IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NATIONAL RELIGIOUS BROADCASTERS, SAND SPRINGS CHURCH, FIRST BAPTIST CHURCH WASKOM, and INTERCESSORS AMERICA, Plaintiffs, v. BILLY LONG, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE INTERNAL REVENUE SERVICE, and THE INTERNAL REVENUE SERVICE, Defendants.	Case No. 6:24-cv-00311

BRIEF *AMICUS CURIAE* OF
AMERICA'S FUTURE,
ORTHODOX CHURCH MISSION FUND OF TEXAS,
ORTHODOX CHURCH MISSION FUND OF HOUSTON, TEXAS, AND
CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND
IN SUPPORT OF THE PARTIES' MOTION FOR A CONSENT JUDGMENT

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INTEREST OF THE *AMICI CURIAE*[1]

The interest of these *amici* is set out in their previously granted motion for leave to file *amicus* brief.

STATEMENT OF THE CASE

Angered by having been criticized by two nonprofit organizations in one of his campaigns for re-election, Senator Lyndon Baines Johnson (D-TX) pushed through the "Johnson Amendment" in 1954 without debate, to bar IRC section 501(c)(3) nonprofit organizations, including churches and other houses of worship, from supporting or opposing candidates or ballot issues, as well as making statements in support or opposition. In August 2024, during the Biden administration, Plaintiffs filed suit against the IRS and its then-Commissioner alleging numerous constitutional violations as well as claims under the Religious Freedom Restoration Act. On April 21, 2025, Plaintiffs filed a motion for summary judgment. Dkt. 23. On July 7, 2025, the parties asked the court to enter a permanent injunction based on a consent decree giving a narrowing construction to the amendment as applied to houses of worship, to prevent the government from censoring or punishing houses of worship for speaking "to its congregation, through its customary channels of communication on matters of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith." Dkt. 35 at 1-2.

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[1] No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these *amici curiae*, their members or their counsel contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

I. THE JOHNSON AMENDMENT EMPOWERS THE GOVERNMENT TO CENSOR AND SELECTIVELY PUNISH CERTAIN AMERICAN PULPITS TO INSULATE GOVERNMENT FROM INTERFERENCE BY PEOPLE OF FAITH.

The Johnson Amendment arrogates to the IRS the authority to dictate to religious leaders and houses of worship which subjects may be taught as religious doctrine without penalty, thereby entangling government with religion. The Supreme Court has repeatedly declared the Establishment Clause's principle of neutrality between competing religious beliefs. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). "The government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The Johnson Amendment violates this rule of neutrality by favoring those religious organizations that feel no obligation to take positions on civic and political affairs, while targeting those whose faith requires them to speak out, resulting in "the suppression of dangerous ideas." *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983). Thus, the Johnson Amendment serves the illegitimate government interest of favoring those religious faiths which do not "meddle" in "secular" matters of government, including such speech as criticizing and opposing incumbent elected officials to hold them to account for their policies which violate Biblical principles, while favoring religious faiths that are passive and compliant in their views toward government, and silent as to the conduct of incumbent politicians.

A. The Establishment Clause Was Modeled after the Views of Jefferson and Madison, as Enshrined in the Virginia Declaration of Rights.

The First Amendment commands that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Those words were not original to the Constitution. As the Supreme Court has noted, they were enshrined first in Virginia, under the inspiration of Thomas Jefferson and James Madison. Jefferson and Madison identified a clear jurisdictional line between the authority of civil government and the realm of "religion," which was defined as the duty of the individual to his or her Creator. That line was clearly marked out by both the Free Exercise and Establishment Clauses.

The First Amendment prohibits the "establishment of religion," but does not define the word "religion." In 1878, the Supreme Court adopted James Madison's definition. The Court noted that, in his famous "Memorial and Remonstrance Against Religious Assessments," James Madison "demonstrated 'that **religion, or the duty we owe the Creator**,' was not within the cognizance of civil government." *Reynolds v. United States*, 98 U.S. 145, 163 (1879) (emphasis added).

The view of Madison and Jefferson had already been enshrined in the 1776 Virginia Declaration of Rights before the First Amendment was drafted. Section 16 of the Declaration (now Article I, Section 16 of the Virginia Constitution) read, "religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and

conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience...."[2]

As the Declaration of Independence and later the Constitution were being drafted, Virginia had already undertaken the "world's boldest ... experiment in religious freedom," grounded in Madison's determination to defend "**liberty of conscience**, for all."[3] Madison's salient role in developing the Virginia Declaration of Rights is indispensable to understanding the religion clauses of the First Amendment, the Virginia Declaration's lineal descendant.[4]

Madison saw a clear jurisdictional line of demarcation between religion and government. Nine years after the Virginia Declaration of Rights, in 1785, Madison wrote his "Memorial and Remonstrance":

> Because we hold it for a fundamental and undeniable truth, "that **Religion** or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence."[...] This right is in its nature an unalienable right.... It is unalienable also, because what is here a right towards men, is **a duty towards the Creator**.... This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: [...] We maintain

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[2] *See* Constitution of Virginia, Section 16, reprinted in R. Perry and J.Cooper, eds., Sources of Our Liberties rev'd ed. (American Bar Foundation: 1978) at 312.

[3] C. Haynes, "James Madison: Champion of the 'cause of conscience,'" *Washington Times* (Dec. 12, 2016) (emphasis added).

[4] Although the Madisonian vision of limited government was radical, it was not without antecedent. Sir William Blackstone explained that, at common law, the state properly had jurisdiction only to make the rules governing "civil conduct," not the rules governing "moral conduct," much less "the rule[s] of faith." 1 W. Blackstone, Commentaries on the Laws of England at 45 (Facs. Ed., Univ. of Chi: 1765).

> therefore that in matters of Religion, no mans right is abridged by the institution of Civil Society and that **Religion is wholly exempt from its cognizance**.[5]

Madison's Memorial and Remonstrance became the foundational language for the Virginia Statute for Religious Freedom, written largely by Thomas Jefferson, and passed shortly after the Virginia Declaration, in 1786. Drawing from Madison's text, the Statute's language is a clear jurisdictional statement. The Statute provides:

> Almighty God hath created the mind free.... [T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.... **[T]o suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous falacy**, which at once destroys all religious liberty....[6]

The Statute for Religious Freedom asserts a principle applicable here, that "no man shall be … restrained, molested, or burthened … or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion." *Id.* at 239. The Statute concludes by decreeing that "**if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right**." *Id.* (emphasis added).

The First Amendment embodies this same jurisdictional statement — "Congress shall make no law" — the same revolutionary jurisdictional claims that Madison and Jefferson stood for in Virginia. Madison repudiated the notion that government should only be tolerant of

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[5] J. Madison, "Memorial and Remonstrance" (1785) (emphasis added).

[6] II The Writings of Thomas Jefferson at 237-39 (G. P. Putnam's Sons: 1893) (emphasis added).

religion, but it had no authority whatsoever over religion — certainly not the authority to muzzle and penalize under the Johnson Amendment.

B. The Supreme Court Recognizes This Jurisdictional Separation.

The Supreme Court has recognized that jurisdictional separation. In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Court continued to recognize that government may not "regulate religious beliefs [or] the communication of religious beliefs." *Smith* at 882. Indeed, the Supreme Court has repeatedly "recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute." *Everson v. Bd. of Educ.*, 330 U.S. 1, 13 (1947). Thus, the "'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can … pass laws which … prefer one religion over another…." *Id.* at 15 (emphasis added).

The Supreme Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), had been much criticized, and for good reason, but even that test is violated by the Johnson Amendment: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion … finally, the statute must not foster 'an excessive government entanglement with religion.'" *Lemon* at 612-13. Even if the Johnson Amendment had a "secular purpose," it has the "primary effect" of inhibiting the religious beliefs of those who believe God requires them to speak out on moral issues in the civic arena and entangles government with religious belief.

The Johnson Amendment cannot be enforced without "inviting the IRS to monitor pastors' sermons" for unapproved content.[7] The Supreme Court has repeatedly defended that jurisdictional line. In 1971, the Court stated that one of the "main evils against which the Establishment Clause was intended to afford protection" was "active involvement of the sovereign in religious activity." *Lemon* at 612. The Court has declared, specifically in the context of tax law, that the purpose of the religion clauses is "to insure that no religion be sponsored or favored, none commanded, and none inhibited." *Walz v. Tax Com. of New York,* 397 U.S. 664, 669 (1970). The Court further declared that "[w]e must also be sure that the end result — the effect [of a law] — is not an excessive government entanglement with religion." *Id.* at 674. To that end, the Court has made clear that "[s]tate power is no more to be used so as to handicap religions than it is to favor them," or the Establishment Clause is violated. *Everson* at 18. The Johnson Amendment "regulate[s] … the communication of religious beliefs," which is impermissible. *Smith* at 882.

The Supreme Court has long been clear that the religion clauses permit Congress to grant tax exemptions to religious organizations if it wishes. "It is significant that Congress, from its earliest days, has viewed the Religion Clauses of the Constitution as authorizing statutory real estate tax exemption to religious bodies." *Walz* at 677. But once Congress has granted an exemption, it cannot grant it selectively only to those who agree not to speak about government. Government cannot assist apolitical religious perspectives while denying the benefit to those who believe their religion requires them to engage in the civic arena. "Few

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[7] D. Suhr, "Sermons are not the state's business," *World Opinions* (July 9, 2025).

concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." *Id.* at 676-77.

The Johnson Amendment forsakes "benevolent neutrality" and adopts "active involvement of the sovereign in religious activity" instead. The Establishment Clause and the Johnson Amendment are at mortal conflict with one another and cannot coexist.

C. For Many People of Faith in American History, Speaking Out Against Public Policies They View as Evil Is Integral to Their Faith.

Throughout America's history, religious leaders have argued that their religious texts demand that adherents be involved in the process of selecting the leaders and the laws that are to govern us. The famous 19th century revivalist Charles Finney said, "all men are under a perpetual and unalterable moral obligation to … exert their influence to secure a legislation that is in accordance with the law of God."[8] Dr. Martin Luther King argued, "every Christian is confronted with the basic responsibility of working courageously for a non-segregated society…. The churches are called upon to recognize the urgent necessity of taking a forthright stand on this crucial issue. If we are to remain true to the Gospel of Jesus Christ, we cannot rest until segregation and discrimination are banished from every area of American life."[9]

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[8] C. Finney, Lectures on Systematic Theology at 354 (William Tegg & Co.: 1851).

[9] IV Papers of Martin Luther King, Jr. at 187 (Univ. of California Press: 2000).

The great abolitionist preacher Henry Ward Beecher "went beyond the traditional bounds of the preachers of his day to create a national pulpit from which he sought to apply the Christian message to a variety of issues in both the personal and the political/social arena"[10]. Beecher lived out his beliefs and "became actively involved in various reform movements, from anti-slavery to woman's suffrage. He often used his pulpit to address such issues, as well as using his oratorical skills in purely political settings." *Id*.

Most of America's great social reforms have been championed by religious movements, and most of those have been sparked from the pulpit. Indeed, "[t]he church's very capacity to be the church, to be faithful to its moral traditions and sense of mission requires an engagement with society that may be threatened by extreme or discriminatory application of Internal Revenue Service … lobbying or campaign regulations."[11] The Supreme Court itself has recognized that, while the state must be neutral between religious beliefs, religion itself requires taking stands on issues of conscience; "[d]octrines and faith are not inculcated or advanced by neutrals." *Lemon* at 618. "'[A]dherents of particular faiths and individual churches frequently take strong positions on public issues.' We could not expect otherwise, for religious values pervade the fabric of our national life." *Id.* at 623 (quoting *Walz* at 670).

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[10] M. Duduit, "Henry Ward Beecher: Preaching to change lives and society," *Preaching.com* (2023).

[11] W. McDowell, "How Religious Organizations and Churches Can Be Politically Correct," 42 BRANDEIS L.J. 71 (2003).

D. The Johnson Amendment Cannot Be Enforced Without Destroying Government Neutrality and Establishing Religion.

Religious beliefs vary greatly, even within religions. In Christianity, some religious leaders believe that the pulpit is not the place for candidate endorsements. A 2017 National Association of Evangelicals survey showed 89 percent of respondent "evangelical leaders" believing that pastors should not endorse candidates from the pulpit.[12] John Stumbo, president of the Christian and Missionary Alliance, stated, "Our calling is higher — our message is greater and our audience must be broader — than using our brief time in the pulpit for political endorsements." *Id.*

On the other hand, many Christians believe God commands them to speak out. Pastor and former presidential candidate Chuck Baldwin, citing statistics from the Barna Group that "less than 10 percent of pastors … say they will speak to" cultural and political issues from the pulpit, has very different religious views.[13] "Ninety-percent of America's pastors say they KNOW that the Bible speaks to all of these issues, but they are deliberately determined to NOT teach these Biblical principles," Baldwin argued. "Please understand this: America's malaise is directly due to the deliberate disobedience of America's pastors — and the willingness of the Christians in the pews to tolerate the disobedience of their pastor. Nothing more! Nothing less!"

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[12] National Association of Evangelicals, "Pastors Shouldn't Endorse Politicians," *NAE.org* (Mar. 29, 2017).

[13] C. Baldwin, "New Research: Pastors Deliberately Keeping Flock In The Dark," *ChuckBaldwinLive.com* (Aug. 7, 2014).

Yet the Johnson Amendment would offer a state benefit of tax exemption to Stumbo and his church, while punishing other churches, on the basis of their differing religious beliefs on the responsibility of the church to address political issues.

This the government may not do. Such a blatant violation of the principle of government neutrality between religious beliefs eviscerates the Establishment Clause. As the Supreme Court has made clear: "[t]he First Amendment **mandates governmental neutrality between religion and religion**, and between religion and nonreligion." *Epperson v. Ark*ansas, 393 U.S. 97, 104 (1968) (emphasis added).

No such neutrality is possible while the Johnson Amendment controls. Enforcement is impossible without "[a] comprehensive, discriminating, and continuing state surveillance … to ensure that these restrictions are obeyed." *Lemon* at 619. But this, the Supreme Court reminds us, is impermissible, as it inevitably "will involve excessive and enduring entanglement between state and church." *Id.* As professor Erik Stanley has written, "[t]he IRS cannot enforce the Johnson Amendment without an IRS agent parsing the speech of a church or a pastor's sermon or other speech to determine if it crossed the line into a Johnson Amendment violation.… Such enforcement of the Johnson Amendment would unconstitutionally entangle the government with religion."[14] As Justice Brennan put it years ago, "[t]he picture of state inspectors prowling the halls … and auditing … instruction surely raises more than an imagined specter of governmental 'secularization of a creed.'" *Lemon* at 650 (Brennan, J., concurring).

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[14] E. Stanley, "Politics, Churches, and Constitutional Protections," *ChurchLawandTax.com* (Apr. 14, 2022).

If the Internal Revenue Service is allowed to grant to some religious entities exemption from taxation only if they choose to remain silent about political issues and candidates, while withholding equal treatment from others because they exercise their time-honored historical right to speak, enjoyed by all other Americans, the Establishment Clause has been ripped from the Constitution. The government has impermissibly entangled itself with religion, declaring that some doctrine may be taught without penalty, while other doctrine may be burdened. The Supreme Court's promise that "no religion [may] be sponsored or favored, none commanded, and none inhibited" (*Walz* at 669), has been broken.

II. THE ANTI-INJUNCTION ACT DOES NOT RESTRICT THIS COURT'S JURISDICTION HERE.

Amicus Americans United for Separation of Church and State ("AU") argues that the Anti-Injunction Act ("AIA") deprives this Court of jurisdiction under the general AIA rule that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a). AU cites one of the exceptions to the rule — that a suit to restrain tax collection may be maintained whether the plaintiff is "certain to succeed on the merits" — arguing Plaintiffs here are not certain to succeed (AU *Amicus* Br. at 13), but these *amici* strongly disagree for the reasons set out in Section I, *supra*. But AU ignored other exceptions to the general rule.

The Supreme Court has explained that "the Anti-Injunction Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *South Carolina v. Regan*, 465 U.S. 367, 378 (1983). *See also Z St. v. Koskinen*, 791 F.3d 24, 30

(D.C. Cir. 2015). *Amicus* AU argues that Plaintiffs have an alternative means to challenge the Johnson Amendment, but they unwittingly concede that alternative does not really exist. AU argues that Plaintiffs should challenge the Amendment under 26 U.S.C. § 7428, but then concedes that "Congress cabined this new remedy in several important ways. First, Section 7428 only applies to organizations challenging an actual, adverse determination of their own tax classification." AU *Amicus* at 15. Moreover, it is applicable only in a case of an "actual controversy respecting an organization's tax classification." *Id.* at 16. Here, all Plaintiffs have already been approved as 501(c)(3) organizations, and as yet none has taken the dangerous step of violating the Johnson Amendment, and thus none have had its qualification challenged by the IRS. Accordingly, as *amicus* AU admits, Section 7428 is not available here, the AIA exception applies.

III. PRE-ENFORCEMENT CHALLENGES SUCH AS PLAINTIFFS' ARE PERMISSIBLE.

A. Pre-Enforcement Challenges Are Permissible Where, as Here, There Is a Credible Threat of Enforcement.

Amici opposing the consent judgment argue that a pre-enforcement challenge is not permissible here, even though pre-enforcement challenges are permissible if there is a credible threat of enforcement. Ironically, interest groups such as *Amicus* AU routinely monitor and threaten churches with submitting complaints to the IRS to enforce the Johnson Amendment. Indeed, in its 2010 annual report, *Amicus* AU boasted: "AU also actively engages in contacting the media to spread the word that tax exemption is a privilege, not a right, and that **the IRS Code means what it says**: religious **organizations may lose their federal tax exemption for egregious violations of the law**." (Emphasis added.) For most of two

decades, *Amicus* AU, along with other ideologically aligned groups, has been threatening churches with enforcement they now contend does not exist.

Other central issues that support a pre-enforcement remedy are also ignored. The very process of any taxpayer defending himself against an IRS audit and enforcement actions, with the IRS having seemingly unlimited resources, can be prohibitively expensive; and as has often been said, the process is the penalty. Few churches have large reserves, and needing to defend oneself against an IRS audit, diverting funds raised for the mission of the church into defending against a threatening three-letter agency presents the church with a moral issue. And for taxpayers frightened into compliance, religious freedom is harmed when a church self-censors to avoid IRS revocation and excise taxes. And, if there was no credible threat of enforcement, why would *Amicus* AU raise money from its donors in order to file complaints with the IRS? Would that not be deceptive fundraising? In the meantime, AU profits financially from taking a position on its website inconsistent with its position in court. And since AU's true goal is muzzling the pulpit of churches across America, the enforcement action is only the cherry on top.

In 2008, AU sparked an IRS investigation of Warroad Community Church after its pastor, Gus Booth, gave an "election sermon" before the 2008 presidential election.[15] Although the IRS eventually dropped the investigation, citing a "pending issue regarding the procedure used to initiate the inquiry," the IRS reserved its right to "commence a future inquiry" at any time. *Id.*

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[15] P. Walsh, "Warroad pastor's IRS case closed, for now," *The Minnesota Star Tribune* (July 29, 2009).

Just before the 2020 presidential election, "[i]n an October 27th letter, the IRS threatened to revoke the nonprofit status of the Coalition of African American Pastors (CAAP) because they have determined that CAAP 'attacked a presidential candidate and urged its followers to elect conservatives.'"[16] On June 14, 2024, the IRS sent a letter to New Way Christian Fellowship of Palm Coast, Florida. The letter threatened to revoke New Way's tax exemption because the church allowed Jill Woolbright, a candidate for the local school board, to speak in the church, and its pastor personally endorsed her from the pulpit. The letter read, in relevant part:

> Our concerns are based on information we possess indicating that New Way Christian Fellowship Inc. may have provided support to one or more candidates in a political campaign.... were you aware that by violating the prohibition on political activities ... that your tax exempt status could be revoked?[17]

The letter went on to invite the church incriminate itself for any other political speech that may have occurred not relating to Woolbright. "Have you participated in any political campaign intervention activities in 2022 that you have not mentioned in response to the above questions?" *Id.*

During the Biden Administration, the IRS launched an investigation of the tax-exempt status of First Baptist Church in Dallas, Texas, where Robert Jeffress, a prominent supporter of President Trump, is pastor. "[O]ur church was the subject of an IRS investigation launched under the Biden administration that spanned several years and cost hundreds of thousands of

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[16] F. Schubert, "EXCLUSIVE: IRS threatens to revoke tax-exempt status of black pastors group," *International Family News* (Dec. 30, 2020).

[17] Letter from Internal Revenue Service to New Way Christian Fellowship Inc. (June 14, 2014).

dollars due to complaints from the Freedom From Religion Foundation," Jeffress said.[18] The Biden Administration investigating a Trump supporter is no surprise. Since there is no list of IRS threats to and enforcement actions against churches, the Johnson Amendment is well designed to allow selective enforcement.

In light of the history of the IRS investigating and threatening the free speech rights of churches, with *Amicus* AU and other aligned groups serving as self-appointed "private attorneys general" to target IRS attention, curiously, groups like AU may actually achieve their objective of silencing the pulpit better by threatening all churches into silence more than the enforcement action against a few, which could lead to litigation to rule the Johnson Amendment unconstitutional.

Plaintiffs need not show that a threat to revoke their individual tax-exempt status is "certainly impending" to have standing; they need only show a "substantial risk" of enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Particularly in the "chilling effect" context, a plaintiff can bring a pre-enforcement challenge if it can show "(1) that they 'intend[] to engage in a course of conduct arguably affected with a constitutional interest'; (2) that their conduct is 'arguably regulated' by the challenged policy; and (3) that 'the threat of future enforcement is substantial.'" *Burnett Specialists v. Cowen*, 2025 U.S. App. LEXIS 14962, *13 (5th Cir. 2025). The decades-long efforts by the IRS (and *Amicus* AU) to shut down the speech of houses of worship is more than "credible evidence" of a continuing threat of enforcement. In the life of most churches, four years is not a long time.

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[18] B. Smietana & J. Jenkins, "Trump adviser and pastor of First Baptist in Dallas says IRS investigated his church," *Religion News Service* (Apr. 18, 2025).

A simple change of administrations can — and recently has — had disastrous tax consequences for disfavored groups. Plaintiffs need show no more.

B. Pre-Enforcement Challenges Are Permissible Where, as Here, the Law Discriminates Invidiously.

Finally, "[t]he tax code may not 'discriminate invidiously … in such a way as to aim at the suppression of dangerous ideas.'" *True the Vote, Inc. v. IRS*, 831 F.3d 551, 561 (D.C. Cir. 2016) (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 548 (1983)). As Plaintiffs point out, "[h]undreds of newspapers are organized under § 501(c)(3), and yet many openly endorse political candidates" without tax consequences or IRS investigations. Amended Complaint (Dkt. 20) at 2 ("Compl."). Indeed, "[t]he IRS has formally recognized the right of college newspapers (owned by colleges that are 501(c)(3) nonprofit organizations) to publish endorsements for political candidates," while targeting houses of worship for negative tax consequences for doing the same thing. *Id.* Presumably, this non-enforcement is due to the Supreme Court's longstanding and quite proper solicitude for the freedom of the press. But the exercise of religion should receive at least the same solicitude, and yet the IRS and *amici* opposing the parties target exercise of religion for disfavored treatment on the basis of content of its religious content. (*Amicus* AU, after all, is not named "Americans United for Keeping Nonprofit Money out of Politics.")

The IRS has a well-documented, recent, sordid history of targeting politically disfavored groups and opinions for discriminatory tax treatment. The House Oversight Committee found that the IRS systematically targeted conservative and "Tea Party" groups for

negative tax consequences under the Obama Administration in 2010. In 2014, the Committee found that:

> Investigations by [the Treasury Inspector General for Tax Administration] and the Oversight Committee found clear evidence that Tea Party and other **conservative organizations were targeted for enhanced scrutiny because their organization's names reflected their conservative beliefs**. Neither TIGTA nor any other investigation has found evidence that a liberal or progressive group was targeted for enhanced scrutiny because its name reflected liberal or progressive beliefs…. A May 2013 review of the IRS tax-exempt applications found that **not a single group identifying itself as "Tea Party" was approved by the IRS** [for 501(c)(4) status] after February 2010, when the new targeting criteria were instated, **while dozens of "progressive" groups were approved**.[19]

Amicus Common Cause ("CC") muses darkly that "religious 501(c)(3)s would pose even more of a dark money threat than 501(c)(4)s do now," and that "[t]he scale of potential political spending by religious 501(c)(3)s is enormous." Brief of *Amicus Curiae* Common Cause ("CC Brief") at 13, 15. CC demonstrates that it has little familiarity with churches when it postulates "transformation of religious 501(c)(3)s into campaign entities," and warns that "there would be little to stop [churches] from devoting nearly half their expenditures to campaign activities — while still qualifying for tax-deductible donations." *Id.* at 14, 15. CC may have a jaded view of America's churches, but the federal government may not.

CONCLUSION

For the foregoing reasons, the Parties' consent judgment should be entered.

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[19] House Oversight Committee, "FACT SHEET: Lois Lerner and the Oversight Committee Investigation of the IRS Targeting Scandal" (Mar. 4, 2014) (emphasis added).

Respectfully submitted,

/s/ J. Mark Brewer

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Certificate of Service

I hereby certify that I served the foregoing Brief *Amicus Curiae* of America's Future, *et al.*, in Support of the Parties' Motion for a Consent Judgment on counsel for the parties using the Court's Electronic Case Filing system.

August 11, 2025

/s/ J. Mark Brewer
J. Mark Brewer