IN THE

SUPREME COURT OF THE UNITED STATES

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 RESPONDENT

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A. Under the Tax Anti-Injunction Act ("AIA") and Article III does Covenant Truth Church have standing when the IRS has not yet conducted an audit?

B. Under the Johnson Amendment, was the Establishment Clause violated when the act prohibited the Church as a 501(c)(3) from participating in political campaigns, which is part of their religion?

LIST OF PARTIES

Petitioners are Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, and The Internal Revenue Service. Petitioners were the defendants in the District Court and the appellants in the Court of Appeals.

Respondent is Covenant Truth Church. Respondent was the plaintiff in the District Court and the appellee in the Court of Appeals.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 345 F.4th 1 (14th Cir. 2025). The opinion of the District Court is not published, but the docket number is USDC No. 5:23-cv-7997.

JURISDICTIONAL STATEMENT

The United States District Court for the District of Wythe had jurisdiction to hear this case pursuant to 28 U.S.C. § 1331. The United States Court of Appeals for the Fourteenth Circuit had jurisdiction to hear this appeal from the United States District Court for the District of Wythe pursuant to 28 U.S.C. § 1291. This Court has jurisdiction to hear this appeal from the United States Court of Appeals for the Fourteenth Circuit pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Relevant statutes and constitutional provisions are reproduced in relevant part in the appendix attached hereto.

STATEMENT OF THE CASE

A. Factual History

The Internal Revenue Code ("IRC") exempts religious organizations from taxation so long as the organizations adhere to the qualifications provided. R. at. 2. Covenant Truth Church ("Church") practices the Everlight Dominion ("Everlight") religion, which is centuries old with a dedicated following that has grown tremendously in recent years. R. at 3. The Church upholds progressive social values that include having its leaders and churches participate in political campaigns that align with its values. R. at 3. Churches and leaders of Everlight are required to endorse candidates and are encouraged to donate and volunteer for political campaigns. R. at 3.

The Church, a 501(c)(3) organization per the IRC, is led by Pastor Gideon Vale ("Vale") and has become the largest Everlight church. R. at 3. The Church's success may be attributed in part to Vale's popular weekly podcast about the faith and the addition of a livestream option for weekly services. R. at 3-4. Vale's podcast is the fourth most listened to podcast in Wythe and draws millions of downloads from across the country. R. at 4. One aspect of the podcast is political messaging in accordance with Everlight's requirement of political activity. R. at 4.

A Wythe senator's death triggered a special election, which was expected to be contentious due to the even divide in the Senate's membership between the two political parties. R. at 4. Congressman Samuel Davis ("Congressman") announced he would be running in the special election, and Vale endorsed him due to the Congressman's progressive social values. Vale also intended to give a series of sermons on the podcast explaining why the Congressman's political stances align with Everlight. R. at 4-5.

The Internal Revenue Service ("IRS") monitors compliance with the IRC through random audits of 501(c)(3) organizations. R. at 5. The Church learned it had been selected for a random audit by letter from the IRS dated May 1, 2024. R. at 5.

B. Procedural History

The Johnson Amendment to 26 U.S.C. § 501, codified at 501(c)(3), mandates that non-profit organizations refrain from participating in political campaigns on behalf of any candidate for public office. R. at 2. Concerned that the IRS would unconstitutionally revoke the Church's 501(c)(3) tax classification, the Church sought a permanent injunction prohibiting enforcement of the Johnson Amendment due to its violation of the Establishment Clause of the First Amendment. R. at 5. Petitioner denied all of Church's claims in their answer, then the Church

filed for summary judgement. R. at 5. “The District Court held that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause.” R. at 5. The Church’s motion for summary judgement was granted and the permanent injunction was entered. The IRS appealed and The Court of Appeals affirmed the District Court’s holding. This Court granted the IRS’s petition for certiorari review.

SUMMARY OF THE ARGUMENT

The Court of Appeals was correct in determining the Church is not barred by the AIA from bringing suit and the Church has standing to sue pursuant to Article III of the U.S. Constitution. The Court of Appeals was also correct in determining the Johnson Amendment is unconstitutional as it violated the Establishment Clause of the First Amendment.

The AIA does not apply to the Church. The AIA prevents parties from bringing suit regarding the collection of taxes unless they are among the listed exceptions. However, the AIA does not bar the Church from bringing suit because there is no alternative available remedy and the Williams Packing exception does not apply. Preventing the Church from bringing suit would be injurious to the foundation of the American justice system. The Church was not barred by the AIA in this suit and the Church has met the requirements for Article III standing.

A party has Article III standing when they can prove injury in fact and that the case is ripe for review. The Church met the injury in fact requirement because the threat of reclassification is imminent and concrete. The IRS has shown their intent to enforce the Johnson Amendment by announcing the audit concerning the Church’s 501(c)(3) classification. Therefore, the Church also met the ripeness requirement because the IRS’s audit is certain to occur. The Church has met the standard for Article III standing and therefore can bring this suit.

The Johnson Amendment is unconstitutional as it violates the First Amendment Establishment Clause. The Johnson Amendment involves an official establishment of religion because it is preferential toward non-religious non-profits and religious non-profits that do not consider political participation part of their core belief system. This preference causes the Johnson Amendment to fail the requisite neutrality and general applicability requirements. Even if the Johnson Amendment met those requirements, it substantially burdens religious practice, which subjects it to strict scrutiny review. The Johnson Amendment fails to pass under strict scrutiny because it lacks a compelling government interest, and it is not narrowly tailored to further the interests it does serve. Therefore, this Court should affirm the Court of Appeals' holding that the Church has standing to sue under Article III despite the AIA and that the Johnson Amendment is unconstitutional.

ARGUMENT

The Court of Appeals correctly ruled in favor of Respondent because: (1) Respondent is not barred by the AIA and has standing pursuant to Article III, and (2) the Johnson Amendment is unconstitutional. This Court reviews questions of law *de novo*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). The issue of standing should be reviewed *de novo* because injury in fact and ripeness are questions of law. *Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006). The constitutionality of the Johnson Amendment should be reviewed using strict scrutiny because this Court reviews constitutionality of statutes with Establishment Clause issues using strict scrutiny review. *Larson v. Valente*, 456 U.S. 228, 246 (1982). To pass strict scrutiny review, a law must serve a compelling government interest and be narrowly tailored to further that interest. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 239 (2025). Therefore, this Court should review the issue of standing *de novo* and affirm the Court of

Appeals' decision that the Church has standing and is not barred by the AIA. This Court should review the constitutionality of the Johnson Amendment with strict scrutiny and affirm the Court of Appeals' decision that the Johnson Amendment is unconstitutional.

I. THE CHURCH IS NOT BARRED BY THE AIA AND HAS STANDING.

A. The Church is not Barred by the AIA Because It Does Not Have an Alternative Remedy.

The AIA states a party, barring the listed exceptions, may not bring suit in any court "for the purpose of restraining the assessment or collection of any tax," 26 U.S.C. § 7421(a). However, if the IRS has proposed a change to a 501(c)(3) organization's tax classification, then the IRC allows those organizations to challenge their status or classification in federal court. 26 U.S.C. § 7428. The act was not intended to bar organizations from bringing suit when there is not an alternative remedy. *S.C. v. Regan*, 465 U.S. 367, 378 (1984). If a party does not have an efficient remedy, then they may not be barred by the AIA. *Franchise Tax Board of Cal. v. Alcan Aluminum Ltd.*, 493 U.S. 331, 339 (1990).

In *Regan*, the state is seeking an injunction claiming that section 103(b)(1) of the Tax Equity and Fiscal Responsibility Act is unconstitutional. 465 U.S. at 370. The defendant argues that there is a singular exception to the AIA provided in *Enochs v. Williams Packing & Navigation Co*. *Id.* at 372 (citing *Enochs v. Williams Packing & Navigation Co*., 370 U.S. 1 (1962)). The court held that because there is no alternative avenue for remedy available to the plaintiff, the *Williams Packing* exception was inapplicable. *Id.* at 373. The AIA was intended to apply in circumstances where Congress provided an alternative remedy. *Id*. at 381.

In this case, the AIA does not apply because the Church does not have an alternative remedy to challenge the Johnson Amendment. The AIA lists several sections of the IRC that the Johnson Amendment does not apply to, however the Church's 501(c)(3) classification is not one. 26 U.S.C. § 7421(a). Therefore, the Church does not have an available remedy under the exceptions in the Johnson Amendment. The Church also does not have an available remedy under section 7428 of the IRC. The IRS announced that the Church had been selected for random audit. R. at 5. If the IRS has not announced that the Church's tax classification will be changed, then the Church does not have a remedy under section 7428 of the IRC.

Petitioner will argue that this Court should apply the test set forth in *Williams Packing*. The rule states that the AIA does "not apply if the taxpayer (1) was certain to succeed on the merits, and (2) could demonstrate that collection would cause him irreparable harm." *Regan*, 465 U.S. at 370 (citing *Enochs v. Williams Packing & Navigation Co*., 370 U.S. 1 (1962)). Even if this Court determines the exception applies, the Church will still prevail. The Church is certain to succeed on the merits because, as the lower courts have found, the Johnson Amendment is unconstitutional as it amounts an official endorsement of religion. The Church would also be irreparably harmed by the enforcement of this tax because it would not be able to practice the Everlight faith free from governmental interference. This case is not like *Williams Packing* because, unlike the plaintiff in that case, the Church does not have another avenue for a remedy. Even if the Court applies the *Williams Packing* test, the Church's claim will still succeed because it is (1) certain to succeed on the merits and (2) would be irreparably harmed.

Litigation is a foundational part of the American justice system and prohibiting suit under the AIA would undermine this foundational aspect. Litigation has multiple functions in society such as dispute resolution and law declaration. Alexandra D. Lahav, The Roles of Litigation in

Am. Democracy, 65 EMORY L.J. 1657, 1658-59 (2016). Access to courts and the ability to bring suit is necessary because if parties do not have an available remedy, they may attempt to resolve the dispute on their own. *Id.* Necessary litigation develops the legal system by furthering the law through judicial interpretation. *Id*. However, unnecessary litigation burdens the legal system. If the IRS proposes a new tax classification and the Church waits to bring suit, as suggested by the dissent as an appropriate remedy, it risks exposure to criminal punishment. Upon reclassification, the Church is faced with two inefficient options, it can either by avoiding paying the tax and therefore open itself to criminal liability, or it can attempt to front the tax and seek a refund. *See CIC Servs., LLC v. IRS*, 593 U.S. 209, 214 (2021). Remedies this inefficient burden both the judicial system and 501(c)(3) organizations, and are therefore no remedy at all. In this case, if the Church is unable to bring suit against the IRS due to the AIA, the foundation of the legal system would be threatened. Overall, the Church is not barred by the AIA because they have no remedy and the *Williams Packing* exception does not apply in this case.

B. The Church Meets the Required Standards for Article III Standing.

"To establish Article III standing, a plaintiff must show (1) 'an injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of,' and (3) a 'likely[hood]' that the injury 'will be redressed by a favorable decision'." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61(1992)). Plaintiffs can show sufficient injury in fact when the harm is "concrete and particularized" and is "actual and imminent." *Susan B. Anthony List*, 573 U.S. 149 at 158. In order to show a threatened injury, plaintiffs must show that the injury is "certainly impending." *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 401 (2013) (quoting *Whitmore v. Ark.*, 495 U.S. 149, 158 (1990)).

In *Susan B. Anthony*, petitioner brought suit seeking relief on the ground that an Ohio statute violated their First and Fourteenth Amendment rights. 573 U.S. 149 at 157. The suit was brought as a pre-enforcement challenge, because, although the current complaint against the petitioner had been withdrawn, they intended to engage in similar conduct again. *Id.* at 155. This Court reasoned that a plaintiff is not required to open themselves up to liability before bringing suit to challenge a threatened injury. Id. at 159. This Court held that the petitioner met the Article III injury in fact requirement by alleging an intention to participate in conduct that may implicate a constitutional interest; the intended conduct is barred by statute; and the potential enforcement of the statute is substantial. *Id*. at 161-63.

In this case, the Church has met the necessary requirements to satisfy Article III standing. Like in *Susan B. Anthony*, the Church brought a pre-enforcement challenge to the Johnson Amendment. R. at 5. The harm to the Church is concrete because the audit is imminent even though the IRS has not yet begun the audit. R. at 5. If the Court allows the IRS to conduct their audit, there is a "substantial risk" that the IRS will repeal the Church's 501(c)(3) tax classification. R. at 7. The intended conduct, the Church's participation in political campaigning, is barred by the IRC despite that it is a fundamental part of Everlight. R. at. 5. Lastly, the IRC revokes 501(c)(3) organizations' tax classification for participating in political campaigns, therefore, the potential enforcement is substantial. There is also a sufficient connection between the revocation of the tax classification and the impending audit. If this Court affirms the Court of Appeals decision, the injury will be redressed. The IRS's ability to revoke the Church's tax classification based on the Church's religious practices demonstrates a clear injury in fact.

The Article III injury in fact requirement coincides with constitutional ripeness. *Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025). "A claim is not ripe for adjudication if it rests

upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all." *Tex. v. U.S.*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Argic. Prods. Co.*, 473 U.S. 568, 580-81 (1985)). Here, there is not a ripeness issue because the IRS audit, barring court interference, will occur. The IRS notified the Church of the audit with the purpose of reviewing the 501(c)(3) tax classification. R. at 5. The Church can bring the pre-enforcement challenge because the injury in fact has been established and the case is ripe for judicial decision.

As Justice Marshall notes, the IRS has entered into a consent decree as a show of their intent to stop enforcement of the Johnson Amendment. R. at 14. However, with the IRS announcing their audit to examine the Church's 501(c)(3) tax classification, there is a clear intent to enforce the Johnson Amendment. R. at 5. A consent decree can be modified by judicial order. *See Horne v. Flores*, 557 U.S. 433, 447 (2009). It is not a far reach to assume that the IRS's announcement of the audit indicates an intent to seek a modification, which would single out the Church for one of its foundational beliefs. The Church, therefore, has Article III standing to demonstrate that the Johnson Amendment is unconstitutional because it satisfied both the injury in fact and ripeness requirements.

II. **THE JOHNSON AMENDMENT IS UNCONSTITUTIONAL**

The Establishment Clause states "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof" U.S. CONST. amend. I. The clause is supposed to prevent excessive government entanglement with religion. *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 670 (1970). The government may not decide which religious beliefs are valid to the extent that the religious practices are not harmful to society. *See Reynolds v. U.S.*, 98 U.S. 145, 166-67 (1878). In order to avoid excess government entanglement

and support the free exercise of religion, laws must be neutral and generally applicable. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022).

A law fails to be neutral if it targets religious exercise either on its face or because religious exercise is the law's object. *Id.* at 526. A law is not generally applicable if it imposes a restriction in which the government is invited to inquire as to the reasons for an individual's conduct. *Fulton v. City of Phila., Pa.*, 593 U.S. 522, 533 (2021). General applicability requires that laws not restrict religious conduct while permitting similar secular conduct. *Id.* at 534. Further, laws must be evenhanded respecting different religious sects. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947). If a law fails to be neutral or generally applicable, it must meet a strict scrutiny standard. *Kennedy*, 597 U.S. at 508. A neutral and generally applicable law can still be subject to strict scrutiny if it substantially burdens religious practice or discriminates among religious sects. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694-95 (2014); *Larson*, 456 U.S. at 246. The strict scrutiny standard requires a showing that the law (1) serves a compelling government interest; and (2) is narrowly tailored to further that compelling government interest. *Cath. Charities Bureau, Inc.*, 605 U.S. at 239. In addition to meeting the strict scrutiny standard, Establishment Clause issues are interpreted using an "analysis focused on original meaning and history." *Kennedy*, 597 U.S. at 536.

Tax exemptions for religious organizations do not violate the Establishment Clause. *Walz*, 397 U.S. at 674. In fact, tax exemption may produce less government entanglement in religion than would taxation because taxation requires government oversight into property value, tax liens, and tax foreclosures. *Id.* However, tax exemptions may not be used to favor one religion above others. *See Id.*; *Zorach*, 343 U.S. at 314. As referenced above, the Johnson

Amendment prohibits 501(c)(3) organizations from participating in political campaigns. 26 U.S.C. § 501(c)(3). If such organizations do participate in political campaigns, they do not qualify for the exemption. *Id.* Though the IRS does not currently claim to enforce the Johnson Amendment, the IRS still has some discretion to enforce it unless Congress or this Court determines otherwise. R. at 14; Promoting Free Speech and Religious Liberty, 82 FED. REG. 21675 (May 4, 2017); Zev Mishell, *What is Happening With the Johnson Amend.?*, Interfaith All. (July 31, 2025), https://www.interfaithalliance.org/post/what-is-happening-with-the-johnson-amendment#:~:text=In%201954%2C%20Congress%20approved%20an,(c)(4)%20organizations.

In *Larson*, this Court held strict scrutiny should be applied for Establishment Clause cases involving denominational preferences. 456 U.S. at 246. This Court held a statute could not impose registration requirements on religious organizations that received a majority of their funding from nonmembers. *Id.* at 230. Despite the statute's secular purpose of avoiding abusive solicitation practices by non-profits, the statute failed under a strict scrutiny standard, which was applied because the restriction amounted to a denominational preference. *Id.* at 246-47. Taking as true the statute had a compelling government interest, the appellant failed to show the restrictions were closely fitted to furthering that interest because no evidence suggested the requirements actually prevented abusive solicitation. *Id.* at 248.

In another case, a church was denied a statutory exemption for religious organizations that would allow it to not pay into the unemployment tax system because the appellee determined its lack of proselytization meant it was not operated primarily for religious purposes. *Cath. Charities Bureau, Inc.* 605 U.S. at 241. In so holding, this Court determined tax

exemptions with secular criteria do not qualify as discrimination among religious sects merely because the criteria have a disparate impact on religious organizations. *Id.* at 250.

A. The Johnson Amendment Violates the Establishment Clause and is Not Neutral Nor Generally Applicable.

The Johnson Amendment violates the Establishment Clause of the First Amendment because the tax exemption requirements prohibit 501(c)(3) organizations from participating in political campaigns, which prevents the Church and other religious organizations from practicing their faith. Part of the Church's Everlight faith requires that its churches and leaders take an active role in political campaigns, including candidate endorsement and encouraging members to participate. R. at 3. Further, the belief that followers should be involved in the political process is a commonly held belief of religious organizations in reviewing American history and tradition. R. at 9. For instance, Everlight is a centuries-old religion embracing political participation as part of its faith R. at 3. The prevalence of religious participation in politics throughout American history is significant given the consideration of original meaning and tradition in Establishment Clause issues. *See Kennedy*, 597 U.S. at 536. Not all 501(c)(3) religious organizations consider political participation part of their faith, so the Johnson Amendment creates a restriction that punishes some religious organizations for practicing a part of their faith without punishing those that do not or punishing non-religious non-profits.

The Johnson Amendment does not meet the requirements for neutrality and general applicability because the ban on political participation is explicit in the text of the amendment, despite that such participation has long been a foundational component of many religious faiths. While the proscribed conduct also applies to non-religious organizations, it still targets religious organizations because the criteria burdens them more. As the government may not determine

which religious beliefs are valid, it may not argue that political participation restrictions do not disproportionately impact religious organizations that value it.

While this Court held in *Cath. Charities Bureau, Inc.* that secular criteria for tax exemptions do not discriminate just because the criteria creates a disparate impact on religious organizations, the burden on religious organizations created by Johnson Amendment rises above that of the unemployment tax system exemption in that case. 605 U.S. at 250. In *Cath. Charities Bureau, Inc.*, the criteria to apply for the exemption involved a showing that an organization was significantly involved in religious practice. *Id.* at 241. In that case, the criteria in question determined whether an organization qualified for an exemption rather than restricting the religious practices of organizations already found to qualify for the exemption. *Id.* The Johnson Amendment allows the Church to qualify for the exemption, but only if they refrain from practicing an important part of their faith. The IRS also codified the tax exemption on which religious organizations relied long before the Johnson Amendment, so the Johnson Amendment, unlike the unemployment tax exemption, involves stripping religious organizations of rights they already held. *See* Mark A. Goldfeder, Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amend.*, 48 U. MEM. L. REV. 209, 213 (2017). Even given the lesser burden on religion imposed in *Cath. Charities Bureau, Inc.*, the restriction in that case was held invalid for failure to meet the strict scrutiny standard, so the more burdensome Johnson Amendment certainly creates an uneven treatment of religious versus non-religious organizations disallowed by the Establishment Clause.

The Johnson Amendment also fails to be neutral and generally applicable because it discriminates among religious sects. The penalty for noncompliance being loss of tax-exempt status favors (1) religious organizations with money to survive the loss of their tax-exempt

status; and (2) religious organizations whose core beliefs do not include political participation. This harsh outcome for religious organizations that want to practice their core beliefs, without similarly penalizing those that do not concern themselves with politics, amounts to a denominational preference.

B. Even if the Johnson Amendment Were Neutral and Generally Applicable, it Does Not Meet the Strict Scrutiny Standard Required for Laws that Substantially Burden Religious Practice.

While the Johnson Amendment does not meet the standard for being neutral and generally applicable, even if those standards were met, the Johnson Amendment substantially burdens religious practice, still subjecting it to strict scrutiny review. As stated above, the restriction on political campaign participation forces the Church and other religious organizations to choose between practicing their core beliefs at the risk of losing their tax-exempt status or foregoing an important aspect of their religion. Further, not all religious organizations would survive the loss of tax exemption because it would require them to pay income taxes that religious organizations have counted on not owing for many years. Forcing religious organizations to choose between paying substantial taxes potentially to the loss of their organization or to go without something as deeply important to them as a religious belief amounts to a substantial burden on religious practice.

Laws that substantially burden religious practice or create denominational preference are subject to strict scrutiny, meaning the law must serve a compelling government interest and be narrowly tailored to further that interest. Like in *Larson*, a secular government interest may be identified in the Johnson Amendment. The Johnson Amendment seeks to prevent non-profit organizations from contributing to political campaigns because (1) it keeps non-profit

organizations nonpartisan and focused on the benefit the government hopes they will provide to society; and (2) to prevent non-profit organizations from performing unregulated political lobbying. *See* Erika King, *Tax Exemptions and the Establishment Clause*, 49 SYRACUSE L. REV. 971, 981-82 (1999); Mishell, *What Is Happening With the Johnson Amend't?*, supra. Also like in *Larson*, the Johnson Amendment still fails because it is not narrowly tailored to further those identified government interests.

The Johnson Amendment is not narrowly tailored to further the first interest because the penalty for violation is loss of tax exemption, which could suppress a non-profit's ability to perform the very function of benefiting society that the government wants them to perform. Regarding the second potential government interest, the Johnson Amendment's initial purpose does not fit with that supposed compelling government interest. The Johnson Amendment, rather than seeking to avoid unregulated political lobbying, was used as a tool for the very political corruption it seeks to avoid since the provision's outset. *See* Deirdre Dessingue Halloran, Kevin M. Kearney, *Fed. Tax Code Restrictions on Church Pol. Activity*, 38 CATH. LAW. 105, 107 (1998). Documents from then-Senator Lyndon Johnson's staff revealed that he may have proposed the Johnson Amendment as a way to silence non-profit organizations that opposed him politically. *Id.*

The Johnson Amendment is also not narrowly tailored to further the second government interest. Enforcement of the Johnson Amendment has been handled sporadically as evidenced by President Trump's executive order declaring the IRS would not enforce the Johnson Amendment and the IRS's subsequent decision to not enforce it despite it being in the IRC. R. at. 14; Promoting Free Speech and Religious Liberty, 82 FED. REG. at 21675. Executive direction in whether to enforce a tax provision is subject to change because it does not have the same

consistency as might a Congressional act or a ruling by this Court regarding the Johnson Amendment's constitutionality and could change from administration to administration. *See* Mishell, *What Is Happening With the Johnson Amend't?*, supra. Sporadic enforcement of a tax exemption that prohibits participation in political campaigns creates a similar danger as potential unregulated political lobbying. The IRS, or associated executive administration, could use enforcement to silence non-profit organizations with which it disagrees while allowing others to participate freely in political campaigns. The IRS's consent decree alone is insufficient to prevent it from abusing its enforcement power to suppress select political ideologies. Enforcing the Johnson Amendment selectively shows it is not narrowly tailored to avoid unregulated political lobbying.

The Johnson Amendment is also not narrowly construed to further the interest of preventing unregulated political lobbying because the penalty of exemption revocation is harsh, whereas a less restrictive means would be more appropriate. For instance, congressmen previously introduced bills that would allow non-profit organizations more freedom to speak about political activities and only restrict the organizations from financial contribution to political campaigns. Goldfeder, supra, at 251-52. Given that less restrictive alternatives exist that would allow religious organizations to hold onto their core beliefs without losing their tax exemption, or forcing them to reclassify as 501(c)(4) organizations, the Johnson Amendment is not narrowly tailored to furthering this interest. Therefore, the Johnson Amendment does not meet the strict scrutiny requirement for a law to substantially burden religion and is unconstitutional.

The Johnson Amendment violates the Establishment Clause of the First Amendment because the requirement it creates for non-profit tax exemption is preferential to non-religious

non-profits and religious non-profit organizations whose core beliefs do not involve political campaign participation. The Johnson Amendment also fails to pass under strict scrutiny because it does not serve a compelling government interest nor is it narrowly tailored to further that interest.

CONCLUSION

Respondent respectfully requests that this Court affirm the decision of the Court of Appeals because Respondent was not barred but the AIA, has Article III standing, and the Johnson Amendment is unconstitutional.

DATED: January 18, 2026

s/_____
Team Number 28
Attorneys for Respondent

APPENDIX

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U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. Art. III, § 2

Section 2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Johnson Amendment of 1954
Effective: December 20, 2019
26 U.S.C.§ 501(c)(3)

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does 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.

The Tax Anti-Injunction Act
Effective: March 23, 2018
26 U.S.C. § 7421

a. Tax.--Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

b. Liability of transferee or fiduciary.--No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of–

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code, in respect of any such tax.