Docket No. 26–1779

In the

Supreme Court of the United States

October Term,

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

BRIEF FOR RESPONDENT

Counsel for Respondent
January 18, 2026

Team 34

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

QUESTIONS PRESENTED

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

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

LIST OF PARTIES

Petitioners are Scott Bessent, in his capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service. Respondent is Covenant Truth Church. Petitioners were the appellants and Respondent was the appellee in the court below.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Wythe is unreported and not available in the record. The opinions of the United States Court of Appeals for the Fourteenth Circuit are 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). The majority opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 1–11. The dissenting opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 12–16.

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Wythe had jurisdiction over the case that is docketed as No. 5:23-cv-7997 pursuant to 28 U.S.C. § 1331. The District Court's federal question jurisdiction was based on an alleged violation of the First Amendment to the Constitution. The District Court entered judgement in favor of Respondent. Petitioners appealed to the Fourteenth Circuit which had jurisdiction pursuant to 28 U.S.C. § 1291. The Fourteenth Circuit entered judgement in favor of Respondent on August 1, 2025. Petitioners filed a timely petition for writ of certiorari, which this Court granted on November 1, 2025. This Court has jurisdiction under Article III of the Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the Constitution provides in relevant part:

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

26 U.S.C. § 501 provides in relevant part:

> (a) An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle . . . .
>
> (c) (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 7421(a) provides in relevant 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.

28 U.S.C. § 1341 provides in full:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

26 U.S.C. § 7428 provides in relevant part:

> A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United

States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

26 U.S.C. § 7422(a) provides in full:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

26 U.S.C. § 6213(a) provides in relevant part:

> The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.

STATEMENT OF THE CASE

I. FACTUAL HISTORY

The Johnson Amendment to the Internal Revenue Code § 501(c)(3) prohibits charitable organizations from intervening in political campaigns. (R. 2). Respondent Covenant Truth Church ("the Church") is classified as a religious charitable organization under § 501(c)(3). (R. 2–3). The Church is the largest practicing church of The Everlight Dominion, which is a well--recognized religion with a devout congregation that holds strong progressive values. (R. 3). The Everlight Dominion requires its leaders and churches to endorse politically aligned candidates and to encourage members to support progressive campaigns. (R. 3). Leaders and congregations who fail to do so are banished from The Everlight Dominion. (R. 3).

Since 2018, The Everlight Dominion has surged in popularity, largely due to Pastor Gideon Vale's leadership at the Church. (R. 3). In an effort to invigorate the youth and spread The Everlight Dominion's message, Pastor Vale created a weekly podcast to deliver sermons and communicate the teachings of The Everlight Dominion to the public. (R. 3–4). This podcast supplements the Church's traditional weekly worship services. (R. 4). Pastor Vale's podcast garnered widespread popularity, becoming the fourth-most listened to podcast in Wythe and the nineteenth-most listened to podcast in the nation. (R. 4). Between 2018 and 2024, the Church's membership increased from a few hundred members to nearly 15,000 congregants. (R. 4).

Pastor Vale's podcast functions as both a religious and political forum. (R. 4). Per The Everlight Dominion's religious mandate, Pastor Vale voices support for progressive political candidates, mobilizing his listeners to vote for the endorsees of the Church. (R. 4). He also encourages members to donate and volunteer for those candidates' campaigns. (R. 4).

In January 2024, Wythe had a hotly contested special election to fill a vacant seat in the Senate. (R. 4). Pursuant to its religious doctrine, the Church endorsed Congressman Samuel

Davis, who ran on a socially progressive platform. (R. 4). On his podcast, Pastor Vale encouraged members to join him in electing the Congressman to the Senate, emphasizing the alignment between the Congressman and the Church's progressive beliefs. (R. 4–5). Pastor Vale also announced his intention to continue supporting Congressman Davis's campaign, both in his sermons and on his podcast. (R. 5). On May 1, 2024, the Internal Revenue Service ("IRS") notified the Church that it was selected for a random audit of its § 501(c)(3) tax-exempt status. (R. 5).

II. PROCEDURAL HISTORY

The Church filed suit in the District Court for the Eastern District of Wythe on May 15, 2024, seeking a permanent injunction to enjoin the IRS's enforcement of the Johnson Amendment on the basis that it violates the Establishment Clause of the First Amendment. (R. 5). The Church moved for summary judgment. (R. 5). The District Court granted the Church's motion for summary judgment and request for permanent injunction, holding that the Church had standing to challenge the Johnson Amendment and that the Johnson Amendment violated the Establishment Clause. (R. 5–6). Petitioners Scott Bessent, in his capacity as Acting Commissioner of the IRS, and the IRS appealed the decision of the District Court to the Court of Appeals for the Fourteenth Circuit. (R. 6).

The Fourteenth Circuit affirmed the lower court's decision. (R. 2). The court held that the Church had standing to bring its lawsuit in federal court because the Tax-Anti Injunction Act ("AIA") did not bar the suit and the Church satisfied the elements of Article III standing. (R. 6–8). The court also held that the Johnson Amendment was unconstitutional under the Establishment Clause. (R. 8). Judge Marshall dissented, noting the IRS has a pending consent decree with different plaintiff churches who sought to enjoin enforcement of the Johnson

Amendment. (R. 14). Petitioners filed this appeal following the Fourteenth Circuit's decision on August 1, 2025, and this Court granted Petitioners' writ of certiorari on November 1, 2025. (R. 17).

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit's ruling and hold that the Church has standing to bring this action and that the Johnson Amendment violates the Establishment Clause of the First Amendment.

First, the Church's lawsuit is not precluded by the AIA, and the Church has standing under Article III to challenge the Johnson Amendment. The AIA does not apply to the Church's lawsuit because the primary purpose of the suit is to challenge an unconstitutional statute rather than restrain tax collection. Even if this Court does find that the AIA applies to the Church's suit, this Court retains jurisdiction because the Church lacks alternative remedies to redress its constitutional injury. Additionally, the Church has Article III standing to request this permanent injunction in federal court. The Church suffered an injury in fact because there is a substantial risk of enforcing the Johnson Amendment, notwithstanding the recent nonenforcement of the statute. Further, the IRS's pending consent decree with a different group of plaintiffs does not affect the Church's standing because the Church's activity falls outside the scope of the consent decree and the Church is not a party to the agreement. Therefore, the Church has standing to challenge the Johnson Amendment in federal court.

Second, the Johnson Amendment violates the Establishment Clause of the First Amendment. The statute on its face creates a denominational preference by privileging some religious organizations over others based on their internal theological choices. Because of that preference, the Court must invalidate the statute unless it can survive strict scrutiny analysis. The Johnson Amendment fails strict scrutiny because Congress lacks a compelling government interest to justify distinguishing between religious denominations, and the text of the statute is overbroad. Even if the statute did not establish a denominational preference, it is still unconstitutional. When there is no denominational preference, the Court looks to history to

understand the scope of the Establishment Clause. The practices of the Church are consistent with the history and tradition of religious involvement in politics tolerated by the Establishment Clause since the founding. Because the Johnson Amendment is unconstitutional, this Court should uphold the permanent injunction permitting the Church to retain its tax-exempt status without sacrificing its religious beliefs.

ARGUMENT

I. THE CHURCH HAS STANDING UNDER THE TAX ANTI-INJUNCTION ACT AND ARTICLE III TO CHALLENGE THE JOHNSON AMENDMENT.

The Church has standing to challenge the Johnson Amendment. The AIA bars federal lawsuits that have the primary purpose of restraining tax collection, unless an exception applies. Additionally, a party has Article III standing when it (1) suffers an injury in fact, (2) there is a causal connection between the plaintiff's injury and defendant's conduct; and (3) there is a likelihood that a favorable judicial decision would redress the plaintiff's injury. The Church's challenge to the Johnson Amendment is not precluded by the AIA, and the Church satisfies Article III's standing requirements. Thus, the Church has standing to request this permanent injunction.

A. The Tax Anti-Injunction Act Does Not Bar the Church's Lawsuit.

The Church has standing in part because the AIA does not apply. The AIA provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a). The statute only bars a taxpayer's challenge to government action when the purpose of the suit is to restrain tax assessment or collection and no exception applies. *Id.*; *see also New Jersey v. Bessent*, 149 F.4th 127, 143 (2d Cir. 2025). In *South Carolina v. Regan*, the Court recognized that Congress did not intend for the AIA to apply to aggrieved parties "for whom it has not provided an alternative remedy." 465 U.S. 367, 378

(1984). Here, the AIA does not apply because the primary purpose of the suit is to prevent the enforcement of an unconstitutional statute, not to restrain tax collection. Even if the AIA does apply, the Church has no alternative remedy to challenge the Johnson Amendment. Therefore, this Court maintains jurisdiction over this action, notwithstanding the AIA.

1. The Tax Anti-Injunction Act Does Not Apply to the Church's Suit.

The AIA does not apply to the Church's lawsuit because the primary purpose of the suit is to challenge an unconstitutional provision and the Church's suit does not frustrate the purpose of the AIA. Congress drafted the AIA to protect the government's ability to assess and collect taxes with minimal judicial interference and "to require that the legal right to the disputed sums be determined in a suit for refund." *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962). The AIA bars lawsuits only when the primary purpose of the suit is to "restrain" the assessment or collection of a tax. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974). Here, the AIA does not apply to the Church's suit because the primary purpose of the suit is constitutional in nature and does not challenge any incidence of taxation. Further, because the Church's lawsuit and subsequent injunction will not impact federal revenue, it does not obstruct the goals of the AIA. Accordingly, this Court should hold that the AIA does not bar the Church's lawsuit because it does not apply to the Church's claim for relief.

a. <u>The primary purpose of the Church's lawsuit is to challenge the constitutionality of the Johnson Amendment.</u>

The Church's lawsuit does not implicate the AIA because the primary purpose of the suit is wholly distinct from tax collection. To determine whether the AIA bars a lawsuit, courts inquire whether the primary purpose of the suit is to restrain tax assessment or collection. *Bob Jones*, 416 U.S. at 738. The presumption of consistent usage, which requires that identical language across related statutes be given the same meaning, demands a narrow reading of

"restraining" in the AIA. *See Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (recognizing that "when Congress uses the same language in two statutes having similar purposes . . . it is appropriate to presume that Congress intended that text to have the same meaning in both statutes"). The Court interprets "restrain" in the Tax-Injunction Act ("TIA")—the AIA's counterpart governing state taxes—to mean fully prohibiting tax assessment or collection. 28 U.S.C. § 1341; *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 8 (2015) (reading "restrain" in the TIA narrowly to preclude only injunctive relief that stops the collection of taxes, rather than "merely inhibits" them). The AIA similarly bars suits "restraining the assessment or collection of any tax." § 7421(a). In accordance with the Court's presumption of consistent usage, "restraining" in the AIA should be read the same as "restrain" in the TIA.

The primary purpose of the Church's lawsuit is not to restrain tax collection. The AIA does not apply automatically to cases "tangentially related to taxes," but rather "requires a careful inquiry into the remedy sought" to determine whether the primary purpose is to fully restrain tax collection. *Cohen v. United States*, 650 F.3d 717, 727 (D.C. Cir. 2011); *see also CIC Servs., LLC v. I.R.S.*, 593 U.S. 209, 217–18 (2021) (finding an aggrieved party's action was not a tax suit in "disguise" where the aim was to challenge a flawed notice under the APA, not any "downstream" tax penalty). Here, the Church is not alleging any injury based on a loss of contributions or future tax liability. (R. 5). Rather, the Church's pre-enforcement suit alleges one constitutional violation: the Church requests injunctive relief on grounds that the Johnson Amendment violates the Establishment Clause by creating a denominational preference for religions that do not require political participation. (R. 3, 5); *infra* Part II. Accordingly, the Church's primary purpose in bringing this suit is to challenge the constitutionality of the Johnson Amendment, not to restrain tax collection.

Where the Court has barred constitutional claims under the AIA, those claims were ancillary to core tax claims. In *Bob Jones University v. Simon*, a university brought suit alleging the potential revocation of its § 501(c)(3) status would lead to injuries in the form of increased tax liability and constitutional violations. 416 U.S. at 736. The Court found that the AIA barred the university's lawsuit because the primary purpose of the suit was to ensure that its donors did not have to pay taxes on their donations. *Id.* at 738. In *Alexander v. Americans United*, a nonprofit brought an action for injunctive relief to reinstate its § 501(c)(3) status, claiming the revocation was erroneous or unconstitutional. 416 U.S. 752, 754–55 (1974). The Court held the suit was barred by the AIA after finding the nonprofit's primary purpose in bringing suit "was to restore advance assurance that donations . . . would qualify as charitable deductions." *Id.* at 758. Unlike in *Bob Jones* and *Americans United*, the Church is not challenging the incidence of taxation, the revocation of its § 501(c)(3) status, or attempting to ensure donors' contributions remain tax deductible. Rather, the Church is bringing a constitutional challenge under the Establishment Clause. (R. 5). Therefore, any indirect tax-related issues arising in the Church's suit are merely ancillary; the action's primary purpose is constitutional in nature and the action is thus not barred by the AIA.

b. The purpose of the AIA is not frustrated by the Church's lawsuit.

The Church's suit does not frustrate the purpose of the AIA, as any impact on federal tax collection from the injunction would be negligible. The purpose of the AIA is 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*, 416 U.S. at 736 (citation and internal quotations omitted). Suits that do not seek to stop the collection of a tax are outside the purview of the AIA.

See Hibbs v. Winn, 542 U.S. 88, 104 (2004); *see also Cohen v. United States*, 650 F.3d at 726 (finding the suit was not barred by the AIA where the remedy sought could have no possible implication on tax collection because the IRS already collected the tax). Here, the Church is not seeking to stop the collection of a tax currently owed, restore assurance to donors, or avoid downstream tax penalties. Rather, if the Church prevails, it will maintain its tax-exempt status. This will not impact federal revenue because donors' contributions, which were tax-deductible before the injunction, will remain tax-deductible. Given the injunction does not interrupt the flow of federal revenue, the Church's lawsuit does not contravene the purpose of the AIA and should be permitted.

2. Even if the AIA Is Applicable, this Court Has Jurisdiction Because the Church Does Not Have an Alternative Remedy.

Even if this Court finds that the AIA does apply to the Church's lawsuit, the suit may still proceed because the Church has no alternative remedies to redress its injury. This Court recognizes both statutory and common law exceptions to the AIA. *See Williams Packing*, 370 U.S. at 6–7 (establishing an equitable exception if the aggrieved party can show an irreparable injury and certainty of success on the merits). In *Regan*, this Court held that the AIA does not bar an aggrieved party's suit when the party has no alternative remedy. 465 U.S. at 378. Courts have subsequently interpreted "no alternative remedy" to include situations where an available remedy is inadequate to address the party's injury. *See, e.g.*, *Z St. v. Koskinen*, 791 F.3d 24, 31–32 (D.C. Cir. 2015) (finding no alternative remedy existed for the aggrieved party where potential remedies would not adequately provide relief); *Bessent*, 149 F.4th at 143 (finding no alternative remedy where the aggrieved party could not utilize the refund remedy as the challenged provision imposed no direct tax obligation). Here, there are no alternative remedies available to the Church, and even if there are, they do not adequately address the Church's

constitutional injury. Should this Court find the AIA bars the Church's lawsuit, the Church would have no ability to bring its constitutional claim. Consequently, this Court should not leave taxpayers without any alternative to challenge provisions they consider unlawful. Given the Church has no alternative remedies, this Court maintains jurisdiction over this action.

a. There are no alternative remedies to address the Church's injury.

The Church has no remedy outside of this First Amendment action to pursue relief because the two remedies generally available in tax collection suits—26 U.S.C. § 7428 and § 7422(a)—are unavailable here. Section 7428 provides U.S. district courts with jurisdiction to issue declaratory judgments on an aggrieved party's adverse § 501(c)(3) classification. 26 U.S.C. § 7428. To acquire judicial review under § 7428, the aggrieved party must first exhaust all required administrative remedies, such as the IRS's appeals process. *Id.* Here, the IRS has yet to issue an adverse determination and the Church's § 501(c)(3) status remains intact. (R. 5). Accordingly, the IRS procedures are useless to the Church because it cannot appeal any adverse tax classification. Because the Church cannot exhaust the IRS's administrative remedies, § 7428 is unavailable as an alternative remedy.

Section 7422(a)'s refund remedy is likewise unavailable to the Church. This Court recognizes that one purpose of the AIA is to "require that the legal right to the disputed sums be determined in a suit for refund." *Bob Jones*, 416 U.S. at 736. Section 7422(a) requires that parties challenging a tax "alleged to have been erroneously or illegally assessed" must file for a refund with the IRS before bringing an action in federal court. 26 U.S.C. § 7422(a). The Church has not been revoked of its § 501(c)(3) status, nor does it pay federal income tax. (R. 5). Given that there is no tax liability to litigate, seeking a refund is not a feasible alternative remedy for

the Church. Therefore, without any available alternative remedy to address its constitutional challenge, the Church's claim is not barred by the AIA.

b. Even if there are alternative remedies, none are adequate to address the Church's injury.

Even if § 7428 or § 7422(a) were available to the Church, they do not provide the relief the Church is seeking. Section 7428 is inadequate as the Church is not seeking to establish its eligibility for tax exemption. The statute authorizes a court to issue only a declaratory judgment regarding an organization's classification for § 501(c)(3) tax exemption. *See Z St.*, 791 F.3d at 31; § 7428. Here, the Church alleges unconstitutional discrimination under the Establishment Clause that places preferential treatment on certain religions over others. (R. 5). The Church's status as a § 501(c)(3) organization remains intact. (R. 5). Therefore, the relief the Church seeks is not attainable under § 7428.

Nor is a refund action under § 7422(a) adequate to address the Church's injury. In a refund action, the court's review is limited to whether a disputed tax was "erroneously or illegally collected." § 7422(a). Because the Church is challenging the constitutionality of the Johnson Amendment, not its tax liability, a refund action does not provide the relief that the Church seeks. To the extent other remedies exist, they are inappropriate for this litigation. *See, e.g.*, 26 U.S.C. § 6213(a) (in a deficiency action, the court's review is limited to a disputed deficiency of an imposed tax); *see also Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 190–196 (2023) (holding district courts have jurisdiction over actions initially directed for agency review even if a party does not exhaust an agency's remedies). Accordingly, the Church has no alternative remedy to litigate its constitutional challenge as any potentially available remedy cannot adequately address its injury. A ruling in favor of Petitioners would set a precedent that leaves taxpayers without a forum to challenge unconstitutional tax provisions.

This Court should uphold the Fourteenth Circuit's grant of summary judgment and find that the AIA does not bar the Church's lawsuit.

B. The Church Has Article III Standing to Seek a Permanent Injunction in Federal Court.

The Church has Article III standing to bring this pre-enforcement challenge in federal court because the mere possibility of enforcing the Johnson Amendment constitutes an injury in fact and makes the dispute ripe for judicial resolution. As a threshold matter, Article III of the Constitution governs standing to sue in federal court. *See* U.S. Const. art. III. Article III limits the jurisdiction of the federal judiciary by imposing the "case or controversy" requirement. *See Murthy v. Missouri*, 603 U.S. 43, 56–57 (2024); *see also DaimlerChrsyler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) ("If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so."). A plaintiff presents a cognizable case or controversy if it establishes standing. *See Murthy*, 603 U.S. at 57. To demonstrate standing, plaintiffs must satisfy three elements: (1) an injury in fact; (2) a causal connection between the plaintiff's injury and defendant's conduct; and (3) a likelihood that a judicial decision favorable to the plaintiff would redress the injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Here, the Church's suit arises out of the potential enforcement of the Johnson Amendment to § 501(c)(3), which mandates that non-profits cannot participate or intervene in the political campaigns of any candidates for public office. (R. 2). The Johnson Amendment poses a direct challenge to the Church's religious mandate. Thus, the Church has Article III standing because the likely enforcement of the Johnson Amendment creates a substantial risk of harm sufficient for an injury in fact, the Church's harm directly stems from the IRS's imminent audit and potential enforcement of the Johnson Amendment, and this Court could redress the Church's injury by holding the Johnson Amendment unconstitutional.

Moreover, Petitioners' consent decree with different plaintiffs does not negate the Church's standing, and this dispute is ripe for judicial resolution. Accordingly, the Church's suit is justiciable in federal court.

1. The Church's Injury In Fact Stems From the Substantial Risk of Enforcing the Johnson Amendment.

The Church suffered an injury in fact that is sufficient to confer standing because it faces a substantial risk of harm. A plaintiff suffers an injury in fact when a defendant violates the plaintiff's legally protected interest that is (1) "concrete and particularized" and (2) "actual or imminent." *Lujan*, 504 U.S. at 560 (finding "conjectural or hypothetical" harm insufficient). In pre-enforcement challenges, a plaintiff satisfies the injury in fact requirement by demonstrating a substantial risk of harm. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). A substantial risk exists when there is a credible or impending threat of enforcement of a regulation. *See id.* at 158–59 (holding actual enforcement of a statute is not a prerequisite for Article III standing). Thus, the Church suffered a justiciable injury in fact given the imminent IRS audit of its § 501(c)(3) compliance and the potential enforcement of the Johnson Amendment.

a. The Johnson Amendment poses a substantial risk of harm to the Church.

There is a substantial risk of harm because the Church intends to continue engaging in conduct specifically prohibited by the Johnson Amendment and there is a credible threat that the IRS will enforce the Amendment. Courts can only find an injury in fact prior to the enforcement of a statute if a party explicitly represents its intention to engage in activity that is restricted by the statute. *See Susan B. Anthony List*, 573 U.S. at 159 (noting that when a party is the object of a statute, there is "ordinarily little question" that enforcement of the statute would harm that party); *Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 265 (5th Cir. 2015) (using a

flexible, "commonsense" inquiry to determine whether a party is the object of a statute). The Johnson Amendment bars § 501(c)(3) charitable organizations from participating in political activity. (R. 2). As a § 501(c)(3) organization, the Church falls squarely under the purview of the Johnson Amendment. (R. 3). The Church's intent to continue discussing progressive politics is reflected in The Everlight Dominion's religious mandate and in its request for permanent injunctive relief. (R. 4–5). Pastor Vale has also expressly indicated he will continue weaving his support for Congressman Davis into his weekly podcasts and services. (R. 5). Therefore, the Church intends to continue engaging in conduct prohibited by the Johnson Amendment.

Additionally, there is a credible risk that the IRS will enforce the Johnson Amendment against the Church. Courts consider inconsistently enforced statutes to be legally operative if they have not been repealed, particularly if their existence has prompted congressional debate. *See, e.g.*, *Bryant v. Woodall*, 1 F.4th 280, 286–87 (4th Cir. 2021) (distinguishing a history of nonenforcement from moribund law); *Poe v. Ullman*, 367 U.S. 497, 512 (1961) (Douglas, J., dissenting) (citing congressional discourse about a statute as evidence of extant law). The Johnson Amendment is the law on the books. (R. 2–3). Though it has been the subject of congressional scrutiny and controversy, Congress has yet to abrogate or revise the statute. (R. 2–3). Thus, the IRS can opt to enforce the Johnson Amendment at any point. Given the Church intends to continue the prohibited conduct and there is a credible threat of enforcing the Johnson Amendment against the Church, the Church faces a substantial risk of harm.

b. <u>The harm that the Church faces from enforcement of the Johnson Amendment is not speculative.</u>

The Church's risk of injury is not speculative. Although parties do not have standing when the likelihood of their asserted injury in fact stems from a "speculative chain of possibilities," that is not the case here. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410–11

(2013). In *Clapper v. Amnesty International USA*, the Court rejected standing because the Respondent's theory of substantial harm rested on a chain of five unlikely contingencies. *Id.* at 411–14. In this case, the IRS notified the Church that it would imminently and undoubtedly review the Church's § 501(c)(3) tax-exempt status. (R. 5). Unlike in *Clapper*, the likelihood of harm to the Church is not attenuated because the audit is the precise vehicle for injurious enforcement.

Additionally, Petitioners' discretion to audit § 501(c)(3) organizations for compliance with the Johnson Amendment does not negate the credible threat of enforcement. A plaintiff continues to face a substantial risk of imminent harm despite discretionary enforcement of a statute. *See Susan B. Anthony List*, 573 U.S. at 164 (holding that past enforcement of a regulation against the same conduct evidences a substantial threat of future harm). Although the IRS has not recently enforced the Johnson Amendment, the IRS is an executive agency, meaning it is subject to presidential oversight and carries out executive policy directives. *See Fonticiella v. Comm'r of Internal Revenue*, 117 T.C.M. (CCH) 1377 (T.C. 2019). Thus, one Executive could choose to aggressively enforce the Johnson Amendment, while another may deprioritize enforcement. *Cf. Branch Ministries v. Rossotti*, 211 F.3d 137, 174 (D.C. Cir. 2000) (affirming the IRS's decision to enforce the Johnson Amendment and revoke a church's tax-exempt status following its involvement in a political campaign); Zachary S. Price, *Politics of Nonenforcement*, 65 Case W. Rsrv. L. Rev. 1119, 1123–24 (2015) (examining the enforcement of the Johnson Amendment under different administrations). Because the IRS retains authority to enforce the Johnson Amendment against the Church, there is a likely, non-speculative threat of enforcement.

c. The Church's First Amendment interest outweighs Petitioners' historical nonenforcement of the Johnson Amendment.

The constitutional nature of the Church's claim is particularly persuasive for Article III standing. When a compelling First Amendment interest will likely be chilled upon future enforcement of a statute, historical nonenforcement of that statute does not dispositively defeat standing. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 333, 336–37 (5th Cir. 2020) (finding it persuasive if a non-moribund statute makes it likely that targets of the statute will self-censor). Moreover, the Court's broader policy demonstrates a deep respect for First Amendment values, traditions, and protections. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012) ("The text of the First Amendment itself . . . gives special solicitude to the rights of religious organizations."). The Johnson Amendment, which restricts the political activities of tax-exempt nonprofits, directly targets the Church's protected First Amendment interests. (R. 2–3). Therefore, the Church's First Amendment challenge renders Petitioners' pattern of nonenforcement immaterial.

2. Petitioners' Pending Consent Decree Does Not Affect the Church's Article III Standing.

Petitioners' consent decree does not negate the Church's standing because the Church's activities fall outside the scope of the agreement. Standing can only be defeated if the government formally agrees not to enforce the challenged provision against a plaintiff's future conduct. *See Susan B. Anthony List*, 573 U.S. at 165 (finding that a limited or ambiguous enforcement policy does not eliminate a credible threat of future enforcement); *Guinther v. Wilkinson*, 679 F. Supp. 1066, 1069 (D. Utah 1988) (finding an Attorney General's disclaimed intent of enforcement unpersuasive to challenge standing for a likely target engaging in proscribed conduct). Petitioners' pending consent decree announces the IRS's intention not to

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. 7). The Church's political involvement, however, is not confined to its "customary channels of communication on matters of faith." Pastor Vale delivers political messages through his weekly podcast that supplements the Church's traditional worship services. (R. 4). Moreover, Pastor Vale only started his podcast recently to promote The Everlight Dominion to younger generations. (R. 3). The record does not indicate that The Everlight Dominion had ever used this type of forum to communicate with members until Pastor Vale's podcast. Therefore, Petitioners' pending consent decree is too narrow to safeguard the Church's political engagement.

Furthermore, the consent decree is inapplicable to the Church because the Church is not a party to the agreement. Consent decrees are only binding on the parties who enter into the agreement. *See Martin v. Wilks*, 490 U.S. 755, 762 (1989) ("A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings."); *Loc. No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 519, 523–24 (1986) (likening consent decrees to contracts in which parties to the agreement are the only ones bound to its terms). If the court approves the motion, only National Religious Broadcasters, Sand Springs Church, First Baptist Church Waskom, and Intercessors for America will enter into the consent decree with the IRS. *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025). This consent decree has no bearing on the Church's standing because the Church is not a party to the agreement.

Finally, Petitioners' objection to the Church's request for a permanent injunction undermines the assertion that the IRS will not enforce the Johnson Amendment. In *National Religious Broadcasters v. Long*, the plaintiffs requested declaratory judgment to bar enforcement of the Johnson Amendment. *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad.*, No. 6:24-cv-00311. There, the IRS moved for a consent decree that would create a presumption of nonenforcement of the Amendment against the plaintiff churches in certain religious contexts. *See id.* Here, Petitioners did not enter into an analogous consent decree with the Church. Instead, the IRS objected to the Church's request for injunctive relief, indicating its intent to enforce the statute against the Church. (R. 6). Petitioners' objection to the Church's permanent injunction thus weakens any presumption of nonenforcement of the Johnson Amendment.

3. The Church's Suit Satisfies the Additional Elements of Standing and Ripeness to Bring This Claim in Federal Court.

The Church's injury is traceable to Petitioners and redressable by this Court. The second and third elements of the standing inquiry require that the plaintiff's injury be fairly traceable to the defendant's challenged conduct and likely to be remediated by court resolution in the plaintiff's favor. *See Lujan*, 504 U.S. at 560–61. Here, Petitioners are the auditors and enforcers of the Johnson Amendment. (R. 5–6). If this Court finds the Church has standing to sue and subsequently invalidates the Johnson Amendment, this Court would rectify the Church's harm. Therefore, the Church satisfies the causation and redressability elements of standing to warrant federal judicial review.

Finally, the Church's claim is ripe for resolution because the dispute has matured into a concrete controversy. A claim is concrete when a plaintiff intends to continue engaging in protected activity regulated by the challenged statute and faces a substantial threat of enforcement that could chill the exercise of constitutional rights. *See, e.g.*, *Abbott Labs v.*

Gardner, 387 U.S. 136, 149 (1967) (striking a balance between judicial restraint in agency decision-making while affording adequate recourse to injured individuals); *Cohen v. United States*, 650 F.3d 717, 734 (D.C. Cir. 2011) (finding a presumption of judicial reviewability); *see also MedImmune, Inc. v. Genetech, Inc.*, 549 U.S. 118, 128 n. 8 (2007) (finding that in pre-enforcement suits, standing and ripeness "boil down to the same question"). Here, Pastor Vale intends to continue endorsing progressive political figures on his podcast as part of his denominational duties, directly contravening the Johnson Amendment. (R. 4–5). Accordingly, the Church's claim is justiciable.

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The Johnson Amendment is unconstitutional under the Establishment Clause of the First Amendment, which guarantees that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. When the government officially prefers "one religious denomination over another," it violates the Establishment Clause. *See Cath. Charities v. Wisc. Labor & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025). A statute that treats religious organizations differently based on theological choices creates a denominational preference. *Id.* at 251–252. The presence of a denominational preference invalidates a statute unless the statute survives strict scrutiny by serving a compelling government interest and being narrowly tailored to meet that interest. *See id.* The Johnson Amendment creates a denominational preference by denying § 501(c)(3) tax-exempt status to religious organizations that theologically require political activity. The state lacks a compelling interest to justify that distinction. Even if the state has a compelling interest, the statute is not narrowly tailored because it erroneously assumes all religions are doctrinally apolitical. Further, even if it does not create a denominational preference, the statute still violates the Establishment Clause because the

Church's behavior is consistent with the types of religious activity historically tolerated by the Amendment.

A. The Johnson Amendment Creates a Denominational Preference.

The Johnson Amendment creates a denominational preference because it disqualifies religious organizations from accessing a government benefit based on their religious laws. The statute draws a line between religions that mandate political activity and those that do not. The statute thus discriminates against religious organizations on the basis of their beliefs, not any secular criteria. The Everlight Dominion requires its religious leaders to engage in particular political activity prohibited by the statute or face banishment from the religion. (R. 3). This is a distinctly religious choice, exercised by the religious leaders of the Church consistent with their faith. As a theological choice, the Church's decision to engage in political activity falls outside the purview of government regulation. Therefore, the Johnson Amendment discriminates against the Church on the basis of its religious beliefs, so the statute must survive strict scrutiny review.

1. The Johnson Amendment is Facially Discriminatory.

The text of the Johnson Amendment has a discriminatory effect that amounts to a denominational preference. The Establishment Clause ensures the government cannot discriminate based on denominational preferences. *Cath. Charities*, 605 U.S. at 251–54 (2025). To determine whether a federal statute denotes a denominational preference, the Court turns first to the text of the relevant statute. *Gillette v. United States*, 401 U.S. 437, 441 (1970). When analyzing the text, the Court looks to its plain meaning to determine whether the statute has a discriminatory effect that makes it unconstitutional. *See Gillette*, 401 U.S. 437, 441–443 (turning to the text of the statute to determine if the rules for conscientious objectors discriminated on the basis of religious affiliation). The text of § 501(c)(3) states that, for their charitable donations to

be tax exempt, "[c]orporations . . . organized and operated exclusively for religious . . . purposes" cannot "participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." *See* 26 U.S.C. §§ 501(a)–(c). Under its plain meaning, this language applies to *any* religious organization regardless of whether its doctrinal requirements contravene the text of the statute. It is impossible for an organization like the Church to fulfill its religious mandate while complying with the requirements of the Johnson Amendment. Therefore, the text of the Johnson Amendment has a discriminatory effect because it precludes religious organizations whose theology requires political activity from accessing a government benefit.

Although the Johnson Amendment also applies to non-religious charitable organizations, it still creates a denominational preference. Even where the text of a law does not explicitly "discriminat[e] between religions, . . . the Establishment clause forbids subtle departures from neutrality." *See Gillette*, 401 U.S. at 452. This includes instances where a state law "burden[s] or favor[s] selected religious denominations," requiring a "state inspection and evaluation of the religious content of a religious organization." *Larson v. Valente*, 456 U.S. 228, 255 (1981); *id.* (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971)). In *Larson v. Valente*, the Court held that a state tax exemption code was facially discriminatory because it provided a tax benefit only to religious organizations where more than fifty percent of donors were members of the organization. 456 U.S. at 228, 246–47. Like *Larson*, § 501(c)(3) of the Internal Revenue Code draws a theological line, enabling only religious organizations that follow certain criteria to access a government benefit. *See* 26 U.S.C § 501(c)(3). This type of distinction mirrors the unconstitutional statute in *Larson* and is therefore facially discriminatory.

2. The Johnson Amendment is Not Based on Secular Criteria.

The Johnson Amendment effectively draws a line based on theological, not secular, criteria, creating a denominational preference. If a plaintiff alleges that a statute prefers one religious denomination over another, the plaintiff "must be able to show the absence of a neutral, secular basis for the lines government has drawn." *See Gillette*, 401 U.S. at 452. Under this requirement, the government can regulate individual belief, but not sectarian affiliation that favors one religious sect over another based on theological differences. *See Gillette*, 401 U.S. at 454*; Catholic Charities*, 605 U.S. at 251–52. In *Gillette v. United States*, the Court found that the "conscientious objector" statute had a secular basis because it addressed individual belief, rather than organizational sectarian differences. 401 U.S. at 499 n.14; *Cath. Charities*, 605 U.S. at 247–50. The Court, however, acknowledged that an Establishment Clause violation would have existed if the claim had involved an "overreaching of secular purposes and an undue involvement of government in affairs of religion." *See Gillette*, 401 U.S. at 450. Here, unlike in *Gillette*, the Johnson Amendment draws a line based on sectarian theological doctrine. The statute clearly differentiates between religious organizations that mandate political activity and those that do not. Therefore, the line drawn in the Johnson Amendment is based on theological criteria that amounts to an "undue involvement of government in affairs of religion." *See id.*

B. The Johnson Amendment Fails Strict Scrutiny.

Because the application of the Johnson Amendment is based on religious, not secular criteria, it must face strict scrutiny. "When a state law establishes a denominational preference, courts must 'treat the law as suspect' and apply 'strict scrutiny in adjudging its constitutionality.'" *Cath. Charities*, 605 U.S. at 248 (quoting *Larson*, 456 U.S. at 246). Because it makes a government benefit contingent on theological differences, the Johnson Amendment is

enforced based on theological choices the Court has historically left to the religious courts of individual denominations. *See id.* at 247–54; *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 732 (1872). The Johnson Amendment's failure to distinguish its treatment of organizations based on secular criteria means it is subject to strict scrutiny and therefore must be narrowly tailored to serve a compelling government interest.

The Johnson Amendment fails strict scrutiny because Congress lacks a compelling state interest to justify the distinction between religious denominations, and the text of the statute is overbroad. To pass muster under the Establishment Clause, a statute that provides a denominational preference must serve a compelling government interest and be narrowly tailored to achieve that interest. *Larson*, 456 U.S. at 247. Here, the government lacks a compelling interest to infringe on a practice historically tolerated under the Establishment Clause. Further, the Amendment's language is not narrowly tailored because it undermines the ability of the Church to exercise its religious liberty. Thus, the statute fails strict scrutiny because the government lacks a compelling interest and, even if it has a compelling interest, the language of the statute is not narrowly tailored.

1. The Government Lacks a Compelling Interest to Justify its Denominational Preference.

The Johnson Amendment does not serve an interest that is sufficiently compelling to justify the denominational preference established by the text. Although the Court has identified a compelling government interest for § 501(c)(3)'s lobbying provision, the Court has never reviewed the political activity provision added by the Johnson Amendment for an Establishment Clause violation. In *Regan v. Taxation with Representation*, when analyzing a free speech challenge to § 501(c)(3), the Court concluded that the government has a compelling interest in avoiding the subsidization of lobbying through tax benefits. 461 U.S. 540, 544 n.6 (1982); *id.* at

540 (Blackmun, J., concurring). That interest, however, justifies only the restrictions on charitable organization lobbying, which arise under a clause distinct from the Johnson Amendment's prohibition on charitable organization participation in political campaigns. *See* § 501(c)(3). Thus, this Court has not yet addressed whether a compelling government interest justifies the Johnson Amendment despite the denominational preference it creates.

While the Court has found the government has a compelling interest in a narrow set of Establishment Clause cases, none of those interests are present here. The Court has previously found compelling government interests in preventing the abuse of charitable solicitation practices, encouraging financial support of organizations that benefit the public, and preventing the weaponization of government power against religious minorities. *See Larson*, 456 U.S. at 248; *Walz v. Tax Comm'n*, 397 U.S. 644, 673 (1970); *Everson v. Bd. of Educ.*, 330 U.S. 1, 9–11 (1946). Here, none of the prior compelling interests address the government's purpose in creating the Johnson Amendment. The government has made no attempt in this instance to assert any compelling interest. There is no mention in the Johnson Amendment's legislative history of the government's interest in preventing religious organizations from participating in politics based on their religious beliefs. *See* H.R. Rep. No. 2543 *as reprinted in* 100 Cong. Rec. 12412 (1954). The record in this case also makes no mention of any interest asserted by the state to justify the provision. (R. 2–3). Without a compelling state interest, the federal government cannot draw a theological line providing a government benefit to some religious organizations and not others based on a difference of religious belief, as it does in the Johnson Amendment.

2. Even if the Government Has a Compelling Interest, It Is Not Narrowly Tailored.

Even if the Johnson Amendment serves a compelling government interest, it is not narrowly tailored because it infringes on the free exercise of religion. In *Catholic Charities v.*

Wisconsin Labor & Industry, the Court held in the Establishment Clause context that a statute was not narrowly tailored because the religious organizations in that case could not freely exercise their religion while complying with state law. *See* 605 U.S. at 253–54. It follows that a statute that is narrowly tailored would not inhibit the free exercise of a particular denomination. *Cf. id*. at 248. Here, The Johnson Amendment infringes on the religious liberty of The Everlight Dominion and the Church. It prevents them from freely exercising their religious beliefs without running afoul of federal law. The Everlight Dominion is a well-established, long-standing religion that predates the adoption of the statute. (R. 3). There is no indication in the record that their doctrinal commitment to political activism is anything other than a sincere, traditional, devout practice. (R. 2–3). Here, the government interferes directly with religious observance. (R. 2–3). If the Johnson Amendment were narrowly tailored, it would enable the Church to comply with federal law without violating its religious doctrines. But, because the language is overbroad, it encompasses organizations attempting to freely exercise their religion. If the Johnson Amendment was sufficiently narrowly tailored to avoid an Establishment Clause issue, it would also avoid this free exercise issue. Therefore, even if there is a compelling government interest at play, the Johnson Amendment is not narrowly tailored to serve that interest because it infringes upon constitutionally guaranteed freedoms.

C. Even If There Is No Denominational Preference, The Statute Is Still Unconstitutional Because It Does Not Faithfully Reflect the Historical Scope of the Establishment Clause.

The Establishment Clause requires the Court to defer to a religion's theological choices, regardless of the impact of those choices on politics. Though the Court used to rely on a test from *Lemon v. Kurtzman*, the Court has since held unequivocally that the *Lemon* Test is an "'ahistorical, atextual'' approach to the Establishment Clause and that the Clause "must be

interpreted by 'reference to historical practices and understandings.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). In returning to the "'original understanding' of the Religion Clauses," the line "that courts and governments must draw between the permissible and the impermissible has to accord with history and faithfully reflect the understanding of the Founding Fathers." *Kennedy*, 597 U.S. at 536 (quoting *Town of Greece*, 572 U.S. at 577 (internal quotations omitted)). In this case, the historical role of religious organizations in politics indicates that the Johnson Amendment infringes on a practice historically tolerated by the Establishment Clause.

The Johnson Amendment conflicts with the historical role of religious organizations in public life. Typically, even when an Establishment Clause inquiry does not require strict scrutiny, the Court looks for a historical analog to determine whether a practice falls within the scope of the Clause. *See Kennedy*, 597 U.S. at 541; *Everson*, 330 U.S. at 14–15. The Founders created the Establishment Clause to prevent taxpayers from subsidizing established churches that infringed on their individual rights to practice their religious beliefs without fear of persecution. *Everson*, 330 U.S. at 14–15. Before the Revolution, secular courts were often responsible for enforcing the heresy laws of the Church of England, a practice detested by the "freedom-loving" colonists. *Everson*, 330 U.S. at 11; *Watson*, 80 U.S. (13 Wall.) at 724 (discussing English heresy rules). The behavior of Founders during and after the ratification of the Establishment Clause indicates that religion played a robust role in political life.

Religion played a prominent role in politics at the time of the Founding. For example, before the Establishment Clause was adopted in the Bill of Rights, Thomas Jefferson and James Madison campaigned against the imposition of a Virginia tax levy to fund the state's church. *Everson*, 330 U.S. at 11–15. They succeeded, and Virginia instead passed a bill written by

Jefferson called the "Virginia Bill for Religious Liberty." *See id.* at 12. In the preamble for the Bill, Jefferson asserts that "Almighty God hath created the mind free . . . that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." *Id.* at 12–13 (quoting 12 Hening, Statues of Virginia (1823) 84; Commager, Documents of American History (1944) 125). Courts often look to this history to determine the scope of the Establishment Clause as the Court did in *Everson v. Board of Education*, and as the Court should do here.

The history indicates that the framers of the Establishment Clause were primarily concerned with laws that preferred one religious denomination over another, not the involvement of religious organizations in political life. *Everson*, 330 U.S. at 11 ("The people . . . reached the conviction that individual religious liberty could be achieved best under a government that was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious . . . group."). For example, years after the Establishment Clause was ratified, President George Washington declared in his farewell address that the nation's morality could not be maintained without religion: "reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle." George Washington, Farewell Address 16 (1796). Taken together, these founding practices indicate that church-sponsored political speech was largely tolerated in the early republic, and that the Johnson Amendment is contrary to the original public meaning of the Establishment Clause.

The pervasive role of religion in American political life persisted beyond the Founding. Since the nineteenth century, the Court has recognized that government policies cannot "attempt to 'standardize'" the views of religious organizations in any way. *See Mahmoud v. Taylor*, 606 U.S. 522, 589 (2025) (Thomas, J., concurring) (quoting *Pierce v. Soc'y of the Sisters of the Holy*

Names of Jesus & Mary, 268 U.S. 510, 535 (1925)); *Watson*, 80 U.S. (13 Wall.) at 723. Though religious factionalism poses a danger to society, "religious groups inevitably represent certain points of view and not infrequently assert them in the political arena." *Walz*, 397 U.S. at 695 (Harlan, J., concurring). The historical involvement of religious organizations in American political life is best reflected in this Court's holding in *Watson v. Jones.* 80 U.S. (13 Wall.) 679 (1872). There, facing sectarian breakdown of the American Presbyterian Church over the question of slavery, the Court held that it was the providence of the judiciary to determine only the legal question at hand, and defer to the church's adjudicatory system on theological matters. *See id.* at 684–94, 732–34. The facts of this case illuminate the scope of acceptable government interference with religious institutions when theological choices impact religious involvement in political life.

The Presbyterian Church of the United States and that of the Confederacy participated in ecclesiastically driven political advocacy during the Civil War. The Church broke into two factions based on their theological positions on American slavery. *See id.* at 691–92. The Presbyterian Church of the United States adopted annual formal resolutions beginning during the outbreak of the Civil War to express support for President Lincoln, the federal government, and the Emancipation Proclamation. *See id.* at 690–91. But some ministries split off, creating a new General Assembly for the Presbyterian Church of the Confederate States, which believed "the system of negro slavery in the South is a divine institution . . . ." *See id.* at 691–92. *Watson* arose out of a property dispute over a ministry in Kentucky whose membership was divided in allegiance between the Presbyterian Church of the United States and that of the Confederacy. *See id.* at 692–93. The federal courts were asked to determine which faction was the rightful owner of the Walnut Street Church in Louisville, Kentucky. *See id.* at 693. The Court took no issue

with the Presbyterian Church's involvement in the political realm, expressly finding that the case did not raise any legal issue regarding whether the established church was "supported by law as the religion of the state." *See id.* at 722. Similarly, the Court should take no issue here with the Church's involvement in politics. *Watson* indicates that religion is inherently politicized and the government has historically tolerated the political activity of religious organizations under the Establishment Clause. Religion is inherently entangled with political life and should be left to the realm of theologians, not the temporal courts of the United States.

In *Watson*, the Court held that the civil courts cannot interfere with matters of religious law, indicating that doing so would create a Religious Clause violation which deprives churches of the right to construe and interpret their own laws and implicates the evils the First Amendment was designed to prevent. *See Watson*, 80 U.S. (13 Wall.) at 729–34. By interfering with a religious organization's choices about how to apply religious law, the courts would inhibit the free exercise of religion while also risking establishing a denominational preference. *See id.* at 729–35. That type of interference is precisely the result of the Johnson Amendment. The Amendment thus contravenes the well-documented historical scope of the Establishment Clause and impermissibly restricts the religious liberty of organizations like the Church.

Though it can be difficult to balance Establishment Clause interests with the interest of the Free Exercise Clause, here the free exercise issue reinforces the presence of the Establishment Clause issue. These are theological choices made by religious leaders and religious courts that fall outside the domain of governmental interference. *See Cath. Charities*, 605 U.S. at 258–59 (Thomas, J., concurring); *id.* at 251–52. A court can only interfere when a theological choice infringes on a civil right. *See Watson*, 80 U.S. (13 Wall.) at 730–31. No civil right is infringed upon in this case. Here, the Everlight Dominion requires its religious leaders

and churches to endorse candidates that align with their values. (R. 3). Churches and religious leaders that fail to participate in politics are "banished from the church and The Everlight Dominion." (R. 3). Therefore, the Johnson Amendment' violates the Establishment Clause because it ignores the clear history of religious involvement in political life in the United States.

CONCLUSION

This Court should affirm the judgment of the Fourteenth Circuit because the Church has standing to sue and the Johnson Amendment violates the First Amendment's Establishment Clause.

Dated: 1/18/2026
Respectfully Submitted,
Team 34
Counsel for Respondent