CASE NO. 26–1779

IN THE

Supreme Court of the United States

SPRING TERM 2026

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

-versus-

COVENANT TRUTH CHURCH,
Respondent.

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

BRIEF FOR PETITIONERS

ORAL ARGUMENT REQUESTED

Team No. 31
Counsel for Petitioners

QUESTIONS PRESENTED

I. Under the Tax Anti-Injunction Act and Article III of the Constitution, does Covenant Truth Church lack standing in federal court when the IRS selected it for a random audit, no change in its tax status has occurred, and the IRS has expressed that it does not intend to enforce the Johnson Amendment against houses of worship?

II. Under the Establishment Clause of the First Amendment, is the Johnson Amendment unconstitutional when it refuses to subsidize non-profit organizations that intervene in politics, applies equally to both religious and nonreligious non-profits, and has had Congressional approval for over seventy years?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

Federal Court Cases

Constitutional Provisions

Statutes

Other Authorities

OPINIONS BELOW

The opinion of the United States District Court of Wythe is unreported and not available in the record. The opinion of the United States Court of Appeals for the Fourteenth Circuit affirming the standing and Establishment Clause issue is reported at *Bessent v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025). R. at 1–16.

JURISDICTIONAL STATEMENT

This Court granted certiorari to review the decision held in *Bessent v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025). R. at 16. 28 U.S.C. § 1254(1) provides that cases from the courts of appeals may be reviewed by the Supreme Court "by writ of certiorari granted upon the petition of any party to any civil [action]." Therefore, while this brief will explain why the District Court for the District of Wythe did not have jurisdiction, because this Court has granted certiorari to hear arguments, this Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Regarding applicable constitutional provisions, this case raises issues under the Establishment Clause of the First Amendment and Article III of the Constitution. U.S. Const. Amend I; U.S. Const. Art. III. Regarding statutory authority, this case raises issues regarding 26 U.S.C. § 501(c)(3) and 26 U.S.C. § 7421(a).

STATEMENT OF THE CASE

The role of the Internal Revenue Service (IRS), Petitioners in this case, is to ensure fairness and accuracy in the administration of federal tax laws. This role is often accompanied by the duty to ensure compliance with applicable tax provisions, such as 26 U.S.C. § 501(c)(3). This provision of the tax code, as an act of legislative grace, provides tax exempt status for certain non-profit organizations, helping to foster charity and promote the common good of the nation. R. at 2. One provision of this legislation, often coined the Johnson Amendment, prevents organizations with such benefits from intermingling their charitable purposes with partisan politics. R. at 2.

For seventy years, Congress has supported the Johnson Amendment's implementation to help separate non-profit organizations from the temptations of political donor influence. R. at 3. In 1954, then-senator Lyndon B. Johnson proposed an amendment to 26 U.S.C. § 501(c)(3) mandating that 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. Without debate, Congress passed the Johnson Amendment to the Internal Revenue Code (IRC). R. at 2. Since its enactment, Congress had many opportunities to eliminate the Johnson Amendment or create an exception that would allow religious organizations to participate in political campaigns. R. at 2–3. However, despite opposing legislation being introduced every year since 2017, Congress has continued to support the goals of the Johnson Amendment. R. at 3.

Respondent Covenant Truth Church (Covenant Truth) is the largest church practicing The Everlight Dominion religion, a centuries-old religion that embraces a "wide array of progressive social values." R. at 3. One of those values is the requirement of its leaders and

churches to participate in political campaigns and pledge support to candidates that align with those progressive beliefs. R. at 3. Part of that participation includes outright endorsement of candidates and even encouraging citizens to donate and volunteer for particular campaigns. R. at 3. Covenant Truth has grown substantially since its pastor, Pastor Vale, joined the congregation in 2018, resulting in an increase from a few hundred members to nearly 15,000 in 2024. R. at 4. Additionally, Covenant Truth's podcast is currently the fourth-most listened to within the State of Wythe and the nineteenth-most listened to within the United States, with millions of downloads. R. at 4. The podcast is not only used to deliver sermons, but also to educate the public on the Everlight Dominion religion, and Pastor Vale has used it as a forum to deliver political messages. R. at 4.

The IRS conducts random audits of Section 501(c)(3) organizations to ensure compliance with the IRC. R. at 5. These audits are conducted at random, and Covenant Truth was selected for an audit on May 1, 2024. R. at 5. Given the timing of the audit, Pastor Vale "became concerned that the IRS would discover the Church's political involvement" and revoke its Section 501(c)(3) status. R. at 5. This was because, earlier that year, Pastor Vale endorsed Congressman Samuel Davis on behalf of Covenant Truth for an upcoming, and important, election within the state of Wythe. R. at 5. Pastor Vale announced his intentions to later give a sermon on why Congressman Davis's values aligned with the Everlight Dominion. R. at 5.

However, it is well known that the IRS does not regularly enforce the Johnson Amendment, and many 501(c)(3) organizations, such as newspapers, endorse political candidates without facing consequences. R. at 8. The IRS has traditionally refrained from enforcing the Johnson Amendment against houses of worship. R. at 14. In fact, the IRS has entered into a legally-binding consent decree, explaining that it will not enforce the Johnson Amendment

"when a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services." R. at 14.

Despite this pattern of non-enforcement, on May 15, 2024, Covenant Truth filed a lawsuit within the District Court for the District of Wythe against the IRS, seeking a permanent injunction prohibiting enforcement of the Johnson Amendment on the grounds that it violates the Establishment Clause of the First Amendment. R. at 5. Covenant Truth filed the lawsuit before the IRS had finished conducting its audit or made any determination on Covenant Truth's tax-exempt status. R. at 5. Nor did Covenant Truth exhaust any of the available administrative remedies before running to court. R. at 13.

The IRS filed a response denying the claims, and Covenant Truth moved for summary judgment. R. at 5. The District Court held that (1) Covenant Truth had standing to challenge the Johnson Amendment, and (2) that the Johnson Amendment was a violation of the Establishment Clause. R. at 5. The District Court entered the order for Covenant Truth's permanent injunction. R. at 5–6. The IRS appealed to the United States Court of Appeals for the Fourteenth Circuit, which affirmed the decision of the District Court. R. at 2. This Court subsequently granted IRS's petition for certiorari for both the standing and First Amendment issues. R. at 17. The IRS asks this Court to reverse the decisions of the lower court.

SUMMARY OF THE ARGUMENT

This case is about whether this Court should require Congress's legislative grace in granting non-profits tax-exemptions to subsidize Covenant Truth's eager participation in hyper-partisan politics. Furthermore, to do so, this Court would have to contort Congress's intent of requiring litigants to file suit in federal court *after* an unfavorable tax decision, and not before an IRS audit has even finished. This Court should refrain from such a deviation.

Covenant Truth faults at every hurdle it must jump through in this case. First, the Tax Anti-Injunction Act (AIA) bars Covenant Truth's suit. The AIA was passed to promote judicial and administrative efficiency by prohibiting claimants from filing a suit to contest the collection of any tax. Here, that is precisely what Covenant Truth seeks to do–to prevent the IRS from revoking their Section 501(c)(3) status. Furthermore, Covenant Truth has failed to demonstrate that any exception to the AIA is applicable. While a claimant is able to circumvent the AIA if they can demonstrate either (1) a likelihood of success on the merits and risk of irreparable harm, or (2) that no other legal remedy is available, Covenant Truth has not met its burden for either of these. First, as explained below, Covenant Truth fails on its Establishment Clause claim, and mere monetary injury is not traditionally considered irreparable harm. Second, Covenant Truth cannot manufacture its own "lack of legal remedy" by filing a suit that is not yet ripe for review. The IRS has not revoked Covenant Truth's tax-exempt status, nor has Covenant Truth exhausted any necessary administrative or statutory remedy.

Even if the statute does not bar Covenant Truth's suit, it still lacks Article III Standing for failure to allege an injury in fact. Standing requires (1) an injury in fact, (2) traceable to the action of the IRS, and (3) a likelihood of favorable redress in court. When raising a pre-enforcement challenge, a claimant demonstrates an injury in fact by showing there is a substantial threat of injury to a constitutional right that is arguably proscribed by the challenged statute. Here, there is no substantial threat of injury to Covenant Truth's First Amendment rights. Not only has the IRS entered a consent decree, expressing its intent to not enforce the Johnson Amendment against houses of worship, but the audit Covenant Truth was selected for was entirely at random. Furthermore, it is possible that the investigation of the IRS does not even

pertain to Covenant Truth's tax status, but instead focuses on their unrelated business income, which does not fall under the 501(c)(3) tax deduction umbrella.

Even if this Court held that Covenant Truth has standing, the IRS still wins because the Johnson Amendment fits squarely within the bounds of both of this Court's tests under Establishment Clause jurisprudence. First, a government tax exemption is constitutional under the Establishment Clause–and strict scrutiny does not apply–if it is justified by a secular purpose and applied neutrally to all types of organizations. For over seventy years, the Johnson Amendment has been approved by Congress as a quintessential wall between church and state. It severs the undue influence of devious political donors from the sacred mission of non-profits and safeguards against taxpayers being forced to subsidize political speech they disagree with. Furthermore, the Johnson Amendment is neutrally applied to both religious and non-religious non-profits. Therefore, the Johnson Amendment is secular and neutral, meaning it avoids strict scrutiny. Yet, even if strict scrutiny applies, the Johnson Amendment is narrowly tailored to its compelling secular interests.

Second, the Johnson Amendment is also constitutional because it is consistent with this nation's history and Tradition of the Establishment Clause. The founding generation rejected England's political influence on religious institutions, and thus they crafted the Establishment Clause to erect a barrier between politics and religion. The Johnson Amendment furthers those fundamental principles and strengthens the wall between church and state. Additionally, there is a history and tradition of neutral, secular, and generally applicable laws foreclosing tax benefits to particular religious beliefs. Finally, Covenant Truth can point to no history and tradition proving organizations are entitled to tax benefits for their proactive involvement in politics. Rather, this Court has recognized that tax exemptions are an act of legislative grace and should

only be implemented if they are justified by a secular purpose and applied neutrally to all beliefs. Therefore, this Court should hold that the Johnson Amendment does not violate the Establishment Clause and reverse the decision of the lower court.

STANDARD OF REVIEW

When reviewing a district court's decision to grant or deny summary judgment, the standard of review is *de novo*. *See generally Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Summary judgment is appropriate when there are no genuine issues of material fact in dispute and the moving party is entitled to a judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). When deciding motions for summary judgment, the court must view the evidence and draw all reasonable inferences in favor of the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The issue of Article III Standing is also reviewed *de novo*. *See Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142 (9th Cir. 2024) ("The existence of a case or controversy is a question of law we review de novo.") (internal citations omitted); *see also Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006) ("Ripeness is a question of law that implicates this court's subject matter jurisdiction, which we review de novo.").

ARGUMENT

The First Amendment of the Constitution mandates that "Congress shall make no law respecting an establishment of religion." U.S. Const. Amend I. The "risk of politicizing religion" is inherent to the understanding and purpose of the Establishment Clause. *Larson v. Valente*, 456 U.S. 228, 254 (1982) This is because "ours is a nation of enormous heterogeneity in respect of political views, moral codes, and religious persuasions." *Gillette v. United States*, 401 U.S. 437, 457 (1971). Thus, it is the government's role, including that of the IRS, to ensure that politics and religion stay in separate and distinct spheres of American life.

In general, non-profit organizations do not have to pay federal income taxes, and donations to those organizations are tax-deductible. 26 U.S.C. § 501(c)(3). However, the Johnson Amendment conditions those benefits on the requirement that the organization "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." *Id.* "Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." *Christian Echoes Nat'l Ministries Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972) (citing *Dickinson v. United States*, 346 U.S. 389, 395 (1953)). The limitations in Section 501(c)(3) "stem from the Congressional policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to . . . affect a political campaign should not be subsidized." *Christian Echoes*, 470 F. 2d at 854.

When the IRS denies extending Section 501(c)(3) status to a particular non-profit, a court can only extend relief to that organization if it has standing. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992). Therefore, this Court should reverse the decision of the lower court for two reasons. First, Covenant Truth's suit need not even reach the merits because it is barred by the Anti-Injunction Act and Covenant Truth lacks Article III standing. Second, even if this Court

were to find standing in this case, the Johnson Amendment does not violate the Establishment Clause because it is a neutrally applied and secularly justified condition on tax benefits that is consistent with this nation's history and tradition.

I. COVENANT TRUTH LACKS STANDING IN FEDERAL COURT BECAUSE ITS SUIT IS BARRED BY THE TAX ANTI-INJUNCTION ACT AND FAILS THE REQUIREMENTS OF ARTICLE III STANDING.

The role of the IRS is to ensure fairness and accuracy in the administration of federal tax laws. This role is often accompanied by the duty to ensure compliance with applicable tax provisions, such as 26 U.S.C. § 501(c)(3). When a complainant seeks to challenge a decision of the IRS pertaining to their tax status within federal court, they must ensure two things: (1) that their claim is not barred by the AIA, 26 U.S.C. § 7421(a), and (2) that they have Article III Standing to bring their suit. U.S. Const. Art. I, § 2, cl. 1. Covenant Truth fails to meet both of these hurdles.

A. Covenant Truth's suit is barred under the Tax Anti-Injunction Act because its primary purpose is to challenge the lay and collection of a tax and no applicable exception to the Tax Anti-Injunction Act applies.

Congress passed the AIA to guard against excessive tax litigation and to ensure consistent administrative outcomes. Cong. Rsch. Serv., *CIC Services v. Internal Revenue Service: Interpreting the Tax Anti–Injunction Act*, CRS Legal Sidebar (Feb. 23, 2021), https://www.congress.gov/crs-product/LSB10576. It was created as an "exception to the general administrative law rule permitting pre-enforcement judicial review of administrative actions in federal courts." *Id.* The AIA was designed to "protect federal revenues and support efficient tax administration by postponing litigation to contest assessment and collection." *Id*. This law ensures judicial efficiency and guards against a flood of litigation by "requir[ing] lawsuits challenging taxes to be made only after paying the disputed tax and filing a claim for refund." *Id*.

The AIA applies to any suit for the lay or collection of tax, barring any type of premature litigation. 26 U.S.C. § 7421(a). There are, however, a few narrow exceptions to this rule. *Alexander v. "Ams. United" Inc.*, 416 U.S. 752, 758 (1974). These exceptions include: (1) whether the challenging party can demonstrate both a likelihood of success on the merits and that they are likely to suffer irreparable injury absent the pre-enforcement challenge, or (2) whether no alternative legal remedy exists. *Id.*; *South Carolina v. Regan*, 465 U.S. 367, 378 (1984) (hereinafter Regan I). Here, not only does this suit pertain to the lay and collection of tax, but Covenant Truth has also failed to establish that either exception to the AIA is applicable.

1. The primary purpose of Covenant Truth's lawsuit is to prevent the lay or collection of tax because it is seeking to protect its tax-exempt status under 26 U.S.C. 501(c)(3).

The AIA states that "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). To determine whether a suit is barred by the AIA, courts analyze whether "a primary purpose" of the suit is to prevent the collection or assessment of a tax. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974). For example, courts must ask whether the requested relief would "directly prevent the collection of . . . income taxes," and "on the basis of this fact alone, the 'purpose' of the suit is indeed to restrain 'the assessment or collection of [a] tax." *Id.* at 750–51 (Blackmun, J., concurring).

Furthermore, when considering the suit's purpose, the court inquires "not into the taxpayer's subjective motive, but into the actions' objective aim–essentially, the relief the suit requests." *CIC Servs., LLC v. Internal Revenue Serv.*, 593 U.S. 209, 217 (2021). This is because probing a taxpayer's "innermost reasons" for the lawsuit leaves "too much potential for circumventing the act." *Id.* Instead, the court should look to the face of the taxpayer's complaint.

Id. Ultimately, any suit seeking injunctive relief against a tax "falls squarely within the scope of the [AIA]." *Bob Jones, 416 U.S. at 732.*

In *Bob Jones*, a university challenged the revocation of its tax-exempt status after refusing to admit African American students. *Id.* at 735. The university stated that "God intended segregation of the races and that the Scriptures forbid interracial marriage," and refusing to admit African American students helped prevent interracial dating on campus. *Id.* at 735. The IRS had previously announced that it would not extend 501(c)(3) status "for private schools maintaining racially discriminatory admissions policies and that it would no longer treat contributions to such schools as tax deductible." *Id.* Therefore, by refusing to admit these students, the university was ineligible for its tax-exempt status, and it was revoked. *Id.* The university challenged the revocation as a violation of its First Amendment rights and sought an injunction to reinstate its status. *Id.* at 736. Despite its First Amendment claims, the Supreme Court found that the university's suit was barred by the AIA, holding that both the payment of federal income tax and any tax deductions accompanied by a 501(c)(3) status "falls within the literal scope and the purposes of the [AIA]." *Id.* at 739.

Here, just as the university's challenge to its tax-exempt status in *Bob Jones* was a challenge to the lay and collection of tax, Covenant Truth's challenge to its tax-exempt status directly challenges the substance of the AIA. The potential tax consequences are identical to *Bob Jones*–loss of 501(c)(3) status, which is accompanied by federal income tax and loss of deductions for charitable contributions. The record explicitly recognizes that after being audited, Pastor Vale "became concerned that the IRS would discover his and Covenant Truth Church's political involvement and revoke the church's Section 501(c)(3) tax classification." R. at 5. Therefore, since this Court has already established that challenging the revocation of an

organization's 501(c)(3) status is challenging the lay or collection of tax under the AIA, this suit is barred by the statute.

In contrast, in *CIC Services*, the AIA did not bar a suit because the relief requested was separate and apart from any tax collection or penalty. *CIC Servs.,* 593 U.S. at 220. CIC Services challenged a Notice published by the IRS requiring taxpayers to report any "micro-captive transactions" or face tax penalties. *Id.* at 213. CIC Services sought an injunction against the Notice's enforcement, alleging that it was a violation of the Administrative Procedure Act. *Id.* This Court held that, since CIC Services was only challenging the legality of the reporting procedures, and not the tax penalty itself, the suit was not within the scope of the AIA. *Id.* at 209. Since the substance of the suit was against the reporting requirement, and the tax was merely an enforcement mechanism of the reporting requirement, the suit was not barred. *Id.*

In this case, unlike in *CIC Services*, Covenant Truth is making a direct challenge to its tax status. Covenant Truth "filed this suit seeking a permanent injunction prohibiting enforcement of the Johnson Amendment." R. 5. Thus, unlike the petitioners in *CIC Services* where CIC Services challenged the reporting procedures alone and not the tax penalty, Covenant Truth is not challenging a substantive law that happens to be accompanied by a tax penalty, but it is challenging the tax code itself. Where the "tax" in question in *CIC Services* was a mere enforcement mechanism of the problematic legislation at issue, here, the tax is baked into the cake of the Johnson Amendment. The heart of Covenant Truth's complaint is concern over the income tax it will be required to pay, should the IRS revoke its status. Therefore, a tax is the core challenge of Covenant Truth's lawsuit, rather than an incidental means of enforcement. Thus, the AIA applies.

Covenant Truth may assert that it is not challenging the collection of a tax but instead the constitutional implications of the Johnson Amendment. However, just because the tax implications are downstream of a constitutional challenge does not mean the suit is not barred by the AIA. If this were the case, careful pleading would always be able to circumvent the AIA and gut its very purpose–preventing taxpayers from immediately filing suit in federal court, rather than pursuing a refund suit. In other words, any plaintiff could claim a constitutional challenge and cut in line to bring their challenge in federal court. To implement consistent results, the AIA "kicks in when the target of a requested injunction is a tax obligation–or stated in the Act's language, when that injunction runs against the 'collection or assessment of [a] tax.'" *CIC Servs.,* 593 U.S. at 218. Therefore, in looking at the "relief requested," it is evident that Covenant Truth's suit is a direct challenge to the amount of taxes it will be required to pay. *Alexander*, 416 U.S. at 761.

2. No exceptions to the AIA apply to Covenant Truth's suit.

To circumvent the AIA, a complainant must demonstrate that their suit falls within an appropriate exception. For the first exception, the AIA bars lawsuits unless (1) the plaintiff is certain to succeed on the merits; and (2) the plaintiff will suffer irreparable harm in the absence of an injunction. *Alexander*, 416 U.S. at 758. The AIA also does not bar a lawsuit where there is no other legal remedy available. *Regan I*, 465 U.S. at 378. The party bringing the suit must bear the "heavy burden of demonstrating that under no circumstances could the Government prevail." *McCabe v. Alexander*, 526 F.2d 963, 965 (5th Cir. 1976). Covenant Truth has not met the burden of establishing a likelihood of success on the merits, that it will suffer irreparable harm absent an injunction, or that there is a lack of adequate legal remedy.

a. Covenant Truth has not demonstrated a likelihood of success on the merits.

As explained more fully in succeeding sections of this brief, Covenant Truth cannot meet its heavy burden of proving a likelihood of success on the merits that the Johnson Amendment does not violate the Establishment Clause of the First Amendment. Government tax exemptions do not violate the Establishment Clause if they are implemented for a secular purpose and are applied neutrally to all types of organizations. *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 673 (1970). Here, the Johnson Amendment's condition that non-profit organizations only gain 501(c)(3) status if they do not intervene in politics is inherently secular in nature. The clear attempt to separate politics and religion is justified through nonreligious motivations, highlighting its secular nature. Furthermore, the Johnson Amendment is neutral because it applies to all types of non-profits, both religious and nonreligious alike.

A government tax exemption may also be constitutional if it is consistent with the history and tradition of the Establishment Clause. *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 535 (2022). The founding generation was particularly concerned with the undue influence of politics in religion, and therefore was firm in their conviction to separate the two to avoid "political tyranny." *McGowen v. Maryland*, 366 U.S. 420, 430 (1961). The Johnson Amendment's plain language directly supports those values. To show that it is likely to succeed on the merits, Covenant Truth would have this Court dispose of a seventy-year tax provision that has deep justifications in the history and tradition of this nation. Therefore, Covenant Truth is not likely to meet its high burden of showing it is likely to succeed on the merits of its First Amendment challenge to the Johnson Amendment.

b. Covenant Truth will not suffer irreparable harm absent an injunction, and instead can seek proper recourse through a refund suit or other regular administrative procedures.

There is also no risk of irreparable harm present in this suit. First, monetary injury alone is not typically considered "irreparable harm" for purposes of an injunction. *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (stating that "[i]t is well established, however, that . . . monetary injury is not normally considered irreparable."); *see also Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.").

While it would be undoubtedly more convenient for Covenant Truth to raise a pre-enforcement challenge to the IRS's audit process, this does not mean that Covenant Truth faces a risk beyond repair. Instead, Covenant Truth must wait, as any other party challenging an IRS decision, and file a refund suit *if* the IRS decides to revoke its tax-exempt status. Should Covenant Truth prevail on the merits, a refund suit provides the necessary relief. *See United States v. Am. Friends Serv. Comm.*, 419 U.S. 7, 11 (1974) (stating that the complainant "will have a 'full opportunity to litigate' their tax liability in a refund suit . . . even though the remitting of the employees to a refund action may frustrate their chosen method of bearing witness to their religious convictions, a chosen method which they insist is constitutionally protected, the bar of the Anti-Injunction Act is not removed."); *Bob Jones,* 416 U.S. at 746–47 (stating that a refund suit, petitioning the Tax Court, and other administrative remedies "offer [a

complainant] a full, albeit delayed, opportunity to litigate the legality of the Service's revocation").

Here, the lower court made clear that Covenant Truth filed its lawsuit before the IRS ever made any decision to keep or change its 501(c)(3) status. However, even if the IRS did change Covenant Truth's tax status, it can easily be reimbursed through a refund suit, or subsequently seeking damages in federal court, if it happens to be correct on the Establishment Clause merits. Therefore, there is no threat of irreparable harm.

c. There is an adequate legal remedy available when, or *if*, Covenant Truth's issue becomes ripe for review.

The Supreme Court stated that "[the AIA's] purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *Regan I*, 465 U.S. at 378. The general rule provides that "[t]he remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden." *Id.* (citing *Snyder v. Marks,* 109 U.S. 189, 193 (1883)). In other words, the AIA requires taxpayers to litigate their claims through administrative avenues before suing in federal court. *Id.* Thus, when challenging the lay or collection of tax, Congress has explicitly stated that taxpayers should not attempt to "restrain collections," but rather they must seek recourse after the tax is already collected. *Hibbs v. Winn*, 542 U.S. 88, 90 (2004).

In a suit challenging an organization's 501(c)(3) status, a multitude of remedies exist. First, traditional "refund suits" have consistently been utilized to recover taxes from a change in tax status. *Bob Jones,* 416 U.S. at 746–47. Second, Congress enacted 26 U.S.C. § 7428 to provide parties with an additional avenue of relief if exhausting administrative remedies did not give them their desired result. This statute allows them to seek declaratory judgment from federal

court pertaining to their tax status. 26 U.S.C. § 7428. Both the administrative remedies and the statutory remedy are available to a party should they suffer an actual injury by losing 501(c)(3) tax status. 26 U.S.C. § 7428.

However, these methods of relief first require the complainant to have an actual controversy–or loss–regarding their tax status.[1] Here, the only reason that Covenant Truth cannot yet pursue these methods of relief is because its issue is not yet ripe for review, as there has not been an actual controversy pertaining to its tax status. However, Covenant Truth cannot manufacture a lack of remedy by merely filing its suit prematurely.

Turning to the first legal remedy available, refund suits are commonly recognized as an appropriate remedy when challenging the constitutionality of the federal tax code. *See Cheek v. United States,* 498 U.S. 192, 195 n.4 (1991) (stating that "a person could challenge the constitutionality of the system by suing for a refund after the taxes had been withheld"). While it may be "slow and unsatisfactory from the taxpayer's point of view," it nonetheless "still provide[s] a forum which judicial review of the legality of actions of the IRS could be obtained." *Am. Friends*, 419 U.S. at 14 n.3 (Douglas, J., dissenting) (citing *Commissioner v. "Ams. United" Inc.*, 416 U.S. 752, 761–62 (1974)).

Second, in addition to a refund suit, 26 U.S.C. § 7428 was established to provide relief to tax-exempt organizations whose status is in jeopardy by providing an avenue to seek a declaratory judgment in federal court *after* exhausting all administrative remedies. *Urantia Found. v. C.I.R.*, 684 F.2d 521, 524 (7th Cir. 1982). This legislation was in direct response to *Bob Jones* and similar cases, where the Supreme Court held that the organizations could only

[1] Both the language of 26 U.S.C. § 7428, and traditional principles of ripeness, require an "actual controversy" to be present and to avoid "premature adjudication." *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 148 (1967).

obtain relief through a refund. *Id.* A refund suit alone was "perceived to create a harsh situation for charitable organizations" that were negatively impacted by the IRS ruling on its tax status. *Id.* Therefore, § 7428 was "designed" to provide "a declaratory judgment procedure under which an organization can obtain a judicial determination of its own status as an eligible charitable contribution donee" after exhausting all administrative remedies. *Id.* at 524 (citing its extensive legislative history). Congress could have provided a means for litigants to raise a pre-enforcement challenge to their tax status. But it did not.

In *Regan I*, this Court clarified that the AIA does not bar a suit where no other avenue for relief exists. *Regan I*, 465 U.S. at 367. The state of South Carolina challenged a tax provision by claiming that it was a violation of the Tenth Amendment. *Regan I*, 465 U.S. at 372. The Supreme Court held that the suit was not barred by the AIA because the law did not result in South Carolina incurring tax liability, and therefore "the state will be unable to utilize any statutory procedure to contest the constitutionality" of the law. *Id.* at 367. This Court also noted that South Carolina would have to rely on a citizen challenging the law if the AIA barred the suit, and Congress did not intend the AIA to "apply where an aggrieved party would be required to depend on the mere possibility of persuading a third party to assert his claims." *Id.* Therefore, because South Carolina was not able to utilize internal administrative procedures to challenge the tax, and would have to instead rely on a third party to bring the challenge, there was no adequate legal remedy available and therefore the AIA did not bar the challenge. *Id.*

Here, since Covenant Truth does have alternative avenues for legal relief, the AIA bars its First Amendment challenge. On May 15, 2024, Covenant Truth filed suit seeking a permanent injunction prohibiting enforcement of the Johnson Amendment. However, it did so before the IRS had made any decision regarding its tax status. In other words, Covenant Truth did not wait

to see whether the IRS was even going to strip its tax-exempt status or not, nor did it go through the important administrative procedures before fleeing to court. Unlike the state in *Regan I*, Covenant Truth is able to utilize statutory and administrative procedures to contest the constitutionality of the Johnson Amendment, *and* it does not have to rely on any third party to bring its claims.[2] More particularly, Covenant Truth is able to file for a refund suit, and subsequently seek relief under 26 U.S.C. § 7428 once, and if, its controversy becomes ripe. However, § 7428 requires Covenant Truth to first exhaust all administrative remedies. *See* 26 U.S.C. § 7428(b). These remedies remain available to Covenant Truth should the IRS decide to revoke it of its 501(c)(3) status.

Knowing all of this, Covenant Truth attempts to manufacture a lack of legal remedy by filing its lawsuit prematurely. The lower court asserted that Covenant Truth has no adequate legal remedy to challenge the Johnson Amendment because the IRC "only allows an organization to challenge an actual controversy respecting an organization's tax classification . . . [here], the IRS has not yet conducted an audit and Appellee's tax classification remains unchanged." R. at 5. The lower court is correct in noting that the IRC only allows an organization to challenge an *actual controversy*, which is lacking here. However, this does not mean there is no adequate legal remedy for Covenant Truth, but rather, it merely emphasizes that its case is not yet ripe for review. The lower court asserting that "[b]ecause [Covenant Truth's] classification as a Section 501(c)(3) organization is intact, IRS procedures and Section 7428 provide no avenue for relief," mistakes an unripe issue for one that is fit for pre-enforcement equitable relief. R. at 7.

[2] An exhaustion of administrative procedures includes filing a timely protest letter, communicating regularly with the IRS, submitting all documents requested by the IRS, and awaiting a final determination. Reg. 601.201(n)(7)(v)(b).

This case is not ripe for review because there is no actual controversy regarding Covenant Truth's tax status. A federal court lacks jurisdiction if a complaint does not demonstrate a "substantial controversy between parties having adverse legal interests" that are of "sufficient immediacy and reality." *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). Section 7428(a) of the Code vests the United States Court of Federal Claims with jurisdiction to "grant relief in cases of actual controversy involving the revocation of a taxpayer's tax-exempt classification." *Found. of Hum. Understanding v. United States*, 88 Fed. Cl. 203, 208 (2009), aff'd, 614 F.3d 1383 (Fed. Cir. 2010); see *Alearis, Inc. v. United States*, 158 Fed. Cl. 64, 67 (2022), aff'd, No. 2022-1376, 2023 WL 1878577 (Fed. Cir. Feb. 10, 2023) (holding that there was no actual controversy because "[p]laintiff [did] not have an official IRS determination to contest"); *Founding Church of Scientology of Wash., D.C., Inc. v. United States*, 26 Fed. Cl. 244, 247 (1992) (stating that no actual controversy existed where the IRS never proposed to revoke a prior ruling regarding a church's tax exempt status); *CREATE, Inc. v. Commissioner*, 634 F.2d 803, 813–815 (5th Cir. 1981) (holding there was no actual controversy where the IRS's determinations did not result in any immediate tax consequences).

This case falls within the same theme–there has been no action on behalf of the IRS that has resulted in *any* tax consequences. This case is *Bob Jones*, but without an issue that is ripe for review. In *Bob Jones*, the Supreme Court stated that, after having its tax-exempt status revoked, the university was not without access to judicial review, and could pursue a refund suit and exhaust internal review procedures. *Bob Jones,* 416 U.S. at 746–47. These are the exact same remedies available to Covenant Truth, should it actually lose its tax-exempt status. Covenant Truth cannot use the fact that its suit is not yet ripe for review as a means to argue that it has no adequate remedy available. What Covenant Truth attempts to do is intentionally put its cart

before the horse, and expect this court to intervene on its behalf. Rather, *if* the IRS decides to revoke Covenant Truth's 503(c) status, the proper administrative channels and refund suits exist to remedy this issue.

Therefore, because there exists a multitude of legal remedies for Covenant Truth to pursue if their case becomes ripe, and because they have not pursued the statutory and administrative remedies available to them, they are not without a means of adequate relief. Thus, the AIA applies and bars its suit.

B. Even if the AIA does not bar Covenant Truth's suit, it still lacks Article III Standing because it lacks a sufficient injury.

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const., Art. III, § 2. The doctrine of standing gives meaning to these constitutional limits by "identify[ing] those disputes which are appropriately resolved through the judicial process." *Lujan v. Def. of Wildlife,* 504 U.S. 555, 560 (1992). The doctrine of standing is "built on separation-of-powers principles, [and] serves 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, 408 (2013).

Generally, to establish Article III standing, a plaintiff must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan,* 504 U.S. at 560–56. "An injury sufficient to satisfy Article III must be 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (internal quotations omitted). Here, the IRS concedes that prongs (2) and (3) are satisfied, but argues that Covenant Truth has failed to meet its burden of showing that there is an injury in fact.

1. Covenant Truth has failed to demonstrate an injury in fact because there is no substantial threat of future enforcement by the IRS against Covenant Truth or any other house of worship.

In the instance of a pre-enforcement challenge, a plaintiff must establish an injury-in-fact by demonstrating that the government: (1) intends to engage in a course of conduct arguably affected with a constitutional interest, (2) the intended future conduct is "arguably proscribed'" by the challenged policy, and (3) 'the threat of future enforcement is "substantial." *Susan B. Anthony*, 573 U.S. at 161–64; *see Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979) (stating that "a plaintiff satisfies the injury-in-fact requirement where he 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"). "The party invoking federal jurisdiction bears the burden of establishing standing," and "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof," with the same degree "required at the successive stages of the litigation." *Susan B. Anthony*, 573 U.S. at 158. Here, Covenant Truth has failed to demonstrate an injury in fact because there is no substantial threat of future enforcement.

There exists a substantial threat of future enforcement when a complainant faces a "credible threat" of enforcement and "should not be required to await to undergo a criminal prosecution as the sole means of seeking relief." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 1 (2010). The prospect of future enforcement must be far from "imaginary or speculative." *Babbitt,* 442 U.S. at 298. In contrast, a threat of enforcement is not substantial for standing purposes when the claimant's injury relies on a "speculative chain of possibilities" that requires "guesswork as to how independent decisionmakers will exercise their judgment." *Clapper*, 568 U.S. at 413-14. Here, Covenant Truth has failed to demonstrate that there is a substantial threat

of future enforcement for three reasons. First, the IRS has expressed that it does not intend to enforce the Johnson Amendment against houses of worship. Second, the audit is performed at random and is not deliberately targeted toward Covenant Truth. Third, even if it were not a random audit, it is not clear that the audit is regarding Covenant Truth's tax status.

In *Susan B. Anthony*, a substantial threat of enforcement existed where the complainant demonstrated that (1) there were numerous prior prosecutions and proceedings under the challenged statute, (2) the government refused to disavow enforcement of the challenged provision, and (3) it explicitly threatened proceedings against the complainant. *Susan B. Anthony*, 573 U.S. at 164–65. These three factors allowed this Court to determine that the threat of enforcement was real and imminent, as opposed to "imaginary or speculative." *See Steffel v. Thompson*, 415 U.S. 452, 455-57 (1974) (holding that there was a threat of substantial enforcement when a handbiller was warned to stop distributing pamphlets, was threatened with prosecution if he disobeyed, and had a companion that was prosecuted for similar reasons).

In contrast, here there is not only a lack of history of enforcing the Johnson Amendment against houses of worship, but the IRS has explicitly stated that it does not intend to do so. The IRS has entered into a legally-binding a consent decree[3], "explaining that it will not enforce the Johnson Amendment '[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services.'" R. at 14. Covenant Church need not worry about its podcast, as it stated that this is a customary channel for its sermons and spiritual guidance. R. at 3–5. Therefore, this case is significantly different from the clearly imminent threat in *Susan B. Anthony* and *Steffel*. Not

[3] A consent decree is akin to a "settlement agreement" approved by the court and is "binding and enforceable." Cornell Law School, *Consent Decree*, Legal Info. Inst. (Jan. 10, 2026), https://www.law.cornell.edu/wex/consent_decree.

only has Covenant Truth failed to present evidence of the IRS enforcing the Johnson Amendment against other churches, but the IRS has clearly denounced any intent to.

Furthermore, it is possible that the IRS's audit has nothing to do with the Covenant Truth's tax-exempt status. It is not clear that the IRS is auditing Covenant Truth with the intention of revoking, or calling into question, its tax exempt status. The record states that Covenant Truth was selected for a "random audit," rather than a target or intentional one. R. 5. Furthermore, Covenant Truth has not given sufficient proof to show that the cause of the audit was its interference in Congressman Davis's campaign. Therefore, drawing all inferences in the IRS's favor, this audit did not seek to target Covenant Church's political involvement.

However, even if the audit itself was not random, this also does not imply that the IRS was auditing Covenant Truth for purposes of its tax-exempt status. The IRC allows for the IRS to audit a church for two reasons: (1) if the IRS believes that the church may not be entitled to its tax exempt status, or (2) if a church "may be carrying on an unrelated trade or business . . . or otherwise engaged in activities subject to taxation under this Title." 26 U.S.C. § 7611(a)(1)–(2). Therefore, even if the IRS actively decided to conduct an audit into Covenant Truth's finances, it is possible that the IRS is investigating Covenant Truth's "unrelated trade or business." *See* I.R.S. Pub. No. 598, *Tax on Unrelated Business Income of Exempt Organizations*, 4 (Mar. 2021), https://www.irs.gov/pub/irs-pdf/p598.pdf (an unrelated trade or business is "the income from a trade or business regularly conducted by an exempt organization and not substantially related to the performance by the organization of its exempt purpose or function").

Covenant Truth currently operates one of the most popular podcasts in the United States. R. at 4. In fact, it is the "nineteenth most listened to podcast nationwide" and "draws millions of downloads from across the country." R. at 4. For reference, the Wall Street Journal is currently

ranked as the seventeenth-most listened to, and Dateline NBC is the twenty-third-most listened to. Spotify, *Top 100*, The Podcast Charts (last visited Jan. 16, 2024) https://podcastcharts.byspotify.com/. With such a high performing podcast comes not only immense amounts of influence, but also high levels of revenue through sponsorships, advertisements, listener contributions, and subscriptions. Rex Provost, *The Money Behind the Mic: How Much do Podcasters Make?*, Backstage (July 25, 2025) https://www.backstage.com/magazine/article/how-much-do-podcasters-make-79071/. Some platforms estimate that having a channel with 50,000 or more listeners per episode can bring in about $100,000, or more, a month. *Id.* Additionally, an audit is not a prosecution, it is merely "a formal examination of an organization's or individual's accounts or financial situation." Audit, Miriam Webster, https://www.merriamwebster.com/dictionary/audit (last visited Jan. 12, 2026). Therefore, with the potential for Covenant Truth's podcast to gross such a large amount of revenue, it is only reasonable that the IRS would investigate this potential "unrelated trade or business" to ensure whether such revenue should be tax exempt as well.

Overall, the AIA bars Covenant Truth's suit because it is a textbook definition of a suit for the lay or collection of tax, and no exceptions apply to circumvent the AIA. Even if the AIA did not bar suit, Covenant Truth still lacks Article III standing to challenge the Johnson Amendment because there is no sufficient threat of injury to their tax status under Section 501(c)(3). Congress' legislative grace does not extend to suits filed before IRS audits are complete. This court should reverse the decision of the lower court.

II. EVEN IF THIS COURT HELD THAT COVENANT TRUTH HAS STANDING TO BRING A SUIT, THE JOHNSON AMENDMENT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BECAUSE IT IS A SECULAR, NEUTRAL LAW THAT IS SUPPORTED BY THIS NATION'S HISTORY AND TRADITION.

"The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947). The Johnson Amendment seeks to safeguard this separation by creating incentives for non-profit organizations to remain unsoiled from the dirty money of politics. This "restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation, insulating each from the other." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 676 (1970).

Furthermore, Congress is not required by the First Amendment to subsidize political contributions from non-profit organizations. *See Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 546 (1983) (hereinafter *Regan II*) ("Congress is not required by the First Amendment to subsidize lobbying."); *see also Cammarano v. United States*, 358 U.S. 498, 513 (1959) ("Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the [IRC]."). Therefore, "there is no genuine nexus between tax exemption and establishment of religion." *Walz*, 397 U.S. at 675. Recognizing this reality, two circuit courts have already upheld the constitutionality of the Johnson Amendment. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 145 (D.C. Cir. 2000); *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 857 (10th Cir. 1972).

Under the Establishment Clause of the First Amendment, there are two primary ways that a government aid program or tax exemption condition can pass constitutional muster. First, a tax

exemption does not violate the Establishment Clause when it is neutrally distributed and implemented for a secular purpose. *Agostini v. Felton*, 521 U.S. 203, 231 (1997). Second, that tax exemption may also be constitutional if the original meaning of the Establishment Clause, as supported through reference to historical practices and understandings, allows such exemption. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535–36 (2022).

In this case, the Johnson Amendment is constitutional under both tests. First, the Johnson Amendment conditions 501(c)(3) tax-exempt status for the secular purposes of ensuring the separation of church and state and safeguarding political contributions and religious donations from unnecessary intermeddling. The Johnson Amendment is also neutrally applied to both religious and nonreligious non-profits. Second, history and tradition support tax provisions that financially segregate politics and religion. Therefore, this Court should reverse the decision of the lower court and hold that the Johnson Amendment does not violate the Establishment Clause of the First Amendment.[4]

A. The Johnson Amendment does not violate the Establishment Clause because it is a secularly justified condition on tax benefits that is applied neutrally to all types of non-profit organizations.

"The Establishment Clause stands at least for the proposition that when government activities touch on the religious sphere, they must be secular in purpose, evenhanded in operation, and neutral in primary impact." *Gillette v. United States*, 401 U.S. 437, 450 (1971). In

[4] The lower court cited both the Establishment Clause and Free Exercise Clause of the First Amendment as support for why it held the Johnson Amendment as unconstitutional. *See* R. at 10. However, the Free Exercise Clause is not at issue before this Court because this Court only granted certiorari for an Establishment Clause violation. R. at 17. But, even if this Court wanted to address the Free Exercise Clause, the IRS still wins. This Court in *Employment Division v. Smith* held that laws that are neutral and generally applicable do not violate the Free Exercise Clause. 494 U.S. 872, 879 (1990). In this case, similar to the Establishment Clause analysis, because the Johnson Amendment has secular justifications that apply to both religious and non-religious non-profits, the law is neutral and generally applicable.

other words, a government benefit does not violate the Establishment Clause when it is (1) justified by secular reasoning and (2) neutrally applied. *Id.* In contrast, regulations that discriminate against organizations on purely religious grounds are subject to strict scrutiny. *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Review Comm'n*, 605 U.S. 238, 248 (2025).

A regulation has secular justification when the government's purpose for enacting the regulation is motivated by nonreligious reasons. *See McGowen v. Maryland*, 366 U.S. 420, 436 (1961) (explaining that Sunday Closing Laws do not violate the Establishment Clause because there was a secular, nonreligious justification for them: "they protect all persons from the physical and moral debasement which comes from uninterrupted labor"); *cf. Cath. Charities*, 605 U.S. at 254 (holding invalid a tax exemption that distinguished organizations on theological lines). A good index of secular justification comes when a regulation applies to a "broad spectrum of groups." *Widmar v. Vincent*, 454 U.S. 263, 274 (1981).

Similarly, a regulation is neutral when it is applied to all sects, religious or non-religious, on a nondiscriminatory basis. *Agostini*, 521 U.S. at 231. A government policy will not be considered neutral if it is directed at a specific religious practice or belief. *Kennedy*, 597 U.S. at 526. The "central purpose" of the Establishment Clause is to ensure governmental neutrality in matters of religion. *Gillette*, 401 U.S. at 449. If the government provides a benefit that is secularly justified and neutrally applied, strict scrutiny does not apply, and the government has not violated the Establishment Clause. *Agostini*, 521 U.S. at 231 (1997).

1. Strict scrutiny does not apply to the Johnson Amendment because its justifications are secular, and it is neutrally applied.

The government does not violate the Establishment Clause–and strict scrutiny does not apply–when it grants or denies tax exemptions and those decisions are motivated by secular reasoning. *Walz*, 397 U.S. at 673. In *Walz*, the New York City Tax Commission granted property

tax exemptions to "religious organizations for religious properties used solely for religious worship." *Id.* at 666. This Court held that the exemption did not violate the Establishment Clause because the "legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility." *Id.* at 672. More specifically, religious organizations have a "harmonious relationship to the community at large," help stabilize community life, foster moral and mental improvement, and further the public interest. *Id.* at 672–73. And, because the New York City Tax Commission had granted similar exemptions to non-profit organizations such as hospitals, libraries, and playgrounds, there was no establishment of religion. *Id.* at 673. In other words, because there was a secular justification for the property tax exemption and it was applied neutrally to all types of organizations, the exemption met constitutional muster. *Id.*

Thus, several courts have upheld the IRS's removal of 501(c)(3) tax-exempt status from certain organizations because the conditions to receive such tax benefits are neutral and secular. *See Branch Ministries*, 211 F.3d at 144 (upholding the constitutionality of the Johnson Amendment because of its neutral prohibition of tax-exempt status to all organizations that intervene in politics); *Christian Echoes*, 470 F.2d at 854 (holding that a nonprofit religious corporation whose mission was to spread Christianity and battle communism, socialism, and political liberalism could lose 501(c)(3) tax-exempt status because the corporation was not politically neutral and attempted to influence legislation); *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d. Cir. 1989) (explaining that "an organization's selective promotion of certain [political] parties over others would be inconsistent with its section 501(c)(3) tax-exempt status"); *Regan II*, 461 U.S. at 546 (holding that the IRS's denial of tax-

exempt status to a nonprofit organization that lobbied for tax law change was consistent with the First Amendment).

This Court has consistently extended the neutral and secular justifications of laws to the school context, holding that government programs providing taxpayer relief equally to parents of public school students and private school students do not violate the Establishment Clause. For example, in *Mueller v. Allen*, this Court held that a Minnesota statute allowing taxpayers to deduct expenses incurred in providing tuition, textbooks, and transportation for their children attending either public or parochial schools did not violate the Establishment Clause because (1) it was neutral on its face and in its application to *all* parents and (2) furthered a secular purpose by increasing the political and economic health of the community. *Mueller v. Allen*, 463 U.S. 388, 395–97 (1983) (emphasis added); *see also Zelman v. Simmons-Harris*, 536 U.S. 639, 662 (2002) (holding that government-provided tuition aid for students in public schools and private religious schools did not violate the Establishment Clause because it possessed a valid secular purpose of providing educational assistance to poor children, and it was neutral with respect to religion); *Everson*, 330 U.S. at 18 (upholding reimbursements for bus transportation to public and parochial schools because the law was neutral to religious believers and non-believers); *Agostini*, 521 U.S. at 232 (explaining that a government program that sent public school teachers into parochial schools to provide remedial education to disadvantaged children was valid under the Establishment Clause because its allocation neither favored nor disfavored religion and was available to all children who meet the eligibility requirements).

In contrast, laws that discriminate directly on religious or theological lines do violate the Establishment Clause. *Cath. Charities*, 605 U.S. at 254. In *Catholic Charities*, Wisconsin exempted nonprofits "operated primarily for religious purposes" from paying taxes into the

State's unemployment compensation system. *Id.* at 241. A Roman Catholic nonprofit organization sought a determination that it qualified for the religious-employer exemption, but the Wisconsin Department of Workforce Development rejected its request. *Id.* at 244.

This Court held that strict scrutiny must apply to Wisconsin's exemption because it "grants a denominational preference by explicitly differentiating between religions based on theological practices." *Id.* at 250. The nonprofit's eligibility for the exemption turned solely on inherently religious choices, namely, whether to proselytize or serve only co-religionists. *Id.* Therefore, the exemption was not based on secular criteria that merely had a disparate impact on different religions, but rather was outwardly targeting and discriminating against particular sects of religions. *Id.*; *see also Larson v. Valente*, 456 U.S. 228, 254 (1982) (holding unconstitutional a statute providing that only religious organizations that receive more than half of their total contributions from members or affiliated organizations exemption from registration and reporting requirements because it granted a "denominational preference"); *Carson v. Makin*, 596 U.S. 767, 781 (2022) (highlighting that a government program that provides tuition payments only to parents who send their children to "nonsectarian" religious schools violated the First Amendment because its lack of neutrality discriminated on the basis of religion).

In this case, strict scrutiny should not apply to the Johnson Amendment because it was created with secular justifications and is neutrally applied to all nonprofits. In 1954, then-senator Lyndon B. Johnson proposed an amendment to 26 U.S.C. § 501(c)(3) mandating that 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. Without any debate, the Johnson Amendment passed and remains a part of the

IRC to this day. Undergirding this condition to receive tax benefits is the secular justification that it protects the legitimacy of political and religious donations.

Without the Johnson Amendment, devious political donors may attempt to manufacture a tax deduction by donating to a political campaign through church channels, instead of donating directly to the political candidate or a Political Action Committee (PAC). Steffen N. Johnson, *Of Politics and Pulpits: A First Amendment Analysis of IRS Restrictions on the Political Activities of Religious Organizations*, 42 B.C. L. Rev. 875, 893–94 (2001). This muddies the waters of political contributions and creates perverse incentives for political bad actors to influence the finances of a religious organization or other non-profit.

Thus, like in *Walz* where the secular justification for the property tax exemption was to help stabilize community life, foster moral and mental improvement, and further the public interest, the Johnson Amendment similarly seeks to stabilize the firm wall of separation between church and state and ensure that both the religious and political spheres of life do not corrupt each other. Religion loses legitimacy and independence when it becomes a tool of political power, and the justifications for the Johnson Amendment squarely attempt to combat those risks.

Therefore, the Johnson Amendment increases the political and economic health of the nation, which was also a secular justification for the taxpayer relief program in *Mueller*. And, unlike in *Catholic Charities* where the exemption was only available to organizations that proselytized or served only co-religionists, the Johnson Amendment does not impose requirements on non-profits to participate in any religious activity. Rather, the lynchpin of the Johnson Amendment rests on political involvement, an inherently secular standard.

Furthermore, given that the Johnson Amendment applies both to religious and nonreligious non-profits, it passes the neutrality requirement of Establishment Clause

jurisprudence. Just like in the numerous cases that upheld government programs benefiting students at public and parochial schools, the Johnson Amendment applies equally to a public newspaper as it does to Covenant Truth. The Johnson Amendment is a legislative grace that is both secular and neutral. Therefore, strict scrutiny should not apply, and this Court should hold that the Johnson Amendment does not violate the Establishment Clause of the First Amendment.

The District Court for the District of Wythe asserted that the Johnson Amendment unconstitutionally "favors some religions over others by denying tax exemptions to organizations whose religious beliefs compel them to speak on political issues." R. at 9. While it is true that the Johnson Amendment does result in organizations like Covenant Truth failing to receive tax benefits because of its belief in political advocacy, that is not dispositive in the constitutional analysis. First, under the Establishment Clause, constitutional neutrality "cannot be an absolute straight line; rigidity could well defeat the basic purpose of [the First Amendment]." *Walz*, 397 U.S. at 669. For "there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." *Id.*

Second, tax exemptions that are based on secular criteria are allowed to have a "disparate impact" upon different religious beliefs and organizations. *Cath. Charities*, 605 U.S. at 250. And, "the question of governmental neutrality is not concluded by the observation that [a statute] on its face makes *no discrimination* between religions." *Gillette*, 401 U.S. at 452 (emphasis added). In many instances, the government may conclude that the general welfare of society, wholly apart from any religious considerations, demands regulation that has a disparate impact on religious views. *McGowen*, 366 U.S. at 442. For example, "for temporal purposes, murder is illegal, [and] the fact that this agrees with the dictates of the Judeo-Christian religions while it may disagree with others does not invalidate the regulation." *Id.* Similar arguments can be made

with regulations on adultery, polygamy, theft, and fraud. *Id.* As long as a regulation is "tailored broadly enough that it reflects valid secular purposes," there is no Establishment Clause violation even if an objection has "roots" that are religious in nature. *Gillette*, 401 U.S. at 454.

In this case, the Johnson Amendment was enacted for secular reasons and is applied neutrally to all non-profit organizations. Thus, the fact that Covenant Truth's views on political involvement disparately impact its tax-exempt status does not invoke strict scrutiny under the Establishment Clause. Covenant Truth's claim that the Johnson Amendment gives preferential treatment to opposing religious views calls into question longstanding precedent and every law that happens to incidentally affect any one church's beliefs. It would be too rigid a standard to require Congress's legislative grace in creating tax exemptions to accommodate every religious perspective if the exemptions are conditioned on secular criteria and applied to all types of non-profits. The Johnson Amendment follows the secular and neutral criteria. It is constitutional. Strict scrutiny should not apply.

2. Even if this Court applies strict scrutiny, the Johnson Amendment is still constitutional because it is narrowly tailored to serve the compelling interests of guarding against devious political contributions and refusing to force taxpayers to subsidize political speech they disagree with.

Under strict scrutiny, a government program or tax exemption can still be upheld if it is justified by a compelling governmental interest and is narrowly tailored to further that interest. *Larson*, 456 U.S. at 247. Even if this Court were to apply this "high bar," the Johnson Amendment still survives. *Cath. Charities*, 605 U.S. at 252.

The main compelling justification for the Johnson Amendment is that it ensures that churches do not become conduits for deductible political contributions. Johnson, *supra*, at 893. In other words, without the wall of the Johnson Amendment, donors may circumvent paying taxes for political contributions by going directly through churches. "If a church is transformed

into a candidate's campaign headquarters (or a grass roots lobbying organization), the government has a significant interest in ensuring that donations to the church are taxed to the same extent as donations to other organizations engaging in such activity." *Id.* at 894.

This Court has previously stressed the compelling need for Congress to be able to regulate such corruption. *Buckley v. Valeo*, 424 U.S. 1, 26 (1976) (discussing the state's interest in preventing the actuality and appearance of corruption). "To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined." *Id.* at 26–27; *see also Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15, 25–26 (D.D.C. 1999) (holding the Johnson Amendment passes strict scrutiny because "the 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").

Another compelling justification for the Johnson Amendment is that it prevents taxpayers from subsidizing political speech they disagree with. *See Regan II*, 461 U.S. at 544 ("Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."). There are certainly plenty of taxpayers who do not agree with the progressive values of Covenant Truth Church and The Everlight Dominion. The Johnson Amendment ensures that those taxpayers are not making up the lost tax revenue from any tax breaks that Covenant Truth would receive had it had Section 501(c)(3) protections.

The Johnson Amendment is narrowly tailored to accomplish these compelling objectives. The Johnson Amendment conditions 501(c)(3) benefits on non-profits not participating in or intervening in any political campaign on behalf of any candidate for public office. This does not

mean that churches or pastors can never speak about political ideas or controversial issues in the public sphere. Rather, it just means that any non-profit organization cannot participate or intervene in campaigns on behalf of particular candidates. *See Adams v. Commissioner*, 170 F.3d 173, 179 (3d. 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."). This creates a wall strong enough to prevent political donors from being incentivized to receive tax breaks for their political contributions to particular candidates. And, it ensures that taxpayers are not forced to subsidize those donations that may or may not support their own views.

Furthermore, the Johnson Amendment may not even result in some non-profits like Covenant Truth from losing the ability to receive tax exempt status if they become politically involved. This is because these organizations can still receive tax exempt status by filing as a related organization under 26 U.S.C. § 501(c)(4). *See Regan II*, 461 U.S. at 552. The only difference is that donations to such Section 501(c)(4) organizations are not deductible. *Branch Ministries*, 211 F.3d at 143. Thus, the Johnson Amendment does not completely foreclose the ability for Covenant Truth to support political candidates and still stay exempt from federal taxes, emphasizing how narrowly tailored the amendment is.

Additionally, the IRS consent decree helps to narrowly tailor the enforcement of the Johnson Amendment. This ensures that the Johnson Amendment is not overinclusive in its application to situations "when a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services." R. at 14. Therefore, because the Johnson Amendment is narrowly tailored to two compelling governmental interests, it passes strict scrutiny. This Court should reverse the decision of the lower court.

B. The Johnson Amendment does not violate the Establishment Clause because it is consistent with this nation's history and tradition of (1) separating politics and religion and (2) distributing tax benefits.

"This Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings." *Kennedy*, 597 U.S. at 535 (internal citations omitted); *McGowen*, 366 U.S. at 431 ("inquiry into the history of Sunday Closing Laws in our country . . . is relevant to the decision of whether the Maryland Sunday law in question is one respecting an establishment of religion."). This analysis requires a focus on the original meaning and history of the Establishment Clause. *Id.* at 536. Therefore, to determine what is permissible and impermissible, this Court must, in part, reflect on the understanding of the Founding Fathers. *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014).

Underlying the justification of the Johnson Amendment is a longstanding history and tradition of separating political and religious spheres. "The writings of [James] Madison, who was the First Amendment's architect, demonstrate that the establishment of a religion was equally feared because of its tendencies to political tyranny and subversion of civil authority." *McGowen*, 366 U.S. at 430. Similarly, Thomas Jefferson echoed the fundamental principle that taxpayers should not subsidize political speech they disagree with when he said, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." Johnson, *supra*, at 890 (internal citations omitted).

In fact, the founding generation implemented the Establishment Clause as a rejection to England's purposeful entanglement of politics and religion. The Act of Supremacy of 1534 made the English monarch the head of the Church of England, and the Act in Restraint of Annates gave him the authority to appoint the Church's most senior officials. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 182 (2012). However, Colonists in the Americas "chafed at the control exercised by the Crown and its representatives over

religious offices." *Id.* at 183. Therefore, the First Amendment was adopted in direct response to this excessive involvement of English politics in religion. *Id.* "Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church." *Id.*; *see also* 1 Annals of Cong. 730–31 (1789) (remarks of J. Madison) (noting that the Establishment Clause addressed the fear that "one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform"). By outlawing the establishment of religion, the founding generation ensured that the new federal government, unlike the English Crown, would have "no role" in ecclesiastical decisions. *Hosanna-Tabor*, 565 U.S. at 184.

The Johnson Amendment's design inherently protects against the encroachment of politics and government on religion. By severing tax benefits to organizations that intervene in politics, the Johnson Amendment protects the goals of the founding generation to erect a wall between church and state. By ensuring that the dirty money of politics does not infiltrate non-profit institutions, the Johnson Amendment is consistent with James Madison and Thomas Jefferson's goals to reject the tendencies of political tyranny and subsidization of political beliefs. For seventy years, Congress has approved of the Johnson Amendment, despite numerous attempts to overturn it. Thus, the Johnson Amendment's survival has become a history and tradition of its own.

There also is a history and tradition of the government enacting neutral and generally applicable laws that result in particular religious beliefs not receiving tax benefits. For example, tax benefits have historically not been extended to pacifists who religiously oppose war. *See Wall v. United States*, 756 F.2d 52, 53 (8th Cir. 1985) (rejecting a religious claim for a "war tax deduction" because "the necessities of revenue collection through a sound tax system raise

governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds."). Similarly, the IRS has refused to extend 501(c)(3) tax status to those religious sects whose beliefs compel them to discriminate on the basis of race. *See Bob Jones*, 416 U.S. at 735 (addressing a case where the IRS revoked a school's tax-exempt status for refusing to admit African American students). And, in extending tax deductions for married couples, the IRS does not accommodate religions that participate in polygamous marriage. Samuel D. Brunson, *Taxing Polygamy*, 91 Wash. & Lee L. Rev. 1, 133 (2013). While Covenant Truth would ask this Court to extend tax benefits on a made to order basis, America's history and tradition has seen it as more of a buffet of benefits–benefits that are premade with non-customizable conditions.

Covenant Truth can point to no history and tradition proving organizations are entitled to tax benefits for their proactive involvement in politics. While there may be a history and tradition of religious figures in this country claiming their religion requires political action, there is no history and tradition of rewarding those beliefs with tax benefits. Rather, this Court has recognized that tax exemptions are an act of legislative grace and should only be implemented if they are justified by a secular purpose and applied neutrally to all beliefs. *See Dickinson v. United States*, 346 U.S. 389, 395 (1953). Therefore, the history and foundations of the Establishment Clause emphasize that the Johnson Amendment falls squarely within its bounds. This Court should reverse the decision of the lower court.

CONCLUSION

Overall, Covenant Truth trips at every hurdle in its attempt to establish its entitlement to an act of legislative grace.

Covenant Truth lacks standing under both the AIA and Article III of the Constitution. First, the AIA bars Covenant Truth's lawsuit because, by challenging its Section 501(c)(3) status,

it is striving to prevent the collection of a tax. Furthermore, Covenant Truth has failed to establish any exception to this general bar. While Covenant Truth asserts that no legal remedy exists, this is merely because there is not an issue ripe for review since there has been no change, or threatened change, in its tax status. Covenant Truth cannot manufacture a lack of legal remedy by filing its suit prematurely. Second, Covenant Truth lacks Article III standing because there is no substantial threat of enforcement of the Johnson Amendment. Rather, the IRS has expressed that it does not intend to enforce the Johnson Amendment against houses of worship. The random audit has yet to result in any change to Covenant Truth's Section 501(c)(3) status, and it is possible the audit is investigating an entirely separate issue.

Even if this Court finds Covenant Truth has standing, the IRS still wins because the Johnson Amendment is constitutional under the Establishment Clause. The Johnson Amendment is inherently secularly justified through its attempt to separate non-profits from political influence. It is neutrally applied to both religious and non-religious non-profits. Additionally, even if strict scrutiny applies, the Johnson Amendment is narrowly tailored to fit its compelling secular interests. Finally, the Johnson Amendment is completely consistent with this nation's history and tradition of rejecting political influence in American life and refusing to require citizens to subsidize political ideas they disagree with.

Therefore, for the reasons stated in this brief, Petitioners respectfully request that this Court reverse the decision of the lower court.

/s/ Team 31
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Counsel for Petitioners