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

BRIEF OF PETITIONER
SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE; THE INTERNAL REVENUE SERVICE

Team 33
Counsel for Petitioner

ISSUES PRESENTED

I. Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.

II. Whether the Johnson Amendment violates the Establishment Clause of the First Amendment.

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The opinion of the court of appeals is reported at 345 F.4th 1 (14th Cir. 2025) and set forth on pages 2–15 of the record. The opinion of the United States District Court of Wythe is unreported.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are included in the appendix.

STATEMENT OF THE CASE

A. Factual Background

The Everlight Dominion is a centuries-old religion that has experienced significant growth in recent years. R. 3. The religion "requires its leaders and churches to participate in political campaigns and support candidates" aligned with its progressive social values. *Id.* This requirement extends to "endorsing candidates and encouraging citizens to donate to and volunteer for campaigns." *Id.* Religious leaders or churches that fail to comply with this mandate face banishment from The Everlight Dominion. *Id.*

Covenant Truth Church ("the Church") has become the largest church practicing The Everlight Dominion. *Id.* The Church is classified as a Section 501(c)(3) tax-exempt organization under the Internal Revenue Code ("IRC"), also known as the Johnson Amendment. *Id.* Under Section 501(c)(3), both secular and nonsecular nonprofits are prohibited from "[p]articipat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." R. 2. The Johnson Amendment "passed without debate and became a part of the [IRC] of 1954." *Id.*

Pastor Gideon Vale ("Pastor Vale") became head pastor of the Church in 2018, when the church had only a few hundred members. *Id.* at 4. Under Pastor Vale's leadership, the church's membership grew to nearly 15,000 members by 2024. *Id.*

Pastor Vale created a weekly podcast to deliver sermons, provide spiritual guidance, and educate the public about The Everlight Dominion. *Id.* By 2024, this podcast had become the fourth-most listened to podcast in the State of Wythe and the nineteenth-most listened to podcast nationwide, drawing millions of downloads. *Id.* Consistent with The Everlight Dominion's requirement for political involvement, Pastor Vale began using his weekly podcast "as a forum to deliver political messages." *Id.* For the Church, Pastor Vale endorses candidates and encourages listeners to vote for candidates, donate to campaigns, and volunteer for campaigns. *Id.*

In January 2024, a Wythe Senator passed away, triggering a special election under state law. *Id.* Congressman Samuel Davis, whose political positions align with The Everlight Dominion's progressive social values, announced his candidacy. *Id.* During a sermon on his weekly podcast, Pastor Vale endorsed Congressman Davis on behalf of the Church. *Id.* at 5. Pastor Vale discussed how Congressman Davis's political positions aligned with The Everlight Dominion's teachings and encouraged listeners to vote for, volunteer with, and donate to the Davis campaign. *Id.* Pastor Vale announced his intention to deliver additional sermons on his podcast and at the Church in October and November 2024 explaining why Congressman Davis's positions aligned with The Everlight Dominion's teachings. *Id.*

The IRS conducts random audits of Section 501(c)(3) organizations to ensure compliance with the IRC. On May 1, 2024, the IRS sent the Church a letter informing the Church it had been selected for a random audit. *Id.* Pastor Vale, aware of the Johnson Amendment's prohibition on political campaign intervention by Section 501(c)(3) organizations, became concerned that the IRS

would discover his and the church's political involvement and revoke the church's tax-exempt status. *Id.* The Church's Section 501(c)(3) tax classification remains unchanged. *Id.*

B. Procedural History

On May 15, 2024, before the IRS could begin its audit, the Church 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 Establishment Clause grounds. *Id.* After the IRS answered the Church's complaint with denials, the Church moved for summary judgment. *Id.* The District Court granted the Church's summary judgment and the permanent injunction, holding "that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause." *Id.* The IRS, Appellants, appealed the district court's decision to the Fourteenth Circuit Court of Appeals. *Id.*

The Fourteenth Circuit affirmed the decision of the district court. *Id.* at 11. It first affirmed that it had jurisdiction because the Tax Anti-Injunction Act would not be applicable, holding that Appellees would have no alternative remedy to challenge the Johnson Amendment. *Id.* at 6. Secondly, it affirmed that Appellees have satisfied the standard for Article III standing, contending that the threat of future enforcement put them at "substantial risk," and that the Johnson Amendment has been selectively enforced by the IRS. *Id.* at 7-8. Next, the Fourteenth Circuit held that the Johnson Amendment is unconstitutional. *Id.* at 8. Specifically, it stated "[The Johnson Amendment] permit[s] the IRS to determine what topics religious leaders and organizations may discuss as a part of their teachings." *Id.* It asserted the tax exemption offered by the Johnson Amendment has been "used as a tool to prevent religious organizations from weighing in on political issues." *Id.* at 10. The IRS petitioned this Court for a writ of certiorari, which was granted.

STANDARD OF REVIEW

The standard of review is de novo as these issues presents a question of law. *Bufkin v. Collins*, 604 U.S. 369, 382 (2025) ("When applying the law involves developing legal principles for use in future cases, appellate courts typically review the decision de novo.") (citation omitted). Constitutional claims, specifically the First Amendment such as here, present questions of law and interpretation. Likewise, the District Court's grant of summary judgment is also reviewed de novo by the Appellate Court with the "evidence [viewed] in the light most favorable to the party opposing summary judgment." *Thompson v. D.C.*, 832 F.3d 339, 344 (D.C. Cir. 2016) (citations omitted). De novo review means the review "give[s] the arguments and the issues a fresh look without any deference to the district court's reasoning." *MacRae v. Mattos*, 106 F.4th 122, 132 (1st Cir. 2024) (citations omitted).

SUMMARY OF THE ARGUMENT

First, the Church does not have jurisdiction or standing to challenge the IRS's Johnson Amendment. Secondly, even if the Church does have standing, the Johnson Amendment does not violate the Establishment Clause of the First Amendment.

The Anti-Injunction Act bars the Church's claim. Specifically, alternative remedies exist for the Church. Once a determination has been made on the Church's tax classification, and if that decision results in the Church's 501(c)(3) classification being removed, then the Church can go through the appeals process provided by the IRS. Additionally, the Church does not have an exception under the *Williams Packing* test because there is (1) a possibility of the IRS's success on the merits and (2) the Church would not be irreparably harmed by the injury because it has the option to organize as a 501(c)(4) organization, where they could keep their tax-exempt status and engage in political endorsement. Furthermore, the Church does not have standing because the potential change of its tax classification is not an "actual or imminent" injury-in-fact, it is purely

speculative. Moreover, the Church does not have standing on pre-enforcement grounds because the threat of future enforcement is not as substantial as the Fourteenth Circuit acclaims, and the Church is not guaranteed to succeed on the merits. Precedence shows that Johnson Amendment enforcement is rare and the IRS has explicitly stated that it does not intend to use this enforcement against churches. Without unequivocally knowing whether the Johnson Amendment would change the Church's tax classification, it cannot be demonstrated that the Church has standing.

There is no violation of the Establishment Clause because the Johnson Amendment is explicitly neutral by applying to both secular and nonsecular organizations. There is no religious coercion within the Amendment, it simply provides one rule for all nonprofits—that they not engage in political campaigning. The fact that 501(c)(3) organizations can also organize as 501(c)(4) organizations to accomplish their goals of engaging in political endorsement further demonstrates the neutrality of the Johnson Amendment. Moreover, precedence of this Court illustrates that (1) the tax exemption is a conditional benefit, not a constitutional right, (2) legislation that is broadly applied to both secular and nonsecular organizations alike is neutral, thus not violating the Establishment Clause and (3) any merely incidental burden placed on the Church is not a violation as laws applying uniformly to everyone is an impossible standard. Further, under *Kennedy*, allowing a religious exception would risk an Establishment Clause violation. The Johnson Amendment is also consistent with our country's "historical practices and understanding" as stated in *Kennedy*, because it preserves the longstanding tradition of separation between church and state. Further, as a matter of policy, the Johnson Amendment preserves the integrity of elections and of non-profit organizations.

ARGUMENT

I. The Church is ineligible for a remedy because their claim is barred by the Tax Anti-Injunction Act and because the Church lacks Article III standing.

The requirement that complainants have proper standing is embedded in the constitution to preserve the efficient functioning of the courts, and to preserve the separation of powers. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). The constitution limits the court's jurisdiction to cases or controversies. U.S. CONST. art. III. Plaintiffs, in their pleadings, have the burden of showing that they have standing and that the court they submit their pleadings to have jurisdiction over the matter. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 561 (1992). When plaintiffs fail to show that they have standing, then the court must dismiss the complaint. *Id.* at 578. Congress also has the power to limit the jurisdiction of federal courts through legislation as it did in the Tax Anti-Injunction Act. 26 U.S.C. § 7421.

The Federal Government is reliant upon the efficient assessment and collection of taxes, which the Constitution has empowered Congress to pursue. In 1867, Congress passed the Tax Anti-Injunction Act (TAIA) to protect the Internal Revenue Agency from constant litigations and promote the efficient collection of taxes. *Hibbs v. Winn*, 542 U.S. 88, 103 (2004). The TAIA removes federal court's jurisdiction to hear cases "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421. This Court has recognized only two exceptions to the TAIA; those being the *Williams Packing* test and allowance of suits where there are no alternative remedies. *South Carolina v. Regan*, 465 U.S. 367, 372–73 (1984). The court of appeals erred in finding that the Church had no alternative remedies and thereby also not considering the *Williams Packing* test. Neither exception allows the Church to bring their current claim, so the Court does not have jurisdiction to weigh the case on the merits.

Additionally, the Church has not established standing under Article III of the Constitution. To have standing, a plaintiff must have an actual or imminent injury. *Lujan*, 504 U.S. at 560. Claims of injury that are speculative or lack a substantial threat to the plaintiff do not satisfy the

standing requirement. *Id.*; *Clapper*, 568 U.S. at 410. The Church lacks Article III standing because their loss of tax-exempt status is speculative and the church has not established that there is a substantial threat of IRS enforcement against it. Even if the tax-exempt status is revoked and enforced against the Church, there is no guarantee that the Church will incur additional tax liability. *Branch Ministries v. Rossotti*, 211 F.3d 137, 143 (D.C. Cir., 2000). The chain of speculation required to foresee the Church's injury is too remote to constitute an imminent injury.

Both the lack of jurisdiction under the TAIA and the Church's lack of standing independently require dismissal. To allow this suit to continue would encourage other taxpayers to seek similar injunctions in advance of paying their taxes, disrupting the government's revenue collection and overflowing the federal courts with every person and organization looking to cut their tax bill. Because Congress has denied the Court's jurisdiction and because the Church lacks standing, Petitioner asks that this Court reverse the judgment of the Fourteenth Circuit and dismiss the Church's complaint.

A. The Tax Anti-Injunction Act bars the Church's suit because alternative remedies for challenging their tax classification are available and because the suit does not pass the *Williams Packing* test.

Parties may not sue the federal government to prevent the collection of taxes when alternative remedies are available. 26 U.S.C. § 7421(a). Despite the lack of legislative history, this Court has embraced a few purposes that the statute was enacted to serve, such as minimizing judicial interference of tax collection and standardizing the remedies available to taxpayers. *South Carolina*, 465 U.S. at 373; *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736-37 (1974). The statute blanketly restricts any case that would result in the restraint of tax assessment and collection, without regard to the nature of the plaintiff's claim. *Alexander v. Ams. United*, Inc., 416 U.S. 752, 758 (1974). Even if a plaintiff makes a constitutional claim, the Court stated that "decisions of this

Court make it unmistakably clear that the constitutional nature of a taxpayer's claim…, is of no consequence under the Anti-Injunction Act." *Id.* at 759. Challenging the IRS's determination of an organization's 501(c)(3) status is a suit restraining the assessment and collection of a tax, so Section 7421 applies unless there is a relevant exception. *Bob Jones*, 416 U.S. at 737 . Exceptions to Section 7421 include the absence of alternative remedies and the two-factor William Packing test. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962). Neither of these exceptions apply to the Church, so the TAIA does not allow the Church to challenge the Johnson Amendment in this suit.

i. The Church's suit is barred by the TAIA because the Church may pursue alternative remedies such as suing for a refund after payment, or seeking a declaratory judgment to challenge their tax classification.

The Fourteenth Circuit erred in finding that there are no alternative remedies available to the Church even though several remedies would inevitably become available if the assessment process continues as the Church contends it will. This Court has held that the TAIA applies to all suits unless Congress has not provided an alternative route to challenge a tax. *South Carolina*, 465 U.S. at 372. Alternative remedies include paying the tax and suing for a refund or declining payment and appealing the levy imposed by the IRS. *Id.* at 375; see also 26 U.S.C. § 6331. Suing for a refund after payment is the predominant method of disputing a tax. *Comm'r of Internal Revenue v. Zuch*, 605 U.S. 422, 425 (2025). It is also likely that congress' purpose in passing the TAIA was to make suing for refunds the exclusive remedy. *Williams Packing*, 370 U.S. at 7.

A party may also choose not to pay the assessed tax. When this happens, the IRS may impose a levy on the party's assets and properties to sell and recover the amount owed. 26 U.S.C. § 6331. The party being levied against has the right to appeal the levy for any reason. Id. The party must be informed of their right to appeal, and the IRS is restricted from seizing any property before

the appeal is resolved or the deadline to appeal lapses. *Id.* This affirms that suing for tax refunds and appealing levies are available to aggrieved parties who wish to challenge taxes assessed against them and that taxpayers will not incur permanent losses due to mistakes in tax assessment and collection.

Alternative remedies specifically for challenging tax classification under Section 501(c) are provided by Congress in 26 U.S.C. § 7428 which allows petitioners to request a declaratory judgment. Under Section 7428(b)(2-3), a party may challenge their classification within 90 days of an adverse classification if the party has exhausted administrative remedies within the IRS, and if the classification does not result from the party's failure to file previous tax returns. *Id*. That pleading may be heard in U.S. Tax Court, Federal Claims Court, or the District Court of D.C. *Id*. This remedy requires a "case or actual controversy," and requires that the petitioner exhaust all IRS internal remedies, but does not require that the tax already be paid. 26 U.S.C. § 7428(a); 26 U.S.C. § 7428(b)(2).

South Carolina provides an exception to the TAIA only if the plaintiff has no alternative remedy and will not have an adequate alternative remedy in the future. In *South Carolina*, the state was allowed to challenge section 310(b)(1) of the Tax Equity and Fiscal Responsibilities Act of 1982 which removed a tax exemption on interest earned from certain state-issued bonds. 465 U.S. at 370. The state was allowed to sue specifically because although the statute would significantly diminish the demand for state issued bonds, the state itself would incur no tax liability. *Id.* at 379-80. Because the state had no tax liability, it could not itself seek a refund, leaving no other remedy for the state other than suing the IRS. *Id.* South Carolina was allowed to sue because the state did not have an alternative remedy and would not have a remedy in the future after the challenged statute is enforced. *Id.* Only bond purchasers would have standing to challenge 310(b)(1) after the

tax went into effect, meaning that the state's only avenue for relief would be to recruit a bondholder to sue in place of the state. *Id.* The Court emphasized that "the Act was intended to apply only when Congress has provided an alternative avenue for an aggrieved party to litigate its claims on its own behalf." *Id.* at 381. The Court decided that exception applied for South Carolina because the state would not be able to litigate on its own behalf, not because the state lacked a remedy in the moment. *Id.*

Unlike the state in *South Carolina*, the Church has several alternative remedies where it can litigate on its own behalf, even though those remedies are not available right now. First, the Church could sue for a refund. The Church cannot now sue for a refund only because the tax has not been assessed or collected. R. at 5. When the IRS completes its audit, and only if the result is unfavorable to the Church, then the Church will be able to pay the assessed tax and then sue for a refund, challenging the legitimacy of the tax. If the Church refuses to pay the tax, the Church's assets are still protected from government seizure until the Church has exhausted its appeal of the levy. At the time that the Church is notified of an unfavorable tax classification, then the threat of enforcement will not be speculative and the Church will have an imminent injury. That remedy is not available now, because the injury is completely dependent on the IRS choosing to revoke the Church's 501(c)(3) status, which is not certain to happen. In the event that the Church faces an imminent injury, the Church will also have an alternative remedy to challenge the tax.

These remedies will only be required if the IRS makes an unfavorable tax classification after auditing the Church. If the IRS determines that the Church will keep its 501(c)(3) status, then the Church will no longer have an injury. If the Church loses its 501(c)(3) classification, Section 7428 will become an available remedy for a declarative judgment as Congress intended. 26 U.S.C. § 7428. Alternatively, the Church could pay the assessed tax and then file a suit for refund as

Congress intended. *Bob Jones*, U.S. 416 at 736-37. Even if the Church declines to use these remedies and refuses to pay the assessed tax, then the Church's assets are still protected at least until the Church has one more method to appeal. 26 U.S.C. § 6331. The Church's inaccessibility of refund suits and declaratory judgments at this moment is not a denial of the alternative remedy; it is only an indication that the issue is not ripe for litigation.

ii. The Church's suit is barred by the TAIA because the Church is not guaranteed to win on the merits and because the Church will not face irreparable harm.

In addition to having alternative remedies available, the Church is barred from suing under the *Williams Packing* test. An exception to Section 7421 is provided only if there is no possibility of the government's success on the merits and if the plaintiff would be irreparably harmed by the injury. *Williams Packing*, 370 U.S. at 7. The likelihood of the government's success is determined by the facts at the time of the suit "under the most liberal view of the law and facts." *Id.* This test preserves the statute's broad prohibition on suits the efficiency of tax collection by maintaining broad prohibitions against injunctions because "such a suit may not be entertained merely because collection would cause an irreparable injury, such as the ruination of the taxpayer's enterprise." *Id.* at 6. *Bob Jones* served to reemphasize the requirement that there be no chance of the government's success for the exception to apply. 416 U.S. at 748-49 (dismissing the plaintiff's complaint because the merits of the case were "sufficiently debatable"). The government, when acting in good faith, is entitled to collect the tax without the delays of litigation. *Williams Packing*, U.S. 370 at 7-8.

Applying the *Williams Packing* test, if the government has any possibility of showing that the Johnson Amendment is constitutional, then the test will not provide an exception to Section 7421. Additionally, if the taxes would not cause irreparable harm, then the test will not provide an exception. The government has a sufficient possibility of success to foreclose the exception and

the Church's potential loss of 501(c)(3) status would not cause irreparable harm. The Johnson Amendment was passed in and has survived numerous challenges in congress. R. 2-3. There have also been judicial challenges to the Johnson Amendment. *Branch Ministries*, 211 F.3d at 142.

Branch Ministries involved a church challenging the constitutionality of the Johnson Amendment based on the Free Exercise clause of the First Amendment. *Id.* The D.C. Circuit considered the arguments of previous 501(c) cases in this Court to conclude that the amendment was constitutional. *Id.* at 143-44 (citing *Regan v. Taxation With Representation*, 461 U.S. 540 (1983) (Blackmun, J., concurring) and *Cammarano v. United States*, 358 U.S. 498 (1959)). The court relies on *Regan* to conclude "that the Church cannot use its tax-free dollars to fund such a PAC unquestionably passes constitutional muster." *Id.* at 143. In *Regan*, this Court reasoned that the Johnson Amendment did not violate the First Amendment because the tax exemptions functioned to subsidize the organizations' activity. *Regan*, 461 U.S. at 550. Alternatively, the removal of tax-exempt status is not a sanction, but the removal functions as the government using its discretion to not fund activities it may disagree with. *Id.* The prior challenges to the Johnson Amendment were not grounded in the Establishment clause, but the statute has continuously survived constitutional challenges. *Branch Ministries*, 211 F.3d at 143-44.

The government is not certain to lose on the merits because there are debatable arguments in favor of the Johnson Amendment's constitutionality. Here the government relies upon argument grounded within previous constitutional defenses of the Johnson Amendment. Arguments reliant upon themes such as the neutral, indiscriminate nature of the statute and the lack of coercion have been used by this Court in challenges to statute based on the Establishment clause. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952). By adopting previously successful and precedential arguments, the government's position is at least debatable, if not probable to succeed. Because the

success of the government's arguments are debatable, there is no guarantee of the government's loss and the *Williams Packing* test is not satisfied.

Losing 501(c)(3) status would not cause irreparable harm to the church because the Church can apply for 501(c)(4) status which retains the majority of tax exemptions. *Branch Ministries*, 211 F.3d at 143. The Church could even retain its 501(c)(3) status by creating an auxiliary 501(c)(4) organization specifically for political participation. *Id.* Although this court has previously considered the value of 501(c)(3) status in assuring tax deductions for donors may satisfy the irreparable harm requirement, that alone does not create an exception under the *Williams Packing* test. *Alexander*, 416 U.S. at 761-62. Transitioning from a 501(c)(3) to 501(c)(4) does not necessarily impose additional taxes against the organization. *Branch Ministries*, 211 F.3d at 143. Rather, change in classification removes the ability for donors to claim tax deduction from their contributions. Because it is unclear what, if any, financial burden the Church would incur, there is not sufficient evidence to show that the Church faces an irreparable harm and the Williams Packing test is not satisfied.

Neither *South Carolina* nor the *Williams Packing* test justify an exception to 7421 in this case. *South Carolina* does not provide an exception because the Church itself would be subject to tax liability and therefore could be eligible for a refund if they succeed in challenging their classification. The *Williams Packing* test does not provide an exception here because the government is not certain to lose on the merits and the Church is not subject to irreparable harm. The TAIA bars the Church's suit from proceeding.

B. The Church has not satisfied Article III standing because the potential change in tax classification is not an actual or imminent injury, and because the insistence of an injury relies upon a chain of speculations.

United States courts may only decide cases where there is a "case or controversy" that needs resolution. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Advisory opinions which are relevant to only future or hypothetical controversies are not allowed. *U.S. v. Fruehauf*, 365 U.S. 146, 157 (1961); *see also Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 241 (1937). To satisfy Article III standing, a plaintiff must show that they have suffered an injury in fact, that the conduct complained of has a causal connection to the injury, and that the injury can be redressed through court intervention. *Lujan*, 504 U.S. at 560–61. The party asserting that the federal court has jurisdiction has the burden of showing that there is standing. *Id.* at 561-562. If there is no injury for the court to redress, then the court must dismiss the suit. *Id.* at 578.

In avoiding advisory opinions, the court has placed additional restrictions on challenges to statutes or regulations that have not gone into effect or have not been enforced. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). Pre-Enforcement challenges to statutes and regulations are available only when the party has intent to engage in conduct with constitutional interest, when that future conduct is proscribed by the statute, and when the threat of future enforcement is substantial. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161-62, 164 (2014). Pre-enforcement challenge of 501(c)(3) is not available to the Church because the threat of future enforcement is not substantial.

i. The potential removal of the Church's 501(c)(3) status is not an injury in fact because it relies on a chain of speculations.

An injury in fact must not rely on a chain of speculations. *Clapper*, 568 U.S. at 410. When the injury that a party seeks to avoid is dependent on several conditions not certain to occur or dependent upon the "decisions of independent actors," then the injury is not imminent. *Id.* at 414. In *Clapper*, the Court counted five sequential assumptions that the petitioner would rely on to claim that the projected injury was imminent. *Id.* at 410. Many of the assumptions relied on

speculations about how the government would act in response to the previous assumption. *Id.* The court ruled that the plaintiff did not have standing because the injury was too remote. *Id.* at 414. In the past, this Court has denied hearing issues where the plaintiff can wait and allow the conflict to develop. *Babbitt*, 442 U.S. at 304 (deeming a farmworkers' union's challenge to an Arizona statute allowing employers to deny resources to labor organizations unripe for review when the employer had not yet used the statute to deny access to the union).

Like the plaintiff in *Clapper*, the Church uses a string of speculations to claim it has standing. The Church's injury is initially dependent upon the Church acting outside the restrictions of the Johnson Amendment, though it is uncertain whether the Church's conduct is outside the restriction because the IRS has not begun an investigation. R. at 5. The Church assumes that the IRS will conclude that the Church does not conform to 501(c)(3) requirements, and the IRS choosing to remove the Church's 501(c)(3) status because of the Church's conduct. *Id.* The Church must also assume that the change in tax status will have unfavorable results, such as exposing the church to new tax liability. So far, the IRS has only indicated that the Church's status will be audited. *Id.* The audit has not occurred, and no judgment has been announced. *Id.* The Church stated that it expects to lose its status, but that is completely dependent on the decisions of IRS officials, who are independent actors. *Id.* The Church's claim is similar to the unripe claim in *Babbitt* because the plaintiff relied upon their own expectation of how a statute would be used rather than waiting to for a conflict that may not materialize. *Babbitt*, 442 U.S. at 304. The potential injury that the Church alleges is speculative until the IRS completes their audit of the church. After the IRS has made a determination of the Church's tax assessment, and only if the determination is unfavorable to the Church, and if then the Church may have a threat of imminent injury.

ii. The Church is not entitled to pre-enforcement challenge because there is not a substantial threat of enforcement.

Pre-enforcement challenges to statutes and regulations are only allowed in limited circumstances. Pre-enforcement challenges are allowed only when the plaintiff "has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Babbitt*, 442 U.S. at 298. The preference to allow pre-enforcement challenges without exposing oneself to actual injury is specifically to avoid needless exposure to criminal sanction. *Id.*

In *Susan B. Anthony*, a political advocacy organization was allowed to challenge an Ohio statute criminalizing the misrepresentation of political candidates' voting records. 573 U.S. at 168. There, the court found that there was a substantial threat of a non-criminal proceeding's enforcement by weighing several circumstances, including previous attempts at enforcement, the types of entities able to initiate investigations, and the overall rate of enforcement. *Id.* at 164. The Court recognized a previous probable cause finding as an example of a prior enforcement attempt, which could be used against the organization in the future. *Id.* The Court also considered that "any person" could submit a claim to initiate a proceeding against the organization and that those were proceedings, including those initiated by false complaints, were common. *Id.* These factors, taken together, suggested that there was a substantial risk of enforcement if the organization continued to engage in identical conduct. *Id.* Even with all the relevant factors weighing in favor of the plaintiff, the Court declined to rule that such a substantial threat of enforcement could alone satisfy Article III standing. *Id.* at 166. The threat of criminal sanctions as well as non-criminal sanctions convinced the Court that pre-enforcement standing was met.

Here, the IRS inquiry into the Church is distinguishable from *Susan B. Anthony*. There has not been a prior enforcement attempt or probable cause finding. Rather, the selection of the Church for an audit was random. R. at 5. Tax inquiries are different from the Ohio statute in *Susan B.*

Anthony because IRS inquiries cannot be initiated by the general public in the same way as the Ohio statute. Additionally, the enforcement of the Johnson Amendment against religious organizations is rare and the IRS has stated its intention not to enforce the Johnson Amendment against churches. *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025).

The church's claim is different from the previous cases in that the Church is seeking to avoid tax liability instead of criminal sanctions. The conduct that the Church intends to engage in is the endorsement of political candidates and political fundraising through church platforms and the threatened injury is the Church's loss of tax-exempt status. R. at 5. Considering that the Church would be refunded and restored to tax exempt status if they succeed, the stakes here are much lower than the consequences of unconstitutional criminal prosecution. Because there is no threat of criminal sanctions, the threat of losing tax-exempt status may not be sufficient to trigger Article III standing.

Because the Church has not established an injury in fact and is not under a substantial threat of enforcement, the Church lacks Article III standing for its pre-enforcement challenge of the Johnson Amendment.

II. The Johnson Amendment does not violate the Establishment Clause because it is expressly neutral, it does not coerce religious participation, and it is aligned with historical practices and understandings of our country.

This case concerns whether the Church's Establishment Clause rights are violated by the Johnson Amendment, which prohibits all, secular and nonsecular, 501(c)(3) organizations from political campaigning from enjoying tax-exempt income. The Church argues the Johnson Amendment should allow for an exception for religious organizations to participate in political campaigns. R. 3.

The following sections analyze why the Johnson Amendment does not violate the Establishment Clause. First, it is expressly neutral: it applies to all 501(c)(3) organizations, not just religious groups. Both secular and nonsecular 501(c)(3) organizations are subject to the same condition, that they do not participate in political campaigning, in order to receive the sane benefit. Second, the Johnson Amendment does not prohibit 501(c)(3) groups from engaging in political campaigns entirely. As an alternative, 501(c)(3) organizations can choose to organize as a social welfare organization, a 501(c)(4) organization, to engage in political campaigning while retaining some tax benefits. Moreover, the tax exemption is a benefit, not a constitutional right. In *Walz*, the Court expressly states that tax exemptions are not absolute, observing that some organizations may "lose that status when their activities take them outside the classification," without breaching the Establishment Clause. *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 673 (1970). Furthermore, any burden placed on the Church is merely incidental. To expect laws "to uniformly affect every individual and organization" is an impossible standard. R. 16. Under *Kennedy*, the Johnson Amendment does not coerce any nonsecular organizations on how to direct their religion. The Johnson Amendment only serves the purpose of what the Establishment Clause seeks to protect, as understood by the Founding Fathers: maintaining balance between church and state.

A. The Johnson Amendment is expressly neutral because it does not direct religious beliefs, it applies equally to all nonsecular and secular 501(c)(3) organizations, any burden is merely incidental, and it upholds the separation between church and state.

The Establishment Clause was created to preserve the balance of separation between church and state. Our founders were concerned with politics tainting the sanctity of churches. The Clause demands neutrality in legislation involving secular and nonsecular institutions and likewise neutrality between nonsecular institutions. Therefore, if legislation was created with a specific religion in mind, then it will be found in violation of the Clause.

The Establishment Clause of the First Amendment states plainly: "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. One of the catalysts for the Revolutionary War and the subsequent founding of our nation was the desire to break from state-sanctioned religion. *McGowan v. State of Md.*, 366 U.S. 420, 430 (1961) ("the writings of Madison, who was the First Amendment's architect, demonstrated that the establishment of a religion was equally feared because of its tendencies to political tyranny and subversion of civil authority."). Puritans settled in New England for the express purpose of escaping state-sanctioned religion. *Torcaso v. Watkins*, 367 U.S. 488, 490 (1961) ("it was largely to escape religious test oaths and declarations that a great many of the early colonists left Europe and came here hoping to worship their own way."). Even Southern colonists who did not wish to stray from the Church of England often "chafed at the control exercised by the Crown" over their religious worship. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 183 (2012). As observed by this Court in Hosanna-Tabor, "[i]t was against this backdrop that the First Amendment was adopted. Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church." *Id.* at 184.

In Thomas Jefferson's famous phrase, the Establishment Clause erected a "wall of separation" between church and state. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 122 (1982) (internal quotations omitted). In keeping this "wall of separation," statutes enacted must remain neutral. *Epperson v. State of Ark.*, 393 U.S. 97, 104 (1968) ("The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion."); *Zorach v. Clauson*, 343 U.S. at 314 ("The government must be neutral when it comes to competition between sects."); *Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over

another."). "A statute violates the Establishment Clause if it is 'entirely motivated by a purpose to advance religion.'" *Bown v. Gwinnett Cnty. Sch. Dist.*, 112 F.3d 1464, 1469 (11th Cir. 1997) (citing *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985)).

This section demonstrates that the Johnson Amendment does not violate any of the pro se violations of the Establishment Clause laid out in *Everson*. On the contrary, the Johnson Amendment achieves the goals of the Establishment Clause—separation of church and state. In *Everson*, the Court clearly outlined the activity that rose to the threshold of violating the Establishment Clause:

> Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.

Everson v. Bd. of Ed. of Ewing Twp., 330 U.S. 1, 15 (1947).

The Johnson Amendment, a provision in the Internal Revenue Code (I.R.C.) which prohibits all tax-exempt non-profit organizations from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office," does not even approach any of the Everson violations. 26 U.S.C. § 501(c)(3). The Amendment does not aid any religion or prefer one religion over another, does not coerce religion, does not punish individuals for religious beliefs and does not direct how religious matters should be handled. It simply upholds what the Establishment clause seeks to protect: the separation of church and state. In fact, it prohibits all 501(c)(3) organizations, secular

and nonsecular, from endorsing a political candidate, making it an expressly neutral mandate. Thus, the Johnson Amendment does not implicate the Establishment Clause as outlined in Everson.

i. The Johnson Amendment is neutral because 501(c)(3) organizations who wish to participate in political campaigning have the viable alternative of re-organizing as a 501(c)(4) organization.

The Johnson Amendment is neutral because, even if a 501(c)(3) organization wanted to engage in political campaigning, it has the viable alternative of organizing as a social welfare organization under section 501(c)(4) of the IRC. Precedent shows that it has not been a significant issue for 501(c)(3) organizations to engage in political campaigning, because they have the option to organize as a 501(c)(4) organization as well.

Under 501(c)(4) organizing, the Church would be able to engage in political campaigning. *See Freedom Path, Inc. v. Internal Revenue Serv*., No. 20-CV-1349 (JMC), 2025 WL 2779771, at *2 (D.D.C. Sept. 30, 2025) ("an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare."). According to the I.R.C., to operate as a 501(c)(4), "an organization must operate primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements)." 26 U.S.C. § 501(c)(4).

Case law affirms that 501(c)(3) organizations who wish to endorse political candidates can alternatively organize as a 501(c)(4) organization. See *Regan*, 461 U.S. at 552 ("TWR may use its present § 501(c)(3) organization for its nonlobbying activities and may create a § 501(c)(4) affiliate to pursue its charitable goals through lobbying."); *Branch Ministries*, 211 F.3d at 143–44 (holding that not only is 501(c)(3) viewpoint neutral, but also the Church may form a 501(c)(4) organization for its lobbying purposes.); *Citizens Union of City of N.Y. v. Att'y Gen. of N.Y.*, 408 F. Supp. 3d 478, 485 (S.D.N.Y. 2019) ("Lobbying cannot constitute a "substantial part" of a 501(c)(3)'s

activities, but there is no restriction on a 501(c)(4)'s ability to engage in lobbying. A 501(c)(3) may not participate in political campaigns. A 501(c)(4) may participate in political activities so long as such work is not the entity's "primary" activity.").

This 501(c)(4) counterpart gives secular and nonsecular 501(c)(3) organizations the same opportunity to participate in politics, making section 501(c)(3), the Johnson Amendment, viewpoint neutral. Therefore, the Church has the option to participate in political campaigning, same as all other 501(c)(3) organizations.

ii. The tax-exemption under the Johnson Amendment is a benefit, not a constitutional entitlement, that is applied neutrally to nonsecular and secular organizations alike.

In *Walz*, the Supreme Court affirmed that conditional tax exemptions are permissible as long as neutrally applied. However, the Court also made clear that tax-exempt groups may lose that benefit if they do not follow the government's guidelines. The Johnson Amendment does exactly that by balancing the fine line of applying the same condition to secular and nonsecular organizations, and thereby, avoiding excessive entanglement with religion.

The Johnson Amendment applies neutrally to all secular and nonsecular organizations, it is not being used as a tool to target religious organizations. As the dissent explains, "[t]he only, and clearly non-secular, requirement is that non-profit organizations may not participate in political campaigns or support political candidates." R. 15-16 (Marshall, J., dissenting) (emphasis added). Importantly, there is no constitutional requirement that religious organizations receive tax exemptions. It is not an Establishment Clause violation if the government offers certain organizations the benefit of a tax exemption and those organizations choose not to follow the guidelines of that benefit.

In *Walz*, the Supreme Court makes clear that religious organizations receive tax exemptions because they are "beneficial stabilizing influences in community life" and the government "finds

this classification useful, desirable, and in the public interest." 397 U.S. 673; see also *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250 (2025) (affirming that tax exemptions to religious institutions are permissible when applied neutrally.). However, the Court has already explicitly stated that religious organizations are not constitutionally entitled to a tax exemption: "Qualification for tax exemption is not perpetual or immutable; some tax-exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption." *Walz*, 397 U.S. at 673. The Court is also sure to point out the narrow tight-rope that must be balanced between religious organizations that receive tax exemptions and the Religion Clauses outlined in the Constitution, expressing, "[w]e must also be sure that the end result—the effect—is not an excessive government entanglement with religion." *Id.* at 674.

The Johnson Amendment represents exactly what the *Walz* Court outlines. The same rule—no political campaigning—applies neutrally and generally to all 501(c)(3) organizations. Like *Walz* explained, the Church is not exempt from the tax-exempt benefit being taken from them if they disobey the terms of section 501(c)(3). If the Johnson Amendment were written in a way that would allow these organizations to politically campaign, then there would be an "excessive government entanglement with religion." It protects the separation between church and state.

Supreme Court precedent affirms that legislation providing tax exemptions should be upheld so long as it is available to both secular and nonsecular institutions. For example, in *Zobrest,* the Court explicitly stated:

> [W]e have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit.

Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 8 (1993) (citations omitted).

In *Zobrest,* the Court held there was no Establishment Clause violation where a government program gave aid to support sign-language interpreters, regardless of whether they attended public or parochial schools. *Id.* at 14.

Other cases represent the idea that neutrality does not equal an Establishment Clause violation. See *Mueller v. Allen*, 463 U.S. 388, 398–99 (1983) ("As Widmar and our other decisions indicate, a program, like § 290.09(22), that neutrally provides state assistance to a broad spectrum of citizens is not readily subject to challenge under the Establishment Clause."); *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 488–89 (1986) ("Nor does the mere circumstance that petitioner has chosen to use neutrally available state aid to help pay for his religious education confer any message of state endorsement of religion."); *Agostini v. Felton*, 521 U.S. 203, 205 (1997) ("Such an incentive is not present where, as here, the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis."); *Mitchell v. Helms*, 530 U.S. 793, 830 (2000) ("The program makes a broad array of schools eligible for aid without regard to their religious affiliations or lack thereof. § 7372; see § 7353(a)(3). We therefore have no difficulty concluding that Chapter 2 is neutral with regard to religion."); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (citation omitted) ("Our focus again was on neutrality and the principle of private choice, not on the number of program beneficiaries attending religious schools.").

The Johnson Amendment achieves the rationale of these Supreme Court cases—if government aid is allocated across the board, to secular and nonsecular organizations alike, then the Establishment Clause is not violated.

iii. Merely incidental burdens are constitutional under the Establishment Clause.

A government regulation that merely affects one religion is not an Establishment Clause because expecting all legislation to apply uniformly across the board is an impossible standard as expressed in *McGowan.* The only condition of the Johnson Amendment is that all organizations do not partake in political campaigning. This law applies to both secular and nonsecular organizations alike to preserve its neutrality.

Any burden placed on the Church is merely incidental and does not mean the Johnson Amendment is targeting specific religions. In *McGowan v. Maryland*, the Supreme Court held that Maryland's criminal statutes, Sunday Closing Laws, which required most businesses to be closed on Sunday, were constitutional under the Establishment Clause and Free Exercise Clause. *McGowan*, 366 U.S. at 450-452. When looking at the statute's purpose, the Court determined it was not created to aid religion, but was instead created with a secular purpose: to allow time for communities and families to enjoy together. *Id.* It clarified government legislation that happens to merely affect a religion is not an Establishment Clause violation: "However, it is equally true that the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." *Id.* at 442. This belief has been the standard in other Religion Clause cases. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*., 508 U.S. 520, 540 (1993) (holding that the ordinance at issue was unconstitutional because it was enacted "because of, not merely in spite of" Santeria's religious practices."). *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990) ("It is a permissible reading of the text…to say that if prohibiting the exercise of religion…is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.").

Only when an exemption specifically targets or directs certain religions does it become unconstitutional. Specifically, the Supreme Court outlined the blatantness needed for this to be the case: "Much like a law exempting only those religious organizations that perform baptisms or worship on Sundays, an exemption that requires proselytization or exclusive service of co-religionists establishes a preference for certain religions based on the commands of their religious doctrine." *Cath. Charities Bureau, Inc.*, 605 U.S. at 250.

Like the statutes implicated in in *McGowan*, *Lukumi*, and *Smith,* the Johnson Amendment does not violate the Establishment Clause merely because it incidentally burdens the Church. Similar to the Sunday Closing Laws in *McGowan*, the Johnson Amendment's criteria is secular and neutral, upholding the goal of the Establishment Clause—separation of church and state. Moreover, it would be an unfair standard to require that piece of legislation "to uniformly affect every individual and organization in the United States." R. 16 (Marshall, J., dissenting). Unlike in *Catholic Charities*, the Johnson Amendment does not direct any religious establishment on how to run its religion, only that it and secular organizations refrain from political endorsement to receive this exemption.

B. Under *Kennedy*, the Johnson Amendment does not coerce religious practice and its creation reflects our country's historical practices and understanding.

The Court in *Kennedy* stated the Supreme Court had abandoned the previous 3-prong *Lemon* test for assessing Establishment Clause violations, instead basing its analysis on "historical practices and understandings." *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 534 (2022). Viewed through the lens of *Kennedy*, the Johnson Amendment clearly embodies neutrality and respects the balance of separation between church and state. Furthermore, the Johnson Amendment is rooted in our country's historical practices and understanding as conditional tax-exemptions have been provided to nonprofits for the purpose they serve in our society.

i. Under *Kennedy*, the Johnson Amendment does not micromanage religious organizations and values the separation between church and state.

Kennedy outlines the test for determined whether legislation violates the Establishment Clause. 597 U.S. 507, 534 (2022). In *Kennedy*, a high school football coach lost his job to protect the school from an Establishment Clause violation after he engaged in prayer with a number of students before, during, and after school games. *Id.* at 507-508. The Court abandoned the previous Lemon test and explained that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Id.* at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). Specifically, "[t]he line that courts and governments must draw between the permissible and the impermissible has to accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers." *Id.* at 535-536 (internal quotation marks omitted) (quoting *Town of Greece*, 572 U.S. at 577).

The Court held that because *Kennedy* did not require, ask, or insinuate that students pray with or should be praying with him, there was no coercion and thus, no violation of the Establishment Clause. *Id.* at 537. It went onto say that even if some were offended by prayer, this offense "does not equate to coercion." *Id.* at 539 (citation omitted). Furthermore, the Court rejected the District's argument that any form of visible prayer is impermissibly coercive on students stating this view "would undermine a long constitutional tradition in which learning how to tolerate diverse expressive activities has always been 'part of learning how to live in a pluralistic society.'" *Id*. at 510 (quoting *Lee v. Weisman*, 505 U.S. 577, 590 (1992)).

Here, like *Kennedy* explains, mere offense of the Johnson Amendment does not equate to an Establishment Clause violation. The Johnson Amendment is completely neutral. It does force nonsecular 501(c)(3) organizations to engage in prayer or not. It does not direct them on how their religious matters should be run. It does not condition anything religious to receive the tax

exemption. It only conditions that all 501(c)(3) organizations refrain from political campaigning. Moreover, as *Kennedy* makes clear, learning how to live in a pluralistic society is requires tolerating "diverse expressive activities." If the government aims to respect this balance, its legislation must be expressly neutral. If nonsecular 501(c)(3) organizations were to receive an exception to this neutral rule, it risks an Establishment Clause violation.

ii. The Johnson Amendment reflects the "historical practices and understanding" of the Establishment Clause.

The Johnson Amendment faithfully reflects the Founding Fathers' understanding of the Establishment Clause because it maintains the balance of the separation of church and state. On its face, the Johnson Amendment preserves Jefferson's "wall of separation" by discouraging campaign slogans from making their way into sermons, thereby maintaining appropriate separation between religious worship and campaign politics. *See Branch Ministries*, 211 F.3d 137 (upholding the revocation of the 501(c)(3) status of a church under the Johnson Amendment for sponsoring newspaper ads that opposed Bill Clinton).

But Thomas Jefferson and his contemporaries did not understand this wall to be insurmountable. The government has historically afforded religious groups a position of respect and financial benefits "in recognition of the important role that religion plays in the lives of many Americans." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 63 (2019). This Court has already held that conditional tax exemptions for religious groups, such as the 501(c)(3) exemption, do not run aground of the history and tradition of Establishment Clause. *Walz*, 397 U.S. at 679 ("Nothing in…two centuries of uninterrupted freedom from taxation has given the remotest sign of leading to an established church or religion."). As Justice Brennan observed, "it seems clear that exemptions were not among the evils that the Framers and Ratifiers of the Establishment Clause sought to avoid." *Id.* at 682 (Brennan, J., concurring). Indeed, the practice of offering conditional

subsidies to nonprofit organizations, including churches, was likely taken by our Founding Fathers as a given:

> Modern American laws of tax exemption of church property are rooted in two traditions, each of considerable vintage: (1) a common law tradition, which accorded such exemptions to established churches that discharged certain governmental burdens; and (2) an equity law tradition, which accorded such exemptions to all churches that dispensed certain social benefits. These two traditions have contributed to the widespread colonial and, later, state laws that exempt church property from taxation.

John Witte, Jr., "Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional Practice?", 64 S. CAL. L. REV 363, 368 (1991); see also note 27 (recognizing that early colonial laws did not distinguish between taxation of church property and church income). From the earliest days of American history, then, our government has provided conditional tax benefits to churches; not because churches are churches, but because churches contribute positively to society and relieve the government of some of its burdens. *Id.* In this way, tax exemptions for religious groups have always been conditioned on their role as nonpartisan organizations that serve the public good. Still today, tax exemptions for churches and other non-profits are a gesture of "benevolent neutrality" from the state in recognition of their "harmonious relationship to the community at large." *Walz*, 397 U.S. at 67. In this same tradition, the Johnson Amendment rewards community harmony by discouraging houses of worship from becoming campaign battlegrounds and preserves the historic bargain of the tax exemption: government benefits in exchange for nonpartisan service to the community.

The Johnson Amendment further falls in line with the history and tradition of the Establishment Clause by preserving churches' traditional role in political discourse, drawing a narrow line at campaign intervention or substantial lobbying. The Founding Fathers did not understand the Establishment Clause to completely proscribe religious groups from engaging in political expression. Colonial life revolved around houses of worship and ministers held a

distinctive position of influence, leading to the inevitable bleeding of political discussion (namely, the impending Revolutionary War) into religious speech:

> Compared to other institutions of moral authority, the church loomed large in colonial society. And the sermon was probably more effective than other forms of public communication…[t]he prominence of the institution and the effectiveness of the medium made political sermons a vitally important factor in the creation of the United States.

Mark A. Knoll, "The Election Sermon: Situating Religion and the Constitutional in the Eighteenth Century," 59 DEPAUL L. REV. 1223, 1238. Samuel Adams himself delivered a mixed-religious-and-political sermon during Thanksgiving of 1777 to "praise God for the patriot's recent victory at Saratoga," and George Washington "promoted religion as critical for the public good" in his Farewell Address of 1796. *Id*. at 1235, 1243. The Founders thus understood that religious and political speech would naturally intersect on moral issues, and that this overlap did not interfere with the Establishment Clause. But, at the same time, the Founding Fathers recognized that their "overriding and commonly held objective of achieving an adequate federal government would only be frustrated if the issue of religion's relationship to the regime were allowed to introduce a dimension of continuing divisiveness into their work." *Id.* at 1241. In other words, the Founders drew a line between natural overlap and disruptive clash between religion and government. This boundary was codified even before the Johnson Amendment, further demonstrating its history and tradition. *Cammarano,* 358 U.S. at 512 ("As early as 1934 Congress amended the Code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.") (internal quotations omitted).

In this same tradition, the Johnson Amendment leaves room for 501(c)(3) organizations to participate in politics while still maintaining the tax exemption. As discussed above, a 501(c)(3) organization that wishes to participate in campaign politics may do so by forming a separate

501(c)(4) division. But voicing support for political candidates is not the only way to engage in politics. The I.R.S. specifically distinguishes between issue advocacy and political campaign intervention: "501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office." Rev.Rul. 2007–41, 2007–25 I.R.B 1424. In this way, the Johnson Amendment permits the exact kind of religious participation in politics that the 14th Circuit Majority construes it does not. Following the guidance of the I.R.S., no church answering Dr. Martin Luther King Jr.'s call to denounce segregation would have been in danger of losing its 501(c)(3) status. R. 8–9. Further, as mentioned above, the Johnson Amendment does not proscribe 501(c)(3) organizations from lobbying entirely but instead limits the lobbying to less than a "substantial part of the activities" of said organization to qualify for the tax exemption. Rev.Rul. 2007–41, 2007–25 I.R.B 1421. As such, Charles Finney could also have enjoyed tax-exemption in leading an organization that modestly "extert[ed] its influence to secure legislation that is in accordance with the law of God." R–8. As a religious leader, Mr. Finney would also have been more than welcome to personally lobby his lawmakers, so long as he spoke for himself rather than on behalf of his 501(c)(3) organization. Rev.Rul. 2007–41, 2007–25 I.R.B 1422.

In the Founding Fathers' formulation, a crucial aspect of the Establishment Clause was the promise that no religion be favored over another. *Larson*, 456 U.S at 245; *Zorach*, 343 U.S. at 314. But to affirm the 14th Circuit's ruling would be doing just this: showing clear favoritism to the Church by permitting the Church to openly and unabashedly participate in campaign politics without even undergoing an I.R.S. audit, when no other religious group or other 501(c)(3) has ever been treated as such.

C. Affirming the Fourteenth Circuit's repeal of the Johnson Amendment would undermine the integrity of both elections and 501(c)(3) organizations themselves.

As a matter of public policy, overturning the Johnson Amendment would change the landscape of campaign finance for the worse. Because the Johnson Amendment is currently the only legislation that prevents campaign contributors from receiving tax deductions for their donations, its repeal would encourage the funneling of political donations through 501(c)(3) organizations for the tax benefits. Benjamin M. Leff, "Fixing the Johnson Amendment Without Totally Destroying It," 6 U. PA. J. L. PUB. AFFS. 115, 127–28 (2020) ("[T]he Johnson Amendment prevents a distortion of the campaign finance system by preventing campaign spending by 501(c)(3) organizations, thereby requiring all contributions…to be made on a nondeductible basis.")

Opening the door to tax-deductible political donations clears a pathway for wealthy donors to install politicians that serve their own agendas and pocket money while they do so. Had the Johnson Amendment been overturned prior to the 2016 presidential election, the top-ten largest super PAC donors would have saved $150 million by routing their donations through 501(c)(3) organizations. "Ten Super PAC Donors Could Save $150 Million with Tax-Deductible Contributions Through 'Johnson Amendment' Repeal," MAPLIGHT (December 14, 2017), https://maplightarchive.org/story/ten-super-pac-donors-could-save-150-million-with-tax-deductible-contributions-through-johnson-amendment-repeal/. Thus, the repeal of the Johnson Amendment would provide an even stronger incentive for wealthy Americans to make campaign donations than a favorable election outcome: more money in their pockets. *Id.* Further, contributing to a campaign through a church or another 501(c)(3) organization cloaks the donor in anonymity because of the more relaxed reporting requirements they enjoy. Ian Vandewalker, "A Dark Money Loophole of Biblical Proportions," THE BRENNAN CENTER (February 3, 2017), https://www.brennancenter.org/our-work/analysis-opinion/dark-money-loophole-biblical-

proportions. The phenomenon of "[d]ark money–spending on elections by groups that hide the identities of their donors–dramatically increased after the Supreme Court loosened limits on political spending by nonprofits in 2007." *Id.* Thus, to affirm the decision below would be to incentivize the wealthiest among us to fund political campaigns with their own interests in mind, to shield them from accountability, and to corrode the integrity of non-profit organizations.

CONCLUSION

For the foregoing reasons, the Petitioner requests that this Court reverse the Fourteenth Circuit Court of Appeals and find that (1) Respondents' claim was barred under the Tax Injunction Act and lack of Article III standing; and that (2) the Johnson Amendment does not violate the Establishment Clause of the Constitution.

Respectfully submitted,

Team 33
Counsel for Petitioner

Appendix

U.S. Const. art. III, § 2, cl. 1

> 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 – Exemption from Tax on Corporations, Certain Trusts, Etc.

a. Exemption from taxation

> An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

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, 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.
>
> 4. (A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

* * * *

26 U.S.C. § 7421 – Prohibition of Suits to Restrain Assessment or Collection

a. Tax

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

* * * *