No. 26-1779

IN THE

Supreme Court of the United States

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 RESPONDENT

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QUESTIONS PRESENTED

1. Whether Covenant Truth Church has standing under the Tax Anti-Injunction Act, 26 U.S.C. § 7421(a), and Article III of the U.S. Constitution to challenge the Johnson Amendment.
2. Whether the Johnson Amendment violates the Establishment Clause of the First Amendment

PARTIES TO THE PROCEEDING

Petitioners, who were defendants in the district court and defendant-appellants in the court of appeals are the Internal Revenue Service, through Acting Commissioner Scott Bessent. Respondent, who was plaintiff in the district court and plaintiff-appellee in the court of appeals is Covenant Truth Church, a 501(c)(3) not-for-profit religious organization.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Wythe, granting summary judgment in favor Respondent and the entry of a permanent injunction is available at No. 5:23-cv-7997. The opinion of the United States Court of Appeals for the Fourteenth Circuit affirming the District Court's decision is reported at *Scott Bessent, In His Off. Capacity as Acting Comm'r of the Internal Revenue Serv., et al. v. Covenant Truth Church*, 345 F.4th 1 (14th Cir. 2025). R. at 1-16.

JURISDICTION

The United States Court of Appeals for the Fourteenth Circuit entered judgment on August 1, 2025. Petitioners filed a timely petition for writ of certiorari, which this Court granted on November 1, 2025. The lower courts had jurisdiction under 28 U.S.C. §§ 1331 and 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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

Amendment, codified at 26 U.S.C. § 501(c)(3), and the Tax Anti-Injunction Act, codified at 26 U.S.C. § 7421(a).

STATEMENT OF THE CASE

This case involves the Internal Revenue Service (Petitioners) intruding and entangling themselves into the deeply-held religious beliefs of Covenant Truth Church (Respondent). Respondent filed this suit to prevent the Government from eroding the safeguards enshrined in the Establishment Clause, and to protect their religious liberty and freedoms. The U.S. District Court for the Eastern District of Wythe granted summary judgment in favor of Respondent and entered a permanent injunction against Petitioners. R. at 5. Petitioners, dissatisfied with the District Court's order and ruling, unsuccessfully appealed to the United States Court of Appeals for the Fourteenth Circuit. R. at 6. The Fourteenth Circuit affirmed the District Court's ruling and the entry of a permanent injunction. R. at 2.

A. Factual Background

Enacted in 1954, the Johnson Amendment prohibits any non-profit classified as a tax-exempt organization from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). Despite its initial bipartisan support, the Johnson Amendment has come out of favor amongst a segment of the American public. R at 2. Since 2017, there has been legislation introduced to either to repeal the Johnson Amendment in its entirety, or to create an exception for religious organizations.[1] R. at 3.

[1] *See* H.R. 172, 115th Cong. (2017); Free Speech Fairness Act, H.R. 2501, 119th Cong. § 1 (2025).

The Everlight Dominion is a centuries-old religion that, at the heart of its teachings, champions progressive social causes and values. R. at 3. As part of its teachings and practices, churches and leaders within the Everlight Dominion are required to participate in political campaigns, endorse and support candidates, and to encourage citizens and parishioners to donate and volunteer for political campaigns that align with the church's core values. R. at 3. Church leaders who fail to adhere to this practice are banished from the Everlight Dominion. R. at 3.

Beginning in 2018, the Everlight Dominion has seen a massive surge in followers due to Pastor Gideon Vale's efforts. As head pastor at Covenant Truth Church, he leads weekly worship services providing spiritual guidance and educates the general public about the teachings of the Everlight Dominion. R. at 4. Additionally, Pastor Vale hosts a weekly podcast that is the fourth-most listened podcast in the State of Wythe and the nineteenth most-listened podcast nationwide. R. at 4. As per the teachings and customs of the Everlight Dominion, Pasto Vale occasionally uses his podcast to voice support for candidates that align with the Church's core values. R. at 4.

In January 2024, the State of Wythe's senior Senator Matthew Russett passed away. R. at 4. Senator Russett's death triggered a special election, and shortly after, Congressman Samuel Davis announced his candidacy to fill the remaining four-year term. R. at 4. Congressman Davis is a champion of progressive social causes. In one of Pastor Vale's weekly podcast sermons, as required by the teachings and practices of the Everlight Dominion, Pastor Vale endorsed Congressman Davis. R. at 4. During this podcast, Pastor Vale spoke at length at how Congressman Davis's political stances aligned with the Church's core values, and announced his intention to give a series of sermons about the teachings of the Everlight Dominion leading up to the special election. R. at 5.

B. Procedural History

On May 1, 2024, Petitioners sent a letter to Covenant Truth Church, informing them that they were selected for an audit. R. at 5. On May 15, 2024, Respondent filed this suit in the U.S. District Court for the Eastern District of Wythe to protect their religious freedom and liberty, seeking to permanently enjoin Petitioners from enforcing the Johnson Amendment because it violates the Establishment Clause and prohibits its church leaders from adhering to their deeply-held religious beliefs. R. at 2, 5. When Petitioners responded with a blanket denial of all Respondent's claims, Covenant Truth Church moved for summary judgment. R. at 5. After full briefing and argument, the District Court held that (1) Covenant Truth Church has standing to challenge the validity of the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment Clause. R. at 5. As such, the District Court granted Respondent's motion for summary judgment and entered a permanent injunction against Petitioners prohibiting them from enforcing the Johnson Amendment. R. at 6.

Dissatisfied with the District Court's order, Acting IRS Commissioner Scott Bessent appealed to the Fourteenth Circuit. R. at 6. The Fourteenth Circuit affirmed the District Court's order, holding that (1) Covenant Truth Church has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment is unconstitutional because it authorizes government regulation of religious activity, a clear violation of the Establishment Clause. R. at 8, 11.

STANDARD OF REVIEW

This Court reviews decisions of standing *de novo*. *Urb. Devs. LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006) ("Ripeness is a question of law that implicates this court's subject matter jurisdiction, which we review *de novo*."). A district court's decision to grant a motion for summary judgment is also reviewed *de novo*. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 466–

67 (7th Cir. 2020). Summary judgment is appropriate if there are no disputed questions of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). This Court reviews a decision to grant a permanent injunction for an abuse of discretion, whereas the rulings of law relied upon the district court are reviewed *de novo*. *W. Watersheds Project v. Matejko*, 468 F.3d 1099, 1107 (9th Cir. 2006). Concerning issues under the Establishment Clause of the First Amendment, this Court reviews with strict scrutiny. *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm.*, 605 U.S. 238, 241 (2025). Under strict scrutiny, the government has the burden to prove the constitutionality of its challenged law. *Id.* at 252.

SUMMARY OF ARGUMENT

The District Court and the Fourteenth Circuit correctly held that Covenant Truth Church has standing to challenge the validity of the Johnson Amendment, and that the Anti-Injunction Act (AIA) does not bar this suit.

First, while the primary purpose of the AIA is to facilitate the speedy collection of taxes by the government, *see Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962), Covenant Truth Church's suit does not seek to restrain the assessment or collection of any tax. This suit is strictly about whether the Johnson Amendment passes constitutional muster. Furthermore, this Court has recognized that the AIA's "purpose and circumstances of its enactment indicate that Congress did not intend to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *South Carolina v. Regan*, 465 U.S. 367, 378 (1984). Since Congress has not provided Covenant Truth Church any alternative remedy to obtain judicial review of their constitutional claims, their suit challenging the validity of the Johnson Amendment falls squarely within the *Regan* exception to the AIA. Traditional avenues of judicial review, such as a refund suit, a suit challenging a tax deficiency, declaratory relief pursuant to 26 U.S.C. § 7428,

and a "friendly-donor" suit are inapplicable for Covenant Truth Church and would not reach their constitutional claims.

Second, Covenant Truth Church has Article III standing to challenge the validity of the Johnson Amendment because the Government's selective enforcement will cause the Church to suffer substantial and imminent harm. The District Court and the Fourteenth Circuit correctly concluded that the Church satisfied the injury-in-fact requirement by establishing that the Service's selective enforcement of the Johnson Amendment will violate their freedom to exercise their deeply held religious beliefs. Furthermore, when the IRS notified the Church of their intention to audit the organization for compliance with section 501(c)(3), the Government manifested their intent to enforce the Johnson Amendment. Therefore, this Court should affirm both of the lower court's holdings as to the first issue.

Additionally, the District Court and the Fourteenth Circuit correctly ruled the Johnson Amendment unconstitutional because it violates the Establishment Clause of the First Amendment through government entanglement. Pursuant to this Court's precedent, the Johnson Amendment does not survive strict scrutiny. It first fails strict scrutiny because it was not drafted and enacted for a compelling government purpose. If its purpose were to prevent religious organizations from participating in political discourse, the is not a compelling interest. Second, the Johnson Amendment is not narrowly tailored to promote such an interest because it is both underinclusive and overinclusive. It is underinclusive because it fails to capture the very activity it seeks to prevent within the language of the statute. In turn, the activity goes unchecked while the Internal Revenue Service sets its sights on smaller, under-resourced religious organizations. The Johnson Amendment is overinclusive because it accounts for behavior that it is not intended to penalize.

Put another way, it could punish harmless dialogue in religious settings when it was simply meant to prevent large-scale political campaigning activities by religious organizations.

Petitioners' assertions are unmeritorious, supported by nonbinding and obsolete case law. Strict scrutiny is this Court's prescribed standard of review, under which the government must prove the constitutionality of its law when it comes to First Amendment claims of this nature. As a matter of policy, the government should not be able to disturb such well-settled freedoms without the expectation of a heightened level of analysis. Upholding such rights that have been central to Americans since the nation's founding is critical in sustaining this democracy. Thus, this Court should affirm the lower courts' holdings as to the second issue.

ARGUMENT

I. COVENANT TRUTH CHURCH'S ESTABLISHMENT CLAUSE CHALLENGE TO THE JOHNSON AMENDMENT IS NOT BARRED BY THE TAX ANTI-INJUNCTION ACT AND PRESENTS A JUSTICIABLE CONTROVERSY UNDER ARTICLE III.

The United States Constitution limits federal court jurisdiction to cases and controversies arising under Article III. U.S. CONST. art. III, § 2. For a plaintiff to have Article III standing, they must demonstrate that they have suffered (1) an injury-in-fact, (2) that was caused by the defendant's actions, and (3) that the injury is capable of being redressed by a judicial decision. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560-61 (1992).

The AIA restricts a federal court's remedial authority of suits seeking to "restrain the assessment or collection of any tax." 26 U.S.C. § 7421(a). The chief purpose of the AIA is to facilitate the expeditious collection of taxes by the government. *Williams Packing,* 370 U.S. at 7. "In considering section 7421(a), [a] two-step analysis is necessary: (1) when does the statute

apply?; (2) when it is applicable, under what circumstances is an exception permitted?" *Alexander v. Ams. United Inc.*, 416 U.S. 752, 766 (1974) (Blackmun, J., dissenting).

The Internal Revenue Service's selective enforcement of the Johnson Amendment against Covenant Truth Church, resulting in the Church suffering irreparable harm, amply satisfy the case or controversy requirement of Article III and compel the exercise of federal jurisdiction. Furthermore, the AIA does not bar the Church's suit because Congress has not provided the Church any alternative remedy to litigate their claims, thus falling squarely within the *Regan* exception. Hence, this Court should affirm both the lower courts' decisions and hold that Covenant Truth Church possess the requisite standing to raise their Establishment Clause claim.

A. The Anti-Injunction Act does not bar Covenant Truth Church's suit challenging the Johnson Amendment because Congress has not provided the Church any alternative remedy to raise their Establishment Clause claim.

This Court has created two exceptions to the AIA. In *Williams Packing*, this Court held that a pre-enforcement injunction against the collection or assessment of taxes may be granted only if "it is clear that under no circumstances could the Government prevail, and if equity jurisdiction otherwise exists." 370 U.S. at 6-7. Unless both conditions are met, a suit seeking preventive injunctive relief must be dismissed. *Alexander*, 416 U.S. at 758. However, this Court recognized that "the Act's purpose and [the] circumstances of its enactment indicate that Congress did not intend to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *Regan*, 465 U.S. at 378. Henceforth, the AIA does not bar injunctive relief when Congress has not provided a party an alternative avenue of review. *Id.* Since Covenant Truth Church does not have access to judicial review of their Establishment Clause claim within the Service's administrative channels, their suit is not barred by the AIA.

1. Covenant Truth Church's Establishment Clause suit falls squarely within the Regan *exception and is not barred by the Anti-Injunction Act.*

"The AIA was never intended to leave a party without *any* forum in which to assert its claims." *New York v. Yellen*, 15 F.4th 569, 577 (2d Cir. 2021). An aggrieved taxpayer who is barred by the AIA from seeking injunctive relief generally has two options to challenge a tax assessment he thinks is unlawful: (1) pay the disputed tax and then sue the IRS in federal district court for a refund, 26 U.S.C. §§ 6532(a), 7422; or (2) withhold the disputed tax and fight the deficiency notice levied against him in the United States Tax Court. *Id.* §§ 6212, 6213. Here, the District Court and the Fourteenth Circuit correctly held that IRS regulations and 26 U.S.C. § 7428 do not provide any avenue of relief for Covenant Truth Church to raise their Establishment Clause claim. As such, the Church's suit falls squarely within the *Regan* exception because a refund suit, a suit challenging a tax deficiency, and declaratory relief pursuant to section 7428 are not adequate remedies and would leave the Church without a forum to assert their claims.

In *Regan*, South Carolina invoked this Court's original jurisdiction and sought an injunction against the Tax Equity and Fiscal Responsibility Act of 1982, which taxed the interest on certain state-issued, unregistered bearer bonds, whereas the interest on state-issued registered bonds remained non-taxable. 465 U.S. at 370. South Carolina argued that the federal statute would destroy its "freedom to issue obligations in the form that it chooses." *Id.* at 372. The Government, as they do here, argued that the AIA barred the suit. *Id.* After the reviewing the history of the AIA and its amendments, this Court held that South Carolina's challenge could proceed in federal court because "Congress ha[d] not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373. This Court reasoned that since the state of South Carolina could not rely on a taxpayer to effectively litigate their claims, to require a "friendly-donor suit" or a taxpayer suit would "create the risk that the [AIA] would entirely deprive the State of any opportunity to

obtain review of its claims." *Id.* at 381. Since third-party standing is seen as the exception to the general rule, this Court concluded that the AIA did not bar South Carolina's claims. *Id.* at 380. *See also Singleton v. Wulff,* 428 U.S. 106 (1976).

Here, Covenant Truth Church's challenge to the Johnson Amendment is materially the same as South Carolina's suit in *Regan*. "[T]he basis of the *Regan* exception is *not* whether a plaintiff has access to a legal remedy for the precise harm that it has allegedly suffered, but whether the plaintiff has any access at all to judicial review." *Jud. Watch, Inc. v. Rossotti*, 317 F.3d 401, 408 (4th Cir. 2003). The statutory and regulatory channels of review—namely a refund suit, a suit challenging a tax deficiency, declaratory relief pursuant to § 7428, or a friendly donor suit—are not adequate remedies for Covenant Truth Church to assert its Establishment Clause claims. Similar to the plaintiffs in *Regan*, Congress has not provided Covenant Truth Church any alternative remedy in this case.

First, because the Church's tax-exempt status remains inact, they cannot contest any tax deficiency owed within the U.S. Tax Court. *See* 26 U.S.C. § 6213. Second, refund suit is inadequate because a refund suit is "directly geared to a determination of the technical aspects of [tax] liability and not to the larger constitutional issues." *Alexander*, 416 U.S. at 778 (Blackmun, J., dissenting). In the Church's case, a refund suit raises a host of hazards that make this particular avenue of judicial review wholly inappropriate for their Establishment Clause claim. To begin, a refund suit may not be maintained until a claim for a refund has been filed. 26 U.S.C. § 7422. Additionally, 26 U.S.C. § 6532(a)(1) precludes a refund suit until the claim is denied or six months have passed from the date of filing. At best, the earliest the Church could be heard on a refund suit would be one to two years. Moreover, if the contested refund is small, the Government may inadvertently or intentionally concede the refund. *Alexander,* 416 U.S. at 789 (Blackmun, J., dissenting) ("There is

little doubt that the Commissioner possesses the authority to make the refund and moot the suit if he chooses not to litigate the underlying issues."). Neither of these outcomes would allow the Church to litigate their Establishment Clause claims. The Church's constitutional claims are "peculiarly within the province of the courts and not of the Executive's administrative officers." *Id*. at 773 (Blackmun, J., dissenting).

Additionally, the Government mischaracterizes *Regan* as a narrow, case-specific exception that applies only where it is certain that individual taxpayers would neither have the incentive nor the ability to challenge a particular tax law. To the contrary, *Regan* squarely holds that the available alternate avenue must allow "an aggrieved party to litigate its claims *on its own behalf*." 465 U.S. at 381 (emphasis added). "Congress did not intend the [AIA] to apply where an aggrieved party would be required to depend on the mere possibility of persuading a third party to assert his claims." *Id.* The AIA does not compel the Church to delegate their Establishment Clause claims to private parties.

Furthermore, this Court should reject the Government's all-encompassing interpretation and application of *Williams Packing* to this case. The Government's interpretation ignores the plain language of the AIA, misinterprets this Court's and lower court's precedents, and would swallow the *Regan* exception whole. "The AIA, as its plain text states, bars suits concerning the 'assessment or collection of any tax.' It is no obstacle to other claims seeking to enjoin the IRS, regardless of any attenuated connection to the broader regulatory scheme." *Cohen v. United States*, 650 F.3d 717, 727 (D.C. Cir. 2011). A number of circuit courts have allowed constitutional claims against the IRS to proceed in face of the AIA. *See We the People Found., Inc. v. United States*, 485 F.3d 140 (D.C. Cir. 2007) (holding that the AIA did not bar a First Amendment claim against the IRS);

and Linn v. Chivatero, 714 F.2d 1278 (5th Cir. 1983) (allowing a Fourth Amendment claim against the IRS).

Lastly, this Court has rejected the Government's theory that the AIA's "assessment and collection language bars any and all lawsuits that might ultimately impact the amount of revenue in the U.S. Treasury." *Cohen,* 650 F.3d at 726 (citing *Hibbs v. Winn*, 542 U.S. 88, 102 (2004)). To read *Williams Packing* as encompassing as the Government contends is to make the AIA more restrictive than this Court and Congress intended. *Alexander*, 416 U.S. at 771 (Blackmun, J., dissenting). The result would be that section 7421(a) becomes an absolute bar to any and all injunctive relief, "irrespective of tax liability, of the purpose of the suit, or of the character of the Service's action." *Id.* (Blackmun, J., dissenting). If this Court was to apply such an all-encompassing interpretation to this case, Covenant Truth Church would be left without any forum to litigate their constitutional claims, directly contradicting Congress' intent and this Court's holding in *Regan*.

2. Covenant Truth Church's suit is not a challenge to the assessment of their tax liability, wholly taking their suit outside the scope of the Anti-Injunction Act.

The Government contends that because Covenant Truth Church has not exhausted its administrative remedies under 26 U.S.C. § 7428, they should be barred from raising their claims. This argument wholly misconstrues the remedy that Covenant Truth Church seeks and the nature of this suit.

First and foremost, Covenant Truth Church does not seek to restrain the assessment or collection of any tax. This case is distinguishable from *Bob Jones* because the Church is not bringing this action to enjoin the IRS from revoking their tax-exempt status. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 735 (1974). In *Bob Jones*, the plaintiffs filed a pre-enforcement suit to prevent the IRS from commencing administrative proceedings leading to the revocation of their

501(c)(3) ruling letter, which would impact their future tax liability. *Id.* Here, the Service sent a letter to the Church informing them that they were randomly selected for an ***audit***. R. at 5. An audit is defined as "[the] formal examination of an individual's or organization's accounting records, financial situation, or ***compliance with some other set of standards***." *Audit*, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). Furthermore, this Court has made it clear that the term "assessment," as used throughout the Internal Revenue Code, "refers to little more than the ***calculation or recording of a tax liability***." *United States v. Galletti*, 541 U.S. 114, 122 (2004) (emphasis added). The Service's intention in their May 1, 2024, letter was to ensure the Church's compliance with the Code and IRS regulations. R. at 5. The record before this Court indicates that the Service did not initiate its audit to assess any tax liabilities owed or to collect any taxes from the Church.

Second, victory for Covenant Truth Church will not determine if a tax is due, but will establish whether the Church can freely exercise their First Amendment rights without government interference. Whether or not the AIA prohibits a suit against the IRS depends on whether the action is fundamentally "a tax collection claim," which the Court must determine based upon "a careful inquiry into the remedy sought, the statutory basis for that remedy, and any implication the remedy may have on assessment and collection." *Cohen*, 650 F.3d at 727. Hearing the merits of the Church's Establishment Clause claim will not obstruct the collection of revenue as in *Synder v. Marks,* 109 U.S. 189 (1883), nor will it alter the Church's future tax liabilities as in *Bob Jones*. This suit is strictly about whether the Johnson Amendment passes constitutional muster.

B. Covenant Truth Church can demonstrate Injury-In-Fact resulting from the Government's selective enforcement of the Johnson Amendment and therefore has Article III Standing to raise their Establishment Clause claim.

An "injury-in-fact" is defined as an "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. This Court has furthered defined "particularized" to mean that the injury must affect the plaintiff in a personal and individual way. *Id.* at n.1 (1992). The plaintiff's injury must be "fairly traceable to the challenged action of the defendant," and can be "redressed a by favorable decision." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-43 (1976). "The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have 'alleged such a personal stake in the outcome of the controversy as to assure concrete adverseness…which the court so largely depends for illumination of difficult constitutional questions.'" *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 72 (1978) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). Here, Covenant Truth Church can satisfy the elements of Article III standing. Respondent will suffer irreparable harm as a result of the Government's enforcement of the Johnson Amendment, and this Court has jurisdiction to provide Covenant Truth Church the remedy it seeks.

1. Covenant Truth Church has Standing Given the Substantial, Imminent Risk of the Government's Selective Enforcement of the Johnson Amendment.

Given the Everlight Dominion's deeply held religious beliefs requiring its churches and leaders to participate in political campaigns that align with its progressive stances, coupled with the Government's clear intention to enforce the Johnson Amendment, the Church has standing to seek prospective, injunctive relief. The lower courts correctly held that Covenant Truth Church satisfied the injury-in-fact requirement by establishing that the Service's selective enforcement of the Johnson Amendment will violate their freedom to exercise their deeply held religious beliefs.

The Government incorrectly argues that Covenant Truth Church must demonstrate certainty of future harm to satisfy injury-in-fact. Rather, this Court's precedents hold that it is

sufficient to confer Article III standing if "there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013)).

The evidence that Covenant Truth Church will be imminently subjected to enforcement is substantial. Given that the IRS notified Respondents of its intention to audit the Church, there is a "substantial risk" of enforcement. *Susan B. Anthony List,* 573 U.S. at 158. The nature of the audit is to ensure the Church's compliance with the Internal Revenue Code, which includes section 501(c)(3). R. at 5. Such an audit will reveal that Covenant Truth Church participated and intervened in a political campaign as necessitated by its religion, and such conduct is prohibited by the Johnson Amendment. Covenant Truth Church can be assured that the threat of future enforcement is substantial. It has no bearing on the instant matter that it is IRS practice to not to enforce the Johnson Amendment against 501(c)(3) organizations. Since the Service appealed the District Court's order and the entry of a permanent injunction, it can be reasonably inferred that the Government intends to enforce the Johnson Amendment.

Despite this, the Government tries to brush this aside by claiming that the likelihood that the Service will enforce the Johnson Amendment against Covenant Truth Church is based on a "speculative chain of possibilities" insufficient to create standing. *Clapper*, 568 U.S. at 414. The Government relies on the notion that this Court has been "generally unwilling to assume that the party seeking relief will repeat the type of misconduct that would once again place [them] at risk of that injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 105–106 (1983) (holding that there was no threat to party seeking an injunction barring police use of chokeholds would be stopped again for traffic violation or other offense, or would resist arrest if stopped).

Here, *Lyons* is no obstacle to standing. Unlike in *Lyons*, here, church leaders within the Everlight Dominion face a realistic threat of future enforcement. The facts of this case are similar to *Honig*, where this Court found that standing existed because the plaintiff could not "conform his conduct" to avoid harm. *Honig v. Doe*, 484 U.S. 305, 320 (1988). Pastor Vale and other church leaders within the Everlight Dominion are required to participate in political campaigns. R. at 3. They cannot "conform their conduct" to avoid harm. *Honig,* 484 U.S. at 320. Moreover, Respondent here is stuck in a catch-22. They either must chill the exercise of their First Amendment rights and face banishment from the Everlight Dominion, or be subjected to government intrusion into their deeply held religious beliefs. Given the unique circumstances and context of this case, the Court should expect that Pastor Vale and other church leaders of the Everlight Dominion will "again engage in the type of misconduct that precipitated this suit." *Id.* at 321.

2. The Proposed Consent Judgment in National Religious Broadcasters v. Long *is not binding on this case and does not bar Respondent from bringing this suit.*

The Government erroneously argues that Covenant Truth Church lacks Article III standing because the Service has entered into a consent decree where they have agreed to not enforce the Johnson Amendment against "a house of worship [which] in good faith speaks to its congregation in connection with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of religious faith." *See* Joint Mot. For Entry of Consent J., *Nat'l Religious Broad. v. Long*, No. 6:24-cv-003111, 2025 WL 2555876 (E.D. Tex. July 7, 2025), ECF No. 35. This argument flatly mischaracterizes the procedural posture of those proceedings, and grossly misconstrues the federal courts' scope when sitting in equity.

First, when this Court granted certiorari for this matter, the United States District Court for the Eastern District of Texas had not ruled on the parties' joint motion.[2] Second, Covenant Truth Church is not a named party in those proceedings. This Court's precedents and the Federal Rules of Civil Procedure hold that courts may not enforce an injunction against a person who is not a party to the case before it. *See, e.g., Scott v. Donald*, 165 U.S. 107 (1897); FED. R. CIV. P. 65(d)(2).[3] "An injunction, by its very nature, does not address the general public, but applies only to particular parties, regulating their activities, because of their past actions in the context of a specific dispute." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 754 (1994).

It is a well-settled principle that "an injunction is a personal decree…[and] [is] not effective against the world at large." *Planned Parenthood Golden Gate v. Garibaldi*, 107 Cal. App. 4th 345, 352 (Cal. Ct. App. 2003). If this Court was to accept the Government's argument, the effect would be to take a narrowly tailored injunction specifically directed to its named parties and read it as a generally applicable statute or a universal injunction. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831 (2025). Such a result would constitute judicial overreach and fly in the face of this Court's equity powers. "The court hearing the action is charged with fashioning a remedy for a specific deprivation, not with the drafting of a statute addressed to the general public." *Madsen*, 512 U.S. at 762.

[2] On November 3, 2025, United States District Judge J. Campbell Barker denied a Motion from proposed-intervenors Americans United for Separation of Church and State to convert the scheduled November 25, 2025 hearing to a remote format. *See* Order on Mot. for Miscellaneous Relief, *Nat'l Religious Broad. v. Werfel*, 6:24-cv-00311, (E.D. Tex. Nov. 03, 2025) ECF No. 94.

[3] Rule 65(d)(2) of the Federal Rules of Civil Procedure reads: (2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

3. Covenant Truth Church's Establishment Clause claims are ripe for judicial adjudication, and this Court should reach the merits of Covenant Truth Church's Establishment Clause claims.

As a last ditch effort, the Government argues that the Church's constitutional claims are unripe and that this Court should exercise its powers to vacate the lower court's judgments and remand to the District Court with instructions to dismiss these proceedings. However, the ripeness doctrine does not bar Covenant Truth Church's Establishment Clause claims, and this Court is well within their jurisdiction to hear the merits.

The ripeness doctrine is invoked to determine whether a dispute has yet matured to a point that warrants a decision. Wright & Miller, 13B FED. PRAC. & PROC. JURIS. § 3532 (3d ed. 2025). "The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity." *Poe v. Ullman*, 367 U.S. 497, 503 (1961). When evaluating for ripeness, this Court takes into consideration the hardship to the parties of withholding judicial deliberation, and the fitness of the issues for judicial determination. Wright & Miller, 13B FED. PRAC. & PROC. JURIS. § 3532.3 (3d ed. 2025).

Covenant Truth Church can bring this pre-enforcement action because it can demonstrate "(1) that they intend to engage in a course of conduct arguably affected with a constitutional interest; (2) that their conduct is arguably regulated by the challenged policy; and (3) that the threat of future enforcement is substantial." *Burnett Specialists v. Cowen*, 140 F.4th 686, 694–95 (5th Cir. 2025) (cleaned up). Participating in political campaigns that align with the Everlight Dominion's progressive stances is a deeply held religious belief of the Church, one that this Court does not question.[4] Such conduct is prohibited by the Johnson Amendment. Finally, the

[4] This Court's precedents state that the Government and courts cannot access the validity or sincerity of an individuals' or group's religious beliefs. For further discussion, see *infra* Section II.B.

Government intends to selectively enforce the Johnson Amendment against Covenant Truth Church. The merits of this case are fit for judicial determination, and for this Court to deny judicial consideration would give the executive branch carte blanche to intrude into Respondent's constitutionally protected interests. Thus, Covenant Truth Church's suit challenging the validity of the Johnson Amendment is not barred by the AIA, and the Church has standing to raise their Establishment Clause claims.

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT THROUGH GOVERNMENT ENTANGLEMENT AND DOES NOT SURVIVE STRICT SCRUTINY.

The very first amendment to the United States Constitution guarantees: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I. Since 1879, this Court has consistently upheld the separation between church and state which underpins one of the core freedoms established under the First Amendment: the freedom of religion. *Reynolds v. United States*, 98 U.S. 145, 163-64 (1879). Historically, this Court has been inspired by this nation's founders, such as Thomas Jefferson and James Madison, and persuaded by their documented intentions regarding this freedom. *See id.* at 162-64. Namely, in *Reynolds*, Chief Justice Waite revisited stories of the nation's founding, noting that Thomas Jefferson "took occasion to say: 'religion is a matter which lies solely between man and his God; . . . that the legislative powers of the government reach actions only, and not opinions." *Id*. at 164. James Madison was also quoted in Chief Justice Waite's opinion, in response to some colonies attempting to enact legislation intended to regulate the establishment and exercise of religion. *Id*. at 162-63. This legislation included taxation of individuals; of which, the funds would then be allocated by

the government to particular religious sects—regardless of whether or not the taxed individuals practiced those religions they were effectively subsidizing. *Id.* Like Jefferson, Madison believed that the government may only get involved in religious affairs of individuals when those beliefs become overt actions which disturb the peace and public order. *Id*. at 163.

Throughout its Freedom of Religion jurisprudence, this Court has referenced American tradition and history to uphold the meaning of the Free Exercise and Establishment clauses of the First Amendment. *Catholic Charities*, 605 U.S. at 247-48. As to the Free Exercise Clause, it has been well-established that the First Amendment protects more than one's right to harbor private religious beliefs, but more importantly, it protects one's right to freely and openly practice those beliefs in the public square. *Emp. Div. v. Smith*, 494 U.S. 872, 877-78 (1990). The Establishment Clause requires that the government not "officially prefer[r]" "one religious denomination . . . over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). Moreover, among different religious sects, the Supreme Court has repeatedly held that the government must remain neutral. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). Essentially, this means that the government must not concern itself with the content of one's religion, as that runs counter to the First Amendment. *See Larson*, 456 U.S. at 255. *Larson* demands that laws which demonstrate denominational preference or discrimination be automatically treated as suspect. *Id*. at 246. It is the government's burden to prove that either no denominational preference exists, or alternatively, such exists, but that it survives strict scrutiny analysis. *Catholic Charities*, 605 U.S. at 238-41.

A. The Johnson Amendment impermissibly entangles government and religion because it fails strict scrutiny.

Over time, this Court has changed its mind about how to interpret the Establishment Clause—in particular, the concept of entanglement. *See Kennedy v. Bremerton Sch. Distr.*, 597 U.S. 507, 534-36 (2022). Entanglement originates from the *Lemon v. Kurtzman* test. *See id.* at 534.

Kennedy gives the impression that the Court intends to leave the longstanding *Lemon* approach in the past, which "called for an examination of the law's purposes, effects, and potential for entanglement with religion." *Id.* at 534. After *Kennedy*, entanglement is the only remaining Lemon test prong routinely utilized by the Court in cases such as the one at bar. *See id.* at 534-36.

Simply put, *Catholic Charities Bureau* clearly announces that, "[t]he First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny." 605 U.S. at 241. Strict scrutiny requires that the government have a compelling interest and its action in question has been narrowly tailored to achieve that interest. *Larson*, 456 U.S. at 246-47. In order to survive strict scrutiny, the law imposed must not be underinclusive, nor overinclusive. *See Catholic Charities*, 605 U.S. at 238-41.

In *Catholic Charities*, Catholic Charities Bureau, Inc. (Bureau), among other similarly situated organizations, was operating under the impression that it qualified for a tax exemption under Wisconsin state law. 605 U.S. at 241. The statutory exemption stated that "certain religious organizations" were not required to pay taxes on unemployment compensation. *Id.* at 238. Under the statute, qualifying organizations were defined as "'operated primarily for religious purposes' and 'operated, supervised, controlled, or principally supported by a church or convention or association of churches.'" *Id.* at 238. Importantly, the employment structure of the Bureau was such that it was overseen by a religious figurehead to ensure furtherance of the Bureau's religious objectives, but was managed by individuals who need not personally observe the Catholic faith. *Id.* at 243. Specifically, this meant that "[t]he Roman Catholic Diocese of Superior exercise[d] control over both the Bureau and its subentities[;] . . . [t]he bishop of the Diocese serve[d] as the Bureau's president and appoint[ed] its membership[;] . . . [but,] [t]he Bureau's executive director,

who need not be a Catholic priest," oversaw each subentity's operations. *Id.* at 243. Further down the chain of command, Bureau employees and subentities did not need to practice Catholicism, and neither did the recipients of the Bureau's charity services. *Id.* at 243-44. Notably, the Diocese supervising the Bureau did not permit proselytization[5] of Catholicism or excluding non-Catholics from using its charity services. *Id.* at 249-50. This was the key fact on which the State relied to deny the tax exemption because it highlighted a secular purpose, rather than a religious purpose. *Id.* at 245-46.

Pertinent to the case at bar, the issue in *Catholic Charities*, was whether the statute violated the Establishment Clause because it sought to exclude the Bureau, a religious organization, from benefitting from a tax exemption meant for religious organizations. *Id.* at 252. More specifically, the Court had to determine whether this particular statute was establishing a system in which the government could exercise denominational preferences or discrimination which is not permitted under the Establishment Clause of the First Amendment. *Id.* After analyzing the statute under strict scrutiny, the Court deemed it unconstitutional. *Id.* As to the State's claimed compelling interest, the Court did not agree that the law was narrowly tailored in furtherance of that interest. *Id.* at 253. First, the Court interpreted the statute as underinclusive because it sought to exclude religious organizations, like the Bureau, which provided just the same services as other religious organizations that participated in proselytization such that they neatly fit within the language of the statute. *Id.* at 253. After all, the Court found no other substantive difference between religious organizations that fit within the language of the statute and the Bureau, since both were controlled by religions, not secular nonprofit organizations. *Id.* at 253. Second, this Court found

[5] In *Catholic Charities*, this Court takes care to note that the Bureau distinguished between "'evangelization,' which involves 'sharing one's faith,' and proselytization,' which seeks to 'influence' or 'coerc[e]' others into accepting one's religious views." *Id.* at 244.

overinclusiveness because the statute did not define which employees the State was examining to determine that a religious organization was unable to benefit from the tax exemption. *Id.* at 254-55. In other words, the State did not distinguish between "employees actually involved in religious works, for whom the anti-entanglement concern is relevant, and other staff[;]" for example, "the exemption cover[s] both the janitor and the priest in equal measure." *Id.* at 254.

In *Larson*, this Court addressed the same question: whether the government's statute created a denominational preference which is unconstitutional under the Establishment Clause of the First Amendment. 456 U.S. at 229. Again, this Court analyzed this statute under strict scrutiny to make this determination; and ultimately, it found that the statute did not pass constitutional muster under the standard of review. *Id.* In this case, Minnesota's statute required charitable organizations to register with and report to the Minnesota Department of Commerce before soliciting contributions in the State. *Id.* at 230-31. However, if an organization qualified for an exemption under the statute, one of which being for religious charities, then it would not be subject to such requirements under the statute. *Id.* at 231-32. This remained the rule "[f]rom 1961 until 1978," at which point the State legislature amended the statute "to include a 'fifty per cent rule' in the exemption provision covering religious organizations." *Id.* at 231. In essence, the "fifty per cent rule provided that only those religious organizations that received more than half of their total contributions from members or affiliated organizations would remain exempt from the registration and reporting requirements." *Id.* at 231-32. Subsequent to that change, the State Department of Commerce contacted the Holy Spirit Association for the Unification of World Christianity (Unification Church), notifying it of its new registration requirement. *Id.* at 233-34. In response, the Unification Church sued. *Id.* at 234. After the State claimed that the Unification Church was

not a religious organization, at least not within the meaning of the statute such that it qualified for the tax exemption, the Court found for the Unification Church. *Id.* at 243.

In his opinion, Justice Brennan wrote, "[t]he fifty per cent rule . . . clearly grants denominational preferences of the sort consistently and firmly deprecated in [the Court's] precedents." *Id.* at 246. While this Court recognized the State's compelling interest in preventing abusive and fraudulent practices of charities soliciting funds, it rejected the State's assertion that its statute was narrowly tailored to further this interest. *Id.* at 284.[6] After finding the statute to fail the strict scrutiny analysis, the Court reiterated a quote from its holding in *Lemon*: "This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction . . . of churches." *Larson*, 456 U.S. at 255 (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971)). To expound this notion, Justice Brennan's opinion previously indicated that the statute was both underinclusive and overinclusive. *Larson*, 456 U.S. at 253-55. After reviewing legislative history of the amendment, this Court found that legislators did not intend for this exemption to pass over religious entities such as "a Roman Catholic Archdiocese" which they felt were deserving of the exemption. *Id.* at 254. Simultaneously, the Court found through the same means that legislators intended for certain religious groups not to have the benefit of the exemption because they were essentially tired of their solicitations for such sizably insignificant causes. *Id.* In review of this, this Court found denominational preference and discrimination, violating the Establishment Clause. *Id.* at 255.

[6] The Court went on to apply the *Lemon* test, which at the time was the rule; however, today only the entanglement prong remains which is illustrated here. *Kennedy*, 597 U.S. at 534.

B. The Johnson Amendment impermissibly entangles government and religion because it allows the government sole discretion over Covenant Truth Church's tax exemption status based on religious beliefs.

The Johnson Amendment impermissibly entangles the government in religious matters which are safeguarded by the Establishment Clause of the First Amendment, just the same as the statutes in *Catholic Charities* and *Larson*. Both cases exemplify this Court's current and robust application of strict scrutiny in cases concerning Establishment Clause issues. In *Catholic Charities*, the Court decided that it was not within the State's purview to make determinations as to whether an organization was purely religious or secular based upon the people to whom it offered employment or charitable services. Here, the government is similarly not permitted to judge the credence of a religion's closely held beliefs which call on members to participate in political campaigns to further the cause of their church. In fact, so doing would subject individual Everlight Dominion churches and leaders to exile from the religious sect entirely. After all, it is not within the government's authority to evaluate the sincerity of individuals' closely held religious beliefs.[7] Considering that the government is not permitted to intrude upon such an intimate aspect of one's life, its conduct in the present case exceeds this boundary.

The Johnson Act is a clear example of entanglement between government and religion. Here, entanglement has been created by Congress deferring judgment to the IRS to determine whether or not religious organizations may benefit under the tax code based squarely upon their substantive religious convictions. To put it plainly, the government has instituted a system in which it is empowered to decide which religious sects are deserving of fiscal relief and which are deserving of fiscal burden. In so doing, the government is attempting to blur the line between

[7] In the context of the Free Exercise Clause, this Court concretely established in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* that the government is not permitted to question the integrity of one's closely held religious beliefs. 508 U.S. 520, 531 (1993).

church and state which this Court and this nation's forefathers have consistently maintained as distinct. This is precisely the kind of denominational preference and discrimination that is prohibited by the First Amendment under the Establishment Clause. With the government making substantive determinations regarding religion, it is impossible for the government to remain neutral and not favor or disfavor certain religions through its decision-making. Thus, the government's actions are immediately suspect under the law and are subject to strict scrutiny.

C. The Johnson Amendment does not overcome strict scrutiny because it does not further a compelling government interest.

1. The Johnson Amendment is not derived from a compelling government interest.

In applying strict scrutiny to the instant case, the government does not have a compelling interest in requiring religious organizations to abstain from participation in political affairs to benefit from established exemptions within the Internal Revenue Code. The statutory scheme that Petitioners are seeking to enforce only silences religions through monetary penalties with which it disagrees. Here, the government is using tax exemptions as an incentive to prevent religious organizations from participating in commentary on political issues. This kind of government action is prohibited by the Constitution and is contrary to public policy. *See generally Walz v. Tax Comm'n of New York*, 397 U.S. 664, 694-96 (1970) (Brennan, J., concurring). Such treatment of private entities by the state itself is wholly unconstitutional and is incompatible with the separation between church and state, deeply rooted in this nation's history.

2. Even if this Court finds a compelling government interest, the Johnson Amendment still fails strict scrutiny because it is not narrowly tailored to further that interest.

Assuming, *arguendo*, this Court accepts Petitioners' interest as compelling, the Johnson Amendment is not narrowly tailored to achieve that interest. Like the statute in *Catholic Charities*, the Johnson Amendment is both underinclusive and overinclusive. In *Catholic Charities*, the

statute was underinclusive because it excluded organizations such as the Bureau which was no different than other religious charitable organizations which were permitted to benefit under the statute. Likewise, the Johnson Amendment is underinclusive because it still leaves room for behavior that it was intended to prevent. In essence, the Johnson Amendment only disincentivizes religious organizations from participating in political campaigns, but it does not prevent them entirely from doing so. Outside of the Johnson Amendment, religious organizations are still permitted, under the Internal Revenue Code, to organize a separate political action committee to advance the same initiatives as the church. Basically, this means that Covenant Truth Church can still participate in the same political engagement as before, so long as it is keeping proper records and not commingling the two organizations' funds.

With such an obvious workaround, it begs the question of what the sincere purpose of the Johnson Amendment was in the first place. Put into practice, it is underinclusive because it does not actually impact the very behavior it was intended to prevent. Even if it were enacted with that purpose in mind, it is incredibly poor policy for legislators to draft and enact statutory schemes with intentional loopholes, expecting private entities to take advantage of them. Additionally, requiring religious organizations to launch completely separate political action committees, in order to properly practice aspects of their religions that demand political engagement, imposes a significant burden. For religious leaders, this means keeping two separate books now, instead of one. It could further expose organizations with this kind of structure to heightened surveillance and scrutiny by the Internal Revenue Service. Even more, a minor bookkeeping error could mean serious penalties for organizations that may not be well-funded or well-resourced for accounting purposes. Ultimately, it severely disincentivizes religious organizations from participating in politics whatsoever, even when their core beliefs require it.

As to overinclusiveness, in *Catholic Charities*, the statute did not distinguish between managerial employees and employees completing menial labor such that they would be regarded with equal weight in determining whether the organization should qualify for the tax exemption. Based on the impact that kind of decision has on the organization itself, this distinction is quite significant. In the instant case, the Johnson Amendment is overinclusive because its language is ambiguous as to whether it seeks to encompass political speech within religious organizations entirely. Regardless of its true meaning, it is being enforced as such. While it is intended to address political campaigning which has been done on Pastor Vale's podcast, for example, one can imagine a similar scenario in which a religious figure makes a comment or two about his or her political stance on the airwaves. In that case, based on the Service's treatment of the Covenant Truth Church and Pastor Vale, that political leader would have singlehandedly lost his or her religious organization's non-profit tax classification. In the same vein, one could imagine members of a church having political dialogue, caught on the church livestream just before the sermon begins. It seems the law could be so overinclusive that the Government would utilize that moment to revoke that church's tax classification. This kind of effect does not serve the purpose that the Johnson Amendment seems to have been enacted to promote. Thus, the Johnson Amendment does not pass strict scrutiny.

D. The cases on which Petitioners rely are inapplicable to the case before this Court because of differences in jurisdiction, as well as factual distinctions requiring entirely different applications of law.

In asserting that Respondent is not entitled to a tax exemption under 26 U.S.C. § 501(c)(3), Petitioners rely on cases like *Branch Ministries v. Rossotti* and *Walz v. Tax Commission of New York*, but those cases are not directly on point. Petitioners aver that under *Rossotti*, the government can limit religious organizations' tax exemption statuses so long as the decision is not derived from

viewpoint and applies to nonreligious and religious organizations alike.[8] *Rossotti* is factually distinguishable from the case at bar because in *Rossotti*, the church was engaging in a campaign to besmirch the reputation and image of then-presidential candidate, Bill Clinton. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000). In that case, the church went out of its way to promote negative advertisement around Clinton, including purchasing an entire page in a well-known newspaper to disseminate a derogatory message about him. *Id.* However, that is not what happened in the instant case. Here, Pastor Vale and Covenant Truth Church were simply trying to support political candidates whose policies were consistent with a core tenet of their religion. Pastor Vale and Covenant Truth Church's intentions and conduct did not bully or harm a political candidate. Significantly, *Rossotti* is not immediately binding on this Court because it is a circuit court of appeals decision. *Id.* at 137. Because of the glaring factual and legal differences between the two cases, the legal reasoning set out in *Rossotti* should not be repeated in this case.

Petitioners argue that *Walz* is factually comparable to the instant case because both cases had an articulable nexus between the statute in controversy and the government interest the law was set out to effectuate. Furthermore, both statutes were neutrally applicable to religious and nonreligious organizations, alike. Such as their argument with respect to *Rossotti*, this argument fails. *Walz* is dissimilar from this case because the statute in *Walz* stemmed from the purpose for which it was created, and it was neutral in its application. *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 672, 674-75 (1970). Because *Walz* is an antiquated case, the statute in question did not have to pass strict scrutiny; it instead was required to overcome a lower standard which appears to

[8] The D.C. Circuit analyzed *Rossotti* under the Free Exercise Clause, as well as the Equal Protection Clause, to state that so long as a government action was viewpoint neutral and equally applicable to all, it was constitutional. *Id.* at 144-45. In the present case, these clauses are inapplicable because of the clear factual distinction between this case and *Rossotti*.

be rational basis review. *See generally id.* at 674.[9] To establish a rational basis, all the government had to prove was that the stated objective of tax exemptions for religious organizations under the statute was to promote spiritual association for its societal benefits; and to accomplish that goal, it would mitigate such organizations' fiscal obligations to the state. *Id.* at 674-75. This goal was achieved, and it was applied uniformly across all religious denominations. *Id.* at 675-76. No favoritism took place, and no discrimination occurred—it was truly neutrally applicable, certainly as far as rational basis review was concerned. *Id.* Because of the discernable nexus and neutrality, the *Walz* Court ruled that no impermissible entanglement was present, and the statute could be upheld. *Id.* at 675-80.

Walz is much different from the instant case because of the disparate treatment that has occurred across religions, singling out Covenant Truth Church. Here, the government is making differing tax exemption determinations depending on the religious organization, on a case-by-case basis, whereas in *Walz*, all religious and non-religious organizations were treated alike. Moreover, the evolution of this Court's Establishment Clause jurisprudence, coupled with its contemporary view of right set out therein, it is called to apply heightened scrutiny to the matter before it. Therefore, this Court should not adopt the same reasoning in this case as it did in *Walz*.

Finally, as a matter of fairness, Covenant Truth Church should not be regarded as any less significant than any other church or organization with differing beliefs. In *Larson*, legislators had their own biases about religions for which they were drafting the religious tax exemption amendment. 456 U.S. at 253-55. To allow the same to happen here would be entirely unfair to the Everlight Dominion religion. Though they may be fewer in number, that makes them no less

[9] Because this standard of review requires the government to clear such a low hurdle, the statute was much more likely to pass the test. Thomas B. Nachbar, *The Rationality of Rational Basis Review*, 102 VA. L. REV. 1627, 1650-52 (2016).

important than more well-established religions; and even if it did, that is not the government's call to make. Diversity of opinion and freedom of belief are individualistic, yet unifying qualities that mark this nation with greatness. To allow unpopular and diminutive viewpoints to be suppressed so easily, only to uphold more prominent, influential systems of belief would begin to erode the very foundation of this country. It would dishonor the intentions of its founders who believed in a clear boundary between the actions of church organizations and state institutions.

In conclusion, the Johnson Amendment violates the First Amendment's Establishment Clause because it permits the government to engage in entanglement between church and state, and under strict scrutiny, the Johnson Amendment cannot survive.

CONCLUSION

This Court should affirm the decision of the Fourteenth Circuit Court of Appeals. The District Court and the Fourteenth Circuit Court of Appeals both correctly held (1) that Respondent has standing to challenge the Johnson Amendment, and (2) that the Johnson Amendment violates the Establishment Clause of the First Amendment. Respondent's Establishment Clause challenge to the Johnson Amendment is not barred by 26 U.S.C. § 7421(a) of the Anti-Injunction Act and presents a justiciable controversy under Article III. Having demonstrated standing, Respondent has shown a violation of the First Amendment Establishment Clause by the Johnson Amendment through an impermissible degree of entanglement. As such, the Johnson Amendment does not pass muster under this Court's prescribed standard of review: strict scrutiny. Thus, Respondent respectfully requests this Court affirm the Fourteenth Circuit's and the District Court's rulings.