Team 13

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 Petitioner

Team 13

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.

LIST OF PARTIES

Petitioners, who were defendants-appellants, are: Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service; The Internal Revenue Service.

Respondents, who were plaintiffs-appellees below, are: Covenant Truth Church.

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The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported in *Bessent v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025). The rulings of the United States District Court for the Eastern District of Wythe are published at USDC No. 5:23-cv-7997.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the relevant constitutional provisions appear below. The relevant statutory provisions include 26 U.S.C. § 501 and 26 U.S.C. § 7421. The relevant portions of 26 U.S.C. § 501 and the full text of 26 U.S.C. § 7421 appears in the Appendix.

Article III Section 2 Clause 1 of the United States Constitution 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 all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2, cl. 1

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fourteenth Circuit entered final judgment on this matter on August 1, 2025. Petitioner timely filed a petition for a writ of certiorari, which this Court granted. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. Statement of Facts

A. The Johnson Amendment

In 1954, Congress amended the Internal Revenue Code ("IRC") by incorporating a timely and necessary amendment proposed by then-Senator Lyndon B. Johnson. R. 2. This amendment, known as the Johnson Amendment, implemented language to 26 U.S.C. § 501(c)(3) which governed the tax-exemption status of non-profit organizations. R. 2. The amended language is as follows: "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." R. 2. The Johnson Amendment passed without debate or contest in both chambers of Congress and was favorably adopted into the IRC of 1954. R. 2. Decades later, amongst changes and revisions of the IRC, the Johnson Amendment remained as a well-established provision in the IRC of 1986. R. 2. Despite recent criticisms and allegations of constitutional violations, Congress refuses to eliminate or amend the Johnson Amendment even after having many opportunities to do so. R. 2-3. Since 2017, proposed legislation has been introduced each year to alter the Johnson Amendment. R. 3. However, Congress stands tall on preserving the original purpose and language of the Johnson Amendment. R. 3.

B. The Everlight Dominion, Covenant Truth Church, and Pastor Gideon Vale

The Everlight Dominion, a centuries-old religion, requires its leaders and churches to participate in political campaigns and endorse candidates that align with the religion's progressive social values. R. 3. Any church or religious leader not adhering to this practice faces scrutiny with The Everlight Dominion. R. 3.

Pastor Gideon Vale ("Pastor Vale"), a devout leader of The Everlight Dominion and head pastor at Covenant Truth Church ("the Church") has grown the Church into the largest church practicing The Everlight Dominion. R. 3. The Church, categorized as a non-profit organization

under 26 U.S.C. § 501(c)(3), is subject to the language of the Johnson Amendment similar to all other religious and non-religious organizations under this classification. R. 2-3. In an attempt to bolster membership of the Church, Pastor Vale created a weekly podcast to educate listeners on The Everlight Dominion faith and encourage listeners to vote and participate in political campaigns on behalf of the Church's progressive social values. R. 3-4. Since its creation, the podcast has drawn widespread popularity. R. 4. In addition to religious education and political discussions, the podcast delivers sermons and provides spiritual guidance, similar to the Church's weekly spiritual services. R. 4. Despite Pastor Vale's knowledge of the Johnson Amendment's requirements, he endorsed Congressman Davis on behalf of Covenant Truth Church for an upcoming special election. R. 4-5. After this endorsement, Pastor Vale expressed his intention to continue his podcast series with sermons promoting political candidates whose values aligned with the teachings of The Everlight Dominion in October and November of 2024. R. 5.

On May 1, 2024, the Internal Revenue Service ("the IRS") notified the Church that it was selected for a random audit. R. 5. As part of the standardized procedures of the IRS, the agency conducts random audits of § 501(c)(3) non-profit organizations to ensure compliance with the IRC. R. 5. Upon receiving audit notice from the IRS, Pastor Vale immediately became concerned that the IRS would find the Church in violation of the Johnson Amendment and revoke its tax-exemption classification. R. 5. This concern resulted in the Church filing suit in the United States District Court for the Eastern District of Wythe seeking a permanent injunction prohibiting enforcement of the Johnson Amendment despite its status as a § 501(c)(3) organization remaining unchanged. R. 5. The suit was filed prematurely before the IRS could even begin its audit and properly assess the Church's tax status. R. 5.

II. Procedural History

On May 15, 2024, the Church filed a lawsuit in the United States District Court for the Eastern District of Wythe. R. 1, 5. The Church sought a permanent injunction seeking to prohibit the potential enforcement of the Johnson Amendment alleging it violated the First Amendment's Establishment Clause. R. 5. The IRS answered the complaint denying the Church's claims, and the Church then moved for summary judgment. R. 5. The District Court ruled in favor of the Church holding that the Church has standing to challenge the Amendment and that the Johnson Amendment violates the Establishment Clause. In effect, the District Court granted the Church's permanent injunction. R. 5. The IRS timely appealed the decision to the Court of Appeals of the Fourteenth Circuit. R. 5.

On August 1, 2025, the Fourteenth Circuit upheld the lower court's decision, additionally holding that the AIA does not bar the Church's suit. R. 6, 8. In response to the IRS's compelling petition, the Supreme Court of the United States granted certiorari on November 1, 2025.

SUMMARY OF THE ARGUMENT

This Honorable Court should reverse the Fourteenth Circuit's decision for two reasons. First, this Court should find that the Church does not have standing under either the AIA or Article III of the Constitution. The Fourteenth Circuit erred in concluding that the AIA only bars suits when there is an alternative remedy available because the plain language of 26 U.S.C. § 7421(a) bars all suits preventing the assessment or collection of taxes. The Church seeks an injunction to protect their 26 U.S.C. § 501(c)(3) non-profit classification which has an effect of preventing the IRS from being able to assess or collect a tax and is in direct contradiction of the AIA. In the alternative, in the unlikely event that this Court finds that the AIA does not bar the suit, the Church remains without standing to bring suit because it lacks the Article III constitutional requirements of injury in fact, causation, and redressability. The Church alleges a

constitutional violation without demonstrating a concrete and particularized injury or a substantial threat of enforcement therefore failing to meet injury in fact. Additionally, the Church fails to meet the causation element because it relies on a speculative chain of possibilities that may not happen in order to connect the IRS's audit notice to the enforcement of the Johnson Amendment. Finally, the Church fails to establish redressability because it relies on a hypothetical injury that would render a favorable court decision futile. By failing to establish each element of injury in fact, causation, and redressability, the Church fails to meet the constitutional requirements of Article III. Therefore, this Court should dismiss the suit for lacking standing under either the AIA or Article III.

Second, this Court should reverse the holding of the Fourteenth Circuit and find that the Johnson Amendment is a constitutional practice under the Establishment Clause. This Court should find that a strict scrutiny analysis under the Establishment Clause is unnecessary because the Johnson Amendment explicitly states that all 26 U.S.C. § 501(c)(3) non-profit organizations are equally subject to its requirements, and thus no discriminatory preference is shown. However, in the unlikely event that this Court finds that the Johnson Amendment is discriminatory, the Amendment still overcomes strict scrutiny because it further compels the government's interest in preserving the integrity of non-profit organizations and political campaigns.

Additionally, the Johnson Amendment is constitutional because it aligns with the historical practices and understandings of the Establishment Clause. The Johnson Amendment maintains a benevolently neutral effect amongst all 26 U.S.C. § 501(c)(3) non-profit organizations, as well as avoids the use of coercive actions. The Johnson Amendment is merely encouraging non-profit organizations to follow the requirements stated within the Amendment,

rather than restricting their constitutional rights. Moreover, the tax exemptions granted by the Johnson Amendment do not transgress upon the duties of the church, rather the exemptions reinforce the distinct separation between church and state. Therefore, this Court should reverse the Fourteenth Circuit's holding and find the Johnson Amendment constitutional.

ARGUMENT

I. This Court should reverse the Court of Appeals of the Fourteenth Circuit's holding because the purpose of the Church's lawsuit is to prevent tax assessment which violates the AIA and the Church lacks the Article III requirements of injury, causation, and redressability to challenge the Johnson Amendment.

This Court must reverse the Court of Appeals of the Fourteenth Circuit's holding that the Church has standing under the AIA and Article III because A) the Church's purpose for the suit is in direct violation of the AIA's explicit language and B) the Church fails to establish the Article III standing requirements of injury in fact, causation, and redressability.

Congress enacted the AIA to ensure that the government's need to assess and collect taxes as expeditiously as possible is protected from trivial judicial interferences. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974). The language of the AIA bars all suits that have a central purpose of restraining the assessment or collection of any tax. 26 U.S.C. § 7421. In addition to the exceptions stated within the AIA, which are inapplicable here, the courts judicially adopted the test laid out in the case *Enoch v. Williams Packing & Navigation Corporation*, 370 U.S. 1, 5-7 (1962) ("the *Williams Packing* Exception"). This exception permits an aggrieved party to bring a pre-enforcement suit as long as the party proves that there is absolutely no possibility of the government achieving a favorable court decision and the party would suffer irreparable injury. *Id.* However, this exception is inapplicable in the present case because the claim brought forth by the Church does not fit within its confines. Therefore, the AIA bars the Church from bringing suit and further prevents the Church from establishing standing under the AIA.

If this Court finds that the AIA does not bar the Church's claim, the Church is still unable to bring forth the lawsuit because it lacks the essential standing requirements under Article III. The United States Constitution grants the judiciary the power to only hear those suits that present a live case or controversy. U.S. Const. art. III, § 2, cl. 1. This constitutional requirement for all suits, known as standing, is established through the elements of 1) an injury in fact that is 2) fairly traceable to the challenged action and 3) can be redressed by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To fulfill Article III standing, the party bringing suit must bear the burden of sufficiently establishing each of the three constitutional requirements. *Id.* However, in pre-enforcement cases where the injury in fact is not immediately apparent, a suing party may fulfill this requirement by demonstrating the intent to engage in a constitutional course of conduct, which is arguably regulated by the challenged policy, and has a substantial threat of enforcement. *See*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *Burnett Specialists v. Cowen*, 140 F.4th 686, 694–95 (5th Cir. 2025). In the present case, the only pre-enforcement requirement at issue is the substantial threat of enforcement. In accordance with the AIA and Article III, this Court should reverse the Fourteenth Circuit's holding because the Church is restraining the assessment and collection of tax and fails to satisfy the Article III requirements.

A. The AIA bars the Church's lawsuit because the Church is attempting to restrain the assessment and collection of taxes by filing suit to protect its 26 U.S.C. § 501(c)(3) classification.

This Court should find that the AIA bars the Church's lawsuit because the primary purpose of the Church's suit is to prevent the collection or assessment of taxes which is explicitly barred through the AIA's plain language. The AIA explicitly states, "*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. § 7421 (emphasis added). Further, there is no recorded legislative history to aid Courts in determining Congress's intent of this statute. *Bob Jones Univ.*, 416 U.S. at 738. However, courts interpret 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.*

When evaluating the merits of a potential violation, the court looks beyond the stated claims and into the potential consequences that could result. *See Bob Jones Univ.*, 416 U.S. at 738–39. In *Bob Jones University*, the Court held that despite omitting certain taxes in the complaint, the AIA barred the petitioner's suit seeking an injunction to maintain its § 501(c)(3) status because the petitioner would still be liable for paying FICA and FUTA taxes. *Id.* Once it is determined that the lawsuit's purpose is in violation of the AIA, the court must determine if the *William Packing* Exception applies. *Id.* at 737.

The *Williams Packing* Exception is the "capstone of judicial construction" of the AIA and distinctly ends the pattern of cyclical departures from the AIA's plain meaning. *See*, *United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 9–10 (1974); *Bob Jones Univ.*, 416 U.S. at 748. The "literal terms" of the AIA can only be avoided, and an injunction enforced, upon evidence of two factors: 1) under no circumstances can the government prevail, and 2) the appellee would suffer irreparable injury. *Bob Jones Univ.*, 416 U.S. at 737 (referencing *Williams Packing,* 370 U.S. at 5-7). The first prong is rarely satisfied because the government receives the most liberal interpretation of the law and facts available to the court at the time of the suit when determining its chance of prevailing. *Williams Packing,* 370 U.S. at 7 (holding to require more than "good faith" on the part of the government would unduly interfere with the AIA's objective). Additionally, irreparable injury alone is not enough to have the exception apply, rather both

elements must be met. *See, e.g.*, *Williams Packing,* 370 U.S. at 6 (stating "a suit may not be entertained merely because [tax] collection would cause an irreparable injury"); *Alexander v. Americans United Inc.*, 416 U.S. 752, 758 (1974) (finding that unless both conditions of the Williams Packing test are met, a suit for preventive injury relief must be dismissed); *Bob Jones Univ.*, 416 U.S. at 748-49 (holding AIA barred petitioner's claim because it did not sufficiently state that "under no circumstances could the Government ultimately prevail").

Here, the Fourteenth Circuit erred in holding that the AIA only bars suits where Congress has provided an alternative remedy. R. 6. The legislative history of the AIA is unclear, *Bob Jones Univ.,* 416 U.S. at 738, and the plain language of this Act does not explicitly state that the existence of an alternative remedy is required for the AIA to bar suit. 26 U.S.C. § 7421. If Congress intended the AIA to only apply in suits where there is already an established alternative remedy, then it would have surely included it within the language of the Act. *Williams Packing*, 370 U.S. at 6 (finding Congress would have "said so explicitly" if it desired to make injunctive remedy depend upon adequacy of a legal remedy). Rather, the Court should find that the AIA bars the Church's lawsuit because the AIA explicitly bars suits that are filed for the purpose of restraining or collecting taxes, 26 U.S.C. § 7421, and that is precisely the purpose of the Church's suit. R. 5. In applying the AIA to the Johnson Amendment, the Court must look at the consequences past the petitioner's requested relief. *Bob Jones Univ.*, 416 U.S. at 738–39. Similar to *Bob Jones*, where the primary purpose of the suit was to maintain the university's § 501(c)(3), 416 U.S. at 738-39, the Church's purpose for seeking an injunction stems from its concern of having its § 501(c)(3) status revoked thereby preventing the IRS from assessing and collecting taxes. R. 5, 12.

Furthermore, the IRS notified the Church of its selection for a random audit process. R. 5. Even though The Everlight Dominion has been established for centuries, it was not until the Church received this notice that it decided to bring forward a suit alleging that the Johnson Amendment is unconstitutional. R. 3, 5. Pastor Vale knew of the Johnson Amendment prior to the IRS audit notification and became concerned that the IRS would discover the Church's political involvement and revoke its classification. R. 5. Since the Church did not bring suit prior to receiving the audit notice, such conduct thereby proves that the primary purpose for this suit is to prevent the IRS from assessing the church's tax status as a non-profit organization. R. 5.

Additionally, the *Williams Packing* Exception will not apply because there is a strong argument in favor of the government finding that the Johnson Amendment is constitutional. R. 13. The Johnson Amendment was upheld against constitutional challenges in prior lawsuits. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 145 (D.C. Cir. 2000) (holding that the revocation of the church's § 501(c)(3) status after it posted newspaper ads opposing Clinton is constitutional); *Regan v. Taxn. With Representation of Washington*, 461 U.S. 540, 548 (1983) (finding no violation of TWR's constitutional rights by "declining to subsidize its First Amendment activities" through tax exemption). Additionally, the IRS acted in good faith when it randomly selected the Church for an audit as part of its standard procedures. R. 5. There is no evidence that the IRS maliciously targeted the Church because it practiced The Everlight Dominion. The Church also fails to establish an irreparable injury because there has been no attempted revocation of its § 501(c)(3) classification. R. 5. As a result, the Church fails to meet both elements of the *Williams Packing* Exception. This Court should hold that the AIA properly bars the Church's lawsuit because the Church is attempting to restrain the assessment or collection of

taxes by protecting its § 501(c)(3) classification, and the *Williams Packing* Exception does not apply.

B. The Church is without Article III standing to challenge the Johnson Amendment because it lacks a concrete injury-in-fact that is fairly traceable and redressable.

The Court should find that the Church does not fulfill the requirements of Article III standing and must dismiss the case because the Court lacks jurisdiction to hear suits that do not contain a live case or controversy. U.S. Const. art. III, § 2, cl. 1. Article III of the Constitution limits the Judiciary's power to hear only suits that present a live case and controversy. *Id.* As a part of this requirement, the Constitution requires that a litigant has standing to challenge the action brought forth in court. *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982). To satisfy Article III standing, at an "irreducible constitutional minimum," a plaintiff must establish 1) an injury in fact 2) that is fairly traceable to the challenged conduct, and 3) a favorable court decision is likely to redress the injury. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021). The party invoking federal jurisdiction bears the burden of establishing each element. *Lujan*, 504 U.S. at 561. Standing plays an important role in screening out cases where the plaintiffs only have a general legal, moral, ideological, or policy objection to particular government actions and not an active case or controversy. *Food and Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 368 (2024). This Court should reverse the Fourteenth Circuit's holding because the Church fails to establish the elements of injury in fact, causation, and redressability.

1. The Church fails to establish a particularized and concrete injury in fact as well as a substantial threat of future enforcement of the Johnson Amendment.

This Court should find that the Church fails to establish the first element of Article III standing, injury in fact, and has not presented evidence to constitute a pre-enforcement suit. The

Church lacks injury in fact under Article III, because i) the Church claims a constitutional violation without a concrete injury present and ii) there is not a substantial threat of the Johnson Amendment being enforced. The Church's injury in fact is merely speculative and predicated on a chimerical threat of enforcement. *Susan B. Anthony*, 573 U.S. at 164.

Under Article III, an injury in fact is one that is concrete and particularized as well as actual or imminent rather than conjectural or hypothetical. *Lujan*, 504 U.S. at 560. Under certain circumstances, the court has permitted pre-enforcement review despite no concrete injury when there is a sufficiently imminent threat of enforcement. *Susan B. Anthony*, 573 U.S. at 159; *see also 303 Creative LLC v. Elenis*, 600 U.S. 570, 581 (2023) (finding a credible threat of enforcing the Colorado Anti-Discrimination Act against petitioner's marriage website because petitioner established a record of past enforcements under the act). To have a sufficient injury in fact in a pre-enforcement suit, the plaintiff must demonstrate that they a) intend to engage in a course of conduct arguably affected with a constitutional issue, b) the conduct is arguably regulated by the challenged policy, and c) the threat of future enforcement is substantial. *Susan B. Anthony*, 573 U.S. at 159. In the current case, the only pre-enforcement element at issue is whether there is a substantial threat of enforcement. This Court should find that there is no injury in fact because the Church fails to demonstrate a concrete, personal injury, and there is no threat of enforcing the Johnson Amendment.

i. *The Church's injury in fact is conjectural and not concrete, particularized, or personal.*

This Court should find that the Church fails to establish injury in fact because the alleged injury is a conjectural and hypothetical constitutional violation rather than concrete and particularized. To satisfy the injury in fact requirement of Article III, the plaintiff must have suffered an invasion of a legally protected interest which is concrete and particularized and

"actual or imminent not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. In establishing concreteness, the injury must actually exist, and the analysis depends on whether the asserted harm has a "close relationship" to harm "traditionally" recognized as providing a case or controversy. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 414 (2021) (holding physical and monetary harms "readily qualify" as concrete while intangible harms like reputational harm are concrete in certain circumstances). An injury is particularized when it affects the plaintiff in a personal and individual way. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (holding that a personal distinct injury, not a generalized grievance, satisfies the particularized element of injury in fact). For an injury to be actual or imminent, the plaintiff must show that the injury has already occurred or is likely to occur soon. *Food and Drug*, 602 U.S. at 381. When an injunction is the only requested remedy, the plaintiff must establish a sufficient likelihood of future injury to satisfy standing requirements. *Id.*

A bare allegation of a constitutional violation, without more, is insufficient to satisfy the injury in fact requirement. *Valley Forge*, 454 U.S. at 485-86 (holding that a psychological consequence presumed to be produced by observations of disagreeable conduct is not an injury sufficient to confer standing under Article III despite it being a constitutional term). In *Valley Forge*, the Supreme Court made clear that a psychological offense, meaning an observation of allegedly unconstitutional government conduct which one disagrees with, does not constitute a concrete injury for purposes of standing and warned that the acceptance of such claims would eliminate the limits imposed by Article III. *Id.*

Here, there is no concreteness or actual or imminent injury. The Church is merely alleging that the Johnson Amendment violates the Constitution without offering any type of actual or realized injury. R. 5. While the Church may claim that it suffers a psychological

consequence because it is aware that the government has this provision, it has not proven anything more than an awareness of the provision and disagreement with its requirements. R. 5. Such suits relying solely on ideological beliefs and not concrete injuries are barred from federal courts because there is no live case or controversy. *Food and Drug*, 602 U.S. at 368. Additionally, the government is not excluding the Church or stigmatizing its beliefs in favor of different beliefs. R. 2. Rather, the Johnson Amendment is applied across all non-profit organizations equally. R. 2. This Court should find that the Church lacks standing because it alleges only an ideological or psychological disagreement with a neutrally applied law and not a concrete, particularized injury suffered from the Johnson Amendment.

ii. *There is no substantial threat of enforcing the Johnson Amendment because the IRS is merely giving notice of an audit and not revoking § 501(c)(3) classification.*

This Court should find that the Church does not have pre-enforcement standing to bring suit because it fails to prove that there is a substantial threat of enforcement of the Johnson Amendment. In proper circumstances, credible and immediate threats of enforcement can simultaneously ripen a pre-enforcement challenge and give the threatened party standing. *Navegar, Inc. v. U.S.*, 103 F.3d 994, 999 (D.C. Cir. 1997). There are three elements of pre-enforcement that a plaintiff must meet to satisfy the injury in fact requirement which are a) the intent of the party to engage in a course of conduct arguably affected with a constitutional interest, b) the conduct is arguably regulated by the challenged policy, and c) the threat of enforcement is substantial. *Susan B. Anthony*, 573 U.S. 149, 159 (2014); *Burnett Specialists*, 140 F.4th at 693. Without a satisfactory showing of each element, a claim is not ripe for adjudication because it would rest upon contingent future events that may not occur as anticipated or at all.

Urb. Developers LLC v. City of Jackson, Miss., 468 F.3d 281, 295 (5th Cir. 2006). In the present case, only the third element of substantial threat of enforcement is at issue.

Courts most frequently find the threat of enforcement substantial when the challenged statutes "chill" conduct protected by the First Amendment. *Burnett Specialists*, 140 F.4th at 693 (holding that the Staffing Companies who failed to provide evidence of enforcement of the Memorandum may establish injury in fact when a credible threat of a policy's enforcement chills their expressive speech or causes self-censorship). Another factor in determining whether there is a substantial threat of enforcement is the enforcing authority's willingness to disavow enforcement. *Peace Ranch, LLC v. Bonta,* 93 F.4th 482, 490 (9th Cir. 2024) (holding the disavowment or refusal to enforce a law serves as a basis to defeat pre-enforcement standing). Additionally, courts find that singling out or targeting specific parties may weigh in favor of pre-enforcement standing when another factor is present. *See Planned Parenthood Great N.W., Hawaii, Alaska, Indiana, Kentucky v. Labrador*, 122 F.4th 825, 838 (9th Cir. 2024) (holding an opinion letter that specifically singled out healthcare individuals performing abortions coupled with the Attorney General's failure to disavow enforcement constituted a substantial threat of enforcement).

Here, the Church's conduct was not "chilled" out of fear of the Johnson Amendment being enforced against them. Rather, the Church and Pastor Vale continued to be politically active through sermon podcasts and endorsing Congressman Davis. R. 5. Despite knowing of the limitations of the Johnson Amendment, Pastor Vale continued being politically involved. R. 4-5. Additionally, there is no indication that the Church plans to cease its involvement in political activities and campaigns. After the Church initiated this lawsuit in May 2024, Pastor Vale kept his plans to continue promoting political candidates through his podcast sermons in the following

months of October and November. R. 4. Pastor Vale expressed concerns that such actions placed the Church in violation of the Johnson Amendment, yet was not worried about the potential enforcement of the Amendment enough to self-censor or chill the Church's conduct. R. 4-5. Therefore, no credible or substantial threat of enforcement is present to satisfy the injury in fact requirement.

In terms of disavowment, the IRS gave a consent decree as part of a settlement that the Johnson Amendment will not be enforced against "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." *See* 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). Here, the Church was within this expressly disavowed exception to the Johnson Amendment and therefore illustrates that there is no substantial threat of enforcement. R. 4-5. Pastor Vale was giving weekly sermons through his podcasts which became one of his customary channels of communication on matters of faith. R. 4. During these sermons, Pastor Vale discussed electoral politics and how The Everlight Dominion values would align or misalign with such politics. R. 5. Since, Pastor Vale, through the Church, is staying within the confines of this exception and the IRS has expressly stated they will not enforce the Johnson Amendment against such practices, then the Church fails to establish a substantial threat of enforcement.

Additionally, the IRS conducts "random audits" of Section § 501(c)(3) organizations, and the Church was selected through this random process. R. 5. The Church was not specifically targeted like the organizations in *Planned Parenthood*, 122 F.4th at 838. Further, the IRS has entered a consent decree specifically stating that it will not enforce the Johnson Amendment

when a house of worship speaks to its congregation on political matters in connection with the religious services. R. 14. The fact that the Church was not specifically targeted and that the IRS has expressly disavowed enforcing the Johnson Amendment prove that there is not a substantial threat of enforcement against the Church. This Court should dismiss the case for lack of Article III standing because the Church fails to establish a concrete, particularized injury and a substantial threat of enforcing the Johnson Amendment.

2. The Church solely relies on a speculative chain of possibilities to connect the IRS's audit notice to the enforcement of the Johnson Amendment.

This Court should find that the Church fails to meet the Article III causation requirement because the Church relies upon a speculative chain of possibilities beginning with a hypothetical injury contingent on future events. Causation is satisfied when the injury is fairly traceable to the alleged actions of the defendant. *Balogh v. Lombardi*, 816 F.3d 536, 543 (8th Cir. 2016). It is well-established that when a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision. *Bronson v. Swensen*, 500 F.3d 1099, 1110 (10th Cir. 2007). However, relying on a speculative chain of possibilities upon a mere claim of a possible future injury is not sufficient to satisfy this element. *Clapper v. Amnesty Intl. USA,* 568 U.S. 398, 409 (2013). When the lawsuit is at the summary judgment stage, the party invoking federal jurisdiction can no longer rest on "mere allegation" but must establish, by affidavit or other specific facts, evidence to meet Article III standing. *Lujan*, 504 U.S. at 560.

The element of causation is closely linked to the requirement of injury. To meet the requirement of injury in fact, the alleged injury must be certainly impending. *Clapper*, 568 U.S. at 409. In applying this definition, the court in *Clapper* stated that the respondents could not meet the traceability requirement because they attempted to argue that there was an "objectively

reasonable likelihood" that their communications would be intercepted under the statute at some point in the future. *Id.* at 410. The Court held that the "objectively reasonable likelihood" is inconsistent with its requirement that "threatened injury must be certainly impending to constitute injury in fact." *Id.* Furthermore, the Court stated that the respondent's theory of traceability relies on a "highly attenuated chain of possibilities, which fail to meet the standard that threatened injury is certainly impending." *Id.* (holding that the chain of contingencies amounts to mere speculation regarding the likelihood of the injury and that the act caused the injury).

Here, the Church's argument for traceability rests on mere contingencies and future events. While the Church properly sued the Commissioner of the IRS, R. 1, it fails to establish not only a certain and impending injury, but also one that can be traced to the Johnson Amendment. In fact, the IRS has merely issued a notice for a random audit and has not taken any active steps in enforcing the Johnson Amendment or revoking the Church's § 501(c)(3) classification. R. 5. The Church is attempting to make an argument that the alleged injury can be traced back to the Johnson Amendment once a string of future and contingent events occur. However, as established in *Clapper,* this chain of alleged contingencies set forth by the Church amounts to mere speculation and is too attenuated to establish traceability. 568 U.S. at 410. Similar to the Court in *Clapper*, this Court should find that Church has not met the traceability requirement because the chain of possibilities connecting the alleged and hypothetical injury to the Johnson Amendment is too speculative. The Church's dependency on a hypothetical chain of future events occurring is not enough to establish causation. This Court should find that the Church fails to meet the traceability requirement of Article III because it relies solely on a

speculative chain of future possibilities and cannot establish a certainly impending injury traceable to the Johnson Amendment.

3. The Court cannot redress an injury contingent on hypothetical events.

This Court must find that the Church fails to satisfy the final element of Article III standing, redressability, because there is no concrete or impending injury a favorable court decision would redress. To satisfy the redressability requirement, the plaintiff must prove that it is likely as opposed to merely speculative, that the injury will be redressed by a favorable court decision. *Lujan*, 504 U.S. at 560. If a party lacks standing to seek injunctive relief because it fails to show that it or any of its members sustains an injury in fact, then there is nothing the court could redress. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 181 (2000).

Here, the Church fails to meet the redressability requirement of Article III because it fails to establish an injury in fact that can adequately be addressed by a favorable court order. The Church seeks a permanent injunction prohibiting the IRS from enforcing the Johnson Amendment. R. 5. The Church argues that the Johnson Amendment is unconstitutional because it violates the Establishment Clause. R. 5. However, the Church does not state a particularized or concrete injury that the granting of this injunction would redress. R. 5. The Church currently maintains its § 501(c)(3) classification, and there is no active threat of enforcing the Johnson Amendment that may otherwise cause injury because the IRS merely sent notice for an audit. R. 5. Even if the Court grants the permanent injunction and prohibits enforcement of the Johnson Amendment, the Church's tax status would remain unchanged, and the court order would be futile. Therefore, there is no active case or controversy that the Court would be able to redress by ruling in favor of the Church and granting the injunction. The Court should hold that the Church

fails to meet the requirements of standing and therefore must dismiss the case because the Court does not have jurisdiction to hear it.

II. This Court should find that the Johnson Amendment is a constitutional practice of the Establishment Clause because it is not discriminatory, aligns with the Clause's historical practices and understandings, and maintains a separation between church and state.

This Court must reverse the Fourteenth Circuit's holding and find the Johnson Amendment a constitutional practice of the First Amendment because: (A) the Johnson Amendment is not discriminatory and is closely fitted to furthering a compelling governmental interest, (B) the historical practices and understanding of the Establishment Clause show the Johnson Amendment is not in violation, and (C) the Johnson Amendment does not transgress the power of the state onto the duties of the church.

Under the Johnson Amendment, organizations described in section § 501(c)(3) are exempt from taxation as long as they do not "participate in, or intervene in (including 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). In obtaining class § 501(c)(3) certification, taxpayer contributions and donations to such organizations are deductible. *Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000). However, a § 501(c)(3) organization, religious or non-religious, violates the Johnson Amendment if any contributions to political campaign funds or public statements made on behalf of the organization are made in opposition or in favor of a candidate. *Citizens Union of City of New York v. Atty. Gen. of New York*, 408 F. Supp. 3d 478, 483 (S.D.N.Y. 2019).

In assessing tax exemptions to religious and non-religious organizations, the Johnson Amendment is held to the principles of the First Amendment. The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of

religion." U.S. Const. amend. I. The First Amendment subjects any governmental action that results in a denominational preference to a standard of strict scrutiny and requires neutrality between religions. *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 241 (2025). If a law is determined to be discriminatory, then the government bears the burden of showing that the law in question is "closely fitted to further a compelling governmental interest" and is not in violation of the Establishment Clause. *Cath. Charities Bureau*, 605 U.S. at 248.

However, if the law is not discriminatory or it overcomes the strict scrutiny analysis, then this Court analyzes constitutionality by referencing the historical practices and understandings of the Establishment Clause. *See Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 576 (2014); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). Benevolent neutrality and avoiding coercive practices are key indicators of whether a law aligns with the historical practices and understandings of the Establishment Clause. *See Epperson v. Arkansas* , 393 U.S. 97, 104 (1968); *Kennedy*, 597 U.S. 507 at 537.. The prohibition of coercing a denominational preference set forth by the Establishment cause is interconnected with the continuing vitality of the First Amendment's Free Exercise Clause. *See Kennedy*, 597 U.S. at 536-37. The historical practices and understandings of the Establishment Clause must align closely with the view of the Founding Fathers. *Sch. Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 294 (1963) (Concurring Justice Brennan); *see also Town of Greece*, 572 U.S. at 577 (stating "any test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change").

The First Amendment does not include any language that blatantly says that the Church and State must be separate and distinct in every and all respects. *Walz v. Tax Comm'n of City of*

New York, 397 U.S. 664, 669 (1970). In any respects, there is no perfect or absolute separation or division between the church and state. *Id.* at 670. Instead, the Establishment Clause and Free Exercise Clause of the First Amendment are put in place to mark the clear boundaries that the church and state must abide by to avoid excessive entanglement. *Id.* This Court should find that the Johnson Amendment is constitutional because it equally governs all § 501(c)(3) organizations without favoring religious sects or restricting constitutional rights and maintains the appropriate division between church and state.

A. Strict scrutiny does not apply because the Johnson Amendment is neither facially discriminatory nor possesses a discriminatory effect towards any religious denomination.

This Court should find that an analysis of strict scrutiny for the Johnson Amendment is unnecessary because strict scrutiny is only needed when a governmental action is discriminatory toward specific religious denominations. Rather, the Johnson Amendment applies its requirements to all organizations categorized under § 501(c)(3), no matter their principles or religious beliefs. 26 U.S.C. § 501(c)(3). However, in the unlikely event that this Court finds the Johnson Amendment to be discriminatory, the Amendment meets the standard of strict scrutiny because it is narrowly tailored to compel a strong government interest. The Johnson Amendment protects the integrity of non-profit organizations and political campaigns by not allowing government funds to fuel campaigns, and thus meets the burden required of strict scrutiny. *See Regan v. Taxn. With Representation of Washington*, 461 U.S. 540, 550 (1983).

The First Amendment of the Constitution lays the foundation that "Congress shall make no law respecting the establishment of a religion." U.S. Const. amend I. The initial step in an Establishment Clause analysis is to determine whether a governmental action may result in the establishment of a denominational preference or is discriminating against religions. *Hernandez v. C.I.R., 490 U.S.* 490 U.S. 680, 695 (1989). If the law is facially differential to religions, it will

likely be found in violation of the Establishment clause. *See, e.g., Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017) (holding the exclusion of Trinity Lutheran from a public benefit program solely because it is a church despite otherwise qualifying for the program violates the Establishment Clause). A governmental action or law is classified as discriminatory if it differentiates between religions along theological lines. *Cath. Charities Bureau*, 605 U.S. at 248. Discrimination along theological lines may consist of a preference for certain religions based on the content of their religion, how they worship, hold services, or participate in these practices at all. *Id.* at 248-49. When a law discriminates among religions in such a way, it must satisfy the highest level of judicial scrutiny. *Id.* at 254. The government overcomes this scrutiny when it proves that the law does not discriminate against certain religions or is closely fitted to further a compelling government interest. *Id.* However, if there is no such denominational discrimination, the law must be analyzed in line with the historical practices and understandings of the Establishment Clause, and the standard of strict scrutiny ceases to apply. *See Hernandez, 490 U.S.* 490 U.S. 680 at 695 (holding that if no facial discrimination exists, courts should proceed to apply the *Lemon* test); *Kennedy*, 597 U.S. at 535 (overruling the *Lemon* Test analysis and replacing it with historical practices and understanding analysis).

Here, a strict scrutiny analysis for the Johnson Amendment is unnecessary because the Amendment is not discriminatory in its language or effect. R. 2; 26 U.S.C. § 501(c)(3). The Johnson Amendment's requirements apply to all organizations categorized under § 501(c)(3), no matter their principles or religious beliefs. 26 U.S.C. § 501(c)(3). Moreover, the language of the Johnson Amendment contains no explicit or deliberate distinctions between different religious denominations, but instead indicates that it is applicable and enforced against all religious

entities. R. 2; *see also Hernandez*, 490 U.S. at 695-96 (finding that the statute survived strict scrutiny because it did not make any "explicit and deliberate distinctions between different religious organizations").

In the alternative, if the Court finds that the Johnson Amendment is discriminatory, the Amendment overcomes the strict scrutiny analysis because it is narrowly tailored to furthering a compelling government interest. When implementing a law or statute, Congress must create regulations that protect the general welfare and, in many instances, are completely separate from religious considerations. *McGowan v. State of Md.*, 366 U.S. 420, 442 (1961). The Johnson Amendment protects the general welfare by preventing taxpayer dollars from subsidizing § 501(c)(3) organizations that pursue activities normally associated with political action committees rather than non-profits. *See Regan*, 461 U.S. at 550 (holding that "it is not irrational for Congress to decide that tax exempt charities such as TWR should not further benefit at the expense of taxpayers at large by obtaining a further subsidy for lobbying"). By restricting the ability of religious and non-religious non-profit organizations from endorsing or opposing political candidates, the Johnson Amendment functions as a safeguard to ensure that these § 501(c)(3) organizations are not undermining the political election and campaigning process. Moreover, in refusing to grant tax exemptions to any § 501(c)(3) organization that violates the Johnson Amendment, the federal government is ensuring that in effect non-profit proceeds, which would otherwise be taxable income, will not be used to support or oppose a political candidate. The Johnson Amendment furthers the government's interest in ensuring fair political elections by narrowly tailoring the restrictions to non-profit organizations and therefore overcomes strict scrutiny.

B. The Johnson Amendment does not violate the Establishment Clause as shown by its historical practices and understandings.

This Court must reverse the Fourteenth Circuit's holding and find the Johnson Amendment is a constitutional practice of the Establishment Clause as shown by its historical practices and understandings because: (1) the Johnson Amendment's grant of tax exemptions is deemed a permissible and benevolently neutral action and (2) the Johnson Amendment is not coercive in requiring all non-profit organizations to adhere to the language of 26 U.S.C. § 501(c)(3).

Since the Johnson Amendment does not facially discriminate nor apply a discriminatory effect towards any specific religious denomination, the constitutional analysis of the Amendment rests upon the historical practices and understandings of the Establishment Clause. *See, e.g.*, *Town of Greece*, 572 U.S. at 576 (analyzing the case using the historical practices and understanding of the Establishment Clause rather than the three-pronged *Lemon* Test); *Kennedy*, 597 U.S. at 535 (stating that "in place of *Lemon* and the endorsement test, this Court has instructed that The Establishment Clause must be interpreted by 'reference to historical practices and understanding.'"). In understanding the historical practices of the Establishment Clause and creating a distinction between what is permissible and impermissible under the First Amendment, the analysis must align with and reflect the findings of the Founding Fathers. *Sch. Dist. of Abington*, 374 U.S. at 294 (Concurring Justice Brennan).

By remaining benevolently neutral and not coercing a religious denomination to adopt specific principles, the Johnson Amendment remains in line with the intent of the framers of the First Amendment and is therefore constitutional. *See, e.g.*, *Epperson*, 393 U.S. at 104 (finding the First Amendment mandates governmental neutrality in applying laws to religious and non-religious organizations); *Kennedy*, 597 U.S. at 537 (finding coercion was among the "foremost

hallmarks of religious establishments" the framers sought to prohibit when adopting the First Amendment). Therefore, the Johnson Amendment is a benevolently neutral governmental action that does not coerce religious denominations to adhere to specific principles.

1. The historical practices and understandings of the Establishment Clause show that the Johnson Amendment's grants of tax exemption to religious and non-religious organizations are permissible because of its benevolent neutrality.

This Court should hold that the Johnson Amendment is constitutional because the Amendment is benevolently neutral in that it applies to all non-profit organizations regardless of religious denomination or status. In prohibiting the government from officially establishing a religion, the First Amendment further sets forth a policy of neutrality which states that individuals must have freedom to practice their religion of choice. *See* U.S. Const. amend I; *Walz*, 397 U.S. at 669 (holding such policy is set forth in the Establishment clause and also derived from accommodations within the Free Exercise Clause). This policy ensures that there is no overwhelming weight towards government control or restraint over specific religious denominations or churches. *Walz*, 397 U.S. at 670.

While the First Amendment establishes zero tolerance for governmental establishment of religion, there is still room for the government to operate with "benevolent neutrality" without restricting or limiting religious activities. *See, e.g.*, *Everson v. Bd. of Ed. of Ewing Tp.*, 330 U.S. 1, 18 (1947) (holding that the First Amendment requires the state to be neutral in relation to religious and non-religious groups, not to be their adversary); *Walz*, 397 U.S. at 669 (finding that there is still room for the government to act with "benevolent neutrality" while permitting religious exercise to exist); *Hernandez*, 490 U.S. at 695 (finding that the Act was constitutional because its disallowance of certain payments to the church as charitable deductions did not differentiate among sects).

A tax exemption that maintains a neutral stance and is designed with the purpose to provide aid, does not constitute a violation of religion that is forbidden by the Establishment Clause. *Marker v. Shultz*, 485 F.2d 1003, 1006 (D.C. Cir. 1973); *see also Branch Ministries*, 211 F.3d at 144 (reasoning that the restrictions imposed by § 501(c)(3) are viewpoint neutral and prohibit political intervention for all tax-exempt organizations regardless of viewpoint). Furthermore, by simply granting or denying tax exemptions, the IRS does not show favoritism or preference to a religious denomination because the agency is not conveying revenue to a church. *See, e.g.*, *Walz*, 397 U.S. at 675 (finding that in granting tax exemptions to § 501(c)(3) organizations, the IRS is not transferring revenue or supporting specific non-profit organizations).

Here, the Johnson Amendment applies to all § 501(c)(3) organizations, both religious and non-religious equally. R. 2. The Amendment prohibits all § 501(c)(3) organizations from intervening or participating in political campaigns. R. 1. Nowhere in the language of the rule does it make any distinction that only specific religious organizations or denominations are subjected to refrain from participation in political campaigns to be eligible for tax exemption. R. 2. Instead, the Johnson Amendment contains clear language that mandates all non-profit organizations to not "participate in,or intervene in (including the publishing or distributing statements), any political campaign on behalf of (or in opposition to) any candidate for public office." R. 2. This explicitly defeats and contradicts the Church's argument that the IRS favors some religions over others by denying tax exemptions to organizations whose religious beliefs compel them to speak on political issues. R. 9. Therefore, the Johnson Amendment is permissible and applies equally to all § 501(c)(3) organizations as shown by the historical practices and understanding of the Establishment Clause.

2. The Johnson Amendment is not coercive when assessed with reference to the historical practices and understandings of the Establishment Clause.

This Court should find that the Johnson Amendment is not coercing religious organizations, but rather is simply stating that it will not fund, by way of tax-exemptions, a non-profit organization's political endorsements. It is a fundamental essence of the First Amendment that the government may not coerce its citizens to support or participate in any specific religious denomination or religious practices. *New Doe Child #1 v. U.S.*, 901 F.3d 1015, 1023 (8th Cir. 2018). The focus of coercion within the historical practices and understandings of the Establishment Clause calls attention to what conduct has long been prohibited under the First Amendment. *Id.*; *see, e.g., Lee v. Weisman*, 505 U.S. 577, 587 (1992) (finding that at a minimum, the Constitution does not allow the government to coerce anyone to support or participate in religion or a specific religious exercise); *Kennedy*, 597 U.S. at 537 (holding that government coercion which forces citizens to engage in formal religious exercise was among the "foremost hallmarks" that the drafters of the First Amendment sought to prohibit). Governmental acts which limit and restrict people's constitutional right to practice religion of their choice have been deemed coercive under the Establishment Clause. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (finding that governmental actions that force individuals to attend church, observe a religious holiday, or take to religious instructions were coercive).

However, in *Maher v. Roe*, the Court made clear that there is a difference between direct state interference with an activity and state encouragement of an alternative activity that is consistent with legislative policy. 432 U.S. 464, 475 (1977). Nowhere in the text of the First Amendment does it convey language that Congress must grant a benefit to an individual for exercising their constitutional right in order to comply with the Establishment and Free Exercise clause. *See*, *Regan*, 461 U.S. at 545 (finding that "the First Amendment's guarantee of free

exercise does not require the government to subsidize an individual's exercise" of a constitutional right).

Here, the Johnson Amendment is not coercing or forcing religious organizations to abandon their constitutional rights. There is a strong difference between the type of conduct that the Johnson Amendment encourages and that of direct government regulation and establishment of religion. The Amendment does not force individuals to attend church or engage in specific religious practices. Rather, the Johnson Amendment merely encourages religious and non-religious organizations to refrain from endorsing or opposing political candidates. R. 2. Similar to *Regan,* where the Court held that the First Amendment does not require the government to subsidize political lobbying, 461 U.S. at 545, this Court should find that the Johnson Amendment is constitutional because it limits tax exemptions from being used to fund political campaigns without coercing a religious practice. R. 2. By not granting tax exemption to the Covenant Truth Church for exercising its constitutional rights, the Johnson Amendment is not coercing the Church to partake in a different religious custom. Therefore, the Johnson Amendment is a constitutional practice of the Establishment Clause and is not coercive as shown by the Clause's historical practices and understanding.

C. The Johnson Amendment is a constitutional practice of the Establishment Clause because the state's power does not transgress upon the duties of the church.

This Court should find that the Johnson Amendment is a constitutional government action which functions separately from the duties of the church and does not establish a religion in violation of the Establishment Clause. A tax exemption given by the government to a church generates minimal involvement between the church and state and is far less of an intrusion into the duties of the church than taxation is. *See Walz*, 397 U.S. at 676; *see also Cath. Charities Bureau*, 605 U.S. at 246 (finding that the tax exemption did not transgress on the church's

independent principles because the exemption "neither regulates internal church governance nor mandates any activity"). In contrast to excessive entanglement, a tax exemption reinforces the heavily coveted separation between the church and state. *Walz*, 397 U.S. at 676. The Court in *Walz* further emphasized the constitutionality of the tax exemption granted by the Johnson Amendment in relation to the Establishment Clause by reasoning that there is "no genuine nexus between [a] tax exemption and [the] establishment of religion." *Id.* at 675; *see, e.g., United States v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981) (holding the determination of a tax exemption does not implicate the establishment of religion).

Here, if the Johnson Amendment was deemed to transgress with the duties of the church or with the Religion Clauses of the First Amendment, then Congress would have surely eliminated it when the legislature was presented with numerous opportunities to do so. R. 3. Moreover, Congress also had a plethora of opportunities to create exceptions that would allow religious organizations and churches to actively participate in political campaigns while still remaining tax-exempt as a § 501(c)(3) organization, yet no such exceptions were created. R. 3. Since 2017, legislators have annually introduced the idea of either elimination or alteration of the Johnson Amendment, but Congress remains steadfast in preserving the explicit language and original intent of 26 U.S.C. § 501(c)(3). R. 3. This preservation, despite the controversy surrounding the Johnson Amendment, illustrates Congress's continued confidence in the Amendment's ability to function effectively, while maintaining the distinct separation between church and state. R. 2-3. The IRS's implementation of the Johnson Amendment continues to follow the viewpoint established in *Walz*, that there is no genuine connection between tax exemptions and the establishment of religion. 397 U.S. at 675. Furthermore, if the Johnson Amendment were eliminated and the taxation of churches was permissible, it would create far

more government involvement in the affairs of the church than awarding tax exemptions under § 501(c)(3). *Id.* at 676. Therefore, the Johnson Amendment is a constitutional practice because it does not establish a religion and maintains a separation of church and state. This Court should reject the Fourteenth Circuit's erroneous holding and find that the Johnson Amendment is constitutional practice of the Establishment Clause.

CONCLUSION

For all the foregoing reasons, this Court should reverse the Fourteenth Circuit's erroneous holding that the Church has standing under the AIA and Article III. Additionally, this Court should reverse the Fourteenth Circuit's holding that the Johnson Amendment is unconstitutional.

Respectfully Submitted,

/s/ Team 13

Team 13
Counsel for Petitioner
January 18, 2026

APPENDIX

United States Code

26 U.S.C.§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation. An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(c) List of exempt organizations. The following organizations are referred to in subsection (a):

[Redacted § 1-2]

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures 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 (except as otherwise provided in subsection (h)), 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.

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax. Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, 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.

(b) Liability of transferee or fiduciary. No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of–

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code, in respect of any such tax.