

No. 26-1779

IN THE  
SUPREME COURT OF THE UNITED STATES

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

v.

Covenant Truth Church,  
*Respondents.*

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

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BRIEF FOR RESPONDENTS

**Team No. 20**  
***Counsel for Respondents***

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### **QUESTIONS PRESENTED**

- I. Whether Covenant Truth Church has standing to bring this suit in federal court?
- II. Whether a statute prohibiting non-profit organizations from participating in political campaigns violates the First Amendment's Establishment Clause?

### **OPINIONS BELOW**

The United States District Court of Wythe's opinion addressing Covenant Truth Church's standing to challenge the constitutionality of the Johnson Amendment is unreported. R. at 2-16. The opinion of the United States Court of Appeals for the Fourteenth Circuit affirming the district court's permanent injunction and the Johnson Amendment's violation of the Establishment Clause .*Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F. 4<sup>th</sup> 1 (14<sup>th</sup> Cir. 2025).

### **JURISDICTIONAL STATEMENT**

This is a direct appeal from the judgment enjoining enforcement of the Johnson Amendment. The District Court possessed jurisdiction under 28 U.S.C. § 1331. The Court of Appeals possessed jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction on writ of certiorari pursuant to Article III Section II of Constitution. The IRS appeals the District Court and Appellate Court's Order enjoining enforcement of the Johnson Amendment. The IRS appeals the District Court and Appellate Court's order granting summary judgement and a permanent injunction to Covenant Truth Church.



## **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

The petitioners' standing in federal court is implicated by Article III of the United States Constitution. U.S. CONST. art III §2. U.S. Const. Amend. I. Statutory authority relevant to this case includes Title 26 of the United States Code, codified Internal Revenue Code, at § 501(c)(3), § 1341, § 7421(a), §7428, and § 7611.

## **STATEMENT OF THE CASE**

This appeal arises from the District Court's decision recognizing Covenant Truth Church's standing to challenge the constitutionality of the Johnson Amendment, specifically to the adherence of the First Amendment Establishment Clause. R. at 5.

### **I. Covenant Truth Church and Pastor Gideon Vale**

Covenant Truth Church, located in the state of Wythe, is the largest member of the Everlight Dominion, a storied religion with devout followers. R. at 3.

Everlight Dominion is a well established religion rooted in progressive social values. R. at 3. One of its core religious values mandates its members and leaders to actively participate in political campaigns that align with their core principals, which includes voting, donations, and volunteering. R. at 3. If any church or leader fails to fulfill this requirement, they will be excommunicated from the Church and the Everlight Dominion. R. at 3.

Part of the Everlight Dominion's growth is due to Pastor Gideon Vale's leadership and his dedication to the church and innovative ideas to increase church membership. R. at 3.

To engage as many members as possible, Pastor Vale focused his efforts on creating various platforms to implement the teachings of the Everlight Dominion. R. at 3-4. These efforts

resulted in weekly podcasts in addition to weekly worship services, offering both in-person attendance and live-stream. R. at 4.

As the podcast grew in popularity, Pastor Vale used this communication method to encourage listeners to vote, volunteer for political campaigns, and donate to those candidates that align with the Everlight Dominion faith. R. at 4.

The passing of Wythe Senator, Matthew Russett, in January 2024, triggered a contentious election for a new senator. R. at 4. Given the nature of the election, Pastor Vale felt compelled to endorse Congressman Samuel Davis, a young politician embracing progressive social values, consistent with those of the Everlight Dominion. R. at 4. Pastor Vale used the podcast as a means for educating his listeners of the intersectionality between Congressman Davis' political stances with the Everlight Dominion teachings. R. at 4. The podcast encouraged listeners to vote, volunteer, and donate to Congressman Davis' campaign and Pastor Vale shared his intentions to deliver sermons in October and November 2024, comparing Congressman Davis' political ideologies to those of the Everlight Dominion. R. at 5.

On May 1, 2024, the IRS sent Covenant Truth Church notice of a random audit of Section 501(c)(3) status. R.5. Pastor Vale, cognizant of the Johnson Amendment, quickly became disturbed that the IRS would revoke its Section 501(c)(3) tax classification based on the Church's political involvement. R. at 5. Covenant Truth Church timely filed suit in the United States District Court seeking a permanent injunction against the enforcement of the Johnson Amendment asserting that it violates the Establishment Clause of the First Amendment. R. at 5. This suit commenced before the IRS began its audit thus, Covenant Truth Church's tax classification status remains unchanged. R. at 5.

## **II. Nature of Proceedings**

Covenant Truth Church filed in the District Court of the Eastern District of Wythe seeking a permanent injunction against the enforcement of Johnson Amendment citing that the Johnson Amendment violates the Establishment Clause of the First Amendment. R. 5.

The District Court found that Covenant Truth Church has standing to challenge the Johnson Amendment, and the Johnson Amendment violates the Establishment Clause. The District Court granted Covenant Truth Church's motion for summary judgment and entered the permanent injunction. R. 5-6. The sitting Commissioner, Scott Bessent and the IRS appealed the District Court's order. R. at 6.

On the Tax Anti-Injunction issue, the appellate court concluded that Covenant Truth Church has no alternative remedy to challenge the Johnson Amendment. The appellate court further reasoned that because the tax classification of the church remains unchanged, the IRS procedures nor does Section 7428 provide no relief. R. at 7. Because there is alternative method of relief available, the AIA does not bar this suit. R. at 7.

The appellate court found the issue appropriate for federal adjudication, determining that Covenant Truth Church properly demonstrated an injury in fact by showing substantial risk that the IRS would revoke its tax classification. R. at 7. The court determined that the IRS' pending audit imposed a future threat of enforcement of the Johnson Amendment. R. at 8. The court further held that the issue was ripe for judicial review and did not require prior enforcement of the Johnson Amendment before challenging the constitutionality. R. at 8.

## **III. The Johnson Amendment**

The court of appeals concluded that the Johnson Amendment is not a neutrally applied law as it entangles religion and government interference, violating the neutrality requirement under the

First Amendment. R. at 8. The court emphasized that the Johnson Amendment fails to recognize the historical significance of religious leaders' obligations in political processes. R. at 9. The court found entanglement between the government and religion in the Johnson Amendment because it conditions a tax benefit to certain religious organizations. R. at 10.

For these reasons, the appellate court affirmed the district court's holding, finding that Covenant Truth Church has standing in federal court and that the Johnson Amendment violates the Establishment Clause. R. at 16.

### **SUMMARY OF THE ARGUMENT**

One of the most essential rights in our Constitution is freedom of religion without governmental interference. Covenant Truth Church asserts that the Johnson Amendment directly infringes on the church's freedom of religion. Covenant Truth Church should not be penalized for sincerely exercising their faith.

Covenant Truth Church is entitled to bring its lawsuit in federal court against the sitting commissioner of the IRS because the Anti-Injunction Act does not bar its claims, and the Church satisfies Article III standing.

Covenant Truth Church has the right to bring this suit in federal court because the Church is challenging the validity and enforcement of the Johnson Amendment rather than the tax classification itself. The Anti-Injunction Act sets forth that "no suit shall be brought in federal court for the sole purpose of restraining the collection or assessment of a tax." The Anti-Injunction Act presents no obstacle to, as the Church's 501(c)(3) tax-exempt status remains unchanged.

The Anti-Injunction Act does not apply in cases where no alternative remedy is available. Covenant Truth Church is not restricted by the Anti-Injunction Act because the church has had no opportunity to raise any constitutional claims regarding the constitutionality of the Johnson Amendment. Because the IRS has not conducted an audit or altered its 501(c)(3) tax classification, Covenant Truth Church has no alternate remedy for relief.

Additionally, Covenant Truth Church has Article III standing to challenge the Johnson Amendment's constitutionality because an audit will subject it to enforcement, threatening revocation of its 501(c)(3) tax exemption status. As a member of the Everlight Dominion, Covenant Truth Church prioritizes its political involvement, adhering to one of the religion's core values. In keeping with such values, Pastor Gideon Vale supported Congressman Davis' senate campaign on his podcast and planned sermons to enlighten the church on why Congressman Davis' ideologies align with those of the Everlight Dominion. In doing this, Covenant Truth Church violated the Johnson Amendment which prohibits any 501(c)(3) organization from participating in political campaigns.

Article III standing requires a petitioner show an injury in fact traceable to the defendant's conduct, only redressable by a favorable judgment. Covenant Truth Church sufficiently demonstrates an injury in fact because the enforcement of the Johnson Amendment would negatively impact the Everlight Dominion's religious freedom.

Therefore, Covenant Truth Church's challenge to the Johnson Amendment is proper for federal adjudication as it is not barred by the Anti-Injunction Act and has Article III standing.

The Johnson Amendment, which conditions § 501(c)(3) tax exempt status on prohibition against political speech endorsing or opposing political candidates, violates the Free Speech and Free Exercise Clauses of the First Amendment.

First, history and tradition demonstrate that religious organizations have long exercised the right to speak on political issues, political leaders, and elections. From the founding era through the Civil Rights movement, churches and clergy regularly addressed moral and political questions from the pulpit, including wars, elections, and civil rights. This unbroken tradition establishes that religious political expression lies at the core of First Amendment protections, not at their periphery.

Second, history likewise supports tax exemptions for religious organizations without restrictions on their political speech. For centuries, both before and after the founding period, governments have exempted religious organizations from taxation to avoid entanglement with religion and to preserve religious liberty. The Supreme Court has repeatedly recognized this practice as an “unbroken” and overwhelmingly supported tradition in the US by both the federal and state governments. Conditioning that exemption on the surrender of constitutional rights is inconsistent with the very purpose of the exemption.

Third, the Johnson Amendment imposes an unconstitutional condition on a government benefit. While no organization has a right to a tax exemption, the government may not condition a generally available benefit on the relinquishment of First Amendment Freedoms. Supreme Court precedent makes clear that denying a public benefit because of constitutionally protected speech or religious exercise impermissibly penalizes those rights. Tax exemptions are not subsidies but public benefits, and the government may not use them as leverage to suppress First Amendment Expression.

Fourth, the Johnson Amendment is a content-based restriction on core political speech and cannot survive strict scrutiny. It prohibits speech solely based on its subject matter of support for or against political candidates and requires government officials to examine the content of sermons and religious communications to determine compliance with the statute. Such content based regulations are presumptively unconstitutional and must be narrowly tailored to serve a compelling government interest. The government lacks such an interest here. Preventing the “politicization” churches, avoiding perceived religious endorsement, and protecting revenue are not compelling state interests to justify suppressing political speech. Moreover, the Johnson Amendment is vastly overinclusive and underinclusive by applying only § 501(c)(3) organizations while permitting similar speech by other entities.

Fifth, developments in Supreme Court jurisprudence in particular *Citizens United v. Federal Election Commission*, undermine earlier decisions upholding the Johnson Amendment. The Court has since rejected the argument that organizations may be forced into alternative entities as a substitute for exercising their own free speech rights, calling into question the constitutional foundation of cases such as *Regan v. Taxation with Representation* and *Branch Ministries v. Rossotti*.

Finally, the Johnson Amendment violates the Free Exercise Clause of the First Amendment by conditioning a generally available public benefit on the abandonment of religious exercise. Religious organizations are forced to choose between retaining tax exempt status and engaging in faith-motivated speech about political leaders and candidates. Supreme Court precedent makes it clear that such coercive conditions on generally available public government benefit impermissibly burdens religious exercise of religious organizations, even when imposed indirectly.

For these reasons, the Johnson Amendment constitutes an unconstitutional infringement on both free speech and free exercise, and in should be declared unconstitutional under the First Amendment.

### **ARGUMENT**

#### **I. THIS COURT SHOULD AFFIRM THE APPELLATE COURT HOLDING FINDING COVENANT TRUTH CHURCH HAS STANDING TO CHALLENGE THE JOHNSON AMENDMENT AND UPHOLD THE PERMANENT INJUNCTION.**

##### **A. The Tax Anti-Injunction Act Does Not Bar Appellee's Suit.**

The District Court correctly determined that Covenant Truth Church's claims are not barred by the Anti-Injunction Act and that the church has established standing under Article III. R. at 7-8. The appellants allege that the true purpose of this suit is to challenge the revocation of Section 501(c)(3) tax exempt status. They further argue that the Church's constitutional challenges to the Johnson Amendment under the Establishment Clause and the First Amendment are merely pretext for their concerns regarding their tax classification. Therefore, asserts this Court lacks jurisdiction, and that this suit is barred by the Tax Anti-Injunction Act (AIA). R. at 12. However, the purpose of the suit is not to restrain the assessment of tax, but to challenge the enforcement and validity of the Johnson Amendment.

Covenant Truth Church, a recognized religious institution of the Everlight Dominion, requires its members and leaders to participate in political campaigns that align with Everlight Dominions' mission of progressive social values. R. at 3. Because political campaigning is an essential religious practice for the Everlight Dominion, the Church's main argument is that the Johnson Amendment unconstitutionally infringes upon their religious freedom, thus violating the First Amendment. While the Johnson Amendment exempts specific organizations operated exclusively for religious purposes, it explicitly prohibits organizations from intervening and



engaging in political campaigns. 26 U.S.C § 501(c) (3). Although, Covenant Truth Church currently possesses Section § 501 (c)(3) tax exempt status, it asserts that they will be sanctioned by the IRS due to a sincere religious belief, which is unconstitutional under the First Amendment and the Establishment Clause.

Covenant Truth Church has standing because it is not challenging the assessment or collection of a tax under the Tax Anti-Injunction Act, (AIA). Instead, the church is challenging the fundamental validity and enforcement of the Johnson Amendment, asserting that the amendment restrictively obstructs the Church's religious freedom. Further, the IRS has made no determinative action regarding the tax classification of the church, which fails to provide the Church with an alternative remedy. This also demonstrates that there will be no significant impact of the tax classification on the Church as result of this suit. Effectively undermining appellants' contention of the purpose of this suit.

The Tax Anti-Injunction Act provides that “no suit for the purpose of restraining the assessment of 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). However, Congress' intent to bar suits only applies in circumstances where there are no alternative remedies for the aggrieved party. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). The purpose of the Anti-Injunction Act (AIA) is to limit interference from the Federal Court regarding the assessment and collection of state taxes when the aggrieved part may seek an alternative remedy. In special circumstances the Internal Revenue Code authorizes certain tax-exempt organizations to challenge and IRS's determination. 26 U.S.C. § 7428. A declaratory judgment regarding the status of Section 501(c)(3) tax- exempt organizations is available only after the IRS has issued an adverse determination and has exhausted all administrative remedies. 26 U.S.C §7428 (b)(2). Here, the

IRS has not yet issued a determination regarding a change in Covenant Truth Church's Classification, because no alternate remedy exists the Church's lawsuit is not barred by the AIA.

Moreover, the record remains unclear as to whether the IRS complied with the Church Audit Procedure Act on May 1, 2024. The Church Audit Procedures Act provides detailed guidelines that the IRS must follow before conducting any church tax inquiry. Under 26 U.S.C. §7611, the Secretary may begin a church tax examination only if there is a reasonable belief based on written facts and circumstances that the church may not be tax exempt or is engaging in taxable activities. 26 U.S.C. §7611 (a)(2)(A)-(B).

Additionally, the IRS must satisfy notice requirements, providing an explanation of the concerns and reasoning for the audit. This notice must also disclose the Church's right to a conference with the IRS to resolve controversy before any examination begins 26 U.S.C. § 7611 (b)(3). Here, it is ambiguous as to whether Covenant Truth Church had the opportunity to conference with the IRS, creating no alternative remedy for the Church.

Furthermore, Covenant Truth Church lacks any state remedy that would provide a "plain, speedy, and efficient remedy." 28 U.S.C. §1341. In *Rosewell v. LaSalle National Bank*, the court considered the interpretation of the "plain, speedy and efficient" exemption to the AIA. Ultimately concluding that a state court remedy is available only if it "provided the taxpayer with a full hearing and judicial termination, in which the taxpayer may raise any and all constitutional challenges to the tax." *Rosewell v. La Salle Nat'l Bank*, 450 U.S. 503, 514 (1981). Here, Covenant Truth Church fails to have any state remedy because they were not offered the opportunity to have a full hearing and judicial termination for them to raise all constitutional challenges.

In determining whether a suit is barred by the AIA, the court must first inquire into the objective motive of the claim and the desired relief. *CIC Services LLC, v. the IRS*, sets forth that in “considering a suit’s purpose, we inquire not into a taxpayer’s subjective motive, but into the objective aim, and the relief sought.” *CIC Servs., LLC v. IRS*, 539 U.S. 209, 217. Here, the face of Covenant Truth Church complaint challenges the validity and enforceability of Johnson Amendment in violation of their free exercise of religion, not to restrain the assessment of a tax under the AIA. Comparable to the reasoning established in *CIC Services*, the Church’s complaint seeks relief from a distinct legal mandate. The tax is relevant only as a sanction for non-compliance with the legal mandate. *Id.*, at 223.

The Johnson Amendment is a regulatory mandate, not a tax, thus AIA is inapplicable. The AIA only “kicks in when the target of the requested injunction is a tax obligation, or the collection or assessment of the tax.” 539 U.S. at 217. In this case, Covenant Truth Church does not challenge the tax assessment, rather its seeking relief from the IRS’s disparate treatment imposed by the enforcement of the Johnson Amendment and the Church’s freedom of religion. Therefore, the AIA would not bar Covenant Truth Church from bringing its claim.

Even if the AIA would apply, Covenant Truth Church may bring its claims because the exception under the Tax Anti-Injunction Act applies. In *Enochs v. Williams Packing & Navigation Co*, the Court held that an exception of the AIA applies when two conditions are met: (1) irreparable injury, and (2) whether the aggrieved party is certain to succeed on the merits. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 6-7 (1962). For preventive injunctive relief to be granted, both conditions must be satisfied.

In this case, Covenant Truth Church will suffer irreparable injury by the enforcement of the Johnson Amendment, as such enforcement directly interferes with the Everlight Dominion's constitutionally protected religious freedom.

The Everlight Dominion faith mandates active participation in political campaigns, the IRS's enforcement of the Johnson Amendment would prohibit a core a religious practice unquestionably causing irreparable harm. Unlike *California v. Grace Brethren Church*, Covenant Truth Church had no opportunity under state law to provide a plain speedy and efficient remedy. The failure to bring this suit would allow the Church's constitutional rights to be violated before given the opportunity to challenge the constitutionality of the Johnson Amendment. *Cal. v. Grace Brethren Church*, 457 U.S. 393, 417 (1982).

The second criteria, under the *Willams Packing* exception, is whether Covenant Truth Church is certain to succeed on its the merits. *William Packing*, 370 U.S. 1, 6-7 (1962). The Supreme Court has yet to clearly state whether a party has satisfied this condition. For example, in *Bob Jones v. Simon*, the Supreme Court reasoned that merits of the case under the First Amendment, due process, and equal protection challenges were debatable as to whether that "under no circumstances could the Government ultimately prevail." 370 U.S., at 7; *Bob Jones v. Simon*, 416 U.S. 272, 747 (1974).

Alternatively, in *Alexander v. "Americans United"*, Justice Blackmun dissenting opinion pushes back on the broad power of the IRS, specifically noting the lack of checks and balances in response to IRS' procedures. Moreover, Blackmun stated that, "where the challenged governmental action is not one intended to produce revenue, but rather, is one to accomplish a broad-based policy objective through the medium of federal taxation, the application of §7421(a) in inappropriate." *Alexander v. "Americans United"*, 416 U.S. 752, 771 (1974). In this unique case,

Justice Blackmun's reasoning applies to the situation at hand, Covenant Truth Church is challenging the governmental action which is attempting to police its constitutional right to freely exercise their religion. The Johnson Amendment is a broad-based policy that unfairly favors certain religious practices over others, which is unconstitutional under the First Amendment. This Court should follow the reasoning set forth in the Court of Appeals concluding that the Johnson Amendment is not a neutrally applied, therefore favors certain religions over others. If this Court follows the line of reasoning from the Appellate court, Covenant Truth Church is certain to succeed on the merits. Therefore, this Court should affirm the Fourteenth Circuit's decision finding that Covent Truth Church has standing under the AIA and is not barred from bringing this suit.

**B. The present case is appropriate for federal court because Covenant Truth Church will suffer injury in fact traceable to the Johnson Amendment, to which its injury would be redressed if the Johnson Amendment is found unconstitutional.**

Covenant Truth Church satisfies Article III Standing to bring this suit in federal court because its random selection for an IRS audit threatens enforcement of the Johnson Amendment and revocation of its 501(c)(3) tax exemption status. Additionally, this threat of prosecution and revocation of its taxation status is a direct result of the Johnson Amendment prohibiting a 501(c)(3) organization from participating in political campaign and speech, directly infringing on Covenant Truth Church's calling as a member of The Everlight Dominion. Finally, a favorable decision by this Court, enjoining the Johnson Amendment as unconstitutional, would prevent Covenant Truth Church from prosecution and protect its 501(c)(3) status. Therefore, Covenant Truth Church has standing in this Court as it sufficiently alleged an injury in fact traceable to the Johnson Amendment, redressable by a favorable decision by this Court.

**1. Covenant Truth Church suffered an injury in fact when the Internal Revenue Service selected it for an audit because the audit will result in a credible threat of enforcement and revocation of its 501(c)(3) status.**

An action in federal court is appropriate when the petitioner alleges a “concrete and particularized” and “actual and imminent” injury in fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Injury in fact exists when one has “personal stake in the outcome of the controversy”. *Warth v. Seldon*, 422 U.S. 490 (1975). An injury in fact occurs when injury is likely to occur in the future. *True the Vote Inc. v. Internal Revenue Service*, 831 F.3d 551, 558 (2016). When the threatened injury is impending or at “substantial risk” of occurring in the future, injury in fact is satisfied. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). If an injury is impending, a petitioner need not wait for enforcement. *Id.* When evidence suggests intent to engage in future conduct affected by enforcement, a credible threat exists, exhibiting imminent injury. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979).

A petitioner alleges injury in fact in the presence of an impending injury or “substantial risk” of future injury. *Susan B. Anthony List*, 573 U.S. at 158. In *Susan B. Anthony List v. Driehaus*, the Supreme Court recognized a preenforcement challenge to a law as actionable, finding the petitioners proved sufficient injury consistent with Article III Standing. *Id.* at 152. In *Susan B. Anthony List*, the petitioner, a non-profit advocacy organization, challenged an Ohio statute prohibiting “false statements” during a political campaign. *Id.* at 151. The petitioners argued the statute violated the First and Fourteenth Amendments of the Constitution. *Id.* at 154. The Court determined preenforcement of a law creates an Article III injury when an individual is “subject to such a threat,” even in the absence of “actual arrest, prosecution, or other enforcement action”. *Id.* at 158. The Court determined the existence of an impending threat if the statute were enforced because the petitioners proved their intended conduct for future political campaigns. *Id.* at 161.

Additionally, the statement the petitioners planned to disseminate in the future was a similar statement to that forbidden by the statute. *Id.* at 161. Finally, the Court found a likelihood of enforcement of the impending threat in the future, therefore the Court determined a substantial risk of injury to the petitioners existed. *Id.* at 164.

This Court should adopt the Supreme Court’s holding in *Susan B. Anthony List*, permitting a preenforcement challenge to a statute where the petitioner faces an impending threat or “substantial risk” of future enforcement of that statute. Like the petitioner’s challenge in *Susan B. Anthony List*, Covenant Truth Church also presents a preenforced challenge to a statute. Here, Covenant Truth Church brought an action seeking to enjoin enforcement of the Johnson Amendment prior to actual enforcement. Covenant Truth Church did this in anticipation of the audit, proactively predicting the harm resulting therefrom. Now, Covenant Truth Church faces a substantial risk of future injury if an audit is conducted. Covenant Truth Church’s foundation lies in the political landscape which is the very activity the Johnson Amendment prohibits. An audit will reveal Covenant Truth Church’s political activity, likely resulting in enforcement. If enforced, Covenant Truth Church faces revocation of its tax exemption status, presenting a “substantial risk” of future injury to its financial stability. Additionally, such an injury from enforcement could result in Covenant Truth Church’s eventual financial failure if it is no longer provided the same tax benefits as other religious non-profit organizations.

Additionally, threatened enforcement satisfies injury in fact when the petitioner shows intent to commit the act prohibited by the challenged statute. *Babbitt*, 42 U.S. at 298. In *Babbitt v. United Farm Workers Nat. Union*, the respondent, a farmer labor union, challenged the constitutionality of an Arizona farm labor statute. *Id.* at 293. The Supreme Court granted Article III standing to challenge the portion of the statute concerning “election of bargaining

representatives, consumer publicity, and imposition of criminal penalties”. *Id.* at 297. The Court determined the petitioner’s past engagement in consumer publicity campaigns and alleged intent to continue such activities in the future, sufficiently demonstrated an Article III injury because although the injury had not occurred, harm by enforcement of the statute would occur once the petitioners carried out their future planned actions. *Id.* at 298. The Court determined a sufficient demonstration of intended actions contrary to the challenged statute is grounds for injury, satisfying the necessity for standing. *Id.* The Court determined an intent to act in the future sufficiently showed a future threat and therefore determined the petitioners need not wait for the punishment from enforcement of the statute to challenge its constitutionality. *Id.* at 298. *See Doe v. Bolton*, 410 U.S. 179, 188, 193 (1973) (explaining when a petitioner alleges intent of future actions where there exists credible threat of punishment resulting in enforcement of the challenged statute, waiting for enforcement to challenge the statute is unnecessary); *See also Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (explaining a credible threat exists in the presence of legitimate fear of enforcement despite lack of previous enforcement of the statute).

Like the petitioners in *Babbitt*, Covenant Truth Church intends future actions in violation of the Johnson Amendment. For example, as a church, Covenant Truth Church holds weekly worship services and Pastor Gideon Vale hosts weekly podcasts where he educates the public about the Everlight Dominion. Additionally, these podcasts often include political messages and encouragement for specific political campaigns, thus violating the Johnson Amendment. Where the *Babbitt* court found a sufficient future threat of injury where the petitioners simply alleged intended future participation in consumer publicity campaigns, this Court should find an imminent threat present in this case where Covenant Truth Church participates in the prohibited conduct weekly. Additionally, Pastor Vale, after already endorsing Congressman Davis on his podcast,



announced his plans for a series of sermons endorsing Congressman Davis, explaining why his stances are consistent with the Everlight Dominion teachings, further violating the Johnson Amendment. Like the petitioners in *Babbitt*, Covenant Truth Church exemplified both past and future conduct, violating the challenged statute, as it already endorsed Congressman Davis and established plans to provide sermons in support. Further, Covenant Truth Church presents ongoing conduct in violation of the Johnson Amendment as it actively encourages campaign participation, specifically for Congressman Davis. Accordingly, this Court, consistent with the Supreme Court in *Babbitt*, should find that Covenant Truth Church has provided sufficient future intent to engage in activity prohibited by the Johnson Amendment, and therefore has alleged sufficient injury to present its case in federal court.

This Court should uphold the District Court’s decision to hear Covenant Truth Church’s case as it alleged a sufficient injury ripe for judicial review. By exercising its faith and participating in the Everlight Dominion calling, Covenant Truth Church faces a significant threat to its 501(c)(3) tax exemption status following an audit. An audit will reveal past and current participation in activities prohibited by the Johnson Amendment, thus threatening the statute’s enforcement. Additionally, Pastor Gideon Vale’s intended provision of sermons in support of Congressman Davis subject Covenant Truth Church to an even greater risk of injury. Covenant Truth Church must have an opportunity to protect itself from the enforcement of the Johnson Amendment before it deprives their tax exemption status.

**2. Covenant Truth Church’s threat of prosecution and revocation of its 501(c)(3) status is a direct result of the issued audit because the audit will reveal its participation in Congressman Davis’ campaign, invoking the Johnson Amendment.**

An injury is ripe for judicial review when the conduct complained of is causally connected to the alleged injury. *Lujan*, 504 U.S. at 560. When an injury is “fairly traceable” to conduct, a

causal connection exists. *Id.* A case is only appropriate for federal courts where the petitioner claims an injury caused by the defendant. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). If a dispute is hypothetical, causation is not established. *Id.*

Standing in federal court requires a causal connection between the harm to a petitioner and the defendant's actions. *Id.* In *TransUnion LLC v. Ramirez*, the defendant, a consumer report agency, developed a scanning system, assisting third party businesses in avoiding transactions with individuals on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") list. *Id.* at 419. The list accounted for individuals who threatened the country's national security, labeling the listees as "potential terrorists, drug traffickers, or serious criminals". *Id.* at 419, 432. Businesses were prohibited from transacting with those on the list. *Id.* at 419. The defendant provided an OFAC list to a third-party credit company containing 1,853 names mistakenly identified as criminals or potential threats to the country's security. *Id.* at 432. The Supreme Court determined the ensuing defamation suffered by the petitioners mistakenly labeled, was a direct cause of the defendant's actions in releasing a list to the third-party company. *Id.* The Court determined the defendant's actions in sharing false classifications caused defamation and false labels to individuals, limiting their ability to conduct business in the United States. *Id.* If not for the defendant sharing the list with incorrect labels to a third party, the petitioners would not have suffered such harm. *Id.* It was the defendant's action of labeling and distributing the names which caused the inadvertent injury among the petitioners; therefore the petitioners suffered an injury as a direct cause of the defendant's conduct and thus had standing in federal court. *Id.*

Like the effects of sharing the list in *TransUnion LLC*, the Johnson Amendment's enforcement directly affects Covenant Truth Church, specifically its tax exemption status and calling as a church. The Johnson Amendment leaves Covenant Truth Church with two options,

either dishonor its Everlight Dominion calling, or lose its tax exemption. Like the injured petitioners in *TransUnion LLC*, Covenant Truth Church only faces an injury because the Johnson Amendment prohibits political involvement. Without the Johnson Amendment's existence, Covenant Truth Church's tax exemption status is maintained, safely, without threat of revocation. The mere existence of the Johnson Amendment puts Covenant Truth Church at risk everyday as it fulfills its duty as the biggest active church within the Everlight Dominion.

This Court should recognize Covenant Truth Church's impending threat of revocation as a direct cause of the Johnson Amendment's enforcement. If enforced, the Johnson Amendment threatens Covenant Truth Church's survival and could prohibit future growth of the Everlight Dominion as future churches could fail if they cannot enjoy tax exemption.

**3. The Court's granting of a permanent injunction on the Johnson Amendment would prevent Covenant Truth Church from prosecution and revocation of its 501(c)(3) tax exemption status.**

If denial of the requested relief would cause hardship to a petitioner, the issue remains appropriate for federal court. *Lujan*, 504 U.S. at 561-562. Where granted relief would redress the petitioner's injury, standing is present. *Id.* at 562. The burden remains on the injured party to show a favorable ruling would relieve them of such harm. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976).

An issue is appropriate for federal court when the alleged injury caused by the defendant is redressed by a favorable ruling. *Lujan*, 504 U.S. at 562. In *Lujan v. Defenders of Wildlife, et al.*, petitioners sought an injunction on § 7(a)(2) of the Species Act of 1973, requiring the Secretary of Treasury's approval for federal agency interaction with endangered species both inside and outside the United States. *Id.* at 558. The Supreme Court found no standing for the suit because the petitioners unsuccessfully presented an injury redressable by a favorable judicial decision. *Id.* at

568. Specifically, the Supreme Court determined the petitioners in the action were unaffected by the challenged provision. *Id.* at 548. The Court determined no redressability existed because the only relief the court could have granted would not affect the petitioners. *Id.* at 571.

Unlike the petitioners in *Lujan*, Covenant Truth Church will experience immediate relief if this Court invalidates the Johnson Amendment. In *Lujan*, the Supreme Court determined a favorable ruling was ineffective on the petitioners. Here, Covenant Truth Church's tax exemption status is adversely affected by the Johnson Amendment. The Johnson Amendment specifically prohibits religious non-profit organizations from political activity, an activity of which allows Covenant Truth Church to act consistent with the Everlight Dominion mission.

An injunction finding the Johnson Amendment as unconstitutional, violating the First Amendment, protects Covenant Truth Church and allows it to continue fulfilling the Everlight Dominion purpose. Conversely, an adverse ruling risks Covenant Truth Church's tax exemption status, causing financial strain and a limitation on its religious freedom. Therefore, this Court should recognize this issue as proper for federal court adjudication as Covenant Truth Church risks a substantial injury caused by the Johnson Amendment to which a favorable ruling would redress it from financial and religious injury.

Therefore, this Court should find Covenant Truth Church's challenge to the Johnson Amendment appropriate for federal adjudication because the notice of the audit presents an injury in fact, threatening the revocation of its tax exemption status. This audit and ensuing revocation is fairly traceable to the Johnson Amendment's prohibition on political involvement to which Covenant Truth Church and the Everlight Dominion's only protection is a favorable judicial outcome from this Court.

## **II. THE JOHNSON AMENDMENT IS UNCONSTITUTIONAL UNDER THE FREE SPEECH AND FREE EXERCISE CLAUSES OF THE FIRST AMENDMENT.**

### **A. History and tradition of religious organizations in the U.S. supports their right 1<sup>st</sup> Amendment right to speak about political issues, politicians, and elections.**

From the very beginning of this nation, religious organizations and their leaders have possessed the freedom to preach Christianity, and they did not relinquish that freedom just because the teaching of the Christian faith related to political issues. The Bible's New Testament demonstrates that Christianity is inherently a political religion by involving itself with political leaders and issues. The Bible, for example, offers prayer for political leaders, *Tim. 2:1-2*, paying taxes, *Romans 13:6-7*, and respecting and obeying government authorities, *Romans 13:1-7*, *Peter 2:13-14*. Christian leaders have used their faith to critique political issues. St. Augustine of Hippo stated, "An unjust law is no law at all", and this very same line was quoted by a Baptist Minister and a leader in the Modern-Day Civil Rights Movement, Martin Luther King Jr., in his work "Letter from a Birmingham Jail", where he urged the civil rights struggle as a moral and religious imperative and condemned segregation laws for being unjust since they were immoral.

America's history is chock full of political sermons. "Proponents of the Johnson Amendment who try to make arguments from tradition (that is, that the Johnson Amendment has been here for a while, and therefore it must be fine) must first acknowledge that it was once commonplace for pastors to preach about political issues and candidates." Mark A. Goldfeder, Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. Mem. L. Rev. 209, 212 (2017). The Clergy were extensively involved in the first great political question that faced our nation, the War for Independence. Michael E. Smith, *Religious Activism: The Historical Record*, 27 Wm. & Mary L. Rev. 1087, 1088 (1986). And from that point onward, religious activists were in debates concerning every war America has been in throughout our history, from the War of 1812, the Mexican War, the Civil War, the Spanish-American War, both World Wars,

and the Vietnam War. *Id.* Also, historically, churches frequently and fervently spoke for and against candidates for government office. Mark A. Goldfeder, Michelle K. Terry, To Repeal or Not Repeal: The Johnson Amendment, 48 U. Mem. L. Rev. 209, 212 (2017). Such sermons date back to the founding period and include sermons against Thomas Jefferson for being a deist; sermons opposing William Howard Taft as a Unitarian; and sermons opposing Al Smith in the 1928 presidential election. *Id.* It is also important to note that Churches in exercising their free speech rights have been at the forefront of most of the significant societal and governmental changes in our history, including the abolition of slavery, segregation, child labor, and advancing civil rights. *Id.*

In sum, churches in the United States have a long-standing tradition supporting the right of religious organizations to apply their religious beliefs to moral issues of their faith as it relates to political issues and leaders of the day.

**B. History and tradition support exempting religious organizations from taxes without a government condition restricting their speech on political issues.**

From the time of the Roman Emperor Constantine to the modern era, religious tax exemptions continue to this day. Gene Edward Veith, The Good, the Bad, and the Ugly, *Ligonier Ministries* (Aug. 1, 2004), <https://learn.ligonier.org/articles/good-bad-and-ugly> (Under the old regime, priests were exempt from taxation, a privilege extended to the Christian clergy). Governments have exempted places of worship from taxes in order to preserve religious freedom and to avoid government entanglement with religion. England had long since practiced giving churches tax-exempt status, and that tradition carried over to the colonies, and became widespread during the colonial period. *Walz v. Tax Comm’n of City of N.Y.*, 397 U.S. 664, 682 (1970). Since the United States’ founding these exemptions for federal and state taxes have continued uninterrupted to the present day and are in force in all 50 states. *Id.* at 685. “For as long federal

income taxes have had any potential impact on churches... religious organizations have been expressly exempt from the tax.” *Id.* at 677. This is an “unbroken practice” of exempting religious organizations, like Covenant Truth Church, has been done openly and affirmatively by state action. *Id.* at 678. And as Justice Brennan stated in *Walz*, a U.S. Supreme Court case addressing the constitutionality of tax exemptions for religious organizations, “Rarely if ever has this Court considered the constitutionality of a practice for which the historical support is so overwhelming.” *Id.* at 681.

Thus, history and tradition strongly support tax exemptions for religious organizations without imposing conditions on such organizations’ free speech and free exercise rights.

**C. The Johnson Amendment is an unconstitutional condition on a government benefit.**

The Johnson Amendment infringes Covenant Truth Church’s 1<sup>st</sup> Amendment Rights by placing an unconstitutional condition on their government benefit § 501 (c)(3) tax exemption status. The § 501 (c)(3) tax exemption is a government benefit, and such the government cannot condition the receipt of a public benefit on the surrender on a constitutional right. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017). While the government is allowed to fund certain forms of speech with which it agrees, that does not the government the prerogative to support the relinquishing of fundament rights. As the Court recognized in *Perry v. Sinderman*, no person or entity has a “right” to a government benefit, and the government may even deny the benefit for a number of reasons, however, the government cannot deny a government benefit that infringes on constitutionally protected rights, especially the freedom of speech. 408 U.S. 593, 597 (1972). “For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.” *Id.* “This would allow the government to ‘produce a result which (it) could not

command directly.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (quoting *Speiser v. Randall*, 357 U.S. 513, 526, (1958)). And this principle has been applied to the denials of tax exemptions. *Speiser v. Randall*, 357 U.S. 513, 526 (1958). Under the current Johnson Amendment churches like Covenant Truth Church who qualify for 501(c)(3) status and the relevant tax exemption essentially have to forgo their constitutional speech to receive the same tax exemption that all other similar organizations enjoy.

Opponents may argue that 501(c)(3) status is a government subsidy and as such the government may decline to subsidize certain 1<sup>st</sup> Amendment activity rather than penalizing it. *See* *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 548 (1983). However, such a determination by this court would be incorrect as 501(c)(3) status is a government benefit and not a subsidy. A subsidy is a “grant or gift of money.” Subsidy, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/subsidy>. The 501(c)(3) tax exempt status does not meet the definition of a subsidy because it is not a gift or lump sum of money given to churches by the government, but rather. The benefit is also generally available to all non-profits, which makes it different from subsidies as well. Tax exemptions and subsidies “are qualitatively different.” *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 690 (1970). A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such transfer. *Id.* Instead, an exemption operates “passively” by relieving the benefited party from paying taxes. *Id.* Therefore, this court should determine that 501(c)(3) status given to churches is a government benefit, and as such the benefit cannot be denied to religious organizations like Covenant Truth Church without qualifying as an unconstitutional condition on a government benefit.



**D. The Johnson Amendment violates Free Speech as content-based speech restriction that does not pass strict scrutiny.**

Justice Thurgood Marshall wrote for the Court that “the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Political speech is “central to the meaning and purpose of the 1<sup>st</sup> Amendment.” *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 329 (2010). Churches like Covenant Truth Church are denied freedom of speech about political candidates by the Johnson Amendment. The Johnson Amendment has created an unconstitutional restriction on free speech rights by forcing churches to forfeit their protected political speech rights in order to retain a government benefit that they need for their existence. “Political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Id.* It is not a defense by the government to argue that religious organizations have other avenues for speaking about political issues and candidates. All legal persons, including religious organizations, have the right of free speech. *Id.*

The Johnson Amendment in its current form creates a subject matter restriction on political speech in violation of the 1<sup>st</sup> Amendment. Nonprofits organized under § 501(c)(3) may not “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.” Only nonprofits with 501(c)(3) status are silenced in such a fashion. All other nonprofit organizations and for-profit organizations are granted the ability to use their speech to support or oppose political candidates. The First Amendment is a shield that opposes attempts to disfavor certain subjects and viewpoints. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000). Also, in the realm of

protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 784–85 (1978). “If a legislature may direct business corporations to ‘stick to business,’ it also may limit other corporations—religious, charitable, or civic—to their respective ‘business’ when addressing the public.” *Id.* at 785. “Such power in government to channel the expression of views is unacceptable under the First Amendment.” *Id.* “Especially where, as here, the legislature’s suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended.” *Id.*

This is exactly what the Johnson Amendment does, it grants an advantage to nonprofits not formed under § 501(c)(3) and for profit organizations in the realm of political speech by allowing them to speak freely as they like while religious organizations like Covenant Truth Church are muzzled by the Johnson Amendment. The Johnson Amendment is an instrument of censorship wielded by the Federal government to keep religious organizations suppressed by not allowing them to exercise their constitutionally protected free speech rights. Churches like Covenant Truth Church are trapped between a rock and a hard place. They are in the position where they must choose between the 501(c)(3) status and surrender their first speech rights, or to forgo the 501(c)(3) benefit and keep their free speech rights. Except that is not meaningful choice here, since many religious organizations as well as Covenant Truth Church depend on tax exemption to exist, making it a Hobson’s choice between either existing or not at all.

As such the Johnson Amendment is a content-based restriction on free speech. Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.* Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. *Id.* Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny. *Id.*

When government official has to synthesize the meaning of one’s message to determine if a regulation was violated that is the essence of a facially content-based restriction. *Reed*, 576 U.S. at 163. In *Reed*, a local town sign ordinance placed different restrictions on the number, size, location, and time limits of signs based on the category the sign fell under. *Id.* at 160-1. The sole determining factor for how a sign was categorized depended on the message contained within the sign. *Id.* The Court held that the town’s sign ordinance was a content-based restriction on its face. *Id.* at 164. The Court reasoned that the city’s ordinance was content-based because enforcement of the regulation in how a sign is categorized under the ordinance depends entirely on the communicative content of the sign. *Id.*

In the case of Covenant Truth Church, the IRS would have to investigate every sermon in the church’s pulpit and in every podcast of Pastor Vale and evaluate every sentence he spoke to determine whether he violated § 501(c)(3). Thus, because enforcement of § 501(c)(3) hinges on IRS agents having to interpret the communicative content of Pastor Vale’s speech that is the essence of a content-based restriction and merits strict scrutiny. *Id.* at 164.

A law that is content-based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Reed*, 576 at 165. Because the Johnson Amendment imposes

content-based restrictions on speech, those restrictions can only stand if they survive strict scrutiny. *Citizen's United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010). Because First Amendment freedoms need breathing space to survive, the government can only regulate in the area of free speech with narrow specificity. *Gooding v. Wilson*, 405 U.S. 518, 522 (1972) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). For a law to survive the exacting test of strict scrutiny, a court must find that the regulation serves a compelling state interest and is narrowly drawn to achieve that end. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983).

The government lacks a compelling state interest. The government's asserted interest in preventing the "politicization" of churches is not compelling. The First Amendment does not permit the government to suppress political speech to promote neutrality or civility. *Texas v. Johnson* 491 U.S. 397, 414 (1989). Political engagement by religious organizations is deeply rooted in American history, undermining any claim that such speech presents a constitutionally cognizable harm. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). The government may also argue that allowing endorsements by tax-exempt organizations would create the appearance of government endorsement of religion. But, tax exemption does not convert private speech into government speech. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541–42 (2001). The government may also argue that protecting the tax base is a compelling issue, but revenue protection, standing alone, does not justify restrictions on First Amendment activity. *Speiser v. Randall*, 357 U.S. 513, 526 (1958). The Johnson Amendment is also underinclusive, applying only to § 501(c)(3) organizations while permitting similar political activity by other tax-exempt entities, undermining any claim of necessity.

Even if the government could state a valid compelling state interest, the Johnson Amendment is not narrowly tailored. The Amendment is overinclusive as it imposes a categorical

ban on all candidate endorsements regardless of scale, timing, audience, or corruption risks. Broad bans on political speech rarely survive strict scrutiny. *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 665–66 (2004). Where less restrictive alternatives exist, strict scrutiny is not satisfied. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813, (2000). Less restrictive means are already available. The government could achieve its objectives through disclosure requirements from 501(c)(3) organizations, disclaimers, contribution limits tied to deductible funds, and targeted anti-corruption enforcement.

Because the Johnson Amendment imposes a content based restriction on core political speech, lacks a compelling state reason, and is not narrowly tailored nor the least restrictive means, it fails strict scrutiny and violates the First Amendment.

**E. The Johnson Amendment should not be considered constitutional on free speech grounds due to the Supreme Court’s ruling in *Citizens United v. Federal Election Com’n*.**

The Supreme Court has upheld that the Johnson Amendment is constitutional in the principal case *Regan v. Taxation with Representation of Washington* 461 U.S. 540 (1983) where the Court denied 501 (c)(3) status to an organization because it appeared substantially likely that the organization would engage in political activity in violation of the Johnson Amendment, and because "Congress is not required by the First Amendment to subsidize lobbying." Other federal courts like the D.C. Circuit have made the same determination. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000). But, even with the Court’s decision in *Regan*, the Johnson Amendment is no longer constitutionally secure as the government would make it out to be. In 1984, in *F.C.C. v. League of Women Voters*, the Supreme Court struck down a portion of the Public Broadcasting act of 1967 on the grounds that it significantly abridged free speech. 468 U.S. 364, 398, (1984). Congress made the condition that it would only allocate funds to non-commercial

broadcasting stations' educational programming on those stations' agreement to not editorialize. *Id.* at 366. Here, the Court stated that, "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment... Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 382 (1984) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 101-02 (1940)). The court has previously reached this same conclusion in the context of elections where it stated, "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976).

*Citizens United* has changed the game for how courts must evaluate free speech claims for nonprofits. The *Citizens United v. Federal Election Commission* case involved the electioneering rule of the Bipartisan Campaign Reform Act of 2002, which prohibited corporate expenditures for express advocacy by corporations. 558 U.S. 310, 320 (2010). The Court struck down the prohibition and stated in explicit terms, "No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations". *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010). In explaining its rationale, the Court emphasized that, "the government The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each. *Id.* at 341. Most importantly, the Court rejected an

alternative-channels-of-speech argument much like one used in *Branch Ministries* case. See *Branch Ministries v. Rossotti*, 211 F.3d 137, 143 (D.C. Cir. 2000) (where D.C. held that churches free speech is not substantially burdened because if churches wish to lobby may create a § 501(c)(4) affiliate to pursue its charitable goals.). In *Citizens United*, the government argued that the ban on corporate speech was valid because corporations could still speak through a separate PAC, but the Court noted however that, “A PAC is a separate association from the corporation,” *Citizens United* at 337. Thus, the Court concluded that the speech of a corporation’s PAC is not the same as the corporation, and therefore unconstitutionally restricted free speech. Thus, the Supreme Court’s ruling in *Citizens United* directly undercuts the principal arguments constitutionality arguments for the Johnson Amendment in both *Branch Ministries v. Rossotti* and *Regan v. Taxation with Representation of Washington*. If a PAC of a corporation is not seen as having the same speech as the corporation, then the same must be true that a religious organization’s § 501(c)(4) affiliate does not have the same speech as the parent religious organization in order to be constitutionally consistent.

Thus, for the reasons above, the Johnson Amendment violates the 1<sup>st</sup> Amendment Free Speech by unduly restricting the free speech of 501(c)(3) nonprofits and is therefore unconstitutional.

#### **F. The Johnson Amendment violates Free Exercise.**

The U.S. Supreme Court has maintained that when a government benefit is made publicly available to all it is unconstitutional to deny a religious organization that public benefit solely on that fact of the organization’s religious identity or activities. *Carson v. Makin*, 596 U.S. 767 (2022); see also *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 484 (2020); *Trinity Lutheran*, 582 U.S. at 462. But this is exactly what the Johnson Amendment does in its current form. It conditions

religious organizations to surrender their religious exercise in their right to preach, speak, post online or in a podcast about how their views of current political leaders and candidates compare to their religious teachings in order to receive a tax exemption. The “imposition of such a condition upon even a gratuitous benefit inevitably deter[s] or discourage[s] the exercise of First Amendment rights. *Trinity Lutheran*, 582 U.S. at 463. The government cannot come to the defense of itself by arguing that the law burdens both religious and secular claimants alike and thus does not violate the Free Exercise Clause. When the government places a condition on a generally available public benefit that excludes those who exercise their religion, it always violates Free Exercise Clause. *See id.* at 460-62. Even when a law is neutral and generally applicable and applies to both religious and nonreligious actors, it is unconstitutional to impose burdens that penalize the free exercise of religion *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 536 (1993).

The government will assert that the Johnson Amendment does not unconstitutionally interfere with Covenant Truth Church’s free exercise of religion, and that rather Congress has decided to decline to subsidize Covenant Truth Church’s free exercise if its religious activities involve political lobbying. *See Regan v. Tax’n With Representation of Washington*, 461 U.S. 540, 546, (1983) (“Congress is not required by the First Amendment to subsidize lobbying”). The Supreme Court has rejected such an argument. In *Trinity Lutheran*, the state government similar tried to argue that its decision to exclude a religious preschool from a grant program by stating, “that it had simply declined to allocate to [the religious preschool] a subsidy the State had no obligation to provide in the first place.” 582 U.S. at 462. The Court rejected the State’s argument, by explaining that the religious preschool “[wa]s not claiming any entitlement to a subsidy. It instead assert[ed] a right to participate in a government benefit program without having to disavow



its religious character.” *Id.* at 463. Thus, the state government’s exclusion of the religious preschool was unconstitutional. *Id.* at 462.

Here, Covenant Truth Church is not claiming entitlement to a government subsidy; they are instead asserting their right to participate in a government tax benefit without having to disavow their religious character and exercise. The government will argue that the Johnson Amendment does not infringe on the free exercise of religion because religious organizations do not have to organize themselves under § 501(c)(3). However, “it is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Id.* at 463; *see also* *McDaniel v. Paty*, 435 U.S. 618, 633 (1978) (Brennan J. concurring) (The “proposition—that the law does not interfere with free exercise because it does not directly prohibit religious activity, but merely conditions eligibility for office on its abandonment—is ... squarely rejected by precedent.”). While the Johnson Amendment does not criminalize the way religious organizations worship or tells them which certain religious tenants they can or cannot adhere to, the Free Exercise Clause does protect against, “indirect coercion” or penalties on the free exercise of religion, not just outright prohibitions.” *Trinity*, 582 U.S at 463. The express discrimination of Covenant Truth Church trying to get a publicly available government benefit against religious exercise here is not denial of a grant, but rather the refusal to allow religious organizations like Covenant Truth Church to receive a public available tax benefit without giving up their free exercise of their religion. *Id.*

Thus, this court should declare that the Johnson Amendment is unconstitutional because it violates the Free Speech and Free Exercise Clauses of the First Amendment.

## **CONCLUSION**

For the foregoing reasons, this Court should affirm the Court of Appeals decision finding that Covenant Truth Church has standing to bring its claim. Covenant Truth Church's claims are not barred by the AIA because its challenging a legal mandate rather than a tax classification, in which no alternative remedy exists. If this Court fails to find that Covenant Truth Church has standing, the Church will suffer an injury in fact, resulting in their inability to freely practice their religion. For centuries, religious organizations in the U.S. have played a vital role in moral and political discourse, exercising rights that lie at the heart of the First Amendment. The Johnson Amendment departs from that tradition by conditioning a long-recognized tax benefit on the surrender of core conditional freedoms. It imposes a content based restriction on political speech, burdens the free exercise of religion, and operates as an unconstitutional condition on a generally available public government benefit. Neither history, precedent, nor compelling government interests justify such an intrusion into protected expression. Because the First Amendment does not permit the government to silence religious organizations in exchange for tax exemption, this Court should hold the Johnson Amendment to be unconstitutional and granted the relief requested.

Accordingly, Respondents ask this Court to affirm the decision of the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted this 18<sup>th</sup> day of January, 2026.