No. 26-1779

IN THE

SUPREME COURT OF THE UNITED STATES

Spring 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 Supreme Court

BRIEF FOR PETITIONERS

Team 19

ATTORNEYS FOR PETITIONERS

QUESTIONS PRESENTED

1. Whether Covenant Truth Church can both satisfy its burden in proving Article III Standing and show its suit is not barred by the Tax Anti-Injunction Act?

2. Whether the Establishment Clause is violated every time the Johnson Amendment is applied despite the Amendment (1) constituting a valid condition on a subsidy of speech under the First Amendment—a practice supported by history and tradition; and (2) providing an effective way for the Government to avoid an excessive, entangling, inquiry into whether entities should be considered religious organizations for purposes of federal funding?

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The opinion of the United States District Court of Wythe is not available in the record. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at S*cott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and set out in the record. R. at 1-16.

LIST OF PARTIES

Petitioners Scott Bessent, in his official capacity as acting commissioner of the Internal Revenue Service, et al., were the appellants in the court below. R. at 1, 17. Respondent is the Covenant Truth Church, the appellee in the court below. R. at 1, 17.

JURISDICTIONAL STATEMENT

The federal courts have jurisdiction over this action under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The decision of the court of appeals in this matter was issued on November 11, 2025. The petition for a writ of certiorari was granted on November 11, 2025. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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

The following sections of the U.S. Internal Revenue Code are relevant to this case: I.R.C. §§ 501(c)(3)-(4), 7421, 7422, and 7428.

STATEMENT OF THE CASE

Factual Background

In 1954, Congress modified the Internal Revenue Code to prohibit non-profit organizations from participating or intervening in any political campaigns, including supporting or opposing any candidate for public office. R. at 2. This change, known as the Johnson Amendment, was passed without debate and was later revised and incorporated into the Internal Revenue Code of 1986. R. at 2. Congress has recently received pressure from interest groups to eliminate or amend the Johnson Amendment to exempt religious organizations, but has declined to do so. R. at 2. In particular, a religion known as The Everlight Dominion has recently taken issue with the Johnson Amendment, resulting in this litigation. R. at 5.

The Everlight Dominion's theology is rooted in progressive social values, and political participation is a required aspect of the faith. R. at 3. Indeed, if The Everlight Dominion's churches or religious leaders fail to endorse and support candidates that align with its theological stances, they are banished from The Everlight Dominion's membership. R. at 3. Gideon Vale, pastor of Covenant Truth Church, took this imperative to heart when he created a weekly podcast to deliver sermons and spiritual guidance to his congregation and the greater community; the podcast surged in popularity, drawing millions of downloads across the country. R. at 3-4. Following The Everlight Dominion's political imperatives, Pastor Vale used his podcast to vocally support candidates aligned with The Everlight Dominion, supporting them on behalf of Covenant Truth Church. R. at 4. Specifically, Pastor Vale endorsed Congressman Samuel Davis in a special election for the United States Senate, encouraging his audience of millions to vote for, volunteer with, and donate to Congressman Davis. R. at 4-5.

On May 1, 2024, the Internal Revenue Service ("IRS") informed Pastor Vale and Covenant Truth Church that they had been selected for a random audit. R. at 5. In light of his frequent

political podcasting and advocacy, Pastor Vale feared that the IRS would discover his political involvement and revoke Covenant Truth Church's 501(c)(3) tax-exempt status. R. at 5. Before the IRS began its audit, and before any actual changes were made to the Church's tax classification, adverse or otherwise, Covenant Truth Church commenced litigation. R. at 5.

Nature of the Proceedings

On May 15, 2024, Covenant Truth Church (the "Church") filed suit seeking a permanent injunction prohibiting the IRS's enforcement of the Johnson Amendment on the ground that the Johnson Amendment violates the Establishment Clause of the First Amendment. R. at 5. The IRS answered the Complaint, denying the Church's claims in full while also contending that the Church (1) lacked Article III Standing in the case, and (2) the Tax Anti-Injunction Act bars the Church's suit entirely. R. at 5, 6.

In response, Covenant Truth Church moved for summary judgment, where the District Court granted its motion, holding that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, (2) the Tax Anti-Injunction Act does not bar the Church's suit, and (3) the Johnson Amendment violates the Establishment Clause. R. at 5-6. The IRS, led by Commissioner Scott Bessent, appealed the District Court's decision to the Fourteenth Circuit of the United States Court of Appeals. R. at 6. The Fourteenth Circuit affirmed the District Court's decision 2-1, with Judge Marshall dissenting. *See* R.

SUMMARY OF THE ARGUMENT

When it comes to the first issue presented by the Respondent, the Tax-Anti Injunction Act ("the Act") bars the Respondent's suit because it seeks to restrain the collection of a tax by the federal government in contravention of the Act. Further, the Act's *Regan* exception does not apply to Respondent because Respondent has at least five alternatives available to it, none of which it has pursued. Finally, even if Respondent has no other alternative and the *Regan* exception applies,

the Act bars Respondent's suit because Respondent is not guaranteed to succeed on the merits of its suit, and will not suffer irreparable harm in the absence of an injunction.

As to the second issue, the Respondent lacks Article III Standing because it cannot establish an injury in fact. The Respondent has not suffered any injury, and certainly not an injury that is concrete, particular, or imminent as required to be proven by this Court. Rather, the Respondent's alleged injury rests solely on speculation that a routine and random IRS audit *might* lead to future enforcement that has not occurred, nor has been threatened.

Absent evidence of past enforcement, present enforcement, or any credible threat of future enforcement, the Respondent's claim of Standing amounts to a highly speculative and attenuated set of hypotheticals and not a concrete injury in fact. The Respondent's claim is not a justiciable claim or controversy, but rather a premature exercise wrongly brought before this Court. Accordingly, the ruling of the Fourteenth Circuit should be reversed for the lack of Article III Standing.

Turning to the third issue, the Respondent's facial challenge to the Johnson Amendment holds no water. The Johnson Amendment (1) constitutes a valid condition on a subsidy of speech under the First Amendment—a governmental practice that "has withstood the critical scrutiny of time" and is readily "accepted by the Framers"; and (2) is necessary for the government to avoid a "potentially [excessive,] entangling[,] inquiry into whether" entities should be considered religious organizations for purposes of federal funding. Accordingly, the Johnson Amendment has constitutional applications, which bar Respondent's facial claim under the Establishment Clause of the First Amendment.

ARGUMENT

I. Respondent's suit is barred by the Tax Anti-Injunction Act, and Respondent lacks Article III standing.

The Tax-Anti Injunction Act ("the Act"), codified at 26 U.S. Code § 7421, bars Respondent's suit because it seeks to restrain the collection of a tax by the federal government in contravention of the Act. But even if the Act does not bar this suit, Respondent still lacks Article III standing because it cannot show that a routine and random audit selection produced an injury in fact. Accordingly, this Court should dismiss this suit for lack of jurisdiction.

A. The Tax Anti-Injunction Act bars Respondent's suit because it is a pre-enforcement review of a tax.

Respondent cannot petition this Court for pre-enforcement review of the Johnson Amendment because the Tax Anti-Injunction Act bars pre-enforcement review of a tax. The Tax Anti-Injunction Act, codified at 26 U.S. Code § 7421, states, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . . ." 26 U.S.C. § 7421(a).[1] The apparent purpose of this suit—indeed, the only discernible purpose of this suit—is to restrain the government's collection of a tax, therefore placing it squarely within the conduct prohibited by the Act. If Respondent remains a 501(c)(3), it will avoid federal corporate taxes.[2] If Respondent loses its 501(c)(3) classification, it will be obligated to pay federal corporate taxes to the government. Because this suit was filed to avoid a possible revocation of Respondent's 501(c)(3) status, and because revocation of its status would lead to the federal government's

[1] "The Anti-Injunction Act apparently has no recorded legislative history, but its language could scarcely be more explicit—'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court…' The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference, 'and to require that the legal right to the disputed sums be determined in a suit for refund.'" *Bob Jones University v. Simon*, 416 U.S. 725, 736. (1974), *citing Enochs v. Williams Packing & Navigation Co., supra*, 370 U.S. 1 at 7.

[2] "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." 26 U.S. Code § 501(a).

collection of taxes from Respondent, this suit was therefore filed for the purpose of restraining the government's collection of a tax in contravention of 26 U.S.C. § 7421(a).

Respondent may claim that this suit is necessary despite the Act's prohibition against pre-enforcement suits. Specifically, Respondent may assert that it has no alternative avenues other than filing this suit; such an assertion would be incorrect. Respondent has at least five alternative remedies available to it, none of which it has pursued.[3] Even if Respondent has no other alternatives, the Act bars this suit unless Respondent demonstrates: (1) it is guaranteed to succeed on the merits; and (2) it will suffer irreparable harm in the absence of an injunction. *Alexander v. Ams. United, Inc*., 416 U.S. 752, 758 (1974). Respondent has demonstrated neither and will not be able to demonstrate either, as the lower courts lack consensus as to the constitutionality of the Act. Further, Respondent will not suffer irreparable harm in the absence of an injunction, as it has at least five alternatives of redress in the absence of an injunction. Accordingly, this Court should find that the Act bars Respondent's suit and should dismiss this suit for lack of jurisdiction.

B. The Act's *Regan* exception does not apply to Respondent because Respondent has at least five alternatives available to it, none of which it has pursued.

The only exception to the Act's bar of pre-enforcement suits against government taxation is if the aggrieved party has no other alternative. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). Indeed, the Fourteenth Circuit majority opinion correctly observed in its analysis of *Regan* that the Act was not intended to apply to aggrieved parties with no other alternatives. R. at 6, *citing Regan* at 378. The *Regan* court made clear that "the Act was not intended to bar an action where,

[3] These are (1) filing an appeal with the IRS; (2) paying the tax and seeking a refund; (3) if a refund is not granted, a refund suit in a federal district court or in the Court of Claims; (4) petitioning the Tax Court to review a notice of deficiency; and (5) filing a donor refund suit to challenge the denial of charitable deduction under 26 USCA § 170(c)(2).

as here, Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373.

Respondent may attempt to analogize this case to *Regan* and assert that this suit is the only legal way to challenge the validity of a potential tax against Respondent after the removal of its 501(c)(3) classification (despite such removal having not yet occurred and having no guarantee of occurring). The facts in *Regan*, however, were markedly different from the facts in this case. In *Regan*, the State of South Carolina sought injunctive relief against the federal government to maintain control of its ability to issue bond obligations in the form that it desired. *Id.* at 371. South Carolina had no alternative remedies to pursue because the tax obligation imposed by the federal government would be distributed to South Carolina's residents through the bond obligations, and South Carolina as a state would have no means by which to pursue a refund for the tax obligation. *Id.* at 378. If South Carolina were required to change its bond obligations and implement the IRS's tax changes before challenging the new change, it would not be able to contest the constitutionality of the statute because it would incur no tax obligation, as explained by the *Regan* court below,

> In this case, if the plaintiff South Carolina issues bearer bonds, its bondholders will, by virtue of § 310(b)(1) of TEFRA, be liable for the tax on the interest earned on those bonds. South Carolina will incur no tax liability. Under these circumstances, the State will be unable to utilize any statutory procedure to contest the constitutionality of § 310(b)(1). Accordingly, the Act cannot bar this action.

Id. at 378-80. So, the reason that South Carolina was granted an exception from the Act under *Regan* because it would have been *functionally* unable to determine how much money its bondholders lost from the federal government's new taxation requirements, and therefore how much would be owed to its bondholders in the event of a refund. South Carolina would have been required to pass its tax obligations onto its citizen bondholders and would not have incurred the tax obligations itself; for that reason, the *Regan* court found that South Carolina would have been

unable to contest the constitutionality of the contested statute. Bondholders—not South Carolina—would have incurred the tax liability imposed by the statute, and South Carolina would therefore suffer no harm and have no avenue of redress to challenge the statute. *Id.*

Respondent does not face the same challenges as South Carolina did in *Regan*, nor does it lack the same opportunities for redress. First, whereas in *Regan* the proposed statute would have imposed a tax burden on South Carolina's citizen bondholders, any tax burden incurred by the possible revocation of Respondent's 501(c)(3) status would be borne by Respondent and Respondent alone. There exists for the Respondent no analogous constituent group similar to South Carolina's citizen bondholders. Upon revocation of its 501(c)(3) status, Respondent would be able to determine exactly how much it paid in additional taxes and would be able to seek redress in multiple different ways.

To that end, the Fourteenth Circuit majority erred in its belief that Respondent lacks an alternative remedy to the Johnson Amendment; it has at least five and has pursued none of them. First, as noted by the Fourteenth Circuit majority, if a party objects to its tax classification as determined by the Internal Revenue Service ("IRS"), it may file an appeal with the IRS. R. at 6. This is the simplest route for Respondent. No such appeal has been filed by Respondent, as the IRS has neither indicated that it plans to change Respondent's tax classification nor actually begun the audit. *Id.* at 5. Respondent knows neither how the IRS will respond to its political activity nor what tax classification changes the IRS would make to its classification status, if any.

Second, if the party chooses not to file an appeal, it may pay the tax and then seek a refund. Significantly, the Williams Packing court itself suggested this is avenue as a remedy, ruling in that case that the plaintiff possessed the alternative remedy of a suit for a refund. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7. If the IRS does not grant the refund, a third option arises:

Respondent may bring a refund suit in a federal district court or in the Court of Claims. This process was recommended by this Court in *Bob Jones University v. Simon*, 416 U.S. 725, 730-31 (1974). ("Or, following the collection of any federal tax and the denial of a refund by the Service, the organization may bring a refund suit in a federal district court or in the Court of Claims. *See* U.S.C. § 7422, 26 U.S.C. § 7422; 28 U.S.C. §§ 1346(a)(1) and 1491.

Fourth, as described in *Bob Jones University v. Simon*, an organization may petition the Tax Court to review a notice of deficiency upon the assessment and attempted collection of income taxes. 416 U.S. 725, 730 (1974). Fifth, if Respondent loses its 501(c)(3) classification, Respondent's donors may bring a refund suit to challenge the denial of a charitable deduction under 26 USCA § 170(c)(2). *Id.* at 731. All five of these remedies are available to Respondent (or will be available if it does suffer an actual harm), and none have yet been pursued by Respondent.

The fact that Respondent has not yet suffered actual harm does not mean that their avenues for redress are exhausted. Indeed, the Fourteenth Circuit majority mistakenly stated, "[b]ecause [Respondent's] classification as a Section 501(c)(3) organization is intact, IRS procedures and Section 7428 provide no avenue for relief." R. at 7. This is an incorrect understanding of both IRS procedures and the intention of the Act. An analogous statement would be to say, "because the owner's home has not yet burned, homeowners and fire insurance provide no relief." The fact that Respondent's intact tax classification as a 501(c)(3) prevents it from pursuing the aforementioned avenues of redress is a feature, not a bug. All previously mentioned avenues of redress are intended for those who have suffered *actual* harm as a result of an adverse tax action by the IRS; they provide not for those who have yet to suffer any actual adversity.

To allow persons who have not yet experienced actual harm to file suit against the IRS would be to invite a flood of litigation to occur upon every change made by the IRS. Not only

would litigation result follow changes made by the IRS, it would also result from the subjective beliefs—mistaken or not—of parties anticipating potential negative tax consequences by the IRS. Such a standard would be untenable. To obtain injunctive relief under the *Regan* court's exemption, Respondent must assert that the provided alternatives are functionally impossible alternatives. They are not functionally impossible simply because the Respondent has not suffered the required harm necessary to pursue them. A harm that has not yet been suffered is no harm at all.

C. Even if the Respondent has no other alternative and the *Regan* exception applies, the Act bars Respondent's suit because Respondent is not guaranteed to succeed on the merits of its suit, and will not suffer irreparable harm in the absence of an injunction.

Judge Marshall correctly articulated the standard for bringing a suit against the Act in dissent, stating "because Appellee brought a pre-enforcement challenge to the Johnson Amendment, the AIA bars the suit unless Appellee demonstrates: (1) it is guaranteed to succeed on the merits; and (2) it will suffer irreparable harm in the absence of an injunction." R. at 12, *citing Alexander v. Ams. United, Inc*., 416 U.S. 752, 758 (1974); *see also Bob Jones University v. Simon* at 737 *"*An injunction could issue only 'if it is clear that under no circumstances could the Government ultimately prevail . . . .'" *citing Williams Packing & Navigation Co.* at 7. This is because—barring a scenario where the government has no chance of succeeding—it is in the interest of both the taxpayer and the government that the tax be collected and a sum be determined for a potential refund; this process ensures the uninterrupted collection of taxes for the government and accurate amounts for any potential refunds for taxpayers.[4] As noted by Judge Marshall, there is no guarantee that Respondent will succeed in its Establishment Clause claim. R. at 12-13. At

[4] *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962) ("The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund. In this manner the United States is assured of prompt collection of its lawful revenue.").

least one lower court, the District of Columbia Circuit Court of Appeals, previously held that the Johnson Amendment does not violate the First Amendment in *Branch Ministries v. Rossotti.* R. at 13, *citing Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000).

In *Rossotti*, Branch Ministries Church and its pastor, Pastor Little, publicly opposed a political candidate by way of newspaper advertisements. *Id.* at 140. For that reason, the IRS revoked the Church's 501(c)(3) status, with the D.C. Circuit court later finding the Johnson Amendment's requirements to be constitutional and viewpoint neutral. *Id* at 139-44. Considering the similarity between *Rossotti* and our case—the only notable difference being that Pastor Vale publicly supported a political candidate while Pastor Little publicly opposed a political candidate—it would be difficult to guarantee the success of Respondent's challenge to the Johnson Amendment when at least one lower court has found the Johnson Amendment to be constitutional and viewpoint neutral. Further complicating such an argument is the fact that this suit was not advanced to this Court by a unanimous lower court; Circuit Judge Marshall issued a compelling dissent in the lower court, suggesting that Respondent is in no way guaranteed to succeed on the merits.

Further, Respondent must suffer irreparable harm in the absence of an injunction. *Alexander v. Ams. United, Inc*. at 758. Respondent will not suffer irreparable harm in the absence of an injunction; any harm suffered by Respondent as a result of a potential change in tax classification can be remedied under both the appellate procedures established by the IRS and § 7428, and there is no guarantee that Respondent's tax classification will even be altered. This Court has consistently asserted that, barring invidious discrimination, "Congress has not violated [an organization's] First Amendment rights by declining to subsidize its First Amendment activities." *Rossotti* at 143-44, *quoting Regan* at 548 (brackets in original). If Respondent's tax

classification is altered, there are at least five different ways that Respondent can avoid or redress any potential harm.[5] Even if this Court finds that Respondent's suit is not barred by the Act, Respondent still lacks Article III standing, and this Court should dismiss this suit for lack of jurisdiction.

II. The Respondent failed to establish Article III Standing.

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies," meaning a plaintiff must have standing to bring suit. U.S. Const., Art. III, § 2. The "irreducible constitutional minimum" of standing consists of three elements that the Respondent must prove; (1) the Respondent suffered an injury in fact, (2) there is a causal connection between the injury, meaning the injury is traceable to the challenged conduct of the defendant, and (3) the injury is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Friends of Earth, Inc. v. Laidlaw Environmental Services, Inc.,* 528 U.S. 180–181 (2000).

To establish injury in fact, the Respondent must show they suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S., at 560. For an injury to be "particularized," it "must affect the Respondents in a personal and individual way." *Id*. The injury cannot be a "generalized grievance" that is widely shared by other people in an "undifferentiated" way. *United States v. Richardson*, 418 U.S. 166, 176–77 (1974). The injury in fact must also be "concrete." *Spokeo*, 578 U.S. at 339. A "concrete" injury is "de facto," that is, it must be real and not abstract. *Id.* at 340.

[5] As outlined above, these are (1) filing an appeal with the IRS; (2) paying the tax and seeking a refund; (3) if a refund is not granted, a refund suit in a federal district court or in the Court of Claims; (4) petitioning the Tax Court to review a notice of deficiency; and (5) filing a donor refund suit to challenge the denial of charitable deduction under 26 USCA § 170(c)(2).

In addition to being particular and concrete, injuries in fact must also be imminent. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Imminence means there is "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. Farm Workers*, 442 U.S. 289, 298 (1979). A sufficiently imminent threat is most obviously shown by a history of past enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014); *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020).

The third requirement—redressability—requires that a favorable decision will remedy the alleged injury. *Lujan*, 504 U.S. at 560–61. In that regard, to be adequate to support standing, the remedy sought must redress the injury alleged; it is not sufficient that the remedy may address some different injury. *California v. Texas*, 593 U.S. 659, 671 (2021). Finally, if relief from the injury "depends on the unfettered choices made by independent actors" that the court cannot control or predict, redressability is not satisfied. *Lujan*, 504 U.S. at 562.

Here, the Respondent cannot establish the threshold requirement of Article III standing: an injury that is concrete and particularized, and actual and imminent. Because no injury in fact exists, the standing inquiry ends at the first step. There is therefore no need to examine causation since an injury that does not exist cannot be traceable to the challenged conduct. There is neither a need to address redressability, for this Court cannot remedy a harm that has never occurred.

A. The Respondent did not suffer a concrete and particularized injury in fact.

Injuries that are not concrete or particular—such as claiming injury from an audit that has not occurred—do not satisfy Article III's injury in fact requirement. *Id*. In *Lujan*, the Court reviewed the Defenders of Wildlife's challenge to a rule promulgated by the Secretary of the Interior interpreting § 7 of the Endangered Species Act ("ESA") of 1973, which rendered the ESA

applicable only to actions within the United States or on the high seas. *Id*. at 558. The Defenders of Wildlife argued that the government's failure to consult regarding certain federally funded activities abroad "increase[d] the rate of extinction of endangered and threatened species." *Id.* at 562. From that premise, they claimed injury in fact on the theory that the extinction of endangered species *might someday* impair their ability to observe those animals in the future. *Id.* at 563.

But the Court rejected that theory and held that the Defenders of Wildlife lacked standing. *Id*. In reaching that conclusion, the Court explained that the injury in fact requirement demands more than a generalized grievance or an abstract interest in the enforcement of the law; it requires that the plaintiff himself be personally and actually affected by the challenged conduct. *Id.* at 563. Because the alleged harm depended on a speculative chain of future events—namely, that species would go extinct and that the plaintiffs would some-day attempt to observe them—the asserted injury was neither concrete nor particularized. *Id.* at 564. Thus, the Court concluded that injuries based on what *might* occur in the future are conjectural or hypothetical, insufficient to establish standing. *Id*. at 564; See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 434, (2021) (denying standing because the risk of some-day harm alone is not a concrete injury.).

The injury alleged by Covenant Truth Church is not concrete; it is hypothetical. As in *Lujan*, where the plaintiffs claimed that a government rule *might* affect them if certain contingencies occurred, Covenant Truth Church asserts injury based on similar contingencies. On May 1, 2024, the IRS merely notified Covenant Truth Church that it was selected for a random audit. Before the audit occurred, Pastor Vale became concerned—though not injured—that the IRS might discover the Church's political activity and revoke its § 501(c)(3) tax status. But concern alone does not establish injury; it shows paranoia of the same sort of "some-day" injury that was present in *Lujan*. Critically, the IRS never *completed* the audit and never expressed an intention to revoke the

Church's tax-exempt status. Thus, Covenant Truth Church's alleged injury—like the Defenders of Wildlife's injury in *Lujan*—rests on nothing more than fear and speculation, which this Court has found insufficient to establish a particular and concrete injury. Accordingly, the Respondent does not have standing to pursue their claim.

B. The Respondent did not suffer an actual or imminent injury in fact.

Not only do Covenant Church's alleged injuries lack concreteness, but they are neither actual nor imminent. Pre-enforcement challenges seeking injunction—as is the challenge here—relying on a "speculative chain of possibilities" are insufficient to create standing. *Clapper*, 568 U.S. at 414. In *Clapper*, the plaintiffs brought suit seeking an injunction against a portion of the Foreign Intelligence Surveillance Act ("FISA"). *Id*. at 401. The plaintiffs asserted an injury in fact existed because there was a reasonable likelihood that their communications would be acquired or surveilled under the FISA in the future. *Id*. at 410. The plaintiffs argued that given the *risk* of surveillance, their injury was actual and imminent. *Id*. at 406–407. No surveillance of their communications had taken place. *See Id*.

The Court held that Clapper's alleged injury was not "certainly impending" because there was no evidence that the defendants were surveilling the plaintiffs or intended to do so in the future; they merely had the ability to. *Id*. at 9. Thus, Clapper could only speculate as to whether any interception of communications would occur at all. *Id.* at 413. Thus, the Court reasoned that the plaintiffs' theory relied on too many speculations and too little concrete evidence. *Id*. In sum, the Court held that imminence must be grounded in an impending or present injury, not a speculative chain of possibilities. *Id*. at 410. *See Babbitt*, 442 U.S. at 298 ("a plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of its operation or enforcement").

Covenant Truth Church relies entirely on a speculative chain of possibilities to prove standing. Thus, the same flaw apparent in *Clapper* is present here; an alleged injury that depends on a series of assumptions about how the government *might* act in the future, rather than on evidence of what has occurred or is about to occur. Here, Covenant Truth Church was merely notified of its selection for a random audit. This random audit, standing alone, did not cause injury. However, from the random audit alone, the Church constructed the following hypothetical sequence: (1) that the IRS would conduct the audit, (2) that the IRS would discover political activity, (3) that the IRS would choose to pursue enforcement, and (4) that the IRS would ultimately revoke the Church's § 501(c)(3) status. But none of those hypothetical facts occurred. The audit was never completed; no enforcement action was initiated, and the IRS never expressed any intent to revoke the Church's tax-exempt status. Absent such facts, Respondent cannot "demonstrate a realistic danger" of enforcement stemming from the IRS audit. *Babbitt*, 442 U.S. at 298.

Further, the Supreme Court has made clear that Article III does not permit jurisdiction where alleged harm rests on "highly attenuated chains of possibilities." *Clapper,* 568 U.S. at 410. Assuming that the IRS would conduct the audit, that the IRS would discover political activity, that the IRS would choose to pursue enforcement, and that the IRS would ultimately revoke the Church's § 501(c)(3) status is a highly attenuated chain of possibilities. As displayed previously, the Respondent has offered no evidence to support a single factor other than the Church being notified of being selected for a random audit. But because speculation cannot establish the imminence of an injury in fact, the Church's claim of an injury fails, and this Court should reject the Church's claim of standing.

a. Selection for a random IRS audit alone does not establish imminent injury.

As a last attempt to establish standing, Respondent may argue that the IRS's notice of the random audit is enough to show an imminent threat of the IRS's intention in enforcing the Johnson Act. This contention fails. The Supreme Court has established that imminence can most convincingly be demonstrated by a history of past enforcement against similarly situated parties. *Susan B. Anthony List*, 573 U.S. at 164; *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). Where such a history is absent, claims of imminent injury collapse into speculation.

That is precisely the case here. When this Court investigates the history of the IRS enforcing the Johnson Amendment, it will find that the IRS has *expressly disclaimed* intent to enforce the Johnson Amendment against houses of worship. This position is formalized in an executive order confirming that the IRS will not enforce the Johnson Amendment. *See* Executive Order 13798 (May 9, 2017) ("[T]he Secretary of Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any . . . house of worship . . . on the basis that such . . . organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation of intervention in a political campaign on behalf of . . . a candidate for public office.").

In light of this disavowal of enforcement, Respondent cannot transform a routine audit notice into an imminent injury. Imminence is not established by speculation about what the IRS *might* do, but by concrete evidence of what it has done or is about to do. Here, there is no history of enforcement, no present enforcement action, and no stated intent to conduct the audit. Because the record shows that enforcement is not only unlikely, but expressly disclaimed by the IRS, the Respondent cannot carry their burden of demonstrating a real and immediate threat of injury. The Respondent's theory of imminence, therefore, fails, and their claim of standing fails with it.

III. The Court must reverse the appellate court's order and find that the Johnson Amendment does not, on its face, represent an unconstitutional violation of the Establishment clause; the Amendment constitutes a valid condition on a subsidy of speech under the First Amendment—a practice supported by history and tradition; and (2) to hold otherwise would require an excessive, entangling, inquiry into whether entities should be considered religious organizations for purposes of federal funding.

When determining whether a law is unconstitutional under the Establishment Clause of the First Amendment, "[t]here is . . . precedent in this area of constitutional law for distinguishing between the validity of the statute on its face and its validity in particular applications." *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988). Whenever a Respondent argues, as it does here, that a law or policy violates the Establishment Clause as written, a facial challenge is brought. *Satanic Temple, Inc. v. City of Bos.*, 111 F.4th 156, 168 (1st Cir. 2024) (collecting Supreme Court cases); *cf. Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm'n*, 605 U.S. 238, (2025) (finding the Wisconsin Supreme Court's interpretation of Wis. Stat. §108.02(15)(h)(2), a corollary of §3309(b)(1)(B), as applied to the Catholic Church was unconstitutional under the Establishment Clause, yet later commenting, through a concurrence, that the identical federal statute was not—so long as the right interpretation was applied.). These types of challenges, put simply, are the "most difficult to mount successfully," given they "often rest on speculation" and "[a]s a consequence, [] raise the risk of 'premature interpretation of statutes on the basis of factually barebones records,'"—"threaten[ing] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Satanic Temple, Inc.*, 111 F.4th at 168. (citations omitted). Accordingly, in order to win their facial challenge, Respondent was required to prove that the Johnson Amendment was not constitutional in *any* of its applications under the Establishment Clause. *Id.* It failed.

At bottom, the First Amendment commands that a State "shall make no law respecting an establishment of religion," meaning the government cannot "pass laws which aid one religion, aid

all religions, or prefer one religion over another." *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968); U.S. Const. amend. I. Yet, absent from the Amendment is a commandment mandating separation of Church and State *in every* scenario. *Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 669 (1970). As this Court aptly put it in *Reynolds v. United States*, "laws are made for [a] government *of actions*, and while they cannot interfere with mere religious belief and opinions, they may with practices." *Reynolds v. United States*, 98 U.S. 145, 166 (1878) (emphasis added). In other words, our government's decision to subsidize pork production[6] doesn't mean it prefers some religions over Islam. *Id.* Any more than our government's decision to subsidize abstinence over contraceptives teaching in public schools[7] aids the Catholic Church. *Id.*; *McGowan v. Maryland*, 366 U.S. 420, 443 (1961) ("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.").

Determining this threshold, determining the line between government interference into "mere religious belief and opinions" (impermissible) and "practices" (permissible), has historically been a difficult task. *See Thomas v. Anchorage Equal Rts. Comm'n*, 165 F.3d 692, 717 (9th Cir. 1999), *rev'd en banc*, 200 F.3d 1134 (9th Cir. 2000) (commenting that "recent Establishment Clause doctrine undoubtedly suffers from a sort of jurisprudential schizophrenia."). That is, until this Court recently clarified that "in place of *Lemon* and the endorsement test . . . the Establishment Clause . . . must be interpreted by reference to historical practices and understandings." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). As a result, moving forward, "[a]ny [governmental] practice that was 'accepted by the Framers and has withstood the

[6] *See* the Meat and Poultry Processing Expansion Program (MPPEP) authorized under section 1001(b)(4) of the American Rescue Plan Act (APRA).
[7] *See* the Sexual Risk Avoidance Education Program (SRAE), which is generally authorized under section 1110 of the Social Security Act.

critical scrutiny of time and political change' does not violate the Establishment Clause." *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014). A finding that supplements the traditional understanding that federal lawmaking implemented to avoid the "potentially entangling inquiry into whether a [church's] . . . practice . . . is the result of sincere religious belief," also doesn't violate the Establishment Clause. *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 n.30 (1983).

Here, the Court will find that the Respondent's First Amendment facial challenge fails. The Johnson Amendment has a multitude of constitutional applications: (1) it constitutes a valid condition on a subsidy of speech under the First Amendment—a governmental practice that "has withstood the critical scrutiny of time" and is readily "accepted by the Framers"; and (2) it is necessary for the government to avoid a "potentially [excessive,] entangling[,] inquiry into whether" entities should be considered religious organizations for purposes of federal funding. *Bob Jones Univ.*, 461 U.S. at 604 n.30.; *Greece v. Galloway*, 572 U.S. at 577.

A. The Johnson Amendment is facially constitutional; it represents a valid condition on a subsidy of speech under the First Amendment—a governmental practice that "has withstood the critical scrutiny of time" and is readily "accepted by the Framers."

Analyzing whether a government regulation accords with the Establishment Clause requires an inquiry into the original meaning and history tied to the challenged regulation. *Kennedy*, 597 U.S. at 535-36. Where that inquiry indicates the regulation was "accepted by the Framers and has withstood the critical scrutiny of time and political change," the regulation endures. *Greece v. Galloway*, 572 U.S. at 577.

a. Regulations governing conditional subsidies, i.e., religious tax exemptions, constitute a type of regulation accepted by the Framers.

Over time, courts have indicated that regulations "accepted by the Framers" present themselves, throughout history, in two forms: (1) identical regulations in existence at the time of

Founding, and (2) historical analogues. *See generally*, *Hunter v. United States Dep't of Educ.*, 115 F.4th 955 (9th Cir. 2024). Here, considering the Johnson Amendment didn't exist at the Founding, a historical analogue accepted by the Framers, a conditional subsidy (i.e., religious tax exemptions), is required. *See Hunter*, 115 F.4th at 965; s*ee e.g.*, *Katz v. United States*, 389 U.S. 347 (1967) ("[t]o read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication.").

To establish such an analogue, "substantial evidence of a lengthy tradition of [conditional subsidies, i.e., tax] exemptions for religion," at or near the time of the Founding is required. *See Hunter*, 115 F.4th at 965**.** Evidence this Court in *Walz* indicated *abounds*:

> The Establishment Clause, along with the other provisions of the Bill of Rights, was ratified by the States in 1791. Religious tax exemptions were not an issue in the petitions calling for the Bill of Rights, in the pertinent congressional debates, or in the debates preceding ratification by the States. The absence of concern about the exemptions could not have resulted from failure to foresee the possibility of their existence, for they were widespread during colonial days. Rather, it seems clear that the exemptions were not among the evils that the Framers and Ratifiers of the Establishment Clause sought to avoid.

Walz, 397 U.S. at 682 (concurring opinion) (concluding, after nearly twenty pages of exhaustive historical analysis establishing that conditional subsidies, i.e., religious tax exemptions, were acceptable to the Framers with the following: "[t]he First Amendment does not invalidate 'the propriety of certain tax . . . exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. . . . Religious institutions simply share benefits which government makes generally available."); *Lemon v. Kurtzman*, 403 U.S. 602, 624 (1971) (stating, back in 1971, that "[w]e have no long history of state aid to church-related educational institutions comparable to *200 years* of tax exemption for churches.") (emphasis added); *Emp't Div. v. Smith*, 494 U.S. 872, 878-79 (1990) (finding that more than a century of First Amendment jurisprudence supports the government's ability to implement

conditional, religious, tax exemptions.); *United States v. Lee*, 455 U.S. 252, 260 (1982) ("[t]he 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.").

Given this overwhelming display of evidence and given that the appellate court has failed to cite even a single court opinion supporting an evident historical trend indicating otherwise (instead opting to cite cases supporting conclusory statements),[8] this court should find that conditional subsidies, i.e., religious tax exemptions, are a type of regulation accepted by the Framers. *See Hunter*, 115 F.4th at 965 ("[a]bsent additional historical evidence—and Plaintiffs point us to none here—the history of tax exemptions near the time of the Founding suggests that the statutory exemptions that operate as a subsidy to religious institutions do not violate the Establishment Clause according to its original meaning.").

b. Our nation has an "uninterrupted practice" of conditioning government subsidies, i.e., religious tax exemptions, and 501(c)(3) in particular, upon an entity's lack of political involvement.

Having established a history of conditional subsidies, i.e., religious tax exemptions at or near the Founding, the history and tradition test then requires an inquiry into whether there is an "uninterrupted practice" of upholding the challenged regulation based on our nation's traditions. *Kennedy*, 597 U.S. at 536 (*quoting Walz*, 397 U.S. at 680); *See Hunter*, 115 F.4th at 965-66. Here, the Respondent challenges 501(c)(3) and the Johnson Amendment, a religious tax exemption conditioned upon an entity's lack of political involvement. 501(c)(3). A type of regulation consistently upheld and uninterrupted throughout our nation's history. *Cammarano v. United States*, 358 U.S. 498, 502, 511 (1959) (explaining that "[s]ince 1918 regulations promulgated by

[8] R. at 11. (Citing history in passing (*Walz*, a pre-Johnson Amendment case), only once, to support the following conclusion: "[t]he Johnson Amendment ignores 'benevolent neutrality' and authorizes government regulation of religious activity."); *see* R.

the Commissioner under the Internal Revenue Code have continuously provided that expenditures for the 'promotion or defeat of legislation . . .' are not deductible from gross corporate income . . . [these regulations represent] unambiguous . . . language, adopted by the Commissioner in the early days of federal income tax legislation, in continuous existence since that time, [that have] consistently construed and applied by the courts on many occasions to deny deduction of sums expended in efforts to persuade the electorate, *even when a clear . . . motive for the expenditure has been demonstrated*.") (Emphasis added); *see Gaylor v. Mnuchin*, 919 F.3d 420, 435-37 (7th Cir. 2019).

Ultimately, this regulatory practice remains uninterrupted for good reason. Religious tax exemptions are really "[s]ubsid[ies] of buildings of worship," which is "a universal practice of state and federal government." *See Hunter*, 115 F.4th at 965 (*quoting Walz*, 397 U.S. at 680); *Regan v. Taxation with Representation*, 461 U.S. 540, 544 (1983) ("tax exemptions . . . are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions."); *The Parsonage Allowance*, 51 U.C. Davis L. Rev. 849, 854 (2018) ("[t]he claim that exemptions differ from direct subsidies for Establishment Clause purposes simply ignores economic reality.").

As such, the government generally does not violate the First Amendment and the Establishment Clause by subsidizing speech based on its *content* or *speaker*. *Zillow, Inc. v. Miller*, 126 F.4th 445, 461 n.5 (6th Cir. 2025) (finding that the "upshot" of viewing religious tax exemptions as subsidies is that the government can "subsidize speech based on its content or speaker without offending the First Amendment.") (Collecting cases); *Ysursa v. Pocatello*

Education Ass'n, 555 U.S. 353, 358 (2009) ("[w]hile in some contexts the government must accommodate expression, it is not required to assist others in funding the expression of particular ideas, including political ones."); *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 648 (7th Cir. 2013) ("[w]hile *Sorell* and *citizens united* support the unconstitutionality of speaker-based discrimination in statutes that prohibit or burden speech, *Regan* controls on government subsidies of speech: speaker-based distinctions are permissible."); *Camelot Banquet Rooms, Inc. v. United States SBA*, 24 F.4th 640, 651 (7th Cir. 2022) *quoting Regan*, 461 U.S. at 546 (explaining Congress did "not infringe[] any First Amendment rights or regulate[] any First Amendment activity" by excluding [entities] from receiving . . . funding" via the Johnson Amendment); *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) ("[t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.").

The only time a government subsidy does violate the First Amendment is where (1) the subsidy is "aim[ed] at the suppression of dangerous ideas"; or (2) violates the unconstitutional conditions doctrine. *Regan*, 461 U.S. at 550; *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (collecting cases). Two exceptions that our nation has an "uninterrupted practice" of finding do not apply to 501(c)(3) and the Johnson Amendment. *Kennedy*, 597 U.S. at 536 (*quoting Walz*, 397 U.S at 680).

1. Our nation's history indicates that 501(c)(3) and the Johnson Amendment were not created to suppress "dangerous ideas."

Conditions on subsidies, including the Johnson Amendment, track with the power imbued

in our legislature. *Regan*, 461 U.S. at 547-48 ("[t]he broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . . [The] passage of time has only served to underscore the wisdom that recognition of the large area of discretion which is needed by a legislature in formulating tax policies. . . . [E]ven more than in other fields, legislatures[, in the context of taxation] possess the greatest freedom [to classify]."). In fact, the very purpose of legislative power is to distribute governmental funds equitably, infusing local communities in need—with the support they need. *Regan*, 461 U.S. at 347 (stating the "legislature necessarily enjoy[s] a familiarity with local conditions which this Court cannot have, [allowing it to use] classification [as] a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden."). As a result, conditions placed on subsides are presumed constitutional and can only "be overcome . . . by the most explicit demonstration that [the condition] is [] hostile and oppressive discrimination against particular persons and classes. [*Notably, t*]*he burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it*." *Regan*, 461 U.S. at 347-48 (emphasis added).

No such "hostile or oppressive" motivation exists behind the Johnson Amendment. As explained by this Court in *Cammarano*, the purpose of the Johnson Amendment was, and is, to avoid any appearance of impropriety on behalf of the Treasury Department, i.e., any appearance that American tax dollars are funding "political agitation" in the U.S.:

> The statutory policy [behind the Johnson Amendment] is further evidenced by the treatment given by Congress to the tax status of organizations, otherwise qualified for exemption as organized exclusively for "religious, charitable, scientific, literary, or educational purposes," which engage in activities designed to promote or defeat legislation. As early as 1934 Congress amended the Code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which "is carrying on propaganda, or otherwise attempting, to influence legislation," and that deductibility should be denied to contributions by individuals to such organizations. Revenue Act of 1934, §§ 101 (6), 23 (o)(2), 48 Stat. 700, 690. And a year thereafter, when the Code was for the

> first time amended to permit corporations to deduct certain contributions not qualifying as "ordinary and necessary" business expenses, an identical limitation was imposed. Revenue Act of 1935, § 102 (c), 49 Stat. 1016. These limitations, carried over into the 1939 and 1954 Codes, made explicit the conclusion derived by Judge Learned Hand in 1930 that "political agitation as such is outside the statute, however innocent the aim . . . . Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them." *Slee v. Commissioner*, 42 F.2d 184, 185. The Regulations here contested appear to us to be but a further expression of the same sharply defined policy.

Cammarano v. United States, 358 U.S. at 512. Ultimately, despite Respondent's best efforts to warp this evidence, contending that the denial of "tax exemptions to organizations whose religious beliefs compel them to speak on political issues" amounts to an attempt to suppress "dangerous ideas," their argument, once again, falls short. *Quoting* R. at 9.

Our nation's uninterrupted history and tradition have heard and denied these claims before. *Camelot Banquet Rooms, Inc.*, 24 F.4th at 646 ("[t]o avoid the controlling line of subsidy cases, plaintiffs focus on language in *Regan* suggesting that a selective subsidy program may violate the First Amendment if it is "aim[ed] at the suppression of dangerous ideas. [However, t]he only sign we see here of a supposed effort to "suppress" is the choice not to subsidize. Whatever door *Regan* left open—and as far as we can tell, the Supreme Court has never struck down a denial of subsidy on this ground—it surely requires something more, like viewpoint discrimination, than the denial of the subsidy itself."); *Branch Ministries*, 211 F.3d at 144 ("[t]he restrictions imposed by section 501(c)(3) are viewpoint neutral; they prohibit intervention in favor of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint."); *Rust*, 500 U.S. at 193 ("[t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other."); *Christian Echoes Nat'l Ministry v. United States*,

470 F.2d 849, 856-57 (10th Cir. 1972) ("[w]e hold that the limitations imposed by Congress in Section 501(c)(3) are constitutionally valid."). Accordingly, the Respondent has failed to carry its burden in proving this exception applies; it has opted not to present *any evidence* indicating 501(c)(3) and the Johnson Amendment were designed to suppress "dangerous ideas." *See* R. Thus, our nation's uninterrupted presumption of constitutionality tied to 501(c)(3) and the Johnson Amendment should persist.

2. Our nation's history indicates that 501(c)(3) and the Johnson Amendment do not violate the unconstitutional conditions doctrine.

The unconstitutional conditions doctrine was designed to prevent the government from "burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Quoting Koontz*, 570 U.S. at 606; *Boehringer Ingelheim Pharm., Inc. v. United States HHS*, 150 F.4th 76, 96 (2d Cir. 2025). A government abstains from doing so, from violating the unconstitutional conditions doctrine, so long as it doesn't deny an entity funds: (1) in a way that gets the entity to support particular speech; or (2) in a way that eliminates every avenue an entity has "to make known its views on matters of public importance." *Quoting Regan*, 461 U.S. at 553; *see generally*, *Speiser v. Randall*, 357 U.S. 513 (1958). What the doctrine doesn't require, though, is that the government amplify an entity's speech with the taxpayer's dime. *Regan*, 461 U.S. at 546, 550 ("[a]lthough [an entity may] not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution 'does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.' . . . We again reject the "notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State.").

i. The Johnson Amendment does not deny entities funds in a way that coerces said entities into supporting a particular message.

Neither problem implicated by the unconstitutional conditions doctrine applies to the Johnson Amendment. To start, the Johnson Amendment does not deny entities funds in a way that coerces them into supporting particular speech. *Cf. Speiser*, 357 U.S. at 519 (1958) (conditioning a property tax exemption, i.e., a subsidy, on organizations signing a statement saying they would not advocate for the forcible overthrow of the government.). Take, for example, the situation this court faced in *Agency for International Development v. Alliance for Open Society International, Inc. See generally, Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013). There, the government had created a subsidy to combat HIV/AIDS around the world, placing two conditions on recipients. *Id.* at 208. First, recipients could not use the money to promote the legalization of prostitution or human trafficking, and second, entities were required to adopt a policy "explicitly opposing prostitution and sex trafficking." *Id.* After review, the court found that only the second condition had violated the unconstitutional conditions doctrine (the first condition wasn't even challenged). *Id.* The court reasoned, in part, that the policy requirement violated the time-honored understanding that "[t]he First Amendment . . . prohibits the government from telling people what they must say." *Id.* at 213.

Here, the Johnson Amendment has no such requirement; it has never required that 501(c)(3) entities support any particular speech. *See* 501(c)(3). Instead, just as the regulation in *Agency for International Development's* required that recipients *not promote* the legalization of prostitution or human trafficking, 501(c)(3) requires that recipients *not promote* or interfere with politics. *Id.* A condition later courts have deemed constitutional under the First Amendment. *Camelot Banquet Rooms, Inc.*, 24 F.4th at 650-51 (discussing *Agency for International Development* and finding that "the condition on the activities the government would fund . . . so

as not to subsidize advocacy of prostitution or human trafficking, was not even challenged in the case, and we have no doubt it was permissible under the First Amendment.). Therefore, this Court should rule the same.

ii. The Johnson Amendment does not deny entities funds in a way that eliminates every avenue an entity has "to make known its views on matters of public importance."

Further, the Johnson Amendment does not deny entities funds in a way that eliminates every avenue they have "to make known its views on matters of public importance." *Regan*, 461 U.S. at 553. This Court's history and uninterrupted precedent make clear that conditional subsidies do not violate the unconditional conditions doctrine if entities possess alternative means by which to express the speech allegedly restricted by a regulation's various subsidy conditions. *Boehringer Ingelheim Pharm., Inc.*, 150 F.4th at 97; *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 792 F. Supp. 3d 227, 254-55 (D. Mass. 2025) ("[t]he Supreme Court has underscored that the use of separate corporate entities, even where closely related, allows Congress to set conditions with its spending powers without unconstitutionally leveraging the funding to regulate speech."); *Rust*, 500 U.S. at 196 (finding that "[t]he Title X grantee can continue to . . . engage in abortion advocacy; it simply is required to conduct those activities through programs that are separate and independent from the project that receives title X funds."); *Fcc v. League of Women Voters*, 468 U.S. 364, 400 (1984), (striking down a statute barring any recipient of certain federal grants from engaging in editorializing, but later finding that "if Congress were to adopt a revised version" of the regulation "that permitted . . . broadcasting stations to establish 'affiliate' organizations" that engaged in editorializing, "such a statutory mechanism would plainly be valid" because "[a] public broadcasting station[] would be free . . . to make known its views on matters of public importance

through its nonfederally funded, editorializing affiliate without losing federal grants for its noneditorializing broadcast activities.").

Ultimately, history indicates that the very regulation in question today fits within this uninterrupted practice. 501(c)(3) entities possess an alternative means by which to express political speech allegedly restricted by the Johnson Amendment:

> [Church's have] avenue[s] available to it [under 501(c)(3)]. As was the case with [the Church in Regan], the Church may form a related organization under section 501(c)(4) of the Code. *See* 26 U.S.C. § 501(c)(4) (tax exemption for "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare"). Such organizations are exempt from taxation; but unlike their section 501(c)(3) counterparts, contributions to them are not deductible. See 26 U.S.C. § 170(c); *see also Regan*, 461 U.S. at 543, 552-53. Although a section 501(c)(4) organization is also subject to the ban on intervening in political campaigns, *see* 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii) (1999), it may form a political action committee ("PAC") that would be free to participate in political campaigns. *Id.*§ 1.527-6(f), (g) ("An organization described in section 501(c) that is exempt from taxation under section 501(a) may, [if it is not a section 501(c)(3) organization], establish and maintain such a separate segregated fund to receive contributions and make expenditures in a political campaign.").

Quoting Branch Ministries, 211 F.3d at 143; *Regan*, 461 U.S. 544; *Agency for Int'l Dev.*, 591 U.S. at 445. Accordingly, this exception doesn't apply; churches and other religious entities have an avenue to make their views on matters of public importance known under 501(c)(3)-(4). *Regan*, 461 U.S. at 553; *see* 501(c)(3)-(4). Thus, history compels that the Johnson Amendment be found constitutional. *Id.*

B. The Johnson Amendment is required to avoid an excessive, entangling inquiry into whether entities should be considered religious organizations for purposes of federal funding.

It is also worth noting that this Court has indicated that if the effect of striking down a particular regulation would lead to excessive government entanglement with religion, that too may represent an independent, constitutional basis for continuing to apply a regulation. *Walz*, 397 U.S.

at 674; *see Bob Jones Univ.*, 461 U.S. at 604 n.30. ([n]oting that an IRS policy was constitutional and reasoning, in part, that "the uniform application of the rule to all [religious entities] avoids the necessity [of] a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief."); *Larson v. Valente*, 456 U.S. 228, 252-53 (1982) (implying that where, in the absence of a regulation, "governmental involvement in . . . religion [is] so direct or in such degree as to engender a risk of politicizing religion[, i.e.,] the very nature [of government activity] is apt to entangle the [government] in details of administration and planning[,]" a regulation, or dismissal of a regulation may be constitutionally necessary.).

Here, to hold that the Johnson Amendment is unconstitutional is to eliminate the government's ability to place conditions on federal funding. If a religious entity is able to say that its religion requires it to avoid any obstacles standing in the way of its receiving federal funding, from every possible source, then the only remaining case-by-case question the IRS can ask, before emptying its coffers, is whether the entity is religious (the Establishment Clause, after all, doesn't cover all entities). A question whose "very nature is apt to entangle the [S]tate in details of administration and planning, [which] may escalate to the point of inviting undue fragmentation." *Larson v. Valente*, 456 U.S. at 253. As stated in *Lemon*, "[i]t conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government." *Lemon v. Kurtzman*, 403 U.S. at 623.

Overall, the historical evidence presented above requires that this Court find the Respondent's First Amendment facial challenge fails. The Johnson Amendment has a multitude of constitutional applications: (1) it constitutes a valid condition on a subsidy of speech under the First Amendment—a governmental practice that "has withstood the critical scrutiny of time" and

is readily "accepted by the Framers"; and (2) it is necessary for the government to avoid the "potentially [excessive,] entangling[,] inquiry into whether" entities should be considered religious organizations for purposes of federal funding. *Bob Jones Univ.*, 461 U.S. at 604 n.30.; *Greece v. Galloway*, 572 U.S. at 577.

CONCLUSION

For the foregoing reasons, this Court should overrule the lower court's decision. The Respondent possesses no avenue to bring its claim: the Respondent's suit is barred by the Tax Anti-Injunction Act, or, alternatively, it lacks Article III Standing. Even if it could bring its claim, the Respondent's facial challenge to the Johnson Amendment fails; the Johnson Amendment is applied constitutionally in a variety of different scenarios under the Establishment Clause of the First Amendment.