initial or continuing qualification of an organization's Section 501(c)(3) status, a court may issue a declaratory judgment to that organization with respect to its qualification. 26 U.S.C. § 7428(a) (2025). Before pursuing declaratory relief, the organization is required to exhaust all "administrative remedies available to it" within the IRS. *Id.* § 7428(b)(2). Section 7428 is the only remedy provided by Congress where the Church can challenge the IRS's determination of its Section 501(c)(3) status. But the Church is not litigating its Section 501(c)(3) status here; it is litigating the constitutionality of the Johnson Amendment.

The Church's suit is similar to another suit brought by a non-profit organization before the D.C. Circuit. *Z St. v. Koskinen*, 791 F.3d 24 (D.C. Cir. 2015). In *Z Street*, a non-profit alleged that an IRS policy constituted viewpoint discrimination under the First Amendment. *Id.* at 27. The non-profit alleged that it treated applications from organizations connected to Israel differently from others to ensure their positions did not contradict the Obama administration's views on Israel, thereby causing the IRS to delay consideration of its application. *Id.* The court held that the *Regan* exception applied to the non-profit's suit. *Id.* at 30. The court found that the non-profit sought to enjoin the IRS from "unconstitutionally delaying consideration of its application," not to obtain Section 501(c)(3) status. *Id.* The court held that although Section 7428 provided a remedy, that remedy would not resolve whether the IRS's delay was unconstitutional. *Id.*

In light of the D.C. Circuit's holding, a declaratory judgment under Section 7428 does not constitute an alternative remedy for the Church. Like the non-profit in *Z Street*, the Church is not seeking a declaration on whether it qualifies—or still qualifies—for Section 501(c)(3) status. R. at 2. The Church also challenged the constitutionality of the Johnson Amendment under the First Amendment, like the non-profit in *Z Street* did when it challenged the IRS's delay. *Id.* The Church sought a permanent injunction against the campaign restriction because it requires the Church to act in contradiction to its own religious mandates. R. at 2. Therefore, regardless of whether a court gave a favorable or adverse declaration concerning its Section 501(c)(3) status, it would not resolve whether the Johnson Amendment violates the Establishment Clause.

Even if the Church sought to establish its qualification for Section 501(c)(3) status, there is no actual controversy under Section 7428 here. For there to be an actual controversy, there must be an IRS determination that directly puts an organization's Section 501(c)(3) qualification at issue and "causes sufficient adverse consequences to that organization." *Baptist Hosps., Inc. v. United States*, 851 F.2d 1397, 1400 (Fed. Cir. 1982). Although the IRS notified the Church that it had been randomly selected for an audit, the IRS had not conducted or completed its audit by the time the Church initiated its lawsuit against the IRS. R. at 5, 7. Therefore, there is no need for the Church to seek declarative relief or administrative remedies under Section 7428.

Judge Marshall contended that the Church must *wait* until the IRS determines whether it qualifies for Section 501(c)(3) status, so it has access to the remedies under Section 7428. R. at 13. If an organization requesting a determination of its Section 501(c)(3) status took "all reasonable steps to secure such determination," and the IRS fails to make its determination 270 days after its request, only then will it have access to the courts for declaratory relief. 26 U.S.C. § 7428(b)(2). As of the filing of this brief, 609 days have passed since the Church filed its suit against the IRS.

R. at 5. Waiting for an IRS determination would be meaningless because it does not resolve the Establishment Clause issue raised by the Church in its complaint. Under these circumstances, the Church cannot pursue "any statutory procedure to contest the constitutionality of" the Johnson Amendment. *Regan*, 465 U.S. at 380. Therefore, the AIA does not bar the Church's suit under the *Regan* exception, and the Church may proceed on the merits of its claim.

II. THE CHURCH HAS STANDING UNDER ARTICLE III TO CHALLENGE THE CONSTITUTIONALITY OF THE JOHNSON AMENDMENT.

Under Article III of the United States Constitution, "the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution and the Laws of the United States." U.S. CONST. art. III, § 2, cl. 1. Article III limits the federal judicial power to cases and controversies and strictly prohibits federal courts from entertaining hypothetical or abstract disputes. *United States v. Texas*, 599 U.S. 670, 675 (2023); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Therefore, it is a "bedrock constitutional requirement" for a litigant to have standing to sue for a case or controversy to exist. *Texas*, 599 U.S. at 675. Hence, the burden of proof is on the litigant to establish standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

To have standing, a litigant must prove (1) that it suffered an "injury in fact," (2) "a causal connection between the injury and the conduct" alleged, and (3) a likelihood, not mere speculation, that "the injury will be redressed by a favorable judicial decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). A litigant suffers an injury if there was "an invasion of a legally protected interest" that is "concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 560. A causal connection between that injury and the conduct alleged exists if that injury is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.*

An Establishment Clause claim is special in the sense that a litigant does not need to show "proof that particular religious freedoms are infringed" in order to establish that it has standing to challenge a government action. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224, n. 9 (1963). However, even in an Establishment Clause claim, this Court has consistently held that a litigant must demonstrate that it was "directly affected" by an alleged wrongful government action or "*personally* suffered" an actual or threatened injury from that wrongful action. *Trump v. Hawaii*, 585 U.S. 667, 698 (2018); *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 472 (1982) (emphasis added).

This Court has recognized that a litigant can have a "*spiritual stake* in First Amendment values sufficient to raise issues concerning the Establishment Clause." *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 154 (1970) (emphasis added). For instance, injuries in the Establishment Clause context are often spiritual or psychological and caused by government action that is not neutral towards religion. *Kumar v. Koester*, 131 F.4th 746, 755 (9th Cir. 2025). Such injuries are also generalized since an official establishment of religion does not harm anyone in particular. *Montesa v. Schwartz*, 836 F.3d 176, 196 (2016). It is for these reasons that the element of injury for standing can be "particularly elusive" in Establishment Clause cases. *Deal v. Mercer Cty. Bd. of Educ.*, 911 F.3d 183, 187 (4th Cir. 2018).

Nonetheless, this Court recognized several theories under which a litigant may establish standing to assert an Establishment Clause claim. *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129–30 (2011). A litigant may have standing if it was directly harmed by an official establishment of religion. *Schempp*, 374 U.S. at 224, n. 9. Here, the Church is directly harmed by the Johnson Amendment because it prohibits the Church from observing its religious mandate. In addition, a litigant has standing if it incurred a cost or was denied a government benefit because

of its religion. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 8 (1989) (plurality opinion). Here, the Church will be denied a benefit by the Johnson Amendment since it observed its religious mandate. A permanent injunction will more than likely redress the Church's unconstitutional ills caused by the IRS. Therefore, the Church has standing under Article III to challenge the constitutionality of the Johnson Amendment under the Establishment Clause.

A. The Church is Directly Harmed by the Johnson Amendment Because the Campaign Restriction Prohibits the Church from Observing Its Mandate Under The Everlight Dominion in Order to Retain Its Section 501(c)(3) Status.

A litigant has standing to challenge a government action under the Establishment Clause if it suffered "direct harm" from an official establishment of a religion. *Winn*, 563 U.S. at 129. In a literal sense, the Johnson Amendment establishes a religion—"a religion that supports the state by remaining *quiescent* in elections and lobbying.[1]" The campaign restriction enforces a policy that prefers religious organizations that remain *silent* on political issues and candidates to those that speak out.[2] It effectively *silences* religious organizations that are convicted by their deeply held beliefs to weigh in on important political issues, compelling them to keep *quiet* if they wish to maintain their Section 501(c)(3) status. This preference for silence amongst religious organizations in political matters caused the Church to suffer an actual injury.

Here, the Church suffered an actual injury because the campaign restriction directly harmed its autonomy to observe its mandate under The Everlight Dominion. Vale is required to participate in political campaigns and endorse candidates who advocate progressive social values. R. at 3. He endorsed Congressman Davis on behalf of the Church to fulfill that requirement. R. at 4. By the

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[1] Allen Calhoun, *Liberal Suppression: Section 501(c)(3) and the Taxation of Speech*, 36 J. L. & RELIGION 155, 156 (2021) (internal quotations omitted).
[2] James S. Ganther, *The Political Activity Restrictions of I.R.C. Section 501(c)(3) and Why They Must Go*, 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 193, 196 (1989).

time the IRS notified the Church of its intent to audit it, the Church was concerned that it could lose its Section 501(c)(3) status because Vale had fulfilled his obligation. *Id.* Its religious practice was halted because continuing to observe its mandate under The Everlight Dominion would result in its status being revoked. But if its practice is halted any longer once the IRS conducts or finishes its audit, it and Vale could face banishment from The Everlight Dominion. R. at 3. Not only is its Section 501(c)(3) status in jeopardy, but the entire religion's existence, too.

Where a law compels this choice between compliance through silence and prosecution as a consequence of being vocal, this Court has held that a litigant may have standing to challenge that law, even if it has not been enforced. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392–93 (1988). In *American Booksellers Ass'n*, this Court held that bookstores had standing to challenge a law that prohibited the sale of "harmful to juveniles" material, which had not yet been enforced. *Id.* at 388, 392. This Court held that the law directly targeted bookstores by compelling them to either comply and incur significant costs or face criminal prosecution. *Id.* at 392. This Court also held that the law fostered self-censorship and that they had an "actual and well-founded fear" that the law would be enforced against them. *Id.* at 393.

Similar to the law in *American Booksellers Ass'n*, the Johnson Amendment fosters self-censorship amongst certain religious organizations. It chills their religious expressive practices. It prohibits them from acting on their religious mandates and convictions to participate in political campaigns and support candidates who align with their beliefs. But if they do not abandon their mandates and convictions, the IRS could revoke their Section 501(c)(3) status. For the Church, compliance requires ceasing its mandated practice under The Everlight Dominion to retain its tax-exempt status. And prosecution—revocation of its Section 501(c)(3) status—is imposed when it

observes that practice. Such compliance, prosecution, and self-censorship gives the Church every reason to fear that the IRS will enforce the Johnson Amendment against it.

The Church faces a deadlock under the Johnson Amendment: compromise its religious beliefs or sacrifice its tax-exempt status. Due to concerns that its Section 501(c)(3) status will be revoked, the Church has had to abstain from practicing its religious beliefs. R. at 5. This forced abstention from its religious practices, for the sake of retaining a government benefit, constitutes an actual injury that can be redressed by a ruling granting the Church's permanent injunction. The injunction would ensure that (1) the Johnson Amendment will no longer compel self-censorship among religious organizations and (2) the Church will not have to choose between adhering to its beliefs and Section 501(c)(3) status. Therefore, because of the redressable actual injury caused by the Johnson Amendment, the Church has standing under Article III.

B. The Church Will Be Denied Its Section 501(c)(3) Status by the IRS on Account of Its Observance of Its Mandate Under The Everlight Dominion, Which Conflicts with the Campaign Restriction of the Johnson Amendment.

A litigant also has standing to challenge a government action under the Establishment Clause if it has been denied a benefit on account of its religion. *Winn*, 563 U.S. at 130. This Court has observed that it can result from "alleged discrimination in the tax code, such as when the availability of a tax exemption is conditioned on religious affiliation." *Id.* In *Texas Monthly*, there was a law granting a sales tax exemption for magazine companies that met certain criteria. 489 U.S. at 5. It was repealed for three years but was later reinstated. *Id.* During that three-year period, only religious institutions that advanced their faith in publications remained exempt. *Id.* A secular magazine company sued for a refund and challenged the exemption as violating the Establishment Clause. *Id.* at 6. This Court held that it had standing to challenge the exemption and that its standing was unaffected by the reinstatement of the original exemption. *Id.* at 8.

The Johnson Amendment's differential treatment of religious organizations is similar to the differential treatment of religious institutions imposed by the exemption in *Texas Monthly*. In *Texas Monthly*, the exemption only covered religious institutions that promoted their faith through publications, not those that did not publish such material on matters of faith. *Id.* at 5. Likewise, the Johnson Amendment covers only those religious organizations that remain silent during political campaigns, but not those that are required or choose to be vocal in such campaigns. R. at 2. Unlike the company in *Texas Monthly* that suffered an actual economic injury by incurring costs due to the repeal, the Church will suffer an imminent economic injury because the IRS could revoke its Section 501(c)(3) status based on the observance of its mandate under The Everlight Dominion. R. at 3. Since this is a claim of a future threat of injury, the Church must show that the threatened injury is certainly impending or that there is a substantial risk that the injury will occur. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

Judge Marshall argued that the likelihood that the Johnson Amendment would be enforced against the Church was speculative, given a lack of prior enforcement. R. at 14. It is true that the IRS does not generally enforce it, but not true that the IRS has never enforced it. R. at 8. Since 1954, the IRS has revoked a religious organization's Section 501(c)(3) status only once. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000). Despite a minimal history of its enforcement against religious organizations, this Court has held that any "past enforcement against the *same conduct* is good evidence that the threat of enforcement is not chimerical." *Driehaus*, 573 U.S. at 164 (citation modified); *see also Christian Healthcare Ctrs., Inc. 23-1769 v. Nessel*, 117 F.4th 826, 849 (6th Cir. 2024) (holding that a litigant can establish standing even if a statute has been enforced previously against the precise conduct it wishes to undertake). *Rossotti* clearly demonstrates that the threat of the Johnson Amendment's enforcement is anything but chimerical.

In *Rossotti*, four days before the 1992 presidential election, the pastor of a church placed an advertisement in the newspapers criticizing Bill Clinton's positions for contradicting the Bible. *Id.* at 140. Each advertisement stated that it was sponsored by the pastor's church. *Id.* The IRS took notice of the advertisement and informed the church that it was no longer tax-exempt or liable for tax because of it. *Id.* After examining the church, the IRS determined that the advertisement violated the Johnson Amendment because it constituted intervention in a political campaign and revoked the church's Section 501(c)(3) status. *Id.* The D.C. Circuit upheld the IRS's revocation of the church's Section 501(c)(3) status. *Id.* at 145. Since *Rossotti*, the IRS has issued advisory warnings to some religious organizations that it determined had violated the Johnson Amendment, but it has never revoked their Section 501(c)(3) status in doing so.[3]

Here, the Church's case is virtually the same as the church's in *Rossotti*. Both used media, albeit in different forms, to express their positions on political candidates during their campaigns. R. at 4. The pastor in *Rossotti* criticized Clinton in the newspapers, whereas Vale endorsed Davis on his podcast. *Id.* The fact that the church in *Rossotti* opposed Clinton and the Church supported Davis is immaterial under the Johnson Amendment. Like the pastor in *Rossotti* who sponsored his advertisement on behalf of his church, Vale also gave his endorsement on behalf of the Church. R. at 4. Despite the IRS not notifying the Church that its Section 501(c)(3) status could be revoked, as it did with the church in *Rossotti*, the Church pursued the same course of conduct that led the IRS to revoke the church's Section 501(c)(3) status in *Rossotti*.

Unlike the church in *Rossotti*, which was investigated by the IRS to determine whether it violated the Johnson Amendment, the Church has not been investigated or even audited. R. at 5.

[3] Mark A. Goldfeder and Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. Mem. L. Rev. 209, 229 (2017).

Nevertheless, the threat of the Johnson Amendment's enforcement is substantial because the IRS has informed the Church of its intent to audit it. R. at 5. Even during the two-week period between the IRS's notice and the Church's suit, Vale was concerned that the IRS would be able to discover that he clearly endorsed candidates, even though he was required to under The Everlight Dominion. It is because of this impending IRS audit, in addition to the fact that the IRS has revoked Section 501(c)(3) status for the same conduct, that the threat of the IRS enforcing the Johnson Amendment against the Church is concrete and substantial, not chimerical or illusory.

Judge Marshall also argued that an IRS consent decree forecloses any possibility that the IRS will enforce the Johnson Amendment against houses of worship, including the Church.[4] R. at 14. However, the Church would not be covered under the decree. Vale's endorsement of Davis was on his weekly podcast, one of the Church's customary channels of communication on matters of The Everlight Dominion. R. at 4–5. His podcast was broadcast not only to his congregation, but also to the public at large. R. at 4. In fact, it is the nineteenth-most-listened-to podcast in the Nation and has been downloaded by millions of citizens. *Id.* Therefore, the possibility of the Johnson Amendment being enforced against the Church remains looming.

The Church's potential revocation of its Section 501(c)(3) status because of the observance of its mandate under The Everlight Dominion can also be redressed by a ruling that would grant the Church's permanent injunction. The injunction would ensure that (1) the IRS will no longer discriminate on the basis of religious beliefs when granting or denying tax exemptions and (2) the

[4] A proposed IRS consent decree recognized that the Johnson Amendment does not reach "speech by a house of worship in good faith speaks to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith." *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025).

Church will not lose its current Section 501(c)(3) status as a result of that discrimination. Therefore, because of the redressable imminent injury that will be caused by the threatened enforcement of the Johnson Amendment, the Church has standing under Article III.

III. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE.

Under the Establishment Clause of the First Amendment, "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. "The clearest command of the Establishment Clause" is that the government cannot officially prefer one religious denomination over another. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025). The Johnson Amendment violates the neutrality principle because it prefers tax exemption for religious organizations that remain silent in political campaigns over those that are vocal.

The Johnson Amendment also fails under the history and traditions test because it does not align with this Nation's historical practice and understanding of traditional tax exemptions for religious organizations. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). Its campaign restriction is a non-traditional condition that prefers some religions over others and interferes with matters of faith and internal affairs. Therefore, under the neutrality principle and the history and traditions test, the Johnson Amendment violates the Establishment Clause.

A. The Johnson Amendment Fails Under the Neutrality Principle.

Under the neutrality principle, the Establishment Clause requires "governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005). This Court has consistently recognized that the government cannot "pass laws which aid one religion" or "prefer one religion over another." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (the government cannot be hostile towards any religion); *County of Allegheny v. ACLU*, 492 U.S. 573, 594 (1989) (the government cannot appear to take a position on questions of religious belief); *Trump*, 585 U.S. at 729 (the

government cannot favor or disfavor one religion over another). Specifically, the government must remain viewpoint-neutral when providing financial benefits. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 834 (1995).

This Court has recently applied this neutrality principle to tax exemptions for religious organizations. *Cath. Charities*, 605 U.S. at 247. Here, the Johnson Amendment blatantly disobeys this neutrality principle. The Johnson Amendment has a denominational preference by denying tax exemption to religious organizations whose faith requires them to participate and be vocal during political campaigns, while granting exemption to those who remain silent during such campaigns. R. at 9. This denominational preference subjects it to strict scrutiny. *Larson v. Valente*, 456 U.S. 228, 246 (1982). The campaign restriction does not survive strict scrutiny because it is not closely fitted to Congress's interest in not subsidizing non-profit political activity. Therefore, the Johnson Amendment violates the Establishment Clause under the neutrality principle.

1. The Johnson Amendment Grants Denominational Preference by Granting Tax Exemption to Religious Organizations That Remain Silent During Political Campaigns and is Subject to Strict Scrutiny.

This Court has held that the government can generally grant tax exemptions for religious organizations under the Establishment Clause, "so long as none was favored over others." *Walz v. Tax Com. of New York*, 397 U.S. 664, 677 (1970). Tax exemptions cannot invidiously discriminate in "a way as to aim at the suppression of dangerous ideas." *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983). In other words, tax exemptions cannot grant denominational preference. *Cath. Charities*, 605 U.S. at 248. This Court has defined denominational preference as differential treatment across religions on theological or denominational lines. *Id.* Official favoritism for certain religions sends a message to other faiths that they are outsiders. *Id.* It is for these reasons that any

indicia of official "favoritism among sects" or "denominational preference" within a tax exemption subjects the tax exemption to strict scrutiny. *Larson*, 456 U.S. at 246.

Judge Marshall contended that the Johnson Amendment satisfies the neutrality principle since the campaign restriction applies equally to all non-profit organizations. R. at 15. He is partly correct, but he fails to recognize the special protection religious organizations are guaranteed under the Religion Clauses. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). Likewise, the Johnson Amendment fails to recognize this protection by granting denominational preference to religious organizations that remain silent during political campaigns, while denying it to those whose beliefs require them to be vocal during such campaigns. This Court has invalidated similar kinds of unjustified exemptions for religious organizations under strict scrutiny. *Larson*, 456 U.S. at 251; *Cath. Charities*, 605 U.S. at 254.

In *Larson*, this Court invalidated an exemption to a registration and reporting requirement that only exempted religious organizations "that received more than half of their total contributions from members or affiliated organizations." 456 U.S. at 231–32. This Court held that the exemption "clearly grants denominational preferences" by exempting some religious organizations—such as the Roman Catholic Archdiocese—but not others—like Unification Church. *Id.* at 246, 253. This Court explained that the exemption was not neutral towards religion since it (1) selectively imposes benefits and burdens on particular denominations by operation and (2) includes certain religious denominations while excluding others by design. *Id.* at 253–54.

Like the exemption in *Larson*, the campaign restriction of the Johnson Amendment is not neutral towards religion in its operation and design. *Id.* The Johnson Amendment benefits religious organizations that remain silent during political campaigns and burdens any religious organization whose beliefs—like those of The Everlight Dominion—require them to be vocal during political

campaigns. R. at 3. Just as the Unification Church was deemed an outsider under the exemption in *Larson*, the Church is considered to be an outsider under Section 501(c)(3) because of the Johnson Amendment. This is because it discriminates against certain religious organizations by granting exemptions based on action or inaction that directly, rather than inadvertently, implicates religious doctrine and deeply held beliefs. *Larson*, 456 U.S. at 252.

In *Cath. Charities*, this Court invalidated the application of a tax exemption to a religious organization that required it to engage in proselytization. 605 U.S. at 242. This Court had observed that the exemption, as applied, imposed "a denominational preference by explicitly differentiating between religions" based on theological practices and choices. *Id.* at 250. This Court found that eligibility for exemption was based on "inherently religious choices." *Id.* The exemption required the religious organization to proselytize, but Roman Catholicism forbade using charitable services to proselytize. *Id.* at 249–50. Therefore, this Court held that the exemption was not neutral towards religion because it favored particular religions based on doctrinal differences. *Id.*

Like the tax exemption in *Cath. Charities*, the Johnson Amendment makes tax exemption conditional upon inherently religious choices, not "secular criteria that happen to have a disparate impact upon different religious organizations." *Id.* In *Cath. Charities*, the organization could not attain tax-exempt status since the exemption, as applied, would require it to violate its own faith by proselytizing through charitable acts. *Id.* at 249. Likewise, the Church cannot attain Section 501(c)(3) status under the Johnson Amendment because the campaign restriction would require it to violate its own faith by refraining from political campaigns. R. at 3. Some organizations, like the Church, must compromise their beliefs to obtain tax-exempt status. Other organizations do not have to make that compromise. Therefore, the Johnson Amendment is not neutral towards religion because it grants tax-exempt status based on a denominational preference.

Here, the Church faces a Hobson's choice under the Johnson Amendment. The Everlight Dominion religion *requires* its churches and church leaders to "participate in political campaigns and support candidates," or face banishment. R. at 3. The Church could continue to adhere to its religious mandates, thereby risking the revocation of its Section 501(c)(3) status by the IRS, while religious organizations that remain silent during political campaigns are granted tax-exempt status. The Church could also retain its tax-exempt status, but at the cost of compromising its religious mandates by refraining from engaging in political campaigns. This may result in the Church and Vale being banished from The Everlight Dominion. *Id.* It could also result in the crumbling and destruction of a centuries-old religion. *Id.* There is no suggestion or indication in the record that the Church or Vale is willing to make those sacrifices. *Id.*

The Johnson Amendment unambiguously grants denominational preference by favoring religious organizations that remain silent during political campaigns. R. at 2. The Church is directly affected by this preference since The Everlight Dominion requires its churches and church leaders to be vocal during political campaigns or else be banished from The Everlight Dominion entirely. R. at 3. Because the Johnson Amendment imposes a denomination preference that "distinguishes among religions based on theological differences" when granting or denying Section 501(c)(3) status to religious organizations, it is subject to strict scrutiny. *Cath. Charities*, 605 U.S. at 254.

2. The Johnson Amendment Does Not Survive Strict Scrutiny Because Its Denominational Preference Is Not Closely Fitted to Avoid Subsidizing the Political Activities of Non-Profit Organizations.

Under strict scrutiny, a law that grants denominational preference will be upheld as valid only if "it is closely fitted [or narrowly tailored] to further a compelling governmental interest." *Cath. Charities*, 605 U.S. at 252. A law is narrowly tailored "if it targets and eliminates no more than the exact source of the evil it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)

(citation modified). Especially under strict scrutiny, "[i]n the First Amendment context, fit matters." *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014). One interest Congress has to justify the Johnson Amendment is avoiding the subsidization of non-profit political activities.[5]

When Section 501(c) was amended in 1987, Congress "declared the policy that the U.S. Treasury should be neutral in political affairs." *Id.* This policy prevents political campaigns from being federally subsidized; otherwise, taxpayers would be forced to financially support campaigns that do not align with their political viewpoints.[6] The IRC subsidizes religious activities to ensure that taxpayers "are not inadvertently financially supporting church-based politicking" and that the government does not become entangled "in underwriting partisan political activity." Goldfeder, *supra* note 3, at 236. Maintaining political neutrality among non-profit organizations by not subsidizing their political activities could qualify as a compelling governmental interest. However, denominational preference for religious organizations based on doctrinal or theological differences is not closely fitted or narrowly tailored to achieve that interest.

First, the denominational preference imposed by the Johnson Amendment is ambiguous. The Johnson Amendment prohibits *participation* or *intervention* in "*any* political campaign." 26 U.S.C. § 501(c)(3) (emphasis added). The word "any" demonstrates that the campaign restriction is an absolute. The campaign restriction also does not define what "participate" or "intervene" means, nor does it list political activities that disqualify a non-profit organization from Section 501(c)(3) status. Outside of this, IRS guidance is unhelpful. One regulation states that publishing or distributing written statements, or making oral statements, supporting or opposing a candidate,

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[5] Jeffrey Mikell Johnson, *The 501(c)(3) Campaign Prohibition as Applied to Churches: A Consideration of the Prohibition's Rationale, Constitutionality, and Possible Alternatives*, 2 LIBERTY U. L. REV. 557, 572 (2008).

[6] Michael Hatfield, *Ignore the Rumors—Campaigning From the Pulpit is Okay: Thinking Past the Symbolism of Section 501(c)(3)*, 20 ND J. L. ETHICS & PUB POL'Y 125, 135 (2006).

constitutes participation or intervention, and no further. 26 C.F.R. § 1.501(c)(3)–1(c)(3)(iii) (2025). A Revenue Ruling states that whether an activity constitutes participation or intervention "depends on the facts and circumstances of each case." REV. RUL. 2007–41, 2007–25 I.R.B. 25, 1421 (2007). This lack of clarity has dire consequences for religious organizations compelled by their religious beliefs to actively participate in political campaigns.

For example, a pastor—on behalf of his church—convicted by his religion to preach to his congregation which candidates to vote for puts his church's Section 501(c)(3) status in jeopardy of being revoked. Goldfeder, *supra* note 3, at 236. A Southern Baptist preacher cannot caution his congregants not to vote for candidates who condone abortion because their religious beliefs align with conservative politics. Nor can a Presbyterian Church (USA) pastor tell her congregants not to vote for candidates who oppose same-sex marriage due to its liberal-leaning religious beliefs. Likewise, Vale cannot expressly endorse Congressman Davis because he espouses progressive viewpoints, even though its qualified religious purpose under Section 501(c)(3) is to advocate progressive social values by engaging in political campaigns. R. at 3. It is clear that denying tax exemptions to certain religious organizations to avoid subsidizing non-profit political activities does not justify hindering religious expression in the political sphere.

Second, notable legislation has been proposed to Congress since 2017 to eliminate or limit the Johnson Amendment's denominational preference. R. at 3. These proposals either called for (1) repealing the Johnson Amendment or (2) creating an exception for religious organizations to engage in political campaigns because such activity is done in furtherance of a religious purpose. *Id.* The focus of these proposals was on restricting funding for political campaigns (and other such activities), not on religious expression by religious organizations during political campaigns. Such efforts have not been successful. *Id.* Nevertheless, these two alternative proposals have proved to

be more narrowly tailored in advancing Congress's interest in not subsidizing non-profit political activity and are less restrictive than the Johnson Amendment.

One proposal is to repeal the Johnson Amendment because Congress already has the means within the IRC to enforce its interest in not subsidizing political non-profit activity. Under the IRC, a Section 501(c)(3) organization that makes any political expenditure must pay a first-tier tax equal to 10% of the amount of that expenditure. 26 U.S.C. § 4955(a)(1). If it does not recover part or all of that amount, or establish safeguards to prevent such expenditures, it must pay a second-tier tax equal to that amount. *Id.* § 4955(b)(1). A political expenditure is defined as "any amount paid or incurred by a section 501(c)(3) organization" when it participates or intervenes in a political campaign. 26 U.S.C. § 4955(d)(1). This definition clarifies that a tax will be imposed only on funds used for political campaign activities, not non-funded political speech. This ensures that mere religious expression, supporting or opposing candidates during political campaigns, does not pose adverse consequences to their Section 501(c)(3) status.[7]

Like the Johnson Amendment, Section 4955 covers the same political activities and applies equally to all non-profit organizations. Unlike the Johnson Amendment, it does not demonstrate any denominational preference. If a religious organization actively participated in a political campaign by funding it, those funds would be taxed, even if it is doctrinally mandated to participate in political campaigns or chooses to do so despite its doctrine not requiring it. Hence, the Church can retain its Section 501(c)(3) status if Vale preaches about Congressman Davis, so long as he does not fund Davis's campaign on behalf of the Church. R. at 3. Taxing religious organizations on objectively political expenditures, and not selectively and subjectively denying tax exemptions

[7] Reece Barker, *A Memorial and Remonstrance Against Taxation of Churches*, 47 B.Y.U.L. REV. 1001, 1030 (2021).

from federal taxes to them, enforces Congress's interest in not subsidizing non-profit political activities more effectively. If only Section 4955 were in effect, religious organizations would retain their Section 501(c)(3) status and only be taxed on political expenditures.

Another proposal was the Free Speech Fairness Act. H.R. 781, 115th CONG. (2017); S. 264, 115th CONG. (2017). The Act was intended to be an exception to limit the discriminatory effects of the Johnson Amendment on religious organizations. Goldfeder, *supra* note 3, at 252. Under the proposed Act, any non-profit organization can make statements concerning a political campaign or candidate and not lose its tax-exempt status if (1) those statements were "made in the ordinary course of [its] regular and customary activities in carrying out its exempt purpose" and (2) the organization does not incur "more than *de minimis* incremental expenses" as a result. H.R. 781. Unlike the Johnson Amendment, it has "neutral, secular criteria that neither favor nor disfavor religion" because it makes tax-exempt status "available to both religious and secular beneficiaries on a nondiscriminatory basis." *Agostini v. Felton*, 521 U.S. 203, 231 (1997).

The Act is neutral towards religion because it permits all religious organizations to be vocal in political campaigns if their statements are made in the ordinary course of their regular activities and serve a religious purpose. H.R. 781. Vale could preach sermons about Congressman Davis and endorse him on his weekly podcast without risking the loss of the Church's tax-exempt status because those activities serve the Church's religious purpose—namely, to participate in political campaigns. R. at 3. In addition, the Act is closely fitted to Congress's interest in not subsidizing non-profit political activities by granting Section 501(c)(3) status only if the religious organization incurs no significant costs when participating in political campaigns. H.R. 781. Here, so long as the Church does not spend large amounts of its funds towards Congressman Davis's campaign, its Section 501(c)(3) status will remain unbothered by the IRS.

The Johnson Amendment grants an unjustified denominational preference by granting tax exemptions to religious organizations that remain *silent* during political campaigns, while denying them to those that are vocal during campaigns. Ganther, *supra* note 2, at 209. This preference demonstrates favoritism toward *silent* religious organizations and expresses disfavor toward those organizations that are not. This preference imposed by the Johnson Amendment is not closely fitted or narrowly tailored to Congress's interest in not subsidizing the political activities of non-profit organizations and does not withstand strict scrutiny. Therefore, under the neutrality principle, the Johnson Amendment violates the Establishment Clause.

B. The Johnson Amendment Fails Under the History and Traditions Test.

Under the history and traditions test, the Establishment Clause must be interpreted by referring to historical practices and understandings. *Kennedy*, 597 U.S. at 535. This Court has "abandoned *Lemon* and its endorsement test offshoot" and instead adopted a history and traditions test—an "analysis focused on original meaning and history"—as the rule under the Establishment Clause. *Id.* at 534, 536. In referring to historical practices and understandings, this Court held that they must have been accepted by the Founding Fathers and "withstood the critical scrutiny of time and political change." *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014).

This Court has also applied the history and traditions test to tax exemptions for religious organizations. *Walz*, 397 U.S. at 680. This Court must examine "the history, purpose, and operation of tax exemptions for religious organizations" to determine whether a particular tax exemption violates the Establishment Clause. *Id.* at 681 (Brennan, J., concurring). The Johnson Amendment does not align with this Nation's historical practice and understanding of traditional tax exemptions for religious organizations since it imposes a non-traditional condition that favors some religions over others and interferes with their faith and internal affairs. Therefore, the Johnson Amendment violates the Establishment Clause under the history and traditions test.

1. Traditional Tax Exemptions for Religious Organizations in this Nation Historically Did Not Favor Some Religions Over Others Nor Interfere with the Faith and Internal Affairs of Religious Organizations.

Tax exemptions for religious organizations represent a time-honored thread woven through the tapestry of American history. Church tax exemptions under British common and equity laws existed in the American colonies,[8] and these exemptions continued for churches and ministers after America gained independence.[9] The Founding Fathers adopted this British practice of church tax exemption, and it was not seriously questioned. *Churches and Tax Exemption*, 11 J. CHURCH & ST. 197, 197 (1969). It was adopted despite no legal basis for granting them or explicit language within the federal or state constitutions.[10] This continued as churches were disestablished. Brunson, *supra* note 9, at 538. In the nineteenth century, Congress granted tax exemptions to churches, religious societies, and, eventually, "corporations and associations, organized and operated exclusively for religious purposes." *Walz*, 397 U.S. at 676 n. 4, 677 (majority opinion).

Before *Walz*, tax exemptions for churches had "a long and established history in the United States" with minimal challenges to their constitutionality. Whitehead, *supra* note 8, at 545. This period of more than "two centuries of uninterrupted freedom from taxation" gives rise to a strong presumption of the practice's constitutionality. *Walz*, 397 U.S. at 678; *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 57 (2019). Time-honored, universal practices, like tax exemptions for religious organizations, have been preserved in this Nation because of their place in its common cultural heritage. *Am. Legion*, 588 U.S. at 54. It is after its thorough review of this unbroken, uninterrupted

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[8] John W. Whitehead, *Tax Exemption and Churches: A Historical and Constitutional Analysis*, 22 CUMB. L. REV. 521, 536 (1991-1992).
[9] Samuel D. Brunson, *God Is My Roommate? Tax Exemptions for Parsonages Yesterday, Today, and (if Constitutional) Tomorrow*, 96 Ind. L.J. 521, 538 (2021).
[10] Dominic Rota, *And on the Seventh Day, God Codified the Religious Tax-Exemption: Reshaping the Modern Code Framework to Achieve Statutory Harmony with Other Charitable Organizations and Prevent Abuse*, 5 CONCORDIA L. REV. 56, 66–67 (2020).

history of church tax exemptions that this Court held that federal and state tax exemptions for religious organizations were constitutional under the Religion Clauses. *Walz*, 397 U.S. at 680. Currently, Congress and all fifty states grant tax exemptions to religious organizations, either through statutory or constitutional provisions, or both.[11]

Traditional tax exemptions applied to entities, such as the Church, that are "organized and operated exclusively for religious purposes." 26 U.S.C. § 501(c)(3). For example, property tax exemptions historically required that the property be *owned* by a religious organization, *used* solely or primarily for religious purposes, or both.[12] Before the Johnson Amendment in 1954 (or the lobbying limitation in 1934), such tax exemptions did not impose conditions requiring them to refrain from political activity or choose between engaging in political activity and retaining their tax-exempt status.[13] A campaign restriction is a foreigner to this Nation's history of tax exemptions for religious organizations. In upholding a property tax exemption containing religious ownership and use conditions as constitutional, this Court acknowledged that

> Few concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally *so long as none was favored over others and none suffered interference*.

Walz, 397 U.S. at 676–77 (emphasis added). This Court observed two conditions that would render otherwise permissible tax exemptions for religious organizations unconstitutional: *favoritism* and *interference*. *Id.* Justice Harlan, too, recognized that tax exemptions must be *neutral* and *voluntary*;

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[11] J. Michael Martin, *Should the Government be in the Business of Taxing Churches?*, 29 REGENT U.L. REV. 309, 314 (2016 - 2017); *see Gaylor v. Mnuchin*, 919 F.3d 420, 436 (7th Cir. 2019) (Specifically, about "2,600 federal and state tax laws provide religious exemptions.").
[12] John R. Brancato, *Characterization in Religious Property Tax-Exemption: What is Religion--A Survey and a Proposed Definition and Approach*, 44 NOTRE DAME LAW. 60, 61 (1968--1969).
[13] Jennifer M. Smith, *Morse Code, Da Vinci Code, Tax Code and … Churches: An Historical and Constitutional Analysis of Why Section 501(c)(3) Does Not Apply to Churches*, 23 J. L. & POLITICS 41, 68 (2007).

that is, tax exemptions cannot "sponsor a particular sect or encourage participation in or abstention of religion." *Id.* at 694 (Harlan, J., concurring). The Johnson Amendment contains both conditions. The campaign restriction imposes a condition that favors some religious organizations over others and interferes with their faith, doctrine, and internal affairs.

Throughout American history, religious organizations have played an active role in this Nation's political landscape since its founding[14] and have been involved in elections without being punished for their political activity.[15] This means that their historical involvement in the political process and traditional exemption from taxation were contemporaneous. Religious organizations "frequently take strong positions on public issues," and this Court has upheld their constitutional right to do so. *Walz*, 397 U.S. at 670 (majority opinion). There was once a time in this Nation when the right to religious autonomy in political matters and the privilege of being tax-exempt coexisted. Now, the Johnson Amendment stands in stark contrast to this longstanding historical backdrop and does not withstand review under the history and traditions test.

2. The Johnson Amendment Imposes a Non-Traditional Campaign Restriction on Religious Organizations That Favors Some Religions Over Others and Interferes with Their Faith and Internal Affairs.

A tax exemption cannot favor some religions over others or single out a particular religious group. *Id.* at 673, 677. This Court has recognized that one specific evil feared by the Founding Fathers was the abuse of the taxing power to favor one religion over another. *Flast v. Cohen*, 392 U.S. 83, 103 (1968). It is for that reason that this Court upheld the tax exemption in *Walz* since it applied to all religious organizations. 397 U.S. at 673. Here, the Johnson Amendment is inapposite

[14] Erik J. Ablin, *The Price of Not Rendering to Caesar: Restriction on Church Participation in Political Campaigns*, 13 ND J. L. ETHICS & PUB POL'Y 541, 571–73 (1999).
[15] Shawn A. Voyles, *Choosing between Tax-Exempt Status and Freedom of Religion: the Dilemma Facing Politically-Active Churches*, 9 REGENT U.L. REV. 219, 227– (1997).

to the tax exemption in *Walz* because of its unjustified denominational preference for religious organizations that remain silent during political campaigns. *See* discussion *supra* Section III.A.1. Nevertheless, it is worth noting that, in addition to violating the neutrality principle, the Johnson Amendment also fails under the history and traditions test by virtue of containing a non-traditional campaign restriction that is not neutral towards religion.

A tax exemption also cannot interfere with or monitor the religious activities or internal affairs of a religious organization. *Walz*, 397 U.S. at 675, 677. If there is one evil the Establishment Clause was intended to prohibit, it is active government involvement in religious activity. *Id.* at 668. Under the Religion Clauses, religious organizations have the autonomy to decide matters of faith and doctrine, and internal affairs, without governmental interference. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020). Therefore, the government cannot participate in the internal affairs of religious organizations or intervene in their internal decisions that affect their faith and mission. *Everson*, 330 U.S. at 16; *Hosanna-Tabor*, 565 U.S. at 190. The Johnson Amendment intrudes upon that religious autonomy in two respects.

First, the Johnson Amendment interferes with the faith and internal affairs of any religious organizations whose Section 501(c)(3) status has been revoked. This Court has recognized that the taxation of religious organizations would *expand* governmental involvement in their internal affairs through financial reporting, audits of their internal operations, tax valuations of religious property, tax liens and foreclosures, "and the direct confrontations and conflicts that follow in the train of those legal processes." *Walz*, 397 U.S. at 674; Barker, *supra* note 7, at 1009. On the other hand, tax exemptions for religious organizations have historically safeguarded them from such interference and created "minimal and remote involvement between church and state." *Id.* at 673, 676. However, there is a major difference between taxing a religious organization on its income

and property and taxing it because of the sermons it delivers. *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943). The Johnson Amendment commits the latter sin.

Second, the Johnson Amendment interferes with the faith and internal affairs of religious organizations whose Section 501(c)(3) status is at risk of being revoked. In *Our Lady of Guadalupe*, this Court held that the government cannot dictate or influence, or attempt to dictate or influence, matters of faith and doctrine because such action constitutes "one of the central attributes of an establishment of religion." *Id.* at 746. This Court has recognized under the ministerial exception that a religious organization's selection, supervision, and removal of ministers are matters of faith and doctrine—internal decisions that affect its faith and mission. *Id.* at 747. Likewise, the content of religious messages and expressive activities, and the manner in which they are presented, are internal decisions by a religious organization that directly affect its faith and mission.[16] Therefore, just as a religious organization has the autonomy to decide who will serve as the messengers, so too can it decide its messages and *how* those messages will be expressed.

Under the Johnson Amendment, the IRS is required to determine whether a certain activity constitutes participation or intervention in a political campaign by considering "all of the facts and circumstances of each case." REV. RUL. 2007–41, 1421. As it pertains to religious organizations that are vocal during political campaigns, the IRS is required to scrutinize the content and manner of their messages or expressive activities to decide whether their statements violate the campaign restriction. These activities include individual actions by religious leaders, candidate appearances at events hosted by religious organizations, and advocacy on hot-button issues. *Id.* at 1422–24. The problem is that the religious and political components of these activities are often intertwined

[16] Erik W. Stanley, *A Survey of Religious Freedom for Individuals and Faith-Based Institutions: LBJ, The IRS, and Churches: The Unconstitutionality of the Johnson Amendment in Light of Recent Supreme Court Precedent*, 24 REGENT U.L. REV. 237, 281 (2011-2012).

and difficult to distinguish. Meghan J. Ryan, *Can the IRS Silence Religious Organizations?*, 40 IND. L. REV. 73, 83 (2007). Hence, one misstep could potentially decimate a religious organization under the Johnson Amendment. Goldfeder, *supra* note 3, at 223.

For example, to determine whether a religious organization participates or intervenes in a political campaign when it invites a candidate speaker, the IRS considers whether it (1) provided an equal opportunity to political candidates seeking the same office or (2) indicated support for or opposition to the invited candidate. REV. RUL. 2007–41, 1423. A pastor who invites a candidate to speak at a church service about his campaign violates the Johnson Amendment if he invites no other candidates to speak during the campaign season. *Id.* For the church to retain its tax-exempt status, it *must* invite other candidates running for the same position and *cannot* show support or opposition to them.[17] What if their political standpoints and proposed policies go against, or violate, its beliefs? It does not matter under the Johnson Amendment. Religious adherents must remain in the pews and listen without expressly disagreeing with them.

The IRS instructing religious organizations to invite political candidates whose values and viewpoints contradict those of the religious organization is akin to the government "[r]equiring a church to accept or retain an unwanted minister." *Hosanna-Tabor*, 565 U.S. at 188. If a religious organization invited such candidates to retain its tax-exempt status, it would send a message to its congregation similar to that of "a wayward minister's preaching," contradicting its religious faith and leading them away from it. *Our Lady of Guadalupe*, 591 U.S. at 747. The Johnson Amendment cannot compel religious organizations to make such a compromise because it intrudes upon their

[17] Keith S. Blair, *Praying for a Tax Break: Churches, Political Speech, and the Loss of Section 501(c)(3) Tax Exempt Status*, 86 DENV. U.L. REV. 405, 417 (2009).

internal governance by depriving them of their authority to choose "who will personify its beliefs" in front of their members. *Hosanna-Tabor*, 565 U.S. at 188.

Now, consider the Church. Under the Johnson Amendment, religious organizations can take positions and make statements on public policy issues without losing their tax-exempt status, even if those issues divide candidates during a campaign. REV. RUL. 2007–41, 1424. However, those statements cannot expressly instruct others to vote for or against a specific candidate or even merely favor or disfavor a candidate. *Id.* Some of the factors that the IRS considers are whether the statement (1) identified one or more candidates, (2) approved or disapproved a position or action of a candidate, (3) was delivered close in time to an election, (4) referred to voting or an election, and (5) addresses an issue that has been raised to distinguish candidates. *Id.* In light of all of these factors, the Church is substantially at risk of losing its Section 501(c)(3) status because of its required religious messages and expressive practices.

Here, Vale—on behalf of the Church—expressly named and supported Congressman Davis and his campaign on his podcast and encouraged his listeners to vote for him because of his progressive standpoints. R. at 4. His statements would violate the Johnson Amendment because they expressly identify and approve a political candidate during an election and prompt others to support him. *See* REV. RUL. 2007–41, 1424–25. Based on the Revenue Ruling, the solution to retaining the Church's Section 501(c)(3) status would be to limit the content of Vale's podcasts to sermons, spiritual guidance, and lectures about The Everlight Dominion and its progressive stances. R. at 4. What if his beliefs mandate him to make such statements, which are internal decisions that affect the Church's faith and mission? R. at 3–4. It does not matter under the Johnson Amendment. Fortunately, the First Amendment does not accept the Johnson Amendment's answer.

This Court has historically held that "no official, high or petty, can prescribe what shall be orthodox in religion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The Johnson Amendment permits the IRS to insert itself into the Church's internal structure to determine which messages Vale can preach from the pulpit or proclaim on his weekly podcast, so that the Church can maintain its Section 501(c)(3) status. R. at 4. Vale is required by The Everlight Dominion "to participate in political campaigns" by endorsing political candidates who espouse progressive social values. R. at 3–4. He fulfills his religious duty through his weekly podcast by preaching sermons and endorsing candidates whose values align with The Everlight Dominion. R. at 4. These internal decisions are solely within the authority of the Church. *See* Stanley, *supra* note 16, at 281. Therefore, the IRS simply cannot interfere with that authority by deciding what religious messages the Church should express or how it should express them.

The Johnson Amendment does not align with this Nation's history of tax exemptions for religious organizations. The campaign restriction deliberately and unashamedly breaks American tradition by favoring religious organizations that remain silent during political campaigns and interfering with the faith and internal affairs of religious organizations. To use an outdated term used by this Court, the campaign restriction creates *excessive entanglement* between the IRS and religious organizations, such as the Church. Therefore, under the history and traditions test, the Johnson Amendment violates the Establishment Clause.

CONCLUSION

The Tax Anti-Injunction Act does not bar the Church's lawsuit to challenge the Johnson Amendment. The Church also has Article III standing to challenge the Johnson Amendment. In addition, the Johnson Amendment violates the Establishment Clause. When a church is silenced by sacrificing a fervent belief to retain a financial benefit, it should have its day in court to contest its compelled and unjustified silence. Accordingly, this Church respectfully requests that this Court affirm the judgment of the Fourteenth Circuit.

Respectfully submitted this 18th day of January 2026.

/s/ Team 10
Team 10
Counsel for Respondents