No. 19-930

In the Supreme Court of the United States

CIC SERVICES, LLC,
Petitioner,

v.

INTERNAL REVENUE SERVICE,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR FREE SPEECH IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 37.3(b) of the Rules of this Court, the Institute for Free Speech ("the Institute") moves for leave to file the attached *Amicus Curiae* brief in support of Petitioner CIC Services, LLC. Petitioners have filed a blanket consent to the filing of *amicus curiae* briefs.

Amicus emailed the Solicitor General's office at SupremeCtBriefs@usdoj.gov on July 7, 2020. *Amicus* also called the designated consent and main office telephone lines, leaving voicemails at the latter on July 20, 2020. Respondent has not yet responded to these efforts.

The Institute is a nonpartisan, nonprofit organization dedicated to the defense of the political rights enshrined in the Constitution's First Amendment. Because the Internal Revenue Service is responsible for categorizing nonprofit organizations and otherwise regulating civil society, its regulatory guidance often raises important First Amendment questions. In such cases, obtaining prompt, pre-enforcement judicial review is critically important. The Institute's brief explains why this case should be used to provide greater access to the courts in such circumstances.

Accordingly, *Amicus* respectfully requests that this Court grant its motion for leave to file.

Dated: July 22, 2020

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INTEREST OF *AMICUS CURIAE*[1]

The Institute for Free Speech ("Institute") is a § 501(c)(3) nonpartisan, nonprofit organization that defends the rights to free speech, assembly, press, and petition. In addition to its scholarly and educational work, the Institute represents individuals and civil society groups, *pro bono,* in cases raising First Amendment objections to the regulation of core political activity.

Because the Internal Revenue Service ("IRS" or "Service") regulates the tax status, structure, and activities of nonprofit organizations, its efforts frequently raise important First Amendment questions. Accordingly, the Institute writes to apprise the Court of the ways in which this case will implicate constitutional litigation far beyond the facts presented here.

SUMMARY OF THE ARGUMENT

This case has implications far beyond tax shelters. App. 2a. The court below applied the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a), to bar a challenge to informal guidance issued by the IRS. *See*, *e.g.*, App. 2a-4a. The Sixth Circuit's rationale—that the "taxes" assessed for noncompliance with that IRS policy triggered the AIA, App. 14a—potentially impacts the availability of an effective judicial remedy for a wide range of IRS regulatory action, much of which reflects policy judgments unrelated to revenue collection, and

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* certifies that no counsel for a party authored this brief in whole or part, nor did any person or entity, other than *amicus* or its counsel, financially contribute to the preparing or submitting of this brief.

some of which governs advocacy at the core of the First Amendment's protections.

Take one important example: how to define "political activity" for nonprofit organizations. The scope of a nonprofit's permissible ventures turns on the extent to which the IRS will consider them "political activity." If a § 501(c)(3) engages in *any* such "political activity," the organization and its mangers may be hit with ruinous financial penalties. At the same time, while a § 501(c)(4) group may engage in *some* "political activity," it cannot be the group's primary function. And a § 527 organization that does not engage in *enough* "political activity" may be in trouble too. Much rides, therefore, on what activity qualifies as "political."

For questions such as these, pre-enforcement review is often essential. But a broad reading of the AIA makes most IRS actions unreviewable for practical purposes. Where a crippling payment is described as a "tax" when it is really a fine, the AIA is being read too broadly. And a "pay now, fight later" approach is unavailable to the overwhelming majority of civil society groups. Moreover, these organizations should have the opportunity to raise constitutional concerns before Article III courts, and not tax court judges lacking both expertise and jurisdiction to consider questions of constitutional law.

ARGUMENT

The Anti-Injunction Act provides 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).[2] It expresses Congress's desire to avoid the real problem of delay-by-litigation tactics for tax payments. Kristin E. Hickman and Gerald Kerska, *Restoring the Lost Anti-Injunction Act*, 103 Va. L. Rev. 1683, 1719–34 (Dec. 2017) (detailing history surrounding adoption of the AIA). In other words, the AIA reflects a policy of "pay now, fight later"[3] for tax challenges.

This case, however, highlights the problem of conflating a "tax" for general revenue collection purposes and a "tax" that really functions as a penalty to discourage misbehavior. App. 2a-3a; App. 26a-27a (Nalbandian, J., dissenting); Pet. 15; BIO 2-3; Opening Br. at 24.

This Court has long held that penalties that chill speech require pre-enforcement remedies. Reading the AIA as broadly as the Sixth Circuit does, however, leaves "aggrieved part[ies]" without "an alternative legal avenue by which to contest the legality" of tax laws regulating nonprofit First Amendment activity.

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[2] Relatedly, the Declaratory Judgment Act ("DJA") bars the district courts from issuing declarations "with respect to Federal taxes." 28 U.S.C. § 2201(a). In practical effect, "[t]he DJA falls out of the picture because the scope of relief available under the DJA is subsumed by the broader injunctive relief available under the AIA." *Cohen v. United States*, 650 F.3d 717, 730-31 (D.C. Cir. 2011) (en banc).

[3] *Perry v. Wright*, No. 12-civ-0721, 2013 U.S. Dist. LEXIS 36250 at *11 (S.D.N.Y. Mar. 8, 2013) (unpublished) (McMahon, C.J.) ("the 'pay now, fight later' mantra provides that a taxpayer may pay the assessed tax and then file an administrative claim for a refund. . . . If this administrative claim is unsuccessful, the taxpayer may then commence an action in district court for a refund.") (internal quotation marks and citations omitted).

South Carolina v. Regan, 465 U.S. 367, 373 (1984). Without pre-enforcement review by an Article III court, nonprofits and their managers face ruinous fines. Such penalties cannot help but chill speech and association, and in such circumstances nonprofit entities should be able to challenge the underlying IRS guidance for what it is: substantive policy regulating core activity protected by the First Amendment.

I. The Tax Code and Regulations Reflect Substantive Policy, not Mere Revenue Collection.

The Internal Revenue Code ("IRC" or "Code") houses more than mere revenue collection provisions. It is also the locus of substantive policy.[4] For the nonprofit world, this includes a key set of provisions regulating "political activity."

a. The Tax Code Regulates Political Activity.

Section 501 of the IRC grants tax exemption to many types of organizations, including charities, veterans' groups, labor organizations, business leagues, and cemetery companies. *See* 26 U.S.C. § 501(c). If an organization is created with the primary purpose of supporting or opposing political candidates, it is regulated under 26 U.S.C. § 527. Tax

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[4] For example, Congress placed a mandate to buy health insurance under title 26 and fashioned penalties for failure to do so. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 539 (2012) ("*NFIB*"). That same law also regulated the types of insurance coverage an employer must provide. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 697 (2014). In *Regan v. Taxation With Representation*, this Court held that Congress chose to favor the speech of educational nonprofits with the "subsidy" of donation deductibility. 461 U.S. 540, 544 (1983).

status determines what sorts of advocacy, including political advocacy, an organization may undertake.

Section 501(c)(3) groups cannot support or oppose a candidate. 26 U.S.C. § 501(c)(3) (banning "participat[ion] in, or interven[tion] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office"). By contrast, § 501(c)(4) organizations are "operated exclusively for the promotion of social welfare" 26 U.S.C. § 501(c)(4)(A), which the IRS has defined as being "primarily engaged in promoting in some way the common good and general welfare of the people of the community." 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i). Activity in support of or opposition to a candidate is not "promotion of social welfare," but is permissible so long as it does not become the organization's primary purpose. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

Just as with § 501(c)(4) status, the question of § 527 status is one of primary activity. 26 U.S.C. § 527(e)(1); 26 C.F.R. § 1.527-2(a)(1) (both defining a political organization as one "organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for [political] activity"). That is, a § 527 organization need not engage solely in "political activity," and may undertake other projects such as educational workshops or social activities, 26 C.F.R. § 1.527-2(a)(3), but its main function must be political advocacy if it is to maintain its tax status.

These distinctions reflect policy decisions by Congress. But *all* of these groups are tax exempt; the decision to classify a group as one sort of organization

rather than another has limited impact on the amount of revenue collected by the Service.[5]

But while these statutory distinctions pose few implications for federal revenue, they turn on nonobvious terms like "political activity" and "primary" purposes, and these terms must be interpreted by the IRS. The Service has responded with a complex, eleven-factor approach known as the "facts and circumstances" test. IRS Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 330 (Jan. 26, 2004); *cf.* IRS Rev. Rul. 2007-41, 2007-25 I.R.B. 1421 (June 18, 2007) (applying the "facts and circumstances" test to twenty-one situations). The complexity of this test, which reflects the vagueness of the statute, has a real impact on speakers, particularly in light of the penalties assessed for violating the IRC.

As just one example, if a group wants to host a public forum with several candidates for the same office without violating its tax status, the Service's 2007 facts and circumstances guidance provides five factors that must be taken into consideration. But the IRS declines to be bound by those five factors, and explicitly states that there may be more. IRS Rev. Rul. 2007-41, 2007-25 I.R.B. at 1423 ("[F]actors in determining whether the forum results in political

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[5] The income of all § 501(c) organizations is generally tax-exempt, 26 U.S.C. § 501(a), with only non-exempt income being taxed, 26 U.S.C. §501(b). *See also* IRS Pub. 598, Tax on Unrelated Business Income of Exempt Organizations, 9-11 (Feb. 2019) (discussing multiple exclusions for what would otherwise qualify as Unrelated Business Taxable Income). While IRC § 527(b) provides for a method of taxing Section 527 organizations, the list of "exempt functions" is, unsurprisingly, focused on political campaigns, 26 U.S.C. §§ 527(c)(3) and (e)(2).

campaign intervention *include* the following…") (emphasis added). Any potential sixth, seventh, or eighth factors or circumstances, however, are not made public.

This is a recipe for selective application of the Code, a problem that has plagued the Service.[6] *See e.g.*, Bipartisan Investigative Report, "The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by 'Political Advocacy' Organizations From 2010-2013," United States Senate Comm. on Finance at 5 (Aug. 5, 2015)[7] ("Our investigation found that from 2010 to 2013, IRS management was delinquent in its responsibility to provide effective control, guidance, and direction over the processing of applications for tax-exempt status filed by Tea Party and other political advocacy organizations"). The Service's own watchdog has voiced similar concerns. National Taxpayer Advocate, Special Report to Congress: Political Activity and the Rights of Applicants for Tax-Exempt Status 14, 16 (June 30, 2013).[8]

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[6] While recent events have brought this issue to public attention, the regulation of nonprofit advocacy poses a long-standing, structural challenge that the IRS has had difficulty meeting. *See* Allison Hayward, Center for Competitive Politics, *Eternal Inconsistency: The Stunning Variability in, and Expedient Motives Behind the Tax Regulation of Nonprofit Advocacy Groups* (2015) *available at* https://www.ifs.org/wp-content/uploads/2015/06/Hayward_Eternal-Inconsistency.pdf.

[7] https://www.finance.senate.gov/imo/media/doc/CRPT-114srpt119-pt1.pdf.

[8] https://taxpayeradvocate.irs.gov/userfiles/file/FullReport/Special-Report.pdf.

The Service's test is complex, and its uncertainties will inevitably leave speakers wondering if their words will be interpreted by the IRS as "political activity." Consequently, groups are likely "to steer far wide[] of the unlawful zone." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal citations omitted). As this Court observed in *Buckley v. Valeo,* laws regulating speech must be drafted with precision, otherwise they force speakers to "hedge and trim" their preferred message. 424 U.S. 1, 43 (1976) (per curiam) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)); *see also Reno v. Am. Civil Liberties U.*, 521 U.S. 844, 871-72 (1997) (noting that "[t]he vagueness of . . . a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech."); *cf. Fed. Commc'ns Comm'n v. Fox TV Stations, Inc.*, 567 U.S. 239, 254-55 (2012) (quoting *Reno*). Additionally, "[p]rolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at the law's meaning and differ as to its application." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 324 (2010).

Further, this Court has recognized the independent First Amendment harm imposed whenever a federal agency "create[s] a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests." *Id.* at 336 (noting that Federal Election Commission's "11-factor test" to determine whether a nonprofit corporation could engage in political speech failed "First Amendment standards"). The Service's eleven-factor "facts and circumstances" test, which embraces rather than "eschew[s] 'the open-ended rough-and-

tumble of factors,'" is just such a regime. *Id.* (quoting *Fed. Election Comm'n v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (Roberts, C.J., controlling op.). And the anticipated chill is all the more likely given the severe "taxes" imposed for guessing wrong.

b. IRS Regulation of Political Activity is Enforced Through Draconian "Taxes" that Function as Fines.

A "tax" is not always a tax. Sometimes a "tax" is really a penalty, as the IRS acknowledges in this case. *E.g.*, BIO at 7-8 (describing 26 U.S.C. §§ 6707, 6707A, and 6708 as "penalties" but arguing the AIA applies). This Court has held that labels are less important than effects, and when the IRS punishes improper political activity, sometimes the "tax" it imposes is actually a ruinous penalty that cries out for pre-enforcement review.

This Court has recognized that "Congress cannot change whether an exaction is a tax or a penalty for constitutional purposes simply by describing it as one or the other." *NFIB*, 567 U.S. at 544 (collecting cases) (emphasis removed). Generally, "'a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the Government,'" while "a penalty . . . is an exaction imposed by statute as punishment for an unlawful act." *United States v. Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 224 (1996) (citations and quotation marks omitted). Just so. Here, nonprofits who violate the IRS's vague political rules are subject to "taxes" that are in fact ruinous penalties immediately due to the government.

For example, a § 501(c)(3) organization that engages in unlawful political activity faces an initial 10 percent "tax" on the amount of the political expenditure, 26 U.S.C. § 4955(a)(1), with a further fine of up to *100 percent* available if the violation is not corrected during the taxable period, 26 U.S.C. § 4955(b)(1). Likewise, the § 501(c)(3) cannot simply convert to a § 501(c)(4) if it violates the anti-campaign rule. 26 U.S.C. § 504(a).[9]

But the real bite is directed toward an organization's personnel: the managers of a nonprofit face *personal* liability for violating the Service's guidelines. The political activity penalty can be applied to "any officer, director, or trustee of the organization" or "any employee of the organization having authority or responsibility with respect to [a political] expenditure." 26 U.S.C. § 4955(f)(2). For the initial penalty, the managers are taxed at 2.5 percent of the amount of the political expenditure. 26 U.S.C. § 4955(a)(2). If the manager "refused to agree to part or all of the correction," then she is subject to "a tax equal to 50 percent of the amount of the political expenditure." 26 U.S.C. § 4955(b)(2).[10] Managers are jointly and severally liable. 26 U.S.C. § 4955(c)(1).

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[9] Similarly, if an organization was supposed to file as a § 527 organization, it faces a penalty in "an amount equal to the rate of tax specified in subsection (b)(1) multiplied by the amount to which the failure relates." 26 U.S.C. § 527(j)(1).

[10] When a person owes $53,000 in tax debt, the IRS can ask the State Department to revoke the person's passport. 26 U.S.C. § 7345. A manager can thus risk not only ruinous fines but a restriction on the freedom to travel as well.

These penalties are not mere threats of tax headaches in the next calendar year. Under 26 U.S.C. § 6852(a), the IRS may immediately assess these "taxes" (that is, the Service need not wait until the end of the tax year). Under 26 C.F.R. § 301.7409-1(b), the violating organization has only ten calendar days to reply to the IRS's letter notifying it of the violations. Thereafter, the Commissioner of the IRS may "personally determine whether to forward to the Department of Justice a recommendation that it immediately bring an action to enjoin the organization from making further political expenditures." *Id.* The U.S. district courts are empowered to issue the injunctions in such matters. 26 U.S.C. §§ 7409(a)(1), 7409(b).[11]

Such a scheme is a quintessential example of "fines so enormous . . . as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation" and IRS regulations. Ex parte *Young*, 209 U.S. 123, 147 (1908). Reading the AIA to demand payment first chills speech.

After all, in practical application, few can afford to violate these provisions of the Code, IRS regulations, or the "facts and circumstances" test before seeking judicial relief. Reading the AIA to bar pre-enforcement challenges to the Code's regulation of political activity, because there *could be* "taxes" assessed at a later time, chills core First Amendment rights.

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[11] In other words, while it would deny taxpayers the same privilege, the IRS is permitted access to the Article III courts.

II. Where Regulations May Chill Speech, Pre-Enforcement Review is Essential.

Pre-enforcement judicial review would be the usual solution to a complex regulatory scheme impacting core First Amendment activity under threat of draconian fines. No speaker should have their speech silenced because they decline the gamble of a "pay now, fight later" system. Yet, under the Sixth Circuit's ruling below, that is precisely what may happen.

Pre-enforcement challenges based on First Amendment harms are routine because there is a real likelihood that "speakers may self-censor rather than risk the perils of trial." *Ashcroft v. Am. Civil Liberties U.*, 542 U.S. 656, 670-71 (2004). When the statutory and regulatory framework is this confusing and complex, the courthouse doors need to be open because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (Brennan, J., plurality op.). And, of course, this Court has held that "administrative action, like arrest or prosecution, may give rise to harm sufficient to justify pre-enforcement review." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165 (2014) (Thomas, J., for a unanimous Court).

This chill of speech is a well-known constitutional harm, and one that is typically remedied by pre-enforcement review by Article III courts. That path should not be closed off merely because the IRS is the defendant.

III. A Broad Interpretation of the AIA Makes Pre-Enforcement Review in a Competent Forum Impossible.

The Sixth Circuit read the AIA so broadly that even the mere possibility of a future "tax" levy may bar challenges to the tax code and the Service's rules. App. 12a. This decision is particularly troubling in light of the existing difficulty nonprofits have in obtaining Article III review of IRS actions.

Freedom Path, Inc. v. Internal Revenue Service, 913 F.3d 503 (5th Cir. 2019), is illustrative. After the district court stripped away other bases for jurisdiction,[12] the challengers were left with facial claims against Revenue Ruling 2004-6, which uses the above-mentioned eleven-factor "facts and circumstances" test to define "political activity" for which a § 501(c)(4) organization will be taxed. 913 F.3d at 506. The Fifth Circuit held that a facial claim could only be applied to the text of Revenue Ruling 2004-6, not how the IRS might apply that text to particular activity. *Id.* at 508. The Circuit Court therefore remanded the case to the district court with instructions to dismiss the case. *Id.*

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[12] *Freedom Path, Inc. v. Lerner*, No. 3:14-CV-1537-D, 2015 U.S. Dist. LEXIS 22025 (N.D. Tx. Feb. 24, 2015) (unpublished) ("*Freedom Path I*") (dismissing claims against then-Exempt Organizations Director for lack of personal jurisdiction); 2016 U.S. Dist. LEXIS 68760 (N.D. Tex. May 25, 2016) (unpublished) ("*Freedom Path II*") (dismissing remaining *Bivens*, First Amendment, Fifth Amendment, and APA claims); *sub. nom. Freedom Path, Inc. v. Int. Rev. Serv.*, 2017 U.S. Dist. LEXIS 104970 (N.D. Tx. July 7, 2017) (unpublished) ("*Freedom Path III*") (rejecting facial vagueness challenge to Rev. Rul. 2004-6).

Similarly, in *True the Vote, Inc. v. Internal Revenue Service*, the D.C. Circuit reviewed claims of unfair treatment by staff of the IRS Exempt Organizations office. 831 F.3d 551, 555 (D.C. Cir. 2016). The court of appeals quickly rejected the plaintiffs' *Bivens* claims because established precedent declined to extend *Bivens* to the IRS. *Id.* at 556 (quoting *Kim v. United States*, 632 F.3d 713, 717 (D.C. Cir. 2011)).[13] Similarly, claims that the IRS has misappropriated private tax information are often barred. *Compare True the Vote,* 831 F.3d at 558 (rejecting misconduct claims) *with NorCal Tea Party Patriots v. Int. Rev. Serv.*, No. 1:13-cv-341, 2014 U.S. Dist. LEXIS 97229 at *43-44 (S.D. Ohio July 17, 2014) (unpublished) (allowing official misconduct claims based on mishandling private tax return information). And when permitted, these claims are limited to individual misconduct, not the constitutionality of the IRS's rules and guidance. In short, the lower courts have provided limited opportunities for Article III review of IRS actions before taxes or penalties are levied.[14]

Theoretically, nonprofits could seek pre-enforcement review in Tax Court, but it has long been

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[13] *Kim*, 632 F.3d at 717-18 (collecting cases nationwide rejecting application of *Bivens* to the IRS) *cf. Minneci v. Pollard*, 565 U.S. 118, 124-25 (2012) (recounting the Court's reluctance to expand the *Bivens* exception); *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

[14] When the IRS fails to give a 501(c) its status letter, the organization may file suit in the District Court for the District of Columbia. 26 U.S.C. § 7428(a)(2). So long as no taxes are yet due, the D.C. Circuit has held the AIA does not apply in this context. *Z St. v. Koskinen*, 791 F.3d 24, 31-32 (D.C. Cir. 2015).

recognized that the "Tax Court has the primary function of finding the facts in tax disputes, . . . and choosing from among conflicting factual inferences and conclusions those which it considers most reasonable." *Comm'r v. Scottish Am. Inv. Co.*, 323 U.S. 119, 123-24 (1944); *cf. Scheidelman v. Comm'r*, 755 F.3d 148, 151 (2d Cir. 2014) (applying *Scottish Am. Inv. Co.*). Tax Court was designed to determine whether a tax is due and calculate the rate. It is not a court with First Amendment expertise.

The Tax Court itself recognizes that it "is a court of limited jurisdiction" and that some remedies are beyond its authority. *Duby v. Comm'r*, No. 6765-02, 2003 Tax Ct. Memo LEXIS 33 at *3 n.1 (T.C. Feb. 13, 2003) (unpublished). That is, the Tax Court may "only exercise jurisdiction to the extent expressly permitted by Congress." *Judge v. Comm'r*, 88 T.C. 1175, 1180-81 (1987). Tax Court's expertise "is limited to the determination of the deficiencies and overpayments," of taxes and not declaratory judgments of constitutional rights. *Roderick v. Comm'r*, 57 T.C. 108, 113 (1971); 28 U.S.C. § 2201(a) (providing the courts with declaratory judgment authority "except with respect to Federal taxes").

Rather than force challenges into an Article I court with limited jurisdiction and no relevant expertise, the AIA should be read to apply only where a lawsuit challenges taxes designed for revenue collection, not penalties designed to discourage misbehavior. In this way, tax dodgers would be barred from using the courts to delay paying what is due, but the IRS would not be isolated from Article III oversight where its regulations and guidance risk chilling core First Amendment rights.

CONCLUSION

For the forgoing reasons, the judgment of the Sixth Circuit should be reversed.

Respectfully submitted,

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