TEAM NO. 5

No. 26-1779

IN THE

Supreme Court of the United States

SPRING 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 PETITIONER

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

QUESTIONS PRESENTED FOR REVIEW viii

OPINIONS BELOW ix

STATEMENT OF JURISDICTION ix

PROVISIONS INVOLVED ix

STATEMENT OF FACTS xi

SUMMARY OF ARGUMENT xv

ARGUMENT 2

I. THE RESPONDENT IS BARRED FROM SUIT BY THE TAX ANTI-INJUNCTION ACT AND LACKS STANDING UNDER ARTICLE III TO CHALLENGE THE JOHNSON AMENDMENT. 2

a. The Tax Anti-Injunction Act Bars the Respondent from Establishing Standing and Neither Judicially Recognized Exceptions to the Act Apply; Thus, the Court is Deprived of Subject-Matter Jurisdiction 3

1. *Respondent's Suit is Directly Tied to Concerns Over Section 501(c)(3) Status and Therefore Triggers the AIA's Bar from Suit* 4

2. *The Respondent Has Not Met the Burden of Proof to Establish the Williams Packing Two-Prong Test Exception* 7

3. *The Respondent Has Yet to Exhaust its Administrative Remedies within the IRS and Fails to Establish That They Have No Access to Judicial Review Absent Relief of the AIA Barring Suit* 9

b. The Respondent Lacks Standing Under Article III Since Its Present Claim Rests on a Speculative Chain of Possibilities. 10

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AS ITS PRIMARY PURPOSE IS SECULAR, ITS APPLICATION IS UNIFORM, AND IT IS ROOTED IN HISTORICALLY RECOGNIZED PUBLIC POLICY……12

a. The Johnson Amendment is Secular in its Purpose, its Primary Effect Neither Advances nor Inhibits Religion, and it Does Not Foster Excessive Government Entanglement with Religion……..13

b. Legislative Authority May Extend to People's Actions When They Violate Important Social Responsibilities or Undermine Public Order, Even When Those Actions are Demanded by One's Religion……...15

CONCLUSION 18

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Alexander v. Ams. United Inc.,
416 U.S. 752 (1974) ..... *passim*

Am. Legion v. Am. Humanist Ass'n,
588 U.S. 29 (2019) 12

Bailey v. George,
259 U.S. 16 (1922) 5

Block v. Cmty. Nutrition Inst.,
467 U.S. 340 (1984) 3

Bob Jones Univ. v. Simon,
416 U.S. 725 (1974) 3, 4, 10

Braunfield v. Brown,
366 U.S. 599 (1961) 16

Clapper v. Amnesty Int'l USA,
568 U.S. 398 (2013) 10

Comm. for Pub. Ed. & Religious Liberty v. Regan,
444 U.S. 646 (1980) 13

Comm'r. v. Shapiro,
424 U.S. 614 (1976) 7

Dodge v. Osborn,
240 U.S. 118 (1916)..... 4

Enochs v. Williams Packing & Nav. Co.,
370 U.S. 1 (1962) ..... *passim*

Everson v. Bd. of Ed. of Ewing Twp.,
330 U.S. 1 (1947) 12

Heckler v. Mathews,
465 U.S. 728 (1984) 11

TABLE OF AUTHORITIES (cont'd)

Hernandez v. Comm'r,
490 U.S. 680 (1989) 14, 17

Iowa–Des Moines Nat'l Bank v. Bennet,
284 U.S. 239 (1931) 11

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 2, 10, 11

McCreary Cnty., Ky. v. Am. C.L. Union of Ky.,
545 U.S. 844 (2005) 12

Miller v. Standard Nut Margarine Co.,
284 U.S. 498 (1932) 7

Prince v. Massachusetts,
321 U.S. 158 (1944) 16

Regan v. Tax'n With Representation of Washington,
461 U.S. 540 (1997) 8, 11, 15, 17

Reynolds v. United States,
98 U.S. 145 (1878) 16

Roemer v. Bd. of Pub. Works of Maryland,
426 U.S. 736 (1976) 13

Sch. Dist. of Abington Twp., Pa. v. Schempp,
374 U.S. 203 (1963) 12

Simon v. Eastern Ky. Welfare Rights Org.,
426 U.S. 26 (1976) 11

South Carolina v. Regan,
465 U.S. 367 (1984) 4, 9

Steel Co. v. Citizens for a Better Env't,
523 U.S. 83 (1998) 2

Taylor v. Secor,
92 U.S. 575 (1875) 6

TABLE OF AUTHORITIES (cont'd)

Town of Greece, N.Y. v. Galloway,
572 U.S. 565 (2014) 12

United States v. Am. Friends Serv. Comm.,
419 U.S. 7 (1974) 9

United States v. Lee,
455 U.S. 252 (1982) 17

Watson v. Jones,
80 U.S. 679 (1871) 12

Whitmore v. Arkansas,
495 U.S. 149 (1990) 10

CIRCUIT COURT CASES

Bob Jones Univ. v. United States,
639 F.2d 147 (4th Cir. 1980) 13, 14, 15, 16

Branch Ministries v. Rossotti,
211 F.3d 137 (D.C. Cir. 2000) 8, 14

Church of Scientology of Cal. v. United States,
920 F.2d 1481 (9th Cir. 1990) 8

Courtney v. United States,
No. 22-60131, 2022 WL 4078240 (5th Cir. Sept. 6, 2022) 7

Ecclesiastical Ord. of the ISM of AM, Inc. v. I.R.S.,
725 F.2d 398 (6th Cir. 1984) 3

Flynn v. United States by & through Eggers,
786 F.2d 586 (3d Cir. 1986) 7

Jensen v. I.R.S.,
835 F.2d 196 (9th Cir. 1987) 8

DISTRICT COURT CASES

Coolman v. U.S. I.R.S.,
117 F. Supp. 2d 943 (D. Neb. 2000) 3

TABLE OF AUTHORITIES (cont'd)

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. I 8, 12

STATUTORY PROVISIONS

26 U.S.C. § 7428 (b)(2) (West 2025) 10

26 U.S.C.A. § 501(a) (West 2025) 8

26 U.S.C.A. § 501(c)(3) (West 2025) ..... *passim*

26 U.S.C.A. § 7421 (West 2025) 9, 2, 3, 4

28 U.S.C. § 1254(1) 8

SECONDARY AUTHORITIES

H.R. Rep. No. 75-1820, at 19 16

To Repeal or Not Repeal: The Johnson Amendment, 48 U. Mem L. Rev. 209 (2017) 13, 15

QUESTIONS PRESENTED FOR REVIEW

I. Whether Covenant of 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.

OPINIONS BELOW

The published opinion of the Court of Appeals for the Fourteenth Circuit is available at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant of Truth Church*, 345 F.4th 1 (14th Cir. 2025). The unpublished order of the District Court for the District of Wythe may be found at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant of Truth Church*, No. 5:23-cv-7997 (U.S.D.C., 2024) (granting summary judgment).

STATEMENT OF JURISDICTION

The decision of the Court of Appeals for the Fourteenth Circuit was entered on November 11, 2025, and a petition was timely filed. The order granting the petition for writ of certiorari is undated. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

Under Section 501 of the Internal Revenue Code, organizations described therein may be granted tax-exempt status under certain conditions. 26 U.S.C.A. § 501(a) (West 2025). The Johnson Amendment provision provides that: "Corporations, and any community chest fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . 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 . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C.A. § 501(c)(3) (West 2025).

The Tax Anti-Injunction Act mandates: "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C.A. § 7421 (West 2025).

STATEMENT OF FACTS

The Johnson Amendment's Longstanding Disqualifying Provision

In 1954, Congress enacted legislation amending the Internal Revenue Code to disqualify tax-exempt nonprofit organizations under Section 501(c)(3), who intervene or participate in political campaigns. R. at 2; 26 U.S.C.A. § 501(c)(3) (West 2025). The amendment (hereinafter, the "Johnson Amendment") provides that non-profit organizations will be ineligible for tax-exempt status where "substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting to influence legislation" or "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." 26 U.S.C.A. § 501(c)(3). In recent years, religious organizations and politicians have advocated to repeal the provision—some arguing that the Johnson Amendment violates the First Amendment. *Id*. However, despite multiple opportunities to eliminate or create an exception to the Johnson Amendment, Congress has declined to do so. R. at 2–3.

Covenant Truth Church's Religious Beliefs

Covenant Truth Church ("CTC" or "the Church" or "Respondent") is a congregation of the The Everlight Dominion religious denomination, which embraces a wide array of progressive social values. R. at 3. As part of its teachings, the Everlight Dominion promotes active political engagement by requiring its leaders and churches to support progressive candidates and encourage adherents to donate and volunteer for their campaigns. *Id*. Accordingly, adherents typically encourage citizens to donate to and volunteer for campaigns. *Id*. Furthermore, those churches or

church leaders under Everlight Dominion who fail to adhere to this requirement, are banished from their church and the religion. *Id*.

Covenant Truth Church's Section 501(c)(3) Status and Pastor Vale's Political Activity

Covenant Truth Church is currently classified as a Section 501(c)(3) organization for tax purposes and has maintained this classification throughout Pastor Vale's affiliation with the church. R. at 3. After becoming Pastor in 2018, Pastor Vale created a weekly podcast in an effort to appeal to a younger audience. *Id*. In the podcast, Pastor Vale delivers weekly sermons and general education about The Everlight Dominion. *Id*. His efforts in reaching wider audiences proved successful, and the podcast is the fourth-most listened to podcast in the State of Wythe and the nineteenth-most listened to nationwide. R. at 4. Additionally, Pastor Vale uses the CTC podcast to deliver political messages in support of those candidates aligned with The Everlight Dominion's progressive values. *Id*. Pastor Vale encourages listeners to vote, donate, and volunteer for campaigns in adherence to the religion's requirement of active political participation. *Id*.

Pastor Vale's Participation in Wythe's Senatorial Special Election

In January 2024, Matthew Russet—Wythe's 90-year-old Senator—passed away, triggering a special election to fill the remaining four years of his term. R. at 4. Shortly thereafter, Congressman Davis, a progressive leaning candidate, announced his intention to run in the election. *Id*. Following the announcement, Pastor Vale, on behalf of CTC, endorsed Congressman Davis during one of his sermons on his weekly podcast—detailing how Davis's political stance aligned with the doctrines of the Church. R. at 4–5. During the podcast, Pastor Vale actively encouraged voters to volunteer with and donate to Congressman Davis's campaign. R. at 5. Moreover, Vale announced his intention to distribute a series of sermons, in person at CTC as well

as on the podcast, in October and November 2024—discussing Congressman Davis's political policies and how they align with The Everlight Dominion's doctrines. *Id*.

The Respondent Receives Notice of Selection for Random Audit by the IRS

On May 1, 2024, CTC received a letter from the Internal Revenue Service ("IRS") informing the Church that it had been selected for a random audit. R. at 5. The IRS typically conducts random audits of Section 501(c)(3) organizations to ensure compliance among tax-exempt nonprofits with the terms of the Internal Revenue Code. *Id*. Pastor Vale admits awareness to the Johnson Amendment and concern over the IRS's discovery of his and the Respondent's political involvement. *Id*. Moreover, because of concerns regarding the potential loss of the Church's tax-exempt status, the Respondent brought suit. *Id*.

The Respondent Brings Suit Challenging Johnson Amendment

On May 15, 2024—two weeks following the receipt of the letter from the IRS—the Respondent (plaintiff) filed this suit seeking a permanent injunction prohibiting enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. R. at 5. Following Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the IRS's denial of the claims, the Respondent moved for summary judgment. *Id*. The District Court held that (1) the Respondent had standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause. *Id*. The District Court granted the Respondent's motion for summary judgment and entered the requested permanent injunction. *Id*. Petitioners appealed the District Court's decision to the Fourteenth Court of Appeals. R. at 6. The Fourteenth Circuit affirmed the decision of the District Court; the Respondent then petitioned this Court for review of the issue. R. at 1, 17.

SUMMARY OF ARGUMENT

I.

The AIA prohibits pre-enforcement judicial interference with the assessment or collection of taxes, which is precisely the relief the CTC seeks. The CTC brings this suit based on a premature concern that it may lose its tax-exempt status following the audit. The timing of this action—filed before the IRS has initiated an audit or altered the CTC's tax status—demonstrates that the suit seeks to "restrain the assessment or collection" of taxes. The Respondent also fails to satisfy either prong of the *Williams Packing* exception. First, the Respondent cannot establish certainty of success on the merits of its Establishment Clause challenge to the Johnson Amendment. The D.C. Circuit has previously held that the Johnson Amendment is constitutional under the Establishment Clause, precluding any claim that success here is certain. Second, Respondent has not demonstrated irreparable injury for which no legal remedy exists, as it has suffered no injury at all—its tax-exempt status remains unchanged.

Nor does the Respondent qualify for the AIA's alternative exception for lack of an adequate legal remedy. The Internal Revenue Code provides a pathway for judicial review in federal court after an organization exhausts its administrative remedies with the IRS. Here, Respondent initiated suit before the IRS took any action, thereby bypassing the remedies expressly provided by statute.

Finally, even if the AIA does not apply, Respondent lacks Article III standing because it has not suffered an injury in fact. The CTC filed this lawsuit before the IRS initiated any audit and remains a 501(c)(3) organization. Respondent's claim rests on speculation and fear that the Johnson Amendment may be enforced against it due to its political activity, which is insufficient to establish standing.

II.

The First Amendment's Establishment Clause has been historically interpreted by the Court to mandate neutrality in the Government's actions toward all religious organizations. The Johnson Amendment serves a secular purpose because it applies to all non-profit organizations—religious and nonreligious—who seek tax-exempt status. Its primary effect neither advances nor inhibits religion, as the restrictions it imposes are viewpoint neutral. Here, the CTC contends that the Johnson Amendment favors some religions over others, particularly those whose religious beliefs compel them engage in politics. However, organizations remain free to express any views they choose; they simply cannot expect the government to subsidize that speech through a tax exemption. Granting tax-exempt status based on religiously motivated political advocacy would itself violate the Establishment Clause by requiring the government to favor certain religious beliefs. Because the Johnson Amendment is secular and viewpoint neutral, it prevents excessive entanglement between government and religion by ensuring that the IRS need not determine whether an organization's activities stem from religious beliefs.

ARGUMENT

I. THE RESPONDENT IS BARRED FROM SUIT BY THE TAX ANTI-INJUNCTION ACT AND LACKS STANDING UNDER ARTICLE III TO CHALLENGE THE JOHNSON AMENDMENT.

Standing is a threshold jurisdictional requirement that is reviewed *de novo*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). Where the Anti-Injunction Act ("AIA") applies, it ousts the Court of subject-matter jurisdiction. 26 U.S.C.A. § 7421 (West 2025). The AIA functions to protect the Government's need to assess and collect taxes as efficiently as possible with a minimum of pre-enforcement judicial interference and ensure that parties exhaust the administrative remedies in place before seeking judicial review. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962). In adhering to the legislative intent of Congress, the Court has hesitated to recognize exceptions to the AIA, and the judicially recognized exceptions are narrow in scope. The first exception is recognized as the *Williams Packing* exception and only applies where the two independent prongs have both been met: a clear showing that (1) under no circumstances could the Government prevail and (2) an irreparable injury for which there is no adequate legal remedy. *Williams Packing*, 370 U.S. at 6–7. To succeed in its claim under the AIA the Respondent has a substantial burden, which it has failed to meet.

Further, Article III standing exists where a plaintiff must first establish that it has suffered an "'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Here, the Respondent has suffered no injury in fact since its tax classification remains unchanged. R. at 7. The present pre-enforcement action relies on the unrealized contingency that the Johnson Amendment will be enforced against Respondent once the IRS is able to conduct its audit. R. 14. Therefore, the respondent has failed to establish standing under Article III.

a. The Tax Anti-Injunction Act Bars the Respondent from Establishing Standing and Neither Judicially Recognized Exceptions to the Act Apply; Thus, the Court is Deprived of Subject-Matter Jurisdiction.

Whether and to what extent a particular statute precludes judicial review is determined from its express language as well as from the "structure of its statutory scheme, its objectives, its legislative history, and the nature of the administrative action involved." *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 345 (1984). The language of the AIA explicitly 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." 26 U.S.C.A. § 7421 (West 2025). This Court has recognized the AIA's principal purpose to be the protection of the Government's need to assess and collect taxes "as expeditiously as possible with a minimum of pre-enforcement judicial interference" and "to require that the legal right to the disputed sums be determined in a suit for refund." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974) (quoting *Williams Packing*, 370 U.S. at 7). Even where collection or assessment of taxes is not imminent, this ban against judicial interference "applies to activities which are intended to or may culminate in the assessment or collection of taxes." *Coolman v. U.S. I.R.S.*, 117 F. Supp. 2d 943, 949 (D. Neb. 2000), *aff'd sub nom. Coolman v. United States*, 242 F.3d 374 (8th Cir. 2000).

In furtherance of this purpose, this Court in *Williams Packing* set forth a two-prong test under which a suit may be brought only if there is proof of both factors: (1) a clear showing that "under no circumstances could the Government ultimately prevail[;]" and (2) "irreparable injury" for which there is no adequate legal remedy. *Williams Packing*, 370 U.S. at 6–7; *Alexander v. Ams. United Inc.*, 416 U.S. 752 (1974). Moreover, this Court emphasized in *Ecclesiastical Order*, that the constitutional nature of a claim, where it is distinct from the probability of success, "is of no consequence under the Anti-Injunction Act." *Ecclesiastical Ord. of the ISM of AM, Inc. v. I.R.S.*,

725 F.2d 398, 402 (6th Cir. 1984) (quoting *Alexander v. Ams. United Inc.*, 416 U.S. 752, 754–55 (1974)). Alternatively, another narrow exception to the AIA applies when a claimant can show that no alternative legal remedy exists to challenge a tax's validity. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). Neither exception—the *Williams* two-prong test, nor the lack of alternative remedy—has been established by the Respondent.

1. Respondent's Suit is Directly Tied to Concerns Over Section 501(c)(3) Status and Therefore Triggers the AIA's Bar from Suit.

Although the Respondent's suit seeking permanent injunction prohibiting enforcement of the Johnson Amendment is constitutional in nature, its main objective in filing its suit is to avoid and restrain the assessment and collection of tax, thus triggering the language of the AIA. This Court has recognized that the language of the AIA "could scarcely be more explicit[:]" "*no suit* for the purpose of restraining the assessment or collection *of any tax* shall be maintained in *any court* by *any person*." *Bob Jones Univ.*, 416 U.S. at 736; 26 U.S.C.A. § 7421 (West 2025) (emphasis added). The AIA's primary function is to protect the Government's need to assess and collect taxes "as expeditiously as possible with a minimum of pre-enforcement judicial interference" and "to require that the legal right to the disputed sums be determined in a suit for refund." *Williams Packing*, 370 U.S. at 7.

Moreover, this Court has historically resisted allowing exceptions to the AIA when the Act's terms have been triggered. *See Alexander*, 416 U.S. at 759–60 (recognizing and applying the "sweeping terms" of the AIA regardless of the constitutional nature of the claim, as distinct from the probability of success, even where plaintiff had shown "irreparably injury"); *see also Dodge v. Osborn*, 240 U.S. 118, 120 (1916) (reasoning that the remedy of a refund suit has been provided by statute and recognized by this Court as enacted under the right of Congress to "prescribe the conditions on which it would subject itself to the judgement of the courts in the collection of its

revenues"); *Bailey v. George*, 259 U.S. 16, 20 (1922) (reiterating that there must be some extraordinary and exceptional circumstances to make the provisions of the AIA inapplicable and recognizing the need to exhaust all legal remedies in order to fulfill the purpose of the Act). Thus, the bar laid down in the AIA—against pre-enforcement judicial interference—is an intentionally difficult bar to overcome and cannot be accomplished by a mere claim of unconstitutionality, nor by a showing of irreparable injury suffered in the absence of a pre-enforcement injunction. *See Alexander*, 416 U.S. at 762 (dismissing the respondents' constitutional challenge to the Johnson Amendment because respondent failed to show that the two independent prongs of the *Williams Packing* exception had been met, and respondents retained an adequate opportunity to litigate the legality of the IRS's withdrawal of their tax-exempt status through a refund suit).

Here, the Respondent, a church, seeks to enjoin the enforcement of the Johnson Amendment by claiming that it violates the Establishment Clause of the First Amendment. R. at 1. Although the claim is constitutional in nature, the Respondent filed suit in response to premature concerns regarding potential loss of its tax-exempt classification, given the known violations of section 501(c)(3) requirements. R. at 5; *see Alexander v. Ams. United Inc.*, 416 U.S. at 760–61 (holding that respondents' suit challenging constitutionality of section 501(c)(3) after the IRS revoked their tax-exempt status was barred by the AIA because the suit's objective was ultimately to restrain the assessment and collection of taxes). Moreover, because the IRS has not yet conducted its audit and the Respondent's tax classification remains intact, this claim directly implicates the AIA's purpose by raising a concern that Congress has directly addressed by the terms of the AIA. R. at 6; *Williams Packing*, 370 U.S. at 7. The Court in *Taylor v. Secor*, acknowledged the policy against suits restraining the assessment or collection of taxes as so:

> [I]t shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the

> government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages.
> *Taylor v. Secor* 92 U.S. 575, 613–14 (1875).

On May 1, 2024, the IRS informed the Respondent that it had been selected for a random audit. R. at 5. Aware of Pastor Vale's repetitive and zealous endorsement of Congressman Samuel Davis and his involvement in a political campaign on behalf of the Covenant Truth Church ("CTC")—conduct explicitly prohibited by the Johnson Amendment—the Respondent's primary concern when filing suit was the imminent risk that the IRS would revoke its tax-exempt status. R. at 4–5; 26 U.S.C.A. § 501(c)(3) (West 2025). The filing of the claim after being informed of the IRS's intent to conduct a random audit, prior to the initiation of that audit, was motivated by a concern over losing tax-exempt status, and was done in an effort to restrain the assessment or collection of tax from the Respondent. R. at 5. In *Alexander v. Ams. United Inc.*, the Court noted that the thrust of the respondent's argument was not that it qualified for a section 501(c)(3) exemption under existing law, but rather that the embedded restriction against efforts to influence legislation is unconstitutional. 416 U.S. at 759. There, the Court held that the constitutional nature of a taxpayer's claim had no effect on lifting the bar imposed by the AIA, when the respondent's "primary design" was "to avoid disposition of funds." *Id*. at 761. Likewise, here the CTC's argument is not that it qualifies under section 501(c)(3), but that the section is unconstitutional because it prohibits the organization from engaging in political campaigns and supporting candidates whose values align with their faith. R. at 2. However, the timing of the suit—after the Respondent became aware that it would be audited by the IRS—is indicative of the fact that the primary design of the claim is to avoid the disposition of funds resulting from the Respondent's tax-exempt status. R. at 5.

Thus, because the claimant's suit triggers the literal terms of the AIA by seeking to restrain the assessment or collection of taxes, the Respondent must either meet the two-prong test set out in *Williams Packing* or show that there is no alternative remedy available to address its claim.

2. The Respondent Has Not Met the Burden of Proof to Establish the Williams Packing Two-Prong Test Exception.

The Respondent fails to establish both independent prongs of the *Williams Packing* exception, and thus the AIA applies to oust the Court of subject-matter jurisdiction. The Court in *Williams Packing* set forth a two-prong test in which a suit may be brought only if there is: (1) a clear showing that "under no circumstances could the Government ultimately prevail[;]" and (2) "irreparable injury" for which there is no adequate legal remedy. *Alexander*, 416 U.S. at 752; *Williams Packing*, 370 U.S. at 6–7. In *Williams Packing*, the Court clarified that inadequacy of the legal remedy available to a plaintiff was insufficient to justify an exception to the bar imposed by the AIA. *Williams Packing*, 370 U.S. at 6 (reversing the lower court's interpretation of *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498 (1932) to mean that irreparable harm alone was sufficient in overcoming the AIA, where it applied).

The facts, "when viewed in the light most favorable to the Service," must clearly show an impossibility of the Government prevailing; thus, the taxpayer's burden of proof under this exception is "very substantial." *Flynn v. United States by & through Eggers*, 786 F.2d 586, 591 (3d Cir. 1986). In *Comm'r. v. Shapiro*, the Court explained that although the taxpayer bears a heavy burden to demonstrate certainty of success on the merits, a court cannot make that determination absent some disclosure of the factual basis for assessment by the Government. 424 U.S. 614, 627–28 (1976) ("The taxpayer can never know, unless the Government tells him, what the basis for the assessment is, and thus can never show that the Government will certainly be unable to prevail."); *see also Courtney v. United States*, No. 22-60131, 2022 WL 4078240, at *5 (5th Cir. Sept. 6, 2022)

(distinguishing *Shapiro* as a case where the Government was in sole possession of the relevant information). To satisfy the second prong of the *Williams Packing* test, "the taxpayer must show that he has no adequate remedy at law and that the denial of injunctive relief would cause him immediate, irreparable harm." *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1486 (9th Cir. 1990) (quoting *Jensen v. I.R.S.*, 835 F.2d 196, 198 (9th Cir. 1987)).

Where it is clear that under no circumstances the Government could prevail, the central purpose of the AIA—prompt collection of lawful revenue—becomes inapplicable. *Williams Packing*, 370 U.S. at 6. Here, there is no certainty that, absent the AIA bar, the Respondent will succeed on its claim challenging the constitutionality of the Establishment Clause. The District of Columbia Circuit Court of Appeals previously held that the Johnson Amendment was not violative of the First Amendment. *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000) (reasoning that the "Congress had not violated [an organization's] rights by declining to subsidize First Amendment activities."); R. at 13. In that case, the IRS revoked the church's 501(c)(3) tax-exempt status and rejected the argument that the Johnson Amendment violated First Amendment rights by way of viewpoint discrimination. *Branch Ministries*, 211 F.3d at 144. The Court reasoned that the restrictions imposed by section 501(c)(3) are viewpoint neutral as they act as a prohibition on all non-profit organizations, regardless of candidate, party, or viewpoint. *Id*. (citing *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 550–51 (1997)). Moreover, the Respondent has not established that it has suffered an irreparable injury for which there is no legal remedy as it has not suffered any injury at all—its tax-exempt status remains unchanged because the IRS has been restrained from initiating their audit. R. at 5. Therefore, the Respondent has failed to meet its burden in establishing both prongs of the *Williams Packing* test—consequently, the exception does not apply to remove the AIA's bar on subject-matter jurisdiction.

3. The Respondent Has Yet to Exhaust its Administrative Remedies within the IRS and Fails to Establish That They Have No Access to Judicial Review Absent Relief of the AIA Barring Suit.

Finally, the Respondent has failed to show that the AIA should not apply for lack of an alternative legal remedy of the claim. An additional exception to the AIA was recognized in *South Carolina v. Regan*, under which a party may bring suit, even where the AIA would otherwise bar the claim, if they could show that no alternative legal remedy exists to challenge the validity of the tax. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). In that case, the state of South Carolina had no means of challenging the constitutionality of section 310(b)(1) of the Internal Revenue Code, as it would incur no tax liability under the statute, and could only obtain judicial review by urging the purchasers of bonds to bring suit. *Id*. at 380. The Court reasoned that Congress did not intend the AIA to apply where an aggrieved party would be required to depend on the mere possibility of persuading a third party to assert his claims. *Id*. at 381; *see Alexander v. Ams. United Inc.*, 416 U.S. at 762 (rejecting the taxpayers' argument that the AIA did not apply due to the lack of adequate alternative remedies for their constitutional claim, instead, relying on the availability of refund suits); *see also United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 11 (1974) (holding that even though requiring the aggrieved to rely on a refund action might frustrate "their chosen method of bearing witness to their religious convictions," which they insisted were constitutionally protected, the AIA still applied to oust their claim).

Here, the Respondent will have the opportunity to litigate the constitutionality of the IRS's actions under the Johnson Amendment through the appropriate channels—once Government action has been taken. R. at 13. Respondent has created a phantom dilemma by asserting that no alternative remedies exist after jumping the procedural gun put established by Congress to maintain an efficient administrative order. R. at 6. The Respondent's argument that it lacks alternative legal redress,

where there is not yet a controversy to remedy, is akin to complaining one has forgotten their umbrella when there is no rain. The Internal Revenue Code provides that once an organization has exhausted administrative remedies available within the IRS, a determination can be sought in federal court. 26 U.S.C. § 7428 (b)(2) (West 2025). The administrative procedures in place serve the purpose of the AIA; and allowing a pre-enforcement injunction, where it does not fall into one of the narrow exceptions, works to nullify the purpose of the AIA and lies beyond the Court's authority. *See Bob Jones Univ.*, 416 U.S. at 747 (holding that the suit was barred from judicial review under the AIA because "[it] is not the case in which an aggrieved party has no access at all to judicial review. Were that true, our conclusion might well be different."). Therefore, because the Respondent has brought a pre-enforcement suit when it does not fall within the narrow exceptions to the AIA, and because Respondent has not exhausted the administrative remedies available to it, a determination cannot be sought in this Court under the AIA.

b. The Respondent Lacks Standing Under Article III Since Its Present Claim Rests on a Speculative Chain of Possibilities.

Even if the Anti-Injunction Act did not apply to the present claim, Respondent has failed to establish standing under Article III. A plaintiff must first establish that it has suffered an "'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."' *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013) (holding that respondents did not have Article III standing where their theory rested on a "speculative chain of possibilities"). Second, the injury complained of must be "fairly traceable" to the challenged action of the defendant. 504 U.S. at 560. Third, it must be "'likely' as opposed to merely 'speculative,' that the injury will be 'redressed by a

favorable decision.'" *Id*. at 561 (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)).

Here, the Respondent has suffered no injury in fact, as the IRS has not initiated its audit nor altered the tax classification of CTC. R. at 7. The present pre-enforcement action relies on the speculative possibility that the Johnson Amendment will be enforced against Respondent once the IRS is able to conduct its audit. R. at 14. However, where a plaintiff is a member of a disfavored class that receives unequal treatment due to a discriminatory policy, they generally have Article III standing. *Heckler v. Mathews*, 465 U.S. 728, 740 (1984) (holding that where the injury is unequal treatment, "the appropriate remedy is a mandate of equal treatment"); *see also Iowa–Des Moines Nat'l Bank v. Bennet*, 284 U.S. 239, 247 (1931) (finding that once a plaintiff is deprived of equal treatment, a cause of action for equal protection accrues).

Presently, the Respondent argues it is a member of a disfavored class because the religion upon which their organization is built requires them to actively support political candidates whose values align with their faith. R. at 2. This argument presents an almost convincing veneer of the factual basis used to support standing in prior cases. *See Heckler*, 465 U.S. at 740 (claiming that a pension offset exception subjected the appellee to unequal treatment solely because of his gender); *see Iowa–Des Moines Nat'l Bank*, 284 U.S. at 247 (alleging that tax officials charged the petitioner higher tax rates on stock holdings than competing moneyed capitals). However, the present case is distinguishable in that the Johnson Amendment remains indiscriminatory in nature, mandating equal-enforcement policy upon all non-profit organizations. *See Regan v. Tax'n With Representation of Washington,* 461 U.S. 540 (1983) (finding that by granting a conditional tax exemption to those non-profit organizations that did not engage in substantial lobbying activities Congress did not regulate any First Amendment activity). Thus, because the Johnson Amendment

is indiscriminatory in nature, the Respondent has failed to establish an invasion of a legally protected interest, and because the present claim rests on a speculative chain of possibilities, the claim must be dismissed for lack of subject-matter jurisdiction.

II. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AS ITS PRIMARY PURPOSE IS SECULAR, ITS APPLICATION IS UNIFORM, AND IT IS ROOTED IN HISTORICALLY RECOGNIZED PUBLIC POLICY.

The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I (West 2025). The First Amendment's Establishment Clause has been historically interpreted by the Court to mandate neutrality in the Government's actions toward all religious organizations. *See Watson v. Jones*, 80 U.S. 679, 728 (1871) (stating "[t]he law knows no heresy and is committed to the support of no dogma, the establishment of no sect."); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947) (reasoning that the First Amendment requires the Government to remain neutral toward religions, neither favoring nor inhibiting them); *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 222 (1963) (emphasizing that the Establishment Clause prohibits the Government from officially favoring or supporting any religious orthodoxy over another).

However, Courts have acknowledged that the principle of "neutrality" under the Establishment Clause is not a fixed path but instead provides "a good sense of direction." *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844, 875 (2005) (discussing how "an appeal to neutrality alone cannot possibly lay every issue to rest" or dictate what issues merit constitutional significance). Moreover, the Court has declined to employ a unified theory or clear test regarding the Establishment Clause, instead focusing on the "issue at hand and looking to history for guidance." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 60 (2019); *see also Town of Greece, N.Y. v. Galloway,* 572 U.S. 565, 576 (2014) (stating that the Establishment Clause must be

interpreted "by reference to historical practices and understandings."). Thus, when considering whether a policy violates the Establishment Clause, the determination must be made in light of the issue presented and historical practices and understandings.

a. The Johnson Amendment is Secular in its Purpose, its Primary Effect Neither Advances nor Inhibits Religion, and it Does Not Foster Excessive Government Entanglement with Religion.

The judicial history of this Court dictates that a legislative policy will not violate the Establishment Clause if it has a "secular legislative purpose, if its primary effect neither advances nor inhibits religion, and if it does not foster an excessive government entanglement with religion. *Comm. for Pub. Ed. & Religious Liberty v. Regan*, 444 U.S. 646, 653 (1980) (citing *Roemer v. Bd. of Pub. Works of Maryland*, 426 U.S. 736, 748 (1976)). This Court has affirmed that section 501(c)(3) is rooted in valid public policy considerations, and proper disqualifying provisions cannot be superseded by the claim that a violation of the provision is done in furtherance of a sincere religious belief. *Bob Jones Univ. v. United States*, 639 F.2d 147, 154 (4th Cir. 1980), *aff'd*, 461 U.S. 574 (1983) ("The principle of neutrality embodied in the Establishment Clause does not prevent government from enforcing its most fundamental constitutional and societal values by means of a uniform policy, neutrally applied.").

The Johnson Amendment doesn't narrow its application to "religious organizations and their leaders," but rather, applies uniformly to all non-profit organizations—religious and nonreligious—who wish to receive a tax-exempt classification. 26 U.S.C.A. § 501(c)(3) (West 2025); *see also* Mark A. Goldfeather and Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEM L. REV. 209, 235 (2017) (arguing that because section 501(c)(3) also governs non-religious nonprofits "[f]orcing the government to allow for some kind of religious exception . . . would not only violate the Establishment Clause but would be tantamount to giving

preferential treatment to religious organizations."). Moreover, the Amendment serves a secular purpose: maintaining the integrity of the tax system by avoiding subsidization of partisan political activity. *See Hernandez v. Comm'r*, 490 U.S. 680, 681 (1989) (stating that the primary secular effect of tax-status policy is not rendered unconstitutional simply because it "happens to harmonize with the tenets" of one religion and not another). Further, the primary effect neither advances nor inhibits religion because the restrictions imposed by the Johnson Amendment are viewpoint neutral—"prohibiting intervention in favor of *all* candidates for public office . . . regardless of candidate, party, or viewpoint." *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000) (emphasis added). Finally, the Johnson Amendment does not encourage excessive government entanglement with religion because the rule applies evenly to all non-profit organizations under section 501(c)(3)—and does not require inquiry into whether a particular organization's choice to intervene in political campaigns is due to a sincere religious belief. 26 U.S.C.A. § 501 (West 2025); *see Bob Jones Univ.*, 639 F.2d at 147, 155 (holding that the government's "uniform application of the rule to all religiously operated schools avoid[ed] the necessity for a potentially entangling inquiry.").

Here, the Fourteenth Circuit misconstrues the application of the Johnson Amendment as well as the principle of neutrality. R. at 9. In reaching its decision, the Fourteenth Circuit reasoned that the Johnson Amendment "favors some religions over others by denying tax exemptions to organizations whose religious beliefs compel them to speak on political issues." R. at 9. However, this Court has recognized that when the Government acts pursuant to a uniform and neutral tax scheme that serves the interest of a sound tax system, the tax policy does not become unconstitutional merely because it has an incidental effect on one religion over another—absent invidious discrimination. *Hernandez v. Comm'r*, 490 U.S. 680, 681 (1989) (reasoning that if a policy "does not facially discriminate among religious sects but applies to all religious entities," it is deemed to be constitutional); *Regan*, 461 U.S. at 548 (distinguishing between Congress choosing

not to uniformly subsidize First Amendment activities and Congress using subsidies to target or suppress disfavored religious viewpoints). Moreover, the Johnson Amendment does not function to deny tax exemptions to organizations "whose religious beliefs compel" certain activity, properly understood—it functions to disqualify *any* non-profit organization under section 501(c)(3) that intervenes in "any political campaign on behalf of or in opposition to any candidate for public office." 26 U.S.C.A § 501(c)(3) (West 2025); *see also* Mark A. Goldfeather and Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEM L. REV. 209, 235 (2017) ("Organizations are just as free to say or do what they believe, but they cannot expect the government to endorse that speech by conferring the tax benefit of tax-exemption on them while they do it."). It does so regardless of whether such disqualifying activities are compelled by a deeply held religious belief or on a whim. 26 U.S.C.A § 501(c)(3) (West 2025). The Fourteenth Circuit has understood the Johnson Amendment to be a penalty targeting religious groups, when in fact it functions to preserve fiscal resources efficiently by applying a viewpoint neutral rule to all tax-exempt organizations under section 501(c)(3). R at 10. Accordingly, because the Johnson Amendment's purpose is secular in nature—its primary effect neither advances nor inhibits religion and it does not foster government entanglement with religion—it does not violate the Establishment Clause of the First Amendment.

b. Legislative Authority May Extend to People's Actions When They Violate Important Social Responsibilities or Undermine Public Order, Even When Those Actions are Demanded by One's Religion

Where there is strong state interest in a policy, and its secondary effect is one that indirectly "favors" a religion over others, the First Amendment is not violated. In *Bob Jones Univ. v. United States*, the court held that, even where government neutrality is mandated, "certain governmental interests are so compelling that conflicting religious practices must yield in their favor." 639 F.2d

147, 154 (4th Cir. 1980), *aff'd*, 461 U.S. 574 (1983) (first citing *Reynolds v. United States*, 98 U.S. 145 (1878); and then *Prince v. Massachusetts*, 321 U.S. 158 (1944) (citing cases where this Court upheld statutes that prohibited polygamy and sale of religious materials by minors, even when a statue indirectly "favors" religions that don't follow these practices)). In that case, the court examined the constitutionality of a nondiscrimination policy of section 501(c)(3) concerning the Establishment Clause and the Free Exercise Clause. *Bob Jones Univ.*, 639 F.2d at 153. The court revoked the university's section 501(c)(3) status based on the university's policy prohibiting interracial dating, even though the policy was based on religious belief. *Id*. at 149. Moreover, the court in *Bob Jones Univ.* relied on precedent in which strong state interests permitted policies that "favored" certain religions and were thus found not in violation of the First Amendment. *Id*. at 154; *see also Braunfield v. Brown*, 366 U.S. 599, 603–04 (1961) (stating that legislative authority over "mere opinion is forbidden[,]" however, it may extend to people's actions when they violate important social duties or undermine public order, "even when the actions are demanded by one's religion."). The court found that the state's interest in not subsidizing racial discrimination in education was in adherence to clearly defined public policy, and therefore not violative of the First Amendment. *Bob Jones Univ.*, 639 F.2d at 151 (relying on the legislative history of section 501(c)(3) found in H.R. REP. NO. 75-1820, at 19 (1939)). Finally, the Court found that the nondiscrimination policy of section 501(c)(3) did not create an "excessive entanglement with religion" because the uniform application of the rule to all religiously operated schools—rendering the inquiry into whether a racially restrictive practice is the result of a sincere religious belief unnecessary. *Id*. at 155.

Here, the Respondent's claim challenges the Johnson Amendment's constitutionality by alleging that it violates the Establishment Clause in its prohibition on "religious organizations and their leaders" from adhering to their deeply held religious beliefs, which requires their active

support of political candidates who align with their faith. R. at 2. However, the Johnson Amendment doesn't focus its application on "religious organizations and their leaders," but rather, applies uniformly to all non-profit organizations—religious and nonreligious—who wish to receive a tax-exempt classification. 26 U.S.C.A. § 501(c)(3) (West 2025); *see also Regan*, 461 U.S. at 548 (holding that, absent invidious discrimination, Congress had "not violated [an organization's] First Amendment rights by declining to subsidize its First Amendment Activities.").

Further, the Johnson Amendment insulates the government's interest in ensuring that no tax-deductible contributions are used to pay for substantial lobbying. *Regan*, 461 U.S. at 553 (Justice Blackmun, concurring). This Court has recognized that even where a burden is placed on First Amendment rights, it may be justified by "broad public interest in maintaining [a] sound tax system" that is free from copious exceptions "flowing from the wide variety of religious beliefs." *Hernandez*, 490 U.S. at 682 (citing *United States v. Lee*, 455 U.S. 252, 260 (1982)). Moreover, the Respondent has yet to show that a substantial burden has been placed on it since it has suffered no injury in fact, and the Johnson Amendment has not yet been enforced in this case. R. at 7. Therefore, because the Johnson Amendment's purpose is secular—its primary purpose neither inhibits nor promotes religion and does not entangle the government with religion—and because this Court's precedent has recognized that strong state interests allow for policy that indirectly harmonizes with some religions over others without violating the First Amendment, this Court should reverse the decision of the Fourteenth Circuit.

CONCLUSION

The Respondent lacks standing under both the AIA and Article III for its claim to challenge the Johnson Amendment. Congress intended the AIA to serve the Government's need to assess and collect taxes as efficiently as possible, with a minimum of pre-enforcement judicial interference, and ensure that parties exhaust the administrative remedies in place before seeking judicial review. The AIA fulfills its purpose by barring suit to those claims which have the purpose of restraining the assessment or collection of any tax by any person. The Court, in adhering to Congress's legislative will, has recognized distinctly narrow exceptions to the AIA. Here, the Respondent brings suit in an effort to avoid audit by the IRS, so that it may retain its tax-exempt classification—in spite of violating the Johnson Amendment. The purpose of Respondent's suit is necessarily a restraint on the assessment of taxes and therefore barred by the AIA. Were it not barred by the AIA, the Respondent nonetheless fails to establish standing under Article III. Any potential injury alleged by the Respondent rests on a speculative chain of possibilities, and no concrete or particularized injury presently exists.

The Johnson Amendment remains the constitutionally sound provision this Court has recognized it as since its inception. Congress has had many opportunities to revise or abrogate the provision and has chosen not to do so. The Johnson Amendment is secular in its purpose; it is viewpoint neutral and uniformly applied. Moreover, this Court has recognized that when the Government acts pursuant to a uniform and neutral tax scheme, the policy does not become unconstitutional merely because it has an incidental effect on one religion over another—absent invidious discrimination. Thus, the Johnson Amendment's disharmony with one religious sect does not constitute a violation of Respondent's First Amendment rights.

For the reasons set forth, Petitioner prays this Court reverse the holding of the Fourteenth

Circuit Court of Appeals and hold that Respondent's suit is barred under the AIA and that the Johnson Amendment is consistent with the Establishment Clause of the First Amendment.

Respectfully submitted this 18th day of January 2026.

_____

_____

ATTORNEYS FOR PETITIONER