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 PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPELAS FOR THE FOURTEENTH CIRCUIT

BREIF FOR THE RESPONENT

Team 14

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QUESTIONS PRESENTED

1. Does Covenant Truth Church have standing to challenge the constitutionality of the Johnson Amendment under the Tax Anti-Injunction Act and Article III of the Constitution?

2. Does the Johnson Amendment violate the Establishment Clause of the First Amendment?

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants in the court of appeals) are Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service; and the Internal Revenue Service.

Respondent (plaintiff-appellee in the court of appeals) is Covenant Truth Church.

OPINIONS BELOW

The opinion of the Fourteenth Circuit Court of Appeals affirming summary judgment in favor of Covenant Truth Church is reported at 345 F.4th 1. The opinion of the district court granting summary judgement in favor of Covenant Truth Church is unpublished (USDC No. 5:23-cv-7997).

JURISDICTIONAL STATMENT

The judgment of the court of appeals was entered on August 1, 2025. The petition for a writ of certiorari was filed after the judgment was entered and was granted on November 1, 2025. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment reads: "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.

The Johnson Amendment and 26 U.S.C. § 501(c)(3), read in full:

> 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.

28 U.S.C. § 501(c)(3).

The Tax Anti-Injunction Act, 26 U.S.C. § 7421 reads:

> (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.

26 U.S.C. § 7421.

STATEMENT OF THE CASE

A. Statutory Background

While "[t]he primary objective of tax provisions is to raise revenue . . . the Internal Revenue Code is replete with provisions that are intended to encourage certain economic or social behavior." Patricia A. Cain, *DOMA and the Internal Revenue Code*, 84 CHI.-KENT L. REV. 481, 498 (2009). For this reason, the Internal Revenue Code strikes a careful balance of regulations determining different forms of taxes, tax liabilities, and procedures for assessing and challenging taxes. *See generally* 26 U.S.C. § 1 *et seq.*

One such example of this delicate system falls within 26 U.S.C. § 501(c), which provides dispensations for organizations engaged in certain kinds of activities from paying taxes. *See* 26 U.S.C. § 501(c). One such dispensation includes organizations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." *Id.* § 501(c)(3). However, organizations falling within § 501(c)(3)'s umbrella face limitations on what they may do. One notable limitation, called the Johnson Amendment, prohibits 501(c)(3) organizations from "participat[ing] in, or interven[ing] in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. *Id.* Though seemingly uncontentious at the time, in recent decades, the Johnson Amendment has been fiercely debated, with many arguing the provision "limits the free speech and free exercise rights of religious leaders in violation of the First Amendment." *See* Mark. A. Goldfeder & Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEM. L. REV. 209, 211, 216 (2017). While some argue the provision supports the separation of church and state, it's unclear exactly why it was adopted. *Id.*

The rationale behind other provisions of the Internal Revenue Code, however, is clearer. Another example falls within 26 U.S.C. § 7421, often called the Tax Anti-Injunction Act (TAIA). *See generally* 26 U.S.C. § 7421. The TAIA prevents "suit[s brought] for the purpose of restraining the assessment or collection of any tax [from being] maintained in any court by any person." *Id.* Essentially, in pursuit of the goal of raising revenue, the TAIA requires individuals to pay their taxes before they may bring suit to dispute them. *Id.*

B. Statement of Facts

Since 2018, the State of Wythe has born witness to the significant growth of The Everlight Dominion faith within the state. *See Bessent v. Covenant Truth Church*, 345 F.4th 1, 4 (14th Cir. 2025). The Everlight Dominion is a centuries-old religion that embraces progressive social values. *Id.* at 3. As part of its beliefs, it requires leaders and churches to "participate in political campaigns and support candidates that align with The Everlight Dominion's progressive stances." *Id.* Though historically the number of the faith's practitioners was relatively small, in recent years, the faith has experienced rapid growth. *Id.*

This is in part due to Pastor Gideon Vale and the Covenant Truth Church. *Id.* Based in Wythe, the Covenant Truth Church is a 501(c)(3) non-profit organization that has grown by thousands in the last decade. *Id.* at 4. Since 2018, Pastor Vale has sought to connect with young people to grow the faith, taking several steps to reach out to this demographic, including creating a weekly podcast delivering sermons and discussing the faith. *Id.* at 3-4. Today, the podcast is the fourth-most popular podcast in Wythe, and the nineteenth-most popular podcast nationwide. *Id.* at 4.

As part of the podcast, Pastor Vale has recently begun to discuss political issues, as The Everlight Dominion's faith requires. *Id.* Specifically, since January 2024, Pastor Vale has spoken

extensively about an upcoming election for Senate in Wythe. *Id.* In one episode of the podcast, Pastor Vale endorsed Congressman Samuel Davis, a candidate running in the Senate election, on behalf of Covenant Truth Church. *Id.* Since then, Pastor Vale has encouraged listeners to support Congressman Davis's campaign and has planned a series of sermons discussing how the Congressman aligns with the teachings of The Everlight Dominion. *Id.*

In May 2024, the Internal Revenue Service (IRS) informed Pastor Vale and Covenant Truth Church that it was selected for a random audit to ensure that Covenant Truth Church was in compliance with 26 U.S.C. § 501(c)(3)'s dictates. *Id.* at 5. Upon this information, Pastor Vale immediately was concerned that the IRS would revoke Covenant Truth Church's 501(c)(3) status because of its political actions in violation of the Johnson Amendment. *Id.*

C. Procedural History

On May 15, 2024, Covenant Truth Church filed a pre-enforcement action seeking a permanent injunction of the Johnson Amendment, claiming it violated the Establishment Clause of the First Amendment. *Id.* Following briefing, the United States District Court for the District of Wythe granted summary judgment to Covenant Truth Church and entered a permanent injunction, holding that Covenant Truth Church had standing to challenge the Johnson Amendment and that the Johnson Amendment violated the Establishment Clause. *Id.* at 5-6. Scott Bessent, in his official capacity as Acting Commissioner of the IRS, and the IRS appealed to the United States Court of Appeals for the Fourteenth Circuit. *Id.* at 6. On August 1, 2025, the Fourteenth Circuit affirmed the holding of the district court. *Id.* at 11. Bessent and the IRS now appeal to the United States Supreme Court. *Id.* at 17.

D. Standard of Review

Summary judgment is proper only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). On appeal, courts review a district court's grant of summary judgment *de novo*, drawing all justifiable inferences in favor of the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "[t]he decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion." *EBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

SUMMARY OF THE ARGUMENT

Covenant Truth Church has standing to challenge the constitutionality of the Johnson Amendment under both the TAIA and Article III. Though ordinarily the TAIA bars lawsuits "for the purpose of restraining the assessment or collection of any tax," this Court has created exceptions to this rule. *See* 26 U.S.C. § 7421(a); *see, e.g.*, *South Carolina v. Regan*, 465 U.S. 367, 373 (1984); *CIC Servs., LLC v. IRS*, 539 U.S. 209, 226 (2021). Specifically, when no other means exist to challenge a tax provision or assessment, or when the suit is not for the sole purpose of preventing the collection of taxes, parties may properly bring a lawsuit. *See Regan*, 465 U.S. at 373; *CIC Servs., LLC*, 539 U.S. at 226.

Covenant Truth Church has no other means for challenging the Johnson Amendment and the suit is not for the purpose of preventing the assessment or collection of taxes. Covenant Truth Church need not wait until it is injured by the IRS's actions to challenge the legality of the Johnson Amendment. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007). Nonetheless, because the IRS has not yet determined Covenant Truth Church's tax status or enforced a tax against it, Covenant Truth Church can not file a refund suit or seek an

administrative appeal within the IRS, eliminating all other potentially available means for challenging the Johnson Amendment. *See Bessent*, 345 F.4th at 5. Further, Covenant Truth Church's intent behind its lawsuit is to challenge the legality of the Johnson Amendment under the Establishment Clause, not to prevent the organization from being taxed or the IRS from collecting taxes. *Id.* While this may incidentally affect the organization's tax liability, this is "'too attenuated a chain of connection' between an upstream duty and a 'downstream tax,'" to bar the suit under the TAIA. *CIC Servs., LLC*, 593 U.S. at 221 (citations omitted).

Regarding Article III standing, Covenant Truth Church is permitted to bring its pre-enforcement suit as it "(1) has an 'intention to engage in a course of conduct arguably affected with a constitutional interest,' (2) [its] intended future conduct is 'arguably . . . proscribed by [the law in question],' and (3) 'the threat of future enforcement of the [challenged policies] is substantial.'" *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2024) (all but first alterations in original) (quoting *Susan B. Anthony List*, 573 U.S. 149, 161-64 (2014)). By seeking to provide support to Congressman Samuel Davis's campaign, as required by its religion, *Bessent*, 345 F.4th at 3, Covenant Truth Church's planned actions affect constitutional interests and are likely prohibited by the Johnson Amendment. This, combined with the substantial likelihood that the Johnson Amendment will be enforced against Covenant Truth Church, creates a sufficiently ripe injury that provides the basis for the suit. *See Speech First, Inc.*, 979 F.3d at 330. Further, because this injury is immediately traceable to the IRS's audit and because a court can easily redress the injury by enjoining enforcement of the Johnson Amendment, Covenant Truth Church has Article III standing to bring suit.

Finally, Covenant Truth Church must succeed on the merits of its challenge as the Johnson Amendment violates the Establishment Clause of the First Amendment. The

Establishment Clause must be understood in light of historical practices and the Founders' understandings of the meaning of the Clause. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022). One clear understanding is that the Establishment Clause prevents the government from displaying preferences with regard to religion and prohibits it from intermingling in the internal actions of religious organizations. *See Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp. Opportunity Comm'n.*, 565 U.S. 171, 189 (2012). If it does so, the government's actions must survive strict scrutiny review. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248, 253 (2025). By prohibiting 501(c)(3) organizations from involving themselves in political life, the Johnson Amendment displays preferential treatment to certain religious denominations based on their ideology and to non-religion generally. In doing so for reasons that are not compelling and through means that are not narrowly tailored, the Johnson Amendment fails strict scrutiny review and violates the Establishment Clause of the First Amendment.

ARGUMENT

I. Covenant Truth Church has standing under the TAIA and Article III to challenge the Johnson Amendment.

The Fourteenth Circuit should be affirmed because neither the TAIA nor Article III of the Constitution bar Respondent's suit. The TAIA stipulates that "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(a). In this way, the TAIA imposes "an especially harsh regime on § 501(c)(3) organizations threatened with loss of tax-exempt status" by largely preventing organizations from challenging the revocation of status until after it occurs. *See Bob Jones Univ. v. Simon*, 416

U.S. 725, 749 (1974). For this reason, this Court has recognized exceptions to the TAIA, including when no alternative "legal avenue by which to contest the legality of a particular tax" exists, *Regan*, 465 U.S. at 373, and when the suit is not brought for the purpose of restraining the assessment or collection of any tax. *See CIC Servs., LLC*, 539 U.S. at 226.

Respondent qualifies under both exceptions as the only avenue to challenge the constitutionality of the Johnson Amendment is through a suit for injunctive relief, and because Respondent seeks a ruling on constitutionality, not a limitation on tax liability. *Bessent*, 345 F.4th at 5. Further, because Respondent faces imminent injury in the form of being forced to choose between practicing its religion and losing tax-exempt status, it satisfies the standard for Article III standing.

A. The TAIA does not bar Covenant Truth Church's suit.

Covenant Truth Church's suit is not barred by the TAIA because it lacks an alternative means for challenging the Johnson Amendment's constitutionality and it has not brought its suit for tax related purposes. Challenges to tax decisions require "extraordinary and exceptional circumstances . . . to make the provisions of the [TAIA] inapplicable." *Bailey v. George*, 259 U.S. 16, 20 (1922). Here, such circumstances exist because Covenant Truth Church lacks an alternative avenue to challenge the Johnson Amendment as both a tax refund suit and administrative appeal are unavailable. Further, because this suit is brought for the purpose of a constitutional challenge, not simply to impede on the government's collection of taxes, exceptional circumstances exist. *See, e.g.*, *Bob Jones Univ.*, 416 U.S. at 732. For these reasons, this Court should permit the Respondent's suit.

1. Covenant Truth Church does not have any available alternative means to challenge the Johnson Amendment.

Respondent's suit is permissible under the TAIA because Covenant Truth Church does not have other methods of obtaining judicial review. This Court created the "no alternative means" exception to the TAIA in *South Carolina v. Regan*. *See generally* 465 U.S. 367 (1984). *Regan* involved a statute categorizing government-issued bonds as either "registration-required obligations" or their now avoided counterparts, bearer bonds. *See id*. at 371. In doing so, the statute imposed tax liability on bearer bonds, which were previously untaxed. *Id.* South Carolina, which issued bonds, argued that the imposition of the bearer bond tax effectively eliminated the market for bearer bonds, impeding its ability to choose which obligations to issue and thus, the state's rights under the Tenth Amendment. *See id.* at 371-72. Considering South Carolina's standing to bring suit under the TAIA, the Court noted that because bondholders would be liable for taxes on bond interest under the statutory scheme while the state itself would not incur tax liability, South Carolina would ordinarily have no process by which it could contest the constitutionality of the statute. *See id.* at 379-80. For this reason, the Court created an exception, holding that "the circumstances of [the TAIA's] enactment indicate that Congress did not intend [the TAIA] to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *Id.* at 378.

Here, Covenant Truth Church has no available means by which to bring its action challenging the Johnson Amendment. "[C]ourts have repeatedly held that the opportunity to sue for a refund is an adequate remedy at law which bars the granting of an injunction [under the TAIA]." *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1489 (9th Cir. 1990). Refund suits give taxpayers the option to pay what is owed to the IRS and "exhaust [its] internal

refund procedures, [before] bring[ing] suit for a refund." *Bob Jones Univ.*, 416 U.S. at 746. In doing so, the refund suit allows organizations to challenge their tax liability to the IRS after collection, altogether avoiding the TAIA's mandate. *See* 26 U.S.C. § 7421(a).

As a 501(c)(3) organization, Covenant Truth Church is not subject to income taxes on donations received. As a result, the option to pay its nonexistent tax liability and file a subsequent refund suit is inapplicable. This issue is compounded by the fact that the revocation of tax-exempt status does not transform past donations into taxable income. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 143 (D.C. Cir. 2000). Thus, in order to accrue tax liability to make it eligible for a refund suit, Covenant Truth Church would need to lose its 501(c)(3) status and receive new donations before bringing a suit. Unlike the church in *Church of Scientology of California*, which owed payment to the IRS at the time of suit, Covenant Truth Church has no current payment obligations. *Compare Church of Scientology of Cal.*, 920 F.2d at 1484, *with Bessent*, 345 F.4th at 5. Therefore, Covenant Truth Church is not able to sue for a refund and thus lacks the primary avenue for challenging IRS action and the Johnson Amendment.

Further, because the IRS has not yet taken any enforcement action against Covenant Truth Church, Covenant Truth Church cannot seek an administrative appeal. Under the Internal Revenue Code, organizations are permitted to seek administrative appeals to challenge an adverse determination related to "continuing qualification of the organization as exempt from tax." 26 U.S.C. § 7123(c)(2)(A). However, these appeals may only be brought when an adverse determination has been made. *Id.* § 7123(c)(1). Here, no determination as to Covenant Truth Church's 501(c)(3) status has yet been made. *Bessent*, 345 F.4th at 5. Accordingly, it is also without recourse for its threatened injury within the administrative procedures of the IRS, firmly placing Covenant Truth Church within the "no alternative means" exception to the TAIA.

2. This is not a suit for the purpose of restraining the assessment or collection of any tax.

Further, Covenant Truth Church's suit is permitted under TAIA because it asserts a viable constitutional challenge to the Johnson Amendment. The TAIA bars suits filed "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). So long as suits are not initiated for this purpose, the TAIA does not apply. *Alexander v. Ams. United Inc.*, 416 U.S. 752, 760-61 (1974). Here, Covenant Truth Church seeks "a permanent injunction prohibiting enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment." *Bessent*, 345 F.4th at 5. This Court has held that suits brought to set aside rules or requirements that themselves are not taxes—even if they relate to tax provisions—are not suits to enjoin the assessment or collection of a tax. *See CIC Servs., LLC*, 593 U.S. at 216. Covenant Truth Church is challenging the *constitutionality* of the Johnson Amendment and its regulatory mandates *separate from* that of any tax. In doing so, its suit falls outside of the scope of the TAIA, granting Covenant Truth Church standing.

The religion followed by Covenant Truth Church, The Everlight Dominion, requires churches and its leaders to participate in political campaigns and endorse candidates that align with the religion's progressive stances. *Bessent*, 345 F.4th at 3. If Covenant Truth Church were to obey the Johnson Amendment's mandate of remaining silent on such issues, it would be forced to violate its religious beliefs, banishing it, Pastor Vale, and anyone who fails to comply with the religion's requirement from The Everlight Dominion community. *See id.* at 3, 9. This imposes a great cost of compliance onto Covenant Truth Church: the loss of its religious liberty. In taking proactive steps to prevent such losses, Covenant Truth Church focuses its suit on the constitutional issues at hand. *See id.* at 2.

While Respondent concedes that the outcome of the constitutional challenge may also impact Covenant Truth Church's tax liability, the constitutional challenge is far removed from the question of Covenant Truth Church's potential tax liability. This Court has held that when "there is 'too attenuated a chain of connection' between an upstream duty and a 'downstream tax,' a court should not view a suit challenging the duty as aiming to 'restrain the assessment or collection of a tax.'" *CIC Servs., LLC,* 593 U.S. at 221 (citations omitted). Here, the tax-classification is simply the "suit's after-effect, not its substance." *Id.* at 220. For this reason, Covenant Truth Church's claims must not be interpreted as seeking to "restrain[] the assessment or collection of any tax." *See* 26 U.S.C. § 7421(a).

B. Covenant Truth Church satisfies Article III standing.

"Article III of the Constitution limits federal courts' jurisdiction to certain 'Cases' and 'Controversies.'" *Clapper v. Amnesty Int'l,* 568 U.S. 398, 408 (2013). Crucial to this limitation is the requirement of standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy standing, plaintiffs must prove that they have an injury which is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). Further, parties must demonstrate their case is "ripe for judicial review" and that "the issues presented are [still] 'live.'" *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)). When a threat of enforcement action is sufficiently imminent, courts have pre-enforcement review. *See, e.g., Susan B. Anthony List,* 573 U.S. at 158-59.

Covenant Truth Church has an imminent injury that is ripe for judicial review. If the Johnson Amendment is enforced, Covenant Truth Church will be forced into a choice between

being unable to practice its religion or losing its tax-exempt status. *Bessent*, 345 F.4th at 3. This threatened injury is immediately traceable to the IRS's audit of Covenant Truth Church, and a ruling in favor of Covenant Truth Church will redress the threatened harm.

1. Covenant Truth Church will suffer imminent injury if the Johnson Amendment is enforced.

Covenant Truth Church has Article III standing because it will suffer imminent injury if the Johnson Amendment is enforced. As this Court has acknowledged, in many pre-enforcement constitutional challenges "Article III standing and ripeness issues . . . 'boil down to the same question.'" *Susan B. Anthony List*, 573 U.S. at 157 n.5 (quoting *MedImmune, Inc.*, 549 U.S. at 128 n.8). Following the Court's examples in *Susan B. Anthony List*, *id.*, *Virginia v. American Booksellers Ass'n., Inc.*, 484 U.S. 383, 392 (1988), and *Babbit v. Farm Workers National Union*, 442 U.S. 289, 299 n.11 (1979), Respondent treats these issues as one in the same.

To achieve Article III standing, parties need not expose themselves "to liability before bringing [a] suit." *MedImmune, Inc.*, 549 U.S. at 128-29. Instead, so long as the "factual and legal dimensions of the dispute are well defined and . . . nothing about the dispute would render it unfit for judicial resolution," litigation is proper. *Id.* at 128. In the context of pre-enforcement constitutional challenges, a plaintiff can demonstrate injury when it "(1) has an 'intention to engage in a course of conduct arguably affected with a constitutional interest,' (2) his intended future conduct is 'arguably . . . proscribed by [the law in question],' and (3) 'the threat of future enforcement of the [challenged policies] is substantial.'" *See Speech First, Inc. v. Fenves*, 979 F.3d at 330 (alterations in original) (quoting *Susan B. Anthony List*, 573 U.S. at 161-64).

As to the first element, Covenant Truth Church has actively engaged in proscribed conduct. In *Peace Ranch, LLC v. Bonta*, the owner of a mobile-home park brought a pre-

enforcement action claiming that a rent-control statute violated his constitutional rights. 93 F.4th 482, 486 (9th Cir. 2024). Discussing his standing to sue, the court held that the owner showed a threatened injury, as his intention to raise rent conflicted with the statute's mandate, arguably affecting his constitutional interests under the Takings Clause. *See id.* at 486-88. Just as in *Peace Ranch*, Covenant Truth Church demonstrates a threated injury, as its intended actions affect its religious freedom rights under the Constitution. As noted, Covenant Truth Church's plans likely implicate challenges associated with its religious freedoms protected by the First Amendment. *See* U.S. CONST. amend I. Accordingly, Covenant Truth Church has satisfied the first requisite showing to qualify for pre-enforcement standing.

As to the second element, Covenant Truth Church's future conduct is proscribed by the Johnson Amendment. The Johnson Amendment mandates that non-profit organizations "not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). In endorsing Congressman Samuel Davis, Pastor Vale has used his weekly podcast as a forum for engaging in such conduct. *Bessent*, 345 F.4th at 4. Additionally, his planned sermons explaining how the Congressman's views align with The Everlight Dominion's teachings do the same. *Id.* at 4-5. This conduct falls squarely within the realm of what is prohibited under the Johnson Amendment, satisfying the second prong for pre-enforcement standing. *Compare id.*, *with* 26 U.S.C. § 501(c)(3).

As to the third element, the threat of future enforcement of the Johnson Amendment against Covenant Truth Church is substantial. In *Susan B. Anthony List v. Driehaus*, this Court considered a challenge to a statutory prohibition on false statements during political campaigns. *See* 573 U.S. at 152. In granting Susan B. Anthony List standing, the Court held that the threat of the statute's future enforcement was substantial, as the statute had been enforced before, was not

rare, and had infinite potential for enforcement as anyone had the ability to file a complaint under the statute. *See id*. at 164-65. Here too, the threat of the Johnson Amendment's enforcement against Covenant Truth Church is substantial. The Johnson Amendment has been enforced in the past against religious organizations who involved themselves in politics. *See generally Branch Ministries*, 211 F.3d 137. Further, not only does the current audit Covenant Truth Church faces subject them to higher risk of enforcement, but the fact that the IRS may conduct an audit any year—or even multiple times in a year—shows that enforcement opportunities are practically infinite. *See* 26 U.S.C. § 7605(b). While true that the Johnson Amendment has been rarely enforced, this is "cold comfort" to Covenant Truth Church, as in First Amendment pre-enforcement challenges to statutes, courts "assume[] a credible threat of prosecution in the absence of compelling contrary evidence." *See Inst. For Free Speech v. Johnson*, 148 F.4th 318, 329 (5th Cir. 2025) (omission in original); *see also Speech First, Inc.*, 979 F.3d at 335. No such evidence exists here. Accordingly, Covenant Truth Church satisfies its showing that the threat of future enforcement of the Johnson Amendment is substantial, thus satisfying pre-enforcement standing.

2. Covenant Truth Church's threatened injury is both traceable of the IRS's audit and redressable by this Court.

Covenant Truth Church's threatened injury is also directly traceable of the IRS's audit and is redressable by a favorable decision of this Court. The standing requirements of traceability and redressability are "easily satisfied [when the] potential enforcement of [a] statute cause[s injury], and the injury could be redressed by enjoining enforcement of the [statute.]" *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006). That is exactly the case here. The IRS's audit of Covenant Truth Church subjects it to a substantial risk that the Johnson

Amendment will be enforced, and thus that Covenant Truth Church must choose between practicing its religion or losing its tax-exempt status. *See supra* Section I.B.1. Further, if the Johnson Amendment's enforcement is enjoined, the IRS's audit of Covenant Truth Church will no longer present a threatened injury. The mere fact that an additional step—the IRS audit—is required to trigger the enforcement of the Johnson Amendment is of no consequence; the two go hand in hand. Accordingly, Covenant Truth Church satisfies the standing requirements of traceability and redressability, thus permitting it to bring its suit under Article III of the Constitution.

II. The Johnson Amendment Violates the Establishment Clause of the First Amendment.

Since the founding of the United States, the Establishment Clause has required that the government act neutrally toward religion. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The First Amendment forbids all laws respecting the establishment of a government-sponsored religion. *See McGowan v. Maryland*, 366 U.S. 420, 442 (1961). This command mandates that government provide neutral treatment—as defined by the historical practices and understandings of the Establishment Clause—among religions, as well as between religion and non-religion. *See Kennedy*, 597 U.S. at 536; *Epperson*, 393 U.S. at 104. If preference is to be given, the policy must satisfy strict scrutiny. *Cath. Charities Bureau, Inc.*, 605 U.S. at 252. Because the Johnson Amendment improperly sponsors specific religious ideology and does not satisfy strict scrutiny, it violates the Establishment Clause of the First Amendment.

A. The history and tradition of the Establishment Clause prohibit the Johnson Amendment because the Johnson Amendment is not neutral toward religion.

Historical practices and understandings must be considered when determining whether government action toward religion violates the Establishment Clause. *See Kennedy*, 597 U.S. at 535-36. When considering an Establishment Clause claim, courts distinguish the permissible from the impermissible in a way that is in "accor[d] with history" and reflects "the understanding of the Founding Fathers." *Id*. at 536 (alterations in original) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014)). Here, the Johnson Amendment ignores the historically accepted practices of the Establishment Clause and displays denominational preferences among religions as well as a preference toward non-religion generally. In doing so, the Johnson Amendment violates the First Amendment of the Constitution.

1. The Johnson Amendment is not required by the Establishment Clause.

In the early days of Congress, just after it enacted the Establishment Clause, Congress recognized the importance of a symbiotic relationship between religion and politics, appointing paid chaplains to lead the legislature in prayer. *See Town of Greece*, 572 U.S. at 576, 587. This recognition was not isolated to the halls of Congress and was accepted by American society. Over the past two and a half centuries, it has been standard practice for pastors to preach about political issues and candidates. *See* Goldfeder & Terry, *supra*, at 210. As this Court has recognized, "'adherents of particular faiths and individual churches frequently take strong positions on public issues.' We could not expect otherwise, for religious values pervade the fabric of our national life." *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971) (quoting *Walz v. Tax*

Comm'n of N.Y., 397 U.S. 664, 670 (1970)). The same is true of The Everlight Dominion and Covenant Truth Church. *Bessent*, 345 F.4th at 9.

To argue the Establishment Clause requires otherwise is devoid of reason and historical understanding. Covenant Truth Church, as a 501(c)(3) non-profit, may be permitted to weigh in on issues of political life without violating the Establishment Clause. As *Kennedy* states, one cannot create one's "own 'vice between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other,' place[oneself] in the middle, and then chose [one's] preferred way out of its self-imposed trap." *See Kennedy*, 597 U.S. at 533 (citations omitted). Accordingly, the Johnson Amendment cannot be construed as required under the Establishment Clause.

2. The Johnson Amendment expresses denominational preference in granting tax-exempt status to religious organizations, violating the Establishment Clause.

The Establishment Clause forbids the government from expressing preference for one religious denomination over another. *See Larson v. Valente*, 456 U.S. 228, 244 (1982). In this light, while providing tax-exempt status to religious entities is generally consistent with the historical practices and understandings of the Establishment Clause, such exemptions must be neutrally granted by the government. *See id.* at 253; *see also Walz*, 397 U.S. at 679-80. In *Walz v. Tax Commission of N.Y.*, a tax exemption for property used solely for religious worship was challenged for creating excessive entanglement between the government and religion. *See* 397 U.S. at 667. Considering the challenge, this Court concluded that a legislature has the power to exempt certain classes of property from taxation without violating the First Amendment. *See id.* at 679-80. So long as the exemption does not single out one particular church or specific

religious group, the exemption is permissible. *See id*. at 673; *see also Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 11 (1989). The Johnson Amendment, however, does just that: it disproportionately allows for tax-exempt status across broad swaths of religious organizations while singling out others.

The Establishment Clause forbids the government from officially preferring one religious denomination over another. *See Larson*, 456 U.S. at 244. In *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, a law provided organizations with an exemption from unemployment compensation taxes so long as the organization was operated primarily for religious purposes. *See* 605 U.S. at 242-44. The Wisconsin government denied the Bureau's claim for exemption while granting the exemption to other religious organizations, determining that even though the Bureau was a part of the Roman Catholic Church, the Bureau itself was not operated primarily for religious purposes. *See id.* at 244. The Wisconsin Supreme Court agreed, holding that because the Bureau did not engage in Catholic proselytization or limit its services to Catholic people, it did not operate primarily for religious purposes. *See id.* at 249. In reversing, this Court appropriately recognized that Catholic teachings expressly bar practicing Catholics from misusing works of charity for purposes of proselytization. *See id*. Thus, to tolerate the interpretation of the Wisconsin Supreme Court would be to grant a denominational preference by differentiating between religions based on theological practices. *See id*. at 250.

The Johnson Amendment follows the same unconstitutional premise as the Wisconsin Supreme Court did in *Catholic Charities Bureau*. It grants a denominational preference by differentiating between religions according to their theological practices. By adhering to the theological practices of The Everlight Dominion, Covenant Truth Church and Pastor Vale must participate in political campaigns that align with the religion's values. *Bessent*, 345 F.4th at 2-4.

The Johnson Amendment, mandating that non-profit organizations "not participate in, or intervene in . . . any political campaign on behalf of . . . any candidate for public office," 26 U.S.C. § 501(c)(3), forces Covenant Truth Church and Pastor Vale to curb the theological practices of The Everlight Dominion in favor of apolitical religious denominations.

A government policy incidentally providing preferential treatment for one religion over another could be constitutional if the regulation does not differentiate between religious denominations on their face, and is evenhandedly applied across the religious spectrum. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 839 (1995); *Larson*, 456 U.S. at 253. For example, as the dissenting opinion in *Larson v. Valente* indicates, an impermissible policy would explicitly mention specific churches, denominations, or religious beliefs. *See* 456 U.S. at 260 (White, J., dissenting). As to even-handed application, *Larson* concerned the Minnesota Charitable Solicitation Act, which created a system of registration and disclosure to prevent fraud by charitable organizations. *See id.* at 230-31 (majority opinion). Religious organizations were exempt from the Act, until a new provision—the 50% rule—provided that only religious organizations receiving more than half of their total contributions from members or affiliated organizations would remain exempt from the requirements. *See id.* at 231-32. In holding the 50% rule unconstitutional, this Court articulated that the principal effect of the rule impermissibly imposed a requirement on some religious organizations but not others. *See id*. at 253. The rule burdened or advantaged particular denominations while risking the politicization of religion, all of which the Establishment Clause was drafted to prevent. *See id*. at 254.

The Johnson Amendment is not evenhandedly applied across the religious spectrum. First, Covenant Truth Church is at risk of losing its tax-exempt status specifically because of its religion. *Bessent*, 345 F.4th at 5. The Johnson Amendment disproportionately harms Covenant

Truth Church and any other religious organization that requires its leaders to engage in political campaigns. This is not an evenhanded application as articulated in *Larson*, given that other religions without such a requirement do not face similar impositions. Second, the Johnson Amendment's legislative history suggests that it was introduced to inhibit religious groups. *See* Erik W. Stanley, *LBJ, the IRS, and Churches: The Unconstitutionality of the Johnson Amendment in Light of Recent Supreme Court Precedent*, 24 REGENT U. L. REV. 237, 245 (2012) (suggesting Johnson Amendment introduced by then-Senator Lyndon B. Johnson to suppress speech of religious organization opposing his campaign): *see also* Johnny Rex Buckles, *Not Even A Peep? The Regulation of Political Campaign Activity by Charities through Federal Tax Law*, 75 U. CINCINNATI L. REV. 1071, 1079 (2007) (suggesting same); Goldfeder & Terry, *supra*, at 214-16 (suggesting same). This intent certainly does not satisfy the Establishment Clause's dictate of evenhanded application. Accordingly, in both its operation and legislative purpose, the Johnson Amendment impermissibly grants a preference between religious denominations, violating the Establishment Clause.

3. The Johnson Amendment expresses preference for non-religious organizations over religious ones, violating the Establishment Clause.

Similarly, the Johnson Amendment violates the Establishment Clause because it implicitly promotes non-religion while denigrating certain religious ideology. This Court has made clear that, like preferences among religious denominations, the government may not express a preference toward religion or non-religion generally. *See Epperson*, 393 U.S. at 104; *see also Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 248 (1990) (government refusing to let religious groups use facilities open to others demonstrates hostility, not neutrality, toward religion). In *Epperson v. Arkansas*, this Court addressed the constitutionality of a statute

prohibiting public schools from teaching the theory of evolution. *See* 393 U.S. at 98-99. Invalidating the measure, this Court noted that by barring the teaching of the theory of evolution, Arkansas violated the Establishment Clause in promoting religiosity over non-religiosity. *See id.* at 103-04, 109.

Though coming to a different result, the same logic applies here. The Johnson Amendment bars religious organizations, such as The Everlight Dominion, from engaging in conduct required by its teachings. *Bessent*, 345 F.4th at 3. In doing so, the Johnson Amendment effectively elevates non-religiosity over religions like those of The Everlight Dominion, operating in conflict with the Establishment Clause. As *Epperson* notes, the government "may not be hostile to any religion or to the advocacy of noreligion [sic]." *See* 393 U.S. at 104. By doing so here, the Johnson Amendment violates the Establishment Clause.

B. The Establishment Clause prohibits the Johnson Amendment from regulating the internal actions or missions of religious organizations.

Under the Establishment Clause, the government may not regulate the internal actions or missions of religious organizations. *See Hosanna-Tabor*, 565 U.S. at 189. This includes the right of religious organizations to express and disseminate their doctrine without government intrusion. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 114 (1952); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). In *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, this Court emphasized that the Establishment Clause prohibits government involvement in ecclesiastical decisions—such as the appointment of a church minister—because doing so impermissibly intermingled government and religious institutions. *See* 565 U.S. at 189. By selecting church leaders, the government "interferes with the internal governance of the

church, depriving the church of control over the selection of those who will personify its beliefs." *Id*. at 188.

The Johnson Amendment violates the Establishment Clause because it impermissibly involves the government in ecclesiastical decisions. There may be no matter more germane to a religious organization's governance than its leader's freedom to preach its mission to members of its faith. *See* Stanley, *supra*, at 281. Pastor Vale is concerned that adhering to his faith's requirement of being actively involved in political campaigns will jeopardize Covenant Truth Church's 501(c)(3) status as a result of the Johnson Amendment. *Bessent*, 345 F.4th at 4-5. In this way, the Johnson Amendment plays a significant role in informing Covenant Truth Church's decision-making process. Just as the Court found that government meddling with the selection of a religious leader in *Hosanna-Tabor* violated the Establishment Clause, the Court here must find that by encroaching on Pastor Vale's ability to make religious decisions and lead Covenant Truth Church, the Johnson Amendment violates the Establishment Clause.

C. The Johnson Amendment does not satisfy strict scrutiny.

The Johnson Amendment grants a denominational preference by impermissibly differentiating between religions based on theological practices, therefore, it must be subject to strict scrutiny. *See Larson*, 456 U.S. at 246-47; *Cath. Charities Bureau*, 605 U.S. at 252. This Court has warned that when a government grants a denominational preference to certain religions, it demonstrates to members of other faiths that "they are outsiders, not full members of the political community." *Cath. Charities Bureau*, 605 U.S. at 248 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000). Subjecting such denominational preferences to strict scrutiny protects against this harm by requiring the government to justify that the differential treatment furthers a compelling governmental interest and is narrowly tailored by the least

restrictive means necessary to achieve that interest. *See Cath. Charities Bureau*, 605 U.S. at 248, 253.

The Johnson Amendment does not satisfy strict scrutiny as it neither furthers a compelling governmental interest nor is narrowly tailored in accomplishing its goal. Though the interest the Johnson Amendment seeks to serve is unclear, it can be presumed as part of the Internal Revenue Code to be the raising of revenue. *See* Stanley, *supra*, at 245; Cain, *supra*, at 498. However, the raising of revenue is generally not a sufficient interest to overcome First Amendment protections. *See generally Minneapolis Star & Trib. Co. v. Minn. Comm'n of Revenue*, 460 U.S. 575, 586 (1983); *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987). This is especially true when narrower means exist to accomplish the goal.

The Johnson Amendment was not necessary to accomplish the goal of raising revenue. As of 2023, more than 42.9 million legal entities were incorporated in the United States. *See Delaware Corporate Law: Facts and Myths*, DEL.'S GOV'T, https://corplaw.delaware.gov/facts-and-myths/#fn:5 [https://perma.cc/QJ9Z-FJCS]. Only 1.85 million of these were tax-exempt, accounting for less than 5% of all entities. *See What Entities Are Tax-Exempt*, TAX POL'Y CTR. (Sep. 2025), https://taxpolicycenter.org/briefing-book/what-entities-are-tax-exempt#:~:text=In%202023%2C%20approximately%201.85%20million,from%20the%20annual%20filing%20requirement [https://perma.cc/XZ5R-BT93]. Given these statistics, it was not necessary for the Johnson Amendment to create an exception to 26 U.S.C. § 501(c)(3) in order to raise revenue and as such, the Johnson Amendment does not pass strict scrutiny and fails to satisfy the Establishment Clause of the First Amendment.

CONCLUSION

"Respect for religious expressions is indispensable to life in a free and diverse Republic—whether those expressions take place in a sanctuary or on a field, and whether they manifest through the spoken word or bowed head." *Kennedy*, 597 U.S. at 543. Perhaps even more important, however, is the "right to sue and defend in the courts of justice . . . one of the highest and most essential privileges of citizenship." *Chambers v. Balt. & Or. R.R.*, 207 U.S. 142, 154 (Harlan, J. dissenting). The district court and the court of appeals recognized this in granting Respondent's motion for summary judgment and entering a permanent injunction enjoining the enforcement of the Johnson Amendment. *See Bessent*, 345 F.4th at 5-6, 11. This Court should do the same.

Covenant Truth Church has standing to sue to challenge the constitutionality of the Johnson Amendment under both the TAIA and Article III of the Constitution. By falling into judicially-created exceptions to the TAIA and in articulating an imminent injury that is substantially likely to occur, traceable to the IRS's actions, and redressable by this Court, Covenant Truth Church has adequately pled all that is necessary to acquire standing. Further, because the Johnson Amendment expresses preferences to certain religious sects and to non-religion generally, as well as interferes in the internal actions of religious organizations, it must be analyzed under strict scrutiny review. Under this enacting standard, the Johnson Amendment fails to survive constitutional muster. For this, and all of the reasons above, the decision of the Fourteenth Circuit should be **AFFIRMED.**