

No. 26-1799

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

Record on Appeal

BRIEF FOR RESPONDENT

Team #26

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QUESTIONS PRESENTED

1. Under the Tax Anti-Injunction Act and Article III of the Constitution, does Covenant Truth Church have standing to challenge the Johnson Amendment?
2. Does the Johnson Amendment violate the Establishment Clause of the First Amendment?

LIST OF PARTIES

The Petitioner is Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service.

The Respondent is Covenant Truth Church.

OPINIONS BELOW

The opinion and order of the United States Court of Appeals for the Fourteenth Circuit, affirming the decision of the district court, are recorded as *Bessent v. Covenant Truth Church*, No. No. 25-30453 (14th Cir. Aug. 1, 2025).

JURISDICTIONAL STATEMENT

The judgment of the Fourteenth Circuit Court of Appeals was entered on August 1, 2025. The petition for certiorari was granted on November 1, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article III of the Constitution 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...to Controversies between two or more States; between a State and Citizens of another State, between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONST. art. III, § 2, cl. 1 (quotation modified).

The Establishment Clause of the First Amendment provides:

Congress shall make no law respecting an establishment of religion...

U.S. CONST. amend I (quotation modified).

The Johnson Amendment, in relevant part, provides:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious...purposes...and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3) (quotation modified).

Tax Anti-Injunction Act, in relevant part, provides:

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).

STATEMENT OF THE FACTS

Congress enacted the Johnson Amendment in 1954, which amended the language of 26 U.S.C. § 501(c)(3) to mandate that non-profit organizations “not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office.” R at 2. In recent years, special interest groups, religious organizations, and politicians have advocated to repeal the provision. R at 2. Many have argued that the Johnson Amendment violates the First Amendment. R at 2. Despite legislation being introduced to amend the Johnson Amendment, Congress has not done so. R at 3.

The Everlight Dominion is a centuries-old religion that embraces progressive social values, and asks its leaders and churches to participate in political campaigns and support candidates that align these values. R at 3. The Everlight Dominion’s teachings ask its followers to endorse candidates who support their stances, encourage citizens to donate, and volunteer. R at 3. Any church or religious leader who fails to speak out in support politically is banished from the church and The Everlight Dominion. R at 3.

Recently, The Everlight Dominion has gained a “massive surge” in followers, in large part due to Pastor Gideon Vale, the head Pastor at Covenant Truth Church, which has become the largest church of The Everlight Dominion. R at 3. Like many religious organizations in the United States, the Covenant Truth Church is classified under the Internal Revenue Code as a § 501(c)(3) organization. R at 3. Pastor Vale has made many efforts to make the church more appealing to the younger generations, not the least of which being the creation of a weekly podcast to deliver sermons. R at 3-4. Since Pastor Vale joined Covenant Truth, membership has increased significantly and Pastor Vale’s podcast has grown in popularity, becoming the fourth most listened to podcast in the state of Wythe and the nineteenth-most listened to podcast nationwide. R at 4.

In adherence to The Everlight's Dominion's requirement that its religious leaders and churches engage in electoral politics, Pastor Vale began delivering political messages through his podcast. R at 4. While not every podcast discusses political issues, on behalf of Covenant Truth Church and in adherence with the tenets of The Everlight Dominion, Pastor Vale endorses candidates and encourages listeners to vote for candidates, donate to campaigns, and volunteer for campaigns to remain in good standing with the faith. R at 4.

During a sermon on his podcast, Pastor Vale endorsed Congressman Samuel Davis on behalf of the Covenant Truth Church. R at 4. Congressman Davis's political views align with the values of The Everlight Dominion, and Pastor Vale encouraged his listeners to vote for, volunteer with, and donate to Congressman Davis's campaign. R at 4-5. Pastor Vale also announced that he would give a series of sermons on his podcast explaining why Congressman Davis's political stances were in alignment with The Everlight Dominion. R at 5.

On May 1, 2024, the IRS sent a letter informing Covenant Truth Church that it had been selected for a random audit of its § 501(c)(3) status. R at 5. Pastor Vale became concerned that the IRS would revoke the church's § 501(c)(3) tax classification because of the Johnson Amendment. R at 5. Covenant Truth Church then filed a lawsuit in the United States District Court for the Eastern District of Wythe seeking a permanent injunction prohibiting enforcement of the Johnson Amendment on the grounds that it violates the Establishment Clause of the First Amendment. R at 5. The church filed this lawsuit before the beginning of its audit; therefore, the church's tax classification as a § 501(c)(3) organization remains unchanged. R at 5.

The plaintiff, Covenant Truth Church, filed this suit on May 15, 2024, seeking a permanent injunction prohibiting the enforcement of the Johnson Amendment asserting that the Johnson Amendment violates the Establishment Clause of the First Amendment. R at 5.

After the defendants answered the complaint, denying the plaintiff's claims, the plaintiff moved for summary judgment. R at 5. Following a full briefing and argument, the District Court held that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause. R at 5. The District Court granted the plaintiff's motion for summary judgment and entered the permanent injunction. R at 5. Acting Commissioner of the IRS Scott Bessent and the IRS appealed the District Court's decision to the Fourteenth Circuit Court of Appeals. R at 6. The Fourteenth Circuit affirmed the decision of the District Court R. at 11. Petitioner, Bessent, filed cert. R. at 17. This Court granted certiorari on November 1, 2025. R. at 17.

SUMMARY OF THE ARGUMENT

The Tax Anti-Injunction Act does not bar this suit because the Covenant Truth Church lacks an alternative remedy to challenge the Johnson Amendment and has Article III standing to proceed. Although the Act generally prohibits pre-enforcement tax challenges, it does not apply where a plaintiff lacks an alternative remedy, as here. The Johnson Amendment inflicts an immediate First Amendment injury by chilling the Church's protected religious and political speech, an injury that occurs before any audit or tax assessment and cannot be remedied through post-enforcement refund litigation designed to address economic harm. To obtain post-audit review, the Church must either self-censor or risk revocation of its §501(c)(3) status, a coercive choice the Constitution does not require. This chilling effect is concrete and particularized, fairly traceable to the Johnson Amendment and the IRS's enforcement authority, and redressable by a favorable ruling that would lift the speech restriction. Because the Church faces a present constitutional injury with no meaningful alternative remedy, this grants Article III standing to hear its pre-enforcement challenge.

The Johnson Amendment violates the Establishment Clause of the First Amendment because it inhibits the free exercise of leaders of The Everlight Dominion from practicing a core tenet of their religion by prohibiting participation in electoral politics. By inhibiting the practice of a religion, the Johnson Amendment also implicates the Free Exercise Clause of the First Amendment. The Johnson Amendment does not comply with these foundational provisions in the First Amendment and therefore does not align with the historical practices and traditions the Court has upheld in its rulings. By prohibiting religious organizations from participation in political campaigns, the Johnson Amendment favors religions that are apolitical or do not require electoral political engagement. This goes against the history of the Establishment Clause and the Court's long-standing precedent of upholding the right to

freedom of religion. The Johnson Amendment's burdening of one religion to the benefit of others is a direct and clear violation of the First Amendment.

Furthermore, the Johnson Amendment is coercive in its application to churches like Covenant Truth who practice The Everlight Dominion. Because it prohibits involvement in electoral politics it compels churches like Covenant Truth to avoid practicing their religion as they are called upon in order to maintain their § 501(c)(3) status. Although the Johnson Amendment gives the appearance of neutrality, it favors other religions while placing a burden on The Everlight Dominion which is a violation of the Establishment Clause under this Court's precedents.

ARGUMENT

I. COVENANT TRUTH CHURCH IS NOT BARRED FROM BRINGING SUIT AND HAS ARTICLE III STANDING TO CHALLENGE THE JOHNSON AMENDMENT.

A. The Tax Anti-Injunction Act does not bar this suit because the Covenant Truth Church has no meaningful remedy to challenge the Johnson Amendment.

The Tax Anti-Injunction Act states, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." 26 U.S.C. § 7421(a). "The Supreme Court has interpreted the primary purpose of this statute to be the protection of the Government's need to assess and collect taxes as expeditiously as possible, with a minimum of preenforcement judicial interference, and 'to require that the legal right to the disputed sums be determined in a suit for refund.'" *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). The Supreme Court has further elaborated that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984).

In *South Carolina*, the Supreme Court held that the Tax Anti-Injunction Act does not bar suits if it has not provided an alternate remedy. *Id.* In this case, South Carolina challenged

a federal statute that eliminated the federal tax exemption for interest earned on certain state-issued bearer bonds, arguing the law violated the Tenth Amendment. *Id.* at 370. Since the tax would affect the bondholders and not the state itself, South Carolina could not bring a refund suit to challenge the tax after payment. *Id.* at 379. The Court reasoned that prior Tax Anti-Injunction Act precedent demonstrated that Congress sought to ensure the prompt collection of taxes, but not to bar suits when the plaintiff lacks any alternative remedy, such as the ability to bring a refund action. *Id.* at 376. Thus, because Congress had not provided any alternative mechanism for the State to obtain judicial review, applying the Tax Anti-Injunction Act would have completely insulated the statute from constitutional challenge. *Id.* at 380-1.

Additionally, in the *Bob Jones University* case, the Supreme Court held that the Tax Anti-Injunction Act bars a pre-enforcement suit seeking to stop the IRS from revoking a university's tax-exempt status, even when the plaintiff raises constitutional claims, because the university had an adequate alternative remedy through post-revocation refund litigation. *Bob Jones Univ.*, 416 U.S. at 747. The Court further held that the University had an adequate alternative remedy because it could pay the tax after revocation and then bring a refund suit, raising its constitutional objections. *Id.* at 746. The Court further clarified that, given the government's strong interest in the orderly collection of taxes and the absence of serious constitutional infirmities, the plaintiffs could not bypass the Tax Anti-Injunction Act. *Id.*

Although the Covenant Truth Church theoretically retains access to post-audit judicial review, that avenue is constitutionally inadequate and cannot qualify as an alternative remedy within the meaning of *South Carolina v. Regan*. The Johnson Amendment inflicts an immediate chilling effect on the Church's First Amendment rights by conditioning continued tax-exempt status on the surrender of core religious and political expression. The injury occurs not at the moment of audit or assessment, but at the moment the Church is forced to

alter, suppress, or abandon protected speech to avoid the threat of enforcement. A remedy that becomes available only after constitutional rights have already been chilled is not meaningful.

To invoke post-audit review, the Church must first engage in the very speech the Johnson Amendment prohibits, thereby exposing itself to revocation of its § 501(c)(3) status and the severe institutional consequences that accompany such enforcement. This requirement forces the Church into a dilemma: either self-censor its sermons and religious messaging to avoid government sanction, or deliberately violate the law in hopes of later securing judicial review. The First Amendment does not tolerate such a coercive choice, and courts have repeatedly recognized that a regime that conditions access to judicial review on the prior sacrifice of constitutional rights imposes a present and cognizable injury. Here, the Church is compelled to choose between silence and self-destruction, a choice that is neither voluntary nor constitutionally permissible.

Moreover, the constitutional injury imposed by the Johnson Amendment is complete at the moment speech is chilled. The harm is not the eventual imposition of tax liability but the suppression of religious and political expression and the resulting intrusion into church autonomy. Post-audit remedies, including refund actions or appeals following revocation, are designed to address economic injury and cannot redress expressive harm that have already occurred. A refund suit may restore money, but it cannot restore sermons never delivered, political viewpoints never expressed, or religious messages altered under threat of government sanction. Because the injury is non-economic and time-sensitive, post-enforcement tax remedies are fundamentally mismatched to the harm at issue.

Finally, the consequences of enforcement are uniquely severe in the church context. Loss of § 501(c)(3) status is not a temporary or easily reversible harm for religious institutions that depend on tax-deductible donations to function. The threat of revocation can

lead to immediate donor withdrawal, reputational damage, and disruption of religious ministries, effects that may force a church to close before judicial review is ever obtained. A remedy that requires a church to risk institutional collapse to challenge the constitutionality of a speech restriction cannot be considered meaningful under *Regan*.

For these reasons, post-audit appeals do not provide a meaningful alternative avenue for review. Because the Johnson Amendment inflicts immediate and irreparable First Amendment injury, and because available post-enforcement remedies cannot redress that injury, the Anti-Injunction Act should not bar a pre-enforcement constitutional challenge.

B. The Covenant Truth Church has Article III standing to challenge the Johnson Amendment because there is a substantial risk of imminent harm.

To establish Article III standing you must show three things; (1) an “injury in fact” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical,” (2) “a causal connection between the injury and the conduct complained of,” or traceability, and (3) that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 412 (D.C. Cir. 2024).

To allege an “injury in fact,” a plaintiff must show that they have suffered an invasion of a legally protected interest. *Id.* “Chilled speech is, unquestionably, an injury supporting standing.” *Bell v. Keating*, 697 F.3d 445, 453 (7th Cir. 2012). A plaintiff substantiates a concrete and particularized chilling effect on his protected speech when he challenges an exercise of governmental power that is regulatory, proscriptive, or compulsory in nature, and he was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging. *Id.* at 454.

Traceability requires the causal connection between the injury and the conduct complained of to be fairly traceable to the challenged action of the defendant, and not the

result of some independent action by a third party. *Iowaska Church of Healing*, 105 F.4th at 413.

In the *Iowaska Church of Healing* case, the D.C. Circuit affirmed the denial of the Iowaska Church's application for § 501(c)(3) tax-exempt status and held that the Church lacked Article III standing to assert a Religious Freedom Restoration Act. *Id.* The Iowaska Church of Healing, whose religious practices center on the consumption of Ayahuasca, a tea containing the federally regulated psychedelic DMT, applied for tax-exempt status under 26 U.S.C. § 501(c)(3), but the IRS denied the application on the ground that the Church's primary activities involved conduct illegal under the Controlled Substances Act. *Id.* at 406. The court reasoned that the church lacked standing because the economic injury the Church asserts on appeal is neither an injury-in-fact nor redressable, and all other standing theories asserted, such as the chilling and reputational injuries, were forfeited by only including them in a footnote. *Id.* at 412.

Here, the Covenant Truth Church satisfies all of the requirements necessary for Article III standing because (1) the chilling effect that the Johnson Amendment places on the protected speech of the Covenant Truth Church is concrete and particularized, (2) the Action of reclassifying the church's § 501(c)(3) status is traceable to Johnson Amendment, and (3) a favorable outcome in this action would redress the chilling effect placed on the Covenant Truth Church.

First, the Covenant Truth Church has suffered a concrete and particularized injury in fact because the Johnson Amendment chills the Church's protected religious and political speech. The First Amendment injury arises not from speculative enforcement, but from the credible threat that engaging in certain forms of sermon content or religious advocacy will trigger loss of the Church's § 501(c)(3) status. As a result, the Church will be forced to alter, limit, or refrain from expressive activity that lies at the core of its religious mission. Courts

have long recognized that self-censorship in response to a credible threat of enforcement constitutes a present and cognizable injury for standing purposes. The injury here is concrete because it affects the Church's actual sermon content and religious messaging, particularized because it burdens this Church's expressive choices, and imminent because the threat of enforcement exists whenever the Church considers engaging in prohibited speech.

Unlike the *Iowaska Church of Healing*, this case does not involve only an economic injury. Although both cases include financial consequences, the injury here goes further by directly encroaching on the Covenant Truth Church's protected speech. That First Amendment intrusion, through the chilling of sermons and religious expression, creates a constitutional harm that was absent in *Iowaska* and squarely distinguishes this case.

Second, the injury is fairly traceable to the Johnson Amendment and the IRS's authority to enforce it. The chilling effect experienced by the Covenant Truth Church does not arise from independent third-party action or abstract fear, but from the statutory prohibition on political speech tied directly to the Church's tax-exempt status. The Johnson Amendment explicitly conditions continued § 501(c)(3) classification on the Church's compliance with speech restrictions, and the IRS's enforcement authority gives those restrictions coercive force. But for the Johnson Amendment, the Church would be free to engage in the challenged speech without risking reclassification or revocation of its tax-exempt status. This direct causal link between the statute and the injury satisfies Article III's traceability requirement.

Third, the injury is redressable by a favorable decision from this Court. If the Johnson Amendment is declared unconstitutional or its enforcement enjoined as applied to the Covenant Truth Church, the chilling effect on the Church's speech would be lifted. The Church would no longer face the threat of losing its § 501(c)(3) status for engaging in protected religious and political expression, and it could speak freely in accordance with its

faith and mission. Redressability does not require a guarantee of future behavior by the government; it requires only that the relief sought would likely alleviate the plaintiff's injury. Here, removing the speech restriction that underlies the chilling effect would directly remedy the harm.

Taken together, these facts establish Article III standing. The Covenant Truth Church is not asserting a generalized grievance or a speculative fear of enforcement; it challenges a statute that presently constrains its speech, coerces self-censorship, and intrudes upon its religious autonomy. Because the Church has demonstrated a concrete First Amendment injury, a direct causal connection to the Johnson Amendment, and the likelihood that judicial relief would redress that injury, this Court has jurisdiction to adjudicate the merits of its constitutional claims.

II. THE JOHNSON AMENDMENT FAVORS SOME RELIGIONS OVER OTHERS AND THEREFORE VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

Under the First Amendment of the Constitution, “congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” U.S. Const. amend. I. (citation modified). The purpose of the Establishment Clause is to ensure that one religion is not given preference over another. *Larson v. Valente*, 456 U.S. 228, 244 (1982). In the past, this Court has determined violations of the Establishment Clause under the Lemon Test, which determines whether a government action (1) has a secular purpose, (2) its primary effect neither advances nor inhibits religion, and (3) does not “foster ‘an excessive entanglement between the government and religion.’” *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (quoting *Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 674 (1970)). In recent years, this Court has shifted away from the Lemon Test, towards a history and traditions test that evaluates a government action in light of “historical practices and understandings.” *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014) (quoting *Cnty. of Allegheny v. ACLU*, 492

U.S. 573, 670 (1989)). In his concurrence, Justice Kavanaugh stated the Lemon test does not easily reconcile cases that address tax exemptions for religious organizations, as “those policies have the effect of advancing or endorsing religion.” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 70 (2019). The Johnson Amendment has the effect of inhibiting the practice of The Everlight Dominion. By prohibiting Covenant Truth Church from supporting political campaigns, when doing so is a key practice of The Everlight Dominion, the Johnson Amendment favors religions who do not maintain this practice over those that do. Religion is often a reflection of one’s moral values, which goes hand-in-hand with one’s political beliefs. The Everlight Dominion is not the only religion to advocate action on certain political values, but the Johnson Amendment prohibiting electoral politics places a specific burden on Covenant Truth Church and others who practice The Everlight Dominion.

A. The Johnson Amendment does not align with historical traditions because the Amendment prohibits a core tenet of The Everlight Dominion faith, by inhibiting its practice and favoring other religions.

This Court interprets the Establishment Clause in “reference to historical practices and understandings.” *Galloway*, 572 U.S. at 576 (internal quotations omitted). The Court evaluates whether an action is permissible or impermissible by determining whether it “accords with history and faithfully reflects the understanding of the Founding Fathers.” *Id.* at 577 (quoting *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)). Further, this Court has recognized that although the Establishment Clause, Free Exercise Clause, and Free Speech Clause are often construed separately, they are “complementary” in their purposes. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022) (citing *Everson v. Bd. of Educ.*, 330 U.S. 1, 13 (1947)).

In *Kennedy v. Bremerton Sch. Dist.*, the petitioner, a high school football coach, was terminated for kneeling in prayer. *Kennedy*, 597 U.S. at 512-13. Although this practice began as a quiet, personal act, students later joined him voluntarily and he eventually began

participating in a locker room prayer tradition that predated his time at the school. *Id.* at 513, 515. The petitioner never required or told the students it was “important they participate in any religious activity.” *Id.* at 515. Still, the respondent school district instructed the petitioner to avoid these religious expressions, eventually prohibiting him from engaging in actions that could “appear to a reasonable observer to endorse prayer,” and later requesting that he pray in a private location. *Id.* at 515-19. After receiving this final instruction, the petitioner continued to kneel on the field in private postgame prayers, which were occasionally joined by others voluntarily. *Id.* at 519. As a result, the petitioner was not rehired for the following football season. *Id.* 520. Although the petitioner challenged the respondent’s action on free speech and free exercise grounds, the Court recognized that the respondent’s actions were brought in light of the Establishment Clause. *Id.* at 523. Though the respondents’ claims were directly averse to the petitioner’s right to free exercise, the Court stated that the three First Amendment clauses were complementary to one another rather than opposing. *Id.* at 523, 532-33 (internal citations omitted). The Court contended that issues raised through the Establishment Clause must be interpreted in light of “historical practices and understandings.” *Id.* at 535 (quoting *Galloway*, 572 U.S. at 576). Finding that the Court of Appeals failed to apply this standard, the Court reversed. *Kennedy*, 597 U.S. at. 536, 544.

The Johnson Amendment prohibits nonprofits, including religious nonprofits, from participating in, or endorsing political campaigns to maintain their § 501(c)(3) status. By doing so, the Johnson Amendment creates a similar conflict to *Kennedy*, which implicates the Establishment, and Free Exercise clauses of the First Amendment. Although the primary challenge here is the Johnson Amendment’s clear violation of the Establishment Clause, by favoring apolitical religions and religious activities that avoid political campaigns, the *Kennedy* Court found that these clauses may be construed in tandem. Further, the Court required that these violations be evaluated in accordance with the practices and

understandings of the Establishment Clause. By prohibiting Covenant Truth Church and Pastor Vale from endorsing candidates that align with Everlight Dominion values, which is a major requirement of the of the faith, the Johnson Amendment is not only in violation of the First Amendment for favoring apolitical religions, it is also suppressing the free exercise of Everlight Dominion and its leaders, which is a clear departure from this nation's history and tradition of religious freedom—a founding principal.

In *Larson v. Valente*, the appellee, the Unification Church, challenged a Minnesota statute amendment that required both religious organizations that solicited more than 50 percent of their funding from nonmembers to register and disclose that information under the Establishment Clause. *Larson*, 456 U.S. at 230-33. The Court first considered the purpose of the Establishment Clause: to ensure “that one religious denomination cannot be officially preferred over another.” *Id.* at 244. The Court further noted its adherence to the “history and logic of the Establishment Clause” which prohibits the government from passing “laws which aid” or “prefer one religion over another.” *Id.* at 246 (citing *Everson*, 330 U.S. at 15) (internal citations omitted). In light of these precedents, the Court applied a strict scrutiny standard to Minnesota's 50 percent rule, requiring it to satisfy a compelling governmental interest. *Larson*, 456 U.S. at 247. The purpose of the 50 percent rule was to protect citizens from abusive solicitation practices, further arguing that it is presumed that members who donate to these organizations have “significant control” over the funds, expenditures, and financial records than nonmembers. *Id.* at 248. The Court rejected appellant's arguments because it failed to justify the assumption that religious organizations would be controlled and supervised by members, that “membership control is an adequate safeguard against abusive solicitations,” and the need for public disclosure, finding that the rule was not closely fitted in furtherance of a compelling governmental interest. *Id.* at 249-51. Although the Court's conclusion cautioned governmental entanglements with religion, it noted that such

entanglements already exists. *Id.* at 252. The Court clarified that the danger rests where the government's actions "burden or favor" certain religions causing lawmakers "to discuss the characteristics of various sects with a view towards 'religious gerrymandering.'" *Id.* at 255 (quoting *Gillette v. United States*, 401 U.S. 437, 452 (1971)). Finally, the Court recognized that the 50 percent rule "sets up precisely the sort of official denominational preference that the Framers of the First Amendment forbade," and affirmed judgment for appellees. *Larson*, 456 U.S. at 255.

Like the 50 percent rule in *Larson*, the Johnson Amendment asserts a preference for some religions over others, specifically religions that do not engage in electoral politics. Just like other religions, The Everlight Dominion maintains values that its members wish to see reflected in the world they live in. Other religions also encourage political engagement based on those values. The only thing that sets The Everlight Dominion apart from other religions that the Johnson Amendment favors is the requirement that its churches and faith leaders engage in electoral politics. The *Larson* Court recognized that legislators must avoid burdening or favoring certain religions based on their characteristics, which is exactly what the Johnson Amendment does by prohibiting electoral engagement. Although the Johnson Amendment was intended to apply to both secular and religious organizations, giving it the appearance of neutrality, its application here places a burden on The Everlight Dominion and gives preferential treatment to religions that do not engage in electoral politics. The Court in *Larson* further emphasized the historical reasoning which led to the drafting of the Establishment Clause and ultimately came to a decision based on the clause's core purpose: to forbid denominational preferences.

The Johnson Amendment does not align with the United States' historical precedents regarding the free exercise of religion by inhibiting the electoral political practices of The Everlight Dominion and its leaders like Pastor Vale. This is a clear violation of the

Establishment Clause because it favors apolitical religions and burdens The Everlight Dominion by prohibiting participation in electoral politics despite participation serving as a core value and requirement of The Everlight Dominion.

B. The Johnson Amendment is coercive in nature because it compels Churches of The Everlight Dominion faith not to participate in political campaigns.

“It is an elemental First Amendment principle that government may not coerce its citizens ‘to support or participate in any religion or its exercise.’” *Galloway*, 572 U.S. at 586 (quoting *Cnty. of Allegheny*, 492 U.S. at 659 (Kennedy, J., concurring in judgment in part and dissenting in part)). This does not mean the Establishment Clause compels the government to avoid “anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’” *Kennedy*, 597 U.S. at 535. However, the Establishment Clause “does not depend upon any showing of direct governmental compulsion...” *Schempp*, 374 U.S. at 221. Further, under the First Amendment, the Government must “maintain strict neutrality, neither aiding nor opposing religion.” *Id.* at 225.

In *Schempp*, the Court addressed two cases regarding state actions in Pennsylvania and Maryland requiring Bible reading in schools. *Id.* at 205, 211. Although both states allowed students to be excused from this requirement, the cases were still brought on First and Fourteenth Amendment grounds. *Id.* at 205, 211-12. The Court noted that while the Free Exercise Clause requires a showing of coercion, under the Establishment Clause, the Government must be neutral and may not favor one religion over another. *Id.* at 221-23. The Court determined that, under the First Amendment, the State must maintain a position of neutrality regarding religion. *Id.* at 226.

Here, the Johnson Amendment is coercive in nature because it compels churches of The Everlight Dominion to refrain from engaging in electoral politics despite that engagement being a core tenet and requirement of the religion. While the *Schempp* Court noted that a showing of coercion is not necessary to prove an Establishment Clause violation,

coercion is still present here. By hingeing § 501(c)(3) tax exemption status on whether a religious organization participates in electoral politics, it forces faith leaders to be silent and avoid upholding that religion's values, while favoring religions that do not require their leaders to be electorally engaged. While the Johnson Amendment does not proselytize, and appears neutral, it does compel churches like Covenant Truth to violate their own religious doctrine to maintain their tax exemption status, resulting in coercion and failing neutrality in application, therefore violating the Establishment Clause.

Although the Johnson Amendment gives the appearance of impartiality, it is both coercive and favors some religions over others. It compels churches of The Everlight Dominion religion to refrain from engagement in electoral politics and benefits religions that do not require electoral engagement. Because the Johnson Amendment is not neutral in application and results in coercion, it is a violation of the Establishment Clause.

CONCLUSION

For the aforementioned reasons, the Respondent respectfully asks this Court to affirm the decision of the Fourteenth Circuit Court of Appeals on both issues.