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SUPREME COURT, U.S.

No. 26-41

In the Supreme Court of the United States

IN RE AARON ERIKSSON,
Petitioner.

ON PETITION FOR WRIT OF MANDAMUS
PURSUANT TO S. CT. R. 20 AND
28 U.S.C. § 1651(A)

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Aaron Eriksson respectfully petitions under this Court's Rule 44.2 for rehearing of the Court's October 5, 2026, order denying his petition for a writ of mandamus. This petition is deliberately narrow. It does not reargue the merits. It asks only that, before the denial becomes final, the Court hear from the government. The government never responded to the petition, and its position on the question at the center of the petition has since changed.

GROUNDS FOR REHEARING

Rule 44.2 limits a petition for rehearing of an order denying an extraordinary writ to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." This petition is restricted to those grounds. It presents one ground. On September 21, 2026—after the United States waived its right to respond and after the petition was distributed for conference—the government told the United States Court of Appeals for the Fifth Circuit that the Religion Clauses limit how the Internal Revenue Service may enforce a condition of federal tax exemption. That filing is an intervening circumstance of substantial effect. If the Court concludes otherwise because the brief was filed before the order of denial, it is, in the alternative, a substantial ground not previously presented. Petitioner raises no other ground.

STATEMENT

A. The petition and the government's waiver

The petition, filed May 21, 2026, and docketed July 9, asks whether the Commissioner of Internal Revenue has a clear duty, enforceable by mandamus, to administer the tax laws without conditioning the deductibility of charitable contributions, and the tax-exempt status of churches, on disclosure and reporting requirements that conflict with petitioner's sincerely held belief that alms are to be given in secret (Matthew 6:1–4). Pet. i.

The petition anticipated that the government would oppose it, Pet. 5, and would rely on *United States* v. *Lee*, 455 U. S. 252 (1982), and *Hernandez* v. *Commissioner*, 490 U. S. 680 (1989). Pet. 5–6. It also explained that the Anti-Injunction Act, 26 U. S. C. § 7421, "would likely bar any attempt to restrain the IRS from enforcing its disclosure requirements" in a lower court. Pet. 4.

The government did not oppose. On July 24, 2026, the United States filed a waiver of its right to respond. See Rule 20.3(b). The petition was distributed on July 29 for the conference of September 28. See Rule 20.5. Petitioner's August 18, 2026, letter calling attention to intervening matter was received by the Clerk on August 24 but was not docketed; the docket reflects no filing by either party after the government's waiver. The Court denied the petition on October 5, 2026. No brief from the government was ever before the Court.

B. The government's September 21, 2026, brief

National Religious Broadcasters v. *Bessent*, No. 26–40237 (CA5), is a challenge by two churches and two nonprofit groups to the provision of 26 U. S. C. §501(c)(3) known as the Johnson Amendment. Gov't C. A. Br. 3. The parties proposed a consent judgment that would permanently enjoin the government from enforcing that condition of tax exemption against the two church plaintiffs "based on 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." Gov't C. A. Br. 10. On March 31, 2026, the district court refused to enter the judgment and dismissed the case under the Anti-Injunction Act and the tax exception to the Declaratory Judgment Act, 28 U. S. C. §2201(a). Gov't C. A. Br. 1, 13.

On September 21, 2026, the government filed its brief as appellee. It asks the court of appeals to reverse "only as it pertained to entry of the proposed consent judgment," and otherwise to affirm. Gov't C. A. Br. 65. To bring that judgment within the exception recognized in *Enochs* v. *Williams Packing & Navigation Co.*, 370 U. S. 1, 7 (1962), the government now argues that IRS enforcement in the covered setting would violate the church autonomy doctrine:

> "Any IRS enforcement action under the Johnson Amendment against such speech would run headlong into the church autonomy doctrine, which prevents civil courts from adjudicating ecclesiastical matters. As construed by this Court,

> the church autonomy doctrine broadly covers a church's internal communications regarding matters of faith and sermons delivered during religious services. Accordingly, the Government could not prevail in enforcing the Johnson Amendment against the worship-service speech described in the consent judgment." Gov't C. A. Br. 19.

The government acknowledges that it did not make this argument in the district court. There, it "only had argued that it could not prevail on the claim redressed by the proposed consent judgment because it agreed with Plaintiffs that the Johnson Amendment, properly interpreted, does not encompass the speech described in the consent judgment." Gov't C. A. Br. 36. It now asks the court of appeals to apply the church autonomy doctrine "even though it was not pressed before the District Court." *Id.*, at 37.

REASONS FOR GRANTING REHEARING

I. The Court ruled without hearing from the government, and the government's position has since changed.

The procedural record is short. The government waived its response on July 24. Eight weeks later, it filed its Fifth Circuit brief. Two weeks after that, the Court denied the petition with nothing from the government before it except the waiver.

A waiver tells the Court that the government does not believe a petition requires a response. It does not tell the Court what the government's position is. Here, that gap matters. The petition's central

obstacle is the principle that "religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *Lee*, 455 U. S., at 260; see *Hernandez*, 490 U. S., at 699–700 (applying *Lee* to the §170 deduction). The petition expected the government to invoke that principle. Pet. 5–6. Instead, the government said nothing in this Court. Then it told a court of appeals that the Religion Clauses place at least some IRS enforcement of a tax-exemption condition beyond the government's reach.

That is an intervening circumstance of substantial effect. It came after the waiver, after distribution, and after petitioner's last filing. It is the respondent's own position, not a stranger's. And it bears directly on the question the petition presents: whether, and when, the free exercise of religion limits the IRS's administration of the conditions it attaches to tax benefits. This Court has long held that "the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules." *United States* v. *Ohio Power Co.*, 353 U. S. 98, 99 (1957) (*per curiam*) (granting rehearing and vacating order denying certiorari); see *Gondeck* v. *Pan American World Airways, Inc.*, 382 U. S. 25, 26–27 (1965) (same, based on "intervening circumstances of substantial . . . effect").

Petitioner recognizes that the brief was filed one week before the September 28 conference. But petitioner had no filing pending, the government had already waived its response, and the brief was filed in a different court, in a case to which petitioner is not a party. If the Court regards the brief as available before its order, it is at least a substantial ground "not

previously presented." Either way, it falls within Rule 44.2.

II. The government's positions now conflict.

This section makes a limited point. Petitioner does not contend that the government has conceded the merits of his petition, or that the *National Religious Broadcasters* brief decides it. The point is only that the government's positions are in tension, and that the Court has not heard the government explain them.

On one side is the premise of *Lee* and *Hernandez*: even a substantial burden on religious exercise is justified by "the broad public interest in maintaining a sound tax system," free of "myriad exceptions flowing from a wide variety of religious beliefs." *Hernandez*, 490 U. S., at 699–700 (quoting *Lee*, 455 U. S., at 260).

On the other side is what the government told the Fifth Circuit on September 21:

- IRS enforcement against worship-service speech "would run headlong into the church autonomy doctrine," so that "the Government could not prevail." Gov't C. A. Br. 19.
- "[T]he church autonomy doctrine protects a church's internal communications relating to church governance or matters of faith or doctrine." *Id.*, at 31 (quoting *McRaney* v. *North American Mission Board of the Southern Baptist Convention, Inc.*, 157 F. 4th 627, 640 (CA5 2025)).
- Deciding whether a sermon violates a tax-exemption condition, "such that a church should lose its tax-exempt status, would require picking apart the religious and political elements of a sermon,

which contravenes the church autonomy doctrine." Gov't C. A. Br. 34.

On that basis, the government asks a federal court to enter a permanent injunction, for religious reasons, against enforcement of a condition of tax exemption, notwithstanding the Anti-Injunction Act. *Id.*, at 10, 18–19, 65.

The two positions may be reconcilable. The government's brief rests on the Fifth Circuit's view of church autonomy, which the government acknowledges "appears to differ from that of many of its sister circuits." *Id.*, at 34, n. 4. It notes that the doctrine does not grant religious institutions "a general immunity from secular laws." *Id.*, at 32, n. 3 (quoting *McRaney*, 157 F. 4th, at 635–636, and *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 591 U. S. 732, 746 (2020)). And it seeks narrow relief. Gov't C. A. Br. 65. But those are the government's distinctions to draw, and it has not drawn them here. Petitioner does not ask the Court to resolve the tension. He asks the Court to let the government address it before the denial becomes final.

III. The government's Anti-Injunction Act position bears directly on Rule 20.

Rule 20.1 requires a petitioner to show "that adequate relief cannot be obtained in any other form or from any other court." The petition relied on the Anti-Injunction Act to make that showing. Pet. 4.

The government's brief now describes when the Act does, and does not, close the lower courts. It says the *Williams Packing* exception "applies where the Government has no likelihood of prevailing on the merits,

and equity jurisdiction otherwise exists." Gov't C. A. Br. 12; see *id.*, at 18. It says, quoting the Fifth Circuit, that "[a]bridgment of the church autonomy immunity imposes irreparable injury." *Id.*, at 34 (quoting *McRaney*, 157 F. 4th, at 641). And it says that the Anti-Injunction Act and the Declaratory Judgment Act bar "any claims beyond the proposed consent judgment," Gov't C. A. Br. 18, leaving claims "not otherwise insulated by the church autonomy doctrine" to a refund suit or to 26 U. S. C. §7428, Gov't C. A. Br. 44.

Where an individual donor's religious objection to §170 disclosure falls within that framework is the question on which Rule 20.1 turns. The result is a dilemma. Before enforcement, the Anti-Injunction Act closes the lower courts to him, Pet. 4; after it, a refund suit would require him first to claim and substantiate the deduction, making to the IRS the very disclosure his religious objection forbids. The government itself treats the abridgment of a protection of that kind as irreparable. Gov't C. A. Br. 34. Does the government contend that any lower court could hear petitioner's claim before he must make that disclosure? If so, which court, and how? Petitioner cannot answer for the government. Only a response can. Either answer would assist the Court: if the government says no lower court is open, the Rule 20.1 showing is confirmed; if it says one is, the government should identify it.

IV. The procedural remedy fits the procedural problem.

The defect here is procedural. The Court decided the petition on the government's silence, and the government has since spoken elsewhere. The remedy is equally procedural. Under Rule 44.3, the Court will not, absent extraordinary circumstances, grant rehearing without first requesting a response. Petitioner asks the Court to take that first step. A request costs the Court little, and it places the government's position before the Court, in this case, in the government's own words.

Because there is no lower-court judgment in this original proceeding, there is nothing to vacate and remand. And because the Solicitor General already represents the respondent, the appropriate step is a request for a response, not an invitation for the views of the United States.

If the Court prefers not to request a response now, it should hold this petition pending the Fifth Circuit's decision in *National Religious Broadcasters*. That decision will address whether the government's church autonomy theory supports an exception to the Anti-Injunction Act for a religious objection to a condition of tax exemption—the same framework that bears on Rule 20.1 here. Holding the petition would allow the Court to dispose of it consistently with that decision. Cf. *Ohio Power*, 353 U. S., at 99.

CONCLUSION

Madison called conscience "the most sacred of all property." J. Madison, Property (Nat'l Gazette, Mar.

29, 1792), in 14 Papers of James Madison 266 (R. Rutland & T. Mason eds. 1983). Whether the government may condition a tax benefit on disclosing its exercise is a question the Court should decide, if at all, with the government's answer before it. The Court should request a response from the Solicitor General under Rule 44.3, addressing the government's position in *National Religious Broadcasters* v. *Bessent*, No. 26–40237 (CA5); grant rehearing; vacate the October 5, 2026, order denying the petition; and consider the petition together with the government's response. In the alternative, the Court should hold this petition for rehearing pending the Fifth Circuit's decision in *National Religious Broadcasters* v. *Bessent* and then dispose of it as appropriate.

Respectfully submitted.

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CERTIFICATE OF UNREPRESENTED PARTY

I, Aaron Eriksson, *pro se*, certify that this petition for rehearing is restricted to the grounds specified in this Court's Rule 44.2, namely intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

/s/ Aaron Eriksson
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October 28, 2026

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IN RE AARON ERIKSSON

CERTIFICATE OF COMPLIANCE AND SERVICE

Pursuant to S. Ct. R. 33.1(h), I certify that the petition for rehearing respectively 2,139 words, excluding parts exempted by S. Ct. R. 33.1(d).

Pursuant to S. Ct. R. 29.2, I certify that 40 copies in booklet format and 1 unbound copy of the petition for rehearing are sent to the Clerk of the Supreme Court of the United States through the United Parcel Service via Next Day Air postage prepaid on this 28th day of October, 2026.

Lastly, I certify pursuant to S. Ct. R. 29.5(c), 3 copies of the petition for rehearing are served all parties required to be served have been served via email and United States Postal Service via Priority Mail postage prepaid, this 28th day of October, 2026.

[See attached service list]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 28, 2026.

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