No. 26-1779

IN THE

# Supreme Court of the United States

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

*Petitioners,*

v.

COVENANT TRUTH CHURCH

*Respondent.*

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

## BRIEF FOR RESPONDENT

TEAM NUMBER 12

*Counsel for Respondent*

## QUESTIONS PRESENTED

1. Under the Tax Anti-Injunction Act and Article III, does a church have standing to challenge a provision of the Internal Revenue Code, when the IRS has notified the church of an impending audit, but there are no alternative remedies to challenge the constitutionality of the provision, and there is a present threat of an imminent substantial injury to the church?

2. Under the Establishment Clause, does the Johnson Amendment violate the First Amendment when it conditions tax-exempt status on refraining from political campaign intervention, thereby breaking with 165 years of unbroken historical tradition and creating a denominational preference against faiths whose doctrine requires political engagement?

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## LIST OF PARTIES

All parties are listed in the caption. Respondent Covenant Truth Church was the plaintiff-appellee below. Petitioners Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service were the defendants-appellants below.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at 345 F.4th 1 and is reproduced in full on pages 1–16 of the appellate record. R. at 1–16. The opinion and order of the United States District Court for the District of Wythe are unreported, though the case was assigned a docket number at 5:23-cv-7997. R. at 1.

## JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Wythe granted Respondent's motion for summary judgment and entered a permanent injunction prohibiting enforcement of the Johnson Amendment. R. at 5–6. The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343.

The United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's judgment on August 1, 2025, in an opinion reported at 345 F.4th 1 (14th Cir. 2025). R. at 1–16. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291.

Petitioners filed a timely petition for a writ of certiorari, which this Court granted on November 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. I, in relevant part, provides:

"Congress shall make no law respecting the establishment of religion . . ."

U.S. Const. art. III, § 2, cl. 2, in relevant part, provides:

> "The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies to which the United States shall be a Party."

26 U.S.C. § 501(c)(3), in relevant parts, provides:

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious . . . purposes . . . no part of the net earnings of which insures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

26 U.S.C. § 7421(a), in relevant parts, provides:

> ". . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

26 U.S.C. § 7428(a)(1)(A), in relevant parts, provides:

> "Creation of Remedy. In a case of actual controversy involving a determination by the Secretary with respect to the initial qualification or continuing qualification of an organization as an organization described at a 501(c)(3) which is exempt from tax under section 501(a) . . ."

26 U.S.C. § 7428(b)(2), in relevant parts, provides:

> "A declaratory judgment or decree under this section 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 Internal Revenue Service. . ."

## STATEMENT OF THE CASE

### I. STATEMENT OF FACTS

The respondent in this matter, Covenant Truth Church ("Covenant"), is the largest congregation of adherents to The Everlight Dominion, a centuries-old faith that requires its leadership and churches to actively participate in political campaigns as a matter of religious obligation. R. at 3. Under the leadership of Pastor Gideon Vale and through his weekly podcast that reaches millions of faithful nationwide, Covenant's membership has grown from a few

hundred to nearly 15,000 in just six years. R. at 3–4. When Pastor Vale used his podcast to endorse a political candidate in compliance with The Everlight Dominion's teachings, the IRS notified Covenant that it had been selected for an audit. R. at 5. Because of the Johnson Amendment, the Church was presented with an illusory choice: either abandon its sincere religious convictions or surrender its tax-exempt status essential to its continued existence. R. at 4–5.

### A. The Everlight Dominion and Its Sacred Mandate for Political Engagement

The Everlight Dominion is a centuries-old religion. R. at 3. Its devout followers embrace a wide array of progressive social values that form the spiritual core of their faith. *Id.* Central to The Everlight Dominion's teachings is the sacred requirement that its leaders and churches actively participate in political campaigns and support candidates whose values align with the faith's tenets. *Id.* This is not a matter of personal preference or convenience, rather it is a fundamental, deeply-rooted religious obligation. *Id.* Religious leaders or churches that fail to carry out the political activity mandate face grave, life-altering consequences: banishment from the church and The Everlight Dominion entirely. *Id.*

### B. Covenant Truth Church and Pastor Gideon Vale's Ministry

Pastor Gideon Vale is a young, charismatic, and deeply devout leader of The Everlight Dominion. *Id.* Pastor Vale serves as the head pastor at Covenant Truth Church, which has become the largest church practicing The Everlight Dominion faith tradition. *Id.* When Pastor Vale joined Covenant in 2018, the church had only a few hundred members and struggled to attract and retain younger congregants. R. at 3–4.

Through Pastor Vale's transformative leadership, Covenant's spiritual messaging, outreach, and membership has never been stronger. *Id.* Among his most successful efforts was

the creation of a weekly podcast through which he delivers sermons, provides spiritual guidance, and educates the public about The Everlight Dominion. R. at 4. Pastor Vale also leads Covenant's regular weekly worship services, which include both in-person services and a livestream option for those unable to attend. *Id.* Under Pastor Vale's leadership, Covenant's membership has exploded to nearly 15,000 members in 2024. *Id.* Further, Pastor Vale's podcast is now the fourth-most listened to podcast in the State of Wythe and the nineteenth-most listened to podcast nationwide, drawing millions of downloads from across the country. *Id.*

### C. Covenant Truth Church's Religious Obligation to Speak on Political Matters

As a devout adherent and religious leader within The Everlight Dominion tradition, Pastor Vale began using his weekly podcast as a forum to deliver political messages consistent with his faith. *Id.* While not every podcast episode discusses political issues, Pastor Vale uses this alternative platform to voice support for candidates and causes whose values align with The Everlight Dominion. *Id.* As an expression of Covenant's sincere religious convictions, Pastor Vale has endorsed candidates and encouraged listeners and congregants to vote and donate their time and money to progressive political campaigns. *Id.*

In January 2024, a Wythe Senator died in office, triggering a special election under to fill the remaining four years of his term. *Id.* Congressman Samuel Davis, a young, charismatic leader who, like The Everlight Dominion, embraces progressive social values, announced his candidacy. *Id.* During a sermon on his weekly podcast, Pastor Vale endorsed Congressman Davis on behalf of Covenant, explaining in detail how the Congressman's political stances aligned with the teachings of The Everlight Dominion. R. at 4–5. Pastor Vale encouraged his listeners to vote for Congressman Davis, volunteer with his campaign, and donate to it: all actions his faith requires of him. R. at 5. Pastor Vale announced his intention to give a series of sermons in

October and November 2024 further explaining why Congressman Davis's positions aligned with The Everlight Dominion's teachings. *Id.*

### D. The Johnson Amendment

The Johnson Amendment (the "Amendment") passed in 1954 as a floor amendment proposed by then-Senator Lyndon B. Johnson. R. at 2. The Amendment added language to 26 U.S.C. § 501(c)(3) mandating that nonprofit organizations "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.* To date, Congress has never created an exception for religious organizations whose sincerely held beliefs compel them to engage in political activity, despite the introduction of legislation to do so each year since 2017. R. at 2–3.

### E. The IRS Audit Notification

On May 1, 2024, the Internal Revenue Service sent a letter to Covenant informing it that it had been selected for a random audit. R. at 5. Pastor Vale, aware of the Johnson Amendment's prohibition on political campaign activity by 26 U.S.C. § 501(c)(3) nonprofit organizations, became concerned that the IRS would penalize his and Covenant's religiously mandated political involvement by revoking the church's nonprofit tax classification. *Id.* Faced with the impossible choice between obeying the dictates of his faith and preserving the church's tax status, Covenant initiated this lawsuit. *Id.*

## II. PROCEDURAL HISTORY

On May 15, 2024, Covenant Truth Church filed suit in the United States District Court for the Eastern District of Wythe, seeking a permanent injunction prohibiting enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. R. at 5–6. To date, Covenant's tax classification as a § 501(c)(3) organization

remains unchanged. R. at 5. Following the Petitioner's blanket denial of Covenant's claims, the church moved for summary judgment. R. at 5–6. The District Court held that Covenant has standing to challenge the Johnson Amendment and determined that the Amendment violates the Establishment Clause. *Id.* The District Court granted summary judgment and entered a permanent injunction. *Id.*

The Fourteenth Circuit affirmed. R. at 11. The court held that the Tax Anti-Injunction Act ("AIA") does not bar the suit because Covenant has no alternative remedy to challenge the Johnson Amendment prior to an adverse determination of its tax classification. R. at 6–7. The court further held that the church satisfies Article III standing requirements because, given the IRS's notification of its intent to audit the church, there is a "substantial risk" of enforcement. R. at 7–8. On the merits, the Fourteenth Circuit held that the Johnson Amendment violates the Establishment Clause by permitting the IRS to determine what topics religious leaders and organizations may discuss as part of their teachings, thereby favoring religions that do not require political engagement over those, like The Everlight Dominion, that do. R. at 8–11.

This Court granted certiorari. R. at 17.

## SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the United States Court of Appeals for the Fourteenth Circuit on both issues presented.

First, Covenant Truth Church has standing to challenge the Johnson Amendment despite the Tax Anti-Injunction Act. 26 U.S.C. § 7421. The AIA does not apply because Covenant lacks alternative remedies and challenges constitutional rights rather than tax collection. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). Even if the AIA applied, Covenant satisfies the *Williams Packing* exception because the government cannot prevail on the merits and Covenant

faces irreparable injury. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). Covenant also satisfies Article III standing requirements through its pre-enforcement challenge: Pastor Vale's religiously mandated political speech is proscribed by the Amendment, the IRS audit creates a sufficiently imminent threat of tax-exempt status revocation, and judicial relief would redress this injury. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–60 (2014); *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Second, the Johnson Amendment violates the Establishment Clause on two independent grounds. First, the Amendment fails the historical test required by *Kennedy v. Bremerton School District* because it prohibits what 165 years of unbroken tradition permitted: religious political advocacy with tax-exempt status. 597 U.S. 507, 535 (2022). From 1789 through 1954, churches engaged in political speech as religious duty while maintaining tax exemptions without restriction. *Id.* The Amendment's 1954 break with this tradition makes the Amendment itself, not Covenant's religious exercise, the constitutional departure requiring justification. Second, the Amendment creates an unconstitutional denominational preference by conditioning tax exemptions on a violation of The Everlight Dominion's doctrinal requirement that its churches participate in political campaigns, a requirement not shared by denominations whose theology permits political silence. *Larson v. Valente*, 456 U.S. 228, 244 (1982). This facially discriminatory classification triggers strict scrutiny, which the government cannot satisfy. *Id.*

The government's asserted interests in fiscal neutrality and preventing corruption cannot justify these constitutional violations. The Amendment itself creates the denominational preferences, while less restrictive alternatives exist to serve any legitimate governmental interests. Ultimately, this Court should affirm the permanent injunction against enforcement of the Johnson Amendment.

## ARGUMENT

Questions of standing and ripeness concern subject matter jurisdiction and are reviewed *de novo*. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (standing implicates subject matter jurisdiction); *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985) (addressing ripeness as timing of suit). Summary judgment presents a question of law likewise reviewed *de novo*. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Accordingly, this Court conducts independent review of both the jurisdictional and constitutional issues presented.

### I. COVENANT TRUTH CHURCH HAS STANDING TO CHALLENGE THE JOHNSON AMENDMENT BECAUSE THE TAX ANTI-INJUNCTION ACT DOES NOT APPLY, THE *WILLIAMS PACKING* EXCEPTION IS MET, AND THE CHURCH'S PRE-ENFORCEMENT CHALLENGE SATISFIES ARTICLE III.

Article III constrains federal courts to only decide "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 2; *Lujan*, 504 U.S. at 560. This limitation serves vital separation-of-powers purposes by ensuring courts resolve concrete disputes rather than rendering advisory opinions. *See Valley Forge Christian Coll.*, 454 U.S. at 471–76. Where the government targets religion through conditions on tax benefits, courts possess both the authority and the obligation to adjudicate constitutional challenges. *See Larson*, 456 U.S. at 242–243.

Covenant Truth Church possesses standing to challenge the Johnson Amendment's constitutionality. First, the Tax Anti-Injunction Act does not bar this suit because Covenant has no alternative remedies, and the suit challenges constitutional rights, not tax collection or assesment. *See Regan*, 465 U.S. at 378; 26 U.S.C § 7421(a). Second, even if the AIA applied, the *Williams Packing* exception permits the suit because the government will certainly lose on the merits and Covenant will suffer irreparable harm, absent an injunction. *See Williams Packing*, 370 U.S. at 6–7. Third, Covenant satisfies Article III standing because the IRS audit creates an

imminent threat to tax-exempt status, this threat is traceable to the Johnson Amendment's enforcement, and a favorable decision will redress the injury. *See Lujan*, 504 U.S. at 560–61. Ultimately, Covenant's challenge is ripe for review, and this Court should reach the merits of the constitutional claim. *See Driehaus*, 573 U.S. at 158–60; *Branch Ministries v. Rossotti*, 211 F.3d 137, 140–41 (D.C. Cir. 2000).

### A. The Tax Anti-Injunction Act Does Not Bar Covenant Truth Church's Constitutional Challenge, and the *Williams Packing* Exception Applies and Is Satisfied in the Alternative.

The AIA does not apply here. The AIA bars suits "for the purpose of restraining the assessment or collection of any tax," 26 U.S.C. § 7421(a), but applies only when plaintiffs have adequate alternative remedies and when the suit directly concerns tax assessment or collection itself. *Regan,* 465 U.S. at 378. Covenant satisfies neither requirement. In the alternative, even if the AIA applies, this suit proceeds under the *Williams Packing* exception because the government will certainly fail on the merits, and Covenant will suffer irreparable harm. 370 U.S. at 6–7.

#### 1. Covenant Truth Church Has No Alternative Remedy Because the IRS Has Made No Tax Determination Subject to Appeal.

The AIA does not bar this suit because Covenant lacks any meaningful alternative remedy. Generally, the AIA only prohibits suits where plaintiffs already have other avenues of relief. *Regan*, 465 U.S. at 376. Under the Internal Revenue Code, "taxes can ordinarily be challenged only after they are paid, by suing for a refund." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 520 (2012). Before bringing a suit, an organization must first exhaust "administrative remedies," but where the IRS has rendered no final determination, administrative remedies simply do not exist. 26 U.S.C. § 7428(b)(2).

Here, the IRS's administrative appeals framework provides no remedy for organizations in Covenant's procedural posture. The appeals process permits organizations to challenge IRS determinations in only three circumstances: (1) initial denial of tax-exempt status, (2) revocation

of tax-exempt status following an audit, or (3) changes to foundation qualification following an audit. *How to Appeal an IRS Determination on Tax-Exempt Status,* I.R.S. Pub. No. 892, at 1–2 (last rev. Feb. 2017). Each scenario requires what the IRS calls a tax "determination," which is an administrative decision. *Id.* Following an unsuccessful appeal, § 7428 permits organizations to file suit in federal court to dispute the "adverse determination," but only "in [the] case of an actual controversy involving a determination by the Secretary." 26 U.S.C. § 7428(a)(1). The logical result of this statutory scheme is clear: no determination, no appeal; no appeal, no remedy.

The IRS's audit notification falls short of the determination required to trigger any administrative remedy. The IRS has initiated an audit but made no determination regarding Covenant's tax-exempt status. R. at 5. Covenant cannot appeal what does not exist: the agency has neither denied initial tax-exempt qualification, revoked existing status, nor changed foundation qualifications. I.R.S Pub. No. 892, *supra*, at 1–2; R. at 5. Without a determination letter, Covenant has no administrative remedy and cannot access § 7428's judicial review provisions. *See Regan*, 465 U.S. at 378 ("[T]he Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy."). Ultimately, this means that the choice Covenant faces is stark: self-censor constitutionally protected religious speech or risk losing tax-exempt status with no pre-enforcement remedy. *Id.*

The dissent's reasoning concerning the requirement of exhaustion misconstrues the procedural requirements governing tax-exempt organizations. R. at 14. The dissent concluded that Covenant must exhaust administrative remedies under § 7428(b)(2). R. at 14. But § 7428(b)(2)'s exhaustion requirement only applies to appeals of full-fledged IRS

determinations. This means organizations must exhaust administrative review of an IRS decision before filing suit to challenge that decision. Without a determination and a subsequent decision on appeal, there is no "actual controversy" triggering § 7428(a)(1)'s grant of federal subject matter jurisdiction, and thus no applicable exhaustion requirement. The dissent ignores this fundamental procedural prerequisite.

Moreover, the IRS appeals process is an internal operation of the same agency tasked with enforcing the Johnson Amendment, the very provision that Covenant challenges as unconstitutional. *See Your Appeal Rights and How to Prepare a Protest if You Disagree*, I.R.S. Pub. No. 5, at 3–6 (last rev. Apr. 2021). Even assuming *arguendo* that the appeals process provides the proper forum for Covenant to raise its constitutional objections, such a proceeding would be futile. The IRS explicitly disclaims authority to consider constitutional challenges: the appeals process "cannot consider your arguments if they are based only on moral, *religious*, *political*, *constitutional*, conscientious, or similar objections to the assessment or payment of Federal taxes." *Id.* at 4 (emphasis added). Thus, the agency charged with enforcing the Johnson Amendment admits it cannot adjudicate the Amendment's constitutionality. Requiring Covenant to pursue this empty remedy would waste both the Church's limited resources and the government's, delaying inevitable constitutional litigation while forcing Covenant to choose between violating its religious obligations or accepting punishment carrying irreparable harm. This Court has never demanded such a Hobson's choice before vindicating constitutional rights. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (reasoning a party is "entitled to challenge a statute that he claims deters the exercise of his constitutional rights" prior to actual harm).

### 2. This Suit Vindicates Constitutional Rights Under the Establishment Clause, Not Tax Collection Interests Protected by the Tax Anti-Injunction Act.

The AIA's prohibition extends only to suits whose "purpose" is "restraining assessment or collection of any tax." 26 U.S.C. § 7421(a). Courts examine the suit's main purpose to determine whether the AIA applies. *Bob Jones Univ.*, 416 U.S. at 738. Covenant's primary purpose in filing this lawsuit is vindicating fundamental constitutional rights under the Establishment Clause: rights this Court has recognized as among the most sacred in our constitutional order. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 15–16 (1947); *see also infra* Part II.A. This constitutional purpose, not merely an interest in avoiding tax obligations, distinguishes Covenant's pre-enforcement challenge from cases where the AIA bars suit.

The timing and nature of Covenant's challenge place it outside the AIA's scope. In *Bob Jones University*, this Court held that the AIA barred the University's suit because its main purpose was preventing tax collection after the IRS had already revoked its tax-exempt status. 416 U.S. at 738–41. The University sought an injunction to prevent the IRS from "withdrawing [the University's] § 501(c)(3) ruling letter and from depriving [the University's] donors of advance assurance of deductibility" after the IRS acted. *Id.* at 738. This Court held that attempting to prevent revocation *after* the IRS already acted made the suit about tax "assessment or collection." *Id.* at 739. The temporal sequence mattered: the University challenged the Act only after suffering a final adverse determination.

*Americans United* reinforces that post-enforcement constitutional challenges fall within the AIA's reach, distinguishing this challenge from Covenant's situation. In *Alexander v. Americans United Inc.*, the IRS revoked Americans United's § 501(c)(3) status for violating § 501(c)(3)'s lobbying prohibition by devoting a substantial part of its activities to influencing legislation. 416 U.S. 752, 754–55 (1974). More than a year later, Americans United filed suit

seeking declaratory and injunctive relief to restore its tax-exempt status, raising constitutional challenges to the lobbying restrictions in 26 U.S.C. §§ 501(c)(3) and 170. *Id.* at 756–57. This Court held that the AIA barred the suit because the "objective of this suit was to restrain the assessment and collection of taxes from respondent's contributors" by restoring "advance assurance that donations to it would qualify as charitable deductions under § 170." *Id.* at 760–61. The Court concluded that Americans United "would not be interested in obtaining the [relief] requested if that relief did not effectively restrain the taxation of its contributors." *Id.* at 761. Again, the timing proved dispositive: Americans United raised constitutional objections only *after* the IRS completed enforcement and revoked tax-exempt status, revealing that unwinding the tax determination was the suit's true purpose. *Id.*

Covenant's pre-enforcement constitutional challenge stands on fundamentally different grounds. Unlike *Bob Jones University*, Covenant initiated this lawsuit to challenge the Johnson Amendment's facial constitutionality *before* any revocation, not to enjoin an audit or prevent tax assessment from an already-completed IRS action. R. at 5. Unlike *Americans United*, Covenant challenges the Amendment at the pre-enforcement stage, *before* the IRS has rendered any determination. The IRS has not revoked Covenant's tax-exempt status, has not assessed any tax liability, and has not issued any final determination. *Id.* Covenant seeks what this Court has long recognized as a permissible pre-enforcement remedy: constitutional adjudication of a law that forces the Church to choose between religious exercise and tax benefits. *See Bob Jones Univ.*, 416 U.S. at 731 ("Accordingly, any organization threatened with revocation of a § 501(c)(3) ruling letter has a powerful incentive to bring a pre-enforcement suit to prevent the Service from taking action in the first instance.").

Here, the suit's substance confirms its constitutional purpose. Covenant holds tax-exempt status and currently pays no federal income taxes. R. at 5. The suit targets a speech restriction that creates denominational preferences forbidden by the Establishment Clause, not a tax liability. *See infra* Part II.B. The Johnson Amendment forces religions that doctrinally require political engagement to choose between their faith and their tax status, while leaving unburdened religions that permit silence. R. at 3; *see Larson*, 456 U.S. at 244. This denominational discrimination, not tax policy, drives this litigation. The main purpose of this suit is eliminating religious discrimination and recognizing Covenant's dignity as an equal participant in the Nation's religious discourse. Because the AIA only reaches suits with the purpose of restraining tax collection, 26 U.S.C. § 7421(a), it does not govern situations where constitutional challenges to conditional grants of tax exemptions arise prior to IRS enforcement actions. The constitutional violation exists now: Covenant need not wait for the government to complete its enforcement action before seeking judicial protection. *See Mahmoud v. Taylor*, 606 U.S. 522, 560–61 (2025).

**3. In the Alternative, the *Williams Packing* Exception Permits This Suit Because the Government Will Certainly Lose on the Merits and Covenant Truth Church Will Suffer Irreparable Harm.**

Even if the AIA applies, the *Williams Packing* exception permits this suit. Under *Williams Packing*, a suit may proceed despite the AIA if "under no circumstances could the Government ultimately prevail" and "the taxpayer would suffer irreparable injury if collection were effected." 370 U.S. at 7. Covenant satisfies both prongs of this test.

a. The Government's Position Is Constitutionally Untenable on This Developed Record.

Whether the government may invoke the AIA depends on "the information available to it at the time of suit." *Id.* This case therefore bears no resemblance to the typical *Williams Packing* posture. Covenant has already prevailed on the constitutional merits at both the district court and the Fourteenth Circuit following full summary judgment proceedings and complete appellate

review. R. at 6–11. Unlike cases arising on preliminary injunctions or undeveloped records, where courts must speculate about the government's likelihood of success, this case comes to the Court after the government has already litigated and lost on a fully developed record. *See Bob Jones Univ*., 416 U.S. at 749; *Americans United*, 416 U.S. at 760.

The Johnson Amendment's constitutional deficiencies are apparent and have been adjudicated. The Amendment creates unconstitutional denominational preferences by systematically favoring religions that permit political silence over those whose doctrines mandate political engagement. *See infra* Part II.B. Likewise, the Amendment independently fails the historical test required by *Kennedy v. Bremerton*. *See infra* Part II.A. Given the Amendment's clear constitutional deficiencies and Covenant's victories at trial and on appeal, the government cannot prevail. This satisfies *Williams Packing*'s first prong.

b. Covenant Truth Church Will Face Irreparable Financial, Reputational, and Religious Harm That No Legal Remedy Can Adequately Redress.

Covenant will suffer irreparable financial, reputational, and religious harm, absent an injunction. Organizations qualifying for § 501(c)(3) status are exempt from federal income tax and their donors may claim tax deductions. 26 U.S.C. § 501(a), (c)(3). If tax-exempt status is revoked, the IRS can assess income tax, impose a two-tiered penalty excise tax of 10% of political expenditures, and levy additional penalties if violations continue. *See* Joint Comm. on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations*, JCX-7-22, 117th Cong. 10–11 (2022). Organizations losing § 501(c)(3) status may reapply "provided [they do] not involve [themselves] in future political campaigns." Gina M. Lavarda, *Nonprofits: Are You at Risk of Losing Your Tax-Exempt Status?*, 94 Iowa L. Rev. 1473, 1491 (2009).

The doctrinal requirements of The Everlight Dominion, which mandate political engagement, make reapplication impossible for Covenant. R. at 3. If Covenant loses tax-exempt status for complying with its faith, it cannot reapply without violating religious obligations. *See Branch Ministries*, 211 F.3d at 142 ("As the IRS confirmed at oral argument, if the Church does not intervene in future political campaigns, it may hold itself out as a 501(c)(3) organization and receive all the benefits of that status."). This creates permanent, irreparable harm.

The financial consequences of enforcement would devastate Covenant's operations. Covenant would likely face immediate tax liability on all income, a 10% excise tax on each political expenditure, and additional penalties for continued doctrinal compliance. R. at 5; *see supra* JCX-7-22 at 10–11. Covenant's donors would lose tax deductions, reducing donations and impairing the church's operations. *See Bob Jones Univ.*, 416 U.S. at 747 (recognizing that losing tax-exempt status impairs "the flow of donations to an organization" and may even terminate it). The lump-sum tax liability, penalty taxes, and lost donations constitute irreparable financial injury that would cripple a religious organization dependent on charitable contributions for its continued existence.

Likewise, losing tax-exempt status would inflict severe reputational damage on Covenant's standing as a legitimate religious institution. Churches rely on § 501(c)(3) recognition to maintain credibility within their communities and among potential congregants. *See* Lloyd Hitoshi Mayer & Ellen P. Aprill, *21st Century Churches and Federal Tax Law*, 2024 U. Ill. L. Rev. 939, 948–51 (2024) (discussing the practical importance of federal tax benefits and compliance concerns for churches). Without it, Covenant faces stigma as an organization that violated federal tax law, even though its conduct was religiously mandated and constitutionally protected. This reputational harm threatens Covenant's ability to attract new members, retain

existing congregants, and maintain its role as the largest church practicing The Everlight Dominion faith tradition. R. at 3–4.

Most critically, Covenant's leaders and members face spiritual banishment if they abandon political engagement to preserve tax status. R. at 3. The Everlight Dominion requires political participation; failure to comply results in expulsion from the church and the faith entirely. *Id.* This spiritual harm, which includes loss of religious community, identity, and standing before God, is irreparable and cannot be remedied by monetary damages. If Covenant abandons its religious obligations to preserve tax status, its adherents suffer grave religious injury and face banishment from their faith community. *Id.* If Covenant honors its obligations and loses tax status, it suffers permanent financial harm and cannot reapply without violating core doctrinal requirements. *Id.*

This is the Hobson's choice the Johnson Amendment imposes: violate deeply held religious beliefs or accept financial ruin and permanent exclusion from tax-exempt status. Either outcome constitutes irreparable harm that monetary damages cannot remedy. This satisfies *Williams Packing*'s second prong. Accordingly, if the *Williams Packing* exception applies. The government will certainly lose on the constitutional merits, and Covenant will suffer irreparable financial, reputational, and religious harm absent an injunction. Even if the AIA applied, and it does not, this suit proceeds.

### B. Covenant Truth Church Satisfies Article III Standing Because the IRS Audit Creates an Imminent Threat of Losing Tax-Exempt Status, This Threat Is Traceable to the Johnson Amendment, and a Favorable Decision Will Redress the Injury.

Article III standing requires (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan*, 504 U.S. at 560–61. These elements are "concededly" to be incorporated and "not susceptible of

precise definition." *Allen v. Wright*, 468 U.S. 737, 751 (1984). Covenant satisfies all three of these elements and thus has standing to bring its claim in federal court.

### 1. Covenant Truth Church Suffers Imminent Pre-Enforcement Injury-In-Fact, Rendering the Claim Ripe.

"Injury-in-fact" requires "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (cleaned up). Pre-enforcement challenges pose timing questions, but this Court has held that "when deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." *Mahmoud*, 606 U.S. at 560–61; *see also Driehaus*, 573 U.S. at 158–60 (outlining a test for "pre-enforcement challenges" to assist in deciding whether to treat the "threat of injuries" as an injury-in-fact that is "sufficiently imminent").

For pre-enforcement threats to constitute imminent injury-in-fact, plaintiffs must (1) "allege an intention to engage in a course of conduct arguably affected with a constitutional interest" that is (2) "proscribed by a statute," and (3) show "a credible threat of prosecution thereunder." *Driehaus*, 573 U.S. at 160 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). Covenant conclusively satisfies all three elements.

#### a. Covenant Truth Church's Religiously Mandated Political Speech Implicates Core Constitutional Protections Under Both Religion Clauses and the Free Speech Clause of the First Amendment.

Covenant intends to continue political engagement as mandated by The Everlight Dominion's doctrine. R. at 3–4. Pastor Gideon Vale leads Covenant Truth Church and produces a weekly podcast reaching millions nationwide. R. at 4. In January 2024, Pastor Vale endorsed Congressman Samuel Davis, explaining how the Congressman's progressive positions aligned with The Everlight Dominion's teachings. R. at 4–5. Pastor Vale encouraged listeners to vote for Congressman Davis, volunteer with his campaign, and donate to it: all actions his faith requires. R. at 5. Pastor Vale announced his intention to deliver additional sermons in October and

November 2024 further explaining why Congressman Davis's positions align with The Everlight Dominion's teachings. *Id.*

This conduct is "certainly affected with a constitutional interest." *Driehaus*, 573 U.S. at 161–62 (cleaned up). Political speech lies at the core of First Amendment protection. *See Citizens United v. FEC*, 558 U.S. 310, 339–40 (2010). Religious political speech receives even greater protection, implicating both the Free Speech Clause and the Religion Clauses. *See Shurtleff v. City of Bos.*, 596 U.S. 243, 285 (2022) (Gorsuch, J., concurring). Consistent with The Everlight Dominion's doctrinally mandated practice, political endorsements of candidates lie at the very core of First Amendment protection. *See Driehaus*, 573 U.S. at 161–62. When those endorsements are religiously mandated, the constitutional interest becomes even more compelling.

b. The Johnson Amendment Directly Proscribes Covenant Truth Church's Religiously Required Conduct.

The Johnson Amendment prohibits § 501(c)(3) organizations from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). Covenant's intended conduct of endorsing candidates, encouraging congregants to vote for them, and urging donations and volunteer work directly violates this prohibition. R. at 4–5. Pastor Vale's podcast endorsement of Congressman Davis and his planned October and November 2024 sermons constitute exactly the conduct the Johnson Amendment proscribes. *Id.* Accordingly, the second element is satisfied.

c. The IRS Audit Combined With Past Enforcement Establishes a Credible and Substantial Threat of Losing Tax-Exempt Status.

The threat of enforcement is substantial. The IRS has notified Covenant of an impending audit. R. at 5. This notification, combined with Pastor Vale's public endorsement of

Congressman Davis on his widely heard podcast, creates a credible and imminent threat that the IRS will revoke Covenant's tax-exempt status for violating the Johnson Amendment. *Id.*

Recent precedent confirms that sparse enforcement history is not fatal to standing. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 336 (5th Cir. 2020) ("A lack of past enforcement does not alone doom a claim of standing."). Even without extensive enforcement history, the threat here is credible given that the IRS has enforced the Johnson Amendment against religious organizations. In *Branch Ministries v. Rossotti*, a church publicly encouraged members not to vote for Bill Clinton. 211 F.3d at 139. As a result, the IRS revoked Branch Ministries' tax-exempt status under § 501(c)(3). *Id.*; *see also Americans United*, 416 U.S. at 754–55 (upholding IRS enforcement of § 501(c)(3) lobbying restrictions against a nonprofit organization).

In this limited sense, Covenant's conduct mirrors *Branch Ministries* in relevant respects. Pastor Vale endorsed a specific candidate and urged his listeners to support that candidate, precisely the conduct the IRS found violated the Johnson Amendment in *Branch Ministries*. R. at 4–5. The critical difference is that The Everlight Dominion requires this endorsement as religious obligation, while the church in *Branch Ministries* voluntarily chose political involvement. 211 F.3d at 140; R. at 3. This doctrinal requirement makes the constitutional injury more severe, not the enforcement threat less credible.

Contrary to what the dissent concludes, the recent consent decree in *National Religious Broadcasters v. Long* does not eliminate the enforcement threat against Covenant. The consent decree applies only to "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." U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July

24, 2025) (emphasis added); *see* R. at 14 (dissent). "Customary channels" is undefined and likely excludes podcasts, a modern communication medium that did not exist when most churches established their communication traditions. Pastor Vale's podcast, though it reaches millions and serves pastoral functions, likely does not qualify as a "customary channel" under the decree's narrow language. Moreover, the decree does not create a binding rule of law protecting Covenant from enforcement, particularly where The Everlight Dominion's doctrine prioritizes the prohibited conduct. Thus, the enforcement threat remains credible.

Covenant has alleged an intention to engage in constitutionally protected conduct that the Johnson Amendment proscribes, and the IRS has initiated an audit creating a credible threat of enforcement. R. at 5. Accordingly, Covenant Truth Church satisfies all three elements of pre-enforcement injury-in-fact. *See Driehaus*, 573 U.S. at 159.

d. The Fully Developed Record and Substantial Hardship Facing Covenant Truth Church Confirm That This Constitutional Challenge Is Ripe for Review.

Ripeness concerns the "timing of the suit." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985). However, it is born out of the same "cases" and "controversies" requirement in Article III as standing. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 322, 335 (2006) (citing *Nat'l Park Hospitality Ass'n. v. Dep't of Interior*, 538 U.S. 803, 808 (2003)). In *Driehaus*, this Court emphasized that if a pre-enforcement threat constitutes injury-in-fact under Article III, ripeness typically poses no separate obstacle. 573 U.S. at 167. Nonetheless, prudential ripeness examines (1) "whether the record was sufficiently developed" and (2) "whether the hardship to the parties would result if judicial relief is denied at this stage in the proceeding." *Id.*

The record is fully developed for constitutional adjudication. Covenant challenges the Johnson Amendment's facial constitutionality, a purely legal question requiring no additional

factual development. *Id.* This case has been fully adjudicated on the merits twice: the district court granted summary judgment after complete proceedings, and the Fourteenth Circuit affirmed following full appellate review. R. at 6–11. Further factual development would therefore not "clarify" the legal claims. *Driehaus*, 573 U.S. at 167.

Furthermore, denying judicial review would impose substantial hardship on Covenant and force an unconscionable choice between faith and financial survival. The Johnson Amendment forces Covenant to choose between refraining from core religious speech mandated by The Everlight Dominion or engaging in conduct that violates federal tax law and risks losing tax-exempt status permanently. *Id.* at 168. Covenant's leaders face potential banishment from their faith if they cease political engagement to preserve tax status. R. at 3. This Hobson's choice, either abandon religious obligations or accept financial ruin, constitutes hardship justifying immediate review. Thus, Covenant's claim is ripe for consideration. *See Driehaus*, 573 U.S. at 167–68.

### 2. The Threat of Losing Tax-Exempt Status Flows Directly From the Johnson Amendment's Enforcement Through the IRS Audit.

Causation requires "a causal connection between the injury and the conduct complained of." *Lujan*, 504 U.S. at 560. The injury must be "fairly traceable to the challenged action of the defendant, not the result of the independent action of a third party not before the court." *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)).

The conduct complained of is the Johnson Amendment's enforcement through the IRS audit. The Amendment prohibits political campaign activity by § 501(c)(3) organizations. 26 U.S.C. § 501(c)(3). Congress enacted this prohibition in 1954, and the IRS enforces it by revoking tax-exempt status from organizations that violate the prohibition. *See Branch Ministries*, 211 F.3d at 139; R. at 2. The IRS initiated an audit of Covenant after Pastor Vale's

endorsement of Congressman Davis. R. at 5. This audit creates the threat that the IRS will revoke Covenant's tax-exempt status for violating the Johnson Amendment. *Id.*

No independent third-party action causes this injury. The IRS, an agency of the federal government and a petitioner here, initiated the audit and threatened enforcement of the Johnson Amendment. R. at 5. The threat of losing tax-exempt status flows directly from the government's enforcement of a federal statute. Covenant's injury is "fairly traceable" to the challenged government action. *Lujan*, 504 U.S. at 560. As a result, causation is satisfied.

**3. Declaring the Johnson Amendment Unconstitutional Would Redress the Threat to Covenant Truth Church's Tax-Exempt Status and Religious Exercise.**

Redressability requires that it is likely "that the injury will be redressed by a favorable decision." *Id.* at 561 (cleaned up). A favorable decision would declare the Johnson Amendment facially unconstitutional under the Establishment Clause. This would eliminate enforcement of the Amendment entirely, permitting Covenant's leaders to speak freely about political matters as their faith requires while maintaining tax-exempt status. The injury would be completely redressed. Similarly, if this Court declares the Johnson Amendment unconstitutional, the IRS cannot revoke Covenant's tax-exempt status for engaging in religiously mandated political speech. Covenant can honor its doctrinal obligations, Pastor Vale can continue endorsing candidates consistent with The Everlight Dominion's teachings, and the church can maintain § 501(c)(3) status. R. at 3–5. The Hobson's choice disappears, and redressability is satisfied.

In sum, Covenant Truth Church has standing. The AIA does not bar this pre-enforcement constitutional challenge, the *Williams Packing* exception is met, and Covenant satisfies Article III's injury, causation, and redressability requirements. The Johnson Amendment forces Covenant to choose between religious obligations and financial survival, an impossible choice this Court should not permit. This Court should reach the merits.

## II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE BECAUSE IT DEPARTS FROM FOUNDING-ERA AND LONGSTANDING NATIONAL PRACTICE AND CREATES DENOMINATIONAL PREFERENCES BY FAVORING RELIGIONS THAT PERMIT POLITICAL SILENCE OVER THOSE REQUIRING POLITICAL ENGAGEMENT.

For over 250 years, America has championed religious heterogeneity, where faiths of every denomination have flourished without government preference or penalty. As a direct result of the liberties protected by the Establishment Clause of the First Amendment,[1] this Court has expounded that "[f]ew concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise . . . benevolent neutrality toward churches . . . so long as none was favored over others and none suffered interference." *Walz v. Tax Comm'n*, 397 U.S. 664, 676–77 (1970). This distinctly American tradition of "benevolent neutrality" towards religion arose from the deliberate efforts of the Founders who sought to guarantee that "each individual would enjoy the right to make sense of his relationship with the divine, speak freely about man's place in creation, and have his religious practices treated with respect." *Shurtleff*, 596 U.S. at 285 (Gorsuch, J., concurring) (referencing *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943)).

The Johnson Amendment ruptures this quintessentially American tradition by penalizing religious organizations whose doctrines require political engagement while blessing those whose beliefs permit silence. First, the Johnson Amendment fails the historical analysis required by *Kennedy v. Bremerton* given that it is lacking both Founding-era acceptance and a longstanding national tradition. 597 U.S. 507 (2022). Second, the Johnson Amendment independently violates the Establishment Clause by creating an unconstitutional denominational preference, favoring

1. The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion . . ." U.S. Const. amend. I. The Establishment Clause was made applicable to the states, including the State of Wythe, through the Fourteenth Amendment. *See Everson*, 330 U.S. at 16.

religions that permit political silence over those whose doctrine requires political engagement. *Larson*, 456 U.S. at 244. Under either framework, the Johnson Amendment is unconstitutional.

### A. The Johnson Amendment Fails the Historical Test Required by *Kennedy v. Bremerton* Because It Lacks Both Founding-Era Acceptance and Longstanding National Tradition.

The Establishment Clause must be interpreted "by reference to historical practices and understandings." *Kennedy*, 597 U.S. at 536 (cleaned up). This historical analysis "has long represented the rule rather than some 'exception' within the Court's Establishment Clause jurisprudence." *Id.* at 536 (cleaned up); *see also Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 229, 259 (2019) (plurality opinion).

The Johnson Amendment fails *Kennedy*'s historical test decisively. From the Founding in 1789 through 1954, religious leaders proclaimed political engagement as a religious duty, and churches engaged in political advocacy while receiving tax exemptions without restriction. R. at 9–10. The Johnson Amendment's 1954 prohibition of this 165-year tradition makes the Amendment itself, not the religious practice it restricts, the constitutional departure requiring justification under *Kennedy*. By conditioning tax-exempt status on the abandonment of religiously mandated speech, namely The Everlight Dominion's doctrinal requirement that its leaders and churches participate in political campaigns, the Amendment severs religious organizations from a practice as old as the Republic itself. R. at 3; *see Walz*, 397 U.S. at 676–77.

#### 1. Under *Kennedy v. Bremerton*, Historical Practices and Understandings Control Establishment Clause Analysis, Requiring Courts to Invalidate Laws Lacking Both Founding-Era Acceptance and Longstanding National Tradition.

*Kennedy* makes an assessment of religious tradition over time dispositive in Establishment Clause cases. This Court has unequivocally held that constitutional boundaries concerning the establishment of religion must be drawn by "reference to historical practices and understandings," *Kennedy*, 597 U.S. at 535 (citations omitted), and that judicial scrutiny of a law

affecting the establishment of religion "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 577 (2014); *see also Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring) ("[T]he line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.").

This approach represents the Court's consistent methodology across Establishment Clause cases spanning nearly eight decades. *See Town of Greece*, 572 U.S. at 575–77; *Walz*, 397 U.S. at 676–78; *Everson*, 330 U.S. at 8–12. Historical analysis protects religious liberty by barring government from using political preferences to redefine religious practice or override the Founders' intent. *See Kennedy*, 597 U.S. at 535–36.

The *Kennedy* framework requires examining practices along two temporal dimensions, both of which must be satisfied. *See id.*; *Town of Greece*, 572 U.S. at 577. First, Founding-era acceptance proves that a practice accords with the original understanding of the Establishment Clause. *See Lynch v. Donnelly*, 465 U.S. 668, 674 (1984) ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."). Second, continuous historical tradition demonstrates that a practice has "withstood the critical scrutiny of time and political change," confirming its consistency with evolving constitutional values. *Town of Greece*, 572 U.S. at 577. Here, the historically grounded practice under *Kennedy* is religious political advocacy while maintaining tax exemptions, a practice which has spanned 165 years from 1789 through 1954. R. at 3, 9–10. The Johnson Amendment, enacted in 1954, prohibits this historical practice, placing the Amendment outside the bounds *Kennedy* establishes. R. at 3.

### 2. For 165 Years Before 1954, Religious Leaders and Churches Engaged in Political Advocacy Without Restriction, Demonstrating the Founding-Era Acceptance and Longstanding Tradition *Kennedy* Requires.

American history conclusively establishes what *Kennedy* demands: From 1789 through 1954, churches engaged in political advocacy, claimed religious obligations to do so, and received tax exemptions without content-based restrictions. This unbroken pattern satisfies both *Kennedy* requirements: Founding-era acceptance and longstanding tradition. 597 U.S. at 535–36.

#### a. Founding-Era Practice Embraced Tax-Exempt Religious Political Engagement Under the Establishment Clause.

The Founders understood the Establishment Clause as prohibiting not merely the creation or support of official state churches, but also governmental preferences among denominations and interference with religious exercise. The Founders intended that the government could not pass "laws which aid one religion, aid all religions, or prefer one religion over another" nor could the government punish any person "for entertaining or professing religious beliefs or disbeliefs." *Everson*, 330 U.S. at 15–16.

As the primary author of the First Amendment, James Madison intended the meaning of the Establishment Clause to be "that Congress should not establish a religion . . . nor compel men to worship God in any manner contrary to their conscience." *McGowan v. Maryland*, 366 U.S. 420, 441 (1961) (quoting 1 Annals of Congress 730 (1789)). Thomas Jefferson similarly understood the Clause as building "a wall of separation between church and State" to preserve the principle that "religion is a matter which lies solely between man and his God." *Reynolds v. United States*, 98 U.S. 145, 164 (1878) (quoting Letter from Thomas Jefferson to Danbury

Baptists (Jan. 1, 1802)).[2] The Founders thus required governmental neutrality: "State power is no more to be used so as to handicap religions, than it is to favor them." *Everson*, 330 U.S. at 18. Founding-era practice regarding religious organizations' political engagement and tax treatment reflected this understanding of benevolent neutrality without handicap or preference.

Just as The Everlight Dominion requires its churches to participate in political campaigns as religious duty, Founding-era ministers routinely addressed political matters from their pulpits. For instance, in New England, "a sermon was always preached" as a part of an upcoming political election and, after 1750 "the sermons were listened to as a source of political instruction." Frank Dean Gifford, *The Influence of the Clergy on American Politics from 1763 to 1776*, 10 Hist. Mag. of the Protestant Episcopal Church, 104, 105 (1941). Because Founding-era preachers advocated for policies and political candidates, "[i]t is difficult to overestimate the influence of these annual election sermons in molding the thoughts of the colonists," especially since most of these sermons "were preached before the governor and elected representatives of the people." *Id.* at 106. Churches served as primary forums for political discourse in the Founding era, leaving behind abundant sermons and leaflets that establish the ubiquity of religious political engagement. *See Marsh v. Chambers*, 463 U.S. 783, 788–92 (1983); *see also* Ellis Sandoz, *Political Sermons of the American Founding Era, 1730–1805* (Liberty Press 1991) (assembling 55 unique Founding-era sermons evidencing widespread religious engagement with political questions). Ultimately, the Founders considered religious political speech essential to civic virtue, not threatening to republican government. *See* George Washington, *Farewell*

2. Discussing Jefferson's letter in *Reynolds*, the Court stated: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured." 98 U.S. at 164.

*Address* (Sept. 17, 1796) ("Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports.").

Tax exemptions for churches and religious organizations emerged during this same period without conditioning them on political silence, reflecting the principle that government must not handicap religions based on doctrinal conduct. *See Walz*, 397 U.S. at 676–78; *see also* John D. Colombo, *Why is Harvard Tax-Exempt?*, 35 Ariz. L. Rev. 841, 844 (1993) ("In colonial America, religious and educational institutions were exempted from local taxes from the beginning."). Among the states, New York enacted a church tax exemption in 1799, followed by Virginia in 1800, and neither statute conditioned the exemption on political silence by religious organizations. *See* Erika King, *Tax Exemptions and the Establishment Clause*, 49 Syracuse L. Rev. 971, 979 (1999). The District of Columbia did the same in 1802. *Id.* Federally, the Seventh Congress enacted tax exemptions for churches in 1802, as "[t]he federal government . . . has always exempted religious institutions from tax collections." *Id.* at 980.

Collectively, this history demonstrates that grants of tax exemptions and religiously affiliated political speech were understood as compatible under the Establishment Clause's original meaning. The Johnson Amendment violates this understanding by conditioning exemptions on the suppression of political speech the Founders accepted.

b. Tax-Exempt Religious Political Advocacy Continued Unbroken for 165 Years, From 1789 Through 1954

The Founding-era pattern of religious political engagement with tax-exempt status continued unbroken through 165 years and three major social movements. This continuous tradition satisfies the *Kennedy* framework's requirement that practices must have "withstood the critical scrutiny of time and political change." *Town of Greece*, 572 U.S. at 577.

Like The Everlight Dominion's mandate today, 19th-century abolitionist ministers preached that Christianity demanded political engagement to end slavery. *See generally* Theodore Parker, *The Collected Works of Theodore Parker*, vol. 12 (Frances Power Cobbe ed., Trübner 1865) (advocating for the moral and political obligation to oppose slavery); *see also* Henry Ward Beecher, "Peace, Be Still," in *Fast Day Sermons: Or, The Pulpit on the State of the Country* 265–92 (Rudd & Carleton 1861) (appealing to Christian morality in political crisis). As the majority below pointed out, Charles Finney articulated the prevailing theology: "All men are under a perpetual and unalterable moral obligation to . . . exert their influence to secure a legislation that is in accordance with the law of God." R. at 9–10; Charles Finney, *Systematic Theology*, Lecture XX: Human Government (1878). More notably, churches organized anti-slavery campaigns, ministers endorsed candidates, and congregations mobilized voters. *See generally* Samuel J. May Anti-Slavery Pamphlet Collection (Cornell Univ. Lib. Digital Coll.), https://digital.library.cornell.edu/collections/may (accessed January 15, 2026) (collecting over 10,000 abolitionist pamphlets and sermons evidencing extensive religious political engagement). These churches maintained tax-exempt status without government suggesting that political advocacy threatened exemptions.

Throughout the 19th and early 20th century, the temperance movement continued this pattern, with religious organizations claiming divine mandates to campaign for prohibition and directly paralleling The Everlight Dominion's doctrinal requirement for political engagement. The Women's Christian Temperance Union and similar religious organizations engaged in extensive political advocacy, including endorsing pro-prohibition candidates and lobbying for legislation. *See* Frances E. Willard, *Do Everything: A Handbook for the World's White Ribboners* (1895) (excerpts), available at https://history.hanover.edu/courses/excerpts/336willard.html. Like

the previous era, churches across denominations participated in prohibition campaigns while maintaining tax-exempt status. *See* John Witte, Jr., *Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional Practice?*, 64 S. Cal. L. Rev. 363, 387–88 (1991). Indeed, since the enactment of the Revenue Act of 1894, "every federal income tax law since . . . has contained the religious and charitable organization exception that eventually became § 501 of the Internal Revenue Code." King, *supra*, at 980.

Through the mid-20th century, civil rights religious leaders proclaimed political engagement as religious duty, exactly as The Everlight Dominion requires. Dr. Martin Luther King, Jr. declared: "every Christian is confronted with the basic responsibility of working courageously for a non-segregated society . . . [t]he churches are called upon to recognize the urgent necessity of taking a forthright stand on this crucial issue." Martin Luther King, Jr., *Message for the National Council of Churches* (1957); R. at 10. Dr. King's political engagement was inseparable from his religious exercise. *See McDaniel v. Paty*, 435 U.S. 618, 626–29 (1978) (plurality opinion) (recognizing historical tradition of clergy engaging in political life and rejecting notion that religious conviction should be separated from civic participation).

This unbroken 165-year tradition establishes that religious political engagement with tax exemptions was the constitutional baseline. Throughout this period, government never suggested exemptions required political silence. R. at 9–10. The practice "withstood the critical scrutiny of time and political change" for 165 years until the Johnson Amendment suddenly prohibited it in 1954. *Town of Greece*, 572 U.S. at 577; R. at 3.

#### 3. The Johnson Amendment's 1954 Enactment Shattered 165 Years of Historical Practice and Cannot Satisfy the Establishment Clause's Requirement of Historical Grounding.

The Johnson Amendment fails *Kennedy*'s historical test by prohibiting what 165 years permitted. Enacted in 1954 without hearings or debate, the Amendment suddenly conditioned tax

exemptions on refraining from political campaign intervention. R. at 3; *see* Patrick L. O'Daniel, *More Honored in the Breach: A Historical Perspective of the Preamble IRS Prohibition on Campaigning by Churches*, 42 B.C. L. Rev. 733, 739–40 (2001). This conditional requirement was unprecedented, as the unbroken practice of granting politically active churches tax-exemptions survived the abolitionist, temperance, and civil rights movements. R. at 9–10. This break places the Amendment outside *Kennedy*'s bounds. 597 U.S. at 535–36.

The Amendment possesses neither element *Kennedy* requires. It lacks Founding-era acceptance because the Founders never conditioned tax exemptions on refraining from political speech: election sermons advocating for candidates were printed and distributed by legislatures in the Founding-era. *See* Gifford, *supra*, at 106. Churches engaged in political discourse while receiving tax exemptions from the Republic's earliest days. *See Walz*, 397 U.S. at 677–78; King, *supra*, at 979–80. The Amendment equally lacks continuous tradition because it breaks with 165 years of practice. As this Court explained, "an unbroken practice of according the exemption to churches, openly and by affirmative state action, not covertly or by state inaction, is not something to be lightly cast aside." *Walz*, 397 U.S. at 678.

Rather than continuing a practice "accepted by the Framers" that "withstood the critical scrutiny of time and political change," the Amendment prohibited what the Framers accepted and what survived for 165 years. *Town of Greece*, 572 U.S. at 577. The practice with constitutional lineage is religious political advocacy with tax exemptions. The Amendment prohibits this practice, making the Amendment, not Covenant's religious exercise, the departure from constitutional tradition. R. at 3–4. Thus, the inquiry relevant to *Kennedy*'s framework is not the Amendment's 70-year history but the 165-year tradition it displaced. 597 U.S. at 535–36.

Here, Covenant and Pastor Vale's religious exercise continues this validated tradition. The Everlight Dominion requires its churches to participate in political campaigns as religious duty. R. at 4. Pastor Vale uses his podcast and sermons to endorse candidates aligned with The Everlight Dominion's values and encourage listeners to vote for, donate to, and volunteer for those campaigns. R. at 5. When Senator Russett's death triggered a special election, Pastor Vale endorsed Congressman Davis and encouraged listeners to support Davis's campaign. R. at 5–6. This conduct replicates what religious leaders have done throughout American history: Founding-era ministers through election sermons, abolitionist ministers endorsing anti-slavery candidates, and civil rights ministers advocating for desegregation. *See* Gifford, *supra*, at 105–06; R. at 9–10.

The IRS audit forced the church to seek a permanent injunction after Pastor Vale became concerned the agency would discover the church's political involvement and revoke its tax classification. R. at 6. For 165 years before 1954, religious leaders engaging in identical conduct maintained tax-exempt status without government interference. Pastor Vale engages in the practice that survived 165 years—yet the Amendment now threatens his church's tax status for conduct the Founders accepted. Ultimately, the Johnson Amendment's 1954 break with historical tradition renders it unconstitutional under the Establishment Clause. *Kennedy*, 597 U.S. at 536.

### B. The Johnson Amendment Creates an Unconstitutional Denominational Preference by Denying Tax Exemptions to Churches Whose Religious Doctrine Requires Political Engagement While Granting Exemptions to Churches Without Such Requirements.

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson*, 456 U.S. at 244. The Johnson Amendment violates this fundamental principle by systematically preferring religions that permit political silence over religions that mandate political engagement. R. at 4. The Everlight Dominion

requires its leaders and churches to participate in political campaigns and support candidates aligned with its progressive teachings. *Id.* Religious leaders who fail to comply face banishment. *Id.* Under the Johnson Amendment, Covenant must choose: violate its core religious doctrine and retain tax-exempt status or comply with its religious doctrine and lose tax-exempt status. R. at 4–6. Meanwhile, religious organizations that permit political silence retain exemptions without burden. This is denominational preference in its starkest form—government using tax policy to favor some religions over others based on the content of their religious obligations. Such discrimination triggers strict scrutiny, which the Johnson Amendment cannot survive. *Larson*, 456 U.S. at 246–47.

#### 1. The Johnson Amendment Creates a Denominational Preference by Burdening Religions That Doctrinally Require Political Engagement While Leaving Unburdened Religions Permitting Silence.

This Establishment Clause embodies a foundational principle: "Neither a state nor the Federal Government . . . can pass laws which . . . prefer one religion over another." *Everson*, 330 U.S. at 15. This prohibition against "denominational preferences" serves as "the clearest command of the Establishment Clause" because government favoritism among religions strikes at the heart of religious liberty by empowering the state to determine which faiths receive favorable treatment. *Larson*, 456 U.S. at 244. Whether accomplished through explicit sectarian classifications or through facially neutral criteria that systematically advantage certain religious groups, denominational preferences violate the Constitution's demand that "the government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *see also Epperson v. Arkansas*, 393 U.S. 97, 104, 106 (1968) (opining that "[t]he First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion," and that "[t]his prohibition is absolute.").

The denominational preference doctrine recognizes that facially neutral government classifications among religions do not need to name specific denominations to create unconstitutional favoritism. *See Larson*, 456 U.S. at 245–46. When a government action or law "grants a denominational preference by explicitly differentiating between religions based on theological practices," it violates the Establishment Clause. *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250 (2025). The critical constitutional inquiry is whether eligibility for government benefits "ultimately turns on inherently religious choices," or instead turns on "secular criteria that happen to have a 'disparate impact' upon different religious organizations." *Id.* at 250 (cleaned up) (quoting *Larson*, 456 U.S. at 247 n.23).

The fifty-percent rule in *Larson* exemplifies how facially neutral criteria create denominational preferences. 456 U.S. at 246. Minnesota's charitable solicitation law imposed registration requirements on religious organizations receiving less than fifty percent of contributions from members, while exempting organizations exceeding that threshold. *Id.* at 231–32. The Supreme Court held this "clearly grants denominational preferences of the sort consistently and firmly deprecated in our precedents." *Id.* at 246. This is because the Minnesota law effectively distinguished between "well-established churches" and "churches which are new and lacking in a constituency." *Id.* at 246 n.23 (quoting *Valente v. Larson*, 637 F.2d 562, 566 (8th Cir. 1981)).

Similarly, Wisconsin's unemployment insurance law in *Catholic Charities* required organizations to engage in proselytization and religious instruction to qualify as being "operated primarily for religious purposes." 605 U.S. at 242, 245. This Court unanimously invalidated this as an unconstitutional denominational preference because it systematically favored religions whose doctrine requires proselytization over those, like Catholicism, whose doctrine forbids

using charity for proselytization. *Id.* at 250. Catholic Charities could access the exemption only by violating its own religious teachings: the precise impossible choice the Establishment Clause forbids. *Id.* Ultimately, the constitutional violation in *Catholic Charities* arose not from mere disparate impact of a neutral statute, but from making eligibility turn on compliance with particular theological approaches to charitable work. *Id.* at 254.

Here, the Johnson Amendment creates the same discriminatory effect as the facially neutral laws at issue in *Larson* and *Catholic Charities*. The Amendment conditions tax exemption on refraining from political campaign intervention. 26 U.S.C. § 501(c)(3). Despite this, The Everlight Dominion requires its churches to "participate in political campaigns and support candidates that align with [its] progressive stances," with failure resulting in banishment. R. at 4. Put to the task, Covenant must choose: violate religious doctrine to retain its tax exemption, or comply with doctrine and forfeit its exemption. R. at 4–6. Religious organizations whose doctrines permit political neutrality face no such burden, accessing § 501(c)(3) benefits without violating religious obligations. This differential treatment, which advantages religions permitting political discretion while disadvantaging religions requiring political engagement, makes tax benefits turn on religious characteristics in violation of the Establishment Clause.

**2. Denominational Preferences Trigger Strict Scrutiny Which the Johnson Amendment Cannot Survive Because It Is Neither Supported by Compelling Interests nor Narrowly Tailored to Achieve Any Legitimate Government Goal.**

Because the Johnson Amendment grants denominational preferences, it "must be invalidated unless it is justified by a compelling governmental interest" and is "closely fitted to further that interest." *Catholic Charities*, 605 U.S. at 252 (quoting *Larson*, 456 U.S. at 246–47). Petitioners bear the burden of clearing this high bar. *Catholic Charities*, 605 U.S. at 252.

Critically, Petitioners cannot come close to meeting this demanding standard. Accordingly, the Johnson Amendment must be struck down as violative of the Establishment Clause.

Petitioners will likely assert government interests in preventing religious organizations from becoming primarily political entities, maintaining separation between church and state, and protecting the integrity of the political process from church interference. *See Branch Ministries*, 211 F.3d at 143. But even assuming these interests qualify as compelling—a dubious proposition given that the First Amendment itself "doubly protect[s]" religious political speech—the Johnson Amendment fails strict scrutiny because it is not "closely fitted" to advance these government interests. *Kennedy*, 597 U.S. at 543; *Larson*, 456 U.S. at 247.

The Amendment cannot survive strict scrutiny even if its asserted interests could be deemed compelling, which itself is doubtful. The fatal defect lies in the profound mismatch between those interests and the Amendment's sweeping prohibition of religious political speech.

The Amendment's prohibition is drastically overinclusive. A law affecting religion is deemed overinclusive, and thus fails strict scrutiny, when its "proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower [laws] that burden[] religion to a far lesser degree." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 546 (1993). Here, the Johnson Amendment forbids *all* campaign intervention by nonprofits regardless of the extent, frequency, or relative proportion of time that an organization pursues political activity. *See 26* U.S.C. § 501(c)(3). Accordingly, a church that devotes 99% of its resources to worship, charity, and religious education loses its life-granting nonprofit tax exemption for a single political endorsement, even when that endorsement is religiously mandated like it is for Covenant. R. at 4–6. Ultimately, the

Amendment operates as an absolute ban on religiously motivated political speech rather than a measured restriction narrowly tailored to any legitimate governmental objective.

The Amendment is equally underinclusive. As the Fourteenth Circuit noted, "many Section 501(c)(3) organizations, such as newspapers, endorse political candidates but never face tax consequences." R. at 8. Yet when Covenant engaged in identical conduct, the IRS initiated an audit. R. at 5–6. This selective enforcement demonstrates that the Amendment leaves "appreciable damage to [the Government's] supposedly vital interest unprohibited" and therefore fails narrow tailoring. *Catholic Charities*, 605 U.S. at 253 (cleaned up) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 172 (2015)). If the government's interest truly lies in preventing tax-exempt organizations from engaging in political speech, it cannot explain why secular organizations routinely violate the Amendment without consequence, while religious organizations face intense, often existence-altering IRS scrutiny. R. at 5–6, 8.

Petitioners will likely argue that less restrictive alternatives to maintaining nonprofit status under § 501(c)(3) exist. While organizations wishing to engage in substantial political activity may organize under § 501(c)(4), this alternative does not address the fundamental constitutional defect. *See Branch Ministries*, 211 F.3d at 143. The availability of § 501(c)(4) status does not cure discrimination in allocating § 501(c)(3) benefits. Covenant faces a denominational preference that allows churches permitting political silence to retain § 501(c)(3) status while denying that status to churches requiring political engagement. Accordingly, the Johnson Amendment fails strict scrutiny.

#### 3. The Johnson Amendment's Discriminatory Denominational Preference Cannot Be Justified by *Smith* or *Branch Ministries*.

The dissent's reliance on *Employment Division v. Smith* and *Branch Ministries v. Rossotti* fails for a single, dispositive reason: neither of those cases involved a law that allocates public

benefits based on whether a religion *requires* political expression or merely *permits* abstention. The Johnson Amendment does exactly that. It does not regulate conduct neutrally, apply secular eligibility criteria, or merely decline to subsidize speech. Instead, it classifies religious organizations by doctrinal obligation by rewarding faiths that can remain silent while penalizing those, like The Everlight Dominion, whose doctrine mandates political engagement. The Establishment Clause categorically forbids that form of denominational preference. *See Larson*, 456 U.S. at 246.

*Smith* addressed whether the Free Exercise Clause required exemptions from a generally applicable criminal law banning peyote use that neither targeted religion nor differentiated among faiths based on doctrinal content. 494 U.S. 872, 878–79 (1990). Oregon's controlled-substances law applied equally to all peyote use and did not require courts or officials to examine religious doctrine to determine compliance. *Id.* at 879. The Johnson Amendment operates differently. Its application turns on theology: religions that permit political silence retain tax-exempt status, while those that mandate political engagement, like Covenant, must choose between religious compliance and exemption. R. at 3–6. That differential treatment is not incidental, it is the Amendment's operative effect. *Smith* itself disclaimed application to laws that "target religious beliefs" or "regulate religious conduct for distinctive treatment," 494 U.S. at 877, and it did not address, let alone authorize, denominational preference under the Establishment Clause. *Larson*, 456 U.S. at 246.

The dissent's reliance on *Branch Ministries* fares no better. *Branch Ministries* addressed a Free Speech Clause challenge and held that the Johnson Amendment does not discriminate based on political viewpoint. 211 F.3d at 142–44. It did not consider whether the Amendment violates the Establishment Clause by favoring religions that permit silence over those that require speech.

Viewpoint neutrality does not resolve that defect. A statute may treat political viewpoints evenhandedly while still engaging in impermissible denominational preference. *Larson*, 456 U.S. at 246. Moreover, *Branch Ministries* did not involve a religious organization whose doctrine compelled political engagement on pain of religious sanction. Covenant and Pastor Vale face banishment if either fails to participate in political campaigns, making compliance with the Johnson Amendment incompatible with adherence to faith. R. at 3–5. That factual predicate, central to the Establishment Clause analysis, was absent there and is ignored by the dissent here. R. at 15–16 (dissent).

Ultimately, this Court should affirm the decision below permanently enjoining the operation of the Johnson Amendment.

## CONCLUSION

Covenant Truth Church has standing to bring this pre-enforcement challenge, and the Tax Anti-Injunction Act does not bar relief. The Johnson Amendment violates the Establishment Clause by conditioning tax exemptions on the surrender of The Everlight Dominion's doctrinal requirement that its churches participate in political campaigns, breaking 165 years of historical practice and creating unconstitutional denominational preferences. This Court should affirm the Fourteenth Circuit's judgment on both issues and uphold the permanent injunction against enforcement of the Johnson Amendment.