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 COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

Counsel for Respondent
Team 4

QUESTIONS PRESENTED

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

2) Whether the Johnson Amendment violates the Establishment Clause of the First Amendment.

LIST OF PARTIES

Petitioners Scott Bessent, Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service were the appellants in the court below. Respondents are Covenant Truth Church and were appellees in the court below.

TABLE OF CONTENTS

TABLE OF CONTENTS ..... **IV**

TABLE OF AUTHORITIES ..... **V**

TABLE OF AUTHORITIES (CONT.) ..... **VII**

OPINIONS BELOW **1**

JURISDICTIONAL STATEMENT **1**

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED **2**

STATEMENT OF THE CASE **2**

SUMMARY OF THE ARGUMENT **5**

ARGUMENT **7**

I. COVENANT TRUTH HAS STANDING UNDER THE TAX ANTI-INJUNCTION ACT AND ARTICLE III TO CHALLENGE THE JOHNSON AMENDMENT. 7

A. The Tax Anti-Injunction Act does not bar Covenant Truth's lawsuit because Covenant Truth has no alternative remedy. *7*

B. Even if the Court determined an alternative remedy was available, the Anti-Injunction Act still does not apply because Covenant Truth meets the Williams Packing Exception. *8*

i. Covenant Truth Succeeds on the Merits because precedent establishes that when legislation clashes with the freedoms guaranteed by the First Amendment, the rights granted to us in the First Amendment take priority. 9

ii. Covenant Truth demonstrates that collection would cause irreparable harm. 11

C. Covenant Truth has standing under Article III to challenge the Johnson Amendment. *12*

i. Covenant Truth has a concrete imminent injury directly caused by the IRS that can be remedied by a favorable decision. 12

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BY PENALIZING RELIGIOUS ORGANIZATIONS AND ITS LEADERS FOR ADHERING TO DEEPLY HELD RELIGIOUS BELIEFS. 15

A. The Establishment Clause is intended to create neutrality towards religion. *15*

B. Withdrawing tax-exempt status from Covenant Truth for practicing its religion is not a neutral action. *16*

C. The Johnson Amendment creates the effect of favoring other religions over Covenant Truth through its tax-exempt status by failing to maintain neutrality. *17*

i. A strict scrutiny analysis proves the Johnson Amendment fails to serve a compelling government interest or be narrowly tailored to serve the interest. 19

CONCLUSION **21**

TABLE OF AUTHORITIES

Page(s)

Cases

Allen v. Wright,
468 U.S. 737 (1984) 12, 13, 14
Enochs v. Williams Packing & Nav. Co.,
370 U.S. 1 (1962) 9
First Amendment.,
605 U.S. 238 (2025) 18, 19, 20
Kennedy v. Bremerton Sch. Dist.,
597 U.S. 507 (2022) 16, 17
Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 12
Lynch v. Donnelly,
465 U.S. 668 (1984) 14
Marsh v. Chambers,
463 U.S. 783 (1983) 15
New York v. Yellen,
15 F.4th 569 (2d Cir. 2021) 9
Perry v. Sindermann,
, 408 U.S. 593, 597 (1972) 10
Shapiro v. Thompson,
394 U.S. 618 (1969) 10
South Carolina v. Regan,
465 U.S. 367 (1984) 7, 8, 9
Speiser v. Randall,
357 U.S. 513 (1958) 10
Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014) 12
Town of Greece v. Galloway,
572 U.S. 565 (2014) 16
United States v. Bennett,
232 U.S. 299 (1914) 9
Van Orden v. Perry,
545 U.S. 677 (2005) 15
Welsh v. United States,
398 U.S. 333 (1970) 15

Statutes

26 U.S.C. § 501(c)(3) 10, 14, 18, 19
26 U.S.C. § 7421(a) 7, 9
U.S. Const. Amend. I 15

Other Authorities

100 CONG. REC. 9604 20
Curtis A. Bradley & Ernest A. Young, *Standing and Probabilistic Injury*,
122 Mich. L. Rev. Online 1561 (2024) 11
F. Andrew Hessick, *Probabilistic Standing*,
106 Nw. U. L. Rev. Online 57 (2012) 11
Measuring a "Spiritual Stake": How to Determine Injury-in-Fact in Challenges to Public Displays of Religion,
81 Fordham L. Rev. (2013) 14
Pre-Enforcement Litigation Needed for Taxing Procedures,
92 Wash. L. Rev. 1317 (2017) 7
Speech, Intent, and the Chilling Effect,
54 Wm. & Mary L. Rev. 1633 (2013) 15
To Repeal or Not Repeal: The Johnson Amendment,
48 U. Mem. L. Rev. 209 (2017) 16, 20
Unconstitutional Conditions,
102 Harv. L. Rev. 1413 (1989) 9, 10

In the Supreme Court of the United States

No. 26-1779

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 THE RESPONDENT

OPINIONS BELOW

The opinion of the 14th Court of Appeals is reported at 345 F.4th 1. The ruling of the district court affirming Covenant Truth Church has standing and the Johnson Amendment violates the Establishment Clause is unreported.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered in the year 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech."

26 U.S.C. § 7421(a) 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, whether or not such person is the person against whom such tax was assessed."

26 U.S.C. § 501(c)(3) mandates any "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes…[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."

STATEMENT OF THE CASE

The Controversial Johnson Amendment.

In 1954, Congress passed the Johnson Amendment, from then-Senator Lyndon B. Johnson, which proposed adding language to 26 U.S.C. § 501(c)(3). R. at 2. The Johnson Amendment mandated that non-profit organizations not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office. *Id.* However, over the past fifteen years, there has been growing debate over whether the Johnson Amendment violates the First Amendment due to it limiting an organization's ability to partake in politics. *Id.* While a variety of special interest groups, religious organizations, and politicians have continued to advocate for the

repeal of the Johnson Amendment, Congress has declined to eliminate the Johnson Amendment or create an exception for religious organizations. R. at 3.

The Everlight Dominion.

The Everlight Dominion is a centuries old religious faith which embraces many progressive values. R. at 3. One of the progressive values being involvement in politics. *Id.* The faith requires its leaders and churches to participate in political campaigns and support candidates that align with the Everlight Dominion's progressive stances. *Id.* Religious leaders must endorse these candidates and encourage the followers to donate and volunteer for campaigns. *Id.* This practice of the faith is not discretionary, and requires strict adherence. *Id.* And failure by any church or religious leader to adhere to this practice will result in their banishment from the church and The Everlight Dominion. *Id.*

Covenant Truth Church is Classified as a 501(c)(3) Organization.

Covenant Truth Church ("Covenant Truth") is the largest church practicing The Everlight Dominion. R. at 3. Like other churches and non-profit organizations, Covenant Truth is classified under the Internal Revenue Code as a Section 501(c)(3) organization for tax purposes. *Id*. This classification allows Covenant Truth to be exempt from paying taxes.

Pastor Gideon Vale's Impact on Covenant Truth and the Reach of his Podcast.

Since joining in 2018, Pastor Gideon Vale has contributed to a massive increase in the Covenant Truth, growing the congregation of a few hundred to nearly 15,000 members by 2024. R. at 4. In order to reach younger generations and promote progressive practices, Pastor Vale uses modern channels of communication–most notably a weekly podcast–which he uses to deliver sermons and spiritual guidance. R. at 4. Pastor Vale's podcast achieved a significant following

with national impact, ranking as the nineteenth-most listened to podcast in the United States and drawing millions of downloads throughout the country. R. at 4. Fulfilling his religious duty as a church leader, Pastor Vale uses his podcast forum to voice support for candidates who align with Everlight Dominion's values, namely Congressman Samuel Davis. R. at 4. Pastor Vale also uses the podcast to educate his listeners on how their own political engagement is an important reflection of their faith, which is heavily tied to the promotion of progressive ideals. R. at 4.

The Johnson Amendment's Effect on Covenant Truth.

The Johnson Amendment functions as a penalty against Covenant Truth for practicing its core religious beliefs. Because the faith *mandates* political involvement, the church is faced with an impossible choice: abandon its religious practices or risk its tax-exempt status. R. at 2, 3. The threat became imminent on May 1, 2024, when the Church received an audit notice from the IRS, following Pastor Vale's public endorsement of Congressman Davis on his podcast. R. at 5. This impending audit creates an impending risk of enforcement that would prevent Covenant Truth from engaging in further religious speech–including a planned sermon series "explaining why Congressman Davis's political stances align with the teachings of the Everlight Dominion"–without the constant fear of IRS repercussions and financial ruin. R. at 5.

Procedural Posture.

Covenant Truth commenced this litigation on May 15, 2024, by filing a complaint for a permanent injunction preventing the IRS from enforcing the Johnson Amendment. R. at 5. Covenant Truth asserted that the Johnson Amendment unconstitutionally violates the Establishment Clause by penalizing religious organizations whose practices mandate political engagement. R. at 5. The United States District Court for the District Wythe ruled that the church possessed standing and declared the Johnson Amendment unconstitutional. R. at 5. The court

subsequently granted summary judgment in favor of Covenant Truth and entered the permanent injunction. R. at 5–6. On appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's decision; specifically noting that the Tax Anti-Injunction Act does not bar the suit and that the Johnson Amendment creates an unconstitutional denominational preference by favoring some religions over others. R. at 10–11. On November 11, 2025, the Supreme Court of the United States granted certiorari to resolve these issues. R. at 17.

SUMMARY OF THE ARGUMENT

Covenant Truth has standing under the Tax Anti-Injunction Act and Article III to challenge the Johnson Amendment. Firstly, while the Tax Anti-Injunction Act seeks to restrain plaintiffs filing suit to collect taxes where plaintiffs have an alternative remedy, the Anti-Injunction Act does not bar lawsuits where the plaintiffs have no alternative way to challenge a tax collection's validity. Covenant Truth has no alternative remedy. Because the IRS has yet to conduct an audit, Covenant Truth has no avenue for relief. To prohibit the church from filing suit would be to deny Covenant Truth judicial review of a statute certain to cause injury. Additionally, Covenant Truth has standing under the Tax Anti-Injunction Act even if this Court were to determine the church does have an alternative remedy because Covenant Truth meets the exceptions listed by this Court under which a plaintiff can nonetheless sue. Covenant Truth is certain to succeed on the merits. This case deals with a statute, named the Johnson Amendment, which conditions government benefits on the relinquishing of a constitutional right. Constitutional rights, guaranteed by the Founding Fathers, are not rights which can be conditioned away. To allow such a contractual bargaining of that which persons and organizations hold most dear would be to undermine the Constitution, causing irreparable harm. In the case of Covenant Truth, this harm would be concrete and likely to occur—either Covenant Truth adheres to its deeply held religious practices and loses its tax exemption

status, or Covenant Truth foregoes its religious practices for a benefit which would result in the church losing its place as an entity of the Everlight Dominion.

The Johnson Amendment's effect on Covenant Truth speaks to a broader issue—that the Johnson Amendment fails to be neutral towards religions and, in doing so, violates the Establishment Clause. The Establishment Clause of the First Amendment prohibits the government from favoring any religion over another. This, however, does not equate to the government being hostile towards all religion. Where a piece of legislation is feared to show favor towards one denomination, it is important to look to historical practices to determine whether favoritism has occurred. Historically, the United States has long allowed for churches to be political—churches have influenced politics in such a way that has been engrained into our history. Pastors giving political speeches have influenced the elections of multiple presidents, and the passing of monumental and progressive legislation. To allow Covenant Truth to engage in political campaigning without penalizing the church through its tax classification would not amount to favoring the Everlight Dominion over another denomination. In contrast, to penalize Covenant Truth for its religious practices *would* violate the Establishment Clause, showing the government favors other religions' beliefs and practices over the Everlight Dominion's. Regarding this as true, a strict scrutiny analysis proves the Johnson Amendment lacks a compelling reason to do so. Because the Amendment fails a strict scrutiny analysis, 26 U.S.C. § 501(c)(3) violates the Establishment Clause and the United States Constitution.

ARGUMENT

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

A. The Tax Anti-Injunction Act does not bar Covenant Truth's lawsuit because Covenant Truth has no alternative remedy.

The Tax Anti-Injunction Act does not bar Covenant Truth's action because the Act applies only when plaintiffs have an alternative course of action to seek a remedy. Under the Tax Anti-Injunction Act of 26 U.S.C. § 7421(a), "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained by any person." 26 U.S.C. § 7421(a).[1] However, this Court held in *South Carolina v. Regan* that where a plaintiff has "no alternative way to challenge the validity of a tax," the action is not barred by the Anti-Injunction Act. *South Carolina v. Regan*, 465 U.S. 367, 372–73 (1984). In that case, the plaintiff, the state of South Carolina, sought an injunction against the federal government for a provision of the Internal Revenue Code which restricted the way in which citizens of the state would qualify for tax exemptions on state or local government bonds. *Id*. at 373. The government however, argued that the plaintiff was barred from the action under the Anti-Injunction Act unless it could prove, under the *Williams Packing* Exception, that the suit would succeed on its merits. *Id.* at 374. This Court rejected that argument, reasoning that because the liability fell on the citizens of the state rather than on the state itself, then the plaintiff, if not allowed to file a complaint, would otherwise be forced to wait for one of

[1] Scholars argue for pre-enforcement litigation to be available in tax proceedings because "delayed litigation requires that taxpayers plan their affairs under the spectre of guidance that might not survive a procedural challenge." Stephanie H. McMahon, *Pre-Enforcement Litigation Needed for Taxing Procedures*, 92 Wash. L. Rev. 1317 (2017). In this context, the litigation delay forces Covenant Truth Church to wait until its constitutional rights are violated before bringing suit. But pre-enforcement litigation can be utilized in the tax context to "isolate procedural issues and allow the public thereafter to focus on the substance of the rules as it applies to their facts." *Id.* at 1320. This is supported by the Administrative Procedures Act as the APA favors pre-enforcement litigation— "Section 701 of the APA establishes a presumption in favor of judicial review of agency action." *Id.* at 1335.

its citizens to bring a suit in order to obtain judicial review. *Id*. at 380. The Court denied the allowance of letting the plaintiff play a waiting game relating to a matter of judicial review. *Id.* at 382. Because the plaintiff would otherwise be forced to wait to bring forth a suit, this Court ruled there was "no alternative avenue for [the] aggrieved party to litigate its claims on its own behalf," and thus the Anti-Injunction Act did not bar the suit. *Id*. at 381.

Here, similar to *Regan*, Covenant Truth has no alternative remedy to challenge the Johnson Amendment. Covenant Truth, like the plaintiff in *Regan*, would, under the Internal Revenue Code, be forced to wait for the harm to occur before being allowed to take administrative action. *Regan*, 465 U.S. at 381. In this case, Covenant Truth could either: (1) appeal the changed tax classification to the IRS, or (2) seek declaratory relief in federal court following an unsuccessful appeal. R. at 6-7. Both avenues are closed to Covenant Truth because both the audit and the changed tax classification has yet to occur. R. at 7. This leaves Covenant Truth, much like the plaintiff in *Regan*, facing a harm certain to occur and yet no alternative way to seek a remedy. *Id*. at 381. This Court in *Regan* reasoned that where a plaintiff is "unable to utilize any statutory procedure to contest the constitutionality" of a section of the Internal Revenue Code, the Anti-Injunction Act does not apply. *Id*. at 380. Because Covenant Truth has no alternative way to challenge the Johnson Amendment or seek an alternative avenue for relief, Covenant Truth possesses standing under the Tax Anti-Injunction Act.

B. Even if the Court determined an alternative remedy was available, the Anti-Injunction Act still does not apply because Covenant Truth meets the *Williams Packing* Exception.

Prior to the Court's decision in *Regan*, the only other way to surpass the Anti-Injunction Act was through the exception test created in *Enochs v. Williams Packing & Navigation Co*., which held that the Anti-Injunction Act did not bar a suit "if the taxpayer (1) was certain to succeed on the merits, and (2) could demonstrate that collection would cause him irreparable harm." *Regan*,

465 U.S. at 374 (citing *Enochs v. Williams Packing & Nav. Co.,* 370 U.S. 1, 6−7 (1962)). *Regan* notably observed that in the cases following the *Williams Packing* decision, a full analysis of the exception proved most plaintiffs had already been provided with an alternative remedy for the grievances complained of. *Id.* at 374. Because the purpose of 26 U.S.C. § 7421(a) was to prevent injunctions where there was a "statutory scheme that provided an alternative remedy," the plaintiffs were barred by the Act from bringing forth a suit. *Id*. In *Regan*, the Court reasoned that where a plaintiff has no remedy available, the *Williams Packing* Test does not apply. *Id.* at 373. Here, Covenant Truth Church has demonstrated there is no alternative remedy available to challenge the Johnson Amendment, thus clearing the bar set forth by the Anti-Injunction Act. However, even if the Court were to disagree, Covenant Truth Church would still have standing under the Anti-Injunction Act because it would meet the exception provided in *Williams Packing*.

i. Covenant Truth Succeeds on the Merits because precedent establishes that when legislation clashes with the freedoms guaranteed by the First Amendment, the rights granted to us in the First Amendment take priority.

Covenant Truth succeeds on the merits. The issue in this case is not whether Covenant Truth has standing to challenge the Johnson Amendment, but whether the Johnson Amendment violates the Establishment Clause and Covenant Truth's right to adhere to its deeply held religious beliefs. Congress' taxing power, though broad, is overshadowed in the light of "restrictions 'expressed in or arising from the Constitution." *New York v. Yellen*, 15 F.4th 569, 580 (2d Cir. 2021) (citing United States v. Bennett, 232 U.S. 299, 306 (1914). Where a government policy or government-offered benefit comes into conflict with the rights granted by the United States Constitution, an "unconstitutional conditions" problem occurs. Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1421–22 (1989). An unconstitutional conditions problem is when

> "the government offers a benefit on condition that the recipient perform or forego an activity that a preferred constitutional right normally protects from government interference. The 'exchange' thus has two components: the conditioned government *benefit* on the one hand and the affected constitutional *right* on the other." Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1421–22 (1989).

Unconstitutional conditions are explicitly prohibited—the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Constitutionally protected interests are the rights typically held by an individual or association, such the freedom of speech, or the freedom of religion. Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1433 (1989). Historically, the Court has created precedent in striking down coercive policies that condition a benefit on the relinquishing of a constitutionally protected interest or right like the freedom of religion. *See Speiser v. Randall*, 357 U.S. 513, 518, 526 (1958) (holding California may not condition veterans' tax-exemptions on whether applicants promised not to advocate for 'the overthrow of the Government); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (explaining an employer denying a teacher's contract renewal based on the teacher's exercise of free speech would be in violation of the First Amendment); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (holding a statute that conditioned state welfare benefits on a resident having resided within the state for at least one year infringed on the constitutional right to travel).

In this case, the merits of Covenant Truth's case are evident because the Johnson Amendment violates the Establishment Clause by conditioning tax-exemptions based on Covenant Truth's religious beliefs and actions. 26 U.S.C. § 501(c)(3) states that in order for a non-profit to qualify for a tax-exemption, it must not participate in political campaigning. R. at 2. This statute

thus conditions that for an organization to receive the benefit of being tax-exempt, it must first give up its right to political speech. Here, this also means that if Covenant Truth wishes to maintain its tax-exempt status, it must abandon its deeply held religious practice of engaging in political discourse to further the Everlight Dominion faith. R. at 3. Under the Everlight Dominion, Covenant Truth's failure to participate in political campaigning would result in the church being banished from the denomination. *Id*. While the Johnson Amendment does not outright prohibit Covenant Truth from practicing its religion, the Amendment would certainly penalize Covenant Truth for doing so. This creates both an unconstitutional conditions issue and an Establishment Clause issue, as any religions which do not prescribe to the doctrine of mandated political campaigning would seem to be favored by the government in maintaining its tax-exempt status. To hold the Johnson Amendment as constitutional would be to undermine the First Amendment of the United States Constitution.

ii. Covenant Truth demonstrates that collection would cause irreparable harm.

For the reasons mentioned above, Covenant Truth also demonstrates that collection would cause irreparable harm.[2] Black's Law Dictionary defines irreparable harm as: "an injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction." INJURY, Black's Law Dictionary (12th ed. 2024). The IRS denying Covenant Truth a tax-exemption would effectively penalize Covenant Truth for exercising one of

[2] Cases concerned with the threat of "*future* injuries are probabilistic." F. Andrew Hessick, *Probabilistic Standing*, 106 Nw. U. L. Rev. Online 57 (2012), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1135&context=nulr. (Emphasis Added) Scholars argue that these threatened harms should not be discounted as actual harms for standing purposes. Plaintiffs should not be forced to wait for the harm to occur because "if being wrongfully subjected to a risk of harm in the future counts as harm in itself, then the plaintiff's present injury is certain." Curtis A. Bradley & Ernest A. Young, *Standing and Probabilistic Injury,* 122 Mich. L. Rev. Online 1561 (2024), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=7039&context=faculty_scholarship.

its most sacred, constitutionally protected rights—the freedom to exercise religion. R. at 3. The broader implication of this would be the violation of the Establishment Clause; the government would be indicating there are some religions with belief systems that are less acceptable than others. On a personal scale, Covenant Truth, if it instead wished to keep or maintain its tax-exempt status, would forsake the Everlight Dominion faith, and be banished by the religion. While adherence to religious belief would cause irreparable economic loss, adherence to the Johnson Amendment would result in the loss of Covenant Truth's status as an Everlight Dominion church.[3] Either way, the Johnson Amendment creates an irreparable harm that cannot be adequately compensated.

C. Covenant Truth has standing under Article III to challenge the Johnson Amendment.

i. Covenant Truth has a concrete imminent injury directly caused by the IRS that can be remedied by a favorable decision.

In order to establish standing, a plaintiff must have (1) an "injury in fact" which is "concrete," "particularized," "actual or imminent," (2) a "causal connection between the injury" and the action for the basis of the complaint, and (3) a "likelihood that the injury" can be remedied by "a favorable decision." *Susan B. Anthony List v. Driehaus,* 573 U.S. 149, 157–58 (2014); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Even so, these elements of standing "cannot be so defined as to make application of the constitutional standing requirement a mechanical exercise." *Allen v. Wright*, 468 U.S. 737, 751 (1984), abrogated by *Lexmark Int'l, Inc. v. Static Control Components,*

[3] The irreparable harm injury rule does not exclude future harm. "If the threatened injury would be substantial and serious…and if the loss or inconvenience to the plaintiff if the injunction should be refused would be *much greater* than any which can be suffered by the defendant through the granting of the injunction…the case is one of such probable great or 'irreparable' damage as will justify a preliminary injunction." INJURY, Black's Law Dictionary (12th ed. 2024) (citing Elias Merwin, *Principles of Equity and Equity Pleading,* 426–27 (H.C. Merwin ed., 1895)). (Emphasis Added).

Inc., 572 U.S. 118, 134 (2014). To better understand the purpose of the three elements of standing, the Court provides instructive questioning:

> "Is the injury too abstract or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?" *Allen*, 468 U.S. at 752.

Where an injury is not abstract, where the line of causation is clear, and where there is an ability to obtain relief from an injury, standing is recognized. In *Allen v. Wright*, the Court denied standing to plaintiffs seeking a nationwide injunction halting tax exemption statuses granted by the IRS to racially discriminatory private schools. *Id.* at 766. The Court denied standing on the basis that injury was not "concrete," or "judicially cognizable" and because there was no clear causal connection between the injury and "the assertedly unlawful conduct of the IRS." *Id.* at 753. In that case, plaintiffs were in a class action suit comprised of parents of black children who were attending public schools that were in the process of desegregation. *Id.* at 739. The Court first reasoned that there was no cognizable injury because "an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court." *Id.* at 754. The plaintiffs do not have children in private schools, or seek to apply them to any private school. *Id.* at 746. Instead, the argument made is that the mere granting of tax exempt statuses to discriminatory private schools impact the process of desegregation and the ability for children to have a desegregated education." *Id*. The Court found this harm was not one that had been "personally" effected on any of the plaintiffs—the injury was abstract in nature. *Id.* at 755−756. The Court then turned to the issue of causal connection and found that any injury that did arise was not "fairly traceable [to] Government conduct," but rather was the indirect action of

discriminatory schools that may nonetheless continue discriminatory practices regardless of tax status. *Id.* at 757. Because the connection was indirect, and any remedy too speculative, the plaintiffs lacked the standing required to seek an injunction. *Id*. at 766. The same cannot be said for this case.

Here, Covenant Truth has an imminent concrete injury in fact caused by the IRS's decision to conduct an audit of Covenant Truth. It is not illogical to believe the IRS will change Covenant Truth's tax-exempt status as a result of its audit: 26 U.S.C. § 501(c)(3) prohibits political activity conducted by churches, and Covenant Truth's doctrine mandates participation in politics. The injury is concrete. Covenant Truth Church is likely to lose tax exemption status for adhering to its religious beliefs. R. at 7. As such, the causal connection between the injury and the IRS is fairly traceable. The IRS auditing Covenant Truth is directly responsible for the church suffering a loss of tax exemption for its religious beliefs. R. at 7-8. Additionally, Covenant Truth also possesses standing on noneconomic injuries.[4] In the Johnson Amendment penalizing Covenant Truth for adhering to its religious beliefs, the government conveys that certain religions are preferable over others. With Covenant Church traditionally being one of the smaller religious denominations with fewer attendants, the government showing a legislative preference against Covenant Church's belief system creates a tangible harm to the acceptance of the Everlight Dominion faith. R. at 3. There is a clear likelihood that these injuries could be remedied by an injunction preventing enforcement of the Johnson Amendment.

[4] Even though the harm suffered by Covenant Truth is more personal in nature, it should not be discounted as an actual injury in fact because "the harm caused by the perceived endorsement of religion…sends a message to nonadherents that they are outsiders, and not full members of the political community." Ashley C. Robson, *Measuring a "Spiritual Stake": How to Determine Injury-in-Fact in Challenges to Public Displays of Religion*, 81 Fordham L. Rev. 2919 (2013). (citing *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

II. The Johnson Amendment violates the Establishment Clause of the First Amendment by penalizing religious organizations and its leaders for adhering to deeply held religious beliefs.

A. The Establishment Clause is intended to create neutrality towards religion.

The Framers' first layer of bedrock to the United States Constitution was the Establishment Clause of the First Amendment, which stated "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. I. The purpose of the First Amendment's Establishment Clause is not simply to prohibit the establishment of religion; neither does the Establishment Clause seek to "compel the government to purge from the public sphere all that in any way partakes of the religious." *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (paraphrasing *Marsh v. Chambers*, 463 U.S. 783 (1983) (holding a state legislature using public funds to pay a chaplain for opening each legislative session with a prayer does not violate the Establishment Clause)). Rather, neutrality sits at the core of the Establishment Clause. However, the concept of neutrality in relation to the Establishment Clause "is not self-defining." Kelsey Curtis, *The Partiality of Neutrality*, Harv. J. L. & Public Policy, 41 (2018) (citing *Welsh v. United States*, 398 U.S. 333, 372 (1970) (White, J., dissenting)). Case law is helpful in setting the baseline: the Establishment Clause serves to prevent the government from exhibiting "favoritism among sects or between religion and nonreligion." *Van Orden v. Perry*, 545 U.S. 677, 698 (2005).[5] Where an Establishment Clause issue arises, it is necessary to conduct interpretation through "historical practices and understandings," looking to

[5] Without the Establishment Clause, the government would have a *chilling effect* on religious practices. Professor Frederick Schauer defines this in the free speech context as, "a chilling effect occurs when individuals seeking to engage in activity protected by the first amendment are deterred from doing so by governmental regulation." Schauer, Frederick, "*Fear, Risk and the First Amendment: Unraveling the Chilling Effect*" (1978). (Emphasis Added). Thus, "an otherwise legitimate regulation has the incidental effect of deterring—or chilling—benign activity"—in this case, the Johnson Amendment penalizing certain religious practices. Leslie Kendrick, *Speech, Intent, and the Chilling Effect*, 54 Wm. & Mary L. Rev. 1633 (2013).

whether history and the Framers had permitted the practice at issue. *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 510 (2022) (citing *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).

Historically, the United States has permitted political preaching from the pulpit. Since America's founding almost 250 years ago, churches have played a part in politics. Mark A. Goldfeder, Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEM. L. REV. 209, 211–12 (2017). As early as the early 1800s, pastors gave sermons regarding political candidates running for office, speaking on figures such as Thomas Jefferson, William Howard Taft, and Al Smith. *Id*. at 212. Religious organizations have "been at the forefront of most of the significant societal and governmental changes in our history including ending segregation and child labor and advancing civil rights." *Id*. Had churches involving themselves with politics been an impermissible practice, it is unlikely this history would hold true today. This indicates that allowing Covenant Truth to continue its deeply held religious beliefs under a tax-exempt status would not violate the Establishment Clause by showing favor to Covenant Truth. Rather, it is better put that the Johnson Amendment, in penalizing Covenant Truth for engaging in what has long been a historically permissible tradition, is what violates the Establishment Clause.

B. Withdrawing tax-exempt status from Covenant Truth for practicing its religion is not a neutral action.

The Johnson Amendment violates the Establishment Clause of the United States Constitution because the legislation effectively penalizes Covenant Truth for following the centuries-old, deeply held beliefs of the Everlight Dominion. In *Kennedy v. Bremerton School District*, the Court rejected the notion that a governmental entity must prohibit "demonstrative religious activity [in conformity]" with the Constitution. 597 U.S. 507, 540 (2022). In that case, a school district suspended a high school football coach for praying on a public football field at school sponsored football games. *Kennedy,* 597 U.S. at 520. The school district argued that it was required to do so

in order to avoid the assumption it was endorsing the coach's religion. *Id*. The Court disagreed, reasoning that the suppression of and hostility towards religion was a misconstruction of the Establishment Clause tantamount to discrimination. *Id.* at 544.

Here, the Johnson Amendment similarly penalizes religious organizations with belief systems like Covenant Truth. Covenant Truth, in accordance with the Everlight Dominion doctrine, requires its followers to participate politically by supporting campaigns and candidates which align with the progressive stances of the Everlight Dominion. R. at 3. However, unlike in *Kennedy*, where the coach was merely motivated to pray before and after each game, here, the Everlight Dominion requires its churches and religious leaders to publicly support political candidates who align with the Everlight Dominion's religious beliefs. R. at 3; *Kennedy,* 597 U.S. at 514−515. This active participation is not a suggestion; it is an obligation. R. at 3. Like the school district in *Kennedy* suspending the coach in its fear of intertwining government with religion, the Johnson Amendment seeks to overcorrect against the Framers' mistrust of corruption by establishing rigid lines of church and state separation at the expense of religious freedom. Such an overcorrection is not only unconstitutional, but it is also not supported by precedent. Thus, because the Establishment Clause is intended not to favor or disfavor religion, and the Johnson Amendment effectively penalizes Covenant Truth for engaging in its religious practices, the Johnson Amendment is unconstitutional.

C. The Johnson Amendment creates the effect of favoring other religions over Covenant Truth through its tax-exempt status by failing to maintain neutrality.

Additionally, the Johnson Amendment is unconstitutional because it penalizes the religions that partake in politics as required by its faith, essentially favoring some religions over others. In *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, a state statute granting tax-

exemption preference to some religious denominations over others was subject to strict scrutiny and ruled unconstitutional and in violation of the First Amendment. 605 U.S. 238, 238 (2025). In that case, a state statute dictated that tax-exemptions to non-profit organizations run by a church would only be permissible if the non-profit "operated primarily for religious purposes." *Cath. Charities Bureau*, 605 U.S. at 241. However, because the organization's mission was to aid "the poor and disadvantaged" instead of proselytizing as required by the statute, the church's nonprofit organization was denied the religious-employer tax exemption granted to other church-led nonprofit organizations. *Id*. at 243. The Court reasoned that the state's tax-exemption statute granted denominational preferences—while religions that proselytized would be tax exempt, religions prohibiting proselytization in its support of religiously-motivated charity would be ineligible for tax exemptions. *Id*. at 249-251. "An exemption," the Court ruled, "provided only to organizations that engage in" certain practices created denominational preferences that amounted to discrimination on the basis of theological choices. *Id*. at 251. Such a statute would be subject to strict scrutiny.

Here, the Johnson Amendment also fails to be neutral and grants denominational preferences according to theological doctrine. Like in *Catholic Charities,* where the statute narrowed tax exemptions to non-profit organizations that engaged only in religious actions and not religiously motivated actions, 26 U.S.C. § 501(c)(3) extends tax-exemptions of churches only to denominations with beliefs that are consistent with statutory regulations. *Cath. Charities Bureau*, 605 U.S. at 249-251; R. at 9. By the statute granting tax exemptions only to denominations that do not require participation in political campaigns, 26 U.S.C. § 501(c)(3) explicitly favors certain religions over others. Any evidence presented by the petitioner that the Johnson Amendment is rarely enforced is immaterial—rarely enforced means that sometimes, it *is* enforced. R. at 8. In

fact, such evidence would only serve to further prove the point that the Johnson Amendment fails to be neutral, granting exemptions to theological decisions it finds proper according to 26 U.S.C. § 501(c)(3). The plaintiff in *Catholic Charities* engaged in charity without proselytization not because the charity fails to be rooted in religious motivations, but because the Catholic religion calls for good deeds to be done without explicitly preaching in pursuit of conversion.[6] *Catholic Charities* held the statute denying tax-exemptions based on religiously motivated church actions created denominational preferences in a way that could not be justified under a strict scrutiny analysis. 605 U.S. at 252. Similarly, Covenant Truth's leader Pastor Gideon Vale delivers political messages not from a place of personal opinion, but because the Everlight Dominion demands he does so, in accordance with his faith. R. at 4. Thus, any application of the Johnson Amendment changing Covenant Truth's tax-exemption status based solely on its uncommon religious practices is unjustifiable.

i. A strict scrutiny analysis proves the Johnson Amendment fails to serve a compelling government interest or be narrowly tailored to serve the interest.

Because the First Amendment requires the government to be neutral towards all religion, a statute which fails to be neutral towards religion is deemed unconstitutional unless the statute (1) serves a compelling government interest and (2) is narrowly tailored to fit that interest. *Cath. Charities Bureau*, 605 U.S. at 252. In *Catholic Charities*, the Court's analysis proved the statute

[6] The United States Conference of Catholic Bishops is instructive on the Catholic catechism. It instructs that evangelism and conversion is most commonly achieved through letting the Catholic faith be apparent in the way its believers "speak, think, and act." According to the Catholic Bishops, evangelism does not consist of the standard evangelistic culture most think of in the United States (i.e. going door to door). Evangelism comes from "the way [Catholics] serve others, especially the poorest, the most marginal." *What is Evangelization? - Go and Make Disciples*, U.S. CONF. OF CATH. BISHOPS, https://www.usccb.org/beliefs-and-teachings/how-we-teach/evangelization/go-and-make-disciples/what_is_evangelization_go_and_make_disciples (last visited Jan. 18, 2026).

in that case failed to survive the strict scrutiny standard. *Id*. at 252. This was because the state failed to explain how drawing distinctions among religious organizations served to (1) ensure the compelling government interest of "unemployment coverage for its citizens" or (2) be narrowly tailored to assuage the state's concern over religious entanglement. *Id*. at 252-53. The statute neither served a compelling government interest nor was narrowly tailored to serve that interest. *Id*.

In this case, the Johnson Amendment fails to serve a compelling government interest because the Johnson Amendment was created out of former President Johnson's personal interest to be reelected. On July 2, 1954, when then-Senator Lyndon B. Johnson introduced the Johnson Amendment to the Senate, he gave no explanation as to why he was introducing the proposed Amendment. When introducing the Amendment, all Senator Johnson said was, "I have discussed the matter with the chairman of the committee, the minority ranking member of the committee, and several other members of the committee, and I understand that the amendment is acceptable to them." 100 CONG. REC. 9604 (1954). In truth, and behind closed doors, Senator Johnson's chances of reelection would be higher if the tax-exempt organizations which funded his opposition lost tax-exempt statuses as a result of endorsing another's political campaign. Mark A. Goldfeder, Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEM. L. REV. 209, 214 (2017). Consequently, the Johnson Amendment "was born of Lyndon Johnson's Texas politics, not the U.S. Constitution." Larry Witham, *Texas Politics Blamed for '54 IRS Rule - LBJ Wanted to Keep Senate Seat,* WASH. TIMES, Aug. 27, 1998, at A4. Since its passing, Congress has yet to clarify the Johnson Amendment's purpose. A legislation which constrains religious organizations with no clear purpose falls far from what the Court considers a 'compelling government interest.'

Recognizing that the Johnson Amendment fails to serve a compelling government interest, it follows that the Johnson Amendment fails to be narrowly tailored—a piece of legislation cannot be narrowly tailored if it was not tailored for any purpose outside of one individual's personal interest in reelection. Under a strict scrutiny analysis, the Johnson Amendment's failure to maintain neutrality amongst religious denominations is unconstitutional.

Conclusion

For these reasons, this Court should affirm the judgment of the 14th Court of Appeals.

Respectfully submitted,

Team 4
Attorneys for Respondent