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 RESPONDENT

Team 22,
Counsel for Respondent

QUESTIONS PRESENTED

I. Under the Tax Anti-Injunction Act and Article III does this Court have jurisdiction to review Covenant Truth Church's challenge to the Johnson Amendment?

II. Under historical practices and understandings, does the Johnson Amendment violate the Establishment Clause of the First Amendment when it exerts control over religious doctrine and financially punishes dissenting?

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The opinion for the panel of the United States Court of Appeals for the Fourteenth Circuit affirming that the Covenant Truth Church (the "Church") has standing and that the Johnson Amendment is unconstitutional 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 1 (14th Cir. 2025).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the judgment of the United States Court of Appeals pursuant to 28 U.S.C. § 1254. The court of appeals affirmed the District Court's grant of summary judgment and permanent injunctive relief. This action arises under the First Amendment to the United States Constitution, as applied to the federal government, and presents a federal constitutional challenge to a provision of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

STANDARD OF REVIEW

This Court reviews questions of constitutional law and standing de novo. *Elder v. Holloway*, 510 U.S. 510, 516 (1994). A district court's determination of Article III standing and justiciability presents a question of law reviewed de novo. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014); *Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case raises issues under the First Amendment Establishment Clause derived from Article I and standing derived from Article III § 2 of the United States Constitution. U.S. CONST. amend. I; U.S. CONST. art. III, § 2, cl. 1. Statutory authority relevant to this case regarding the Establishment Clause includes 42 U.S.C. § 2000bb-1, which addresses the government's duty to

not substantially burden sincere religious exercise. Statutory authority relevant to this case regarding standing includes 26 U.S.C. § 501(C)(3), § 26 U.S.C. §7421(a), and 26 U.S.C. § 7428.

STATEMENT OF THE CASE

1. Statement of Facts

Congress enacted the Johnson Amendment to prohibit non-profit organizations from participating or intervening in political campaigns on behalf of or in opposition to any candidate for public office. R. at 2. A variety of special interest groups, religious organizations, and politicians argue that the Johnson Amendment violates the First Amendment and advocate for its repeal. R. at 2. Yet despite many opportunities to eliminate the provision or create an exception allowing religious organizations to actively participate in political campaigns, Congress has declined to act. R. at 2-3.

The Church is the largest church of The Everlight Dominion religion, which embraces a wide array of progressive social values. R. at 3. The Everlight Dominion mandates its leaders and churches to participate in political campaigns and support candidates that align with the religion's progressive stances. R. at 3. If a church or religious leader does not comply with the requirement, they are banished. R. at 3.

Pastor Gideon Vale is a young, charismatic, and devout leader and the head of the Church. R. at 3. Pastor Vale joined the Church in 2018 and is largely the reason The Everlight Dominion has experienced massive growth because he made several efforts to attract and retain younger members. R. 3-4. Between 2018, when Pastor Vale joined, and 2024, the Church experienced a large increase in members from a few hundred to nearly 15,000 individuals. R. at 3. As a part of increasing the religion's membership, Pastor Vale created a weekly podcast, where he delivers sermons, provides spiritual guidance, and educates the public about The Everlight Dominion. R. at 3-4. Additionally, Pastor Vale leads the Church's regular in-person

worship services, including a livestream option for people who are unable to attend in person. R. at 4. The Church has become the largest practicing church of the religion. R. at 3.

In accordance with the religion's requirement that leaders and churches be involved with progressive political campaigns, Pastor Vale sometimes uses his weekly podcast to discuss political issues, deliver political messages, and endorse candidates and campaigns aligned with The Everlight Dominion. R. at 4. As required by his faith, Pastor Vale endorsed the candidacy of Congressman Samuel Davis for a special election for the open Wythe Senate seat. R. at. 4. Pastor Vale discussed the endorsement in a sermon, explaining how Congressman Davis's positions aligned with The Everlight Dominion's values. R. at 4-5. In this endorsement, he encouraged listeners to vote for, donate to, and volunteer for Davis's campaign, and announced plans to deliver additional sermons on the topic in October and November 2024. R. at 5.

On May 1, 2024, before Pastor Vale could deliver his planned sermons, the Internal Revenue Service (IRS) notified the Church that it had been selected for a random audit as a 26 U.S.C. § 501(c)(3) ("501(c)(3)") organization. R. at 5. While the IRS has entered into a consent decree, explaining that it will not enforce the Johnson Amendment "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services," at the time, Pastor Vale was aware of the Johnson Amendment and was concerned that the IRS could revoke the Church's 501(c)(3) tax exemption status, defunding a church for its religious beliefs. R. at 5, 14. Accordingly, on May 15, 2024, before the IRS could begin its audit, the Church filed suit in the United States District Court for the Eastern District of Wythe, asserting that applying the Johnson Amendment to punish the Church for following its religious teachings violates the Establishment Clause. R. at 5.

2. Procedural History

District Court. On May 15, 2024, the Church filed suit to prevent the government from enforcing the Johnson Amendment in violation of the Establishment Clause. R. at 5. After hearing all argument, the District Court granted the Church's motion for summary judgment and entered the permanent injunction. R. at 5-6. The District Court held that the Church had standing to challenge the Johnson Amendment and that the Johnson Amendment violates the Establishment Clause. R. at 5. Scott Bessent, Acting Commissioner of the IRS, and the IRS (collectively "Petitioners"), appealed the decision to the United States Court of Appeals for the Fourteenth Circuit. R. at 6.

Circuit Court. On appeal, the Fourteenth Circuit Court of Appeals affirmed the District Court's decision on both grounds. R. at 6, 8, 11. The Circuit Court held that the Church had standing because no alternative remedy existed and the Tax-Anti Injunction Act (AIA), therefore, does not bar suit. R. at 6-8. The Circuit further held that the Johnson Amendment violates the Establishment Clause because it grants the IRS the "power to grant tax exemptions only when a religious organization agrees to remain silent on [political] issues." R. at 9.

SUMMARY OF THE ARGUMENT

I.

This Court has jurisdiction because the Church's pre-enforcement suit is not barred by the AIA and the Church has Article III standing.

First, the Church's suit does not fall within the threshold of the AIA. No audit has occurred, and the Church's 501(c)(3) status remains unchanged. The primary purpose of this pre-enforcement suit is to challenge the Johnson Amendment as a violation of the Establishment Clause of the First Amendment. This challenge arises before any formal tax assessment or

collection and is not intended to restrain taxation. Moreover, the Church lacks adequate alternative remedies as waiting until an adverse tax classification occurs would force the Church to self-censor or knowingly violate the law. Without a remedy for pre-enforcement constitutional injury, this suit is not barred by the AIA under *South Carolina v. Regan*.

Second, the Church has Article III standing. It faces a concrete and imminent injury because its intended conduct is regulated and the threat of enforcement is substantial. The injury is directly caused by the Johnson Amendment, as the Church's self-censorship and pre-enforcement challenge respond to the threat of IRS action, not voluntary choice. Redressability is likely because enjoining enforcement would directly relieve the Church of its tax burden and compliance obligations. Accordingly, the claim is justiciable.

Therefore, this Court should affirm the Fourteenth Circuit's decision, as the suit is not barred by the AIA and meets Article III standing requirements.

II.

The Johnson Amendment violates the Establishment Clause because it conflicts with historical practices and fails strict scrutiny.

First, the Johnson Amendment is impermissible when analyzed in conjunction with historical practices and understandings. From the beginning of modern Establishment Clause jurisprudence, this Court looked primarily to historical practices and understandings to guide its analysis. The Johnson Amendment fails four out of six of the hallmark indicators of religious coercion. The Johnson Amendment exerts control over the doctrine and personnel of the Church, punishes the Church and its members for their religious exercise, restricts the Church and its members' political participation, and financially supports churches it prefers over other denominations.

Second, the Johnson Amendment fails strict scrutiny because the government's interest is not compelling and it is not the least restrictive means due to lack of an exception. Under the Religious Freedom Restoration Act of 1993, the government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. The Johnson Amendment's purpose was to prevent the use of tax-deductible money in political campaigns. In analogizing this purpose with other strict scrutiny cases, this purpose is clearly not compelling. Further, even if that interest is compelling, it does not outweigh the government's burden under RFRA to not substantially burden religious exercise. Lastly, the Johnson Amendment is not the least restrictive means because the government did not consider the particular religious harms posed. Here, Congress did not consider the religious harm that would result from enforcing the Johnson Amendment. Therefore, the Johnson Amendment must be repealed, or the Church must be granted an exception.

Therefore, this Court should affirm the Fourteenth Circuit's decision, as the Johnson Amendment is not in accordance with historical practices and does not pass strict scrutiny.

ARGUMENT

I. THIS COURT HAS JURISDICTION BECAUSE THE AIA DOES NOT BAR THE CHURCH'S CLAIM AND THE CHURCH HAS ARTICLE III STANDING.

The Fourteenth Circuit correctly held that the Church's suit is not barred by the AIA and that the Church has Article III standing. The Church's pre-enforcement suit challenges the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. R. at 5. First, the Church's challenge is not barred by the AIA because it does not fall within the scope of the AIA and additionally, is permitted under *South Carolina v. Regan* as the Church lacks an alternative remedy to challenge the suit. *See Regan*, 465 U.S. 367, 373 (1984). Second, the Church satisfies the requirements for Article III standing.

The AIA states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a) ("7421(a)"). This Court has interpreted the AIA's principal purpose as efficiency in tax collection, emphasizing minimal pre-enforcement judicial interference when a suit falls within the scope of its language. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962) (hereinafter "*Williams Packing*"). However, this Court has further clarified the scope of the AIA, stating the AIA was not intended to apply to suits where "Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Regan*, 465 U.S. at 373.

The Church's suit does not restrain assessment or collection of any tax and does not seek any refund relief. Rather, the Church's suit challenges the Johnson Amendment's constitutional validity prior to any enforcement action. Without adequate alternative remedies, this suit does not fall within the AIA's protective scope.

A. The AIA Does Not Bar the Church's Challenge.

The Church's pre-enforcement challenge falls outside the intended scope of the AIA, because its primary purpose is not to prevent tax collection or assessment. Alternatively, even if the AIA applied, the Church's claim would be permitted under *Regan* because the Church lacks an alternative remedy in the form of another legal avenue to challenge the validity of the Johnson Amendment. *Regan*, 465 U.S. at 373.

1. The Church's Pre-Enforcement Suit Does Not Fall Within the Scope of the AIA Because the Stated Object Is Not to Prevent the Assessment or Collection of a Tax.

The Church's suit is not barred by the AIA because it does not fall within the threshold scope of the AIA. The AIA is limited to suits that have the primary objective of restraining the government's tax assessment or collection efforts. 7421(a). This Court in *Direct Marketing Association v. Brohl* defined "assessment" in the context of the Tax Injunction Act as the

"official recording of a taxpayer's liability which occurs after information relevant to the calculation of that liability is reported to the taxing authority." 575 U.S. 1, 8-9 (2015) (noting that the Tax Injunction Act is modeled on the AIA and "assume[s] that words used in both Acts are generally used in the same way, and we discern the meaning of the terms in the AIA by reference to the broader Tax Code"). A "collection" of a tax refers to "the act of obtaining payment of taxes due" which is a step in the process that occurs after formal assessment. *Id.* at 10. The collection process can involve the notice of liability or the demand for payment, which involves obtaining payment of taxes due. *Id.*

The Johnson Amendment imposes a substantive restriction on speech as a condition of tax-exempt status, chilling the Church's' religious exercise and expressive conduct, independent of any future tax assessment. The Church does not seek to restrain the IRS from assessing or collecting taxes; it instead seeks to enjoin enforcement of a statutory speech prohibition. R. at 2. The impending IRS audit, like the reporting and recordkeeping requirements in *Direct Marketing*, is a preliminary investigative step and not the official calculation of a collection of tax liability. Accordingly, an injunction of the Johnson Amendment which would prevent an audit by the IRS does not restrain "assessment" within the meaning of the AIA as set forth by this Court in *Direct Marketing*. Similarly, the Church's suit is not a "collection" by definition set forth by this Court in *Direct Marketing*. The collection process involves the notice of liability or the demand for payment, none of which include the revocation of 501(c)(3) status which would potentially occur as a result of the Church's challenge here. Revocation of § 501(c)(3) status is not "collection" because it neither demands nor obtains payment of any tax. Revocation is a classification determination, not a tax assessment. This potential revocation would be an

upstream determination that may have downstream tax consequences but is not part of the tax collection process.

When analyzing whether a suit's purpose is to restrain the assessment or collection of a tax under 7421(a), this Court in *CIC Services, LLC v. IRS,* looked at the "stated object" of the suit. *See CIC Servs.,* 593 U.S. 209, 229 (2021) (Sotomayor, J., concurring) (stating "the [AIA] is best read as directing courts to look at the stated *object* of a suit rather than the suit's downstream effects.") (emphasis in original). The central inquiry in considering a suit's purpose is not to inquire into the challenger's subjective motive, but rather into the action's objective aim into what relief the suit requests. *Id.* at 217. Additionally, under *CIC Services*, the mere fact that a challenge is for pre-enforcement does not automatically render a challenge barred by the AIA. *See Id.* at 221. Therefore, because the Church's pre-enforcement challenge does not prevent the assessment or collection of a tax and the stated purpose of this action is to challenge the Johnson Amendment's constitutionality, it does not fall under the scope of the AIA.

The Church's pre-enforcement challenge falls outside the scope of the AIA also because the potential tax consequence would merely be a downstream effect like in *CIC Services*. Where a pre-enforcement challenge targets a regulatory duty or statutory restriction, and any tax consequences are downstream and contingent, the suit is outside the scope of the AIA. *CIC Servs.,* 593 U.S. at 221. "Downstream effects" are not the purpose of the Church's pre-enforcement challenge. *Id.* at 229. Courts must look to the immediate relief sought, not contingent tax consequences that result downstream. This Court emphasized that downstream tax consequences do not automatically trigger if the primary purpose and "action's objective aim" falls outside the scope of the AIA. *Id.* at 217. Further, this Court stated that when the "chain of connection" is too attenuated between an upstream duty and a downstream tax, "a court should

not view a suit challenging the duty as aiming to restrain the assessment or collection of a tax." *CIC Servs.,* 593 U.S. at 221. Thus, the Johnson Amendment challenge falls outside of the AIA's intended scope.

In *CIC Services,* this Court held that a pre-enforcement challenge to a regulatory requirement enforced by tax penalties falls outside the AIA's scope if the plaintiff's objective is to invalidate the regulatory rule itself. *Id.* at 216.The IRS had imposed a reporting obligation, and failure to comply would lead to civil tax penalties and criminal prosecution. *Id.* The challenger there filed suit before enforcement, seeking to invalidate the Notice under the Administrative Procedure Act. *Id.* at 214-15. This Court concluded that the complaint's "stated object" targeted the reporting mandate itself, not the downstream tax penalty, because it sought an injunction that "set aside the Notice" and prevented enforcement of the reporting obligation. *Id.* at 216 (holding "a reporting requirement is not a tax; and a suit brought to set aside such a rule is not one to enjoin a tax assessment or collection."). Like in *CIC Services*, the Church's challenge does not fall within the intended scope of the AIA.

The Church's challenge is not a tax action in disguise. This Court in *CIC Services* highlighted three aspects of the challenge that refuted the idea that it was a "tax action in disguise." *Id.* at 209. A pre-enforcement challenge falls outside of the AIA where the plaintiff targets an independent regulatory restriction, faces no immediate tax liability, and can seek review only after punishment. *Id.* at 209-10. The mere possibility of a downstream tax penalty does not convert such a challenge into a suit to restrain tax collection. *Id.*

Here, like in *CIC Services*, the Church brings a pre-enforcement challenge to an independent regulatory restriction enforced through the IRS, not a suit whose purpose is to restrain the assessment or collection of any tax. Under the "stated object" inquiry, the object here

is to invalidate the Johnson Amendment on constitutional grounds. *See CIC Servs.*, 593 U.S. at 229; R. at 5. The Church in its current suit does not ask the court to restrain any tax. Therefore, the challenge falls outside the AIA's intended scope to bar suits "for the purpose of restraining the assessment or collection of any tax." 7421(a).

The Church's pre-enforcement challenge of a regulatory condition is distinct from the post-enforcement challenges in *Alexander v. Americans United, Inc.* and *Bob Jones University v. Simon* where 501(c)(3) status administrative proceedings had already begun, making the object of the suit essentially a restraint on tax administration. *Alexander*, 416 U.S. 752, 757-58 (1974); *Bob Jones University*, 416 U.S. 725, 735 (1974).

First, in *Alexander*, the challenger sought a post-enforcement injunction against enforcement of a revocation that had already begun. 416 U.S. at 754-55. The IRS in *Alexander* had already issued a ruling letter revoking a prior qualification of 501(c)(3) status, on specified grounds. *Id.* Second, even though the university in *Bob Jones University* filed before revocation was complete, the IRS had already initiated administrative proceedings. 416 U.S. at 735 (noting the Commissioner of Internal Revenue had already "instructed the Director to commence administrative procedures leading to the revocation of § 501(c)(3) ruling letter"). The suit in *Bob Jones University* was to halt ongoing tax proceedings "alleg[ing] irreparable injury in the form of substantial federal income tax liability and the loss of contributions." *Id.* at 735-36. For AIA purposes, this Court treated the case as a post-enforcement action within the scope of the AIA because the suit sought to restrain a tax-related administrative act already in motion. *Id.* at 747.

In contrast, here, the Church challenges the Johnson Amendment before any audit determination or adverse action has been taken, making this a true pre-enforcement challenge. R. at 5. *Alexander* and *Bob Jones University* are distinguishable because the Church filed its valid

pre-enforcement challenge prior to the beginning of its audit, and the Church's status as a 501(c)(3) organization is unchanged. R. at 5. The Church has only received an audit notice in the May 1, 2024, letter where the IRS informed the Church that it had been selected for an audit. R. at 5. No revocation, determination, or administrative action has occurred yet. *See* R. at 5-6. The pre-assessment suit comes before the beginning of an audit, which is not a collection or assessment of taxes, but merely investigatory action. R. at 5. Thus, the Church's suit falls outside the scope of the AIA's intended purpose to bar suits restraining the assessment or collection of any tax.

As in *CIC Services*, any tax consequences here because of the pre-enforcement challenge are downstream and contingent, arising *only if* the Church violates the Johnson Amendment, the IRS completes its audit, and the agency imposes penalties or revokes tax-exempt status. R. at 5. All these aspects, taken together, show that the Church's suit targets the Johnson Amendment's regulatory restriction on political speech, not the downstream tax penalty that might result. The Church is not trying to stop the IRS from collecting a tax; it is instead challenging a speech-restrictive condition on tax-exempt status *before* any tax is assessed. Loss of exemption is a collateral downstream consequence, not the object of the suit. Therefore, this suit is not barred.

2. Even If the AIA Applies, *Regan* Permits the Church's Pre-Enforcement Suit Because It Lacks Alternative Remedies.

Even if this Court applies the AIA to the Church's claim, it survives because the Church lacks alternative remedies to challenge the Johnson Amendment. The AIA generally bars pre-enforcement suits seeking to restrain tax assessment or collection. However, under this Court's holding in *Regan*, a pre-enforcement suit may proceed, despite the AIA, if the taxpayer does not have an alternative remedy and if waiting for the challenge would result in irreparable harm. 465 U.S. at 378.

a. *Regan* Permits This Pre-Enforcement Suit Because the Church Has No Alternative Remedy.

The Church does not have an alternative avenue to challenge the Johnson Amendment prior to enforcement, making the suit permissible under *Regan*. In *Regan*, this Court held that "the Act was not intended to bar an action where, as here, Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." 465 U.S. at 373. Accordingly, the AIA reflects the policy that taxpayers must generally pursue their claims through the procedures Congress has provided, such as refund suits or other statutory remedies, rather than seeking pre-enforcement injunctions. *Snyder v. Marks*, 109 U.S. 189, 193 (1883). But when no statutory alternative exists, the AIA does not bar that challenge. *Id.* Because the Church has no alternative means to challenge the Johnson Amendment, even if this suit were deemed within the scope of the AIA, it would fall within the *Regan* exception and therefore would not be barred.

Under *Regan*, the AIA does not bar the Church's suit. In *Regan*, the challenger was left with no applicable statutory procedure to contest the challenged tax's constitutionality. *Id.* at 378-80. The challenger in *Regan* sought an injunction to a Section 103(a) Internal Revenue Code amendment that exempted interest earned from a taxpayer's gross income on the grounds that it violated the Tenth Amendment. *Id.* at 372. This Court held that the suit in *Regan* was not barred by the AIA because it had no alternative statutory procedures to challenge the amendment's constitutionality through normal tax channels. *Id.* at 380. In *Regan*, the issue was that the challenger was issuing bearer bonds that were taxable to the bondholders, not the challenger. *Id.* at 378. Therefore, because the challenger incurred no tax liability and had no statutory mechanism to contest the tax itself, the suit was permitted to proceed outside the AIA bar. *Id.* at 380.

Additionally, this Court's First Amendment jurisprudence addressing delayed judicial review provides guidance on whether a remedy available only after speech has been chilled can be considered "adequate" under *Regan*. *See Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988); *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As this Court has recognized, "the alleged danger of [a speech-regulating statute] is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution." *Am. Booksellers Ass'n*, 484 U.S. at 393. The loss of First Amendment freedoms, "for even minimal periods of time," constitutes irreparable injury. *Elrod*, 427 U.S. at 373.

This Court's First Amendment jurisprudence further recognizes that injuries caused by chilled speech occur before enforcement and cannot be undone through delayed review. *See Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 502 (1932) (noting a plaintiff may seek pre-enforcement injunctive relief when a statute threatens immediate and irreparable injury); *Am. Booksellers Ass'n*, 484 U.S. at 393 (holding self-censorship is a present harm). Because the loss of First Amendment freedoms, such as political speech by the Church, "constitutes irreparable injury," a remedial scheme that becomes available only after speech has been suppressed cannot supply the "meaningful opportunity" for review as an adequate alternative that *Regan* requires. *See Elrod*, 427 U.S. at 373 (holding the threatened loss of public employment based solely on political affiliation constituted an irreparable injury).

Here, just as in *Regan*, where no statutory alternative existed for the plaintiff, the Church is left without an adequate statutory alternative. Although the suit here does not present a bearer bond issue, it is procedurally analogous to *Regan* as the Church also faces a tax-related regulation in which the usual statutory procedure does not yet provide a remedy. *Regan* involved a state challenging a tax provision affecting bondholders, where the state itself did not owe the

tax, therefore leaving it with no statutory procedure. 465 U.S. at 373. Here, the Johnson Amendment affects the Church's eligibility for a tax exemption, but it does not impose a direct tax, therefore leaving the Church without a remedy.

26 U.S.C. § 7428 ("7428") relief is not an alternative for the Church to challenge the Johnson Amendment. 7428 provides relief only after an organization's tax classification has been changed. *See* 7428 (stating "[f]or purposes of [7428(a)], a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification"). The Church's pre-enforcement suit implicates the Church's First Amendment rights to political speech, like in *Virginia v. American Booksellers Association* and *Elrod v. Burns*. A post-enforcement 7428 remedy is not an "alternative legal avenue" under *Regan* when the challenged tax provision would chill core First Amendment speech by the Church.

The IRS has not begun its audit, and the Church's tax-exempt status remains unchanged. R. at 5. Without 7428 procedure as an alternate avenue for relief, the Church has no practical avenue to obtain judicial review without first risking violating the law. R. at 5. Waiting to pursue relief after an adverse tax classification is an insufficient alternative remedy because it would require the Church to either self-censor or knowingly violate the law. R. at 5. Because the IRS has not revoked its 501(c)(3) status, and 7428 relief is unavailable until such a revocation occurs, the Church has no alternative legal procedure to protect its First Amendment right to expression. The severity of constitutional injury makes post-enforcement alternatives inadequate. Without an alternative remedy to pre-enforcement constitutional injury, this suit is not barred by the AIA under *Regan*.

b. The *Williams Packing* Exception is Inapplicable Because the AIA Does Not Bar the Church's Pre-Enforcement Challenge.

The narrow *Williams Packing* exception to the AIA is inapplicable to the Church's pre-enforcement challenge because the AIA does not govern this suit. The *Williams Packing* exception exists *only* when the AIA would otherwise bar jurisdiction, permitting pre-enforcement review where the government cannot prevail on the merits, and equitable jurisdiction exists. *See generally Williams Packing*, 370 U.S. at 7; *Alexander*, 416 U.S. at 758. The first prong requires that the government's claim is without merit while the second prong focuses on the potential of irreparable harm to the taxpayer due to the lack of adequate remedy at law. *Williams Packing*, 370 U.S. at 7; *Alexander*, 416 U.S. at 758; *See also Elrod*, 427 U.S. at 373 (noting "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") Therefore, the dissent erred in its application of the *Williams Packing* exception in its discussion. *See* R. at 12-13 (analyzing the *Williams Packing* exception in *Alexander*).

Here, however, the AIA does not govern this case because the Church does not seek to restrain the assessment or collection of a tax; rather, it challenges the enforcement of the Johnson Amendment, a speech-restricting provision of 501(c)(3). This Court has repeatedly held that the AIA should be construed narrowly, particularly in pre-enforcement suits where no tax has been assessed or collected. *See NFIB v. Sebelius*, 567 U.S. 519, 581 (2012) (reaffirming the AIA only applies to suits seeking to restrain tax collection when the challenged action is a "tax" within the meaning of the AIA); *Regan*, 465 U.S. at 378 (holding a pre-enforcement challenge is not barred when no alternative remedy exists). Because the Church's claim does not fall within the AIA's statutory scope, the *Williams Packing* exception, a narrow judicial exception to the AIA, is not applicable. The Church's suit is not barred as a pre-enforcement challenge to a statute that chills

constitutionally protected speech. Accordingly, this Court should find the *Williams Packing* exception inapplicable as the AIA does not bar the Church's challenge in its statutory language and under *Regan*'s alternative remedy inquiry.

B. The Church Has Article III Standing Because There Is an Injury, Causation, and Redressability.

The Church has Article III standing to bring this suit. To bring a claim to federal court, a plaintiff must have Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The doctrine of standing sets the standard for "cases" and "controversies" that can be "appropriately resolved through the judicial process." *Id.* U.S. Const. art. III, § 2, cl. 1. (citing *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). First, standing requires that the "plaintiff suffered an injury in fact," which is "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 (quoting *Allen v. Wright*, 468 U.S. 737, 756 (1984); *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). Where the alleged harm depends on speculative future events, the plaintiff lacks an injury in fact, and the claim is constitutionally unripe. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (holding a speculative future injury is insufficient for injury-in-fact); *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967) (stating claims dependent on contingent future events are not constitutionally ripe). With all required components, the Church has Article III standing.

The Church has a concrete and imminent injury. The injury in fact requirement is "to ensure that the plaintiff has a 'personal stake in the outcome of the controversy.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Second, there must be a causal connection between the injury and the conduct complained of, requiring the injury to be "fairly traceable to the challenged action of the

defendant." *Lujan*, 504 U.S. at 560 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41 (1976)). Third, standing requires redressability. *Lujan*, 504 U.S. at 561. It must be "'likely' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* (quoting *Simon*, 426 U.S. at 43). The burden to establish the three elements required for Article III standing is on the "party invoking federal jurisdiction," which the Church has met. *Id.*

1. The Church Faces a Concrete and Imminent Injury Because Its Intended Conduct Is Regulated and the Threat of Enforcement Is Substantial.

The Church can show injury-in-fact, causation, and redressability in its claim, therefore satisfying Article III standing requirements. In *Susan B. Anthony List v. Driehaus*, this Court addressed the requirements for a sufficiently imminent injury under Article III. *See Susan B. Anthony List*, 573 U.S. at 158. Circumstances surrounding an allegation of future injury, require that the "threatened injury is certainly impending." *Id.* Additionally pre-enforcement challenges are permitted as "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Id.* In the case of a pre-enforcement challenge, the party invoking federal jurisdiction can satisfy the injury-in-fact requirement if the party alleges "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).

This case is ripe. The ripeness doctrine ensures that courts do not decide abstract disputes. *Abbott Labs.*, 387 U.S. at 149. Where the alleged harm depends on speculative future events, the plaintiff lacks an injury-in-fact, and the claim is constitutionally unripe. *Id.* A challenger can successfully claim a ripe pre-enforcement challenge if the challenger demonstrates "(1) that they intend to engage in a course of conduct arguably affected with a

constitutional interest; (2) that their conduct is arguably regulated by the challenged policy; and (3) that the threat of future enforcement is substantial." *Burnett Specialists v. Cowen*, 140 F.4th 686, 694-95 (5th Cir. 2025).

The party invoking federal jurisdiction in *Susan B. Anthony List* satisfied this requirement by showing that the intended conduct concerned the constitutional interest of political speech. 573 U.S. at 162. Additionally, this Court held that the threat alleged by the petitioner was substantial because there was "probable cause" to believe the petitioners had already violated the statute and "as long as petitioners continue to engage in comparable speech" that speech would remain proscribed by the statute at issue. *Id.* at 162-63. Accordingly, the petitioners had alleged burdens imposed by a true threat of prosecution that was "sufficient to create an Article III injury." *Id.* at 165.

Here, like in *Susan B. Anthony List*, the Church can satisfy the requirement for injury-in-fact for its pre-enforcement challenge. While the IRS has entered a consent decree promising limited non-enforcement of the Johnson Amendment, the decree applies only to narrowly defined circumstances, such as speech "in good faith" through "customary channels" on matters of faith in connection with services. *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 dissent errs by concluding that this decree eliminates the threat of substantial and imminent risk of enforcement to the Church. R. at 14. The consent decree does not immunize the Church from enforcement of the Johnson Amendment.

The Church's political endorsements on its widely disseminated podcast, and its intended future sermons regarding candidates, may fall outside this narrow carve-out and "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Babbitt*,

442 U.S. at 298; *see* R. at 5. The Church faces the threat of an injury that is certainly impending as the IRS sent a letter on May 1, 2024, in which the IRS informed the Church it had been selected for a random audit. R. at 5. The letter also stated that the IRS "intended to conduct an audit of its organization, which will review [the Church's] compliance with § 501(c)(3), including the Johnson Amendment." R. at 7-8. Based on the IRS's impending audit of the Church, the threat of future enforcement is substantial. The IRS did not give binding general immunity in the consent decree, and the Church still suffers a credible threat that the IRS could use its discretion to enforce the Johnson Amendment against the Church's conduct. R. at 7 n.2.

Additionally, the suit is not premature under the ripeness doctrine because the Church can demonstrate that "(1) that they intend to engage in a course of conduct arguably affected with a constitutional interest; (2) that their conduct is arguably regulated by the challenged policy; and (3) that the threat of future enforcement is substantial." *See Burnett Specialists*, 140 F.4th at 694-95. First, church members and leaders have already "participated and intervened in a political campaign" as required by the Church's religion. R. at 7. The participation and intervention in political campaigns are the challenged conduct under the Johnson Amendment. R. at 7.

Second, the Johnson Amendment directly mandates that non-profit organizations "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 501(c)(3). Third, the IRS informed the Church of its intended audit of its organization. R. at 7. Under this intended audit, the IRS will review the Church's compliance under the Johnson Amendment, making the threat of enforcement substantial. R. at 7.

2. The Church's Injury is Causally Linked to the Johnson Amendment.

Next, under Article III, the causation requirement is satisfied when the alleged injury is fairly traceable to the challenged government action, as established in *Lujan.* 504 U.S. at 560-61.

This Court in *Allen v. Wright* further established that an injury is not fairly traceable and causation is not sufficiently established when the injury alleged "results from the independent action of some third party not before the court." 468 U.S. 737, 757 (1984). In *Allen*, the tax involved exemptions from third parties. *Id.* at 758. This did not satisfy the causation prong of Article III because the link in the chain of causation was too attenuated to support standing when the decision moved away from the government and went to a third party. *Id.*

Although this Court in *Allen* denied standing where the injury was not fairly traceable to the government and depended on the independent actions of third parties, here, the Church's injury flows directly from the challenged tax scheme by operation of law, without reliance on speculative third-party behavior. *See Id.* at 757-59. The Church faces a credible threat of enforcement because the IRS "conducts random audits of Section 501(c)(3) organizations to ensure compliance with the Internal Revenue Code." R. at 5. The Johnson Amendment prohibits 501(c)(3) organizations from participating in political campaigns. 501(c)(3). The IRS is the enforcing authority of the Johnson Amendment that conducts audits, determines compliance with 501(c)(3) and has the authority to revoke tax-exempt status of the Church. R. at 5. Loss of tax-exempt status is the direct legal consequence of violating the provision, and the Church's fear of enforcement exists directly because of the statute the IRS enforces. The Church's self-censorship and pre-enforcement challenge are responses to the threat of IRS conduct, not voluntary choices, therefore making the causal chain direct and unbroken.

3. The Church May Bring a Pre-Enforcement Challenge because it is Likely that the Injury will be Redressed by a Favorable Decision.

The last prong of Article III standing requires redressability, which requires that it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 561. In *Bennett v. Spear*, this Court held that redressability is

satisfied where the requested relief would remove a regulatory obstacle that has a determinative or coercive effect on third parties, thereby alleviating the plaintiff's injury. 520 U.S. 154, 170-71 (1997) (holding relief would "remove the biological opinion's coercive effect" and therefore "alleviate [the plaintiffs'] injury").

This Court in *American Booksellers Association* held that self-censorship caused by threatened enforcement is redressable. 484 U.S. at 393. There, this Court held that pre-enforcement plaintiffs satisfy standing requirements where injunctive relief would eliminate a credible threat of enforcement that causes self-censorship, stating "[t]he alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution." *Id.* The challengers successfully argued for an injunction of a statute regulating the display of sexually explicit materials, alleging that the law would chill constitutionally protected speech. *Id.* at 386. This Court held the challengers had standing because the credible threat of enforcement caused them to self-censor, and injunctive relief would eliminate that harm. *Id.* at 393. This Court further emphasized that redressability is satisfied where invalidating the statute would remove the threat of enforcement. *Id.* at 392.

Here, enjoining enforcement of the challenged tax would directly relieve the Church of its tax burden and compliance obligations, making redressability likely. *See Bennett*, 520 U.S. at 171. The Church intends to continue the proscribed conduct, with Pastor Vale announcing that he intended to give future sermons about the upcoming election. R. at 5. A permanent injunction against enforcement of the Johnson Amendment would directly allow the Church to express without penalty. R. at 5. Further, the Church's harm flows solely from the Johnson Amendment. An injunction prohibiting enforcement of the Johnson Amendment would eliminate the harm of enforcement risk, directly targeting the source of the injury, rather than a third party like in

Bennett. 520 U.S. at 171; R. at 8. Redressability is satisfied because an injunction barring IRS enforcement of the Johnson Amendment would remove the threat of audit and revocation of 501(c)(3) status, thereby allowing the Church to engage in its religiously mandated political speech without self-censorship and fear of penalty. Accordingly, the Church's claim is justiciable as it satisfies the requirements of Article III standing.

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE BECAUSE IT CONFLICTS WITH HISTORICAL PRACTICES AND FAILS STRICT SCRUTINY.

This Court's precedents and the First Amendment's Religion Clauses condemn laws such as the Johnson Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press." U.S. CONST. amend. I. The First Amendment is applicable to the States under the terms of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In *Everson v. Board of Education*, this Court summarized the protections of the Establishment Clause: "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947).

Under the Johnson Amendment, non-profit organizations are prohibited from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 501(c)(3). If a non-profit does not participate or intervene in a political campaign on behalf of (or in opposition to) any candidate for public office and complies with the other requirements of the Internal Revenue Code, it may be exempt from paying federal income tax. *Id*.

A. The Johnson Amendment Is Impermissible When Analyzed in Conjunction with Historical Practices and Understandings.

From the beginning of modern Establishment Clause jurisprudence, this Court looked primarily to historical practices and understandings to guide its analysis. *Shurtleff v. City of Boston*, 596 U.S. 243, 281 (2022) (Gorsuch, J., concurring); *Everson*, 330 U.S. at 9-15. This Court recently clarified "[i]n 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) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). The distinction between permissible and impermissible must "accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers." *Galloway*, 572 U.S. at 577. The historical practices and understandings approach has long represented the rule in Establishment Clause jurisprudence. *Kennedy*, 597 U.S. at 536 (internal quotations omitted); *see Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 78 (2019); *Torcaso v. Watkins*, 367 U.S. 488, 490 (1961); *McGowan v. Maryland*, 366 U.S. 420, 437-40 (1961).

During the founding era, religious establishments bore certain traits:

> First, the government exerted control over the doctrine and personnel of the established church. Second, the government mandated attendance in the established church and punished people for failing to participate. Third, the government punished dissenting churches and individuals for their religious exercise. Fourth, the government restricted political participation by dissenters. Fifth, the government provided financial support for the established church, often in a way that preferred the established denomination over other churches. And sixth, the government used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function.

Shurtleff, 596 U.S. at 286; *see* M. McConnell, Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 WM. & MARY L. REV. 2105, 2110-2112, 2131 (2003) (Establishment and Disestablishment).

These "hallmarks" are often indicators of religious coercion. *Shurtleff*, 596 U.S. at 286 (holding "[m]ost of these hallmarks reflect forms of 'coerc[ion]' regarding 'religion or its exercise'") (internal citations omitted); *Van Orden v. Perry*, 545 U.S. 677, 693 (2005) (Thomas, J., concurring). It is irrelevant to define the Establishment Clause's boundaries when history shows a specific practice is allowed. *Galloway*, 572 U.S. at 577. Any test a court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change. *Allegheny County v. ACLU*, 492 U.S. 573, 670 (1989); *see also Galloway*, 572 U.S. at 577.

1. The Johnson Amendment Exerts Control Over the Doctrine and Personnel of the Church.

This Court has warned about utilizing tax exemptions to evaluate conduct of religious institutions. *Walz v. Tax Com. of New York*, 397 U.S. 664, 674 (1970). In *Walz v. Tax Commission of New York*, this Court held that giving emphasis to "good works," a variable aspect in the church context, introduces an element of impermissible government intrusion in evaluation and standards. *Id.* Permitting this involvement produces a continuing day-to-day relationship that the policy of neutrality seeks to minimize. *Id.* Further, this Court condemned the use of a "social welfare yardstick" as a significant element to qualify for tax exemption because it could escalate into unconstitutional government interference. *Id*. A rule requiring invocations to be nonsectarian would force the legislature and judiciary to act as supervisors and censors of religious speech: a rule that would involve government in religious matters to a far greater degree than editing, approving prayers in advance, or criticizing their content after the fact. *Galloway*, 572 U.S. at 581. In 1923 this Court held that the protections of the Fourteenth Amendment included at least a person's freedom "to worship God according to the dictates of his own conscience." *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923). Every analysis under the

Establishment Clause must turn on whether the specific act in question is intended to establish or interfere with religious beliefs and practices or have the effect of doing so. *Walz*, 397 U.S. at 669.

In *Walz*, an owner of real estate in New York sought an injunction to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations. 397 U.S. at 666. The owner contended that the New York City Tax Commission's grant of an exemption to church property indirectly required him to contribute to religious bodies: violating the Establishment Clause. *Id*. at 670. This Court interpreted that the legislative purpose of the property tax exemption was neither the advancement nor the inhibition of religion. *Id*. at 672. Further, this Court held that the tax exemption did not single out one particular church or religious group, rather, all houses of religious worship received the exemption as stabilizing influences in community life and as part of the public interest. *Id*. at 672-73. Moreover, this Court held that granting tax exemptions to churches, while indirectly giving them an economic benefit, amounted to less involvement than taxation. *Id*. at 674-75. This Court likened giving tax exemptions to churches to giving tax exemptions to libraries, art galleries, and hospitals. *Id*. at 675 (noting that the tax exemptions did not turn art gallery employees into arms of the state and that "[t]here is no genuine nexus between tax exemption and establishment of religion").

Here, the Johnson Amendment exerts control over the doctrine and personnel of the Church by prohibiting them from following their established religious doctrine. *See* R. at 3. As opposed to the upheld tax exemption in *Walz*, the Johnson Amendment directly controls which doctrines are acceptable and which doctrines are prohibited. 397 U.S. at 672-73. The Everlight Dominion is a centuries-old religion which requires its leaders and churches to participate in the political process. R. at 3. Further, "[a]ny church or religious leader who fails to adhere to this

requirement is *banished* from the church and The Everlight Dominion." R. at 3 (emphasis added). The Johnson Amendment controls this belief system by prohibiting churches and members who follow The Everlight Dominion from adhering to their religion's teachings. *See Walz*, 397 U.S. at 672.

By not allowing the Church and its members to pursue their belief systems, the Johnson Amendment forces the government to intrude upon religious beliefs in violation of the Establishment Clause. As explained in *Walz*, blanket tax exemptions for houses of religious worship that do not control beliefs are constitutional. *Id.* at 675. However, the Johnson Amendment directly excludes religions which include political participation as part of their teachings. *See* R. at 3. The Johnson Amendment is not a blanket statute which applies regardless of belief, rather, it specifically acts as a form of government control over religious belief and further entangles the government's own standards for religion with religious institutions. Removing the Johnson Amendment would untangle the government's current day-to-day intrusion into religious bodies by removing government evaluations and standards regarding which beliefs are allowed and which beliefs are punishable via removal of 501(c)(3) status.

2. The Johnson Amendment Punishes the Church and Its Members for Their Religious Exercise.

Punishment of unpopular religious beliefs has been shown throughout history to be contrary to the Constitution; "[t]hrough history, the suppression of unpopular religious speech and exercise has been among the favorite tools of petty tyrants." *Shurtleff*, 596 U.S. at 284-85; *see Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *Feldman v. United States*, 322 U.S. 487, 501 (1944). The Founding Fathers intended the United States to be different, allowing each individual to enjoy the right to make sense of his relationship with religion, speak freely about his place in creation, and have his religious practices treated with

respect. *Shurtleff*, 596 U.S. at 284-85; *see also West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Religious beliefs do not need to be acceptable, logical, consistent, or comprehensible to others to receive First Amendment protection. *Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021) (citing *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981)). The line separating the secular from the sectarian in America is elusive. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 231 (1963) [hereinafter "*Abington*"].

The Johnson Amendment is not neutral towards religious beliefs. The government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs. *Fulton*, 593 U.S. at 533. The Founding Fathers fought to end the extension of civil government's support to religion in a manner which made the two interdependent and threatened the freedom of each. *McGowan*, 366 U.S. at 465-66. This Court has said regarding the history of the Establishment Clause that "'our tradition of civil liberty rests not only on the secularism of a Thomas Jefferson but also on the fervent sectarianism . . . of a Roger Williams.'" *Abington*, 374 U.S. at 259-60 (quoting PAUL A. FREUND, THE SUPREME COURT OF THE UNITED STATES, ITS BUSINESS, PURPOSES AND PERFORMANCE (1961) 87-91.

The Johnson Amendment punishes religious institutions who follow unpopular religious beliefs through removal of their tax exemption status. Before the Johnson Amendment was added to 501(c)(3) in 1954, it was a blanket tax exemption for religious institutions. 26 U.S.C. § 501(c)(3) (1953). Today, with the added Johnson Amendment, religious institutions who practice religion through political activism are punished for this pursuit. *See* R. at 3. The Johnson Amendment utilizes tax exemptions to directly fund churches with popular religious beliefs while defunding churches who follow dissenting belief systems: a practice long condemned by this Court. *See* 501(c)(3); *Shurtleff*, 596 U.S. at 284-85; *Capitol Square Review & Advisory Bd.*,

515 U.S. at 760; *Feldman*, 322 U.S. at 501 (Black, J., dissenting); *Fulton*, 593 U.S. at 533; *Thomas*, 450 U.S. at 714. By funding religious institutions who do not participate politically, the Johnson Amendment allows the government to decide which religious beliefs are worthy of tax exemption status through secular standards of what religious beliefs should be. *See* R. at 2. Churches who are required to participate in this country's political process by endorsing candidates who support the Church's same beliefs are being denied tax exemption status due to government intrusion. In this way, churches who have dissenting beliefs are punished for their religious exercise through government intervention, prohibition, and defunding.

Since 2017, legislation has been introduced each year to eliminate the Johnson Amendment or to create an exception which would allow religious organizations to actively participate in political campaigns in accordance with their teachings. R. at 2-3. However, despite the near decade of push back on this exclusionary rule, Congress has not recognized the numerous churches, members, and institutions who are being punished for simply following their religious beliefs. R. at 2-3. The continued fight to end the Johnson Amendment's exclusionary tax exemptions exemplifies the substantial harm done to churches who are required to participate politically. Without the Johnson Amendment's restrictions and prohibitions to sincerely held religious beliefs, all religious institutions who qualify under 501(c)(3) would be supported equally for the good works done in their community. *See generally Walz*, 397 U.S. at 674. The Johnson Amendment will continue to punish dissenting churches through removal of tax exemptions, even if those religious beliefs are sincerely held.

3. The Johnson Amendment Restricts the Church and Its Members' Political Participation.

The Johnson Amendment interferes with the Church and its members' religiously required political participation. It is a delicate and difficult task to determine what is a religious

belief or practice. *Thomas*, 450 U.S. at 714. The analysis determining what is a religious belief or practice does not turn upon a judicial perception of the particular belief or practice in question. *Id*. Thus, "courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000); *see also Thomas*, 450 U.S. at 716.

In *Walz*, this Court noted:

> Adherents of particular faiths and individual churches frequently take strong positions on public issues including, as this case reveals in the several briefs *amici*, vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right. No perfect or absolute separation is really possible; the very existence of the Religion Clauses is an involvement of sorts -- one that seeks to mark boundaries to avoid excessive entanglement.

397 U.S. at 670.

In *Kennedy v. Bremerton School District*, a high school football coach lost his job for kneeling midfield after games to offer his prayers. 597 U.S. at 512-13. The school district disciplined him because it thought not acting could lead a reasonable observer to mistakenly conclude it endorsed the coach's religious beliefs. *Id*. at 514. This Court concluded that there was no evidence the coach had coerced his students to pray with him or told any student that it was important to participate in any religious activity. *Id*. at 537. This Court went further to note that the school district's argument would effectively allow the government to script everything a teacher or coach says in the workplace. *Id*. at 540. This Court held that respect for religious expressions is indispensable to life in a free and diverse republic and a government entity may not punish an individual for engaging in personal religious observances as protected by the First Amendment. *Id*. at 543.

The Johnson Amendment directly restricts political organization by churches and their members, even if political participation is required by a devout religious teaching. In *Kennedy*,

this Court held that the government cannot interfere with religious expression when the expression is related to personal religious observances and is non-coercive. *Kennedy*, 597 U.S. at 537, 543. Similarly, here, by taking away a church's tax exemption status for politically active churches, the Johnson Amendment effectively kills political participation by religious institutions: a deeply held and personal belief for those in The Everlight Dominion.

The Johnson Amendment effectively takes on the role of the school district in *Kennedy*. By giving religious institutions the choice of either restricting religious expressions or taking away tax exemption status, the government is essentially entangling itself into religious institutions and forcibly restricting their right to political participation. Churches, their members, and all religious institutions, as a whole, are prohibited from supporting political candidates that align with their church's teachings: a right guaranteed to all secular institutions. Without the Johnson Amendment, 501(c)(3) would allow churches, even those who tell their constituents it is important to participate in the political sphere, to be exempt from taxation. However, with the Johnson Amendment, specific churches who pursue political activism, as required by their religious teachings, are punished, silenced, and restricted from faithfully adhering to their religious beliefs and partaking in this country's political system.

The religious expression at issue is not coercive and therefore falls under *Kennedy* protection. 597 U.S. at 543. The Everlight Dominion's membership has seen an increase from a few hundred to 15,000 members between 2018 and 2024. R. at 4. While the weekly podcast to deliver sermons, provide spiritual guidance, and educate the public about The Everlight Dominion discusses political topics, it is not coercive. R. at 4. Similar to the non-coercive religious exercise in *Kennedy*, the podcast, which does not always discuss political issues, simply

voices support for candidates which align with The Everlight Dominion to membership listeners. 597 U.S. at 537; R. at 4.

The football coach in *Kennedy* did not coerce his students to pray with him or tell any student it was important to participate in religious activity; therefore, the Court concluded his actions were non-coercive. 597 U.S. at 537. Similarly, here, there is no required listening for non-members, there is no promotion of the podcast to non-sectarian establishments, and there is no coercion of secular people to partake in listening to the sectarian podcast. Every listener of Pastor Vale's podcast is listening of their own volition and is likely a member of the church who follows The Everlight Dominion faith. Adding discussion of progressive belief systems under the church to a podcast delivered to members of the same belief without listening requirements or secular advertisement is not coercion of the type found unconstitutional in *Kennedy*. Rather, it is further religious exercise which is being restricted by application of the Johnson Amendment.

4. The Johnson Amendment Financially Supports Churches It Prefers Over Other Denominations.

This Court has held that, "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). The government is required to be neutral when it comes to competition between religious sects. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The First Amendment mandates government neutrality between religion and the government may not adopt programs or practices which aid or oppose any religion: this prohibition is absolute. *Epperson v. Arkansas*, 393 U.S. 97, 104-06 (1968). Tax exemption of a religious entity is utilizing public funds to finance religious exercise. *Abington*, 374 U.S. at 229. Constitutional neutrality regarding the Religion Clauses must be flexible; rigidity would defeat the basic purposes of the First Amendment which is to ensure no religion is favored, no religion is commanded, and no religion is inhibited. *Walz*,

397 U.S. at 669. "Few concepts are more deeply embedded in the fabric of our national life . . . than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." *Id*. at 676-77. Government actions that favor certain religions convey to members of other faiths that they are "outsiders, not full members of the political community." *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025) (hereinafter "*Catholic Charities*") (quoting *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290, 309 (2000)).

In *Larson v. Valente*, this Court held that the Establishment Clause prohibits statutes that grant preference to certain denominations over others. 456 U.S. at 246-47. There, a Minnesota statute imposed certain registration and reporting requirements upon only those religious organizations that solicited more than fifty percent of their funds from nonmembers. *Id*. at 230. This Court determined that the law clearly granted denominational preferences by favoring religious organizations that received over half of their contributions from members and must be invalidated unless it is justified by a compelling government interest and closely fitted to further that interest. *Id*. at 246-47. This Court struck down the fifty percent rule as a violation of the Establishment Clause. *Id*. at 255.

The Johnson Amendment is not neutral between religions. In *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, an entity controlled by the Roman Catholic Diocese claimed it qualified for a tax exemption as a religious organization. 605 U.S. at 241.Wisconsin's unemployment compensation program required most employers to make regular contributions to the State's unemployment fund through payroll taxes. *Id*. at 242. The program contained an exemption for religious employers to services provided by a minister of a

church in the exercise of their ministry or to organizations controlled and operated by a church for primarily religious purposes. *Catholic Charities*, 605 U.S. at 242. The entity at issue was a nonprofit organization providing services to the disadvantaged and was an arm of the Roman Catholic Diocese of Superior, Wisconsin. *Id*. at 243. The entity's request for the religious-employer exemption was denied because it provided charitable social services which were neither inherently nor primarily religious activities. *Id*. at 244-45.

Just as in *Catholic Charities*, the Johnson Amendment inherently institutes denominational preferences based on political religious teachings. In *Catholic Charities*, the lower court held that the services offered by the sub entities could be provided by organizations of either religious or secular motivations and therefore was not operated primarily for religious purposes. *Id*. at 246. This Court reversed and held that the denial of the tax exemption violated the First Amendment. *Id* at 241. This Court explained that the First Amendment mandates government neutrality between religions and subjects any government sponsored denominational preference to strict scrutiny. *Id*. However, the Wisconsin law instituted a denominational preference by excluding religions who do not use charity work for only members of the Catholic faith. *Id*. at 249-50. Further, because the application of the tax exemption law imposed a denominational preference by differentiating between religions based on theological lines, the law's application did not survive strict scrutiny and was struck down. *Id*. at 241-42.

Here, the Johnson Amendment gives financial support to churches and belief systems it prefers over churches and belief systems it does not prefer. Like the laws at issue in both *Larson* and *Catholic Charities*, the Johnson Amendment grants denominational preference by financially supporting religions that meet the government's secular standards for religious beliefs. *Larson*, 456 U.S. at 246-47; *Catholic Charities*, 605 U.S at 249-50. Through the Johnson Amendment's

control, punishment, and restriction of politically active churches, the government effectively funds churches who do not participate politically by giving them tax exemptions and does not fund churches whose religious beliefs require them to participate in politics. *See Abington*, 374 U.S. at 228-29.

Just as the tax exemption in *Catholic Charities*, the Johnson Amendment imposes a denominational preference based on theological lines. 605 U.S. at 241-42. Here, churches who believe in supporting political candidates who embody their religious beliefs are denied a tax exemption while churches whose religious beliefs do not entail political participation are essentially funded by the government. *See* 501(c)(3). Funding churches based on belief systems is a historically coercive type of establishment. *Walz*, 397 U.S. at 676-77. By repealing the Johnson Amendment from 501(c)(3), the denominational preference for non-politically active churches is removed from the statute and the government will untangle itself from evaluating religious beliefs to financially aid specific institutions.

B. The Johnson Amendment Fails Strict Scrutiny Because the Government's Interest Is Not Compelling and It Is Not the Least Restrictive Means Due to the Lack of Exception on a Case-By-Case Basis.

The Johnson Amendment substantially burdens the Church's sincere religious exercise. Under the Religious Freedom Restoration Act of 1993 ("RFRA"), the "government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 107 Stat. 1488, 42 U.S.C. § 2000bb-1(b). The government may only substantially burden a person's exercise of religion only if it demonstrates it is both in the furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling government interest. *Id*. When RFRA burdens a person's religious exercise, they may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government. *Id*. This Court stated "RFRA requires the Government

to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person – the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-32 (2006).

The Johnson Amendment fails to satisfy strict scrutiny. In assessing the compelling interest test, this Court looks beyond broadly formulated interests justifying the general applicability of government mandates and scrutinizes the asserted harm of granting "specific exemptions to particular religious claimants." *Id*. at 433. Strict scrutiny "at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim." *Employment Division v. Smith*, 494 U.S. 872, 899 (1990) (O'Connor, J., concurring). This Court must evaluate this claim regarding the specific religious claimant. *Gonzales*, 546 U.S. at 433.

The government fails to show that the Johnson Amendment is the least restrictive means. The government bears the burden to show that the relevant law, or application thereof, is closely fitted to further a compelling governmental interest. *Larson*, 456 U.S. at 246. Explicit distinctions between religious practices are subject to strict scrutiny, including in the religious exemptions context. *Catholic Charities*, 605 U.S. at 251. A law that differentiates between religions along theological lines is textbook denominational discrimination, establishing a preference for certain religions based on how they worship, hold services, or initiate members and whether they engage in those practices at all. *Id*. at 248-49. This Court reasoned "[s]uch official differentiation on theological lines is fundamentally foreign to our constitutional order, for '[t]he law knows no heresy, and is committed to the support of no dogma.'" *Id*. (quoting *Watson v. Jones*, 80 U.S. 679, 728 (1871)).

Like the religious practice in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, the Church's sincere religious exercise is substantially burdened by a generally applicable law. In *Gonzales*, a religious sect received communion by drinking a tea brewed from plants containing a hallucinogen regulated under the Controlled Substances Act (CSA) by the federal government. 546 U.S. at 423. The government conceded that the practice was a sincere exercise of religion but continued to seek to prohibit the sect from engaging in the practices on the grounds that the CSA bars all use of the hallucinogen. *Id*. The religious sect sued to block enforcement against it under RFRA. *Id*. The government argued that it had a compelling interest in the uniform application of the CSA and that no exception to the ban could be made to accommodate the sect's sincere religious practice because it was the least restrictive means of advancing health and safety, preventing diversion to recreational users, and complying with the United Nations Convention on Psychotropic Substances. *Id*. at 426.

The government's asserted purpose is not outweighed by the substantial harm. In *Gonzales*, this Court held that there was substantial need to assess the particulars of the religious sect's use and to weigh the impact of an exemption for that specific use. *Id*. at 430. Further, this Court found that the compelling interest the government asserted was mere general characteristics of substances and that Congress did not consider the harms posed by the particular use at issue in this case which does not carry its burden under RFRA. *Id*. at 432. Moreover, this Court held that a general interest in uniformity does not justify substantial burden on religious exercise, and instead courts should look to the asserted need. *Id*. at 435. Because RFRA operates by mandating consideration of exceptions to rules of general applicability, this Court held that the religious sect effectively demonstrated that its sincere exercise of religion was substantially

burdened, and the government failed to demonstrate the application of the burden would be justified by a compelling interest. *Gonzales*, 546 U.S. at 429, 436.

1. The Government's Asserted Interest is Not Compelling and is Outweighed by the Church's Substantial Burden.

The Johnson Amendment fails strict scrutiny because the asserted government interest is not compelling and does not outweigh the government's obligation under RFRA to not substantially burden religious exercise. The Johnson Amendment was enacted to prevent the use of tax-deductible money in political campaigns. *Regan v. Taxation with Representation*, 461 U.S. 540, 544 (1983). In *Gonzales*, the government attempted to justify its harm to a religious sect by pointing to generalized, un-specific government purposes which were not found compelling by this Court. 546 U.S. at 426, 436. Similarly, here, the government is attempting to legislate a sweeping ban on conduct without considering the particularized harm on a case-by-case basis.

Preventing the use of tax-deductible money in political campaigns is far less of a compelling government interest than the asserted interest in *Gonzales*. *Id*. at 426. The government cannot assert that preventing tax-deductible money from use in political campaigns outweighs its burden in RFRA to not substantially burden religious exercise. *See* 42 U.S.C. § 2000bb-1(b). RFRA plainly contemplates that courts will recognize exceptions to federal statutes on account of substantial harm to freely exercise religious beliefs. 42 U.S.C. § 2000bb-1(c).

Here, this Court should recognize that, similar to the religious sect in *Gonzales*, the Church's religious freedom will be substantially harmed by enforcement of the Johnson Amendment. *See Gonzales*, 546 U.S. at 429. The Everlight Dominion is a centuries-old religion which requires its leaders and churches to participate in the political process. R. at 3. Churches and leaders who fail to adhere to this requirement are banished both from the church and The Everlight Dominion itself. R. at 3. By enforcing the Johnson Amendment against the Church,

tens of thousands of the Church members will have to decide between exercising their sincerely held religious beliefs or being banished from their Church and belief system altogether. R. at 3-4. This is a substantial harm to a religious sect that was not originally contemplated by Congress when they were attempting to stop the use of tax-deductible money into political campaigns. *Taxation with Representation*, 461 U.S. at 544. Therefore, there is no compelling governmental interest. Further, even if this Court finds the asserted governmental interest compelling, that interest is outweighed by the substantial harm to the Church and its members.

2. The Johnson Amendment Is Not the Least Restrictive Means to Achieving the Government's Asserted Purpose Because the Government Did Not Consider the Particular Harms Posed.

The Johnson Amendment is more restrictive than granting an exception to the Church. Like the governmental interest asserted in *Gonzales*, it is clear that Congress, here, did not consider the substantial religious harm that would result from enforcing the Johnson Amendment without exception. 546 U.S. at 432. In order to pass the narrowly tailored aspect of strict scrutiny, this Court must assess the particulars of the Church's harm and weigh the impact of an exemption for the Church specifically. *Id.* at 430. Applying the Johnson Amendment to all 501(c)(3) organizations without exception will substantially harm the Church, The Everlight Dominion, and its members. Enforcement of the Johnson Amendment will force all Church members to decide between exercising their sincerely held religious beliefs or being banished. R. at 3-4. It is uncontested in the record that supporting progressive stances is a sincerely held religious belief to the Church. R. at 3-4. An exemption for the Church is in line with RFRA, does not curtail the asserted purpose for the Johnson Amendment, and alleviates the substantial harm suffered by the Church. Therefore, this Court must grant a religious exemption to the Church or declare the Johnson Amendment unconstitutional in its entirety for its denominational discrimination towards politically active religious institutions.

CONCLUSION

For the foregoing reasons, Respondent respectfully request this Court to affirm the decision of the Court of Appeals for the Fourteenth Circuit in all respects.

Dated: January 17, 2026

Respectfully Submitted,

s/ Team 22

Counsel for Respondent