No. 26-1779

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 2025 TERM

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
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 42

Williamsburg, VA

Counsel for Respondent

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QUESTION PRESENTED

1. Whether a church has standing under Article III of the Constitution and the Tax Anti-Injunction Act to challenge a statute that restricts its political involvement when compliance violates its sincere religious obligations and non-compliance is penalized through adverse tax reclassification.

2. Whether the Johnson Amendment's mandate against political involvement violates the Establishment Clause when it regulates content preached from the pulpit and imposes a burden that inherently varies between religions.

LIST OF PARTIES

The parties to this controversy are as follows: Scott Bessent, in his Official Capacity as Acting Commissioner of the Internal Revenue Service, and the Internal Revenue Service, Petitioners; and Covenant Truth Church, Respondent. Covenant Truth Church is led by Pastor Gideon Vale and is affiliated with and practices The Everlight Dominion religion.

OPINIONS BELOW

The decisions of the United States District Court for the District of Wythe and the United States Court of Appeals for the Fourteenth Circuit are unreported. Pages 1–11 of the record provide the Fourteenth Circuit's majority opinion, written by Judge Washington and joined by Judge Barbour. Pages 12–16 of the record provide the dissent, written by Judge Marshall.

JURISDICTIONAL STATEMENT

The United States District Court for the District of Wythe had original federal question jurisdiction under 28 U.S.C. § 1331 because Respondent's action arises under the United States Constitution's Establishment Clause. U.S. CONST. amend. I. Petitioners appealed the district court's final decision, which granted Respondent's summary judgment and its request for a permanent injunction. The United States Court of Appeals for the Fourth Circuit thus had jurisdiction under 28 U.S.C. § 1291. This Court granted a timely petition for writ of certiorari and therefore has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case concerns Article III standing, U.S. CONST. art. III, § 2, cl. 1; the Tax Anti-Injunction Act (AIA), I.R.C. § 7421(a); the Johnson Amendment codified in I.R.C. § 501(C)(3); and the Establishment Clause of the First Amendment, U.S. CONST. amend. 1.

STATEMENT OF THE CASE

Statement of Facts

Covenant Truth Church, practicing a centuries-old religion, has found itself in direct conflict with the Internal Revenue Service's mandate against political preaching—a restriction that necessarily violates the church's sincerely held religious beliefs. R. at 2. In 1954, Senator Lyndon B. Johnson proposed an amendment to the Internal Revenue Code § 501(c)(3), known as the Johnson Amendment. *Id.* The Johnson Amendment requires non-profit organizations to "not participate in, or intervene in (including the publishing of or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." *Id*. The amendment passed but has increasingly become a source of strife in politics and courtrooms, especially as it relates to the First Amendment. *Id.* To enforce compliance with the Internal Revenue Code, which includes the Johnson Amendment, the IRS conducts random audits of 501(c)(3) organizations. R. at 5. However, many secular non-profit organizations, such as "newspapers," have been able to engage with political campaigns yet "never face tax consequences." R. at 8.

Covenant Truth faithfully adheres to The Everlight Dominion, a centuries-old religion that is becoming increasingly popular in the United States. R. at 3–4. The Everlight Dominion "requires its leaders and churches to participate in political campaigns and support candidates that align with" The Everlight Dominion's stances, under penalty of "banish[ment]" from the religion. R. at 3. Covenant Truth, led by Pastor Gideon Vale, is currently classified as a 501(c)(3) organization. *Id*. Since 2018, Pastor Vale has significantly increased Covenant Truth's membership through weekly sermon podcasts that provide spiritual guidance and educate the public about The Everlight Dominion. R. at 4. Pastor Vale's podcast has been so successful in its evangelism that it is now the 4th most listened-to podcast in the State of Wythe and 19th in the United States, reaching

millions of listeners nationwide. *Id*. To fulfill his religious duty, Pastor Vale uses his podcast to voice support for any candidate whose values align with The Everlight Dominion on behalf of Covenant Truth. *Id.*

In January 2024, Senator Matthew Russet passed away, triggering a special election. *Id*. Congressman Samuel Davis, a politician with values aligned with those of The Everlight Dominion, announced his candidacy. R. at 5. Pastor Vale endorsed Congressman Davis during his sermon podcast, detailing Davis's political stances and encouraging listeners to vote for, volunteer with, and donate to Davis's campaign. R. at 4–5. Pastor Vale also announced his intention to deliver a series of online sermons later that year explaining how Davis's stances intersect with The Everlight Dominion's religious teachings. R. at 5.

In May 2024, the IRS randomly selected Covenant Truth for an audit. *Id*. Not willing to comply with the Johnson Amendment's "mandat[e,]" Covenant Truth filed suit. *Id.* The IRS has not yet revoked Covenant Truth's Section 501(c)(3) status, but it has not rescinded its intent to audit Covenant Truth either. *Id.* The IRS recently entered into a consent decree in another case, stating that it will not enforce the Johnson Amendment "[w]hen a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services." R. at 14. The consent decree only appears to apply in the "narrow circumstances" its language specifies, and it does not mention political statements on a church's podcast. *Id.*

Procedural History

Respondent filed suit in the United States District Court for the Eastern District of Wythe "seeking a permanent injunction prohibiting the enforcement of the Johnson Amendment on the grounds that [it] violates the Establishment Clause of the First Amendment." *Id.* The District Court granted Respondent's motion for summary judgement and issued a permanent injunction against

the IRS, holding that (1) Covenant Truth has standing to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the First Amendment's Establishment Clause. *Id.* Petitioners then timely appealed. R. at 6.

The United States Court of Appeals for the Fourteenth Circuit, reviewing *de novo*, affirmed the District Court and held that Covenant Truth had Article III standing, the Tax Anti-Injunction Act did not bar suit, and the Johnson Amendment violated the Establishment Clause. R. at 11. In support of its holding, the court found that (1) Article III standing was satisfied because Covenant Truth faced a "substantial risk" of selective enforcement despite the Johnson Amendment's otherwise "rare" enforcement, (2) Covenant Truth had no alternative remedy under the Internal Revenue Code, and (3) that the Johnson Amendment effectively favored other religions over The Everlight Dominion. R. at 6–8, 11. The court reasoned that "history and tradition demonstrates [sic] that religious leaders routinely state that their religions obligate them to be involved with the political process," pointing to Charles Finney and Dr. Martin Luther King Jr. R. at 9–10. It further echoed the Supreme Court's acknowledgement that churches "frequently take strong positions on public issues," and "could not [be] expect[ed to do] otherwise, for religious values pervade the fabric of our national life." R. at 10 (citation modified) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971)). Judge Marshall dissented, arguing that respondents faced no imminent harm under Article III, the Tax Anti-Injunction Act nevertheless barred suit, and the Johnson Amendment's mandate was constitutional. R. at 12–16.

Petitioners filed a timely writ of certiorari, which this Court granted. R. at 17.

SUMMARY OF THE ARGUMENT

The Johnson Amendment weaponizes the tax code by providing the IRS with a sword to cut politics out of church sermons, despite the Establishment Clause's shield against government entanglement with religion. This Court should therefore hold that (1) Covenant Truth satisfies the constitutional requirements for pre-enforcement standing and is not barred by the Tax Anti-Injunction Act; and (2) the Johnson Amendment's mandate against church engagement with political campaigns violates the Establishment Clause of the First Amendment.

First, this suit is ripe for decision, as Covenant Truth faces imminent injury from the Johnson Amendment's passive coercion and its active enforcement through IRS audits. Covenant Truth has a sincere religious obligation to support politicians who align with its moral teachings, and it fully intends to continue making political statements on its sermon podcast. The Johnson Amendment specifically prohibits non-profit churches from distributing political statements in support of candidates for political office. Furthermore, the IRS has a history of enforcing the Johnson Amendment against politically involved churches and has elected to audit Covenant Truth for compliance. Those circumstances handily demonstrate a realistic risk of injury and therefore provide pre-enforcement Article III standing.

Additionally, the Tax Anti-Injunction Act does not bar Covenant Truth's suit. The Act only bars suits for the purpose of evading the collection of assessment of a tax, and Covenant Truth's claim primarily seeks to escape the Johnson Amendment's mandate—not evade a tax. Moreover, the Internal Revenue Code provides Covenant Truth with no alternative avenue for remedy, which is a requirement for the Tax Anti-Injunction Act to apply. Finally, the threat of irreparable harm and the reasonable certainty of this claim's success allow this Court to reach the merits through the equitable exception embodied in the *Williams Packing* test. Any of these three reasons is independently sufficient to permit this suit.

Second, the Johnson Amendment's censorship mandate violates the Establishment Clause by excessively entangling the government with religion and using coercion to steer churches toward its preferred religious practices. Through the lens of history and tradition, the Establishment Clause affords the broadest protections to religion in order to prohibit governmental control over theology, entanglement with religion, and preferential treatment between denominations. Yet, enforcement of the Johnson Amendment's mandate contravenes these core safeguards. The mandate empowers the IRS to regulate the legal limits of preaching and exert subtle control over religious doctrine by weaponizing the tax code to penalize noncompliance. This fosters excessive government entanglement within the church's walls and teachings. The code creates a denominational preference towards religions who can comfortably comply without offending their religious beliefs, while Covenant Truth is forced to compromise its religion in order to comply.

The nation's Founders wisely feared the corrupt intermingling of government and religion, but Petitioners seek to erode that distinction out of political convenience. Therefore, Respondent respectfully requests that this Court affirm the Fourteenth Circuit's decision and refuse to reinstate the Johnson Amendment's unconstitutional restriction against Covenant Truth.

ARGUMENT

The touchstone of the Establishment Clause is its prohibition of government intrusion into any church's internal faiths and beliefs. This serves as a constitutional safeguard against any Government action that aims to control a man's internal conscience or faith. In the words of James Madison, a person's "duty towards the Creator . . . is precedent, both in order of time and in the degree of obligation, to the claims of Civil Society."[1] The Johnson Amendment upsets this constitutional order by forcing Covenant Truth Church to choose between its duty to its creator

[1] MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), in 8 PAPERS OF JAMES MADISON 295, 299 (R. Rutland, W. Rachal, B. Ripel, & F. Teuteeds. 1973).

and its duty to civil society. Furthermore, the Johnson Amendment inherently violates the Establishment Clause by controlling the limits of religious doctrine and showing favoritism between denominations. This Court should therefore affirm the Fourteenth Circuit and prevent the Johnson Amendment's mandate from being enforced.

I. COVENANT TRUTH HAS ARTICLE III STANDING AND IS NOT BARRED FROM BRINGING SUIT BY THE TAX ANTI-INJUNCTION ACT.

Covenant Truth meets the requirements for standing under Article III, and its pre-enforcement suit is consistent with this Court's precedent recognizing certain exceptions to the Tax Anti-Injunction Act. Every court has a duty to ensure that the matter before it is within its subject matter jurisdiction. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803) ("it becomes necessary to enquire whether a jurisdiction, so conferred, can be exercised"). Whether a party has standing to bring a suit necessarily involves subject matter jurisdiction and is reviewed *de novo* as a question of law. *Urb. Dev., LLC v. City of Jackson, Miss.*, 468 F.3d 281, 292 (5th Cir. 2006).

A. The IRS's Audit of Covenant Truth for Compliance with the Johnson Amendment Poses the Imminent Threat of a Financial Penalty for Political Speech, Which Provides Article III Standing.

Covenant Truth faces the substantial threat of being penalized for its religiously motivated political speech due to the IRS's looming audit for compliance with the Johnson Amendment. These circumstances are sufficient to provide Article III standing. The United States Constitution grants the judiciary the power to decide "all Cases" and "Controversies" which arise out of "the Laws of the United States." U.S. CONST. art. III, § 2. A case or controversy requires three basic elements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). First, the plaintiff must have suffered a "concrete and particularized" injury that is "actual or imminent." *Id.* Second, the defendant's conduct must have a "causal connection" with the alleged injury. *Id.* Third, the court must be able to "redress" the injury by a favorable decision. *Id.* at 561. The second and third

elements are plainly met in this case: the IRS's regulations and declared audit are the cause of the alleged injury, and the district court was able to redress the harm by entering an injunction against enforcement of the Johnson Amendment.

Thus, the only disputed element below was the "imminence" of Covenant Truth's injury. A pre-enforcement challenge to a statutory regulation satisfies the "injury-in-fact" requirement whenever the circumstances "render the threatened enforcement sufficiently imminent." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) [hereinafter *SBA*]. A plaintiff can demonstrate this by "alleg[ing] 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, [under which] there exists a credible threat of prosecution.'" *Id.* (quoting *Babbitt v. Farm Workers*, 442 U. S. 289, 298 (1979)). Therefore, whenever (1) the plaintiff intends to act in a manner arguably protected by the Constitution, (2) a statute prohibits that intended conduct, and (3) the plaintiff is "not without some reason in fearing prosecution," the injury is sufficiently imminent to support Article III standing. *Babbitt*, 442 U.S. at 302. In such cases, the plaintiff need not "first expose himself" to the anticipated injury before challenging the "statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974).

1. *Covenant Truth Intends to Continue Fulfilling its Religious Obligation of Political Involvement, Which is Affected with a First Amendment Interest.*

Covenant Truth's intended political involvement is more than arguably protected under the Establishment Clause because the Everlight Dominion, which Covenant Truth faithfully adheres to, requires its religious leaders to be actively involved in political campaigns. For an organization to have pre-enforcement standing, its intended conduct first must be "arguably" protected by the Constitution. *SBA*, 573 U.S. at 159. This Court has already recognized that the First Amendment "has its fullest and most urgent application" in the context of campaigns for political office.

Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971). Other forms of political speech have easily met the "arguably protected" standard in the past. *See, e.g.*, *Babbitt*, 442 U.S. at 301 (considering political "boycott activities" to be arguably protected); *Steffel*, 415 U.S. at 458 (considering political "handbilling" to be arguably protected). Political podcasts are surely not beyond the reach of the First Amendment. *See Green v. Finkelstein*, 73 F.4th 1258, 1265 (11th Cir. 2023) ("[W]e see no reason why statements made during an interview on a publicly disseminated podcast would not be afforded First Amendment protection."). And yet, those examples do not account for the added constitutional interest in Covenant Truth's case: freedom to fulfill the practical obligations of its religion under the Establishment Clause.

As Part II of this brief describes in depth, the First Amendment's Establishment Clause prevents the government from controlling, coercing, or unduly constraining religious doctrine or practice. *See Town of Greece v. Galloway*, 572 U.S. 565, 608 (2014). To faithfully practice its religion, Covenant Truth is "required" to "participate in political campaigns and support candidates" who align with its social and theological teachings. Covenant Truth's pastor, Gideon Vale, has made numerous political statements through Covenant Truth's podcast and had specifically planned to deliver a series of sermons endorsing Congressman Davis of Wythe on behalf of the church. This intended endorsement was motivated by Davis's "social values," which "align[ed] with the Everlight Dominion" and therefore religiously *obligated* Covenant Truth to support him. Furthermore, Covenant Truth's religious obligation does not end with Congressman Davis. Unlike the plaintiffs in *Golden v. Zwickler*, 394 U.S. 103, 106 (1969), whose conduct focused exclusively on one politician who had since retired, Covenant Truth's political involvement is spurred by its own doctrine and morals applied to ongoing policy issues. *Cf. SBA*,

573 U.S. at 163 ("Here, by contrast, petitioners' speech focuses on the broader issue of support for the ACA, not on the voting record of a single candidate.").

Covenant Truth intends to continue fulfilling its religious obligations through outspoken political involvement, which squarely implicates the First Amendment's religious and speech protections. Covenant Truth's intended course of conduct thus handedly meets the standard set by *SBA* as being arguably affected with a constitutional interest.

2. *The Johnson Amendment's Broad Restriction on Non-Profit Organizations Prohibits Participation in Political Campaigns, which Includes Covenant Truth's Continuing Political Statements.*

To satisfy the test for standing articulated in *SBA*, the intended course of conduct must be fairly "proscribed" by the challenged statute. 573 U.S. at 159. That bar is met when the breadth of the statute "arguably" includes the "subject matter" of the party's intended speech. *Id.* at 162. The Johnson Amendment has long been viewed by many courts—including this Court—as a mandate. *See Alexander v. Ams. United*, 416 U.S. 752, 755 (1974) (referring to acts that "violated [Section] 501 (c)(3)").[2] This mandate specifically prohibits non-profit organizations 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). Covenant Truth is presently designated as a non-profit organization under Section 501(c)(3); therefore, it is subject to the Johnson Amendment's mandate against partisan political engagement. *See, e.g.*, *Bob Jones Univ. v. United States* (*Bob Jones I*), 639 F.2d 147, 155 (4th Cir.

[2] *See also* R. at 3 (describing the Johnson Amendment as a "mandate"); *Fulani v. Brady*, 935 F.2d 1324, 1326 (D.C. Cir. 1991) (describing the Johnson Amendment as a "mandate that tax exempt organizations not engage in partisan political activities"); *Bob Jones Univ. v. United States* (*Bob Jones I*), 639 F.2d 147, 155 (4th Cir. 1980) (describing the requirements of § 501(c)(3) as "statutory mandate[s]"); *Hopkins v. Blue Cross & Blue Shield Ass'n*, Civil Action No. 10-900 (JDB), 2010 U.S. Dist. LEXIS 134730, at *13 (D.D.C. Dec. 21, 2010) (describing the Johnson Amendment as a "public policy mandate").

1980). Covenant Truth's intention to fulfill its religious duty by supporting Congressman Davis's campaign and other future campaigns are therefore threatened by the plain text of the Johnson Amendment.

3. *The Threat of the IRS Enforcing the Johnson Amendment Against Covenant Truth is Substantial and Carries the Added Harm of Compelled Self-Censorship Against its Religious Obligations.*

Due to the Johnson Amendment's history of enforcement against churches and the IRS's looming audit of Covenant Truth, the risk of enforcement is substantial. Moreover, this level of government oversight poses the additional risk of coercion toward self-censorship regardless of actual enforcement. Article III permits suits where the injury alleged is merely "imminent," as opposed to actual, so long as it is not purely "hypothetical." *Lujan*, 504 U.S. at 560. A plaintiff thus "does not have to await the consummation of threatened injury to obtain preventive relief." *Babbitt*, 442 U.S. at 298. When the alleged injury flows from the enforcement of a statute, as in this case, Article III permits suit if "there exists a credible threat of prosecution" under that statute. *SBA*, 573 U.S. at 159. A plaintiff may therefore challenge a statute *before* its enforcement by "demonstrat[ing] a realistic danger" of injury from that statute's enforcement. *Babbitt*, 442 U.S. at 298 (1979).

A good indicator that the threat of harm is realistic is an agency's "past enforcement [of the same statute] against the same conduct." *SBA*, 573 U.S. at 164. In *SBA*, the plaintiff-organization sought to challenge an Ohio law regulating its involvement in political campaigns by effectively auditing the organization after complaints of "false statement[s]." *Id.* at 162. The fact that SBA had been the "subject of [another] complaint in a recent election cycle" under the same statute was sufficient to demonstrate a realistic risk of enforcement. *Id.* at 164. The Ohio statute had historically resulted in around "20 to 80 false statement complaints per year." *Id.* This Court reasoned that the possibility of repeated complaints, which could easily be filed by just about

anyone, risked eventual enforcement. *Id.* The harm to SBA was thus sufficiently imminent for standing under Article III. *Id.* Past enforcement of the statute against a different party engaged in the same conduct is also good evidence of a realistic threat. *Steffel*, 415 U.S. at 459. In *Steffel*, the petitioner and a companion had both been engaged in political handbilling. *Id.* There, the petitioner was able to challenge a prohibitory statute because it had already been enforced against his companion. *Id.* The prior enforcement against a similarly situated party was "ample demonstration" that the risk of harm was substantial, rather than merely "chimerical." *Id.*

Covenant Truth has ample reason to fear that injury is imminent due to (1) the certainty of the IRS's looming audit, and (2) the Johnson Amendment's historical enforcement against similarly situated churches. First, the IRS has already notified Covenant Truth of its intent to audit it for compliance with Section 501(c)(3)'s restrictions, which include the Johnson Amendment. The Ohio statute from *SBA*, in contrast, was not certain to trigger again, as no complaint had been announced at the time of SBA's suit. The IRS's impending audit of Covenant Truth is therefore even *more imminent* than the risk of another complaint in *SBA*. Further, the IRS has not retracted its intent to audit Covenant Truth. *Cf. SBA*, 573 U.S. at 164 (2014) (holding the threat of enforcement was substantial because "proceedings are not a rare occurrence" and a new complaint *could* easily be filed). Second, the Johnson Amendment has been enforced against other politically involved churches in the past. *See, e.g.*, *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000) (enforcing the requirements of the Johnson Amendment); *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 858 (10th Cir. 1972) (revoking tax-exempt status from a non-profit that grew political in its messaging), *cert. denied*, 414 U.S. 864 (1973). The Johnson Amendment's history of enforcement demonstrates that audits, such as the one faced by Covenant Truth, have real consequences for churches not willing to toe the line.

Attempting to obviate the Johnson Amendment's historical enforcement against churches, Petitioners point to the recent "consent decree" which the IRS has put forth, as does the dissenting opinion below. However, that consent decree only purports to allow a church to speak to "its congregation, through its customary channels of communication" when it is "in connection with religious services." *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025). While the state can withdraw a risk of imminent harm by "disavow[ing] any intention" of enforcing the challenged statute, *Babbitt*, 442 U.S. at 302, this decree is far from a total disavowal. *See* R. at 7 (Washington, J., majority) (observing that the consent decree on its face only applies in "narrow circumstances"). Nor does this decree appear to permit Covenant Truth to continue making political statements on its podcast. Covenant Truth began podcasting in 2018, and the church's podcast now reaches beyond its congregation to millions of additional listeners across the country. Covenant Truth can hardly be certain that the IRS will consider its podcast a "customary channel of communication" aimed at "its congregation" rather than at the public. Moreover, the fact that Petitioner has pursued this matter through two appeals evidences the IRS's intent for the Johnson Amendment to remain in effect.

Beyond the IRS's history of enforcing the Johnson Amendment against churches, the threat of injury is bolstered by the IRS's increasingly intimidating stature, which strong-arms self-censorship. Surely by this point churches are "disturbingly aware of the overwhelming power of the Internal Revenue Service." *See Alexander*, 416 U.S. at 763 (Blackmun, J., dissenting). The Inflation Reduction Act (IRA) of 2022 significantly increased IRS funds to, in large part, "increase compliance and enforcement actions." Treasury Inspector General for Tax Administration, *Snapshot: The IRS's Inflation Reduction Act Spending Through March 31, 2025*, Report Number:

2025-IE-R026, 1 (August 1, 2025). The Congressional Budget Office initially anticipated enough "additional enforcement activities" to "generate $204 billion in revenues through Fiscal Year (FY) 2031," though some of the IRA's additional spending was later reduced. *Id.* at 2. Considering the IRS's significant growth, the Johnson Amendment presents a serious risk of coercion toward self-censorship: "a harm that can be realized even without an actual prosecution." *See Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988). When parties are unduly pressured by statute to "curtail" their speech, regardless of religious obligations, they "thus forgo full exercise of what they insist are their First Amendment rights." *See Babbitt*, 442 U.S. at 301. That coercive effect further compounds the harm posed by the Johnson Amendment even when it is not being actively enforced.

The IRS has set out to audit Covenant Truth for compliance with the Johnson Amendment's mandate, has a history of enforcing the mandate against similarly situated churches, and is in the midst of a deliberate push for increased enforcement actions. Under these circumstances, there is a substantial risk of enforcement against Covenant Truth, and the IRS's consent decree offers it no guaranteed safe harbor. The injury to Covenant Truth is therefore sufficiently imminent to provide Article III standing.

B. The Tax Anti-Injunction Act Does Not Apply Because the Primary Purpose of Covenant Truth's Suit is to Challenge a Restriction on its Conduct, and the Internal Revenue Code Nevertheless Provides No Alternative Remedy.

The Tax Anti-Injunction Act's general bar cannot apply because the primary purpose of Covenant Truth's suit is to challenge the Johnson Amendment's restriction of its religious practices. Moreover, the Internal Revenue Code otherwise provides Covenant Truth with no alternative legal avenue. Section 7421(a), better known as the Tax Anti-Injunction Act (AIA), places a general bar on any suit brought "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). This requires the Court to first look at an "action's objective aim"

to determine whether the AIA applies. *CIC Servs., LLC v. IRS*, 593 U.S. 209, 217 (2021). However, even where a suit falls within the scope of the AIA, this Court has recognized certain exceptions to the AIA's general bar. First, the AIA does not bar suit in situations where "Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *South Carolina v. Regan*, 465 U.S. 367, 373 (1984). Second, the AIA does not bar suit if the plaintiff "(1) was certain to succeed on the merits, and (2) could demonstrate that collection would cause him irreparable harm." *Id.* at 374 (citing *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 6–7 (1962)).

1. *The Primary Purpose of Covenant Truth's Suit is to Challenge the Restriction of its Religiously Motivated Political Speech Independent of Any Tax Reclassification.*

Covenant Truth's suit does not fall within the scope of the AIA because its primary purpose is to set aside the Johnson Amendment's unconstitutional mandate restricting religiously motivated political speech. The AIA's general bar against suits only applies to those primarily seeking to "restrain" the IRS from assessing or collecting a tax. 26 U.S.C. § 7421(a). This Court determines the purpose of a suit by considering "the end or aim to which [the suit] is directed." *CIC Servs.*, 593 U.S. at 217 (quoting N. Webster, An American Dictionary of the English Language (rev. ed. 1844)). More specifically, the Court examines "the substance of the suit—the claims brought and injuries alleged—to determine the suit's object." *Id.* at 218. While the purpose is determined objectively, how the plaintiff "describes the relief requested" is an important factor. *Id.* For example, the initial complaint in *CIC Services* had variously requested "'setting aside IRS Notice 2016-66,' 'enjoin[ing] the enforcement of Notice 2016-66 as an unlawful IRS rule,' and 'declaring that Notice 2016-66 is unlawful.'" *Id.* The challenged notice-mandate was backed up by a "statutory tax penalty," which was deemed a "tax" for the purposes of the AIA. *Id.* at 217. The Court held that these requests were "most naturally understood as a request to 'set aside' that rule,"

rather than "to block the application of a [tax] penalty." *Id.* at 218. CIC Services's suit therefore did not fall within the scope of the AIA. *Id.* at 224.

In contrast, this Court held that another suit was within the scope of the AIA when the plaintiff's requests for relief centered on providing its donors with "advance[d] assurance of deductibility." *Bob Jones Univ. v. Simon* (*Bob Jones II*), 416 U.S. 725, 738 (1974). There, Bob Jones University had supported its statutory challenge by alleging that "it would be subject to 'substantial' federal income tax liability" as a consequence of enforcement. *Id.* The university further submitted sworn affidavits detailing its potential tax liability and the extensive expected harm to its operations. *Id.* Although Bob Jones University had focused its complaint on its donors' expectations to avoid directly requesting restrained tax collection, the Court found that its supporting documents "belie[d] any notion" that its purpose was not to avoid tax liability. *Id.*

The Court in *CIC Services* also analyzed the functional aspects of the broader statutory scheme to determine the objective purpose of the action. 593 U.S. at 219–220. In doing so, it outlined three factors which tend to show a non-tax primary purpose: (1) a non-tax cost of compliance, (2) a procedural gap between the regulation itself and any tax consequence for non-compliance, and (3) separate criminal liability for willful violations. *Id.* First, the challenged statute in *CIC Services* levied "no tax" itself, but rather compelled the taxpayer to "to collect and submit" complex digital information about "their participants." *Id.* at 220 (noting that this requirement "inflict[ed] costs separate and apart from the statutory tax penalty"). Compliance required onerous labor independent of any tax, so CIC Services simply sought to avoid "the (non-tax) burdens of a (non-tax) reporting obligation," with avoiding taxes as the suit's "after-effect, not its substance." *Id.* Second, the challenged statute and subsequent tax penalty were "several steps removed from each other" in operation. *Id.* The IRS needed to learn of a potential violation of its reporting

mandate, then "determine (often no small matter) that a violation of the Notice has in fact occurred," only to finally make the discretionary decision to impose a tax penalty on the violating organization. *Id.* That "threefold contingency" was "too attenuated a chain of connection." *Id.* at 221. In such circumstances, "a court should not view a suit challenging [a statutory] duty as aiming to 'restrain the assessment or collection of a tax.'" *Id.* at 221 (quoting 26 U.S.C. § 7421(a)). Lastly, the Court noted that "willful" violations of the reporting requirement were also punishable by separate criminal penalties, which, together with first two factors, settled the question of CIC Services's primary purpose in bringing suit. *Id.*

In this case, both the internal and external factors from *CIC Services* demonstrate that Covenant Truth's primary purpose of the suit falls outside the scope of the AIA. First, Covenant Truth's alleged injury and requested relief indicate that its purpose was to defeat an unconstitutional restriction—not a tax. Covenant Truth filed suit "seeking a permanent injunction prohibiting *enforcement of the Johnson Amendment* on the ground that *the Johnson Amendment violates* the Establishment Clause of the First Amendment." R. at 5 (emphasis added). There is no mention by Covenant Truth of the consequential tax reclassification in the record below. That distinguishes this case from *Bob Jones II*, where the plaintiff had explicitly argued the tax consequences in support of its claim. 416 U.S. at 738. Instead, the record shows that Covenant Truth has much to lose by complying with the Johnson Amendment's mandate. Since Pastor Vale began to engage with politics on the church's podcast, Covenant Truth's membership has grown to "nearly 15,000 members." R. at 4. Compliance would cut off that growth, prevent Pastor Vale from fulfilling his religious obligation for political involvement, and rob Covenant Truth of an effective leader.

Second, the balance of statutory factors from *CIC Services* show that the Johnson Amendment can be challenged in good faith while preventing tax reclassification as a mere after-effect. The Johnson Amendment, like the reporting requirement in *CIC Services*, levies no tax itself; it does, however, compel non-profit organizations and churches to self-censor political speech. The Johnson Amendment functions as a "mandate that tax exempt organizations not engage in partisan political activities." *Fulani v. Brady*, 935 F.2d 1324, 1326 (D.C. Cir. 1991). While willful violations of the Johnson Amendment's mandate are not punishable with criminal penalties, compliance with the mandate does carry a weighty independent cost. Self-censorship requires "forgo[ing the] full exercise" of Covenant Truth's First Amendment rights. *See Babbitt*, 442 U.S. at 301. Moreover, compliance is particularly tricky—if not impossible—because Covenant Truth's religious beliefs require its leaders to stay politically involved under pain of "banishment" from the religion. Covenant Truth thus has no meaningful choice to comply with the Johnson Amendment, as to do so would require abandoning its deeply held religious beliefs.

Finally, the distance between the Johnson Amendment's mandate and a subsequent tax reclassification is several steps removed. Like the statute in *CIC Services*, the Johnson Amendment depends upon a three-fold contingency. At a minimum, the IRS must first (1) determine to conduct an audit of the politically active non-profit, (2) conduct a full investigation to complete the audit, and (3) only then decide whether to adversely reclassify the organization, perhaps on the basis of the IRS's new consent decree. Even with the substantial risk of passing through all three gates to enforcement, those distinct stages reveal an "upstream duty and a downstream tax." *See CIC Servs.*, 593 U.S. at 221 (citation modified). This "too attenuated chain" allows for a clear distinction between suits challenging the Johnson Amendment and those challenging mere tax reclassification.

Covenant Truth's claimed injury and requested relief, taken together with the Johnson Amendment's compliance costs and operative distance from tax consequences, demonstrate that the primary purpose of this action was to challenge a restriction on Covenant Truth's conduct. Accordingly, this suit falls outside of the intended bounds of the AIA, and the Fourteenth Circuit was correct to exercise subject matter jurisdiction.

2. *The Tax Anti-Injunction Act Nevertheless Cannot Bar this Suit Because Covenant Truth has No Alternative Remedy Under the Internal Revenue Code for the Unconstitutional Restriction of its Conduct.*

Regardless of the primary purpose of Covenant Truth's suit, the AIA cannot bar this suit because the Internal Revenue Code provides no alternative legal avenue for remedy. The AIA "was not intended to bar an action where, as here, Congress has not provided the plaintiff with an alternative legal way to [bring its] challenge." *See Regan*, 465 U.S. at 373. Therefore, for the AIA to bar suit, Congress must have "prescribe[d] an alternative remedy" that is available for "the plaintiff in *this* case." *Id.* at 381 (emphasis added). While the Court in *Williams Packing* recognized the alternative of complying with IRS's enforcement and filing for a tax refund later, 370 U.S. at 7, that alternative is not available for Covenant Truth's particular claim. Compliance with the Johnson Amendment would require Covenant Truth to self-censor against its religious obligations and consequently banish its lead pastor. On the other hand, *refusing* to comply—only to bring suit after suffering a tax penalty—would invite unfair discrimination against Covenant Truth relative to non-religious Section 501(c)(3) organizations, such as newspapers, which commonly evade enforcement.

While the Internal Revenue Code offers a remedy for disputing an *affected* tax classification, 26 U.S.C. § 7428, it does not offer any remedy for challenging the constitutionality of a separate restriction on a church's conduct, which is merely backed up by the threat of reclassification. If Covenant Truth was only seeking to preemptively challenge its erroneous

reclassification, it would be illogical to profess intent to persist in its offending conduct. Covenant Truth already acknowledges that its adverse reclassification would be consistent with the Johnson Amendment. Its contention is that the Johnson Amendment is inconsistent with the Constitution. The option of waiting to dispute reclassification later therefore cannot serve as an alternative remedy.

Furthermore, because Covenant Truth had Article III standing *before* the IRS's actual enforcement, post-enforcement remedies that Congress has provided for other would-be plaintiffs *post*-enforcement are immaterial. To cite a maxim that has proven true elsewhere in the law: "you take your [plaintiff] as you find him." *See, e.g.*, *Schmude v. Tricam Indus.*, 556 F.3d 624, 628 (7th Cir. 2009) (articulating the common law "eggshell-skulled plaintiff" rule). Just as a hypothetical tort victim does not restrain the real victim's remedy, a hypothetical church already suffering a tax reclassification cannot serve to restrain Covenant Truth's pre-enforcement suit. Waiting until Covenant Truth's harm is fully realized is not an "alternative avenue" provided by Congress, but would rather leave Covenant Truth floundering with no avenue at all. *See Regan*, 465 U.S. at 381.

Because the imminent threat of enforcement against Covenant Truth provides it with pre-enforcement standing, yet the Internal Revenue Code provides no pre-enforcement remedy, the Tax Anti-Injunction Act cannot apply here. For that additional reason, the Fourteenth Circuit was correct to exercise subject matter jurisdiction independent of determining the suit's primary purpose.

3. *Even Under the Williams Packing Test, Covenant Truth is Not Barred from Bringing Suit Because the Johnson Amendment Cannot be Used to Selectively Penalize a Religion.*

The facts of this case also satisfy the *Williams Packing*, which independently excepts Covenant Truth's suit from the AIA's statutory bar. Under the *Williams Packing* test, the AIA does not bar a suit that "was certain to succeed on the merits," if the plaintiff "could [also] demonstrate

that collection would cause [it] irreparable harm." *Regan*, 465 U.S. at 374 (citing *Williams Packing*, 370 U.S. at 6–7). As the discussion of the merits in Part II illustrates, the Court may well find that this challenge to the Johnson Amendment was reasonably certain to succeed. *See* R. at. 5, 11 (the District Court for the District of Wythe finding on summary judgment that "the Johnson Amendment violates the Establishment Clause," and the Fourteenth Circuit affirming on a *de novo* review). The Johnson Amendment's imminent enforcement also imposes an irreparable harm on two fronts: (1) it compels self-censorship against Covenant Truth's religious obligations—banishing it from The Everlight Dominion and threatening the church's recent growth in membership; and (2) it punishes non-compliance through discriminatory exactions "merely in the guise of a tax," which can fatally disrupt a church's operations. *See Williams Packing*, 370 U.S. at 7 (citation modified). The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co.*, 401 U.S. at 272. An early injunction is therefore both appropriate and necessary to preserve Covenant Truth's First Amendment freedom to practice its religion to its full extent, including in its political involvement.

The AIA cannot bar Covenant Truth's suit for three independent reasons. First, the objective purpose of Covenant Truth's suit is to challenge a restriction—not a tax. It thus falls outside the scope of the AIA's plain text under *CIC Services*. Second, the Internal Revenue Code offers Covenant Truth no alternative legal avenue to secure its desired remedy of striking the Johnson Amendment, which places this suit outside the bounds of the AIA's intended application under *Regan*. Third, the harm alleged from the Johnson Amendment's enforcement is sufficient to justify this Court's consideration of the merits under the equitable exception to the AIA embodied in the *Williams Packing* test. Any one of these reasons is sufficient to provide subject matter

jurisdiction notwithstanding the AIA. Therefore, the Fourteenth Circuit was correct to reach the merits and decide the Johnson Amendment's unconstitutionality.

II. THE JOHNSON AMENDMENT VIOLATES THE ESTABLISHMENT CLAUSE BY BREAKING FROM THE NATION'S HISTORY AND TRADITION AND BY IMPOSING A DENOMINATIONAL PREFERENCE TO THE DETERMENT OF SOME RELIGIONS.

The Johnson Amendment violates the First Amendment's Establishment Clause by allowing the government to define the limits of religion and forcibly invade theological doctrine. Questions of law decided on summary judgment by the court below are reviewed *de novo*. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 466–67 (7th Cir. 2020).

The Establishment Clause guarantees that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. It consequently forbids government actions that exert any level of control over religion or favor one religion over another. *Town of Greece v. Galloway*, 572 U.S. 565, 608 (2014); *Larson v. Valente*, 456 U.S. 228, 246 (1982). The Johnson Amendment violates this constitutional safeguard in two ways: first, the mandate implicitly coerces, compels, and controls a pastor at the pulpit, while unconstitutionally entangling the government in religion; and second, the mandate creates a denominational preference by disadvantaging sects whose theology compels partisan engagement. This mandate effectuates extensive government entanglement with the church and produces an unconstitutional religious disparity that cannot survive strict scrutiny.

A. This Nation's Historical Understanding of the Establishment Clause Forbids the Government from Enacting Legislation that Controls, Compels, or Coerces a Pastor at the Pulpit and Excessively Entangles Government with Religion.

The Establishment Clause, understood historically, prevents the government from controlling a church's leaders or excessively entangling itself with religion. Any analysis of the Establishment Clause must be guided by the historical practices and understanding of this nation.

Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 535 (2022). Under this framework, government actions by way of force or funds that control, coerce, or suppress religious doctrine are unconstitutional. *Id.*; *Everson v. Bd. of Educ.*, 330 U.S. 1, 10 (1947); *see also McCulloch v. Maryland*, 17 U.S. 316, 431 (1819) ("the power to tax involves the power to destroy"). At the founding, the Establishment Clause reflected the framers' troubled past with the oppressive Church of England and their newfound desire for religious freedom. Michael W. McConnell, *Establishment and Disestablishment at the Founding*, Part I: Establishment of Religion, 44 WM. & MARY L. REV. 2105, 2166-69 (2003). After all, in England and the early American colonies,

> Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated. And all of these dissenters were compelled to pay tithes and taxes to support government-sponsored churches . . . . It was these feelings which found expression in the First Amendment.

Everson, 330 U.S. at 10. This historical understanding informs the Establishment Clause as we know it today; the government has no power to define what religious institutions can believe or preach. *See* Wm. & Mary L. Rev. 2105, 2131. The Establishment Clause was not designed to prohibit religious influence on the public, but rather to prohibit the government's control over religion. *Town of Greece*, 572 U.S. at 608. As James Madison emphasized, "There is not a shadow of right in the general government to intermeddle with religion," and "its *least* interference with [religion] would be a most flagrant usurpation." [3]

[3] James Madison, STATEMENT AT THE VIRGINIA RATIFYING CONVENTION, 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS, ON THE ADOPTION OF THE FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787, at 330 (Jonathan Elliot ed., 2d ed., William S. Hein & Co., Inc. 1996) (1836) (emphasis added). For further discussion of

While the Court previously evaluated Establishment Clause claims under *Lemon v. Kurtzman*, 403 U.S. 602 (1971), it has since clarified that the appropriate inquiry is focused on the historical understanding of an impermissible establishment of religion. *Town of Greece*, 572 U.S. at 578; *Kennedy,* 597 U.S. at 536. The historical approach reveals that the Establishment Clause forbade any governmental entanglement manifested through supervision and coercion, particularly at the pulpit. *Town of Greece*, 572 U.S. at 608. Therefore, laws that pressure churches to alter, suppress, or conform religious theology to a government law fit squarely within the governmental actions that the Establishment Clause stands to prevent.

1. *The Johnson Amendment Unconstitutionally Regulates Pulpit Preaching.*

The Establishment Clause affords churches general autonomy to determine how they teach their congregants' faith and doctrine, free from any governmental influence. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) ("any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion"); s*ee Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession*, 877 N.W.2d 528, 542 (Minn. 2016) (holding that communications made within a church are protected under the First Amendment); *see also*, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012) (holding the civil government cannot enforce laws that necessitate "government interference with an internal church decision that affects the faith and mission of the church itself").[4] A church's compliance with the Johnson Amendment

James Madison's Establishment Clause proposal, *see generally* Vincent Phillip Munoz, THE ORIGINAL MEANING OF THE ESTABLISHMENT CLAUSE AND THE IMPOSSIBILITY OF ITS INCORPORATION, 8 U. Pa. J. Const. L. 585, 627 (August 2006).

[4] *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (explaining the First Amendment prohibits the Court from issues that involve "underlying controversies over religious doctrine"); *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 120 (1952) (holding the government may not enforce a law against a church for complying with the churches theological beliefs).

turns on what it preaches at the pulpit and in the public square. Therefore, the Johnson Amendment's mandate impermissibly intrudes on churches' protected autonomy by allowing the government to define the legal limits of religion. Each time a pastor, preacher, minister, clergyman, or any other religious leader plans to address the congregation or evangelize the public, they must be mindful not to cross the line into prohibited political speech. The mandate forces churches to prune any politics from their professions of faith, thereby allowing the government to circumscribe religious preaching throughout America.

2. *The Johnson Amendment Unconstitutionally Weaponizes the Tax Code to Coerce Churches into Conformity.*

The Establishment Clause forbids the government from using coercive laws to pressure religious groups to modify or abandon their religious beliefs. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm'n*, 605 U.S. 238, 269 (2025) ("The exclusion of 'religious observers from otherwise available public benefits' is impermissible, 'regardless of whether the religious institution's injury is direct coercion or the withholding of a benefit.'") (quoting *Carson v. Makin*, 596 U.S. 767, 778 (2022)); *Lee v. Weisman*, 505 U.S. 577, 588 (1992) (holding that "subtle coercive pressures" that give the public "no real alternative" than to surrender a point of religion offend the Establishment Clause). Churches hold "independence from secular control or manipulation," including blanket freedom to determine matters of faith and doctrine. *Presbyterian Church*, 393 U.S. at 448. Here, enforcement of the mandate exerts exactly that forbidden coercive pressure. Prohibiting non-profit churches from certain political preaching threatens religious leaders with the ever-looming possibility that one sermon could trigger the loss of tax-exempt status. This possibility implicitly coerces churches to circumscribe religiously motivated political preaching into the government's idea of a "legal religion."

Moreover, the government is forbidden from crafting laws that require the forfeiture of religious theology. "[T]o condition the availability of benefits upon [a party's] willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." *Sherbert v. Verner*, 374 U.S. 398, 406 (1963); *see also Hosanna-Tabor*, 565 U.S. at 196 (recognizing the importance of a church's ability to self-govern on matters of faith and leadership). By conditioning tax exemptions on political silence, the mandate pressures churches, who are convicted to involve themselves in politics, to modify or abandon their core doctrinal beliefs. Therefore, compliance with the mandate coerces religious institutions to sacrifice their religious practices to conform to a government-imposed norm of theological political silence. Religious groups—particularly those practicing The Everlight Dominion—cannot simply extract their political convictions from their preaching without being implicitly told that they are required to forgo their religion.

Petitioners might attempt to argue that the mandate is constitutional based on this Court's previous finding of constitutionality as applied to secular non-profits under a free speech claim. *See Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 540–43 (1983). While *Taxation* upheld the mandate, the Court's reasoning rested on the organization's alternative means for campaign speech by creating a 501(c)(4) and establishing a Political Action Committee. *Id*. A closer reading of *Taxation* reveals the decision's inapplicability to the claim before the Court today. *Taxation* did not involve religious institutions, religious doctrine, or Establishment Clause coercion. Unlike the plaintiffs in *Taxation*, many religious institutions cannot separate their religious mission from their speech without altering the core tenets of their beliefs and practices. *Id*. For churches whose doctrine compels them to preach prohibited political sermons, a 501 (c)(4) is not a meaningful alternative. While secular non-profits can extract political speech from their

everyday routines, churches adhering to The Everlight Dominion cannot. More fundamentally, *Taxation* did not consider whether conditioning tax-exempt status on compliance with the mandate caused churches to modify, restructure, or even forfeit religious theology. In that way, Covenant Truth's challenge to the Johnson Amendment is distinct and carries much more constitutional force.

3. *The Johnson Amendment Unconstitutionally Creates Excessive Government Entanglement.*

The Establishment Clause protects "religious liberty from the invasion of civil authority" and forbids excessive government entanglement with religion. *Everson*, 330 U.S. at 15–16. The government must afford churches "independence from secular control or manipulation" and ensure they remain free from governmental supervision. *Presbyterian Church*, 393 U.S. at 448 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 117 (1952)). Accordingly, the government may not enact laws requiring the ongoing supervision of churches. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 299 (1963).

Enforcing the Johnson Amendment's mandate necessarily empowers the IRS to control the church through periodic reviews of the church's internal affairs. A law that requires "pervasive monitoring" by governmental officials is an unconstitutional entanglement of government within religion. *Lemon*, 403 U.S. at 627 (Douglas, J., Concurring); *see Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 692 (1970) (observing that "[e]xtensive state investigation into church operations and finances" indicates an impermissible entanglement of government in religion). Enforcing the Johnson Amendment requires ongoing supervision, inspection, and auditing of religious institutions. This enables the IRS to use its audits to police religious institutions and supervise countless church services, religious-based podcasts, and other church-produced media. Such an intrusion into a church's sacred teachings impermissibly entangles the government with religion.

Worse yet, enforcement requires the IRS to interpret religious messages to determine when the church has violated the Johnson Amendment. The Establishment Clause ensures that it is impermissible for the government to "rubber-stamp ecclesiastical decisions," after making determinations about religious motive, meaning, and intent. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 734 (1976); *Kedroff*, 344 U.S. at 108. Yet the enforcement of the Johnson Amendment requires exactly that kind of governmental interference and interpretation.

Because the mandate permits the IRS to define the legal limits by which churches are to abide, weaponizes the tax code into a penalty for non-compliance, and empowers the IRS to supervise religious conviction, enforcement of the mandate unconstitutionally creates a government established religion.

B. The Johnson Amendment's Enforcement Effectuates a Denominational Preference that Cannot Survive Strict Scrutiny and Uniquely Harms Covenant Truth Due to its Particular Theological Doctrines.

The Establishment Clause demands "benevolent neutrality" between all religions and prohibits the government from creating a denominational preference by creating laws that favor one religion over another. *Walz*, 397 U.S. at 676; *Gillette v. United States*, 401 U.S. 437, 452 (1971). Laws that create a denominational preference "convey to members of other faiths that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 688, 688 (1984) (O'Connor, J., concurring)). When a law facially or operationally disadvantages certain religions while advantaging others, that law creates a denominational preference and triggers strict scrutiny. *Larson*, 456 U.S. at 246. To be sure, even "subtle depart[ures] from neutrality" may create a denominational preference that makes the law presumptively invalid. *Gillette*, 401 U.S. at 452. Once there is a denominational preference, the Government must overcome the highest level of

scrutiny by proving the law serves compelling government interest using the least restrictive means. *Larson*, 456 U.S. at 246. Accordingly, the government must "be *steadfastly neutral*" in its treatment of religion and cannot create a law that, in operation, prefers certain denominations over others. *Schempp*, 374 U.S. at 299 (emphasis added).

1. *The Johnson Amendment Creates a Denominational Preference.*

Tax exemptions must be structured to preserve neutrality among religious viewpoints and may not distort the tax system to favor certain religions by conditioning eligibility for tax benefits on theological characteristics. *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 14–15 (1989); *see also Cath. Charities Bureau, Inc.*, 605 U.S. at 250 (holding that religious denominations differ regarding the religious behaviors they emphasize, and the government may not condition tax benefits along these differences). As held in *Catholic Charities*, the Government may not create criteria for determining a tax benefit that varies between religions. 605 U.S. at 250. Contrary to this principle, the mandate does precisely that. While the mandate, at first glance, appears to apply to all churches equally, in operation, it does not. The mandate burdens certain denominations whose religious beliefs require preachers to address political issues from the pulpit, while leaving churches that are not so compelled unaffected. "Taxation, further, would bear unequally on different churches, having its most disruptive effect on those with the least ability to meet the annual levies assessed against them." *See Walz*, 397 U.S. at 692 (Brennan, J., concurring). For that reason, the mandate creates a religious disparity by burdening certain denominations whose religious beliefs require preachers to address political issues from the pulpit, while leaving churches that are not so compelled unaffected.

2. *The Johnson Amendment is Not Narrowly Tailored to the State's Interest in Preventing Indirect Subsidies for Lobbying or its Interest in Preventing the Appearance of a Nationally Established Religion.*

Neither of Petitioners' supposed interests justify the broad and untailored reach of the Johnson Amendment's anti-political mandate against churches. First, any interest in preventing indirect governmental subsidies for lobbying is unsubstantiated and insufficient to justify a denominational preference. Speculative concerns are not compelling enough to justify a denominational preference. *Larson*, 456 U.S. at 248–49 (explaining that conjectural interest cannot justify a denominational preference). There is nothing in the record to suggest that Covenant Truth financially supports lobbying efforts;[5] rather its claim is limited to its own political speech. Consequently, the hypothetical concern of indirectly subsidizing lobbying cannot withstand scrutiny to justify a discriminatory law.

And even if the government's interest against indirectly subsidizing lobbying was more than hypothetical, the Johnson Amendment still fails to use the least restrictive means. Laws that create a denominational preference must not impose greater burdens on religious practice than necessary to advance the government's asserted interest. *Larson*, 456 U.S. at 246–47. But here, the mandate targets more than just the asserted interest of campaign expenditures and financial contributions. It imposes a categorical prohibition on all political support, regardless of whether political preaching involves a financial contribution. Instead, the government could protect its asserted interests through far less restrictive means, such as regulating only express campaign donations or large monetary contributions, which would align directly with its asserted interests. Instead, the mandate imposes a blanket restriction on all sermons, doctrinal teaching, and religious

[5] *Contrast* R. at 4 with *Regan v. Taxation with Representation of Wa.*, 461 U.S. 540, 543–44 (1983) (explaining that congress had an interest in enforcing the mandate when the plaintiff-organization asserted that it wanted to use tax-deductible contributions to support substantial lobbying).

commentary that may resemble political lobbying motivated by religious belief, regardless of its relation to campaign expenditures.

Second, exempting all religious organizations from the mandate would cultivate religious neutrality and *disentangle* the government from the church—not establish a religion. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 235–36 (1972) (holding exceptions for religion permissible when used to alleviate disparities among religions); *Sherbert v. Verner*, 374 U.S. 398, 409 (1963) (finding that extending unemployment benefits to Seventh-day Adventists fostered government "neutrality"). Sherbert's exception "reflected nothing more than the governmental obligation of neutrality in the face of religious differences," and would not "represent that involvement of religious with secular institutions." *Id.* An injunction barring enforcement of the Johnson Amendment would serve the same constitutional purpose. "The government may (and sometimes must) accommodate religious practices." *Hobbie v. Unemployment Appeals Com.*, 480 U.S. 136, 144–45 (1987). Therefore, exempting churches from the mandate lawfully accommodates religion and serves the secular goal of upholding a church's constitutional rights.

Moreover, a religious accommodation for churches would significantly reduce any government entanglement within the church by eliminating the IRS's power to conduct reviews of a church's internal affairs. *Walz*, 397 U.S. at 691-92 (holding tax exemptions for religious organizations reduced government entanglement with religion). A religious exemption only establishes religion when it lacks a secular purpose and confers unexplained benefits unrelated to religious harm. *See Tex. Monthly*, 489 U.S. at 1, 17 (holding that a religious publications' tax exemptions, contingent upon government review of its religion and absent secular purpose, was a blatant endorsement and entanglement with religion). Unlike the exemption in *Texas Monthly,* which required the state to review religious materials to determine eligibility, carving out a

religious exemption to the Johnson Amendment would *remove* the IRS's existing requirement to monitor religious sermons, podcasts, and media.

Lastly, a religious exemption would not endorse religion over non-religion because such an accommodation could not meaningfully incentivize secular organizations to reclassify as churches. The IRS has implemented rigorous criteria for a secular organization to reclassify as a church. *See generally First Libertarian Church v. Commissioner*, 74 T.C. 396 (1980). Further, religious status carries more than an exemption from the mandate; it also requires sincere theological beliefs. While the Court may not decide the truth of these theological beliefs, it may "decide whether the beliefs professed by a registrant are sincerely held and whether they are, in [its] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965). Both the IRS and the Court could constitutionally prevent abuse of this exception. "It cannot be seriously contended" that if all religious institutions were excepted from the mandate, the government would then "impermissibly entangle church and state;" rather, an exemption would "effectuate[] a more complete separation of the two and avoid[] the kind of intrusive inquiry into religious belief" that the IRS currently holds. *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 339 (1987) (citation modified).

3. *The Johnson Amendment's Selective Enforcement Against Covenant Truth Imposes Even Greater Harm Due to the Church's Unique Theological Doctrine.*

Covenant Truth's theological beliefs prevent it from complying with the Johnson Amendment's mandate in good conscience. Its denomination "requires its leaders and churches to participate in political campaigns." This duty "includes endorsing candidates and encouraging citizens to donate to and volunteer for campaigns," and "[a]ny church or religious leader who fails to adhere to this requirement is banished" from the religion. The Johnson Amendment compels churches to "not participate in, or intervene in (including the publishing or distributing of

statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3). Understandably, this mandate forces Covenant Truth to set sail between Scylla and Charybdis.[6] Covenant Truth must choose either (a) self-censorship and banishment from its religion, or (b) a discriminatory financial penalty.

The Johnson Amendment therefore presents Covenant Truth with a Hobson's choice—no choice at all. Covenant Truth cannot abandon its core theological doctrines without banishment from its religion. The government may not craft laws that vainly define government approved theology or doctrine. *See Our Lady of Guadalupe Sch.*, 591 U.S. at 746 (holding that it is impermissible for the government to attempt to control religious beliefs); *Cath. Charities Bureau, Inc.*, 605 U.S. at 250. Still, the IRS has decided to condition Covenant Truth's tax status on a prohibition against political preaching, which directly conflicts with a core theological requirement binding Covenant Truth. Using the Johnson Amendment, the IRS transforms tax-exemption from a shield into a sword in an attempt to sever Covenant Truth's unique theological practices.[7] And because Covenant Truth has no meaningful choice, the Johnson Amendment forces Covenant Truth to pay what is effectively a discriminatory fee for its unapproved religious practices.

This coercion necessitates the government's entanglement in religion. The Johnson Amendment empowers the IRS to invade Covenant Truth's internal house of worship, despite constitutional assurances that churches remain free from extensive civil invasion. *Everson*, 330 U.S. at 53–54. The IRS has already announced its audit of Covenant Truth, which entails a

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[6] *See* Homer, *The Odyssey*, bk. XII (Samuel Butler trans., The Internet Classics Archive n.d.) ("'Is there no way,' said I, 'of escaping Charybdis, and at the same time keeping Scylla off when she is trying to harm my men?'") (January 16, 2026, at 17:43 ET), https://classics.mit.edu/Homer/odyssey.html.

[7] *See generally* Tavia Bruxellas McAlister, *From Shield to Sword: Straying from the Original Meaning of the Establishment Clause*, Nebraska Law Bulletin (March 23, 2024).

"pervasive monitoring" of the church to determine its compliance with the Johnson Amendment's mandate. *Lemon*, 403 U.S. at 627 (Douglas, J., concurring); *see also Walz*, 397 U.S. at 675 (explaining that a tax exemption prevents "continuing surveillance leading to an impermissible degree of entanglement"). This includes reviewing Pastor Vale's livestreams, worship services, sermons, and religious-based podcasts, thereby giving government officials the power to breach the church's sanctuary and scrutinize its religious teaching. If that is not considered a step toward a forbidden "establishment," then the Founders might as well have stayed in England.[8]

Lastly, these burdens on Covenant Truth are not equally imposed across religions. The mandate is structured to impose significant harm on politically involved religions while favoring other less-partisan denominations. "To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another." *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953). The Johnson Amendment does precisely that. Covenant Truth's unique beliefs mean that complying with the Johnson Amendment would equate to a moral failure to engage with the public, leading to banishment. Whereas non-partisan religions can comfortably comply and receive the government's favor. The Johnson Amendment thus unavoidably harms Covenant Truth while passing over organizations that practice less politically involved religions.

[8] *See generally* Michael W. McConnell, *Establishment and Disestablishment at the Founding*, Part I: Establishment of Religion, 44 WM. & MARY L. REV. 2105, 2166–69 (2003).

CONCLUSION

The Establishment Clause was carefully crafted by the Founders to protect religion from government intrusion. The Johnson Amendment exerts a subtle coercion on a religious minority to abandon its doctrine or face an asymmetrical financial playing field. Therefore, Respondent respectfully requests this Court affirm the Fourteenth Circuit's decision and shield Covenant Truth Church from selective enforcement of the Johnson Amendment.

Respectfully Submitted,

_/s/_____
Team 42
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