No. 26-1779

In the

Supreme Court of the United States

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 PETITIONER

Counsel for Petitioner
Team 15

QUESTIONS PRESENTED

1. Whether the Tax Anti-Injunction Act and Article III standing requirements bar a pre-enforcement action to the Johnson Amendment that would effectively prohibit collection or assessment of taxes when the Internal Revenue Service has not revoked the organization's tax-exempt status.
2. Whether the Johnson Amendment violates the Establishment Clause when it applies uniformly to religious and secular organizations and conditions receipt of a federal tax exemption on refraining from political campaign activity, even when a particular religion requires political participation.

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Petitioners, who were Defendant-Appellants below, are: Scott Bessent, In His Capacity as Acting Commissioner of the Internal Revenue Service; The Internal Revenue Service.

Respondent, who was Plaintiff-Appellee below, is: Covenant Truth Church.

OPINIONS BELOW

The opinion of the United States District Court of Wythe addressing the constitutional challenge raised by Respondent, granting Respondent's motion for summary judgment and its request for a permanent injunction, is unreported but appears in the record at pages 1-6. The opinion of the United States Court of Appeals for the Fourteenth Circuit, affirming both the grant of summary judgment and the request for permanent injunction, is reported at *Bessent v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and appears in the record at pages 1-16.

JURISDICTIONAL STATEMENT

The Court of Appeals for the Fourteenth Circuit entered final judgment on August 1, 2025. The petition for writ of certiorari was timely filed and granted on November 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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

This case also involves the following provisions of the Internal Revenue Code: 26 U.S.C. §§ 501, 7123, 7421, 7428, 7803.

STATEMENT OF THE CASE

Factual Background

Johnson Amendment Perseveres. In 1954, then-Senator Lyndon B. Johnson proposed an amendment to the Internal Revenue Code. R. at 2. The amendment, passing without debate, added language to Section 501(c)(3) mandating that non-profit organizations "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." 26 U.S.C. § 501(c)(3) (West, Westlaw through P.L. 119-59); R. at 2. Since its enactment, the Johnson Amendment has persevered through a revision to the Code and remains part of the Internal Revenue Code of 1986. R. at 2. Despite recent efforts to repeal the Johnson Amendment, Congress has declined to eliminate it or to create an exception for religious organizations that would allow them to actively participate in political campaigns. R. at 2-3.

Modernizing the Pulpit. Covenant Truth Church is classified under the Internal Revenue Code as a Section 501(c)(3) organization. R. at 3. Headed by Pastor Gideon Vale, Covenant Truth Church is the largest church practicing The Everlight Dominion. R. at 3. The Everlight Dominion requires its leaders and churches to participate in political campaigns and support candidates who align with its stances. R. at 3. In an effort to attract a younger generation of members, Pastor Vale created a weekly podcast to deliver sermons, provide spiritual guidance, and educate the public about the religion. R. at 4. Pastor Vale began to use the podcast to deliver political messages, including endorsements of candidates and encouragement to vote, donate, and volunteer for campaigns. R. at 4.

Audit Notice Sparks Concern. On May 1, 2024, the Internal Revenue Service ("IRS") sent notice to Covenant Truth Church that it had been selected for an audit. R. at 5. These audits, conducted at random for Section 501(c)(3) organizations, allow the IRS to ensure compliance with the Internal Revenue Code. R. at 5. Concerned that the audit would reveal the Church's political involvement, Covenant Truth Church sought to prohibit the enforcement of the Johnson Amendment. R. at 5. This lawsuit was filed before the IRS could conduct the audit, and Covenant Truth Church's Section 501(c)(3) status remains unchanged. R. at 5.

Procedural History

District of Wythe. On May 15, 2024, Covenant Truth Church filed suit in the District of Wythe, seeking a permanent injunction to prohibit enforcement of the Johnson Amendment. R. at 5. The Church argued that the Johnson Amendment violates the Establishment Clause of the First Amendment. R. at 5. Following the IRS's denial of this claim, the Church moved for summary judgment. R. at 5. In granting the Church's motion and entering the permanent injunction, the District Court held that (1) Covenant Truth Church had standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause. R. at 5-6.

Fourteenth Circuit. The Court of Appeals for the Fourteenth Circuit affirmed the decision of the District Court in full. R. at 11. The court held that the Church's challenge to the Johnson Amendment was not barred by the Tax Anti-Injunction Act and that the Church had met the requirements for Article III standing. R. at 6. On the merits, the court concluded that the Johnson Amendment ignored "benevolent neutrality" in violation of the Establishment Clause. R. at 11. In dissent, Justice Marshall highlighted the direct tie between the Church's suit and the Tax Anti-Injunction Act, underscored the speculative nature of the enforcement, and criticized the majority's misapplication of this Court's precedent and the Establishment Clause. R. at 12,

14-15. Acting Commissioner of the IRS, Scott Bessent, and the IRS subsequently appealed the Court of Appeals' decision, and this Court granted review. R. at 6, 17.

SUMMARY OF THE ARGUMENT

At its core, this case is about reinforcing the carefully defined boundaries set forth by Congress and the Constitution. The court of appeals erred in holding that Covenant Truth Church had standing and that the Johnson Amendment violates the Establishment Clause. The judgment of the United States Court of Appeals for the Fourteenth Circuit should be reversed in its entirety.

I.

The statutory and constitutional limits on federal jurisdiction and standing may not be bypassed simply by reframing a tax dispute as a constitutional challenge. This Court lacks jurisdiction over Covenant Truth Church's action because the Tax Anti-Injunction Act ("AIA") bars suits that have a primary purpose of restraining the collection or assessment of taxes. Although Covenant Truth Church frames its action as a challenge to the Johnson Amendment, the practical effect of it is to prevent the revocation of its tax-exempt status, which would necessarily prohibit the collection or assessment of taxes against it.

Independently, Covenant Truth Church lacks Article III standing. It cannot establish an actual injury because its pre-enforcement action relies on speculation. The Johnson Amendment has not been enforced against it, nor is there a credible or imminent threat of enforcement because the Internal Revenue Service ("IRS") has rarely enforced the Johnson Amendment and has recently agreed not enforce it against houses of worship, such as Covenant Truth Church. As a result, Covenant Truth Church has failed to establish an injury in fact pursuant to Article III standing.

II.

A congressional condition on a voluntary government-conferred benefit faithfully adheres to the Establishment Clause's core requirement of government neutrality towards religion. The Johnson Amendment's requirement that tax-exempt organizations refrain from political activity does not breach this neutrality, even if a religion requires political participation. Consistent with the nation's history and tradition, the Johnson Amendment neither establishes, endorses, nor disfavors religion. Rather, it applies uniformly to all Section 501(c)(3) organizations and regulates only the receipt of a governmental subsidy.

The Establishment Clause prohibits the government from preferring one religion over another, or from disapproving of one or all religions. The Johnson Amendment does none of these things. Instead, it imposes a neutral condition on a government-conferred benefit that applies equally to religious and secular organizations. Any disparate impact on a particular religion arises not from governmental preference, but rather from internal religious doctrines. In an era of sharp partisan division, the Johnson Amendment is vital to preserving the Establishment Clause's core demand for government neutrality. Abandoning the Johnson Amendment risks intertwining government financial benefits with religious political endorsements, compromising the separation of church and state.

As historically understood, the Establishment Clause prohibits coercion, compelled financial support, and government sponsorship of religion. The Johnson Amendment is consistent with these longstanding limits on government involvement with religion, as it neither compels belief nor funds religious activity. Congress's attachment of a condition on the eligibility for tax-exemption regulates subsidy, not religious belief or doctrine. Religious organizations remain free to engage in political activity; they need only forgo the subsidy.

ARGUMENT

I. The Tax Anti-Injunction Act and Article III Standing Requirements Independently and Collectively Bar Covenant Truth Church's Challenge to the Johnson Amendment.

Neither Congress nor the Constitution permit Covenant Truth Church's ("Respondent") constitutional challenge to the Johnson Amendment, placing this suit beyond this Court's reach. Federal courts must decline subject matter jurisdiction where it does not exist. *Abraugh v. Altimus*, 26 F.4th 298, 304 (5th Cir. 2022). Jurisdiction is a threshold inquiry, "springing from the nature and limits of the judicial power of the United States, and is inflexible and without exception." *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884) (citation modified). Accordingly, federal courts are courts of limited jurisdiction that possess only the power authorized by the Constitution or by statute. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

Separate from these jurisdictional limitations, Article III further constrains judicial authority through the doctrine of standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Built on the idea of separation of powers, Article III standing similarly limits the judiciary's power within its proper constitutional role. *Raines v. Byrd*, 521 U.S. 811, 820 (1997). Respect for this role requires courts to refrain from proceeding on the merits for the sake of convenience and efficiency until the question of standing is settled. *See id.*

Accordingly, this Court should reverse the Court of Appeals' decision because Respondent's challenge is barred by both statutory and constitutional limits. First, the AIA strips this Court of jurisdiction over Respondent's pre-enforcement action. Second, even if the Court

had jurisdiction under the AIA, Respondent has failed to allege an imminent or credible threat of injury sufficient to establish Article III standing.

A. The Tax Anti-Injunction Act Deprives This Court of Jurisdiction Over Covenant Truth Church's Challenge of the Johnson Amendment.

Respondent's pre-enforcement challenge directly runs afoul of the congressional prohibition of such actions under the AIA. This jurisdiction-stripping statute expressly states that "no suit for the purposes of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C.A. § 7421(a) (West, Westlaw through Pub. L. No. 119-59). Even with an absence of recorded legislative history, Congress's intention is unmistakable: no action for the purpose of restraining the assessment or collection of any tax can stand. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). This prohibition serves to protect the government's need to assess and collect taxes as expeditiously as possible, with minimal pre-enforcement judicial interference. *Id.* As this Court has acknowledged, the government faces danger if the courts were to interfere in the tax collection process, which the government depends on for its continued existence. *See Taylor v. Secor*, 92 U.S. 575, 613 (1875).

The AIA forbids precisely the type of pre-enforcement relief Respondent seeks. This Court lacks jurisdiction over this action because Respondent's challenge to the Johnson Amendment would restrain the collection or assessment of taxes. Moreover, neither of the statute's narrow exceptions place Respondent's action within the Court's jurisdiction. To hold otherwise would undermine both the long-established congressional bar on pre-enforcement tax challenges and the stability of the tax system. Accordingly, this Court should not allow Respondent the opportunity to artfully circumvent the restrictions set forth by Congress.

1. The Primary Purpose of Covenant Truth Church's Pre-Enforcement Claim is to Prevent Tax Collection or Assessment.

The applicability of the AIA turns on whether the primary purpose of the suit is to prevent the collection or assessment of taxes. *See Bob Jones Univ.*, 416 U.S. at 738. When courts have addressed the AIA, they have confirmed that the statute is to be applied strictly. *See Snyder v. Marks*, 109 U.S. 189, 192 (1883) (finding the AIA applies even to illegal taxes); *Bob Jones Univ.*, 416 U.S. at 738 (holding the AIA was applicable in a suit compelling the IRS to refrain from withdrawing a university's 501(c)(3) status); *Crenshaw Cnty. Priv. Sch. Found. v. Connally*, 474 F.2d 1185, 1188 (5th Cir. 1973) (holding proceedings regarding withdrawal of tax exemption and deductibility-assurance directly involved assessment and collection of taxes). Accordingly, the AIA bars not only actions explicitly restraining the assessment or collection of taxes, but also those that would prevent the *process* leading to the assessment or collection of taxes.

The AIA strips this Court of jurisdiction because the purpose of Respondent's suit is to restrain the assessment or collection of taxes. The AIA applies even despite the assertion that an action is for purposes other than to obstruct tax collection and assessment. *See Bob Jones Univ.*, 416 U.S. at 738; *Alexander v. Ams. United*, 416 U.S. 752, 760-61 (1974). In *Alexander*, this Court rejected an argument proffered by the respondent that the AIA was not applicable because the restraint on the assessment or collection of taxes was a collateral effect of its suit. 416 U.S. at 760. In rejecting this argument, the Court reasoned that the obvious purpose of respondent's suit was to reduce the taxation of its contributors. *Id.* at 761.

In the case at bar, Respondent can attempt to bury its tax-blocking suit under the guise of a constitutional challenge to the Johnson Amendment, but it cannot hide the real-world effect of its claim. In practical terms, an injunction in favor of Respondent would effectively prevent any

potential withdrawal of its Section 501(c)(3) status and necessarily shield it from federal taxation. It follows that Respondent would not have sought an injunction against the IRS ("Petitioner") unless such relief restrained taxation upon it. *See Id.* Consequently, this case falls under the AIA, and the Court cannot entertain it.

Moreover, an allegation that a statute is unconstitutional does not allow a suit to bypass the AIA bar. *See Bailey v. George*, 259 U.S. 16, 20 (1922); *Alexander*, 416 U.S. at 759. As this Court has made clear, a "suit may not be brought to enjoin the assessment or collection of a tax because of the alleged unconstitutionality of the statute imposing it." *Dodge v. Osborn*, 240 U.S. 118, 121 (1916). If the AIA's jurisdictional bar could be overcome by a claim that a statute was unconstitutional, it would allow any taxpayer to simply characterize a tax dispute as a constitutional challenge to evade the congressional prohibition on such actions.

2. Neither Exception to the Tax Anti-Injunction Act Apply to Covenant Truth Church's Action.

There are two limited exceptions to the AIA, though Respondent cannot invoke either of them in this case. One such exception, often referred to as the *Williams Packing* exception, provides that pre-enforcement suits to collect taxes are barred unless (1) it is "clear that under no circumstances could the government ultimately prevail," and (2) "equity jurisdiction otherwise exists." *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). With respect to the first prong of the exception, a suit for an injunction may only be entertained if the government cannot establish its claim under the most liberal view of the law and facts. *Id.* This must be determined on the basis of the information available to the court at the time of the suit. *Id.*

Respondent cannot plausibly assert that there are no circumstances in which Petitioner could prevail in this matter because the Johnson Amendment has previously withstood First

Amendment challenges. *See Regan v. Tax'n With Representation of Wash.*, 461 U.S. 540, 545 (1983) (holding that conditioning 501(c)(3) status on refraining from political speech was constitutional); *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000) (holding revocation of a church's tax exemption status because it openly opposed a political candidate did not violate the First Amendment). In light of the precedent upholding the Johnson Amendment, Respondent cannot demonstrate that Petitioner has no chance of prevailing.

Even if Respondent could satisfy the first prong of the *Williams Packing* exception, its action collapses under the second prong. This prong provides that equity jurisdiction must exist in order for a pre-enforcement suit to be brought. *See Williams Packing*, 370 U.S. at 7. An essential prerequisite for injunctive relief under traditional equitable jurisdiction is the existence of irreparable injury. *United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 11 (1974). When determining whether there is an irreparable injury, courts look to whether there is an inadequacy of legal remedies. *See id.*

Equitable jurisdiction does not exist here because the Internal Revenue Code guarantees that taxpayers have the opportunity to appeal unresolved issues and challenge the position of the IRS. *See* 26 U.S.C.A. § 7123(a) (West, Westlaw through Pub. L. No. 119-59); 26 U.S.C.A. § 7803(a)(3)(D) (West, Westlaw through Pub. L. No. 119-59). This ensured opportunity has materialized through the right to raise objections in response to formal IRS actions and the right to appeal an IRS decision in an independent forum. Internal Revenue Serv., *Taxpayer Bill of Rights*, https://www.irs.gov/taxpayer-bill-of-rights#appeal. In addition, if this process is unsuccessful, an organization may seek a declaratory judgment from a federal court to challenge its Section 501(c)(3) status. *See* 26 U.S.C.A. § 7428(b)(2) (West, Westlaw through Pub. L. No. 119-59).

The AIA remains in effect even if the alternative remedy does not bring about the desired result. *See Am. Friends Serv. Comm.*, 419 U.S. at 11 (explaining that directing plaintiffs to a refund action does not remove the AIA bar despite frustrating their chosen religious practice). Simply because Respondent may not prefer the alternative remedies that have been made available, this does no negate its obligations to abide by Congress' clearly asserted limitations on pre-enforcement tax disputes.

The only remaining exception to the AIA reflects the notion that Congress did not intend to bar jurisdiction in cases where it has not provided an alternative legal avenue to challenge the validity of a tax. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). The Court has interpreted this exception narrowly, finding that it may only be invoked when there is no possibility of the aggrieved party seeking judicial review on its own behalf. *Id.* at 381.

Far from lacking recourse, Respondent has access to several alternative legal remedies provided within the Internal Revenue Code. At this stage, Petitioner has merely indicated that Respondent has been selected for a randomized audit. Its tax exemption status remains intact. R. at 5. Respondent need only wait until the audit is performed and Petitioner makes its decision in order to access the available remedies. The *South Carolina v. Regan* exception is not triggered merely by the lack of an immediate judicial remedy; rather, it applies only when there is no remedy available at all. *See* 465 U.S. at 378. Should Respondent have its Section 501(c)(3) tax-exempt status withdrawn, it may exhaust Petitioner's internal and independent appeal procedures and, if necessary, bring a suit in federal court. This Court has accepted that these review procedures offer a full opportunity to litigate the legality of Petitioner's revocation of tax-exempt status. *Bob Jones Univ.*, 416 U.S. at 746.

3. Disregarding the Tax Anti-Injunction Act Would Undermine the Jurisdictional Bar Imposed by Congress and Risks Destabilizing the Tax System.

Maintaining Respondent's action would flout the very purpose driving the enactment of the AIA almost 160 years ago: to protect both the expeditious assessment and collection of taxes and the collector from litigation pending a suit for a refund. *See Bob Jones Univ.*, 416 U.S. at 736; *Williams Packing*, 370 U.S. at 7-8. The Court has long acknowledged that the government has provided for a complete system of corrective justice, and there is no place in this system to seek relief from the court until after the money is paid. *Taylor*, 92 U.S. at 613. Taxation is necessary because money is a "vital principle of the body politic; which sustains its life and motion, and enables it to perform its most essential functions." Library of Cong.*, The Federalist Papers: Nos. 21–30*, https://guides.loc.gov/federalist-papers/text-21-30. Thus, the government's honor and orderly conduct depend upon the prompt payment of taxes. *Cheatham v. United States*, 92 U.S. 85, 89 (1875).

As this Court has cautioned, permitting actions that could delay the collection of taxes until the taxpayer's liability is resolved might "'in every practical sense operate to suspend collection of the … taxes until the litigation is ended.'" *Williams Packing.*, 370 U.S. at 8 (quoting *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943)). Such a delay risks the government's ability to fund vital aspects of society. Among other benefits, federal revenue supports the nation's health insurance programs, Social Security, and national defense activities, and contributes to payments on the federal debt. Center on Budget and Policy Priorities, *Policy Basics: Where Do Our Federal Tax Dollars Go?*, https://www.cbpp.org/research/federal-budget/where-do-our-federal-tax-dollars-go. Taxes play a critical role in providing security, infrastructure, and social services. Doron Narotzki & Tamir Shanan, *Taxing Morality: How Tax*

Law Defines Wealth, Justice, and Fairness, 41 GA. ST. U. L. REV. 943, 978 (2025). Allowing Respondent and other similarly situated claimants to circumvent the AIA risks placing this essential tax system in jeopardy.

B. Even if This Court Has Jurisdiction Under the Tax Anti-Injunction Act, Covenant Truth Church Fails to Establish Standing Pursuant to Article III.

Article III of the United States Constitution confines federal court jurisdiction to actions for which the plaintiff has met certain requirements. U.S. CONST. art. III, § 2, cl. 1. One such requirement is the doctrine of standing. *Lujan*, 504 U.S. at 560. To satisfy this requirement, Respondent must show (1) an injury in fact, (2) a causal connection between the injury and the actions of the defendant, and (3) it is likely that the injury will be redressed by a favorable judicial decision. *Id.* at 560-61. The burden of establishing this constitutional requirement lies with the party invoking federal jurisdiction. *Id.* In the case at bar, Respondent has failed to establish an injury in fact, and thus, does not have standing to bring this action against Petitioner.

Pursuant to Article III standing, an injury must be concrete and particularized and actual or imminent, not conjectural or hypothetical. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Lujan*, 504 U.S. at 560). A statute's mere existence, without enforcement or a credible threat of enforcement, does not create Article III standing. *Poe v. Ullman*, 367 U.S. 497, 507 (1961). In the pre-enforcement context, a challenger must allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). An imaginary or speculative fear of prosecution is not sufficient to bring a pre-enforcement challenge. *See Younger v. Harris*, 401 U.S. 37, 42 (1971).

A threat is not imminent if it depends on a "speculative chain of possibilities" to materialize. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013). The principle of 'imminence' is an elastic concept, but it must not be stretched beyond its purpose of ensuring the alleged injury is not too speculative. *Clapper*, 568 U.S. at 409. Accordingly, the threatened injury must be "certainly impending" to constitute an injury in fact. *Id.* In *Clapper*, this Court rejected a claim of imminent injury based on the possibility that the government would unlawfully intercept the plaintiff's communications during covert surveillance. *Id.* at 407. This allegation was found to be unpersuasive, as the chain of events that needed to materialize for that feared result to occur was too speculative and thus failed to establish that the injury was certainly impeding. *Id.* at 414.

Similar to *Clapper*, the alleged threat to Respondent is not imminent because its pre-enforcement challenge to the Johnson Amendment depends on a series of uncertain future events. At present, Petitioner has neither conducted the audit nor revoked Respondent's Section 501(c)(3) status. R. at 5. For Respondent's feared injury to materialize, Petitioner would have to conduct the audit, discover Respondent's political activity, and then choose to enforce the Johnson Amendment against it.

This chain of events has progressed beyond speculation because Petitioner has explained that it will not enforce the Johnson Amendment against houses of worship. *See* U.S. Opp. to Mot. To Intervene, *Nat'l Religious Board v. Long*, No. 6:24-cv-00311, 2025 WL 2555879 (E.D. Tex. July 24, 2025). This consent decree enjoins the government from enforcing it "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services." *Id.* This exception granted by the government ensures that Respondent's weekly podcast would be insulated from

the Johnson Amendment's restraint on Section 501(c)(3) organizations' political involvement. In the modern age of technology, religious leaders are no longer confined to the physical pulpit. Respondent utilizes the podcast to deliver sermons, provide spiritual guidance, and educate listeners. R. at 4. All features that are consistent with a communication on matters of faith. As a result, Respondent would fall within the scope of this exception and would be able to continue its religious practices without risk of the Johnson Amendment being enforced against it.

II. The Johnson Amendment is Constitutional.

The First Amendment expressly provides that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. This foundational principle has been interpreted broadly, forbidding more than a bar on a congressional enactment establishing a church. *See McGowan v. State of Md.*, 366 U.S. 420, 442 (1961). In particular, this Court has explained that the "clearest command" of the Establishment Clause is that the government may not officially prefer one religious denomination over another. *Larson v. Valente*, 456 U.S. 228, 244 (1982). Accordingly, the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

This Court should reverse the lower court's decision because the Johnson Amendment does not violate the Establishment Clause of the First Amendment. First, the Johnson Amendment preserves the neutrality called for by the Establishment Clause by applying uniformly to religious and secular organizations. Second, the Johnson Amendment aligns with the Nation's history and tradition. Third, the Johnson Amendment conditions a government subsidy on secular criteria, not religious belief or doctrine.

A. The Johnson Amendment Adheres to the Establishment Clause Because It Preserves Neutrality.

The Establishment Clause demands "[t]he government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). This principle of neutrality provides that neither the state nor the federal government may, in part, "pass laws which aid one religion, aid all religions, or prefer one religion over the other." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). A governmental policy is neutral if it is not specifically directed at religious practice. *See Emp. Div. v. Smith*, 494 U.S. 872, 878 (1990). Furthermore, in enacting law, the government cannot regulate religious theory, doctrine, or practice. *See Epperson v. State of Ark.*, 393 U.S. 97, 103-04 (1968).

In line with this constitutional framework, the Johnson Amendment imposes uniform restrictions on all tax-exempt organizations, regardless of their religious or secular nature. The equal application of these restrictions preserves the government's constitutionally required neutrality towards religion. This procedural framework of neutrality is essential to maintaining the separation of church and state, as called for by the Establishment Clause.

1. The Johnson Amendment Applies Uniformly to All Section 501(c)(3) Organizations.

In adherence to the Establishment Clause, the Johnson Amendment applies uniformly to religious and secular non-profit organizations. Codified within Section 501(c)(3) of the Internal Revenue Code, the Johnson Amendment provides that organizations, religious or secular, are exempt from taxation so long as they do not participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. 26 U.S.C.A. § 501(c)(3) (West, Westlaw through Pub. L. No. 119-59). An organization's eligibility for the tax exemption thus turns on whether it intervenes in a political campaign. *See Branch Ministries v. Rossotti*, 211 F.3d

137, 141 (D.C. Cir. 2000). This criterion demonstrates that the Johnson Amendment does not call on Petitioner to differentiate between religious or secular organizations. Rather, it simply imposes a neutral consequence on *any* organization, secular or otherwise, that involves itself in the political landscape.

Even if the Johnson Amendment has an incidental effect or disparate impact on a religion, such an effect does not violate the Establishment Clause. This Court has recently recognized that the Establishment Clause does not require laws to burden all religions equally. *McGowan*, 366 U.S. at 442. Accordingly, neutral laws may affect religions differently without constituting an unconstitutional preference. *Cath. Charities Bureau v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250 (2025). Therefore, the Fourteenth Circuit erred in concluding that the Johnson Amendment favors religions whose tenets do not require political involvement over those that do. The impact on religious organizations that require political involvement, such as Respondents, is merely incidental, and any resulting impact stems from internal religious mandates, not government favoritism.

The Johnson Amendment is a neutral law that places the same restriction on religious and secular organizations. As such, it does not trigger a heightened level of scrutiny. This Court has explained that when a law grants a denominational preference, the law must be treated as "suspect" and evaluated under strict scrutiny. *Larson*, 456 U.S. at 246. Strict scrutiny therefore applies where eligibility for a benefit turns on "inherently religious choices," but not where it depends on "secular criteria." *See Cath. Charities Bureau*, 605 U.S. at 238. Here, eligibility for the Section 501(c)(3) tax exemption depends only on whether the organization intervenes in a political campaign, and thus does not implicate a heightened level of scrutiny.

2. The Johnson Amendment is Vital for Maintaining the Neutrality Demanded by the Establishment Clause.

Prohibiting the enforcement of the Johnson Amendment would erode the neutrality that the Establishment Clause has protected for over two centuries. As explained in *Zorach*, "[t]here cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated." 343 U.S. at 312. Thus, while the First Amendment erected a wall between Church and State, it does not require that separation exist in every and all respects. *See Id.* Rather, it defines the manner and specific ways in which there shall be no concert, union, or dependency between them. *Id.*

The Johnson Amendment's neutral condition on tax-exempt status ensures that religious and secular organizations abstain from partisan political activity. Removing this prohibition could permit tax-subsidized religious political endorsements and risk the creation of a dependency between the two institutions by tying the government-conferred financial benefit to partisan religious activity. Scholars have noted that courts are concerned that the entanglement of religion and politics threatens neutrality because it risks political divisiveness rooted in faith and encourages voting based on religious affiliation. Jake S. Neill, *Who Let the Ghouls Out? The History and Tradition Test's Embrace of Neutrality and Pluralism in Establishment Cases*, 51 PEPP. L. REV. 325, 336 (2024). In this way, conditioning tax-exemption status to prevent religious campaign activity helps safeguard against the dependency the Establishment Clause was intended to avoid.

Additionally, the Johnson Amendment prevents religions from becoming political instruments. Absent the Johnson Amendment's prohibition against political interference, politicians and lawmakers would be free to seek religious endorsements in return for political

support. Scholars have noted that deregulation of the Johnson Amendment could result in non-profit organizations being forced to redirect significant funds from their missions to political spending in order to retain the favor of lawmakers. Whitney Untiedt, *Lighting the Way: The Johnson Amendment Stands Strong against Dark Money in Politics*, 6 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. 37 (2019). By maintaining a clear boundary between Section 501 (c)(3) tax-exemption status and partisan political activity, the Johnson Amendment protects the constitutionally required neutrality of the government.

B. The Johnson Amendment Does Not Violate the Establishment Clause Under the Nation's History and Tradition.

The Establishment Clause must be interpreted by "reference to historical practices and understandings." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (citing *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). The line between what government action is permissible and what is not must accord with history and reflect the understanding of the Founding Fathers. *Kennedy*, 597 U.S. at 536. A practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change does not violate the Establishment Clause. *See Town of Greece*, 572 U.S. at 577. Where history shows that a practice is permitted, the Establishment Clause does not call for a precise boundary to be defined. *Id.* The condition imposed by the Johnson Amendment is consistent with this framework because it neither resembles historical forms of religious establishment nor deviates from longstanding traditions of conditioning federal subsidies.

1. The Johnson Amendment Does Not Resemble the Historical Forms of Religious Establishment Prohibited by the First Amendment.

The determination of whether a law is one 'respecting the establishment of religion' requires understanding the meaning of that language. *Everson*, 330 U.S. at 8. Historically, the

'establishment of religion' connoted "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 668 (1970). The Establishment Clause was adopted against a backdrop of compelled support for government-favored churches, religious persecution, and the forced payment of tithes and taxes to support ministers and to build and maintain churches. *See Everson*, 330 U.S. at 10-11. The Framers purpose in drafting the Establishment Clause was to "assure that the national legislature would not exert its power in the service of any purely religious end." *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 234 (1963) (Brennan, J., concurring).

The Johnson Amendment bears no resemblance to these historical establishments. It involves no coercion of belief or governmental endorsement of any particular religion. Pursuant to historical understandings of the Establishment Clause, coercion has been a defining trait of the religious establishments the Framers sought to prohibit. *See Kennedy*, 597 U.S. at 537. Members of the Court may disagree as to what constitutes coercion in violation of the Establishment Clause. *Compare Lee v. Weisman*, 505 U.S. 577, 593 (1992) (finding that inviting a religious leader to pray at graduation exerts public and peer pressure as real as overt compulsion), *with id.* at 640 (Scalia, J., dissenting) ("[h]allmark of historical establishments of religion was coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*"). However, it is evident that even under any definition articulated by this Court, no such coercion exists within the Johnson Amendment.

Section 501(c)(3) does not direct organizations to adopt or abandon any specific religious belief. Instead, the statute places a condition on the eligibility for a governmental benefit. Under the Johnson Amendment, Respondent and any other religious or secular non-profit organization are free to engage in political campaigns. They simply may not do so while maintaining a

government subsidy. Any pressure an organization experiences under the Johnson Amendment does not arise from governmental compulsion, but from its own decision on whether to accept the limitations on the voluntary benefit.

The absence of coercion is further demonstrated by the availability of another route to obtaining tax-exempt status for organizations that wish to engage in political activity. Section 501 (c)(4)(A) of the Internal Revenue Code provides tax-exempt status for organizations operated exclusively for the promotion of social welfare. 26 U.S.C.A. § 501(c)(4)(A) (West, Westlaw through Pub. L. No. 119-59). Under this statute, an organization may participate in political activity without risking its tax-exempt status. *See Regan v. Tax'n With Representation of Wash.*, 461 U.S. 540, 543 (1983). Thus, the availability of an alternative pathway confirms that organizations wishing to maintain tax-exempt status need only pursue this benefit under a different statutory classification.

2. The Johnson Amendment is Consistent with the Nation's History of Conditioning Governmental Subsidies.

The Johnson Amendment fits squarely within a longstanding American tradition of attaching conditions, limitations, and eligibility criteria on government subsidies. STAFF OF THE H. COMM. ON AGRIC., 97TH CONG., GOVERNMENT SUBSIDY: HISTORICAL REVIEW 1-2 (Comm. Print 1958). From the beginning, federal subsidies functioned as tools to advance the aims and purposes of the government, and not as unconditional entitlements. *See id.* Early programs demonstrate that Congress has exercised authority over federal financial assistance under which benefits were conferred. *See id.* at 7-8.

Throughout this nation's history, Congress has placed conditions on government-conferred benefits. For instance, Congress has exercised its Spending Clause authority by

attaching conditions to federal financial assistance, treating such programs as agreements in which recipients accept specified obligations in exchange for government funds. Shariful Khan, *An Expansive View of "Federal Financial Assistance,"* 133 YALE L.J. 695 (2024). Congress has used its power to condition grants to states and private actors on ongoing compliance with statutory requirements, including antidiscrimination mandates under civil rights laws such as Title VI, Title IX, and Section 504 of the Rehab Act, for as long as federal funding is accepted. *Id.* Viewed in this context, the Johnson Amendment reflects a longstanding practice of conditioning government subsidies on compliance with specified requirements.

C. The Johnson Amendment Regulates a Governmental Subsidy, Not Religious Belief or Doctrine.

Tax-exemption status under Section 501(c)(3) is a discretionary benefit granted by Congress, not a constitutional entitlement. A tax exemption is a form of governmental subsidy that is administered through the tax system. *Regan.*, 461 U.S. at 544. The effect of which is the same as a cash grant in the amount of tax it would have to pay on its income. *Id.* As this Court explained in *Regan*, tax exemptions are a "'matter of grace [that] Congress can, of course, disallow … as it chooses.'" *Id.* at 549 (quoting *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958)). Thus, tax-exempt status is discretionary, and the legislature is free to place regulations on it without necessarily implicating the Establishment Clause.

While the Establishment Clause forbids the government from promoting or disapproving of religious doctrine, it does not immunize religiously motivated conduct from neutral regulation. While the legislature has no power over one's beliefs, it is free to regulate actions. *Reynolds v. United States*, 98 U.S. 145, 164 (1878). Likewise, the Establishment Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize

with the tenets of some or all religions. *McGowan*, 366 U.S. at 442. An assertion that a statute does not align with a particular religious belief should not, by itself, render the statute unconstitutional.

The Johnson Amendment falls within these boundaries because it conditions tax-exempt status solely on an organization's participation in electoral campaigns, without consideration of religious doctrine. As this Court has established, the restrictions imposed by Section 501(c)(3) prohibit the act of intervening in favor of political candidates, regardless of the ideology or the religious beliefs driving the organization. *See Branch Ministries*, 211 F.3d at 144. In *Catholic Charities*, the Court considered a Wisconsin statute that provided tax exemptions for organizations operated primarily for religious purposes. 605 U.S. at 241. The Court held that the statute violated the Establishment Clause because it granted a denominational preference by differentiating along theological lines, such as whether the organization proselytized or served only co-religionists. *Id.* at 250. Unlike the statute in *Catholic Charities*, enforcement of the Johnson Amendment does not turn on the examination of an organization's mission or belief system. As such, the Johnson Amendment comports with the Court's interpretation of the Establishment Clause.

Moreover, conditioning the revocation of tax-exempt status on such criteria does not constitute denominational preference. Rather, it reflects Congress's decision not to subsidize an organization's political advocacy. There is undoubtedly a First Amendment right to discuss governmental affairs. *See Mills v. State of Ala.*, 384 U.S. 214, 218 (1966). However, this right is not infringed merely because Congress has chosen not to pay for it. *See Cammarano v. United States*, 358 U.S. 498, 513 (1959). Congress does not violate the First Amendment by declining to subsidize First Amendment activity absent invidious discrimination. *Branch Ministries*, 211 F.3d

at 143–44. The Internal Revenue Code simply requires organizations to pay for their engagement with constitutionally protected activities "entirely out of their own pockets, as everyone else engaging in similar activities is required to do." *Cammarano*, 358 U.S. at 513. Accordingly, there is no reading of the Johnson Amendment that supports a finding that it regulates religious belief or doctrine. A mere incidental effect on a particular religion does not render the Johnson Amendment unconstitutional.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the decision of the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

/s_____

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