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.,

Petitioner,

v.

COVENANT TRUTH CHURCH,

Respondent.

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

BRIEF OF RESPONDENT COVENANT TRUTH CHURCH

Team 32

Counsel for Respondent

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QUESTIONS PRESENTED

I. Does Covenant Truth Church have standing under the Tax Anti-Injunction Act ("AIA") and Article III to challenge the Johnson Amendment when it has suffered concrete injury, is suing on grounds other than challenging taxation, and qualifies for an AIA exception?

II. Does the Johnson Amendment violate the Establishment Clause of the First Amendment when it denominationally discriminates, conditions public benefits on religious conformity, and fails both modern and traditional Establishment Clause tests?

LIST OF PARTIES

The Petitioners are Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, ET AL. ("IRS"). The Respondent is Covenant Truth Church ("CTC").

OPINIONS BELOW

The opinion of the Fourteenth Circuit Court of Appeals is reported at 345 F.4th 1 (14th Cir. 2025) and set forth on pages one to sixteen of the record. The opinion of the United States District Court for the District of Wythe is unreported.

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Wythe had original jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution of the United States, alleging the Johnson Amendment violates the First Amendment. The United States Court of Appeals for the Fourteenth Circuit exercised jurisdiction under 28 U.S.C. § 1291, as the District Court's order granting summary judgment was a final decision. Following the Fourteenth Circuit's judgment in favor of Plaintiff-Appellee, Defendant-Appellants timely filed a petition for a writ of certiorari, which this Court granted. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. III, § 2. states, in relevant part:

> "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 . . ."

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

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

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

c. List of exempt organizations. The following organizations are referred to in subsection (a):
   3. Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious […] purposes […] 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 U.S.C. § 7421 states, in relevant part:

a. Except as provided [elsewhere] […] 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 states, in relevant part:

a. Creation of remedy. In a case of actual controversy involving—
    1. a determination by the Secretary—
        A. 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. Limitations
    2. Exhaustion of administrative remedies. A declaratory judgment or decree under this section shall not be issued in any proceeding unless the [relevant court] determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

STATEMENT OF THE CASE

Plaintiff-Appellee Covenant Truth Church ("CTC") responds to this appeal by Defendants-Appellants Scott Bessent and The Internal Revenue Service ("IRS"). The IRS seeks to overturn the Fourteenth Circuit Court of Appeals decision that CTC has standing to challenge the Johnson Amendment and that the Johnson Amendment is unconstitutional. R-1, 2.

CTC is a church within the Everlight Dominion religion, which has maintained a dedicated following for centuries. R-3. The Everlight Dominion affirmatively requires churches and leaders to participate in politics by endorsing candidates, encouraging donations, and organizing volunteer efforts; any church or leader who fails to do so is banished. R-3. The religion has exploded in popularity due to Pastor Vale of CTC, who joined as head pastor in 2018 and led a campaign to bring the church into the digital age. R-3, 4. In service of the Everlight Dominion's religious dogma, Pastor Vale encouraged worship with live streams, podcasts, and weekly services and, at times, support political campaigns aligned with the church's values. R-4. This included supporting

Congressman Samuel Davis in a special election that decided the balance of the Wythe Senate in 2024. Across mediums, Pastor Vale explained why Davis was in alignment with the church and encouraged followers to vote for him, volunteer with him, and donate to his campaign. R-4, 5.

A few months after the special election was triggered, the IRS announced its intention to audit CTC's status as a Section 501(c)(3) organization. R-5. Though the IRS asserts this audit was random, it alleges no procedural facts to support this. *Id*. Pastor Vale and the CTC have reason to believe the IRS wishes to enforce the Johnson Amendment, a provision of 26 U.S.C. § 501(c)(3). This provision was introduced by then-Senator Lyndon B. Johnson to require non-profit organizations to "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." R-1, 5; 26 U.S.C. § 501(c)(3). This provision effectively compels churches and leaders in the Everlight Dominion to violate the tenets of their faith to maintain their status as a tax-exempt church under Section 501(c)(3). Since its introduction in 1954, and especially in the past 15 years, this provision has faced mounting controversy and endless (albeit unsuccessful) challenges by a variety of religious institutions – as well as a diversity of politicians and special interest groups. R-2. Because the audit was successfully enjoined, CTC's status remains for the moment. R-5.

On May 15, 2024, CTC filed a suit seeking injunctive relief to preclude the IRS from enforcing the Johnson Amendment, arguing the provision unconstitutionally constrains and coerces religious institutions. R-5. The IRS contends CTC does not have standing under Article III of the Constitution and that the Tax Anti-Injunction Act ("AIA") bars this suit. *See* U.S. Const. art. III; 26 U.S.C. § 7421. It also argues for the amendment's constitutionality.

The District Court for the District of Wythe granted CTC's motion for summary judgment and issued a permanent injunction, finding that CTC had standing to challenge the Johnson

Amendment and that the provision violates the Establishment Clause of the First Amendment. R-2. The U.S. Court of Appeals for the Fourteenth Circuit affirmed this judgment on both counts in a split decision entered August 1, 2025. R-2, 12; *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025). The IRS presently appeals on both counts, and a writ of certiorari was granted November 1, 2025, on 1) whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment; and 2) whether the Johnson Amendment violates the Establishment Clause of the First Amendment. R-17; No. 26-1779.

SUMMARY OF THE ARGUMENT

The Court of Appeals made no error in finding standing for CTC under Article III and the AIA. Traditional Article III standing requires CTC to show 1) an "injury-in-fact," 2) a causal link between that injury and the alleged conduct, and 3) redressability of that injury. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Here, the IRS's threatened audit created a redressable coercive dilemma for the church, ultimately causing both actual and sufficiently ripe imminent injury. CTC may find Article III standing independently under the overbreadth doctrine, as the Johnson Amendment encroaches on religious freedom broadly. *See, e.g.*, *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). Because CTC's very existence is threatened here, a finding of standing is the only just outcome.

The AIA precludes only lawsuits whose purpose is restraining tax assessment or collection, but the purpose of CTC's suit is to resist religious coercion. 26 U.S.C. § 7421; *contrast with Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974) (holding that a university's action made primarily to preserve funds was sufficiently related to restraining tax collection). CTC challenges the lawfulness of an audit, and preliminary processes and requirements are typically not barred by the

AIA. *See, e.g.*, *CIC Servs., LLC v. IRS*, 593 U.S. 209, 216 (2021). Even if this Court finds otherwise, the AIA does not bar CTC from suing because CTC qualifies for a *Williams Packing* exception, as it faces irreparable harm with no adequate alternate remedy – and the IRS is unable to establish its claims. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962).

Once jurisdiction is established, the merits of this case are straightforward. The Johnson Amendment violates the Establishment Clause under every framework this Court could apply. First, the provision is unconstitutional because it is not denominationally neutral. *See Larson v. Valente*, 456 U.S. 228, 244 (1982). By exclusively burdening churches whose doctrine compels political participation, the Johnson Amendment discriminates among religions. Further, it conditions the receipt of public benefits on Government-approved religious conformity. Independently, the Johnson Amendment violates the Establishment Clause under the coercion test because it offers CTC no choice but to disregard its doctrine in exchange for continued benefits. *See Lee v. Weisman*, 505 U.S. 577, 596 (1992). By coercing CTC to alter its longstanding religious doctrine, the authority over practices is transferred from the church to the federal Government.

Beyond blatant religious discrimination and impermissible coercion, the Johnson Amendment also fails the history-and-tradition framework governing modern Establishment Clause analysis. *See Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014). Used in place of the highly criticized *Lemon* test, modern jurisprudence confirms the same constitutional violation because the provision departs from longstanding practices. But even if the Johnson Amendment were evaluated under the *Lemon* test, it is still unconstitutional because it inhibits religion and fosters excessive government entanglement. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Accordingly, no matter which framework this Court applies, the Johnson Amendment is unconstitutional because it violates the Establishment Clause of the First Amendment.

ARGUMENT

I. CTC has standing to challenge the Johnson Amendment under the AIA and Article III.

CTC satisfies the traditional standard for Article III standing and is not barred from bringing this suit under the AIA.

A. CTC has standing to challenge the Johnson Amendment under Article III.

CTC faces precisely the type of controversy Article III intended to allow in a federal court. Article III of the Constitution limits federal court jurisdiction to "cases" and "controversies" appropriately resolved through judicial process. U.S. Const. art. III, § 2; *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Under *Susan*, CTC must show three elements: 1) an "injury-in-fact," 2) a causal link between that injury and the alleged conduct, and 3) redressability of that injury. *Id*. Plaintiff has the burden to show these elements with facts set forth by affidavit or specifically alleged facts at the summary judgment stage. *Lujan*, 504 U.S. at 561; Fed. Rule Civ. Proc. 56(e). Here, as discussed below, CTC has shown each element. Independently, CTC has standing to bring this suit because the Johnson Amendment is overbroad in its chilling of constitutionally protected religious expression. *See Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973) ("Litigants, therefore, are permitted to challenge a statute [whose] very existence may cause others not before the court to refrain from constitutionally protected speech or expression.").

1. CTC has suffered a sufficiently ripe injury-in-fact.

CTC's injuries are concrete, particularized, and both actual and imminent, so CTC has suffered an injury-in-fact sufficient for Article III standing. U.S. Const. art. III, § 2; *Susan*, 573 U.S. at 157-58. Essentially, the "injury-in-fact" designation exists to ensure that the plaintiff has a personal stake in the outcome. *See Id*. at 158 (citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

Injury-in-fact requires the injury to be actual or imminent, and not merely conjectural or hypothetical. *Susan*, 573 U.S. at 158 (citing *Lujan*, 504 U.S. at 560). Although the loss of tax-exempt status as an "inherently valuable statutory right" is an argument courts typically reject when churches assert purely economic damage, this is not a case about economic damage. *See, e.g.*, *Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 412 (D.C. Cir. 2024).

With respect to challenging preliminary injunctions, an injury-in-fact is shown when Plaintiff: 1) has an "intention to engage in a course of conduct arguably affected with a constitutional interest," 2) the intended future conduct is "arguably . . . proscribed by [the policy in question]," and 3) "the threat of future enforcement of the [challenged policies] is substantial." *Susan*, 573 U.S. at 161-64; *see also Burnett Specialists v. Cowen*, 140 F.4th 686, 694–95 (5th Cir. 2025). A showing of all three elements constitutes "ripeness," thus demonstrating an injury-in-fact imminent and specific enough to be worthy of Article III standing. *Id*.

Here, CTC has suffered concrete, particularized, and actual injuries from the mere threat of the IRS's audit. CTC, following the Everlight Dominion religion, is bound by unique dogma requiring leaders and churches to actively support and engage in political campaigns or face total banishment. R-3. CTC is also in a somewhat precarious existential position, as it depends heavily on the leadership and streaming revenue generated by Pastor Vale. R-3, 4. Now, Pastor Vale and other leaders are forced to make an impossible decision. They may continue adhering to their religious requirements and potentially destroy the church's status in the eyes of the law, losing not only direct economic benefits but also public recognition, dignity, respectability, and access to other benefits like grants. Or they may abandon their faith, potentially destroying the church in the process. Accordingly, this is not simply a matter of voluntary self-censorship in response to a potential economic threat, as the IRS will likely argue; this is a threat whose very presence

engenders inevitable destruction. Already, without turning to the question of likelihood of enforcement, members of the church are faced with an impossible dilemma to break the faith or risk destroying the church. R-3, 4. This coercive threat alone is therefore sufficient to cause concrete injury to the church, with consequences such as lost membership, lost faith, and lost dignity – ultimately amounting to much more than the narrow economic losses complained of in *Iowaska*, 105 F.4th at 412. In other words, this injury cannot be prevented or remedied by choosing to surrender a financial benefit – and the alternative disintegrates an entire following.

CTC is also under threat of a sufficiently ripe imminent injury. Here, CTC intends to engage in conduct arguably implicating a constitutional issue by continuing to endorse political candidates and support their campaigns in violation of the Johnson Amendment; that issue is discussed at length in Part II, but certainly rises to the level of "arguable" necessitated by ripeness standards. *Susan*, 573 U.S. at 161-64. Note that CTC and its members not only intend that conduct but are religiously compelled to engage in it. R-3. This religious conduct is unambiguously regulated by the Johnson Amendment and the IRS's enforcement of that provision, as the IRS has full power to revoke the tax-exempt "church" status of any organization that engages in such politics. 26 U.S.C. § 501(c)(3); R-1-3.

Fulfilling the final element for ripeness, the IRS also presents a credible and substantial threat of enforcement; CTC members are evangelical about their religious need to engage in prohibited conduct, and the IRS has already taken the first step to quash that religious practice. R-5. Lack of past enforcement is usually persuasive to show no likelihood of enforcement, and the IRS will undoubtedly lean on this in its argument. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). But here, the IRS's history of not enforcing the Johnson Amendment is a purely voluntary restraint – and importantly, the IRS has already deviated from that history in its audit

action. R-5. Given the current environment of mounting political weaponization and the unique circumstances of CTC's growing influence, the IRS's history of non-enforcement should be even less material in evaluating its current likelihood of enforcement.

On top of that, circumstances suggest the IRS may be weaponizing the audit in this case, or using it as a trial run to see how far it can go to control churches. The IRS selected CTC for a self-described "random" audit in May 2024, mere months after the death of Wythe Senator Matthew Russett, which triggered a special election deciding the balance of the Senate. R-4, 5. Pastor Vale endorsed a candidate in that election and announced his intention to support his campaign, especially during the critical months of October and November of 2024. *Id*. Regardless of its intentions in this instance, the IRS knows or has learned that the Johnson Amendment gives it immense power to shape the behaviors of religious institutions; a mere letter announcing an audit was enough to burden CTC, send it scrambling to defend itself, and cause its leaders to worry for its future. A finding in favor of the IRS here would implicitly give it the authority to intimidate any religious institution that dares to have a voice on matters of public policy.

The IRS consent decree that says it will refrain from enforcing the Johnson Amendment "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services," is similarly unpersuasive. U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025). Because the IRS is powerful and seems committed to acting against CTC, it can easily engineer a line of reasoning to circumvent this decree; for example, it may ignore Everlight Dominion doctrine to argue that political support is not a "[matter] of faith," or argue that the podcasts used by Pastor Vale to connect with his congregation are not "customary channels of communication." R-4. However much tradition, history, and

posturing may imply a reluctance to enforce the Johnson Amendment, the IRS has the tools, the motivation, and the first steps in place to proceed with enforcing it. At minimum, this Court should find the likelihood of enforcement to be substantial – therefore fulfilling all three elements of ripeness to show an imminent injury-in-fact in addition to an actual injury-in-fact. CTC demonstrates multiple concrete injuries, so the next question is whether the IRS caused them.

2. The IRS's Johnson Amendment action caused CTC's injury.

The IRS's audit in connection with the Johnson Amendment directly caused CTC's injuries-in-fact. In *Lujan*, the Court found lack of causation for standing because of the plaintiff's far-flung, novel theories of how they might be injured by a new regulation; the plaintiff argued that a new regulation could eventually result in fewer animal species in some areas, which could someday interfere with their enjoyment of travel or present butterfly-effect-like long-term consequences. *Lujan*, 504 U.S. at 555-57. Similarly, *Clapper* held that speculation on a chain of possible future decisions by independent actors is insufficient to create standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013). In that case, the plaintiffs incurred measurable present costs because of fears of future action, but the Court held that "[they] cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id*. at 416.

In this case, no assumptions, inferences, or speculation are necessary to demonstrate causal relationship; the IRS's coercion created this existential religious dilemma. R-5. In fact, the IRS may not only be causing harm, but actively intending it. Pastor Vale has been effectively running CTC and supporting politicians since 2018, but only after the 2024 Congressional special election was triggered did the IRS "randomly" audit the CTC. R-3-5. Unlike in *Lujan* and *Clapper*, no speculative chain of inferences is needed to see how the IRS injured and continues to injure CTC. *Lujan*, 504 U.S. at 555-57; *Clapper*, 568 U.S. at 414. And unlike in *Clapper*, CTC is not "inflicting

harm on [itself] based on [its] fears of hypothetical future harm" for two reasons. *Id*. at 416. First, CTC is not choosing to inflict harm on itself; the IRS is forcing CTC members to choose between abandoning their faith or allowing the church to be publicly discredited and stripped of its benefits. And second, the inflicted harm is based on fears of a near-certainly impending future harm; even if the present audit is stopped, CTC is piously obligated to continue conduct proscribed by the Johnson Amendment indefinitely, so it is only a matter of time before the IRS moves to undermine, and effectively destroy, the religion. Fortunately, this harm is redressable.

3. CTC's injury is perfectly redressable.

Both CTC's actual and imminent injuries are redressable by this Court. In *Lujan*, the Court found lack of redressability because the plaintiff was challenging a general Government program, rather than an individual action. *Lujan*, 504 U.S. at 568-69. In fact, it was the most important prong for the Court in the *Lujan* case, as the Court acknowledged that even if the Secretary was ordered to revise an order, it would not fix the damage alleged by the plaintiff. *Id*. at 568-69. Here, defeating the Johnson Amendment permanently solves CTC's actual and imminent problems; without the dangling sword of the Johnson Amendment empowering the IRS to intimidate CTC, religious coercion would no longer be possible. More imminently, stopping the audit via injunctive relief would be sufficient to keep the religion intact. R-3-5. In fact, a CTC victory could help legitimize its religion and inspire its followers in a way that outweighs any damage the IRS has presently inflicted. Together with the arguments above, the redressability of CTC's injuries shows that CTC fulfills all three traditional standing elements under *Susan*. *Susan*, 573 U.S. at 157-58.

4. The overbreadth doctrine grants standing independently.

Even if this Court disputes CTC's injury under the traditional test for standing, it may find standing under the overbreadth doctrine. This doctrine applies in First Amendment cases where a "statute's very existence may cause others not before the court to refrain from constitutionally

protected speech or expression." *Broadrick*, 413 U.S. at 613. The overbreadth doctrine is frequently treated as a "strong medicine" employed "sparingly and only as a last resort." *Id*.; *see also Hoffman Est. v. Flipside, Hoffman Est.*, 455 U.S. 489, 495-97 (1982). That said, in *Virginia*, the Court held that infringement of the First Amendment rights of book buyers was sufficient for a bookstore to gain standing in a pre-enforcement challenge of an anti-obscenity law. *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988). The Court held that "the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution," similar to the danger here. *Id*. at 393.

CTC may be unique in its affirmative requirements to endorse political candidates, R-3, but many churches can and do make political statements as part of their self-sustenance and mission. The Johnson Amendment, while rarely enforced, menaces as a Damoclean power over any religion with political interests – and it was created by then-Senator Lyndon B. Johnson with that purpose in mind. Robert M. Penna, *The Johnson Amendment: Fact-Checking the Narrative*, Stanford Soc. Innovation Rev. (Aug. 2018), https://bit.ly/49eEcct ("the history behind Johnson's wording is itself steeped in politics . . . [he] was reportedly incensed that two tax-exempt entities had opposed him."). The text of the Johnson Amendment precludes churches and religious institutions from "[participation] in, or [intervention] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). This language is broad enough to ban acts as innocuous as praising a political candidate for a charitable act in a church's newsletter. This Court should not use the IRS's selective non-enforcement to render this imposition unchallengeable. As is, it is a tool the IRS can use at their whim to silence religious voices or manipulate congregations into conformity with the State. Despite its status as "strong medicine" and a tool of "last resort," the overbreadth

doctrine must apply to this case to prevent "harm[s] that can be realized even without an actual prosecution." *Virginia*, 484 U.S. at 392-93.

5. Finding CTC standing under Article III is the only just outcome.

The only path to justice for CTC and similarly situated religious organizations is for this Court to intervene – which starts with giving CTC the opportunity to be heard. On the surface, this is purely an Establishment Clause issue relating to a single entity's tax status, but the nuances and consequences of this issue are much greater. The IRS has long held the potential to be an oppressive instrument of the Government, and it must be restrained from exploiting problematic rules to impose its will upon faith-driven, peaceful citizens.

Consistently, this Court has held that the Government's provision of financial benefits may not be used to "discriminate invidiously" to "aim at the suppression of dangerous ideas." *Regan v. Taxation with Representation of Wash*., 461 U.S. 540, 548 (1983) (holding that veteran's organizations cannot be discriminated against the same way identitarian groups can). And although tax exemption itself is a privilege, not a right, this is still a coercive dilemma for religious practitioners. *Christian Echoes Nat'l Ministry v. United States*, 470 F.2d 849, 857 (10th Cir. 1972) ("tax exemption is a privilege, a matter of grace rather than right"). Whether the IRS is taking aim at CTC's religio-political practices generally or attempting to silence voices with specific political leanings is immaterial; this is an attack on the very core of the Everlight Dominion – which has remained foundational in the hearts of countless devotees for hundreds of years. R-3. The IRS's proposed audit therefore looms like an aimed weapon at a fragile and irreplaceable spiritual institution; if fired, it could mean extinction for an entire faith in this country and could easily be fired again at the inevitable next target. This Court should not wait until the weapon is fired to hear this case and decide whether it is a permissible exercise of Government power.

Complicating matters in this case is the woeful absence of the "chilling effect" on religious expression in modern jurisprudence, leaving unanswered questions and ambiguities that institutions like the IRS may currently abuse with abandon. *See The Establishment Clause and the Chilling Effect*, 133 Harv. L. Rev. 1338 (2020). Recent cases have shown that this Court is increasingly sympathetic to free religious exercise. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 544 (2022) (holding that the Government may not suppress a high school coach's prayers during and after games); *Mahmoud v. Taylor*, 606 U.S. 522, 527 (2025) (granting a preliminary injunction precluding a school from withholding opt-outs for storybooks that conflicted with parents' religious beliefs). But without decisive anchors to clarify these persistent ambiguities and provide guidance to good-faith and bad-faith actors alike, CTC, other churches, and millions of believers across denominations will find themselves uncertain of whether they are free to practice their faith in this country. This case is an unprecedented opportunity for this Court to solidify the constitutional limits of interference with religion, so it deserves to be heard.

The core question to ask with respect to Article III standing is this: "[h]ave the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions?" *Baker v. Carr*, 369 U.S. 186, 204 (1962); *see also Larson v. Valente*, 456 U.S. 228, 238-39 (1982) (Minnesota's new statutory requirements on religious organizations receiving more than fifty percent of their funds from nonmembers were sufficient to show standing). Here, it is unquestionable that CTC has a personal stake in this outcome, as its very existence depends on it. And it is clear on its face that the Johnson Amendment raises difficult questions of constitutionality, further illustrated by the cavalcade of legislative challenges to it since 2017. R-2, 3. This is precisely the type of case that would allow the

adversarial presentation of issues necessary to determine whether the Johnson Amendment should stand. Accordingly, this Court should be persuaded that all Article III standing requirements are met – and allow this case a fair opportunity to be heard on the merits.

B. The AIA does not preclude CTC from challenging the Johnson Amendment.

The AIA prohibits suits "for the purpose of restraining the assessment or collection of any tax," but this prohibition does not apply here. 26 U.S.C. § 7421. This suit's primary purpose is not to restrain taxation, but to prevent religious coercion and preserve the integrity of CTC and the Everlight Dominion overall. And even if its primary purpose was restraining taxation, the AIA would not apply because CTC qualifies for a *Williams Packing* exception; its case is guaranteed to succeed on the merits, CTC would suffer irreparable harm in the absence of an injunction, and other remedies are not available. *Williams Packing*, 370 U.S. at 7; *see also* 26 U.S.C. § 7428 (precluding appeal as an alternative remedy in this case).

1. The purpose of CTC's suit is to resist religious coercion – not to avoid taxes or penalties.

The lower court's dissenting opinion succinctly demonstrates why it is error to apply the AIA here: it misstates the purpose of CTC's lawsuit. R-12. The AIA is unambiguous in its prohibition, stating "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained [...]" 26 U.S.C. § 7421. Courts begin an AIA analysis by evaluating the purpose of the suit in question. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974). If the suit is not for the purpose of restraining the assessment or collection of a tax, it may go forward; if the suit is for that purpose, it must be dismissed. *CIC Servs.*, 593 U.S. at 216.

In *Bob Jones*, a university filed suit to enjoin revocation of its 501(c)(3) status and argued that its racially discriminatory policies were religious in nature. *Bob Jones*, 416 U.S. at 734-35 ("One of these beliefs is that God intended segregation of the races and that the Scriptures forbid

interracial marriage."). The Court rejected the university's argument that its primary purpose for challenging its tax-exempt status revocation was to preserve its funds for institutional operations, rather than restraining tax collection; the Court found these issues to be so intertwined that they were practically indistinguishable. *Id*. at 738. The Court also interpreted the AIA very broadly, highlighting that its text allows it to apply to "any tax," implying that the AIA would apply to any suit that included any tax implication. *Id*. at 739. Further, the Court dismissed the argument that the IRS was motivated to end the university's discriminatory policies, noting a lack of such evidence. *Id*. And notably, the *Bob Jones* Court applies the *Williams Packing* rule (discussed below), ultimately holding that the AIA barred the lawsuit because it was not certain to succeed on the merits. *Id*. at 746. But the Court also acknowledged the AIA may not apply if the aggrieved did not have access to judicial review. *Id*.

The Court's broad interpretation in *Bob Jones* is somewhat undermined by the more recent, landmark *CIC* case. *See CIC Servs.*, 593 U.S. at 211. There, the Court held that the AIA does not preclude a lawsuit "seeking to set aside an information reporting requirement that is backed by both civil tax penalties and criminal penalties." *Id*. That lawsuit challenged the lawfulness of Notice 2016-66, which required affirmative data reporting for certain taxes. *Id*. at 213-15. Failure to furnish or abide by these rules were met with otherwise permissible civil penalties. *Id*. The Court reasoned that "[a] reporting requirement is not a tax; and a suit brought to set aside such a rule is not one to enjoin a tax's assessment or collection. That is so even if the reporting rule will help the IRS bring in future tax revenue." *Id*. at 216. The Court is consistent in this interpretation. *See, e.g.*, *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 8 (2015) ("Information gathering is a phase of tax administration procedure that occurs before assessment [or] collection."). In *CIC*, the Court also applied a concrete standard for determining the purpose of a lawsuit – that the purpose is not the

taxpayer's motive, but the suit's objective aim, illustrated by the relief requested. *CIC Servs.*, 593 U.S. at 217. Though the Government argued the requirement was a tax action "in disguise," the Court rejected this posture for three reasons: 1) the affirmative reporting obligations; 2) the distance between the reporting rule and the statutory tax penalty; and 3) applicable, separate criminal penalties associated with the law. *Id*. at 219-223.

Application of the AIA in this case hinges on the case's true purpose. *Bob Jones*, 416 U.S. at 738; *CIC Servs.*, 593 U.S. at 216. Though superficially similar, this case is highly distinguished from *Bob Jones* – primarily because its purpose truly is to resist religious coercion and protect CTC from oppression. CTC makes no financial argument here. Though a loss of tax-exempt status may incidentally burden the church financially, the existential threat is more closely related to CTC's loss of perceived legitimacy, constraints imposed upon its congregation, and intimidation by a Government politically opposed to it. *Contrast with Bob Jones*, 416 U.S. at 738. The CTC is also not abusing the "religion" label as a shield for unethical practices, as was the case in *Bob Jones*; instead of manufacturing pseudo-scriptural reasons to continue outdated practices, CTC is merely trying to preserve its unvarnished dogma mandating political support, which has been a central characteristic of the religion for hundreds of years. *Contrast with id*. at 734-35; R-3. Additionally, regardless of the IRS's true underlying motivation in *Bob Jones*, it used a routine process to pursue tax collection; here, the IRS alleges it initiated a purely random audit but offers no substantive evidence to show this was truly "random" or a matter of routine. *Id*.; R-5. Due to the suspicious mid-special-election timing of the IRS's selection letter, CTC has a much stronger argument that the IRS is dishonestly acting against it – not to collect taxes owed, but to weaken the church and dissuade devotees from practicing a central tenet of their religion.

Also, note that the Court in *Bob Jones* would likely have found in favor of the plaintiff university if alternate remedies were not available – which as explored below, perfectly describes CTC's position. *Id.* at 746; *see also Williams Packing*, 370 U.S. at 7. In sum, it's likely that the *Bob Jones* Court would have found for CTC on two independent fronts.

The implied support for CTC's position continues through at least 2021 with *CIC*. Under *CIC*, the purpose of this suit must be considered not by speculating about CTC's motives, but by looking at the objective relief requested. *CIC Servs.*, 593 U.S. at 217. And just as in *CIC*, there are multiple factors distancing this suit from a primary purpose of enjoining tax collection. *See id.* at 219-23. Here, CTC seeks enjoinment of something very specific: enforcement of a particular rule within the Johnson Amendment, and not any specific form of tax assessment or collection. R-2. In fact, the IRS has taken no assessment or collection action at all, as it has merely announced its intention to conduct an audit, so it is not possible to argue that CTC is enjoining such a tax action. R-5. Further, this audit is an administrative investigation; in modern cases, this Court is consistent in delineating administrative procedures from actual assessment or collection of taxes – even if those administrative procedures are linked to tax collection somehow. *See, e.g.*, *CIC Servs.*, 593 U.S. at 216; *Brohl*, 575 U.S. at 8. The objective outcome that CTC seeks is relief giving it the freedom to honor its religious code without Government interference.

In *CIC*, the Government urged the Court to consider another objective outcome: that a victory for the plaintiff would open floodgates to more enjoinment actions, would "enfeeble" the AIA, and would weaken the IRS and its ability to collect tax revenue. *CIC Servs.*, 593 U.S. at 223. The Court quickly and rightfully dismissed this argument, noting the very narrow, clear context in which its ruling applied. *Id*. at 223-24. It is also absurd to portray the IRS as a victim whose influence or capacity may diminish in light of a single, narrow adverse ruling. The IRS collected

$5.1 trillion in gross taxes for 2024, and this amount has increased consistently – nearly every year – for decades. *See* Michael Faulkender, et al. *Internal Revenue Service Data Book*, at 1 (Dep't of the Treasury, 2024) https://www.irs.gov/pub/irs-pdf/p55b.pdf. The IRS is objectively more powerful than ever, and if this Court takes the IRS's consent decree seriously, it must acknowledge that an adverse ruling in this case would not result in a net loss of power or influence. *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad.*, WL 2555876. An adverse ruling against the IRS would merely say it "can't" do something it already insists it "won't" do – akin to compelling someone to holster a weapon they insist they will not fire.

Ultimately, CTC's objective aim in enjoining this pre-tax administrative process is to render unconstitutional a long-controversial statute so it and similar churches can exercise free religious practice. Thus, its primary purpose is not to restrain the assessment or collection of a tax, so the AIA does not bar the suit. And even if it did, CTC qualifies for an exception to the AIA.

2. Even if CTC's purpose was to avoid tax penalties, the AIA does not bar the suit.

Even if CTC's primary purpose is found to be restraining the assessment or collection of taxes, it qualifies for the rare exception to the AIA introduced in *Williams Packing*. *Williams Packing*, 370 U.S. at 7. There, the Court held that "if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the [AIA] is inapplicable," and "the attempted collection may be enjoined if equity jurisdiction otherwise exists. In such a situation the exaction is merely in 'the guise of a tax.'" *Id*. at 7 (quoting *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 509 (1932)). Later courts would refine the formulation of this exception, explaining that courts may enjoin the collection or assessment of taxes notwithstanding the AIA if: "(1) the taxpayer shows 'extraordinary circumstances causing irreparable harm' for which he has no 'adequate remedy at law,' and (2) it is apparent that, under the most liberal view of the law and

the facts, the United States 'cannot establish its claim.'" *Comm'r v. Shapiro*, 424 U.S. 614, 622-23 (1976) (quoting *Shapiro v. Sec'y of State*, 499 F.2d 527, 532 (D.C. Cir. 1974)). Here, the U.S. cannot succeed, CTC will suffer irreparable harm in the absence of injunctive relief, and CTC has no other remedies available, so the exception applies.

The question of whether the U.S. can succeed is based on "the information available to the Government at the time of the suit," thus indirectly burdening the Government to show facts sufficient to indicate a chance of prevailing. *Shapiro*, 424 U.S. at 627. Here, the Government has merely answered CTC with a blanket denial of claims, thus providing no substance with which this Court may decide the United States can establish its claim. *Id*. at 623; R-5. Though this alone is sufficient to fulfill this element required by *Williams Packing*, this Court may further explore the uncontested strength of CTC's claims on the merits in Part II. The IRS may argue that its power must be preserved or that the Johnson Amendment serves an important function, but the reality is, this amendment is unconstitutional under four independently sufficient analyses. *See* Part II. No matter what version of the facts the IRS presents or which legal arguments it makes, the constitutional violation remains. Interestingly, *Williams Packing*'s requirements create a kind of paradox, as the decision of whether the merits of the case can be heard requires the Court to evaluate the merits. As such, the merits of CTC's claims must be evaluated one way or another.

CTC will also suffer irreparable harm without an injunction, as this coercive dilemma poses an existential threat, explained above. Courts typically take existential threats to religions very seriously. For example, this Court has held prohibitions on animal sacrifice unconstitutional in part because animal sacrifice is central to Santeria. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546-47 (1993) ("The Free Exercise Clause commits government itself to religious tolerance."). This Court has also struck down the denial of unemployment benefits because of an

individual's Sabbath observance, as this essentially created a lose-lose scenario analogous to the one CTC faces here: the individual was forced to lose a financial benefit or abandon her faith. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) ("Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."). The concurrence in that case illustrated that such "interference [was] as plain as it [was] in Soviet Russia, where a churchgoer [was] given a second-class citizenship, resulting in harm though perhaps not in measurable damages." *Id*. at 412 (Douglas, J., concurring).

And famously, in *Wisconsin v. Yoder*, this Court rejected requirements for compulsory formal education after the eighth grade because such an imposition by the State "would gravely endanger if not destroy the free exercise of [the Amish community's] religious beliefs." *Wisconsin v. Yoder*, 406 U.S. 205, 219 (1972). Lawmakers presumably understand the potential irremediable harm the Johnson Amendment can inflict on churches like CTC, which is why so many have tried to overturn or modify it since at least 2017. R-3. Because CTC is under threat of irreparable harm as required by *Williams Packing*, injunctive relief is proper.

Injunctive relief also happens to be the only adequate remedy for CTC under the law, due to the unique circumstances of this case and an incapacitating statutory framework. As properly described by the lower court, 26 U.S.C. § 7421 prohibits suits to restrain the assessment or collection of taxes, but 26 U.S.C. § 7428 (b)(2) states that with respect to a 501(c)(3) status controversy like this, an organization must exhaust administrative remedies before taking legal action. 26 U.S.C. § 7421; 26 U.S.C. § 7428 (b)(2); R-6, 7. Administrative remedies consist only of an appeal process to a proposed reclassification. *See* 26 U.S.C. § 7428 (a). This places CTC in the impossible position of needing to file an appeal for a decision that hasn't been made before it can file suit to protect its interests. The AIA's "purpose and the circumstances of its enactment

indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties [with no available] alternative remedy." *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). The Court in that case acknowledged the lack of clear legislative history for the act, but that it was initially put forth as part of a statutory scheme that provided alternative remedies. *Id*. at 374. Historically, the remedy for any type of tax classification, assessment, or collection controversy has been to sue and get back the taxes paid. *See, e.g.*, *Bob Jones*, 416 U.S. at 738; *Alexander v. "Ams. United"*, 416 U.S. 752, 761-62 (1974) (holding that without irreparable injury, alternate adequate remedies exist); *United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 11 (1974) (rejecting the argument that a probable loss constitutes an "inadequate remedy."). But such a remedy is unavailable here; if CTC waits until a new tax classification is proposed or until the IRS attempts to collect a tax, the damage to its congregation and its nature as a holy institution will already be done.

The *Williams Packing* exception is infrequently invoked and even less frequently applied because of the "extraordinary circumstances" it requires. *See Shapiro*, 424 U.S. at 623. But here, CTC is faced with exactly this variety of extraordinary circumstances, as it faces the threat of irreparable harm, it is destined to succeed on the merits, and there is no alternative remedy available. *Id*. at 622-23. Even if this Court is not persuaded that the primary purpose of CTC's suit is to resist coercion, it should still find that the AIA does not apply in these circumstances – and allow the case to proceed.

II. The Johnson Amendment is unconstitutional because it violates the Establishment Clause of the First Amendment.

The Johnson Amendment is a political tool that empowers the Government to interfere with religion and should be found unconstitutional. Embedded as a provision of 26 U.S.C. § 501(c)(3), the Johnson Amendment provides that organizations otherwise qualifying for tax-exempt status, such as churches, may not "participate in, or intervene in" political campaigns. 26

U.S.C. § 501(c)(3). Organizations compliant with this provision and other Internal Revenue Code requirements receive benefits that include a federal income tax exemption. *See* 26 U.S.C. § 501. Conversely, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Deeply rooted in this nation's history, the Establishment Clause embodies the fundamental principle that church and state must be separated. *Zorach v. Clauson*, 343 U.S. 306, 312 (1952). This separation must be complete and unequivocal. *Id.*

The Johnson Amendment is unconstitutional under every applicable Establishment Clause framework. It impermissibly discriminates among religions by burdening those whose doctrine requires political participation. *See Larson v. Valente*, 456 U.S. 228, 244 (1982). It forces churches to choose between adherence to doctrine and continued public benefits, so it is independently unconstitutional under the coercion test. *See Lee v. Weisman*, 505 U.S. 577, 596 (1992). Setting aside discrimination and coercion, the Amendment fails under the Court's history-and-tradition framework governing Establishment Clause analysis, as it departs from this nation's longstanding practices. *See Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014). And even under the repeatedly criticized, older *Lemon* test, the Johnson Amendment is unconstitutional. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Accordingly, regardless of which framework(s) this Court applies, the Johnson Amendment violates the Establishment Clause of the First Amendment.

A. The Johnson Amendment violates the Establishment Clause because it is not denominationally neutral.

The Johnson Amendment violates the Establishment Clause's clearest command that "one religious denomination cannot be officially preferred over another." *Larson*, 456 U.S. at 244. This Court has repeatedly reaffirmed the principle of denominational neutrality in its Establishment Clause jurisprudence. *Id.* at 246. For example, in *Zorach*, the Court said that "[the] Government

must be neutral when it comes to competition between sects." *Zorach*, 343 U.S. at 314. Further, in *Epperson v. Arkansas*, the Court stated unambiguously: "The First Amendment mandates Government neutrality between religion and religion, and between religion and nonreligion . . . This prohibition is absolute." *Epperson v. Arkansas*, 393 U.S. 97, 104-06 (1968). The principle of denominational neutrality bars the Government from passing laws that aid or oppose particular religions. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025). When the Government distinguishes among religions based on theological differences, it imposes denominational preference that must satisfy the highest level of judicial scrutiny to be permissible. *Id.* at 254.

As explained in the analysis that follows, the Johnson Amendment discriminates among religions by exclusively burdening churches doctrinally compelled to participate in politics. The Johnson Amendment also conditions the receipt of a public benefit on Government-religious conformity, practically forcing churches to alter or suppress their doctrines. Because the Johnson Amendment favors some religions over others and actively compels religious conformity, it is not denominationally neutral – and it therefore violates the Establishment Clause.

1. The Johnson Amendment discriminates against CTC.

By burdening religions whose doctrines compels political participation, the Johnson Amendment is constitutionally defective. The Establishment Clause of the First Amendment means at least this: neither a state nor the federal Government can pass laws that prefer one religion over another. *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). The Court's decision in *Larson v. Valente* supplies the governing analytic framework for claims that a law creates such a denominational preference. *Larson*, 456 U.S. at 244. Under this framework, the initial inquiry is whether the law facially differentiates among religions, because a Government policy will not qualify as neutral if it is specifically directed at religious practice. *Kennedy v. Bremerton Sch. Dist.*,

597 U.S. 507, 526 (2022) (quoting *Employment Div., Dept. of Human Resources of Ore v. Smith*, 494 U.S. 872, 878 (1990)). If no such facial preference exists, the Court previously proceeded to the unreliable three-pronged Establishment Clause inquiry derived from *Lemon v. Kurtzman*. *See, e.g., Hernandez v. Comm'r*, 490 U.S. 680, 695 (1989); *Lemon*, 403 U.S. at 612-13. A law that differentiates between religions along theological lines constitutes "textbook denominational discrimination." *Cath. Charities Bureau*, 605 U.S. at 248.

Aside from discrimination, Government actions that favor certain religions over others convey to members of other faiths that they are simply outsiders instead of full members of the political community. *Id.* When the Government allies itself with one religion, the inevitable result is hatred, disrespect, and even contempt of those who hold contrary beliefs. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 221-22 (1963). The Establishment Clause also extends beyond facial discrimination, forbidding even subtle departures from neutrality and covert suppression of particular religious beliefs. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993) (striking down animal sacrifice laws as unconstitutional because animal sacrifice is essential to Santeria).

Here, the Johnson Amendment discriminates among religions by burdening only those whose doctrines compels political participation. The Everlight Dominion requires its religious leaders to provide moral and political guidance to followers. R-3. The CTC provides this guidance through sermons and podcasts. R-4. As such, Pastor Vale's podcast episodes were not political commentary, but the very means by which CTC communicates doctrine and fulfills its religious mission. R-3. Compliance with the Johnson Amendment therefore requires CTC to abandon a core religious obligation. By contrast, religions whose doctrines do not mandate political engagement

remain unaffected by the statute's prohibitions. The Johnson Amendment thus draws a functional theological line, oppressing CTC while leaving other churches free to operate without constraint.

This discriminatory structure extends far beyond Covenant Truth Church. Any religion that mandates political guidance as a religious duty is categorically disadvantaged by the Johnson Amendment, while other religions are favored. The imbalance is inherent in the statute's design, not the result of isolated enforcement. The Establishment Clause forbids precisely this outcome: a legal regime that rewards some faiths for their theology while punishing others for adhering to theirs. Accordingly, the Johnson Amendment denominationally discriminates against CTC.

2. The Johnson Amendment conditions public benefits on religious conformity.

By conditioning benefits on the suppression of required religious doctrine, the Johnson Amendment undermines the denominational neutrality this Court requires. As explained above, Government must be neutral in matters of religious theory, doctrine, and practice. *Epperson*, 393 U.S. at 104. It may not be hostile to any religion nor aid, foster, or promote one religion or religious theory over another, including nonreligion. *Id.* It is not within the judiciary's role to question the centrality of beliefs and practices to a faith or evaluate the validity of a faith's interpretation of religious doctrine. *Hernandez*, 490 U.S. at 699. Decisions regarding whether to "express and inculcate religious doctrine" through worship, proselytization, or religious education, even when undertaken in the course of charitable work, are fundamentally theological choices driven by the content of different religious doctrines. *Cath. Charities Bureau*, 605 U.S. at 252.

The determination of what constitutes a "religious" belief is often difficult. *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981). However, that determination is not dependent on a court's perception of the belief; "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Id.*

Thus, a statute that conditions access to public benefits on such doctrinal choices, or that excludes religious organizations from an accommodation based on those choices, facially favors some denominations over others. *Cath. Charities Bureau*, 605 U.S. at 252.

Here, the Johnson Amendment further violates denominational neutrality by conditioning a public benefit on conformity with Government standards. The IRS audit of CTC came only after Pastor Vale's podcast sermons became popular enough to be influential in the mainstream; Pastor Vale has consistently adhered to the Everlight Dominion's requirement of endorsing political candidates since at least 2018. R-3, 5. Now faced with the loss of tax exemption, CTC must either suppress its religious practices or suffer similarly existential consequences (including not only a financial detriment, but a tarnished reputation, deprivation of access to grants, and more). The only real choice for the church is to conform to the state, which will result in banishment from the faith. The broader risks posed by this structure are exacerbated by the IRS's own conduct, as the IRS letter signaling its audit demonstrates that the statute functions as a discretionary enforcement tool rather than a neutral background rule. R-5. This discretion allows the federal Government to selectively use the Johnson Amendment against disfavored religious messages, turning tax law into a mechanism for enforcing religious conformity. The system does not merely burden one church. Instead, it places all similarly situated religions at risk of losing public benefits.

Accordingly, the Johnson Amendment violates the Establishment Clause because it discriminates against religions whose doctrine mandates political involvement. Further, it conditions public benefits on compliance with Government-approved theology.

B. The Johnson Amendment is independently unconstitutional because it is religiously coercive.

In addition to the clear constitutional violation of discrimination, the Johnson Amendment coerces CTC to deviate from doctrine to access public benefits. It is a tenet of the First Amendment

that the Government "cannot require its citizens to forfeit their rights and benefits as the price of resisting conformance to Government-sponsored religious practices." *Lee*, 505 U.S. at 596. At a minimum, the Constitution also "guarantees that Government does not coerce anyone to support or participate in religion or its exercise." *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Lee*, 505 U.S. at 587). Although the Court has articulated several frameworks for evaluating Establishment Clause claims, the coercion test seeks to determine whether the Government applied coercive pressure to support or participate in religion. *See McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005).

In *Lee v. Weisman*, the Court established that impermissible coercion under the Establishment Clause includes indirect Government pressure in religious matters, not exclusively direct or physical compulsion. *Lee*, 505 U.S. at 587 (holding that a policy allowing public schools to invite clergy to give prayers at graduation ceremonies constituted impermissible coercion). Indirect coercion is a subtle pressure deemed as real as any overt compulsion. *Id.* at U.S. 593. Thus, the free thought in religion is not only implicated when the Government engages in direct or indirect coercion, but also when it pressures individuals to support practices they do not agree with. *Marsh v. Chambers*, 463 U.S. 783, 803 (1983). As discussed below, the Johnson Amendment is additionally unconstitutional because it coerces CTC to alter its core religious practices. Further, it transfers authority over religious practices from the church to the federal Government. Accordingly, the Johnson Amendment violates the Establishment Clause under this framework.

1. The Johnson Amendment coerces CTC to alter core religious practices.

By conditioning public benefits on doctrinal silence, the Johnson Amendment coerces CTC to alter core religious practices. Withdrawal of a conditional privilege for failure to comply is unconstitutional if conditioned upon conduct proscribed by a religion or denied because of conduct mandated by doctrine. *Branch Ministries v. Rossotti*, 211 F.3d 137, 142 (D.C. Cir. 2000) (citing

Jimmy Swaggart Ministries v. Bd. of Equalization, 493 U.S. 378, 391-92 (1990)). This Court has consistently treated coercion as a foremost hallmark of religious establishments the Framers sought to prohibit when they adopted the First Amendment. *Kennedy*, 597 U.S. at 537. Religious coercion involves using Government power to extract financial support of a church, compel religious observance, or control religious doctrine. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 52 (2004). Although pressures that fall short of legal coercion do not violate the Establishment Clause, compulsion need not be direct to constitute a violation. *Town of Greece*, 572 U.S. at 610.

In *Santa Fe Independent School District v. Doe*, the practice at issue occurred at a Texas high school where students elected a chaplain to lead a prayer before football games held at the school. *Doe*, 530 U.S. at 294. Despite the lack of a compulsory attendance requirement, the Court held that there was still coercive pressure on students effectively required to attend, such as cheerleaders and band members. *Id.* at 311. Thus, the indirect coercive pressure upon religious minorities to conform to officially approved religion is a blatant violation when the power, prestige, and financial support of the Government is placed behind a particular religious belief. *Schempp*, 374 U.S. at 221 (quoting *Engel v. Vitale*, 370 U.S. 421, 431 (1962)).

Here, the Johnson Amendment coerces by forcing CTC to choose between compliance with federal law and adherence to its religious doctrine. The Everlight Dominion requires its leaders to provide political guidance as part of their dogma. R-3. The IRS therefore conditions public benefits on an abandonment of religious doctrine that would banish churches and leaders from the faith, leaving CTC with no meaningful choice. Aside from tax-exempt status, CTC's legitimacy and power are threatened. This pressure mirrors the indirect coercion condemned in *Sante Fe* and *Lee*, where participation was voluntary but practically unavoidable. In fact, the

coercion here is even more acute: CTC is not merely exposed to some form of discomfort, but to the loss of its ability to function as a church.

This coercion is also not speculative. The Johnson Amendment operates by threatening withdrawal of a legal privilege based on compliance with Government-defined limits on religious expression. When a law conditions a benefit on refraining from conduct mandated by religious doctrine, the pressure to conform escalates to coercion. By leveraging tax law to force CTC to abandon core religious practices, the Johnson Amendment crosses the line from permissible regulation to unconstitutional coercion.

2. The Johnson Amendment transfers authority over religious practices from the church to the Government.

By holding the Johnson Amendment constitutional, the Court would put the Government in charge of deciding religious doctrine. There cannot be the slightest doubt that the First Amendment reflects the philosophy that church and state should be separated. *Zorach*, 343 U.S. at 312. Consistent with this fundamental understanding, it also protects the right of religious institutions to decide for themselves matters of church faith and doctrine, free from Government interference. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). Any attempt by the Government to influence such matters would constitute one of the central attributes of an establishment of religion. *Our Lady of Guadalupe Sch., supra*, at 746 (explaining that the First Amendment outlaws such intrusion.) Although religious institutions are not completely immune from secular laws, churches possess the primary right to protect their autonomy over their central mission. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012). This autonomy is vital, as independence in faith and religious doctrine has been termed by the Court as "matters of church Government." *Id.*

Here, the Johnson Amendment operates as religious coercion by transferring authority over religious practice from the church to the federal Government. To comply with the statute, CTC must continually evaluate whether its sermons and religious teachings conform to Government standards governing political speech. In doing so, the Government assumes the role of arbiter of permissible religious doctrine, placing federal authorities in the position of judging whether they have crossed a prohibited line. This invasion of autonomy is precisely what the Establishment Clause prohibits. But determining a church's doctrine and central mission is the church's prerogative – not the Government's. By conditioning tax-exempt status on conformity with Government expectations about permissible religious teaching, the Johnson Amendment compels churches to minimize their priorities when determining how to practice their faith.

Accordingly, the Johnson Amendment violates the Establishment Clause because it operates as religious coercion. Not only does it leave CTC with no real choice but to alter its core religious doctrine, it also transfers the authority over religious practice to the Government. As a result, the statute exerts impermissible coercive pressure in two independent respects. Thus, the Johnson Amendment is once again unconstitutional under this framework.

C. The Johnson Amendment fails the Court's history and tradition framework governing Establishment Clause analysis.

The Johnson Amendment fails constitutional scrutiny even when assessed under the Court's most deferential Establishment Clause framework. Under this Court's modern jurisprudence, courts must interpret the Establishment Clause with "reference to historical practices and understandings," rather than rigid multi-factor tests. *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece*, 572 U.S. at 576). The Court has explained that the history and tradition framework has displaced the *Lemon* test because it presents "daunting" problems that cannot resolve Establishment Clause cases. *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 49 (2019).

Notably, members of the Court have harshly criticized this rigid test, with Justice Scalia going as far as to compare the *Lemon* test to a "ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried . . ." *Lamb's Chapel v. Ctr Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) (Scalia, J., concurring).

In applying this framework, the Court must draw the line between permissible and impermissible Government action in a manner that "accords with history and faithfully reflects the understanding of the Founding Fathers." *Town of Greece*, 572 U.S. at 577. An analysis grounded in history and original meaning represents the rule, not an exception, in Establishment Clause cases. *Kennedy*, 597 U.S. at 536 (quoting *Town of Greece*, 572 U.S. at 575). For example, in *Marsh v. Chambers*, the Court upheld legislative sessions because such prayers had an "unbroken history of more than 200 years." *Marsh*, 463 U.S. at 792. The Court's analysis here does not require a precise founding-era analogue, but it still mandates that a practice reflects historical acceptance through time and political change. *Town of Greece*, 572 U.S. at 577; *Am. Legion*, 588 U.S. at 54-55 (relying on the connection between themes of tolerance and historical religious inclusivity).

The Constitution and this nation's traditions counsel mutual respect and tolerance, not censorship or suppression, of religious and nonreligious views alike. *Kennedy*, 597 U.S. at 514. Explained below, there is no historical tradition permitting Government control over religious teaching or expression. Further, the Johnson Amendment represents a departure from the historical practices that have governed church and state relations. Because the Johnson Amendment is inconsistent with this nation's history, it is unconstitutional in yet another respect.

1. There is no historical tradition permitting Government control over religious teaching or religious expression.

Since the founding-era, the Establishment Clause has barred governmental control over religious doctrine. The First Amendment reflects the foundational principle that church and state

must remain separate and that the Government may not "regulate religious beliefs" or the "communication of religious beliefs." *Smith*, 494 U.S. at 882. Nor may the State or the Federal Government may force a person "to profess a belief or disbelief in any religion," nor impose legal requirements that favor certain religious beliefs over others. *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). This Court's historical understanding of unconstitutional establishments confirms the same principle. Founding-era establishments were defined by specific unconstitutional hallmarks, including Government control over religious doctrine, restrictions on dissenters, limitations on political participation, and financial support for preferred denominations. *Kennedy*, 597 U.S. at 537 n.5; *Shurtleff v. City of Boston*, 596 U.S. 243, 285 (2022) (Gorsuch, J., concurring). As commentators have observed, *Kennedy*'s articulation of these hallmarks function as a "cipher" for interpreting the Establishment Clause through history and tradition. Daniel L. Chen, *Kennedy v. Bremerton School District*: The Final Demise of Lemon and the Future of the Establishment Clause, 21 Harvard J. L. & Pub. Policy Per Curiam, 9 (2022).

Here, there is no historical tradition supporting governmental regulation of religious teaching or doctrine. From the founding-era forward, the Establishment Clause has drawn a firm line between permissible Government tolerance of religion and impermissible Government control over religious belief, expression, and participation. *See Kennedy*, 597 U.S. at 537 n.5. Although this Court has recognized a longstanding tradition of tax exemption for churches, it has done so only where the exemption created "minimal and remote involvement between church and state." *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 676; 680 (1970). The Johnson Amendment abandons that tradition. By conditioning a church's legal status on whether its religious teaching complies with secular stands, the statute places the Government in the position of evaluating the content of sermons and religious communications to determine whether doctrine is permissible. History

instead identifies Government control over religious doctrine and participation as defining hallmarks of unconstitutional establishments. The Johnson Amendment does not merely decline to subsidize that practice; it penalizes it by suppressing religious teachings. In doing so, the Government replicates the abuses the Establishment Clause was designed to prevent. Accordingly, no historical tradition permits Government regulation or suppression of CTC's religious doctrine.

2. History and tradition instead support church-state separation.

Where history rejects Government control over religion, it affirms a constitutional tradition of separating church and state. For nearly a century, this Court has recognized that "we have staked the very existence of our country on the faith that complete separation between state and religion is best for state and best for religion." *Illinois, ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 232 (1948) (quoting *Everson*, 330 U.S. at 59 (Jackson, J., Dissenting)). Further, the first and most immediate purpose of the Establishment Clause rests on the belief that a union of Government and religion tends both to destroy Government and to degrade religion. *Schempp*, 374 U.S. at 221. An additional historical purpose was to avoid "sponsorship, financial support, and active involvement in religious activity." *Walz*, 397 U.S. at 668. Where a law departs from the traditional boundaries governing church and state relations, precedent demands it be treated as constitutionally suspect. *Larson*, 456 U.S. at 246. History and tradition ask whether the Government action at issue resembles the historical practices the Court has tolerated, and the answer in the present case is no.

Here, the Johnson Amendment departs from the historical practices this Court has long acknowledged. History and tradition instead reflect a constitutional commitment to church-state separation that protects CTC's religious practice. The Everlight Dominion has required political guidance from its leaders for hundreds of years, making CTC's practice rooted in longstanding faith tradition. R-3. By contrast, the Johnson Amendment was only enacted in 1954 and lacks the

historical pedigree this Court has demanded. R-2. This Court's history-and-tradition cases confirm that religious practices are tolerated when the Government refrains from control. In *Marsh* and *Town of Greece*, the Court upheld legislative prayers because those practices reflected longstanding historical acceptance and involved no Government proselytization or discrimination among faiths. *Marsh*, 463 U.S. at 792-94; *Town of Greece*, 572 U.S. at 584, 597.

The same principle underlies the Court's monument cases, which sustained religious symbols on public property based on their passive character, historical context, and lack of denominational discrimination. *See, e.g.*, *Van Orden v. Perry*, 545 U.S. 677, 681 (2005); *Am. Legion*, 588 U.S. at 63. If history tolerates religious symbols displayed on Government land, it necessarily protects religious doctrine confined to the private sphere of churches and congregations. The Johnson Amendment does the opposite: it conditions a church's legal status on compliance with Government-defined limits and empowers the Government to penalize religious doctrine. Under the Court's history and tradition framework, the Johnson Amendment cannot stand. Even if the Court does not acknowledge the clear doctrinal violation of discrimination and the concrete harm of coercion, modern jurisprudence confirms the same unconstitutional result. Because the Johnson Amendment departs from historical practices and replicates the abuses the Establishment Clause was designed to prevent, it violates the First Amendment.

D. Even if considered under the *Lemon* test, the Johnson Amendment still fails.

Although the Court's Establishment Clause jurisprudence has gone "sour" with the *Lemon* test, the Johnson Amendment would still fail under its framework. *See Lemon*, 403 U.S. at 612-13. In *Lemon v. Kurtzman*, the Court announced a three-part test that a statute must pass to avoid the prohibition of the Establishment Clause. *Id.* First, the statute must have a secular legislative purpose. *Id.* There is no secular purpose if the statute's primary effect is to aid religion rather than implement policy goals. *Id.* at 665 (White, J., Dissenting). Second, its principal effect must be one

that neither advances nor inhibits religion. *Bd. of Educ. v. Allen*, 392 U.S. 236, 243 (1968). Finally, the statute must not foster "an excessive Governmental entanglement with religion." *Walz*, 397 U.S. at 674.

Although the Johnson Amendment has a secular purpose of tax exemption, it is still unconstitutional under the *Lemon* test. As explained more fully below, the Johnson Amendment fails the "primary effect" prong because it inhibits religion. The provision additionally fails under the "entanglement" prong because it fosters excessive Government oversight with religion. Accordingly, even when assessed under this framework, the Johnson Amendment violates the Establishment Clause.

1. The Johnson Amendment has the primary effect of inhibiting religion.

In the process of developing the "purpose and effect" analysis in *Board of Education v. Allen*, the Court assessed whether the primary purpose of a state action was to advance or inhibit religion. *Allen*, 392 U.S. at 243-45 (finding a state action focused on advancing educational opportunities and there was no effect of advancing religion, the Court upheld the law). The appropriate inquiry has been stated as follows: "What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution." *Epperson*, 393 U.S. at 107 (quoting *Schempp*, 374 U.S. at 222). The Court later elaborated that the "effects" of a challenged action should be assessed by asking whether a "reasonable observer" would conclude that the action constituted an endorsement of religion. *Cnty. of Allegheny v. Am. Civ. Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 620 (1989). In evaluating particular religious practices, "churches frequently take strong positions on public issues." *Lemon*, 403 U.S. at 623 (quoting *Walz*, 397 U.S. at 670). But our nation should not expect otherwise, "for religious values pervade the fabric of our national life." *Lemon, supra,* at 623.

Here, the primary effect of the Johnson Amendment is inhibiting religious exercise by placing doctrine and teaching under the constant threat of Government penalty. Under the statute, churches must refrain from religious instruction that could be construed as political intervention or risk the loss of tax-exempt status and much more. R-2. A reasonable person would understand this slippery structure as discouraging religious leaders from fully expressing what they believe. This inhibition is not only limited to CTC. Because the statute turns on the content of religious speech, it places all churches on notice that sermons and religious communications may trigger Government consequences. Faced with a dangerous risk, churches are incentivized to censor themselves or change their doctrine to avoid scrutiny. That chilling effect on religious expression and practice, which is woefully missing from modern jurisprudence, is the statute's operative consequence. When a law pressures churches to modify or suppress religious doctrine to remain in the Government's good graces, its primary effect is in the inhibition of religion in violation of the Establishment Clause.

2. The Johnson Amendment entangles Government with religion.

In addition to failing the "primary effect" prong, the Johnson Amendment entangles the Government in religious doctrine. A statute must not foster "an excessive Governmental entanglement with religion." *Walz*, 397 U.S. at 674 (examining a challenge to laws that provided tax exemptions for property used or owned by religious groups for worship, despite finding no violation). In *Walz*, the Court expanded the focus of its analysis under the effect prong, explaining that the Establishment Clause prohibits Government financial leverage over religious institutions and involvement in religious affairs. *Id.* at 669. Few concepts are more deeply embedded in this nation than neutrality between church and state, so long as none suffer interference. *Id.* at 677. To determine whether Government entanglement with religion is excessive, the Court must examine

the character and purposes of the institutions that are benefited, the nature of the aid provided, and the resulting relationship between the Government and the church. *Lemon*, 403 U.S. at 615.

Although the First Amendment does not prohibit Congress from granting tax exemptions to churches, the Court must not tolerate interference with religion. *Walz*, 397 U.S. at 669. Chief Justice Rehnquist has elaborated on the irony between tax exemption and religious entities, stating that "both tax exemptions and deductibility are a form of subsidy that is administered through the tax system" and a "tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income." *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 544 (1983). It is true that routine Government involvement with religious organizations is permissible. *Tony and Susan Alomo Found. v. Sec'y of Lab.*, 471 U.S. 290, 305-06 (1985) (noting that religious entities are not exempt from Government activity such as fire inspections, building and zoning relegations, or record keeping requirements). For example, the *Walz* Court found that tax exemption laws did not create excessive Government entanglement because exemptions for religious organizations created "minimal and remote involvement between church and state." *Walz*, 397 U.S. at 676. The Government's involvement here cannot be categorized as "minimal and remote."

Pervasive monitoring of religious matter is a central danger against which the Court has held the Establishment Clause protects. *See Aguilar v. Felton*, 473 U.S. 402, 413 (1985). The *Lemon* Court explained that prohibited entanglement can be as broad as a state actively supervising subject matter and tracking funding. *Lemon*, 403 U.S. at 618 (examining statutes that provided aid to nonpublic schools by reimbursing teachers' salaries, textbooks, and instructional materials). The statutes violated the Establishment Clause simply because they would require the state to actively supervise the subject matter taught by teachers as well as track the funding at parochial schools to

ensure compliance. *Id.* at 618-621. Although the present case does not involve an educational setting, the broad definition of what constitutes excessive entanglement is squarely applicable.

Here, the Johnson Amendment also fosters excessive Government entanglement by requiring ongoing Government involvement in religious affairs. To enforce the statute, the Government must constantly review sermons, religious communications, and church messaging to determine whether they cross a prohibited line. Such an inquiry entangles the Government in questions of religious understanding and doctrine, which is precisely the type of supervision the Establishment Clause forbids. Constant probing into religious messaging is not routine supervision that this Court has permitted. Unlike the "minimal and remote" interaction approved in *Walz*, enforcement here would demand content-based judgments about religious expression. The danger is not merely theoretical: a regime that requires pervasive monitoring openly invites intrusion into religious autonomy. Accordingly, such involvement exceeds constitutional limits and constitutes excessive entanglement.

Even under the long-criticized *Lemon* test, the Johnson Amendment cannot survive. Its primary effect inhibits religion by placing religious teaching under a Government magnifying glass. At the same time, it fosters excessive entanglement by requiring the Government to monitor and evaluate religious communications on an ongoing basis, setting the stage for more future intrusions. Even as a secondary framework, *Lemon* confirms that the Johnson Amendment violates the Establishment Clause.

Ultimately, the Johnson Amendment is blatantly unconstitutional because it fails to withstand scrutiny across four independent channels of analysis. The provision first violates the First Amendment by discriminating among religions, burdening those whose doctrine requires political participation. It is independently unconstitutional under the coercion test because it forces

churches to choose between loyalty to religious doctrine and continues access to public benefits. And even if the Court were to set aside these First Amendment violations, the result would not change under modern jurisprudence. Under the Court's history-and-tradition framework, the Johnson Amendment fails because it departs from the nation's longstanding practices by authorizing Government supervision of religious teaching. Finally, even under the *Lemon* test, the amendment's inhibiting of religion and excessive entanglement with religious affords render it unconstitutional. No matter what framework the Court chooses to apply, the conclusion is the same: the Johnson Amendment violates the Establishment Clause of the First Amendment and cannot stand.

CONCLUSION

For the foregoing reasons, this Court should find in favor of CTC on both counts, affirming the Court of Appeals and ultimately finding the Johnson Amendment unconstitutional.

Respectfully submitted,

Team 32
Counsel for Respondent

APPENDIX

Constitutional Provisions and Statutes in full:

U.S. Const. art. III, § 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.

* * * *

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.

* * * *

26 U.S.C. § 501(c)(3) - Exemption from tax on corporations, certain trusts, etc.

d. List of exempt organizations. The following organizations are referred to in subsection (a):

4. 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 U.S.C. § 7421 - Prohibition of suits to restrain assessment or collection

b. 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 - Prohibition of suits to restrain assessment or collection

c. Creation of remedy. In a case of actual controversy involving—
    1. a determination by the Secretary—
        A. 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),

d. Limitations
    C. Exhaustion of administrative remedies. 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.