No. 26-1779

In the Supreme Court of the United States

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

Petitioner,

v.

COVENANT TRUTH CHURCH,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

BRIEF FOR PETITIONER

TEAM NUMBER 17
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.
2. Whether the Johnson Amendment's prohibition of political-campaign intervention violates the Establishment Clause of the First Amendment.

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The opinion of the United States Court of Appeals for the Fourteenth Circuit, R. at 1–15, (No. 26-1779) is unreported. The opinion of the United States District Court for the District Court of Wythe, (USDC No. 5:23-cv-7997) is also unreported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on August 1, 2025. The petition for a writ of certiorari was timely filed and granted on November 1, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISONS AND STATUES INVOLVED

This case involves the following statutory and regulatory provisions, the relevant portions of which are included in the Appendix:

26 U.S.C. § 501(c)(3)

26 U.S.C. § 501(c)(4)

26 U.S.C. § 7421(a)

U.S. CONST. amend. I

U.S. CONST. art. III, § 2, cl. 1

STATEMENT OF THE CASE

The Anti-Injunction Act

In 1937, Congress passed the Tax Anti-Injunction Act ("AIA"), seeking to "limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes" by disallowing parties from seeking injunctive relief against incoming tax collections. 26 U.S.C.A. § 7421; *Unfortunate Son, Ltd. v. Wilkins*, 406 F. Supp. 2d 839, 843 (N.D. Ohio 2005). The AIA states that "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 the tax was assessed." 26 U.S.C.A. § 7421; R. at 12. Over time, very narrow judicial exceptions arose, such as the *Williams Packaging* exception, and allowance of parties to seek injunctive relief when there is no adequate remedy at law. R. at 12-13.

Johnson Amendment

The Johnson Amendment, passed in 1954, exempts non-profit organizations from tax liabilities so long as they refrain from publicly involving themselves in political campaigns. R. at 15; 26 U.S.C.A. § 501(3). Courts have consistently upheld its constitutionality. R. at 15-16. In 2025, the IRS entered a consent decree which stated that they will not enforce the Johnson Amendment as long as "house[s] of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services." R. at 14.

Consent Decree

The IRS entered into a consent decree before this litigation commenced stating that it will not enforce the Johnson Amendment "[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." R. at 14.

Proceedings Below

The IRS ("Petitioner") issued a random, routine tax audit of Covenant Church's ("Respondent") Section 501(c)(3) tax status on May 1, 2024. R. at 5. This random audit came after Pastor Vale encouraged his listeners to support Congressman Samuel Davis in an upcoming special election in the state of Wythe, via his weekly podcast. R. at 5. Pastor Vale also announced that he

would give a series of sermons explaining how Congressman Davis's stances were consistent with the Covenant Church's teachings. R. at 5. Covenant Church then filed a suit on May 15, 2024, seeking a permanent injunction against the enforcement of the Johnson Amendment before the IRS began its audit, alleging that the Johnson Amendment was unconstitutional. Courts have repeatedly upheld the constitutionality of the Johnson Amendment. R. at 15-16. The District Court of Wythe ruled in favor of Respondent, and Petitioner appealed to the United States Court of Appeals for the Fourteenth Circuit.

On appeal, a single judge, Judge Washington writing for the Court (1) held appellees suit was not barred by the AIA (2) that the Respondents met the requirements for standing (3) that the Johnson Amendment was unconstitutional and accordingly upheld the judgement of the District Court. R 6-11. Judge Marshall dissented to all of these points, reasoning that Respondents suit was barred by the AIA, lacked standing requirements and that the Johnson Amendment was constitutional. R. at 12-16. Judge Marshall reasoned that (1) that the AIA applied because the Respondent did not meet any of the narrow exceptions to the AIA (2) Respondent's claim was too hypothetical and non-imminent to amount to Article III standing (3) the Johnson Amendment was constitutional because the Johnson Amendment precedent favored its constitutionality. R. at 12-16.

Respondent then appealed, and this Court granted certiorari. R. at 17.

SUMMARY OF ARGUMENT

1. This suit should be dismissed for lack of jurisdiction. The Anti-Injunction Act bars any "suit for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). That bar applies to pre-enforcement efforts to prevent the IRS from revoking § 501(c)(3) status. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 742 (1974). Respondent cannot satisfy the narrow

Williams Packing exception because it is not "clear that under no circumstances could the Government ultimately prevail," and equity relief is improper where Congress has provided post-enforcement review. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). Nor can Respondent invoke *South Carolina v. Regan*, because adequate avenues for review exist once the IRS makes an adverse determination. 465 U.S. 367, 373–80 (1984). Bad faith collections are also not sufficient to relieve the Respondent of demonstrating the applicability of either of the two limited exceptions to the AIA. Because Respondent fails to allege sufficient facts showing that either of the two limited exceptions to the AIA are applicable, this Court should reverse the appellate court's judgement.

Even if the AIA did not apply, Respondent cannot show Article III standing without "a concrete or particularized injury." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 559-60 (1992). Here, the potential likelihood of Respondent losing its tax-exempt status does not constitute a sufficient injury. A random audit conducted by the IRS is a routine procedure that will not lead to irreparable harm. Courts have held that such a harm is speculative at best. Further, when parties can avail themselves of relief with additional remedies, the AIA governs. This Court has recognized that revocations of tax-exempt status can be remedied internally through the IRS.

Assuming Respondent meets the "concrete and particularize" threshold, the potential harm in this case is not imminent. The consent decree protects speech and communication made through podcasts. Absent an official audit, coupled with the fact that the IRS has enforced the Johnson Amendment on extremely rare occasions, imminence is particularly lacking.

The claim is also unripe independently. Tax classifications have been consistently held to lack ripeness. Here, a hypothetical tax liability does not warrant judicial review. Holding otherwise may open the floodgates to non-justiciable claims and strip deference from the IRS and the

government's taxing powers. Since Respondent lacks the requirements for standing, this Court should find that their claim is without merit and reverse the appellate court's judgement.

2. The Johnson Amendment's prohibition of religious organizations remains valid under the First Amendment's Establishment Clause. Even though the First Amendment provides that the government cannot establish or favor religion, *see McGowan v. Maryland*, 366 U.S. 420, 443 (1961), some level of government interference with religious activities has always been permissible by this Court. Under *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Comm.*, 605 U.S. 238, 246 (2025), this Court has held that a regulation is valid under the Establishment Clause when it turns on secular criteria. As explicitly stated in the Johnson Amendment, the IRS's purpose is to regulate political conduct to determine tax-exemption status, which constitutes a secular activity. Accordingly, the Johnson Amendment does not seek to inquire into one's religious beliefs, and in turn lacks denominational preferences.

In this case, the Johnson Amendment applies to all non-profit organizations, both religious and non-religious alike. Such broad regulations have been held to be sound under the Establishment Clause since they do not single out a specific religious practice. Universal provisions, like the Johnson Amendment, meet the standard of "benevolent neutrality." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 669 (1970). Though a regulation may interfere with a religious practice, it does not trigger an Establishment Clause claim. Infringement on one's free exercise rights is permissible so long as the government as a compelling interest. With the Johnson Amendment primarily concerned with secular activity, any incidental effect that may occur remains valid.

Although the First Amendment establishes that church and State shall remain separate, this Court has afforded deference to legislatures. Interactions between state and religious groups are

inevitable, thus, government interreference is authorized if it is not excessive. Here, the relationship between tax exemptions and religious groups do not constitute as invasive interreference. Holding otherwise would imply that the separation of church and State are absolute, which this Court has denied. More significantly, tax regulations are recognized as a necessity to maintain the integrity of a tax system. Further, even if Respondent were to prove a burden exists here, they are entitled to alternative remedies by filing under different tax codes.

ARGUMENT

I. RESPONDENT LACKS STANDING UNDER BOTH THE TAX ANTI-INJUNCTION AND ARTICLE III TO CHALLENGE THE JOHNSON AMENDMENT

This case should begin and end with jurisdiction. Congress adopted the AIA to prevent precisely what Respondent seeks here: a pre-enforcement injunction that would prevent the IRS from administering and enforcing the tax laws' assessment and collection provisions. The AIA is "all-encompassing," and it reflects Congress's deliberate choice to channel disputes over federal tax obligations into post-enforcement review. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736–46 (1974). Respondent's lawsuit, filed before any assessment, before any adverse determination, and before the IRS has even begun its audit, attempts to subvert that structure. This Court should decline to treat a standard audit notice as a basis for enjoining the Internal Revenue Code.

Respondent cannot squeeze this suit into either of the narrow paths this Court has recognized around § 7421(a). Under *Williams Packing*, an injunction is permissible only when it is clear, under any view of the law and facts, that the Government cannot prevail and when equity independently supports relief. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962). Respondent cannot satisfy either prong. At a minimum, the Government's position is "sufficiently debatable" to defeat the *Williams Packing* exception and foreclose pre-enforcement relief. *Bob*

Jones Univ., 416 U.S. at 749; *see also Branch Ministries v. Rossotti*, 211 F.3d 137, 142–44 (D.C. Cir. 2000). And the only injury Respondent posits is the possibility of future tax consequences and related financial effects, exactly the kind of remediable harm this Court has held does not constitute irreparable injury for purposes of bypassing the AIA. *Bob Jones Univ.*, 416 U.S. at 747–48. Nor does *South Carolina v. Regan* assist Respondent: unlike the plaintiff there, Respondent has ample post-enforcement avenues to litigate any constitutional objections, including administrative review and refund litigation. 465 U.S. 367, 373–80 (1984); *United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 10–11 (1974) (per curiam).

Even if the AIA did not foreclose jurisdiction, Article III does. Respondent's theory rests on a highly attenuated chain of contingencies: a routine audit *might* uncover a violation; the IRS *might* elect to enforce; enforcement *might* result in revocation; and any revocation *might* produce downstream financial effects. That is not an injury that is "*certainly impending*." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409–14 (2013) (emphasis added). The claim is unripe for the same reason: there is no final agency action, no assessment, and no concrete enforcement posture in which a constitutional question can be evaluated against an actual record. *See Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003). Entertaining this suit now would transform federal courts into supervisors of ordinary tax administration, adjudicating unripe issues, untethered to any completed enforcement decision. The judgment below should be reversed, and the case remanded with instructions to dismiss for lack of jurisdiction.

A. THE SUIT MUST BE DISMISSED FOR LACK OF JURISDICTION BECAUSE THE AIA BARS PRE-ENFORCEMENT CHALLENGE

The AIA establishes a broad jurisdictional rule that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." 26 U.S.C. § 7421(a).

This Court has repeatedly described the Act as "all-encompassing," permitting pre-enforcement relief only within narrow and carefully limited exceptions. *Bob Jones Univ.* 416 U.S. at 742.

Respondent falls within neither exception. *Williams Packing* applies only when it is clear the Government cannot prevail. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962). *Regan* applies only when Congress has provided no alternative avenue for judicial review. *South Carolina v. Regan*, 465 U.S. 367, 373–80 (1984). Allegations of bad faith do not excuse Respondent from meeting the stringent requirements of either AIA exception. Because Respondent fails to allege sufficient facts showing that either of the two limited exceptions to the AIA are applicable, this Court should reverse the appellate court's judgement and remand for further proceedings.

1. The AIA Bars Respondent From Seeking an Injunction Because Respondent Cannot Satisfy the Narrow *Williams Packing* Exception

Respondent fails to show any facts sufficient to meet the *Williams Packing* exceptions to the AIA's bar on pre-enforcement injunctive relief. To circumvent the AIA, Respondent must show both that (1) they are both guaranteed to succeed on the merits and that (2) they stand to suffer irreparable harm in the absence of injunctive relief. *See Williams Packing*, 370 U.S. at 7. Respondent satisfies neither requirement. Its constitutional challenge to the Johnson Amendment is, at minimum, debatable, and any alleged harm from potential tax enforcement is purely financial and fully remediable through post-enforcement review. Because Respondent cannot meet either prong of the *Williams Packing* test, the AIA requires dismissal of this pre-enforcement challenge.

i. *Respondent Is Not Guaranteed to Succeed on the Merits Because it is Uncertain if they Are Entitled to an Injunction*

The AIA's judicial exception in *Williams Packing* permits a pre-enforcement tax injunction only in the extraordinary circumstance where it is certain that "under the most liberal view of the

law and the facts, the United States cannot establish its claim." *Williams Packing*, 370 U.S. at 7. Here, even under the most liberal view of the law and facts Respondent fails to demonstrate that the Government has no chance at prevailing on the merits, because the Government has already prevailed in closely factually analogous scenarios. In *Bob Jones University*, this Court rejected a petition for a pre-enforcement injunction preventing the IRS from assessing tax liability, holding that "petitioner's First Amendment, due process, and equal protection contentions [were] sufficiently debatable to foreclose any notion that 'under no circumstances could the Government ultimately prevail.'" *Bob Jones Univ.*, 416 U.S. at 749 (1974). The same is true here. Respondent cannot show a certainty of victory on the merits. Every court to consider the Johnson Amendment's constitutionality has upheld it. Respondent's Establishment Clause theory is, at the very least, open to debate, which means the Government plainly retains some chance of ultimately prevailing. That ends the matter because the Government's legal position is not frivolous or foreclosed, and the AIA's bar remains "all-encompassing." *Id.* at 742 (rejecting the notion of any extra-statutory exceptions beyond the *Williams Packing* test).

Multiple lower courts have likewise recognized that pre-enforcement challenges to potential loss of tax benefits do not satisfy the *Williams Packing* standard. For example, in *Judicial Watch, Inc. v. Rossotti*, the Fourth Circuit held that a suit seeking to halt IRS action was barred by the AIA, emphasizing that the *Williams Packing* exception is "construed . . . very narrowly" and does not apply absent a showing that the Government's position is clearly without merit. 317 F.3d 401, 408–09 (4th Cir. 2003). The Ninth Circuit held that injunctive relief was unavailable under the AIA where the plaintiff merely speculated that a tax was unconstitutional, explaining that "the Supreme Court now recognizes a single, narrow judicial exception to the Anti-Injunction Act." *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1485 (9th Cir. 1990). The D.C.

Circuit reached the same conclusion in *Branch Ministries v. Rossotti*, that the church's First Amendment and statutory arguments were not so ironclad as to preclude the government from prevailing, and thus, injunctive relief was unavailable under the AIA. 211 F.3d 137 (D.C. Cir. 2000) (challenge to revocation of 501(c)(3) following political campaign). In short, Respondent here, like the plaintiffs in *Bob Jones University*, *Branch Ministries*, and similar cases, has not shown (and cannot show) the absence of a viable government claim. On that ground alone, the AIA's jurisdictional bar remains in force.

ii. *Respondent Faces No Irreparable Injury from the Purported Tax Enforcement*

The *Williams Packing* test also requires that "equity jurisdiction otherwise exists," which means that the plaintiff must show traditional grounds for equitable relief, including irreparable harm. Respondent cannot meet that requirement. 370 U.S. at 7. The only harm Respondent claims is the potential loss of its tax-exempt status if the IRS eventually enforces the Johnson Amendment against it. But such monetary and incidental injuries have never been considered irreparable. In *Bob Jones University*, the Court held that the loss of contributions and imposition of income tax pending a refund suit did not constitute irreparable injury. 416 U.S. at 747–48. The D.C. Circuit similarly found that "[t]he sole effect of the loss of the tax exemption will be to decrease the amount of money available to the Church for its religious practices," which is not an irreparable harm warranting an injunction. *Branch Ministries*, 211 F.3d at 142. In sum, having to pay a tax (or losing a financial benefit) is the price of admission for post-enforcement review, not a basis for bypassing the AIA. If it were otherwise, every tax plaintiff could plead "irreparable harm" from the very fact of a tax liability, eviscerating the Act's core purpose.

Respondent also cannot transform its claimed injury into an irreparable constitutional harm. In *Church of Scientology of California v. United States*, a religious organization argued that an IRS audit and potential tax assessment violated the First Amendment, and thus an injunction should issue. 920 F.2d 1481 (9th Cir. 1990). The Ninth Circuit rejected that plea, holding that mere allegations of unconstitutional motivation or effect do not bypass the AIA absent the *Williams Packing* exception. *See id.* at 1485. The same principle applies here. Until and unless the tax law is enforced against Respondent, any alleged chilling of speech is conjectural, and if enforcement were to occur, Respondent could raise its First Amendment arguments in the proper posture through a refund suit or other post-enforcement review. Furthermore, IRS has already entered into a consent decree stating it will not enforce the Johnson Amendment against houses of worship under certain circumstances Respondent likely satisfies. R. at 14. Because Respondent cannot show harm that cannot be adequately addressed through later judicial review, it fails to satisfy the irreparable-harm requirement of *Williams Packing*.

2. Adequate Alternative Remedies Exist for Respondent's Claims

Because sufficient remedies at law exists the AIA remains applicable and therefore bars Respondent's suit. This Court has recognized only a narrow exception to the AIA where a plaintiff has "no alternative avenue" to litigate its legal objections to a tax. *South Carolina v. Regan*, 465 U.S. 367, 373–80 (1984). That exception has no application here.

Unlike the plaintiff in *Regan*, which lacked taxpayer status and thus had no way to trigger post-enforcement review, Respondent and similarly situated organizations have well-established remedies. In *United States v. American Friends Service Committee*, this Court rejected a religious organization's attempt to enjoin IRS action, holding that the AIA barred the suit because the organization could pay the tax and sue for a refund. 419 U.S. 7, 10–11 (1974) (per curiam)

(explaining that a religious organization could not seek injunctive relief because adequate remedies at law existed and therefore the AIA applied).

Lower courts have applied that principle consistently. The Fourth Circuit has held that a church challenging an IRS audit had an adequate remedy at law, including the ability to "resist the audit, force the IRS to initiate a summons enforcement proceeding, and then challenge the validity of the audit in that forum," to "pursue an internal appeal," to "pay the tax in full and sue for a refund," "contest the deficiency in Tax Court," and to "contest IRS actions during the collection process." *Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401, 410 (4th Cir. 2003). Because those avenues were available, the court held that the Anti-Injunction Act barred the suit. *Id.* Courts have likewise recognized that it is a "perfectly valid remedy . . . to pay the tax under protest and then seek a refund." *Int'l Lotto Fund v. Virginia State Lottery Dep't*, 20 F.3d 589 (4th Cir. 1994); *see also Hansen v. Dep't of Treasury*, 528 F.3d 597, 602 (9th Cir. 2007). Here, Respondent may avail themselves of the same remedies. If the IRS were ever to assess tax liability or revoke Respondent's tax-exempt status, Respondent could pursue administrative review, contest the assessment in Tax Court where available, or pay the tax and seek a refund in federal court, raising the same constitutional arguments it presses now. Because those avenues for review exist, the AIA bars Respondent's pre-enforcement suit.

3. Even If the Random Audit Qualifies as a Bad-faith Tax Collection, It Does Not Fall Under the Exceptionally Narrow AIA Exception

Respondent points to no evidence of bad faith or malfeasance tainting the Government's randomly selected audit, and even if they could, bad faith motives do "not render the [AIA] inapplicable." *See Jud. Watch, Inc.,* 317 F.3d at 406. To supersede the AIA, Respondent must either demonstrate that they qualify for "qualifies for one of two exceptions to the Anti–Injunction

Act [the *Williams Packing* exception or that no adequate remedy at law exists], or they must show that the Service's action was without an independent basis in the requirements of the [tax] [c]ode." *Bob Jones Univ.*, 416 U.S. at 740 (refusing to probe IRS's motives and finding the AIA applicable where the agency acted in good-faith pursuance of the tax code's requirements). Here, conducting a randomly selected routine audit of an organization with § 501(c)(3) tax-exempt status falls squarely within an "independent basis" of the tax code, and is a textbook example of the IRS performing its statutory duties. Accordingly, because the audit rests on an independent statutory basis and Respondent cannot satisfy either exception to the AIA, the Act's bar applies in full.

B. EVEN IF THE AIA DID NOT APPLY, RESPONDENT LACKS ARTICLE III STANDING

Even aside from the statutory bar, Respondent's suit failed at the threshold because it does not present the "case or controversy" required by Article III. U.S. CONST. art. III, § 2, cl. 1. To establish Article III standing, a plaintiff must show a concrete and particularized injury that is actual or "certainly impending." *Lujan*, 504 U.S. at 560–61; *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). This Court has cautioned that the standing inquiry is "especially rigorous" where reaching the merits would require deciding the constitutionality of actions taken by a coordinate branch of the Federal Government. *Clapper*, 568 U.S. at 408. Respondent cannot meet that basic requirement here. Its alleged injury is both too abstract and too speculative to support standing. At best, Respondent seeks adjudication of the constitutionality of a tax law that has never been applied to it, based on a conjectural chain of future events and an amorphous notion of "chill" on its speech. That is precisely the kind of hypothetical grievance Article III forbids federal courts from adjudicating. For these reasons Respondent lack Article III standing and this Court should reverse the judgement of the appellate court.

1. Respondent's Claimed Injury Is Not Concrete or Particularized as the IRS Has Only Requested a Random Audit

The only harm Respondent asserts is the potential loss of its favorable tax status at some indefinite point in the future, which could in turn reduce its donations or funding. That theory of injury is neither concrete nor particularized to Respondent in the way Article III requires. Respondent identifies no present injury and no imminent interference with its operations; instead, it relies on a chain of hypothetical contingencies that is insufficient to establish standing. *See Clapper*, 568 U.S. at 409. At best, Respondent's theory depends on a series of attenuated steps: a randomly selected audit might uncover a violation; the IRS *might* choose to enforce a rarely enforced provision[1]; enforcement *might* result in revocation of tax-exempt status; and that revocation *might* cause financial harm. Such "speculative" and "conjectural" possibilities do not amount to an injury in fact. *Id.* at 420. Courts have consistently rejected standing theories that rest on unspecified, contingent consequences affecting tax-exempt status. *See, e.g.*, *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976); *Iowaska Church of Healing v. Werfel*, 105 F.4th 406, 413 (D.C. Cir. 2024).

Moreover, even if Respondent did lose its tax exemption down the road, that injury would be a financial or social setback, not the invasion of a legally protected interest of the sort that confers standing. As the D.C. Circuit has explained, an alleged harm that amounts only to "a setback to the organization's abstract social interests," rather than a "concrete and demonstrable injury to the organization's activities" is insufficient for Article III standing. *Nat'l Taxpayers*

[1] Indeed, in the seventy years since the Johnson Amendment's enactment, only a single church has had its tax-exempt status revoked for violating the provision. *See* Jeremy Schwartz & Jessica Priest, *Churches are breaking the law and endorsing in elections, experts say. The IRS looks the other way.*, TEX. TRIB., (Oct. 30, 2022, at 05:00 CT), https://www.texastribune.org/2022/10/30/johnson-amendment-elections-irs/.

Union, Inc. v. United States, 68 F.3d 1428, 1433 (D.C. Cir. 1995). There, the court denied standing because the organization identified no specific program curtailed and no concrete interference with its activities. *See id.*; *see also American Legal Foundation v. FCC*, 808 F.2d 84, 91 (D.C. Cir. 1987). Here, Respondent's showing is weaker: it has not lost its tax exemption, and it identifies no concrete activity that has been curtailed, canceled, or impeded in any way. Such an abstract interest in the government following the law is exactly what does not count for standing purposes. *See Lujan*, 504 U.S. at 573–74 ("[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws—does not state an Article III case or controversy."). Accordingly, Respondent has failed to demonstrate a concrete and particularized injury necessary for standing.

2. Even If the Claim Was Concrete or Particularized, It Is Neither Actual Nor Imminent Because the Consent Decree Forecloses Any Credible Threat of Enforcement

Even assuming Respondent could demonstrate a concrete or particularized injury, it still fails to satisfy Article III's requirement that the injury be "actual or imminent." *Lujan*, 504 U.S. at 560. An injury is imminent only if it is "*certainly* impending." *Clapper*, 568 U.S. 398 at 409 ("Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending") (emphasis added).

There is no imminent threat of enforcement here. The IRS has not initiated any enforcement action and has merely selected Respondent for a randomly generated audit. An audit, standing alone, imposes no tax liability and signals no enforcement decision. Any future injury would depend on multiple discretionary steps by the Government, none of which is alleged to be impending. That degree of uncertainty forecloses imminence under settled precedent. *See Clapper*,

568 U.S. at 410 (rejecting standing where injury depended on "a speculative chain of possibilities"). The IRS has only enforced the Johnson Amendment against houses of worship *one time* in the past seventy years since its inception—even before the consent decree.

The absence of imminence is further confirmed by the Government's binding consent decree expressly promising non-enforcement of the Johnson Amendment against "speech by a house of worship 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). Respondent has not plausibly alleged that its sermons or regular podcast communications fall outside of that protection. Because the consent decree does not define terms such as "customary channels of communication" or "congregation," those terms must be given their ordinary meaning. *See Chapman v. United States*, 500 U.S. 453, 454 (1991) (emphasizing that when words do not have a common-law meaning and are not clearly defined, they must be given); *see also Bostock v. Clayton Cnty*., *Georgia*, 590 U.S. 644, 654 (2020) (explaining that words are given their ordinary meaning at the time of enactment). Under their plain meaning, sermons explaining why a politician's political stances align with a church's teaching, which are delivered through a church's regular podcast, constitute speech to a congregation through customary channels of communication.[2] Podcasts are now a standard

[2] "Customary" means commonly practiced or observed, "communications" refers to the use of words or behavior to convey information, and a "congregation" means a religious community. *See, e.g.*, *Customary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/customary; *Communication*, Merriam-Webster, https://www.merriam-webster.com/dictionary/communication; *Congregation*, Merriam-Webster, https://www.merriam-webster.com/dictionary/congregation.

medium for religious instruction and outreach, particularly among churches that rely on broadcast or digital sermons as part of their ordinary worship practices.[3]

To argue that Respondent was not engaged in conduct protected by the consent decree would undermine the ordinary meaning of the terms of the consent decree, render it meaningless, and "frustrate that intent" of the parties entering the consent decree and "lead to absurd results." *United States v. DBB, Inc*., 180 F.3d 1277, 1281 (11th Cir. 1999); *see also Revitch v. DIRECTV*, LLC, 977 F.3d 713, 717 (9th Cir. 2020) (emphasizing that courts must avoid construing unambiguous language in ways that defeat the parties' intent or lead to absurd outcomes).

Although a plaintiff need not await prosecution to bring a pre-enforcement challenge, standing exists only where the plaintiff faces a credible and substantial risk of enforcement. In *Susan B. Anthony List v. Driehaus*, for example, the Court found standing (and ripeness) for a pre-enforcement First Amendment challenge because the plaintiffs had alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [the] statute," and there was a history of past enforcement against similar conduct, making the threat of future enforcement credible. 573 U.S. 149, 159 (2014) (citation omitted). But the situation here could not be more different. Respondent has not pointed to any concrete plan to engage in conduct

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[3] Podcasts remain a very "commonly practiced, used [and] observed" form of "behavior to express information or express thoughts" "concerning electoral politics viewed through the lens of religious faith"—especially among televangelists. As early as 2019, religious podcasts accounted for over 15% of total podcasts with over 92,000 religious podcasts being available. Blurbrry, Podcast Stats Soundbite: 3 Surprising Stats about Religious Podcasts, Podcast Insider (Jan. 14, 2019), https://blubrry.com/podcast-insider/2019/01/14/3-surprising-podcast-stats-religious/#:~:text=The%20Inevitable%20Disclaimer,Have%20Fewer%20Listeners%20Per%20Podcast. This mode of communication was well established among churches at the time of the consent decree, including churches that were parties to the underlying litigation, such as Sand Springs Church and First Baptist Church of Waskom, both of which regularly address their congregations through podcasts and online video platforms. *See* Complaint ¶¶ 5–6, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311 (E.D. Tex. Aug. 28, 2024), ECF No. 1.

outside the bounds of the consent decree's protection or beyond the traditional sermonizing that the IRS has said it will tolerate. There is no pattern of past enforcement against Respondent or comparable churches for such conduct. And the Government has explicitly waived any intent to enforce the law in Respondent's context. In short, Respondent cannot demonstrate the kind of "substantial risk" or credible threat of adverse action that supported pre-enforcement standing in cases like *Susan B. Anthony List*. *See id.* at 164 (plaintiffs facing a live threat where the state had previously initiated proceedings against one of them under the law and refused to disavow future enforcement). If Respondent ventures beyond that context (for example, by turning its resources to overt political campaigning outside of its religious services), and if the IRS then signals an intent to enforce the law against it, Respondent could at that time file suit with a stronger claim to standing. But unless and until that happens, Article III forbids this Court from rendering what would amount to an advisory opinion on the Johnson Amendment's validity in a speculative set of circumstances.

In sum, Respondent's claimed injury is both conjectural and contingent. It is neither occurring now nor certainly impending. Allowing standing on such a tenuous basis would collapse the injury-in-fact requirement into a mere pleading of ideological disagreement with the law. This Court has repeatedly refused to water down Article III's demands in that fashion, especially in cases involving the sensitive area of tax enforcement and government finances. *See, e.g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) (reaffirming the bar on taxpayer standing to challenge government taxing or spending decisions absent direct injury). The Court should adhere to that discipline here and hold that Respondent lacks standing to pursue this suit.

C. RESPONDENT'S CHALLENGE IS NOT RIPE FOR JUDICIAL REVIEW

Even if Respondent had standing, its claim would still be non-justiciable under the related doctrine of ripeness. The doctrine ensures that a court does not entangle itself in abstract disagreements or decide issues prematurely, before they have concretely crystallized through actual facts on the ground. *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003). Two considerations guide the ripeness inquiry: (1) the fitness of the issues for judicial decision (including whether further factual development is necessary), and (2) the hardship to the parties of withholding court consideration. *Id.* at 808 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). Respondent flunks both prongs.

1. This Case Is Not Fit for Adjudication Because There Is No Final Agency Action or Concrete Enforcement

Respondent's challenge is unripe because it seeks a constitutional ruling in the absence of any final agency action, tax assessment, or enforcement decision. Ripeness doctrine prevents courts from resolving abstract disputes divorced from a concrete factual context. *See Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 162 (1967). The Court has already held adverse classifications rendered by government agencies are non-justiciable matters because they lack ripeness. *See id.* at 165 (noting that because regulatory agency did not make an adverse classification yet, the case was not ripe for review). Here, the IRS has not revoked Respondent's tax-exempt status, imposed any penalty, assessed any tax, or otherwise enforced the Johnson Amendment. The IRS has not even completed its audit. The court below was therefore asked to decide the constitutionality of the Johnson Amendment without knowing whether the IRS will find a violation, whether it will pursue enforcement, or what form any enforcement might take. That posture renders the claim unfit for review.

This Court's ripeness doctrine bars review of claims that turn on contingent future events, and lower courts have uniformly applied that principle to hold that speculative or unassessed tax liability lack ripeness for judicial review. *See, e.g.*, *Alcan Aluminium Ltd. v. Dep't of Revenue of State of Or.*, 724 F.2d 1294 (7th Cir. 1984). As the Seventh Circuit explained, "[u]ntil a tax is assessed, the controversy cannot be considered ripe." *Id.* at 1298. Courts routinely dismiss challenges based on speculative or unlikely future tax liability. *See, e.g.*, *Unfortunate Son, Ltd. v. Wilkins*, 406 F. Supp. 2d 839, 842 (N.D. Ohio 2005) (holding that a claim premised on "a potential assessment against the shareholder" that was "unlikely to come to pass" was not ripe). Here, no tax has been assessed and no adverse classification has been made, placing this case squarely within that settled line of authority.

Nor does any futility exception apply. In some cases, courts have excused the need to await final agency action if the agency has "dug in its heels and made clear" that the church will be texted, rendering a pre-enforcement suit effectively the only way to obtain relief. *See, e.g.*, *Nenninger v. Village of Port Jefferson*, 509 F. App'x 36, 39 (2d Cir. 2013). Here, the Government has done the opposite, entering a binding consent decree expressly disavowing enforcement of the Johnson Amendment against speech like Respondent's. R. at 14. Because Respondent seeks review in the absence of enforcement, a developed record, or cognizable hardship, its claim is not fit for adjudication and is therefore non-justiciable.

2. Respondent Will Suffer No Hardship from Deferring Review

Withholding review imposes no hardship sufficient to justify immediate adjudication. An audit notice does not impose tax liability, revoke Respondent's exemption, or otherwise alter Respondent's legal status or obligations. It does not "command anyone to do anything or to refrain from doing anything," nor does it "subject anyone to any civil or criminal liability." *Nat'l Park*

Hosp. Ass'n, 538 U.S. at 809–10; *see also Ohio Forestry Ass'n v. Sierra Club et. al*, 523 U.S 726, 733 (1998). Respondent remains a tax-exempt church and remains free to operate and speak as it always has.

Toilet Goods is again instructive: this Court found no ripeness hardship where the challenged agency action did not affect "primary conduct" and "no irremediable adverse consequences" flowed from requiring a later, enforcement-stage challenge. *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 164-65 (1967). The same is true here. If the IRS ever makes an adverse determination, Respondent can challenge that action through established post-enforcement procedures and raise the same constitutional objections on a concrete record. Because immediate review would be advisory and deferring review causes no comparable hardship, the claim is not ripe and should be dismissed.

D. Allowing Audit-Notice Challenges Would Impede the IRS's Tax-Collecting Abilities and Invite Premature Litigation

Accepting Respondent's position would convert routine audit notices into immediate federal litigation. If this Court gave credence to Respondent's perplexing understanding of the AIA and Article III standing, it would invite a slew of meritless lawsuits, impede the Government's ability "to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference," and interfere with the purposes and goals of the AIA. *See* 20A Fed. Proc., L. Ed. § 48:1420. Allowing institutions to allege non-particularized and non-imminent pre-enforcement claims because of a random audit "is plainly at odds with the dual objectives of the Act: efficient and expeditious collection of taxes with a minimum of preenforcement judicial interference, and protection of the collector from litigation pending a refund suit." *United States v. Am. Friends Serv. Comm*., 419 U.S. 7, 12, (1974) (internal quotations omitted); *see also*

Unfortunate Son, 406 F. Supp. 2d at 843 (Goal of the act was to "limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes."). If a randomly selected audit were enough to trigger pre-enforcement jurisdiction, taxpayers, especially § 501(c)(3) entities, could routinely halt ordinary IRS administration whenever they objected to the Code's constraints, frustrating Congress's channeling choice and disabling enforcement in practice. This Court has repeatedly recognized the Government's compelling interest in maintaining "a sound tax system," free of "myriad exceptions," and has cautioned that "[t]he tax system could not function if denominations were allowed to challenge the tax system" on the basis of speculative downstream objections. *Hernandez v. Comm'r*, 490 U.S. 680, 699–700 (1989) (quoting *United States v. Lee*, 455 U.S. 252, 260 (1982)).

Likewise, allowing non-particularized, and non-imminent claims to proceed in court—such as a conjectural harm which in theory *could* stem from a random audit—would contradict the purpose of rejecting claims which lack Article III standing, which is the prevention of "the judicial process from being used to usurp the powers of the political branches." *Clapper*, 568 U.S. at 408. If plaintiffs were permitted to establish standing based on speculative harms arising from routine tax inquiries, they could inundate courts with meritless suits seeking injunctive relief, effectively weaponizing the Judiciary to disable the taxing authority of the Legislative and Executive Branches and undermine the separation of powers. *See id.* (purpose of standing is the prevention of plaintiffs using the judiciary to usurp the other branches of government). The Court should decline Respondent's invitation and require it to proceed, if at all, through the post-enforcement avenues Congress provided.

II. THE JOHNSON AMENDMENT'S PROHIBITION ON POLITICAL-CAMPAIGN INTERVENTION BY SECTION 501(C)(3) ORGANIZATIONS DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE

Even if the Court reaches the merits, it should resoundingly uphold the constitutionality of the Johnson Amendment. The Johnson Amendment's requirement that non-profit organizations refrain from engaging in political campaigns is consistent with the Establishment Clause provided in the First Amendment. While the Establishment Clause prohibits the federal government from passing laws that endorse a specific religion, *see McGowan v. Maryland*, 366 U.S. 420, 443 (1961), regulations may be enacted on religious groups if it is broad in scope. A regulation remains sound under the Establishment Clause when it does not aid or prefer one religion over another. *Id*. Absent an explicit denominational preference, the Johnson Amendment has a neutral application and purpose, and this Court should uphold its validity under the Establishment Clause.

A. AN ESTABLISHMENT CLAUSE CLAIM IS APPROPRIATELY RAISED WHEN A LEGISLATIVE STATUTE MANDATES RELIGIOUS ACTIVITIES

To evaluate a regulation within the scope of the Establishment Clause, courts ask whether the regulation turns on "inherently religious choices" or instead applies "secular criteria." *Catholic Charities, Inc. v. Wisconsin Labor & Industry Review Comm.*, 605 U.S. 238 (2025). Secular activity preserves the separation of church and State because it does not require civil authorities to differentiate faiths "based on theological practices." *Id.* at 250. Official differentiation on theological lines is "fundamentally foreign to our constitutional order," because "[t]he law knows no heresy, and is committed to the support of no dogma." *Id.* at 249 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871)).

1. Campaign Intervention Is Secular Conduct, and Applying § 501(c)(3) Does Not Require Inquiry into Religion Doctrine

Section 501(c)(3) provides preferential tax treatment to organizations operated for "religious, charitable, scientific, [or] educational" purposes, but it conditions that subsidy on the

organization not "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). That condition targets an objective and secular category—campaign intervention—not any religious belief or practice. The Johnson Amendment's prohibition does not lose its secular status merely because Respondent claims the regulated conduct is religiously motivated or religiously required.

Applying that rule does not require the IRS to conduct a close analysis of a religion's beliefs or practices. Rather, it regulates universal conduct that any religious and non-religious organizations may engage in. *Cf. Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (noting that a law that applies only to Jehovah's Witnesses constitutes discrimination). As *Catholic Charities* explains, the constitutional concern is whether enforcement triggers "subjective inquiry with respect to religious truth" or requires officials to decide whether an organization's activities conform to religious doctrine. 605 U.S. at 245–46. Lacking particularity, the Johnson Amendment is "uniformly applicable to all," *see U.S. v. Lee*, 455 U.S. 252, 261 (1982), and makes no attempt to cross theological lines amongst religions.

For legislative statutes to coincide with the Establishment Clause, there must be a clear secular purpose. *See, e.g.*, *Board of Education v. Allen,* 392 U.S. 236 (1968); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *School Dist. of Abington v. Schempp*, 374 U.S. 203 (1963). Once a secular purpose is established, courts normally grant deference to the legislation. *See e.g.*, *Croft v. Perry*, 624 F.3d 157, 166 (5th Cir. 2010). Political conduct has been recognized as a secular activity. *See In re Westboro Baptist Church*, 40 Kan. App. 2d 27, 54 (Kan. App. 2008) ("As a result, the attachment of a religious belief onto an otherwise secular activity, *such as politics*, does not

establish a free exercise claim.")[4] (emphasis added). While this Court has acknowledged the existence of secular "shams," the Johnson Amendment's purpose is clearly "sincere" on its face and application. *Wallace v. Jaffree*, 472 U.S. 38, 64 (1985). The prohibition is geared to all "non-profit organizations" that wish to obtain a tax exemption. 26 U.S.C. § 501(c)(3). The language makes no reference to any religious doctrine. "[O]penly available data [must] support a commonsense conclusion that a religious objective permeated the government's action," and such data is lacking here. *Croft*, 624 F.3d at 167. The facts here illustrate the statute's secular focus. Respondent's pastor endorsed an identified candidate "on behalf of" the Church and urged listeners to vote for, donate to, and volunteer for that candidate's campaign. Although a statute "need not have 'exclusively secular' objectives to meet the sincerity standard," *id.*, the Johnson Amendment's language is entirely secular, and thus passes constitutional muster, *see Jaffree*, 472 U.S. at 64.

2. Conduct That Coincides with a Religious Practice Remains a Secular Activity and Is Subject to Regulation

Respondent may argue that political conduct is a necessary component to its religion, making the Johnson Amendment target religious choices rather than secular criteria. However, the Johnson Amendment is not the first of its kind to correspond with a religion and remain valid under the Establishment Clause. This Court has long rejected the premise that neutral regulation of secular conduct violates the Establishment Clause simply because the regulation "happens to coincide or harmonize with the tenets of some or all religions." *McGowan*, 366 U.S. at 442. As this Court has explained, the fact that religions oppose murder or theft does not mean the government may not prohibit those acts. *See id.*; *see also Harris v. McRae*, 448 U.S. 297, 320

[4] This Court has noted that the Establishment Clause and Free Exercise Clause have complementary purposes. *Kennedy v. Bremerton School District*, 597 U.S. 507.

(1980) ("That the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny."). As such, an amendment may coincide with religious tenets and "does not, without more, contravene the Establishment Clause." *McRae,* 448 U.S. at 320. Here, *McGowan* is dispositive; refraining from political conduct may disagree with Respondent's religion, yet it is still a secular activity amenable to regulation.

The same is true for a statute whose regulatory effect infringes upon a religious exercise. Even though the Johnson Amendment's prohibition may adversely impact one's free exercise rights, this Court has ruled that such an outcome is not enough to void a regulation. *See U.S. v. Lee*, 455 U.S. 252, 257 (1982) ("The conclusion that there is a conflict between the Amish faith…is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional."). This Court has expressly recognized that a neutral tax rule may "impose a disparate burden on . . . religious groups" without thereby violating the Establishment Clause. *Hernadez v. C.I.R.*, 490 U.S. 680, 696 (1989) (noting that a compelling governmental interest can justify a burden placed on a central religious belief even if the burden is substantial). It follows precedent that a statute "primarily having a secular affect," like the Johnson Amendment, survives an Establishment Clause claim. *Id*. at 696.

B. THE JOHNSON AMENDMENT IS PERMISSIBLE UNDER THE ESTABLISHMENT CLAUSE BECAUSE IT PASSES THE NEUTRALITY TEST

Respondent's core doctrinal move is to invoke *Larson*'s statement that "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." 456 U.S. at 244. That principle is correct, but it does not help Respondent. *Larson* involved an explicit statutory classification among religious organizations. *Id.* at 246–47.

The Johnson Amendment contains no such preference. It does not mention religion at all, much less distinguish among denominations. 26 U.S.C. § 501(c)(3).

Catholic Charities reinforces that distinction. There, the Court upheld a statute that awarded a benefit based on "religious purposes," while cautioning that the holding does not extend to laws that "contain secular criteria that happen to have a disparate impact upon different religious organizations." *Catholic Charities, Inc. v. Wisconsin Labor & Industry Review Comm.*, 605 U.S. 238, 250 (2025). The court of appeals effectively erased *Catholic Charities*' caveat. It treated disparate impact as the equivalent of official preference, reasoning that a rule burdens denominations whose doctrine encourages political endorsements. But *Catholic Charities* drew the opposite line: the Establishment Clause problem is governmental differentiation on "theological lines," not the incidental disparate effects of a secular rule. *Id.* at 245, 250. The Johnson Amendment fits squarely on the secular side of that line.

Neutrality ensures that the government is neither aiding nor opposing any religion, and that all sects are "tolerated and none favored." *Lee v. Weirsman*, 505 U.S. 577, 590 (1992). It does not require the government to re-engineer generally applicable laws to eliminate any disparate burden that a faith's internal norms might create. That sort of tailoring would itself force government to decide which practices are religiously obligatory and how central they are—precisely the inquiry the Establishment Clause forbids. In recent years, this Court has applied the "endorsement test" to assess legislative neutrality. *See Jaffree*, 472 U.S. at 56 (adopting Justice O'Connor's revision of the purpose component from *Lynch v. Donnelly*); *see also Doe v. Wilson County School System*, 564 F. Supp. 2d 766, 792 (M.D. Tenn. 2008). If "a reasonable observer would believe that a particular action constitutes an endorsement of religion by the government," the regulation does not pass the neutrality test. *Wilson County School System*, 564 F. Supp. 2d at 792. A law that is

neutral "need not be justified by a compelling governmental interest *even if* the law has the incidental effect of burdening a particular religious practice." *Church of Lukumi Babalu Aye, Inc., v. Hialeah*, 508 U.S. 520, 531 (1993).

1. The Johnson Amendment's Prohibition is Applicable to All Religious Organizations and Therefore Does Not Establish Denominational Preferences

Applying the endorsement test, the Johnson Amendment undoubtedly meets the neutrality threshold to a reasonable observer. When it is obvious that the drafters of a regulation had a specific religion in mind, as in *Lukumi*, the regulation cannot be neutral. *See id.* The Johnson Amendment does not reference a particular religious practice; indeed, it makes no reference to religion at all. *Wilson County School System*, 564 F. Supp. 2d at 533 ("A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context."). When this Court evaluated the facial neutrality of the regulation in *Lukumi*, it recommended that city officials impose a *general* regulation rather than one that specifically targeted a religious faith. *Id*. at 538. The Johnson Amendment directly follows the Court's recommendation by being a broad, "catch-all" provision that does not "endorse or disapprove" of any religion. *Id.* at 792. Some courts have applied the neutrality test rather strictly. For example, the Seventh Circuit held that "[a] statute is unconstitutional under this test '*only* when ... there [is] no question that the statute ... was motivated wholly by religious considerations.'" *Gaylor v. Mnuchin*, 919 F.3d 420, 427 (7th Cir. 2019) (citing *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984)) (emphasis added). Under this interpretation, the Johnson Amendment is the epitome of neutral as it is difficult to rationalize the IRS's motivation to target religious organizations.

Respondent argues that because its faith requires political endorsements, the Johnson Amendment "favors" religions without that obligation. R. at 9. But the Constitution does not define

denominational preference as the absence of perfect uniformity of impact. If it did, neutral laws would become presumptively unconstitutional whenever a religion claimed that the law's regulated conduct was religiously mandated. This Court has long rejected such a sweeping proposition. In *McGowan*, this Court held that the Establishment Clause "does not ban" regulation of secular conduct merely because it "coincide[s] or harmonize[s]" with some religions' tenets. 366 U.S. at 442. And in *Harris v. McRae*, this Court reiterated that "[t]hat the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny." 448 U.S. 297, 320 (1980).

That is why the court of appeals' reliance on broad statements about neutrality "between sects" is misplaced. R. at 9. Neutrality does not mean that government must design generally applicable rules to ensure all religion's internal norms are equally easy to satisfy. It means that the government itself does not choose winners and losers based on religious doctrine, which would force government to decide which practices are religiously obligatory and how central they are. *See Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). The Johnson Amendment does not choose winners and losers, applying the same condition to every charity that accepts the § 501(c)(3) subsidy.

It is true that the Establishment Clause extends beyond facial neutrality, *see Lukumi*, 508 U.S. at 534, and prohibits the government from "making adherence to a religion relevant in any way to a person's standing in the political community," *see Wilson County School System*, 564 F. Supp. 2d. at 791. Courts have thus assessed a statute's purpose to ensure the government does not take religious sides. *Gaylor*, 919 F.3d at 427. Since the Johnson Amendment solely focuses on tax-exemption criteria, it's "ostensible and predominant purpose" reflects government neutrality, not religious advancement. *Id*. Absent any "explicit and deliberate distinctions between different

religious organizations," *see Larson v. Valente*, 456 U.S. 228, 246-47 n.23 (1982), there is no risk of establishing denominational preferences, *see, e.g.*, *Catholic Charities*, 605 U.S. 238 at 241. Like in *Hernadez*, the Johnson Amendment is "neutral both in design and purpose." *Hernadez v. C.I.R.*, 490 U.S. 680, 681 (1989). As such, the Johnson Amendment hardly makes even subtle departures of neutrality. *See Gillette v. U.S.*, U.S. 437, 452 (1971).

The court below might believe *Larson v. Valente* compels strict scrutiny here, but *Larson* is easily distinguished. In *Larson*, Minnesota passed a law that imposed registration and reporting requirements on religious organizations that solicited more than 50% of their funds from nonmembers, while exempting those that raised most funds internally. That law, though facially neutral in wording, obviously was drawn to affect certain denominations (newer, less established ones) more than the traditional churches with large member bases. The Supreme Court struck it down, finding it effectively singled out particular denominations for regulation based on how they structure themselves and raise money, thus "making explicit and deliberate distinctions between different religious organizations." *Larson v. Valente*, 456 U.S. at 246–47. The Johnson Amendment, by contrast, does not single out any denomination or subset of religions. It does not single out any denomination or subset of faiths, nor does it draw lines based on religious structure or belief. All § 501(c)(3) organizations are subject to the same rule, regardless of doctrine. That some religions may find compliance more difficult reflects their own practices, not a governmental classification or preference.

The Establishment Clause does not promise total immunity to religious organizations. Under *Lukumi*, incidental effects arising from a statute that burdens a religion is allowed. *Church of Lukumi Babalu Aye, Inc., v. Hialeah*, 508 U.S. 520, 531 (1993). More significantly, this Court has recognized and upheld legislation that results in some inequality. *McGowan*, 366 U.S. at 425-

26. Accordingly, even if Respondent claims the Johnson Amendment affects them differently compared to other religious groups, *see id*. at 425, it is not enough to conclude it lacks neutrality.

2. Invalidating the Prohibition Would Disturb the Established Principle of Non-Excessive Government Interference and that Separation of Church and State Is Not Absolute

Total separation is not possible in an absolute sense, and entanglements with religious organizations turn on whether they are "excessive" before they violate the Establishment Clause. *Agostini v. Felton*, 521 U.S. 203, 233 (1997).

Hernandez is directly on point. There, this Court rejected an Establishment Clause challenge to the disallowance of certain deductions claimed by adherents of the Church of Scientology. 490 U.S. at 696–97. The Court explained that "routine regulatory interaction which involves no inquiries into religious doctrine" does not of itself violate the Establishment Clause's non-entanglement command. *Id.* at 697. The Johnson Amendment fits comfortably within that category. Determining whether an organization has intervened in a political campaign is a secular inquiry that can be made without assessing the truth of religious claims, the validity of religious doctrine, or the sincerity of a belief.

This Court has also upheld significantly more direct government monitoring of religious entities where the oversight is aimed at secular criteria. As this Court held in *Bowen v. Kendrick*, there is no excessive entanglement when a government reviews and monitors programs set up by religious institutions. 487 U.S. 589, 615-17 (1988). Additionally, when a state conducts annual audits on state grants to religious colleges, there is no excessive entanglement. *See Roemer v. Board of Public Works of Md*., 426 U.S. 736, 764-65 (1976). *Bowen* and *Roemer* provide that auditing and monitoring religious organizations is an appropriate level of government interference. Since these tactics are arguably more invasive than regulating political conduct of *all* non-profit

organizations, the Johnson Amendment is a textbook example of non-excessive government interference. *See Hernandez v. Comm'r*, 490 U.S. 680, 696-97 (1989) ("Routine regulatory interaction, such as the application of neutral tax laws, that does not involve inquiries into religious doctrine . . . does not of itself constitute entanglement."). Holding otherwise would reverse and disturb multiple Supreme Court precedents.

Invalidating the Johnson Amendment will also result in an outcome that the Establishment Clause is meant to protect against. For example, in *Walz v. Tax Comm'n of New York*, this Court held that eliminating a tax exemption "would tend to *expand* the involvement of government by giving rise to tax valuation of church property." 397 U.S. 664, 674 (1970) (emphasis added). Accordingly, the Johnson Amendment should remain intact to prevent a disproportionate level of government interference. Invalidating the amendment would be inconsistent with the recognition that tax exemptions do not create religious advancement or inhibition, *see Walz*, 397 U.S. at 672, and that they are a "matter of grace that state and federal legislatures may disallow as they choose," *see In re Westboro*, 40 Kan. App. 2d at 43.

C. THERE IS AN ABSENCE OF A BURDEN PLACED ON RELIGIOUS ORGANIZATIONS AS THE JOHNSON AMENDMENT SERVES AS A REGULATORY TAX DEVICE

To prevail on a free exercise inquiry, the government must place "a substantial burden on the observation of a central religious belief or practice." *Hernadez*, 490 U.S. 680 at 699. However, this Court has provided that "even a substantial burden would be justified by the 'broad public interest in maintaining a sound tax system.'" *Id*. (citing *U.S. v. Lee*, 455 U.S. 252, 260 (1982)). In *Hernadez*, petitioners claimed that a tax exemption would interfere with their religious activities, like Respondent in this case. *Id*. at 700. This Court held that accepting this argument would essentially open the floodgates to religious organizations filing free exercise claims. *Id*. ("This

argument knows no limitation."); *see also Lee*, 455 U.S. at 260 ("The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief."). Like in *Hernadez*, this Court should reject Respondent's argument that the Johnson Amendment burdens its religious belief as it operates exclusively to regulate the tax system.

1. The Relationship Between Tax Exemptions and Establishment of Religion is Minimal

Courts have concluded that certain entities such as religious organizations, hospitals, and libraries serve "the community at large" and thus are entitled to legislative tax exemptions. *Walz*, 397 U.S. at 672-72. As a result, as the Court of Appeals of Kansas explained, the Johnson Amendment "applies *equally to all charitable organizations*, religious and nonreligious alike." *In re Westboro*, 40 Kan. App. 2d at 45 (emphasis added); *see also Walz*, 397 U.S. 664 (holding that a property tax exemption that does not "single out" a religious group and is granted to all houses of worship is constitutional). Respondent can hardly claim it faces an unequal burden because of the Johnson Amendment's prohibition; if there is such a burden, it is equally shared amongst all religious organizations, which is permitted under the Establishment Clause.

However, no burden exists here. As held in *Walz*, this Court has recognized that there is "no genuine nexus between tax exemption and establishment of religion." *Id*. at 675. Rather, exemptions create "only a minimal and remote involvement between church and state." *Id*. at 676. Further, other courts have agreed that the "burden" of losing a tax exemption is not constitutionally significant. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 142 (App. D.C. 2000) (citing *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 391 (1990)). In *Branch Ministries*, the D.C. Court of Appeals held that "the impact of [a tax] revocation is likely to be more symbolic

than substantial." *Id*. The Johnson Amendment does not violate Respondent's religious beliefs, rather, it prevents them from receiving preferential tax treatment, a burden that has been held to be "overstated." *Id*. The lack of emphasis courts have placed on tax revocations suggests that the IRS's mandate does not constitute a substantial burden.

Moreover, "[q]ualification for tax exemption is not perpetual or immutable." *Walz*, 397 U.S. at 673. It is common for "tax-exempt groups [to] lose that status when their activities take them outside the classification…" *Id*. If Respondent were to lose its tax exemption status, such an outcome would not be out of the ordinary, as similarly situated organizations under the Johnson Amendment are subject to the same result.

2. Because Section 501(c)(3) Status Is Voluntary and Alternative Vehicles Remain Available, Withholding that Classification Does Not Coerce Religious Exercise

Finally, Respondent's challenge depends on treating § 501(c)(3) status as if it were a constitutionally guaranteed baseline, which is not. The government does not penalize religion by declining to subsidize particular conduct. *Regan*, 461 U.S. at 545–46. Churches remain free to endorse candidates, to encourage voter turnout, and to participate in electoral politics; they simply may not do so while receiving a federal subsidy designed for charitable work and funded through tax-deductible contributions.

Even within the church context, § 501(c)(3) leaves substantial room for speech. Clergy do not surrender their rights as citizens; they may endorse candidates in their personal capacities, speak at rallies, write op-eds, and participate in political organizations. What § 501(c)(3) withholds is the ability to convert the church's institutional platform and tax-subsidized resources into a campaign apparatus. That is a narrow, status-based condition on a government subsidy based on

the Establishment Clause's historic goal of avoiding government-financed religious influence in civic affairs.

Respondent and other non-profit organizations are not barred from engaging in political conduct by not complying with the Johnson Amendment. As noted in *Branch Ministries*, Respondent is permitted to forming a "related organization" under 26 U.S.C. §501(c)(4). *Branch Ministries*, 211 F.3d at 143. This enables non-profit organizations to "form a political action committee ("PAC") that would be free to participate in political campaigns." *Id*. Similarly, under the tax code's longstanding structure, organizations that wish to engage in campaign activity may operate under other provisions, including § 501(c)(4) and § 527, rather than insisting on § 501(c)(3)'s charitable subsidy. *See* Cong. Rsch. Serv., RL33377, at 14–16. These appears to be more favorable avenues for Respondent to engage in conduct that aligns with their faith.

Although churches are prohibited from creating a PAC *themselves*, this Court has provided a series of attainable steps they may take to file under 501(c)(4). *Branch Ministries*, 211 F.3d at 143. This includes separately incorporating the 501(c)(4) organization and maintaining records of tax-deductible contributions. *Id*. Respondent can also set up a separate segregated fund under § 527(f)(3) to conduct the taxable activities. *See* Cong. Rsch. Serv., RL33377, at 14-16. With other avenues available to Respondent, this Court should hold that the Johnson Amendment does not violate their free exercise rights. *Branch Ministries*, 211 F.3d at 144.[5]

[5] Further, since there is no free exercise violation, this Court does not need to inquire whether the Johnson Amendment serves a compelling government interest. *Id*.

CONCLUSION

Because Respondent lacks standing under the AIA and Article III, and because the Johnson Amendment's prohibition is valid under the Establishment Clause, Petitioner respectfully requests that the judgement of the Fourteenth Circuit Court of Appeals be reversed.

APPENDIX

FROM TITLE 26, SECTION 501 OF THE UNITED STATES CODE

(c) EXEMPTION FROM TAXATION.

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(c) TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES.

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) LIST OF EXEMPT ORGANIZATIONS

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation--

(A) is exempt from Federal income taxes--

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is

limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

FROM TITLE 26, SECTION 7421 OF THE UNITED STATES CODE

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.

FROM THE UNITED STATES CONSTITUTION, AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

FROM THE UNITED STATES CONSTITUTION, ARTICLE III, SECTION II, CLAUSE I

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.