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.,

PETITIONERS,

V.

COVENANT TRUTH CHURCH,

RESPONDENT.

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

BRIEF FOR THE PETITIONER

Team 21
Counsel for Petitioner

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QUESTIONS PRESENTED

I. Under the Tax Anti-Injunction Act and Article III of the United States Constitution, does Covenant Truth Church lack standing to challenge the Johnson Amendment when it brings a pre-enforcement claim?

II. Under the First Amendment, does the Johnson Amendment comply with the Establishment Clause when it conditions non-profit organizations' tax-exempt status on a neutral and uniform requirement to refrain from political interference?

LIST OF PARTIES

Petitioners, Acting Commissioner of the Internal Revenue Service Scott Bessent and the Internal Revenue Service were the appellants in the court below. Respondent Covenant Truth Church was the appellee in the court below.

OPINIONS BELOW

The opinion of the United States District Court for the District of Wythe is referenced as case No. 5:23-cv-7997. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et. al. v. Covenant Truth Church*, 345 F.4th (14th Cir. 2025).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Fourteenth Circuit upon granting a petition for writ of certiorari pursuant to 28 U.S.C. § 1254. This action arises under the Tax Anti-Injunction Act, Article III of the Constitution, and the First Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. Const. art. I § 8, cl. 1; art. III § 2; U.S. Const. amend. I; amend XVI. The statutory provisions relevant to this case are: 26 U.S.C. § 501(c)(3); 26 U.S.C. § 7421(a); 26 U.S.C. § 7428.

STATEMENT OF THE CASE

1. Statement of Facts

The Johnson Amendment and the Internal Revenue Service. The United States Internal Revenue Code ("IRC") includes 26 U.S.C. § 501(c)(3), which exempts certain non-profit organizations from federal income taxation. R. at 2. In 1954, Congress proposed an amendment

to Section 501(c)(3) requiring that to qualify for the exemption, non-profit organizations must not participate or intervene in political campaigns for any candidate for public office. R. at 2. This additional requirement is referred to as the Johnson Amendment. R. at 2. The Johnson Amendment was passed by Congress without debate and has remained a part of the code for over seventy years. R. at 2. Since 2017, Congress has declined opportunities to amend or repeal the Johnson Amendment. R. at 3.

The Internal Revenue Service ("IRS") conducts random audits of Section 501(c)(3) organizations to ensure compliance with the IRC. R. at 5. In 2025, the IRS entered into a consent decree stating that it will not enforce the Johnson Amendment when 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. It is well-known that the IRS generally does not enforce the Johnson Amendment against many Section 501(c)(3) organizations. R. at 8.

The Everlight Dominion, Covenant Truth Church, and Pastor Gideon Vale. The Everlight Dominion is a religion that encourages political activism. R. at 3. The Everlight Dominion embraces particular social values and requires its believers to engage in political activism and support candidates aligning with their values. R. at 3. Churches and leaders in The Everlight Dominion are required to participate in politics, which includes encouraging individual citizens to donate to and volunteer for political campaigns. R. at 3.

Covenant Truth Church (the "Church" or "Respondent") is the largest church practicing The Everlight Dominion. R. at 3. From 2018 to 2024, the Church has grown from a few hundred to nearly 15,000 members. R. at 4. The Church holds regular weekly worship services, which include both in-person attendance and a livestream option available to anyone unable to attend in person. R. at 4. The Church is currently classified as a Section 501(c)(3) organization, making it

exempt from federal income taxation. R. at 3. It maintains this classification and its tax-exempt status under the IRC today. R. at 3.

Pastor Gideon Vale is the head pastor at the Church, a position he has occupied since 2018. R. at 3. Pastor Vale leads the Church's weekly worship services and its weekly podcast wherein he delivers Church sermons, spiritual guidance, and other teachings about The Everlight Dominion. R. at 4. The podcast is popular both in the State of Wythe and nationwide. R. at 4. The Church's significant growth in membership is largely attributable to Pastor Vale's effort to appeal to younger generations through his weekly podcast. R. at 4. Pastor Vale also uses this podcast as a forum to deliver political messages in accordance with the faith of The Everlight Dominion. R. at 4. He encourages listeners to vote, donate, and volunteer for political campaigns in line with The Everlight Dominion's teachings. R. at 4.

Wythe's 2024 Election. In January 2024, Congressman Samuel Davis announced that he would run in an expectedly contentious special election to replace Wythe's recently deceased Senator. R. at 4. Congressman Davis's political beliefs align with those of The Everlight Dominion. R. at 4. Pastor Vale endorsed Congressman Davis on behalf of the Church in a podcast episode. R. at 4. He also discussed how Congressman Davis's political stances aligned with the teachings of The Everlight Dominion and encouraged his listeners to vote for, volunteer for, and donate to Congressman Davis's campaign. R. at 5. Pastor Vale also announced his intention to give a series of sermons at the Church in October and November 2024 in connection with this endorsement. R. at 5.

2. Procedural History

Wythe District Court. Before the IRS had taken any action to enforce the Johnson Amendment, Respondent filed this suit in the District Court for the District of Wythe seeking to

enjoin enforcement of the Johnson Amendment on the ground that it violated the Establishment Clause. R. at 5. Respondent then filed a motion for summary judgment. R. at 5. The District Court granted the plaintiff's motion for summary judgment and entered the permanent injunction. R. at 5. The District Court held Respondent had standing to challenge the Johnson Amendment, and that the Johnson Amendment violates the Establishment Clause. R. at 5.

Fourteenth Circuit. Acting Commissioner of the IRS Scott Bessent and the IRS (together, "Petitioners"), appealed the District Court's decision to the Fourteenth Circuit Court of Appeals. R. at 5. The Fourteenth Circuit affirmed the District Court's decision. R. at 11. First, the Fourteenth Circuit held Respondent had standing under the Tax Anti-Injunction Act ("AIA") and Article III of the Constitution. R. at 6–7. Second, the Fourteenth Circuit held the Johnson Amendment violated the Establishment Clause. R. at 8. Justice Marshall dissented on both issues. R. at 12. Justice Marshall concluded Respondent's suit lacked jurisdiction because the AIA clearly bars pre-enforcement suits brought for the purpose of restraining the assessment or collection of taxes. R. at 12. Justice Marshall further asserted that even if the suit was not barred by the AIA, Respondent lacked standing because its claim relied on a speculative chain of possibilities that were insufficient to establish an injury in fact. R. at 14. Finally, Justice Marshall dissented on the Establishment Clause issue because the Johnson Amendment is based on secular criteria and applies to Section 501(c)(3) organizations equally. R. at 14.

SUMMARY OF ARGUMENT

I. COVENANT TRUTH CHURCH DOES NOT HAVE STANDING TO BRING SUIT UNDER THE AIA OR ARTICLE III.

The Church does not have standing to bring this suit under the AIA. The AIA bars pre-enforcement suits that restrain the assessment and collection of taxes. Suits relating to tax-exempt status under 501(c)(3) are squarely within the scope of the AIA even if Respondent

alleges a constitutional claim. The narrow *Williams Packing* exception does not apply because it is not clear the government will not prevail under any circumstance and equity jurisdiction does not otherwise exist. The exception allowing pre-enforcement suits for claims where there is no adequate legal remedy does not apply because Section 7428 allows 501(c)(3) to bring tax-exempt status claims at the post-enforcement stage.

Even if the Church had standing under the AIA, the Church independently lacks standing under Article III of the Constitution. The Church's alleged injury is not concrete and particularized because it has not experienced any tangible or intangible harm. The Church's has also not alleged an actual or imminent injury because the IRS has not provided any indication that revocation of the tax's tax-exempt status is certainly impending. Thus, this Court should reverse the Fourteenth Circuit's decision and dismiss Respondent's suit for lack of jurisdiction.

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE THE AMENDMENT ALIGNS WITH HISTORICAL PRACTICES AND UNDERSTANDINGS AND IS NEUTRAL TO RELIGION.

The Johnson Amendment does not violate the Establishment Clause of the First Amendment because it satisfies the history and tradition test. Despite this Court's jurisprudence reflecting a number of different tests in the past, the history and tradition test is the applicable test for evaluating Establishment Clause claims. Under the history and tradition test, the Johnson Amendment is constitutional because the Founding Fathers intended to completely separate church and state and to grant Congress with broad power over matters of federal taxation.

This Court should look to *The Federalist Papers* to ascertain the Founding Fathers' beliefs and intentions. Sentiments in *The Federalist Papers* make clear that the Founding Fathers intended to separate church and state. The Johnson Amendment reflects a strong separation of church and state because it discourages religious organizations from intervening in political matters and prevents the government from entangling itself with religion by inquiring into

individual religious beliefs. *The Federalist Papers* also reflect that the Founding Fathers intended to assign Congress broad power over federal taxation. The Johnson Amendment is a legitimate exercise of such power. Therefore, the Johnson Amendment satisfies the history and tradition test.

The Johnson Amendment does not impose a denominational preference and therefore is not subject to strict scrutiny. There is no denominational preference because the Johnson Amendment applies equally to all Section 501(c)(3) organizations of all religious sects and any burden upon religious exercise is merely incidental to secular purpose. Even if strict scrutiny applies, the Johnson Amendment is constitutional. It advances the compelling government purpose of maintaining a stable tax system that is free of religious interference. It is the least restrictive means of doing so because it is applied uniformly and neutrally. Thus, this Court should reverse the decision of the Fourteenth Circuit and hold that the Johnson Amendment is constitutional under the Establishment Clause.

ARGUMENT

I. COVENANT TRUTH CHURCH DOES NOT HAVE STANDING TO BRING SUIT UNDER THE AIA OR ARTICLE III.

Respondent's suit must be dismissed for lack of jurisdiction. The Church asks the Court to intervene before the IRS has taken any enforcement action, notwithstanding Congress's clear directive that challenges to tax administration proceed only after enforcement. The AIA bars this suit because it bypasses the remedial procedure Congress has enacted. Even if it did not, Article III independently forecloses jurisdiction because the Church alleges only speculative harm.

Under the Johnson Amendment, organizations described in Section 501(c)(3) of the IRC, including churches, may retain federal income tax-exempt status only if they do not participate nor intervene in any political campaign for any candidate running for public office. 26 U.S.C. §

501(c)(3). An organization seeking tax-exempt status must obtain a ruling letter from the IRS declaring it qualifies as tax-exempt and cannot rely solely on technical compliance with Section 501(c)(3). *Bob Jones Univ. v. Simon*, 416 U.S. 725, 728–29 (1974). If tax-exempt status is revoked, an organization may challenge the IRS's action by petitioning the Tax Court, but only once the IRS has completed its assessment and attempted collection of income taxes. *Id*. at 730.

A. Covenant Truth Church Does Not Have Standing Under the AIA Because the Suit Would Impermissibly Restrain the Assessment and Collection of Taxes and No Exception Applies.

The AIA provides 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). In essence, the assessment or collection of income taxes must be completed before an organization is able to file suit regarding the IRS's revocation of a tax-exempt status. *Bob Jones Univ.,* 416 U.S. at 730. Courts have routinely ruled against 501(c)(3) organizations seeking to block the IRS's ruling letter withdrawal. *Id*. at 733.

This Court has consistently interpreted AIA's fundamental purpose to be, "the protection of the Government's need to assess and collect taxes as expeditiously as possible" without judicial interference. *Bob Jones Univ.*, 416 U.S. at 737; *see also Enochs v. Williams Packing & Navigation Co*., 370 U.S. 1, 7–8 (1962); *see also*, *State Railroad Tax Cases*, 92 U.S. 575, 613–14 (1876); *cf. Cheatham v. United* States, 92 U.S. 85, 88–89 (1876). As this Court has acknowledged, while the AIA has no recorded legislative history, its language "could scarcely be more explicit." *Bob Jones Univ.*, 416 U.S. at 737.

Accordingly, the AIA creates an explicit and nearly absolute bar on pre-enforcement suits that would interfere with tax assessment or collection, channeling all challenges into post-payment refund actions. As applied, the AIA bars the Church's claim at this stage because (1) the

suit has the purpose of restraining tax assessment and collection, (2) the *Williams Packing* exception does not apply, and (3) there is an adequate legal remedy.

1. *The AIA Bars the Church's Lawsuit Because It Has the Impermissible Purpose of Restraining Tax Assessment and Collection.*

Respondent's purpose is to restrain the assessment and collection of taxes, which is explicitly prohibited under the AIA. 26 U.S.C. §7421(a). Pursuant to the language of the AIA, courts consider whether the *purpose* of the suit is to prevent the assessment or collection of taxes. *Bob Jones Univ.*, 416 U.S. at 738. This determination is not based on how the plaintiff labels its claim, but rather the objective purpose and effect of the requested relief. *Id*.

This principle was squarely established in *Bob Jones University v. Simon*. 416 U.S. 725. There, the IRS announced it would revoke a religiously affiliated private university's tax-exempt status under Section 501(c)(3) because its racially discriminatory admissions and policies violated public policy. *Bob Jones Univ.*, 416 U.S. at 735. The university sued at the pre-enforcement stage, arguing it was not subject to AIA because its purpose was not to prevent the assessment and collection of taxes. *Id*. at 735–36. Instead, the university argued that the central purpose of its claim was that its constitutional rights would be violated by the loss of tax-exempt status. *Id*. However, this Court rejected the university's arguments, holding that enjoining the revocation of a tax-exempt status would undoubtedly restrain the assessment or collection of taxes, even if no income tax liability resulted. *Id*. at 725. Moreover, this Court held constitutional claims do not warrant pre-enforcement review because Congress intended these tax disputes to be resolved only after enforcement. *Id*. at 741. Thus, this Court concluded the claim was barred by the AIA because the IRS was merely enforcing the technical requirements of the IRC. *Bob Jones Univ.*, 416 U.S. at 740.

In contrast, a pre-enforcement action is not barred by AIA when it is separate from the tax penalty. *CIC Services v. IRS*, 593 U.S. 209, 220 (2021). In *CIC Services*, this Court held the AIA did not prevent a tax advisor from bringing a pre-enforcement action against an IRS reporting rule. *Id*. at 210. The challenged rule required taxpayers and advisors to report information about certain transactions and subjected them to tax penalties for noncompliance. *Id*. This rule was independently onerous, was "several steps removed" from the tax penalty, and was backed by separate criminal penalties. *Id*. at 220, 214. Considering these factors together, this Court determined the suit's "objective aim" was to eliminate the reporting requirement, rather than oppose a tax penalty. *Id*. at 217. As a result, this Court emphasized the AIA applies when "the legal rule at issue is a tax provision," such that there is "no non-tax legal obligation." *CIC Services v. IRS*, 593 U.S. at 224.

As this Court held in *Bob Jones University*, the AIA bars pre-enforcement judicial interference when the plaintiff merely reframes the suit to present a tax issue as a constitutional challenge. Here, Respondent seeks to enjoin the IRS from enforcing a statutory condition on Section 501(c)(3) tax-exempt status before any revocation, assessment, or penalty has occurred. However, enjoining the IRS from revoking a tax-exempt status is precisely the type of per-enforcement judicial interference Congress intended to bar under the AIA. This Court, through *Bob Jones University*, has made it clear that when the practical effect of a claim is to prevent the assessment or collection of taxes, it is barred under the AIA.

Further, unlike the regulation challenged in *CIC Services*, an injunction barring the Johnson Amendment's enforcement would prevent the IRS from revoking the Church's tax-exempt status and from assessing taxes that would otherwise follow. Unlike *CIC Services*, the Johnson Amendment is part of Section 501(c)(3), not several stages removed from the tax

provision. This places the suit squarely within the scope of the AIA. Accordingly, the AIA bars Respondent from seeking pre-enforcement relief on its tax-exempt status.

2. *The Williams Packing Exception Does Not Apply Because the Government Can Prevail and Equity Jurisdiction Does Not Exist.*

The Church's claim does not meet the narrow exception to the AIA's pre-enforcement prohibition. *Williams Packing & Navigation Co.,* 370 U.S. 1. The *Williams Packing* exception applies where (1) it is clear the government cannot ultimately prevail under any circumstances, and (2) equity jurisdiction otherwise exists. *Id*. at 7. Unless both conditions are met, a suit for preventive injunctive relief must be dismissed. *Alexander v. Americans United Inc*., 416 U.S. 752, 758 (1974). The Church's claim satisfies neither criteria.

First, it is anything but clear that the government would not be able to prevail on the merits. The *William Packing* exception only applies where the IRS's actions are plainly without legal basis. *Bob Jones Univ.*, 416 U.S. at 745. This Court and lower courts have repeatedly upheld conditions on tax-exempt status against constitutional challenges, including restrictions on political activity. *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983) (holding plaintiff's First Amendment rights were not violated when it was denied tax-exempt status under Section 501(c)(3) due to its involvement in political activity); *see Bob Jones Univ.*, 416 U.S. at 733 (listing disputes between the AIA and organizations seeking to retain their 501(c)(3) status that have been resolved against the organizations in federal district courts). This conflict "has been resolved against the organizations in most cases." *Bob Jones Univ.*, 416 U.S. at 733. Accordingly, because controlling precedent repeatedly sustains restrictions on tax-exempt status and forecloses pre-enforcement challenges under the AIA, it is in no way clear that the government would not prevail on the merits of this case. Thus, Respondent's claim does not meet the first element of this exception and is barred under the AIA.

Second, even if this Court finds that the Government would certainly not prevail on the merits, equity jurisdiction does not exist. Equity jurisdiction can be established through a showing of irreparable harm and inadequate legal remedy. *Alexander*, 416 U.S. at 762. This Court has firmly held that while a showing of irreparable harm is an essential prerequisite for injunctive relief, that alone is insufficient to meet the *Williams Packing* exception. *Bob Jones Univ.*, 416 U.S. at 749. This Court has also emphasized that the loss of tax-exempt status, financial harm, or delay in judicial review alone does not establish grounds to overcome the AIA. *Id*. 746–47.

Respondent must also show that having its claim barred by the AIA would deprive it of the opportunity to have its claim adjudicated. *Alexander*, 416 U.S. at 752. Because there is an adequate remedy at law for Respondent's claim, it does not meet the equity jurisdiction element of the *Williams Packing* exception. For tax-exempt status suits that are initially barred at the pre-enforcement stage, Congress has enacted a comprehensive remedial scheme governing disputes. 26 U.S.C. § 7428. Under Section 7428, an organization may seek declaratory relief in federal court *after* the IRS has made an adverse determination and other administrative remedies have been exhausted. This Court has recognized that paying federal income taxes, exhausting internal refund procedures, and *then* bringing a suit for a refund constitutes an adequate legal remedy. *Bob Jones Univ.*, 416 U.S. at 746. These procedures allow organizations to receive "full, albeit delayed, opportunity to litigate the legality" of the IRS's revocation of a tax-exempt status. *Bob Jones Univ.*, 416 U.S. at 746; *see also*, *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). While congressional restriction on pre-enforcement review may cause delays, this interest is outweighed by the "powerful

governmental interests in protecting the administration of the tax system from premature judicial interference." *Bob Jones Univ.*, 416 U.S. at 748.

Respondent may bring this claim at a post-enforcement stage and therefore, equity jurisdiction does not exist. Although Respondent may be required to pay taxes, pursue administrative remedies, and litigate its claims after enforcement, this Court has consistently held that such burdens do not render legal remedies inadequate. Even if delays cause Respondent to experience hardship and irreparable harm, this Court has recognized that the governmental interest in protecting the administration of the tax system outweighs the potential harm caused by delays. Because Respondent's claim may be fully adjudicated under Section 7428, its claim does not meet the second prong of the *Williams Packing* exception.

Respondent does not meet the strict criteria necessary for the *Williams Packing* exception to apply. This Court's precedent has repeatedly established that the government likely prevails on the merits of this type of claim. Moreover, Respondent may bring its claim at the post-enforcement stage, creating an adequate legal remedy for Respondent's claim to be fully adjudicated. Because the narrow *Williams Packing* exception is not met, the AIA bars Respondent's claim.

3. *The Church Does Not Meet the Inadequate Legal Remedy Exception Because Its Claim Can be Adjudicated Under Section 7428.*

The fact that the IRS not yet revoked the Church's tax-exempt status does not render Section 7428's procedure an inadequate remedy. Congress specifically intended to prevent pre-enforcement challenges through the AIA without foreclosing an organization's ability to bring a post-enforcement suit.

The AIA does not bar pre-enforcement action where there is no alternative remedy. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984) ("*South Carolina*"). Equity jurisdiction can be

established by a lack of adequate remedy, but *South Carolina* clarified that an adequate remedy at law alone can create an exception to the AIA. *South Carolina*, 465 U.S. at 373. This applies even if the first prong of the *Williams Packing* exception is not met. *Id*. In *South Carolina*, this Court evaluated a challenge to a federal tax provision that eliminated a tax exemption for interest earned on certain state-issued bearer bonds unless the bonds were registered. *Id*. at 370–71. South Carolina filed a complaint seeking pre-enforcement relief on the grounds that the statute was unconstitutional and violated the doctrine of intergovernmental tax immunity. *Id*. at 371–72. Critically, the tax was imposed on bondholders, not on South Carolina itself. *Id*. at 378–80. South Carolina, while not a taxpayer, was affected by the statute as it made its bonds less attractive to the actual taxpayer. *South Carolina v. Regan*, 465 U.S. at 371. Because South Carolina was not a taxpayer, it had no adequate legal remedy, and thus the AIA did not bar it a pre-enforcement action. *Id.* at 381.

However, here, unlike *South Carolina v. Regan*, Respondent has an alternative remedy to challenge the Johnson Amendment. Unlike South Carolina, the Church is the entity directly subject to the tax consequences of the challenged provision. Congress's remedial scheme has expressly provided mechanisms for judicial review of disputes over Section 501(c)(3) status through Section 7428, which permits declaratory relief after the IRS revokes tax-exempt status. The fact that Section 7428 relief is not yet available because the IRS has not acted does not render the remedy inadequate. The AIA does not ask whether a remedy is immediately available; it asks whether Congress has provided one at all. As this Court made clear in *Bob Jones University*, the AIA "requires that the legal right to the disputed sums be determined only after enforcement," and delay in review is an intended feature of the statutory scheme, not a defect. *Bob Jones Univ.*, 416 U.S. at 736.

If the Church has its tax-exempt status revoked, it may challenge the revocation. Congress enacted the AIA precisely to prevent organizations from suing when a claim has not ripened, meaning before the actual controversy occurs. *Bob Jones Univ.,* 416 U.S. at 746. To allow Respondent to bring a claim at this pre-enforcement stage would negate the very purpose of the AIA and Section 7428.

B. Covenant Truth Church Does Not Have Article III Standing Because Respondent Has Not Sufficiently Alleged an Injury.

Even if this Court holds the AIA does not bar this suit, Respondent lacks standing to under Article III of the Constitution. U.S. Const. art. III, § 2. Article III limits judicial power to actual cases and controversies, requiring plaintiffs to allege an injury in fact that is causally connected to the defendant's actions and can be resolved by a judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992). To satisfy Article III's "injury in fact" requirement, an injury must be "concrete and particularized" and "actual or imminent," rather than "conjectural or hypothetical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). The Church lacks Article III standing because it has not alleged an injury that is (1) actual or imminent, and (2) concrete and particularized.

Because the IRS has not revoked the Church's tax-exempt status and the Church has not suffered harm, the injury alleged is merely conjectural and hypothetical, which does not meet the standard required by Article III to establish standing. Respondent's claim is not concrete and particularized because no tangible or intangible harm has occurred. Respondent fails to meet its burden of showing an injury is actual or imminent because the IRS's enforcement is not certainly impending.

1. *Respondent Has Not Alleged a Concrete and Particularized Injury Because It Has Not Alleged a Tangible or Intangible Harm.*

For an injury to be "concrete and particular" the harm suffered must be real and not abstract. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 352 (2016). Tangible harms such as physical or monetary harms, as well as some intangible harms such as status harms, qualify as concrete injuries under Article III. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 414 (2021). The concrete injury requirement is intended to preserve the adversarial process by ensuring a case will be resolved based on factual context and resulting legal consequences. *Id*. at 581. Standing cannot rest on a plaintiff's offense or disagreement with the government's alleged violation of the Establishment Clause. *See Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485–86 (1982) (concluding that plaintiffs lacked standing because they failed to identify a personal injury from alleged violation of the Establishment Clause).

Here, Respondent presents precisely the type of abstract, conceptual stake that Article III seeks to prohibit. The Church has not suffered any injury because its tax-exempt status has not been revoked. Rather than alleging a concrete consequence of government action, Respondent's claim rests on a disagreement regarding condition imposed by the Johnson Amendment rather than a harm suffered. The Church's offense or disagreement with the government's alleged noncompliance with the Establishment Clause is insufficient to constitute a concrete or particularized injury. Thus, Respondent does not have standing under Article III.

2. *Respondent Has Not Alleged an Actual or Imminent Injury Because It Merely Alleges Speculative Possibilities.*

Respondent's pre-enforcement challenge to the Johnson Amendment is neither actual nor imminent. At issue here is a pre-enforcement claim, meaning Respondent's tax-exempt status has not been revoked. Threatened injury must be "certainly impending" to constitute injury in fact and "allegations of possible future injury" are insufficient. *Whitmore v. Arkansas*, 495 U.S. 149,

158 (1990). Accordingly, a speculative chain of future possibilities does not establish standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013).

Respondent's injury is not "certainly impending" because the IRS has repeatedly indicated that it will not enforce the Johnson Amendment against churches. The fact that the IRS sent a letter to the Church, informing the Church it had been selected for a random audit, does not guarantee imminent injury. The IRS has conducted many investigations of churches and other charities for potential violations of Section 501(c)(3), but it has only revoked a church's tax-exempt status once for engagement in political activities. Craig Holman, *Johnson Amendment Memorandum: Background and Talking Points* (July 20, 2025)[1]; *see Branch Ministries v. Rossotti,* 211 F.3d 137 (D.C. Cir. 2000) (IRS revoked tax-exempt status from a church that placed advertisements urging Christians not to vote for a presidential candidate because of his positions on certain moral issues). Generally, the IRS has been reluctant to enforce the Johnson Amendment against churches, frequently dismissing violations. *Id*.

Further, the IRS has entered a consent decree limiting the Johnson Amendment's enforcement on houses of worship. *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). The IRS will not revoke a house of worship's tax-exempt status when it has engaged in speech "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." *Id*. The consent decree provides three key reasons for its decision to limit the enforcement of the Johnson Amendment as applied to places of worship. *Id*. First, the statutory text of Section 501(c)(3) does

[1] Available at: https://www.citizen.org/article/johnson-amendment-memorandum.

not reach intimate communications between a house of worship and its congregation concerning matters of faith, including their intersection with politics. *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). Second, "this interpretation is in keeping with the IRS's general non-enforcement of the Johnson Amendment against such speech." *Id*. Third, "constitutional avoidance counsels in favor of an interpretation of the Johnson Amendment that would not reach such speech." *Id*.

Respondent's alleged injury rests on a speculative chain of events: an audit might occur; the audit might result in an adverse finding; the IRS might revoke Respondent's tax-exempt status; and that revocation might result in tax liability. Each step in this sequence is contingent and uncertain. This Court has repeatedly held that such speculations do not satisfy Article III's requirement that threatened injury be "certainly impending." *Whitmore*, 495 U.S. at 158.

The IRS's consent decree supports that revocation of the Church's tax-exempt status is highly unlikely. The Church has employed virtual forms of communication to deliver faith-based information to its congregation. R. at 4. This includes live-streaming in-person worship services and producing a weekly podcast. R. at 4. Thus, virtual messaging has become integral to the Church's communication and is a "customary channels of communication" on matters of faith to the Church's congregation. R. at 4. Statements made regarding electoral politics are presented through the lens of The Everlight Dominion's religious faith and the podcast provides sermons discussing why certain candidates align with the religion's values. R. at 4. Thus, the Church's speech to its congregation via its podcast is in connection with religious services, conducted through customary channels of communication on matters of faith, and concerns politics through the lens of The Everlight Dominion. The circumstances in which the Church engages in speech align with IRS's consent decree promising nonenforcement against houses of worship.

Even if the Church's conduct does not fall within the exception detailed in the consent decree, the reasoning therein demonstrates that the IRS is unlikely to enforce the Johnson Amendment against the Church. The IRS has explicitly stated it will not enforce the Johnson Amendment against religious organizations' speech in order to adhere to Section 501(c)(3)'s text and to avoid raising constitutional questions. Because the Church's alleged violation of the Johnson Amendment consists only of speech, the IRS's position supports that the risk of enforcement is speculative rather than certainly impending.

Because Respondent alleges only speculative, pre-enforcement harm and identifies no concrete and particularized injury that is actual or imminent, it lacks Article III standing. Respondent's claims rest on disagreement with a statutory requirement and fear of hypothetical enforcement, not on any completed or impending government action affecting its legal rights. Article III does not permit courts to adjudicate such abstract disputes or to intervene prematurely in the tax-administration process. Accordingly, even if the AIA does not independently bar this suit, Respondent's claims must be dismissed for lack of Article III standing.

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE THE AMENDMENT ALIGNS WITH HISTORICAL PRACTICES AND UNDERSTANDINGS AND IS NEUTRAL TO RELIGION.

The First Amendment to the Constitution states "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. To analyze potential Establishment Clause violations, courts assess whether the law comports with "'historical practices and understandings'" of the Founding Fathers. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). This Court has also held that the government must be "neutral in its relations with groups of religious believers and non-believers." *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

The Johnson Amendment should be analyzed under the history and tradition test. *Kennedy*, 597 U.S. at 53. Under such analysis, the Johnson Amendment does not violate the Establishment Clause because it maintains complete separation between church and state, aligning with the intentions of the Founding Fathers. *Reynolds v. United States*, 98 U.S. 145, 164 (1878). The Johnson Amendment reflects this separation by disallowing tax exemptions for religious entities when they involve themselves with political matters. The Founding Fathers also intended to grant Congress with plenary power over matters of taxation. *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916); U.S. Const. art. I, § 8, cl. 1 (Taxing and Spending Clause). The Johnson Amendment aligns with this understanding because Congress is free to impose conditions upon exemptions from taxation, regardless of incidental burdens.

The Johnson Amendment is also neutral to religion and across religious beliefs because it applies to all non-profit entities that satisfy Section 501(c)(3). It does not treat religious organizations differently than it treats secular organizations. It does not treat certain religious groups differently than other religious groups. The amendment is "neutral in primary impact" by imposing the same requirement upon all organizations. *Gillette v. United States*, 401 U.S. 437, 450 (1971). Any organization that fails to meet the requirement does not qualify for the tax exemption, regardless of religious status or religious beliefs. Therefore, the Johnson Amendment is neutral and constitutional.

A. The Johnson Amendment Is Constitutional Because It Aligns With Historical Practices and Understandings of the Founding Fathers.

Despite a history of competing tests to evaluate alleged Establishment Clause violations, this Court made clear in *Kennedy v. Bremerton School District* that the applicable test today is the history and tradition test. 597 U.S. at 535. The Founding Fathers believed in strongly separating church and state and maintaining the federal government's broad power to impose

federal taxes. *Reynolds*, 98 U.S. at 164; FEDERALIST NO. 30 (Alexander Hamilton). Therefore, the Johnson Amendment is constitutional because it aligns with history and tradition.

1. *The History and Tradition Test Is the Standard for Evaluating Compliance With the Establishment Clause.*

The Church's claim is properly analyzed under the history and tradition test, which is the culmination of this Court's Establishment Clause jurisprudence. In 1971, this Court created the *Lemon* test, which required courts to weigh whether the law has "a secular legislative purpose," whether the "primary effect" of the law "neither advances nor inhibits religion," and whether the law fosters "an excessive government entanglement with religion." *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971). In 1984, Justice O'Connor in a concurring opinion created the endorsement test: "whether […] the practice under review in fact conveys a message of endorsement or disapproval." *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring). In 1992, this Court articulated the coercion test: "government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

In *Kennedy v. Bremerton School District*, this Court recognized that the multiplicity of Establishment Clause tests "'invited chaos' in lower courts, led to 'differing results' in materially identical cases, and created a 'minefield' for legislators." 597 U.S. at 534 (quoting *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 768–69, n. 3 (1995)). Therefore, in recent Establishment Clause cases, this Court has firmly stated that "reference to historical practices and understandings" is the applicable framework. *Town of Greece*, 572 U.S. at 576; *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 61 (2019) (plurality opinion); *Kennedy*, 597 U.S. at 535. And despite recent clarity regarding its applicability, this is not a new test. There are numerous examples of this Court using history to evaluate Establishment Clause claims. *Reynolds*, 98 U.S. at 163 (interpreting statements by Thomas Jefferson and James Madison in the

Revolutionary era); *Everson*, 330 U.S. at 10 (analyzing religious persecution allowances in colonial charters); *McGowan v. Maryland*, 366 U.S. 420, 430–32 (1961) (looking to "the writings of Madison, who was the First Amendment's architect" and the history of Sunday Closing Laws in the colonies); *Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 677 (1970) (evaluating enactments by Congress from the early 19th century).

Since the Church here alleges a violation of the Establishment Clause, this Court should analyze historical practices and the intentions of the Founding Fathers to determine the Johnson Amendment's constitutionality. Under such analysis, the Johnson Amendment is constitutional because it aligns with the Founding Fathers' ideologies about church and state separation and about the federal government's taxation power.

2. *The Johnson Amendment Is Constitutional Under the History and Tradition Test.*

The Johnson Amendment harmonizes with the Founding Fathers' perspectives. Under the history and tradition test, courts determine whether a law is permissible through "[a]n analysis focused on original meaning and history." *Kennedy*, 597 U.S. at 536. The line "between the permissible and the impermissible" must "accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers." *Id.* (quoting *Town of Greece*, 572 U.S. at 577) (internal quotation marks omitted). Here, the Johnson Amendment survives such historical analysis.

To determine what the Founding Fathers understood and believed, *The Federalist Papers*, authored largely by Alexander Hamilton and James Madison, has "always been considered as of great authority." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 418 (1821). This Court has stated that *The Federalist Papers'* "intrinsic merit entitles it to this high rank; and the part [Hamilton and Madison] performed in framing the constitution, put it very much in their power to explain the views with which it was framed." *Cohens*, 19 U.S. (6 Wheat.) at 418. *The*

Federalist Papers have been looked to for evidence of the original meaning of the Constitution "more than any other historical source except the text of the Constitution itself." Gregory E. Maggs, *A Concise Guide to the Federalist Papers as a Source of the Original Meaning of the United States Constitution*, 87 B.U. L. REV. 801, 802 (2007). Therefore, they serve as an authoritative source to determine what may accord with history and reflect the understanding of the Founding Fathers.

i. The Founding Fathers intended to separate church and state.

As this Court has recognized, the Founding Fathers "emphatically disclaimed" religious establishment and "'applied the logic of secular liberty to the condition of religion and the churches.'" *Larson v. Valente*, 456 U. S. 228, 244 (1982) (quoting Bernard Bailyn, *The Ideological Origins of the American Revolution*, 265 (1967)). Thomas Jefferson stated that the "legislature should buil[d] a wall of separation between church and State." *Reynolds*, 98 U.S. at 164. In *Reynolds*, a case from 1878, this Court acknowledged that allowing religious beliefs to exempt individuals from otherwise applicable laws "would be to make the professed doctrines of religious belief superior to the law of the land." 98 U.S. at 167. Allowing individual organizations such as The Everlight Dominion to privilege their own beliefs above an otherwise neutral requirement makes their religious preferences superior to the law of the land. Within this context, the Johnson Amendment is a permissible method of separating religious and other non-profit organizations from political activity.

The Founding Fathers supported preventing religious organizations from interfering in political matters. In Federalist Paper No. 10, James Madison stated: "A zeal for different opinions concerning religion, […] government, [...] and an attachment to different leaders […] divided mankind into parties, inflamed them with mutual animosity, and rendered them much

more disposed to vex and oppress each other than to co-operate for their common good." THE FEDERALIST NO. 10 (James Madison). This demonstrates Madison's belief that religious interference in matters of politics would drive political factionalism to the detriment of democracy. The Johnson Amendment permissibly disincentivizes such interference by encouraging religious institutions not to interfere with political campaigns.

The Founding Fathers also advocated against inquiries into religious beliefs and for requirements that were entirely neutral to different sects. In Federalist Paper No. 52, Madison advocated that federal elected offices should be "open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to *any particular profession of religious faith*." THE FEDERALIST NO. 52 (James Madison) (emphasis added). The Johnson Amendment fits squarely into the requirement of religious neutrality. The Section 501(c)(3) exemption and its condition to refrain from political campaign activity applies to all qualifying non-profit organizations, without regard to their values or religious faith. Like the system proposed by Madison, the Johnson Amendment is completely neutral to different religious beliefs.

Further, the Johnson Amendment has been in place for over seventy years. This Court has held that "[t]he passage of time gives rise to a strong presumption of constitutionality." *Am. Legion*, 588 U.S. at 57. When "time's passage" establishes familiarity and historical significance to a practice, "removing it may no longer appear neutral." *Id.* at 56. Striking down a decades-old requirement for tax exemption to cater to a singular objecting religion is less neutral than maintaining the uniform requirement. Accordingly, upholding the Johnson Amendment aligns with the history of the IRC.

ii. The Founding Fathers intended to give Congress plenary power over matters of federal taxation.

Congress has "complete and plenary power o[ver] income taxation." *Stanton*, 240 U.S. at 112; U.S. Const. amend. XVI. The Founding Fathers intended to grant the federal government "an unqualified power of taxation in the ordinary modes." FEDERALIST NO. 31 (Alexander Hamilton). Therefore, Congress is free to impose requirements and qualifications upon tax benefits as it sees fit.

In Federalist Paper No. 30, Hamilton endorsed "permitting the national government to raise its own revenues by the ordinary methods of taxation authorized in every well-ordered constitution of civil government." FEDERALIST NO. 30 (Alexander Hamilton). Federalist Paper No. 30 was written to criticize the decentralized taxation system in the Articles of Confederation. Dan T. Coenen, *A Rhetoric for Ratification: The Argument of The Federalist and Its Impact on Constitutional Interpretation*, 56 DUKE L.J. 469, 481 (2006) ("the Articles of Confederation vested the central government with so little power […] by denying Congress the authority […] to impose taxes directly on American citizens"). Federalist Paper No. 30 emphasized that the federal government must be granted broad authority to tax citizens directly in order to fund national interests. The Johnson Amendment aligns with Hamilton's intentions. Narrowing the scope of organizations eligible for the exemption from federal income tax maintains a broad tax base to fulfill the national government's fiscal goals. In line with Federalist Paper No. 30, Congress today has the authority to impose federal income tax upon all individuals and organizations under the Sixteenth Amendment. If Congress has the authority to impose a tax, it surely also has the authority to deny an exemption from a tax.

This Court held in *Walz v. Tax Commission of New York* that in the exercise of its taxing power, Congress "may at its discretion wholly exempt certain classes […] from taxation, or may

tax them at a lower rate." *Walz*, 397 U.S. at 679–80 (quoting *Gibbons v. District of Columbia*, 116 U.S. 404, 408 (1886)). There, in upholding a religious exemption from property taxation, this Court recognized that tax-exempt status can be lost and regained as organizations form, evolve, and engage in or refrain from certain activities. *Id.* at 673 ("tax exemption is not perpetual or immutable; some tax-exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption"). This recognition further affirms the breadth of Congress's ability to exercise broad discretion in imposing and exempting from taxation, in line with the powers afforded by the Founding Fathers. The Johnson Amendment is a legitimate exercise of such discretion.

Moreover, exemptions from taxation are matters of legislative grace. *Haswell v. United States*, 205 Ct. Cl. 421, 433 (1974); *Christian Echoes Nat'l Ministry*, 470 F.2d at 854. Congress may restrict tax exemptions without violating the Constitution, and this Court has upheld a requirement to qualify for tax benefits against a First Amendment challenge. *Cammarano v. United States*, 358 U.S. 498, 513 (1959). In *Cammarano v. United States*, this Court held that individuals who did not qualify for a tax deduction were "not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets," as every other taxpayer is required to do. 358 U.S. at 513. This holding comports with the principle that Congress is afforded discretion in determining whether tax benefits should or should not apply to certain organizations and activities. The Johnson Amendment reflects Congress's ability to impose generalized qualifications upon Section 501(c)(3) exemption status. This ability falls directly within its broad taxation power as intended by the Founding Fathers.

B. The Johnson Amendment Is Constitutional Because It Does Not Impose a Denominational Preference.

Under the First Amendment, the government must be neutral among religions. *Everson*, 330 U.S. at 18. The government's action is not neutral if it officially prefers one religious denomination over another. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025) ("*Catholic Charities*"). If a law institutes such a denominational preference, it is subject to strict scrutiny. *Larson*, 456 U.S. at 246. A law "imposes a denominational preference" when it "differentiat[es] between religions based on theological choices." *Catholic Charities*, 605 U.S. at 250. This does not include secular criteria that incidentally have a disparate impact upon different religious organizations. *Id.* The Johnson Amendment does not differentiate between religions, and any burden upon religious practices is merely incidental to its secular purpose.

Bestowing taxation exemptions upon religious institutions is constitutional. *Walz*, 397 U.S. at 673. This Court has acknowledged that such exemptions do not aim to establish religion, but "simply spar[e] the exercise of religion from the burden of [...] taxation levied on private profit institutions." *Id.* Imposing a condition upon receipt of such tax exemption does not constitute a denominational preference.

1. *The Johnson Amendment Does Not Favor or Disfavor Certain Religious Denominations.*

The Johnson Amendment is secular in its criteria, which does not impose a denominational preference. This Court established in *Larson v. Valente* that imposing registration and reporting requirements that applied to some, but not all religious denominations warranted the application of strict scrutiny. 456 U.S. at 246. In subsequent cases, this Court clarified that strict scrutiny need only apply to "a statute or practice patently discriminatory on its face," not to one "neutral on its face and motivated by a permissible purpose." *Lynch*, 465 U.S. at

687 n.13; *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 339 (1987) ("*Amos*"). The government remains neutral if its religious exemptions are "tailored broadly enough that it reflects valid secular purposes." *Gillette*, 401 U.S. at 454.

Laws "discriminating *among* religions" are subject to strict scrutiny, and laws "affording a uniform benefit to *all* religions" are not. *Amos*, 483 U.S. at 339 (quoting *Larson*, 456 U.S. at 252). In *Amos*, this Court held that an exemption of religious organizations from religion-based employment discrimination liability afforded a uniform benefit to all religions. 483 U.S. at 339. A former employee of a facility run by a religious organization challenged the exemption after his employment was terminated on religious grounds. *Id.* at 330–31. The employee argued that allowing religious employers to discriminate on religious grounds for nonreligious jobs violated the Establishment Clause. *Id.* at 331. This Court, declining to apply strict scrutiny, held that the exemption was facially neutral and motivated by the "permissible purpose of limiting governmental interference with the exercise of religion." *Id.* at 339. Thus, the exemption was deemed constitutional. *Id.*

Strict scrutiny does not automatically apply upon allegations of denominational preferences. *Town of Greece*, 572 U.S. at 589. In *Town of Greece*, this Court upheld a town's policy to open its monthly board meetings with a prayer. *Id.* at 569. Town residents challenged the policy on the basis that nearly all of the prayers were Christian prayers from Christian ministers. *Id.* at 571. This Court did not apply strict scrutiny, despite the findings of fact revealing that the great majority of the prayers and ministers were indeed Christian. *Id.* at 593. Instead, this Court applied the history and tradition test and upheld the prayer policy, stating that "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require

[...] an effort to achieve religious balancing." *Town of Greece*, 572 U.S. at 585–86. Such balancing would impermissibly create "a form of government entanglement with religion." *Id.*

The Johnson Amendment is entirely neutral, conferring a uniform benefit upon all denominations like the exemption in *Amos*. Regardless of beliefs, all denominations are subject to the requirement to refrain from interference in political activity. Any burden upon religious practices is merely incidental to the secular purpose of preventing religious interference with political elections. The Johnson Amendment's purpose is secular because it applies not only to religious institutions, but to all non-profit organizations that operate for Section 501(c)(3)'s listed purposes. Nothing in its language grants advantages or disadvantages upon particular religious denominations or particular types of organizations. The Johnson Amendment imposes a uniform requirement to qualify for tax-exempt status, and Section 501(c)(3) affords a uniform benefit to all qualifying organizations. The Johnson Amendment does not impose additional requirements upon nor unfairly burden any denomination or non-profit organization. Its uniform applicability across various types of organizations reflects its secular purpose.

Respondents' contention that the Johnson Amendment favors other religions is analogous to the contentions raised in *Town of Greece*. The challenged policy in *Town of Greece* was facially nondiscriminatory yet resulted in denominationally imbalanced practices, like the Johnson Amendment. However, neither the *Town of Greece* policymakers nor Congress is required to make efforts to accommodate each and every religious practice to achieve perfectly balanced results. That some denomination's beliefs are more compatible with a secular policy than others does not translate to government establishment of a particular religion.

As stated in *Catholic Charities*, disparate impact among religions that is incidental to secular criteria is permissible. 605 U.S. 238. Though The Everlight Dominion may incidentally

be more burdened than other denominations, this does not require an application of strict scrutiny. Imposing upon the Court a responsibility to weigh the comparative burdens of an entirely secular requirement approaches the impermissible entanglement with religion that this Court warned against in *Town of Greece*. 572 U.S. at 586. Therefore, the Johnson Amendment is not subject to strict scrutiny, but history and tradition analysis.

2. *Even under Strict Scrutiny, the Johnson Amendment Is Constitutional.*

Even if the Johnson Amendment's neutral language is determined to implement a denominational preference, it is constitutional under strict scrutiny because it is the least restrictive means to further a compelling governmental interest. *Larson*, 456 U.S. at 251. Though strict scrutiny is a high standard, laws involving religious liberty are more likely to survive. Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 VAND. L. REV. 793, 857–58 (2006) ("the religious liberty category had the highest survival rate of any area of law in which strict scrutiny applies: 59 percent, more than double the mean of the other doctrinal categories"); Richard H. Fallon Jr., *Tiers for the Establishment Clause*, 166 U. PA. L. REV. 59, 105 (2017) ("religious classifications should trigger strict scrutiny, [but] religiously-based exemptions from otherwise applicable regulatory duties and prohibitions should sometimes […] survive that test"). Limitations on religious liberty may be justified by showing that the limitation "is essential to accomplish an overriding governmental interest." *United States v. Lee*, 455 U.S. 252, 257 (1982). The District Court of the District of Columbia has held that "the government has a compelling interest in maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose." *Branch Ministries, Inc. v. Rossotti*, 40 F. Supp. 2d 15, 25–26 (D.D.C. 1999), *aff'd*, 211 F.3d 137 (D.C. Cir. 2000).

The government's interest in maintaining the integrity of the United States tax system is compelling. In *United States v. Lee*, this Court held that "the broad public interest in maintaining a sound tax system is of such a high order" that "religious belief in conflict with the payment of taxes affords no basis for resisting the tax." 455 U.S. at 260. Here, there is a broad public interest in maintaining a separation between tax-exempt organizations and political campaign activity. The IRS "should be neutral in political affairs" and political campaign activity "should not be subsidized" by providing a tax exemption to politically active organizations. *Haswell*, 205 Ct. Cl. at 433. Allowing organizations like the Church to avoid paying taxes but also participate in political activity would impermissibly entangle the IRS with religion and politics. As stated by the Tenth Circuit Court of Appeals, the Johnson Amendment promotes the "overwhelming and compelling [g]overnmental interest" of guaranteeing that "the wall separating church and state remain high and firm." *Christian Echoes Nat'l Ministry*, 470 F.2d at 857.

The Johnson Amendment is the least restrictive means to achieve the government's compelling purpose. The Third Circuit Court of Appeals has held that the "least restrictive means of furthering a compelling interest in the collection of taxes [...] is in fact, to implement that system in a uniform, mandatory way." *Adams v. Commissioner*, 170 F.3d 173, 179 (3d Cir. 1999). This Court has stated that "every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs." *United States v. Lee*, 455 U.S. at 261. Accordingly, disincentivizing the Church from participating in politics is necessary to achieve the government's purpose of uniformly collecting taxes and preventing religious interference with political affairs.

Further, Section 501(c)(3) organizations have alternative avenues to participate in political activity. In *Regan*, this Court upheld Section 501(c)(3) against a First Amendment

challenge, in part because the organization challenging the law "could still qualify for a tax exemption under § 501(c)(4)." *Regan*, 461 U.S. at 544. In *Branch Ministries v. Rossotti*, the District of Columbia Circuit Court explained how a church may form a related organization under Section 501(c)(4) and an associated political action committee that would not be subject to the Johnson Amendment. 211 F.3d 137, 143 (D.C. Cir. 2000). Creating such a political action committee "will provide an alternate means of political communication that will satisfy the standards" set by this Court's interpretation of the IRC. *Id.* The Church is free to take these steps and avoid any potential loss of its tax-exempt status due to political activity. Therefore, the Johnson Amendment is sufficiently narrowly tailored to its purpose to maintain constitutionality under strict scrutiny.

CONCLUSION

The Church's suit must be dismissed for lack of jurisdiction. The AIA squarely bars this pre-enforcement challenge because it would restrain the assessment and collection of taxes, and claims involving tax-exempt status under Section 501(c)(3) fall within the Act's scope, even when presented as constitutional claims. The *Williams Packing* exception does not apply because it is not evident that the government could not prevail, nor does equity jurisdiction otherwise exist. The Church also does not qualify for an exception based on the absence of an adequate legal remedy because Congress has expressly provided a post-enforcement mechanism under Section 7428. 26 U.S.C. § 7428.

Further, the Church lacks Article III standing because it has not suffered a concrete and particularized injury, nor has it alleged an injury that is actual or imminent. The IRS has taken no action and provided no indication that revocation of the Church's tax-exempt status is certainly impending.

Even if this Court holds that Respondent has standing, this Court should hold the Johnson Amendment does not violate the Establishment Clause. The history and tradition test is the applicable test to evaluate alleged Establishment Clause violations. Under the history and tradition test, the Johnson Amendment is constitutional because it aligns with the perspectives of the Founding Fathers. The Johnson Amendment also does not impose a denominational preference and therefore is not subject to strict scrutiny. Even if strict scrutiny applied, the Johnson Amendment would survive such scrutiny because it is the least restrictive means to achieve a compelling government interest.

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

Dated: January 18, 2026

Respectfully Submitted,

s/ Team 21

Counsel for Petitioner