Team 24

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 RESPONDENTS

QUESTIONS PRESENTED

1. Whether Covenant Truth Church has standing to challenge the Johnson Amendment where an IRS audit creates a substantial risk of constitutional injury, notwithstanding the Tax Anti-Injunction Act's post-violation remedial scheme?

2. Whether the Johnson Amendment violates the Establishment Clause by conditioning § 501(c)(3) tax-exempt status on refraining from political campaign activity while permitting denominational preferences?

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The opinion for the United States District Court of Wythe is unreported and cannot be found in the record. The opinion for the United States 14th Circuit Court, issued by Judge Bushrod Washington, is unreported but may be found in the record. R. at 1–11. Additionally, Judge Marshall's dissent may be found in the record. R. at 12–16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case raises issues under Article III of the United States Constitution concerning standing and under the First Amendment concerning the Establishment Clause. Additionally, this case implicates the Tax Anti-Injunction Act, codified as 26 U.S.C. § 7421(a), the Johnson Amendment, codified as 26 U.S.C. § 501(c)(3), and the declaratory judgment provision for tax-exempt status determinations, codified as 26 U.S.C. § 7428.

U.S. CONST. art. III, § 2, cl. 1 provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority…

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

> Non-profit organizations may 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 USC § 7421(a) provides:

> Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed

26 U.S.C. § 7428, in relevant parts, provides:

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

> filing of an appropriate pleading, the . . . [Court] may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification.
> (b) . . . A declaratory judgment or decree under this section shall not be issued in any proceeding unless the . . . [Court] determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Fed. R. Civ. P. 56(a) provides:

> A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

STATEMENT OF THE CASE

I. Factual History

This case is about allowing a religious organization to exercise its First Amendment rights without governmental suppression of its religious beliefs. It arises from a claim brought by Appellees, Covenant Truth Church, seeking a permanent injunction prohibiting the enforcement of the Johnson Amendment. Specifically, this case is about vindicating the Church's constitutional rights under the Establishment Clause by challenging the Johnson Amendment's intrusion into religious governance.

1. The Johnson Amendment

Over half a century ago, Congress amended the Internal Revenue Code and created what is now known as the Johnson Amendment. R. at 2. The Amendment proposed language to 26 U.S.C. § 501(c)(3), prohibiting non-profit organizations, including churches, from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." *Id.* The provision remained part of the Code, which was revised and renamed in 1984. *Id.* Over the past fifteen years, however, it has been a subject of intense and growing controversy. *Id.* Special interest groups, religious organizations, and political leaders have called for its repeal on the ground that it violates the First Amendment. *Id.* Since 2017, Congress has had repeated opportunities to eliminate or create an exception allowing churches to freely express their religious beliefs without suppression but has failed to do so. *Id.* at 2–3. Congress has declined each time, choosing instead to leave the Johnson Amendment in place and to deny religious organizations any statutory exemption for the exercise of their religious doctrine. *Id.*

2. The Everlight Dominion's origin and doctrinal beliefs.

For centuries, The Everlight Dominion has had a devout and dedicated following. R. at 3. At inception, The Everlight Dominion had a smaller number of adherents. *Id.* The religious doctrine, like many others, embraces a wide array of progressive social values. *Id.* However, as part of its teachings, The Everlight Dominion requires that its leaders and churches participate in political campaigns and support candidates that align with its progressive doctrine. *Id.* Any church or religious leader who fails to endorse political candidates and encourage congregants to do the same faces banishment from The Everlight Dominion. *Id.*

3. Covenant Truth Church and Pastor Vale exercise The Everlight Dominion and are classified as a § 501(c)(3) organization.

Covenant Truth Church practices The Everlight Dominion and operates as a § 501(c)(3) organization. *Id.* It is the largest church within the denomination. *Id.* Pastor Gideon Vale joined Covenant Truth Church in 2018 and now serves as head pastor. *Id.* After becoming head pastor, Pastor Vale observed low attendance among younger members. *Id*. To engage younger generations, he launched a weekly podcast to deliver sermons, provide spiritual guidance, and educate the public about The Everlight Dominion. *Id.* at 4

4. In January 2024, Covenant Truth Church's membership increased, and Pastor Vale began using his podcast to support Congressman Davis.

The podcast fueled growth to 15,000 members and became the fourth-most listened-to podcast in the State of Wythe, the nineteenth-most listened to nationwide, and drew in millions of downloads across the country. *Id.* Consistent with his religious obligations, Pastor Vale used the podcast to communicate political messages. *Id*. In January 2024, a Wythe Senator's death triggered a special election. *Id*. Congressman Samuel Davis—whose progressive social views align with

The Everlight Dominion—announced his candidacy. *Id*. Adhering to his religion, Pastor Vale urged listeners to vote for, donate to, and volunteer for Congressman Davis's campaign. *Id.* at 5.

5. On May 1, 2024, the IRS notified Covenant Truth Church that it had been selected for a random audit.

Pastor Vale announced his intention to deliver a series of sermons in October and November 2024. *Id.* He intended to deliver them both on the podcast and in church. *Id.* The sermons would explain how Congressman Davis's political positions align with The Everlight Dominion. *Id.* Before the series began, the IRS notified Covenant Truth Church on May 1, 2024, that it had been selected for a random audit. *Id.* Aware that the Johnson Amendment restricts political speech by religious organizations, Pastor Vale feared the IRS would penalize the Church for exercising its beliefs and revoke its § 501(c)(3) status. *Id.* He therefore filed this suit. *Id*

II. Procedural History

On May 15, 2024, Covenant Truth Church filed suit to permanently enjoin enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. *Id.* at 5. After the defendants answered and denied the allegations, Covenant Truth Church moved for summary judgment. *Id.* The District Court, however, agreed with Covenant Truth Church and held (1) Covenant Truth Church satisfies Article III standing and (2) the Johnson Amendment violates the Establishment Clause. *Id.*

After the District Court granted summary judgment and entered a permanent injunction, Defendants appealed to the Fourteenth Circuit, which affirmed. The 14th Circuit held that Covenant Truth Church has Article III standing because (1) IRS procedures and Section 7428 provide no avenue for relief, rendering the Anti-Injunction Act inapplicable, and (2) the IRS's intent to audit the Church, combined with its engagement in conduct prohibited by the Johnson Amendment, creates a substantial risk of enforcement. *Id.* at 6–8. The 14th Circuit further held

that the Johnson Amendment violates the Establishment Clause because it (1) allows the IRS to dictate the subjects religious leaders may address, (2) denies tax-exempt status to organizations whose religious beliefs compel political speech, (3) penalizes such organizations while others face no comparable burden, and (4) uses tax exemptions as a means of regulating religious activity. *Id.* at 8–10. Defendants appealed, and this Court granted the petition for certiorari on the following issues: (1) whether Covenant Truth Church has standing under the Tax-Anti-Injunction Act and Article III to challenge the Johnson Amendment and (2) whether the Johnson Amendment violates the Establishment Clause of the First Amendment. *Id.* at 17.

SUMMARY OF THE ARGUMENT

I.

The Tax Anti–Injunction Act ("AIA") does not bar this suit for three independent reasons: the Church's claim falls outside the statute's text, Congress provided no alternative avenue for relief, and the *Williams Packing* exception squarely applies. Congress has used the Internal Revenue Code to structure relationships between taxation and non-profit entities. In doing so, Congress spoke through the language it enacted, and courts must respect that text as the best evidence of congressional intent. The AIA applies only to suits brought "for the purpose of restraining the assessment or collection of any tax," and Congress enacted it to protect revenue collection. 26 U.S.C. § 7421(a); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 543 (2012). The AIA does not bar Covenant Truth Church's suit because the Church does not seek to restrain tax collection; instead, the Church is protecting its rights under the Establishment Clause. Further, the AIA cannot apply when Congress has provided no alternative remedy. *South Carolina v. Regan*, 465 U.S. 367, 381 (1984). Section 7428 offers relief only after a final adverse IRS determination and provides no mechanism for pre-enforcement constitutional claims, leaving Covenant Truth Church without any forum to challenge the Johnson Amendment before suffering irreparable harm. *See* 26 U.S.C. § 7428. Lastly, the *Williams Packing* exception permits this suit. Under the *Williams Packing* rule, the AIA does not apply when a plaintiff is certain to succeed on the merits and will suffer irreparable harm. *South Carolina*, 465 U.S. at 373; *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 6–7 (1962). Here, the Church satisfies both prongs because the government cannot lawfully enforce the Johnson Amendment because enforcement violates the Establishment Clause, and the ongoing suppression of the Church's religious expression

constitutes irreparable First Amendment harm. Thus, the AIA does not bar Covenant Truth Church's lawsuit.

Additionally, Covenant Truth Church satisfies Article III standing. Article III standing requires a plaintiff to show three elements: injury in fact, causation, and redressability. *Diamond Alt. Energy, LLC v. Env't Prot. Agency*, 606 U.S. 100, 120 (2025). A future injury suffices where there is a substantial risk that the harm will occur, and the injury is "certainly impending." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013)). A plaintiff facing an imminent threat may bring a pre-enforcement suit when they (1) intend to engage in conduct arguably protected by the Constitution, (2) that is proscribed by statute, and (3) face a credible threat of enforcement. *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979).

First, Covenant Truth Church satisfies the three standing elements. Covenant Truth Church's denomination is injured by the Johnson Amendment, which regulates religious organizations that engage in political speech. Absent the Amendment, Covenant Truth Church could freely organize as a § 501(c)(3) religious entity without refraining from its core beliefs or fearing legal consequences. Moreover, this Court can redress the injury by permanently enjoining the enforcement of the Johnson Amendment. Second, Covenant Truth Church faces a substantial risk that the IRS will enforce the Johnson Amendment against them because the Amendment regulates the very conduct that lies at the core of the Church's beliefs. Third, the Church's imminent threat of injury supports a pre-enforcement suit: if it refrains from endorsing political candidates, it risks banishment from the denomination; the Johnson Amendment prohibits precisely that conduct; and the IRS audit specifically targets such political speech. Accordingly,

this Court should hold that the AIA does not bar Covenant Truth Church's suit and that the Church has suffered an injury-in-fact sufficient to confer Article III standing.

II.

The Johnson Amendment violates the Establishment Clause by creating unconstitutional denominational preferences and excessively entangling the government with religion. By conditioning 501(c)(3) tax-exempt status on refraining from political campaign activity, the Amendment structurally favors religions that impose no obligation to engage in political speech while penalizing religions like The Everlight Dominion that require such engagement as a central tenet of faith. This denominational preference violates core Establishment Clause principles and is confirmed by this Court's recent precedent prohibiting religious discrimination in governmental benefit programs. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2015 (2017); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020); *Carson v. Makin*, 142 S. Ct. 1987, 1998 (2022). Moreover, enforcing the Amendment requires the IRS to monitor religious speech and make theological determinations, which is excessive entanglement condemned by this Court. *Lemon v. Kurtzman*, 403 U.S. 602, 619–20 (1971). Historical analysis confirms that religious political engagement has deep roots in American tradition, rendering the 1954 Johnson Amendment incompatible with established practice. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022). This Court should affirm the Circuit's grant of summary judgment.

STANDARD OF REVIEW

The facts of this case are undisputed. Both issues before the Court turn on the proper interpretation and application of federal statutory and constitutional law. The district court granted summary judgment in favor of Covenant Truth Church. This Court reviews a grant of summary judgment de novo. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

In assessing Article III standing, the Court looks first to the text of the Constitution. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). Standing does not require the Court to evaluate the merits of the plaintiff's claim; rather, the Court must accept all material allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *Warth v. Seldin*, 422 U.S. 490, 500–01 (1975). When reviewing claims under the Religion Clauses of the First Amendment, the Court looks at whether the challenged government action intrudes upon religious belief or seeks to establish religion, a determination that turns on the purpose and effect of the government's conduct. *Walz v. Tax Comm'n*, 397 U.S. 664, 669 (1970).

ARGUMENT

I. COVENANT TRUTH CHURCH HAS STANDING TO BRING THIS SUIT

The Tax Anti-Injunction Act does not bar the Appellee's lawsuit, and Appellee satisfies the standard for Article III standing.

A. The Tax Anti-Injunction Act Does Not Bar This Suit

The Tax Anti–Injunction Act ("AIA") does not bar this suit for three independent reasons. First, Covenant Truth Church's claim falls outside the statute's text because the Church seeks to prevent unconstitutional interference with religious governance, not to restrain the assessment or collection of a tax. Second, Congress provided no alternative avenue for relief, as Section 7428 becomes available only after a final adverse IRS action and offers no mechanism to raise pre-enforcement constitutional claims. Third, the *Williams Packing* exception applies because the government's enforcement of the Johnson Amendment violates the Establishment Clause, and the Church faces immediate, irreparable harm to its First Amendment rights.

1. The AIA does not bar this suit because the Church seeking to stop ongoing violations of the Establishment Clause is not within the plain meaning of the AIA.

This Court has long established that statutory interpretation principles begin with looking at the plain meaning of the language Congress enacted and presume that the statute's ordinary meaning reflects its legislative purpose, "[a]bsent a clearly expressed legislative intention to the contrary." *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). The AIA provides, with exceptions, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person[.]" 26 U.S.C. § 7421(a). The purpose of the statute is to preserve the government's ability to collect revenue by prohibiting pre-enforcement suits that

would impede tax collection and to channel challenges into post-payment refund actions. *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 543. The statute's lack of legislative history confirms that Congress did not intend courts to depart from the language it enacted. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974).

Covenant Truth Church's suit falls outside of the AIA's plain meaning. The primary purpose of this suit is not to impede tax collection; it is to vindicate Covenant Truth Church's constitutional rights under the Establishment Clause by challenging the Johnson Amendment's intrusion into religious governance. The Everlight Dominion's religious doctrine mandates its churches and leaders to participate in political life, including supporting political campaigns and endorsing candidates. R. at 3–4. Pastor Vale has followed those religious mandates by using sermons and the Church's podcast to support candidates whose views align with the faith's teachings. *Id.* When the IRS initiated a random audit while the Church was engaged in religiously required conduct, the Church faced an immediate and coercive choice: abandon its doctrine or risk losing its legal existence due to the Johnson Amendment. R. at 5; 26 U.S.C. § 501(c)(3). Although possible tax consequences loom in the background, the injury at stake is constitutional—the forced suppression of religious belief, worship, and institutional autonomy. R. at 5. The Church should not have to violate the law simply to practice its faith. Thus, this suit challenges the government's interference with religion, not the imposition of tax collection, and the AIA cannot apply to the Covenant Truth Church's claim.

2. <u>The AIA does not apply because Covenant Truth Church does not have an alternative remedy.</u>

The AIA cannot apply when "Congress has [not] provided an alternative avenue for the aggrieved party to litigate its claims on its own behalf." *New Jersey v. Bessent*, 149 F.4th 127, 143 (2d Cir. 2025) (quoting *South Carolina*, 465 U.S. at 381). Although the Act lacks legislative

history, Congress's language intended the Act to bar suits only when an alternative legal avenue exists to challenge the tax. *South Carolina*, 465 U.S. at 373; *Bob Jones Univ.*, 416 U.S. at 736.

Covenant Truth Church does not have an alternative remedy. The Internal Revenue Code allows organizations to challenge actual controversies with respect to their Section 501(c)(3) status in federal court. 26 U.S.C. § 7428. That statutory avenue, however, is strictly limited: it becomes available only after the IRS denies an application for, or revokes, Section 501(c)(3) status and the organization exhausts its administrative appeal within the IRS. *See* 26 U.S.C. § 7428; *Z St. v. Koskinen*, 791 F.3d 24, 27 (D.C. Cir. 2015); 26 U.S.C. § 501(c)(3). Because the statute contemplates a final, adverse IRS action, it does not allow preemptive challenges, nor does it address the constitutional claims at issue here. *See generally* 26 U.S.C. § 7428; R. at 5. Requiring Covenant Truth Church to wait for IRS action would place it in an untenable position: the Church must either violate the law by continuing its religious practices or suppress its faith to avoid an adverse determination merely to trigger Section 7428's mechanism to regain 501(c)(3) status. R. at 5; *see generally* 26 U.S.C. § 7428; 26 U.S.C. § 501(c)(3). But Section 7428 does not provide a vehicle to challenge the constitutionality of the Johnson Amendment, which is the core of this case. *Id.* The IRS has not audited the Church, and its Section 501(c)(3) status remains unchanged. R. at 5. As a result, Section 7428 offers no viable avenue for relief. The Church stands without any statutory remedy, and Congress has provided no alternative means to protect its constitutional rights. Therefore, because the IRS has not yet conducted its audit and the Covenant Truth Church's Section 501(c)(3) status remains unchanged, no alternative remedy exists, and the AIA does not bar this suit.

3. Covenant Truth Church meets the *Williams Packing* rule, thus barring the AIA from applying to this suit.

Further, the AIA is inapplicable if the *Williams Packing* rule is met. *South Carolina*, 465 U.S. at 373; *Enochs*, 370 U.S. at 6–7. It provides that the AIA cannot apply when a taxpayer (1) is certain to succeed on the merits, and (2) can demonstrate irreparable harm. *Id.* If both conditions are met, a suit for preventive injunction is proper. *Alexander v. Americans United Inc.*, 416 U.S. 752 (1974). Here, the Church meets both standards.

a) Covenant Truth Church is certain to succeed on the merits.

Covenant Truth Church is certain to succeed on the merits. Under the *Williams Packing* rule, a plaintiff satisfies the first prong when "under no circumstances could the Government ultimately prevail." *Enochs*, 370 U.S. at 6–7. That standard is met here because the Petitioners seek to apply the Johnson Amendment in a way that directly burdens Covenant Truth Church's religious autonomy and mandates without any neutral administrative predicate. R. at 5; 26 U.S.C. § 501(c)(3). The IRS has not made any factual findings, has not issued a notice of violation, and has not taken any enforcement action. R. at 5. Despite that, the Church cannot practice its religious requirements because the Johnson Amendment expressly prohibits the very conduct its doctrine mandates. R. at 4–5; 26 U.S.C. § 501(c)(3). When a statute operates unconstitutionally, it is void and cannot provide a lawful basis for enforcement. *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879) (holding that an unconstitutional law "is as no law," and that any enforcement under it "is illegal and void"). Here, the Petitioners' only path to enforcement would require coercing religious compliance as the price of legal existence. R. at 4–5; 26 U.S.C. § 501(c)(3). This Court has made clear that "any attempt by government to dictate or even to influence [religion] would constitute one of the central attributes of an establishment of religion," and that "[t]he First Amendment outlaws such intrusion." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060

(2020). By conditioning the Church's continued legal existence on abandoning religiously mandated activity, the government's enforcement of the Johnson Amendment crosses that constitutional line. R. at 4–5; 26 U.S.C. § 501(c)(3). Because the government lacks the constitutional authority to impose these conditions, it makes the Petitioners' argument impossible to prevail, and the first *Williams Packing* prong is satisfied.

b) Covenant Truth Church will experience irreparable harm if its religion is suppressed.

Covenant Truth Church faces irreparable harm. The second *Williams Packing* prong requires a showing of irreparable harm. *Enochs*, 370 U.S. at 6–7. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, it is evident that Covenant Truth Church faces a coercive dilemma: it must cease religiously mandated political expression or risk losing its legal and financial existence. R. at 3–5; 26 U.S.C. § 501(c)(3). The IRS has already initiated an audit, and the Church has publicly engaged in activity that the Johnson Amendment purports to prohibit. *Id.* This forces the Church to self-censor right now—not after enforcement, but immediately. The loss of Section 501(c)(3) status would not merely impose a financial penalty; it would cripple the Church's ability to function, operate ministries, and serve its 15,000 members. *Id.* Once the Church's religious mission is suppressed or its congregation dismantled, no later monetary remedy can restore what was lost. This is certainly irreparable harm.

c) *Branch Ministries v. Rossotti* is distinguishable.

The dissent's reliance on *Branch Ministries v. Rossotti*, fundamentally misunderstands both the procedural posture and the nature of Covenant Truth Church's injury. 211 F.3d 137, 144 (D.C. Cir. 2000); R. at 12–13. In *Branch Ministries*, the suit involved a post-enforcement challenge after the IRS had already revoked the church's tax-exempt status. 211 F.3d at 139. That church

had a statutory pathway under Section 7428 and sought to undo a finalized administrative action. *Id.* In contrast, Covenant Truth Church brings a pre-enforcement constitutional challenge before any IRS determination to avoid being forced to violate the law or suffer irreversible harm. R. at 5. That distinction is dispositive. Further, *Branch Ministries* addressed a narrow free-speech claim about campaign advertisements; this case concerns a broader Establishment Clause injury to religious governance and doctrinal integrity. 211 F.3d at 139. R. at 4–5. Because Covenant Truth Church faces coercion before any tax liability arises and without any administrative remedy, the AIA cannot bar this suit.

Branch Ministries also falls clearly outside of the *Williams Packing* rule because the church in that case challenged a completed IRS revocation after it had already violated the law, so it faced neither ongoing coercion nor irreparable pre-enforcement injury. 211 F.3d at 139–40. In contrast, Covenant Truth Church confronts an immediate and continuing constitutional threat before any IRS determination. R. at 5. The Johnson Amendment forces the Church to choose between abandoning its doctrine and risking its legal existence. R. at 5; 26 U.S.C. § 501(c)(3). Unlike in *Branch Ministries*, the Petitioners here cannot prevail as a matter of law because they seek to condition religious survival on suppressing core religious practice. R. at 3–5. The facts in this case satisfy both prongs of the *Williams Packing* exception and confirm that the AIA cannot bar Covenant Truth Church's suit.

Accordingly, this Court should find that the AIA does not bar Covenant Truth Church's suit for three independent reasons: the Church's claim falls outside the statute's text, Congress provided no alternative avenue for relief, and the *Williams Packing* exception applies.

B. Covenant Church Satisfies the Standard for Article III Standing.

Covenant Truth Church has standing to challenge the Johnson Amendment because the Petitioners' actions caused a concrete injury, and this Court can provide a remedy. Article III of the Constitution confines federal court jurisdiction to "Cases" and "Controversies." U.S. CONST. art. III, § 2, cl. 1. Article III standing turns on a basic yet crucial question: "What's it to you?" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024); A. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 882 (1983). A plaintiff satisfies standing by establishing proof of three elements: injury in fact, causation, and redressability. *Diamond*, 606 U.S. at 120. First, an injury in fact is concrete, particularized, and actual or imminent—not conjectural or hypothetical. *Diamond*, 606 U.S. at 120; *Lujan,* 504 U.S. at 560. Second, causation is met where the injury was likely caused or fairly traceable to the defendant's conduct. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Third, redressability is satisfied where judicial relief would likely remedy the injury. *Id.* When a defendant's action causes an injury, enjoining the action will typically redress that injury. *All. for Hippocratic Med.* 602 U.S at 379.

Covenant Truth Church can readily answer the "[w]hat's it to you" question. This lawsuit was brought because the speech restricted by 26 U.S.C. § 501(c)(3) lies at the core of The Everlight Dominion—a doctrine in which all 15,000 members firmly believe. R. at 3–4. First, Covenant Truth Church has established an injury in fact because it has already been selected for an audit. R. at 5. This is not a speculative fear of enforcement; the process that could revoke 501(c)(3) status is imminent. *Diamond*, 606 U.S. at 120; *Lujan,* 504 U.S. at 560. An IRS audit constitutes a particularized injury for Covenant Truth Church because the Johnson Amendment specifically targets religious organizations that engage in political campaigns. 26 U.S.C. § 501(c)(3); *Diamond*,

606 U.S. at 120; *Lujan,* 504 U.S. at 560. Absent the Johnson Amendment, Covenant Truth Church would not be barred from exercising its core religious belief of supporting political candidates. *TransUnion*, 594 U.S. at 423; R. at 3. Lastly, enjoining the audit and invalidating the Johnson Amendment would redress Covenant Truth Church's injury by removing the forced choice between adhering to its religion and violating 26 U.S.C. § 501(c)(3). *All. for Hippocratic Medicine*, 602 U.S at 379; *Susan B. Anthony List*, 573 U.S. at 168.

1. Covenant Truth Church faces a certainly impending injury and a substantial risk of harm.

The injury-in-fact requirement ensures that a plaintiff has a personal stake in the outcome of the controversy. *Warth,* 422 U.S. at 498. Future injuries suffice for Article III standing when the threatened injury is "certainly impending," or there is a "substantial risk the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158 (citing *Clapper*, 568 U.S. at 408). Enforcement of a regulation or prosecution is not a prerequisite to challenging the law. *Susan B. Anthony List*, 573 U.S. at 158. There should be "little question" that a plaintiff suffers injury when it is the direct object of a government regulation. *Lujan*, 504 U.S. at 561.

Covenant Truth Church's personal stake in the outcome is its constitutional right to exercise its "centuries-old" religion. *Warth,* 422 U.S. at 498; R. at 3. Covenant Truth Church faces a "certainly impending" risk of harm because the IRS's audit can revoke its status simply for exercising a constitutional right and expressing its religious beliefs. *Susan B. Anthony List*, 573 U.S. at 158 (citing *Clapper*, 568 U.S. at 408). Covenant Truth Church need not receive a completed audit finding a violation of the Johnson Amendment to appear before this Court; the threat to regulate its religious beliefs is sufficient. *Susan B. Anthony List*, 573 U.S. at 158. Lastly, as this Court has recognized, there should be "little question" whether Covenant Truth Church has a

substantial risk of harm because the beliefs of The Everlight Dominion are the "object" of what the Johnson Amendment seeks to regulate. 26 U.S.C. § 501(c)(3); *Lujan*, 504 U.S. at 561.

In *Susan B. Anthony List*, this Court held that a state statute threatening enforcement against the plaintiffs' intended political speech posed a substantial risk of harm. 73 U.S. at 150. There, the statute "swe[pt] broadly" because it criminalized and imposed fines for certain false statements made during political campaigns. *Id.* at 153. Enforcement proceedings were initiated against the plaintiffs, and before the proceedings concluded, the plaintiffs filed suit to challenge the statute's constitutionality. *Id.* at 154. This Court reasoned that the statute regulated the plaintiff's intended political speech and therefore likely triggered the same enforcement process, creating a sufficient threat of enforcement. *Id*. at 150. Accordingly, this Court held that Article III standing was satisfied even in the absence of a conviction. *Id*. at 158.

This Court should look to the reasoning and holding in *Susan B. Anthony List* and conclude that Covenant Truth Church has suffered an injury-in-fact sufficient for Article III standing. Here, like the statute in *Susan B. Anthony List*, the Johnson Amendment regulates the political speech Covenant Truth Church intends to deliver in its sermons. 26 U.S.C. § 501(c)(3); *Susan B. Anthony List*, 573 U.S. at 158. Additionally, like the plaintiffs in *Susan B. Anthony List*, Covenant Truth Church filed suit before any enforcement proceedings concluded. *Susan B. Anthony List*, 573 U.S. at 154; R. at 5. The Church's injury does not depend on the outcome of the audit; rather, *Susan B. Anthony List*, makes clear that a final determination is unnecessary. *Id.* at 158. The injury instead arises from the credible threat of future enforcement created by the Johnson Amendment. R. at 5. The Everlight Dominion predates the Johnson Amendment by centuries and requires strict adherence to its beliefs, with noncompliance risking banishment; nevertheless, the Amendment regulates political speech that Covenant Truth Church intends to engage in. 26 U.S.C. § 501(c)(3);

R. at 3. Accordingly, the Church faces a substantial risk of future injury sufficient for Article III standing.

a) The IRS's consent decree with the plaintiffs in *Nat'l Religious Broad. v. Long* does not render Covenant Truth Church's injury non-imminent.

In *Nat'l Religious Broad v. Long*, two plaintiff churches and the IRS entered into a consent decree. No. 6:24-cv-00311, 2025 WL 2555876 at *1 (E.D. Tex. July 24, 2025). The decree states that "statutory text, IRS practice, and the doctrine of constitutional avoidance" interpret the Johnson Amendment to not regulate "communications from a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith." *Id.* Notably, although the IRS initially argued that the AIA barred the plaintiffs' claims, it conceded in the consent decree that the court had authority to grant injunctive relief with respect to those plaintiffs. *Id*. The consent decree limited the injunction's binding effect to the two plaintiff churches; accordingly, the case was dismissed. *Id.* at *2.

The consent decree in *Nat'l Religious Broad.* is unpersuasive and inapplicable here. The consent decree applies only to the two plaintiff churches in that case and does not extend to other churches, such as Covenant Truth Church. *Id.* at *2. Unlike the plaintiffs in *Nat'l Religious Broad.*, Covenant Truth Church may be subjected to an audit that regulates its religious views before the IRS elects to enter into any agreement—if it does so at all. *Id.* Accordingly, this Court should conclude that the IRS's consent decree does not render Covenant Truth Church's injury non-imminent because it is inapplicable here.

2. Covenant Truth Church's injury is imminent because its core religious practices are prohibited by the Johnson Amendment.

Pre-enforcement suits are permitted when a plaintiff faces a sufficiently imminent threat of injury. *Babbitt,* 442 U.S. at 298. An injury is imminent where the plaintiff alleges (1) intent to

engage in conduct arguably protected by the Constitution, (2) that is proscribed by statute, and (3) faces a credible threat of enforcement. *Id.* First, intent to repeat specific statements that triggered past enforcement is sufficient conduct. *Susan B. Anthony List*, 573 U.S. at 150. Conduct involving political speech is certainly affected with a constitutional interest. *Babbitt,* 442 U.S. at 298. Second, a constitutional injury may arise from the "chilling effect" of statutes that proscribe the exercise of First Amendment rights. *Laird v. Tatum*, 408 U.S. 1, 11 (1972). Third, a credible threat of enforcement exists when a plaintiff intends to engage in the same or similar speech that previously triggered enforcement proceedings. *Susan B. Anthony List*, 573 U.S. at 150. Importantly, a plaintiff need not confess an intent to violate the law to establish a credible threat of prosecution. *Id.* at 163.

This Court should find that Covenant Truth Church's imminent injury allows a pre-enforcement suit to satisfy Article III standing. First, Covenant Truth Church intends to continue engaging in political-campaign speech because it is required by The Everlight Dominion. R. at 3. The intent to continue making the same statements about political candidates, as required by its faith, constitutes sufficient conduct to satisfy the first element of a pre-enforcement challenge. *Susan B. Anthony List*, 573 U.S. at 150. Moreover, Pastor Vale's sermons address political campaigns and implicate a constitutional interest that is "certainly affected." *Babbitt,* 442 U.S. at 298; R. at 4. Second, the Johnson Amendment proscribes speech in Covenant Truth Church's sermons, creating a "chilling effect" that constitutes a constitutional injury and satisfies the second element of a pre-enforcement suit. *Laird*, 408 U.S. at 11.

Covenant Truth Church has engaged in such speech for centuries and intends to continue, making it likely to face future enforcement under the Johnson Amendment. *Susan B. Anthony List*, 573 U.S. at 150. Additionally, Covenant Truth Church need not "confess" to the IRS that it will

violate the Johnson Amendment. *Id*. Its intent to express its religious beliefs by endorsing candidates and participating in political campaigns is sufficient to trigger a threat of enforcement. *Id.* at 163; R. at 3–5. Thus, the third element of a pre-enforcement suit is satisfied. Accordingly, this Court should conclude that Covenant Truth Church's imminent injury allows a pre-enforcement suit to satisfy Article III standing.

In *Babbitt,* this Court held that the plaintiffs had standing to challenge the constitutionality of a statute that regulated union activity. 442 U.S. at 289. The challenged provision targeted core First Amendment conduct by restricting election-related union activity and broadly criminalizing boycotting, picketing, striking, and collective-bargaining efforts. *Id.* at 301–303. Although the plaintiffs had not previously violated the statute, this Court found standing because they engaged in the regulated speech in the past and intended to continue doing so. *Id.* at 299. This Court further explained that plaintiffs need not expose themselves to actual arrest or prosecution to establish a non-speculative constitutional injury. *Id.* at 302.

This Court should follow the reasoning and holding of *Babbitt* and likewise conclude that Covenant Truth Church's pre-enforcement challenge satisfies Article III standing. As in *Babbitt*, Covenant Truth Church has engaged in, and intends to continue engaging in, core First Amendment speech mandated by The Everlight Dominion—speech the Johnson Amendment directly regulates. 442 U.S. at 299. Covenant Truth Church need not await a completed audit or an enforcement determination to suffer a constitutional injury. *Id.* at 302. Accordingly, Covenant Truth Church's pre-enforcement suit involves a sufficiently imminent threat of injury and therefore satisfies Article III standing.

Accordingly, this Court should hold that Covenant Truth Church faces a substantial and imminent risk of harm to its constitutional rights, directly traceable to the Johnson Amendment's regulation of political speech, and redressable by this Court.

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE

A. The Johnson Amendment Creates an Unconstitutional Denominational Preference

1. The Johnson Amendment discriminates among religions based on doctrinal requirements.

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). The government must maintain "benevolent neutrality toward churches and religious exercise generally, so long as none was favored over others and none suffered interference." *Walz,* 397 U.S. at 676–77. Indeed, "[t]he government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). This neutrality requirement extends beyond explicit preferences to facially neutral laws that discriminate among religions in practice. *See Larson*, 456 U.S. at 246–47 (invalidating registration requirement that discriminated among religions based on fundraising sources). Neither a state nor the federal government "can pass laws which … prefer one religion over another." *Everson v. Bd. Of Educ. of Ewing Twp*., 330 U.S. 1, 15 (1947). The Establishment Clause thus forbids the government from structuring benefit programs in ways that advantage certain religious denominations while burdening others based on their doctrinal requirements. *Id*.

In *Walz*, this Court upheld property tax exemptions for religious organizations but emphasized that such exemptions must be administered with "benevolent neutrality" that does not favor some religions over others. 397 U.S. at 676–77. This Court explained that the government benefits to religion are permissible only when they do not create "sponsorship, financial support,

and active involvement of the sovereign in religious activity." *Id*. at 668. Here, the Johnson Amendment fails this standard by requiring the IRS to actively monitor and evaluate religious speech—precisely the "active involvement" *Walz* warns against. 317 U.S. at 676; R. at 3. Moreover, by structuring the tax exemption to disadvantage religions with political speech requirements, the government abandons "benevolent neutrality" in favor of discriminatory administration. *Walz*, 317 U.S. at 676.

The Johnson Amendment creates structural discrimination among religious denominations. The Amendment allows 501(c)(3) status for religions without political engagement requirements but denies it to religions that mandate political activity. R. at 3. The Everlight Dominion requires its churches and leaders to participate in political campaigns and support aligned candidates. *Id*. Failure to comply results in banishment from the church. *Id*. Other religions have no such requirement and face no comparable burden. The result is that the government grants a valuable tax benefit based on which religious doctrine a church follows—religions without political speech obligations receive the benefit; religions with such obligations do not. This discrimination is not incidental but structural. For The Everlight Dominion, political engagement is not separable from religious belief—it is a religious belief that manifests in required conduct. R. at 3. The government cannot condition benefits on which religious doctrines a church follows. *See McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality op.). By penalizing religions whose doctrine requires political witness while leaving unburdened those religions that impose no such requirement, the Johnson Amendment creates the typical example of denominational preference that *Larson* prohibits. 456 U.S. at 244.

2. This Court's recent precedent confirms this denominational preference violates the Constitution.

In *Trinity Lutheran*, this Court held that Missouri violated the Free Exercise Clause by denying a playground resurfacing solely because the applicant was a church. 137 S. Ct. at 2019. This Court explained that the Free Exercise Clause "protect[s] religious observers against unequal treatment" and bars the government from imposing "special disabilities" based on "religious status." *Id*. at 2019 (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 113 S. Ct. 2217 (1993) (internal quotation marks omitted)). Like Missouri's playground program, the 501(c)(3) program denies benefits based on religious identity and doctrine. The government cannot deny tax exemption to churches whose religious beliefs require political engagement. This is precisely the "special disability" imposed "because of their religious status" that *Trinity Lutheran* condemns. *Id*. at 2024.

The principle from *Trinity Lutheran* was reinforced in *Espinoza*, where Montana excluded religious schools from a scholarship program. 140 S. Ct. at 2251. This Court held that "[a] State need not subsidize private education[,] [b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Id*. at 2261. The principle is clear: once the government creates a benefit program, it cannot structure that program to exclude certain religions. *Id*. The IRS need not create 501(c)(3) exemptions, but having done so, it cannot structure them to exclude religions with political engagement requirements. *Id*. The Johnson Amendment does exactly what Montana tried to do—exclude certain religious organizations from a generally available benefit program based on their religious characteristics. *Id*; R. at 3.

Most recently, in *Carson*, this Court held that Maine could not exclude schools from a tuition program based on whether they provide religious instruction. 142 S. Ct. at 1998. This Court rejected the government's attempt to distinguish between religious "status" and "use," holding that

both forms of discrimination violate the Constitution. *Id*. at 2000–01. Here, the Petitioners might argue that the Johnson Amendment regulates "conduct" (political activity) rather than religious "status." But *Carson* forecloses this argument. Political engagement is the religious use and practice required by The Everlight Dominion's doctrine. R. at 3. Just as Maine could not exclude religious instruction, the IRS cannot exclude religiously required political engagement from an otherwise generally available benefit.

Perhaps most directly on point is *McDaniel*, where Tennessee attempted to bar clergy from serving as state legislators. 435 U.S. at 621–22. This Court held that the government cannot condition public participation on surrendering one's religious vocation. *Id*. at 626 (plurality op.). The plurality applied strict scrutiny, while Justice Brennan's concurrence found an Establishment Clause violation through the state's preference for religions that do not require clergy to engage in politics. *Id*. at 631–32 (Brennan, J., concurring in the judgment). The parallel to this case is direct: Tennessee conditioned legislative service on not being clergy; the IRS conditions Section 501(c)(3) status on not engaging in religiously required political speech. *Id*. at 621; R. at 2. Both impose a "disability" on those because of their religious status. *McDaniel*, 435 U.S. at 632. Indeed, this case presents an even stronger claim than *McDaniel*—Pastor Vale is not seeking a governmental office but merely seeking to maintain tax status while fulfilling his religious obligations. R. at 3–4.

3. The Petitioners' "secular criteria" defense fails.

The Petitioners will argue that the Johnson Amendment employs "secular criteria" that merely have disparate impact on different religions. They will cite *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, which held that statutes with "secular criteria that happen to have a disparate impact upon different religious organizations" are permissible. 605 U.S. 238,

250 (2025). *Catholic Charities* involved a Wisconsin statute creating tax exemptions for organizations "operated primarily for religious purposes," requiring activities such as proselytization to qualify. *Id*. at 245. This Court held this was permissible. *Id*. at 250. The Petitioners will argue that the Johnson Amendment is similarly permissible because its prohibition on political activity is facially secular and applies equally to all non-profits.

This argument fails. *Catholic Charities* involved explicitly religious criteria—the statute required organizations to engage in religious activities like proselytization to qualify for the exemption. 605 U.S. at 245. This Court held that such criteria, while having disparate impact, did not violate the Establishment Clause because they were based on religious practices. *Id*. at 250. The Johnson Amendment presents the opposite situation. Its criterion—no political activity—appears secular but has the *effect* of discriminating among religions based on their doctrines. For The Everlight Dominion, political engagement is not separate from religion; it is religion. R. at 3. The Amendment thus regulates religious practice under the guise of secular criteria.

Moreover, *Catholic Charities* explicitly stated its holding did not apply to "secular criteria that happen to have a disparate effect upon different religious organizations." 605 U.S. at 250. This Court was careful to limit its holding to criteria based on religious activity itself. *Id*. The Johnson Amendment's prohibition on political activity is precisely such a secular criterion with disparate religious impact. Some religions require political engagement as a matter of doctrine; others do not. R. at 3. The Amendment burdens the former while leaving the latter unburdened. This is not permissible under *Catholic Charities* and is exactly what the case warned against. 605 U.S. at 250.

This Court acknowledges that "religious values pervade the fabric of our national life" and that religious individuals "frequently take strong positions on public issues." *Lemon*, 403 U.S. at 623. By prohibiting political activity as a condition of a tax exemption, the government necessarily

regulates what religious leaders can preach when their faith requires political speech. This is direct regulation of religious doctrine, not merely disparate impact from secular criteria.

4. The *Nat'l Religious Broad.* consent decree confirms and deepens the denominational preference problem.

The IRS's recent conduct in *Nat'l Religious Broad.* further confirms the Johnson Amendment's constitutional infirmities. 2025 WL 2555876 at *1. Rather than defend the Amendment's constitutionality, the IRS agreed to settle, proposing language that would exempt certain religious speech from enforcement. *Id*. This represents the first time in seventy years that the IRS has formally acknowledged the Johnson Amendment may be unconstitutional as applied to religious speech. *Id*.

The IRS agreed not to enforce the Johnson Amendment when "a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith." *Id*. Religions that confine political engagement to traditional Sunday services directed at their own congregation would receive protection under the decree. But religions like The Everlight Dominion, whose doctrine requires public political witness beyond the sanctuary walls, would remain subject to enforcement. This distinction, based on *how* a religion practices its faith, creates a denominational preference that *Larson* and *Carson* prohibit. *See* 456 U.S. at 244; *see also* 142 S. Ct. at 2001–02.

The Everlight Dominion's requirement of political engagement extends beyond mere endorsement of candidates. R. at 3. The doctrine requires members to "participate in political campaigns" and "encourage citizens to donate to and volunteer for campaigns." *Id*. This is not speech confined to a sanctuary on Sunday morning—it is active, public political engagement mandated by religious belief. *Id*. A consent decree protecting only "internal" congregational speech explicitly excludes religions like The Everlight Dominion, whose doctrine demands

external witness. This is denominational discrimination. *Larson*, 456 U.S. at 246 (emphasizing that the government cannot pass laws which prefer one religion over another). The government cannot condition First Amendment protection on whether a religion practices its faith quietly, publicly, internally, or externally.

B. The Johnson Amendment Excessively Entangles Government with Religion

1. Enforcing the Johnson Amendment requires the IRS to monitor and evaluate religious speech content.

Excessive government entanglement with religion violates the Establishment Clause. *Lemon*, 403 U.S. at 620. Entanglement analysis examines whether government regulation creates "comprehensive, discriminating, and continuing state surveillance" of religion. *Id*. While this Court no longer employs the three-part *Lemon* test as the primary Establishment Clause framework, entanglement concerns remain vital. *See Kennedy*, 597 U.S. at 535–36 (applying historical analysis but noting entanglement concerns). The separation between the government and religion must be maintained. *Reynolds v. U.S.*, 98 U.S. 145, 163–64 (1879). Critically, "the government may not regulate religious beliefs [or] the communication of religious beliefs." *Emp. Div. v. Smith*, 494 U.S. 872, 882 (1990). This categorical prohibition forecloses any enforcement scheme requiring the IRS to monitor and evaluate religious speech content.

Any application of the Johnson Amendment requires the IRS to engage in extensive surveillance and evaluation of religious speech. The IRS must audit churches to determine compliance. R. at 5. The IRS must review sermons, podcasts, and religious teachings to determine whether they constitute political campaign intervention. *Id*. The IRS must evaluate the context, intent, and content of religious messages. *Id*. In this case, the IRS must determine whether Pastor Vale's discussion of how Congressman Davis's values align with The Everlight Dominion's teachings constitutes impermissible political activity. R. at 4–5. This requires the IRS to make an

inherently theological judgment: Is this sermon about faith or politics? Where is the line between religious instruction and political advocacy?

This governmental surveillance and evaluation of religious speech is the type of entanglement the Establishment Clause forbids. *See Emp. Div.* 494 U.S. at 882. The government surveils religious services and teachings. R. at 5. The government evaluates the content of pastoral communications. *Id*. at 4–5. The government determines which religious messages are permissible versus impermissible. *Id*. This "comprehensive, discriminating, and continuing state surveillance" of religion violates the Establishment Clause. *Lemon*, 403 U.S. at 619.

2. The consent decree makes explicit the theological determinations required.

The *Nat'l Religious Broad.* consent decree makes explicit the entanglement problem inherent in any Johnson Amendment enforcement. 2025 WL 2555876 at *1. The IRS agreed not to enforce when speech is in "good faith" on "matters of faith" through "customary channels . . . in connection with religious services." *Id*. Each of these terms requires an inherently religious determination.

Whether speech is "in good faith" requires the IRS to evaluate religious sincerity—to determine whether a church truly believes in its religious doctrine or is merely pretextual. Whether speech addresses "matters of faith" requires the IRS to make theological content determinations. What constitutes a "matter of faith" for one religion may be purely secular for another. Whether a podcast constitutes a "customary channel" for modern churches requires the IRS to judge religious practices and traditions. Whether a podcast is "in connection with religious services" requires the IRS to define the boundaries of religious activity. These are quintessentially religious questions that the government has no competence to answer and no business deciding.

3. The ministerial exception and religious autonomy prohibit this governmental oversight.

In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, this Court recognized a "ministerial exception" granting churches authority over their selection and control of ministers. 565 U.S. 171, 188–89 (2012). This Court held that the government cannot interfere with a church's choice of who will "personify its beliefs" or dictate what ministers may say. *Id*. at 188. This principle was reaffirmed and expanded in *Our Lady of Guadalupe Sch*. 140 S. Ct. at 2063. Religious autonomy includes the right of churches to determine what their ministers preach, including political content when required by religious doctrine. *Hosanna-Tabor,* 565 U.S. at 200–01 (Alito, S., concurring in the judgment). The IRS monitoring of Pastor Vale's sermon content to determine Johnson Amendment compliance violates this ministerial exception and religious autonomy. *Id*. The church—not the government—decides what its minister preaches. *Id*.

4. *Branch Ministries* is distinguishable.

The Petitioners will rely on *Branch Ministries*, the only federal appellate case directly addressing the Johnson Amendment. 211 F.3d at 137. That court upheld the Amendment as a First Amendment challenge. *Id*. at 144. However, *Branch Ministries* is distinguishable in critical respects.

First, *Branch Ministries* involved no religious compulsion. In that case, the church placed newspaper advertisements opposing President Clinton's reelection. *Id*. at 139. Nothing in the record suggested their religion *required* this political activity. *Id*. It was voluntary political speech, not religiously mandated conduct. *Id*. Here, The Everlight Dominion requires political engagement on pain of banishment. R. at 3. This distinction is critical. Religious compulsion triggers a different constitutional analysis. *See Sherbert v. Verner*, 374 U.S. 398, 403–04 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972).

In *Sherbert*, this Court held that South Carolina could not deny unemployment benefits to a Seventh-day Adventist who refused to work on Saturdays due to religious conviction. 374 U.S. at 403–04. This Court recognized that the government cannot condition benefits on violating one's religious requirements. *Id*. Similarly, in *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, Indiana could not deny benefits to a Jehovah's Witness who quit a job making weapons based on religious belief. 450 U.S. 707, 717–18 (1981). These cases establish that religious compulsion—where faith requires certain conduct—triggers heightened constitutional protection. *Id*.; *Sherbert*, 374 U.S. at 403–04. The Everlight Dominion's requirement of political engagement, enforceable through banishment, presents precisely this situation. R. at 3. *Branch Ministries* involved no such compulsion and is thus inapposite. 211 F.3d at 139.

Second, *Branch Ministries* pre-dates the modern Supreme Court jurisprudence on religious discrimination in benefit programs. Recent cases establish principles that undermine *Branch Ministries's* reasoning. *Trinity Lutheran*, 137 S. Ct. at 460; *Espinoza*, 140 S. Ct. at 2261; *Carson*, 142 S. Ct. at 1996. *Branch Ministries* pre-dates *Kennedy's* establishment of historical analysis as the primary Establishment Clause framework. *Kennedy*, 597 U.S. at 535. Thus, *Branch Ministries* applied an outdated framework.

Third, the IRS itself no longer defends *Branch Ministries's* reasoning. In *National Religious Broadcasters*, the IRS declined to defend the Johnson Amendment's constitutionality and instead agreed to settle. 2025 WL 2555876 at *1. The IRS's most recent concession that enforcing the Johnson Amendment against religious political speech raises constitutional problems directly contradicts *Branch Ministries's* holding. 211 F.3d at 144. The Petitioners cannot simultaneously argue that *Branch Ministries* correctly upheld the Johnson Amendment and settle

other cases by agreeing not to enforce it. The IRS's change of position undermines *Branch Ministries*'s precedential value.

C. Historical Analysis Confirms the Johnson Amendment Violates the Establishment Clause

1. *Kennedy* establishes historical analysis as the primary establishment clause framework.

Courts should interpret the Establishment Clause "with reference to historical practices and understandings." *Kennedy*, 597 U.S. at 535. "An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some 'exception' within the 'Court's Establishment Clause jurisprudence.'" *Id*. at 536 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 575 (2014)). Under this framework, a government practice is constitutional only if it comports with the Nation's historical treatment of religion and government. *Id*. at 535–36.

2. American history demonstrates a longstanding tradition of religious political engagement.

From the Founding Era through the Civil Rights Movement, American religious institutions routinely engaged in public political life. Churches serve as centers of political discourse, civic mobilization, and moral instruction, and religious leaders frequently framed political participation as a matter of religious duty rather than a private preference. *See Town of Greece*, 572 U.S. at 576 (recognizing that practices deeply embedded in the Nation's history are constitutionally significant).

Religion and politics are deeply intertwined in American public life. Historically, religious beliefs did not operate in private spheres but actively shaped political judgment, civic participation, and resistance to governmental authority. As documented by the Library of Congress, religion played a central role in the American Revolution by providing a moral sanction for opposition to

British rule and legitimizing political resistance as a religious duty.[1] Furthermore, there is evidence that the clergy were not passive observers of political events.[2] Ministers served as chaplains, participated in legislative bodies, authored political communications, and preached sermons framing resistance to tyranny as consistent with—if not required by—religious obligation.[3] Far from being discouraged, such religious political engagement was widely accepted as compatible with the emerging constitutional order.[4]

American history beyond the Founding further confirms that religious political engagement has remained a consistent feature of civic life. Historical scholarship reflects that religious beliefs have shaped political movements, voting behavior, and public discourse across different eras and political parties.[5] This continuity reinforces that religious participation in political life is not a historical anomaly but a recurring and accepted element of the American democracy. There is no historical tradition of treating such engagement as subject to government-imposed silence.

3. The Johnson Amendment contradicts historical tradition.

Applying *Kennedy*'s historical framework, the Johnson Amendment cannot be sustained as applied to a church whose doctrine requires public political engagement. 597 U.S. at 535–36. Enacted in the mid-twentieth century with no historical justification, the Amendment imposes a categorical prohibition that would have been foreign to the Founding generation. Under *Kennedy*, such ahistorical restrictions cannot be justified. 597 U.S. at 535–36.

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[1] Religion and the American Revolution, *Religion and the Founding of the American Republic*, Libr. Of Cong., https://www.loc.gov/exhibits/religion/ (last visited Jan 13., 2026)
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *See* Daniel K. Williams, *God in the Voting Booth: How Religion Shapes the Politics of Both Republicans and Democrats, Origins: Current Events in Historical Perspective* (Oct. 2025), https://origins.osu.edu/read/god-voting-religion-politics

Before 1954, churches freely engaged in political speech without risking loss of tax benefits. The Johnson Amendment represents a sharp and unprecedented break from this historical practice. The Amendment silences religious political speech as a condition of receiving tax exemption—a condition that has no grounding in the Nation's history and tradition. The enactment cannot override the weight of historical evidence demonstrating that religious political engagement has been understood as protected religious exercise throughout American history. Thus, this Court should affirm the Circuit grant of summary judgment.

Accordingly, the Johnson Amendment violates the Establishment Clause through multiple, independent constitutional defects. The Amendment creates unconstitutional denominational preferences by conditioning tax benefits on religious doctrine because it favors religions without political speech requirements while penalizing religions like The Everlight Dominion that mandate such engagement. *Larson*, 456. U.S. at 244; *Trinity Lutheran*, 137 S. Ct. at 2024. The Amendment excessively entangles the government with religion by requiring the IRS to monitor sermons and make theological determinations about religious speech content. *Lemon*, 403 U.S. at 619; *Emp. Div.*, 494 U.S. at 882. The Amendment contradicts American historical tradition of religious political engagement. *Kennedy*, 597 U.S. at 535. These violations cannot be cured by narrowing enforcement by creating exceptions—they are structural defects inherent in the Amendment itself.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the 14th Circuit and hold that (1) the Tax Anti-Tax Injunction Act does not bar Covenant Truth Church's suit, and the Church has Article III standing to bring this challenge; (2) the Johnson Amendment violates the Establishment Clause of the First Amendment. Covenant Truth Church respectfully requests that this Court permanently enjoin enforcement of the Johnson Amendment as applied to religious organizations whose doctrine requires political engagement.

Respectfully submitted, this 18th day of January 2026.

Team 24
Counsel for Respondents