No. 26-1779

IN THE

SUPREME COURT OF THE UNITED STATES

BESSENT, SCOTT, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE, et al.
Petitioners,

v.

COVENANT TRUTH CHURCH
Respondent.

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

BRIEF FOR PETITIONERS

TEAM NUMBER 29
Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

Constitutional Provisions

QUESTIONS PRESENTED

1. Whether the Fourteenth Circuit Court of Appeals erred in finding that Covenant Truth Church has standing under Article III and the Tax Anti-Injunction Act to bring a pre-enforcement challenge against the Johnson Amendment.
2. Whether the Fourteenth Circuit Court of Appeals erred in finding that the Johnson Amendment violates the Establishment Clause of the First Amendment by favoring apolitical religions.

LIST OF PARTIES

Petitioners (defendants in the district court and appellants in the circuit court) are Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service.

Respondent (plaintiff in the district court and appellee in the circuit court) is Covenant Truth Church.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Wythe is unreported and not reproduced in the record. The district court granted Respondent Covenant Truth Church's motion for summary judgment and request for a permanent injunction preventing Petitioners Scott Bessent, Commissioner of the Internal Revenue Service, and the Internal Revenue Service (collectively the "IRS" or "Petitioners") from enforcing the Johnson Amendment in violation of the Establishment Clause of the First Amendment. R. at 5. In so doing, the district court determined that Covenant Truth Church had standing to bring a pre-enforcement challenge against the Johnson Amendment. R. at 5.

The opinion of the United States Court of Appeals for the Fourteenth Circuit is unreported but reproduced in the record. R. at 1–16. The appellate court affirmed the decision of the district court, finding that Covenant Truth Church has Article III standing to bring a pre-enforcement challenge against the Johnson Amendment and that the Tax Anti-Injunction Act does not bar Covenant Truth Church's suit because they have no alternative remedy. R. at 6–8. The appellate court also agreed with the district court that the Johnson Amendment violates the Establishment Clause by permitting government regulation of religious activity and by favoring certain religions over others. R. at 8–11.

Circuit Judge Marshall dissented, writing that in their view the Tax-Anti Injunction Act bars Covenant Truth Church's suit because the IRS provides alternative administrative remedies for parties like Covenant Truth Church that seek to challenge the legality of their taxes. R. at 13. Judge Marshall would have also held that Covenant Truth Church lacked Article III standing to bring a pre-enforcement challenge against the Johnson Amendment because their stated injury-in-fact was too speculative and there was no credible threat of enforcement of the Johnson Amendment by the IRS. R. at 14. Finally, Judge Marshall argued that the Johnson Amendment does not violate the Establishment Clause because it is based on secular criteria, applies to religious and non-religious organizations equally, and does not preference one religious denomination over others. R. at 15–16.

JURISDICTIONAL STATEMENT

Following plaintiff's complaint entered on May 15, 2024, the United States District Court for the Eastern District of Wythe held that it had original jurisdiction pursuant to 28 U.S.C. § 1331. R. at 5. It erred in its determination according to the limits of judicial power contained in U.S. Const. art. III, § 2 and the constraints on the jurisdiction of federal courts contained in 26 U.S.C. § 7421(a). After the district court entered a final determination on the merits via a grant of summary judgment, defendants timely appealed to the United States Court of Appeals for the Fourteenth Circuit, with jurisdiction pursuant to 28 U.S.C. § 1291. Fed. R. Civ. P. 56(a); R. at 5–6. Following the judgment of the Fourteenth Circuit on August 1, 2025, defendants-appellants timely petitioned this Court for a writ of certiorari, which was granted on November 1, 2025, pursuant to 28 U.S.C. § 1254(1). R. at 17.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. III, sec. 1 in part, provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

U.S. Const. art. III, sec. 2 in part, 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 all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States . . . between 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. amend. I, in part, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

26 U.S.C. § 501, in relevant parts, provides:

> (a) Exemption from taxation
> An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle . . .
>
> . . .
>
> (c) List of exempt organizations
>
> > . . .
> >
> > (3) Corporations . . . organized and operated exclusively for religious . . . purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf (or in opposition to) any candidate for public office.

26 U.S.C. § 7421(a), in part, provides:

> [N]o 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. § 7611, in relevant parts, provides:

> (a) Restrictions on Inquiries
>
> (1) In general
> The Secretary may begin a church tax inquiry only if—
>
> . . .
>
> (B) the notice requirements of paragraph (3), have been met.
>
> . . .
>
> (3) Inquiry notice requirements
> (A) In general
>
> The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.
>
> (B) Contents of inquiry notice
>
> The notice required by this paragraph shall include—
> (i) an explanation of—
> (I) the concerns which gave rise to such inquiry, and
> (II) the general subject matter of such inquiry, and
> (ii) a general explanation of the applicable—
> (I) administrative and constitution provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination of church records), and
> (II) provisions of this title which authorize such inquiry or which may be otherwise involved in such inquiry.

26 U.S.C. § 7801(a)(1) provides:

> Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

28 U.S.C. § 1254, in part provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . .

28 U.S.C. § 1291, in part, provides:

> The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .

28 U.S.C. § 1331 provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

First enacted in 1954, the so-called Johnson Amendment—named for then-Senator Lyndon B. Johnson, who proposed it—added language to 26 U.S.C. § 501(c)(3) requiring that organizations seeking tax-exempt status "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf (or in opposition to) any candidate for public office." Id.; R. at 2. The Johnson Amendment was preserved during the revision and reorganization of tax laws leading to the Internal Revenue Code of 1986, and remains in effect today the same as it has the past seventy-odd years. R. at 2.

Respondent Covenant Truth Church ("Respondent") is a religious nonprofit organization that receives tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. R. at 3. In 2018, Respondent hired Pastor Gideon Vale ("Pastor Vale") who promptly began making efforts

at expanding the appeal and popularity of Covenant Truth Church and its belief in the Everlight Dominion. R. at 3–4. One of Pastor Vale's most successful efforts has been a series of weekly podcasts providing spiritual guidance and education about Covenant Truth Church. R. at 4. Pastor Vale's podcast recently ranked fourth in number of listeners amongst podcasts in the State of Wythe and nineteenth amongst podcasts nationwide. R. at 4. At an indeterminate point between 2018 and 2024, Pastor Vale began using his podcast to discuss political issues and endorse political candidates for office whose stances align with his and Covenant Truth Church's faith. R. at 4. Active involvement of churches and religious leaders in political campaigns is a religious tenant of the Everlight Dominion. R. at 4. Pastor Vale's political endorsements are made on behalf and as an official representative of Covenant Truth Church. R. at 4.

In January 2024, Senator Matthew Russett of the State of Wythe passed away, triggering a special election under state law to fill the remainder of his six-year term. R. at 4. Congressman Samuel Davis subsequently announced that he would run in the special election to fill the late Senator Russett's seat. R. at 4. During the ensuing special election season, Pastor Vale endorsed Congressman Davis's bid for Senate, discussing in detail on his podcast how Congressman Davis's views aligned with Covenant Truth Church's beliefs. R. at 4–5. Pastor Vale encouraged his listeners to vote, volunteer for, and donate to Congressman Davis's campaign. R. at 5. Pastor Vale also announced an intention to create a series of similar podcast episodes endorsing Congressman Davis leading up to the special election in October and November 2024. R. at 5.

On May 1, 2024, roughly four months after the passing of Senator Russett, the Internal Revenue Service notified Covenant Truth Church that it had been selected for a random audit. R. at 5. Randomized audits are regularly conducted by the Internal Revenue Service to ensure general

compliance with the Internal Revenue Code. R. at 5. No other notice of inquiry except for the random audit was sent to Covenant Truth Church. R. at 5.

Following the notice of random audit from the Internal Revenue Service, Covenant Truth Church filed a suit in the United States District Court for the Eastern District of Wythe seeking to enjoin any potential revocation of its tax-exempt status under Section 501(c)(3). R. at 5. Covenant Truth Church had grown concerned that, through Pastor Vale's podcast, it had violated the prohibition on political endorsements contained in the Johnson Amendment. R. at 5. At the time of filing, the Internal Revenue Service had not begun its random audit. R. at 5. Covenant Truth Church's tax-exempt status also remains fully intact. R. at 5.

II. PROCEDURAL HISTORY

Covenant Truth Church's initial complaint was filed with the United States District Court for the Eastern District of Wythe on May 15, 2024, two weeks after receiving notice of random audit from the Internal Revenue Service. The complaint sought a permanent injunction prohibiting the revocation of tax-exempt status via enforcement of the Johnson Amendment. R. at 5. Covenant Truth Church's complaint alleges that the Johnson Amendment requiring tax-exempt organizations to refrain from endorsing or participating in political campaigns violates the Establishment Clause of the First Amendment. R. at 5. Following an answer and full denial of all claims by the IRS, Covenant Truth Church moved for and was granted summary judgment by the district court. R. at 5.

The IRS timely appealed to the United States Court of Appeals for the Fourteenth Circuit to challenge the district court's determination. R. at 6. Specifically, the IRS contended (1) that Covenant Truth Church lacked Article III standing to bring a pre-enforcement challenge against the Johnson Amendment; (2) that the Tax Anti-Injunction Act ("TAIA") barred Covenant Truth

Church's suit; and (3) that the Johnson Amendment did not violate the Establishment Clause. Following de novo review, the Fourteenth Circuit affirmed the decision of the district court on August 1, 2025. R. at 6, 11. The IRS timely petitioned for a writ of certiorari, which the Supreme Court granted on November 1, 2025. R. at 17.

SUMMARY OF THE ARGUMENT

The Court should resolve the two questions posed in this case by reversing both decisions by the Fourteenth Circuit. First, to preserve the accessibility, efficiency, and effectiveness of the federal judicial system for plaintiffs in need, the Court should find that Respondent's inability to show Article III standing or the Tax Anti Injunction Act bars this suit. Article III standing requires a showing of injury in fact, traceability of the harm, and redressability by the court; none of those three criteria are met here because of unripe suit that Respondent has brought forth. Respondent has yet only received a "random audit" warning letter (R. at ??), meaning there are still many steps remaining and other avenues of relief, including relief under the IRS's own policies, before this suit is properly before this Court. Additionally, the Tax Anti Injunction Act bars all suits on tax collection, with only two exceptions – that there are no other remedies available to Respondent, or that the tax is a ruse for which the government has no chance of succeeding. Neither of these exceptions are met by Respondent, and thus Respondent lacks standing for this suit.

Secondly, even if this court finds that Respondent has standing, the Respondents' Establishment Clause argument fails. Under Establishment Clause precedent today, the Johnson Amendment is perfectly Constitutional because it is neutral and does not increase entanglement between church and state, and furthermore it does not resemble any of the historical hallmarks that embodied the Founders' understanding of establishment of religion. The Johnson Amendment passes both rational basis review and strict scrutiny as it is narrowly tailored to only cover the use

of public monies in political campaigns while allowing 501(c)(3) organizations to speak freely and furthermore involves the compelling government purposes of tax collection and separation of church and state.

ARGUMENT

A district court's grant of summary judgment is a question of law reviewed *de novo* on appeal. See, e.g., Williams v. BP Expl. & Prod., Inc., 143 F.4th 593, 597 (5th Cir. 2025). Issues involving subject-matter jurisdiction, "because [they] involve[] a court's power to hear a case, can never be forfeited for waived." U.S. v. Cotton, 535 U.S. 625, 630 (2002). Furthermore, "when a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety." Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006).

This Court should reverse the decision of the United States Court of Appeals for the Fourteenth Circuit for three reasons. First, Respondent Covenant Truth Church cannot establish the requisite injury-in-fact to invoke the jurisdiction of the federal courts under Article III of the U.S. Constitution. Second, Respondent's suit has been jurisdictionally barred by an act of Congress, the Tax Anti-Injunction Act. Third, Respondent's argument on the merits fail because the Johnson Amendment is facially and functionally neutral, causes no excessive entanglement of church and state, and has no historically prohibited analog.

I. RESPONDENT LACKS ARTICLE III STANDING TO BRING A PRE-ENFORCEMENT CHALLENGE.

Article III standing serves as a crucial check on the power of the federal judiciary by ensuring only real controversies in which parties have a stake in the outcome are heard by the courts of the United States. See U.S. Const. art. III, § 2 (limiting the extent of the "judicial Power" to "Cases" and "Controversies"). Article III standing "is built on separation-of-powers principles, serv[ing] to prevent the judicial process from being used to usurp the powers of the political

branches." Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013). As such, it is always "[t]he party invoking federal jurisdiction [who] bears the burden of establishing standing." *Id.* at 411–12 (internal citation omitted). To establish standing under Article III, a plaintiff must show "(i) that [they] suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)).

Respondent has failed to demonstrate a "concrete and particularized" injury-in-fact, making this case inappropriate for resolution through the judicial process. Lujan, 504 U.S. at 560. Alleged future injuries suffice to create standing only when the threatened injury is either "certainly impending" or there is "substantial risk" of its occurrence. Clapper, 568 U.S. at 414 n.5. Respondent's alleged injury, however, relies on a "speculative chain of possibilities" that is insufficient to establish a sufficiently concrete injury-in-fact. Id. at 414. Respondent's theory requires conjecturing that (1) the IRS's random audit will assess compliance with the Johnson Amendment; (2) that the IRS will determine that Respondent's behavior was in violation of the Johnson Amendment; (3) that the IRS will issue a non-binding adverse determination letter revoking tax-exempt status; (4) that the IRS will seek to enforce that letter; (5) that that letter will seek to revoke tax-exempt status from Respondent on no grounds besides the Johnson Amendment; (6) that administrative appeals to the IRS will provide no relief to Respondent; (7) that a request to tax court for a new determination letter will prove unavailing; and finally (8) that a de novo determination by an Article III court will uphold the IRS's revocation of Respondent's status. R. at 2, 5. See XC Found. v. Comm'r, No. 23-70060, 2024 WL 2843037, at *2 (9th Cir. June 5, 2024) ("A 501(c)(3) determination letter is not binding. . . . [Plaintiff] retains the right to a

de novo determination of its status in future litigation . . . . [Plaintiff] retains the additional right to petition the Tax Court for a pre-enforcement determination by requesting a new determination letter."). Put another way, this case is unripe. See Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 n.5 (2014) (quoting MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 128 n.8 (2007)) ("[T]he Article III standing and ripeness issues in [pre-enforcement cases] 'boil down to the same question.'").

Furthermore, in pre-enforcement challenges plaintiffs must show "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute, and there exists a credible threat of prosecution [or enforcement] thereunder" to establish an injury-in-fact. Driehaus, 573 U.S. at 159 (quoting Babbitt v. Farm Workers, 442 U.S. 289, 298 (1979)). The credible threat requirement persists even when the plaintiff brings a facial challenge to a statute on First Amendment grounds, as neither "the mere existence of a proscriptive statute nor a generalized threat of prosecution satisfies" the requirements of standing. Thomas v. Anchorage Equal Rts. Comm'n, 220 F.3d 1134, 1139 (9th Cir. 2000).

To assess if there is a credible threat of enforcement courts examine several relevant circumstantial factors including: (1) the past history of enforcement of the relevant statute; (2) whether enforcement authority lies solely with a government prosecutor or agency; (3) whether a warning letter has been provided to the plaintiffs regarding their specific conduct; and (4) whether there has been disavowal of intent to enforce on behalf of the government. See Driehaus, 573 U.S. at 164–65; see also 303 Creative LLC v. Elenis, 6 F.4th 1160, 1174 (10th Cir. 2021) (relying on Driehaus's factors), rev'd on other grounds, 600 U.S. 570 (2023); McKay v. Federspiel, 823 F.3d 862, 869 (6th Cir. 2016) (examining, inter alia, whether warning letters were sent); Arizona v. Yellen, 34 F.4th 841, 850 (9th Cir. 2022) (looking to past history of enforcement and whether

specific warnings or threats to initiate proceedings were communicated to plaintiffs). Each of these factors weigh against the credibility of Respondent's perceived threat of enforcement.

First, despite its considerable age, the Johnson Amendment remains widely unenforced by the IRS. R. at 8 ("It is well-known that the IRS generally does not enforce the Johnson Amendment."); U.S. Opp. to Mot. to Intervene, Nat'l Religious Broad. v. Long, No. 6:24-cv-00311, 2025 WL 2555876, at *3 n.1 (E.D. Tex. July 24, 2025) (noting the dissatisfaction of many social interest groups with the lack of enforcement of the Johnson Amendment by the IRS). Indeed, the President issued a targeted executive order in 2017 mandating that the Department of the Treasury not deny nor revoke tax-exempt status under the Johnson Amendment from "any individual, house of worship, or other religious organization" for speaking about "moral or political issues from a religious perspective . . . ." Exec. Order No. 13,798, 82 Fed. Reg. 21675 (May 4, 2017). The President recently reaffirmed his commitment to those same principles and referenced his prior order favorably while doing so. See Exec. Order No. 14,291, 90 Fed. Reg. 19417 (May 1, 2025) (establishing the Religious Liberty Commission). Such an order falls well within the discretion of the Executive to choose "how to prioritize and how aggressively to pursue legal actions . . . who violate the law . . ." TransUnion, 594 U.S. at 429; accord U.S. v. Texas, 599 U.S. 670, 680 (2023) ("In light of inevitable resource constraints and regularly changing . . . public-welfare needs, the Executive Branch must balance many factors when devising . . . prosecution policies.").

Taken together, this suggests that the Johnson Amendment has for all intents and purposes "fallen into desuetude" such that fear of an enforcement action is unreasonable. See Arizona Right to Life Pol. Action Comm. v. Bayless, 320 F.3d 1002, 1007 (9th Cir. 2003); accord Foothills Christian Ministries v. Johnson, 148 F.4th 1040, 1050 (9th Cir. 2025) ("The challenged provision

has therefore been on the books for over 40 years. Yet [plaintiff] has not identified a single instance . . . in which the provision has been used . . . far from communicating a specific warning or threat of enforcement, the State has explicitly disavowed enforcement . . . under these circumstances."). In sum, there is no prior history to suggest the IRS intends to enforce the Johnson Amendment against Respondent and thus no credible threat of prosecution. See Foothills, 148 F.4th at 1050 ("Because there is no credible threat . . . [plaintiff lacks standing . . . . There is thus no case or controversy for us to decide.").

Second, any potential enforcement of the Johnson Amendment is limited to the IRS alone. See 26 U.S.C. § 7801(a)(1) (leaving sole authority for the enforcement of the Internal Revenue Code with the Secretary of the Treasury); Bob Jones Univ. v. Simon, 416 U.S. 725, 728–29 (1974) (describing the IRS's management of 501(c)(3) status). Thus, any enforcement action would have to be brought by "state officials who are constrained by explicit guidelines or ethical obligations," rather than by "political opponents," Driehaus, 573 U.S. at 164, or "any member of the public." McKay, 823 F.3d at 869. This substantially decreases the likelihood that the Johnson Amendment will be weaponized against Respondent, leaving their argument resting on a "highly speculative fear" that is insufficient to create standing. Clapper, 568 U.S. at 410. That fear is doubly speculative given that the IRS, as sole statutory enforcer of the Johnson Amendment, has a general policy of non-enforcement. R. at 8.

Third, Respondent has received no warning letter from the IRS regarding the specific conduct at issue. R. at 5. Though the IRS did communicate that they would be conducting an audit of Respondent, nothing in that notification provided indication that the audit was based on the Johnson Amendment. R. at 5; see Downtown Soup Kitchen v. Mun. of Anchorage, 406 F. Supp. 3d 776, 793 (D. Alaska 2019) (finding a threat of imminent enforcement only when the

communicated warning cited the precise provision being challenged). To the contrary, the IRS notification was for a *random* audit of Respondent to ensure general compliance with the Internal Revenue Code. R. at 5. Moreover, the IRS could not easily conduct a non-random audit of Respondent if it wanted to, as Congress has placed special limitations on the IRS's ability to audit churches and other religious institutions. See 26 U.S.C. § 7611. To audit Respondent, the IRS would first have to provide a notice and summary of relevant concerns and reasons for the audit. Id. Such notice would have to include a specific statement regarding Respondent's compliance with the Johnson Amendment and an intent to audit on that basis. See id.

The record reflects no such letter, and Respondent's apparent fear that the IRS would "discover" their recent behavior belies any notion that they received forewarning from the IRS of an intent to audit based on the Johnson Amendment. R. at 5. Thus, while the IRS does intend to conduct a random audit of Respondent, such an audit does not increase the likelihood of enforcement of the Johnson Amendment. See Christian Healthcare Ctrs., Inc. v. Nessel, 117 F.4th 826, 850 (6th Cir. 2024) (citing Davis v. Colerain Township, 51 F.4th 164, 174 (6th Cir. 2022)) ("[A]n entity's assertion that it intends to enforce its laws in the abstract—and not against the specific conduct that the plaintiff plans to undertake—does not meaningfully increase the risk of enforcement.").

Fourth and finally, the IRS has, as far as is practicable, disavowed its intent to enforce the Johnson Amendment. Specifically, the IRS has entered a consent decree agreeing not to enforce the Johnson Amendment against "speech by a house of worship to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith." U.S. Opp. to Mot. to Intervene, Long, 2025 WL 2555876, at *3. The IRS cannot be expected to have done more by this

stage. See Nessel, 117 F.4th at 850 ("It is indeed unrealistic to expect a defendant to disavow a law's enforcement as applied to 'fluid and future facts' that are unclear at this time."). Forcing the IRS to disavow the Johnson Amendment each time it sends out a notice of random audit would be expensive, wasteful, and redundant given the IRS's general posture of non-enforcement. R. at 8. Respondent is not entitled to an individualized notice of disavowal simply because they filed suit. Rather, the IRS's prior behavior serves as notice undercutting any threat of enforcement.

Considering the long history of the Johnson Amendment, the IRS's infrequent enforcement of it generally and specific disavowal of enforcement of the Johnson Amendment against religious institutions, the IRS's monopoly on enforcement authority, and the lack of any transmitted warning letters beyond the notice of selection for a random audit, there is no credible threat of enforcement against Respondent. As a result, Respondent lacks a concrete injury-in-fact to establish standing.

Article III standing also requires the plaintiff to show that their injury-in-fact was likely caused by the defendant and would be redressed by the judicial relief sought. TransUnion, 594 U.S. at 423 (citing Lujan, 504 U.S. at 560–61 (1992)). Respondent fails on both counts.

Respondent's alleged injury must be traceable to potential enforcement of Johnson Amendment specifically. See Clapper, 568 U.S. at 410–11. However, striking down the Johnson Amendment would not prevent the IRS from revoking tax-exempt status for any other violation it may find while auditing Respondent. For instance, it is possible that the IRS will decide to revoke Respondent's status because it discovers that some of the "net earnings" of Covenant Truth Church are "inur[ing] to the benefit of a[] private shareholder or individual." 26 U.S.C. § 501(c)(3). Thus, Respondent's argument "amounts to mere speculation about whether [revocation] would be under [the Johnson Amendment] or some other authority." Clapper, 568 U.S. at 411. When a government agency has multiple available sources of authority to carry out a challenged action, speculation

about which provision it will use to do so is insufficient to show traceability. See id. at 412–13 ("The Government has numerous other methods . . . none of which is challenged here."). Consequently, Respondent cannot trace their alleged injury—potential loss of tax-exempt status—to enforcement of the Johnson Amendment by Petitioners.

Respondent also fails to explain how their requested relief will provide redress for their alleged injury. See TransUnion, 594 U.S. at 423. While possible the Court provides Respondent's requested relief, declaring the Johnson Amendment unconstitutional, such a remedy may not ameliorate the alleged injury-in-fact underlying Respondent's suit, namely the revocation of tax-exempt status. A decision favorable to Respondent would not, therefore, "relieve a discrete injury" or even "slow the pace" of one. Massachusetts v. EPA, 549 U.S. 497, 525–26 (2007) (quoting Larson v. Valente, 456 U.S. 228, 244 n.15 (1982)). As such, Respondent has not shown that their requested relief would satisfy the redressability requirement of Article III standing.

Because Respondent fails on all three standing requirements—injury-in-fact, causation, and redressability—the lower courts erred in deciding they had the power to hear this case. See U.S. v. Cotton, 535 U.S. 625, 630 (2002). Consequently, this Court should reverse and remand for dismissal.

II. THE TEXT OF THE TAX ANTI-INJUNCTION ACT BARS RESPONDENT'S SUIT.

Regardless of whether Respondent has Article III standing, this suit is barred by the Tax Anti-Injunction Act ("TAIA"). 26 U.S.C. §7421(a). In accordance with their lawful authority to establish and regulate the federal courts, Congress has provided 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) (emphasis added); see also U.S. Const. art. III, §§ 1–2 (granting Congress power to establish and regulate federal courts). TAIA's prohibition is jurisdictional,

meaning that cases barred by it must be dismissed outright. See Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 5 (1962) ("The object of [TAIA] is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes."); Bob Jones Univ. v. Simon, 416 U.S. 725, 749 (1974) ("[TAIA] deprived the District Court of jurisdiction to issue the injunctive relief petitioner sought."). Though typically given "almost literal effect," TAIA has two exceptions, neither of which are applicable to Respondent. Bob Jones, 416 U.S. at 737.

The first exception applies when an aggrieved party has no available alternative remedy beyond the injunction they are seeking. See South Carolina v. Regan, 465 U.S. 367, 378 (1984). However, because Respondent will have access to post-enforcement administrative and judicial remedies, the exception recognized in Regan is irrelevant. See, e.g., Jarrett v. U.S., 79 F.4th 675, 684 (6th Cir. 2023) ("South Carolina v. Regan does not fill this gap. . . . [I]n this instance Congress has provided a remedial process (refund suits) . . . ."). The second exception, originating in Enochs v. Williams Packing & Navigation Co., allows suits where "it is clear that under no circumstances could the Government ultimately prevail . . . ." 370 U.S. 1, 7 (1962). However, Williams Packing was only intended to prevent blatant lawlessness on behalf of the government and is a low bar to clear. See id. at 7–8 (requiring only "good faith on the part of the Government."). Because this Court's grant of certiorari on the question of the Johnson Amendment's constitutionality demonstrates a debatable issue on the merits of Respondent's claim, the Williams Packing exception is inapposite. See U.S. v. Clintwood Elkhorn Min. Co., 553 U.S. 1, 14 (2008).

Because the TAIA is directly applicable to the case at hand, and because neither of its exceptions are relevant to Respondent's situation, this Court should reverse the decision of the Fourteenth Circuit Court of Appeals and remand for dismissal of the case.

A. The TAIA Prevents Suits Challenging the Revocation of 501(c)(3) Status, Including Respondent's Suit.

In Bob Jones, this Court determined that TAIA covers suits seeking injunctive relief from revocations of 501(c)(3) tax-exempt status. See 416 U.S. at 738–40; accord Alexander v. Am. United Inc., 416 U.S. 752, 758–61 (1974). Even challenges premised on assertions of fundamental constitutional rights are barred by the TAIA, as "decisions of this Court make it unmistakably clear that the constitutional nature of a taxpayer's claim . . . is of no consequence under the Anti-Injunction Act." Alexander, 416 U.S. at 759. This is because "[i]n considering a 'suit's purpose' [the court will] inquire not into a taxpayer's subjective motive, but into the actions objective aim—essentially, the relief the suit requests." CIC Servs., LLC v. IRS, 593 U.S. 209, 217 (2021).

Here, Respondent is requesting an injunction preventing the IRS from enforcing the Johnson Amendment, a provision of the tax code that bears directly on the tax-exempt status of nonprofit organizations. R. at 2, 5. The Johnson Amendment imposes no affirmative obligations or costs "separate and apart from the statutory tax," such as reporting requirements. CIC, 593 U.S. at 221. Additionally, there are not "separate criminal penalties" indicating that Respondent is challenging an administrative rule instead of a regulatory tax. Id. Further, this is not a challenge to the adequacy of the IRS's administrative relief processes or a suit challenging the legality of agency action under the Administrative Procedure Act, either one of which could show that this suit was about something other than taxes. See, e.g., Z Street v. Koskinen, 791 F.3d 24, 30–31 (D.D.C. 2015) (finding a challenge to delays in IRS administrative remedies beyond the scope of the TAIA); Cohen v. U.S. 650 F.3d 717, 733–34 (D.D.C. 2011) (finding an APA challenge to the legality and adequacy of established IRS refund procedures beyond the scope of the TAIA). Rather, the "'legal rule at issue' here is a tax provision" and this case is "[a]t its heart . . . 'a dispute over taxes.'" Rocky Branch Timberlands, LLC v. U.S., No. 22-12646, 2023 WL 5746600, at *2

(11th Cir. Sep. 6, 2023). It is therefore barred by the TAIA. See id. (holding that TAIA barred plaintiff's suit).

In its most straightforward formulation, the TAIA "applies whenever a suit calls for enjoining the IRS's assessment and collection of taxes—of whatever kind." CIC, 593 U.S. at 225. Because Respondent's suit seeks to enjoin the IRS's ability to assess and potentially collect taxes via the Johnson Amendment, it is barred by TAIA.

B. Post-Enforcement Forms of Relief Are Adequate Alternative Remedies When Congress Exercises Its Taxing Power.

In South Carolina v. Regan, this Court determined that the TAIA was never intended to foreclose injunctive suits "brought by aggrieved parties for whom [Congress] has not provided an alternative remedy." 465 U.S. at 378. By ignoring the availability of post-enforcement remedies for Respondent, the Court of Appeals for the Fourteenth Circuit erred in its application of the Regan exception.

The facts of Regan were unique in that the aggrieved party would have been completely unable to challenge the taxes in question via administrative or statutory procedure even after assessment and collection by the IRS. Id. at 379–80. This lack of review separated the case from prior cases, including Bob Jones and Alexander, where the Court found the availability of post-enforcement remedies—such as refund suits and tax court review—sufficient to avoid the question presented in Regan: whether the TAIA applied. See, e.g., Bob Jones, 416 U.S. at 746 ("This is not a case in which an aggrieved party has no access at all to judicial relief. Were that true, our conclusion might well be different."); Alexander, 416 U.S. at 762 ("[R]espondent will have a full opportunity to litigate the legality of the [IRS's] withdrawal of respondent's [Section] 501(c)(3) ruling letter in a refund suit following the payment of [unemployment] taxes.").

Over time, this has become known as TAIA's "familiar pay-now-sue-later procedure," and has been upheld time and again by courts as a permissible exercise of congressional authority. CIC, 593 U.S. at 222, 224 ("If the dispute is about a tax rule . . . the sole recourse is to pay the tax and seek a refund."); see also Hibbs v. Winn, 542 U.S. 88, 104 (2004) ("[Through the TAIA] Congress directed taxpayers to pursue refund suits instead of attempting to restrain collections."); Reich v. Collins, 513 U.S. 106, 111 (1994) ("Due process . . . allows the State to maintain an exclusively postdeprivation regime . . . ."); U.S. v. Clintwood Elkhorn Min. Co., 553 U.S. 1, 10 (2008) ("[T]he taxpayer must succumb to an unconstitutional tax, and seek recourse only after it has been unlawfully exacted."). Fundamentally, the appropriate scope of the TAIA remains a matter "for Congress, which is the appropriate body to weigh the relevant, policy-laden considerations . . . and the effect[s] on the assessment and collection of federal taxes if the law were to be changed," at least so long as they do not run afoul of any other constitutional guideposts. Bob Jones, 416 U.S. at 750.

Though undeniably "pro-government and revenue-protective," Congress's decision was to supply only post-enforcement relief to parties seeking to challenge the assessment and collection of their taxes. Clintwood, 553 U.S. at 11. And, despite the apparent harshness of that decision, "in light of the powerful governmental interests in protecting the administration of the tax system from premature judicial interference," and "the [g]overnment's need to assess and collect taxes as expeditiously as possible," it "do[es] not rise to the level of constitutional infirmities." Bob Jones, 416 U.S. at 736, 747. After all, "[t]axes are the life-blood of government and the anti-injunction prohibition is Congress' recognition that 'the tenacity of the American taxpayer' constantly threatens to drain the nation of a life-sustaining infusion of revenues." Regan, 465 U.S. at 386 (O'Conner, J., concurring) (cleaned up). Consequently, Congress need only ensure that there is

some ability to contest an adverse determination by the IRS following assessment and collection, not that there be way to do so prior to enforcement.

The only proper reading of Regan, then, is that an aggrieved party must have no available alternative remedy, including post-enforcement relief through tax courts or refund suits, before being exempt from the TAIA. Because Respondent brought their suit prior to enforcement, they do not yet have access to the administrative or statutory mechanisms through which they will later be able to seek post-enforcement relief. R. at 6–7. However, if or when the IRS makes an adverse determination, Respondent will have full access to administrative and adjudicative appeals procedures. See I.R.S., Publ'n 892 (Rev. 2), (2017) (detailing the availability of IRS appeals procedures for tax-exempt organizations following an adverse determination based on an audit). The immediate unavailability of those procedures is therefore irrelevant when considering the Regan exception, as they amount to nothing more than a restatement of the "pay-now-sue-later" scheme Congress adopted. Respondent will have adequate opportunities for relief—if necessary—following the IRS's audit. Therefore, Respondent's case does not merit an exception to the TAIA under the Regan rule. See Jarrett, 79 F.4th at 684.

C. Williams Packing Does Not Apply Because There is a Debatable Issue on the Merits.

A second exception to the TAIA exists in accordance with the Court's decision in Williams Packing. 370 U.S. 1 (1962). However, the so-called Williams Packing exception has no relevance here. To circumvent application of TAIA under Williams Packing, a plaintiff must be able to show both (1) that they are *certain* to succeed on the merits and, (2) that collection of the challenged taxes would cause irreparable harm. Williams Packing, 370 U.S. at 6–7; Regan, 465 U.S. at 374. Regardless of the quality of Respondent's arguments on the merits, it cannot be said that they are *certain* to succeed should this Court reach them in this case. The TAIA exception established in

Williams Packing applies "[o]nly if it is then apparent that, under the *most liberal view of the law and the facts*, the United States cannot establish its claim." Williams Packing, 370 U.S. at 7 (emphasis added); Clintwood, 553 U.S. at 14. That exceptionally low bar has been met here, as proven by this Court's decision to grant certiorari on the Establishment Clause question raised below. R. at 17; see Clintwood, 553 U.S. at 14 (denying an application of the Williams Packing exception because the question of law had recently been granted certiorari before the Supreme Court).

Lastly, the only major circuit case dealing with the constitutionality of the Johnson Amendment's application to churches, Branch Ministries v. Rossotti, held that there was no infringement of free speech rights or substantial burdening of the free exercise of religion. 211 F.3d 137, 144 (D.C. Cir. 2000). While not explicitly dealing with the Establishment Clause question raised here nor binding at the Supreme Court level, Branch Ministries illustrates that the Johnson Amendment's constitutionality is sufficiently disputable. Evidence that plaintiff is not certain to succeed on the merits forecloses application of the Williams Packing exception. Not only that, Branch Ministries even indicates that the constitutional question favors the IRS. See id. This is substantially more than what is required on the government's behalf under Williams Packing. See Williams Packing, 370 U.S. at 7–8.

Because the TAIA bars Respondent's suit, the district court lacked jurisdiction to hear this case in the first instance. See id. at 5 (describing the TAIA as a jurisdictional hurdle); U.S. v. Cotton, 535 U.S. 625, 630 (2002) (explaining that jurisdictional issues implicate the proper scope of power of the courts). As a result, this Court should reverse the appellate court's decision and remand for dismissal. See Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) (identifying dismissal as the appropriate response to a lack of jurisdiction).

III. THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

The Johnson Amendment requires that organizations receiving tax-exempt status not "participate in, or intervene in (including 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). Respondent challenges the validity of Johnson Amendment under the First Amendment's Establishment Clause, arguing that its provisions against political engagement by tax-exempt organizations favor apolitical religions and discourage the core beliefs of Covenant Truth Church. R. at 8–9. In doing so, Respondent fundamentally misunderstands Establishment Clause precedent, including the history and context of the Establishment Clause's protections as outlined in Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 534 (2022), and the basic Establishment Clause principles in Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n, 605 U.S. 238, 241, 247 (2025).

Furthermore, because the Johnson Amendment does not discriminate against a suspect class or curtail a fundamental right, it should be subject to a rational basis review. Regardless, the Johnson Amendment would survive strict scrutiny as it is narrowly tailored to achieve a compelling government interest.

A. The Johnson Amendment Does Not Violate the Establishment Clause Under the Neutrality and Entanglement Tests or the Kennedy Test.

This Court has long held that the Establishment Clause must be interpreted through the lens of history and tradition. See, e.g., Everson v. Bd. of Educ., 330 U.S. 1, 8–9 (1947) (recognizing that early Americans had a "vivid picture" of persecution that informs modern analysis); Town of Greece v. Galloway, 572 U.S. 565, 577 (2014) (holding that any test the Court adopts must "faithfully [reflect] the understanding of the Founding Fathers"); Marsh v. Chambers, 463 U.S. 783, 795 (1983) (using history to uphold prayer opening a legislative session). Kennedy v.

Bremerton solidified a historical analysis as the legal test for whether a statute violates the Establishment Clause, replacing the test in Lemon v. Kurtzmann (which assessed statutes under 3 factors: whether the law in question (1) had a secular purpose, (2) had a neutral effect, and (3) did not create excessive government entanglement with religion). Kennedy, 597 U.S. at 534; Lemon v. Kurtzmann, 403 U.S. 602, 612–13 (1971). Despite the shift away from the Lemon test, the Court in Catholic Charities relied less on the Kennedy test and more on the factors in the Lemon test and its progeny, including neutrality and entanglement. Cath. Charities Bureau, Inc., 605 U.S. at 247, (highlighting the importance of neutrality and prevention of excessive entanglement and applying those factors as they stood in Larson v. Valente, 456 U.S. 228, 245(1982), to evaluate a Wisconsin tax exemption law under the lens of neutrality and anti-entanglement). This distinction can be explained by the Court in Catholic Charities not needing to get to a historical analysis because a clear lack of denominational neutrality makes an Establishment Clause violation. If there is facial neutrality however, then the Establishment Clause requires use of the Kennedy factors. See e.g., Hunter v. United States Dep't of Educ., 115 F.4th 955, 964–966(9th Cir. 2024) (applying both the Kennedy test and the neutrality and entanglement factors). Stinson v. Fayetteville Sch. Dist. No. 1, 798 F. Supp. 3d 931, 950 (W.D. Ark. August 2025) (applying both the Kennedy test and the neutrality and entanglement tests, "there is no cause to believe that all Supreme Court precedent that relied on the Lemon test has been—or will be—overruled.").

The relevant inquiry applicable to this case is whether the Johnson Amendment survives the neutrality and anti-entanglement tests in Catholic Charities, and secondly if it survives the Kennedy test. See Kennedy, 597 U.S. at 560; Cath. Charities Bureau, Inc., 605 U.S. at 241, 247.

i. The Johnson Amendment, Which Does Not Establish a Denominational Preference by Differentiating Between Religions Textually or Structurally, is Neutral.

The Establishment Clause requires denominational neutrality, achieved by government avoidance of "officially prefe[rring] one religious denomination over another." Larson, 456 U.S. 228 at 245. The purpose of the Establishment Clause is to avoid is suppressing the ability of members of a particular faith to feel like "full members of the political community." Santa Fe Indep. School Dist. v. Doe, 530 U. S. 290, 309 (2000). Thus, the government must refrain from "favoritism amongst sects". School Dist. of Abington Township v. Schempp, 374 U. S. 203, 305 (1963) (Goldberg, J., concurring). Typically, in evaluating neutrality, both facial and structural neutrality are considered. See Kennedy, 597 U.S. at 525; see also Cath. Charities Bureau, Inc., 605 U.S. 238, 249 (striking down a Wisconsin law that distinguished between denominations as applied by the Wisconsin Supreme Court and recognizing textual favoritism as a paradigmatic violation of the Establishment Clause); Epperson v. Ark., 393 U.S. 97, 98-99 (1968) (striking down an Arkansas law making teaching evolution a misdemeanor even though it didn't directly reference religion).

First, facial neutrality requires a law to be textually neutral, typically interpreted as a law that does not distinguish denominationally and applies to all sects equally. See, e.g., Fowler v. Rhode Island, 345 U.S. 67 n.1 (1953) (striking down a law that was applied to Jehovah's Witnesses differently than other sects); Cath. Charities Bureau, Inc., 605 U.S. 238, 254 (where the law as applied distinguished between religions that proselytized and those that didn't); Gillette v. United States, 401 U. S. 437 n. 7 (1971) (where the conscientious objector status was equally available to members of all religions). Here, the Johnson Amendment's text applies equally to all entities seeking 501(c)(3) tax exemption. 26 U.S.C. § 501(c)(3). The statute explicitly provides a very long list of regulated entities, including "corporations, and any

community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition…or for the prevention of cruelty to children or animals" 26 U.S.C. § 501(c)(3). Unlike the statute in Larson, the Johnson Amendment does not distinguish between religions (or lack thereof) at all on its face – it applies equally to all groups and lays out a secular criterion. Compare Larson, 456 U.S. 228, 231, with 26 U.S.C. § 501(c)(3). In fact, secular organizations violating this Amendment also lose 501(c)(3) status under the same analysis as religious organizations. Regan v. Taxation with Representation, 461 U.S. 540, 551 (1983) (where a secular nonprofit lost 501(c)(3) status for lobbying activities, "The issue in these cases is not whether TWR must be permitted to lobby, but whether Congress is required to provide it with public money with which to lobby.").

The Court must then determine if a facially secular law places a disparate burden upon a religion that is sufficient to trigger an Establishment Clause violation, which is a burden that distinguishes between denominations. Catholic Charities Bureau, Inc., 605 U.S. at 247 (reaching this step after determining that the law was neutral on its face but was being applied in a way that distinguished between denominational burden). A regulation does not violate the Establishment Clause merely because it "happens to coincide or harmonize with the tenets of some or all religions." Bob Jones Univ. v. United States, 461 U.S. 574, n.30 (1983) (quoting McGowan v. Maryland, 366 U.S. 420, 442 (1961)); see also Harris v. McRae, 448 U.S. 297, 319–320 (1980). Here, the Johnson Amendment may not harmonize with the Covenant Truth Church's principles, but that does not mean the burden placed on Covenant Truth implies an establishment of state religion as that requires an uneven application of the law. Catholic Charities Bureau, Inc., 605 U.S. at 247.

Additionally, the Johnson Amendment imposes a condition on a government benefit or subsidy, not a penalty for religious exercise or an elevation of a particular theology or group. See Bob Jones Univ. v. United States, 461 U.S. 574, 582 (characterizing 501(c)(3) status as a government subsidy that may be revoked). Such a distinction between government benefits and penalties means that political religions like Everlight Dominion are not being disfavored. R. at 3. There is no elevation of a particular religious organization over any other, rather a discretionary denial of a government subsidy in order to further the goal of keeping church and state separate, the core command of the Establishment Clause. See Cutter v. Wilkinson, 544 U. S. 709, 719 (2005) ("The Establishment Clause, commands a separation of church and state."). Looking beyond the text of the Johnson Amendment, there is nothing to indicate that it was drafted to target political religious groups, instead the purpose of the Amendment is to curtail the use of government subsidies in political campaigns via tax-exempt corporations. R. at 2. Respondents argue that the IRS is selectively enforcing the Johnson Amendment against Covenant Truth. R. at 8. In reality, this is categorically untrue. The history of the Johnson Amendment is such that rarely has a church ever lost 501(c)(3) status. E.g. Branch Ministries, 211 F.3d. at 139–41. Secular organizations have also lost status for similar activities. E.g. Taxation with Representation, 461 U.S. at 551. Covenant Truth was notified of a random audit rather than a targeted one. R. at 5. These facts together make it clear that there was no selective prosecution against Covenant Truth and thus the structural background of the Johnson Amendment as it applies in this case is also neutral. In treating all 501(c)(3) groups equally in its requirements, the Johnson Amendment embodies neutrality and is therefore constitutional under the Establishment Clause.

The Respondents' theory requires a radical shifting of Establishment Clause doctrine. It requires that theological disparity be equated to textual, structural disparity. This is a radical shift from precedent, and a road that would lead to a religious veto over neutral government policies. When an internal theological burden exempts a religious group from adhering to laws that have a secular and neutrally applicable governmental interest, the Establishment Clause can become a weapon for preferential treatment rather than a bulwark against it and would lead to far more entanglement between church and state.

ii. The Johnson Amendment Does Not Increase Government Entanglement.

The Fourteenth Circuit erred in its interpretation of 'entanglement' under the Establishment Clause. The Fourteenth Circuit states that the Johnson Amendment amounts to the IRS being permitted to "determine what topics religious leaders and organizations may discuss". R at 8. While the idea of government controlling religious doctrine is indeed what 'entanglement' implies, it requires more tangible control over or inquiry into religious doctrine such that the government is determining the "truth" of a religion. See, e.g., EEOC v Cath. Univ. of Am., 83 F. 3d 455 (1996) (finding excessive entanglement when the government is involved in hiring decisions at a religious institution); Carson v. Makin, 596 U.S. 767 (2022) (finding excessive entanglement when the government inquires into whether and how a religious school pursues its educational mission); Doe v. Bd. of Regents of the Univ. of Colo., 100 F.4th 1251 (10th Cir. 2024) (finding excessive entanglement when the government required individuals to justify an exemption based on an official doctrine of an organized religion as this amounts to the government pronouncing the 'official doctrine' of each religious sect); Cutter, 544 U.S. at 722 (explaining that religious

accommodations may not "override other significant interests" or impose undue burdens on the public).

Here, the Johnson Amendment does not inquire into the core tenets of a religion but rather imposes a uniform restriction on all 501(c)(3) organizations, which does not implicate the Establishment Clause. Bob Jones, 639 F.2d at 155 ("[T]he uniform application of the rule to all religiously operated schools avoids the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief"). Furthermore, not only was Covenant Truth subject to a random audit, but the process of IRS auditing does not require any inquire into what qualifies as a "core truth" of a religion, only filing information to determine where money is going and any official public statements as opposed to private sermons, which is a uniform requirement across all 501(c)(3) organizations. As discussed in Branch Ministries, religious institutions also receive additional protections as compared to other 501(c)(3) organizations to prevent excessive evaluation of doctrine. 211 F.3d. at 139–41. If anything, allowing Respondent's suit to survive would not prevent the IRS from "monitoring religious leaders" but rather establish a precedent that religious objections to even neutral laws are a basis for invalidation. R. at 9. This would imply that the government would have to inquire into each law's burden on religious groups' practices in detail before passing laws, and this type of inquiry resembles the impermissible entanglement in Cath. Charities Bureau, 605 U.S. at 277.

iii. Even If the Kennedy Test is Applied, the Johnson Amendment Survives Because it Does Not Analogize to the Six Hallmarks of an Establishment Clause Violation.

Under the test established in Kennedy, the relevant inquiry is historical – is the Johnson Amendment the type of law the Founders envisioned when drafting the Establishment Clause? See Kennedy, 597 U.S. at 535. The historical context of the era informs us that it is not. At the Founding, the context that gave birth to the Establishment and Free Exercise Clauses included a

fear of European religious tensions that were "generated in large part by established sects determined to maintain their absolute political and religious supremacy." Everson, 330 U.S. at 9. In the early colonial period, such tensions flourished, and all persecuted dissenters were "compelled to pay taxes to support government-sponsored churches...[and] pay ministers' salaries and maintain churches". Id. at 10–11. See also Larson, 456 U.S. at 244–245 ("If Parliament had lacked the authority to tax unrepresented colonists, then by the same token the newly independent States should be powerless to tax their citizens for the support of a denomination to which they did not belong. The force of this reasoning…led ultimately to the inclusion of the Establishment Clause.").

Furthermore, Kennedy laid out a standard that can be read in four ways – (1) narrowly as a test limited to religious coercion alone, (2) by the six historic hallmarks that Justice Gorsuch established in his concurrence in Shurtleff v. City of Bos., 596 U.S. 243, 286 (2022) (as cited to in Kennedy), (3) a full-blown historical return to anti-incorporation alone, or (4) very broadly as reading secularism to be a 'religion' that can be established at the expense of other faiths. (Tyler Ashman, Post, The Establishment of Originalism in Kennedy v. Bremerton School District, U. Chi. L. Rev. Online (April 9, 2024), https://lawreview.uchicago.edu/online-archive/establishment-originalism-kennedy-v-bremerton-school-district. The second interpretation, Justice Gorsuch's in Shurtleff, is the most supported of these interpretations as the others would either remove the Establishment Clause's teeth or place a very high burden on government. See, e.g., Stephanie H. Barclay, The Religion Clauses After Kennedy v. Bremerton School District, 108 Iowa L. Rev. 2097 (2023); Hilsenrath v. Sch. Dist. of the Chathams, 136 F.4th 484, n.54 (3d Cir. 2025); Firewalker-Fields v. Lee, 58 F.4th 104, 122 n.7 (4th Cir. 2023).

The six hallmarks are as follows: (1) Control over doctrine, governance, and personnel of the church; (2) compulsory church attendance; (3) financial support [of the church from the state]; (4) prohibitions on worship in dissenting churches; (5) use of church institutions for public functions; and (6) restriction of political participation to members of the established church. *See* Shurtleff, 596 U.S. at 286 (Gorsuch, J., concurring in the judgment) (citing Michael W. McConnell, Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 Wm. & Mary L. Rev. 2105, 2110-12, 2131-81 (2003)).

In the case at bar, the Circuit Court ignores five of these indicia, drawing only a tenuous connection to the first hallmark. R. at 8, 10. In reality, the Johnson Amendment does not analogize to any of these 6 hallmarks. First, the second through sixth hallmarks are not implicated because the Johnson Amendment is a condition on tax exemption. Nothing compels citizens to attend a particular church's services here as the Johnson Amendment simply places a condition on tax exemption. There is no additional financial support of the church from the state in the Johnson Amendment. *See* Walz v Tax Comm'n, 397 U. S. 664, 668 (1970) (holding that the grant of a tax exemption was held to not be a sponsorship of an organization, but rather an abstention from demanding that churches support the state). The Johnson Amendment imposes no prohibition on worship. Finally, Covenant Truth Church members are free to engage in the political process as much as they want to as long as tax-exempt funds are not used. See Branch Ministries, 211 F. 3d at 144; David A. Fahrenthold, I.R.S. Says Churches Can Endorse Candidates from the Pulpit, New York Times (July 7, 2025), https://www.nytimes.com/2025/07/07/us/politic s/irs-churches-politics-endorse-candidates.html#:~:text=For%20years%2C%20the%20I.R.S.%20has,a%20reporter%20for%20two%20decades. With regard to the first hallmark, Respondent argues that conditioning tax exemption on something that goes against Everlight Dominion's core tenets is

equivalent to control of doctrine. This argument fails because as outlined in Part III(A)(ii), control of doctrine requires something much more tangible than a disparate burden on a particular group. The historical context behind government control of doctrine is more akin to the legacy of religious strife in Europe as outlined in Larson rather than the mere conditioning of a government subsidy on a uniformly applied requirement that is not only very rarely enforced against churches but that also includes many layers of protection from government inquiry into religion.

B. The Johnson Amendment Survives Both Rational Basis Review and Strict Scrutiny.

In Larson, the Court established that strict scrutiny applies in Establishment Clause only where state law establishes a denominational preference and thus violates the Establishment Clause, as religion is the original suspect class. Larson, 456 U.S. at 246. However, as established in Part III(A), there is no denominational preference facially or structurally, and therefore, the Court should use rational basis review. Trump v. Hawaii, 585 U.S. 667, 704 (2018). Rational basis review requires that the Amendment be "plausibly related to the Government's objective". Id. at 670. C.f. Catholic Charities Bureau, Inc., 605 U.S. at 248 (using strict scrutiny when denominal preference was found). Preventing the excessive entanglement of church and state by preventing tax-exempt organizations from engaging in political campaigning with subsidized government funds and promoting nonprofit nonpartisanship are objectives clearly met by restricting all 501(c)(3) corporations from engaging in overt campaigning while leaving their Free Speech rights untouched. Thus, the Johnson Amendment would survive rational basis review.

Strict scrutiny would require the government to "[bear] the burden to show that the relevant law…is closely fitted to further a compelling governmental interest." Catholic Charities Bureau, Inc., 605 U.S. at 248. Control over taxation and a separation between Church and State is a compelling governmental interest. See Hernandez v. Commissioner, 490 U.S. 680, 699-700 (1989)

("even a substantial burden would be justified by the 'broad public interest in maintaining a sound tax system,' free of 'myriad exceptions flowing from a wide variety of religious beliefs'"); Adams v. Commissioner, 170 F.3d 173, 179 (3rd Cir. 1999) ("The least restrictive means of furthering a compelling interest in the collection of taxes . . . is in fact, to implement that system in a uniform, mandatory way"). C.f. Catholic Charities Bureau, Inc., 605 U.S. at 254 (where the law failed strict scrutiny because of its overt denominal preference, which was not narrowly tailored.)

Here, the Johnson Amendment is narrowly tailored to achieve compelling interest because it is a facially neutral law that allows Churches to engage in political speech so long as it does not include funding particular political campaigns. Branch Ministries, 211 F. 3d. at 25-26 (holding that "[t]he government has a compelling interest in maintaining the integrity of the tax system and in not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose."). Under the IRS's official rules, "churches and other 501(c)(3) organizations can engage in a limited amount of lobbying (including ballot measures) and advocate for or against issues that are in the political arena." Internal Revenue Service, Charities, Churches and Politics, https://www.irs.gov/newsroom/charities-churches-and-politics (last visited January 18, 2026). Furthermore, churches are still free to present political speech to their own constituencies in private sermons, even when that speech endorses a political candidate or position. David A. Fahrenthold, I.R.S. Says Churches Can Endorse Candidates from the Pulpit, New York Times (July 7, 2025), https://www.nytimes.com/2025/07/07/us/politics/irs-churches-politics-endorse-candidates.html#:~:text=For%20years%2C%20the%20I.R.S.%20has,a%20reporter%20for%20two%20decades. Thus, Pastor Vale is free to speak to his congregation about his convictions as a private person or to his own congregation, but the Church cannot directly engage in political activity in an official capacity. Whether or not Covenant Truth Church meets

these criteria is properly a fact-specific question rather than a wholesale challenge to the Johnson Amendment that will not survive under the Establishment Clause.

CONCLUSION

For the foregoing reasons, the Court should reverse the Fourteenth Circuit's decisions and determine that (1) Respondent Covenant Truth Church does not have standing under Article III or the Tax Anti-Injunction Act to bring a pre-enforcement challenge against the Johnson Amendment and (2) that the Johnson Amendment does not violate the Establishment Clause of the First Amendment of the U.S. Constitution.

The Court should find that Respondent lacks standing because they are unable to show injury in fact, traceability, or redressability, all requirements for Article III standing. Furthermore, the Tax Anti-Injunction Act bars jurisdiction of this suit because the Respondent's case is an injunction on the collection of taxes yet does not fall within one of two exceptions that could have granted jurisdiction. In denying standing, the Court protects the efficiency of the federal courts as well as the separation of powers core to our constitutional system.

The Court should also find that the Johnson Amendment is constitutional under current Establishment Clause doctrine because it is neutral and does not increase entanglement between church and state, and furthermore it does not resemble any of the historical hallmarks that embodied the Founders' understanding of establishment of religion. The Johnson Amendment passes both rational basis review and strict scrutiny as it is narrowly tailored to only cover the use of public monies in political campaigns while allowing 501(c)(3) organizations to speak freely and furthermore involves the compelling government purposes of tax collection and separation of church and state. The government's ability to collect taxes is a crucial responsibility exercised by

the IRS. The requested outcome would ensure that the government is not excessively burdened in creating laws that help further its purpose.