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

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January 18th, 2026
Team 25, on Behalf of Petitioner

QUESTIONS PRESENTED

1. Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment.

2. Whether the Johnson Amendment violates the Establishment Clause of the First Amendment.

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

26 U.S.C § 7421, in relevant part, provides:

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

26 U.S.C § 7428(b)(2), in relevant part, provides:

> **(2) Exhaustion of administrative remedies.**--A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

II. STATEMENT OF THE CASE

I. Factual Background

A. Covenant Truth Church fears the protentional revocation of Section 501(c)(3) tax classification after political involvement by Paster Vale on behalf of the church.

Respondent Covenant Truth Church became concerned after the Petitioners, the Internal Revenue Service ("IRS"), mailed a letter with the expressed intent to conduct a randomized audit on the church due to the anticipated discovery of the Church political involvement prohibited by the 26 U.S.C § 501(c)(3). R. at 5.

In 2018, Paster Vale joined the Church and focused outreach efforts towards younger generations. R. at 3. Paster Vale began a weekly podcast to broadcast sermons, guidance, and outreach about The Everlight Dominion. R. at 4. The podcast broadcasted on behalf of the Church and evolved into a forum for political messages. R. at 4. Pastor Vale endorsed and encouraged listeners to donate and volunteer for certain candidates. R. at 4. In January 2024, the podcast specifically identified and endorsed Congressman Davis on behalf of the Church. R. at 4. Pastor Vale shared how Congressman Davis aligned with The Everlight Dominion and encourage engagement with Congressman Davis's campaign. R. at 5.

B. Congress enacted the Johnson Amendment to safeguard any 501(c)(3) tax status from political campaign related activity.

The Church is The Everlight Dominion and requires its members to take part in political campaigns and endorsements of candidates. R. at 3. However, the Church is classified as a Section 501(c)(3) nonprofit for tax filing. R. at 3. Organizations classified under 501(c)(3) classification are subject to the Johnson Amendment enacted by Congress and into the Internal Revenue Code prohibiting non-profit organizations from any political campaign for any candidate. R. at 2. Every year since 2017, Congress has proposed legislation to eliminate or revise the Johnson Amendment and declined to do so. R. at 3.

The IRS is known to conduct random audits of 501(c)(3) nonprofits to determine compliance. R. at 5. On May 1, 2024, the Church received a letter from the IRS for notice of a random audit. R. at 5. The Church became concerned about Paster Vale's political involvement on behalf of the Church and the potential revocation of the Church's Section 501(c)(3) tax classification. R. at 5. In response, the Church filed suit on May 15, 2024, before the IRS began the audit. R. at 5.The Church sought permanent injunction to prohibit the enforcement of the Johnson Amendment for the alleged violation of the Establishment Clause of the First Amendment. R. at 5.

II. Procedural History

The District Court granted Respondent Covenant Truth Church Motion for Summary Judgment and request for permanent injunction. R. at 2. The District Court found the Church held standing to challenge the Johnson Amendment and found the Johnson Amendment violated the Establishment Clause. R. at 2. The Fourteenth Circuit affirmed the District Court's judgment. R. at 2. Petitioners Scott Bessant and the IRS appeal the District Court's decision to the United States Supreme Court. R. at 6.

We seek reversal of the District Court's summary judgment and hold the Church does not have standing to challenge the Johnson Amendment and find that the Johnson Amendment does not violate the Establishment Clause. *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, USDC No. 5:23-cv-7997 (E. D. Wythe, 2023).

III. SUMMARY OF ARGUMENT

The District Court erroneously granted summary judgment because Mount Pilot Public Schools acted within constitutional bounds in both cases.

First, the Church does not hold standing to challenge the Johnson Amendment suit because the Church suit is barred by the Tax Anti-Injunction Act ("AIA") and does not satisfy Article III standing requirements. The AIA provides 501(c)(3) tax classified nonprofits administrative remedies described in 26 U.S.C. § 7428(b)(2) that must be exhausted prior to filing suit related to the assessment or collection of taxes—including audits—from any person. The Church suit triggered the clear and explicit language of the AIA enacted by Congress to allow the IRS authority to conduct taxation without judicial interference. Additionally, the Church failed to show an actual or imminent injury required by Article III standing to provide a court subject matter jurisdiction. Article III standing requires injury, causation, and redressability by a favorable finding by the court. When one element is missing, the court must defrain from proceeding with the case. The Church did not show a sufficient injury to challenge the constitutionality of the Johnson Amendment before a court of law.

Second,

IV. ARGUMENT

I. THE COURT SHOULD REVERSE THE DISTRICT COURT'S SUMMARY JUDGMENT AND HOLD THE CHURCH DOES NOT HAVE STANDING UNDER THE AIA NOR UNDER ARTICLE III.

The Court should reverse the District Court's summary judgment and hold the Church did not have standing to challenge the Johnson Amendment. The Church cannot prove the exhaustion of administrative remedies prior to a court filing required under the AIA nor satisfy the first element for Article III standing of an injury. Thus, the Church suit is barred, and the District Court did not hold subject matter jurisdiction to proceed with the case.

A. The Church cannot halt the lawful assessment of its current tax exemption since their very suit triggered both the AIA plain meaning and the Court's acknowledged purpose.

The Church does not have standing under the AIA because the AIA prohibits individuals from challenging the assessment of taxes by the IRS. Courts must rely on statutory interpretation to understand Congress's intent of a statute which begins and ends with the plain meaning of the text plain meaning versus a plaintiff's alleged interpretation or argument. *NFIB v. Sebelius*, 567 U.S. 519, 544 (2012). The AIA section 7421(a) *Prohibition of suits to restrain assessment or collection* states "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). An assessment of taxes extends to—and is barred by the AIA—when a plaintiff files a pre-enforcement challenge to **prevent** the IRS decision to revoke a tax-exempt status. *Bob Jones Uni. v. Simon*, 416 U.S. 725, 735 (1974). An IRS notice to audit or re-assess tax liability of an organization is within the scope of an assessment. *Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401, 405 (4th Cir. 2003). Through the statute's plain meaning, it is clear that the Court must examine whether the lawsuits' purpose is to restrain a tax assessment or collection. *Bob Jones*, 416 U.S. at 738. When a court finds a suit is for the purpose of restraining the assessment or collection of taxes, the case "**must be dismissed**" because the Act withdraws the court's jurisdiction. *CIC Services, LLC v. I.R.S.*, 593 U.S. 209, 216 (2021) (emphasis added); *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 5 (1962).

Based on the AIA plain meaning of the AIA, the suit is a restraint on the assessment and collection of taxes in the anticipation of the IRS's revocation of the Church's 501(c)(3) classification and is therefore barred. The Court held the "best evidence of Congress's intent is the statutory text." *Sebelius*, 567 U.S. at 544. The Court must view the 26 U.S.C § 7421(a) *Prohibition of suits to restrain assessment or collection of* tax—known as the AIA—by the language plain meaning. In 1867, the AIA was enacted and states "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not

such person is the person against whom such tax was assessed." 26 U.S.C § 7421(a). The Court understood a tax exemption as a privilege, and not something Congress must provide. *Regan v. Taxation with Representation of* Washinton, 461 U.S. 540, 551 (1983). The Court in *Bob Jones* held the Act barred pre-enforcement suits seeking to challenge the IRS' decision to revoke a tax-exempt status from an organization who engaged in political related activity, like lobbying, even if the activity was legal but restricted for tax purpose. 416 U.S. at 735. The Court ruled that a complaint was premature when based on the organization's "concern" and speculation of the IRS's collection after an audit determined the re-assessment of 501(c)(3) tax status. *Id*. at 750.

The Church argues that the IRS acted with "selective enforcement" in auditing the nonprofit for re-assessment of its 501(c)(3) tax status and not auditing other non-religious organizations. R. at 8. The Church crafted the sentiment that the suit concerned the constitutionality of the Johnson Amendment to file a pre-enforcement challenge, although the IRS's notice of an "impending audit" prompted the suit. *Id*. at 5. The Court must use the text plain meaning and bar the Church's suit because the suit's purpose triggers Section 7421(a). For the Court to decide would go against Congress-aligned precedent of denying proposed legislation that would eliminate the Johnson Amendment since 2017. *Id*. at 3.

The Johnson Amendment applies to **all** persons and does not "unfairly target[]" religious organizations. *Id*. at 8. In *Bob Jones* and *Judicial Watch*, the courts held that the AIA barred suits that attributed non-tax related challenges. *Bob Jones*, 416 U.S. at 748–49; *Judicial Watch*, 317 F.3d at 408. The District Court was misguided in holding the Church alleged unconstitutionality of the Johnson Amendment established jurisdiction because the suit was filed—for the sole purpose of restraining the assessment of taxes out of the Church's "concern[]" for the revocation of organizations 501(c)(3) tax status. R. at 2, 5.

The Court has understood a plaintiff's incentive to file a pre-enforcement suit to prevent the revocation of a tax exemption, yet, affirmed such action is in direct conflict with the AIA. *Bob Jones*, 416 U.S. at 732. If Congress wanted injunctive relief against the IRS's assessment of taxes, then Congress would have explicitly stated so, but Congress has "declined" to provide "an exception for religious organizations" to suits like the Church filed. *Williams Packing*, 370 U.S. at 6.; R. at 2–3. Thus, a plaintiff's suit is barred by the AIA when seeking a pre-enforcement challenge that restrains a tax assessment or collection based on the possible revocation of 501(c)(3) classification. *Bob Jones*, 416 U.S. at 750.

B. Congress provided administrative remedy for 501(c)(3) nonprofits when an actual controversy arises with the IRS, and the Church has not exhausted such remedies.

The IRS has the authority to provide, assess, and revoke 501(c)(3) tax exemption status from religious and non-religious nonprofits without the immediate interference of judicial intervention by the courts. The Internal Revenue Code states an organization described in Section 501(c)(3) must adhere to the exhaustion of administrative remedies subject to 26 U.S.C. § 7428(b)(2):

> A declaratory judgment or decree under this section shall not be issued in any proceeding unless ... determine[d] that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

26 U.S.C. § 7428(b)(2). Therefore, a plaintiff cannot file a suit in attempt to enjoin the IRS for an audit to assess its continued tax exemption status. *Alexander v. Ams. United Inc.*, 416 U.S. 752, 760 (1974). The Court held that Congress used it's authority to limit resolution of tax related issues against the IRS to administrative remedies provided in the code. *CIC Services, LLC v. I.R.S.*, 593 U.S. at 225. Unless a plaintiff falls within one of the two judicial exceptions where (1) the only legal remedy provided is based on the reliance for a third-party to file suit on his behalf, or (2) the plaintiff shows "guaranteed to succeed on the merits" and "suffer irreparable harm in the absence of an injunction" the plaintiff suit is barred by the AIA. *South Carolina v. Regan*, 465 U.S. 367,

381 (1984); *Alexander*, 416 U.S. at 758. The Church would like the Court to believe there are no alternative remedies like in *South Carolina v. Regan*, where plaintiff legal remedy was attached to the possibility of a third-party filling on the plaintiff's behalf. 465 U.S. at 367. Here, the Church is obligated to exhaust administrative remedies before filing within a court if the Church believes the IRS determination is not favorable. 26 U.S.C. § 7428(b)(2).

The Court should follow *Judicial Watch* and find the Church's suit is barred by the AIA because the suit's purpose is to prohibit the IRS's audit to assess the Church's compliance with 501(c)(3) tax exempt requirements. 317 F.3d at 407. In *Judicial Watch*, the Fourth Circuit held that the plaintiff sought to avoid an audit for tax liability determination and not the alleged unconstitutionality of a provision. *Id*. at 408. Here, the Church alleged "no alternative remedy exist[]" to address the "substantial risk" of injury from the "unchanged" tax exception status. R. at 5, 7. This statement is untrue. Congress and the IRS predicted controversies would arise with the IRS's assessment or collection of taxes by nonprofits with a 501(c)(3) tax classification through Section 7428(b)(2). 26 U.S.C § 7428(b)(2). When the IRS conducts an audit to determine continued tax exemption status, the IRS provides a proposed determination and allows the nonprofit to appeal directly to the IRS. *Id*. The IRS followed the required procedure to audit a nonprofit, although the audit may cause "serious delays" the review is constitutional. *Bob Jones*, 416 U.S. at 725. Therefore, the Church acted prior to an "actual controversy" to arise because an IRS notice for an audit does not mean the IRS audit must result in the nonprofits' revocation of Section 501(c)(3) classification. R. at 5–6, 8.

C. The Church's suit does not fall into one of the two judicial exceptions that prohibits the AIA from barring a suit.

In *South Carolina v. Regan*, the Court held the AIA did not apply when Congress did not provide plaintiff with an "alternative" remedy to challenge the validity of a tax related matter. 465 U.S. at 373. In *Regan*, the plaintiff was "required to depend on the mere possibility of persuading

a third party to assert his claims." *Id*. at 378–79. Here, the Church does not rely on a third-party to assert the churches allegations rather the Church halted the IRS' audit based on the mere allegation of "selective enforcement" and tries to bring a pre-enforcement barred by the AIA. *Regan*, 465 U.S. at 378–79; R. at 8. The Church did not allow the IRS to conduct an audit to assess the tax exemption status, even if the Church allotted time for the completion of the audit the Church holds administrative remedies to exhausted. 26 U.S.C § 7428(b)(2). The Church must be patient with the IRS's audit to decide whether the execution of alternative legal remedies is necessary. At this time, the IRS has not conducted an audit and the Church's 501(c)(3) status "remains unchanged" for any party to file suit. R. at 5.

The second exception to bar the application of the AIA is when the plaintiff proves under no circumstances could the government prevail and absent an injunction the plaintiff will suffer irreparable harm. *Williams Packing*, 370 U.S. at 6–7. Mere allegation of an irreparable injury alone is insufficient for a party to fall within the *Willams Packaging* exception. *Alexander*, 416 U.S. at 762. In *Willams Packaging*, the Court held pre-enforcement injunctions "related directly" to the assessment or collection of taxes with alleged constitutional infringement explicitly without merit are barred by the AIA. 370 U.S. at 6–8. The Church stated on the record that the church's pastor used his weekly podcast to "endorse[d] candidates" and adhere to The Everlight Dominion requirement of active involvement in "political campaigns." R. at 4. These admissions alone provide the anticipation that the IRS's audit will find evidence of the Church's lack of compliance with Section 501(c)(3) organizations required compliance with the prohibition against political involvement and provides the IRS a greater liklihood to prevail. R. at 4. Thus, the mere possibility of the Church's injury alone does not place the suit outside the reach of the AIA and is barred.

II. THE CHURCH EXPERIENCED NO ACTUAL, OR IMMINENT THREAT OF A FUTURE HARM TO ENJOIN THE IRS IN PERMANENT INJUNCTION.

The Church fails to allege an imminent future harm and does not have standing under Article III because the Church alleged the *potential* revocation of 501(c)(3) tax exemption status that has remained unchanged and the Church cannot prove with certainty that the IRS will revoke the exemption. As the Fourteenth Circuit acknowledged, the IRS requires an "actual controversy" to develop before a remedy is afforded like court of law who require Article III standing to grant jurisdiction. R. at 6, 7. Article III standing is an elemental test and requires a plaintiff to show all three elements of: (1) injury in fact is concrete **and** particularized, (2) causation between the injury and defendant's acts, and (3) likely redressability by the court's favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61(1992). When one prong is not satisfied, the court cannot hear the case. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). An injury must be concrete and particularized and actual and imminent, "not conjectural or hypothetical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Lujan*, 504 U.S. at 560). A pure allegation of possible future injury is not concrete nor particularized and is insufficient to show an injury. *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 409 (2013).

A. The Church did not suffer an actual injury to satisfy Article III standing.

The Church did not suffer an actual harm as the 501(c)(3) tax exemption status "remains unchanged" and is halted from any changes upon the filed suit before the Court. Respondent does not suffer an actual injury. R. at 5. Respondent's tax classification "remains unchanged" and the alleged unconstitutionality of the Johnson Amendment does not provide Respondent with an actual injury. *Id*. Respondent suffers no actual injury from the alleged unconstitutional enforcement of the Johnson Amendment. A plaintiff's allegation of "subjective" chilling of speech without an objective harm does not establish Article III standing. *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972). As the Court held in *Laird*, the Respondent proved no more than allegations of the IRS's "intent to audit its church and review compliance." *Laird*, 408 U.S. at 13–14; R. at 8. The IRS is known

to conduct "random audits of Section 501(c)(3) organizations" and the Respondent is a 501(c)(3) organization that does not fall outside the IRS authority's scope for review. R. at 3, 5. Thus, the Respondent's fear of the audits results is a "pure allegation of possible harm." *Clapper v. Amnesty Int'l USA,* 568 U.S. at 409.

B. The Church did not show an imminent threat to a future injury or a substantial risk of harm by the IRS to satisfy Article III standing.

The Church incorrectly relies on threatened "enforcement of the Johnson Amendment" for substantial risk of its tax classification revocation. R. at 5, 7. To prove an alleged future injury, a plaintiff must prove a "threatened injury is impending or a substantial risk the harm will occur." *Clapper v. Amnesty Int'l USA,* 568 U.S. at 400. Despite the Church's acknowledgement of the IRS is known ability to conducted "random audits of Section 501(c)(3) organizations," the Church relies on the "substantial risk" of imminent injury from the IRS's letter notifying the organization of a future audit. R. at 5. All non-profit Section 501(c)(3) tax classified organizations are subject to constitutional audits by the IRS and the Church does not fall outside the IRS authority. *Id*.

The Church incorrectly relies on the possibility of "future harm" from the assumed discovery of Paster Vale's "political involvement" on behalf of the church to prompt the revocation of the church's Section 501(c)(3) tax classification. *Id*. The Church did not and will not show a substantial risk of satisfying imminent harm in the future. The Church received a letter "for a random audit" as any other 501(c)(3) organization would and could receive. *Id*. Additionally, the IRS 2024 Annual Report showed 1,955 of examination for exempt organization which resulted in only 87 "proposed revocations for tax-exempt entities." IRS fiscal 2024 accomplishment letter. Mere fear of revocation of tax exemption status does not equate an imminent injury.

Therefore, the Court lacks jurisdiction to hear the Church's alleged complaint from the Church's failure to show an injury and does not hold standing under the AIA to challenge the Johnson Amendment. The Court should revise the lower court's decision and requires the Church

to await the IRS audit to determine if administrative remedies are necessary for the church to pursue.

Even if the Court assumed the proposed revocation of the 501(c)(3) tax exemption status, The Church is required to exhaust administrative remedies to challenge the proposed revocation provided by the IRS and we respectfully request the Court follow Congress's intent to bar a suit as the one before you with the AIA. 26 U.S.C § 7428(b)(2).

III. THE JOHNSON AMENDMENT WITHSTANDS EVERY ANGLE OF CONSTITUTIONAL CHALLENGE THE CHURCH ASSERTS.

The Court should reverse the District Court's find that the Johnson Amendment is unconstitutional. Though we believe that the lawsuit should have been originally dismissed for lack of jurisdiction, if it does happen to persist further, we find that the Johnson Amendment's adherence with the Establishment Clause halts any further claim. The Johnson Amendment acts in benevolent neutrality to effectuate its end of nonprofit bipartisanship—or silence—all three prevalent determination tests. Further, courts have already assessed similar matters, issuing opinions that such provisions are merely neutral limitations on tax benefits. Lastly, religions can, organizationally, participate in politics in other ways since not the entirety of a church must be a nonprofit; this negates the Church's potential harm, but also furthers the neutrality of the Johnson Amendment.

A. The Johnson Amendment is neutral in purpose, poses no outright hostility to religious organizations, and is constitutional under the Establishment Clause.

The Johnson Amendment, created in 1954 by then-Senator Lyndon B. Johnson, has had a clear, sole purpose: to prohibit 501(c)(3) non-profits from endorsing or opposing political candidates. 26 U.S.C. § 501(c)(3). For over 70 years, this provision operated without substantial challenge; however, in 2017, legislation was introduced to create a "religious exception" to the Amendment. R. at 7. Despite similar legislative proposals ever since, Congress has routinely

refused to eliminate or alter the Amendment. *Id.* But why? Congress, being the most knowledgeable and educated on the issues of lawmaking precedent, historical trend, and legal ramifications, the fact that legislation has been introduced and subsequently declined for nearly 10 years consecutively heavily implies that a religious exception to the Johnson Amendment would prove harmful.

1. Courts have employed various tests to assess Establishment Clause challenges.

Initially, *Lemon v. Kutzman* acted as the seminal case on the concept of Establishment Clause neutrality. Under this *Lemon* test, for a law to pass constitutional muster, it must (1) have a secular (non-religious) purpose, (2) have a primary purpose of effect that neither advances nor stifles religion, and (3) not create excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 642 (1971). If this test were still the sole standard, the Johnson Amendment would pass with flying colors, and we need not be here today. The Court has previously used and subsequently considered other tests for determining Establishment Clause violations. One such test is the "endorsement/reasonable observer" test, which adds another layer of analysis to the first two prongs of the *Lemon* test. This test requires asking whether the government "endorsed" religion, from the perspective of a disinterested, reasonable observer, such that the law creates an external perception of governmental favor/disfavor to religion. *Lynch v. Donnelly*, 465 U.S. 668, 687–94 (1984) (O'Connor, J., concurring). Cases like *Galloway* and *Kennedy* have provided more recent discussion of the issue, but neither has firmly done away with the *Lemon* test and rationale.

This test, the "endorsement/reasonable observer" test, sought to add further clarification to the prongs of *Lemon*. In *Town of Greece v. Galloway*, the town had a tradition of opening its board meetings with a prayer by a local clergy member, selected from a directory that was predominantly

Christian. 572 U.S. 565, 565 (2014). Respondents, citizens who attended the meeting and observed the town's practice, alleged that the town demonstrated preferential treatment to Christians, thus violating the Establishment Clause. *Id.* The respondents argued that the knowing use of a skewed-distribution directory, which was predominantly Christian, constituted impermissible favoritism, coerced non-believer participation, and failed the Endorsement Test through the sponsoring of sectarian prayers. *Id.* at 565–567. Notably, the Court found this to be a contentious opinion, resulting in a 5-4 decision. Ultimately, the Court reasoned that the very nature of legislative prayer is a longstanding tradition and not indicative of an Establishment Clause violation; the directory was demographically reflective and happenstantial, not an official endorsement of Christianity specifically; and coercion was not present, as the prayers were only for legislators, and the public could leave at their leisure. *Id*. at 577–587.

Another, more recent case similarly assessed the Establishment Clause: *Kennedy v. Bremerton School District*. In this case, a public school district fired its football coach after he performed a silent, post-game prayer on the field. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 507 (2022). The coach filed suit, alleging violation of the Free Speech and Free Exercise Clauses; the District Court found that the "sole reason for the District's decision to suspend Mr. Kennedy was its perceived risk of constitutional liability under the Establishment Clause for his religious conduct after three games in October 2015." *Id.* (quoting *Kennedy v. Bremerton Sch. Dist.*, 443 F. Supp. 3d 1223, 1231 (2020)) (internal citation omitted). The decision in this case harkened back to *Galloway*, calling for an interpretation with "reference to historical practices and understandings," reading the Clauses of the First Amendment in tandem, rather than competition. *Id.* at 510. The Court introduced a new test, the "*Kennedy* test," that broadened the interpretation of the Establishment Clause and contrasted it with the narrow, effects-based *Lemon* test. *Id.* at 535–36.

2. The Johnson Amendment passes constitutional muster under the three most prevalent Establishment Clause tests: *Lemon*, *Kennedy*, and endorsement.

Applying the *Lemon* test, the Johnson Amendment (1) advances the secular purpose of prohibiting non-profits from influencing political candidacy, (2) its primary purpose is neutral to religious organizations, since the purpose is to prevent organizations from garnering political representation without taxation, and (3) no evidence exists to conclusively assert that the Johnson Amendment creates *excessive* entanglement with religion, as 501(c)(3) organizations are not required to report, instead being automatically granted the tax exemption. *Churches, integrated auxiliaries and conventions or associations of churches*, IRS.GOV, https://www.irs.gov/charities-non-profits/churches-integrated-auxiliaries-and-conventions-or-associations-of-churches (last updated Mar. 21, 2025). The broader nature of the *Kennedy* test provides further support for the Johnson Amendment's constitutionality, requiring only a contextual basis for the law's existence in accordance with historical practices and understandings. Over the past several years, the Johnson Amendment has withstood inquiry and challenge from various angles, yet Congress has declined to eliminate or create an exception for religious organizations. R. at 3. Similarly, regarding historical practices and understandings, the public support for the permanence of the Johnson Amendment is overwhelming. In 2023, 75% of surveyed Americans opposed allowing churches and religious organizations to endorse political candidates while retaining tax-exempt status. *Most Americans Oppose Churches Endorsing Political Candidates*, PUBLIC RELIGION RESEARCH INSTITUTE, (July, 8, 2025) https://prri.org/spotlight/most-americans-oppose-churches-endorsing-political-candidates/. An earlier 2017 survey found 71% opposition and reflected the popular sentiment that the majority (66%) of Americans believe that "churches should not take sides in elections." Gregory A. Smith, *Most Americans oppose churches choosing sides in elections*, PEW RESEARCH CENTER, (Feb. 3, 2017), http://pewrsr.ch/2kxslA0/. Another survey in 2019 echoed

similarly, detailing that 63% of Americans assert that churches and religious organizations "should keep out of political matters." Claire Gecewicz, *Many churchgoers in U.S. don't know the political leanings of their clergy*, PEW RESEARCH CENTER, (Jan. 13, 2020), https://pewrsr.ch/380jv2L. Smith's data, initially collected in 2016, noted that the 66% opposition percentage is "stable with other readings over the past eight years." Smith, *supra*. Recent historical precedent clearly supports a 501(c)(3) tax-exempt status for an organization, or a church specifically, only when the organization remains apolitical. The review of church-specific data demonstrates the connection between the historical understanding and sentiment of Americans that the practice of separating church and state is of utmost importance, but also a historied expectation.

Finally, assessing the endorsement test, which contemplates whether a reasonable observer would find that the government's law endorses or disapproves of religion and ostracizes non-adherents. Though it is now largely replaced by the *Kennedy* test, it displays tenets of an objective standard and exposes non-neutrality. *Kennedy*, 597 U.S. at 535. To pass this endorsement test, the law must not convey, to an outsider, a message that the government endorses or discourages religion—no favoritism to either side is allowed. Ostensibly, this serves as another safeguard of the protected separation of church and state in public matters and is primarily relevant in cases of public religious displays. Under this objective lens, it is clear that the general notion of a nonprofit is neither religious nor non-religious, and the Johnson Amendment, which interacts with them, is similarly neutral.

B. The Covenant Truth Church asserts that the Johnson Amendment constitutes favoritism towards non-religious nonprofits over religious ones, while urging the Court for hypocritical preferential treatment.

Here, the Church argues that the Johnson Amendment violates the Establishment Clause by "favor[ing] some religions over others by denying tax exemptions to organizations whose

religious beliefs compel them to speak on political issues," and "authorizes government regulation of religious activity through ignoring the notions of benevolent neutrality. R. at 9, 11. However, both contentions are misguided. The Court has held that a statute or practice that plainly embodies an intentional discrimination among religions must be closely fitted to a compelling state purpose to survive constitutional challenge. *See Larson v. Valente*, 456 U.S. 228 (1982). From the Johnson Amendment's inception, it was never meant to discriminate against any type of organization; instead, it was meant to broadly prohibit a tax-exempt nonprofit's political activity. Therefore, the Church cannot argue that the Johnson Amendment "plainly embodies an intentional discrimination" against them, and it instead asserts vague notions of favoritism. R. at 8–9. From *Kennedy*, we know that the Clauses of the First Amendment should be read in tandem; the fact that the Church requests a religious carve-out exception to allow political campaigning through the guise of religion undermines the Establishment Clause in favor of Freedom of Speech Clause, when both—as well as the Freedom of Exercise Clause—are properly adhered to through the Johnson Amendment since the Johnson Amendment does not outright restrain religious practices or speech. *Kennedy*, 597 U.S. at 507.

Though the Church may allege facially neutral favoritism or discrimination, once again, the Court has held that a statute or practice that plainly embodies intentional discrimination among religions must be closely fitted to a compelling state purpose to survive constitutional challenge, meaning that if such a scenario existed, the Johnson Amendment would have been struck down many years prior. *See Larson*, 456 U.S. at 228. On the inverse, as first seen in *Yoder v. Wisconsin*, the Free Exercise Clause protects religious *belief* absolutely, but religious *practice* is limited if it conflicts with a "compelling government interest." 406 U.S. 205, 233–234 (1972). The Congressional power to tax, or even more agreeably, as in this case, to condition a tax exemption, certainly falls within the realm of such a compelling purpose. As reiterated throughout, the Johnson

Amendment's purpose is to prohibit charitable organizations from endorsing/opposing political candidates for public office, to preserve bipartisanship and reduce political corruption. Such a goal and effect of bipartisanship surely can be nothing but a compelling government interest.

A razor-thin line maintains the separation of church and state, a fact our forefathers understood and contemplated for quite some time. James Madison wrote that religion and government "exist in greater purity, the less they are mixed together" and "that [r]eligion flourishes in greater purity, without the aid of [the g]overnment." James Madison, *Letter from James Madison to Edward Livingston, 10 July 1822*, FOUNDERS ONLINE - NATIONAL ARCHIVES, (July 10, 1822) https://founders.archives.gov/documents/Madison/04-02-02-0471. The Court has held that the government cannot "make a religious observance compulsory," and allowing the Church to retain its tax exemption would do just that. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The Church made its stance clear: all members of its congregation must "actively support political candidates whose values align with their faith" and that "any … who fail[] to adhere to this requirement is banished from the church and the Everlight Dominion." R. at 2–3. Non-enforcement of the Johnson Amendment under these facts would, ironically, violate the Establishment Clause by allowing the Everlight Church to compel its clergy to engage in a religious practice. The Court further reiterated this sentiment in *Lee v. Weisman*, cementing that the government, through action or inaction, may not force its citizens to engage in "a formal religious exercise," which would be exactly the case here if the Johnson Amendment were deemed unconstitutional. 505 U.S. 577, 589 (1992).

And, even if the Johnson Amendment may somehow, although neutrally, infringe on a minor subset, the Court previously held that "[the] right to free exercise must be kept in harmony with the rights of her fellow citizens, and "some religious practices [must] yield to the common good." *United States v. Lee,* 455 U.S. 252, 259 (1982). Here lies one such alleged religious practice: political campaigning. In this instance, the Church would like the Court to enable it to have its

cake and eat it too—receiving all of the benefits with none of the drawbacks. If the rule of law were otherwise, and the Johnson Amendment were deemed unconstitutional, the same favoritism the Church sought to prevent would instead allow it to prosper on a windfall.

C. Court precedent permits neutral limitations on tax benefits.

In *Branch Ministries v. Rossotti*, the U.S. Court of Appeals for the D.C. Circuit upheld the IRS's decision, ruling that tax exemptions are a form of government subsidy and that conditions on those subsidies—such as avoiding partisan endorsements—do not violate the Free Speech or Religion Clauses, or the Religious Freedom Restoration Act. 211 F.3d 137, 143–44 (D.C. Cir. 2000). The case also reiterated that the Johnson Amendment is viewpoint neutral in the plain fact that its requirement hinges on apolitical involvement, as opposed to restricting religion per se. *Id.* The court spent time detailing the permitting rationale for such limitations: "The Supreme Court has consistently held that, absent invidious discrimination, 'Congress has not violated [an organization's] First Amendment rights by declining to subsidize its First Amendment activities.'" *Id.* (quoting *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983)). Absent a better showing that the Church's free exercise rights have been substantially burdened, the Court should be unconvinced on an argument of discrimination in the first place. *Rossotti*, 211 F.3d at 173. The neutrality the Church seeks from the Johnson Amendment has been there all along; the Church just did not want to acknowledge it. As *Rossotti* and *Regan* show, "the restrictions imposed by 501(c)(3) are viewpoint neutral; they prohibit intervention in favor of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint." *Id.*; *Regan*, 461 U.S. at 550–51.

D. The Johnson Amendment does not regulate religion; still, religious nonprofits can organizationally participate in politics since not the entirety of a church must be a nonprofit.

According to Google, religion is "The belief in or worship of a superhuman power or powers, especially a God or gods. Who are we to question God, or a god? But, here, there is no such deity, merely a social leader seeking to skirt constitutional provisions to seat a favorably aligned political candidate. A pastor of a church using his platform to encourage a congregation to vote for a congressman, some may argue that is not the will of a god nor the act of a religion. R. at 4–5. Analyzing the Free Exercise Clause, intertwined with the Establishment Clause, we clarify that the Johnson Amendment does not infringe upon the Church's religious rights. However, paradoxically citing religion as religion itself cannot stand to constitute a mockery of our constitutional provisions and judicial system.

While Pastor Vale asserts his political support of Congressman Davis through "align[ment] with the teachings of The Everlight Dominion," this so-called alignment does not meet the requisite threshold for the religion activity the Constitution protects. R. at 5. If the Church wishes to support particular *ideals* rather than candidates themselves, this would likely be permissible, since the Johnson Amendment merely bars the interaction with or support of political campaigns—if this were simply a support of of values, rather than an endorsement of politics, we would not be here today. To create a religious exception, as the Church desires, would, according to The Council of Nonprofits, "politiciz[e] and thereby eras[e] the public's high trust in charities, houses of worship, and foundations to benefit politicians and paid political consultants." R. at 2–3; *Protecting the Johnson Amendment and Nonprofit Nonpartisanship*, NATIONAL COUNCIL OF NONPROFITS, https://www.councilofnonprofits.org/trends-and-policy-issues/protecting-johnson-amendment-and-nonprofit-nonpartisanship (last accessed Jan 18, 2026).

V. CONCLUSION