No. 26-1779

In the Supreme Court of the United States

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

PETITIONERS

V.

COVENANT TRUTH CHURCH,

RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT
TEAM 18

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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

Petitioner, Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, ET AL.

Respondent, Covenant Truth Church.

OPINIONS BELOW

The District Court for the Eastern District of Wythe granted summary judgment for Respondent, Covenant Truth Church, and granted Respondent a permanent injunction. R. at 5. The District Court held that Covenant Truth Church has standing to challenge the Johnson Amendment,

and the Johnson Amendment violates the Establishment Clause. The United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's decision. R. at 2.

JURISDICTIONAL STATEMENT

The plaintiff-respondent, Covenant Truth Church, filed the instant suit in the District Court for the Eastern District of Wythe which had subject matter jurisdiction over the plaintiff's suit pursuant to 28 U.S.C. §1331 and §1343. The District Court granted summary judgment for Respondent and granted a permanent injunction. R. at 5. Petitioner filed a timely notice of appeal. The United States Court of Appeals for the Fourteenth Circuit had original appellate jurisdiction over the appeal pursuant to 28 U.S.C. §1291. The Court of Appeals affirmed the District Court's decision. R. at 2. This Honorable Court has appellate jurisdiction to hear the instant appeal under the U.S. Const. art. II, § 2.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTIONAL PROVISIONS

> U.S. Const. amend. I Establishment Clause: "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. art. III, § 2, cl. 1: "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."

STATUTES INVOLVED

26 U.S.C. § 501(c)(3): "An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle

(c) List of exempt organizations.--

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious . . . purposes . . . 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.."

26 U.S.C. §501(c)(4): "An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle

(c) List of exempt organizations.--

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

26 U.S.C. §6113(a): "contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

(b) Organizations to which section applies.--

(B) is a political organization"

26 U.S.C. § 7421(a): 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. § 7422: No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed

> 26 U.S.C. § 7428: "Exhaustion of administrative remedies.--A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination."

STATEMENT OF THE CASE

Covenant Truth Church, a The Everlight Dominion church and respondent here, filed the below suit to protect its freedom of religious expression which was at risk of being infringed upon with enforcement of the Johnson Amendment. R. at 5. While The Everlight Dominion is a religion with centuries of history, it prides itself on supporting progressive social values. R. at 3. Specifically, both The Everlight Dominion leaders and churches must actively promote their social values by endorsing candidates and calling their followers to donate to and volunteer for candidates who embrace the same values. *Id.* Should a leader or church fail to advance progressive values in those active ways, the leader or church will face banishment from the religion. *Id.*

Pastor Gideon Vale, head pastor at Covenant Truth Church, guided both Covenant Truth Church and The Everlight Dominion in amassing a large influx of followers over the past several years. R. at 4. Membership under Pastor Vale increased from a few hundred followers in 2018 to 15,000 members in 2024. *Id.* This increase in membership can be attributed to Pastor Vale's implementation of a podcast to deliver sermons, guidance and education, and a livestream of the weekly service. *Id.* The podcast gained so much traction it is now the fourth most popular podcast in the State of Wythe and is in the top twenty in the nation. *Id.* As a leader of The Everlight Dominion faith Pastor Vale engaged in political messaging in some, but not all, of his podcasts.

Id. This included promoting candidates, highlighting political issues, urging followers to vote and volunteer for, and donate to candidates that aligned with The Everlight Dominion's progressive beliefs. *Id.*

Wythe's Senator Russett passed away in January 2024, prompting a special election. R. at 4. One candidate of the special election, Congressman Davis, is a champion of progressive social values. *Id.* This alignment in values caused Pastor Vale to endorse Congressman Davis for the special election. Pastor Vale instructed his followers on the shared beliefs between The Everlight Dominion and Congressmen Davis and encouraged his listeners to support Davis in the election. *Id.*

Covenant Truth Church is classified as a Section 501(c)(3) under the Internal Revenue Code. R. at 5; *see also* 26 U.S.C. IRC § 501(c)(3) classification is intended for nonprofits and religious organizations like churches. *Id.* In 1954, Congress passed the Johnson Amendment which mandates 501(c)(3) non-profit organizations not publish, or distribute statements about any political campaign, either in support or opposition to a candidate for public office. *Id.* On May 1, 2024, the Internal Revenue Service ("IRS") informed Covenant Truth Church that the IRS would conduct an audit of the church, as part of its random audit practice. *Id.* After the notice but before the audit, Covenant Truth Church became concerned with losing their 501(c)(3) tax status. *Id.* As such, Covenant Truth Church filed suit in district court seeking a permanent injunction enjoining the enforcement of the Johnson Amendment. *Id.* Covenant Truth Church asserted that enforcement of the Johnson Amendment would be a violation of the Establishment Clause of the First Amendment. *Id.* The United States District Court for the Eastern District of Wythe agreed with Covenant Truth Church and granted the permanent injunction. *Id.* Most recently, the United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's decision. *Id.*

SUMMARY OF THE ARGUMENT

The District Court and Court of Appeals were correct in their assessment and application of the law and Respondent respectfully requests this Court affirm the lower courts' decisions. Covenant Truth Church's claim was not barred by the Tax Anti-Injunction Act ("AIA"). The AIA is relevant when an injunction "runs against 'the collection or assessment of [a] tax.'" *CIC Servs. LLC v. IRS*, 593 U.S. 209, 218 (2021) (quoting 26 U.S.C. § 7421(a)). Covenant Truth Church's suit against the IRS did not restrain a tax or assessment. The audit had not even begun, so there was no existing tax or assessment that could have been restrained. Moreso, the AIA has an exemption for cases where there is no remedy for under IRS procedures. *South Carolina v. Regan,* 465 U.S.367, 379 (1984). Here, the church has no remedy except for the injunction and suit. Not only is the AIA not applicable because there is no tax or assessment to be restrained; the AIA specifically allows this claim due to the lack of other remedies available to the church.

The AIA is not a bar to this case, and Covenant Truth Church has proper standing. Covenant Truth Church has Article III standing, under First Amendment standing analysis due to the threat of harm and enforcement of IRS regulations. First Amendment standing analysis is appropriate because of the Church's challenge of the Johnson Amendment. Covenant Truth Church does not need to wait for the audit because an actual harm does not need to have occurred yet for an Article III injury. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988), see also *Mahmoud v. Taylor*, 606 U.S. 522, 560–61 (2025). Regardless, the potential threat of enforcement is enough to demonstrate Article III injury, whether in the First Amendment context or otherwise. *Steffel v. Thompson*, 415 U.S. 452, 475 (1974). The threat of enforcing the Johnson Amendment is enough to demonstrate injury to the Covenant Church as it would douse the Church's freedom of speech.

Finally, the Johnson Amendment is unconstitutional because it violates the Establishment Clause of the First Amendment: that the government cannot show official preference to or endorse one religion over any other, remaining neutral in any competition between religions. *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The effect of the Johnson Amendment imposes tax penalties on religious institutions whose beliefs involve political activism, like the Covenant Truth Church. This would treat Covenant Truth Church differently than other religious organizations, thus is a violation of the Establishment Clause. As such, Respondent respectfully requests this Court affirm the lower courts' decisions.

STANDARD OF REVIEW

This standing decision is subject to *de novo* review as a question of law. *United States v. Texas*, 599 U.S. 670, 697 (2023). Additionally, reviewing a motion for summary judgment is reviewed *de novo*. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 466–67 (7th Cir. 2020).

ARGUMENT

Both the District Court and Court of Appeals applied the law properly. Covenant Truth Church's claim against the IRS is not barred by the AIA because there is no tax or assessment to be restrained. *CIC Servs. LLC v. IRS*, 593 U.S. 209, 218 (2021). Also, the claim falls under the AIA exemption where if a party has no other legal remedy, they may bring a suit. *South Carolina v. Regan,* 465 U.S. 367, 379 (1984). Standing is not an issue here either as Covenant Truth Church has standing under the Article III First Amendment standing analysis. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) Finally, as a violation of the Establishment Clause, the Johnson Amendment is unconstitutional. *Larson v. Valente*, 456 U.S. 228, 244 (1982). As such, the opinions of the lower courts must be affirmed.

I. The Tax Anti-Injunction Act does not bar the Covenant Truth Church's suit against the IRS, its purpose is not to restrain a tax or assessment, and because the church has no remedy otherwise.

26 U.S.C. § 7421(a), the Tax Anti-Injunction Act does not bar Covenant Truth Church's lawsuit against the Internal Revenue Service. First, the remedy requested by Covenant Truth Church does not trigger the AIA, as its purpose is not to restrain the assessment or collection of a tax. *See CIC Servs. LLC v. IRS*, 593 U.S. 209, 217–18 (2021). Rather, an audit analyzing the Johnson Amendment is far upstream from any tax assessment, as the IRS's audit letter does not actually reach the point of "assessing" taxes. *See Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 9 (2015); *Hibbs v. Winn*, 542 U.S. 88, 102 (2004).

Regardless, Covenant Truth Church's claims are an exception to the AIA, as delineated in *South Carolina v. Regan*, because the church has no alternate remedy to pursue its claims. *See* 465 U.S. 367, 379 (1984). IRS procedures provide no other option for Covenant Truth Church to be heard on its constitutional challenge, as the IRS has not even changed the church's tax status or begun its assessment. Finally, courts have given greater deference to constitutional claims. *See We the People Found., Inc. v. United States*, 485 F.3d 140, 143 (D.C. Cir. 2007). As this is a challenge to the Johnson Amendment, alleging that the IRS is using the amendment to unfairly disfavor religious groups, the AIA also does not apply to Covenant Truth Church's claims.

A. AIA does not apply to Covenant Truth Church, as the purpose of its suit against the IRS is not to restrain a tax, nor has its current tax situation advanced to an assessment.

To determine a suit's purpose, a court should look to "the relief the suit requests" as opposed to "a taxpayer's subjective motive." *CIC Servs., LLC,* 593 U.S. at 217. This analysis looks towards the specific "injunctive relief requested" by a taxpayer and what process they seek to have enjoined. *Alexander v. Americans United*, 416 U.S. 752, 761 (1974). As such, the AIA is triggered

when an injunction seeks to target a tax obligation, or specifically, "when that injunction runs against 'the collection or assessment of [a] tax.'" *CIC Servs., LLC*, 593 U.S. at 218 (quoting 26 U.S.C. § 7421(a)).

For example, the AIA did not apply when plaintiffs in *CIC* sought relief for a burdensome tax reporting notice, requiring the company to spend more than $60,000 per year and hundreds of hours of labor to comply with. *Id.* at 220. Three factors of the reporting regulation worked in favor of the AIA not applying to the situation.

First, the plaintiffs' challenge only targeted "the (non-tax) burdens of a (non-tax) reporting obligation." *Id.* While it is true that if the *CIC* plaintiffs succeeded, they would not have to pay any tax penalty, this is only because their suit successfully targets the reporting mandate, not its "after-effect." *Id.* Second, the reporting rule and tax penalty are "several steps removed," requiring CIC to withhold information, the IRS to find that violation, and then to make the "entirely discretionary" choice to impose the tax penalty. *Id.* Such a "threefold contingency" is important in this evaluation, where the downstream tax consequences are far removed from the upstream notice requirement. *Id.* at 221. Finally, the notice had associated criminal penalties, which greatly increases the risk of challenging after noncompliance. *Id.* at 222.

Here, Covenant Truth Church's claims easily meet the first two factors of *CIC*, and the third does not apply.

The Johnson Amendment places a non-tax burden on 501(c)(3) organizations, requiring their compliance with a non-tax regulation. The amendment itself only relates to the non-tax conduct of these organizations, forbidding them from participating or intervening in any campaign for public office. 26 U.S.C. § 501(c)(3). Covenant Truth Church and other organizations must bear the burden instituted by the IRS's conduct restriction, self-restraining their own involvement in

such matters, even when their beliefs may compel them to do so. Taken independently, the Johnson Amendment is not a tax restriction, but rather, a regulation on conduct akin to a notice regulation. While Covenant Truth Church would not be subject to potential 501(c)(3) revocation if they succeed on their claims, this only serves as an "after-effect" of their suit. Not because they have targeted a tax.

To even reach a tax, the IRS's procedure includes the same causal gaps as *CIC*. Here, the IRS still needs to (1) actually initiate its audit, (2) find a violation on behalf of Covenant, and (3) make its discretionary choice to enforce the Johnson Amendment. *See* R. at 7 n.2 (referencing the IRS consent decree that they will only enforce the Johnson Amendment in certain situations, reflecting its discretionary nature). Not only do these two steps mirror *CIC*, but conducting an audit under the first step is an especially large undertaking. As such, there are three causal links between the Johnson Amendment and a downstream tax, far removing this challenge from affecting an AIA-barred tax.

Next, the AIA does not apply because the IRS's audit has not begun an actual "assessment" under the statutory language. *See* 26 U.S.C. § 7421(a). Assessment occurs as a distinct phase, after the reporting phase of taxation, and it is "the official recording of a taxpayer's liability." *Direct Mktg. Ass'n,* 575 U.S. at 9. More plainly, assessment is the process where a taxpayer's liability is officially determined. *Id.*

The word "assessment" is not independent from the company it keeps with "collection." *See Winn*, 542 U.S. at 102. It is not a term "synonymous with the entire plan of taxation," but rather, it exists in relation to "collection" under the statute. *Id.* Assessment is the bookkeeping notion where the IRS records the amount owed to the government, and it "is the *official recording* of liability that triggers levy and collection efforts." *Id.* at 101 (emphasis added). The term official

is important in this calculation because income taxes, which require self-calculation and self-assessment, are not formally considered an assessment until executed by the IRS. *Id.* at 100 n.3.

For example, *CIC* illustrates this line, where a routine reporting requirement was not an assessment for the purposes of the AIA. *See CIC Servs. LLC,* 593 U.S. at 216–17. Rather, these requirements were only "information gathering" and described by the court as "ordinary reporting duties" that do not trigger the AIA. *Id.* (quoting *Direct Mktg. Ass'n*, 575 U.S. at 8). In comparison, audits that are underway are considered an "assessment." *See, e.g. Judicial Watch v. Rossotti,* 317 F.3d. 401, 404 (D.C. Cir. 2003). In *Judicial Watch*, the plaintiff filed an action after the IRS had already served them with a summons to produce documents for the audit. *Id.* In fact, the plaintiffs here had been served an audit letter, had it revoked while knowing they remained on the IRS's "radar screen," and were finally served summons three years after the initial letter. *Id.* at 403–04. As such, the Fourth Circuit found that an audit to determine liability is "within the category of activities that may culminate in the assessment of taxes." *Id.* at 405.

Plainly, there is no assessment of Covenant Truth Church's tax liability currently, as there is no audit underway. The IRS has not requested documents, initiated a subpoena or summons, or in any way initiated an assessment, other than expressing an intent they may do so in the future. Assessment is the official recording of a taxpayer's liability, not the possibility that the IRS assesses one's taxes later. All that has changed is the notification that the church has been selected for a random audit, which is a realistic possibility for any 501(c)(3) organization at any given moment.

Nothing about Covenant Truth Church's status has advanced to an assessment, as nothing has changed. The audit has not been initiated to form an "assessment," let alone a downstream "collection" that may result. Covenant Truth Church exists in the exact same status as it always

has, functioning as a 501(c)(3) organization. The audit letter only serves as a formality, not an actual assessment or change in tax status.

Again, as a 501(c)(3) organization, an audit is always an impending possibility for Covenant Truth Church. This status existed before receiving the audit letter. Since 501(c)(3) organizations are subject to random audits at any time, an assessment is no more underway before and after receiving an audit letter. Covenant Truth Church and others are always on notice that they may be audited.

Lastly, the audit letter's lack of force further indicates that this situation has not reached an assessment. The IRS revoking this letter is a distinct possibility, as seen in *Judicial Watch*, and the organization's status did not change before and after doing so. In *Judicial Watch*, an assessment did occur until the organization had been served summons to produce documents, meaning the IRS's assessment was then underway. Covenant Truth Church's situation has not reached this point, as the IRS has not asked for any documents or initiated its audit. Instead, the IRS must choose to begin its assessment on the church, which it has not done yet.

Between the status quo and the IRS hypothetical revoking this audit letter, nothing about Covenant Truth Church's status would change. Such contrast (or lack thereof) illustrates that no assessment is underway.

B. Covenant Truth Church has been left with no available administrative remedy to challenge the Johnson Amendment by IRS procedures, which is a distinct exemption to the AIA.

It is well settled that when a plaintiff does not have a remedy under the IRS's procedures, their suit is not barred by the AIA. *South Carolina,* 465 U.S. at 379. This exception means that the AIA does not "reach all disputes tangentially related to taxes." *Cohen v. United States*, 650 F.3d. 717, 727 (D.C. Cir. 2011). Rather, analyzing AIA exceptions "requires a careful inquiry into the

remedy sought, the statutory basis for that remedy, and any implication the remedy may have on assessment and collection." *Id.*

Specifically, in *Z St. v. Koskinen*, plaintiffs *Z St.* were left without adequate remedy when the IRS told them their 501(c)(3) application would be delayed because the IRS was "carefully scrutinizing organizations" with connections to Israel, such as Z St. 791 F.3d. 24, 27 (2014). The court recognized that *Z St.* could have waited out the IRS's processing and decision, and the deadline for the IRS to give a response was only 32 days away. *Id.* at 32. Then, the organization could have challenged under 26 U.S.C. § 7428, which is the IRS's procedure for controversies surrounding 501(c)(3) organizations for an "adequate remedy." *Id.* Moreover, other remedies would have been available to Z St. past this, such as pursuing a deficiency petition or refund suit under 26 U.S.C §§ 6213, 7422 respectively.

But until those 32 days had elapsed, they could not use any IRS remedy, procedure, or challenge to contest the constitutionality of their situation. *Id.* at 31–32 (citing *South Carolina*, 465 U.S. at 380). As such, the plaintiffs were left without any mechanism to challenge the IRS's delay, existing within *South Carolina*'s exception. *Id.* at 31.

Broader situations without remedies also avoid the AIA barring claims. For example, taxpayers in *Cohen* sued for money that the IRS previously collected as part of an excise tax, as changes in the law entitled taxpayers to have those funds returned. *Cohen v. United States*, 650 F.3d. 717, 726 (D.C. Cir. 2011). There, IRS procedures were not applicable (not even a refund suit under § 7422), as the IRS's procedures are not written "to affect the assessment or collection of taxes after the fact." *Id.* at 726–27.

Cohen notes that disputes "tangentially related to taxes" may still not be barred by the AIA, noting an array of cases that would call for the IRS returning seized materials, compelling the IRS

to collect more taxes, and challenging discriminatory organizations receiving tax exemptions from the IRS. *Id.* at 727 (citations omitted). As such, *Cohen* notes that constitutional claims may call for a different analysis under the AIA's remedy analysis. *See id.* at 727.

Specifically, *We the People* illustrate how different First Amendment claims will draw differing AIA analyses. *We the People Found., Inc.*, 485 F.3d at 143. For instance, a suit compelling IRS agents and officials to respond to petitions for information may proceed under the AIA as a straight First Amendment Petition Clause claim. *Id.* at 141, 143. However, alleging that the IRS now seeks to collect unpaid taxes in retaliation for these requests is barred by the AIA, as it directly "seek[s] to restrain the Government's collection of taxes." *Id.* at 142–43.

Here, Covenant Truth Church 's situation falls outside of any current IRS remedy, leaving the church in legal limbo like the plaintiffs in *Z St*.

Covenant Truth Church is in a remarkably similar position to the *Z St.* plaintiffs. Just as *Z St.* plaintiffs had no remedy ahead of IRS processing, the church is left without any avenue to challenge the constitutionality of the Johnson Amendment until the IRS takes further action. While further remedies may be available to Covenant Truth Church later, no remedy currently exists to challenge the IRS regulation. Akin to *Z St.* plaintiffs' inability to utilize § 7428 to challenge a 503(c)(3) ruling, Covenant Truth Church is equally unable to use this procedure to launch an otherwise valid constitutional claim. Without an existing remedy, Covenant Truth Church's situation falls squarely within the *South Carolina* exception.

Next, Covenant Truth Church's status is as equally early in IRS procedure as the plaintiff in *Cohen*'s suit was late. In *Cohen*, because taxes had already been collected, and the relief they sought was far past the assessment or collection of taxes, their suit was not barred by the AIA since no alternative remedies existed. Conversely, Covenant Truth Church's claims early enough *before*

assessment and collection that no remedies exist. Both claims lay outside the assessment and collection phase of taxation, just on opposite sides of the spectrum. While *Cohen* concerned a taxation situation "after the fact," Covenant Truth is in an equal position before the fact. *Cohen*, 650 F.3d. at 727.

Finally, Covenant Truth Church's challenge is also constitutional, as was the case in *We the People*. Admittedly, the claim here is somewhere in between the two asserted in *We the People*. There, the petitions for information are solely requests for information that do not relate to tax liability. However, *We the People*'s challenge to unpaid taxes is inarguably related to the assessment and collection of taxes. As such, Covenant Truth Church's challenge to the Johnson Amendment is closer to the former, seeking to change policy due to its constitutional implications. While of course, revoking the Johnson Amendment could have downstream tax implications, there are three distinct steps for reaching an actual assessment or purpose of restraining taxes. *See supra* at 10 (discussion about the three distinct steps in *CIC* and how Covenant Truth Church's situation mirrors this); *see also Cohen*, 650 F.3d. at 727 (referencing cases where an indirect relation to a tax may not be barred by the AIA). As such, Covenant Truth Church's suit is far closer to a straight constitutional challenge, as it directly asks this court to consider the constitutionality of the Johnson Amendment, as opposed to a direct restraint on the assessment or collection of taxes.

Lastly, alongside the *South Carolina* exception, the *Williams Packing* test, exists as the final exception to the AIA. *See Enoch v. Williams Packing & Navigation Co.,* 370 U.S. 1, 7 (1962). Under the *Williams Packing* test, a taxpayer may bypass the AIA if there is (1) no circumstance where the government could prevail, and (2) "equity jurisdiction otherwise exists." *Id.*

Admittedly, the *Williams Packing* test functions as a final resort, as it only serves as an exception in extraordinary circumstances. While equity jurisdiction may otherwise exist (*see infra*

Section II), the first prong is a near-impossible bar to surpass. While Covenant Truth Church is quite confident in the merit and strength of its Johnson Amendment arguments, it recognizes that any valid counterargument or dispute will cause this prong to fail.

II. Covenant Truth Church satisfies Article III standing, as the Supreme Court's analysis of First Amendment standing cases should apply to its challenge of the Johnson Amendment, and because the church nonetheless has standing due to the threat of harm and enforcement of IRS regulations.

To satisfy Article III standing, a plaintiff must satisfy three elements. First, they must suffer an "injury in fact" which is "concrete and particularized," as well as "actual and imminent." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Second, there must be a causal connection between the injury and the conduct causing the suit, requiring such conduct to be "fairly… trace[able] to the challenge action of the defendant." *Id.* (citation omitted). Finally, it must be likely that the injury will be redressed by a favorable outcome for the plaintiff. *Id.* at 560–61.

The Supreme Court notes a "recurring issue" in determining whether "the threatened enforcement of a law creates an Article III injury." *Id.* at 158. Under these threats, "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Id.*

Often, Article III claims turn on whether a plaintiff has suffered an "injury in fact." *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161 (2014). To prove this, plaintiffs must show (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) that their future conduct is barred by the sweep of the challenged regulation, and (3) "the threat of future enforcement is substantial." *Id.* at 161–164 (quoting *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979) for the first two prongs).

In this context, concerns about injury and a lack of standing are vastly lessened in the First Amendment context because of concerns over a law's chilling effect, at least in free exercise and expression contexts. *Secretary of Maryland* v. *Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984).

"Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). Due to this, "when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." *Mahmoud v. Taylor*, 606 U.S. 522, 560–61 (2025).

Further, this doctrine underscores that an actual harm does not need to have occurred yet for an Article III injury. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988). For example, bookstores had standing to sue over Virginia law that required censorship of certain books that may not be appropriate for children. *Id.* at 392–93. There, plaintiffs had "an actual and well-founded fear that the law would be enforced against them," and there was a greater "alleged danger… of self-censorship" under the regulation. *Id.* at 393. *See also Mahmoud,* 606 U.S. at 560–61 (where parents did not need to wait until an actual harm occurred to their free exercise rights, after expressing concern their school may read books to their children inconsistent with their religious beliefs).

Most notably, the court has broadly found standing in First Amendment cases for the fundraising and solicitation for charitable organizations. The court first analyzed this through a municipal ordinance barring solicitation of contributions by charitable organizations that did not spend at least 75 percent of its receipts on "charitable purposes." *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 622 (1980). The plaintiff could bring suit, even without a demonstration that it was one of the organizations affected by the law. *Id.* at 634. "In these First Amendment contexts," courts are inclined to disregard the normal prohibitions on bringing suits as it applies to others "because of the possibility that protected speech or associative activities may

be inhibited by the overly broad reach of the statute." *Id.; see also Secretary of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 949 (1984) (analyzing a similar but more flexible statute to that in *Citizens for a Better Env't*, holding that a facial challenge was permitted "for the benefit of society" and "to prevent the statute from chilling the First Amendment rights of other parties not before the court).

While the Supreme Court has not directly applied this First Amendment "overbreadth" doctrine to Establishment Clause claims, it has still found standing for litigants challenging on such grounds. *Larson v. Valente*, 456 U.S. 228, 244 n.16 (1982). For example, plaintiffs challenged a Minnesota law that imposed reporting and registration requirements on charitable organizations that had previously exempted religious organizations, until the state's legislature changed the rule to include religious organizations who received more than 50 percent of their contributions from nonmembers. *Id.* at 231–32. Even though Minnesota had only threatened to enforce the new 50 percent rule against the plaintiffs, the court still found injury, as it disabled them from soliciting contributions until the church complied with the state's reporting and registration requirements. *Id.* at 241. For the same reason, there was a causal connection between the plaintiff's injury and the challenged conduct. *Id.* Additionally, a suit to declare these reporting requirements unconstitutional would fully redress these injuries by removing such obligations. *Id.* at 242–43.

Nevertheless, the potential threat of enforcement is enough to demonstrate Article III injury, whether in the First Amendment context or otherwise. For example, an individual handing out pamphlets to protest the Vietnam War was still able to challenge the constitutionality of its prohibition, despite only being told by police officers telling the individual to stop handing out pamphlets, and that they would arrest him if he did so again. *Steffel v. Thompson*, 415 U.S. 452, 455–56. The individual challenging the statute had Article III standing, even without being

arrested, because there was "a genuine threat of enforcement." *Id.* at 475. Injury may also transcend criminal or speech contexts, where an individual does not forfeit their Article III standing by paying patent royalty payments under protest. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 131–32 (2007) (actual or threatened serious injury to business or employment "can be as coercive as other forms of coercion"). A threat to a person's livelihood or business, whether threatened or actual, has sufficed for restitution dating back to common law. *Id.* at 132.

Here, Covenant Truth Church meets all three prongs of *Lujan*'s test for Article III standing. Most critically, its Johnson Amendment challenge is an "injury in fact," as the church's position mirrors that of other organizations affected by the bar on political activity, the Johnson Amendment regulates conduct in the very similar manner to situations where the court has applied overbreadth doctrine, and the church is under a general threat of enforcement. Then, establishing such injury lends to a simple causal connection because the IRS's proposed conduct (enforcing the Johnson Amendment) connects to Covenant Truth Church's injury, and declaring the amendment unconstitutional would serve as a sufficient remedy to these injuries.

First, this court should view Covenant Truth Church's Establishment Clause challenge to the Johnson Amendment as it does for standing in other First Amendment cases. Covenant Truth Church has been injured itself by the Johnson Amendment, and it serves as a representative of other religious organizations harmed by the government's religious entanglement. It is quite plausible that the conduct of other organizations has been affected by the Johnson Amendment, preventing religious groups from speaking out when their faith calls for it. *Munson* and *Broadrick* directly consider (what are essentially) hypothetical parties whose conduct is barred by regulation. Other religious organizations are just as disadvantaged by the Johnson Amendment's prohibition as Covenant Truth Church, unable to voice important religious, political beliefs because of the

government's disfavor. By challenging the Johnson Amendment, Covenant Truth Church represents similarly situated litigants whose rights are curtailed by this Establishment Clause entanglement.

And while the court's analysis of overbroad First Amendment claims has only been analyzed in the free exercise and free speech context, the overlap between these rights and the Establishment Clause issue here should not be understated. Not only does the Johnson Amendment needlessly entangle the government with religion by regulating religions compelled to make political message, but its prohibition on this conduct creates the exact same "chilling effect" that provides the basis for the doctrine. Just as bookstores may not display or stock certain books under the threat of statutory enforcement, the government disfavors religions compelled to speak out with 501(c)(3) revocation. Such analysis has even been extended to charitable organizations, where the court has found standing for organizations that also served as representatives of others. As such, it would not be a stretch for the court to extend the doctrine to Covenant Truth Church's challenge, as it represents other similarly situated groups under the Establishment Clause.

Even without extending the First Amendment overbreadth analysis to the instant matter, Covenant Truth Church still meets Article III standing.

Most notably, Covenant Truth Church demonstrates harm in the same manner as the plaintiffs in *Larson*. Just as the threat of being subject to reporting and registration requirements sufficed as harm, so is the threat of an audit to revoke tax status. Both are threats with the potential for harm under the Establishment Clause, affecting the ability to solicit donations and exercise religious beliefs.

As such, Covenant Truth Church's conduct meets the first two prongs of *Susan B. Anthony List*. First, the church intends to engage in conduct arguably affected with a constitutional interest,

in that its rights are affected by the government's disfavor it faces under the Johnson Amendment. The church has engaged in this prohibited political conduct in the past, and any future prohibition on such would be injurious. This leads naturally to the second prong, regarding future conduct being barred by the statute. The Everlight Dominion is a religion that requires speaking on important political issues, and the Johnson Amendment threatens the church's ability to do so. Covenant Truth Church faces a threat of harm in the future if unable to voice these religious beliefs, and the Johnson Amendment needlessly entangles government regulation by making tax status contingent on religious and political exercise.

Finally, these claims meet the final prong, a substantial risk of enforcement, detailed in *Susan B. Anthony List* and discussed in *Steffel*. Covenant Truth Church is substantially at risk of Johnson Amendment enforcement, not only because of the threat of IRS enforcement generally, but due to the notice of an impending audit. The lower court decision references an IRS consent decree that an IRS consent decree expressing that it would not enforce the Johnson Amendment in select cases. R. at 2 n.2. However, the majority correctly notes that this is exception only applies when "a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith connected to its religious services." *Id.* Critically, Covenant Truth Church and Pastor Vale engage and spread its message through non-customary channels of communication, creating in podcasts and digital livestreams of services. R. at 3. Covenant Truth Church's use of podcasts specifically leaves them vulnerable to enforcement, as it is a non-customary channel of communication that extends far past messages strictly to the church's congregation. The podcast is the fourth most popular in the state of Wythe, and the twentieth most popular podcast nationally, with an audience that far surpasses just Covenant Truth Church's congregation. The church would be hard-pressed to rely on this IRS decree as a safe harbor, given

the non-traditional way in which the church spreads its message through digital means, reaching many across the country.

The threat of enforcement is further substantiated by the letter from the IRS, demonstrating its intent to audit Covenant Truth Church. R. at 5. This increases the likelihood of enforcement from the regular potential for random selection inherent to 501(c)(3) organizations, into an imminent threat to the church's activities. While the IRS has not actually initiated an audit or assessment, this notification increases the likelihood of such. Moreso, 501(c)(3) revocation is a true possibility, as the IRS regularly utilizes revocation. Publicly, the IRS has listed 1,386 organizations for which it has revoked 501(c)(3) status, excluding those that simply failed to file the required paperwork. *Revocations of 501(c)(3) determinations,* I.R.S., https://www.irs.gov/charities-non-profits/charitable-organizations/revocations-of-501c3-determinations. Thus, revocation is a real possibility for any organization that may violate 501(c)(3) rules, as the IRS has shown a willingness to strip this status if necessary. Under the threat of an audit, Covenant Truth Church faces a very real possibility of becoming the 1,387th.

Finally, with injury established through the above analysis, Covenant Truth Church meets the final two prongs of *Lujan*, giving the church Article III standing.

The injuries suffered are traceable to the conduct of the defendant, the IRS. The existence and potential enforcement of the Johnson Amendment is the central merits issue of this suit, and the IRS's enforcement of this regulation traces this suit to them. Moreover, the notification of an upcoming audit further strengthens this connection, as the likelihood of enforcement is not just abstract. Finally, any Establishment Clause injury would be fully redressed by a favorable outcome. Without the Johnson Amendment, Covenant Truth Church would be free to both voice its religious imperatives and maintain 501(c)(3) status without government entanglement. In the

status quo, the Johnson Amendment disfavors religious groups with an imperative to speak out on religious issues, and the remedy here would address this unconstitutional bar.

As such, Covenant Truth Church meets Article III standing due to the constitutional nature of its claim, as well as the threat of enforcement it faces. First Amendment overbreadth doctrine has not yet been analyzed by the Supreme Court for the Establishment Clause, but the parallels between this case and the underlying rationale of this doctrine strongly support its application to Covenant Truth Church's challenge of the Johnson Amendment. Even if not, the threat of injury and enforcement by the IRS give Covenant Truth Church Article III standing, impeding the church's ability to practice its religion due to government regulation and entanglement through the Johnson Amendment. As such, Covenant Truth Church has Article III standing on its challenge.

III. The Johnson Amendment is unconstitutional because it violates the Establishment Clause of the First Amendment, undermining the neutrality the clause requires between religions and entangling the church with the state.

The Johnson Amendment is unconstitutional because it violates the Establishment Clause 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. In enacting the Johnson Amendment and regulating what religions can and cannot do as a part of their religious beliefs to receive preferential tax treatment, they have violated the Establishment Clause. By dictating what churches may or may not practice to be recognized as a "charitable organization" under IRC §501(c)(3), Congress is creating a greater entanglement between church and state, which opposes the history of the Establishment Clause and its purpose. The Johnson Amendment exposes certain religions to prejudicial tax treatment and disincentivizes donors from donating to Covenant Truth Church. The Johnson Amendment, while seemingly secular on its face, has a

disparate impact on Covenant Truth Church, violating the Establishment Clause. Accordingly, the Johnson Amendment is plainly in violation of the Establishment Clause of the First Amendment.

Pursuant to the Establishment Clause of the First Amendment, the government cannot show official preference to or endorse one religion over any other. Instead, the government must remain neutral in any competition between religions. *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). To remain neutral means that neither state nor federal government may not pass any laws "which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Board of Ed. of Ewing Tp.*, 220 U.S. 1, 15 (1947). In analyzing the constitutionality of government action under the Establishment Clause, focusing "on the original meaning and history, this Court has stressed, has long represented the rule rather than some 'exception' within the 'Court's Establishment Clause jurisprudence.'" *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 536 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 575 (2014)).

Although a government act or statute may not directly show preference to one religious sect over another, it is unconstitutional under the Establishment Clause if it has the effect of excessively entangling government and religion. *Lemon v. Kurtzman*, 403 U.S. 602, 609 (1971). The *Lemon* court concluded that a Rhode Island statute allowing state officials to supplement the income of instructors in nonpublic schools who taught secular subjects was unconstitutional. *Id.* at 608. While the statute on its face did not favor one religion over another, 95% of pupils attending nonpublic schools in Rhode Island attended Roman Catholic Schools. *Id.* Accordingly, the Court ruled that since the statute almost entirely benefited Roman Catholic Schools, and therefore indoctrination into the Roman Catholic Church, it "fostered excessive entanglement" by significantly funding a religious sect, undermining government neutrality in religious competition. *Id.* at 609.

Tax exemptions based on religion are constitutional under the Establishment Clause when they apply equally to all religions. *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 673 (1970). Taxing all religions equally protects any one religion from hostility in the form of excessive taxation. *Id.* Specifically, the Court in *Walz* noted that a property tax exemption for religious properties used for religious purposes is constitutional under the Establishment clause despite concerns that such exemptions entangled the church and the state. *Id.* Since no one religion was singled out negatively or positively in the tax exemption, then there were no tax concerns under the Establishment Clause of the First Amendment. *Id.*

The government may express some religious sentiment as is in line with the history of the Establishment Clause, including prayer, so long as the prayer does not coerce non-adherents into participation or attempt to establish an official state religion. *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 586 (2014). In *Town of Greece*, the Court held that a prayer before town meetings did not violate the Establishment clause, despite being offensive to some who listened. *Id.* at 589. The Court, relying heavily on a historical analysis of the Establishment Clause, determined that the historical values guarded by the Establishment Clause have never been opposed to legislative prayer and therefore the prayer was not an act of forcing citizens to adhere to any particular religion, but was deeply rooted in the American historical tradition. *Id.* at 587.

Here, the Johnson Amendment is not only entirely unnecessary for the government to satisfy the purposes of the Establishment Clause, but it also undermines the Establishment Clause's historical goals of government neutrality in religious competition. Although the Johnson Amendment does not appear to show preference to certain religions, the effect of the Amendment imposes tax penalties on religious institutions whose beliefs involve political activism. Like the statute in *Lemon*, which had the effect of showing preference to the Roman Catholic Church, the

Johnson Amendment shows preference to religions which do not include political activism as a religious practice. Under the Establishment Clause, the government cannot show preference to any religion over others. The Everlight Dominion requires the church to speak out on political issues, and by unfairly allocating tax benefits, the government is expressly favoring other religious in the competition for resources. Furthermore, preventing certain religions from receiving tax benefits as charitable organizations overtly entangles the church and the state, undermining the longstanding rule that the government must remain neutral in competition between religious sects.

The Johnson Amendment is unlike the property tax exemption in *Walz*, however. The exemption in *Walz* applied to all religions equally, regardless of beliefs or practices. The Johnson Amendment, on the other hand, does differentiate religions based on practices, refusing charitable organization status to religions that engage in politics as a matter of doctrine. Under the reasoning in *Walz,* this directly contradicts the purpose of the Establishment Clause. The *Walz* Court emphasized that universal tax exemptions to all religions further separates church and State and prevents the establishment of a government religion, protecting all religions from taxational discrimination. Since the Johnson Amendment differentiates tax benefits based on religious beliefs, it violates the Establishment Clause and its historical interpretation. The Johnson Amendment, takes the opposite approach to *Walz*. 501(c)(3) benefits are by nature unfairly allocated, denying access to religions that must engage in politics due its principles. While facially neutral, The Everlight Dominion and other similar religions are severely disadvantaged.

Such historical interpretation was reinforced by *Town of Greece*, which ruled that a historical interpretation of the Establishment Clause is necessary when considering questions of constitutionality. The prayer in *Town of Greece* was constitutionally permissible because the country has had a historic root in pre-legislative prayer which did not conflate the church and the

state. *Walz* notes that granting tax exemptions for religion does not aim to establish a religion or have the effect of doing so, as it only reflects concern by statute and constitution authors about the danger of excessive taxation to religion. Unlike the legislative prayer in *Town of Greece*, the Johnson Amendment's treatment of religion does not line up with the historic goals of the Establishment Clause. Since the Johnson Amendment does not equally treat all religions, it exposes religions that act politically as a matter of doctrine to excessive taxation, therefore acts against the history of and in violation of the Establishment Clause.

The IRS's rejoinders do not alter this conclusion. One rejoinder is that overturning the Johnson Amendment will have the consequence of creating a greater amount of entanglement between church and State through the increased presence of religion in political dialogue. Though as the Court has ruled, keeping church and State entirely separate is impossible. *See Lemon v. Kurtzman,* 403 U.S. 602, 614 (1971). As the Court in *Lemon* noted, the goal of the Establishment Clause is to prevent excessive entanglement between church and State and prevent the state from sponsoring any religion over another. Regulating what can and cannot disqualify a church from being recognized as a charitable organization and preventing them from reaping the benefits of being a charitable organization creates an excessive entanglement between church and State. This is directly out of line with the historical purpose of the Establishment Clause, and the status quo forces the IRS to entangle itself in religion. From America's youth, the Framers have made the purpose of the Establishment Clause clear: to promote separation of church and State. Letter from Thomas Jefferson to the Danbury Baptists (Jan. 1, 1802) (on file with the Library of Congress). *Walz* notes that granting tax exemptions for religion does not aim to establish a religion or have the effect of doing so but simply reflects concern by statute and constitution authors about the danger of excessive taxation to religion. Unlike the legislative prayer in *Town of Greece*, the

Johnson Amendment's treatment of religion does not line up with the historic goals of the Establishment Clause. Since the Johnson Amendment does not equally treat all religions, it exposes religions that act politically as a matter of doctrine to excessive taxation. This, as the court in *Walz* noted, overly conflates the government with religion, which is in violation of the history of and the purpose of the Establishment Clause. The Johnson Amendment, in imposing tax disadvantages on certain religious practices, acts in violation of the Establishment Clause by acting in opposition to its historical context. Therefore, to prevent the government from entangling itself with religion and defeating its own neutrality, the Johnson Amendment must be overturned.

The dissent in the lower court decision insists that if Covenant Truth Church wishes to continue their political activism, they may simply file under I.R.C. §501(c)(4)c as a social welfare organization. However, filing as a §501(c)(4) social welfare organization as opposed to a §501(c)(3) charitable organization will have a detrimental effect on Covenant Truth Church. The key difference in tax treatment between a §501(c)(4) entity and a §501(c)(3) entity is that donations to a social welfare organization are not deductible, whereas donations to a charitable organization are deductible. *Donations to Section 501(c)(4) Organizations*, I.R.S., https://www.irs.gov/charities-non-profits/other-non-profits/donations-to-section-501c4-organizations. Additionally, under I.R.C. §6113(a), social welfare organizations must disclose that "contributions or gifts to such organization[s] are not deductible as charitable contributions for Federal income tax purposes." I.R.C. §6113(a). The imposition of a requirement on a religious institution to notify all donees that they cannot deduct donations on their taxes not only may hurt Covenant Truth Church's image as a church, but it would also disincentivize potential donees from giving donations to Covenant Truth Church, since there is no non-psychic benefit to the donee. It is overly optimistic to assume that taxpayers may donate to a church for non-tax reasons.

Regardless, it is overly optimistic to assume that requiring Covenant Truth Church to disclose that donations made to it are non-deductible might discourage any donors who are aware that donations to churches are usually deductible. Due to the disparate benefits of §501(c)(3) and §501(c)(4), forcing Covenant Truth Church to file under §501(c)(4) would penalize them for their religious beliefs, demonstrating how the Johnson Amendment treats The Everlight Dominion churches differently from others. By forcing the church in a disadvantageous tax status, the IRS fails to meet religious neutrality that the Court has repeatedly held the Establishment Clause requires.

The IRS may also claim that under cases like *McGowan v. Maryland* and *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, Covenant Truth Church's Establishment Clause claim fails. This is not the case. While on the surface these cases may negatively impact the outcome of an Establishment Clause claim for Covenant Truth Church, this is not true. *Catholic Charities* involved a tax regulation on the use of a property for religious purposes where the property in question was not used primarily for religious purposes because it was a charity that happened to be associated with a religious sect. *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 244 (2025). The statute in *Catholic Charities* is not like the one at hand, because the Johnson Amendment is trying specifically to regulate the behavior permissible on a statute that applies to nearly all churches and similar religious establishments. While the *Catholic Charities* regulation is trying to regulate how a property is used and what makes it eligible for certain tax benefits, the Johnson Amendment is trying to regulate which religious conduct makes an establishment eligible for tax benefits. This distinguishes the present case from *Catholic Charities,* since the Court in that case was regulating an entirely different type of government conduct. The current case deals with the government regulating whether something is religious conduct, while the other is the government deciding if something

is used for a religious purpose under a specific religion. The Johnson Amendment is, plainly put, the government regulating what a religion can and cannot do to receive tax benefits, which is a clear violation of the Establishment Clause.

Nor is the conduct the Johnson Amendment is regulating secular under *McGowan v. Maryland*. *McGowan v. State of Md.,* 366 U.S. 420, 452,(1961). When a statute deals with choices a religion may make about its beliefs and what conduct is required, this is inherently religious regulation in nature. So, while the *McGowan* court ruled that the government occasionally passes legislation that coincides with tenants of certain religions, this is not equivalent to the religious conduct the Johnson Amendment regulates. Certain statutes may line up with the tenants of religious organizations, but the Johnson Amendment directly regulates what conduct a religion may or may not engage in under its own tenants, which directly violates the Establishment Clause.

As described above, both the District Court and Court of Appeals applied the law properly. Covenant Truth Church's claim against the IRS is not barred by the AIA because there is no tax or assessment to be restrained. *CIC Servs., LLC*, 593 U.S. at 218. Further, the claim is within the AIA exemption for parties with no other legal remedy. *South Carolina,* 465 U.S. at 379. Moreso, Covenant Truth Church has proper standing pursuant to the Article III First Amendment standing analysis. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) Lastly, the Johnson Amendment is an unconstitutional violation of the Establishment Clause. *Larson v. Valente*, 456 U.S. 228, 244 (1982). As such, the opinions of the lower courts must be affirmed.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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