Docket No. 26-1779

In The

Supreme Court of the United States of America

February Term, 2026

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 FOR PETITIONERS

Attorneys for Petitioners
Team 41

QUESTIONS 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.

LIST OF PARTIES

Petitioners are Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service. Petitioners were the defendants-appellants below.

Respondent is Covenant Truth Church, a Section 501(c)(3) organization. Respondent was the plaintiff-appellee below.

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The opinion of the United States District Court of Wythe is unreported and not available in the record. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at *Bessent v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025), and set out in the record. *See* R. at 2-17.

JURISDICTIONAL STATEMENT

The Fourteenth Circuit has entered judgment in this case. *See* R. at 2-17. Petitioners timely filed a petition for a writ of certiorari. This Court granted the petition. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. Const. art. III, § 2; *id.* amends. I, XVI.

The following statutory provisions are relevant to this case: 26 U.S.C. §§ 501(c)(3)-(4), 7421(a).

The following regulations are relevant to this case: 26 C.F.R. §§ 1.527-2(b)(1), 2(c)(1), 6(f), 6(g) (2025).

STATEMENT OF THE CASE

Covenant Truth Church is a church classified as a Section 501(c)(3) organization under the Internal Revenue Code. R. at 3. The church is a member of The Everlight Dominion, a centuries-old religion that requires its religious leaders and churches to be actively involved in political campaigns. R. at 3. Specifically, The Everlight Dominion embraces a wide array of progressive social values and encourages citizens to donate and volunteer for political campaigns. R. at 3.

Pastor Vale is the head pastor at Covenant Truth Church. R. at 3. Under his leadership, Covenant Truth Church has become the largest church practicing The Everlight Dominion. R. at 3. This effect has caused The Everlight Dominion to surge in popularity, especially among the younger generation. R. at 3. Pastor Vale has been able to reach many young followers through his weekly podcast, which he uses as a forum to deliver sermons and political messages. R. at 4. During one of his weekly sermons, Pastor Vale endorsed Congressman Davis, a political candidate who is running for U.S. Senator in a special election. R. at 4. Pastor Vale used his platform to discuss in detail how Congressman Davis's political stances aligned with the progressive views of The Everlight Dominion. R. at 5.

On May 1, 2024, the Internal Revenue Service (IRS) sent a letter to Covenant Truth Church, informing the church that it had been selected for a random audit. R. at 5. Upon receiving the letter, Pastor Vale became concerned that the IRS would enforce the Johnson Amendment against the church and revoke the church's tax-exempt status. R. at 7. The Johnson Amendment was enacted in 1954 by then-Senator Lyndon B. Johnson and mandates that, to be eligible for Section 501(c)(3) tax-exempt status, nonprofits may "not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3).

Two weeks after receiving the letter from the IRS, Pastor Vale filed this lawsuit, seeking to enjoin the IRS from enforcing the Johnson Amendment on the grounds that it violates the Establishment Clause of the First Amendment. R. at 5. At the time of the lawsuit, the IRS had not begun its audit and had not revoked Covenant Truth Church's Section 501(c)(3) status. R. at 5.

SUMMARY OF THE ARGUMENT

I. Covenant Truth Church lacks standing under the Tax Anti-Injunction Act and Article III of the Federal Constitution to challenge the Johnson Amendment.

A. First, the Anti-Injunction Act (AIA) bars any claim seeking to enjoin the IRS from collecting taxes. The AIA states that no suit shall be maintained by any court for the purpose of restraining the collection of a tax. This act applies when the primary purpose of a suit is to prevent tax collection. Here, the church is seeking an injunction to inhibit the IRS from enforcing the Johnson Amendment. Enforcing the amendment would remove the church's tax-exempt status—which would result in tax collection. Thus, by seeking an injunction, the church is ultimately trying to prevent tax collection. Under the AIA, the church is unable to seek this kind of pre-enforcement relief.

Furthermore, the narrow exception to the AIA is inapplicable. A narrow exception applies when (1) it is clear that the government could prevail under no circumstances, and (2) the plaintiffs will suffer irreparable harm if relief is not granted. Here, it is far from certain that the IRS can prevail under no circumstances. Laws that are neutral and generally applicable are valid under the Establishment Clause. The Johnson Amendment *is* neutral and generally applicable—it applies to all nonprofit entities, both religious and secular. This quality forecloses the argument that the IRS can prevail under no circumstances.

Moreover, the church also cannot demonstrate that it would suffer irreparable harm. This Court has previously found that a tax burden destroying a corporation's business is insufficient to

establish irreparable harm. Likewise, this Court has also found that losing a donor base does not establish irreparable harm. Given these precedents, the church cannot cite its donor base or financial stability as the basis for irreparable harm.

B. The church also lacks standing under Article III because its claim is unripe, and it faces no substantial risk of enforcement. A claim is not ripe when it is contingent on future events that may not occur as anticipated. Here, the church has suffered no injury because the IRS has not revoked its tax-exempt status. Instead, the church's injury is contingent on its tax-exempt status being revoked—which may not occur.

Furthermore, the church also faces little risk of enforcement. To have Article III standing, a plaintiff must demonstrate an injury in fact that is concrete and particularized. Claims of future injury may suffice if there is a substantial risk that the harm will occur. In the present case, the harm would be enforcement of the Johnson Amendment. This enforcement would cause the church to lose its tax-exempt status. But here, there is no substantial risk of enforcement. The IRS has recently decreed that it would not enforce the Johnson Amendment against churches that speak to their congregations on matters of electoral politics. This executive policy would allow the church and its leaders to support progressive candidates consistent with its religious beliefs. Because the church faces no substantial risk of enforcement, it lacks standing.

C. Finally, the church cannot bring a facial challenge to the Johnson Amendment because its unique religious beliefs give rise to the claim. Challengers who bring a facial challenge to a statute must establish that no circumstances exist under which the statute could be valid. But here, the amendment does not burden the practices of non-church entities. Enforcing the Johnson Amendment against a non-church entity would, without question, be valid. Because the church has

failed to demonstrate that the Johnson Amendment is valid under no circumstances, the church cannot bring a facial challenge.

II. The Johnson Amendment is constitutionally valid under the Establishment Clause.

A. First, the amendment is neutral and generally applicable. A statute is constitutionally valid when it is neutral toward religion and generally applicable to all entities. Here, the amendment is neutral toward religion. It applies to all nonprofit organizations—both religious and secular. What is more, no evidence suggests that targeting religion was Congress's object. Neither the statutory language nor the legislative history reveals an intent to discriminate against religious sects. Likewise, the Johnson Amendment is generally applicable to all nonprofit organizations. All Section 501(c)(3) entities—both religious and secular—are forbidden from engaging in politics. And the statute provides no mechanism for individualized exemptions.

B. Furthermore, the Johnson Amendment accords with historical practices and understandings of the Establishment Clause. This Court has instructed that the Establishment Clause must be interpreted by referencing historical practices and understandings. Here, Congress has historically imposed generally applicable standards for receiving tax exemptions. Some of these standards, such as lobbying restrictions, burden a religious entity's political involvement. Consistent with this history, the Johnson Amendment is also a generally applicable standard for receiving tax exemptions. And the amendment has been in effect for over seventy years. Given its long lifespan, invalidating the amendment would be inconsistent with this nation's historical practices.

C. Moreover, the Johnson Amendment does not coerce religious entities. The Establishment Clause forbids the government from coercing its citizens to support or participate in any religion. Here, the church may freely exercise its religious practices by becoming a Section

501(c)(4) organization. This type of entity could create a political action committee (PAC) that engages in politics. Establishing the PAC would initiate political involvement, allowing the church to satisfy its religious obligations.

D. In addition, the amendment does not require pervasive monitoring of religious matters. Pervasive monitoring violates the Establishment Clause. But the Constitution permits routine regulatory interactions that involve no inquiries into religious doctrine. Here, the IRS does not inquire about a church's religious doctrine. During an audit, IRS agents may observe a church's facility, operations, and financial records. This type of interaction is permissible under the Establishment Clause.

E. Finally, even if the Johnson Amendment creates a denominational preference, it is constitutionally valid because it satisfies strict scrutiny. When a law establishes a denominational preference, courts must treat the law as suspect and apply strict scrutiny. Under this standard, a law must be invalidated unless it is closely fitted to further a compelling governmental interest. A law is closely fitted when it is neither overinclusive nor underinclusive. Here, the government has compelling interests in maintaining a sound tax system and in not subsidizing partisan political activity. The amendment is not overinclusive to achieve these interests. Encompassing all nonprofit entities is necessary to maintain a sound tax code. The code would otherwise have to make exceptions for each organization's ideological preferences. What is more, this Court has classified tax exemptions as subsidies. Given tax exemptions are subsidies, excluding any entities from the Johnson Amendment would force the government to *subsidize* partisan politics. Likewise, the amendment is not underinclusive—it encompasses all Section 501(c)(3) organizations. This broad reach creates a uniform tax standard. It also allows the government to refrain from subsidizing

partisan politics. Because the Johnson Amendment is closely fitted to further compelling interests, it is constitutionally valid under the Establishment Clause.

STANDARD OF REVIEW

The appropriate standard of review for both questions presented in this case is *de novo*. Rulings related to standing and jurisdiction are reviewed *de novo*. *See Takhar v. Kessler*, 76 F.3d 995, 999 (9th Cir. 1996) ("Standing is a question of law reviewed de novo . . . ."); *Groome Res., Ltd. v. Parish of Jefferson*, 234 F.3d 192, 199 (5th Cir. 2000). In addition, an order granting a motion for summary judgment is also reviewed *de novo*. *See Joseph v. Hess Oil*, 867 F.3d 179, 181 (3d Cir. 1989) ("Our standard of review in an appeal from a grant of summary judgment is plenary."). Finally, injunction rulings are reviewed *de novo* when there is an underlying question of law. *See United Offshore Co. v. S. Deepwater Pipeline Co.*, 899 F.2d 405, 407 (5th Cir. 1990) (applying *de novo* review to a preliminary injunction order with an underlying "issue of law"). Under this standard, the Court does not defer to the lower courts but instead engages in an "independent determination" of the legal issues in the case. *United States v. First City Nat'l Bank*, 386 U.S. 361, 368 (1967).

ARGUMENT

I. The church lacks standing to challenge the Johnson Amendment under the Anti-Injunction Act and Article III of the U.S. Constitution.

Respondent Covenant Truth Church is a religious organization seeking to prevent IRS enforcement of the Johnson Amendment. R. at 5. The Johnson Amendment bars tax-exempt organizations from participating in, or intervening in, political campaigns on behalf of, or in opposition to, candidates for public office. 26 U.S.C. § 501(c)(3). As a religious organization, the church is eligible for Section 501(c)(3) tax exemptions. *Id.* Should the church participate in political campaigns, it would, in theory, forfeit its tax-exempt status under the Johnson Amendment. This outcome is the result that the church seeks to avoid—paying taxes while endorsing political candidates in violation of the Johnson Amendment.

The church's lawsuit asks the district court to permanently enjoin the IRS from enforcing the Johnson Amendment. R. at 5. This type of lawsuit is explicitly barred by the Tax Anti-Injunction Act (AIA), which prohibits claims that seek to enjoin the IRS from collecting taxes. 26 U.S.C. § 7421(a). Furthermore, the IRS has not actually enforced the Johnson Amendment against the church, nor is the church at risk of enforcement; the IRS formally decreed in 2025 that the Johnson Amendment does not apply to churches speaking on matters of political importance to their congregations. R. at 5; Joint Motion for Entry of Consent Judgement at 2, *Nat'l Religious Broad. v. Long*, No. 24-CV-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025). Therefore, the church does not have standing to bring a claim.

A. The church's suit fails because the Anti-Injunction Act bars a claim seeking to enjoin the IRS from collecting taxes.

The AIA prevents the church from bringing a claim for injunctive relief on tax assessments. The AIA states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against

whom the tax was assessed." 26 U.S.C. § 7421(a). Simply put, the AIA limits a court's ability to issue injunctive relief. *Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A.*, 551 F.3d 812, 818 (2009). The AIA bars the church's suit because it seeks to enjoin the IRS from collecting taxes and because none of the exceptions to the AIA apply.

1. The AIA bars the church's suit because the church is seeking to prevent a tax assessment.

The church's suit is barred by the AIA because the church is seeking to prevent a tax assessment against it. The AIA applies when the primary purpose of the suit is to prevent tax assessment or collection. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974). In *Bob Jones University*, a Christian school sought to "restrain" the IRS from revoking its tax-exempt status under Section 501(c)(3). *Id.* at 739. The IRS had not yet revoked the university's tax-exempt status, but it had announced that it would no longer grant tax-exempt status to schools like Bob Jones University that maintained discriminatory admissions practices. *Id.* at 735. This Court unanimously decided that the AIA barred the university's lawsuit because the Act explicitly prohibits suits "for the purpose of restraining the assessment or collection of any tax." *Id.* at 731-32.

Likewise, the church here seeks to prevent a tax assessment against it. Like the religious university in *Bob Jones University*, the church here is a religious organization seeking to violate the requirements of Section 501(c)(3). And as in *Bob Jones University*, the church is seeking to keep its Section 501(c)(3) status despite this violation by enjoining IRS enforcement of the Johnson Amendment. In *Bob Jones University*, this Court held that an injunction of this sort was for the purpose of preventing a tax assessment and, therefore, prohibited under the AIA. 416 U.S. at 749. The same prohibition applies here.

Even though the church is not seeking an injunction to prevent the IRS from collecting taxes against it in the most literal sense, the AIA still applies. A suit's purpose depends on the relief the suit requests. *Alexander v. Ams. United Inc.*, 416 U.S. 752, 760 (1974). The church is seeking an injunction preventing the IRS from enforcing the Johnson Amendment. R. at 5. Enforcing the Johnson Amendment in this case would remove the church's tax-exempt status, which would result in the church owing taxes. Therefore, the church is seeking to prevent tax collection.

The connection between the relief requested and the text of the AIA is far more straightforward in this instance than in the case of *Bob Jones University*, where this Court found that the AIA applied. 416 U.S. at 738. In *Bob Jones University*, the school argued that the AIA should not apply because the suit was intended to "compel the [IRS] to refrain from withdrawing [the university's] ruling letter and from depriving [the university's] donors of advance assurance of deductibility." 416 U.S. at 738. Even though the school described its goal as maintaining its donor base, not preventing taxation in the literal sense, this Court held that the AIA applied just the same. *Id.* Despite how the church characterizes its claim, it is seeking to prevent a tax assessment, which is barred by the AIA.

2. The narrow exception to the AIA is inapplicable because the church cannot demonstrate that the government could prevail under no circumstances and that the church would suffer irreparable harm.

The church does not fall under the narrow exception to the AIA. This exception applies when (1) it is clear that under no circumstances could the government ultimately prevail, and (2) the plaintiffs would suffer irreparable harm if relief were not granted. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962).

The church cannot argue that the IRS's adverse treatment is plainly without a legal basis or that under no circumstances could the IRS prevail. To win on the first prong of the *Williams Packing* test, the church must show that the IRS made a determination "plainly without a legal

basis or that under no circumstances could the IRS prevail." *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1194 (11th Cir. 2011) (referencing *Williams Packing*, 370 U.S. 1). As the dissent in the case below succinctly stated: "It is far from certain that [the church] will prevail on its Establishment Clause claim." R. at 12-13. The District of Columbia Court of Appeals previously stated that because the Johnson Amendment's rules are neutral and generally applicable, they do not violate the First Amendment. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 653-54 (2002); *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 673, 680 (1970); *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000). The only time when the IRS *has* lost on Johnson Amendment issues is when it selectively chooses to enforce against some organizations, but not others. *See, e.g.*, *Freedom from Religion Found., Inc. v. Shulman*, 961 F. Supp. 2d 947, 954 (W.D. Wis. 2013) (denying IRS motion to dismiss). The church does not claim that the Johnson Amendment is being enforced arbitrarily, only that it might be enforced against it. Because the Johnson Amendment is viewpoint-neutral, *Branch Ministries* clearly forecloses a claim that the IRS could prevail under no circumstances. *See* 211 F.3d at 144.

The church also cannot show that it will suffer irreparable harm. In *Bob Jones University*, losing a donor base was insufficient to demonstrate irreparable harm. 416 U.S. at 738. And in *Williams Packing*, a tax burden that would destroy the corporation's business was insufficient to demonstrate irreparable harm. 370 U.S. at 6. The church, therefore, cannot cite a loss of donor base or financial instability as the basis for irreparable harm.

3. The church has other enforcement mechanisms.

Alternate avenues of relief exist here. The AIA prevents the church from seeking an injunction against IRS enforcement; however, it does not prevent a plaintiff from seeking other legal remedies. *See Bob Jones University,* 416 U.S. at 746. In fact, the presence of an alternate enforcement mechanism explicitly prevents a claim because a claim cannot be brought under the

AIA exception when there is alternate enforcement mechanism. *Christian Coal. of Fla., Inc.*, 662 F.3d at 1193. This Court in *Bob Jones University*, after upholding the AIA bar on the school's claim, enumerated several alternate avenues for relief, including (1) exhausting the IRS's internal procedures and (2) paying the tax, then suing for a refund. 416 U.S. at 746. This Court bluntly acknowledged that these avenues are not the "best that can be devised." *Id.* at 747. Nevertheless, as this Court described, the delay of post-enforcement review does "not rise to the level of constitutional infirmities." *Id.*

The majority opinion below relies on *South Carolina v. Regan*, 465 U.S. 367, 373 (1984), which states that the AIA is entirely inapplicable when plaintiffs do not have an alternate remedy to challenge a tax. That is not the case here. In *South Carolina*, the Court found there was no alternative remedy because, if the State continued with the status quo, it would incur *no tax liability*, creating no opportunity to challenge the tax through the traditional appeal process. *Id.* Here, the church, under its theory, *would* incur tax liability if the Johnson Amendment were enforced against it, and the usual review processes would then apply. The majority seems to confuse the church's lack of standing—the absence of an "actual controversy"—as a pathway around the AIA. R. at 6. This approach would completely undermine the AIA by allowing anyone to bring suit for injunctive relief before their tax-exempt status has been changed.

B. The church lacks standing under Article III to bring this suit because its claim is unripe, and the IRS is not enforcing the Johnson Amendment.

1. The church's claim is unripe because it is contingent on future events.

The church does not have standing to bring a claim because its injury is contingent on future events. Article III, Section 2 of the Federal Constitution grants courts jurisdiction over "Cases" and "Controversies." U.S. Const. art. III, § 2. "The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through

the judicial process." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (citation modified). To bring a claim under Article III, plaintiffs must have suffered an "injury-in-fact" that is "concrete and particularized." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). A claim is not ripe for litigation when it "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation modified). Here, the church has not suffered an injury because the IRS has not yet revoked its tax-exempt status. R. at 7. Because this claim is contingent on future events—the IRS revoking the church's tax-exempt status—the claim is not ripe.

Absent actual injury, courts may find a suit is ripe when enforcement decisions are final. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated by Califano v. Sanders*, 430 U.S. 99 (1977). In *Abbott Laboratories*, pharmaceutical companies sought injunctive relief to prevent costly drug labeling rules from going into effect. *Id.* at 138. This Court held that, even though the pharmaceutical companies had not yet made the label change, the case was ripe because the agency decision was final. *Id.* at 149.

Here, the IRS has not made a final decision about the church's tax status. In fact, the IRS has not indicated any possible penalty toward the church at all; it merely selected the church for a "random audit." R. at 5. Not until the IRS revokes the church's tax-exempt status, or at least makes a final enforcement decision against the church, could the church have Article III standing to sue.

2. The church does not have standing because the IRS formally stated that it is not currently enforcing the Johnson Amendment.

The church cannot sue the IRS to enjoin its enforcement of the Johnson Amendment because the church faces no substantial risk of enforcement. To have standing, a plaintiff must demonstrate an "injury in fact" that is "concrete and particularized." *Driehaus*, 573 U.S. at 158. Claims of future injury may suffice if "there is a substantial risk that the harm will occur." *Id.* In

the present case, the harm would be enforcement of the Johnson Amendment. This enforcement would cause the church to lose its tax-exempt status.

Here, the church does not face a substantial risk of enforcement—or any risk of enforcement at all. The IRS plainly stated in its July 2025 consent decree that the Johnson Amendment would not be enforced against churches that speak to their congregations on matters of electoral politics. Joint Motion for Entry of Consent Judgement at 35, *Nat'l Religious Broad.*, 2025 WL 2555876. The churches in *National Religious Broadcasting*, like the church here, argued that enforcing the Johnson Amendment would favor religions that do not speak directly to political matters over those religions that do by offering tax-exempt status to the former and not the latter. *Id.* In response, the IRS entered a consent decree stating that it will not enforce the Johnson Amendment against churches that exercise these First Amendment rights. This shield against IRS action protects the exact type of religious freedom that the church seeks to invoke. Any further protection is, therefore, wholly unnecessary.

C. The church cannot bring a facial challenge to the Johnson Amendment because its unique religious beliefs give rise to the claim.

Aside from the statutory and constitutional bar preventing the church's suit, the church also seeks improper relief. The church's claim cannot be brought as a facial challenge since its admittedly unique religious beliefs give rise to the claim. To hold that a law is facially unconstitutional, this Court needs to find that under *no set of circumstances* could the law be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987).

This Court explained that bringing First Amendment claims as facial challenges "comes at a cost." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). In the First Amendment context, a facial challenge can succeed even if a "substantial number" of the law's applications are unconstitutional. *Id.* (quoting *Ams. for Prosperity Foundation v. Bonta*, 594 U.S. 595, 615 (2021)).

A "proper facial analysis" involves first, assessing the law's scope, and second, determining which of the law's applications violate the First Amendment, then measuring them against the rest of the law's applications. *Id.* at 724-25.

Even under the church's view, the law would still be constitutional under many of its applications. The church argues that the Johnson Amendment broadly "prohibit[s] religious organizations from adhering to their deeply held religious beliefs." R. at 2. But the Johnson Amendment encompasses *all* Section 501(c)(3) organizations that receive a tax exemption, not just religious organizations. *See* 26 U.S.C. § 501(c)(3). Furthermore, not all religions possess the specific religious beliefs of The Everlight Dominion, which "requires its leaders and churches to participate in political campaigns." R. at 3. Enforcing the Johnson Amendment against a non-church entity would, without question, be constitutionally valid. Because the church has failed to show that even a substantial number of applications are invalid, the church cannot bring a facial challenge.

II. The Johnson Amendment is constitutional under the Establishment Clause of the First Amendment.

The Johnson Amendment does not violate the Establishment Clause of the First Amendment. The Establishment Clause states that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. Here, the law at issue is the Johnson Amendment.

This amendment passes constitutional muster. First, the amendment is neutral and generally applicable to all nonprofit organizations. Laws that are neutral toward religion and generally applied to all entities are valid under the Establishment Clause. *Zelman*, 536 U.S. at 653-54; *Walz*, 397 U.S. at 673, 680. Here, this amendment is not directed specifically at religious entities. Instead, it applies generally to all nonprofit organizations—both religious and secular. Second, the Johnson Amendment accords with historical practices and understandings of the Establishment Clause.

This Court has emphasized that "the Establishment Clause must be interpreted by reference to historical practices and understandings." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (citation modified). Since the nineteenth century, Congress has imposed generally applicable standards on tax-exempt entities. The Johnson Amendment is consistent with this history.

Third, the amendment does not coerce the church to change its religious practices. Laws that coerce an entity to change its religious practices contravene the Establishment Clause. *Town of Greece v. Galloway*, 572 U.S. 565, 586 (2014). Here, the church may fulfill its religious obligations *and* remain tax-exempt by becoming a Section 501(c)(4) organization. Fourth, the amendment does not require pervasive monitoring for the presence of religious matter. Pervasive monitoring for religious matter violates the Establishment Clause. *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 695-95 (1989). During an audit, IRS agents do not inquire about a church's religious doctrine. Rather, they merely observe a church's operations, activities, and financial records. Because these audits involve no inquiries about religious doctrine, they do not constitute pervasive monitoring.

Finally, even if the amendment creates a denominational preference, it is constitutionally valid because it satisfies strict scrutiny. When a law establishes a denominational preference, courts must apply strict scrutiny. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025). Under this standard, a law is invalidated unless it is closely fitted to further a compelling governmental interest. *Id.* at 252. Here, the government has a compelling interest in maintaining a sound tax system. Allowing religious exceptions would defeat that objective: The law would vary based on each organization's beliefs. Likewise, the government also has a compelling interest in not subsidizing partisan political activity. This Court has already concluded

that tax exemptions are subsidies. *See Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 544 (1983) Thus, giving tax exemptions to entities who engage in politics would essentially *subsidize* their political activities. By including religious entities, the Johnson Amendment is closely fitted to further compelling governmental interests. Accordingly, it is valid under the Establishment Clause.

A. The Johnson Amendment is valid because it is neutral and generally applicable to all nonprofit organizations.

The Johnson Amendment does not violate the Establishment Clause because it is neutral and generally applicable. A statute is constitutionally valid when it is neutral toward religion and generally applied to all entities. *Zelman*, 536 U.S. at 653-54; *Walz*, 397 U.S. at 673, 680; *see also Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) ("[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability . . . ." (citation modified)). Both elements are satisfied here.

First, the Johnson Amendment is neutral toward religion. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 247-48 (stating that the "principle of denominational neutrality bars States from passing laws that aid or oppose religions"). A government policy fails the neutrality test when "it is specifically directed at religious practice." *Kennedy*, 597 U.S. at 526 (citation modified). A policy is specifically directed at religious practice if it "discriminates on its face or if a religious exercise is otherwise its object." *Id.* at 526 (citation modified). Here, the Johnson Amendment does not facially discriminate against religious organizations. *See* 26 U.S.C. § 501(c)(3). It applies to *all* nonprofit organizations—both religious and secular. *See id.*; *see also Gillette v. United States*, 401 U.S. 437, 451 (1971) (upholding an exemption to selective service under the Establishment Clause because it "does not single out any religious organization or religious creed for special

treatment"); *Zelman*, 536 U.S. at 653-54 (upholding a school voucher program that was "made available to both religious and secular beneficiaries on a nondiscriminatory basis").

Moreover, nothing suggests that regulating religious exercise was Congress's object. *See Kennedy*, 597 U.S. at 526. Since its enactment in 1954, the Johnson Amendment has broadly applied to *all* Section 501(c)(3) organizations. *See* Internal Revenue Code of 1954, Pub. L. 83-591, § 501, 68A Stat. 3, 163. For over seventy years, this amendment has focused on nonprofit entities, not on sectarian affiliation. *See Gillette*, 401 U.S. at 454 ("In the draft area for 30 years, the exempting provision has focused on individual conscientious belief, not on sectarian affiliation."). This consistency in language evinces a broader goal of regulating nonprofit entities—not religious practices. Regarding legislative history, Congress passed the Johnson Amendment without debate. R. at 2; *see also Gillette*, 401 U.S. at 453 (analyzing legislative materials to determine congressional intent). Senator Johnson—the bill sponsor—merely said that the amendment aimed to deny tax-exempt status "to those who intervene in any political campaign on behalf of any candidate." *See* 100 Cong. Rec. 9604 (daily ed. July 2, 1954) (statement of Sen. Lyndon B. Johnson). No floor statements or committee reports reveal an intent to specifically target religious sects. *See id.* (stating merely that "[t]he amendment was agreed to"). Overall, the Johnson Amendment is neutral in both design and purpose. *See Hernandez*, 490 U.S. at 695-95 (upholding a charitable contributions statute that was "neutral both in design and purpose").

Furthermore, the Johnson Amendment is generally applicable to all nonprofit organizations. *See Walz*, 397 U.S. at 673, 680 (upholding property tax exemptions for religious organizations because they were generally applicable to all nonprofit organizations). A statute "will fail the general applicability requirement if it prohibits religious conduct while permitting secular conduct that undermines the government's interests in a similar way." *Kennedy*, 597 U.S. at 526

(citation modified). Likewise, a statute will also "fail the general applicability requirement . . . if it provides a mechanism for individualized exemptions." *Id.* (citation modified). Here, the amendment does not permit secular conduct that undermines the government's interests. *See* 26 U.S.C. § 501(c)(3). All Section 501(c)(3) organizations—both secular and religious—are forbidden from participating in political campaigns. *See id.* And Section 501(c)(3) provides no mechanism for individualized exemptions. *See id.* Under the amendment's plain text, any nonprofit entity that participates in a political campaign can lose its tax exemption. *See id.*

Contrary to the Fourteenth Circuit's opinion, the Johnson Amendment does not "favor[] some religions over others." R. at 9. The amendment makes no deliberate distinctions between religious organizations. *See* 26 U.S.C. § 501(c)(3); *see also Larson v. Valente*, 456 U.S. 228, 246 (1982) (invalidating a charitable donation statute that made "explicit and deliberate distinctions between religious organizations"). Like several other tax laws, it imposes a neutral requirement that applies to both secular and religious entities. *See, e.g.*, *United States v. Lee*, 455 U.S. 252, 261 (1982) (upholding a Social Security tax that infringed on the religious beliefs of Amish citizens); *Regan*, 461 U.S. at 542, 551 (upholding Section 501(c)(3)'s tax-exemption requirement that nonprofit organizations refrain from engaging in substantial lobbying activities). This Court has emphasized that a law "does not violate the Establishment Clause merely because it happens to coincide or harmonize with the tenets of some or all religions." *Hernandez*, 490 U.S. at 696 (citation modified). Rather, if burdening a religious practice is "merely the incidental effect of a *generally applicable* and otherwise valid provision, the First Amendment has not been offended." *Emp. Div.*, 494 U.S. at 878 (emphasis added). Because the Johnson Amendment is neutral and generally applicable, it is valid under the Establishment Clause.

B. The Johnson Amendment is constitutional because it accords with historical practices and understandings of the Establishment Clause.

The Johnson Amendment does not violate the Establishment Clause because it accords with historical practices and understandings. This Court has instructed that "the Establishment Clause must be interpreted by reference to historical practices and understandings." *Kennedy*, 597 U.S. at 535 (citation modified). Compared to laws in the Founding Era, the amendment is neutral and generally applicable—it neither targets nor favors a specific religious sect. Moreover, Congress has a long tradition of imposing generally applicable standards for receiving tax exemptions. The amendment here is consistent with that tradition.

Unlike the Johnson Amendment, laws in the Founding Era targeted and favored specific religious sects. *See Galloway*, 572 U.S. at 577 (upholding local legislative prayer by looking at the practices of the First Congress); *McGowan v. Maryland*, 366 U.S. 420, 433-34 (1961) (upholding Sunday Closing Laws in part because these laws were common during the Founding Era). In the early 1800s, Congress refunded import duties to Christian societies for importing stereotype plates, which were used to print Bibles. *See* Act of Feb. 2, 1813, § 1, 6 Stat. 116, 116 (remitting import duties to the Bible Society of Philadelphia); Act of Apr. 20, 1816, §§ 1-2, 6 Stat. 162, 162 (remitting import duties to the Bible societies of Massachusetts and Baltimore). Congress also refunded import duties to Christian entities for importing furniture and church bells. *See* Act of May 20, 1826, § 1, 6 Stat. 346, 346 (remitting duties to a Catholic bishop for importing furniture); Act of July 2, 1836, § 1, 6 Stat. 675, 675 (remitting duties to the rector of the Christ Church for importing church bells). By remitting import duties, Congress granted tax exemptions to religious organizations. These exemptions targeted and favored specific religious sects—Congress did not exempt every religious group.

Based on these historical practices, the Johnson Amendment is constitutionally valid. In the Founding Era, Congress granted tax exemptions that targeted and favored specific religious sects. *See, e.g.*, Act of Feb. 2, 1813 § 1; Act of Apr. 20, 1816 §§ 1-2; Act of May 20, 1826 § 1. Here, the Johnson Amendment neither targets nor favors a specific religious sect. *See* 26 U.S.C. § 501(c)(3). Instead, it imposes a generally applicable and neutral requirement on all nonprofit entities—both religious and secular. *See id.*

Furthermore, Congress has a long tradition of imposing generally applicable standards for receiving tax exemptions. In 1864, Congress exempted religious organizations from a tax on gross lottery receipts. *See* Act of June 30, 1864, § 111, 13 Stat. 223, 279 (1864). To be eligible, organizations had to use the receipts for "the relief of sick and wounded soldiers, or some other charitable use." *Id.* Like the Johnson Amendment, this standard applied to *all* charitable organizations—regardless of religious doctrine. *See id.* Later, in 1909, Congress created a "special excise tax" for corporations. Revenue Act of 1909, § 38, 36 Stat. 11, 112. To be exempted from the tax, religious entities were prohibited from operating on a for-profit basis. *See id.* at 113. Like the Johnson Amendment, this policy was a generally applicable standard for receiving tax exemptions: Congress made no exceptions for any religious sects. *See id.* Finally, in 1913, the Sixteenth Amendment authorized Congress to impose direct income taxes. *See* U.S. Const. amend. XVI (1913). After creating income tax exemptions for religious entities, Congress soon required these entities to limit their lobbying activities. *See* Revenue Act of 1934, Pub. L. No. 73-216, § 517, 48 Stat. 680, 760 (stating that "no substantial part of the activities" of tax-exempt organizations may include lobbying for legislation). This policy applied to *all* nonprofit entities—regardless of their religious obligations. *See id.*

Like these actions, the Johnson Amendment is a generally applicable standard for receiving tax exemptions. *See* 26 U.S.C. § 501(c)(3). This amendment may limit an entity's political involvement. However, a lobbying restriction would certainly limit an entity's political involvement. *See* Revenue Act of 1934 § 517. Yet no court has ever invalidated this restriction. *See Christian Echoes Nat. Ministry, Inc. v. United States*, 470 F.2d 849, 856 (10th Cir. 1972) (rejecting a religious organization's claim that the lobbying requirement violated its First Amendment rights); *see also Regan*, 461 U.S. at 545-46 (rejecting a nonprofit organization's claim that the lobbying requirement violated its First Amendment rights); *Cammarano v. United States*, 358 U.S. 498, 499, 512-13 (1959) (concluding that Treasury regulations—which provided that money spent for political advertising is not deductible—are valid under the First Amendment). Likewise, restrictions on the use of gross lottery receipts might also limit an entity's political involvement. *See* Act of June 30, 1864 § 111. Instead of aiding the sick, some churches might prefer using their lottery receipts to "participate in political campaigns and support candidates." R. at 3. But no court has ever invalidated Congress's lottery requirement. Consistent with history, the Johnson Amendment is a generally applicable standard for receiving tax exemptions.

In addition, the Johnson Amendment has been in effect for over seventy years. *See* R. at 2. "The passage of time gives rise to a strong presumption of constitutionality." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 56, 63 (2019) (finding that a cross monument erected over ninety years ago did not offend the Establishment Clause); *Van Orden v. Perry*, 545 U.S. 677, 681-82 (2005) (concluding that a Ten Commandments monument erected forty years ago outside a government building did not offend the Establishment Clause); *Marsh v. Chambers*, 463 U.S. 783, 795 (1983) (upholding the practice of state legislative prayer that had existed "for more than a century in Nebraska"). Here, Congress retained the Johnson Amendment in 1986. R. at 2. Since

then, Congress has declined multiple opportunities to eliminate the amendment or create exceptions. *See* R. at 2-3. As this Court has acknowledged, "an unbroken practice . . . is not something to be lightly cast aside." *Walz*, 397 U.S. at 678. Here, the Johnson Amendment *is* an unbroken practice that has endured for over seventy years. *See* R. at 2-3. Invalidating this amendment would, therefore, be inconsistent with this nation's historical practices.

Finally, the Fourteenth Circuit's analysis of history and tradition is misguided. *See* R. at 9. Religious leaders have always asserted their obligations to "be involved in the political process." R. at 9. But Congress has never been obligated to subsidize this involvement. *See Regan*, 461 U.S. at 548 (finding that Congress did not violate an organization's First Amendment rights "by declining to subsidize its First Amendment activities"). After the Sixteenth Amendment's adoption in 1913, Congress created the first income tax exemptions for churches. *See* Mark A. Goldfeder & Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. Mem. L. Rev. 209, 212-13 (Fall 2017). Within only six years, the Treasury Department enacted regulations that required tax-exempt churches to limit their lobbying activities. *See* Vaughn E. James, *Reaping Where They Have Not Sowed: Have American Churches Failed to Satisfy the Requirements for the Religious Tax Exemption*, 43 Cath. Law. 29, 45 (2004) (referencing Treas. Reg. 45, art. 517 (1919)). Soon after, Congress codified a similar lobbying restriction on tax-exempt churches. *See* Revenue Act of 1934 § 517. Lobbying restrictions would certainly hamper a church's political involvement: With these standards, churches are limited in how much they can advocate for and against legislation. Yet these policies have existed since nearly the dawn of federal income taxes. What is more, the Johnson Amendment was enacted in 1954—over seventy years ago. *See* R. at 2. Given this context, history and tradition *do not* support Congress's obligation to fund a church's political activities.

C. The Johnson Amendment is valid because it does not coerce the church to change its religious practices.

The Johnson Amendment passes constitutional muster because it does not constitute religious coercion. "It is an elemental First Amendment principle that government may not coerce its citizens to support or participate in any religion or its exercise." *Galloway*, 572 U.S. at 586; *see also Kennedy*, 597 U.S. at 536-37 (concluding that the Establishment Clause forbids the government from "mak[ing] a religious observance compulsory"). No coercion is manifested here.

First, the church may fulfill its religious obligations by becoming a Section 501(c)(4) organization. *See Branch Ministries*, 211 F.3d at 143 (referencing 26 U.S.C. § 501(c)(4)); *see also Regan*, 461 U.S. at 543 (upholding a tax-exemption requirement where a nonprofit organization had other alternatives to receiving tax-exempt status). Although donations to these entities are not deductible, Section 501(c)(4) organizations are also tax-exempt. *Branch Ministries*, 211 F.3d at 143 (referencing 26 U.S.C. § 501(c)(4)). These entities may create separate political action committees (PACs) that participate in political campaigns. *See id.* (referencing 26 C.F.R. § 1.527-6(f), (g) (2025)). The church's PAC could solicit donations for progressive political candidates. *See* C.F.R. § 1.527-6(f) (allowing a Section 501(c)(3) entity to "establish and maintain such a separate segregated fund to receive contributions and make expenditures in a political campaign"). The PAC could also create its own weekly podcast to endorse progressive candidates, like Congressman Davis. *See* R. at 4; C.F.R. § 1.527-2(b) (2025) ("The purpose of [a segregated fund] must be to receive and segregate exempt function income . . . for use only for an *exempt function* . . . ." (emphasis added)); 26 C.F.R. § 1.527-2(c)(1) ("An *exempt function* . . . includes all activities that are directly related to and support the process of influencing . . . the . . . election, or appointment of any individual to public office . . . ."). Establishing a PAC would initiate these activities. Thus, by creating a PAC under Section 501(c)(4), the church and its leaders could

"participate in political campaigns and support candidates"—while also remaining tax-exempt. R. at 3.

Furthermore, Congress has no obligation to subsidize religious practices. *See Regan*, 461 U.S. at 544 (finding that tax exemptions "are a form of subsidy that is administered through the tax system"). A tax exemption is not a right—it is a benefit. *See Christian Echoes Nat. Ministry, Inc.*, 470 F.2d at 857 (concluding that a "tax exemption is a privilege, a matter of grace rather than right"). And "[t]his Court has never held [it] must grant a benefit . . . to a person who wishes to exercise a constitutional right." *Regan*, 461 U.S. at 545. Here, the church is not coerced to change its religious activities. The church is "simply being required to pay for those activities entirely out of [its] own pockets, as everyone else engaging in similar activities is required to do under the . . . Internal Revenue Code." *Cammarano*, 358 U.S. at 513. Because tax exemptions are merely a subsidy, no coercion is manifested.

D. The Johnson Amendment is constitutional because it does not require pervasive monitoring for the presence of religious matter.

The Johnson Amendment is permissible under the Establishment Clause because it does not require pervasive monitoring. "[P]ervasive monitoring for the subtle or overt presence of religious matter is a central danger against which [this Court has] held the Establishment Clause guards." *Hernandez*, 490 U.S. at 694; *see also Widmar v. Vincent*, 454 U.S. 263, 265, 267 (1981) (invalidating a public university's policy that prohibited the use of its facilities "for purposes of religious worship or religious teaching" (citation modified)). This type of surveillance is not manifested here.

First, the IRS does not inquire about a church's religious doctrine. *See Hernandez*, 490 U.S. at 697 (accepting "routine regulatory interaction which involves no inquiries into religious doctrine"). The IRS conducts "random audits of Section 501(c)(3) organizations to ensure

compliance with the Internal Revenue Code." R. at 5. During an in-person audit, a revenue agent may tour a church's premises to "observe the facility, operations and activities" of the church. *Charity and Nonprofit Audits: Review of Requested Items*, IRS, https://www.irs.gov/charities-non-profits/review-of-requested-items-exempt-organizations-audits. The agent may also request the church's financial records and annual returns. *Id.* Looking at operations and financial records is not the type of pervasive monitoring that contravenes the Establishment Clause. *See Hernandez*, 490 U.S. at 696 (accepting that the IRS may have to "ascertain from the institution the prices of its services and commodities, the regularity with which payments for such services and commodities are waived, and other pertinent information about the transaction").

Furthermore, the Fourteenth Circuit's concern with government entanglement is misplaced. *See* R. at 9 ("By requiring the IRS to monitor religious leaders and their churches, the Johnson Amendment *entangles* government with religion . . . ." (emphasis added)). Government entanglement was a prong of the *Lemon* test—which this Court explicitly abrogated. *See Kennedy*, 597 U.S. at 534 ("[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot." (citing *Am. Legion*, 588 U.S. 29)); *see also Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (asking whether a statute (1) has a secular purpose, (2) has a secular effect, and (3) does not foster "an excessive government entanglement with religion" (citation modified)). In place of *Lemon*, this Court emphasized that "[a]n analysis focused on original meaning and history . . . has long represented the rule rather than some exception within the Court's Establishment Clause jurisprudence." *Id.* at 536 (citation modified). Here, the Johnson Amendment is consistent with Congress's history of imposing generally applicable requirements for tax exemptions. *See, e.g.*, Revenue Act of 1934 § 517. Because the Johnson Amendment accords with historical practices, it is valid under the Establishment Clause.

E. Even if the Johnson Amendment creates a denominational preference, it is constitutional because it satisfies strict scrutiny.

Assuming, arguendo, that the Johnson Amendment creates a denominational preference, it is still permissible because it satisfies strict scrutiny. "When a state law establishes a denominational preference, courts must treat the law as suspect and apply strict scrutiny in adjudging its constitutionality." *Cath. Charities Bureau, Inc.*, 605 U.S. at 248 (citation modified); *see also Larson*, 456 U.S. at 246 (requiring strict scrutiny when a state law grants a denominational preference). Under strict scrutiny, a law "must be invalidated unless it is justified by a compelling governmental interest and is closely fitted to further that interest." *Cath. Charities Bureau, Inc.*, 605 U.S. at 252 (citation modified). A law is closely fitted when it is neither overinclusive nor underinclusive. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 253-54. The Johnson Amendment satisfies this standard.

Here, the government has two compelling interests. First, the government "has a compelling interest in maintaining the integrity of the tax system." *Branch Ministries, Inc. v. Rossotti*, 40 F. Supp. 2d 15, 25 (D.D.C. 1999), *aff'd*, 211 F.3d 137 (D.C. Cir. 2000); *see also Hernandez*, 490 U.S. at 699-700 (recognizing the "broad public interest in maintaining a sound tax system, free of myriad exceptions flowing from a wide variety of religious beliefs"). Tailoring the tax code to each entity's religious preferences would be insurmountable—Congress must make laws that apply *nationwide*. Second, the government also "has a compelling interest . . . in not subsidizing partisan political activity." *Branch Ministries, Inc.*, 40 F. Supp. 2d at 26. Tax exemptions "are a form of subsidy." *Regan*, 461 U.S. at 544. Without the Johnson Amendment, the government—and American taxpayers—would essentially be funding partisan political campaigns.

Furthermore, the Johnson Amendment is not overinclusive. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 253-254 (recognizing that a law is closely fitted when it is neither overinclusive nor underinclusive). Encompassing *all* nonprofit entities is essential to maintaining a sound tax code. As this Court has acknowledged, "[t]he difficulty in attempting to accommodate religious beliefs in the area of taxation is that we are a cosmopolitan nation made up of people of almost every conceivable religious preference." *Lee*, 455 U.S. at 259 (citation modified). Making exceptions for every religious entity would undermine the soundness of the tax system. *See Lee*, 455 U.S. at 258 (finding that widespread exceptions from social security taxes "would undermine the soundness of the social security program"). Exceptions for religious entities would also force the government to subsidize partisan political activity. *See Regan*, 461 U.S. at 544 (classifying tax exemptions as a "form of subsidy"). For example, Pastor Vale uses his podcast to endorse candidates, like Congressman Davis. R. at 4. If the Johnson Amendment excluded churches, the government would be funding these political activities. *See* Benjamin M. Leff, *Fixing the Johnson Amendment Without Totally Destroying It*, 6 U. Pa. J.L. & Pub. Aff. 115, 120 (2020) (noting that the Johnson Amendment "prevents 501(c)(3) organizations from using the government subsidy implicit in tax exemption . . . for electoral purposes").

Moreover, the Johnson Amendment is not underinclusive. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 253-254. It encompasses *all* Section 501(c)(3) organizations who receive a tax exemption. *See* 26 U.S.C. § 501(c)(3). The amendment's broad reach creates a uniform standard for tax-exempt entities. Uniformity yields a sound tax system. *See Adams v. Comm'r of Internal Revenue*, 170 F.3d 173, 179 (3d Cir. 1999) ("The least restrictive means of furthering a compelling interest in the collection of taxes . . . is . . . to implement that system in a uniform, mandatory way . . . ."). Likewise, by including all Section 501(c)(3) organizations, the government can refrain

from subsidizing partisan politics. Any nonprofit entity that engages in politics can lose its tax exemption. *See* 26 U.S.C. § 501(c)(3).

Although the Johnson Amendment imposes a burden, "[n]ot all burdens on religion are unconstitutional." *Lee*, 455 U.S. at 257. A state "may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." *Id.*; *see also Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (finding that the governmental interest in eradicating racial discrimination in education "substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs"). Here, the government's interests in maintaining a sound tax system and not subsidizing partisan politics substantially outweigh the burden on religious practices. *See Hernandez*, 490 U.S. at 699 ("[E]ven a substantial burden would be justified by the broad public interest in maintaining a sound tax system . . . ." (citation modified)); *Branch Ministries, Inc.*, 40 F. Supp. 2d at 25 (finding that the government's interests in not subsidizing partisan politics supersedes any "substantial burden" on religious practices). And the Johnson Amendment is closely fitted to further these interests. *See Cath. Charities Bureau, Inc.*, 605 U.S. at 252. Because the amendment satisfies strict scrutiny, it is valid under the Establishment Clause. *See id.*

This outcome is the right policy. Invalidating the Johnson Amendment would weaken transparency in the political process. *See* Dominic Rota, *And on the Seventh Day, God Codified the Religious Tax Exemption: Reshaping the Modern Code Framework to Achieve Statutory Harmony with Other Charitable Organizations and Prevent Abuse*, 5 Idaho L. Rev. 56, 87-88 (2021). Unlike PACs, religious organizations are not required to disclose the identities of their donors. *See id.* at 87. Hence, without the Johnson Amendment, political activists would choose to donate to religious organizations because they could keep their identities private. *See id.* Religious

entities would then forward their donations to political campaigns. This effect would be detrimental to democracy. "[T]ransparency through donor disclosure enables the electorate to make informed decisions and give proper weight to different speakers and messages." Rota, *supra*, at 88. Upholding the Johnson Amendment would preserve donor disclosure. Political activists would have little incentive to donate to religious organizations. Instead, they would donate to PACs, who must disclose their identities. With this information, Americans could make informed decisions at the ballot box.

CONCLUSION

In conclusion, this case is barred by both statute and the Constitution. The clear language of the AIA prohibits the church from enjoining the IRS in its enforcement of taxes. Furthermore, the church does not have standing to sue because there is no substantial risk that the Johnson Amendment will be enforced against it. Finally, the church cannot claim that the Johnson Amendment is facially unconstitutional because the church's unique set of beliefs give rise to the claim. Therefore, the church lacks the statutory and constitutional standing necessary to sustain this claim.

Even if this Court reaches the merits of this case, the Johnson Amendment is constitutionally valid. It does not single out religious organizations for special treatment. It does not coerce the church to change its religious practices. And it does not require pervasive monitoring of church activities. Furthermore, the Johnson Amendment accords with Congress's historical treatment of the Establishment Clause. And any incidental burdens on religion are justified by the government's compelling interests in maintaining the integrity of the tax system and preventing government sponsorship of partisan activity. Textual and policy analysis leads to the same conclusion: Congress should not be forced to use taxpayer funds to subsidize church-organized political activity. For these reasons, we ask this Court to vacate the holdings of the lower courts

and remand this case to be dismissed for a lack of standing. In the alternative, this Court should hold that the Johnson Amendment does not violate the Establishment Clause of the Constitution.