No. 26-1779

In the Supreme Court of the United States

FEBRUARY TERM, 2026

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE, ET AL.,

Petitioner,

v.

COVENANT TRUTH CHURCH,

Respondent.

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

BRIEF FOR PETITIONER

TEAM 11
Counsel for Petitioner

QUESTIONS PRESENTED

(1) Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.

(2) Whether the Johnson Amendment violates the Establishment Clause of the First Amendment.

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LIST OF PARTIES

Petitioners, defendant-appellants below, are Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service.

Respondent, plaintiff-appellee below, is Covenant Truth Church.

OPINIONS BELOW

The opinion of the United States District Court of Wythe, finding that Covenant Truth Church has standing to challenge the Johnson Amendment and that the Johnson Amendment violates the Establishment Clause, is unreported and is not available in the record.

The opinion of the United States Court of Appeals for the Fourteenth Circuit, affirming the decision of the district court, is reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and is set out in the record at R. 1–16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST. art. 1, § 8, cl. 1; U.S. CONST. art. III, §§ 1–2; U.S. CONST. amend. 1.

The following statutory authority is relevant to this case: the Tax Anti-Injunction Act, codified at 26 U.S.C. § 7421(a); 26 U.S.C. § 7428; 26 U.S.C. § 501(c)(3), which includes the Johnson Amendment, and 26 U.S.C. § 501(c)(4).

STATEMENT OF THE CASE

Statement of the Facts

Covenant Truth Church, located in the State of Wythe, is a part of The Everlight Dominion, a progressive faith that requires affiliated churches and their leaders to participate in political campaigns and support candidates who are aligned with its progressive social values. R. at 3. The

church is led by Pastor Gideon Vale, a devout leader of The Everlight Dominion. *Id.* Pastor Vale embodies the church's public and religious leadership, leading its weekly worship services. *Id.* at 4. Since accepting his call into leadership, Pastor Vale has broadcasted a weekly podcast that proclaims the beliefs, principles, and objectives of The Everlight Dominion. *Id.* These podcasts encompass the tenets of The Everlight Dominion, ranging from preaching sermons to delivering political messages, and even endorsing political candidates that align with The Everlight Dominion's progressive stance. *Id.* These weekly podcasts have seen great success and drawn millions of downloads from across the nation. *Id.* Pastor Vale's weekly show has the public's ear: it ranks as the fourth-most-listened-to podcast in the State of Wythe and the nineteenth-most-listened-to podcast nationwide. *Id.*

Pastor Vale uses the podcast as a tool, wielded on behalf of Covenant Truth Church, to voice support for candidates, encourage the public listeners to vote for those candidates, and urge them to volunteer or donate to these campaigns. *Id.* Recently, within the Wythe political sphere, Senator Matthew Russett's death left a vacant Senate seat, presenting an opportunity to break the existing deadlock between two major political parties. *Id.* Invoking his obligation to the tenets of The Everlight Dominion, Pastor Vale used the weekly podcast to endorse Congressman Davis, urging listeners to vote for him, volunteer, and contribute financially to his campaign. *Id.* at 5. Pastor Vale also announced his intent to continue this advocacy, committing future sermons, both on the podcast and during the church's weekly service, to supporting Congressman Davis and demonstrating how his progressive views align with those of The Everlight Dominion. *Id.*

Covenant Truth Church, knowing its doctrine as a part of The Everlight Dominion, chose to file for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. *Id.* at 3. This tax classification allows Covenant Truth Church to enjoy the conditional tax benefit granted to

compliant non-profit organizations throughout the United States. *Id.* To maintain its conditional tax-exempt status as a Section 501(c)(3) organization, the church must abide by the Johnson Amendment. *Id.* at 2. This amendment to Section 501(c)(3) includes a condition mandating that its non-profit organizations 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." *Id.* Since the Johnson Amendment was adopted in 1954, Congress has repeatedly considered legislation to eliminate it, but has declined to do so and allowed the Johnson Amendment to remain a stable and operative tax regulation. *Id.* at 2–3.

On May 1, 2024, the Internal Revenue Service (IRS) sent a letter to Covenant Truth Church, stating that the Church had been selected for a random audit. *Id.* at 5. As part of its ordinary oversight to confirm compliance with the Internal Revenue Code, the IRS regularly conducts such examinations of non-profit organizations that claim tax-exempt status under Section 501(c)(3). *Id.* Aware that Covenant Truth Church's political advocacy conflicted with the conditions attached to Section 501(c)(3), Pastor Vale recognized that the Church's tax-exempt status could be revoked if the IRS chose to act. *Id.* Rather than face that possibility, Pastor Vale filed suit against the Internal Revenue Service in the Eastern District of Wythe, seeking a permanent injunction against the enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. *Id.* The IRS has not taken any steps beyond sending the initial notification letter to Covenant Truth Church; it has not yet begun its audit. *Id.* Today, Covenant Truth Church remains classified as a Section 501(c)(3) organization and retains its tax-exempt status. *Id.*

Procedural Background

The Respondent, Covenant Truth Church, filed this lawsuit on May 15, 2024, seeking a permanent injunction against the IRS prohibiting the enforcement of the Johnson Amendment. *Id.*

Covenant Truth Church claims that the Johnson Amendment violates the Establishment Clause of the First Amendment. *Id.* After the Defendants answered, Covenant Truth Church moved for summary judgment. *Id.* The Eastern District of Wythe granted the motion, concluding that Covenant Truth Church had standing to challenge the Johnson Amendment and that the Amendment violates the Establishment Clause. *Id.* at 5–6. Based on these conclusions, the district court entered the permanent injunction. *Id.* The Petitioners—Scott Bessent, Acting Commissioner of the IRS, and the Internal Revenue Service—appealed the District Court's decision to the United States Court of Appeals for the Fourteenth Circuit. *Id.* at 6. In a 2–1 decision, Judge Bushrod Washington, writing for the majority, affirmed the lower court's decision. *Id.* at 2. Justice Marshall dissented, arguing that Covenant Truth Church lacked standing, and that the Johnson Amendment is constitutional. *Id.* at 12.

SUMMARY OF THE ARGUMENT

I. Covenant Truth Church Does Not Have Standing to Bring This Suit

The Anti-Injunction Act ("AIA") bars this Court's jurisdiction over Respondent's suit. Reflecting Congress's deliberate decision to limit federal court jurisdiction, the AIA dictates that no suit brought for the purpose of restraining the assessment or collection of any tax may be maintained in federal court. The apparent purpose of Respondent's suit is to avoid the risk of IRS enforcement of the Johnson Amendment and the revocation of the Church's tax-exempt status. It seeks to avoid paying taxes. While Covenant Truth Church creatively disguised its claim as a constitutional challenge, its suit is nevertheless foreclosed by this Court's prior determinations that the AIA bars pre-enforcement claims challenging the IRS's actions under Section 501(c)(3). The taxpayer's subjective characterization of the claim is irrelevant. Thus, Covenant Truth Church brings the exact type of claim that Congress intended the AIA to bar. Furthermore, the two narrow

exceptions to the AIA do not apply to this case. Those exceptions apply only in specific circumstances where there is equitable jurisdiction and the Government will not likely prevail, or where a plaintiff has no alternate legal remedy. Covenant Truth Church does not have such a case. Finally, Covenant Truth Church has chosen not to exhaust the administrative remedies required under the Internal Revenue Code and instead has proceeded straight to court. Therefore, the Anti-Injunction Act's jurisdictional bar applies with full force and blocks this Court's jurisdiction.

Even if the AIA does not apply, Covenant Truth Church does not meet the minimum requirements demanded by the Constitution for Article III standing. Respondent has failed to meet its burden of overcoming the presumption that the federal courts lack jurisdiction. First, Covenant Truth Church does not allege a concrete or imminent injury, but only a speculative fear that the IRS might enforce the Johnson Amendment by investigating the church, assessing taxes, or revoking its tax-exempt status. This Court has established that hypothetical future enforcement, particularly when there is a history of non-enforcement, cannot establish the imminent injury that Article III demands. Second, even if the church could articulate a future harm, any future injury depends on a sequence of uncertain discretionary decisions not yet made. Additionally, for Covenant Truth Church to effectively raise a pre-enforcement challenge, it must establish a credible threat of adverse government action. Here, there is little, if any, evidence that the IRS is likely to enforce the Johnson Amendment against Covenant Truth Church. The church, which bears the burden of establishing Article III standing, has offered no evidence of a substantial risk of enforcement, but rather relies solely on its own subjective opinion that it is violating the Johnson Amendment. Respondent's subjective concerns cannot substitute for the lack of history of enforcement, warning, investigation, or any concrete indication that the IRS intends to act adversely toward the church. Respondent has failed to establish a sufficient injury in fact and failed

to bring a valid pre-enforcement challenge to establish Article III standing. Therefore, this Court has no jurisdiction to hear its case.

II. The Johnson Amendment is Constitutional

Even if the AIA does not apply and Respondent does have standing to challenge the Johnson Amendment, the amendment will withstand a constitutional challenge. A law only violates the Establishment Clause when it is not neutral toward a religion, does not keep church and state separate, does not use secular criteria, and is a part of the history and tradition of the nation. But the Johnson Amendment does not promote other religions over The Everlight Dominion just by passing a law that incidentally bans one of its religious practices. Case law demonstrates that the neutrality mandate is only violated when a law compels a church or religious group to engage in conduct. Such a law is not present in this case. Furthermore, the Johnson Amendment is not a violation of the separation of church and state, as interpreted narrowly by this Court. Keeping church and state completely alienated would lead to hostile and unfriendly results. Congress has given the IRS the authority to conduct church tax examinations. According to this Court's interpretation, this grant of power does not violate separation of church and state.

Additionally, the Johnson Amendment uses secular criteria to determine whether a non-profit organization complies with Section 501(c)(3). The Court has also used secular criteria to determine whether an activity is solely a display of a religious belief. Under such precedent, political involvement is not solely a display of a religious belief. This case differs from those where the Court struck down a law because it did not use secular criteria.

Finally, the history and tradition of this nation demonstrate that religious leaders refrain from direct political involvement. There have only been rare instances in America's history where religious groups and leaders have been notably involved in politics. Most evangelical leaders and

American citizens do not believe that religious leaders should endorse politicians. Importantly, Congress has had many opportunities to abolish the Johnson Amendment and has refused to do so. Even the history of the amendment itself supports its constitutionality. Therefore, if the Court reaches the merits of this case, it should find that the Johnson Amendment does not violate the Establishment Clause of the United States Constitution.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fourteenth Circuit was entered for Covenant Truth Church. Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, filed a petition for writ of certiorari, which this Court granted. This Court has appellate jurisdiction under 28 U.S.C. § 1254(1). This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because the Respondent asserted claims arising under the United States Constitution and federal statutes, including 26 U.S.C. § 501(c)(3) and the Establishment Clause of the First Amendment to the United States Constitution.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 466–67 (7th Cir. 2020); *Murphy v. Missouri Dept. of Corr.*, 372 F.3d 979, 982 (8th Cir. 2004). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Additionally, decisions of standing and ripeness are questions of law that fall within this Court's jurisdiction to review de novo. *Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006).

ARGUMENT

I. COVENANT TRUTH CHURCH DOES NOT HAVE STANDING TO BRING THIS SUIT.

Under the United States Constitution, Congress has the power to collect taxes, as well as the power to establish inferior federal courts. U.S. CONST. art. 1, § 8, cl. 1; art. III, § 1. In exercising this power, Congress has limited the jurisdiction of those federal courts, through mechanisms such as the Tax-Anti Injunction Act, which is codified in 26 U.S.C. § 7421. The Anti-Injunction Act ("AIA") is a broad jurisdictional bar, enacted to protect the Tax Administration and to prevent court decisions from disrupting the flow of revenue to the federal government. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974); *CIC Servs., LLC v. IRS*, 593 U.S. 209, 212 (2021). It bars any suit brought "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421. In practice, the AIA bars a lawsuit if the *effect* of the injunctive relief sought would restrain the government from collecting taxes, regardless of how the relief is framed by the plaintiff. *Bob Jones*, 416 U.S. at 725. While the Court has established two narrow exceptions to the AIA, this case does not qualify for either one. This Court should find that Covenant Truth Church seeks the very relief that the AIA precludes: judicial interference with the assessment and collection of taxes by the federal government. Therefore, the AIA bars Respondent's case.

Another mechanism that limits the jurisdiction of federal courts is the doctrine of standing. Because federal court jurisdiction is limited to "Cases" and "Controversies," each party must establish that it has standing to bring its case before the court. U.S. CONST. art. III, § 2; *Renne v. Geary*, 501 U.S. 312, 316 (1991). To do so, a party must show (1) an injury in fact, (2) that is fairly traceable to the defendant, and (3) that is likely to be resolved by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Here, Covenant Truth Church has not met this standard, because it has failed to establish an injury that is sufficiently concrete and imminent, and

it has failed to meet the requirements of a valid pre-enforcement challenge. This Court should find that, even if the AIA does not apply, Respondent has still failed to meet the constitutional requirements of standing. Therefore, the Court has no jurisdiction to hear this case.

A. The Tax Anti-Injunction Act Bars Covenant Truth Church's Suit.

Respondent Covenant Truth Church has brought this pre-enforcement suit and seeks an injunction to stop the IRS from revoking its tax-exempt status. As such, it is attempting to restrain the collection of taxes, and thus it is the exact kind of suit that is barred by the Tax Anti-Injunction Act. See 26 U.S.C. § 7421; 26 U.S.C. § 501(c)(3). The characteristics of this suit do not qualify for either of the narrow exceptions to the AIA. Additionally, the church has disregarded the administrative remedies set out by Congress and instead has proceeded to court prematurely. Therefore, this Court should find that the Tax Anti-Injunction Act bars Covenant Truth Church's lawsuit, and it has no jurisdiction to hear this case.

1. Covenant Truth Church's suit is precisely the kind of suit that Congress intended to bar with the Anti-Injunction Act.

The United States Constitution dictates that "Congress shall have Power To lay and collect Taxes." U.S. CONST. art. 1, § 8, cl. 1; *see also Moore v. United States*, 602 U.S. 572, 583 (2024) (the Constitution's grant of taxing power to Congress is "exhaustive"). Under Article III of the Constitution, through the Vesting Clause, Congress also has the power to establish inferior federal courts. U.S. CONST. art. III, § 1. Exercising that authority, Congress has determined the scope of the jurisdiction of these inferior federal courts. Congress's grant of jurisdiction is statutory, but not absolute, and may be adjusted as Congress defines, limits, or withdraws the jurisdiction of inferior federal courts. *See* Brett J. Wierenga, *The Label Test: Simplifying the Tax Injunction Act after* NFIB v. Sebelius, 84 U. CHI. L. REV. 2103, 2105 (2017). The Anti-Injunction Act ("AIA") is a broad jurisdictional bar, enacted in 1867 to protect the Tax Administration and to prevent court decisions

from disrupting the flow of revenue to the federal government. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974); *CIC Servs., LLC v. IRS*, 593 U.S. 209, 212 (2021); *see also* T. Cooley, LAW OF TAXATION 536–537 (2d ed. 1886) (discussing the difficulty of using injunctions to restrain the collection of taxes and the resulting need for legislation to protect the flow of federal taxes). In plain terms, the AIA bars any suit brought "for the purpose of restraining the assessment or collection of any tax . . . by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421. Through the AIA, Congress protected the Federal Government's ability to collect a consistent stream of revenue by "barring litigation to enjoin or otherwise obstruct the collection of taxes" and limiting the jurisdiction of inferior federal courts to decide issues on the merits. *NFIB v. Sebelius*, 567 U.S. 519, 543 (2012). Now, under the AIA, a person can challenge a federal tax only after he pays it, by suing for a refund. *See United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4–5 (2008).

While the AIA has no recorded legislative history, "its language could scarcely be more explicit." *Bob Jones*, 416 U.S. at 736. The principal purpose of the AIA is to protect the "Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference." *Id.*; *see also Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962) (an injunction would defeat the purpose of the AIA "unless it is apparent, under the most liberal view of the law and the facts, that the United States cannot establish its claim"). Additionally, a collateral objective of the AIA is the protection it provides the "collector from litigation pending a suit for refund." *Williams Packing*, 370 U.S. at 7–8. The practical effect of the AIA today is "simple and obvious: courts lack jurisdiction to issue injunctive relief in suits seeking to restrain the assessment or collection of taxes." *Jud. Watch, Inc. v. Rossotti*, 317 F.3d 401, 405 (4th Cir. 2003).

In practice, courts interpret the AIA according to its literal terminology. *Alexander v. Ams. United, Inc.*, 416 U.S. 752, 760 (1974). Courts consider whether the plaintiff's *primary purpose* in bringing the suit is to seek relief that would restrain the assessment and collection of taxes. *Id.* at 760–61. Analysis of this point requires an understanding of the literal meaning of the terms. The term "restrain" does not mean to "merely inhibit" the assessment and collection of taxes, but rather "to some degree stop" the IRS's assessment and collection of taxes. *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 14 (2015). Similarly, the terms "assessment" and "collection" are read in light of the broader Federal Tax Code. *Id.* at 8. An assessment, under the AIA, "involves a 'recording' of the amount the taxpayer owes the Government." *Hibbs v. Winn*, 542 U.S. 88, 100 (2004) (quoting 26 U.S.C. § 6203). Essentially, it is "the official recording of liability that triggers levy and collection efforts." *Id.* at 101. A collection, in turn, is "the act of obtaining payment of taxes due." *Brohl*, 575 U.S. at 10. It is a separate step in the IRS's taxation process. *Id.* Lastly, "any tax" is construed to mean anything that is "in a condition to be collected as a tax, and is claimed by the proper public officers to be a tax," even if it was collected in error or illegally. *Snyder v. Marks*, 109 U.S. 189, 192 (1883). Each of these terms is applied literally in determining a plaintiff's purpose in bringing the suit and seeking relief.

Here, Respondent seeks the very relief that the AIA precludes: judicial interference with the assessment and collection of taxes by the federal government. For years, Covenant Truth Church has enjoyed the conditional tax-exemption status under Section 501(c)(3). R. at 3. After engaging in political activity in direct violation of the Johnson Amendment, Covenant Truth Church is now seeking an injunction to stop the IRS from investigating its activities and tax-exempt status. *Id.* at 4–5. According to the *Alexander* Court, this triggers an analysis under the literal terms of the AIA. Creatively, the church frames its purpose in pursuing this injunction as a

constitutional challenge. *Id.* at 5. However, despite this word play, the true purpose of the church's suit is to avoid revocation of its tax-exempt status, which essentially would restrain the collection of taxes. *See id.* If Covenant Truth Church loses its tax exemption due to its political involvement, it will have to pay taxes like other for-profit organizations. *See id.* at 2, 5. Indeed, it was only after the IRS sent a letter to Covenant Truth Church about the upcoming audit that the church initiated this lawsuit, seeking to avoid the consequences of its past political advocacy. *Id.* at 5. In bringing suit and seeking injunctive relief, Respondent attempted to preemptively avoid revocation of its tax-exempt status by the IRS. *Id.* In the courts below, the church's injunction has already successfully temporarily barred the assessment of its tax liability. *Id.* at 2. If the church is successful in obtaining a permanent injunction, the collection of not only its tax, but also the tax of other similarly-situated organizations, will be restrained. The requested relief will bar the IRS's enforcement of its conditional requirements for maintaining Section 501(c)(3) tax-exempt status. *Id.* at 5. Thus, the primary purpose and relief sought by Covenant Truth Church is essentially to restrain the assessment and collection of taxes, and therefore the AIA's jurisdictional bar applies. Because Respondent is seeking injunctive relief to restrain the collection of taxes, it is bringing precisely the kind of suit that is barred by the literal terms of the AIA.

2. The Anti-Injunction Act bars this suit because the remedy that Covenant Truth Church seeks would restrain the assessment or collection of a tax.

The Anti-Injunction Act bars a lawsuit if the injunctive relief sought would restrain the government from collecting taxes, regardless of how the relief is framed by the plaintiff. *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974); *Alexander v. Ams. United, Inc.,* 416 U.S. 752 (1974). In *Bob Jones*, the Court held that the AIA barred a university's pre-enforcement suit that sought to stop a threatened IRS action it claimed was "outside its lawful authority and would violate [the university's] rights to the free exercise of religion, to free association, and to due process and equal

protection of the laws." 416 U.S. at 736. The university, a Section 501(c)(3) organization, received an IRS notification letter that its tax-exempt status would be revoked. *Id.* at 735. Rather than pursuing the administrative remedies that Congress has provided, the university filed suit in federal court, seeking injunctive relief. *Id.* Bob Jones argued, unsuccessfully, that the AIA did not apply because its suit was not "for the purpose of restraining the assessment or collection of any tax." *Id.* at 738. The Court disagreed, noting that an injunction preventing the IRS from withdrawing a Section 501(c)(3) classification would necessarily restrain the federal government from collecting taxes, so a suit seeking such relief fell "squarely within the literal scope of the [Anti-Injunction] Act." *See id.* at 732; 26 U.S.C. § 501(c)(3). In its reasoning, the Court addressed the University's attempt to reclassify its claim to make the AIA inapplicable. Importantly, the Court concluded that the controlling inquiry under the AIA is not the taxpayer's characterization of the government's motive, but rather the practical effect of the relief sought. *See id.* at 741. For regulatory challenges against the government's taxing power, the taxpayer must pay first, then pursue any administrative remedies, and then may appeal with a refund suit in federal court. *Id.* The Court drew attention to two earlier decisions, where the same constitutional challenge to a child labor tax was barred by the AIA in one pre-enforcement suit seeking an injunction, but then resolved in parallel suit seeking a tax refund. *Id.* at 740–41 (citing *Bailey v. George*, 259 U.S. 16 (1922) and *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922)). With these decisions, the Court emphasized that timing matters. *See id.* Because *Bob Jones* was a pre-enforcement suit in which the injunctive relief sought would have restrained tax assessment and collection by the IRS, the literal terms of the AIA applied and blocked the suit. *Id.* at 732, 749; *see also Fla. Bankers Ass'n v. U.S. Dep't of the Treasury*, 799 F.3d 1065, 1072 (D.C. Cir. 2015) (holding that the AIA bars suits that would impede the IRS's ability to assess or collect a tax by nullifying a required reporting mechanism).

In *Alexander*, which was decided in the same year as *Bob Jones*, a non-profit organization brought a pre-enforcement action to enjoin the IRS from revoking its tax-exempt status under Section 501(c)(3). 416 U.S. at 755–57. The organization challenged the constitutionality of the laws under which its tax-exempt status was revoked, rather challenging the invalidity of its increased tax burden. *See id.* at 759. Despite this creativity, the Court squarely established that its precedent makes "it unmistakably clear that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act." *Id.* If the plaintiff prevailed and maintained its tax-exempt status, then IRS would collect fewer taxes from the organization and its charitable contributors. *See id.* at 760–61. It would be "circular" to conclude that the plaintiff's primary design was not truly to remove or avoid taxation. *Id.* at 761. Therefore, the Court held that *Alexander* qualified as a suit to enjoin the assessment or collection of taxes, and thus triggered the literal terms and jurisdictional bar of the AIA. *Id.* at 760.

Here, Respondent's suit is foreclosed by this Court's past rulings in *Bob Jones* and *Alexander*, because the AIA bars pre-enforcement claims against the IRS under Section 501(c)(3), even when creatively framed as constitutional claims. In its lawsuit, the church claimed that the Johnson Amendment violates its constitutional rights. R. at 5. However, like the university in *Bob Jones*, Covenant Truth Church's true pre-enforcement objective is to halt IRS action, so strategically framing it as a constitutional challenge is an unsuccessful attempt to evade the AIA. What matters under the purpose of the AIA is the *effect* of the relief sought against the "assessment" and "collection" of taxes, not the organization's subjective classification of its claim. Just like the organization in *Alexander*, if the church here succeeds in obtaining injunctive relief, it will prevent the IRS from revoking its Section 501(c)(3) tax-exempt status. *Id.* at 5. If the church wishes to bring a constitutional challenge to the tax, it must follow the example of *Bailey* and first pay the

tax, then proceed through the administrative remedies, and then appeal by pursuing a tax refund suit in federal court. Thus, as in *Bob Jones* and *Alexander*, the injunctive relief sought would restrain the government from the assessment and collection of taxes from both the church and its donors, so Covenant Truth Church's suit is barred by the AIA.

As recently as 2021, the Supreme Court reaffirmed *Bob Jones* and *Alexander*, confirming that pre-enforcement suits seeking injunctive relief to challenge IRS revocation of Section 501(c)(3) tax-exempt status remain subject to the AIA's jurisdictional bar, even if they are not framed as tax disputes. *CIC Servs., LLC v. IRS*, 593 U.S. 209, 224–25 (2021); 26 U.S.C. § 501(c)(3). In *CIC Services*, the Court emphasized that it has repeatedly "rejected the view that regulatory tax cases have a special pass from the Anti-Injunction Act." *Id.* at 224. The Court continued that the AIA "draws no distinction between regulatory and revenue raising tax rules. It applies whenever a suit calls for enjoining the IRS's assessment and collection of taxes—of whatever kind." *Id.* at 225. But regardless of the "taxpayer's subjective motive," the Court must focus on the "action's objective aim—essentially, the relief the suit requests." *Id.* at 217. A plaintiff could almost always classify a challenge to a tax as a constitutional claim, but the AIA looks beyond that. *See Fla. Bankers Ass'n*, 799 F.3d at 1071 ("the Anti-Injunction Act is more than a pleading exercise, as the Supreme Court has explained time and again in concluding that it bars premature challenges to regulatory taxes").

However, *CIC Services* also provided an example of a different category of lawsuit where the AIA does not apply. There, the claimant brought no legal claim against the separate statutory tax, but instead claimed that an information-reporting requirement was procedurally and substantively flawed. *CIC Services*, 593 U.S. at 219. The object of the suit was to enjoin a standalone reporting mandate backed by criminal sanctions. *Id.* at 214. The Court determined that

the suit fell outside of the AIA's jurisdictional bar because the requested injunction did not "run against a tax at all." *Id.* at 223. Importantly, this holding is consistent with both *Bob Jones* and *Alexander*. *See id.* at 218, 225. If a tax imposes a cost or condition on legal behavior, then there is "no target for an injunction other than the command to pay the tax," and the AIA bars a taxpayer from bringing a "preemptive suit to foreclose tax liability." *Id.* at 224. If the dispute is about a tax rule, then the "sole recourse is to pay the tax and seek a refund." *Id.* However, in *CIC Services*, the suit challenged a regulatory reporting requirement that was completely separate and distinct from a regulatory tax, and thus it was not barred by the AIA. *Id.* at 214, 225.

Here, Covenant Truth Church's objective differs from that of the organization in *CIC Services*, because its primary purpose in bringing this suit is to block the possible assessment and collection of its taxes. *See* R. at 5. If the IRS chooses to enforce the Johnson Amendment and revoke the church's tax-exempt status, the church and its donors would have to begin paying taxes. *See id.* at 3, 5. The church is challenging a tax condition that is imposed on legal behavior (political involvement), and this is the kind of regulatory challenge that *CIC Services* confirmed is barred by the AIA. *See id.* at 2, 5. Unlike the organization in *CIC Services*, Respondent is not challenging a reporting requirement coupled with criminal sanctions, so it cannot claim that *CIC Services* controls. The injunctive relief Covenant Truth Church seeks is against a tax condition imposed on legal behavior, so according to *CIC Services*, the Anti-Injunction Act bars pre-enforcement review and prevents the church from bringing a preemptive suit to avoid tax liability.

3. Covenant Truth Church does not meet either of the narrow exceptions to the Anti-Injunction Act

This Court has established two narrow exceptions to the application of the Anti-Injunction Act. The first is a two-prong test: an injunction may be granted only "if equity jurisdiction otherwise exists" and "if it is clear that under no circumstances could the Government ultimately

prevail." *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962); *see also Alexander*, 416 U.S. at 758 (reaffirming this two-prong test). Both conditions must be met to avoid the AIA's jurisdictional bar. *Id.* For the first prong, equity jurisdiction must exist, and its essential prerequisite is irreparable injury. *Alexander*, 416 U.S. at 762. However, irreparable injury alone is not enough; it is only one part of the *Williams Packing* test. *Id.*; *see also Bob Jones*, 416 U.S. at 745 (*Williams Packing* "switched the focus" of the exception test, so that now "the degree of harm is not a factor"). The second prong of the test requires that under "no circumstances could the Government ultimately prevail." *Williams Packing*, 370 U.S. at 7. It must be apparent "under the most liberal view of the law and the facts" that, given the information available to it at the time of suit, the Government cannot in good faith establish its claim. *Id.* at 7–8. In cases arising under Section 501(c)(3) and the Johnson Amendment, it is difficult for a non-profit organization to prevail on this prong of the test, because the Code "provides an explicit basis for the IRS to investigate" an organization's tax-exempt status and "determine if its 'political' activities merit a change." *Jud. Watch, Inc. v. Rossotti*, 317 F.3d 401, 407 (4th Cir. 2003). Considering the most liberal view of the law and the facts, it becomes quite plausible to conclude that the IRS proceeded in good faith and with legitimate reasons for investigation. *Id.* Thus, it is difficult for an organization to "demonstrate that the IRS action does not reflect . . . 'a good faith effort to enforce the technical requirements of the tax laws.'" *Id.* (quoting *Bob Jones*, 416 U.S. at 740). If the organization cannot meet both prongs of the *Williams Packing* test, then the AIA still applies and blocks the suit.

Here, Covenant Truth Church's suit does not fall under the narrow *Williams Packing* exception, because the church cannot establish the second prong and show that the Government could not ultimately prevail. As the *Judicial Watch* court stated, the Internal Revenue Code gives a valid basis for the IRS to investigate the church's tax-exempt status. In conducting an audit of

the church's political activities, the IRS is acting in good faith to enforce the technical requirements of the tax laws. *See* R. at 5. Because Pastor Vale has been using his weekly podcast on behalf of the church to endorse political candidates and encourage listeners to vote, volunteer, and donate to political causes, the IRS could reasonably find that the church has engaged in political activity in violation of the Johnson Amendment. *Id.* at 2, 4. So, if the IRS chooses to enforce the Johnson Amendment against the church, it is likely that the Government will prevail. Therefore, Respondent fails on the second prong of the *Williams Packing* test, and the exception to the AIA's jurisdictional bar does not apply.

The second narrow exception to the AIA applies only if the aggrieved party has no alternative legal way to challenge the tax. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). Due to the unique circumstances in *Regan*, if the Court had applied the AIA, South Carolina would have incurred no tax liability, and thus would have had to rely on third parties to raise its constitutional challenge in court, as there were no other statutory remedies available to the State. *See id.* at 379–80. The Court emphasized that in its past decisions of cases like *Bob Jones* and *Williams Packing*, it relied on the availability of a refund suit as an alternative legal avenue for the taxpayer. *Id.* at 374–75. In its holding, the Court stated that the AIA "was not intended to bar an action where . . . Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373. But, if Congress has provided an alternate avenue for the aggrieved party to litigate its claim, such as refund suit, the AIA applies in full force. *Id.* at 381; *see also Jud. Watch*, 465 U.S. at 408 (finding that the *Regan* exception did not apply because the non-profit sought to avoid an audit, did not need to depend on third parties, and could seek declaratory relief through a refund suit). Therefore, the narrow *Regan* exception to the AIA applies only if the aggrieved party has no alternative legal remedy. *Regan*, 465 U.S. at 373.

Covenant Truth Church's claim does not qualify for the *Regan* exception because, as in *Bob Jones* and *Williams Packing*, it has an alternative remedy in the form of a refund suit. Because the church has Section 501(c)(3) tax-exempt status, if that status is revoked by the IRS and the church is forced to pay taxes, it then has the option to pursue administrative remedies or file a refund suit. *See* R. at 3, 5. The *Regan* exception only applies if the plaintiff has no access to judicial review. Here, Respondent does have the option to obtain review through the administrative remedies that Congress has provided. Unlike the State of South Carolina, Covenant Truth Church will not have to depend on a third party to raise its constitutional claim, because it will have tax liability if its tax-exempt status is revoked. *See id.* at 2–3, 5. Even if the church does not like the remedies available to it, it still must follow the procedures established by Congress and the Court. Therefore, because Covenant Truth Church has access to alternate legal remedies, the *Regan* exception does not apply, and the AIA bars this suit.

4. This Court has no jurisdiction over this case because Covenant Truth Church did not first exhaust its administrative remedies.

Before filing suit in federal court, a taxpayer seeking a refund must comply with the procedures established in the Internal Revenue Code ("IRC"). *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4 (2008). The Court has made it clear that Congress does have "authority to require administrative exhaustion before allowing a suit against the Government, even for a constitutional violation." *Id.* at 9. According to the statutory procedures, a claim for a refund must be filed with the IRS before a suit can be filed against the federal government in federal court. *Id.* at 4. If a party wishes to challenge a revocation of its Section 501(c)(3) status, it must first exhaust all administrative remedies available under Section 7428. 26 C.F.R. § 301.7430-1(c) (2023). That section of the Code states that a declaratory judgment "shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District

of Columbia determines that the organization involved has exhausted administrative remedies available to it" within the IRS. 26 U.S.C. § 7428 (b) (2). Only after exhaustion and within 90 days after an adverse determination may the taxpayer file for a review of the administrative decision in federal court. *Id.*

Respondent is barred from bringing this suit because it refused to abide by Congress's mandated tax refund scheme. While Covenant Truth Church seeks to block enforcement of the Johnson Amendment, it did not first fulfill the exhaustion requirement of 26 U.S.C. § 7428. Upon receiving the IRS's notification letter, the church did not wait for the IRS's audit determination and then proceed with the administrative remedies available to it. *See* R. at 5. Rather, the church filed a pre-enforcement suit in an attempt to avoid the consequences of the Johnson Amendment. *Id.* Because Covenant Truth Church neither exhausted its administrative remedies as required by Section 7428 nor pursued the statutory mechanisms for review, such as a declaratory judgment action or a refund suit, this Court has no jurisdiction to hear its case.

Ultimately, because Covenant Truth Church has brought this pre-enforcement suit and seeks an injunction to restrain the collection of a tax, it is the exact kind of suit that is barred by the Anti-Injunction Act. The characteristics of its suit do not qualify for either of the narrow exceptions to the AIA. Furthermore, the church has disregarded the administrative remedies set out by Congress, and instead has proceeded to court prematurely. For these reasons, this Court should find that the Tax Anti-Injunction Act bars Covenant Truth Church's lawsuit, and therefore it has no jurisdiction to hear this case.

B. Covenant Truth Church Lacks Article III Standing.

Even if the Anti-Injunction Act does not apply here, Respondent has failed to establish its Article III standing to bring this suit. To overcome the burden of presumption against jurisdiction

and establish standing, a party must show (1) an injury in fact, (2) that is fairly traceable to the defendant, and (3) that is likely to be resolved by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Covenant Truth Church has not met this standard, because it has failed to establish an injury that is sufficiently concrete and imminent, and it has failed to meet the requirements of a valid pre-enforcement challenge. This Court should find that, even if the AIA does not apply, Covenant Truth Church has still failed to meet the constitutional requirements of standing, and thus the Court has no jurisdiction to hear its case.

1. Covenant Truth Church has not suffered any injury that is sufficiently concrete and imminent to establish Article III standing.

The doctrine of standing serves to identify which issues the federal courts may hear. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). As Chief Justice Marshall wrote, if judicial power were "extended to every question under the constitution," then federal courts could commandeer "almost every subject." 4 Papers of John Marshall 95 (C. Cullen ed.1984) (quoted in *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). So, in Article III of the Constitution, federal court jurisdiction is limited to "Cases" and "Controversies." U.S. CONST. art. III, § 2. This requirement serves to identify "those disputes which are appropriately resolved through the judicial process." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). Indeed, "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan*, 504 U.S. at 560. Today, it is "presume[d] that federal courts lack jurisdiction 'unless the contrary appears affirmatively from the record'" and the burden is on the plaintiff to demonstrate that he is a proper party to invoke the court's jurisdiction. *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)). Therefore, to establish the constitutional minimum requirements for standing, a plaintiff must

show (1) an injury in fact, (2) that is fairly traceable to the defendant, and (3) that is likely to be resolved by a favorable court decision. *Lujan*, 504 U.S. at 560–61.

To satisfy the first standing requirement, a plaintiff must show that he has suffered an injury in fact: "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent." *Id.* at 560 (internal citations omitted). This injury cannot be conjectural or hypothetical. *Id.* A plaintiff cannot rely on speculative future enforcement or a chain of contingencies to satisfy the injury-in-fact requirement. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). If the plaintiff alleges a threatened future injury, it must be *certainly* impending, because mere allegations of possible future injury will not suffice. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990). A claim may not be adjudicated if it "rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568 (1985)). For example, in *Clapper*, the plaintiffs based their claims on "their highly speculative fear" that the government would target their activity in the future. 568 U.S. at 410. The Court held that their fear of government action and future injury was "too speculative to satisfy the well-established requirement that threatened injury must be "certainly impending," and held that they lacked standing to bring the claim. *Id.* at 401–02. The Court has clearly established that, in order to have Article III standing, the plaintiff bears the burden of showing that his injury is sufficiently concrete and imminent. *Lujan*, 504 U.S. at 560.

Here, Covenant Truth Church must overcome the presumption that the federal courts lack jurisdiction by establishing that it has Article III standing. To meet this burden, the church must first show that it has suffered a concrete and imminent injury in fact. Respondent has failed to do this. First, Covenant Truth Church has not alleged a concrete and imminent injury, but rather a fear

of unlikely future enforcement of the Johnson Amendment. R. at 5. Its claim rests on its "concern" over the possibility that at some point in the unknown future the IRS may initiate an investigation, assess taxes, and revoke its tax-exempt status because it engaged in political activity. *Id.* However, mere speculation of what the IRS might do does not constitute a present injury. Additionally, the IRS letter that invoked this speculative fear was simply a routine letter informing the church that it would be subject to a random audit. *Id.* Today, Covenant Truth Church is still classified as a Section 501(c)(3) organization and continues to receive its tax-exempt benefits. *Id.* The IRS investigation has not even begun, and there is nothing near an adverse determination. *Id.* Like the plaintiffs in *Clapper*, the church has alleged a subjective apprehension; namely, that the IRS will actually enforce the Johnson Amendment, which it rarely does. *Id.* at 5, 14. Even if the Church could articulate a future harm, any injury is contingent upon a sequence of discretionary decisions not yet made, such as: whether the IRS will investigate, whether it will conclude that the Church has violated the Johnson Amendment, whether it will revoke the church's status, and whether that revocation will become final. There is no evidence that the alleged injury Covenant Truth Church fears is "certainly impending." Rather, its claim is based on a hypothetical injury untethered to any concrete government action. Therefore, Respondent has failed to establish the injury in fact required for Article III standing.

2. Covenant Truth Church has not met the narrow standing requirements of a valid pre-enforcement challenge.

In some constitutional challenges arising under the First Amendment, the Court will allow a plaintiff to establish standing "without first suffering a direct injury from the challenged restriction" if he successfully demonstrates "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). To

determine whether there is a credible threat of adverse state action, the court considers whether there is a reasonable likelihood that the government will enforce the challenged law, whether the plaintiff intended to violate the challenged law, and whether the law is inapplicable to the plaintiffs. *Lopez*, 630 F.3d at 786. However, to invoke a federal court's jurisdiction, the plaintiff must still demonstrate an actual or imminent injury to a legally protected interest that is "credible, not 'imaginary or speculative.'" *Id.* at 785 (quoting *Babbitt*, 442 U.S. at 298). Under this analysis, a threat of future injury is credible if the government has previously initiated criminal proceedings against the plaintiff (or warned or threatened to do so), or if there is a history of past enforcement against the plaintiff or others under the challenged law. *Id.* at 786; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–61, 164–66 (2014) (listing examples of sufficiently imminent threatened enforcement, and finding a sufficient injury in fact because petitioners had already been targeted, there was evidence of past enforcement of similarly-situated individuals, the commission had already found probable cause, and petitioners faced the threat of administrative proceedings and criminal prosecution). However, where enforcement against the plaintiffs or similarly-situated parties is absent, the asserted threat remains speculative and insufficient to establish standing. *Lopez*, 630 F.3d at 786.

Here, Respondent fails to meet the narrow requirements for pre-enforcement Article III standing, because there is not a credible threat of adverse state action against the church. Even if the IRS conducts its audit, there is no credible reason to believe that it will find that Covenant Truth Church has violated the Johnson Amendment and revoke its tax-exempt status. R. at 5. Indeed, the IRS rarely enforces the Johnson Amendment. *Id.* at 14. The church is merely "concerned" that the IRS will take action. *Id.* at 5. In one of the rare cases where the Johnson Amendment was enforced, the plaintiff church claimed that it was "the only one to have ever had

its tax-exempt status revoked for engaging in political activity" and filed hundreds of pages demonstrating the political involvement of other non-profit organizations that maintained their Section 501(c)(3) status. *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (2000). This hardly supports Covenant Truth Church's claim that its concern is backed by a reasonable likelihood that the government will enforce the Johnson Amendment against it. R. at 5. There is little to no evidence, past or present, that establishes a credible threat of government enforcement of the Johnson Amendment. Unlike the examples given in *Lopez*, there is little evidence of past enforcement, probable cause, or threats of administrative consequences or prosecution, because Respondent preemptively sued to prevent the IRS from acting. *Id.* There are no past circumstances that would render its alleged injury in fact sufficiently imminent. The IRS's letter notifying the church that it would be subject to a random audit is not sufficient to find a substantial risk of threatened enforcement of the Johnson Amendment; there are too many contingencies. *See id.* Therefore, Covenant Truth Church's asserted threat of future injury remains speculative and insufficient to establish the injury required for Article III standing.

Because there is no credible threat of IRS action against it, Covenant Truth Church has not established an injury that is sufficient for a valid pre-enforcement action. Its alleged future injury is speculative and not concrete or imminent enough to establish Article III standing. Therefore, even if this Court finds that this suit is not barred by the Anti-Injunction Act, it should find that Respondent lacks standing. If one party lacks standing, then this Court does not have jurisdiction to hear this case.

II. THE JOHNSON AMENDMENT IS CONSTITUTIONAL

If the Court reaches the merits of this case, it should find that the Johnson Amendment is constitutional and does not violate the Establishment Clause of the First Amendment of the United

States Constitution. That clause states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. Over time, the Court has interpreted this to mean that the government must remain neutral about religion: it may not aid or oppose any one religion over another, and it may not compel anyone to engage in religious practices. *Larson v. Valente*, 456 U.S. 228, 244 (1982), *Epperson v. Ark*, 393 U.S. 97, 104 (1968), *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). This separation of church and state requires neutrality, but it does not require hostility or alienation. *See Zorach*, 343 U.S. at 314. Furthermore, the government and its agencies may use secular criteria to influence decisions, even if those decisions impact religious people or organizations. *Employment Div. v. Smith*, 494 U.S. 872, 881–82 (1990). Finally, courts should interpret the Establishment Clause in light of the historical practices and understanding of our nation. *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014). Here, the Johnson Amendment is constitutional because it applies to all non-profit organizations equally and thus does not violate the separation of church and state, because the IRS rightly uses secular criteria to make determinations about tax-exempt status, and because the history and traditions of America support the idea that religious leaders should refrain from political involvement. Therefore, if the Court reaches the merits of this case, it should find that the Johnson Amendment is constitutional.

A. The Johnson Amendment Does Not Violate the First Amendment Because It Applies to All Organizations Equally.

The First Amendment states that Congress may not pass a law respecting an establishment of religion or prohibiting its free exercise. U.S. CONST. amend. I. As the Court has phrased it, "[t]he 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). Essentially, the government must remain neutral "between religion and religion, and between religion and

nonreligion." *Epperson v. Ark*, 393 U.S. 97, 104 (1968). The Court expounded on this notion, stating that government "must be neutral in matter of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another." *Id.* at 103–04. Additionally, the government may not make religious observance compulsory, such as by coercing people to attend church, observe a religious holiday, or take religious instruction. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). Simply put, the government cannot compel people or churches to engage in religious activity. *See id.* However, the Court has also clarified that "regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions" does not violate the Establishment Clause. *McGowan v. Maryland*, 366 U.S. 420, 442 (1961). Thus, government may pass laws and regulate conduct that may have an incidental effect on tenets of some religions, as long as the government does not promote and is not hostile to any religion over another, and does not compel anyone to engage in religious activity.

Admittedly, governments have at times violated the neutrality mandate. In one such case, the Court held that a Wisconsin law violated the First Amendment because it required non-profit organizations to engage or refrain from engaging in certain religious activities. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 241 (2025). The state law at issue there granted a tax exemption to "any church or convention or association of churches," without any further qualification, and to services given by "a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order." *Id.* at 242 (quoting Wis. Stat. §§ 108.02(15)(h)(1), (3)). Catholic Charities Bureau then claimed that it qualified for the exemption. *Id.* at 244.

However, the Court held that the law was invalid because it required churches to proselytize or limit their services to fellow religionists in order to qualify for the exemption. *Id.* at 250, 254.

Here, the Johnson Amendment applies to all non-profit organizations equally, and through it the government is not promoting or acting with hostility toward any religion, including The Everlight Dominion. *See* R. at 2. The amendment is not directed at The Everlight Dominion churches to inhibit their religion; rather, it is a broad condition on a tax exemption that has an incidental effect on The Everlight Dominion churches. *Id.* In this amendment, Congress and the IRS have created a regulation to prevent non-profit organizations from profiting from politics and government without contributing to government funds. *See id.* By placing conditions on the receipt of tax-exempt status, the IRS is not favoring one religion over another. It is not acting with hostility toward any specific religion, because its conditions apply to all religions and non-religions equally. The IRS is not promoting other religions over The Everlight Dominion by merely banning political involvement as a condition for tax-exempt status. Additionally, unlike the state law in *Catholic Charities Bureau*, the Johnson Amendment does not violate the neutrality mandate, because the IRS is not compelling Covenant Truth Church to engage in any activity against its religious beliefs. *Id.* at 2, 4. The condition may prohibit Covenant Truth Church from political involvement, but it does not compel Covenant Truth Church to actively do anything against its religious beliefs in order to maintain its tax-exempt status. *See* R. at 2, 4–5. Not allowing the church to be involved in politics in order to receive tax-exempt status is not the same as compelling the church to engage in a certain activity. The neutrality mandate simply requires that the government cannot claim that one religion is the best religion or the nation's religion; the government must remain neutral on its religious views, and the laws must reflect that. The Johnson Amendment is consistent with the neutrality mandate.

Additionally, Covenant Truth Church is not without alternative here. A non-profit organization that wishes to engage in political lobbying may file for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code. *See Regan v. Tax'n With Representation*, 461 U.S. 541, 543–44 (1983); 26 U.S.C. § 501(c)(4). In *Regan*, the non-profit organization Taxation With Representation ("TWR") sought tax exemption under Section 501(c)(3), even though it already had exemption under Section 501(c)(4). *Id.* at 543. TWR argued that denying its tax-exemption violated the First Amendment. *Id.* at 542. However, the Court disagreed, reasoning that "Congress is not required by the First Amendment to subsidize lobbying." *Id.* at 546. The Court held that the denial did not violate the First Amendment, because TWR could still qualify for tax exemption under Section 501(c)(4), which allows organizations to be tax-exempt while engaging in political lobbying. *See id.* at 543–45. In a concurring opinion, Justice Blackman noted that the organization could utilize both "its present § 501(c)(3) organization for its nonlobbying activities" and then "create a § 501(c)(4) affiliate to pursue its charitable goals through lobbying." *Id.* at 553 (Blackmun, J., concurring); *see also Branch Ministries v. Rossotti*, 211 F.3d 137, 143 (D.C. Cir. 2000) (noting that the non-profit organization chose to pursue the conditional benefit under Section 501(c)(3) but had another avenue available to it through Section 501(c)(4)).

Here, Respondent has the same opportunity, and the Court has said that this opportunity is sufficient. Just like TWR, Covenant Truth Church can be tax-exempt and still endorse politics, just under a different section of the Code. Under Section 501(c)(4), Respondent could create a separate organization for the purpose of promoting its political beliefs and endorsing politicians while maintaining its church in accordance with Section 501(c)(3). This would allow the church to keep both its tax-exempt status and its religious belief in political involvement. *See* R. at 3–4. Thus, the

Johnson Amendment does not give Covenant Truth Church an unreasonable ultimatum between following its religious views and having tax-exempt status; there is a way to do both.

B. The Johnson Amendment and the IRS's Authority to Conduct Church Tax Examinations Do Not Violate the Separation of Church and State.

The Court has interpreted the idea of "separation of church and state" narrowly, noting that the government must remain neutral, but it can "close its doors" in certain situations. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The *Zorach* Court stated that the First Amendment "does not say that in every and all respects there shall be a separation of Church and State." *Id.* at 312. If states and religion were aliens to each other, the result would be hostility and unfriendliness. *Id.* The Court then gave a list of examples showing why this alienation is impractical: churches would not be required to pay property taxes, municipalities would not be permitted to render police or fire protection to religious groups, policemen would not be permitted to help parishioners into their places of worship, and there would be no prayer in our legislative halls. *Id.* at 312–13. This list, of course, is not exhaustive. Ultimately, the Court declined to "read into the Bill of Rights such a philosophy of hostility to religion" and held that public institutions can accommodate people's religious needs without violating the First Amendment. *Id.* at 315.

Similarly, here there is no constitutional requirement for the IRS, as a government agency, to be completely separate and alienated from churches and religious organizations. While the IRS must of course stay within the limits of the neutrality mandate, it does not have to act hostilely toward religion. In fact, it cannot, for that would be in violation of the neutrality mandate itself. *See Epperson*, 393 U.S. at 103–04. So, it follows that the IRS may create laws that incidentally affect religious organizations while remaining within its statutory and constitutional authority. *See McGowan*, 366 U.S. at 442. When the IRS conducts a random tax audit of a non-profit organization that happens to be a church, it is not targeting religion. *See* R. at 5. It is simply carrying out its

statutory duty to ensure compliance with the Internal Revenue Code. *Id.* As long as it remains neutral, the IRS has authority to conduct a church tax examination without violating the separation of church and state.

Importantly, in one of the few cases where the Johnson Amendment was enforced, the D.C. Circuit Court of Appeals held that it does not violate the First Amendment, and that the IRS has the constitutional authority to revoke a church's tax-exempt status. *Branch Ministries v. Rossotti*, 211 F.3d 139, 145 (D.C. Cir. 2000). In 1992, Branch Ministries, a church that had tax-exempt status under Section 501(c)(3), placed a full-page advertisement in two newspapers in which it urged Christians not to vote for Bill Clinton because of his positions on certain moral issues. *Id.* at 139. The IRS concluded that the placement of the advertisements violated the Johnson Amendment and revoked the church's tax-exempt status because of its involvement in politics. *Id.* Branch Ministries challenged the revocation on the grounds that the IRS acted beyond its statutory authority, and the revocation violated its right to the free exercise of religion. *Id.* It argued that the conditional privilege was an unconstitutional burden on its free exercise. *Id.* at 142. The court disagreed, reasoning that Branch Ministries failed to demonstrate that its free exercise rights were substantially burdened. *Id.* at 144. Ultimately, the court held that the IRS did not exceed the Constitution or its statutory authority by revoking the church's tax-exempt status due to its involvement in politics. *Id.* at 145.

This Court should adopt the same reasoning here. Just as Branch Ministries published an advertisement endorsing Bill Clinton, Covenant Truth Church published a podcast urging its followers to vote for Congressman Samuel Davis because of his positions on certain moral issues. R. at 4–5. According to the *Branch Ministries* court, the IRS has statutory authority to revoke Covenant Truth Church's tax-exempt status due to its political involvement. In the interests of

fairness and justice, the IRS should require Covenant Truth Church to refrain from the same activities that other non-profit organizations are required to refrain from to maintain tax-exempt status. *See id.* at 2. Notably, the court below reasoned that, by requiring the IRS to monitor religious organizations to evaluate their tax-exempt status, the Johnson Amendment entangles government with religion, thus violating the First Amendment. *Id.* at 9. However, as the dissent below stated, the IRS is not required to monitor churches; it is merely granted the authority to inquire into the activities of tax-exempt churches to determine whether they are still qualified to receive their tax-exempt status. *Id.* at 2, 15. The IRS may examine any tax-exempt organization, whether it is religious or not. *Id.* at 5. Thus, following the example of *Branch Ministries*, the Court should hold here that the IRS has statutory authority to inquire into the activities of non-profit organizations, to evaluate their continued tax-exempt status, and to withdraw that tax-exempt status if necessary.

C. The IRS Can and Should Use Secular Criteria to Determine Whether a Tax Exemption may be Granted to a Religious Organization.

The government and its agencies may use secular criteria to influence decisions, even if those decisions impact religious people or organizations. *Employment Div. v. Smith*, 494 U.S. 872, 881–82 (1990). In *Smith*, the Court used secular criteria to determine that Oregon's law illegalizing peyote, even for religious use, was constitutional. *Id.* at 890. The Court evaluated the constitutionality of Oregon's prohibition of peyote even when strictly used for religious reasons. *Id.* at 876. The respondents were fired from their jobs for ingesting peyote, and when they applied for unemployment compensation, they were found ineligible for benefits because of their work-related misconduct. *Id.* at 874. On appeal, the respondents argued that they should not be denied unemployment benefits because their peyote use was religious. *Id.* at 882–83. Ultimately, the Court held that Oregon could prohibit certain kinds of religiously-motivated conduct without violating the Establishment Clause. *Id.* at 890. In its reasoning, the Court noted that if a State banned acts

or abstentions *only because of* the religious beliefs they displayed, the law would violate the Constitution. *Id.* at 877. The Court gave the example of banning the casting of statues used for worship purposes, which would doubtless be unconstitutional. *Id.* at 877–78. Additionally, the Court continued with other examples of decisions that would violate the Free Exercise Clause, such as cases that direct the education of children or compel an activity. *Id.* at 881. Throughout its reasoning, the Court used secular criteria to evaluate the constitutionality of Oregon's actions, even though those actions affected religious activities.

Following the example set in *Smith*, here the IRS uses secular criteria to determine whether a non-profit organization gets involved in politics. While the IRS has not yet evaluated whether Covenant Truth Church is involved in politics, it does have the constitutional authority to do so. R. at 5. Just as Oregon could generally ban the ingestion of peyote, the IRS may generally require non-profit organizations to not be involved in politics in order to receive their tax-exemption status, even if that requirement affects religious organizations. The Johnson Amendment does not prohibit the kind of religiously-motivated conduct that the Court summarized in *Smith*. *See id.* at 2. Under the amendment, Covenant Truth Church is not compelled to engage in activity contrary to its religion in order to receive the exemption. *See id.* at 2, 5. Additionally, engaging in politics is not a display of religious belief—it is an activity in which both religious and non-religious people participate. As previously discussed, the IRS has the authority to create conditions for tax exemptions that incidentally affect religion. Just as in *Smith*, where the respondents believed that consuming peyote was a display of their religious beliefs, here the members of The Everlight Dominion claim that involvement in politics is a display of their religion. *Id.* at 4. However, as in *Smith*, where the Court held that ingesting peyote was not a display of religious belief because it was not exclusively for religious purposes, this Court should hold that political involvement is also

not exclusively for religious purposes. In its reasoning, the Court should follow *Smith* and allow the IRS to continue to use secular criteria to determine political involvement, even though it negatively affects Respondent.

However, the government may not impose denominational preferences or force organizations to make an inherently religious choice. *Cath. Charities Bureau, Inc.*, 605 U.S. at 250. In *Catholic Charities Bureau*, Wisconsin denied the Bureau's request for a tax exemption under Wisconsin law. *Id.* at 244. The Bureau appealed, and the Administrative Law Judge reversed the department's ruling. *Id.* The Wisconsin Labor and Industry Review Commission reversed the ALJ's ruling, thus reinstating the denial of the Bureau's request. *Id.* at 244-45. In its reasoning, the Commission noted that the Bureau was not operated primarily for religious purposes. *Id.* at 245. The Wisconsin Supreme Court affirmed, reasoning that the Bureau's activities were secular in nature. *Id.* However, the Supreme Court disagreed and reversed, holding that the case involved denominational discrimination, which is directly prohibited by the Establishment Clause. *Id.* at 248–49. Under the statute, the Bureau could only qualify for the exemption if it proselytized or limited its services to fellow Catholics. *Id.* at 249. But the Bureau's Catholic faith barred it from misusing works of charity to proselytize. *Id.* Thus, the Court reasoned that the Bureau's eligibility turned on a choice of whether to proselytize or serve only co-religionists, which was an inherently religious choice. *Id.* at 250. The Court held that this requirement "impose[d] a denominational preference by differentiating between religions based on theological choices," and that it was not mere secular criteria that happened to have a different impact on some religious organizations. *Id.* Thus, the Court made it clear that the government may not distinguish among religions or establish a denominational preference without satisfying a strict scrutiny standard. *Id.* at 254; *see also*

Larson v. Valente, 456 U. S. 228, 246 (stating that when there is a denominational preference, courts must "treat the law as suspect" and apply "strict scrutiny in adjudging its constitutionality").

Here, while Covenant Truth Church's faith requires its followers to be involved in politics, the Johnson Amendment does not require it to actively do something that is against its faith. R. at 2, 4. The Court in *Smith* emphasized this point: it is not unconstitutional to ban an act in accordance with someone's faith, but it is unconstitutional to compel him to take a certain action. *Employment Div. v. Smith*, 494 U.S. at 881–82. Here, the IRS bans non-profit organizations from political involvement, but it does not compel them to engage in any certain activity. R. at 2. Additionally, unlike the law in *Catholic Charities Bureau*, the IRS's condition does not create an inherently religious choice for Covenant Truth Church. Political involvement is not an inherently religious choice because it is not an inherent form of worship or proselytization, just as in *Smith* the Court found that ingesting peyote was not a form of worship. There are other motivations for political involvement. While The Everlight Dominion religion believes that its churches should be involved in politics, political actions do not fall into the example categories of inherent forms of worship or proselytization found in *Smith* and *Catholic Charities Bureau*. Thus, because the Johnson Amendment does not require Covenant Truth Church to act against its faith and does not create an inherently religious choice for the church, the IRS may constitutionally ban political involvement even though it is part of a particular religion's beliefs.

D. American History and Tradition Demonstrates that Most Religious Leaders Refrain from Political Involvement.

In considering First Amendment cases, courts interpret the Establishment Clause in light of the historical practices and understanding of our nation. *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014). One of the most notable times in America's history that religious leaders entered the world of politics was during the friendship between the evangelist Billy Graham and President

Richard Nixon. The two men met well before Nixon's presidency, and their friendship continued through both of Nixon's presidential elections. Ron Elving, *Billy Graham Walked A Line, And Regretted Crossing Over It, When It Came To Politics*, NAT'L. PUB. RADIO (Feb. 24, 2018), https://www.npr.org/2018/02/24/587809173/billy-graham-walked-a-line-and-regretted-crossing-over-it-when-it-came-to-politi. In 1968, Graham went so far as to endorse Nixon for president. *Id.* As time passed, Graham befriended and advised the presidents following Nixon, continuing up to President Barack Obama. *Id.* However, later in his life, Graham expressed regret at his level of political involvement. *Id.* In 2011, he even said that, while he was grateful to have ministered to the needs of people in politics, in hindsight, "I know I sometimes crossed the line, and I wouldn't do that now." *Q & A: Billy Graham on Aging, Regrets, and Evangelicals: Interview by Sarah Pulliam Bailey*, CHRISTIANITY TODAY (Jan. 21, 2011), https://www.christianitytoday.com/2011/01/qabillygraham/. Billy Graham's involvement in politics was remarkable because it was abnormal. It contradicted the common history and tradition of religious leaders in America, and even he realized it.

A second prominent time in America's history of religious leaders' political involvement was in the late 1970s when Jerry Falwell, Sr. formed the Moral Majority, which was a religious special interest group that campaigned in favor of Republican Ronald Reagan against Democrat incumbent Jimmy Carter. Giulia Buccione and Brian G. Knight, *The Rise of the Religious Right: Evidence from the Moral Majority and the Jimmy Carter Presidency*, NAT'L. BUREAU OF ECON. RSCH., 2 (June 2024), https://www.nber.org/system/files/working_papers/w32551/w32551.pdf. This movement was notable in American history because religious leaders were directly endorsing politicians. *Id.* However, the fact that it was notable is precisely the point. Up until the late 1970s,

most religious leaders generally refrained from directly endorsing politicians. The vast majority of American history, nearly 200 years, stands in favor of religious leaders staying out of politics.

Not only do the history and traditions of the nation demonstrate that religious leaders and churches refrain from political involvement, but most Americans and evangelical leaders agree with this view. According to the 2024 Evangelical Leaders Survey, 98% of religious leaders agree that pastors should not endorse politicians from the pulpit. *Should Pastors Endorse Politicians From the Pulpit?*, NAT'L. ASSOC. OF EVANGELICALS (July 31, 2024), https://www.nae.org/should-pastors-endorse-politicians-from-the-pulpit/. Even more remarkably, according to a 2022 survey, 77% of adults in the United States opposed churches endorsing political candidates. Gregory A. Smith, *In a 2022 Survey, Most Americans Opposed Churches Endorsing Political Candidates*, PEW RSCH. CTR. (July 10, 2025), https://www.pewresearch.org/short-reads/2025/07/10/in-a-2022-survey-most-americans-opposed-churches-endorsing-political-candidates/. These statistics reflect the views and values of the nation, and work together with the history and traditions of this country to support the Johnson Amendment's constitutionality.

Finally, even the history of the Johnson Amendment in Congress supports its constitutionality. The Johnson Amendment has been presented to Congress every year since 2017, and Congress has repeatedly declined to eliminate it. R. at 2–3. The fact that Congress has examined the Johnson Amendment so many times with no change supports the conclusion that it does not violate the Constitution. While it is evident that some Congressmen do not like the Johnson Amendment, due to the large number of times it has been brought to the attention of Congress, it has not been eliminated by Congress despite all the arguments that have been made to abolish it. *Id.* The Johnson Amendment is supported by the history and traditions of our nation, and through the years it has stood firm as constitutional.

Because the Johnson Amendment applies to all non-profit organizations equally, it does not violate the First Amendment or the separation of church and state. As a result, the IRS can and should use secular criteria to evaluate Covenant Truth Church's activities and tax-exempt status. Furthermore, the history and traditions of our nation and of the Johnson Amendment itself support its constitutionality. Therefore, this Court should find that the Johnson Amendment is valid under the United States Constitution.

CONCLUSION

This suit is precisely the kind of suit that is barred by the Tax Anti-Injunction Act. Respondent brought this pre-enforcement suit seeking an injunction to restrain the collection of a tax, and the circumstances do not qualify for either of the narrow exceptions to the AIA. Furthermore, the church has disregarded the administrative remedies set out by Congress and has proceeded to court prematurely. For the reasons set forth above, this Court should find that the Tax Anti-Injunction Act bars Covenant Truth Church's lawsuit, and therefore the Court has no jurisdiction to hear this case.

Even if the Court finds that the Anti-Injunction Act does not apply here, it should find that Respondent lacks standing to bring this suit. Because there is no credible threat of IRS action, Covenant Truth Church has not established an injury that is sufficient for a valid pre-enforcement action. Additionally, its alleged future injury is speculative and not concrete or imminent enough to establish Article III standing. Therefore, this Court should find that Respondent lacks standing, and the Court has no jurisdiction to hear this case.

However, if the Court reaches the merits of this case, it should find that the Johnson Amendment does not violate the United States Constitution. The Johnson Amendment applies to all non-profit organizations equally, and thus does not infringe on freedom of religion or violate

the separation of church and state. The IRS can and should use secular criteria to evaluate the activities and tax-exempt status of Section 501(c)(3) organizations. Additionally, the history and traditions of our nation support the idea that religious leaders should refrain from political involvement. Therefore, this Court should find that the Johnson Amendment is constitutional.

Accordingly, Petitioners respectfully request that this Court reverse the decision of the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted this 18th day of January, 2026,

/s/ Team 11

Team 11
Counsel for Petitioners