
Docket No. 26-1779

In The

Supreme Court of the United States

Spring 2026

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

Petitioners,

v.

Covenant Truth Church,

Respondent.

ON PETITION FOR REVIEW FROM THE
UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

Oral Argument Requested

Counsel for Petitioner
Team 35

QUESTIONS PRESENTED

- I. Can Covenant Truth Church establish standing when its suit is contrary to the purpose of the Tax Anti-Injunction Act and fails to satisfy the requirements of Article III standing?
- II. Can the Johnson Amendment violate the Establishment Clause of the First Amendment when its purpose is to avoid excessive government entanglement with religion?

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.....	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF FACTS.....	2
Factual Background.....	2
Procedural History	4
STANDARD OF REVIEW	5
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
I. Covenant Truth Church’s only reason for bringing this lawsuit is to prevent the Internal Revenue Service from collecting income taxes that it is owed.....	7
A. Covenant Truth Church has an alternative remedy to contest the legality of the Johnson Amendment	7
B. Covenant Truth Church does not satisfy the two-part test presented in <i>Williams Packing</i>	11
II. Covenant Truth Church does not have Article III standing because there is no actual case or controversy	13
A. The “injury” suffered by Covenant Truth Church is conjectural and hypothetical	13
B. Covenant Truth Church has failed to establish a future injury that is fairly traceable to the IRS	16
C. Because the IRS has taken no action against Covenant Truth Church, this Court cannot redress their “injuries”	18

D.	Congress has not conferred the power to carry out federal tax regulations to the judiciary	19
III.	The Johnson Amendment aligns with the First Amendment because it maintains Government neutrality towards the free exercise of religion	21
A.	The Johnson Amendment does not establish a denominational preference for one religion over another	22
B.	The Johnson Amendment is constitutional because it is the least restrictive means of furthering a compelling government interest	24
1.	The Johnson Amendment is necessary to maintain both the Establishment Clause and the wall of separation between Church and State	24
2.	Congress provides Section 501(c)(3) organizations alternative channels for political expression	25
	CONCLUSION	27

TABLE OF AUTHORITIES

Cases	<i>Page(s)</i>
<i>Abraugh v. Altimus</i> , 26 F.4th 298 (5th Cir. 2022)	10
<i>Alexander v. Americas United Inc.</i> , 416 U.S. 752 (1974)	11
<i>Bob Jones Univ. v. Simon</i> , 416 U.S. 725 (1974)	8, 17
<i>Branch Ministries v. Rossotti</i> , 211 F.3d 137 (D.C. Cir. 2020)	<i>passim</i>
<i>Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n</i> , 605 U.S. 238 (2025)	22, 25
<i>Citizens Union of City of N.Y. v. Att’y Gen. of N.Y.</i> , 408 F.Supp.3d 478 (S.D.N.Y. 2019)	21
<i>City of L.A. v. Lyons</i> , 461 U.S. 95 (1983)	14
<i>Clapper v. Amnesty Int’l USA</i> , 569 U.S. 398 (2013)	15, 17, 20
<i>Edwards v. Comm’r</i> , 84 T.C.M. (CCH).....	7
<i>Enochs v. Williams Packing & Nav. Co.</i> , 370 U.S. 1 (1962)	7, 8, 11, 13
<i>Found. Of Hum. Understanding v. U.S.</i> , 88 Fed.Cl. 203 (Fed. Cl. 2009), <i>aff’d</i> 614 F.3d 1383 (Fed. Cir. 2010)	8, 9
<i>Gonzales v. Gorsuch</i> , 688 F.2d 1263 (9th Cir. 1982)	18
<i>Inv. Syndicate of Am., Inc. v. Simon</i> , 407 F.Supp. 83 (D.C. Cir. 1975)	12

<i>Jericho Painting & Special Coating Inc. v. Richardson</i> , 838 F. Supp. 626 (D.D.C. 1993)	11, 12
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	21, 22, 24
<i>Lujan v. Defs. Of Wildlife</i> , 504 U.S. 555 (1992)	16, 17, 20
<i>Marvel v. U.S.</i> , 548 F.2d 295 (10th Cir. 1977)	11, 12
<i>McCreary Cnty., Ky. v. Am. Civ. Liberties Union of Ky.</i> , 545 U.S. 844 (2005)	21
<i>McLennan v. U.S.</i> , 23 Cl. Ct. 99 (Ct. Cl. 1991)	9
<i>Myers v. Bethlehem Shipbuilding Corp.</i> , 303 U.S. 41 (1938)	9, 20
<i>N.J. v. Bessent</i> , 159 F.4th 127 (2nd Cir. 2025)	7
<i>Ramirez v. Collier</i> , 595 U.S. 411 (2022)	24, 25, 26
<i>Republic of Marsh. Is. v. U.S.</i> , 865 F.3d (9th Cir. 2017)	18
<i>RYO Machine. LLC v. U.S. Dept. of Treasury</i> , 696 F.3d 467 (6th Cir. 2012)	7
<i>S.C. v. Regan</i> , 465 U.S. 367 (1984)	7
<i>Seed v. EPA</i> , 100 F.4th 257 (D.C. Cir. 2024)	18
<i>Speech First, Inc. v. Fenves</i> , 979 F.3d 319 (5th Cir. 2020)	15, 17
<i>Susan B. Anthony v. Driehaus</i> , 573 U.S. 149 (2014)	13, 18

<i>Stark v. Wickard</i> , 321 U.S. 288 (1944)	20
<i>Steffel v. Thompson</i> , 415 U.S. 452 (1974)	14
<i>Taylor v. Sector</i> , 92 U.S. 575 (1875)	7
<i>Tex. v. U.S.</i> , 523 U.S. (1998)	18
<i>Urb. Dev., LLC v. City of Jackson, Miss.</i> , 468 F.3d 281 (5th Cir. 2006)	4
<i>U.S. v. Tex.</i> , 599 U.S. 670 (2023)	19
<i>Viamedia, Inc. v. Comcast Corp.</i> , 951 F.3d 429 (7th Cir. 2020)	4
<i>Waldman v. Conway</i> , 871 F.3d 1283 (11th Cir. 2017)	18, 19
<i>Walz v. Tax Comm’n of City of N.Y.C.</i> , 387 U.S. 664 (1970)	21, 23, 24
<i>Whitmore v. Ark.</i> , 495 U.S. 149 (1990)	20
<i>Zorach v. Clauson</i> , 343 U.S. 306 (1952)	21

TABLE OF AUTHORITIES (cont'd)

	<i>Page(s)</i>
United States Constitution	
U.S. CONST. amend. I	1, 21
U.S. CONST. art. I, § 8	1, 7, 19, 20
U.S. CONST. art. III, § 2	1, 13, 18
Statutes	
26 U.S.C. § 7428	<i>passim</i>
26 U.S.C. § 7421	1, 7, 11
26 U.S.C. § 501(c)(3)	<i>passim</i>
26 U.S.C. § 501(c)(4)	26
Other Authorities	
<i>Jefferson's Letter to the Danbury Baptists</i> , LIBRARY OF CONGRESS (January 1, 1802), https://www.loc.gov/loc/lcib/9806/danpre.html	10
U.S. Opp. To Mot. Intervene, <i>Nat'l Board v. Long</i> , No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025)	9, 16
The Federalist No. 45 (James Madison)	13
The Federalist No. 47 (James Madison)	9
The Federalist No. 78 (Alexander Hamilton)	20
William Douglas, <i>GOP plans to ease law on pol. speech from the pulpit gets lukewarm reception</i> , MCCLATCHY DC (Nov. 2, 2017) https://www.mcclatchydc.com/news/politics-government/congress/article182390976.html	10, 25

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 is reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al., v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025) and set out in the record. R. at 1–16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST., art. I § 8; art. III § 2; U.S. CONST. amend. 1.

The following provisions of the Internal Revenue Code are relevant to this case: 26 U.S.C. § 7428; 26 U.S.C. § 7421; 26 U.S.C. 501(c)(3)–(4).

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this action under 28 U.S.C. § 1331. The court entered judgment, and Petitioner Scott Bessent filed a timely notice of appeal. R. at 17. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF FACTS

Factual Background

The Origins of The Everlight Dominion. Covenant Truth Church adheres to the centuries-old Everlight Dominion religion. R. at 3. Under The Everlight Dominion, leaders and churches are obligated to participate in many political activities, such as endorsing candidates and encouraging citizens to donate to and volunteer for campaigns. R. at 3. The consequence for failure to participate in such activity is dismissal from the church. R. at 3

Growth at Covenant Truth Church. Historically, The Everlight Dominion has sustained a small number of followers. R. at 3. However, Pastor Gideon Vale (Pastor Vale), the head pastor at Covenant Truth Church, has sparked a substantial membership growth. R. at 3. This growth can be traced to his unique method of reaching audiences, such as his weekly podcast sermons. R. at 4. Originally, Pastor Vale's objective with this podcast was to deliver sermons, provide spiritual advice, and educate the public about The Everlight Dominion. R. at 4. His podcast has become highly successful, ranking as the fourth most listened-to podcast in the State of Wythe and the nineteenth most listened-to podcast nationwide. R. at 4. With the podcast reaching millions of listeners, Pastor Vale has begun to leverage his religious platform to share his explicit political views. R. at 4.

Podcasting to Express The Everlight Dominion View. Frequently, Pastor Vale uses his podcast to support candidates whose values align with The Everlight Dominion. R. at 4. He further encourages his listeners to vote for candidates, donate to campaigns, and engage in other political activities. R. at 4. Following the death of Wythe Senator Matthew Russett, a special election was triggered fill the remaining years of Senator Russett's term. R. at 4.

One of the candidates of the special election, Congressman Davis, adhered to many of the same views as The Everlight Dominion. R. at 4. Following the announcement of his campaign,

Pastor Vale and the Covenant Truth Church began supporting Congressman Davis, encouraging listeners to volunteer, donate, and even vote for him. R. at 5. In fact, Pastor Vale intended to give multiple sermons on his podcast and at Covenant Truth Church, specifically dedicating them to Congressman Davis and his political stances. R. at 5.

The Johnson Amendment and Internal Revenue Service Audits. The Johnson Amendment of the Internal Revenue Code (IRC), dating back to 1954, requires 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” in order to maintain a tax-exempt status under Section 501(c)(3) of the IRC. R. at 2. Despite annual revisions to the IRC and pressure to reform the Johnson Amendment, the provision has remained relatively unchanged since its adoption. R. at 2–3. Although some lobbyist groups argue that the provision violates the First Amendment, Congress has declined to eliminate the provision every year since 2017. R. at 3.

On May 1, 2024, Covenant Truth Church, as a Section 501(c)(3) organization, was selected for a random audit by the Internal Revenue Service (IRS). R. at 5. The IRS conducts these random audits to ensure that religious organizations are following the Johnson Amendment’s stringent requirements against political involvement.¹ R. at 5. Failure to follow the requirements of the statute may lead to revocation of an organization’s Section 501(c)(3) tax classification. R. at 5. Fearful that the Covenant Truth Church could lose its tax classification, the church filed this lawsuit seeking a permanent injunction against the IRS, arguing that the Johnson Amendment violates the Establishment Clause. R. at 5. The church’s suit is largely premature because the IRS

¹ The Johnson Amendment requires 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.”

has not begun its audit, and the church maintains its tax classification under Section 501(c)(3). R. at 5.

Procedural History

United States District Court for the Eastern District of Wythe. Covenant Truth Church filed suit seeking a permanent injunction to prohibit the IRS from enforcing the Johnson Amendment. R. at 5. Covenant Truth Church moved for summary judgment following the IRS's denial. R. at 5. This motion was granted. R. at 5. The District Court ruled that (1) Covenant Truth Church had standing to challenge the Johnson Amendment, and that (2) the Johnson Amendment violates the Establishment Clause of the First Amendment. R. at 5.

United States Court of Appeals for the Fourteenth Circuit. Following the District Court's ruling, Scott Bessent, Acting Commissioner of the IRS, and the IRS appealed to the United States Court of Appeals for the Fourteenth Circuit. R. at 5. The court affirmed the Eastern District of Wythe's decision. R. at 5. Circuit Judge Marshall, dissenting from the majority, found that Covenant Truth Church did not have standing and that the Johnson Amendment posed no risk to the Establishment Clause. R. at 5.

United States Supreme Court. This Court has granted certiorari. R. at 6.

STANDARD OF REVIEW

Whether a Section 501(c)(3) organization has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment is a question of law reviewed *de novo*. *Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006). Similarly, a district court's grant of summary judgment is reviewed *de novo*. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 466–67 (7th Cir. 2020). Decisions subject to *de novo* review may be considered by the appellate court without deference to the lower court's legal conclusions. *Id.*

SUMMARY OF THE ARGUMENT

The integrity of our republic depends on managing the balance of powers between the separate branches of government. This Court should reverse the decision of the Fourteenth Circuit for three reasons. First, this suit brought by Covenant Truth Church is barred by the Anti-Injunction Act. Second, Covenant Truth Church lacks Article III standing to bring this issue in federal court. And finally, the Johnson Amendment functions as a constitutional grant of Congressional authority.

Tax Anti-Injunction Act. Congress, authorizing its power to collect taxes owed to it, created the Tax Anti-Injunction Act to prevent frivolous suits for the sole purpose of preventing collection. There is no dispute regarding the primary purpose of this suit—Covenant Truth Church's only concern is that it could lose its favorable tax classification. This concern is unfounded because the IRS has not even begun to conduct an audit of the Church. Once the IRS has begun the audit and reaches a decision, the Church may appeal through the IRS's designated appeals process rather than burdening the judiciary with matters properly addressed by the agency. Congress has the legal right to collect the money it is owed; therefore, this suit is barred by the Tax Anti-Injunction Act.

Article III Standing. To successfully bring an Article III suit, the plaintiff must demonstrate that it has Article III standing. Article III standing is limited to *actual* cases and controversies. Covenant Truth Church has failed to show that it (1) has suffered any injury-in-fact; (2) that the “injury” is fairly traceable to the IRS; and (3) that a favorable decision will redress its “injury.” The church’s injury-in-fact is based upon a chain of speculative events that are neither concrete and particularized, nor actual or imminent. Furthermore, this Court is unable to redress the church’s injury because Congress has not granted it the authority to do so. The revocation of a favorable tax classification is redressed by the IRS, not this Court. Therefore, this suit is also barred by Article III.

The Johnson Amendment. The Johnson Amendment prohibits organizations that receive Section 501(c)(3) tax exemption from engaging in political campaigns. This Amendment is essential to the America that was imagined by the Founding Fathers: one that is free of government entanglement with religion. The Constitution prescribes that “Congress shall make no law respecting the Establishment of religion.” The Johnson Amendment is a neutral policy that applies to all organizations regardless of their values, creeds, and tenets. Covenant Truth Church has not provided sufficient evidence to show that the IRS, by adhering to the Johnson Amendment, has preference one denomination over another. Further, the IRS has a legitimate government interest in avoiding state-sponsored religion and upholding the separation of church and state doctrine. The IRS, in furthering these legitimate government interests, has been careful not to overly restrict Section 501(c)(3) organizations. The IRS has never sought to purge the church of all references to politics. For these reasons, the Johnson Amendment is constitutional.

ARGUMENT

I. Covenant Truth Church's only reason for bringing this lawsuit is to prevent the Internal Revenue Service from collecting income taxes that it is owed.

Over a century ago, Congress was granted the broad authority “to lay and collect taxes. . . for the general welfare of the United States.” U.S. CONST. art. I, § 8, co. 1. To carry out this immense responsibility, the Internal Revenue Service (IRS) has been delegated the responsibility to apply and execute Congress’s Internal Revenue Code (IRC). *Edwards v. Comm’r*, 84 T.C.M. (CCH) 24 (T.C. 2002), aff’d, 119 F. App’x 293 (D.C. Cir. 2005), and aff’d, 119 F. App’x 293 (D.C. Cir. 2005). To help the IRS accomplish its goals, Congress enacted the Tax Anti-Injunction Act, which prohibits a party from bringing a suit for the purpose of restricting the collection of government taxes. *See* 26 U.S.C. § 7421. In this case, Covenant Truth Church is suing the IRS and its commissioner solely to evade tax assessment and collection. R. at 12.

A. Covenant Truth Church has an alternative remedy to contest the legality of the Johnson Amendment.

When an aggrieved party receives an adverse tax classification, the proper process by which to seek a remedy is to file an appeal with the IRS. 26 U.S. § 7428. The manifest purpose of this process is to ensure that there is no premature judicial interference in the raising of funds that “the government depends on for its continued existence.” *Taylor v. Secor*, 92 U.S. 575, 613 (1875). Courts have consistently held that a plaintiff may bring a suit against the IRS *only* when Congress has failed to provide an alternative legal pathway for the plaintiff to address their grievances. *S.C. v. Regan*, 465 U.S. 367, 381 (1984); *RYO Machine, LLC. v. U.S. Dept. of Treasury*, 696 F.3d 467, 473 (6th Cir. 2012); *N.J. v. Bessent*, 149 F.4th 127, 144 (2nd Cir. 2025). Premature judicial interference in the collection of federal taxes, like Covenant Truth Church is requesting here, would deprive the government of collecting its lawful revenue. *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962).

The mere existence of an alternative legal pathway to protest an adversary IRS determination is enough to satisfy the Tax Anti-Injunction Act, and this Court's requirements for redress. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 747 (1974). This low threshold aims to protect the government's strong interest in maintaining the efficient operation of its tax system. *Id.* Alternative avenues of review are adequate even in situations where the review process has serious delays, which may result in financial hardship. *Id.*

The alternative legal pathway does not have to be "the best that can be devised." *Id.* For example, in *Bob Jones University*, this Court held that the plaintiff's suit was the specific type of proceeding that the Tax Anti-Injunction Act sought to prohibit. *Id.* at 732. There, the plaintiff challenged an IRS provision that required schools to eliminate discriminatory admission policies to maintain their Section 501(c)(3) tax classification. *Id.* at 735. The plaintiff filed a lawsuit against the IRS after the agency threatened to revoke its tax-exempt status. *Id.* at 736. This Court held that suits whose primary purpose is to avoid the adverse effects of a change in tax classification on business operations are barred by the Tax Anti-Injunction Act. *Id.* at 738. Additionally, this Court held that the Act also barred the suit because the plaintiff had access to numerous remedies, including a review procedure before the Tax Court, paying income taxes, and bringing suit for a refund. *Id.*

A plaintiff should exhaust all remedies available to them before seeking a suit against the IRS in federal court. *Found. of Hum. Understanding v. U.S.*, 88 Fed.Cl. 203, 212 (Fed. Cl. 2009), *add'd*, 614 F.3d 1383 (Fed. Cir. 2010). Like the plaintiff in *Bob Jones University*, a remedy is readily available to Covenant Truth Church. 416 U.S. at 748. Here, I.R.C. § 7428(a) provides Covenant Truth Church with the ability to seek a declaratory judgment. *Found. of Hum. Understanding*, 88 Fed.Cl. at 209; § 7428(a). However, I.R.C. § 7428(a) may only be invoked

when there is an “actual controversy.” *Id.*; § 7428(a). An actual controversy exists when there is an adverse ruling that “directly affects an organization’s ‘classification or qualification’ for tax-exempt treatment.” *McLennan v. U.S.*, 23 Cl. Ct. 99, 103 (1991) (quoting *Baptist Hospitals, Inc. v. U.S.*, 851 F.2d 1397 (Fed.Cir.1988)). Here, there can be no actual controversy because there has been no adverse ruling against the Covenant Truth Church that directly affects its tax classification. R. at 13.

The IRS’s failure to conduct its audit of Covenant Truth Church is not dispositive of whether the Tax Anti-Injunction Act is applicable. R. at 7. Because the Church has commenced this premature, frivolous lawsuit, the IRS has not been able to even consider a determination on the Church’s tax classification. R. at 5. Rather, Covenant Truth Church must first allow the IRS to begin an audit and then make a determination regarding its status before it may seek a remedy. I.R.C. § 7428. It is completely plausible that the IRS may conduct the audit and find that the Church has not violated the Johnson Amendment. U.S. Opp. To Mot. Intervene, *Nat’l Board v. Long*, No. 6:24-cv-00311, 2025 WL 255876 (E.D. Tex. July 24, 2025). However, even if the IRS rules that the Church violated the Amendment, the agency has created an alternative appeals process under I.R.C. § 7428. § 7428. As a result, the Church’s remedy is to appeal through those channels, not this Court. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51 (1938) (noting that there is a “long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.”).

Allowing the Church to seek redress through this Court rather than the proper channels would effectively undermine the separation of powers the Founding Fathers sought to protect. The Federalist No. 47 (James Madison) (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.”). Further,

allowing the Church to engage in such open political campaigns while being tax-exempt would diminish one of the main purposes of this Nation's founding, which is the separation of church from the powers of the state. *See Jefferson's Letter to the Danbury Baptists*, LIBRARY OF CONGRESS (January 1, 1802), <https://www.loc.gov/loc/lcib/9806/danpre.html> ("I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State.").

The suit by Covenant Truth Church may, at best, be categorized as an attempt to expedite the IRS's bureaucratic review process. R. at 13. While this Court may be sympathetic to the issues that an invalid tax classification ruling may have on the Church, it is ultimately Congress's role to address issues, if any, relating to federal taxes, including the Johnson Amendment. *S.C.*, 465 U.S. at 381. However, given that Congress has attempted to change the language of both the Johnson Amendment and the Tax Anti-Injunction Act multiple times and has declined to do so shows that Congress is content with how the system currently operates. *See e.g.*; William Douglas, *GOP plans to ease law on pol. speech from the pulpit gets lukewarm reception*, MCCLATCHY DC (Nov. 2, 2017) <https://www.mcclatchydc.com/news/politics-government/congress/article182390976.html>; H.R. 172, 115th Cong. (2017) (both failing to pass through Congress).

The Church's failure to exhaust all of the remedies readily available to it would be contrary to the Tax Anti-Injunction Act's purpose, which is to facilitate the collection of government funds. *Id.* at 373. Once Covenant Truth Church allows the IRS to conduct its audit, an "actual controversy" exists, and it may invoke the remedy offered under I.R.C. § 7428. § 7428. Because the IRS has not even begun its audit of the Church, no controversy exists. I.R.C. § 7428. Therefore,

the Tax Anti-Injunction Act bars the suit. 26 U.S.C. § 7421(a); *see Abraugh v. Altimus*, 26 F.4th 298, 304 (5th Cir. 2022) (noting that the Court has a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist.”).

B. Covenant Truth Church does not satisfy the two-part test presented in *Williams-Packing*.

Even if this Court finds that Covenant Truth Church’s suit is barred by the Tax Anti-Injunction Act, the suit would still be unable to proceed based on the test outlined in *Williams Packing*. *Alexander v. Americas United Inc.*, 416 U.S. 752, 758 (1974); *Williams Packing & Nav. Co.*, 370 U.S. at 7. *Williams Packing* presents a narrow exception to the Tax Anti-Injunction Act that permits pre-enforcement injunctions to be granted against the collection of taxes. *Id.* Under the test, an injunction may be granted only if: “(1) it is clear that under no circumstances could the Government ultimately prevail[;] and (2) if equity jurisdiction otherwise exists.” *Id.* The suit may not proceed unless both prongs are satisfied. *Id.* Here, Covenant Truth Church fails the *Williams Packing* test under the first prong; it is clear that the Government could prevail because the IRS could find that the Church was engaged in behavior that violates the requirements of Section 501(c)(3).² *Id.*

The first prong of the test must be viewed in a light most favorable to the Government. *Jericho Painting & Special Coating, Inc., v. Richardson*, 838 F. Supp. 626, 630 (1993). It is a stringent standard that must be adhered to under the most liberal view of the law and facts, based on information known by the government at the time of the suit. *Marvel v. U.S.*, 548 F.2d 295, 300–01 (10th Cir. 1977). This demanding standard was established to give the Tax Anti-Injunction

² The Johnson Amendment requires 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.” Here, the Church began supporting Congressman Davis by encouraging listeners to volunteer, donate, and vote for him, which the IRS could find in violation of the Johnson Amendment.

Act an almost literal effect on barring suits for the sole purpose of restraining the collection of taxes. *Id.* at 397.

The first prong cannot be satisfied when a material issue exists. *Jericho Painting & Special Coating, Inc.*, 838 F. Supp. at 630. For example, in *Jericho Painting & Special Coating Inc.*, a plaintiff sought an injunction to enjoin the IRS from forcing a sale of his property to satisfy his incurred debt. *Id.* at 628. There, to meet the first prong, the plaintiff was required to show that the IRS had no legal right to force the sale. *Id.* at 630. At the time of the suit, the IRS had a legal right to conduct a recovery of unpaid taxes through a sale of assets; therefore, the plaintiff was unable to show that the Government would not prevail. *Id.*

Like in *Jericho Painting & Special Coating, Inc.*, the same is true here: Covenant Truth Church is unable to demonstrate “that the [G]overnment does not have a solid, substantial legal basis” for its actions. *Inv. Syndicate of Am., Inc. v. Simon*, 407 F.Supp. 83, 85 (D.C. Cir. 1975). Here, the Church would be required to show that the IRS had no legal basis for stripping it of its Section 501(c)(3) tax classification. *Id.* The IRS could find that much of Covenant Truth Church’s conduct was contrary to the requirements of the Johnson Amendment. R. at 5; 26 U.S.C. § 501(c)(3). On his weekly podcast, Pastor Vale encouraged his congregation to volunteer, donate to, and even vote for Congressman Davis. R. at 5. Before this suit, Covenant Truth Church also planned to give a series of sermons explaining why its congregation should vote for Congressman Davis. R. at 5. In fact, the Church brought this suit because it feared that its involvement in Congressman Davis’s campaign was a violation of the Johnson Amendment. R. at 5.

Under 26 U.S.C. § 501(c)(3), it is stated plainly that tax-exempt organizations are those that are “organized and operated exclusively for religious purposes...and which do not participate in, or intervene in, any political campaign on behalf of any candidate for public office.” 26 U.S.C.

§ 501(c)(3). Viewing these facts in the light most favorable to the Government, the IRS has a great chance of prevailing at the time of suit because Covenant Truth Church facially appears to be acting in the exact manner prohibited by the Amendment. 26 U.S.C. § 501(c)(3). Accordingly, even if this Court applied the narrow exception provided in *Williams Packing*, Covenant Truth Church would be unable to show standing under the Tax Anti-Injunction Act. *Williams Packing & Nav. Co.*, 370 U.S. at 7; 26 U.S.C. § 7428.

II. Covenant Truth Church does not have Article III standing because there is no actual case or controversy.

Federal courts have limited jurisdiction. U.S. CONST. art. III, §2, cl. 1. Unlike state courts, federal courts are limited to specific cases and controversies to maintain the balance of powers within the government. The Federalist No. 45 (James Madison) (“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”). The plaintiff bears the burden of establishing Article III standing, which requires the existence of an actual case or controversy. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157–58 (2014). An actual case or controversy exists when there is “(1) an injury-in-fact[;] (2) a sufficient causal connection between the injury and the conduct complained of[;] and (3) a likelihood that the injury will be redressed by a favorable decision.” *Id.* Article III standing prevents the judicial system from being used to seize the powers of the political branches. *Id.* Allowing Covenant Truth Church to proceed with this suit would bypass the administrative channels in place, effectively stripping Congress of its power to lay and collect taxes for the general welfare of the United States. U.S. CONST. art. III, § 2, cl. 1.

A. The “injury” suffered by Covenant Truth Church is conjectural and hypothetical.

An injury-in-fact is an injury that is “concrete and particularized” and “actual or imminent.” *Susan B. Anthony List*, 573 U.S. at 158. This requirement ensures that plaintiffs

without a personal stake in the outcome of a case do not overwhelm courts with frivolous suits. *Steffel v. Thompson*, 415 U.S. 452, 475 (1974). A future injury may fulfill this requirement in limited circumstances where the injury is “certainly impending” or when there is a “substantial risk” of the harm occurring. *Id.* For instance, in *Steffel*, a plaintiff was permitted to bring a pre-enforcement suit after receiving a genuine threat of prosecution. *Id.* There, the plaintiff’s fear of future injury was genuine because he had been threatened twice with arrest, and his companion, who had been involved in the same activity, had already been prosecuted. *Id.* at 459. A future injury that can be corroborated by an intelligible set of facts cannot be described as imaginary or hypothetical. *Id.*

However, when a plaintiff’s fear of injury is wholly speculative, the injury-in-fact requirement is not met. *Id.* For example, in *Lyons*, this Court held that a plaintiff’s claim of future injury was insufficient to establish standing because there was no evidence to support his contention that the injury would occur. *City of L.A. v. Lyons*, 461 U.S. 95, 106 (1983). In making its decision, this Court considered how many events needed to take place for the alleged future injury to occur. *Id.* at 109. Specifically, when a plaintiff’s injury-in-fact is merely supported by a series of hypotheticals, there is no basis to warrant the invocation of federal jurisdiction. *Id.*

Covenant Truth Church has alleged a future injury that is wholly speculative. R. at 14. There is no evidence that the IRS has unfairly targeted the Church with the intention of depriving it of its tax-exempt status. R. at 7–8. Like the alleged injury-in-fact in *Lyons*, many hypothetical events must occur before the Church is at a *substantial risk* of losing its tax-exempt status. *Lyons*, 461 U.S. at 109. First, the IRS must conduct its random audit. R. at 5. During its audit, the IRS may request various documentation from the Church. 26 U.S.C. § 7611. Next, it will decide whether the Church’s conduct violates the provisions outlined in the Johnson Amendment. 26

U.S.C. § 7611. Because many hypothetical events must occur before there is a substantial risk of losing its status, Covenant Truth Church’s standing is based upon a purely speculative chain of possibilities that do not establish an actual or imminent injury. *Clapper v. Amnesty Int’l USA*, 569 U.S. 398, 415 (2013).

Even if the IRS finds that Pastor Vale’s conduct is improper, the Church can only speculate as to whether the IRS will enforce the Johnson Amendment against them. R. at 14. In fact, the Amendment is rarely enforced. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (“The government has disclaimed its intent to enforce the Johnson Amendment against houses of worship, and a lack of past enforcement is persuasive evidence that there is no likelihood of enforcement.”); R. at 14. Unlike the present matter, *Branch Ministries* is one of the rare occurrences where the IRS revoked a church’s Section 501(c)(3) status for its political involvement. *Branch Ministries v. Rossotti*, 211 F.3d 137, 143–44 (D.C. Cir. 2000). There, the Church funded a highly circulated newspaper advertisement that urged Christians not to vote for Former President Clinton. *Id.* at 140. The court found the Church’s political activity was unconnected to its ability to freely exercise its religion. *Id.* at 142. Additionally, the Church did not require its members to partake in political participation as a part of the congregation. *Id.* at 140. Therefore, the newspaper was not in connection with its religious services; thus, the Johnson Amendment was enforced. *Id.* at 144.

The facts here vary drastically: Pastor Vale is speaking directly to his congregation and following the commands of The Everlight Dominion. R. at 4. Specifically, The Everlight Dominion requires its congregation to participate in political campaigns and support candidates that align with its political stances by donating to and volunteering for campaigns. R. at 3. Any member or leader who “fails to adhere to this requirement is banished from the church.” R. at 3.

And while Covenant Truth Church has engaged in these actions, the key difference between the Church and *Branch Ministries* is that the Church's actions were connected to its religious services, and thus, the IRS will likely not enforce the Johnson Amendment. R. at 4–5. As opined by Circuit Judge Marshall in his dissent, “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,” the Johnson Amendment will not be enforced. R. at 14; *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). Therefore, because the IRS is unlikely to enforce the Johnson Amendment against Covenant Truth Church, the Church fails to allege an injury that is concrete and particularized, or actual or imminent. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Thus, Covenant Truth Church has no Article III standing. *Id.*

B. Covenant Truth Church has failed to establish a future injury that is fairly traceable to the IRS.

To satisfy the next requirement of Article III standing, the plaintiff must demonstrate that there is a sufficient causal connection between their injury and the defendant's conduct. *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 603 F.Supp.3d 1183, 1197 (Fla. Dist. Ct. App. 2022). In other words, there must be at least an indirect showing that the defendant's conduct caused the plaintiff's injury. *Id.* at 1206. Courts have recognized a defendant's conduct as fairly traceable to a plaintiff's injury when there is enough information to surpass the pleading stage. *Id.*

For example, in *In re Mendax Services, Inc.*, the court found that the traceability requirement was met because the plaintiff provided enough evidence to make it plausible that the defendant's conduct was the cause of its injury. *Id.* There, following the defendant's actions, the plaintiff experienced identity theft, economic losses, lost time, and faced other impending risks. *Id.*

Therefore, it was plausible to assume that the plaintiff would prevail on the merits of their claim.³
Id.

Conversely here, Covenant Truth Church has failed to provide any plausible evidence that the IRS is the cause of its alleged future injury. R. 3–5. The Church is complaining about the revocation of its Section 501(c)(3) tax exemption status—an event that has not actually occurred. R. at 5. The Church still maintains its tax-exempt status and the other benefits of the Section 501(c)(3) statute. R. at 5. Although the IRS sent a letter to Covenant Truth Church, it was only a letter notifying the church of a random audit. R. at 5. The IRS never targeted the Church’s beliefs. R. at 5. The IRS never threatened to revoke the Church’s tax classification, like in *Bob Jones University*. R. at 5; 416 U.S. at 747. The IRS’s *only* desire was to engage in an audit, which likely would not have resulted in a revocation of the Church’s tax classification. *Speech First, Inc.*, 979 F.3d at 330 (highlighting that the government does not intend to enforce the Johnson Amendment against churches when connected with religious activities). Furthermore, any economic loss or lost time incurred by Covenant Truth Church is the direct result of the Church’s decision to bring this premature suit. R. at 5. The Church cannot establish even an indirect connection between its injuries and the IRS’s actions. R. at 3–5. It is not plausible for the IRS to be a cause of the Church’s injury if it has never taken adverse actions against the Church. R. at 3–5. Too many “ifs” must occur before Covenant Truth Church can make a connection between its injury and the IRS’s revocation of its tax-exempt status. *Clapper*, 568 U.S. at 414. Therefore, because the Church has presented no plausible evidence to connect their “injury” to the IRS, the Church is unable to trace their future injury as required by Article III standing. *Lujan*, 504 U.S. at 560–61.

³ This Tax Court case demonstrates the effectiveness of the tax system, reinforcing the argument advanced in Part I.A.

C. Because the IRS has taken no action against Covenant Truth Church, this Court cannot redress their “injuries.”

Finally, to establish Article III standing, a plaintiff must demonstrate the likelihood that his injury is likely to be redressed by a favorable ruling. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). In addition to showing that the injury will be redressed, the plaintiff must prove that the court has the power to issue the relief sought. *Seed v. EPA*, 100 F.4th 257, 263 (D.C. Cir. 2024). To reiterate the gravity of the Church’s request, by granting an injunction, the Church is asking this Court to step outside its constitutional bounds placed on it during this nation’s founding and into the shoes of Congress’s express authority to lay and collect taxes. *Republic of Marsh. Is. v. U.S.*, 865 F.3d 1187, 1200 (9th Cir. 2017). A separation of powers issue will arise if this Court oversteps and seeks to resolve an issue for which Congress has not granted it the authority to do so. *Id.* The primary focus of this requirement is to ensure that this Court can adequately remedy the Church’s “injury.” See *Gonzales v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982). Lack of redressability alone is enough to deny standing. *Id.* at 1199.

Furthermore, because this case does not involve an actual case or controversy, it is not ripe for review. U.S. CONST. art. III, § 2, cl. 1. While there is no established test to determine whether a case is ripe, many courts resolve the issue by considering whether a claim “rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.” *Tex. v. U.S.*, 523 U.S. 296, 300 (1998); *Uncertain Contingencies*, 13B Fed. Prac. & Proc. Juries, § 3542.2 (3d ed.). Covenant Truth Church’s tax-exempt status has not been revoked; therefore, there is no issue for this Court to redress. R. at 5.

Finally, courts have held that ripeness does not exist when a plaintiff can only allege a speculative threat of injury. *Waldman v. Conway*, 871 F.3d 1283, 1293 (11th Cir. 2017). Instead, courts are more apt to accept theories of ripeness based on a plaintiff’s immediate danger of

suffering an injury. *Id.* at 1120. Again, Covenant Truth Church’s injury is speculative as to whether the IRS will rescind its tax-exempt status. R. at 3–5. The Church has failed to present evidence that the IRS intends to find a Johnson Amendment violation other than a letter alerting the Church to its audit. R. at 3–5.

If the Church were facing an immediate danger of Section 501(c)(3) revocation, the IRS would have acted similarly to the way it did in the *Branch Ministries* case. There, the IRS requested information from the church regarding its alleged political activities and expenditures. *Branch Ministries*, 211 F.3d at 140. After formally notifying the Church of its intent to examine the church’s records for a Section 501(c)(3) violation, the IRS held two meetings with the Church. *Id.* It was not until after the largely unproductive meetings that the IRS revoked the church’s tax classification. *Id.* Here, the contact between Covenant Truth Church and the IRS has been minimal. R. at 5. To allege that the IRS’s letter on May 1st is an indication of revocation would be inconsistent with the IRS’s tendencies shown in *Branch Ministries*. R. at 5; 211 F.3d at 140.

D. Congress has not conferred the power to carry out federal tax regulations to the judiciary.

The remedy sought by a plaintiff must traditionally be “thought to be capable of resolution” in federal court. *U.S. v. Tex.*, 599 U.S. 670, 671 (2023). Although Article I specifically grants Congress the power to lay and collect taxes for the general welfare of the United States, Congress has delegated some of this authority to the IRS. U.S. CONST. art. I, § 8, cl. 1. In fact, Congress has specially created barriers, such as the Tax Anti-Injunction Act and 26 U.S.C. § 7428, to limit the reach of federal courts in tax legislation. § 7428. These provisions reflect Congress’s clear intent to limit judicial interference with tax administration and the intent to channel disputes through specific administrative procedures. 26 U.S.C. § 7428.

Additionally, judicial oversight can only be permitted when there is no alternative remedy for redress through Congress or another appropriate agency. *Myers*, 303 U.S. at 51. Traditionally, tax-exempt status is granted by the IRS, not the courts. *How to Appeal an IRS Determination on Tax-Exempt Status*, IRS (2017), <https://www.irs.gov/pub/irs-pdf/p892.pdf>. And when an organization receives an adverse judgment regarding its tax-exempt status, Congress provides those redress procedures through the IRS. *Id.* By allowing Covenant Truth Church to address their issues prematurely in the judicial system rather than the IRS, this Court would be overstepping the boundaries established by the Constitution and Congress in resolving tax issues. U.S. CONST. art. I. § 8, cl. 1.

Finally, requiring this Court to engage in guesswork in assessing the Church's theory of standing would completely undermine the effectiveness of the separation of powers principle on which this country was founded. *Clapper*, 568 U.S. at 413; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 577 (1992); see *The Federalist No. 78* (Alexander Hamilton) ("The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever."). In fact, this Court has consistently rejected the idea of engaging in such guesswork: "Under Article III, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights." *Stark v. Wickard*, 321 U.S. 288, 310 (1944); *Whitmore v. Ark.*, 495 U.S. 149, 158 (1990). ("Allegations of possible future injury do not satisfy the requirements of Art. III. A threatened injury must be 'certainly impending' to constitute injury in fact."). Therefore, this Court should decline to engage in such guesswork and should hold that Covenant Truth Church does not have Article III standing.

III. The Johnson Amendment aligns with the First Amendment because it maintains Government neutrality towards the free exercise of religion.

The Religion Clauses of the First Amendment are essential to the backdrop of American liberty. *See McCreary Cnty., Ky. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 876 (2005). Yet, this Court has long understood that “the Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution.” *Walz v. Tax Comm’n of City of N.Y.C.*, 387 U.S. 664, 668 (1970). The Free Exercise Clause protects United States citizens and organizations from governmental restriction of religion: “Congress shall make no law...prohibiting the free exercise [of religion].” U.S. CONST. amend. I. In contrast, the Establishment Clause ensures that the Government avoids state-sponsored religion: “Congress shall make no law respecting an establishment of religion.” U.S. CONST. amend. I. In the view of the very men who authored these clauses, the establishment of religion can manifest in many ways, such as “sponsorship, financial support, and active involvement of the sovereign in religious activity.” *Walz*, 387 U.S. at 668.

Ordered liberty demands that the Government maintain neutrality towards religion. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). Historically, this Court has analyzed Establishment Clause claims under strict scrutiny by using the test set out in *Lemon v. Kurtzman*. 403 U.S. 602, 612–13 (1971). This test set out a three-pronged analysis to determine whether a statute was in violation of the Establishment Clause. *Id.* However, this Court made clear in 2022 that this was not the preferred method to analyze Establishment cases because it was too speculative. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). Today, this Court first uses a preliminary analysis set out in *Larson* of whether the law establishes a denomination preference of one religion over another. *Larson v. Valente*, 456 U.S. 228, 246 (1982). If the law facially appears to establish such a preference, courts must “treat the law as suspect” and use a “strict scrutiny [analysis] in

adjudging its constitutionality.” *Id.* The Government bears the burden of showing that the law is the least restrictive means of furtherance of a compelling interest. *Id.* at 251.

A. The Johnson Amendment does not establish a denominational preference for one religion over another.

To bring this claim under the Establishment Clause, Covenant Truth Church must present evidence sufficient to support a finding that the Johnson Amendment establishes a denominational preference for one religion over another. *Id.* at 246. A law establishes a denominational preference if it fails neutrality or is not generally applicable. *Kennedy*, 597 U.S. at 526; *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 252 (2025).

For example, in *Catholic Charities Bureau, Inc.*, a tax-exempt statute was challenged for its denominational preference for organizations that served only those with co-religionist beliefs. *Cath. Charities Bureau, Inc.*, 605 U.S. at 241. The exemption, on its face, was not “available on an equal basis to all denominations.” *Id.* at 251. This amounted to a denominational preference because the exemption could only be used by Catholics for Catholic purposes. *Id.* at 252. When the receipt of an exemption is conditioned on a religious organization engaging in a certain type of religious activity, “it must be invalidated unless it is justified by a compelling government interest and is closely fitted to further that interest.” *Id.* at 252.

In contrast, a statute that gives all religious organizations the choice of engaging in political activity and forfeiting its Section 501(c)(3) status or refraining from political activity and retaining its Section 501(c)(3) status is not preferring one religion over the other, and is therefore, constitutional. *Branch Ministries*, 40 F.Supp.2d. at 25. While a church that decides to pick the former option may be subjected to corporate tax liability and have less money to expend on its religious activities, financial hardships because of a church’s desire to participate in political activities cannot be considered a denominational preference by the Government. *Id.* Such a choice

is unrelated to the fact that the organization is religious, and even less connected to the specific denomination of the Church. *Id.* Instead, the Johnson Amendment applies to *all* Section 501(c)(3) organizations regardless of their creed, beliefs, or objectives:

Any community chest, fund, or foundation organized or operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes...no substantial part of the activities of which is carry on propaganda, or otherwise attempting to influence legislation, any political campaign on behalf of any candidate for public office.

26 U.S.C. 501(c)(3).

Here, admittedly, political involvement is an essential tenant to The Everlight Dominion. R. at 3. However, Covenant Truth Church incorrectly assumes that the possibility of losing tax benefits due to political involvement automatically renders the Johnson Amendment preferential to certain denominations. R. at 5. That is not the case. When auditing Section 501(c)(3) organizations to determine their political involvement, the IRS is not looking to monitor specific religious denominations. § 503(c)(3). With the Johnson Amendment, the IRS is giving all non-profit organizations, like Covenant Truth Church, two choices: (1) maintain tax-exempt status and refrain from political activity; or (2) lose tax-exempt status and participate in political activity. *Id.* Tax-exempt status is a conditional privilege, *not* a constitutional right under the Establishment Clause. *Branch Ministries*, 211 F.3d at 142.

Because Congress must strike a balance between the Free Exercise Clause and the Establishment Clause of the First Amendment, it must create laws that are neutral and generally applicable. *Walz*, 397 U.S. at 669–70. The Johnson Amendment is a non-secular and neutral policy because it demands the same from all organizations benefiting from a Section 501(c)(3) tax classification. R. at 15; 26 U.S.C. 501(c)(3). To hold otherwise would be inconsistent with

historical references and understandings of the Establishment Clause. *Kennedy*, 597 U.S. at 535 (2022).

B. The Johnson Amendment is constitutional because it is the least restrictive means of furthering a compelling governmental interest.

If this Court finds that Johnson Amendment is not neutral, the Government may still show that the Amendment is constitutional by demonstrating that it “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Ramirez v. Collier*, 595 U.S. 411, 425 (2022). When the Government satisfies these elements, there cannot be a constitutional violation. *Id.*

1. The Johnson Amendment is necessary to maintain both the Establishment Clause and the wall of separation between Church and State.

The first prong in determining whether a law is constitutional is whether it is in furtherance of a compelling governmental interest. *Ramirez*, 595 U.S. at 425. Here, avoiding the establishment of state-sponsored religion is a compelling governmental interest in maintaining the Johnson Amendment. *Cath. Charities Bureau, Inc.*, 605 U.S. at 254. Not only is this interest mandated by the Establishment Clause of the First Amendment, but it “is fundamental to our constitutional order that the government maintain neutrality” between religions. *Id.*

Additionally, the Johnson Amendment promotes the compelling governmental interest of maintaining a wall between church and state. 26 U.S.C. § 501(c)(3). As addressed before, the Johnson Amendment applies to all organizations regardless of their creed, background, or beliefs. 26 U.S.C. § 501(c)(3). If this Court finds the Amendment unconstitutional, it would, in effect, dismantle the wall that separates church and state. *Walz*, 397 U.S. at 674. For example, elimination of the Johnson Amendment could result in “tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations that follow in the train of those legal processes.” *Id.*

at 674. As James Madison once said, government and religion “will both exist in greater purity, the less they are mixed together.” James Madison, *James Madison to Edward Livingston, 10 July 1822*, FOUNDERS ONLINE (July 10, 1822), <https://founders.archives.gov/documents/Madison/04-02-02-0471>.

Here, by adhering to the Johnson Amendment, the IRS is furthering both compelling governmental interests and maintaining the balance between the Free Exercise Clause and the Establishment Clause. *Cath. Charities Bureau, Inc.*, 605 U.S. at 237. Congress, the branch of government that has been delegated the authority to oversee this issue, has been given a multitude of opportunities to change the Amendment’s provisions, but has declined to do so because of its effectiveness. R. at 3; *see e.g.*; William Douglas, *GOP plans to ease law on pol. speech from the pulpit gets lukewarm reception*, MCCLATCHY DC (Nov. 2, 2017) <https://www.mcclatchydc.com/news/politics-government/congress/article182390976.html>; H.R. 172, 115th Cong. (2017) (both failing to pass through Congress). Because Congress has a compelling governmental interest in both avoiding the establishment of a state-sponsored religion and maintaining the wall between church and state, the first prong is satisfied. *Ramirez*, 595 U.S. at 425.

2. Congress provides Section 501(c)(3) organizations alternative channels for political expression.

The second prong in determining whether a law is constitutional is whether the means to achieve the compelling governmental interest are the least restrictive. *Ramirez*, 595 U.S. at 425. The Johnson Amendment is the least restrictive means by which the IRS could “limit” Covenant Truth Church’s political involvement to maintain the balance between church and state. *Id.* While the Amendment regulates direct political involvement by non-profit organizations, it does provide alternative methods readily available to promote candidates for public office. *Branch Ministries*,

211 F.3d at 172. First, Congress permits a tax-exempt organization to create a Section 501(c)(4) affiliate organization to engage in lobby efforts. *Id.* Secondly, non-profit organizations may opt out of tax-exempt status to exercise their rights according to their preferences. *Branch Ministries*, 40 F.Supp.2d at 25. These alternative methods to the restrictions placed on Section 501(c)(3) organizations allow churches to speak freely about political activities without their free exercise rights being substantially burdened. *Id.* at 19. Congress chose this option as the least restrictive means available when it could have declined alternative avenues for political engagement or imposed a complete prohibition on religious political activity regardless of tax-exempt status. *Id.* at 26 (“The government has a compelling interest in . . . not subsidizing partisan political activity, and Section 501(c)(3) is the least restrictive means of accomplishing that purpose.”).

Here, Covenant Truth Church has not presented any reasoning as to why it cannot create a Section 501(c)(4) organization to exercise its political stance. R. at 3–5. Further, the Church has failed to provide any evidence or argument that it would be substantially harmed by paying taxes. R. at 3–5. Ultimately, the Johnson Amendment is the most effective way to (1) prevent the establishment of a state-sponsored religion, and (2) maintain the separation of church and state. *Branch Ministries*, 40 F.Supp.2d at 26. Therefore, both prongs of the test are satisfied, and this Court should hold that the Johnson Amendment is constitutional. *Ramirez*, 595 U.S. at 425.

CONCLUSION

The Tax Anti-Injunction Act bars this suit by Covenant Truth Church. Congress, possessing the power to lay and collect taxes, has delegated the responsibility of collecting taxes to the IRS. The Act ensures that the federal court system is not overwhelmed with cases brought simply for the purpose of avoiding taxation. Though Covenant Truth Church maintains that this suit is not barred by the Tax Anti-Injunction Act because Congress has not provided a remedy for it to appeal its adverse tax determination, that is not the case. After an organization receives an adverse tax classification, it may appeal the decision using 26 U.S.C. § 7428. This appeals process is settled through the IRS's channels. If Covenant Truth Church receives an adverse tax classification from the IRS, the Church will have the right to appeal under 26 U.S.C. § 7428. After an unfavorable appeal decision with the IRS, the Church can bring the case to federal court. Therefore, the Church lacks standing under the Tax Anti-Injunction Act.

Similarly, Covenant Truth Church also lacks standing under Article III. Article III standing exists only when there is an actual case or controversy. This requirement safeguards other branches of government from judicial oversight in matters that are not yet ready for review. At this point, Covenant Truth Church's attempt would effectively strip Congress of its ability to lay and collect taxes. A future injury may only suffice when a plaintiff has demonstrated that the future injury is certainly impending. A speculative chain of possibilities, as alleged by Covenant Truth Church, cannot be characterized as a certainly impending injury. Furthermore, the federal court system may address the tax classification issue only when Congress has given it the authority to do so. As of today, the IRS has that power. Therefore, Covenant Truth Church lacks Article III standing.

Finally, the Johnson Amendment does not violate the Establishment Clause. Congress, when developing the Johnson Amendment, attempted to grapple with the difficulties of managing

both the Free Exercise Clause and the Establishment Clause. For Covenant Truth Church, the free exercise of their religion includes participation in the political realm. However, this nation was founded on the idea of the separation of church and state. The Establishment Clause demands neutrality, and the Johnson Amendment ensures that all organizations are held to that standard. Tax-exempt classification is a benefit that the Government has conferred to non-profit organizations, and Congress has the authority to condition its receipt in ways that best serve this nation. It would threaten the existence of the Democracy as we know it to eliminate the Johnson Amendment and allow state-sponsored religions. Therefore, because the Amendment is neutral, serves a compelling governmental interest, and is the least restrictive means of accomplishing that interest, the Johnson Amendment is constitutional.

Respectfully submitted,

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