No. 26-CIV-1779

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service;
The Internal Revenue Service,
Defendant-Appellant,

v.

Covenant Truth Church,
Plaintiff-Appellee.

Appeal from the United States District Court
for the District of Wythe, USDC No. 5:23-CV-7997,
The Honorable Barbour, Marshall, and Washington,
Circuit Judges.

BRIEF OF APPELLANT

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January 18, 2026

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Jurisdictional Statement

This action was brought by the Covenant Truth Church (Appellee), against Scott Bessent (Appellant), Acting Commissioner of the Internal Revenue Service, on behalf of the Internal Revenue Service, on May 15, 2024. The indictment alleged that the 26 U.S.C. §501(c)(3), the Johnson Amendment, violated the Establishment Clause of the First Amendment.

The United States District Court for the Eastern District of Wythe had jurisdiction under 28 U.S.C. § 1331, which grants jurisdiction to district courts to hear "all civil actions arising under the Constitution, laws, or treaties of the United States." The District Court granted Appellee's motion for summary judgement and entered a permanent injunction. The Appellant filed Notice of Appeal, and this Court issued an Order granting the petition for certiorari review. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Questions Presented

I. Under the Tax Anti-Injunction Act (AIA) and Article III, does Appellee have standing to challenge the "Johnson Amendment" when there has been no injury in fact to Appellee?

II. Under the First Amendment's Establishment Clause, is the Johnson Amendment unconstitutional when it applies to broad classifications for the purpose of tax exemptions?

Statement of the Case

Congress, a longstanding and respected body that is dedicated to upholding the spirit and letter of the United States' Constitution, enacted legislation amending the Internal Revenue Code (IRC). R. at 2. Then admired Senator Lyndon B. Johnson's hard work assisted in incorporating into the amendment that in order for non-profit organizations to receive tax exemption status under 26 U.S.C. § 501(c)(3), they must not participate in, or intervene in, political campaigns. R. at 2. The time-honored amendment, commonly referred to as the Johnson Amendment, has been upheld by Congress since it was initially enacted in 1954. R. at 2.

The Everlight Dominion is a religion that has wrongfully blurred the line between religion and politics, using its influence to steer leaders and churches into direct involvement in political campaigns. R. at 3. The Everlight Dominion has directly intertwined religion with politics by requiring its leaders and churches to endorse political campaign candidates and encouraging the public to assist in political campaigns. R. at 3. Any leader or church who fails to adhere to such requirements is banned from the church and The Everlight Dominion. R. at 3.

Appellee is The Everlight Dominion's largest church in the State of Wythe (Wythe). R. at 3-4. Appellee, identically to every other charitable organization in the United States, originally received tax exemption status from the Internal Revenue Service (IRS) under 26 U.S.C. § 501(c)(3) of the IRC. R. at 3.

Following Appellee's gracious grant of tax exemption status from the IRS, Appellee increased its political involvement. R. at 4. Led by Vale, the main figurehead of Appellee, the religious organization has been spewing political content through its podcast to a nationwide audience and to its 15,000-member congregation. R. at 4. Like clockwork, Vale habitually uses the weekly podcast to urge the public to endorse political campaign candidates that align with The

Everlight Dominion's ideals. R. at 4.

Of late, Wythe experienced the loss of a Senator which shepherd a special political election to fill the empty seat. R. at 4. The election was expected to spark heated political debates because of an even divide between the two major political parties involved. R. at 4.

Not long after the special election was announced, Vale wasted no time and took full advantage of Appellee's podcast by urging the public to vote for, and donate time and money to, political campaign candidate Congressmen Davis. R. at 4-5. Not only did Vale and Appellee wield the podcast platform to share political messages, but they additionally utilized in person church sermons to endorse Congressman Davis. R. at 5.

The IRS conducts random audits of tax-exempt organizations to guarantee their compliance with the IRC and its Johnson Amendment. R. at 5. Appellee, fearing the IRS's discovery of its political involvement that was in violation of the Johnson Amendment, quickly filed a lawsuit in the United States District Court for the Eastern District of Wythe. R. at 5. Appellee, having done so, hoped its actions would combat the IRS from repealing its tax exemption status before the IRS had a chance to perform its randomized audit. R. at 5.

Appellee's lawsuit was filed on May 15, 2024. R. at 5. Appellee sought a permanent injunction that would end the enforcement of the Johnson Amendment. R. at 5. Despite the District Court's grant of summary judgment in favor of Appellee, the Acting Commissioner of the IRS, Scott Bessent, and the IRS appealed the decision. R. at 5-6.

Summary of the Argument

I. The District Court erroneously found that Appellee has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.

The AIA bars Appellee's lawsuit, and Appellee has not satisfied the standard for Article III standing. The AIA prohibits parties from bringing suit where the purpose of the suit is to prematurely seek judicial intervention. Appellee's lawsuit is barred by the AIA because it seeks premature judicial interference despite the availability of alternative remedies. Appellee cannot bring an action to prohibit enforcement of the Johnson Amendment because it has adequate alternative remedies which include appealing the IRS's revocation of its tax-exempt status or filing a refund suit after paying taxes following revocation. The Court should find that Appellee is unable to bring an action because its suit is barred by the AIA. Additionally, the Court should find that Appellee does not have standing to bring suit under Article III. Injury in fact is a requirement for standing to bring suit under the United States' Constitution. Appellee has failed to demonstrate an injury in fact because the audit of the organization has not yet occurred. Appellee's speculation that a pending audit will result in the loss of its tax exempt status does not constitute an imminent injury sufficient to establish injury in fact. The Court should also find that because the IRS has taken no action, and because the audit has not yet occurred, Appellee's claim is ripe for review.

II. The District Court's decision erred in finding that the Johnson Amendment violated the Establishment Clause of the First Amendment.

The Johnson Amendment does not violate the First Amendment's Establishment Clause. Congress's enumerated constitutional powers allows for it to place conditions upon the receipt of tax exemption status by acting through the IRS. Although the Establishment Clause limits the government's ability to intrude into religious affairs, the Johnson Amendment does not exceed those boundaries. The Johnson Amendment plainly does not involve the government in religion because it is a neutral and generally applicable restriction imposed on a broad class of

organizations. The Court should hold the Johnson Amendment is not in violation of the First Amendment's Establishment Clause because of its neutral applicability.

Argument

The Court's grant of Appellee's motion for summary judgment should be reversed because not only is Appellee's suit barred by the AIA, but its suit lacks standing. Additionally, the Court's decision should be reversed because the Johnson Amendment does not violate the Establishment Clause of the First Amendment.

The standard of review of the District Court's grant of Appellee's motion for summary judgment is *de novo*. Viamedia, Inc. v. Comcast Corp., 951 F.3d 429, 466-67 (7th Cir. 2020). The standing issue of ripeness is also reviewed *de novo*. Urb. Dev., LLC v. City of Jackson, Miss., 468 F.3d 281, 292 (5th Cir. 2006). *De novo* review is when an upper-level court reviews a case as if the case were being reviewed for the very first time, regardless of the district court's findings. Salve Regina Coll. v. Russel, 111 S. Ct. 1217, 1222 (1990).

The AIA prevents courts from getting involved in suits which interfere with the government's assessment and collection of taxes. Bob Jones Univ. v. Simon, 416 U.S. 725, 736 (1974). The AIA bars suits where the purpose of the suit is to obtain pre-enforcement judicial interference in order to block the IRS from applying the Johnson Amendment. Bob Jones Univ. at 736. Tax exempt organizations are barred from bringing an action under the AIA where other alternative remedies for challenging the Johnson Amendment are available to them. South Carolina v. Regan, 465 U.S. 367, 378 (1984). Furthermore, tax exempt organizations under 26 U.S.C. § 501(c)(3) cannot bring a suit where they have not yet been assessed by the IRS because of the lack of standing and ripeness of the claim. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013). In addition to the lack of standing and ripeness of a claim revolving around tax exemption and the Johnson Amendment, the Johnson Amendment does not violate the First Amendment's Establishment Clause. The Establishment Clause states that the government is not free to involve itself in religious affairs. U.S. Const. amend. I. However, Congress has the power to act through

the IRS to place conditions on the receipt of tax exemption status. Regan v. Tax'n With Representation of Wash., 461 U.S. 540, 550 (1983). (Regan v. Tax'n). Moreover, the IRS's enforcement of the Johnson Amendment does not interject the government into religious affairs because the amendment is generally applied to a broad category of charitable organizations. Walz v. Tax Comm'n of City of New York, 397 U.S. 664, 669 (1970).

The District Court's decision to grant Appellee's motion for summary judgment should be reversed. The decision should be reversed because (1) Appellee's suit lacks standing and is too ripe for judicial review and because (2) the Johnson Amendment does not violate the First Amendment's Establishment Clause.

I. The District Court erroneously found that Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.

Under the AIA, the Appellee's lawsuit is barred, further, the Appellee has not satisfied the Article III standing requirements. The plain language of 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). This Court has long held that payment of the disputed taxes is required prior to raising a claim about tax liability. See Comm'r v. Zuch, 605 U.S. 422, 430 (2025). As seen here, a suit would be without standing under the AIA without payment of the disputed taxes prior to bringing the claim.

Additionally, without standing under the AIA the claimant does not meet the threshold to satisfy constitutional standing under Article III. Article III standing requires an "injury in fact," meaning, a causal connection between the injury and the alleged wrongdoing that is redressable. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Further, the injury in fact must be concrete and particularized, and actual or imminent. Allen v. Wright, 468 U.S. 737, 756 (1984); See also

Los Angeles v. Lyons, 461 U.S. 95, 102 (1983). The causal connection between the injury and alleged wrongdoing "has to be 'fairly…trace[able] to the challenged action of the defendant, and not…the result [of] the independent action of some third party not before the court.'" Lujan, 468 U.S.at 560 (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-2 (1976)). Finally, it must be "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" Simon, 426 U.S. at 38, 43.

A. The Tax Anti-Injunction Act Bars Appellee's Suit

Appellee's suit is barred under the AIA which 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). This Court has found this language to explicitly imply the "protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum or pre-enforcement judicial interference…" Bob Jones Univ., 416 U.S. at 736.

In Bob Jones, the appellant sued to prevent the IRS from removing its tax-exempt status, prior to the collection or assessment of the tax. Id. at 727. The Court found that the allegations made by appellants were for the purpose of preventing the "[IRS] from assessing and collecting income taxes." Id. at 738. These actions "conflict directly with…congressional prohibition of such pre-enforcement tax suits." Id. at 731.

Here, Appellee's suit seeks exactly what the AIA prohibits: pre-enforcement judicial interference to prevent the IRS's application of the Johnson Amendment and collection of taxes in relation to Appellee's § 501(c)(3) status. Appellee misstates precedent set by this Court which found that the purpose of the AIA is *not* to be applied to parties without alternative remedies. South Carolina v. Regan, 465 U.S. at 378. In South Carolina v. Regan, the State of South Carolina sought an injunction and relief on the grounds that a section of the IRC was unconstitutional. Id. at 370.

South Carolina filed suit to challenge the validity of the tax; a suit that is typically barred by the AIA statute. Id. at 372-73. Additionally, this Court established the "Regan exception," holding that the AIA would not exclude the action where Congress had "not provided the plaintiff with an alternative legal way to challenge the validity of a tax." Id. at 372-73. Unlike in South Carolina v. Regan, here, Appellee is provided with congressionally granted alternative remedies to suit.

As previously stated, Appellee has alternative remedies to challenge the Johnson Amendment without pre-enforcement judicial interference. The IRC allows for challenges to actual controversies regarding the organization's tax classification. 26 U.S.C. § 7428. Following the revocation of Appellee's § 501(c)(3) status, Appellee's first of remedy is through internal appeal with the IRS. Should the appeal be unsuccessful, Appellee may seek declaratory relief under §7428.

Another remedy available to Appellee is the payment of the taxes, exhausting the IRS's internal refund procedures, and then suing for a refund. Bob Jones Univ., 416 U.S. at 746 (quotations omitted). Appellee can file civil suit against the IRS for the recovery of any tax that has "been erroneously or illegally assessed or collected," under 28 U.S.C. §1346(a)(1). The payment of the taxes, and then filing suit for refund, is an "opportunity to litigate the legality of the [IRS's] revocation of tax-exempt status…" Bob Jones Univ., 416 U.S. at 746.

The Court in both Bob Jones University and United States v. American Friends Service Committee held that the availability of refund suits defeated arguments that the AIA should be rejected. Bob Jones Univ., 416 U.S. at 746-48; United States v. American Friends Serv. Comm., 419 U.S. 7, 11-12 (1974). Both alternative remedies available to Appellee require: (1) the revocation of Appellee's § 501(c)(3) status, (2) exhausting the IRS internal procedures, and (3) finally filing suit. Bob Jones Univ., 416 U.S. at 746-48. Appellee invokes the Regan exception

incorrectly by prematurely circumventing the proper steps necessary before suit; exception requires that there is no congressionally mandated alternative remedy to suit. South Carolina v. Regan, 465 U.S. at 736. While the remedies available to Appellee involve a lengthy process, first having their § 501(c)(3) status revoked and then exhausting all internal appeal processes, this Court has held that hardship or delay does not equate to a lack of remedy. Bob Jones Univ., 416 U.S. at 746-47; See also Alexander v. Americans, 416 U.S. 752, 760-62 (1974).

The AIA requires Appellee to have taken appropriate action for relief following an audit of Appellee's tax classification as a §501(c)(3) organization and then through the IRS internally after the tax-exempt status has been revoked. Here, no determination has been made on Appellee's status and Appellee has made no effort to exhaust the IRS's internal procedures. Bob Jones Univ., 416 U.S. at 746. Since no determination has been made, suit cannot yet be brought as the Appellee is unable to appeal a decision before it happens. However, the AIA still bars Appellee's suit as Congress has provided Appellee with alternative remedies through §7428 and §1346(a)(1), which can be utilized when a determination on the Appellee's tax classification has been made. Appellee is attempting to use the AIA to prematurely avoid having to properly apply the alternative remedies available.

Therefore, the Court should find that Appellee lacks standing under the AIA to bring suit. The Court should find, as it has before, that Appellee has not exhausted all alternative remedies available before seeking pre-enforcement judicial interference.

B. Article III Standing is Not Satisfied by Appellee

Even if the Court were to reach Article III, Appellee has also failed to establish an injury in fact. To establish Article III standing, Appellee must show an injury that is "concrete, particularized, and actual or imminent [and] fairly traceable to the challenged action…" Clapper,

568 U.S. at 409 (citing Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010)). This Court has frequently held that imminence does not have nearly as broad a meaning as often indicated. Lujan, 504 U.S. 555. The alleged injury "must be *certainly impending* to constitute injury in fact." Id. (citing Whitmore v. Arkansas, 495 U.S. 149, 158 (1990)). "Certainly impending" means that "'allegations of *possible* future injury' are not sufficient." Id. Further, an "attenuated chain of possibilities does not satisfy the requirement that threatened injury must be certainly impending." Id. at 410. Here, Appellee alleges injury based upon a planned audit, speculative concerns of future enforcement, and the possibility of losing tax-exempt status. Injuries based upon hypotheticals are not "certainly impending" harm. Id.at 158.

In Clapper, the respondents alleged that their injury was based upon a reasonable likelihood that the injury will occur at some point in the future, due to the penalties in the related statute. Id.at 401-02. The Court found that the injuries alleged were too speculative and that measures to limit future application of the statute's penalties were an attempt to "manufacture standing" by acting "based on hypothetical future harm that is not certainly impending." Id.at 402. Here, Appellee has received only notice of an audit, the audit itself has not occurred; therefore, any hypothetical future results speculated by Appellee cannot be said to be "certainly impending." Id.at 409. There are various outcomes possible due to an audit, however, speculation of a singular outcome is not enough to show "concrete, particularized, and …imminent" injury. Id.

Additionally, the IRS has discretion in regard to the enforcement of the Johnson Amendment. In recent years, the IRS has used its discretion to adjust the situations in which the Amendment will be applied. The Johnson Amendment, as applied currently, applies to the non-religious political activity by religious institutions, per the discretion of the IRS that was formalized by consent decree in Nat'l Religious Broad. V. Long. Joint Mot. for Entry of Consent

Judgment, 2-4; Nat'l Religious Broad. v. Long, No. 6:24-cv-00311 (E.D. Tex. 2025). The consent decree was a joint motion between the plaintiffs and the IRS in which the IRS stipulated to new guidance regarding the Johnson Amendment. Id. The consent decree directly indicates that the Johnson Amendment will not be enforced "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication matters of faith in connection with religious services." Id. When politics is being "viewed through the lens of religious faith, it neither 'participate[s]' nor 'intervene[s] in a 'political campaign.'" Id.

This Court has found that a history of past enforcement is substantial in showing evidence of imminent injury. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 164 (2014). Here, Appellee does not have a showing of a past history of enforcement, in fact the consent decree from Nat'l Religious Broad., shows a lack of imminent enforcement. Appellee's speculative injuries are in relation to political messages included in Appellee's weekly podcast. The alleged purpose of this podcast was to deliver sermons and provide education about Appellee's organization. The podcasts would be considered internal communications, as they are being utilized as an online religious service to attract the younger generation. The purpose of the podcast falls squarely within the internal conversation exception for houses of worship from the Nat'l Religious Broad. consent decree.

In cases in which statues are rarely enforced and discretion has been formalized in such ways as a consent decree, this Court has found that injury is not imminent. Poe v. Ullman, 367 U.S. 497, 501-02 (1961). Appellee questions whether the consent decree will be applied to them, however, the uncertainty in application leans to a lack of standing. This Court has held previously that, in a case where uncertainty about the application of a statute led the Court to be without an "'idea whether or when such [a sanction] will be ordered,' the issue is not fit for adjudication."

Tex. v. United States, 523 U.S. 296, 300 (1998).

Additionally, should the Court find standing, the claim is unripe for review; at this point no action has been taken by the IRS and no taxes or penalties have been imposed. See Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726, 736-37; Summers v. Earth Island Inst., 555 U.S. 488, 500 (2009). Under the Constitution, Congress has the power to "lay and collect Taxes". U.S. Const. art. I, §8, cl.1. A pre-enforcement decision, focused on a policy choice exception for religious entities would present a nonjusticiable political question. Judicial review at this point would see the Court settling policy decisions related to taxes and religion. Going against justiciability and the ripeness doctrine. Therefore, the Court should find that Appellee lacks Article III standing to bring suit. The Court should find, that the Appellee has not established an injury-in-fact, the issue is unripe for review, and it goes against justiciability.

II. The District Court's decision erred in finding that the Johnson Amendment violated the Establishment Clause of the First Amendment.

The First Amendment's Establishment Clause creates a separation of church and state. Everson v. Board of Education, 330 U.S. 1, 18 (1947). The Establishment Clause requires that the government avoid favoring specific religions and refrain from discriminating against religions. Everson, 330 U.S. at 18. Congress is not free to interject in the establishment or to interfere with the practice of religion. U.S. Const. amend. I. While the government is restricted in its ability to involve itself in the practice of religion, Congress has the power to place conditions on the receipt of tax exemption status. Regan v. Tax'n, 461 U.S. at 550. Congress has the power to act through the IRS to limit churches' obtainment of tax exemption status. Id.

The Establishment Clause does not strictly prohibit the government from being selective when they choose to fund religious organizations; rather, the Establishment Clause only signifies that the government cannot establish its own religion or interfere with religion. Walz, 397 U.S. at

669. The IRS, as a government agency, is considered to have interfered with religion if it fails to set up a broad class of exemptions for all kinds of organizations and instead, solely targeting religious practices. Id. at 669; see also Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 21 (1989). Secular tax exemptions do not violate the Establishment Clause of the First Amendment if they are given to religious organizations as directed by statute. Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Comm., 605 U.S. 238, 250 (2025). Additionally, revocation of a church's tax exemption status does not violate a church's First Amendment right to freely practice religion unless the condition placed upon the grant of tax exemption is based on religious beliefs. Branch Ministries v. Rossotti, 211 F.3d 137, 142 (D.C. Cir. 2000).

It is not a violation of the First Amendment's Establishment Clause for the IRS to repeal a church's tax exemption status based on its political involvement because the churches are required to pay taxes for constitutionally protected activities similarly to everyone else engaging in like activities under the IRC. Commarano v. United States, 358 U.S. 498, 513 (1959). While tax exemption statutes may intermingle with religion, it does not necessarily mean the statutes violate the Establishment Clause. McGowan v. Maryland, 366 U.S. 420, 442-43 (1961).

A. The Court should find that the IRS can place conditions on the grant of tax exemption status to churches.

The Court should find that the IRS is not in violation of the First Amendment's Establishment Clause because Congress is permitted to carry out its enumerated powers through government agencies. Although churches are religiously affiliated organizations, Congress has the power to place conditions upon the receipt of tax exemption status through the use of the IRS. Regan v. Tax'n, 461 U.S. at 550.

Congress has the ability to act through a government agency, specifically the IRS, to limit who may receive tax exemption status. Id. In Regan v. Tax'n, Appellee was a nonprofit corporation

that was organized for the purpose of promoting public interest in the area of federal taxation. Id. at 541. Appellee applied for tax exemption status but was denied such status from the IRS because Appellee was largely involved in attempting to influence legislation in violation of 26 U.S.C. § 501(c)(3). Id. While Appellee argued that the Johnson Amendment was unconstitutional under the First Amendment, the Court held that the Johnson Amendment was constitutional because Congress has the power to place conditions on tax exemption status. Id. at 550.

Like in Regan v. Tax'n, where the nonprofit corporation was denied tax exemption status by the IRS for attempting to influence legislation, Appellee here was also attempting to influence legislation that violated the Johnson Amendment. Appellee here violated the Johnson Amendment with their conduct by endorsing political candidates. Similar to Regan v. Tax'n, Appellee here argues that the Johnson Amendment is in violation of the First Amendment. While the Court in Regan v. Tax'n held that Congress had the power to use the IRS to place conditions on the ability of organizations to receive tax exemption status, the Court here should decide no differently. In the time since this case, the United States' Constitution has not changed nor have Congress' enumerated powers. The Court here would continue to find that, once again, the IRS has the ability to refuse to grant an organization tax exemption status based on its involvement in political affairs. The Court should find Appellee lacks a sufficient argument to support the claim that the Johnson Amendment violates the First Amendment's Establishment Clause. The Court should find, as it has so many times before, that the IRS has the authority to deny tax exemption status to church organizations.

B. The IRS does not violate the First Amendment's Establishment Clause if it does not target religious organizations.

The Johnson Amendment is constitutional so long as it remains broadly applicable to various organizations, not just churches. Texas Monthly, Inc., 489 U.S. at 21. The statute, when

creating broad classifications for tax exemptions, does not interfere with religion because it is not specifically aimed at restricting religious beliefs and practices. Walz, 397 U.S. at 669. The Johnson Amendment and its application become unconstitutional when it is being used to target and limit specific religions. Branch Ministries, 211 F.3d at 142.

An exemption cannot solely limit a single kind of organization. Texas Monthly, Inc., 489 U.S. at 2. In Texas Monthly, Inc., the Appellant published a general interest magazine. Id. at 6. The Appellant was not itself religious, and its publication materials did not "contain only articles promulgating the teaching of a religious faith." Id. Because the Appellant was not a purely religious organization and did not solely publish religious articles, they were required to pay a sales tax. While the Appellant was required to pay a sales tax because its organization and publications were not religiously affiliated, publications that were labeled as religious publications continued to enjoy tax exemption. Id. The Appellant contended that the sales tax exemption was in violation of the Establishment Clause because it only applied to religious publications. Id. at 5. The Court held that tax exemption cannot be made and established to apply only to religiously affiliated institutions. Id. at 23. The Court also noted that if a tax exemption focuses solely on only religious organizations in particular, the exemption is in violation of the First Amendment's Establishment Clause. Id. Additionally, the Court held it is a violation of the Establishment Clause if the government entangles church and state when deciphering whether an organization is promulgating certain religious beliefs. Id. at 21. The Court held that because the exemption entangled church and state while also only applying to religious organizations, the exemption was in violation of the Establishment Clause. Id. at 21, 23.

Unlike in Texas Monthly, Inc. where the Appellant claimed the sales tax exemption was favoring religious organizations and, therefore, the exemption was in violation of the

Establishment Clause, Appellee here is not arguing the exemption favors religious organizations. While the cases may factually differ, there are important contrasts to be made. First, unlike in Texas Monthly, Inc. when the exemption solely focused on religious organizations, the tax exemption here does not solely focus on religious organizations. The Johnson Amendment focuses on all different kinds of broad classifications including, but are not limited to, religious organizations, charities, educational institutions, foundations, etc. 26 U.S.C. § 501(c)(3). Second, unlike in Texas Monthly, Inc. where the exemption required the government to be involved in making religious determinations, the exemption here does not require the IRS to make religious determinations. Instead, the exemption here only requires the IRS to refuse tax exemption status to churches that become involved in politics. The IRS repealing Appellee's tax exemption status because of their attempts to sway the public into endorsing certain political campaign candidates does not involve religion. The endorsement of political campaign candidates is a purely political matter, not a matter that concerns religion.

Tax exemption does not necessarily lead to a violation of the Establishment Clause where church and state become entangled. Walz, 397 U.S. at 676. Furthermore, broad categories of tax exemptions do not violate the Establishment Clause. Id. at 669; see also McGowan, 366 U.S. at 540. In Walz, a real estate owner brought an action attempting to prevent the New York City Tax Commission from giving tax breaks to churches. Id. at 666. The Appellant claimed it was a violation of the First Amendment's Establishment Clause for the government to be allowed to grant such exemptions to churches. Id. The Court held that the tax exemption was not in violation of the Establishment Clause because the exemption included broad categories of organizations that could be potentially exempt. Id. at 675-76. The Court also held and noted that it is important to look at the purpose of the government's actions to determine if it is attempting to interfere with

religion. Id. at 669. The Court held that since the grant of tax exemption was not intended by the government to be a sponsorship of religion, the exemption was not in violation of the Establishment Clause. Id. at 675.

First, like in Walz where the tax exemption included broad categories, the Johnson Amendment here provides broad categories for which organizations can be exempt from taxation. Second, similarly to Walz where the government's grant of tax exemptions was not for the purpose of focusing on religious organizations, the Johnson Amendment was not created for the sole purpose of regulating religious organizations. Instead, the Johnson Amendment is applicable to various charities, educational institutions, foundations, etc. 26 U.S.C. § 501(c)(3). The Johnson Amendment does not solely target churches and other religious organizations.

The IRS has statutory authority to place conditions on the receipt of tax exemption status without being in violation of the Establishment Clause. Branch Ministries, 211 F.3d at 142. Moreover, tax exemption is not in violation of the Establishment Clause unless the conditions are meant to prevent religious organizations from freely practicing their faith. Id. at 144. In Branch Ministries, Branch Ministries was an organization that owned and operated a church. Id. at 141. The religious organization published advertisements in newspapers as an attempt to persuade the public not to vote for a presidential candidate. Id. at 139. Because of the advertisements, the IRS repealed the organization's tax exemption status. Id. The court held that the IRS's revocation of the organization's tax exemption status was not a violation of the Establishment Clause because the condition placed upon the tax exemption was not based on specific religious beliefs. Id. at 142.

First, like in Branch Ministries where the organization was religiously affiliated, Appellee here is religiously affiliated. Second, similar to Branch Ministries where the religious organization urged the public to not endorse/endorse certain political campaign candidates, Appellee here urged

the public through its podcast to endorse certain political campaign candidates. Third, like in Branch Ministries when the IRS repealed the organization's tax exemption status, the IRS here repealed Appellee's tax exemption status because of its attempts to interfere with legislation. Lastly, similar to Branch Ministries where the Johnson Amendment's tax exemption condition was not based on the organization's specific religious beliefs, the Johnson Amendment's tax exemption condition here was not based on Appellee's religious beliefs. Rather, the condition here was that the church would be able to maintain its tax exemption status as long as it did not involve itself in politics. Here, Appellee did involve themselves in politics by using their podcast to spread political messages and to make attempts to get church members and the public to vote for political campaign candidates. Even if Appellee's endorsement of certain political candidates was motivated by the candidates' alignment with Appellee's religious beliefs, such motivation does not transform Appellee's political involvement into a religious act. Additionally, while not taking advantage of every podcast to spread political messages, Appellee still finds themselves to be at odds with the tax exemption conditions laid out in the Johnson Amendment.

In conclusion, the Court here should overrule the district court's judgment because the Johnson Amendment does not violate the First Amendment's Establishment Clause. Like Regan, the IRS has the authority to place conditions on the receipt of tax exemptions through the enactment of the Johnson Amendment. Moreover, like the provisions upheld in Texas Monthly, Inc., Walz, and Branch Ministries, the Johnson Amendment applies uniformly to a broad range of exemption classifications. Rather than single out religious entities for differential treatment, the Johnson Amendment remains neutral in its application. Because of the Johnson Amendment's broad range of classifications, it does not interfere with religious organizations' ability to freely practice religion.

Conclusion

For the foregoing reasons, the judgement of the Court of Appeals should be reversed on both questions presented. Scott Bessent, on behalf of the IRC, respectfully requests this Court find that under the AIA and Article III, the Appellee does not have standing to challenge the Johnson Amendment because there has been no injury in fact. Furthermore, this Court should find that the Johnson Amendment is constitutional under the First Amendment's Establishment Clause because it applies to broad classifications of organizations for the purpose of tax exemptions.

Dated this 18th day of January, 2026

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