CAUSE NO. 26-1779

In The

Supreme Court of the United States of America

FEBRUARY TERM, 2026

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

Petitioners

v.

COVENANT TRUTH CHURCH

Respondent

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

BRIEF FOR PETITIONER

ORAL ARGUMENT REQUESTED

ATTORNEYS FOR PETITIONER
TEAM 37

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

QUESTION PRESENTED

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

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

LIST OF PARTIES

Party Name	Appellate Designation	Trial Court/ Agency Party Role	Trial Court/ Agency Party Status
Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service	Appellant	Defendant	Participated Below
The Internal Revenue Service	Appellant	Defendant	Participated Below
Covenant Truth Church	Appellee	Plaintiff	Participated Below

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.

JURSIDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the Fourteenth Circuit was entered on August 1, 2025. The petitioners filed a timely petition for writ of certiorari, which this Court granted on November 1, 2025. This court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

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

The following provisions of the Internal Revenue Code of 1986 are relevant to this case: 26 U.S.C. § 501(c)(3); 26 U.S.C. § 501(c)(4); 26 U.S.C. § 7421(a); 26 U.S.C. § 7428(a); 26 U.S.C. § 7428(b); 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Proceedings Below

On May 15, 2024, Covenant Truth Church filed suit in the United States District Court of Wythe seeking to permanently enjoin the enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. R. at 5. The defendants denied the plaintiff's claims. R. at 5. After full briefing and argument, the District Court granted the plaintiffs motion for summary judgment and entered the permanent injunction on the grounds that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause. R. at 5-6.

The Acting Commissioner of the Internal Revenue Service ("IRS"), Scott Bessent, and the IRS, the Appellants, appealed the District Court's decision. R. at 6. The Fourteenth Circuit affirmed the decision of the District Court on both grounds, finding that the Tax Anti-Injunction Act ("AIA") does not bar Appellee's lawsuit, Appellee satisfies the standard for Article III standing, and the Johnson Amendment is unconstitutional. R. at 6-11.

Justice Marshall dissented the standing issue because Appellee has not satisfied the exceptions to the bar the AIA provides to suits challenging the collection or assessment of taxes, and because the pre-enforcement challenge Appellee brought to the Johnson Amendment is speculative. R. at 12-14. He concluded that this suit should be dismissed for lack of jurisdiction. R. at 12. He dissented on the First Amendment issue because the Johnson Amendment is based on secular criteria and therefore complies with Supreme Court precedent. R. at 15-16. He concluded that the Johnson Amendment is not in violation of the Establishment Clause. R. at 16.

B. Statement of Facts

Over a half century ago, Congress enacted legislation, proposed by Lydon B. Johnson,

which would amend the existing Internal Revenue Code 26 U.S.C. §501(c)(3) to condition eligibility for tax exemption status on an organization's agreement to not participate or intervene in a political campaign for or against a specific political candidate. R. at 2. The amendment, known as the Johnson Amendment, passed without debate and since its enactment, Congress has repeatedly revisited the amendment and has declined to repeal or alter the conditions, leaving the framework intact for decades R. at 2-3.

The Everlight Dominion is a progressive religion with a substantial and dedicated following. R. at 3. One of its congregations, Covenant Truth Church, is led by Paston Gideon Vale, a young and charismatic leader who has expanded the church's reach through sermons, spiritual guidance, and a weekly podcasted designed to reach younger audiences. R. at 4. Since Pastor Vale has joined the church, the membership has increased from a couple hundred members to nearly 15,000 with the addition of in-person and livestream worship services. R. at 4. As part of their mission, Everlight Dominion encourages its leaders and congregation to participate in in civic involvement, including joining in political activity. R. at 4. In order to uphold his religious mission, Pastor Vale has developed a popular podcast, and messages have started to include political messages like endorsing candidate, encouraging the congregation to vote for specific candidate, and to donate and volunteer for campaigns. R. at 4.

In January 2024, the death of Wythe's Senator Matthew Russell had triggered a special election with significant political implications. R. at 4. Pastor Vale and the Everlight Dominion endorsed a progressive Congressman Davis during a sermon, and he encouraged his listeners to support the congressman's candidacy. R. at 4. Pastor Vale then announced an upcoming series of sermons, on both his podcast and through the church, discussing why Congressman Davis's beliefs align with the church. R. at 4-5. The Everlight Dominion and Covenant Truth Church

have maintained a 501(c)(3) tax benefit, therefore receiving the federal tax benefits. R. at 3. On March 1st, the church received a letter from the Internal Revenue Service informing that they have been selected for a random audit at the time the church received the letter the IRS had not started the audit, made any findings, or taken any enforcement action. R. at 5. Pastor Vale, aware recent activity in the church may revoke their tax-exempt status, filed a suit seeking a permanent injunction to prohibit the enforcement of the Johnson Amendment based on it being a violation of the Establishment Clause. R. at 5.

SUMMARY OF THE ARGUMENT

I.

The Tax Anti-Injunction Act ("AIA") provides a jurisdictional restraint on litigants in federal court who challenge the "assessment or collection of any tax." Appellee's suit is for the purpose of challenging an adverse tax classification, therefore falling within the realm of the AIA. Appellee has not overcome the jurisdictional bar of the AIA. They have not proved they are guaranteed to succeed on the merits of their claim nor that they will face irreparable harm. As other courts have found the Johnson Amendment to be Constitutionally enforceable, it is possible for the Government to prevail.

Further, Appellee's tax classification is, at this point, unchanged. Therefore, they are not facing irreparable injury absent an injunction. Both elements together are required to overcome the bar of the AIA. Additionally, Appellee does have an alternative remedy at law to challenge the IRS classification once it has been made. Therefore, this Court lacks jurisdiction to hear this case.

The Article III § 1 standing requirements provide an additional bar to Appellee's pre-enforcement challenge. Appellee does not have a concrete injury-in-fact, as their injury relies on

the speculation that the Government may enforce the Johnson Amendment against them, despite a consent decree to the contrary and a lack of past enforcement.

As for the imminence requirements necessary for pre-enforcement challenges, although Appellee may have been "chilled" by the Johnson Amendment, this is insufficient to bring a pre-enforcement suit. Appellee, in seeking enforcement of an injury that is not impending nor sufficiently imminent, has not proved an adequate injury-in-fact. Without an injury-in-fact, Appellee has not met the burden of standing articulated in Article III.

II.

The Johnson Amendment does not violate the Establishment Clause because it demonstrates a historically grounded, neutral, and noncoercive exercise of congressional power. Clearly perceived through this Court's "historical practice and tradition" analysis, this facet of Congress's taxing power falls well within constitutional bounds. The Establishment Clause prohibits law that prefers one religion to another or religion to nonreligion, but the Constitution does not prohibit the government from applying neutral conditions to widely available public tax benefits, even when religious organizations are affected.

Historically, tax benefit has been understood to be a matter of legislative grace, not a constitutionally guaranteed right. Congress has set the outer parameters on programs such as these to avoid government subsidization of partisan political activity and undermining the foundation of campaign financial law. For more than seventy years, the amendment has been upheld and repeatedly reaffirmed by Congress and the Courts, highlighting the Nation's longstanding commitment to separation of church and state.

The amendment is neutral and evenly applied as it imposes identical restrictions on all organizations under §501(c)(3). Exempting religious organizations from the prohibition would instead create a type of favoritism towards religion that the Establishment Clause forbids.

Lastly, the Johnson Amendment is noncoercive; it does not prohibit speech or compel participation but merely defines the scope of a voluntary tax benefit. Organizations remain free to engage in political activity outside the 501(c)(3) framework and since the government has no duty to subsidize political expression there is no unconstitutional burden under the Establishment Clause.

ARGUMENT

I. Covenant Truth Church Does Not Have Standing Under the Tax Anti-Injunction Act nor Under Article III to Challenge the Johnson Amendment.

Congress manifested an intent to restrict access to litigants in federal court under the Tax Anti-Injunction Act ("AIA"). *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962). The AIA provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a). The purpose of the AIA has been explicitly stated as to protect the Government's interest in assessing and collecting taxes as "expeditiously as possible with a minimum of pre-enforcement interference." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974).

Courts have consistently held that the AIA is to be given literal meaning and only avoided when two conditions are met. *Williams Packing*, 370 U.S. at 6-7. First, when there will be irreparable injury and second, when there is certainty for success on the merits of the claim. *Bob Jones*, 416 U.S. at 737. Importantly, the Court has dictated that the AIA bar is only applicable when an alternative remedy at law is available. *South Carolina v. Regan*, 465 U.S.

367, 372-73 (1984). Covenant Truth Church has not overcome the exceptions to the AIA and is therefore barred from bringing suit.

The AIA is not the only jurisdictional bar in this matter. Article III § 1 of the Constitution specifies that "[t]he judicial Power of the United States" is limited to "Cases" and "Controversies." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016); U.S. CONST. art. III, § 1. The doctrine of standing is embedded in these two concepts. *Id*. at 337-38. Therefore, "the exercise of judicial power" is limited to litigants who have suffered an "injury-in-fact that is fairly traceable to a defendant's conduct and redressable by a favorable decision." *Silver v. IRS*, No. 20-1544, 2025 U.S. Dist. LEXIS 203446, at *14 (D.D.C. Oct. 15, 2025). Article III requires that federal courts may not hear issues that are hypothetical or abstract, as they do not function to "publicly opine on every legal question." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Appellee, as a litigant in Federal Court seeking review, must show that they have standing in the alleged dispute, and they have not done so. *Raines v. Byrd*, 521 U.S. 811, 818 (1997). The issues of jurisdictional bars and standing are reviewed *de novo*. *Dalton v. JJSC Props., LLC*, 967 F.3d 909, 911 (8th Cir. 2020).

A. The AIA Bars Covenant Truth Church's Suit Challenging the Johnson Amendment.

Covenant Truth Church claims that the Johnson Amendment, a provision of 26 U.S.C. § 501(c)(3) prohibiting non-profit organizations from intervening or participating in political campaigns, violates the Establishment Clause. R. at 5. The Johnson Amendment prohibits organizations that are involved in political campaigns from being exempt from having to pay federal income tax, as they otherwise would be. 26 U.S.C. § 501(c)(3). In challenging the Johnson Amendment, Covenant Truth Church is attempting to prevent tax collection or

assessment, explicitly prohibited by the AIA. 26 U.S.C. § 7421(a); *Bob Jones*, 416 U.S. at 736. This Court in *Enochs v. Williams Packing*, affirmed in *Bob Jones Univ. v. Simon*, has established a two-part test in determining whether the AIA may bar a suit which falls within the meaning of § 7421 (a). *Id*. at 737 (citing 370 U.S. at 6-7). Not included in this test is a constitutional challenge. *Alexander v. Ams. United, Inc.*, 416 U.S. 752, 759 (1974). Therefore, Covenant Truth Church, in claiming the Johnson Amendment violates the Establishment Clause, cannot overcome the bar set forth by the AIA. *Id*. at 758-59.

Instead, Covenant Truth Church, to be successful in bringing a pre-enforcement injunction against the assessment or collection of taxes, must show that (1) under absolutely no circumstances will they be unsuccessful on the merits of their claim, and (2) "equity jurisdiction otherwise exists." *Id*. at 758. Here, Covenant Truth Church cannot show either of these requirements for a pre-enforcement injunction and therefore is barred for suit by the AIA. *Id*.

1. The Primary Purpose of this Suit Is to Prevent Tax Collection or Assessment.

The plain language of the AIA indicates that the jurisdictional bar applies to a suit when the primary purpose is to prevent tax collection or assessment. *Williams Packing*, 370 U.S. at 5-6. This suit's purpose falls within the meaning of Section 7421(a). Although on its face Appellee is challenging the constitutionality of the Johnson Amendment; in doing so, they are restricting tax collection or assessment. R. at 5.

In *Alexander v. Ams. United, Inc.*, this Court found that the primary purpose of the suit was to inhibit tax collection or assessment from donors to a non-profit, educational organization through "assurance that their donations would qualify as charitable deductions." 416 U.S. at 760-61. Similarly, Appellee here is seeking to ensure Covenant Truth Church remains a tax-exempt organization by preventing future enforcement of the Johnson Amendment. R. at 5. In both

Alexander and in this instance, the party is indirectly seeking to restrain the assessment or collection of taxes and therefore falls within the AIA. 416 U.S. at 760-61; R. at 5.

2. Appellee Cannot Demonstrate That It is Guaranteed to Succeed on the Merits.

According to this Court in *Williams Packing*, Appellee, to exempt itself from the AIA's bar, must prove that it is guaranteed to succeed on the merits of its case. 370 U.S. at 7. This Court has described this hurdle as a strict bar, noting that a party may only meet this standard if they can show that "under the most liberal view of the facts and the law, the government cannot prevail." *Id*. Appellee has not been successful in this showing. It is not guaranteed that this Court finds the Johnson Amendment unconstitutional, especially because other courts have faced this issue and found otherwise. *Branch Ministries v. Rossotti*, 211 F.3d 137, 144-45 (D.C. Cir. 2000).

In *Branch Ministries v. Rossotti*, the DC Circuit held that enforcing the Johnson Amendment through the revocation of a church's Section 501(c)(3) tax classification did not violate the First Amendment. 211 F.3d at 144-45. In *Inst. for Free Speech v. Johnson*, while not explicitly ruling on the Johnson Amendment itself, the Fifth Circuit did not deny the enforceability of the statute and cited to the D.C. Circuit in *Branch*, indicating a finding of Constitutionality. *Inst. for Free Speech v. Johnson*, 148 F.4th 318, 331 (5th Cir. 2025). Therefore, "under the most liberal view of the facts," it is not guaranteed that Appellee's claims will be successful. *Williams Packing*, 370 U.S. at 7.

3. Appellee Cannot Demonstrate That It Will Suffer Irreparable Harm in Absence of an Injunction.

As for the second requirement expressed in *Williams Packing*, Appellee would need to establish that they will suffer irreparable harm in the absence of this injunction. 370 U.S. at 7. Appellee has not shown that they will suffer irreparable harm. The respondents in *Alexander*

alleged irreparable injury due to loss of contributions "between the withdrawal of § 501 (c)(3) status and the final adjudication of its entitlement to that exemption." 416 U.S. at 761-62. While this Court noted that this might constitute irreparable injury, it was not enough to overcome the AIA bar. *Id*. Rather, it is only one part of the *Williams Packing* inquiry. *Id*. (citing *Williams Packing*, 370 U.S. at 6-7).

In this case, like the respondents in *Alexander*, Appellee, if their tax-exempt status is revoked, might suffer injury. *Id*. However, to distinguish this case from *Alexander*, Appellee's tax-exempt status is currently unchanged. *Id*. Appellee has not shown that with or without a finding of constitutionality of the Johnson Amendment, their status is guaranteed to be revoked. R. at 5. In contrast, the respondents in *Alexander* have already had a determination of a change in their status for taxing purposes. 416 U.S. at 761-62.

Although Appellee has not made an adequate showing of irreparable harm, even if they had, this Court has explicitly stated that it is not enough to escape the jurisdictional bar. *Id*. In fact, this Court expressed that allowing injunctive relief on a showing of irreparable injury "alone would render § 7421 (a) quite meaningless." *Id*. at 762 (citing *Bob Jones*, 416 U.S. at 745-46).

4. Covenant Truth Church Has an Alternative Remedy at Law.

Appellee cannot overcome the AIA's bar because an alternative remedy at law exists. This Court in *South Carolina v. Regan* expressed that Congress did not intend the Act to bar suit when there is not an alternative remedy available. 465 U.S. at 373. In *Regan*, this Court found that because "the State will be unable to utilize any statutory procedure to contest the constitutionality of § 103(j)(1)," the suit was not barred by the AIA. *Id*. at 380.

This Court distinguished *Regan* from *Bob Jones* as well as *Alexander*, noting that in both cases, the parties had a refund suit available to them. *Id*. at 376-80. This case may also be distinguished from *Regan*. Unlike South Carolina in *Regan* where no statutory procedure was created for their situation, here, when a party is aggrieved by their tax classification made by the IRS, the party can file an appeal with the IRS. 465 U.S. at 379-80; *See* 26 U.S.C. § 7428. If that appeal is unsuccessful, a party may use Section 7428 to seek relief in federal court. 26 U.S.C. § 7428(a). Further, Section 7428 requires plaintiffs to exhaust administrative remedies, like this appeals process, before seeking judicial relief. *See* 26 U.S.C. § 7428(b). Although an adverse classification has not been made and might not be made, the procedural scheme available is the remedy that Congress contemplated for the injury Appellee is alleging here. *See* 26 U.S.C. § 7428. Therefore, the exception laid out in *Regan* cannot apply to Appellee. 465 U.S. at 376-78.

B. Covenant Truth Church Does Not Have Standing Under the Requirements of Article III of the Constitution.

The Article III standing requirements are defined by this Court through a test requiring a plaintiff to show that they have "(1) an 'injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of' and (3) a 'likel[ihood]' that the injury 'will be redressed by a favorable decision.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). An inadequate injury-in-fact serves to end the standing analysis, which is the focus of this issue. *TransUnion*, 594 U.S. at 417. This Court ensures a strict following of the standing requirements, holding that "[its] standing inquiry has been especially rigorous when reaching the merits of the dispute would force [it] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Raines*, 521 U.S. at 819-20. Here, as Covenant Truth Church is challenging the Constitutionality of the Johnson Amendment, strict compliance with

Article III standing must be upheld. *Id*. This is an issue of separation of powers, ensuring that "the power of the Federal Judiciary may not be permitted to intrude upon the powers given to the other branches." *Spokeo*, 578 U.S. at 337.

1. Appellee Has Not Established a Concrete Injury-In-Fact As Required by Article III Standing Requirements.

Appellee has not met the burden required by Article III § 1 of the Constitution to establish an adequate injury-in-fact. *TransUnion*, 594 U.S. at 417. This inquiry requires the plaintiff to show that their injuries are "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citing *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)). For an injury to be "particularized," it must be personal to this specific party. *Spokeo*, 578 U.S. at 339. Here, Appellee's injury is particularized, as potential enforcement of the Johnson Amendment could affect Covenant Truth Church. R. at 5. However, individualization of an injury does not end the inquiry. *Spokeo*, 578 U.S. at 339-40. The injury must further be "concrete," meaning, not abstract. *Id*.

In *Spokeo, Inc. v. Robbins*, this Court determined that a violation of procedure alone, especially when it is not guaranteed to cause harm, is not enough to satisfy the standing requirements. 578 U.S. at 341. In *Spokeo*, the procedural violation in question was one regarding the potentially harmful dissemination of false information. *Id*. at 342. The Court recognized that in some instances this procedural violation could be harmful, but in other cases it may not be, for example, the dissemination of an incorrect zip code. *Id*.; *See TransUnion*, 594 U.S. at 432-35 (holding members whose credit files contained misleading information that "labeled [them] as potential terrorists, drug traffickers, or serious criminals," but were not disseminated to third parties, did not have standing due to lack of material, concrete harm).

Similarly, In *Clapper v. Amnesty Int'l USA*, this Court determined that the respondent's challenge failed given that their injuries relied on speculative information about "whether their communications with their foreign contacts will be acquired under §1881a." 568 U.S. at 411. In *Whole Woman's Health v. Jackson*, this Court found that the petitioners lacked standing against the sole private defendant due to his sworn declarations that he does not have intention to file an S.B.8 suit against them. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 48 (2021).

Here, Appellee's injury relies on the likelihood that the Johnson Amendment will be enforced against them. R. at 5. Not only that, but that the Johnson Amendment would cause Covenant Truth Church to lose their Section 501(c)(3) tax classification. R. at 5. Just like the petitioner in *Spokeo*, Appellee has not alleged injuries that move from the abstract to reality. 578 U.S. at 341-42. A routine audit of Appellee's organization by the IRS does not guarantee harm. R. at 5. Although the right in question in *Spokeo* was granted statutorily while here it is a Constitutional right in question, the concept of concreteness remains the same. 578 U.S. at 341-43. A violation does not amount to an injury in every scenario, and the judicial system is not a policing agency. *TransUnion*, 594 U.S. at 423-24.

Further, just like in *Clapper*, Appellee's injuries rely on a series of future events. 568 U.S. at 412-13. In both cases, the injury requires the Government to act, and in neither case can the party show that that targeting or enforcement has occurred or will. *Id*. Therefore, in both instances, the injuries alleged are purely speculative and ungrounded in fact. *Id*. Additionally, like the defendant in *Whole Woman's Health* who issued a sworn declaration that he will not pursue any action, the IRS has entered a consent decree, explaining that it will not enforce the Johnson Amendment "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with

religious services." 595 U.S. at 48; *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025). This is direct, persuasive evidence that the threat of enforcement is speculative. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020).

The conduct Appellee worries would be in violation of the Johnson Amendment is their Pastor, Pastor Gideon Vale, speaking to his congregation through his weekly podcast as well as at his weekly worship services. R. at 3-5. Both instances are "customary channels of communication," and, as it is part of Covenant Truth Church's religion to speak on political matters, is "in connection with religious services." R. at 3. Therefore, the conduct in question fits squarely within the consent decree, showing that an injury based on the enforcement of the Johnson Amendment is not only not guaranteed, but unlikely. In addition to the consent decree, the Johnson Amendment has a history of a lack of enforcement. R. at 7; *See Free Speech*, 148 F.4th at 331 (non-profit entities represented political candidates for years while disclosing this activity to the IRS, but the IRS did not enforce the Johnson Amendment).

This case can be distinguished from the Fifth Circuit's decision in *Speech First, Inc. v. Fenves*. In *Speech First*, the Fifth Circuit held that a history of past enforcement may move a party's case from speculative to concrete; however, a lack of past enforcement does not by itself kill the existence of standing. 979 F.3d at 336. In *Speech First*, the University points to a lack of past enforcement of their policies to restrict student speech as evidence that the "chilling effect" the students allege is abstract. *Id*. Only after a decision by the District Court did the University in *Speech First* change its policies. *Id*. at 329.

In contrast to the evidence in *Speech First*, not only has there been a lack of past enforcement of the Johnson Amendment, but, as mentioned above, there has been a consent

decree that explicitly excludes organizations just like Appellees from being included. *Id*. at 336. Additionally, the "chilling effect" in *Speech First* was more prevalent due to the consequences, nature of the policies, and the overall climate of the University's campus. *Id*. at 323-27.

This Court has established that a "chill" alone is not enough to meet standing requirements. *Whole Woman's Health*, 595 U.S. at 47. In *Speech First*, there was more; however, here, there is only the potential for an adverse tax classification that can be challenged through other avenues. 979 F.3d at 323-27. Therefore, while a lack of past enforcement did not end the inquiry in *Speech First*, in totality, the lack of past enforcement helps to end the inquiry here. *Id*. at 336. As this Court has previously opined "[n]o concrete harm, no standing." *TransUnion*, 594 U.S. at 417.

2. Appellee Has Not Established an Actual or Imminent Injury-In-Fact Required by Article III for a Pre-Enforcement Challenge.

Alongside the analysis of concreteness, Appellee must show that the alleged injuries are "actual or imminent," for which they have not. *Lujan*, 504 U.S. at 560. Since Appellee brought a pre-enforcement challenge to the Johnson Amendment, they must prove that there is intended future conduct and "the threatened enforcement [is] sufficiently imminent." *Driehaus*, 573 U.S. at 159. This Court has further addressed pre-enforcement challenges by noting that "this Court has never recognized an unqualified right to pre-enforcement review of constitutional claims in federal court." *Whole Woman's Health*, 595 U.S. at 49. As Pastor Vale of Covenant Truth Church, Appellee, is actively involved in politics, the intended future conduct prong of the inquiry has been met. *See Driehaus*, 573 U.S. at 162.

Although it is not necessary that a plaintiff wait to bring suit until he has exposed himself to the injuries in question, the plaintiff must still prove that "there exists a credible threat of

prosecution." *Id*. at 159. It must not be merely "possible" that a threat of enforcement is coming, but rather that the threat of enforcement is "certainly impending." *Clapper*, 568 U.S. at 409.

In *Calderon v. Ashmus*, the plaintiff sought a declaratory judgment and injunctive relief to determine if, "when he sought habeas relief, California would be governed by Chapter 153 or by Chapter 154 in defending the action." *Calderon v. Ashmus*, 523 U.S. 740, 746 (1998). In doing so, in anticipation of seeking habeas, the plaintiff would be informed about certain aspects of his case, for example, time limitations. *Id*. This Court held that this was not an actual or imminent injury but was rather "attempts to gain a litigation advantage by obtaining an advance ruling on an affirmative defense." *Id*. at 747.

In *Steffel v. Thompson*, this Court held that because the petitioner had been warned by officials twice, been told by police that he is risking prosecution and that if he continues his action he will be arrested, and his companion had been arrested for the same activity, there was an actual or imminent risk of prosecution. *Steffel v. Thompson*, 415 U.S. 452, 458-59 (1974). In *Steffel*, although the petitioner had not yet been prosecuted, this Court noted that it is not necessary to wait until the petitioner has "expose[d] himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Id*. at 459.

Just like the plaintiff in *Calderon* who sought relief prior to his habeas action, Appellee here is seeking relief prior to not only enforcement of the Johnson Amendment, but also a determination of their tax classification. 523 U.S. at 746-47. In seeking to enjoin enforcement of the Johnson Amendment before the Amendment has been enforced, Appellee is seeking relief on an issue that is not actually impending. R. at 5. Further, even if the Johnson Amendment were to be enforced against them, it is still not clear that their tax classification would be changed. In

Calderon, the plaintiff argued "the State's 'threat' to assert Chapter 154 in habeas proceedings" creates an imminent, redressable injury. 523 U.S. at 748-49. Similarly, Appellee urges the threat of an IRS audit that might result in an adverse tax classification to be an imminent, redressable injury. R. at 5. Neither argument is in line with Article III. *Calderon*, 523 U.S. at 749.

The evidence that Appellee puts forth is a routine, random audit of Covenant Truth Church to ensure compliance with the Internal Revenue Code. R. at 5. This can be distinguished from the evidence of *Steffel* which was, again, direct threats by officials of prosecution as well as the prosecution of a companion who was engaged in the same activity. 415 U.S. at 459. There has not been adequate evidence presented of an imminent threat of both enforcement of the Johnson Amendment and an adverse tax classification. Therefore, Appellee has not met the threshold requirement for an injury-in-fact. Appellee does not have standing to litigate their claims in federal court.

II. The Johnson Amendment Does Not Violate the Establishment Clause.

Far from violating the Establishment Clause, the Johnson Amendment reinforces it by maintaining government neutrality by preventing tax subsidy towards organizations does not go to religious political campaign intervention. "The 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); *See* U.S. CONST. amend. 1. Like the prohibition of religious preference, the Establishment Clause also inhibits laws that favor religion over nonreligion by allowing unique governmental benefits or privileges for religions organizations alone. *See Texas Monthly Inc. v. Bullock*, 489 U.S. 1, 8-9 (1989). The First Amendment specifically provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech." U.S. CONST. amend. 1. While religious

belief is absolutely protected, the Court has long recognized that religiously motivated conduct remains subject to neutral and generally applicable law. *Reynolds v. United States.*, 98 U.S. 145, 162 (1878). When amendments are read literally, they may seem to grant absolute protection but this court over the last two centuries has rejected an absolutist interpretation. *Fed. Election Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 482 (2007); *United States v. Rahimi*, 602 U.S. 680, 716 (2024)(Kavanaugh, J., concurring). Further, this Court has recognized that "the Establishment Clause does not ban federal…regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." *McGowan v. Maryland*, 366 U.S. 420, 422 (1961). A main facet to the Establishment Clause is the prohibition against compelling the public to subsidize religious activity through the mechanisms of the government. *Walz v. Tax Commc'n of New York*, 397 U.S. 664, 673 (1970)(highlighting the ban of compelled financial support for any religious institution or belief).

The Court, in the past, has traditionally used the *Lemon* approach to examine a law's purpose, effect, and potential for entanglement with religion but, with apparent shortcomings in the analysis, the court has since set aside that approach. *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022); *See Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 32-33 (2019); *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). Without explicit denominational discrimination, the Court has gone on to institute that the Establishment Clause must be interpreted by "reference to historical practices and understandings" rather than a heightened scrutiny framework. *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014); *Kennedy*, 597 U.S. at 510; *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. at 32 (plurality opinion)(stating that a possible transgression of rights under the clause looks to history for guidance). Additionally, "[a]n analysis focused on original meaning and history, this

Court has stressed, has long represented the rule rather than some 'exception' within the Court's Establishment Clause jurisprudence." *Kennedy*, 597 U.S. at 510; *See Town of Greece*, 572 U.S. at 575. Therefore, a neutral, generally applicable law that is consistent with historical practice and is designed to avoid government endorsement or coercion, would not constitute a violation of the Establishment Clause merely because it affects religious entities. A court's decision to grant a motion for summary judgment is reviewed *de novo*. *Pierce v. Dep't of the Air Force*, 512 F.3d 184, 185 (5th Cir.2007).

A. The Johnson Amendment is Present and Enforced in History and Tradition.

The Johnson Amendment is consistent with the Nation's historical understanding that tax exemption is a matter of legislative grace, and that the government may condition such exemptions to avoid subsidizing partisan religious activity without violating the Establishment Clause. Since its creation, the Establishment Clause was understood to prohibit governmental entanglement with religion. "In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'" *Everson v. Bd of Educ. of Ewing*, 330 U.S. 1, 16 (1947) (quoting *Reynolds*, 98 U.S. at 164). When the First Amendment was pending in Congress, it was understood that the "meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law…." 1 ANNALS OF CONG. 758 (1789)(asserting that the Framer's intent was to prohibit Congress from creating an official church). "Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church" through the enactment of the First Amendment. *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Emp. Opportunity Comm'n*, 565 U.S. 171, 184 (2012). This understanding reflects an early recognition that government must not use its powers to advance or defer

religious activity.

1. The Status of Tax-Exemption is a Privilege, Not a Constitutional Right.

The U.S. Constitution never grants a general right to obtain tax exemption but instead grants Congress the power to tax. U.S. CONST. art. I, § 8; *Walz*, 397 U.S. at 676; *Regan v. Tax'n With Representation*, 461 U.S. 540, 549 (1983)(quoting *Commissioner v. Sullivan*, 356 U.S. 27, 78 (1958)). While the First Amendment prohibits "placing obstacles in the path" of speech, the constitution does not require the government to "assist others in funding the expression of particular idea[s], including political ones." *Regan*, 461 U.S. at 549; *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009). Furthermore, the Court has recognized that tax exemptions may be withdrawn when an organization fails to comply with neutral legal requirements. *Bob Jones Univ. v. United States*, 461 U.S. 574, 586 (1983). In *Regan*, the court held that the conditions placed on the ability to obtain tax-exempt status was constitutional because Congress may choose not to subsidize political activity and the condition did not prohibit the speech altogether. 461 U.S. at 544. Additionally in *Rust v. Sullivan*, the court held that Congress, without violating the Constitution, can define the contours of a funded program because a legislature's decision not to provide a subsidy does not violate the right itself. 500 U.S. 173, 193 (1991).

As in both *Regan* and *Rust*, where Congress's decision to place parameters or conditions on a program was held to be constitutional, the Johnson Amendment's political intervention condition is a valid use of congressional taxing power and avoids deeper First Amendment issues. 461 U.S. at 544; 500 U.S. at 193. Congress conditioned tax exemption to prevent tax-deductible contributions from being converted into anonymous campaign expenditures, which would entangle the government in partisan religious politics and undermine the foundation of campaign finance law. If this congressional safeguard were to be repealed, it would create a

backdoor for anonymous, tax-deductible, and illicit financing to political campaigns through benefit of governmental subsidy. This effectively corrodes effective regulatory requirements for campaign financing and mandates participation with little or no consensus from the public and government to support religious political activity.

2. The Amendment is a Longstanding and Consistently Enforced Congressional Act.

In 1954, Congress approved a proposed amendment, introduced by Senator Lydon Johnson, to the existing 501(c)(3) tax law to extend the existing prohibition on participation in lobbying to include engaging in any political campaign activity. Internal Revenue Services, *Charities, Churches, and Politics*, IRS, (last visited Jan. 12, 2026), https://www.irs.gov/newsroom/charities-churches-and-politics**;** *See* 100 CONG. REC. 9602-04 (daily ed. July 2, 1954). The amendment was adopted without debate and approved with bipartisan support. 100 CONG. REC. 9602-04 (daily ed. July 2, 1954). The Johnson Act states that any organization under Section 501(c)(3) must be "operated exclusively for religious, charitable, …or educational purposes…and which does not participate in, or intervene in (including 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). Since its enactment, Congress has repeatedly declined to repeal or weaken the amendment despite numerous legislative efforts. *See* HOUSES OF WORSHIP POLITICAL SPEECH PROTECTION ACT, H.R. 2357, 107th Cong. (2001); HOUSES OF WORSHIP FREE SPEECH RESTORATION ACT OF 2005, H.R. 235, 109th Cong. (2005); H.R. 2275, 110th Congress, 1st Sess. (2007). Congress has even, at times, strengthened the conditions, most notably in 1987 to clarify that the prohibition includes statements in opposition to candidates. Internal Revenue Services, *Charities, Churches, and Politics*, IRS, (last visited Jan. 12, 2026), https://www.irs.gov/newsroom/charities-churches-and-politics.

In, *Marsh v. Chambers*, the court held because legislative prayer is deeply embedded in the history and tradition of this country and the practice has been followed consistently by Congress and the state legislature that it is not a violation of the Establishment Clause. 463 U.S. 783, 786-90, 793 (1983). This is similarly evident in *Branch Ministries v. Rossotti*, where the court held that declining to subsidize partisan politics is not a free speech violation because a condition on a tax benefit is not a blanket prohibition on speech but a government upholding the underlying foundation of the public good purpose of tax exemption. 211 F.3d 137, 141-144 (D.C. Cir. 2000). Like the legislative prayer upheld in *Marsh*, the Johnson Amendment's restriction on political campaign activity by tax-exempt organizations is supported by longstanding and consistently revisited historical practice. 463 U.S. at 786-90, 793. Since its enactment, Congress and state legislatures have repeatedly treated the stipulation as a settled condition of tax status and reinforced its constitutional framework under the historical analysis. *Id.* Tax exemption is a form of legislative grace as much as it is a benefit that is granted by legislation, rather than an inherent constitutional entitlement. As in *Branch Ministries*, where the court held that declining the grant of a tax benefit is not in itself a constitutional violation, the Johnson Amendment grants a special advantage given to entities that meet certain criteria and when an entity declines to comply with those conditions, it is merely the government withholding a benefit it was never constitutionally obligated to provide. 211 F.3d at 141-144. It acts as an exception to the normal taxation requirement and can be revoked if an entity fails to comply unlike the permanence of a fundamental right. The Johnson Amendment has been rooted in our history for over a half of century and has been continuously upheld with historical understanding that it is a legislative grace whose parameters can be set and enforced by Congress's powers given by the Constitution.

B. Tax-Exempt Status is Governed by Neutrality and Equal Treatment.

Under this Court's modern analysis of the Establishment Clause there is no implication where the government regulates access to a generally available tax exemption based on a neutral and secular criteria that applies equally to all organizations falling under 501(c)(3) status. The Establishment Clause prohibits that the government favor religion or particular religious viewpoints. *Epperson v.* Arkansas, 393 U.S. 97, 104 (1968). The Johnson amendment does the opposite, it applies neutrally to all tax-exempt organizations, both secular and religious alike. 26 U.S.C. §501(c)(3). This Court has recognized that "government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge" simply because a religion is incidentally benefitted or burdened. *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993). "The restrictions imposed by section 501(c)(3) are viewpoint neutral; they prohibit activity and intervention of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint." *Branch Ministries*, 211 F.3d at 144; *See also Regan*, 461 U.S. at 550-551. Where a law applies uniformly to all entitles, regulates conduct rather than viewpoint, and conditions access to a generally available government benefit on no behaviorally specific criteria, it neither favors nor disfavors religion. *See Kennedy,*597 U.S. at 510; *Emp. Div. Dept. of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 881 (1990); *Texas Monthly Inc.*, 489 U.S. at 10. "Such neutrality is a significant factor in upholding programs in the face of Establishment Clause attack, and the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and evenhanded policies to extend benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 820-21 (1995). *See Larson*, 456 U.S. at 244. A reasonable observer with the knowledge of the historical background and uniform application of the tax-exempt status,

would not perceive the Johnson Amendment as anything more than a universally applied standard for tax-exempt entities. 26 U.S.C. §501(c)(3). The prohibition imposed on 501(c)(3) organizations is a condition on activities, they are permissible as they serve a lay purpose of encouraging beneficial public activities to all organizations falling under the tax-exempt status. *See Branch Ministries*, 211 F.3d at 144; *Zelman v. Simmons-Harris*, 536 U.S. 639, 652-53 (2002); *Cf Walz*, 397 U.S. at 673-74. The restriction has applied for almost half a century to thousands of organizations; this reflects Congress's consistent effort to separate neutral charitable activity from government subsidized partisan politics. *See generally Am. Legion*, 588 U.S. at 47 (highlighting that longstanding, neutrally applied practices are plausibly constitutional).

This Court's decision in *Texas Monthly*, further underscores why the Johnson Amendment is constitutionally sound. There, the court struck down a sales tax exemption that applied only to religious publications because the benefit singled out religious entities for a unique financial benefit without giving the same treatment to secular organizations. 489 U.S. at 14-15. By contrast, exempting churches from the Johnson Amendment while continuing to condition tax-exempt status for secular charities would be the other side of the coin of unconstitutional favoritism that was rejected in *Texas Monthly*. *Id*. As such, in *Branch Ministries,* the court highlights that granting special permission to churches to engage in partisan politics while retaining tax-exempt status would raise a violation of the Establishment Clause because it is precisely the type of religious favoritism the Establishment Clause forbids. 211 F.3d at 144.

The Johnson Amendment avoids precisely that infirmity. Illustrated by *Texas* Monthly, where the court found that an exemption singled out a religion for preferential treatment, the Johnosn Amendment conditions for barring political involvement apply across the board to every

organization that hold a 501(c)(3) tax-exempt status. 489 U.S. at 14-15. Consequently, trampling the Johnson Amendment and allowing churches to partake in political campaign intervention would in fact create a violation of the Establishment Clause by granting the religious organizations unique, biased considerations that would be unavailable to secular organizations under the same category of status. The Establishment Clause is violated not only when religion is treated unequally, but also when it is given preferential treatment. Like in *Branch Ministries,* where the court found that the restrictions imposed by Congress are viewpoint neutral and do not allow preferential treatment to religion, the Johnson Amendment prevents denominational preference by not distinguishing among religions nor emphasizing religion over nonreligion nor aligning government with religiously influenced political activity. 211 F.3d at 144. Allowing churches to endorse candidates would risk aligning the government with particular religious political positions, even when congregants hold a divergent view and potentially creating denominational favoritism and political division along religious line. Even further, it could cause a cascade of new 501(c)(3) organizations that would be formed for the sole purpose of taking advantage of this new facet of political funding. Neutral, universal application of the Johnson Amendment to all tax-exempt organizations upholds the Establishment Clause by preventing unconstitutional government entanglement with religion.

C. Participation in a Tax-Benefit is Voluntary Without Coercion.

The Establishment Clause is concerned with coercion and entanglement, rather than regulating public benefits offered through neutral, private-choice programs. The Johnson Amendment does not coerce speech because it imposes no penalty on political advocacy but merely defines the conditions of a voluntary tax benefit that entities looking for 501(c)(3) benefit are free to accept or decline. 26 U.S.C. §501(c)(3); *Regan*, 461 U.S at 544, 545. Coercion under

the Establishment Clause would require the government compel religious observance, would penalize religious or non-religious belief or establish religion in a historically cognizable way. *See Lee v. Weisman*, 505 U.S 577, 587 (1992); *Kennedy,* 597 U.S. at 510. Courts have reasoned that Congress is not required to subsidize lobbying or political speech and may define the limits of a tax exemption that organizations choose to participate in without infringing on constitutional rights. *Regan,* 461 U.S. at 544. The argument that costly compliance with a neutral eligibility requirement amounts to coercion has been rejected as a generally applicable tax condition does not violate religious freedom solely because of compliance burdens. *Catholic Charities of Sacramento v. Superior Court*, 32 Cal. 4th 527, 561-62 (2004). Precedent has made clear that "the program challenged here is a program of true private choice…and thus constitutional." *Zelman*, 536 U.S. at 653; *Witters v. Washington Dept. of Serv. for the Blind*, 474 U.S. 481, 487 (1986); *Zobrest*, 509 U.S. at 10. Participation in the 501(c)(3) program is entirely voluntary, and organizations remain free to engage in political speech outside the program, meaning the government has not suppressed speech but merely declined to subsidize it. 26 U.S.C. §501(c)(3); *Regan*, 461 U.S. at 544. Tax exemption for organization is a freely chosen, neutral benefit, not a compel, government mandated action.

In *Regan*, the court held that the limits on the political activities of 501(c)(3) organizations does not constitute a violation of the First Amendment because the government is not setting conditions on speech and the organization has the ability to set up an a 501(c)(4), social welfare organization, to enjoy an alternate form of government subsidy. 461 U.S at 544, 545. In *Town of* Greece, the court found there was no coercion of specific belief or content and therefore was not a violation of constitutional right. 572 U.S at 571. As in *Regan*, where the restriction was upheld, the Johnson Amendment constitutes a permissible condition on a

voluntary tax benefit rather than an unconstitutional burden as it does not prohibit the speech the organizations are engaged in and offers an alternative route to tax exemption. 461 U.S. at 544, 545. The Johnson Amendment imposes no penalty, disability, or sanction, just a denial of an elective tax benefit. The availability of alternative organizational forms demonstrates that the condition is voluntary and structural, not coercive. Congress chose structural eligibility rules that avoid intrusive enforcement that would require monitoring sermons and religious messaging. As in *Town of Greece,* where the court emphasized that coercion requires pressure on belief or participation, the Johnson amendment does not compel churches to adopt or renounce any religious belief, doctrine, or practice. 572 U.S. at 571. Because the organizations remain free to speak, there is no compelled silence just the Congress's choice of how far to develop the boundary of a subsidized activity. By reason of the Johnson Amendment not compelling particular speech or participation in religious belief and that obtainment of tax-exempt status is an optional initiative for tax benefit, it is not a violation of the Establishment Clause.

CONCLUSION

For the reasons set forth, this Court should reverse that Covenant Truth Church is not barred by the Tax Anti-Injunction Act to pursue their suit restricting the Government's assessment or collection of taxes. Covenant Truth Church does not meet the exceptions required by this Court to avoid the bar. Additionally, this Court should reverse the finding that Covenant Truth Church meets the requirements to litigate in federal court as set forth by the Constitution, as they have not pled an adequate injury-in-fact. This Court should find that Covenant Truth Church does not have standing to pursue their claims.

Furthermore, this Court should reverse that decision that the Johnson Amendment is an unconstitutional violation of the Establishment Clause as it is a neutral and voluntary tax benefit entrenched in our Nation's history. Enacted over seventy years ago, the Johnson Amendment is the embodiment of the Framers intention for the creation of the Establishment Cause and has been routinely upheld against attempts to amend or repeal. It is a neutral, elective standard for all organizations falling under the tax-exempt status and avoids a violation of the Clause by avoiding viewpoint discrimination and preferential treatment.

Accordingly, the petitioner respectfully asks this Court to reverse the decision from the United State Court of Appeals for the Fourteenth Circuit.

Respectfully submitted this 18th day of January 2026.

/s/_____

TEAM 17
COUNSEL FOR PETITIONERS