No. 26-40237

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NATIONAL RELIGIOUS BROADCASTERS; SAND SPRINGS CHURCH; FIRST BAPTIST CHURCH WASKOM; INTERCESSORS FOR AMERICA,

Plaintiffs-Appellants,

v.

SCOTT BESSENT, *Acting Commissioner of the Internal Revenue Service*; and INTERNAL REVENUE SERVICE,

Defendants-Appellees.

On Appeal from the U.S. District Court for the Eastern District of Texas
Civil Action No. 6:24-cv-311

BRIEF OF *AMICI CURIAE* CAMPAIGN LEGAL CENTER AND PUBLIC CITIZEN IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

No. 26-40237, *National Religious Broadcasters, et al. v. Bessent, et al*.

The undersigned counsel of record certifies, pursuant to Fifth Circuit Rules 28.2.1 and 29.2, that in addition to the persons and entitles identified in the parties' certificates of interested persons, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amici curiae:

Campaign Legal Center, Public Citizen

Counsel for *Amici Curiae*:

Valencia Richardson, Erin Chlopak, and Kevin P. Hancock.

Campaign Legal Center and Public Citizen, Inc. are nonpartisan, nonprofit corporations. They have no parent corporations, and no publicly held corporation owns 10 percent or more of either of their stock.

/s/ Valencia Richardson
Valencia Richardson
Counsel of Record for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Campaign Legal Center ("CLC") and Public Citizen are nonpartisan, nonprofit organizations that work in the areas of campaign finance, ethics, and election law to ensure that government is accountable, accessible, and transparent. *Amici* have a longstanding interest in the promotion and defense of measures that protect the integrity of government, and have participated as *amicus* in numerous campaign finance cases, including *Citizens United v. FEC*, 558 U.S. 310 (2010). CLC and Public Citizen, together with Common Cause, filed an *amici curiae* brief in the district court opposing the parties' joint motion for entry of the proposed consent judgment. ECF No. 54.[1]

Without taking a position on the applicability of the Anti-Injunction Act ("AIA"), *amici* file this brief to emphasize that the parties' arguments with respect to the AIA depend on an incorrect characterization of the Johnson Amendment—that it restricts speech, that it discriminates by viewpoint, that it cannot textually or constitutionally reach a church's electoral communications. *Amici* also write to

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[1] All record citations are to the district court's electronic docket, *Nat'l Religious Broadcasters v. Bessent*, No. 6:24-cv-311 (E.D. Tex.).

explain the ramifications the proposed consent judgment, if entered, would have for our nation's elections.[2]

SUMMARY OF ARGUMENT

The Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421, generally prohibits lawsuits seeking to enjoin the collection of taxes. Below, the district court held that this case is barred by the AIA, and, thus, held that it lacked jurisdiction over the case, including jurisdiction to enter the parties proposed consent judgment. On appeal, both parties ask this Court to hold that the proposed consent judgment fits within the "narrow, judicially created exception" to the AIA recognized in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962), and to remand for the district court to enter the proposed judgment.

Where the AIA would otherwise be applicable, the *Williams Packing* exception permits the action if "under no circumstances could the Government ultimately prevail." *Id.* The parties and their *amici* offer three arguments why the Government could not prevail against a church that endorses candidates from the pulpit: The Government argues that it could not prevail because it has agreed not to try to prevail, and because it now reads this Court's church-autonomy precedent to

[2] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amici*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.

forbid any inquiry into a sermon. Appellants argue that the Johnson Amendment is a speech restriction that the IRS enforces against only certain viewpoints. Appellants' *amici* argue that the Johnson Amendment is unconstitutional.

None of those arguments hold up. The Johnson Amendment is not a restriction on speech; it is a condition on a taxpayer-funded subsidy that the Supreme Court has upheld against exactly this kind of First Amendment challenge. It is viewpoint neutral on its face and has been applied to churches across the political spectrum. And its text, which defines prohibited intervention to "includ[e] the publishing or distributing of statements," 26 U.S.C. § 501(c)(3), reaches precisely the speech the consent judgment would immunize: a church's published endorsement of candidates through its "customary channels of communication." ECF No. 35-1 ¶¶ 5-7. Far from being a claim that "under no circumstances could [the Government] ultimately prevail," *Williams Packing*, 370 U.S. at 7, Plaintiff's claim would likely fail—if only the Government would put up a fight.

The stakes here are not confined to two churches in east Texas. The consent judgment would embed in a court order an IRS "interpretation" that the agency could not then reasonably decline to apply to any of the roughly 340,000 churches that hold 501(c)(3) status. Churches file no annual returns, disclose no donors, and offer contributors a charitable deduction that no 501(c)(4) can match. Exempting them from the Johnson Amendment would create a new class of political vehicles more secretive and more heavily subsidized than any that exists today. That is not a "narrow" injunction. It is the dismantling by consent decree of a statutory safeguard that Congress has maintained for 70 years. Regardless of the applicability of the AIA, the district court's refusal to enter the consent decree should be affirmed.

ARGUMENT

I. Appellants' Arguments that the *Williams Packing* Exception Applies Depend on Misunderstandings of Fact and Law

A. Appellant Is Not Certain to Succeed on Its Claim

The *Williams Packing* exception applies only if "it is clear that under no circumstances could the Government ultimately prevail," judged on "the most liberal view of the law and the facts" favorable to the Government. 370 U.S. at 7. The taxpayer must show a "*certainty* of success on the merits." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 737 (1974) (emphasis added). The test is "stringent," *id.*, and this Court has called it "most onerous . . . indeed." *Crenshaw Cnty. Priv. Sch. Found. v. Connally*, 474 F.2d 1185, 1187 (5th Cir. 1973). The district court held the test unmet because, "[g]iven the open-textured nature of the legal provisions at issue here and the wide array of potential facts discussed in the complaint," Plaintiffs' contentions were not "so undebatable as to foreclose any possibility of government success." ECF No. 106 at 8. That holding was correct for three independent reasons.

1. The text of the Johnson Amendment reaches the type of election-related endorsements that the consent judgment covers. The Johnson Amendment provides

that a section 501(c)(3) organization may 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. § 501(c)(3). The consent judgment declares that a church's communications "to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith," are not "participation" or "intervention" because they are more akin to "a family discussion concerning candidates." ECF No. 35-1 ¶¶ 3-6. The parties reach that conclusion by consulting a dictionary for the words "participate" ("to take part") and "intervene" ("to interfere with the outcome or course"). ECF No. 35-1 ¶ 3.

There are several problems with this line of argument. To start, public communications endorsing or opposing candidates comfortably qualify as taking part in or interfering with the outcome or course of a political campaign. *See McConnell v. FEC*, 540 U.S. 93, 169 (2003) ("public communications" that promote or attack a candidate "undoubtably have a dramatic effect on federal elections"). More importantly, the statute itself makes clear that the definition of "intervention" is broader than the parties' dictionary suggests; it expressly "includ[es] the publishing or distributing of statements." 26 U.S.C. § 501(c)(3). Other, broader definitions of "intervene"—"to come in . . . so as to affect . . . or prevent a result," or to "involve oneself"—are more consistent with that text. *See* Ellen P. Aprill, *Misunderstanding National Religious Broadcasters*, Tax Notes (July 25, 2025), https://perma.cc/Q4DY-BBGB (citation omitted). And courts have repeatedly held that public support for or opposition to candidates is inconsistent with 501(c)(3) status. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000) (upholding revocation of a church's exemption for newspaper advertisements urging Christians not to vote for a presidential candidate); *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d Cir. 1989); *Ass'n of Bar of City of N.Y. v. Comm'r*, 858 F.2d 876, 880 (2d Cir. 1988); *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 856 (10th Cir. 1972) (ministry "intervened in political campaigns" by using "its publications and broadcasts to attack candidates" and endorsing a candidate at its annual convention).

The speech at issue here is not a private family discussion. Appellees allege that, if permitted, their pastors would deliver sermons "in close proximity to the election" discussing the "stands taken by the major candidates nationally," "compar[ing] the views of each of the relevant candidates and/or the major political parties," "urg[ing] the congregation to vote and to do so in accordance with the [church's] principles and viewpoints," and hosting live appearances by "[c]andidates for state and local offices" for whom the church would urge its congregation to vote. ECF No. 20 at 10-11. Both churches publish recorded and live versions of their sermons on the internet. *See* Sermons, Sands Springs Church, https:// https://perma.cc/89HM-P3ST (last visited Sep. 23, 2026); First Baptist Church Waskom, https://perma.cc/STZ2-VJG7 (last visited Sep. 23, 2026), including via a YouTube channel, *see* First Baptist Church Waskom (@FirstBaptistChurchWaskom), YouTube, https://perma.cc/NB5V-XELD. A candidate endorsement delivered from the pulpit and posted to YouTube is a "publish[ed] or distribut[ed] . . . statement[]," 26 U.S.C. § 501(c)(3), on behalf of a candidate in the most literal sense. The Government itself conceded below that "there is no doubt that Plaintiffs seek to engage in speech that is contrary to" the Johnson Amendment. ECF No. 84 at 5.

That is enough to end the *Williams Packing* inquiry. The question is not whether the parties' reading of the statute is plausible; it is whether the Government's reading is *impossible*. On the "most liberal view of the law and the facts" favorable to the Government, *Williams Packing*, 370 U.S. at 7, a church that broadcasts candidate endorsements has published or distributed statements in a political campaign, and the IRS would prevail.

The consent judgment's remaining justification—that its reading "is in keeping with the IRS's treatment of the Johnson Amendment in practice" because the agency "generally has not enforced" it against worship-service speech, ECF No. 35-1 ¶ 4—fares no better. An agency's enforcement discretion does not rewrite a statute's text, and the Government's brief in this Court does not rely on that rationale. Nor could it. The IRS has revoked a church's exemption for candidates' advocacy, *see Branch Ministries*, 211 F.3d at 139, and Plaintiff's own complaint alleges that the agency has investigated and sanctioned religious organizations for similar speech, ECF No. 20 ¶ 48. A history of forbearance is not a certainty of defeat.

2. The Government's invocation of the church autonomy doctrine is likewise unavailing. The Government argues—for the first time on appeal, *see* Gov't Br. 36-37—that any enforcement action against sermon speech would "run headlong into the church autonomy doctrine" as construed in *McRaney v. North American Mission Board of the Southern Baptist Convention, Inc.*, 157 F.4th 627 (5th Cir. 2025). *See* Gov't Br. 19, 30-34. The argument mistakes the doctrine's scope.

McRaney holds that "[c]ivil courts cannot adjudicate ecclesiastical matters." 157 F.4th at 633. The cases it describes involved defamation suits that would have required courts to separate defamatory statements from statements of religious belief or scriptural interpretation. *See id.* at 639. Whether a 501(c)(3) organization published a statement supporting or opposing a candidate for public office is not an ecclesiastical question. It requires no judgment about the truth of any doctrine, the meaning of any scripture, or the sincerity of any belief. The statute asks only whether the organization took a side in an electoral contest, not why. The Government's own brief concedes that the doctrine "does not grant 'religious institutions . . . a general immunity from secular laws,'" Gov't Br. 32 n.3 (quoting *McRaney*, 157 F.4th at 635-36), and that "[r]equiring [a religious organization] to comply with" the requirements of "tax exempt status results in only an incidental burden upon [its] free exercise of religion," *id.* (quoting *United States v. Holmes*, 614 F.2d 985, 989 (5th Cir. 1980)). Courts have applied the Johnson Amendment to churches without any suggestion that doing so intruded on religious autonomy. *See Branch Ministries*, 211 F.3d at 142-44 (rejecting free exercise challenge to revocation of church's exemption). And the Supreme Court has enforced a 501(c)(3) condition against a religious institution despite its sincere religious objection. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 602-04 (1983).

Moreover, the consent judgment is not confined to sermons. Its operative language covers any speech "through [a church's] customary channels of communication on matters of faith." ECF No. 35-1 ¶ 7. For churches that customarily communicate with their congregations through websites, webcasts, and broadcast media, that language reaches far beyond anything *McRaney* protects.

Perhaps for these reasons, the Government did not press this argument below, Gov't Br. 36, and acknowledges this Court's view of the doctrine "appears to differ from that of many of its sister circuits," *id.* at 34 n.4. A theory that debatable cannot satisfy a test that demands "certainty." *Bob Jones Univ.*, 416 U.S. at 737. The Supreme Court rejected a similar argument in *Bob Jones* itself, holding that the university's "First Amendment, due process, and equal protection contentions are sufficiently debatable to foreclose any notion that under no circumstances could the Government ultimately prevail." *Id.* at 749 (quotation marks omitted).

3. Whether the Government agrees with the plaintiff is not the test under *Williams Packing*. Stripped of the church-autonomy gloss, the Government's prong-one argument is the claim it asserted below: that it cannot prevail because it has agreed with Plaintiffs about what the statute means. *See* Gov't Br. 36 (acknowledging that below "the Government only had argued that it could not prevail . . . because it agreed with Plaintiffs"). But *Williams Packing* asks whether the Government could win on the law and the facts, not whether it prefers not to. A consent decree "must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction," *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986), and this Court has warned that "[c]ourts must be especially cautious when parties seek to achieve by consent decree what they cannot achieve by their own authority," because "[c]onsent is not enough when litigants seek to grant themselves powers they do not hold outside of court." *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 846 (5th Cir. 1993). The IRS cannot, by stipulation, convert a claim it would likely win into one it is certain to lose under *Williams Packing*.

B. The Johnson Amendment Is a Condition on a Subsidy, Not a Restriction on Speech

Appellants' *amici* argue that the Government cannot prevail, and thus *Williams Packing* applies, because the Johnson Amendment "conditions continued tax-exempt status on the surrender of core First Amendment freedoms." ACLJ Br. 4; *see id.* at 12-32; Citizens United Br. 14-28. But the Supreme Court has rejected these claims for more than 60 years. A party cannot show a "certainty of success on the merits," *Bob Jones Univ.*, 416 U.S. at 737, against a statute that the Supreme Court's subsidy cases directly sustain.

The Johnson Amendment does not suppress or penalize speech. It sets a condition on eligibility for government benefits—federal tax exemption and tax-deductible contributions. Those benefits are functionally "a form of subsidy that is administered through the tax system." *Regan v. Tax'n With Representation of Wash.*, 461 U.S. 540, 544 (1983). "[A] tax exemption has much the same effect as a cash grant to the organization" and deductible contributions are "similar to cash grants of the amount of a portion of the individual's contributions." *Id.* Organizations that wish to engage in political campaign activity remain free to do so notwithstanding the Johnson Amendment; they simply must relinquish the taxpayer-funded subsidy if they choose that path.

While the First Amendment prohibits "plac[ing] obstacles in the path" of speech, *Regan*, 461 U.S. at 549 (internal quotation marks omitted), nothing requires government to "assist others in funding the expression of particular ideas, including political ones," *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009); *see also Harris v. McRae*, 448 U.S. 297, 318 (1980). In *Cammarano v. United States*, the Supreme Court upheld a regulation denying deductions for lobbying expenses, explaining that the plaintiffs were "not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets." 358 U.S. 498, 513 (1959). In *Regan*, the Court rejected a First Amendment challenge to the very provision of section 501(c)(3) that sits beside the Johnson Amendment—the bar on substantial lobbying—holding that "Congress has not infringed any First Amendment rights or regulated any First Amendment activity" "but has simply chosen not to subsidize . . . lobbying." 461 U.S. at 541, 546. And in *Branch Ministries*, the D.C. Circuit applied *Regan* to the Johnson Amendment itself, holding that "Congress has not violated an organization's First Amendment rights by declining to subsidize its First Amendment Activities." 211 F.3d at 143-44 (internal quotation marks omitted); *see also United States v. Am. Libr. Ass'n*, 539 U.S. 194, 212 (2003) (plurality) ("A refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." (citation modified)).

The Johnson Amendment leaves a range of options open to organizations that want to intervene in political campaigns. They may forgo the benefits of Section

501(c)(3) status, including by operating as for-profit entities. As the Supreme Court has recognized, religious organizations "might organize as for-profit corporations because of the potential advantages of that corporate form, such as the freedom to participate in lobbying for legislation or campaigning for political candidates who promote their religious or charitable goals." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 712 (2014). Or they may maintain Section 501(c)(3) status for their nonpartisan activities while establishing a separate political organization under Section 527 of the Code—the vehicle Congress has designated for organizations whose purpose is to influence elections. *See* 26 U.S.C. § 527(e)(1)-(2). Such an organization is itself exempt from tax on its campaign-related receipts, *id.* § 527(a), (c), and, unlike a Section 501(c)(3), is subject to donor-disclosure requirements, *id.* § 527(j). The Supreme Court has long recognized that Congress may require this kind of structural separation between subsidized charitable activity and unsubsidized political activity. *See Regan*, 461 U.S. at 544; *id.* at 552-53 (Blackmun, J., concurring). It is up to Plaintiffs to decide whether to accept the conditions that come with Section 501(c)(3) status. Having made that choice, they cannot plausibly claim that Congress has restricted their speech by defining the scope of a voluntary tax benefit.

Plaintiffs' reliance on *Citizens United* does not change the analysis. That case involved a statutory ban on independent expenditures by corporations, enforced by criminal penalties, 558 U.S. at 318—a law that prohibited speech by barring certain speakers from spending money. It did not involve a government subsidy or address the boundaries of tax exemption. As the Seventh Circuit has explained, "[w]hile . . . *Citizens United* support[s] the unconstitutionality of speaker-based discrimination in statutes that prohibit or burden speech, *Regan* controls on government subsidies of speech: speaker-based distinctions are permissible." *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 648 (7th Cir. 2013) (citing *Regan*, 461 U.S. at 548-49).

This settled characterization forecloses the use of the First Amendment to invoke *Williams Packing*. The only consequence of noncompliance with the Johnson Amendment is loss of the subsidy. As the district court put it, "if the plaintiffs here gave up their § 501(c)(3) tax-exempt status, none of the harms they allege could occur." ECF No. 106 at 5; *accord* Gov't Br. 41-42. That observation exposes the contradiction at the heart of Appellants' position. The Johnson Amendment thus commands nothing; it defines the terms on which an organization may claim a benefit it is free to decline. That is what makes it constitutional under *Regan*. A provision that burdens nothing but eligibility for exempt status cannot be a First Amendment violation, under existing precedent, that is certain to succeed for purposes of *Williams Packing*.

Even if the Johnson Amendment were treated as a speech restriction (which it is not), it would survive First Amendment scrutiny, and the Government could not be "certain" to lose. The Government has at least two compelling interests in drawing a line between tax-subsidized charitable activity and partisan electoral activity. The first is ensuring that tax-deductible contributions do not become vehicles for financing political campaigns. If they did, every dollar a donor gave to a politically active church would be matched, in part, by the Treasury, which would allow private donors to direct a taxpayer subsidy to the candidates of their choosing. Such contributions would also carry the risk of *quid pro quo* corruption given that a large, undisclosed, tax-subsidized gift to a 501(c)(3) that endorses a candidate would effectively be (in the candidate's view) a large undisclosed gift to the campaign. And it would defeat the right of voters to know "who is speaking about a candidate shortly before an election." *Citizens United*, 558 U.S. at 369; *see infra* Part II.B.

The second is maintaining the integrity and neutrality of the charitable sector, whose exemptions "are justified on the basis that the exempt entity confers a public benefit." *Bob Jones Univ.*, 461 U.S. at 591; *see Regan*, 461 U.S. at 550. The Johnson Amendment—a bright-line rule that applies to every 501(c)3) organization and leaves each free to speak at its own expense—is directly and narrowly tailored to serve those interests. *See Branch Ministries*, 211 F.3d at 143-44.

C. The Johnson Amendment Is Viewpoint Neutral

Appellants' also argue that the IRS enforces the Johnson Amendment by viewpoint, so that this suit challenges IRS conduct "unrelated to the protection of the revenues" within the meaning of *Bob Jones Univ.*, 416 U.S. at 740; *see also Z Street v. Koskinen*, 791 F.3d 24 (D.C. Cir. 2015). Appellants' Br. 47-49. Their *amici* go further, contending that the Johnson Amendment was designed to suppress criticism of incumbents, favors churches that are "compliant toward government," and cannot be enforced without establishing religion. *See* Citizens United Br. 14-28. None of these arguments withstand scrutiny.

The Johnson Amendment is viewpoint neutral on its face. It prohibits 501(c)(3) organizations from intervening in political campaigns, whether in favor of or in opposition to any candidate, and whatever the organization's religious, political, or ideological commitments. As the D.C. Circuit held in the only appellate decision to address a church's challenge to revocation under the provision, "[t]he restrictions imposed by section 501(c)(3) are viewpoint neutral; they prohibit intervention in favor of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint." *Branch Ministries*, 211 F.3d at 144. That neutrality is what distinguishes a permissible subsidy condition from an impermissible one: subsidies generally do not burden speech, but they cannot "discriminate on the basis of viewpoint." *Walker*, 705 F.3d at 648 (citing *Regan*, 461 U.S. at 548). The Johnson Amendment does not.

Nor have Plaintiffs plausibly alleged viewpoint-discriminatory enforcement. A selective-enforcement claim under the Free Speech Clause requires a plaintiff to overcome the presumption that the government acted lawfully by showing that it was singled out for enforcement while others similarly situated were not. *See Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141, 1146 (D.C. Cir. 2023). Plaintiffs offer a handful of anecdotal examples—nonprofit newspapers, isolated statements pulled from the internet—that do not show the IRS has treated them differently from similarly situated organizations. ECF No. 20 at 17-44. Indeed, Plaintiffs do not claim that the Johnson Amendment has been enforced against them at all. *Id.* at 15. Even assuming some progressive-leaning groups have engaged in campaign activity without consequence, Plaintiffs offer no evidence that similarly situated conservative organizations were treated less favorably; at most, they allege uneven enforcement, not viewpoint-based enforcement. And the provision has been enforced against organizations on both ends of the political spectrum. *See Branch Ministries*, 211 F.3d at 139 (advertisements opposing Bill Clinton); *Christian Echoes Nat'l Ministry v. United States*, 470 F.2d 849, 856 (10th Cir. 1972) (ministry that attacked candidates "considered too liberal").

Thus, this case is not one where the IRS's position "has no legal basis or is unrelated to the protection of the revenues." *Bob Jones Univ.*, 416 U.S. at 740. Enforcing a facially neutral statutory condition on tax exemption, which the Supreme Court has upheld, against organizations that concede they wish to engage in the conduct it describes, ECF No. 20, ¶¶ 37-40; ECF No. 84 at 4, is "a good-faith effort to enforce the technical requirements of the tax laws," *Bob Jones Univ.*, 416 U.S. at 740. *Z Street* is not to the contrary. There, the IRS had actually subjected the plaintiff's exemption application to a viewpoint-based review process, 791 F.3d at 27, and the plaintiff sought only to end that process, not to be relieved of any substantive condition on its exemption, *id.* at 31-32. Here, the IRS has taken no action toward Appellants at all, and the relief sought is an injunction against enforcing the condition itself. ECF No. 20 at 56.

II. The Consent Judgment Would Effectively Exempt Churches from the Johnson Amendment and Open a New Channel for Anonymous, Tax-Deductible Election Spending

A. The Consent Judgment Is Not Narrow

The parties describe the consent judgment as a "narrow injunction" covering only "a narrow category of speech." Gov't Br. 18; *see* Appellants' Br. 8. Its terms say otherwise. Although the injunction runs only to the two Plaintiff Churches, it rests on a declaration that the Johnson Amendment "does not reach speech by a house of worship to its congregation, in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith." ECF No. 35-1 ¶¶ 6-7. The IRS could not reasonably enforce the Johnson Amendment against other religious organizations engaged in the same conduct once its own "interpretation" has been adopted in a court order.

The decree's language is also far broader than the "sermon" the Government now describes. The Government's brief repeatedly characterizes the covered speech as a "sermon"—speech by "pastors" delivered "during religious services," the enforcement of which would require "picking apart the religious and political elements of a sermon." Gov't Br. 33-35. But the text is far broader, covering communications through a church's "customary channels of communication." ECF No. 35-1 ¶ 7. That language would allow existing or newly created Section 501(c)(3)s that regularly reach their congregations through radio, television, or the internet to focus those communications on candidates as election day approaches, and then to claim that the broadcasts are part of their "customary channels of communication on matters of faith." Far from being analogous to a "family discussion concerning candidates," *id.* ¶ 3, the decree could be read to permit the very "public communications" that the Supreme Court has said have a "dramatic effect on federal elections." *McConnell*, 540 U.S. at 169.

B. Exempting Religious 501(c)(3)s from the Johnson Amendment Would Create a New Class of Super Dark Money Groups

Disclosure of spending on elections is a cornerstone of the federal campaign finance system. "[E]nlightened self-government" depends on voters knowing "who is speaking about a candidate shortly before an election," so that they may "make informed choices in the political marketplace." *Citizens United*, 558 U.S. at 339, 367, 369. Disclosure also serves to "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam). The Federal Election Campaign Act accordingly requires organizations whose major purpose is federal campaign activity to register as political committees and report their contributions and expenditures, and requires other groups to file event-driven reports if they engage in certain electoral spending, such as express advocacy or broadcast messages naming candidates and targeting voters shortly before an election. 52 U.S.C. §§ 30102-30104. Congress has also recognized that transparency is essential to the enforcement of its substantive limits on contributions from foreign nationals, federal contractors, corporations, and unions. *See SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc).

Section 501(c)(4) "social welfare" organizations have exploited regulatory loopholes and enforcement failures to become the central vehicles for "dark money"—spending intended to influence elections without public disclosure its sources. Since *Citizens United*, 501(c)(4) groups have spent at least $4.3 billion to influence federal elections while keeping their donors anonymous, and much of that money has been funneled to super PACs that disclose only the 501(c)(4) as the source. *See* Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Races*, Brennan Ctr. for Just. (May 7, 2025), https://perma.cc/R6YC-KKEE. The Federal Election Commission, hobbled by partisan deadlock, has not voluntarily found a single nonprofit to be a political committee since *Citizens United*, despite overwhelming evidence in many cases. *See* Adav Noti *et al.*, *CLC: Why the FEC is Ineffective*, Campaign Legal Ctr. (Aug. 8, 2022), https://perma.cc/CDQ4-TAMB. The net result has been an erosion of the disclosure regime and a flood of anonymous campaign funding from prohibited or restricted sources: corporations, unions, federal contractors, and foreign nationals have all used 501(c)(4)s to make end-runs around the law and influence elections in secret. *See, e.g.*, Megan McAllen, *Delay, Deadlock, Dismiss: Pras Michel Indictment Exposes How FEC Dysfunction Opens Our Elections to Foreign Meddling*, Campaign Legal Ctr. (May 15, 2019), https://perma.cc/Q7G7-RL3R.

The Johnson Amendment has kept the far larger charitable sector out of this system. In exchange for the twin subsidies of exemption and deductibility, Section 501(c)(3)s must refrain from campaign intervention—a bargain Congress struck in 1954 amid concerns about the use of tax-exempt organizations to influence elections while shielding donors from scrutiny. *See* 100 Cong. Rec. 9128 (1954). If permitted to ignore that bargain, religious 501(c)(3)s would pose an even greater dark-money threat than 501(c)(4)s do now, for three reasons.

First, religious 501(c)(3) organizations could offer donors both secrecy and a charitable deduction—something no 501(c)(4) can do. Empirical studies confirm that taxpayers respond to the deduction by increasing their donations, and the benefit "favor[s] high-income people, who face relatively higher marginal tax rate." Cong. Budget Off., Options for Changing the Tax Treatment of Charitable Giving, at 2 (May 2011), https://perma.cc/E9AQ-VCC5. Wealthy donors and political operatives would have every incentive to shift their spending from 501(c)(4)s into newly politicized churches and religious nonprofits.

Second, religious 501(c)(3)s report even less than other nonprofits. Most exempt organizations must file annual Form 990 returns disclosing basic financial information, 26 U.S.C. § 6033(a)(1), but churches and certain religious organizations are categorially exempt, *id.* § 6033(a)(3)(A). Churches also need not apply to the IRS for recognition of exemption, *id.* § 508(c), and are shielded by special audit procedures, *id.* § 7611. Political spending by such organizations would occur in near-total secrecy.

Third, the potential scale of dark money spending is enormous. There are an estimated 340,000 religious Section 501(c)(3)s in the United States, *see* Nat'l Philanthropic Tr., Charitable Giving Statistics, https://perma.cc/K7K6-ZSME (last visited Sep. 28, 2026), some of which spend tens of millions of dollars in a single year. Because the consent decree defines the covered communications as not constituting intervention at all, it could be read to allow such messaging by 501(c)(3)s without any limit; in contrast, the IRS's already permissive approach toward 501(c)(4)s at least limits those groups from devoting more than 49 percent of their expenditures to political activity. *See* Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). Nor can the states fill the regulatory gap. Many state disclosure laws were written on the assumption that 501(c)(3)s do not spend on elections, and some expressly exclude them. *See, e.g.*, R.I. Gen. Laws §§ 17-25.3-1(b), 17-25-3(2), (19).

The result would be an unprecedented expansion of taxpayer-subsidized political spending. Both exemption and deductibility are government subsidies that Congress has long conditioned on abstention from campaign activity, *Regan*, 461 U.S. at 544, precisely so that the public does not underwrite partisan politics under the guise of charitable giving. Decades of experience show that politically active donors adapt quickly to new channels. Liberal and conservative churches alike would be pressured to accept partisan contributions, and their leaders would be incentivized to act as campaign operatives rather than spiritual guides. The same flood of dark money that has overwhelmed the 501(c)(4) sector would surge into the 501(c)(3) sector—only now it would be tax-deductible and largely invisible.

* * *

A district court may approve a consent decree only if it "is not unconstitutional, unlawful, contrary to public policy, or unreasonable." *United States v. City of Miami*, 614 F.2d 1322, 1333 (5th Cir. 1980) (internal citation omitted). Where, as here, the parties seek to accomplish through judicial fiat what Congress has not authorized, that inquiry is at its most searching. *See Clements*, 999 F.2d at

846. Here, the decree is unlawful under Section 501(c)(3) and contrary to the public policy embodied in the Johnson Amendment and the federal campaign finance disclosure regime. For those reasons, this Court should affirm that the district court properly declined to enter it.

CONCLUSION

The district court's decision not to enter the consent judgment should be affirmed.

Dated: September 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Valencia Richardson
Valencia Richardson

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) and Fifth Circuit Rule 29.3 because it contains 5,504 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fifth Circuit Rule 32.2.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Fifth Circuit Rule 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font for text and at least 14-point Times New Roman font for footnotes.

3. This brief complies with the privacy redaction requirement of Fifth Circuit Rule 25.2.13, the electronic submission has been scanned for viruses with the most recent version of a commercial virus scanning program is and is free of viruses, and the paper copies of the brief, if any, are identical to the electronic submission.

Dated: September 28, 2026

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