No. 26-1779

IN THE

SUPREME COURT OF THE UNITED STATES

February Term 2026

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

Petitioners,

v.

Covenant Truth Church,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

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BRIEF FOR PETITIONERS

Team No. 3

ATTORNEYS FOR PETITIONERS

QUESTIONS PRESENTED

I. Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act and Article III of the United States Constitution to challenge the constitutionality of the Johnson Amendment prior to the Internal Revenue Service issuing a revocation of its section 501(c)(3) tax classification.

II. Whether the Johnson Amendment violates the Establishment Clause of the First Amendment when section 501(c)(3) prohibits religious organizations from intervening in political campaigns despite their religious practices requiring them to participate in political campaigns and support candidates that align with their religious beliefs.

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The orders and opinions of the United States District Court for the Eastern District of Wythe are unreported and not available in the record; the court's holding is summarized on pages 2, 5, and 6 of the record. R. at 2, 5–6. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and set out in the record on pages 1–16. R. at 1–16.

LIST OF PARTIES

Scott Bessent, in his official capacity as acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service are the Petitioners in this Court and were the defendants-appellants in the courts below. Covenant Truth Church is the Respondent in this Court and was the plaintiff-appellee in the courts below.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fourteenth Circuit entered judgment on August 1, 2025. This Court has appellate jurisdiction over this Petition pursuant to the grant of writ of certiorari as required by 28 U.S.C. § 1254(1). This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. III, § 2, cl. 1 states:

> 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 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. amend. I states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

26 U.S.C. § 501(a) states:

> An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

26 U.S.C. § 501(c)(3) states:

> 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 (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), 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. § 7421(a) states:

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

STATEMENT OF THE CASE

I. Statement of the Facts

The Johnson Amendment. The Johnson Amendment, codified in 26 U.S.C. § 501(c)(3), is a federal income tax exemption afforded to churches and other non-profit organizations on the condition of refraining from participating in political campaigns. R. at 1–2. More specifically, the

amendment requires non-profit organizations "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." R. at. 2. If section 501(c)(3) organizations adhere to this condition, they are exempt from paying federal income tax. R. at 2.

Despite recent controversy surrounding the legislation, the Johnson Amendment has remained intact since its enactment. R. at 2–3. In 1954, the amendment was passed without debate, but over the years, it has grown increasingly contentious. R. at 2. Beginning in 2017, the amendment has been attacked with proposed legislation that directly contradicts the amendment's core purpose—legislation that would allow religious organizations classified under the Johnson Amendment to participate in political campaigns. R. at 3. Despite these attacks, however, Congress has refused repeal the Johnson Amendment or create an exception that would broaden the amendment's application for religious organizations. R. at 3.

The Everlight Dominion & Covenant Truth Church. The Everlight Dominion is a centuries-old religion with well-established principles of endorsing and promoting progressive social values. R. at 3. As part of The Everlight Dominion's beliefs, leaders are required to "participate in political campaigns and support candidates that align with The Everlight Dominion's progressive stances," including supporting political candidates and their campaigns via monetary donations, volunteer opportunities, and overall endorsement. R. at 3. Leaders that fail to do so are "banished" from the church and religion, as a whole, per The Everlight Dominion's beliefs. R. at 3.

Covenant Truth Church is currently the largest church practicing The Everlight Dominion. R. at 3. Covenant Truth Church ("Covenant") has increased in popularity since Gideon Vale joined Covenant in 2018 and subsequently became Covenant's head pastor. R. at 3. Since Pastor Vale's involvement at Covenant, the church's membership has increased from a few hundred members

to thousands of members. R. at 4. This increase is attributed to Pastor Vale's weekly podcast, which is used to promote the beliefs and messages of The Everlight Dominion, including participating in political campaigns and endorsing specific political candidates. R. at 2–4. Since the inception of the podcast, Covenant's weekly attendance increased, and the podcast became the fourth-most listened to podcast in Wythe and the nineteenth-most listened to podcast in the country. R. at 4.

Despite Covenant Truth Church's alignment with The Everlight Dominion, the church is a section 501(c)(3) organization, which prohibits participation in political campaigns—a direct contradiction to The Everlight Dominion's core beliefs and practices. R. at 3. The Everlight Dominion requires its leaders to participate in political campaigns, and the Covenant Truth Church is a section 501(c)(3) organization prohibited from participating in political campaigns. R. at 2–3.

Pastor Vale's Political Involvement. The Everlight Dominion and Covenant Truth Church have increased in popularity due to Pastor Vale's weekly podcast. R. at 3–4. Pastor Vale's goals for the podcast were two-fold: first, he wanted to increase Covenant's membership and attract a younger audience, and second, he wanted to use the podcast as a platform of political involvement, as required by The Everlight Dominion. R. at 3–4.

At the beginning of 2024, Pastor Vale had the opportunity to satisfy his obligation of political involvement when Wythe's Senator, Matthew Russet, suddenly passed away. R. at 4. Russett's passing gave rise to a special election to elect the individual who would complete the remaining four years of Russett's senatorial term. R. at 4. A candidate running for the position was Samuel Davis, a young Congressman who promoted ideas aligned with those of The Everlight Dominion. R. at 4. The Senate race was expected to be a contentious election, and Pastor Vale used his podcast to endorse Congressman Davis on behalf of Covenant Truth Church. R. at 4–5.

Pastor Vale publicly endorsed Davis's candidacy by announcing Covenant Truth Church's endorsement of Congressman Davis on the podcast. R. at 4–5. Pastor Vale also announced that a sermon series would be held at Covenant Truth Church, explaining Congressman Davis's political stances and how those stances aligned with the values and beliefs of The Everlight Dominion. R. at 5. Listeners of Pastor Vale's podcast were encouraged to attend those sermons, as well as donate to, volunteer with, and endorse Davis's candidacy for Wythe Senator. R. at 5.

These actions led Pastor Vale to worry about Covenant Truth Church's tax classification as a section 501(c)(3) organization after Covenant received notice that the Internal Revenue Service ("IRS") would be conducting a random audit to ensure the church's compliance with the Internal Revenue Code, which prohibited such organizations from participating in political campaigns. R. at 5. Pastor Vale did not want the IRS to discover his political involvement on behalf of Covenant Truth Church for fear of a revocation of Covenant's section 501(c)(3) tax classification. As a result, Pastor Vale filed suit in the United States District Court for the Eastern District of Wythe seeking a permanent injunction, which would prohibit the enforcement of the Johnson Amendment and prevent the IRS from discovering Covenant's political involvement. R. at 5.

II. Nature of the Proceedings

The District Court. The receipt of notice regarding the IRS's random audit of Covenant Truth Church gave rise to this suit. R. at 5. On May 1, 2024, the Internal Revenue Service ("IRS") sent Covenant Truth Church a letter notifying the church that it had been selected to participate in a random audit. R. at 5. This audit system was used to ensure section 501(c)(3) organizations are complying with the requirements set forth by the Internal Revenue Code. R. at 5. Nearly two weeks later, on May 15, 2024, Covenant Truth Church brought suit in the United States District Court for the Eastern District of Wythe seeking a permanent injunction of the enforcement of the Johnson

Amendment. R. at 5. The basis of Covenant's claim was that the Johnson Amendment violated the Establishment Clause of the First Amendment by prohibiting the church's ability to practice its sincere religious beliefs, which required the church to actively support political candidates that possess values closely aligned with the church's beliefs. R. at 3. In response, the Petitioners, acting Commissioner of the Internal Revenue Service, Scott Bessent, and the Internal Revenue Service, filed a blanket denial of Covenant's claims, and Covenant subsequently moved for summary judgment. R. at 5.

The District Court granted Covenant's motion for summary judgment and request for a permanent injunction. R. at 2. The District Court held that (1) Covenant had standing to challenge the amendment under the Tax Anti-Injunction Act and Article III of the United States Constitution, despite the suit being brought before the audit had been conducted and before Covenant's tax classification had been changed, and (2) the Johnson Amendment was a violation of the Establishment Clause of the First Amendment. R. at 2, 5. The Petitioners subsequently appealed the District Court's decision to the United States Court of Appeals for the Fourteenth Circuit.

The Appellate Court. On appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's judgment on two grounds: (1) Covenant had standing under the Tax Anti-Injunction Act and Article III of the United States Constitution, and (2) the enforcement of the Johnson Amendment is a violation of the Establishment Clause of the First Amendment.

First, the Appellate Court found statutory and constitutional standing. The appellate decision found statutory standing under the Tax Anti-Injunction Act, codified in 26 U.S.C. § 7421(a). The court reasoned that the Act did not bar Covenant's claim because the church had no other alternative remedy to seek redress. R. at 7. The court found Covenant to have no other alternative remedy because the church's tax classification had not been revoked at the time of the suit, and

any alternative remedies available only applied after the tax classification had been changed. R. at 7. The Internal Revenue Service had not conducted its audit nor changed Covenant's tax classification at the time the church brought suit, so Covenant's tax classification still has not changed. R. at 5, 7. Additionally, the Appellate Court found constitutional standing under Article III of the United States Constitution. R. at 7. The court found Covenant's injury to be imminent because the IRS sent notice of its intent to audit the church and, therefore, the church faced "substantial risk" of the Johnson Amendment's enforcement. R. at 7. Because of these circumstances, the court found Covenant's claim to be ripe and the selective enforcement of the Johnson Amendment to "unfairly target[] Appellee's religious practices." R. at 8.

Second, the Appellate Court found the Johnson Amendment was a violation of the First Amendment's Establishment Clause. R. at 11. The Establishment Clause prohibits the government from preferring one religious denomination over another, and the court found the Johnson Amendment to violate this principle by denying federal tax exemptions to religious organizations that are required to advocate for political candidates and participate in political campaigns. R. at 8–9. Because of this, the Appellate Court held that the Johnson Amendment was not neutral in its application and favored some religions over others because The Everlight Dominion requires leaders to speak on political issues, while other religions do not have the same requirements. R. at 9–10. The Appellate Court highlighted the historical importance of our nation's emphasis on the separation of church and state, and the court stated that these values are supported within the Establishment Clause and the Free Exercise Clause of the First Amendment. R. at 10. The court found the Johnson Amendment to "authorize[] government regulation of religious activity," which "stands in clear violation of the Establishment Clause." R. at 11.

SUMMARY OF THE ARGUMENT

This Court should REVERSE the judgment of the United States Court of Appeals for the Fourteenth Circuit. Contrary to the conclusions of the courts below, Covenant Truth Church lacks statutory and constitutional standing to challenge the actions of the Internal Revenue Service regarding compliance with the Johnson Amendment. Further, the Johnson Amendment is not a violation of the First Amendment's Establishment Clause and Free Exercise Clause because the amendment does not discriminate amongst religions nor does it substantially burden Covenant Truth Church's ability to freely practice its religious beliefs.

I.

First, Covenant Truth Church lacks statutory standing under the Tax Anti-Injunction Act because Covenant has access to alternative remedies to redress its claims. The Tax Anti-Injunction Act, codified in 26 U.S.C. § 7421(a), is designed to bar claims sought for the sole purpose of preventing the assessment or collection of taxes. There are only two methods to bypass the Tax Anti-Injunction Act's preclusion: (1) the plaintiff has no access to alternative remedies, or (2) the plaintiff satisfies the *Williams Packing* exception, which deems the Act inapplicable if there is certainty that the Government cannot prevail and equity allows the court to have jurisdiction. The lower court found Covenant Truth Church to have standing under the Tax Anti-Injunction Act, stating that the church had no access to alternative remedies. Petitioners ask this Court to REVERSE the lower court's determination and find the Tax Anti-Injunction Act bars Covenant's claims because Covenant has access to alternative remedies and does not satisfy the *Williams Packing* exception.

The Tax Anti-Injunction Act was created to prevent suits that seek to avoid the assessment and collection of taxes, and Covenant's claim falls directly within the scope of the Act. Covenant Truth

Church filed its claim against the Internal Revenue Service out of fear of its section 501(c)(3) status being revoked for violations of the statute's requirements. The Johson Amendment, codified in 26 U.S.C. § 501(c)(3), prohibits its organizations from participating in and intervening with political campaigns. In response to the amendment's conditional requirements, section 501(c)(3) organizations benefit from federal tax exemptions and deductible charitable contributions.

Covenant Truth Church has consistently participated in political campaigns, despite the Johnson Amendment's prohibition. Covenant's head pastor, Pastor Vale, conducted a weekly podcast where he explicitly endorsed a political candidate and encouraged his listeners to vote for, volunteer with, and donate to a specific candidate. When Pastor Vale was notified that Covenant Truth Church was subject to a random audit by the Internal Revenue Service, he filed suit alleging First Amendment violations and seeking to prevent the enforcement of the Johnson Amendment. Pastor Vale's actions fall squarely within the scope of the Tax Anti-Injunction Act because the purpose of Vale's suit against the Internal Revenue Service was to prevent the assessment and collection of the federal income taxes that would be owed to the Service after the Service discovered Covenant's violations of section 501(c)(3).

Two exceptions to the Tax Anti-Injunction Act allow suits seeking to avoid the assessment and collection of taxes to continue. The first is when the plaintiff lacks alternative remedies. The lower court found Covenant to have no alternative remedies. However, there are two notable alternatives available to Covenant. First, the church can seek an appeal if the IRS revokes its tax classification. Second, the church can seek a refund after an erroneous alteration of its tax classification results in the payment of taxes. Both alternative remedies are available to Covenant upon revocation of its section 501(c)(3) status. Covenant Truth Church did not exercise these additional avenues due to prematurely filing suit before the remedies were available. While Covenant's tax classification

remains unchanged, Covenant has not fully exhausted all of the alternative remedies it may have available.

The second exception is set forth in *Williams Packing*, which states that the Tax Anti-Injunction Act is inapplicable if (1) the plaintiff is certain that the Government cannot prevail and (2) equity allows the court to have jurisdiction. Covenant cannot meet either element to satisfy the *Williams Packing* exception. Covenant Truth Church cannot be certain that its claim is likely to succeed on the merits because it is debatable whether the Internal Revenue Service will enforce the Johnson Amendment. To determine the certainty of success, the court must look to the information available at the time of the claim. In this case, Pastor Vale and Covenant Truth Church explicitly violated the amendment's requirements, which gives the Service authority to enforce the amendment against the church. However, Covenant relies on a "consent decree" issued by the Internal Revenue Service, which provides that the Service will not enforce the Johnson Amendment against houses of worship when speaking to its members through customary channels of communication. Because Covenant cannot be certain whether the Internal Revenue Service would have enforced the Johnson Amendment, the church does not satisfy the first element.

Additionally, Covenant Truth Church cannot be certain that the challenged action will result in irreparable harm. Although there are risks of significant harm when an organization's tax classification is revoked or changed, Covenant cannot be certain of such harm in this case because the damage has not occurred. The harm that Covenant would experience from the enforcement of the Johnson Amendment is entirely speculative because its tax classification remains unchanged. Therefore, Covenant Truth Church fails the second element of the *Williams Packing* exception.

Second, Covenant Truth Church lacks constitutional standing under Article III of the United States Constitution because Covenant has not sustained a redressable injury that is fairly traceable

to the conduct of the Internal Revenue Service. The lower court found Covenant Truth Church to have standing under Article III, stating the church sustained a sufficiently imminent injury-in-fact. Petitioners ask this Court to REVERSE the lower court's determination and find that Covenant Truth Church lacks Article III standing. To find Article III standing, the plaintiff must satisfy three elements: (1) an injury-in-fact, (2) conduct that is fairly traceable to the conduct of the defendant, and (3) redressability. Here, Covenant fails all three.

Covenant Truth Church fails all three elements of Article III standing because the church filed suit before the harmful conduct occurred. Regarding the first element, Covenant does not have a sufficient injury because the church's tax status remains unchanged, and the threatened injury is not imminent because the potential revocation is not certainly impending, considering the Internal Revenue Service has not yet made a determination regarding Covenant's tax classification. Regarding the second element, the Internal Revenue Service has not taken any action against Covenant Truth Church to create "fairly traceable causation." To link the cause of the plaintiff's harm to the defendant, the defendant must have engaged in wrongful conduct. Here, Covenant Truth Church filed suit before the Service could act, so Covenant's alleged injury is not fairly traceable to the Service. The alleged harm is not fairly traceable until the Service takes action. Regarding the third element, redressability is entirely speculative because there is no evidence of the extent of Covenant's harm. Because the extent of Covenant's harm is unknown, the redressability of such harm is also uncertain. Therefore, it is unlikely this Court will be able to redress an unknown injury. Because of these facts, Covenant lacks Article III standing.

II.

The Johnson Amendment is not a violation of the Establishment Clause or the Free Exercise Clause of the First Amendment. The lower court found the Johnson Amendment unconstitutional as a violation of the Establishment Clause by specifying the topics religious organizations can

teach and by favoring some religions over others. Petitioners ask this Court to REVERSE the lower court's decision and find the Johnson Amendment to be constitutional as it relates to the First Amendment's religious protections.

First, the Johnson Amendment does not violate the Establishment Clause. The Establishment Clause protects the Government's promotion, preference, or endorsement of one religion over another. To avoid an Establishment Clause violation, the Court looks to the historical practices and understandings at the time of the First Amendment's enactment to determine the Founding Fathers' intent. Here, this Court should find that the Johnson Amendment adheres to the historical practices and understandings of this nation. Before the First Amendment's enactment, it was a standard practice to differentiate between denominations. However, this distinction was eliminated, and a constitutional prohibition on denominational discrimination was established, which was a foundational concept to the implementation of the Establishment Clause and Free Exercise Clause within the First Amendment. Because of this and the long-standing principle supporting the separation of church and state, the Johnson Amendment follows the historical practices of our nation. Further, this Court has held that the declination of subsidization is not a First Amendment violation and found section 501(c)(3) to adhere to First Amendment principles. Therefore, this Court should return to its previous determination and find the Johnson Amendment constitutional under the Establishment Clause.

Second, the Johnson Amendment does not violate the Free Exercise Clause. The Free Exercise Clause protects against the Government implementing laws that prohibit an individual's right to freely exercise their sincerely held beliefs. While the right to believe is absolute, the Government can enact regulations that limit an individual's right to outwardly practice those beliefs. Such regulations must not substantially burden a person's right to exercise their religious beliefs, and if

it does create a significant burden, the Government must prove the challenged regulation supports a compelling government interest furthered by the least restrictive means. However, regulations on the exercise of religion are not subject to strict scrutiny if it involves a neutral law of general applicability. In this case, the Johnson Amendment is constitutional under the First Amendment's Free Exercise Clause because it does not place a substantial burden on Covenant Truth Church's free exercise rights, and it is neutral and generally applicable as it relates to all section 501(c)(3) organizations.

The Johnson Amendment does not place a substantial burden on Covenant Truth Church, or any other religious organization classified under section 501(c)(3), because section 501(c)(4) allows religious organizations to participate in partisan elections. While section 501(c)(3) prohibits such involvement in political campaigns, section 501(c)(4) works in tandem with section 501(c)(3) to provide organizations with two avenues to achieve their goals. The dual structure of section 501(c)(3) and 501(c)(4) allows religious organizations to preserve their 501(c)(3) status for non-political activities, while using their 501(c)(4) status to participate politically. This does not create a substantial burden on religious 501(c)(3) organizations because they are able to be classified under both sections as long as they are separately incorporated and keep thorough financial records.

Finally, the Johnson Amendment is neutral and generally applicable. The amendment is neutral because it does not place restrictions on religious organizations simply because they are religious. The Johnson Amendment's prohibition of participating in political campaigns is politically focused, not religiously driven. The amendment is generally applicable because it applies to everyone classified under section 501(c)(3), and it does not account for exceptions or selective enforcement. The Johnson Amendment is generally applicable because all section 501(c)(3)

organizations are subject to the same conditions, regardless of whether the organization is religious or secular. Congress has had the opportunity to impose exceptions, and it has declined to do so. The purpose Johnson Amendment is to ensure taxpayer dollars are spent appropriately. The focus of the Johnson Amendment is not aimed at burdening or targeting religious organizations. Because of these reasons, this Court should find section 501(c)(3) constitutional under the First Amendment's Free Exercise Clause.

ARGUMENT AND AUTHORITIES

Standard of Review. The questions presented here are reviewed de novo for three reasons. First, this case presents pure questions of law. *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 U.S. 559, 563 (2014) (citing *Pierce v. Underwood*, 487 U.S. 552, 558 (1998)). Second, subject matter jurisdiction issues, including those concerning questions of standing, are reviewed de novo. *Reedom v. Ackal*, 551 F. App'x 249, 249 (5th Cir. 2014) ("We review questions of standing de novo . . . ."); *Powell v. Kemp*, 53 F. App'x 750, 751 (6th Cir. 2002) ("The standard of review on the issue of subject matter jurisdiction is de novo."). Finally, First Amendment protections are reviewed de novo. *Servin-Espinoza v. Ashcroft*, 309 F.3d 1193, 1196 (9th Cir. 2002) ("We review constitutional questions de novo.").

I. COVENANT TRUTH CHURCH LACKS STATUTORY AND CONSTITUTIONAL STANDING TO BRING ITS CLAIM AGAINST THE INTERNAL REVENUE SERVICE SEEKING A PERMANENT INJUNCTION.

At a minimum, there are one of two ways to achieve standing: through Article III of the United States Constitution or through a statutory provision that affords or bars a particular plaintiff's right to sue. *See Leyse v. Bank of Am. Nat'l Ass'n*, 804 F.3d 316, 320 (3d Cir. 2015) ("Unlike Article III standing, statutory standing is not jurisdictional. Statutory standing goes to whether Congress has accorded a particular plaintiff the right to sue under a statute, but it does not limit the power

of the court to adjudicate the case."). Here, Covenant Truth Church lacks both. Covenant Truth Church lacks statutory standing because the Tax Anti-Injunction Act ("AIA") precludes claims seeking to avoid the assessment or collection of taxes. *See* 26 U.S.C. § 7421(a). Covenant Truth Church also lacks Article III standing because there has not been an injury that is fairly traceable to the actions of the Internal Revenue Service that is likely to be redressed with a favorable outcome. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (establishing the three elements needed to satisfy Article III standing).

A. Covenant Truth Church lacks statutory standing because the Tax Anti-Injunction Act precludes claims for an injunction when the purpose of the suit is to avoid the assessment and collection of taxes.

The Tax Anti-Injunction Act, codified in 26 U.S.C. § 7421(a), states, in pertinent part, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). The purpose of the AIA is to prohibit injunctions against the collection of federal taxes. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962) ("The object of § 7421(a) is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes."). The Act is designed to protect "the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement 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) (quoting *Williams Packing*, 370 U.S. at 7).

The suit at issue today is a clear example of the kind of suit the AIA was designed to avoid—a suit for the purpose of restraining the collection or assessment of taxes. *See* 26 U.S.C. § 7421(a). Covenant Truth Church is a section 501(c)(3) organization that intentionally participates and

intervenes in political campaigns, which is a direct violation of section 501(c)(3). *See* 26 U.S.C. §§ 501(a), (c)(3); R. at 3–4. Covenant and Pastor Vale's political participation includes endorsing political campaigns and encouraging church members to vote for, volunteer with, and donate to the specific political candidates that align with The Everlight Dominion's values. R. at 3–5. However, once Covenant received notice that the IRS would be conducting a random audit of the church's compliance with section 501(c)(3) requirements, Pastor Vale became increasingly worried about Covenant's tax status. R. at 5. As a result of this worry, Pastor Vale filed a lawsuit seeking a permanent injunction against the IRS to prevent the enforcement of the Johnson Amendment. R. at 5. Based on these facts, this suit is clearly to prevent the assessment and collection of taxes, which blatantly falls within the scope of the AIA.

Even if there is debate on whether this is a clear preclusion of Covenant's claim, the AIA is interpreted broadly to include suits that incidentally prevent such collections or assessments. *Enax v. United States*, 243 F. App'x 449, 451 (11th Cir. 2007) (citing *Hobson v. Fischbeck*, 758 F.3d 579, 580–81 (11th Cir. 1985). In addition to avoiding the payment of federal income tax, section 501(c)(3) organizations are exempt from federal social security taxes and federal unemployment taxes. *Bob Jones*, 416 U.S. at 727 (citing 26 U.S.C. § 3112(b)(8)(B)). Further, charitable donations to section 501(c)(3) organizations are tax-deductible. *Id.* at 727–28 (citing 26 U.S.C. § 170(c)(2)). To be exempt from these taxes, such organizations must adhere to section 501(c)(3) and refrain from participating or intervening in political campaigns. *See* 26 U.S.C. §§ 501(a), (c)(3).

Because of these benefits, there is no debate that the revocation of an organization's section 501(c)(3) status can cause significant harm to the organization. *Bob Jones*, 416 U.S. at 730. For example, the revocation of a charitable organization's section 501(c)(3) status can negatively impact the flow of charitable donations if they are suddenly no longer deductible by the donor. *Id.*

Additionally, a tax status revocation can subject the organization to federal taxes, such as federal income tax, federal social security tax, and federal unemployment tax. *Id.*; *see* 26 U.S.C. §§ 501(a), 3112(b)(8)(B). Petitioners concede that this change is not without consequence; however, it does not guarantee that the aggrieved party of such a change in classification can seek an injunction.

The purpose of the AIA is to preclude suits that prevent the assessment and collection of taxes. *South Carolina v. Regan*, 465 U.S. 367, 372 (1984). And specifically, this Court has held that actions regarding the reclassification of an organization's section 501(c)(3) status seeking injunctive relief "falls squarely within the literal scope of the Act." *Bob Jones*, 416 U.S. at 731–32. In such an instance, an injunction would prevent the IRS from collecting federal income tax, federal social security tax, and federal unemployment tax, which clearly prohibits the Service from collecting necessary taxes, even if such a result were incidental to the proposed claim. *Id.* The language of the AIA specifically states, "no suit for the purpose of retaining the assessment or collection of any tax shall be maintained . . . ," and the injunction in this case completely goes against what the AIA is designed to accomplish. *See id.*

1. The Tax Anti-Injunction Act precludes Covenant Truth Church's claim for an injunction because Covenant has access to alternative remedies that provide opportunities to appeal the Internal Revenue Service's decision and request a refund.

There are only two ways to avoid the AIA's preclusion. *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 775–76 (1974) ("[Section] 7421(a) is not a bar to an injunction . . . , the traditional equitable considerations of irreparable injury and adequate alternative remedy must determine whether injunctive relief is appropriate."). First, the AIA does not apply when the plaintiff has no alternative remedy. The AIA precludes suits seeking injunctive relief when alternative remedies exist. *Regan*, 465 U.S. at 373 ("[T]he circumstances of [the AIA's] enactment strongly suggest that Congress intended the Act to bar a suit only in situations in which Congress

had provided the aggrieved party with an alternative legal avenue by which to contest the legality of a particular tax."). The AIA does not apply when there is a lack of alternative remedies to the plaintiff's claim. *Id.* at 373–74 ("The Act, therefore, prohibited injunctions in the context of a statutory scheme that provided an alternative remedy."). Here, Covenant has other avenues of recourse, so this Court should find the AIA to preclude the church's claim.

The first avenue of recourse is Covenant's ability to appeal the IRS's decision to revoke an organization's tax classification. Judge Marshall for the Fourteenth Circuit Court of Appeals stated in his dissenting opinion of the lower court's holding that the IRS allows parties to submit an appeal following a revocation of the organization's tax classification. R. at 13. Section 7428(a) states that an organization can challenge its section 501(c)(3) classification after an unsuccessful appeal. *See* 26 U.S.C. § 7428(a); R. at 13. For this avenue to be available, Covenant must first have had its section 501(c)(3) status revoked. *See* 26 U.S.C. § 7428(a); R. at 13. The church has not fully exercised its avenues of recourse in this case because it has not had its section 501(c)(3) status revoked. R. at 5. Covenant must wait to exhaust all other alternative remedies before seeking an injunction under the AIA. *See* 26 U.S.C. §§ 7421(a), 7428(a); R. at 13.

Another avenue of recourse Covenant can explore is a refund after its tax classification resulted in the payment of taxes. When it comes to the assessment of an organization's section 501(c)(3) status, multiple post-enforcement avenues can be explored in seeking a remedy. *Bob Jones*, 416 U.S. at 731. For example, "the organization may litigate the legality of the Service's action by petitioning the Tax Court to review a notice of deficiency." *Id.* at 730. Additionally, if the IRS imposes a collection on the organization and denies a refund, "the organization may bring a refund suit in a federal district court or in the Court of Claims." *Id.* at 730–31. Even further, donors have recourse through the opportunity to bring a refund suit themselves to "challenge the denial of a

charitable deduction under [section] 170(c)(2)." *Id.* at 731; *see* 26 U.S.C. § 170(c)(2). These are additional avenues of recourse available to Covenant Truth Church; however, Covenant could not utilize these options due to prematurely filing suit. Just because Covenant did not exercise its alternative remedies does not mean those remedies did not exist or were not available to the church. As stated in the record, Covenant's tax classification is unchanged, and until that tax classification is changed, the church has not exhausted all alternative remedies. R. at 5.

2. The Tax Anti-Injunction Act precludes Covenant Truth Church's claim for an injunction because Covenant Truth Church's claim is not likely to succeed on the merits and the collection of federal income taxes would not cause the church irreparable harm.

The only other exception to the AIA was set forth by this Court in *Williams Packing*, when this Court found the AIA to be inapplicable if (1) it is certain that the Government cannot prevail and (2) equity allows the court to have jurisdiction. 370 U.S. at 7 ("Nevertheless, if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and . . . the attempted collection may be enjoined if equity jurisdiction otherwise exists."). For the exception outlined in *Williams Packing* to apply, the suit must first be within the scope of the AIA. *Alexander*, 416 U.S. at 758–59 ("[R]espondent's suit was without the scope of the Anti-Injunction Act and therefore not subject to the *Williams Packing* test."). Under the exception outlined in *Williams Packing* and reaffirmed in *Alexander*, both elements must be satisfied to grant injunctive relief in a suit aimed at preventing the assessment or collection of taxes. *Id*. at 758; *see Williams Packing*, 370 U.S. at 7.

As stated previously, this case clearly falls within the scope of the AIA because Pastor Vale is explicitly seeking to avoid the assessment and collection of Covenant's federal income tax. Therefore, if applicable, the *Williams Packing* exception could apply. However, Covenant fails to meet either element of *Williams Packing*, and as a result, does not qualify for injunctive relief

under the second alternative to be exempt from the preclusions set forth in the AIA. *See Willaims Packing*, 370 U.S. at 7; 26 U.S.C. § 7421(a).

i. *Covenant Truth Church cannot be certain the claim is likely to succeed on the merits because the enforcement of the Johnson Amendment and potential revocation of Covenant's tax status is entirely speculative.*

To satisfy the *Williams Packing* exception affirmed by this Court, it must first be shown that "'under no circumstances could the Government ultimately prevail' on the merits. . . ." *Enax*, 243 F. App'x at 451 (citing *Williams Packing*, 370 U.S. at 7). To prove this element, the Court must look to the information available at the time of the claim, and when looking at such information, the Court must interpret the law liberally to see if the United States is not likely to succeed, meaning the plaintiff is certain to succeed on the merits of his or her case. *Id.* If it is "sufficiently debatable" that the United States could succeed, there is not enough information to satisfy the first element of the judicial exception. *Id.* at 451–52.

Here, it is sufficiently debatable that the IRS could succeed on the merits because Covenant Truth Church and Pastor Vale blatantly violated the conditional requirements set out in section 501(c)(3). *See* 26 U.S.C. § 501(c)(3). Covenant would argue this outcome is not debatable due to the IRS's proposed "consent decree," which states the IRS's intent not to enforce the conditional requirement in section 501(c)(3) against churches like Covenant Truth Church. R. at 14. However, the decree states that the Johnson Amendment will not be enforced 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." *See* U.S. Opp. To Mot. To Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 255876 (E.D. Tex. July 24, 2025). However, this decree is not codified law, nor can Covenant Truth Church guarantee that the IRS would adhere to its statements made in the

motion. Regardless of these questions, Pastor Vale's conduct falls outside the scope of the IRS's proposal.

Pastor Vale acted outside of the customary channels of communication when speaking on Congressman Davis's candidacy. R. at 4–5. The IRS's consent decree acknowledges that the speech must be made through the "customary channels of communication on matters of faith," and Pastor Vale made his acknowledgements through the use of a weekly podcast. *See* U.S. App. To Mot. To Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 255876 (E.D. Tex. July 24, 2025); R. at 4–5. This podcast was not a customary mode of communication for the church; rather, it was created with the motivation of increasing church attendance. R. at 3–4.

Covenant's customary mode of communication is via in-person sermons and corresponding livestreams. R. at 4. Customarily, churches provide their sermons and materials on site during the weekly service, not via a podcast. While podcasts are increasing in popularity, they are not the "customary mode of communication" for its members and weekly attendees. Pastor Vale's podcast was used for more than communicating with Covenant Truth Church members, but was also used to share additional resources and reach a wider audience. R. at 3–4. The motivation behind the creation of Pastor Vale's podcast shows that this was not customary for the church because the pastor was trying something new to reach new attendees. R. at 3–4. This is not customary.

In addition, the podcast is noticeably popular, being the fourth-most listened to in the State of Wythe and the nineteenth-most listened to in the nation. R. at 4. Pastor Vale's podcast is reaching all kinds of listeners from all over the nation; it is reaching listeners beyond those who attend Covenant Truth Church. Although Pastor Vale's intentions are honorable, this does not equate to the customary channels of communication indicated in the IRS's "consent decree." Therefore, even though there have been discussions of the Johnson Amendment not being enforced against

houses of worship, the actions in this case do not fall within the scope of the IRS's decree and do not ensure Covenant that the IRS is unlikely to succeed.

It is very uncertain whether the IRS would succeed on this claim, and based on the above-mentioned facts, it is possible that the IRS could enforce the Johnson Amendment against Covenant Truth Church. Therefore, Covenant Truth Church does not meet the requirements to prove that under no circumstances would the Government succeed in this case. *See Enax*, 243 F. App'x at 451 (citing *Williams Packing*, 370 U.S. at 7)

ii. *Covenant Truth Church cannot be certain that the collection of federal income taxes would cause the church irreparable harm because Covenant has not sustained any harm from the Internal Revenue Service.*

The second element that must be satisfied to qualify for the *Williams Packing* exception is that "'equity jurisdiction otherwise exists' because there is no adequate remedy at law and irreparable injury will result." *Id.* Equitable courts should not act when there is a legal avenue to remedy alleged harms. *See Nat'l Taxpayers Union v. United States*, 68 F.3d 1428, 1436 (D.C. Cir. 1995); *see also Younger v. Harris*, 401 U.S. 37, 43–44 (1971) ("[T]he basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable harm."). Most cases fail the *Williams Packing* exception under the first element because it is difficult to establish the Government's likelihood of prevailing when considering all circumstances. *See Marvel v. United States*, 548 F.2d 295, 300 (10th Cir. 1977) ("Although it is stipulated that seizure of taxpayers' assets would result in irreparable injury, the prerequisite of all equitable relief, taxpayers face a heavy burden under the 'no circumstances' portion of the *Williams Packing* test."). However, this Court should find that Covenant Truth Church fails to satisfy the *Williams Packing* test because the church cannot be certain of either element required to permit injunctive relief under the AIA.

Williams Packing describes irreparable injury as the "ruination of the taxpayer's enterprise." 370 U.S. at 6–7 ("[C]ollection would cause an irreparable injury, such as the ruination of a taxpayer's enterprise."). It is difficult to say with certainty that Covenant Truth Church would face "ruination" of its organization simply by the revocation of its section 501(c)(3) status. Since Pastor Vale's tenure as head pastor, Covenant's attendance has grown from a few hundred to several thousand. R. at 4. The majority of this increase can be attributed to Pastor Vale's focus on increasing the younger demographic of the church's membership and appealing to a younger generation. R. at 3–4. While a change in tax classification can negatively impact charitable donations and the collection of federal taxes, there is no evidence in the record that would indicate Covenant Truth Church's membership rates, podcast listens, or growing popularity would be impacted by a potential change in tax classification. *See* 26 U.S.C. §§ § 170(c)(2), 501(a), (c)(3), 3112(b)(8)(B). For Covenant Truth Church to perform this assessment would be entirely speculative and far from certain on whether such actions would constitute a "ruination" of Covenant's enterprise.

Although the loss of charitable contributions can create a significant loss for section 501(c)(3) organizations, especially churches, this Court has held that the revocation of an exemption status can give rise to an irreparable injury. *Alexander*, 416 U.S. at 776 ("Even where it has been found that § 7421(a) bars a suit, it has been recognized that revocation of exempt status is an irreparable injury that otherwise satisfies the condition for the granting of injunctive relief."). However, it is still entirely speculative on the level of injury that Covenant could face after a revocation of its tax classification. In addition, as stated previously, because Covenant filed suit before the IRS conducted its audit and made a determination on Covenant's tax status, it is also entirely speculative whether the church would lose its section 501(c)(3) status at all.

Therefore, this Court should find that Covenant Truth Church cannot be certain on whether it would face irreparable harm, and as a result of such speculation, it has not satisfied the second element of the *Williams Packing* exception. If this Court finds that Covenant is certain to sustain irreparable harm, the church still fails the exception by failing to meet the first prong, and as a result, the AIA should bar Covenant Truth's Claim against the Internal Revenue Service.

B. Covenant Truth Church lacks constitutional standing under Article III because it does not have an injury that is sufficiently connected to the actions of the Internal Revenue Service.

Standing is essential to Article III's limitation of jurisdiction to cases and controversies. *Lujan*, 540 U.S. at 560 ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."); *see* U.S. Const. art. III, § 2, cl. 1. To satisfy Article III standing, the plaintiff must satisfy three elements: (1) the plaintiff must have an "injury-in-fact" that is (a) concrete and particularized and (b) actual or imminent; (2) there must be a causal connection between the injury and the conduct that resulted in the injury that is "fairly traceable to the challenged action of the defendant"; and (3) it must be able to be "redressed by a favorable decision." *Id.* 560–61 (cleaned up).

1. Covenant Truth Church's pre-enforcement challenge will not satisfy Article III standing because there is no actual or sufficiently imminent injury as long as Covenant's tax status remains unchanged.

The first element that must be satisfied to establish standing is determining the plaintiff's injury. The alleged injury must satisfy two requirements: (1) it must be concrete and particularized, and (2) actual or imminent. *Id.* at 560. To prove an injury that meets the threshold to satisfy Article III, the alleged injury requires more than a "cognizable interest," rather, the plaintiff must be "among the injured." *Id.* at 563. Here, the plaintiff—Covenant Truth Church—is not among the injured. Instead, Covenant Truth Church has filed a pre-enforcement challenge to prevent the

reclassification of its organization and avoid paying federal taxes. R. at 5. This suit is not the result of an injury or another's wrongful action.

Covenant Truth Church's injury is not actual nor imminent. The injury is not actual because Covenant's tax classification has not changed. R. at 5. The IRS has not revoked the church's section 501(c)(3) status nor acted in any way to directly adversely affect Covenant's operations. When an actual injury does not exist, there must be a finding of imminence in order to satisfy the injury requirement of Article III standing. *Id.* at 564. Covenant Truth Church has filed a pre-enforcement challenge because the church is seeking redress prior to the injury occurring. R. at 5. Pre-enforcement challenges are not automatically void of Article III standing, but the future potential injury must be "sufficiently imminent" to satisfy standing requirements. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014).

This Court has held that the injury-in-fact requirement of Article III standing is satisfied when a pre-enforcement challenge "alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Id.* (quoting *Babbit v. Farm Workers*, 442 U.S. 289, 298 (1979)). To have standing for a future injury, the potential injury must be "certainly impending" or create a "substantial risk" of harm. *Id. at* 158 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). Imminence cannot be speculative or uncertain; it must be clear and forthcoming. *Clapper*, 568 U.S. at 409 ("Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending.").

Here, Covenant's injury is not sufficiently imminent and is entirely speculative. Imminency requires more than abstract ideas; it requires details, established plans, and tangible evidence to

show that an injury is certain to occur and has an established timeframe for when it is to occur. *Lujan*, 540 U.S. at 564 ("Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require."). Covenant does not know when its tax classification will be changed because the IRS has not had the opportunity to conduct its compliance audit. R. at 5. The IRS conducts random audits to ensure that section 501(c)(3) organizations are complying with IRS requirements, and the record does not reflect that this audit occurred in response to any actions of Covenant Truth Church or Pastor Vale. R. at 5.

Further, Covenant does not know if its tax classification will ever change because it has not received notification from the IRS of any such revocations. R. at 5. Covenant has filed suit before any action by the IRS had occurred, and there is no certainty that the IRS will revoke its tax classifications or take any adverse actions against the church. R. at 5. This Court has consistently held that the possibility of a future injury is not sufficient to establish an injury-in-fact. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) ("Allegations of possible future injury do not satisfy the requirements of Art. III."); *see Clapper*, 568 U.S. at 409. While there is a possibility that the IRS could revoke Covenant's section 501(c)(3) tax status, there are no facts in the record to show that possibility to be "sufficiently imminent" as to prove a specified plan, timeline, or guarantee that such actions will occur. Rather, the revocation of Covenant Truth Church's section 501(c)(3) classification is simply something that could happen sometime in the future. Covenant has alleged nothing more than a future potential injury.

It is clear that Pastor Vale is fearful of the potential revocation of Covenant's tax classification; however, that does not equate to imminency according to Article III standards. R. at 5. If that were so, any event where an organization or individual is fearful of government action would provide

enough imminence to establish an injury-in-fact. This Court should not find this to be true. Rather, this Court should find that Pastor Vale's fear does not create enough imminency to establish an injury-in-fact, and therefore, does not satisfy the first element to establish Article III standing.

2. Covenant Truth Church's alleged injury is not fairly traceable to the challenged action of the Internal Revenue Service because the Service did not cause Covenant any injury.

The second element that must be satisfied is causation to prove the plaintiff's alleged injury is fairly traceable to the defendant's actions. "[T]here must be a causal connection between the injury and the conduct explained of—the injury has to be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Lujan*, 540 U.S. at 560 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976)) (cleaned up). To determine if causation of the plaintiff's alleged injury is "fairly traceable" to the defendant's actions, it cannot be merely speculative and must be able to demonstrate that the defendant will perform such action. *See Clapper*, 568 U.S. at 413.

Here, the IRS has not performed any action that is fairly traceable to Covenant's alleged harm. Covenant claims that the Johnson Amendment, also known as section 501(c)(3), is unconstitutional for violating First Amendment protections. However, it is clearly stated in the record that Covenant filed this action out of fear of the revocation of its tax status, which allows Covenant to be exempt from several federal taxes and is privileged to deductible charitable contributions, while its tax classification remains intact. R. at 5. Covenant does not allege any specific First Amendment violations or injuries beyond the fact of a broad statement claiming the amendment as a whole is unconstitutional.

Covenant Truth Church has not suffered a fairly traceable injury due to any actions from the IRS. Covenant Truth Church and Pastor Vale have been encouraging its members to participate

in, volunteer with, and donate to campaigns since 2018—long before the initiation of this suit. R. at 3. Over the course of several years, Covenant Truth Church has exercised its religious practices despite the Johnson Amendment's prohibitions. R. at 3–5. While Covenant may allege that the amendment violates its First Amendment rights, Covenant cannot successfully bring a suit before it meets the requirements necessary to establish standing. *See* U.S. Const. art. III, § 2, cl. 1. Covenant Truth Church's claim is premature and cannot satisfy the elements to establish standing as it stands before this Court, today. For this Court to find the actions of the IRS fairly traceable to Covenant's alleged injury, there must be a causal link, and despite Covenant's claims, there simply is not one. The IRS has not yet intervened or prohibited any actions of Covenant Truth Church, nor has it prevented Covenant Truth Church's leaders or members from exercising their religious beliefs. R. at 5.

Additionally, the record does not reflect that any action by the IRS has caused Covenant Truth Church to pay federal income taxes or any other federal tax, and there are no facts to establish any negative impact on Covenant's charitable donations because of this suit. For any of the injuries alleged by Covenant to come to fruition, there must be an intervening circumstance to cause such injuries. *See Fulani v. Brady*, 935 F.2d 1324, 1329 (D.C. Cir. 1991) ("The Court has made clear that an injury will not be 'fairly traceable' to the defendant's challenged conduct nor 'redressable' where the injury depends not only on that conduct, but on independent intervening or additional causal factors."). Here, the intervening cause is IRS action. It will only be appropriate to determine the justiciability of this suit once the IRS acts against Covenant Truth Church regarding its compliance with the Johnson Amendment. Until then, this Court should find that Covenant's alleged injury is not fairly traceable to the IRS, failing to satisfy the second element needed for Article III standing.

3. Covenant Truth Church's claim is not likely to be redressed by a favorable decision because Covenant's alleged injuries are entirely speculative.

The third element of Article III standing that must be satisfied is redressability. To meet this element, it must be likely that the plaintiff's claim can be redressed by a favorable decision; it cannot be speculative or uncertain. *Lujan*, 540 U.S. at 561. The analysis of redressability is similar to that of causation. To find that the plaintiff's claim is redressable by a favorable decision, there cannot be any intervening causes that would inhibit the court's ability to remedy a plaintiff's alleged harm. *See Fulani*, 935 F.2d at 1329.

Here, the ability of this Court to redress Covenant's alleged harm is entirely speculative because there are not enough facts to indicate the extent of harm suffered by Covenant. Nor is there enough evidence to indicate whether the enforcement of the Johnson Amendment will alleviate or increase the church's potential damages. In *Fulani*, the United States Court of Appeals for the District of Columbia Circuit performed a "but-for" causation analysis to determine whether an alleged injury satisfied the redressability element of Article III standing. *See id.* at 1328–29 ("Given but-for causation, the Second Circuit concluded that redressability necessarily followed . . . ."). When there is a "but-for" connection, it is likely to find redressability, but here, there is none. Because the IRS has not acted in a way to revoke Covenant's section 501(c)(3) tax classification or inhibit the church's ability to practice its religious practices any further, it is impossible to determine that "but-for" the IRS's actions, Covenant would not have sustained an injury.

The injuries claimed by Covenant Truth Church, such as First Amendment violations, could not have occurred prior to the IRS revoking its tax classification; however, the IRS has not revoked or altered Covenant's tax status. R. at 5. The alleged injury cannot come before the alleged harmful

action. Therefore, Covenant cannot successfully charge the IRS with any violations of law without showing IRS action. "[S]uits challenging, not specifically identifiable Government violations of law, but the particular programs agencies establish to carry out their legal obligations are, even when premised on allegations of several instances of violations of law, rarely if ever appropriate for federal-court adjudication." *Lujan*, 504 U.S. at 568 (citing *Allen v. Wright*, 468 U.S. 737, 759–60 (1984)). Covenant's claims against the IRS are not identifiable violations of law because the IRS had not taken action to cause the harm Covenant alleges. The IRS notified Covenant Truth Church of a random audit. R. at 5. This audit was not a guarantee that the IRS would revoke the church's tax classification, nor was it a statement from the IRS indicating an intent to revoke the church's tax status. It was simply a procedural mechanism used by the IRS to ensure compliance. R. at 5. Until the IRS does something more, Covenant Truth Church fails to establish redressability.

II. THE JOHNSON AMENDMENT IS NOT A VIOLATION OF THE FIRST AMENDMENT.

The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. Within the First Amendment are the Establishment Clause and the Free Exercise Clause, which work together to ensure the religious liberties of American citizens are protected. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) ("These Clauses work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities."). The Johnson Amendment does not violate the Establishment Clause or the Free Exercise Clause because the amendment does not prefer one religion over another, nor does it prohibit religious organizations from freely exercising their beliefs.

A. The Johnson Amendment does not violate the Establishment Clause of the First Amendment because the actions of the Internal Revenue Service are aligned with this Nation's historical practices and understandings.

The Johnson Amendment does not violate the Establishment Clause because it does not endorse religion or prefer one religion over another nor does it violate the historical practices of our nation. The purpose of the Establishment Clause is to prevent the Government from endorsing, promoting, preferring, or aiding one religion over another. *Larson v. Valente*, 456 U.S. 228, 246 (1982) (citing *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947)); *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025). The crux of the Establishment Clause analysis is to ensure the Government is not placing preferential treatment of one religion or denomination over another. *Larson*, 456 U.S. at 244. This principle of "denominational neutrality" goes to the heart of the Establishment Clause's design and works in tandem with the Free Exercise Clause in allowing individuals to practice their sincerely held beliefs, even if those beliefs are different from others. *See Larson*, 456 U.S. at 246; *Catholic Charities*, 605 U.S. at 248.

To determine whether a regulation violates the Establishment Clause, this Court has held that we must look to the "historical practices and understandings" that were in effect at the time of the First Amendment's enactment to understand the Founding Fathers' intent. *Kennedy*, 597 U.S. at 535–36. When looking at the history, it is clear that the ability to tax citizens, regardless of religion or denomination, was foundational to the development of our society. At the beginning of this country's founding, it was standard practice to differentiate between denominations among the colonies. *See Larson*, 456 U.S. at 244–45. However, that distinction shifted once States needed the power to tax citizens of differing denominations. *See id.* at 245–46. As a response to this need, a "constitutional prohibition" on denomination discrimination was established. *See id.* at 244–45.

This distinction is foundational to the drafting of the First Amendment and its inclusion of the Establishment Clause and the Free Exercise Clause. *See id.*

The separation of church and state is a common theme in the history of the Bill of Rights and the drafting of the First Amendment. *Zorach v. Clauson*, 343 U.S. 306, 312 (1952). While this concept is not an absolute separation, it is pivotal in showcasing the history of the balance between religion and government. *Id.* at 312–14 ("Government may not finance religious groups . . . nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement . . . for government to be hostile to religion and throw its weight against efforts to widen the effective scope of religious influence.").

The Johnson Amendment is not a violation of the First Amendment for prohibiting section 501(c)(3) organizations from participating or intervening in political campaigns. The application of the Johnson Amendment is the Government refusing to subsidize lobbying. This Court has held that the declination of subsidization is not a First Amendment violation. *See Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983) ("We have already explained why we conclude that Congress has not violated . . . First Amendment rights by declining to subsidize its First Amendment activities."). This Court has already found section 501(c)(3) to not be a First Amendment violation, and it should continue to do so because it is foundational to the structure of our society to tax and maintain the separation of church and state.

B. The Johnson Amendment does not violate the Free Exercise Clause of the First Amendment because the law does not create a substantial burden on religious practices, and it is neutral and generally applicable.

The Johnson Amendment is not a violation of the Free Exercise Clause of the First Amendment. *Branch Ministries v. Rossotti*, 211 F.3d 137, 143–44 (D.C. Cir. 2000). The Free Exercise clause states, "Congress shall make no law . . . prohibiting the free exercise [of religion]."

U.S. Const. amend. I; *Kennedy*, 597 U.S. at 524. The Free Exercise Clause works with the Establishment Clause to ensure that the Government does not favor one religion over another while allowing individuals to exercise their beliefs free of Government influence. *Larson*, 456 U.S. at 246. The free exercise of religion is not an absolute right, and the regulation of religious practice must satisfy strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 523 (2021). However, such laws do not need to pass strict scrutiny if they are neutral and generally applicable. *Id.*

The United States Court of Appeals for the District of Columbia found that section 501(c)(3) was not a violation of the Free Exercise Clause of the First Amendment because it did not substantially burden the plaintiff-church's right to freely exercise its religious practices. *Branch Ministries*, 211 F.3d at 144. Because of this finding, the court did not determine if the statute satisfied strict scrutiny, but the court also found the statute to be neutral and generally applicable. *Id.* at 143–44. This Court should agree with the United States Court of Appeals for the District of Columbia and find that the Johnson Amendment does not violate the Free Exercise Clause.

1. The Johnson Amendment does not substantially burden Covenant Truth Church's right to freely exercise its religious practices.

There is an absolute right to believe; however, the right to practice those beliefs can be regulated. *See Fulton*, 593 U.S. at 523. To lawfully regulate religious practices, the "'Government shall not substantially burden a person's exercise of religion' in the absence of a compelling government interest that is not furthered by the least restrictive means." *Branch Ministries*, 211 F.3d at 142 (quoting 42 U.S.C. §§ 2000bb-1(1), (b)). The Johnson Amendment does not substantially burden a church's right to freely exercise its religious practices, even if those practices require intervention in political campaigns, because section 501(c)(3) organizations have the ability to lobby and participate in political elections through the use of section 501(c)(4). 26

U.S.C. 501(c)(3); *see* 26 U.S.C. § 501(c)(4). Section 501(c)(4) provides churches with an alternative means to participate in political campaigns. *Branch Ministries*, 211 F.3d at 143 (citing *Taxation with Representation*, 461 U.S. at 540 (Blackmun, J., concurring)) ("[T]he availability of such an alternate means of communication is essential to the constitutionality of section 501(c)(3)'s restrictions on lobbying."). Section 501(c)(4) allows religious organizations to continue their section 501(c)(3) status for "nonlobbying activities," while using section 501(c)(4) status to participate politically. *Id.*

The denial of subsidization of constitutional rights does not equate to a constitutional violation. *See id.* at 143–44. The tax deductions and exemptions available to section 501(c)(3) organizations, such as exemptions from federal income tax and charitable deductions, are comparable to the effect of a cash grant directly to the organization. *Taxation with Representation*, 461 U.S. at 544; *see* 26 U.S.C. §§ 501(a), (c)(3), 720(c)(2). However, "Congress is not required by the First Amendment to subsidize lobbying." *Taxation with Representation*, 461 U.S. at 546. The dual structure of section 501(c)(3) and section 501(c)(4) allows organizations to participate in political campaigns without the use of public funds for such activities. *Id.* at 545. This relationship is dispositive of Covenant Truth Church's First Amendment claim. *See id.* at 553–54 (Blackmun, J., concurring) ("The constitutional defect that would inhere in § 501(c)(3) alone is avoided by § 501(c)(4)."). The interaction between the two sections highlights Congress' intent to avoid the payment of political participation through deductible contributions. *Id.* at 553.

Here, there is no evidence that Covenant Truth Church is also classified under section 501(c)(4). All that is required for an organization to coexist under both sections is to be separately incorporated and maintain records showing deductible contributions have not been used to fund political intervention. *Branch Ministries*, 211 F.3d at 143; *Taxation with Representation*, 461 U.S.

at 554. Congress has broad authority to determine how the tax classifications operate and work together, and it is Congress's responsibility to determine what activities to subsidize and what advantages each organization type should receive. *See Taxation with Representation*, 461 U.S. at 550 ("But Congress . . . has authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying, and other disadvantages that might accompany that lobbying."). Therefore, this Court should find that the Johnson Amendment does not create a substantial burden on the Free Exercise rights of section 501(c)(3) organizations.

2. The Johnson Amendment is neutral because it is not directed at religious practices and does not discriminate against other section 501(c)(3) organizations based on religion or denomination.

For a regulation to be "neutral," it cannot be specifically directed at or against a certain religious practice. *Kennedy*, 597 U.S. at 526. "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 593 U.S. at 533. Section 501(c)(3) does not restrict religious practices because of their religious nature but because of their political nature. The purpose of section 501(c)(3) is to restrict certain organizations' ability to speak about specific candidates or campaigns, but it does not prohibit those organizations from speaking freely on controversial, public, or political matters. Eric R. Swibel, *Churches and Campaign Intervention: Why the Tax Man is Right and How Congress Can Improve His Reputation*, 57 Emory L.J. 1605, 1606–07 (2008). Section 501(c)(3) "ensures that government subsidization of organizations through tax collection does not extend to certain partisan activity." *Id.*

Section 501(c)(3) is neutral. *Branch Ministries*, 211 F.3d at 144 ("The restrictions imposed by section 501(c)(3) are viewpoint neutral . . . ."). The Johnson Amendment does not state that only

those practicing The Everlight Dominion cannot intervene in political campaigns. Nor does the amendment specify that only specific religions are subject to the conditional requirement. Rather, the amendment says all organizations under its subsection, such as those that are educational, religious, scientific, literary, or otherwise, are prohibited from participating in political campaigns. *See* 26 U.S.C. § 501(c)(3). All religious and secular organizations classified under section 501(c)(3) are subject to the same requirements as Covenant. *See* 26 U.S.C. § 501(c)(3). For purposes of the statute, it does not matter whether Covenant Truth Church is a religious organization that requires its leaders to participate in political campaigns or if it is a secular organization that requires its leaders to participate in political campaigns. Both organizations in either scenario are subject to the same requirements. The application of section 501(c)(3) is not aimed at burdening religious organizations but rather neutrally ensuring taxpayer dollars are spent appropriately. Therefore, this Court should find section 501(c)(3) neutral under the First Amendment.

3. The Johnson Amendment is generally applicable because it applies to every section 501(c)(3) organization.

For a regulation to be "generally applicable," it must apply equally to every individual, organization, or affected party. *Fulton*, 593 U.S. at 533–34 (holding that a law is not generally applicable "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests" or if it provides "a mechanism for individualized exemptions."); *see Kennedy*, 597 U.S. at 526. When there is an option for individuals or organizations to opt out of a certain regulation or policy provision, that provision is not "generally applicable" under the First Amendment. *See Fulton*, 593 U.S. at 534.

Here, section 501(c)(3) is generally applicable. *Branch Ministries*, 211 F.3d at 144 ("The restrictions imposed by section 501(c)(3) . . . prohibit intervention in favor of all candidates for

public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint."). As previously mentioned, section 501(c)(3)'s conditional requirement applies to all section 501(c)(3) organizations, regardless of religious affiliation. Congress has had the opportunity to impose exceptions and has declined to do so. R. at 3. Because the Johnson Amendment applies to all organizations involved, it is generally applicable under the First Amendment. Therefore, this Court should find that the Johnson Amendment is both neutral and generally applicable and should further find the Johnson Amendment constitutional under the First Amendment.

CONCLUSION

For the foregoing reasons, Petitioners request this Court to REVERSE the judgment of the United States Court of Appeals for the Fourteenth Circuit regarding both issues.

Respectfully submitted,

/s/ Team 3
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