No. 26-1779

IN THE

SUPREME COURT OF THE UNITED STATES

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

v.

COVENANT TRUTH CHURCH,
Respondent.

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

BRIEF FOR RESPONDENT

TEAM NUMBER 30
Counsel for Respondent

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QUESTIONS PRESENTED

1. Does the Tax Anti-Injunction Act bar Respondent's requested relief?
2. Does Respondent satisfy Article III's standing requirements?
3. Does the Johnson Amendment violate the Establishment Clause of the First Amendment to the U.S. Constitution by preferring religious sects that do not require political involvement over those that do have such a requirement?

OPINIONS BELOW

The orders and opinions of the United States District Court for the Eastern District of Wythe are unreported and not reproduced in the record. The District Court granted Covenant Truth Church's request for summary judgment and its request for a permanent injunction against the enforcement of the Johnson Amendment. R. at 2. The District Court found that Covenant Truth Church had standing to challenge the Johnson Amendment and that the Johnson Amendment violated the Establishment Clause of the First Amendment. R. at 2.

The opinion of the United States Court of Appeals for the Fourteenth Circuit is unreported but reproduced in the record. R. at 1–11. The Court affirmed both of the District Court's holdings for summary judgment and for the permanent injunction. The Court found that Covenant Truth Church had standing both under the Tax Anti-Injunction Act, because Covenant Truth Church did not have an alternate remedy, and under Article III, because Covenant Truth Church intended to and did engage in conduct regulated by the challenged policy, and the threat of the enforcement of that policy against Covenant Truth Church was substantial. R. at 6–7. The Court also found that the Johnson Amendment violates the Establishment Clause because it allows the Internal Revenue Service to determine what topics religious leaders and organizations may discuss as part of their teachings under the threat of said religious organizations losing their 501(c)(3) tax-exempt status. R. at 8–11.

In a dissenting opinion, Judge Marshall wrote that Covenant Truth Church's claim was barred by the Tax Anti-Injunction Act because pre-enforcement challenges intended to prevent a tax assessment or collection can only survive the Tax Anti-Injunction Act if they will succeed on the merits, which he believed was not the case here. R. at 12–13. Judge Marshall additionally noted that Covenant Truth Church had access to other remedies. R. at 13. Judge Marshall further

argued that Covenant Truth Church did not meet the Article III standing requirements because of a consent decree that the IRS signed promising not to enforce the Johnson Amendment under certain circumstances that he believed applied to Covenant Truth Church. R. at 14. Last, Judge Marshall argued that the Johnson Amendment does not violate the Establishment Clause because it applies to religious and non-religious organizations equally. R. at 15–16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. III, § 2, cl. 1, in relevant part, provides:

> 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.

U.S. Const. amend. I, in relevant part, provides:

> 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.

26 U.S.C. § 7421(a), in relevant part, provides:

> 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.

26 U.S.C. § 7428, in relevant part, provides:

> (a) In a case of actual controversy involving—
>
> (1) a determination by the secretary with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),
>
> (b) A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

26 U.S.C. § 501(c)(3), in relevant part, provides:

> 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.

26 C.F.R. § 1.501(c)(3)-(1), in relevant part, provides:

> (b) Organizational Test –
>
> (1) In general. An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its articles) as defined in subparagraph (2) of this paragraph:
>
> (a) Limit the purposes of such organization to one or more exempt purposes;
>
> (c) Operational Test –
>
> (1) Primary activities. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.
>
> (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words private shareholder or individual, see paragraph (c) of § 1.501(a)-1.

I.R.C. § 7611(a), in relevant part, provides:

> (2) The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church—
>
> (A) may not be exempt, by reason of its status as a church, from tax under section 501(a),

I.R.C. § 6033(a)(3), in relevant part, provides:

> (A) Paragraph (1) shall not apply to–
>
> (i) churches, their integrated auxiliaries, and conventions or associations of churches,

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

In 1954, Congress enacted the Johnson Amendment as part of the Internal Revenue Code, prohibiting 501(c)(3) nonprofit organizations from engaging in political campaign intervention—a restriction that remains in force today. R. at 2. 501(c)(3) organizations that violate the Johnson Amendment lose access to federal tax exemptions. R. at 1. Religious organizations often classify themselves as non-profit organizations under the Internal Revenue Code and are thus subject to the Johnson Amendment. R. at 1.

One such 501(c)(3) organization, Covenant Truth Church (hereinafter "Respondent"), follows The Everlight Dominion, a small religion that requires its leaders and affiliated churches to endorse aligned candidates and urge members to donate and volunteer in political campaigns, with noncompliance punishable by banishment from one's church and the faith itself. R. at 3.

Recently, one of Respondent's pastors, Gideon Vale (hereinafter "Vale"), launched a weekly podcast to attract younger members and grow the church. R. at 3–4. This podcast has millions of downloads and is the fourth-most listened to podcast in the state. R. at 4. As part of his religious obligations, Vale endorsed Congressman Samuel Davis for a Senate seat on the podcast, encouraged listeners to vote for, donate to, and volunteer with the Davis campaign, and announced he would soon deliver sermons explaining how Davis's political positions align with The Everlight Dominion. R. at 4–5.

Soon after, the Internal Revenue Service (hereinafter "IRS") informed Respondent that it was randomly selected for an audit to ensure its compliance with the Internal Revenue Code, which includes the Johnson Amendment. R. at 5.

II. PROCEDURAL HISTORY

On May 15, 2024, two weeks after the IRS announced its intention to audit Respondent, Respondent filed suit in the United States District Court for the Eastern District of Wythe seeking a permanent injunction prohibiting enforcement of the Johnson Amendment on the grounds that it violates the Establishment Clause of the First Amendment. R. at 5. After the IRS filed its answer, Respondent moved for summary judgment, which the District Court granted, finding that Respondent had standing to challenge the Johnson Amendment and that the Johnson Amendment violated the Establishment Clause. R. at 5. Scott Bessent, acting commissioner of the IRS, and the IRS ("Petitioners") appealed to the United States Court of Appeals for the Fourteenth Circuit, which affirmed the District Court's grant of summary judgment. R. at 2. Petitioners appealed, and the United States Supreme Court granted certiorari. R. at 17.

SUMMARY OF ARGUMENT

The Fourteenth Circuit correctly held that Respondent's request for injunctive relief does not violate the Tax Anti-Injunction Act, which requires that Respondent *restrain* an *assessment* or a *collection*. Respondent does no such thing. This action was filed just after the IRS announced its intention to audit Respondent. An audit is neither an *assessment* nor a *collection*; it instead belongs to the pre-assessment *information-gathering phase*. Actions targeting this phase are permissible under the Tax Anti-Injunction Act. Even if Respondent were targeting an assessment or a collection, Respondent did not *objectively* intend to, nor actually, *restrain* either, as restraint requires not merely inhibiting or delaying the activity, but stopping it outright. Even if the injunction is upheld, the IRS can still audit, assess, and collect hypothetical taxes from Respondent; it just cannot rely on the Johnson Amendment to do so. Additionally, principles from prior precedent establish that a plaintiff may seek relief without triggering the Tax Anti-

Injunction Act, even with the subjective intent to restrain an assessment or collection, as long as the requested relief does not actually do so. Last, even if Respondent were found to be restraining an assessment or collection, as Respondent has no alternative remedies, the AIA does not apply.

The Fourteenth Circuit was also correct in holding that Respondent established Article III standing. Respondent faces a concrete, particularized, imminent, and substantial risk that its tax classification will be changed—leading to a loss of benefits gained by being a 501(c)(3) and a loss of significant donation revenue—based on regulations that require the IRS to have a reasonable belief that a church may no longer be tax-exempt prior to initiating an audit. The prior consent decree does not protect Respondent because Vale's speech falls outside of its scope, and the absence of prior enforcement is not determinative in evaluating the presence of imminent harm. Additionally, there is a causal connection between the IRS's activity and the harm that will imminently occur, as the actions of third parties in response to Respondent's loss of 501(c)(3) status are sufficiently predictable, and the harm will be immediate. Providing injunctive relief to stop the use of the Johnson Amendment in evaluating the audit would redress the harm. Finally, as the case is fit for judicial decision and because Respondent would face hardship if adjudication were deferred, the case is sufficiently ripe.

Furthermore, the Fourteenth Circuit was correct in holding that the Johnson Amendment violates the Establishment Clause of the First Amendment. The Johnson Amendment requires that religious non-profits refrain from engaging in political activities, which discriminates against religions that require political participation from their adherents. As the Court cannot label such beliefs as irreligious if they are sincerely held—and in this case they are sincerely held—the Johnson Amendment requires the Government to discriminate against religious groups based on

religious doctrine. This facial discrimination triggers strict scrutiny under the Larson test. The Johnson Amendment fails strict scrutiny because the Government does not put forward a compelling governmental interest that the ban on political participation would solve, and the restriction itself is not narrowly tailored because it bans more conduct than is necessary to solve any hypothetical compelling interest.

In the alternative, the Johnson Amendment still fails the alternative Establishment Clause tests that look to historical practices and understandings, as churches have been tax-exempt in some form since the nation's founding while actively engaging in political advocacy and candidate support, which is the very conduct the Johnson Amendment now prohibits. The Johnson Amendment thus prohibits political activity among tax-exempt churches despite these churches having participated in such activities while retaining their tax-exempt status since the founding era without any suggestion that it constituted an establishment of religion. Thus, the Johnson Amendment violates the Establishment Clause by disfavoring certain religious groups without a need or parallel stemming from the founding.

Further, invalidating the Johnson Amendment will not leave 501(c)(3) organizations virtually unrestricted because they remain subject to other restrictions on what constitutes permissible political activity. Therefore, affirming the Fourteenth Circuit's summary judgment decision would cause no harm to either the political process or the nonprofit sector.

ARGUMENT

The constitutionality of federal legislation is a question of law and is reviewed de novo. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 350 (2011). The government bears the burden of showing the constitutionality of a challenged law. U.S. v. Playboy Ent. Grp., 529 U.S. 803, 817 (2000).

I. RESPONDENT'S STANDING IS NOT IMPACTED BY THE ANTI-INJUNCTION ACT.

The Tax Anti-Injunction Act (hereinafter "AIA") establishes 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). Summarily, the AIA bars suits challenging an organization's tax status, but it does not apply when the plaintiff lacks any alternate means to contest the IRS action or when the claim has no implications for tax assessment or collection; the IRS also cannot administer the tax code in a viewpoint-discriminatory manner. Z St. v. Koskinen, 791 F.3d 24, 30 (D.C. Cir. 2015) (citing South Carolina v. Regan, 465 U.S. 367 (1984); Bob Jones Univ. v. Simon, 416 U.S. 725 (1974); Alexander v. Ams. United Inc., 416 U.S. 752 (1974); Cohen v. U.S., 650 F.3d 717 (D.C. Cir. 2011)). To survive the AIA, a party must show that it has either suffered irreparable injury, which is "the essential prerequisite for injunctive relief in any case," and that "under no circumstances could the government ultimately prevail" on the legal issue, or that the AIA does not apply at all. Bob Jones Univ., 416 U.S. at 737; Enochs v. Williams Packing & Nav. Co., 370 U.S. 1, 7 (1962). The first factor will be addressed in the section addressing Article III standing, and Respondent's case is outside the scope of the AIA for three reasons: the suit is not enjoining an *assessment* or a *collection*, even if the suit were enjoining an assessment or a collection, the requested injunction was not *objectively* intended to, nor does it actually, *restrain* an assessment or a collection, and the Respondent has no alternate remedies.

A. Respondent's Claim Does Not Implicate a Tax Assessment or Collection, Thus the AIA Does Not Apply.

The AIA only applies to Respondent when a suit seeks to restrain a tax *assessment* or *collection*. To determine the character of the challenged action, courts "look[] to federal tax law as a guide." Direct Mktg. Ass'n v. Brohl, 575 U.S. 1, 8 (2015). While Brohl analyzed the Tax

Injunction Act, as it is the state law counterpart of and was modeled on the AIA, the Court's analysis is applicable to both statutes. Id. at 8.

This Court identified three separate phases of tax administration: information gathering, assessment, and collection. Id. at 8-10. Information gathering constitutes "a phase of tax administration procedure that occurs *before* assessment . . . or collection," which is outside of the ambit of the AIA. Id. at 8 (emphasis added). The AIA would not bar, for example, "a lawsuit challenging ordinary reporting requirements, even if those requirements facilitate the collection of taxes," because they "are part of the information-gathering phase." Harper v. Rettig, 46 F.4th 1, 7 (1st Cir. 2022) (citation modified) (explaining the holding of Brohl); see Franklin v. U.S., 49 F.4th 429, 434 (5th Cir. 2022) (reiterating that Brohl "held that a challenge to [tax] reporting requirements" was valid). Assessment refers to "the official recording of a taxpayer's liability, which occurs *after* information relevant to the calculation of that liability is reported to the taxing authority" that has "long been treated" as "distinct from[] the step of reporting information pertaining to tax liability." Brohl, 575 U.S. at 9 (emphasis added); see also Hibbs v. Winn, 542 U.S. 88, 90 (2004) (holding that an assessment is not "synonymous with the entire taxation plan," but is instead "the trigger for levy and collection efforts" that operates as a "collection propelling function"). Collection is "the act of obtaining payment of taxes due" undertaken "after a formal assessment." Id. at 10.

i. Respondent Did Not Enjoin an "Assessment" or "Collection."

This action was filed after the IRS informed Respondent that it "had been selected for a random audit" and "prior to the IRS beginning its audit." R. at 5. An audit is "a formal examination and verification of an individual's or organization's records and accounts, finances, or compliance with a set of standards." Audit, Legal Information Institute,

https://www.law.cornell.edu/wex/audit. This is a mode of information gathering, which necessarily takes place prior to an assessment or a collection. Furthermore, because churches, like Respondent, are exempt from "annual informational filings," and because nothing in the record indicates that the IRS possesses any information about Respondent beyond Vale's public political comments, this audit clearly serves to gather information about Respondent to evaluate its compliance with the Internal Revenue Code. Spiritual Outreach Soc. v. C.I.R, 927 F.2d 335, 337 n. 2 (8th Cir.1991). As the AIA limits courts' jurisdiction "only in suits involving assessment and collection" and as this suit implicates only the information gathering stage, the AIA does not impede Respondent's standing. Harper, 46 F.4th at 8.

ii. Respondent Did Not Actually "Restrain" an Assessment or Collection.

Even if the audit could be characterized as part of a tax assessment or collection, the AIA still does not apply because Respondent does not *restrain* any tax from being assessed or collected. Whether an assessment or collection was restrained involves determining not "whether it merely inhibits," but "whether the relief to some degree stops" an assessment or collection. Brohl, 575 U.S. at 12. This Court found it incorrect to equate "restrain" to "limit, restrict, or hold back" because this "broad meaning" would produce an obscure boundary "that would result in both needless litigation and uncalled-for dismissal." Id. at 12, 14.

Nothing in the requested relief suggests that, if the Respondent's injunction were granted, the IRS could not continue with its audit. Nor does the injunction suggest, if the IRS were to reclassify Respondent based on an analysis deprived of the Johnson Amendment, that the IRS would not be able to assess and collect taxes appropriate for Respondent's new hypothetical classification. This injunction merely requests that the IRS be barred from evaluating Respondent under the Johnson Amendment due to its unconstitutionality.

iii. Respondent Did Not "Objectively" Try to Restrain an Assessment or Collection.

A suit's "primary purpose" is determined based on "the relief the suit requests," not the "taxpayer's subjective motive." Bob Jones Univ., 416 U.S. at 738; CIC Services, LLC, 593 U.S. at 217. Thus, Vale's concern that the IRS would discover Respondent's political involvement and revoke its 501(c)(3) designation is irrelevant because, even if Vale's subjective motive was to restrain an assessment or collection, the subjective motive of the taxpayer is not considered. R. at 5. This Court and other courts have frequently held that suits brought by plaintiffs with subjectively good intentions are barred if their requested relief objectively restrains an assessment or collection, even if the restraint is a collateral effect. See, e.g., Bob Jones Univ., 416 U.S. at 738 (1974) (finding that, despite the plaintiff claiming it sued to prevent "depriving [Bob Jones'] donors of advance assurance of deductibility," the AIA barred the suit as it restrained a collection); Ams United Inc., 416 U.S. at 760-61 (holding that if the restraint of an assessment or collection is caused by the suit, even as a "collateral effect," the suit is barred by the AIA); Gulf Coast Mar. Supply, Inc. v. U.S., 867 F.3d 123, 129 (D.C. Cir. 2017) (concluding that the AIA barred a suit that restrained a collection even when the plaintiff merely "want[ed] its terminated tobacco permit restored"). Inverting the same principle means that a plaintiff may seek relief without triggering the AIA, even despite having the subjective intent to restrain an assessment or collection, if the requested relief does not, in fact, do so.

The AIA only "kicks in when the target of a requested injunction is a tax," not when the "suit contests, and seeks relief from, a separate legal" wrong. CIC Servs., LLC v. IRS, 593 U.S. 209, 218, 223 (2021). This suit requests "a permanent injunction prohibiting enforcement of the Johnson Amendment." R. at 5. This is unlike Bob Jones Univ. and Ams. United, where in the

former, the plaintiff requested that the court enjoin the *revocation* of its 501(c)(3) status, and in the latter, the plaintiff requested injunctive relief for the *reinstatement* of its 501(c)(3) status. See 416 U.S. at 725; 416 U.S. at 752. These plaintiffs "sought to litigate their tax status" and were thus barred by the AIA. Z St., 791 F.3d at 30. Instead, Respondent's requested relief is like the relief requested in CIC Servs., where the plaintiff was not barred from seeking to enjoin the enforcement of an IRS filing procedure because the plaintiff "targeted the notice, not the taxes that backed the notice." Novartis Pharm. Corp. v. Sec. U.S. Dept. of Health and Human Services, 155 F.4th 223, 232-33 (3d Cir. 2025).

Respondent is not targeting any tax, nor does Respondent claim that whatever tax it may pay due to a hypothetical reclassification violates the Constitution. Respondent instead targets a criterion used to evaluate an audit, claiming that the criterion violates the Constitution. See id. at 233 ("Novartis claim[s] that the excise tax violates the Excessive Fines Clause – not that some other part of the statute does so. That is the inverse of CIC Services"). Nor, as discussed, would the restraining of an assessment or a collection be a collateral effect of an innocent purpose, as what is targeted is neither an assessment nor a collection, and the injunction is not a restraint. As the Respondent's injunction neither objectively intends to nor actually targets or restrains an assessment or a collection, Respondent's standing is not negated by the AIA.

B. Respondent Has No Alternative Remedy.

As Respondent argues that the AIA does not apply to this suit, the presence of an alternate remedy is irrelevant. However, if the AIA did apply, the AIA would still not bar this suit because Respondent has no alternate remedy. See Regan, 465 U.S. at 378. Where the AIA has barred an action, plaintiffs usually have several avenues of redress. Plaintiffs can "litigate the legality of the [IRS's] action by petitioning the tax court to review," bring a "refund suit" after

the taxes have been paid, or have a donor bring a refund suit to "attack the legality of the [IRS's] revocation" of the organization's 501(c)(3) status. Bob Jones Univ., 416 U.S. at 730-31. After Bob Jones Univ., Congress created an exception to the AIA by allowing an organization impacted by a 501(c)(3) revocation or denial to sue for a declaratory judgment regarding its tax-exempt status after the IRS issues a final adverse decision. See 26 U.S.C. § 7428.

None of these remedies are available to Respondent. First, "the IRS has not yet conducted its audit and [Respondent's] tax classification remains unchanged," meaning there is no "actual controversy with respect to the initial . . . or continuing qualification" to litigate, no refund for either Respondent or a donor to pursue, nor declaratory relief regarding its tax status to be had. R. at 7. 26 U.S.C. § 7428(a)(1). Further, no administrative remedies exist to be exhausted at this point. See 26 U.S.C. § 7428(b)(2). Last, Respondent need not "wait until the IRS makes a determination . . . and then pursue relief," as Respondent is not required to expose itself "to liability" before challenging "the constitutionality of a law." R. at 14. MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 129 (2007). Thus, even granting that an assessment or collection was restrained, as there is no alternative relief, the AIA does not bar this suit.

II. RESPONDENT MEETS ARTICLE III STANDING REQUIREMENTS.

To establish standing under Article III, a plaintiff must establish three elements: the plaintiff must have suffered an injury in fact, there must be a causal connection between the alleged activity and the injury that is fairly traceable to the challenged action, and it must be likely that the injury is redressable. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992).

The purpose of these requirements is to ensure that the plaintiff has a "personal stake in the outcome of the controversy." Warth v. Seldin, 422 U.S. 490, 498. As a conjectural matter, it cannot be disputed that Respondent, a 501(c)(3) non-profit that is subject to the Johnson

Amendment and has engaged in activities that are violative of it, has a personal stake in the constitutional validity of the Johnson Amendment.

A. Respondent Has Suffered an Injury in Fact as It Faces an Imminent Risk of Harm.

For a plaintiff to incur an injury in fact, there must be an "invasion of a legally protected interest" that is "actual or imminent." Lujan, 504 U.S. at 560. An imminent risk is one that is "likely to occur soon." Food and Drug Administration v. All. for Hippocratic Med., 602 U.S. 367, 381 (2024). It is important to note this key distinction between the AIA's and Article III's requirements: whereas the AIA requires an actual controversy to apply, standing can be satisfied under Article III even when the harm is not actual, so long as it is imminent. As will be shown, Respondent threads this needle, having a non-actual but imminent harm that satisfies Article III standing while avoiding the AIA.

Respondent faces an imminent and substantial risk that its tax classification will be changed. See Susan B. Anthony List v. Driehaus, 573 U.S. 149, 164 (2014) (emphasizing the importance of the threat of future enforcement being "substantial"). Pre-administrative actions, like an audit, may "give rise to harm sufficient to justify pre-enforcement review" when there is a "reasonable threat" of harm. Id.; see also Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 625–26 (holding that "[i]f a reasonable threat of prosecution creates a ripe controversy, we fail to see how the actual filing of the administrative action . . . does not"). Respondent publicly campaigned for a political candidate and was then "randomly" selected for an audit. R. at 5. If the audit is evaluated under the Johnson Amendment, it is substantially likely that the IRS will revoke Respondent's 501(c)(3) status. This revocation "threatens the flow of [monetary] contributions," Bob Jones Univ., 416 U.S. at 730. As a church, Respondent is also at substantial risk of losing benefits like "exemption from certain excise taxes." Spiritual Outreach

Soc., 927 F.2d at 337 n. 2. This substantial risk of harm is sufficiently reasonable to justify pre-enforcement review, as it would cause "serious damage" to Respondent. Bob Jones Univ., 416 U.S. at 730. Furthermore, Respondent meets the injury-in-fact requirement because the audit was likely not random, Respondent is not protected by the consent decree, and the absence of prior enforcement is not determinative on this issue.

i. It Is Unlikely That the Audit Was Random Because Regulations Require That the IRS Have Reasonable Belief That a Church May No Longer Be Tax-Exempt Prior to Initiating an Audit.

The non-randomness of the audit significantly contributes to the substantial nature of the risk of harm. "Churches may be investigated by the IRS only in accordance with strict and specific procedures." Church of Spiritual Tech. v. U.S., 26 Cl. Ct. 713, 731 n.37 (1992). Summarily, "any church tax inquiry" can only begin if the IRS "reasonably believes" that the church "may not be exempt . . . from tax." I.R.C. § 7611(a)(2), (a)(2)(A).

This reasonable belief must have grounding, but it is unlikely to have been grounded on any tax information the IRS held, considering that churches are "exempt[] from annual information filings." Spiritual Outreach Soc., 927 F.2d at 337 n. 2; I.R.C. § 6033(a)(3)(A). See also Found. of Human Understanding v. U.S., 88 Fed. Cl. 203, 211 (2009) (finding that churches receive preferential treatment "principally because of the exemption from filing annual information returns and the restriction on audits of churches" (cleaned up)). The only information in the record that could ground this reasonable belief is Vale's comments, and Vale's comments could only lead to the Respondent facing harm if they are evaluated under the Johnson Amendment. Additionally, a requirement of reasonable belief to initiate an audit precludes randomness, as the former necessitates that one believes facts "under circumstances in which a reasonable person would believe," while the latter necessitates that one be "lacking a definite

plan, purpose, or pattern." Black's Law Dictionary 1456, 184 (10th ed. 2014); Random, Merriam-Webster, https://www.merriam-webster.com/dictionary/random. Furthermore, the likelihood of a 501(c)(3) being randomly audited is just .18%. See Dave Moja, What Are My Chances of Being Audited by the IRS?, Association for Biblical Higher Education (Apr. 19, 2017), https://www.abhe.org/chances-audited-irs/. With such low odds and a reasonable belief requirement, it seems hardly random that just six months after violating the Johnson Amendment, the IRS announced it would audit Respondent.

ii. The Consent Decree Does Not Protect Respondent.

The dissent argues that Respondent would not face harm because the IRS has entered a consent decree. R. at 14. However, the consent decree does not impact the harm's imminence. First, given the aforementioned reasonable belief requirement, the IRS *itself* must reasonably believe that there is an offense, and as explained above, that offense likely can only be Vale's political activities. I.R.C. § 7611(a)(2). This logically necessitates that the IRS must reasonably believe it can enforce a punishment on Respondent, and this requires that the IRS reasonably believe that the enforcement limitations of the consent decree can be avoided.

Beyond this, the consent decree does not say that the IRS "does not intend to enforce the Johnson Amendment against houses of worship" at all, but only when they speak "through its customary channels of communication on matters of faith in connection with religious services." R. at 14. Thus, for the Johnson Amendment not to be enforced, three things must be true: the activity was undertaken on customary channels of communication, the activity discussed matters of faith, and the activity occurred on the platform in connection with religious services. R. at 14. The podcast is a customary channel of communication for Vale. R. at 4. However, simply because it is a requirement for Respondent's "religious leaders and churches to be actively

involved in political campaigns" does not mean that the matters being communicated are of faith. Vale used the podcast as a "forum to deliver political messages." R. at 4. Campaigning for a political candidate is political. Furthermore, the podcast itself is not a religious service, and the ambiguity around the meaning of "in connection with" means that Respondent "cannot be certain that there is a presumption against enforcement." R. at 7. See Found. of Human Understanding, 88 Fed. Cl. at 232 (holding that "[r]adio and internet broadcasts lack critical associational aspects of religious services"). Thus, if the audit were allowed be evaluated under the Johnson Amendment, Respondent faces an imminent risk of harm.

iii. The Absence of Prior Enforcement Is Not Determinative.

In evaluating whether Respondent has an "actual or well-founded fear" of enforcement, the "Supreme Court has [not] required much," instead presuming "that the government will enforce the law." Hedges v. Obama, 724 F.3d 170, 200 (2d Cir. 2013) (citation modified). This Court has never suggested that evidence of prior enforcement is "*necessary* to make out an injury in fact." Vitagliano v. Cnty. of Westchester, 71 F.4th 130, 139 (2d Cir. 2023) (emphasis in original); see also Speech First, Inc. v. Fenves, 979 F.3d 319, 336 (5th Cir. 2020) (holding that "a lack of past enforcement does not alone doom a claim").

B. Respondent's Imminent Risk of Harm Is Concrete and Particularized.

An injury in fact must also be "concrete and particularized." Lujan, 504 U.S. at 560. For a harm to be particularized, it must "affect the plaintiff in a personal and individual way." Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (cleaned up). The harms noted above—a loss of donation revenue and the benefits associated with being a 501(c)(3) organization—satisfy this requirement because it is Respondent that will be harmed.

To be concrete, a harm must "actually exist." Id. at 340. This does not preclude "intangible harms" so long as they have traditionally provided "a basis for a lawsuit." Id. at 341. First, the imminent harm actually exists—Respondent will actually lose donation revenue and 501(c)(3) benefits. Second, the monetary nature of this harm makes it tangible. Even if it did not, many pre-enforcement challenges to taxes have been previously brought that satisfied Article III standing requirements, showing this kind of harm is a traditional basis for a lawsuit.

C. There Is a Causal Connection Between the IRS's Activity and the Harm, and the Harm is Redressable.

Causation and redressability "are often flip sides of the same coin." All. for Hippocratic Med., 602 U.S. at 381 (citation modified). Thus, "[i]f a defendant's action causes an injury, enjoining the action . . . will typically redress that injury." Id. at 381.

To show causation, a plaintiff must show "a predictable chain of events leading from the government action to the asserted" injury in fact, with the causal chain not being "too speculative or too attenuated." Id. at 386. Here, the links in the causal chain between the IRS's application of the Johnson Amendment to its audit of Respondent and the imminent harm Respondent would face due to this application are not speculative nor attenuated. Speculation is not implicated, as in this case, it is "sufficiently predictable how third parties would react to government action or cause downstream injury to plaintiffs." Id. If there is any third party in this scenario, it is the class of donors, and it is logical that an organization losing its 501(c)(3) designation reliably results in lower donation revenue. Cf., Tax law change caused U.S. charitable giving to drop by about $20 billion in law's first year, new study shows, Indiana University (July 29, 2024) (finding that a government policy that "reduced the tax incentive for people to give to charity" led to a "$16 billion permanent annual drop" in donations). The latter refers to situations where "the government action is so far removed from its distant . . . ripple effects." All. for Hippocratic

Med., 602 U.S. at 386. While this is a pre-enforcement action, should the injunction be denied, it is perfectly clear that the harm to Respondent would be immediate regarding both the immediate reduction of donation revenue and the loss of 501(c)(3) benefits.

It is also likely—if not certain—that upholding the injunction will redress Respondent's imminent injury. By enforcing the injunction, Respondent would not have its audit evaluated under the Johnson Amendment, and nothing in the record suggests that Respondent has violated any other Internal Revenue Code provision that would strip it of its 501(c)(3) status. As a final note, as mentioned above, as redressability is merely the flip-side of causation, as causation has been shown, it can reasonably be inferred that redressability is also shown.

D. This Case Is Ripe for Review.

The ripeness doctrine exists to prevent courts from "entangling themselves in abstract disagreements over administrative policies." Abbott Laboratories v. Gardner, 387 U.S. 136, 148 (1967). A case is sufficiently ripe when the issues are "fit for judicial decision," and when the parties would face hardship if the court withheld a decision. Id.

This is not a case of abstract administrative disagreement because Respondent asks a "purely legal" question: whether the Johnson Amendment is constitutional. Id. at 149. Additionally, "further factual development" would not "significantly advance" this Court's ability to "deal with the legal issues presented." Natl. Park Hosp. Ass'n v. Dept. of Int., 538 U.S. 803, 812 (2003) (citation modified). In fact, the factual circumstances (that do not implicate standing) here are irrelevant, as Respondent facially challenges the Johnson Amendment.

To show a facing of hardship, a plaintiff must show that a court deferring a case would create "adverse effects of a strictly legal kind." Id. at 809 (citing Ohio Forestry Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 726 (1998)). Respondent faces adverse effects of this kind, likely

losing its legal 501(c)(3) status and its aforementioned associated legal benefits. Respondent also faces "significant practical harm." Sierra Club, 523 U.S. at 726. Should the IRS evaluate its audit of Respondent under the Johnson Amendment because this Court delayed making a decision until after Respondent's tax classification was changed, the IRS would be "withhold[ing] [] or modify[ing] a[] formal legal license, power, or authority" and would be abolishing "legal rights" as well as creating legal "obligations" on behalf of Respondent and Respondent's donors. Id. at 733. The harms of this would "be felt immediately" and create "irremediable adverse consequences" that prevent Respondent from waiting for "a later time when harm is more imminent and certain" because "postrevocation avenues of review take substantial time, during which the organization is certain to lose contributions from those donors whose gifts are contingent on entitlement to charitable deductions." Id. at 727; Toilet Goods Ass'n, Inc. v. Gardner, 387 U.S. 158, 164 (1967); Bob Jones Univ., 416 U.S. at 731. Litigation is a slow process, and Respondent may no longer be able to afford a case beginning after the IRS makes its determination on unconstitutional grounds. The Johnson Amendment also affects Respondent's "primary conduct," inasmuch as its religious obligations to participate in political campaigning are impeded. Natl. Park Hosp. Ass'n, 538 U.S. at 810.

Furthermore, Respondent can bring a ripe, pre-enforcement challenge to the Johnson Amendment by showing "(1) that they intend to engage in a course of conduct arguably affected with a constitutional interest; (2) that their conduct is arguably regulated by the challenged policy; and (3) that the threat of future enforcement is substantial." R. at 8. Burnett Specialists v. Cowen, 140 F.4th 686, 694–95 (5th Cir. 2025) (cleaned up). All of these apply to Respondent. As it is a religious requirement for Respondent's religious leaders and churches to participate in political campaigns, it is intended by Respondent and its adherents that these political activities

that are violative of the Johnson Amendment will continue. Second, the conduct is explicitly regulated by the Johnson Amendment. Last, the threat of future enforcement is substantial given the reasonable belief requirements imposed on the IRS by the aforementioned regulations.

III. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE BY SHOWING PREFERENCE FOR SOME RELIGIOUS SECTS AND VIOLATING HISTORICAL UNDERSTANDINGS OF VALID RELIGIOUS CONDUCT.

The Johnson Amendment conditions the tax-exempt status of 501(c)(3) organizations on their lack of engagement in political activities. Branch Ministries v. Rossotti, 211 F.3d 137, 139 (D.C. Cir. 2000), see 26 U.S.C. § 501(c)(3) (establishing that 501(c)(3) organizations are forbidden from participating in "any political campaign on behalf of (or in opposition to) any candidate for public office"). A church can organize as a 501(c)(3) to get tax-exempt status so long as it is "organized and operated for religious . . . purposes." Id.; see Walz v. Tax Comm'n of City of New York, 397 U.S. 664, 676 (1970) ("For so long as federal income taxes have had any potential impact on churches—over 75 years—religious organizations have been expressly exempt from the tax.").

If a religious organization gets involved with a political campaign, the IRS can revoke its 501(c)(3) designation and the tax benefits that flow from it. § 501(c)(3). However, if a tenet of the religion requires the organization to engage in political activities, revoking its 501(c)(3) status for doing so should trigger constitutional review under the Establishment Clause. The Establishment Clause prevents the Government from "prefer[ing] one religion over another." Everson v. Board of Education, 330 U.S. 1, 15 (1947). This Court has established two tests to determine whether a statute violates the Establishment Clause, depending on the type of violation alleged. See Hernandez v. C.I.R., 490 U.S. 680, 695 (1989) (applying two tests to the Establishment Clause analysis). The Larson test applies strict scrutiny to a statute if the

Government "clearly grants denominational preferences of the sort consistently and firmly deprecated in our precedents." Larson v. Valente, 456 U.S. 228, 246–47 (1982). If that test does not apply, then the law is instead analyzed by reference to "historical practices and understandings" to distinguish between "the permissible and the impermissible." Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 535–36 (2022) (overruling the Lemon test and establishing in its place the "historical practices and understandings" test); see Hernandez, 490 U.S. at 695 (applying the Lemon v. Kurtzman test, 403 U.S. 602 (1971), after the Larson strict scrutiny test). Under both tests, the Johnson Amendment violates the Establishment Clause.

A. The Johnson Amendment Fails to Satisfy Strict Scrutiny and Is Unconstitutional.

The Establishment Clause requires that the "government be neutral when it comes to competition between the sects." Zorach v Clauson, 343 U.S. 306, 314 (1968). When this "clearest command of the Establishment Clause" is violated, the statute must be "justified by a compelling governmental interest" and be "closely fitted to further that interest" to pass constitutional muster under strict scrutiny. Larson, 456 U.S. at 244, 246–47.

i. Strict Scrutiny Applies to the Johnson Amendment Because It Clearly Grants Denominational Preference.

A law clearly grants denominational preference when "such laws establish a preference for certain religions based on the content of their religious doctrine, namely, how they worship, hold services, or initiate members and whether they engage in those practices at all." Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n, 605 U.S. 238, 248–49 (2025). Strict scrutiny is triggered only if the statute facially discriminates against such practices. See Gillette v. U.S., 401 U.S. 437, 450 (1971) (rejecting the application of strict scrutiny to a law allowing conscientious objection to war, which only requires a reason rooted in any religious belief). For example, a law that grants exemptions only to organizations that "perform baptisms,

engage in monotheistic worship, or hold services on Sunday" engages in obvious line-drawing based solely on religious dogma, as those criteria grant benefits or impose hardships on different churches depending on their specific beliefs, and therefore trigger strict scrutiny. Id. at 248. However, statutory criteria need not implicate widely recognized religious dogma to trigger strict scrutiny under Larson, as this Court has applied strict scrutiny to obscure and ancillary practices of different religions. See Larson, 456 U.S. at 231–32 (applying strict scrutiny to a law that grants reporting and registration exemptions to religious organizations that receive at least 50% of their contributions from members of the organization); Catholic Charities, 605 U.S. at 249–50 (applying strict scrutiny to a law granting tax-exemptions only to charities that attempt to proselytize or limit their charitable services to members of the faith).

The Johnson Amendment facially discriminates based on religious belief by treating sects that do not require their members to be involved in politics more favorably than sects that do have such a requirement, like the Everlight Dominion. See Larson, 456 U.S. at 231–32 (applying strict scrutiny to a law treating religions differently based on how they source their money). Just as the proselytization rule in Catholic Charities, which required religious bodies to prosletyze while engaging in charitable activity to receive tax-exempt status, discriminated against the Catholic faith, which prohibits proselytization when giving charity, the Johnson Amendment makes churches that follow The Everlight Dominion ineligible for tax-exempt status because the sect requires its members to engage in political campaigning by encouraging members to vote for specific candidates. R. at 3. See Catholic Charities, 605 U.S. at 249–50. In Catholic Charities, this Court recognized that the key to finding the rule discriminatory was that "Petitioners' Catholic faith . . . bar[red] them from satisfying th[e rule's] criteria." Id. at 249. Similarly, it is the tenets of The Everlight Dominion that bar Respondent from satisfying the 501(c)(3) criteria,

and as such, the Johnson Amendment "establishes a preference for certain religions based on the content of their religious doctrine." R. at 3. Id. at 248. This is clearly distinguishable from the valid criteria in Gillette, as the law in that case granted a benefit regardless of the applicant's religious sect, while the Johnson Amendment denies a tax benefit on the grounds of The Everlight Dominion's religious doctrine that requires its adherents to be politically involved. R. at 3. See Gillette, 401 U.S. at 450 (holding that a law requiring some objection rooted in faith was valid as no specific sect was required).

Strict scrutiny does not apply to laws that are merely "'secular criteria' that 'happen to have a disparate impact upon different religious organizations.'" Catholic Charities, 605 U.S. at 250 (quoting Larson, 456 U.S. at 246 n.23). The dissent argues that the Johnson Amendment imposes only secular criteria based on Branch Ministries v. Rossotti, which held that bans on participation in electoral politics for 501(c)(3) organizations are viewpoint neutral. 211 F.3d 137, 143–44 (D.C. Cir. 2000). However, the dissent makes two errors in applying Branch Ministries: failing to recognize churches' requirement of political participation as a religious one, and applying reasoning meant for the Free Exercise Clause in an Establishment Clause case.

The first error stems from the fact that the church in Branch Ministries did "not maintain that a withdrawal from electoral politics would violate its beliefs." See id. at 142 (holding that the sole effect of the criteria being a loss of money to the church is "not a constitutionally significant" burden on the church). This means that the 501(c)(3) criteria analyzed in Branch Ministries the 501(c)(3) criteria were analyzed only as a financial restriction on the church, not as a limit on its religious beliefs. See id. at 142 (holding that the sole effect of the criteria being a loss of money to the church is "not a constitutionally significant" burden on the church). As such, the criteria were considered secular with only a disparate impact on the church in question,

which is not enough to trigger strict scrutiny. See id. Thus, Branch Ministries does not hold that the 501(c)(3) criteria are always neutral and secular. Instead, its holding applies only to cases where the church does not maintain that following the criteria would violate its beliefs. See Gordon College v. U.S. Small Bus. Administration, No. CV 23-614 (BAH), 2024 WL 3471261, at *6 (D.D.C. July 18, 2024) (holding that Branch Ministries does apply, as the regulation capping employees of a 501(c)(3) was not tied to any religious belief).

When a church claims that certain criteria interfere with its religious belief, the only way the Government can treat the belief as illegitimate is if the belief is not sincerely held. See U.S. v. Ballard, 322 U.S. 78, 86-87 (1944) ("Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean they can be made suspect before the law."); U.S. v. Seeger, 380 U.S. 163, 184 (1965) (holding that inquiries into the truth of religious beliefs are "foreclosed to the government."). The Government cannot reject claims of religiosity on the grounds that such beliefs are inherently irreligious. Hernandez, 490 U.S. at 693. Thus, when a religious group claims a criterion for a universal benefit interferes with a religious belief, the Government cannot question the validity of the belief, and Branch Ministries does not apply. See Branch Ministries, 211 F.3d at143–44; Ballard, 322 U.S. at 86–87.

Here, Respondent's mandate to engage in political activity is a sincerely held religious belief, and as such, Branch Ministries does not apply. R. at 3. See Branch Ministries, 211 F.3d at 143–44; Ballard, 322 U.S. at 86–87. The tenet is sincerely held, as the church will banish those who fail to adhere to the requirement. R. at 3. See Ballard, 322 U.S. at 86–87 (holding that the court must take as true the defendant's claim that they had the supernatural power to heal through their faith and that good faith was the only question for the jury). As such, Respondent maintains

that withdrawal from electoral politics would "violate its beliefs," indicating that this Johnson Amendment criterion is not secular. See Branch Ministries, 211 F.3d at 142.

The second mistake the dissent makes regarding Branch Ministries is that it transposes Free Exercise Clause doctrine to an Establishment Clause question when the dissent argued that a church could be a 501(c)(4) organization if it wishes to engage in political activities. See id. (analyzing the case through a First Amendment and RFRA lens). Such an argument works for Free Exercise violations, as the burden in going from a 501(c)(3) to a 501(c)(4) is losing tax benefits, and such a loss does not burden the free exercise of religious beliefs "in a constitutionally significant way." Id. at 142. However, such harm does not translate to the Establishment Clause analysis, as the concern here is not whether belief is burdened but whether other churches have access to a benefit that this church does not. See Zorach, 343 U.S. at 314 (holding the government "must be neutral" in competition between sects). As such, if most churches were 501(c)(3)s but a few churches were designated as 501(c)(4)s, which benefit from fewer tax benefits, while there would likely be no Free Exercise violation, as the 501(c)(4) churches could still reasonably practice their faith, there would be a likely Establishment Clause violation. See id. (holding that government interference in competition between sects is impermissible under the Establishment Clause). The Free Exercise Clause embraces "freedom of conscience and worship," whereas the Establishment Clause is a "prohibition on forms of state intervention in religious affairs." American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Bd. of Educ., 84 F.3d 1471, 1478 (1996). As such, the analysis of one should not be substituted for the other.

ii. The Larson Strict Scrutiny Analysis Should Apply Instead of the Historical Practices and Understandings Test.

The general historical practices and understandings test only applies to laws "affording a uniform benefit to all religions." See Larson, 456 U.S. at 252 (holding that the tests outside of Larson are designed to deal with uniform benefit laws). The analytical key for deciding if a law should warrant the application of the rarer Larson test is whether the governmental practice is "critical—rather than approving—of a religion." Allison Hugi, A Borderline Case: The Establishment Clause Implications of Religious Questioning by Government Officials, 85 U. Chi. L. Rev. 193 (2018); see also Town of Greece, N.Y. v. Galloway, 572 U.S. 565, 571 (2014) (applying the historical test to a law allowing prayer from any denomination at a city hall meeting); Torcaso v. Watkins, 367 U.S. 488, 494 (1961) (analyzing the historical establishment of religion for a law requiring an oath to God to hold public office); McGowan v State of Md., 366 U.S. 420, 436 (1961) (applying the historical test to a law granted to universal day of rest on Sundays which lines up which Christian theology). However, at the time Larson was decided, the historical test did not exist yet, and the only other test outside of Larson described by this Court was the Lemon three-pronged analysis. See id. ("The Lemon v. Kurtzman 'tests' are intended to apply to laws affording a uniform benefit to all religions . . . ."). This Court intended the uniform benefit language to apply to the historical test, as when the historical test was explicitly instituted in Kennedy, this Court said it was only "[i]n place of Lemon and the endorsement test" and made no mention of replacing the Larson test. See Kennedy, 597 U.S. at 535–36; see also Catholic Charities, 605 U.S. at 248 (holding in 2025 that Larson strict scrutiny applies to differential treatment across religions). As such, the historical practices test only fills in the space of uniform benefits legislation left by the abrogation of Lemon and leaves the Larson test in place to operate for laws discriminating against religion. See Catholic Charities, 605 U.S. at 248.

The Johnson Amendment should trigger strict scrutiny under Larson and not the historical test, as it is critical of the tenets of Respondent. See Larson, 456 U.S. at 252. The Johnson Amendment does not provide a universal benefit; instead, it sets a criterion for tax-exempt status that excludes religions requiring political participation by their affiliated churches and adherents. This is like the rule in Catholic Charities that prevented religions that prohibit proselytization when providing charity from receiving tax benefits. See 605 U.S. at 248. This discrimination is distinguishable from the approving attitude towards religion stemming from governmental endorsement of prayer at town hall meetings in Town of Greece, 572 U.S. at 571, the favorable treatment of religion with a "God" in requiring an oath to God for political service in Torcaso, 367 U.S. at 494, or the granting of a day of rest which aligns only with Christian faiths in McGowan, 366 U.S. at 436. Each of those cases dealt with laws that explicitly favored specific faiths, whereas the Johnson Amendment sets a criterion for a benefit that a specific religion cannot meet, triggering Larson. See Catholic Charities, 605 U.S. at 248 (applying Larson where the law sets criteria for an exemption that the Catholic Church specifically cannot meet).

iii. The Johnson Amendment Fails Strict Scrutiny for Lacking a Compelling Governmental Interest and Lacking Narrow Tailoring Due to Overbreadth.

When strict scrutiny is triggered, the law in question must have a "compelling governmental interest" and a means of regulation that is "closely fitted to further that interest." Larson, 456 U.S. at 247. For the Government to argue an interest is sufficiently compelling, "the state must specifically identify an actual problem in need of solving." Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 799 (2011) (holding a law restricting minors' access to violent video games does not have a compelling state interest because there is no link between video games and rising violence). Beyond just identifying the problem, the Government must provide evidence of the existence of said problem. Watchtower Bible and Tract Socy. of New York, Inc.

v. Village of Stratton, 536 U.S. 150. 169 (2002) (finding that the Government's interest in crime prevention lacked evidence of any special crime problem that the regulation could solve). Not only must the government interest be compelling, but the means chosen to advance it must be neither overinclusive nor underinclusive in addressing the problem. See Brown, 564 U.S. at 802 (finding law banning violent video games for minors is underinclusive, as other types of media depict the same violence that video games do, and overinclusive, as it claims to aid parents who may not care that their child plays these games).

The Johnson Amendment fails strict scrutiny for failing to further a compelling governmental interest. See Larson, 456 U.S. at 247. While today it is claimed that the Johnson Amendment is designed to prevent public subsidization of political campaigning, no such justification was articulated when it was passed. Samuel D. Brunson, A New Johnson Amendment: Subsidy, Core Political Speech, and Tax-Exempt Organizations, 43 Yale L. & Pol'y R. 354, 364 (2012). In fact, it is widely understood that Senator Johnson introduced the law to harm tax-exempt organizations that opposed his candidacy. Id. Regardless, the Government has not identified any actual problem requiring a solution, as it offers no evidence that individuals were laundering money through tax-exempt organizations to fund political spending or that major donors were forcing charities to endorse favored candidates. See id. at 412; Patrick L. O'Daniel, More Honored in the Breach: A Historical Perspective of the Permeable Irs Prohibition on Campaigning by Churches, 42 B.C. L. Rev. 733, 769 (2001) ("Indeed, there is no indication of any concern expressed regarding such politicking" at the time of passage.); Watchtower Bible, 536 U.S. at 169 (requiring proof of the problem in need of fixing). In fact, this Court in Larson rejected the concern that big donors to religious organizations can control the organization. 456 U.S. at 249. While campaign finance rules have changed since the passage of the Johnson

Amendment due to Citizens United v. Fed. Election Commn., there is still no compelling governmental interest in barring 501(c)(3) organizations from making independent expenditures. These organizations are already subject to strict limits on direct political spending, comparable to the caps Citizens United upheld on direct candidate expenditures by political action committees. 558 U.S. 310, 345 (2010) (retaining limits on direct contributions to candidates); See Brunson, New Johnson Amendment, supra, at 364 (illustrating the three additional restrictions on political expenditures by non-profits separate from the Johnson Amendment). As the Johnson Amendment does not advance the Government's interest in the problem of tax-exempt organizations' political participation, there is no compelling governmental interest that satisfies strict scrutiny.

Even if there was a satisfactory compelling governmental interest, the means of the Johnson Amendment are overbroad because they prohibit more conduct than necessary to prevent public subsidization of political campaigns, indicating a lack of narrow tailoring. See id. at 249. The Johnson Amendment can go as far as banning simple statements in support of political campaigns that require no money from donors to be made. Internal Revenue Service, Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, IRS.gov (Aug. 20, 2025), https://www.irs.gov/charities-non-profits/charitable-organizations/restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations. If the worry was really subsidization of political campaigning, churches like Respondent, which endorse candidates and encourage citizens to vote, would pose no risk to that interest, as these statements are monetarily costless and do not result in tax-exempt dollars being funneled to political campaigns. R. at 3. See Brown, 564 U.S. at 802. Like the law in Brown, which claimed to help parents who very likely did not want help protecting their children from video games, the Johnson Amendment is clearly overbroad, as it claims to address a monetary

concern by banning monetarily costless statements. See id. As such, the Johnson Amendment fails strict scrutiny on tailoring grounds as well. See Larson, 456 U.S. at 247.

B. The Johnson Amendment Fails to Satisfy the Historical Practices and Understandings Test and Is Thus Unconstitutional.

When analyzing an Establishment Clause claim outside the scope of the Larson test, this Court requires comparison to "historical practices and understandings" to draw the line between "permissible and impermissible." Kennedy, 597 U.S. at 535–36. Specifically, this Court looks to whether such history "reflects the understanding of the Founding Fathers." See Town of Greece, 572 U.S. at 576–77 (finding that since the founding generation allowed prayer in governmental spaces after the passage of the First Amendment, such prayer does not violate the Establishment Clause). Such history is the metric to ensure the interpretation of the Establishment Clause remains operable to "guarantee the free competition between religions." See Larson, 456 U.S. at 245. Any interference with such competition by the Government conveys to other faiths that "they are outsiders, not full members of the political community." Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 309 (2000). In protecting the unity of the polity, Madison's vision of Establishment Clause doctrine is maintained by ensuring "freedom for all religion[s]" to operate as their adherents see fit. See Larson, 456 U.S. at 245.

The Johnson Amendment's restriction on political involvement for tax-exempt organizations also has no grounding in history. Tax exemptions for churches have existed from the early days of the founding era, and this Court has recognized that the historical support of the practice is "overwhelming." See Walz, 397 U.S. at 681 (Brennan, J., concurring). Justice Brennan noted that the lack of concern about tax-exempt organizations abusing their status in the period following ratification of the Constitution could not stem from the failure to foresee their existence because they were "widespread during colonial days." Id. at 682.

Churches' involvement with politics also dates to the founding era. For example, during the War for Independence against England, Congregationalist ministers "aggressively" backed the war through sermons and other means. Michael E. Smith, Religious Activism: The Historical Record, 27 Wm. & Mary L. Rev. 1087, 1088 (1986). Religious groups were also highly influential during the push for prohibition in the early 1900s, with churches even setting up offices in Washington, D.C., to lobby for the cause. Id. at 1089. Not only have churches been involved with government since the founding of the United States, but churches have also long been deeply involved with political campaigning. Id. at 1092 (chronicling explicit church involvement in the Presidential elections of Thomas Jefferson, Andrew Jackson, Grover Cleveland, and John F. Kennedy). Campaigning against Jefferson, Reverend Linn publicly wrote that electing Jefferson would "destroy religion, introduce immorality, and loosen all the bonds of society." Id. Many religions have been involved in politics since the founding, as many view such political engagement as a religious obligation. Frederick Douglass expected religion to be involved in the political sphere when he wrote, "[b]etween the Christianity of this land and the Christianity of Christ, I recognize the widest possible difference." People and Ideas: Frederick Douglass, Public Broadcasting Service, https://www.pbs.org/wgbh/pages/frontline/godinamerica/people/frederick-douglass.html (last visited Jan. 6, 2026). George Washington, in his farewell address, discussed the need for religion in politics, saying, "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports." George Washington, Farewell Address to the People of the United States (Sep. 19, 1796).

Accordingly, when Congress expressly extended tax-exempt status to churches in the early twentieth century against a backdrop of substantial ecclesiastical engagement in politics at

the time, partisan campaigning was not an unforeseen nor a troubling development, but an anticipated feature of religious life. Revenue Act of 1913, ch. 16 § 2(G)(a) (1913) (current version at 26 U.S.C § 501). When the Johnson Amendment was passed in 1954, tax-exempt groups, including churches, had been involved with politics for over a century in the United States, while remaining tax-exempt in one way or another the entire time. See Brunson, New Johnson Amendment, supra, at 365. Thus, adding a tax-exemption criterion based on religious doctrine, after more than a century of granting the exemption to all churches regardless of doctrine, clearly violates the government's duty of neutrality. See Kennedy, 597 U.S. at 535–36.

While the dissent argues that the "regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions" does not violate the Establishment Clause, McGowan, 366 U.S. at 422, this analysis was abandoned after the rejection of the Lemon test. See Hernandez, 490 U.S. at 696 (applying the harmonizing analysis from McGowan in the primary effects test of Lemon); Hunter v. U.S. Dept. of Ed., 115 F.4th 955, 963 (9th Cir. 2024) (overruling an opinion that relied upon McGowan as part of the Lemon test). Even if the McGowan line of reasoning applied today, it would not save the Johnson Amendment. The Johnson Amendment's criteria discriminate against religions whose doctrines require political participation, whereas McGowan traditionally addresses only laws that favor religions whose doctrines align with the restriction. See 366 U.S. at 431 (upholding Sunday Closing laws as the laws merely coincide with Christian Sabbath days); Doe v. Parson, 960 F.3d 1115, 1118 (8th Cir. 2020) (applying McGowan to a law setting the time of conception to when life begins because it coincides with Catholic dogma); Harris v. McRae, 448 U.S. 297, 319–20 (1980) (upholding the Hyde Amendment, which prohibits federal funds to reimburse the cost of abortions, even though it mirrors Christian doctrine). As such, McGowan does not alter the result

of the historical test, with it still striking down the Johnson Amendment. See Kennedy, 597 U.S. at 535–36.

C. Invalidating the Johnson Amendment Will Not Create an Influx of Tax-Exempt Money Being Laundered into Political Campaigns.

If this Court were to strike down the Johnson Amendment on Establishment Clause grounds, there is no reason to believe money would be laundered through 501(c)(3) organizations to partisan politics to the point that the Government would be subsidizing political campaigns. See Brunson, New Johnson Amendment, supra, at 366. This subsidization policy would not be threatened even without the Johnson Amendment, as "[t]he Johnson Amendment comes on top of organizational, operational, and noninurement requirements for tax-exemption." Id. at 363. To satisfy the organizational requirement, an organization must be organized and operated exclusively for exempt purposes, which do not include attempting to influence legislation or engaging in other political activities. 26 C.F.R. § 1.501(c)(3)-1(b)(1)(i)(A); see Brunson, New Johnson Amendment, supra, at 368–69. To satisfy the operational test, an organization may dedicate only an "insubstantial part" of its activities to the promotion of non-exempt goals. 26 C.F.R. § 1.501(c)(3)-1(c)(1); see Brunson, New Johnson Amendment, supra, at 368–69 (arguing that courts usually define insubstantial as no more than fifteen to twenty percent of activity). To satisfy the noninurement requirement, an organization cannot use its net earnings for the benefit of private shareholders or individuals. 26 C.F.R. § 1.501(c)(3)-1(c)(2). Thus, even if there were no Johnson Amendment, any money spent on politics would have to constitute an insubstantial amount of an organization's expenditures. Further, any amount an organization does spend is subject to an excise tax that could reach as high as 100% of the expenditure itself, greatly discouraging tax-exempt organizations from laundering tax-exempt money into politics. See Brunson, New Johnson Amendment, supra, at 370. Thus, there is no risk that the floodgates

will be flung open to tax-exempt dollars flowing into politics, as these requirements and excise taxes already apply to 501(c)(3) organizations outside of the Johnson Amendment.

CONCLUSION

For the foregoing reasons, the Court should affirm the Fourteenth Circuit's decision to grant summary judgment for Respondent on its constitutional claim.

As Respondent has not enjoined nor restrained an assessment or a collection, and as Respondent has no other alternate remedies, this Court should find that AIA does not bar Respondent's requested relief. Furthermore, as Respondent has shown that there is a substantial risk of it facing imminent, concrete, and particularized harm that is ripe to be challenged, is remediable, and is directly caused by the IRS's activity, this Court should find that Respondent satisfies all Article III standing requirements.

Additionally, this Court should find that the Johnson Amendment violates the Establishment Clause of the Constitution because it prefers religious sects that do not require their churches and adherents to be politically active under both Larson and the historical practices test. The requested outcome would ensure the Government does not involve itself in the competition between religions while also not affecting the flow of money through religious sects for politics.