No. 26-1779

In the Supreme Court of the United States

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 OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Attorneys for Respondent
Team 36

QUESTIONS PRESENTED

1. Under the Tax Anti-Injunction Act, does a taxpayer have Article III standing to bring a pre-enforcement challenge to the Johnson Amendment if no viable alternative exists to block enforcement of the act?
2. Does the Johnson Amendment violate the Establishment Clause of the First Amendment if it inequitably promotes certain denominations and fails to align with the nation's historical beliefs?

LIST OF PARTIES

Petitioners Scott Bessent, in his official capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service were the appellants in the court below.

Respondent is Covenant Truth Church, and was the appellee in the court below.

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JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fourteenth Circuit affirmed the grant of summary judgment and permanent injunction entered by the United States District Court for the District of Wythe on August 1, 2025. Petitioners filed a timely petition for writ of certiorari, which this Court granted on November 1, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST. 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. § 501(c)(3); 26 U.S.C. § 7421(a); 26 U.S.C. § 7428.

STATEMENT OF THE CASE

I. A pastor, a podcast, and the IRS walk into a bar . . .

The Everlight Dominion is a long-established faith rooted in progressive social values and civic engagement. R. at 3. At the core of the religion is a requirement that clergy and churches remain actively involved in community politics, including endorsing and campaigning for candidates that support the order's positions. R. at 3. The Everlight Dominion's following has traditionally been limited, and it has struggled to attract and retain younger members. R. at 3. However, the once-obscure religion has recently captured the national spotlight, thanks to Gideon Vale, head pastor of Covenant Truth Church ("Covenant"). R. at 3-4.

When Pastor Vale joined Covenant in 2018, the church was a small 501(c)(3) organization with only a few hundred members. R. at 3-4. Vale wanted to make Covenant, and the Everlight Dominion as a whole, more appealing to younger generations. R. at 3-4. To this end, he launched a weekly podcast as a platform to share the faith's gospel and mission. R. at 3-4 The podcast was well received, and millions of people downloaded the pastor's sermons, spiritual guidance, and education. R. at 3-4. The Everlight Dominion saw an influx of followers, with Covenant's congregation alone reaching nearly 15,000 members. R. at 4.

Adhering to the precepts of the faith, Pastor Vale began using his podcast to endorse ideologically aligned political candidates. R. at 4. When the January 2024 death of Wythe Senator Matthew Russet triggered a special election, Vale took to the podcast to campaign for and endorse progressive Congressman Samuel Davis on behalf of Covenant. R. at 4-5.

Not long after, the IRS informed Covenant that it had been selected for a random audit. R. at 5. This concerned Pastor Vale, as the IRS purports to bar any 501(c)(3) from participating in political campaigns under the Johnson Amendment. R. at 2, 5. Vale worried that the IRS would

sanction Covenant for its faith-mandated activism. R. at 5. Covenant decided to challenge the constitutionality of the provision prior to the review. R. at 5.

II. . . . And no one agrees who calls the shots.

On May 15, 2024, Covenant filed a pre-enforcement suit against Petitioners in the United States District Court for the District of Wythe seeking to enjoin enforcement of the Johnson Amendment. R. at 5. The church contended that the provision violates the Establishment Clause of the First Amendment. R. at 5. Petitioners denied the allegations, and Covenant moved for summary judgment. R. at 5. The district court granted the motion and entered a permanent injunction, finding both that the church had standing to bring its challenge and that the provision was unconstitutional. R. at 5-6. On appeal, the Fourteenth Circuit affirmed the trial court's decision. R. at 11. Petitioners then petitioned this Court for a Writ of Certiorari. R. at 17.

SUMMARY OF THE ARGUMENT

The appellate court appropriately affirmed the trial court's grant of summary judgment, as Covenant Truth Church's pre-enforcement challenge to the Johnson Amendment is proper under both the Tax Anti-Injunction Act ("AIA") and Article III.

The AIA does not bar Covenant's suit. The suit's primary purpose is not to restrain the assessment or collection of a tax, but to enjoin a regulatory scheme that infringes upon the church's religious practice. Any potential tax liability is speculative and contingent on a multi-step enforcement process, making the connection too attenuated for the AIA to apply. Moreover, even if the AIA were implicated, Covenant falls within the recognized exception for cases without an alternative legal remedy. This is because the Internal Revenue Code provides no meaningful avenue for Covenant to challenge the Johnson Amendment's constitutionality without first risking enforcement.

Covenant also satisfies Article III standing requirements. The Johnson Amendment infringes upon Covenant's right to religious exercise through viewpoint-based discrimination. Additionally, the threat of enforcement is both concrete and imminent; Covenant intends to engage in conduct proscribed by the Amendment, and the government is presumed to enforce the law. Furthermore, the recent IRS consent decree does not have bearing on this threat as it protects only a narrow category of speech that does not apply here.

Finally, the appellate court was correct in granting a permanent injunction, because the Johnson Amendment violates the protections of the Establishment Clause. By denying tax-exempt status to religious organizations that engage in political advocacy, the provision disfavors denominations whose faith mandates political participation. The Amendment also conflicts with the historical understanding of the Establishment Clause, which has traditionally sought to protect religious institutions from government interference, not authorize government oversight of religious speech. By empowering the state to regulate religious messaging, the Johnson Amendment undermines religious liberty and is therefore unconstitutional.

STANDARD OF REVIEW

Jurisdictional challenges based on standing are reviewed *de novo*. *Barry v. Lyon*, 834 F.3d 706, 714 (6th Cir. 2016) (citing *Miller v. City of Cincinnati*, 622 F.3d 524, 531 (6th Cir. 2010)). Grants of summary judgment are similarly reviewed *de novo*. *Santa Monica Commty. Coll. Dist. v. Mason*, 952 F.2d 407 (9th Cir. 1991).

A *de novo* review requires "evaluat[ing] the facts of record in the light most flattering to the nonmovant . . . and draw[ing] all reasonable inferences in that party's favor." *Alston v. Town of Brookline*, 997 F.3d 23, 35 (1st Cir. 2021). This is done "without deference to the lower court." *United States v. Terry*, 83 F.4th 1039, 1041 (6th Cir. 2023).

ARGUMENT

I. Covenant Truth Church has standing to bring a pre-enforcement challenge to the Johnson Amendment.

The First Amendment's Establishment Clause provides that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. 1. Nevertheless, the Johnson Amendment selectively grants federal tax-exempt status to "[c]orporations . . . organized and operated exclusively for religious . . . purposes . . . which [do] 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.§ 501(c)(3). Consequently, Covenant is able to bring a pre-enforcement challenge to the Johnson Amendment because the provision conditions a significant government benefit on a restriction that directly burdens the Church's religious exercise and expression.

A. The Tax Anti-Injunction Act does not bar Covenant Truth Church's suit.

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 The act is intended "to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund [so that] the United States is assured of prompt collection of its lawful revenue." *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962)

To achieve this purpose, this Court has interpreted the AIA as having "almost literal effect." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 737 (1974). The AIA only applies "when the target of a requested injunction is a tax obligation." *CIC Services, LLC v. IRS*, 593 U.S. 209, 218 (2021). In other words, if a taxpayer's suit is *not* for the primary purpose of enjoining a tax obligation, "it can go forward." *Id.* at 216.

1. The primary purpose of Covenant Truth Church's suit is to prevent a constitutional violation.

As an initial matter, "[i]n considering a 'suit['s] purpose,' [courts] inquire not into a taxpayer's subjective motive, but into the action's objective aim—essentially, the relief the suit requests." *Id.* at 217. This consideration includes examining the face of the complaint, the claims brought and injuries alleged, and the thing sought to be enjoined. *Id.* at 218. (citing *Bob Jones Univ.,* 416 U.S. at 738; *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 761 (1974)). For example, in *CIC Services, LLC v. IRS*, this Court held that a challenge brought against an IRS reporting requirement was "not a suit 'for the purpose of restraining the [IRS's] assessment or collection' of a tax," even though a violation of the requirement could result in a tax penalty. *CIC Servs., LLC*, 593 U.S. at 226. There, an insurance advising company sought to "set aside an information-reporting requirement that [was] backed by both civil tax penalties and criminal penalties." *Id.* at 211. The company claimed that the requirement, which penalized advisors for failing to report certain transactions to the IRS, was arbitrary and capricious, and that it was issued without proper notice-and-comment procedures. *Id.* at 214-15. The company brought a pre-enforcement action, which the IRS moved to dismiss under the AIA. *Id.* at 215. In determining whether the suit fell within the AIA's scope, this Court looked to the primary purpose of the suit. *See id.* at 217. It found that the complaint "ask[ed] for injunctive relief from the . . . reporting rules, not from any impending or eventual tax obligation." *Id.* at 219. This Court concluded that "a request . . . to 'enjoin the enforcement' of an IRS reporting rule [was] most naturally understood as a request to 'set aside' that rule . . . , not to block the application of a penalty that might be imposed for some yet-to-happen violation." *Id*. It further "reject[ed] the Government's argument that an injunction against the [requirement was] the same as one against the tax penalty," finding

instead that the suit "target[ed] the upstream reporting mandate, not the downstream tax[, and] because that [was] the suit's aim, the Anti-Injunction Act impose[d] no bar." *Id.* at 219, 223.

On the other hand, in *Bob Jones University v. Simon*, this Court held that a suit seeking to enjoin the IRS "from revoking or threatening to revoke petitioner's tax-exempt status" fell "within the literal scope and the purposes" of the AIA. *Bob Jones Univ.,* 416 U.S. at 735, 739. That case arose after the IRS "announced that it would no longer allow 501(c)(3) status for private schools maintaining racially discriminatory admissions policies." *Id.* at 735. A private evangelical university "advised the [IRS] that it did not admit Negroes, and . . . had no intention of altering this policy," and the IRS responded by commencing the administrative procedures to revoke its 501(c)(3) status. *Id*. The university filed suit, alleging that the threatened revocation "was outside [the IRS's] lawful authority and would violate [the university's] rights to the free exercise of religion, to free association, and to due process and equal protection of the laws." *Id.* at 736. The university maintained that it was seeking an injunction for "maintenance of the flow of [donor] contributions, not the obstruction of revenue," and as such, the AIA was inapplicable. *Id.* at 738. This Court disagreed, finding that the "complaint and supporting documents filed in the District Court belie[d] any notion that this [was] not a suit to enjoin the assessment or collection of federal taxes." *Id*. It observed that "[i]n support of its claim of irreparable injury, [the university] alleged in part that it would be subject to 'substantial' federal income tax liability if the Service were allowed to carry out its threatened action," which "le[ft] little doubt that a primary purpose of this lawsuit [was] to prevent the [IRS] from assessing and collecting income taxes." *Id.*

Next, "when there is 'too attenuated a chain of connection' between an upstream duty and a 'downstream tax,' a court should not view a suit challenging the duty as aiming to 'restrain the assessment or collection of a tax.'" *See CIC Servs., LLC*, 593 U.S. at 221. In *CIC Services*, this

Court "reject[ed] the Government's argument that an injunction against the [reporting requirement was] the same as one against the tax penalty—just 'two sides of the same coin.'" *Id.* at 219. Rather, it found that the two were "several steps removed from each other." *Id.* This Court noted that before any liability could attach, the company would need to withhold the required information, the IRS would need to determine that a violation had in fact occurred, and then the IRS would need to decide to impose the tax penalty. *Id*. This Court emphasized that "[this] threefold contingency matter[ed] in assessing whether the Anti-Injunction Act applie[d]," finding that "[b]etween the upstream [requirement] and the downstream tax, the river [ran] long," and thus it was "hard to characterize [the] suit's purpose as enjoining a tax." *Id*.

Finally, the purposes of the AIA are not met "by probing an individual taxpayer's innermost reasons for suing." *Id.* at 217-18. In *CIC Services*, the IRS insisted "that there [was] no real difference between a suit to invalidate the [requirement] and one to preclude the tax penalty." *Id.* at 218-19. It argued "that by framing [the] suit as an attack on the [requirement, the company was] trying to 'eva[de] the Anti-Injunction Act through artful pleading. '" *Id*. This Court disagreed, noting that the plain language of the complaint "ask[ed] for injunctive relief from the . . . reporting rules, not from any impending or eventual tax obligation," and in fact "barely mention[ed] that penalty." *Id.* This Court cautioned not to look past the face of the taxpayer's complaint when determining the purpose of a suit, as "[d]own that path lies too much potential for circumventing the Act." *See id*.

Here, the primary purpose of Covenant's suit is to challenge the constitutionality of a regulatory scheme that permits the federal government to "monitor religious leaders and their churches" and to confer financial benefit only on those who practice their faith in a particular manner. R. at 9. As in *CIC Services,* where the relief requested was from the challenged rule rather

than the potential tax, Covenant's action to enjoin the enforcement of the Johnson Amendment can properly be understood as a request to set aside the law in its entirety. Unlike *Bob Jones*, where the university sought to prevent the IRS from carrying out an adverse action that it had directly been threatened with, Covenant is not seeking to prevent the collection of any specific tax or assessment. While it is true that the church has been selected for a random audit by the IRS, this situation is distinguishable from *Bob Jones*, where the IRS threatened a concrete, adverse enforcement action based on the university's conduct. Here, Covenant is not seeking to block the IRS from auditing the church as such, but to prevent the IRS from exceeding its constitutional authority at large.

Moreover, the chain of connection between the restrictions placed on 501(c)(3) entities and a concrete, adverse assessment against Covenant is far too attenuated for the AIA to be applicable. Similar to *CIC Services*, where a threefold contingency made it hard to characterize the suit's purpose as enjoining a tax, the river between the upstream regulation and downstream tax here is long; the IRS would have to follow through on the scheduled audit, observe a violation during this audit, decide to enforce the restriction, and then decide that the proper remedy is revocation of Covenant's protected status. As Judge Marshall correctly remarked in his dissent, "[t]he likelihood that the Johnson Amendment will be enforced against [Covenant] relies on a 'speculative chain of possibilities.'" R. at 14. Such a speculative chain places this action outside the AIA's domain.

To be sure, Pastor Vale has not been ignorant of the implications of the Johnson Amendment on Covenant's 501(c)(3) classification. However, any concern that he may personally have had over the outcome of the IRS's audit is not dispositive of this suit's primary purpose. As in *CIC Services*, where this Court cautioned against looking past the face of a complaint, the primary purposes of this suit under the AIA are not appropriately ascertained by probing the inner

workings of the Pastor's psyche. Here, the suit seeks injunctive relief from the constitutional overreach of the Johnson Amendment itself, and not any yet-to-be-levied tax obligation.

2. Covenant Truth Church does not have an alternative remedy to its challenge.

Even if the primary purpose of Covenant's challenge to the Johnson Amendment were to be considered as preventing the assessment or collection of a tax, the action is still not barred by the AIA. "Despite the normally broad reach of the Anti-Injunction Act, [this] Court has fashioned exception[s] to the Act that permit[] actions for injunctive relief in circumstances which do not undermine the Act's purposes." *See Linn v. Chivatero*, 714 F.2d 1278, 1287 (5th Cir. 1983). Specifically, this Court has recognized two judicial exceptions to the AIA. *Leves v. Comm'r*, 796 F.2d 1433, 1434 (11th Cir. 1986)

In *Enochs v. Williams Packing & Nav. Co.*, this Court held that the AIA permits judicial intervention if "it is clear that under no circumstances could the Government ultimately prevail," and "equity jurisdiction otherwise exists." *Williams Packing & Nav. Co.*, 370 U.S. at 7. There, an employer sought to enjoin the collection of social security and unemployment taxes that it alleged were not owed and would destroy its business. *Id.* at 2. This Court found that the suit was barred under the AIA, concluding that "[o]nly upon proof of the presence of two factors could the literal terms of [the AIA] be avoided: first, irreparable injury, the essential prerequisite for injunctive relief in any case; and second, certainty of success on the merits." *Bob Jones Univ.* 416 U.S. at 737 (summarizing *Williams Packing & Nav. Co.*, 370 U.S. at 6-7). It emphasized that "[i]n such a situation the exaction is merely in 'the guise of a tax.'" *Williams Packing & Nav. Co.*, 370 U.S. at 7. (citing *Miller v. Standard Nut Margarine Co. of Fla.*, 284 U.S. 498, 509 (1932)).

Later, in *South Carolina v. Regan*, this Court recognized a second exception for "actions brought by aggrieved parties for whom [Congress] has not provided an alternative remedy." *South*

Carolina v. Regan, 465 U.S. 367, 378 (1984). In that case, the state of South Carolina sought an injunction against the Federal Tax Equity and Fiscal Responsibility Act, asserting that it "destroy[ed the state's] freedom to issue obligations in the form that it chooses" and violated the Tenth Amendment. *Id.* at 371–72. Because the act's scheme placed the tax liability on bondholders rather than the state, South Carolina was "unable to utilize any statutory procedure to contest the [act's] constitutionality." *Id.* at 380. In holding that the AIA was not a bar to the suit, this Court noted that the AIA "prohibited injunctions in the context of a statutory scheme that provided an alternative remedy" and "was merely intended to require taxpayers to litigate their claims in a designated proceeding." *Id.* at 374. It concluded that the AIA "was not intended to apply in the absence of such a remedy." *Id.*

The present case falls under this second exception; Covenant does not have an alternative remedy to contest the constitutionality of the Johnson Amendment. Acknowledgedly, section 7428 of the Internal Revenue Code allows certain federal courts "to grant declaratory relief in a 'case of actual controversy' involving IRS denial or revocation of an organization's tax-exempt charitable status." *McLennan v. United States*, 23 Cl. Ct. 99, 103 (1991), *aff'd,* 994 F.2d 839 (Fed. Cir. 1993) (citing *Baptist Hosps., Inc. v. United States*, 851 F.2d 1397 (Fed. Cir. 1988)). However, this can only be done after "an IRS decision which directly affects an organization's 'classification or qualification' for tax exempt treatment." *Id.* An adverse decision has not yet been issued against Covenant, and this relief is not available.

Granted, it has been argued that section 7428 provides an alternative remedy for Covenant. As Judge Marshall posited in his dissent, Covenant has the ability to wait for an adverse determination to be made, and then pursue relief through administrative channels. R. at 13. However, this position goes against this Court's longstanding jurisprudence. *See, e.g., Ex parte*

Young, 209 U.S. 123, 146 (1908) ("The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid."). Rather, this Court "do[es] not require plaintiffs to 'bet the farm . . . by taking the violative action' before 'testing the validity of the law,' and [it does] not consider this a 'meaningful' avenue of relief." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 490–91 (2010) (citations omitted) (first quoting *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 129 (2007); then quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212 (1994)). Thus, because the Internal Revenue Code does not provide a viable alternative remedy, Covenant's challenge is outside the scope of the AIA.

It should also be noted that a suit for injunctive relief need only meet the criteria for one of the above exceptions to avoid being barred by the AIA. *Agbanc Ltd. v. Berry*, 678 F.Supp. 804, 806–07 (D. Ariz. 1988). While Judge Marshall's dissent also discussed the *Williams Packing* exception (as restated in *Alexander*, 416 U.S. at 758) (R. at 12-13), the absence of an alternative remedy means that Covenant does not need to demonstrate irreparable injury or a certainty of success on the merits. *See Williams Packing & Nav. Co.*, 370 U.S. at 7. Instead, the unavailability of other relief on its own indicates "that equity jurisdiction exists [and thus] the decision of whether to grant a preliminary injunction should be made according to normal standards governing the issuance of such relief." *See In re Dore & Associates Contracting, Inc.*, 45 B.R. 758, 762 (Bankr. E. D. Mich. 1985).

B. Covenant Truth Church has Article III standing to bring its suit.

"Federal courts are courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Under Article III, federal judicial power extends only to the resolution of "Cases" and "Controversies." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016), as revised (May 24, 2016);

U.S. Const. art. III, §§ 1-2. "[T]he plaintiff must have a personal stake in the case—in other words, standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (quoting *Raines v. Byrd*, 521 U.S. 811 (1997)) (internal quotation marks omitted). Importantly, "[w]hen an individual is subject to [threatened enforcement of a law], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citing *Steffel v. Thompson,* 415 U.S. 452, 459 (1974)).

There are three "irreducible constitutional minimum" elements of standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 578 U.S. at 338 (citing *Lujan*, 504 U.S. at 560-62). At issue in this case is the first element: whether Covenant has suffered an injury in fact. R. at 7, 14. A harm rises to an injury in fact when it is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent.'" *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560). Covenant has demonstrated each of these elements.

1. The Johnson Amendment invades Covenant Truth Church's First Amendment rights.

Among the protections afforded by the First Amendment is a strict prohibition on "viewpoint discrimination." *Matal v. Tam*, 582 U.S. 218, 243 (2017). It is unconstitutional for the government to target and punish "particular views taken by speakers on a subject." *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 828–29 (1995). The prohibition extends to the actions taken and regulations imposed by the IRS. *See True the Vote, Inc. v. IRS*, 831 F.3d 551, 560–61 (D. C. Cir. 2016). That is to say, "[t]he tax code may not 'discriminate invidiously . . . in such a way as to aim at the suppression of dangerous ideas.'" *Id.* (quoting *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 548 (1983)). Of particular relevance here, this Court has

held that "[i]f the purpose *or effect* of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid *even though the burden may be characterized as being only indirect*." *Braunfeld v. Brown*, 366 U.S. 599 (1961) (emphasis added). For example, in *Cantwell v. State of Connecticut,* this Court held that a state law requiring individuals soliciting funds for religious causes to obtain a certificate from the state placed "a forbidden burden upon the exercise of liberty protected by the Constitution." *Cantwell v. State of Connecticut*, 310 U.S. 296, 307 (1940). In that case, members of the Jehovah's Witnesses contended that "require[ing] them to obtain a certificate as a condition of soliciting support for their views amount[ed] to a prior restraint on the exercise of their religion within the meaning of the Constitution." The state argued that the law, which "require[d] an application to the secretary of the public welfare council of the State [who would] determine whether the cause [was] a religious one," "impose[d] no previous restraint upon the dissemination of religious views or teaching but merely safeguard[ed] against the perpetration of frauds under the cloak of religion." *Id.* at 304-05. This Court took issue with the fact that the official's "decision to issue or refuse [a certificate] involve[d] appraisal of facts, the exercise of judgment, and the formation of an opinion," and that he was "authorized to withhold his approval if he determine[d] that the cause [was] not a religious one." *Id.* at 305. It concluded that "[s]uch a censorship of religion as the means of determining its right to survive [was] a denial of liberty protected by the First Amendment." *Id.*

In this case, enforcement of the Johnson Amendment invades Covenant's constitutional rights. Conditioning tax-exempt status on the absence of political speech, while affording such status to denominations whose faith practices do not require political engagement, burdens the protections of the First Amendment. As in *Cantwell,* where requiring individuals to prove the

religious nature of their cause was a burden on practitioners' liberty, requiring Covenant and other similarly situated congregations to justify their messages to their sermons and messages in the event of an audit to receive beneficial tax treatment infringes upon the liberty protected by the First Amendment.

2. The Johnson Amendment poses a concrete, particularized, and imminent threat to Covenant Truth Church.

A threatened future harm can rise to an injury in fact when it is "(1) potentially suffered by the plaintiff, not someone else; (2) concrete and particularized, not abstract; and (3) actual or imminent, not conjectural or hypothetical." *Stringer v. Whitley*, 942 F.3d 715, 720–21 (5th Cir. 2019) (internal quotation marks omitted) (citing *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972); *Susan B. Anthony List*, 573 U.S. at 158; *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998)). For example, in *Susan B. Anthony List v. Driehaus*, this Court held that the petitioners alleged a sufficiently imminent injury to confer Article III standing on their pre-enforcement challenge. *Susan B. Anthony List*, 573 U.S. at 152. There, two advocacy organizations sought injunctive relief from an Ohio law prohibiting a person from making false statements about the voting records of political candidates, claiming it unconstitutionally chilled their speech. *Id.* at 155–56. The trial court "dismissed both suits as non-justiciable, concluding that neither suit presented a sufficiently concrete injury for purposes of standing or ripeness." *Id.* at 156. The appellate court affirmed the holding, concluding that prior injuries "d[id] not help . . . show an imminent threat of *future* prosecution," and that "it was speculative whether any person would file a complaint . . . in the future." *Id.* In reversing this decision, this Court reasoned that "[a]n allegation of future injury may suffice [for Article III standing] if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Id.* at 158 (quoting *Clapper v. Amnesty Intl. USA*, 568 U.S. 398, 414 n.4 (2013)). It concluded that when challenging a law

before its enforcement, "a plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Id.* at 159 (quoting *Babbitt v. Farm Workers,* 442 U.S. 289, 298 (1979)).

Covenant has met the injury in fact requirement for its pre-enforcement challenge. To start, any adverse assessment would directly affect the church, rather than a third party. Additionally, the consequences of enforcement are concrete and tangible: if Covenant engages in prohibited speech, it risks losing its 501(c)(3) status. And lastle, the threatened harm is certainly impending and imminent. As in *Susan B. Anthony List*, where organizations intended to discuss political candidates' voting records in a manner forbidden by the statute, Covenant and its leaders intend to uphold the tenets of the Everlight Dominion by endorsing political candidates. This intention places Covenant at substantial risk, as there is a presumption "that the government will enforce the law." *Cayuga Nation v. Tanner*, 824 F.3d 321, 331 (2d Cir. 2016) (quoting *Hedges v. Obama*, 724 F.3d 170, 197 (2d Cir. 2013)). It is reasonably foreseeable that the scheduled IRS audit will uncover the church's required advocacy and, as a result, trigger adverse tax consequences. Accordingly, Covenant has alleged a sufficiently concrete and imminent injury to satisfy Article III standing.

To be sure, the IRS recently entered into a consent decree regarding the enforcement of the Johnson Amendment against houses of worship. 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). In the decree, the IRS agreed to non-enforcement of the provision for "speech by a house of worship to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of

religious faith." *Id.* However, this agreement was explicitly limited to that "narrow, clearly defined category of speech." *Id.* Pastor Vale's podcast falls outside this category. The intended audience of the podcast extends well beyond Covenant's congregation, as Covenant's flock is shy of 15,000 members, while the downloads for Pastor Vale's podcast number in the millions. R. at 4. Adding that the purpose of the podcast, from its inception, has been to educate the public at large about the Everlight Dominion (R. at 3), and it becomes evidence that it cannot appropriately be considered speech *to* Covenant's congregation. Further, Covenant's customary channel of communication is its regular weekly services. R. at 4. Thus, the podcast falls outside the narrow scope of speech protected under the IRS consent decree, and any campaign statements made therein are subject to the restrictions of the Johnson Amendment.

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

"The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *Epperson v. State of Arkansas*, 393 U.S. 97, 104 (1968) "Manifesting a purpose to favor one faith over another, or adherence to religion generally, clashes with the 'understanding, reached . . . after decades of religious war, that liberty and social stability demand a religious tolerance that respects the religious views of all citizens . . . .'" *McCreary Cnty., Ky. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Zelman v. Simmons–Harris*, 536 U.S. 639, 718 (2002) (BREYER, J., dissenting)). To determine whether government action violates the Establishment Clause, courts consider the Clause's "original meaning and history." *Hunter v. United States Dep't of Educ.*, 115 F.4th 955, 964–65 (9th Cir. 2024) (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022)).

A. The Johnson Amendment disadvantages religions whose faith requires political participation.

This Court has found that "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). In other words, the government "may not aid, foster, or promote one religion or religious theory against another." *Epperson*, 393 U.S. at 104. In *Walz v. Tax Comm'n of City of New York*, for instance, this Court affirmed that New York's religious property tax exemption did not violate the Establishment Clause. *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 666 (1970). In finding that the exemption was neither a "sponsorship nor hostility" towards religion, this Court noted that the state "ha[d] not singled out one particular church or religious group or even churches as such; rather, it ha[d] granted exemption to all houses of religious worship within a broad class of property." *Id.* at 672-73. It also reasoned that "[t]he grant of a tax exemption [was] not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state." *Id.* at 675. This Court emphasized that "[t]he general principle deducible from the First Amendment and all that has been said by the Court is . . . that we will not tolerate either governmentally established religion or governmental interference with religion." *Id.* at 669.

The present case sits in stark contrast. Unlike *Walz*, where the tax exemption was granted broadly, the Johnson Amendment, by the plain text of its statute, singles out and excludes a specific class of religious organization: those "which . . . participate in, or intervene in . . ., any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). Further, whereas in *Walz* the grant of a tax exemption was not considered a sponsorship, here the denial of an exemption to a certain class of religion constitutes a hostility. Allowing religious organizations to abstain from paying taxes may not amount to sponsorship of religion—as opposed to secularism—but granting or denying a break to certain denominations based on how they

practice their faith certainly aids and fosters one sect against another. As such, the Johnson Amendment violates the Establishment Clause by disfavoring religions whose faith mandates political activism.

B. The Johnson Amendment conflicts with the historical purpose of the Establishment Clause.

To be permissible under the Establishment Clause, a government action "has to 'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'" *Kennedy*, 597 U.S. at 536 (citing *Town of Greece, N. Y. v. Galloway*, 572 U.S. 565, 577 (2014)). "History strongly points to the proposition that from the framing of our country, the Founders overwhelmingly supported religion as a method of increasing the virtues of Americans." David Abbondanza, *The Pulpit Initiative: Fighting to Return America's First Freedom to Her Churches*, 12 Rich. J.L. & Pub. Int. 225, 229 (2009).

This Court has recognized that Americans "are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). That is to say, "religious values pervade the fabric of our national life." *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971). Consequently, "[t]hroughout the history of the nation–and long before–churches have been active in helping to shape the public policy of the commonwealth in ways they believe God desired." Shawn A. Voyles, *Choosing Between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*, 9 Regent U. L. Rev. 219, 226 (1997).

Still, "[t]he separation of church and state was very important to many of the Founding Fathers, largely because they thought it necessary to protect religion from governmental interference." Stephanie A. Bruch, *Politicking from the Pulpit: An Analysis of the IRS's Current Section 501(c)(3) Enforcement Efforts and How It Is Costing America*, 53 St. Louis U. L.J. 1253, 1256 (2009). To this end, "[c]ongress understood that restricting the speech of churches was not

within its jurisdiction[;] [t]hat is, the exercise of religious speech, whether in support of or in opposition to the government cannot be censored by government." Shawn A. Voyles, *Choosing Between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*, 9 Regent U. L. Rev. 219, 229 (1997). At the same time, "tax exemptions for churches are the product of an 'unbroken' history that 'covers our entire national existence and indeed predates it.'" John W. Whitehead, *Tax Exemption and Churches: A Historical and Constitutional Analysis*, 22 Cumb. L. Rev. 521, 539 (1992) (quoting *Walz,* 397 U.S. at 678).

Against this backdrop, the Johnson Amendment cannot stand. The provision conflicts with the Establishment Clause's historical purpose by restricting churches' speech in a manner that undermines religious liberty. Rather than shielding religious institutions from governmental control, it authorizes the government to police sermons, scrutinize religious messages, and decide which practices are acceptable ways to express faith.

The Founding Fathers recognized the importance of religion in public life. The Johnson Amendment thus represents a modern departure from historical practice, transforming a neutral tax policy into a weapon for suppressing religious participation in civic life. Because it neither aligns with historical tradition nor reflects the Founders' understanding of the Establishment Clause, the Johnson Amendment is unconstitutional.

CONCLUSION

The circuit court properly upheld Covenant's grant of summary judgment and permanent injunction. Neither the AIA nor Article III bars Covenant from bringing a pre-enforcement challenge to the Johnson Amendment. Moreover, the Johnson Amendment's blatant infringement upon the religious protections guaranteed by the Establishment Clause demands a remedy.

This Court holds the power to uphold the values and beliefs that this nation's Founding Fathers considered central to our society. Covenant respectfully requests that this Court affirm the decision of the circuit court.

Respectfully Submitted,

Team 36
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