Docket No. 26-1779

IN THE

Supreme Court of the United States

February Term, 2026

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

V.

COVENANT TRUTH CHURCH,
Respondent.

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

BRIEF FOR PETITIONER

TEAM NUMBER 23
Counsel for Petitioner

QUESTIONS PRESENTED

The questions before the Court are as follows:

1. Whether the Anti-Injunction Act and Article III deprive federal courts of jurisdiction over a pre-enforcement challenge that seeks to enjoin the Internal Revenue Service from enforcing the conditions of 26 U.S.C. § 501(c)(3), where the suit seeks to prevent a potential future tax liability, and Congress has provided alternative post-enforcement remedies.

2. Whether the Johnson Amendment, which conditions federal tax-exempt status on an organization's abstention from political campaign activity, violates the Establishment Clause of the First Amendment.

TABLE OF CONTENTS

QUESTIONS PRESENTED ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

I. STATEMENT OF FACTS 2

II. PROCEDURAL HISTORY 3

SUMMARY OF THE ARGUMENT 4

ARGUMENT 8

I. RESPONDENT'S PRE-ENFORCEMENT CHALLENGE IS JURISDICTIONALLY BARRED BY THE ANTI-INJUNCTION ACT AND ARTICLE III…….…...8

A. The Anti-Injunction Act Bars This Suit……8

1. The Respondent's suit to enjoin the rescission of their 501(c)(3) status is a suit to restrain the assessment and collection of a tax……..9

2. The South Carolina exception does not apply because the Respondent has an alternative remedy……...11

3. This suit is otherwise barred because the respondent cannot prove certainty of success on the merits.……..…13

B. Respondent Cannot Establish Article III Standing Because They Cannot Demonstrate a Credible Threat of Petitioner Enforcing the Johnson Amendment Against Them.……15

1. The threat of enforcement is not credible because Petitioner has disavowed enforcement of the Johnson Amendment on the facts of this case…….16

a) The Consent Decree prohibits enforcement of the Johnson Amendment on the facts of this case……16

(i) "By a house of worship to its congregation, through customary channels of communication."……17

(ii) "On matters of faith"……18

(iii) "In connection with religious services"……18

2. Petitioner cannot enforce the Johnson Amendment on the facts of this case, because doing so could lead to invalidation of the Johnson Amendment on First Amendment grounds…….....19

3. The threat of enforcement is not credible, and Respondent's claim is not ripe for review, because of subsequently necessary administrative procedures……..….20

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OR FIRST AMENDMENT.…….……21

A. The Fourteenth Circuit Erred in Its Establishment Clause Analysis……..22

1. The Establishment Clause is designed to separate church and state…….……..22

2. The Johnson Amendment's effect on Respondent aligns with the goal of the Establishment Clause…….….24

3. Conditions on tax-exemptions have historical precedence in the United States….25

4. The rigid Establishment Clause language is not meant to be construed literally....26

B. The Establishment Clause Does Not Apply to the Johnson Amendment……..….27

1. Congress is not required by the First Amendment to support lobbying……..…27

2. The Johnson Amendment applies to all organizations equally……..….28

3. The Johnson Amendment is based on secular criteria designed to benefit societal welfare…….29

C. Even if It Is Determined That the Johnson Amendment Grants a Denominational Preference, It Is Constitutionally Valid as It Passes Strict Scrutiny……..30

1. The Johnson Amendment addresses a compelling government interest…….31

2. The government must be able to change tax classifications after they are made....31

3. The Johnson Amendment is closely fitted to furthering that government interest..32

4. The Johnson Amendment leaves alternative means of communication…….…..33

D. In the Alternative, the Johnson Amendment Does Not Violate the Free Exercise Clause……34

1. The Johnson Amendment does not substantially burden Respondent.…….…..34

2. Even if a substantial burden exists, the Amendment is justified by a compelling governmental interest.…….……36

CONCLUSION 37

TABLE OF AUTHORITIES

CASES

Alexander v. Americans United Inc., 416 U.S. 752 (1974) 10, 12

Aransas Project v. Shaw, 775 F.3d 641 (5th Cir. 2014) 7

Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289 (1979) 16

Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000) ..... passim

Bob Jones Univ. v. Simon, 416 U.S. 725 (1974)..... passim

Broadcasters v. Long, 2025 WL 2555876 (E.D. Tex.)..... 16, 19

Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n, 605 U.S. 238 (2025) 29, 30

Chance v. Massachusetts, 321 U.S. 158 (1944) 36

Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013)..... 21

Crenshaw County Private School Foundation v. Connally, 474 F.2d 1185 (5th Cir.1973)..... 14

Davis v. Beason, 133 U.S. 333 (1890)..... 29, 36

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006) 7

Employment Division, Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872 (1990)..... 27, 29, 30

Enochs v. Williams Packing & Nav. Co., 370 U.S. 1 (1962)..... 4, 8, 14

Everson v. Bd. of Educ. of Ewing Tp., 330 U.S. 1 (1947)..... 21

FCC v. League of Women's Voters, 468 U.S. 364 (1984) 34

Israelite House of David v. Holden, 14 F.2d 701 (WD Mich. 1926)..... 14

Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017)..... 7, 8

Jensen v. Internal Revenue Serv., 835 F.2d 196 (9th Cir. 1987) 8, 35

Jimmy Swaggart Ministries v. Bd. of Equalization of Cal., 493 U.S. 378 (1990) 35, 36

Kennedy v. Bremerton Sch. Dist., 597 U.S. 507 (2022) 22

Larson v. Valente, 456 U.S. 228 (1982) ..... passim

Lemon v. Kurtzman, 403 U.S. 602 (1971) 22, 23

Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992)..... 15

McGowan v. Maryland, 366 U.S. 420 (1961)..... 23, 27, 29

National Council on the Facts of Overpopulation v. Caplin, 224 F.Supp. 313 (D.C.C. 1963).... 14

Regan v. Taxation With Representation of Wash., 461 U.S. 540 (1983)..... passim

South Carolina v. Regan, 465 U.S. 367 (1984) 4, 11, 12

Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014)..... 5, 15

Town of Greece v. Galloway, 572 U.S. 565 (2014)..... 25, 26

United Cancer Council, Inc. v. Comm'r, 100 T.C. 162 (1993)..... 13

United States v. Am. Friends Serv. Comm., 419 U.S. 7 (1974) 14

Vermont Right to Life Comm., Inc. v. Sorrell, 221 F.3d 376 (2d Cir. 2000) 18

Walz v. Tax Comm'n of New York, 397 U.S. 664 (1970) 22, 23, 25, 26

STATUTES

26 U.S.C. § 7421..... 4, 8

26 U.S.C. § 7428..... 1, 4, 11, 12

26 U.S.C. §501(c)(3)..... 1, 2, 19

26 U.S.C. §7611..... 1, 20

OTHER AUTHORITIES

A History of the Tax-Exempt Sector: An SOI Perspective, I.R.S., Winter 2008 at 105, 106..... 25

Erin M. Hawley, *The Equitable Anti-Injunction Act*, 90 Notre Dame L. Rev. 81, 104 (2014) 11

Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape, H.R. Comm. on Ways and Means, Subcomm. on Oversight, 118th Cong. (2023) (testimony of Justin C. Chung)..... 25

Internal Revenue Service. Nonprofit Charitable and Other Tax-Exempt Orgs., Tax Year 2019. https://www.irs.gov/pub/irs-pdf/p5331.pdf..... 19

Kristin E. Hickman & Gerald Kerska*, Restoring the Lost Anti-Injunction Act,* 103 Va. L. Rev. 1683 (2020) 8

Nat'l Council of Nonprofits, *Protecting the Johnson Amendment and Nonprofit Nonpartisanship*, https://www.councilofnonprofits.org/trends-and-policy-issues/protecting-johnson-amendment-and-nonprofit-nonpartisanship 30

Paul A. Freund, *Public Aid to Parochial Schools*, 82 Harv. L. Rev. 1680 (1969) 23

CONSTITUTIONAL PROVISIONS

U.S. CONST. AMEND. 1..... 1, 19, 21

OPINIONS BELOW

The opinion of the United States District Court of Wythe is unreported and not available in the record. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at Scott Bessent v. Covenant Truth Church, 345 F.4th 1 (14th Cir. 2025) and available in the record. R. at 1–16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST. AMEND. 1.

The following sections of the Internal Revenue Code are relevant to this case: 26 U.S.C. §501(c)(3); 26 U.S.C. §§ 7421 – §7428; 26 U.S.C. §7611.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

The Johnson Amendment. 26 USC §501(c)(3) provides that non-profit organizations may 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." R at 2. Originally proposed by then- Senator Lyndon B. Johnson, the provision has become known as the Johnson Amendment. *Id.* Legislation has been introduced each year since 2017 to eliminate the Johnson Amendment or create an exception that would allow religious organizations to participate in political campaigns, but Congress has refused to do so. R at 3.

The Everlight Dominion. The Everlight Dominion is a religious sect that embraces a wide variety of progressive social values. R. at 3. As part of its teaching, it requires its leaders to participate in political campaigns of candidates who align with those social values. *Id.* Any Everlight Dominion leader who fails to adequately participate in political campaigning is subject to banishment. *Id.*

Covenant Truth. Covenant Truth Church ("Respondent"; "Church") is a religious congregation based in Wythe that practices the Everlight Dominion. R. at 3. It is registered as a 501(c)(3) organization. *Id.* Pastor Gideon Vale ("Vale") has been Pastor for Respondent since 2018. R. at 4. In that capacity, Vale delivers weekly sermons at Respondent's church services, which are also broadcast on the internet for members who are unable to attend in-person. *Id.* In addition, Vale maintains a podcast where he delivers sermons, provides spiritual guidance, and educates the public about the Everlight Dominion. *Id.*

Vale's Ministry. Under Vale's leadership, Respondent's membership has increased from "a few hundred" to nearly 15,000 members in 2024. R. at 4. Vale's podcast has also received

significant attention, becoming the fourth-most listened to podcast in Wythe and the nineteenth most listened to podcast nationwide. *Id.* Millions of people from across the country download Vale's podcast. *Id.*

Political Activity. Vale also uses his podcast to endorse political candidates who support progressive social values, in line with Everlight Dominion's teachings. R. at 4. At the time Respondent filed this lawsuit, Congressman Samuel Davis ("Davis") was running in a special election for an open Senate seat in Wythe. *Id.* Davis, like the Everlight Dominion, supports progressive social values. *Id.* During one of his sermons on his podcast, Vale endorsed Davis on behalf of Respondent, and encouraged his congregation to become involved in Davis's campaign. *Id.* Vale then announced a series of sermons that would take place during Respondent's weekly services and on his podcast, where he would explain why Davis's political stances aligned with Everlight Dominion teaching. R. at 5.

II. PROCEDURAL HISTORY

District of Wythe. On May 1, 2024, the IRS sent a letter to the Respondent notifying them that they had been selected for a random audit. R. at 5. The Respondent promptly filed this suit seeking a permanent injunction to bar the enforcement of the Johnson Amendment on May 15, 2024. *Id*. In its complaint, the Respondent claimed that the Johnson Amendment violates the Establishment Clause of the First Amendment. *Id*.

After the Secretary and IRS answered the Respondent's complaint, the Respondent moved for summary judgment. *Id*. The District Court granted the motion for summary judgment and held that (1) the Respondent has standing and (2) the Johnson Amendment violates the Establishment Clause. The Secretary and IRS appealed the District Court's decision to the Fourteenth Circuit Court of Appeals. *Id*.

Fourteenth Circuit. A panel of the Fourteenth Circuit Court of Appeals heard the IRS's appeal. R. at 1. Judge Washington, writing for the majority, entered its judgment on August 1, 2025. *Id*. The court held that (1) the suit was not barred by the Anti-Injunction Act because the Respondent lacked adequate remedies, (2) the Respondent had Article III standing, and (3) the Johnson Amendment is unconstitutional because it penalizes religious groups whose faith requires them to speak on political issues. R. at 6-10. The IRS filed a timely petition for writ of certiorari, which the Court granted on November 1, 2025.

SUMMARY OF THE ARGUMENT

The Anti-Injunction Act 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. However, the AIA does not apply when the plaintiff has no alternative remedy. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). Furthermore, if the plaintiff can prove that the court has equity jurisdiction and that there are no circumstances under which the government would not succeed on the merits, then the suit may proceed, despite the AIA. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962).

By filing this suit, the Respondent is attempting to ensure they remain a tax-exempt not-for-profit organization. In other words, they are attempting to block the IRS's ability to assess taxes on their organization and their donors. The Respondent has an alternative remedy: if the IRS in fact revoked its 501(c)(3) classification, the Respondent would be able to challenge that action under Section 7428. There is no certainty that the Respondent will succeed on the merits; the Johnson Amendment has been upheld by the District of Columbia Court of Appeals. *Branch Ministries v. Rossotti*, 211 F.3d 137, 142 (D.C. Cir. 2000). The Government's argument has a foundation in law and fact, and the *William Packing* exception therefore does not apply.

Plaintiffs bringing pre-enforcement challenges to statutes can satisfy Article III standing only if they can demonstrate "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." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014).

Respondent lacks Article III standing because they cannot demonstrate a credible threat of Petitioner enforcing the Johnson Amendment against them. Petitioner issued a Consent Decree in a similar case, which prohibits enforcement of the Johnson Amendment against "speech by a house of worship to its congregation, through customary channels of communication, on matters of faith in connection with religious services." Because the Consent Decree applies to the relevant instances of speech made by Vale, Respondent cannot show a credible threat of enforcement. In addition, enforcing the Johnson Amendment against Respondent on the facts of this case could lead to a facial invalidation of the provision, strongly disincentivizing Petitioner from doing so.

Further, Respondent sued long before Petitioner could have made an adverse determination about their tax-exempt status, rendering their claim unripe for review. Respondent's argument for standing rests on a highly attenuated chain of assumptions about subsequent administrative procedures, insufficient to constitute injury in fact.

The First Amendment's Establishment Clause forbids the government from establishing a religion or preferring one religious denomination over another. When an alleged violation occurs, the Court uses "references to historical practices and understandings" to determine whether the law creates a religious preference. If it does not, there is no Establishment Clause issue; if it does, the Court then applies strict scrutiny.

The Establishment Clause was designed to separate church and state. The Founders and Framers desired to limit the hazards of allowing religion's political fragmentation from intruding into the political arena. With so many secular issues concerning government, permitting religious frictions to flourish impedes the prosperity of the general society. The Johnson Amendment, which prevents § 501(c)(3) tax-exempt organizations from using government funds to support political campaigns, aligns with the Establishment Clause goal of separating church and state.

There is a long history of tax exemptions in the United States. The government provides some organizations with tax-exempt status to promote beneficial influences in a pluralistic society. Yet, tax-exempt status is a privilege, not a right. Since their creation, tax exemptions have often been conditioned on the organization receiving the exemption adhering to the classification and purpose for which it initially received the exemption. Conditions on tax-exemptions such as the one in the Johnson Amendment are baked into the fabric of our society, and the effects of the Johnson Amendment do not violate but instead serve the goals of the Establishment Clause.

The Establishment Clause does not ban the regulation of conduct that coincides with tenets of a religion. Otherwise, members of a religion who adopt murder as a tenet would be free to prey on society. The Johnson Amendment does not single out religious organizations—it applies equally to all § 501(c)(3) organizations regardless of if religion is involved. The Amendment also addresses all political campaigns, regardless of viewpoint or candidate. The Amendment addresses a secular concern—tax-exempt organizations using government subsidies to support political campaigns. Just because it interferes with one of a religion's tenets does not mean it is not a valid law that serves the general welfare of society.

Further, Respondent has an alternative method to communicate its political campaign support. Respondent can create a 501(c)(4) organization that is permitted to support political campaigns. If the gift of tax-exemption is not being used in a way Congress did not intend for it to be used, Respondent gets to keep it. The Johnson Amendment simply allows the government to decline to subsidize Respondent's First Amendment activities. Thus, this Court should hold that the Johnson Amendment does not violate the Establishment Clause.

STANDARD OF REVIEW

A decision to grant or deny a permanent injunction is reviewed for abuse of discretion. *eBay Inc. v. MercExchange*, L.L.C., 547 U.S. 388, 391 (2006). However, the "district court abuses its discretion when it makes an error of law." *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017). The district court's legal conclusions are reviewed *de novo*. *Id.* The district court abuses its discretion when it "relies on erroneous conclusions of law when deciding to grant or deny the permanent injunction." *Aransas Project v. Shaw*, 775 F.3d 641 (5th Cir. 2014).

ARGUMENT

I. RESPONDENT'S PRE-ENFORCEMENT CHALLENGE IS JURISDICTIONALLY BARRED BY THE ANTI-INJUNCTION ACT AND ARTICLE III.

The Anti-Injunction Act bars this suit because Respondent seeks to preemptively restrain the assessment and collection of federal taxes, has an adequate alternative remedy under the Internal Revenue Code, and cannot show that the government is certain to lose on the merits.

Respondent's challenge is also jurisdictionally defective under Article III, as it depends on Petitioner violating a Consent Decree and risking facial invalidation of the Johnson Amendment. Respondent's argument for standing also relies on a speculative and non-credible threat of enforcement, rendering the claim unripe for judicial review.

A. The Anti-Injunction Act Bars This Suit.

The Anti-Injunction Act (AIA) is explicit: "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.

The AIA's purpose is to enable the United States to collect taxes without judicial intervention and to require that disputes be resolved through refund suits. *See Williams Packing*, 370 U.S. at 7 (1962). Although the legislative history of the AIA is sparse, this Court has held that requiring suits to be litigated through refund suits is necessary to protect the government's revenue streams. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 737 (1974); *Id*. *See* Kristin E. Hickman & Gerald Kerska*, Restoring the Lost Anti-Injunction Act,* 103 Va. L. Rev. 1683, 1724 (2020).

Unless a suit otherwise barred by the Act "falls within one of the statutory or judicially created exceptions to the Act, the district court lacks subject matter jurisdiction and must dismiss the complaint." *Jensen v. Internal Revenue Serv.*, 835 F.2d 196, 198 (9th Cir. 1987).

The AIA bars this suit because the Respondent seeks to restrain the assessment and collection of taxes, has adequate alternative remedies under the Internal Revenue Code, and cannot show that the government is certain to lose on the merits.

1. The Respondent's suit to enjoin the rescission of their 501(c)(3) status is a suit to restrain the assessment and collection of a tax.

The Respondent's suit is governed by the Act because it seeks to restrain the assessment and collection of a tax. Holding otherwise would create a loophole that undermines the purpose of the Act.

Courts examine whether the primary *purpose* of the suit is to restrain tax assessment or collection. *See Bob Jones*, 416 U.S. at 749. The Respondent may argue that its request for a pre-enforcement injunction is intended to (1) maintain the flow of its donations and (2) challenge the constitutionality of the Johnson Amendment, not to restrain the assessment or collection of a tax, and therefore, the Act does not apply.

This Court rejected a nearly identical claim in *Bob Jones*. 416 U.S. at 739-40. In that case, the IRS revoked a university's 501(c)(3) status due to its racially discriminatory admissions policies. *Id.* at 735. The university argued that the AIA did not apply because the goal of its suit was to maintain the flow of contributions, not to restrain the assessment or collection of a tax. *Id.* at 738. Donors would be more likely to donate if their contributions were tax-deductible. Therefore, the university's alleged interest in the suit was to restore its not-for-profit designation, not to avoid paying taxes. *Id*.

This Court held that, even under the university's theory, the Act still applied because it sought to restrain the collection of taxes from donors. *Id*. The AIA does not differentiate between whose taxes the plaintiff is attempting to prevent the collection of. *Id*. Therefore, the court found

that the purpose of the suit was to prevent the Internal Revenue Service ("Service") from assessing and collecting income taxes. *Id*.

Furthermore, in *Americans United*, decided the same day as *Bob Jones*, this Court held that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the AIA. *Alexander v. Americans United Inc.*, 416 U.S. 752, 759 (1974). In that case, the IRS revoked a Protestant educational organization's 501(c)(3) classification for violating the Johnson Amendment, the same amendment at issue here. *Id.* at 754-55; R. at 5. This Court rejected the organization's argument that the thrust of the organization's complaint was that the Johnson Amendment was unconstitutional, because their constitutional claims were a means to restrain the assessment and collection of taxes in contravention of the AIA. *Americans United Inc.*, 416 U.S. at 761.

In this case, Vale initiated this suit out of fear that Petitioner would revoke the Respondent's 501(c)(3) classification. R. at 5. The Respondent may argue that this suit is not governed by the AIA because it is bringing the suit to protect its constitutional rights or to maintain its contributions. This Court rejected identical pretextual arguments in *Bob Jones* and *Americans United*. *Americans United Inc.*, 416 U.S. at 761; *Bob Jones*. 416 U.S. at 739-40.

If the Respondent's 501(c)(3) designation were rescinded, it would still be free to deliver political messages and collect donations. The only difference would be that the Respondent and its donors would have to pay the applicable taxes. This is the result the Respondent is attempting to enjoin. Therefore, this suit seeks to restrain the collection and assessment of a tax and is governed by the AIA.

2. *The South Carolina exception does not apply because the Respondent has an alternative remedy.*

The Respondent has an alternative remedy: it could wait until the IRS revokes its 501(c)(3) classification and bring a suit for declaratory judgment under Section 7428. 26 U.S.C. § 7428.

Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy. *South Carolina*, 465 U.S. at 378 (1984).

The Fourteenth Circuit relied on *Carolina* to hold that this suit is not barred by the AIA. R. at 6-7. This decision significantly expanded this Court's holding in *South Carolina*, which has been characterized as a narrow exception for cases in which remedies are procedurally impossible, not inconvenient. *See* Erin M. Hawley, *The Equitable Anti-Injunction Act*, 90 Notre Dame L. Rev. 81, 104 (2014).

In *South Carolina*, this Court held that South Carolina could challenge the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) because the state had no alternative avenue to challenge the validity of that law. *South Carolina*, 465 U.S. at 371. Interest earned on certain types of bonds is exempt from federal income tax. *Id*. The TEFRA limited the types of bonds that could qualify as tax-exempt, thereby limiting the types of tax-exempt bonds South Carolina could issue. *Id.* at 372. South Carolina argued that this limitation violated the 10th Amendment. *Id*.

This Court held that Congress did not intend the AIA to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy. *Id*. at 378. In South Carolina's case, if they issued bonds that do not qualify as tax-exempt under TEFRA, its bondholders will be liable for the tax on the interest earned on those bonds. *Id*. at 378-79. South Carolina would not incur any tax liability. *Id*. at 380. Because refund suits require petitioners to

pay first and litigate later, South Carolina would not be able to utilize the tax refund procedures to challenge the constitutionality of the TEFRA. *Id*. Because the state had no alternative remedy, and its suit was not barred by the AIA. *Id*.

In this case, there is a clear remedy: Section 7428 allows an aggrieved party to challenge the Secretary's revocation of its nonprofit status. 26 U.S.C. § 7428. This Court has repeatedly held that a refund suit provides an adequate remedy for a 501(c)(3) organization challenging the revocation of its tax-exempt status. *See Americans United Inc.*, 416 U.S. at 761 (holding that although the refund action may not remedy the decrease in Respondent's contributions, it does not mean that refund suits are an inadequate remedy); *Bob Jones*, 416 U.S. at 746 ("[tax refund] review procedures offer petitioner a full, albeit delayed, opportunity to litigate the legality of the Service's revocation of tax-exempt status…"). The remedy available to the Respondent is even stronger than a refund suit; Section 7428 allows organizations to petition for a declaratory judgment to reinstate their nonprofit status before they pay any taxes and to have donations made during the suit be tax-deductible.

Section 7428, however, only applies to "actual controversies." 26 U.S.C. § 7428. The Secretary must first revoke the organization's tax-exempt status, and the organization must exhaust its administrative remedies before bringing a suit. *Id.* The only reason this action is not available at this time is that it is a pre-enforcement action; the Secretary has not even begun an audit. R. at 5. This Court granted South Carolina an exception because it was procedurally impossible for the state to bring a suit. It is not procedurally impossible for the Respondent to bring a suit. If their 501(c)(3) classification is revoked, as they argue it is certain to be, they merely need to follow the procedures prescribed by Section 7428 to challenge the constitutionality of the Johnson Amendment.

Permitting this suit to proceed because a plaintiff's statutory remedies are not yet available would subvert Congress's clear intent. Under such a ruling, any party that alleges a future tax liability is unlawful, but has not yet paid the tax and therefore cannot pursue a refund action, could invoke pre-enforcement judicial review. The IRS would be forced to defend the speculative challenges before it has made any assessment or collected any revenue. The result would incentivize taxpayers to bypass the statute's prescribed procedures, undermining Congress's deliberate decision to channel tax disputes into post-assessment administrative and judicial proceedings.

As the US Tax Court has noted, the avenues of review available to an aggrieved party may "present serious problems of delay, during which the flow of donations to an organization will be impaired and in some cases perhaps even terminated." However, these delays are just in light of the "powerful governmental interests in protecting the administration of the tax system from premature judicial interference." *United Cancer Council, Inc. v. Comm'r*, 100 T.C. 162, 170 (1993).

Because Section 7428 provides a clear remedy to the Respondent, and holding otherwise would fundamentally alter the AIA, this suit does not qualify for the *South Carolina* exception to the AIA.

3. This suit is otherwise barred because the Respondent cannot prove certainty of success on the merits.

The Respondent cannot establish any degree of certainty that it will prevail on the merits. Therefore, this suit does not meet *Williams Packing's* bar for injunctive relief.

Under the *Williams Packing* test, a suit to enjoin the collection or assessment of a tax may proceed if the court has equitable jurisdiction, and "if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for

an injunction be maintained." *Williams Packing*, 370 U.S. at 7. When both conditions are true, the exaction is merely "in the guise of a tax." *Id*.

In *Williams Packing*, a corporation that provided equipment to fishermen objected to the government's tax assessment on the grounds that the fishermen it supplied gear to were not employees. *Id*. at 3.

The Court's analysis in *Williams Packing*, the capstone of judicial construction of the Act, was one sentence: "The record before us clearly reveals that the Government's claim of liability was not without foundation." *Id*. at 7; *United States v. Am. Friends Serv. Comm*., 419 U.S. 7, 10 (1974). This Court did not discuss the veracity of the claims; the fact that the government's case had a foundation in law and fact was enough to dismiss any certainty of success. *Williams Packing*, 370 U.S. at 7.

Under the most liberal view of the law and the facts, the Respondent cannot prove certainty of success on the merits. *See* infra Part II. The District of Columbia Circuit has outright rejected a very similar claim. *Branch Ministries*, 211 F.3d at 142. Furthermore, this Court has acknowledged that "the clash between the language of the Anti-Injunction Act and the desire of 501(c)(3) organizations to block the Service from succeeding in withdrawing a ruling letter has been resolved against the organizations in most cases. *Bob Jones*, 416 U.S. at 733; *see e.g.*, *Crenshaw County Private School Foundation v. Connally*, 474 F.2d 1185 (5th Cir. 1973); *National Council on the Facts of Overpopulation v. Caplin*, 224 F.Supp. 313 (D.C. Cir. 1963); *Israelite House of David v. Holden*, 14 F.2d 701 (W.D. Mich. 1926).

Because the IRS's case on the merits has a foundation in law and fact, the *Williams Packing* exception does not apply to this action.

B. Respondent Cannot Establish Article III Standing Because They Cannot Demonstrate a Credible Threat of Petitioner Enforcing the Johnson Amendment Against Them.

The doctrine of standing is an "irreducible Constitutional minimum" stemming from Article III's limitation of federal judicial authority to "Cases" and "Controversies." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The party invoking federal jurisdiction (here, Respondent) bears the burden of establishing standing, and if they cannot do so, a reviewing court must dismiss for lack of jurisdiction. *Id.* at 562; *Id.* at 574.

Establishing standing requires satisfaction of three elements: (1) "injury in fact," an invasion of a constitutionally protected interest which is concrete and particularized and actual or imminent, as opposed to conjectural or hypothetical, (2) causation, and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. at 560-61. Here, Respondent satisfies causation and redressability, but they cannot satisfy "injury in fact" because their pre-enforcement challenge to a statute is not ripe for judicial review.

A plaintiff challenging a statute pre-enforcement can meet the "injury-in-fact" requirement of standing only if they can demonstrate "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." *Susan B. Anthony List*, 573 U.S. at 160. Here, Respondent can demonstrate an intention to engage in a course of conduct arguably affected by a constitutional interest, but proscribed by statute. However, Respondent cannot show a credible threat of enforcement, because Petitioner has disavowed enforcement of the Johnson Amendment, and because enforcement is not sufficiently likely due to forthcoming administrative procedures.

1. *The threat of enforcement is not credible because Petitioner has disavowed enforcement of the Johnson Amendment on the facts of this case.*

In *Babbit*, this Court found a justiciable controversy in a pre-enforcement challenge to a statute in part because the "State [had] not disavowed any intention of invoking the criminal penalty provision." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979). In contrast, the government here has explicitly disavowed any intention of enforcing the Johnson Amendment against the Church by issuing the Consent Decree.

a) The Consent Decree prohibits enforcement of the Johnson Amendment on the facts of this case.

Entered into as part of a settlement agreement for a similar case, the Consent Decree provides that the government will not enforce the Johnson Amendment on "speech by a house of worship to its congregation, through customary channels of communication, on matters of faith in connection with religious services." United States' Opposition to Motion to Intervene. *Broadcasters v. Long*, 2025 WL 2555876 (E.D. Tex.). Two forums of speech are relevant to this inquiry: Vale's weekly sermons and his podcast.

(i) "By a house of worship to its congregation, through customary channels of communication."

The Church, although centuries old, has evolved into a distinctly modern institution. R. at 3. It has recently seen its membership increase from "a few hundred to nearly 15,000" in a six-year period, mostly due to the presence of a dynamic new minister with a strong online presence. *Id.* This has transformed the Church from a traditional brick-and-mortar congregation to an online faith community. The Church's weekly service includes both in-person attendance and a livestream option. R. at 4. It is unclear from the record exactly how many members attend in-person versus online, but Vale's podcast has attracted significant attention outside of Wythe, so it

is likely that many of the new members who live outside driving distance attend online. *Id.* Therefore, Vale's weekly sermons, both in-person and online, constitute speech "by a house of worship to its congregation through customary channels of communication."

Vale's podcast has become an indispensable part of the Church's ministry because he uses it to "deliver sermons, provide spiritual guidance, and educate the public" about the Church, the same goals as his preaching at the pulpit. R. at 4. Given the disparity between the podcast's "millions of downloads" and the Church's 15,000 members, it is likely that many new Church members do not attend Vale's weekly services and instead listen to his podcast. *Id.* Because the content of the podcasts is the same as Vale's services, the only quality that separates these "podcast-only" Church members from the members who attend the weekly livestream services is the presence of video for the latter group. *Id.* The mere absence of video should not cause this Court to cleave off "podcast-only" members from the rest of the Church's congregation for the purposes of this analysis. Therefore, Vale's podcast is a "customary channel of communication" for the Church and its new members.

(ii) "On matters of faith"

The Everlight Dominion embraces a wide array of progressive social values and requires its leaders to participate in political campaigns and support candidates that align with those values. R. at 3. Thus, support for certain political candidates constitutes a "matter of faith" for Respondent.

This conclusion is bolstered by the penalty the Everlight Dominion places on religious leaders who fail to sufficiently engage in political campaigns – banishment. The enforcement of such a severe punishment on members of the clergy evidences the centrality of political campaigning to Everlight Dominion theology. Banishing faith leaders for misfeasance rather

than malfeasance (i.e. supporting a candidate with conservative social values) demonstrates the centrality of political campaigning to the Everlight Dominion.

(iii) "In connection with religious services"

Vale announced the series of sermons in support of Davis, which occurred both in-person and on the podcast, at the same time. R. at 5. And as discussed above, the contents of Vale's sermons are the same as the contents of his podcasts, which have become an indispensable part of the Church's ministry. Thus, both Vale's sermons and his podcast can be fairly considered to be "in connection with religious services."

2. *Petitioner will not enforce the Johnson Amendment on the facts of this case, because doing so could lead to invalidation of the Johnson Amendment on First Amendment grounds.*

In *Sorrell*, a plaintiff brought a pre-enforcement challenge to a statute, and the government, challenging the plaintiff's standing, argued that it had no intention of enforcing the statute against the plaintiff. *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 383 (2d Cir. 2000). The Second Circuit, unconvinced, commented: "While that may be so, there is nothing that prevents the State from changing its mind." *Id.* The present case is distinguishable because if Petitioner were to change its mind and enforce the Johnson Amendment against Respondent, this Court could find the provision facially unconstitutional, leaving Petitioner with less authority to rein in other non-religious 501(c)(3) organizations who engage in political activities.

The Consent Decree was generated by a case similar to the one at bar, where 501(c)(3) churches sued Petitioner, bringing a facial challenge to the Johnson Amendment on First Amendment grounds, among other claims. United States' Opposition to Motion to Intervene.

Broadcasters, 2025 WL 2555876. In order to settle the case, Petitioner issued the Consent Decree, agreeing to not enforce the Johnson Amendment against the plaintiff churches based on the above-described narrow category of speech. *Id.* The Consent Decree reflects the reality that if Petitioner were to enforce the Johnson Amendment against a church speaking to its congregation on a matter of faith, it would constitute enforcement of a "law respecting an establishment of religion, or prohibiting the free exercise thereof" in violation of the First Amendment. U.S. Const. amend. I.

Section 501(c)(3) provides an exemption from federal income tax not only to churches, but also to organizations promoting literature, science, public safety, education, amateur sports, as well as organizations preventing cruelty to children or animals. 26 U.S.C. § 501(c)(3). Organizations exempt under §501(c)(3) represent the majority of all tax-exempt organizations, and account for most of the financial activity in the tax-exempt sector. Internal Revenue Service. Nonprofit Charitable and Other Tax-Exempt Orgs., Tax Year 2019. https://www.irs.gov/pub/irs-pdf/p5331.pdf. Thus, there are many non-religious organizations exempt under §501(c)(3).

Because of the significant amount of income taxes at stake, Petitioner has a strong interest in ensuring that the pool of registered 501(c)(3) organizations is no broader than the statute authorizes. More broadly, Petitioner has an interest in ensuring that nonprofit organizations are actually operated for a public purpose, as opposed to partisan political purposes. If the Johnson Amendment were held to be facially unconstitutional, Petitioner would lose its ability to enforce it against any organization, defeating both interests. Petitioner is strongly disincentivized from enforcing the Johnson Amendment against Respondent.

3. *The threat of enforcement is not credible, and Respondent's claim is not ripe for review, because of subsequently necessary administrative procedures.*

Congress has established an IRS audit process exclusively applicable to 501(c)(3) nonprofit churches. 26 U.S.C.A. § 7611. In order to audit the tax-exempt status of a church and revoke its 501(c)(3) status, Petitioner must take several steps. First, Petitioner must provide an "inquiry notice" to the exempt church, describing the intended scope of the agency's inquiry. *Id.* at §(a)(3). Second, at least 15 days after service of the "inquiry notice", Petitioner must provide an "examination notice" to the exempt church, containing a copy of the previous notice, a description of the records the agency seeks, and an offer to hold a conference in order to discuss concerns regarding the examination. *Id.* at §(b)(2). Third, Petitioner must wait at least 15 days from service of the "examination notice", or wait a reasonable time for the conference to take place, before conducting any examination of church records or activities. *Id.* Fourth, after reviewing the church's books, records, and religious activities, the assigned auditor must make the determination that the church is in violation of the tax code.

In the present case, Respondent received notice from Petitioner that the agency would be conducting a "random audit" on May 1, 2024. R. at 5. This letter satisfied the requirements of an "inquiry notice" under §7611. Rather than waiting for Petitioner to begin its audit of the Church, Respondent sued on May 15, 2024. R. at 5. Before beginning to analyze any information whatsoever about Respondent, Petitioner was required to take several steps. On the day Respondent sued, Petitioner was entitled to issue an "examination notice", after which it must have waited another fifteen days or a reasonable time if Respondent requested a conference. Only then could Petitioner have begun its audit of Respondent. While the audit was ongoing, Respondent would have retained its 501(c)(3) status.

In *Clapper*, a statute authorized the government to surveil persons reasonably believed to be located outside the United States, subject to approval by a specialized court ("FISC"). *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 404-05 (2013). Plaintiffs, who spoke internationally with likely surveillance targets, alleged that their communications would be affected and argued for Article III standing on that basis. There, plaintiffs' standing relied on a series of inferences: that the government would decide to surveil a particular person under the challenged statute, that the FISC would approve surveillance, that the government would succeed in intercepting the communication, and that a plaintiff would be a party to a particular intercepted communication. *Id.* at 410. Justice Breyer found these inferences to constitute a "highly attenuated chain of possibilities" insufficient to create Article III standing. *Id.* at 410.

In the present case, Respondent's argument for standing rests on a similarly attenuated series of inferences: that Petitioner would issue a "notice of examination," that any issues would not be resolvable through a conference, that Petitioner would begin its audit of Respondent, and that after the audit, Petitioner would revoke Respondent's 501(c)(3) status. As a result, Respondent cannot demonstrate a credible threat of enforcement.

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OR FIRST AMENDMENT.

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. AMEND. I. The clearest command of that phrase, known as the Establishment Clause, is that one religious denomination cannot be officially preferred over another. *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Court has long adhered to the principle that no state can "pass laws which aid one religion" or that "prefer one religion over another." *Everson v. Bd. of Educ. of Ewing Tp.*, 330

U.S. 1, 15 (1947). In our case, the federal government does not prefer any religions to other religions, nor does it curtail any religion or organization's First Amendment abilities; it seeks only to decline to subsidize non-profit organizations' support for political campaigns.

A. The Fourteenth Circuit Erred in its Establishment Clause Analysis.

When a potential Establishment Clause violation occurs, the Court has instructed that 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 line that courts and governments must draw between permissible and impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers." *Id.* at 536 (quoting *Town of Greece*, 572 U.S. at 577). Further, the Court has stressed that an analysis focused on original meaning and history has long represented the rule rather than some exception within the Court's Establishment Clause jurisprudence. *Id.* (quoting *Town of Greece*, 572 U.S. at 575). Here, the Fourteenth Circuit misinterpreted the history surrounding the Johnson Amendment and Establishment Clause in the United States.

1. *The Establishment Clause is designed to separate church and state.*

Although the Fourteenth Circuit accurately notes that politics and religion are naturally intertwined, it failed to take into account: (1) the purpose of the Establishment Clause and (2) what the Johnson Amendment addresses. R. at 9-10. It is known that "adherents of particular faiths and individual churches frequently take strong positions on public issues," *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 670 (1970). After all, "religious values pervade the fabric of our national life." *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971).

However, political division on religious lines was one of the principal evils that the First Amendment sought to prevent. Paul A. Freund, *Public Aid to Parochial Schools*, 82 Harv. L. Rev. 1680, 1692 (1969). In the words of Thomas Jefferson, "the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" *McGowan v. Maryland*, 366 U.S. 420, 443 (1961). Madison believed the Establishment Clause to mean that "Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." *Id.* at 441 (quoting I Annals of Congress 729). It is important to note that here, the Johnson Amendment is not compelling Respondent to worship God in any manner; it only allows the government to decline to subsidize an organization's support of political campaigns. *See, e.g.*, *Branch Ministries*, 211 F.3d at 143 (quoting *Cammarano v. United States*, 358 U.S. 498, 513 (1959) ("Petitioners are not being denied a tax reduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code.").

The Court has stated that in light of the "expanding array of vexing issues" to debate and divide on, "it conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government." *Lemon*, 403 U.S. at 623. While the Constitution's authors sought to protect religious worship from the pervasive power of government, the "history of many countries attests to the hazards of religion's intruding into the political arena." *Id.* "History cautions that political fragmentation on sectarian lines must be guarded against." *Walz*, 397 U.S. at 695 (separate opinion of Harlan, J.).

"The potential divisiveness of such conflict is a threat to the normal political process." *Lemon*, 403 U.S. at 622. Based on Jefferson, Madison, and the Court's understanding of the Establishment Clause, the Clause exists to keep religion out of politics and keep politics out of religion.

2. *The Johnson Amendment's effect on Respondent aligns with the goal of the Establishment Clause.*

The Johnson Amendment, enacted by Congress in 1954 as an amendment to the Internal Revenue Code, added language to 26 U.S.C. § 501(c)(3) mandating that non-profit organizations "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." R. at 2. Despite many opportunities to do so, Congress never eliminated the Johnson Amendment, nor did it create exceptions for religious organizations, which are often included within the broader category of § 501(c)(3) non-profit organizations. R. at 2-3. With the codification of the Johnson Amendment, the Internal Revenue Code "exempts certain organizations from taxation, including those organized and operated for religious purposes, provided that they do not engage in certain activities, including involvement in 'any political campaign on behalf of (or in opposition to) any candidate for public office.'" *Branch Ministries,* 211 F.3d at 143. Thus, the Johnson Amendment sets a condition on a 501(c)(3) tax-exemption that keeps the government from subsidizing a non-profit organization's (including religious organizations classified under 501(c)(3)) support for political campaigns. The effect of this goal fits neatly within the goal of the Establishment Clause – to separate church and state.

3. *Conditions on tax-exemptions have historical precedence in the United States.*

The history of tax-exemptions in the United States is strong and dates back to the 1894 Wilson-Gorman Tariff Act that contained "one of the earliest statutory references to tax exemption for charitable organizations." *Growth of the Tax-Exempt Sector and the Impact on the American Political Landscape*, H.R. Comm. on Ways and Means, Subcomm. on Oversight, 118th Cong. (2023) (testimony of Justin C. Chung). The 1894 Act waived corporate income tax for "corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes." *Id.* Even in the early history of tax-exemption legislation, tax-exempt status was conditioned on principles such as existing for a charitable purpose and being free of private inurement. Paul Arnsberger et al., *A History of the Tax-Exempt Sector: An SOI Perspective*, I.R.S., Winter 2008 at 105, 106. This aligns with a more modern understanding: that the government offers tax-exemptions for religious organizations in addition to other non-profit organizations because "each group contributes to a diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society." *Walz*, 397 U.S. at 689.

Regarding tax-exempt organizations, the Court has noted that the state may have an "affirmative policy that considers these groups as beneficial and stabilizing influences in community life" and finds tax-exempt classifications "desirable, and in the public interest." *Id.* at 673. However, "qualification for 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." *Id.* Thus, the Johnson Amendment's condition for 501(c)(3) non-profit organizations to not support political campaigns is well within the established historical practices and understandings of United States tax-exemptions. Here,

Respondent's activities – engaging in the support of political campaigns – took it outside the classification necessary to receive a § 501(c)(3) tax-exemption. R. at 4-5.

"A test that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent." *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014). Regarding prayers at the beginning of legislative sessions, an unbroken history of more than two hundred years leaves "no doubt" that the practice "has become part of the fabric of our society." *Id.* at 576 (quoting *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). Here, the existence of the Establishment Clause in the First Amendment, ratified in 1791, shows that the goal of keeping politics out of religion and keeping religion out of politics was a belief crucial to the fabric of our society. Similarly, the history of conditions on tax-exemptions is strong and has become an integral part of our tax-codes and national structure.

4. *The rigid Establishment Clause language is not meant to be construed literally.*

The Establishment Clause cases can sometimes appear to advocate "complete and uncompromising separation" between church and state. *Walz*, 397 U.S. at 671. Yet, the Court has previously "declined to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history." *Id.* Here, the rigid language of the Establishment Clause should not be misinterpreted as trumping the history surrounding it and the Johnson Amendment.

Under the "reference to historical practices and understandings" test, the Johnson Amendment does not violate the Establishment Clause. Preventing non-profit organizations, which include many religious organizations, from using government funds (tax-exempt funds) to support political campaigns aligns with the broader Establishment Clause and First Amendment

goal of separating church and state. Conditions on tax-exemptions have been baked into the fabric of society for over one-hundred years. The Johnson Amendment does not target religious organizations; however, its effect still benefits Establishment Clause goals. Respondent's desired outcome would create an Establishment Clause issue because the government, through its tax-exemptions for § 501(c)(3) non-profit organizations, would essentially be funding Respondent's support for political campaigns. Thus, the Johnson Amendment does not violate the Establishment Clause; it prevents a violation. The Johnson Amendment aligns with the historical practices and understandings of the United States by conforming with the Framers and Court's conviction that church and state should remain separate, while also continuing a firm history of conditional tax-exemptions meant to further desirable and public interests.

B. The Establishment Clause Does Not Apply to the Johnson Amendment.

The "Establishment Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." *McGowan*, 366 U.S. at 442 (1961). Although laws cannot interfere with mere religious beliefs and opinions, they may interfere with practices. *Employment Division, Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) (citing *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878). Here, the Johnson Amendment regulates conduct harmful to the United States' political arena, not religion.

1. *Congress is not required by the First Amendment to support lobbying.*

In a similar case regarding an organization being denied a § 501(c)(3) tax exemption, the Court held that Congress does not violate First Amendment rights by declining to subsidize First Amendment activity. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 550 (1983). Congress has the authority to determine whether the advantage the public would receive

from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying. *Id.* In *Regan*, the Court held that denying an organization § 501(c)(3) status because it sought to use tax-deductible contributions to support substantial lobbying activities was constitutional. *Id.* at 551.

The issue in *Regan* was not whether the organization was permitted to lobby, but was whether Congress was required to provide it with public money with which to lobby. *Id.* at 551. The same analysis applies in our case. Respondent is not restricted from supporting political campaigns; it simply does not gain the benefit of public money with which to support those political campaigns. Therefore, there is no valid First Amendment issue.

2. *The Johnson Amendment applies to all organizations equally.*

First, the Johnson Amendment applies to all non-profit organizations classified under § 501(c)(3). R. at 2. The IRS does not care if a non-profit is religious or not—in fact the IRS need not even know if a non-profit organization under § 501(c)(3) is a religious organization or not—it only cares if an organization under § 501(c)(3) is participating in political campaigns. Respondent is not singled out; every religious organization classified under 501(c)(3) is subject to the Johnson Amendment; every non-religious organization classified under 501(c)(3) is subject to the Johnson Amendment.

Further, the D.C. Circuit has held that the "restrictions imposed by section 501(c)(3) are viewpoint neutral; they prohibit intervention in favor of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint." *Branch Ministries*, 211 F.3d at 144. Thus, the Johnson Amendment does not discriminate against a particular political viewpoint; it seeks to prevent any and every political campaign from being supported by any §

501(c)(3) non-profit organization. It applies equally to all § 501(c)(3) organizations regardless of the views of those organizations.

3. *The Johnson Amendment is based on secular criteria designed to benefit societal welfare.*

Second, the Johnson Amendment governs a secular concept meant to benefit the general welfare of society, regardless of religious considerations—tax-exempt organizations' participation in political campaigns. R. at 2. Just because an activity is part of a religion's theological doctrine does not mean that the government cannot regulate it. *McGowan*, 366 U.S. at 442. "Congress and state legislatures," in many instances, "conclude that the general welfare of society," regardless of "any religious considerations, demands such regulations." *Id.* "The mere possession of religious convictions, which contradict the relevant concerns of a political society, does not relieve the citizens from the discharge of political responsibilities." *Employment Division*, 494 U.S. at 879 (quoting *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 594-95 (1940).

In one case, which involved the denial of a party's unemployment compensation following his use of the illegal drug, peyote, the Court held that the party's use of the peyote as part of his religion did not create an Establishment or Free Exercise Clause issue, and that the state drug prohibition was constitutional. *Id.* at 890. Murder, theft, and fraud are all illegal even though some religions agree that those crimes should be illegal, while other religions may allow or encourage such actions. *McGowan*, 366 U.S. at 442. The Court upheld a ban on polygamy despite some religions holding polygamy as a religious belief. *Davis v. Beason*, 133 U.S. 333, 344 (1890).

Although the government may regulate practices that coincide with certain religious values. *McGowan*, 366 U.S. at 442 (a "law that differentiates between religions along theological lines is textbook denominational discrimination."); *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025). When a law mandated the revocation of a religious organization's tax-exemption because it did not proselytize or only offer charitable services to its own members, the Court held that law unconstitutional. *Id.* at 249-50. The religious organization had a rule against misusing charity to further proselytization, and the Court determined that the law granted a "denominational preference by explicitly differentiating between religions based on theological practices." *Id.*

The Johnson Amendment in our case is more akin to addressing the relevant concerns of a political society than to differentiating based on theological practices. It benefits society when organizations do not have an unfair advantage when it comes to funding and supporting political campaigns. It "helps to ensure that organizations dedicated to the public good in communities remain above the political fray." Nat'l Council of Nonprofits, *Protecting the Johnson Amendment and Nonprofit Nonpartisanship*, https://www.councilofnonprofits.org/trends-and-policy-issues/protecting-johnson-amendment-and-nonprofit-nonpartisanship. By preventing 501(c)(3) non-profit organizations from using government money to subsidize (through tax-exemptions) political campaigns, the welfare of society is generally promoted. Respondent alleges a religious requirement mandating involvement in political campaigns. R. at 3-4. However, politics infiltrates every facet of every person's life. The Johnson Amendment regulates fairness in the political arena—that it happens to coincide with a religion's tenet does not invoke the Establishment Clause. That it happens to impact Respondent more than other groups is an "unavoidable consequence of democratic government" that "must be preferred to a

system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs." *Employment Division*, 494 U.S. at 890.

The Court has never held that when otherwise prohibitable conduct is accompanied by religious convictions the conduct must be free from government regulation. *Id.* at 882. It should not do so here.

C. Even if It Is Determined That the Johnson Amendment Grants a Denominational Preference, It Is Constitutionally Valid as It Passes Strict Scrutiny.

If the Court is presented with a law that grants a denominational preference, the Court must treat the law as suspect and apply strict scrutiny. *Larson v. Valente*, 456 U.S. 228, 246 (1982). Under strict scrutiny, a law is "invalidated unless it is justified by a compelling governmental interest" and is "closely fitted to further that interest." *Id.* at 246-47. Here, the Johnson Amendment passes strict scrutiny.

1. *The Johnson Amendment addresses a compelling government interest.*

Here, the government has a significant interest in preventing non-profit organizations from using government funds to promote political campaigns and keeping the political arena fair. Generally, citizens and organizations supporting political campaigns is beneficial to democracy. The Johnson Amendment only seeks to prevent groups from using tax-free dollars to support political campaigns. *See* R. at 2. Prohibiting organizations that receive tax-exemptions from using those conditioned privileges (tax-free dollars) to gain an advantage in the political arena is a matter of the highest importance. The political system is the bedrock of the United States; thus, Congress should defend that system's fairness.

In one case, the Supreme Court found that a Minnesota law conditioning tax-exempt status on religious organizations receiving more than half of their total contributions from

members or affiliated organizations satisfied the compelling government interest requirement (although failed narrow tailoring) because the state "has a significant interest in protecting its citizens from abusive practices in the solicitation of funds for charity, and that this interest retains importance when the solicitation is conducted by a religious organization." *Id.* at 248. Because the law, "viewed as a whole," had "a valid secular purpose," the Court assumed, *arguendo*, that it was generally addressed to a sufficiently compelling governmental interest. *Id.*

This Court has consistently held that an organization's First Amendment rights are not violated simply because Congress declines to subsidize those First Amendment activities. *Branch Ministries*, 211 F.3d at 143-44 (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 548 (1983)). The Johnson Amendment does not punish First Amendment activity; it simply requires organizations to pay for it out of their own pocket—not with government money—just like everybody else.

The problem the Johnson Amendment addresses is not that religious organizations may have political views, but instead, that non-profit organizations that receive tax-exemptions will have an unfair advantage in the political arena if they can use government money to support political campaigns. The Amendment serves a substantially compelling government interest.

2. *The government must be able to change tax classifications after they are made.*

Ultimately, a tax exemption is a form of subsidy that has the same effect as providing a cash grant to an organization. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 544 (1983). Congress is allowed to decide that tax-exempt charities "should not further benefit at the expense of taxpayers at large by obtaining a further subsidy" regarding political campaigns. *Id.* at 550. Logically, this makes sense; if the government is granting the privilege of tax-

exemption, it can keep that privilege from being co-opted to serve goals that Congress did not intend the tax-exemption to serve.

Thus, in our case, Congress's ability to prevent its gift of tax-exemption from causing the federal government to subsidize political campaigns is a compelling government interest. Congress must be able to control how its gifted money is used. Otherwise, once a tax-exemption is granted it is granted forever.

3. *The Johnson Amendment is closely fitted to furthering that government interest.*

In addition to serving a compelling governmental interest, to pass strict scrutiny, the law must be closely fitted to furthering that interest. *Larson*, 456 U.S. at 246. The compelling government interest here is the prevention of the government subsidizing organizations' support of political campaigns in an effort to keep the political arena fair. Here, conditioning the § 501(c)(3) tax-exempt status on abstention from supporting political campaigns is a closely fitted policy that furthers that government interest.

A law that is overinclusive or underinclusive fails to be closely fitted to the furthering of a government interest. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 252-54. The Court concluded that a law designed to ensure unemployment coverage in Wisconsin was underinclusive because the state exempted over forty forms of employment from its unemployment compensation program. *Id.* at 253. Our case is different.

The Johnson Amendment targets all non-profit organizations classified under § 501(c)(3). R. at 2. If it only targeted some organizations under that classification, it may be underinclusive; however, because the issue of the government not subsidizing tax-exempt organizations' support of political campaigns is important regarding all tax-exempt organizations under that classification, a law that covers every organization under that classification is a closely fitted

law. Similarly, the law is not overinclusive, as it applies only to the exact organizations where the problem of supporting political campaigns with tax-free dollars could arise—non-profit organizations classified under 501(c)(3).

The Amendment directly addresses the governmental interest. Revoking § 501(c)(3) tax-exempt status if an organization supports a political campaign effectively curbs organizations from using tax-free dollars (government subsidies) to support those campaigns. This keeps § 501(c)(3) organizations from adding to any unfairness in the political arena. Therefore, the Johnson Amendment is closely fitted to furthering the goal of a fair political arena and the prevention of government subsidies from being used to support political campaigns.

4. *The Johnson Amendment leaves alternative means of communication.*

The availability of an alternate means of communication is essential to the constitutionality of § 501(c)(3)'s lobbying restrictions. *FCC v. League of Women's Voters*, 468 U.S. 364, 400 (1984). Although 501(c)(3) restrictions revoke status for involvement in political campaigns, the Court details an avenue for organizations to pursue charitable goals through lobbying by creating a § 501(c)(4) affiliate. *Regan*, 461 U.S. at 552.

The D.C. Circuit explained that a "separately incorporated," yet related, § 501(c)(4) organization may form a political action committee that "would be free to participate in political campaigns." *Branch Ministries*, 211 F.3d at 143. Respondent in our case is welcome and able to use this path for its support of political campaigns.

D. <u>In the Alternative, the Johnson Amendment Does Not Violate the Free Exercise Clause.</u>

Although Respondent alleges a violation of the Establishment Clause, the Free Exercise Clause should also be analyzed, as the two clauses go hand in hand in the creation of the

Religion Clauses. *Larson*, 456 U.S. at 246. They are sometimes referred to together as the Establishment Clause, but the Court has laid a distinct doctrine for each. *See Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 384 (1990). The Johnson Amendment does not violate the Free Exercise Clause.

1. *The Johnson Amendment does not substantially burden Respondent.*

A free exercise analysis requires determining whether the "government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Id.* at 384-85. A substantial burden exists where "the state conditions receipt of an important benefit upon conduct mandated by religious belief," or "denies such a benefit because of conduct mandated by religious faith, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Id.* at 391-92 (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987)).

Here, the Johnson Amendment does not substantially burden Respondent because Respondent has an alternative means of participating in political campaigns—creating a 501(c)(4) organization. *See Regan*, 461 U.S. at 543. Respondent asserts that Everlight Dominion "requires its leaders and churches to participate in political campaigns." R. at 3. Nowhere in the record is it asserted that this must occur with the entity classified under 501(c)(3). A 501(c)(4) organization is "permitted to engage in substantial lobbying" and can be paired with a 501(c)(3) organization as long as the 501(c)(3) organization does not subsidize the 501(c)(4) organization. *Regan*, 461 U.S. at 543-44.

Following the *Regan* Court's outline, Respondent here could use its § 501(c)(3) organization for its nonlobbying activities and create a § 501(c)(4) affiliate to satisfy its religious need to participate in political campaigns. Although this may be more costly, this Court has held

that "merely decreasing the amount of money" an organization "has to spend on its religious activities" with a "generally applicable tax" law is not a constitutionally significant burden. *Jimmy Swaggart*, 493 U.S. at 391. Therefore, the burden on Respondent is not substantial and the Johnson Amendment does not violate the Free Exercise Clause.

2. *Even if a substantial burden exists, the Amendment is justified by a compelling governmental interest.*

A substantial burden is not dispositive if justified by a compelling governmental interest. *Id.* at 384-85. In one case, the Court ruled that the government's interest in preventing child labor and keeping "public highways" clear justified a law that happened to strike at a core conviction asserted by a Jehovah's Witness—that the street was her church and that her child should be able to offer religious literature for sale. *Chance v. Massachusetts*, 321 U.S. 158, 170-71 (1944). Of the Jehovah's Witness's claim that this law violated her convictions, the Court stated: "however Jehovah's Witnesses may conceive them, the public highways have not become their religious property merely by their assertion." *Id.*

In our case, Respondent does not gain a claim on participation in political campaigns as a solely religious concept simply by asserting it. Like in *Prince*, where the secular, government interests overruled an asserted religious belief, here, the regulating of fair political campaigns, free of government-subsidized dollars, trumps any substantial burden Respondent endures.

In *Davis v. Beason*, the Court ruled that "as a law of the organization of society," a law against polygamy was constitutional, despite the defendant's religious convictions to the contrary. 133 U.S. 333, 344 (1890). Polygamy's tendency to "destroy the purity of the marriage relation, to disturb the peace of families, to degrade women, and to debase men," was given as compelling justification. *Id.* at 341. Keeping the government from subsidizing certain political

campaigns in an effort to maintain a fair political arena, similar to marriage and peace of families, is a foundational concept in the United States.

Our case is similar to *Chance* and *Davis*, in that a secular, compelling government interest protects the Johnson Amendment's constitutionality, despite the Amendment's burden on Respondent's religious belief in political campaigns. R. at 3. At the creation of § 501(c)(3), of which the Johnson Amendment is a part, Congress was concerned that tax-exempt organizations "might use tax-deductible contributions to lobby to promote the private interests of their members." *Regan*, 461 U.S. at 550. Keeping tax-free dollars from being used on activities Congress chose not to subsidize is a compelling governmental interest. Since the Johnson Amendment serves such an interest, it does not violate the Free Exercise Clause.

CONCLUSION

The Anti-Injunction Act bars Respondent's suit to obtain pre-enforcement judicial review of federal tax administration. Respondent's suit seeks to restrain the assessment and collection of taxes, Congress has provided an adequate post-enforcement remedy through the Internal Revenue Code, and Respondent cannot demonstrate that the government is certain to lose on the merits. Neither the narrow *South Carolina* exception nor the *Williams Packing* doctrine applies. Permitting this suit to proceed would circumvent Congress's carefully considered system for resolving tax disputes and invite premature judicial interference with the administration of the tax laws. Accordingly, the Anti-Injunction Act requires dismissal for lack of jurisdiction.

Respondent cannot show "injury in fact" as required by Article III standing doctrine because they cannot demonstrate a credible threat of Petitioner enforcing the Johnson Amendment against them. Petitioner has disavowed enforcement of the Johnson Amendment on the facts of this case, and Petitioner is highly disincentivized from doing so by the threat of facial

invalidation. Further, Respondent's argument for standing rests on an assumption about the outcome of a highly attenuated chain of administrative procedures that were necessary before Petitioner could revoke Respondent's tax-exempt status.

The Johnson Amendment does not violate the Establishment Clause. It creates a condition on a government tax-exemption. Conditions on tax-exemptions have existed since tax-exemptions were first granted in the United States. The Establishment Clause exists to separate church and state and not allow one to interfere in the affairs of the other. Thus, the Johnson Amendment, which prevents tax-exempt 501(c)(3) organizations from using government funds to support political campaigns, both continues a standard practice of creating conditional tax-exemptions while also adhering to the Establishment Clause's goal of keeping church and state separate. Respondent's solution would result in the United States funding Respondent's support for political campaigns through subsidies. Not only does the Johnson Amendment not violate the Establishment Clause—it prevents a violation.

The Establishment Clause does not even apply to the Johnson Amendment because the Clause does not ban the regulation of conduct whose reason or effect happens to coincide with the tenets of a religion. The United States is home to many religions, and ordering judges to wade through what counts as a "real" religion or tenet is problematic and contrary to the First Amendment. However, asserting that an otherwise prohibitable action is part of a religious ideology does not grant immunity for committing that action. The Johnson Amendment governs a secular issue—tax-exempt organizations classified under 501(c)(3) using government money for their support of political campaigns. It does not matter if the group is religious or non-religious; society has an interest in political campaigns not being supported with tax-free dollars.

Even if there is an Establishment Clause violation, the Johnson Act passes strict scrutiny. The Johnson Act addresses the compelling interest of keeping political campaigns from being subsidized by tax-exempt organizations classified under 501(c)(3) status. In addition, it serves the interest of allowing Congress to retain control over its gift of tax-exemption and create conditions for that gift. The Johnson Amendment is narrowly fitted to those interests because it only applies to the target group—tax-exempt non-profit organizations classified under 501(c)(3). That category includes religious and non-religious groups and directly addresses the problem of tax-free dollars used by those groups for political campaign support.

Lastly, there is no Free Exercise Clause violation because Respondent is not substantially burdened and even if it is, there is a compelling governmental justification. First, Respondent is not substantially burdened because it has an alternative method of satisfying its religious requirement of supporting political campaigns—creating a sister § 501(c)(4) organization for its political lobbying. Second, there is a compelling governmental justification because the fairness and perceived fairness of elections is critical to the fabric and foundation of the United States. Congress must defend the integrity of elections and political campaigns.

To ensure that Congress may regulate conduct to prevent tax-exempt dollars from being spent by § 501(c)(3) organizations in support of political campaigns, this Court should do four things. First, it should vacate the holdings of the lower courts. Second, it should hold that the Tax Anti-Injunction Act bars Respondent's lawsuit and remand the issue to the lower court for a consistent verdict. Third, it should hold that Respondent lacks Article III standing and remand the issue to the lower court for a consistent verdict. Fourth, it should hold that the Johnson Amendment is constitutional and remand the issue to the lower court for a consistent verdict.

Respectfully submitted this 18th day of January 2026.