No. 26-1779

In the
Supreme Court of the United States

October Term 2025

SCOTT BESSENT, In His Official Capacity as

Acting Commissioner of the Internal Revenue Service, ET AL.,

Petitioner,

v.

COVENANT TRUTH CHURCH,

Respondent.

On Writ of Certiorari to
the United States Court of Appeals
for the Fourteenth Circuit

BRIEF FOR RESPONDENT

Team 6
Attorneys for Respondent

QUESTIONS PRESENTED

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

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

LIST OF PARTIES

Petitioners Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al., were the appellants in the court below. Respondent Covenant Truth Church was the appellee in the court below.

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JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fourteenth Circuit entered its judgment on November 11, 2025. Petitioners Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al., filed a petition for a writ of certiorari, which this Court granted. This Court has jurisdiction to review the Court of Appeals' decision by writ of certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Both questions presented directly involve Constitutional provisions. The first question involves the standing requirements of Article III. U.S. CONST. art. III, § 2. The second question involves the Establishment Clause of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I.

Similarly, both questions presented involve a provision of the Internal Revenue Code. The first question involves the Tax Anti-Injunction Act, 26 U.S.C. § 7421(a), which bars "suit[s] for the purpose of restraining the assessment or collection of any tax." The second question involves 26 U.S.C. § 501(c)(3), which provides tax-exempt status to certain non-profit organizations. Specifically, the case centers on Section 501(c)(3)'s "Johnson Amendment," which prohibits any organization with Section 501(c)(3) status 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).

STATEMENT OF THE CASE

This case concerns the Internal Revenue Code's requirements to receive tax-exempt status as a non-profit organization. R. at 5. The Johnson Amendment, a provision of 26 U.S.C. § 501(c)(3), exempts non-profit organizations, including churches, from having to pay federal income tax on the condition that they do not participate or intervene in political campaigns. R. at 5. Respondent, Covenant Truth Church ("the Church"), seeks a permanent injunction prohibiting enforcement of the Johnson Amendment on the ground that it violates the Establishment Clause of the First Amendment. R. at 5.

First, the Church argues that it has standing to bring this lawsuit under both the Tax Anti-Injunction Act ("AIA") and Article III of the U.S. Constitution. R. at 9. Second, the Church argues that the Johnson Amendment violates the Establishment Clause because the Amendment favors some religions over others by denying tax exemptions to organizations whose religious beliefs compel them to participate and intervene in political campaigns. R. at 9.

I. STATEMENT OF THE FACTS

The Johnson Amendment. In 1954, Congress enacted the Johnson Amendment, an amendment to the Internal Revenue Code proposed by then-Senator Lyndon B. Johnson. R. at. 2. The Amendment modified 26 U.S.C. § 501(c)(3) to require that non-profit organizations "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." R. at 2. The provision survived Congress's significant revision of the Internal Revenue Code in 1986. R. at 2. The Amendment has become extremely controversial in recent years, and legislation has been introduced each year since 2017 seeking to eliminate the Johnson Amendment or create an exception allowing religious organizations to participate in political campaigns without losing their

Section 501(c)(3) status. R. at. 3. However, Congress has declined to enact such legislation. R. at 3.

The Everlight Dominion and Covenant Truth Church. The Everlight Dominion is a centuries-old religion that, in recent years, has experienced a significant surge in followers. R. at. 3. Everlight Dominion doctrine requires its leaders and churches to participate in political campaigns and support candidates that align with the religion's progressive stances. R. at. 3. Any leader or church that does not comply with this requirement is banished from the Everlight Dominion. R. at 3. Covenant Truth Church is the largest church in the Everlight Dominion, boasting nearly 15,000 members. R. at 4. Like every other church and non-profit organization in the United States, the IRS has classified the Church as a Section 501(c)(3) non-profit exempt from federal income tax. R. at 2–3.

Pastor Vale's political campaigning through his podcast. Pastor Vale joined the Church in 2018 and became its head pastor. R. at 3. Pastor Vale leads the Church's regular weekly worship services, which include in-person and livestream options. R. at 4. Pastor Vale is largely responsible for the surge in followers of the Church, having undertaken several efforts to attract new members over the last few years. R. at 3. Those efforts include a weekly podcast to deliver sermons, provide spiritual guidance, and educate his listeners on the Everlight Dominion religion. R. at 4. The podcast has millions of downloads and has become the fourth-most listened-to podcast in the State of Wythe and the nineteenth-most listened-to podcast in the nation. R. at 4. Adhering to the Everlight Dominion's doctrinal requirements, Pastor Vale began using his weekly podcast to express support for candidates who align with Everlight Dominion doctrine. R. at 4. He endorsed candidates and encouraged listeners to vote for them, as well as to donate and volunteer for their campaigns. R. at 4.

In January 2024, Wythe Senator Matthew Russett passed away, triggering a special election to fill the remaining four years of his six-year term. R. at 4. Congressman Samuel Davis announced he would run as a candidate in this special election. R. at 4. During one of his podcast episodes, Pastor Vale endorsed Congressman Davis, encouraging listeners to vote for Davis and volunteer and donate to his campaign because Davis embraced the progressive social values of the Everlight Dominion. R. at 4. Pastor Vale also announced that he would dedicate several sermons of his podcast during October and November of 2024 to explaining why Davis's political views aligned with the Everlight Dominion. R. at. 4–5.

The IRS's notification of an audit. On May 1, 2024, the IRS sent a letter to the Church informing the Church that it had been selected for a random audit to ensure compliance with the Internal Revenue Code. R. at 5. Pastor Vale was aware of the Johnson Amendment, and he became concerned that the IRS would discover the Church's political campaign involvement through the audit and consequently revoke the Church's Section 501(c)(3) status. R. at 5.

II. NATURE OF THE PROCEEDINGS

The District Court. On May 15, 2024, after receiving the notification that it had been selected for an IRS audit, the Church filed a lawsuit in the United States District Court for the Eastern District of Wythe asking for a permanent injunction prohibiting enforcement of the Johnson Amendment on the grounds that it violates the Establishment Clause of the First Amendment. R. at 5. The IRS answered the complaint with a blanket denial, and the Church moved for summary judgment. R. at 5. The District Court granted the Church's motion, ordered the permanent injunction, and held that (1) the Church had standing under the AIA and Article III to challenge the Johnson Amendment, and (2) the Johnson Amendment violates the Establishment

Clause. R. at 5. The IRS appealed the District Court's decision. R. at. 6. The audit has not begun, and the Church's tax classification as a Section 501(c)(3) has not changed. R. at 5, 7.

The Fourteenth Circuit. The United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's grant of summary judgment. R. at 11. The Fourteenth Circuit held that the AIA did not bar this lawsuit because the Church does not have an alternative route to challenge the Johnson Amendment. R. at 6. The court also held that the Church alleged an injury establishing Article III standing because the Church participated in political campaigns in violation of the Johnson Amendment and because the IRS audit would review its compliance with Section 501(c)(3). R. at 7–8. There was a substantial risk that the IRS would revoke the Church's tax classification through enforcement of the Johnson Amendment. R. at 7–8. Additionally, the court found that there was no ripeness issue because the Church engaged in activities arguably affected with a constitutional interest that were prohibited by the Johnson Amendment, and the IRS's notification of an audit showed a substantial threat of enforcement. R. at 8. Finally, the Court held that the Johnson Amendment violates the Establishment Clause because it favors some religions over others by denying tax exemptions to religious organizations whose doctrine compels them to participate and intervene in political campaigns. R. at 9. The dissenting opinion first argued that the lawsuit should have been dismissed for lack of jurisdiction under the AIA. R. at 12. It argued that the Church cannot bring this pre-enforcement challenge because the Church (1) can appeal to the IRS after a change in tax classification, and (2) is not guaranteed to succeed on the merits. R at 13. Next, it claimed that the Church had not suffered an injury sufficient to satisfy Article III standing because the Amendment has rarely been enforced and a recent consent decree between the IRS and two unrelated churches showed that the IRS does not intend to enforce the Amendment against "houses of worship." R. at 14. Finally, it found that the Johnson Amendment was based on

secular criteria and applied equally to religious and non-religious organizations, and it was therefore constitutional. R. at 15–16.

A writ of certiorari was filed, which this Court granted. R. at 17.

SUMMARY OF THE ARGUMENT

I.

The Tax Anti-Injunction Act ("AIA") does not bar Covenant Truth Church ("the Church") from bringing this suit because the objective aim of the suit is to challenge the constitutionality of the Johnson Amendment—not the assessment or collection of a tax. But even if this Court finds that the purpose is to restrain tax assessment or collection, the exception for parties who do not have an alternative avenue for relief applies to the Church, so the AIA does not bar the suit.

Furthermore, the Church has Article III standing to bring the suit because it satisfies both constitutional and prudential standing requirements. With regard to the constitutional requirements, the Church has suffered an injury in fact through a substantial risk of harm. The IRS has decided to audit the Church and is likely to enforce the Johnson Amendment against it, which would end the Church's Section 501(c)(3) status. Moreover, the fact that the Johnson Amendment covers the Church's conduct supports a pre-enforcement challenge. The Church is not required to show that authorities have already threatened to enforce the Amendment against it, and a lack of consistent past enforcement does not impact standing. Although the IRS entered a consent decree protecting certain forms of political speech by religious organizations, the consent decree extends only to the two unrelated churches in that case. Thus, the Church here cannot rely on a lack of consistent past enforcement or the consent decree to protect itself against constitutional violations and retain its tax-exempt status.

The Church also satisfies the prudential ripeness requirement to establish standing because the Church can show both fitness and hardship. The issue is fit for review because the record is concrete and there are no pending administrative proceedings. The Church will continue to experience hardship if this Court does not provide prompt judicial review of the constitutional

question at hand, both through the likelihood of losing its Section 501(c)(3) status and the IRS favoring religions that do not compel political involvement over the Everlight Dominion.

II.

The Johnson Amendment violates the Establishment Clause of the First Amendment by officially preferring some religious denominations over the Everlight Dominion. The Amendment requires churches not to participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. That requirement treats religious denominations differently based on theological lines; it does not allow a religious denomination that is doctrinally compelled to participate in political campaigns to maintain its tax-exempt status. Such is the case of the Everlight Dominion, which banishes any church or leader who does not participate or intervene in political campaigns for candidates who support the religion's progressive stances. Moreover, this Court has instructed that the Establishment Clause must be interpreted in light of historical practices and understandings. The United States has a long, rich history of many churches and denominations participating actively in politics, including by endorsing or opposing candidates for office.

Because the Johnson Amendment establishes a denominational preference, the Court subjects it to strict scrutiny. But the Amendment does not survive strict scrutiny because it is not narrowly tailored to further a compelling government interest. The Amendment is both overinclusive and underinclusive. Thus, the fit between the Amendment's means and the Government's ends is poor at best—not narrowly tailored.

This Court should affirm the Fourteenth Circuit's decision and hold that (1) Church has standing to bring this lawsuit under the AIA and Article III and (2) the Johnson Amendment violates the Establishment Clause of the First Amendment.

ARGUMENT

"Congress shall make no law respecting an establishment of religion . . . ." U.S. CONST. AMEND. I. The Establishment Clause of the First Amendment prohibits the Government from officially preferring one religion over another. *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n.*, 605 U.S. 238, 247 (2025). While agencies like the IRS may generally provide *some* favorable treatment to religious organizations through tax exemptions, it violates the Establishment Clause when it begins to hand out tax exemptions only to organizations that adhere to the religious doctrine the agency likes. The Johnson Amendment does that by providing Section 501(c)(3) tax-exempt status to religious organizations whose religious doctrines do not require them to participate in political campaigns. R. at 1–2. Therefore, the Johnson Amendment is unconstitutional.

This is an appeal of the Fourteenth Circuit's court decision to affirm Covenant Truth Church's ("the Church") motion for summary judgment and its request for a permanent injunction prohibiting enforcement of the Johnson Amendment ("the Amendment"). This appeal presents only legal questions, and this Court reviews questions of law *de novo*. *See Pierce v. Underwood,* 487 U.S. 552, 558 (1988).

This Court should affirm the Fourteenth Circuit's decision on both issues. First, neither the Tax Anti-Injunction Act ("AIA") nor Article III prevents the Church from bringing this suit. The AIA does not apply here, and even if this Court finds that it does apply, the suit falls under an AIA exception for taxpayers with no alternative avenue for relief. The Church further satisfies the injury and ripeness requirements of Article III standing. Because the IRS will likely revoke the Church's Section 501(c)(3) status, it satisfies the injury requirement through a substantial risk of harm. The Church has also demonstrated both fitness and hardship to satisfy the prudential ripeness

requirement. Second, this Court should affirm because the Johnson Amendment, on its face, prefers religious denominations that do not compel churches and leaders to participate in political campaigns by allowing only those religions to maintain their tax-exempt status. The Amendment's denominational preference triggers strict scrutiny, which the Amendment does not survive because it is not narrowly tailored to further a compelling government interest.

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

The AIA bars lawsuits brought with the purpose of restraining tax assessment or collection. 26 U.S.C. § 7421(a). However, the AIA does not apply where the purpose of the suit aims at something other than a tax assessment or collection, and tax impacts are merely incidental. *See CIC Servs., LLC v. IRS*, 593 U.S. 209 (2021). Even if this Court finds that this suit is aimed at restraining tax collection or assessment, an exception to the AIA applies because the Church has no other avenue for relief. *See South Carolina v. Regan*, 465 U.S. 367, 381 (1984).

A party bringing a pre-enforcement challenge has Article III standing if it satisfies the constitutional requirements by alleging a future injury when there is a substantial risk of harm and the prudential ripeness requirements by showing fitness and hardship. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). To establish an Article III injury, courts look for (1) a plaintiff's intent to engage in a course of conduct arguably affected with a constitutional interest, (2) the intended future conduct being arguably proscribed by the relevant statute, and (3) a substantial threat of future enforcement of the challenged statute. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citing *Driehaus*, 573 U.S. at 161–64). Importantly, a lack of consistent past enforcement is not detrimental to standing. *See Speech First*, 979 F.3d at 336; *Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003). Additionally, a consent decree limiting an

agency's enforcement of a law governs only the parties involved in the decree. *See Trump v. CASA, Inc.*, 606 U.S. 831, 833 (2025).

The Fourteenth Circuit properly held that the AIA does not bar this suit and that the Church has Article III standing. This Court should affirm.

A. The Tax Anti-Injunction Act does not bar Covenant Truth Church from bringing this suit because the Act does not apply, and this suit falls under an exception if the Act were to apply.

The AIA states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a). For the AIA to bar a plaintiff from bringing a lawsuit, two things must be true: (1) the plaintiff must be bringing the suit with the purpose of restraining tax collection or assessment, and (2) the plaintiff must demonstrate their certainty of success on the merits and the irreparable harm to be suffered from the tax collection. *See Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 6–7 (1962). Even then, exceptions exist when a plaintiff has no alternate route for judicial review. *See Regan*, 465 U.S. at 381.

Here, the Church's suit does not aim to restrain the assessment or collection of tax; rather, the suit challenges the lawfulness of the Johnson Amendment itself. R. at 5. For the purposes of this suit, tax consequences are merely incidental. Even if this suit's purpose were to restrain tax collection, the AIA does not bar the suit because the Church currently has no alternative opportunity for judicial review. R. at 6–7. This Court should find that the AIA does not bar this lawsuit, either because the lawsuit is not aimed at restraining tax collection or assessment, or because the Church has no alternative avenue to pursue relief.

1. The Tax Anti-Injunction Act does not apply because the purpose of this suit is to challenge the constitutionality of the Johnson Amendment, not to restrain tax collection or assessment.

This Court has held that the AIA does not apply when a suit challenges an IRS mandate as opposed to a tax, even if a tax functions alongside a particular mandate. *See generally CIC Servs.*, 593 U.S. 209. In *CIC Services*, an IRS notice required CIC, as a business advisor, and its taxpayer advisees to describe their transactions for IRS regulation. *Id.* at 214. Noncompliance with the notice would subject taxpayers and advisors to both civil tax penalties and criminal penalties. *Id.*

CIC sued, asking this Court to enjoin the enforcement of the notice before the notice's first reporting date. CIC asserted that the notice was unlawful under the Administrative Procedure Act because it was issued without proper notice-and-comment procedures and without proven need. *Id.* at 214–15. The Court found that CIC's action challenged the regulatory mandate of the notice and entailed compliance costs not related to and often going beyond any tax. *Id.* at 220. Because the suit targeted the reporting rule of the mandate—not the taxes entailed in the mandate—this Court held that the suit fell outside of the AIA, despite taxes functioning alongside the mandate as sanctions for noncompliance. *Id.* at 223.

The same analysis applies to the Church's suit here. This Court clarified that, "[i]n considering a suit's purpose, we inquire not into a taxpayer's subjective motive, but into the action's objective aim—essentially, the relief the suit requests." *Id.* at 217. The Church filed this suit prior to any Section 501(c)(3) status change or subsequent tax penalty for noncompliance. R. at 5. It sued the IRS, not to avoid or restrain tax collection, but to assert a claim against a government agency for infringing on religious constitutional protections. Even if the Church's individual goal, or *subjective* aim, is to retain its Section 501(c)(3) status, the *objective* aim of this lawsuit matters for determining the suit's purpose. *CIC Servs.*, 593 U.S. at 217. That objective aim

is to challenge the Johnson Amendment's constitutionality. Thus, similar to CIC, any impacts on the IRS's tax collection or assessment are merely incidental to the Church's interest in advancing its constitutional rights. Accordingly, the Church's suit does not fall under the AIA's purview, and the AIA does not bar it.

2. Even if the Tax Anti-Injunction Act applies, this suit is not barred because Covenant Truth Church has no alternative avenues to pursue relief.

To determine whether the AIA bars a lawsuit that *does* aim to restrain tax assessment or collection, courts apply the *Williams Packing* rule, which states that the AIA will not bar a suit if "the taxpayer (1) was certain to succeed on the merits, and (2) could demonstrate that collecting would cause him irreparable harm." *Regan*, 465 U.S. at 374 (citing *Williams Packing*, 370 U.S. at 6–7). If the answer to either of those questions is no, the AIA bars the suit. *See Williams Packing*, 370 U.S. at 7.

But the analysis does not end here. In *Regan*, this Court explained that the AIA only applies when actions are brought by parties who have alternate routes to pursue for relief. 465 U.S. at 378. There, South Carolina was issuing bearer bonds—bonds not requiring record or registration—as opposed to registered bonds. As the issuer, South Carolina sued the IRS, claiming that an Internal Revenue Code amendment restricting bearer bonds from qualifying for tax exemptions and requiring bondholders to pay a higher interest for bearer bonds was unconstitutional. *Id.* at 370–72. The IRS argued that the bondholders, not South Carolina, needed to bring these claims because South Carolina was not experiencing the adverse tax effects. *Id.* at 374. This left South Carolina with no alternative route to pursue these claims on their own behalf. *Id.* at 381.

This Court went on to distinguish other cases that applied *Williams Packing* on the grounds that, in those decisions, plaintiffs had the alternative avenue for relief of simply paying the tax and

then filing for a refund. *See id.* at 375 (distinguishing *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974)). Rejecting the IRS's argument, this Court held that relying on the taxpayer to raise claims and limiting South Carolina's ability to challenge the law's constitutionality would risk depriving "[South Carolina] of any opportunity to obtain review of its claims." *Regan*, 465 U.S. at 381. Thus, this Court concluded that the *Williams Packing* did not apply because an alternate route for judicial review was not available. *Id.*

The Second Circuit recently applied this AIA exception. *See New Jersey v. Comm'r*, 149 F.4th 127 (2d Cir. 2025). In that case, the IRS created a regulation limiting charitable-contribution deductions on federal income tax returns following a tax cut law that affected several states, including New York. *Id.* at 136, 138–139. New York joined suit against the IRS, alleging that the IRS's interpretation of the regulation violated the Administrative Procedure Act. *Id.* at 139. The IRS argued that New York's claims were barred by the AIA and that the regulation "must instead be challenged by a taxpayer who pays the tax, then seeks a refund on the ground that the [regulation] was unlawful and improperly increased their tax liability." *Id.* at 142–43. The Second Circuit found that New York had no alternative avenue to challenge the regulation and held that the claims were not barred by the AIA, reasoning that the *Regan* exception is not narrowly confined and the state could not assert their claims in another forum outside of federal court. *Id.* at 143–44. *See also New York v. Yellen*, 15 F.4th 569, 579 (2d Cir. 2021) (characterizing the *Regan* exception as "not so narrow" and applying it where multiple aggrieved parties have similar but not "wholly derivative" injuries).

Similarly, the Church has no alternative avenue but to make its claim in federal court. While the IRS may argue that the Church should wait for its Section 501(c)(3) status to be revoked, then pursue administrative remedies, this is not a route that provides the Church with a *current*

opportunity to make its claim because these administrative procedures are not available while the Church's Section 501(c)(3) status remains intact. R. at 5–7. It is well settled that the AIA only applies where plaintiffs have an alternate avenue for relief, like proceeding through administrative appeals or filing for a refund. *See, e.g.*, *Regan*, 465 U.S. at 381. Where courts have held that a plaintiff is barred by the AIA because they should pay the relevant tax, then file for a refund, an alternative avenue for relief was available to them at the time of the court's ruling. *See, e.g.*, *Bob Jones Univ. v. Simon*, 416 U.S. at 746. Because the Church has no present alternate avenue to litigate its claims, this Court should find that the *Regan* exception applies and the AIA does not bar this suit.

B. Covenant Truth Church has Article III standing to bring this suit because it satisfies both constitutional standing requirements and prudential ripeness requirements.

Article III standing requirements stem from the U.S. Constitution's giving the court power over "cases" and "controversies." U.S. CONST. art. III, § 2. This Court has interpreted Article III standing to require that plaintiffs allege "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Driehaus*, 573 U.S. at 157–158 (2014) (citing *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 (1992)) (cleaned up). Here, causation and redressability are not at issue. Once the Church shows an injury in fact, the remaining two elements are easily satisfied. A causal connection is clear because the IRS audit and likely enforcement of the Johnson Amendment directly create the substantial risk of the Church losing its Section 501(c)(3) tax-exempt status. R. at 5. Similarly, redressability is clear because this Court's finding in favor of the Church—holding that the Johnson Amendment is unconstitutional under the Establishment

Clause—will prohibit enforcement of the Amendment, directly remedying the Church's injury. R. at 5.

Furthermore, there is no ripeness issue. The Church satisfies the prudential ripeness requirements of fitness and hardship by bringing this claim with no other ongoing administrative procedures and demonstrating that it will continue to suffer a hardship without this Court's prompt judicial review. R. at 5–7. It is well established that a plaintiff need not expose himself to prosecution or liability before challenging a statute, especially when action is threatened by the government. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ("[I]t is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights."); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007) ("[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge . . . the constitutionality of a law threatened to be enforced."). Because the Church's political engagement, as required by Everlight Dominion doctrine, is prohibited by the Johnson Amendment, and because the IRS intends to perform an audit on the Church regarding its Section 501(c)(3) compliance, there is a substantial risk of the IRS enforcing the Johnson Amendment and revoking the Church's Section 501(c)(3) status. This Court should find that the Church has met the constitutional and prudential standing requirements under Article III.

1. Covenant Truth Church satisfies the constitutional requirements for Article III standing.

For Article III standing, the plaintiff's injury "must be concrete and particularized and actual or imminent, not conjectural or hypothetical." *Driehaus*, 573 U.S. at 158 (quoting *Lujan*, 504 U.S. at 560) (cleaned up). But the injury need not have already occurred; instead, it may be an

allegation of future injury. *Driehaus*, 573 U.S. at 158. Here, this Court should apply the "substantial risk of harm" and hold that the Church has demonstrated that its alleged future injury—losing its Section 501(c)(3) status for noncompliance with the Johnson Amendment—satisfies the Article III injury requirement.

While past enforcement can certainly support standing, "a lack of past enforcement does not alone doom a claim of standing." *Speech First*, 979 F.3d at 336. Courts have applied this principle to First Amendment cases, recognizing that the mere existence of a statute, despite no *direct* threat of enforcement, can amount to a substantial risk of harm. *See id.*; *Majors*, 317 F.3d at 721. Additionally, the consent decree between the IRS and two unrelated Texas churches has no impact on the Church's standing for this suit. *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broads. v. Long*, No. 6:24-cv-00311, 2025 WL 2555876 (E.D. Tex. July 24, 2025) [hereinafter IRS Consent Decree]; *Trump v. CASA, Inc.*, 606 U.S. 831, 833 (2025).

a. The Article III injury requirement is satisfied because Covenant Truth Church faces a substantial risk of harm.

This Court finds that an allegation of a future injury or threatened enforcement of a law satisfies Article III standing when there is a "substantial risk" of harm. *See Driehaus*, 573 U.S. at 158. More specifically, courts recognize an injury where "(1) [a plaintiff] has an intention to engage in a course of conduct arguably affected with a constitutional interest, (2) his intended future conduct is arguably proscribed by [the statute], and (3) the threat of future enforcement of the challenged policies is substantial." *Speech First*, 979 F.3d at 330 (quoting *Driehaus*, 573 U.S. at 161–64).

In *Driehaus*, this Court analyzed several prior cases to illustrate that pre-enforcement challenges are consistent with Article III. *Driehaus*, 573 U.S. at 159–61 (citing *Steffel*, 415 U.S.

452 (finding an injury where a plaintiff challenged the constitutionality of a trespass statute after being threatened with arrest for distributing handbills protesting the Vietnam War); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289 (1979) (finding an injury where plaintiffs challenged an unfair labor statute before its enforcement because they previously participated in, and intended to continue their participation in, conduct prohibited by the challenged statute); *Virginia v. Am. Booksellers Ass'n Inc.*, 484 U.S. 383 (1988) (finding an injury where booksellers sought pre-enforcement review of a law because they displayed certain reading materials that potentially violated a statute and compliance measures would be costly)).

Further, in *Driehaus* itself, advocacy organizations filed claims against the state election commission, the secretary of state, and other government entities to challenge an Ohio statute prohibiting "false statements during the course of a political campaign." *Id.* at 151–52. This Court held that the threat of future enforcement of false statement statutes against the plaintiff amounted to an Article III injury. *Id.* at 161.

First, this Court concluded that the advocacy organizations alleged an "[intent] to engage in a course of conduct arguably affected with a constitutional interest" by pleading that their specific prior statements included statements that Affordable Care Act voters "supported taxpayer-funded abortion." *Id.* at 161–62. The organizations intended to continue making those statements during future elections. *Id*. Second, this Court found that the future conduct was arguably proscribed by the statute because the statements focused on broad issues of support, the statute was previously enforced against the organization, and future enforcement would not depend on the literal truth of the statements. *Id.* at 162–63. Third, this Court found a substantial risk of future enforcement based on a history of past enforcement and the threat of criminal prosecution. *Id.* at 164–66. Thus, this Court held that there was an Article III injury. *Id.* at 161.

The analysis in this Court's prior decisions supports finding an Article III injury here. The Everlight Dominion requires its member churches and their leaders to engage in political campaigning. R. at 3. Fulfilling this religious obligation, which the Johnson Amendment directly prohibits, is something the churches and leaders will continue to do unless the Everlight Dominion doctrine changes. Thus, the Church has demonstrated a course of conduct arguably affected with a constitutional interest. R. at 2–5. Because the Church must stop participating in political campaigns to lawfully retain Section 501(c)(3) status, the Church's conduct is arguably proscribed by the Amendment. R. at 2–3. Finally, the threat of future enforcement is substantial because the IRS has previously enforced this statute against churches; the language of the statute continues to cover the Church's conduct; and the IRS indicated its intent to audit the Church, signaling that it will assess compliance with the Internal Revenue Code, including Section 501(c)(3). R. at 5. *See Branch Ministries v. Rossotti*, 211 F.3d 137, 140 (D.C. Cir. 2000) (enforcing the Johnson Amendment against a church). Thus, the Church faces a substantial risk of losing its tax-exempt status, which satisfies the injury requirement for Article III standing.

b. Inconsistent past enforcement of the Johnson Amendment does not defeat Covenant Truth Church's Article III standing.

In *Speech First,* the Fifth Circuit considered whether a substantial threat of future enforcement of allegedly unconstitutional policies could be shown to establish an Article III injury despite a lack of consistent past enforcement. 979 F.3d at 336–38. The Fifth Circuit presented a logical consideration that can be applied here to rebut the IRS's likely argument that the Church does not face a substantial risk of losing their Section 501(c)(3) status due to a lack of consistent past enforcement: if there is no history of unconstitutional past enforcement of the Johnson Amendment, and no intent to apply the Johnson Amendment to religious organizations like the

Church, then why maintain the policy, or at least the attendant sanctions of losing tax-exempt status, at all? *Cf. id.* at 337. The Fifth Circuit is not alone in its suspicion; the Seventh Circuit has explained that "a plaintiff who mounts a pre-enforcement statutory challenge on First Amendment grounds need not show that the authorities have threatened to prosecute him . . . the threat is latent in the existence of the statute." *Id.* at 336 (citing *Majors*, 317 F.3d at 721) (cleaned up).

Additionally, the IRS *has* enforced the Amendment against churches. Take, for example, Branch Ministries, which operated a tax-exempt church with Section 501(c)(3) status. *Branch Ministries*, 211 F.3d at 140. The church placed advertisements in newspapers encouraging Christians not to vote for Bill Clinton during his presidential candidacy, asserting that his positions on abortion, homosexuality, and condom distribution violated Biblical principles. *Id.* at 140. The IRS found that these advertisements violated the Johnson Amendment's prohibition on tax-exempt organizations from participating in political campaigns. *Id.* Consequently, the IRS revoked the church's Section 501(c)(3) status. *Id.* The D.C. Circuit upheld the revocation based on the IRS's finding that the church violated Section 501(c)(3). *Id.* at 140–42.

Several years after successfully enforcing the Johnson Amendment against that church, the IRS released hypothetical fact patterns involving religious organizations engaging with political campaigns to illustrate what conduct the Amendment would and would not prohibit. *See* Rev. Rul. 2007-41, 2007-25 I.R.B. (providing three hypotheticals involving a church, two of which were said to violate the Johnson Amendment). This official IRS guidance demonstrates the continued vitality of the IRS's interest in enforcing the Johnson Amendment against churches. For these reasons, a lack of consistent past enforcement does not defeat Article III standing here.

c. The consent decree between the IRS and two unrelated churches does not impact Covenant Truth Church's standing because it does not bind the IRS and the Church.

The IRS entered a consent decree with two Texas churches, agreeing not to enforce the Johnson Amendment against them. *See* IRS Consent Decree, 2025 WL 2555876. The IRS may argue that this consent decree indicates no likelihood of enforcement here. R. at 14. However, the consent decree has no bearing on the IRS and the Church. Consent decrees bind only the parties involved in the decree. *See Blue Chimp Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975) ("[A] consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it."). This Court has since affirmed that consent decrees and similar relief carry no legal weight against contested statutes, stating that "[n]either declaratory nor injunctive relief . . . can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular . . . plaintiffs." *Trump v. CASA*, 606 U.S. at 833.

Furthermore, consent decrees are not designed to serve as a substitute for the democratic process or a "block to ordinary avenues of political change." *Horne v. Flores*, 557 U.S. 433, 448 (2009). This Court has historically attempted to limit overbroad and unnecessary consent decrees, recognizing their unintended power of limiting legislative and executive powers. *Id.* at 450. Thus, the consent decree entered between the IRS and two unrelated Texas churches does not and should not extend to, protect against, or limit the possibility of the IRS enforcing the Johnson Amendment against the Church.

Even if the consent decree had some legal weight in this case, the category of speech covered by the decree is limited. Described by the court as a "narrow, clearly defined category of speech," the consent decree covers "speech by a house of worship to its congregation in connection

with religious services through its customary channels of communication on matters of faith, concerning electoral politics viewed through the lens of a religious faith." IRS Consent Decree, 2025 WL 2555876. There, the Texas churches were engaging in political speeches during worship services. *Id.* Here, Pastor Vale is engaging in political campaigning, communicating to mass amounts of people over a nationwide podcast. R. at 4–5. Even if the consent decree did apply to the Church, the conduct and nature of the Church's communication arguably do not constitute communication "in connection with religious services through customary channels of communication" as intended by the consent decree. IRS Consent Decree, 2025 WL 2555876. The podcast's public availability, with listeners both in Wythe and nationally, indicates that the communication may not just be "to its congregation" as covered by the decree. R. at 4. Moreover, the podcast format may not be a "customary channel[] of communication." IRS Consent Decree, 2025 WL 2555876. This consent decree is explicitly enforced between the IRS and two Texas churches, and its interpretation is designed to cover the specific definitions of "religious services," or "customary channels of communications," as related to those parties, not the Church here. *Id.* Thus, the consent decree has no bearing on the Church's standing.

2. The issue is ripe because Covenant Truth Church has demonstrated both fitness and hardship.

Because the Church meets the injury in fact requirement, "[t]he question of the ripeness of the constitutional challenges raised . . . need not long detain us." *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 81 (1978). This Court has recognized the overlapping nature of Article III standing's constitutional and prudential considerations. *See Allen v. Wright*, 468 U.S. 737, 750 (1984). Typically, establishing an injury and that the injury would be redressed by the requested relief satisfies issues of ripeness involving "the existence of a live Case or Controversy."

Duke Power, 438 U.S. at 81. So, much of the injury established for constitutional standing will be considered in determining ripeness. *See id.* at 750 ("All of the doctrines that cluster about Article III—not only standing but . . . ripeness . . .—relate in part, and in . . . overlapping ways . . . ."); *MedImmune*, 594 U.S. at 128 n.8 (acknowledging that standing and ripeness can boil down to the same question, that being the establishment of an Article III injury or hardship to the aggrieved party).

Still, courts often use a somewhat distinct two-part analysis when considering whether an issue is ripe, or ready for the court's review, to avoid premature adjudication and entanglement in abstract disagreements between parties. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Courts evaluate, "[1] the fitness of the issues for judicial decision and [2] the hardship to the parties of withholding court consideration." *Id.* at 149. Here, both fitness and hardship are present.

a. The issue is ripe because the record is fit for judicial review.

The fitness factor asks whether the issue presents a question of law or question of fact. Here, the issue is purely a question of law: whether the Johnson Amendment violates the Establishment Clause of the First Amendment. R. at 17. Furthermore, there are no ongoing administrative proceedings that must conclude before this issue can be discussed, which may otherwise raise a fitness concern. R. at 7; *see Abbott Labs.*, 387 U.S. at 149. While the IRS is likely to argue that the Church should be forced to wait for speculative administrative proceedings, they are also likely to claim that they will not be enforcing the Johnson Amendment against religious organizations. R. at 13–14. These conflicting positions cannot serve as a roadblock for ripeness. The record is concrete, no administrative proceedings are in progress, and the overarching issue of the Johnson Amendment's unconstitutionality as applied to religious organizations causes cognizable injury to the Church. *See Abbot Labs.*, 387 U.S. at 149–50 (citing *Columbia Broad.*

Sys. v. United States, 316 U.S. 407 (1942)) (explaining that because certain contractual regulations had the force of law, there was a cognizable injury to a radio broadcaster sufficient to meet the fitness requirement even though no license had been denied or revoked). Thus, the issue is fit for judicial review.

b. The issue is ripe because Covenant Truth Church has demonstrated a hardship.

The hardship factor overlaps with the Article III injury analysis. Satisfying the constitutional standing requirements and showing a nexus between the injury and the constitutional rights demonstrates a hardship, and the issue is thus ripe for review. *See Duke Power*, 438 U.S. at 78 (discussing the "nexus" requirement for taxpayer suits where plaintiffs must demonstrate a connection between the alleged injuries and the asserted constitutional rights). The Church's injury—the substantial risk of losing its tax-exempt status after the IRS audits the Church and evaluates its Section 501(c)(3) compliance—directly connects to the Johnson Amendment prohibiting the Church's participation and intervention in political campaigns as required by its religion. R. at 2–5. This prohibition is the precise constitutional protection that the Church is asserting under the Establishment Clause. R. at 2. While courts may decline to grant standing where the asserted harm is only a generalized grievance, this Court has emphasized that the ripeness doctrine supports prompt resolution of constitutional challenges, even if the injury stems from a substantial threat of future harm. *Duke Power*, 438 U.S. at 81–82.

To the extent that the IRS may argue that the Church's claims should be deemed nonjusticiable on prudential ripeness grounds, rather than for lacking an Article III injury, this Court has found that request to be "in some tension with . . . the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Id.* at 167

(cleaned up). This Court has further recognized that denying prompt judicial review for constitutional claims would impose a substantial hardship on aggrieved parties, "forcing them to choose between refraining from core political speech on the one hand, or engaging in that speech and risking costly . . . proceedings" on the other. *Driehaus*, 573 U.S. at 167–68. Declining to review the Church's claims forces it to choose between refraining from constitutionally protected actions or violating a federal statute. Thus, this Court should find that this issue is ripe.

This Court should hold that the Church has standing to bring this suit under both the AIA and Article III. The AIA does not apply because the suit challenges the Johnson Amendment's constitutionality, and any tax impacts are incidental. Even if this Court finds that the AIA does apply, it does not bar this lawsuit because the Church does not have an alternate route to pursue relief. The Church's Section 501(c)(3) status remains intact, it is unable to pursue administrative avenues for relief at this time, and this suit is the only present opportunity it has to advance its own claims.

Additionally, the Church has successfully established Article III standing. First, it has satisfied the Article III injury requirement by demonstrating a substantial risk of harm through the future threat of the Johnson Amendment's enforcement and losing its Section 501(c)(3) status. A lack of consistent prior enforcement does not impact the Church's standing, and the IRS's reliance on a consent decree separate and unrelated to the Church is immaterial to this suit. Second, there are no ripeness concerns. The Church is experiencing a hardship through its substantial risk of harm that will only be exacerbated by denying prompt judicial review for its constitutional protections, and the record is fit for review. Thus, this Court should affirm the Fourteenth Circuit's grant of summary judgment in favor of the Church.

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

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. While Establishment Clause jurisprudence has undergone major shifts over the last few years[1], its "clearest command" remains that "one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n.*, 605 U.S. 238, 247 (2025). The Johnson Amendment violates this bedrock principle by preferring other religious denominations over the Everlight Dominion. On its face, the Amendment singles out and denies Section 501(c)(3) tax benefits to any non-profit adhering to a religion that requires its institutions and leaders to be actively involved in political campaigns. Religious denominations with no such doctrinal requirement, however, enjoy tax-exempt status for their non-profit institutions. This Court views this type of disparity with heavy skepticism: any government-sponsored denominational preference triggers strict scrutiny. *See Cath. Charities*, 605 U.S. at 241. The Johnson Amendment does not survive strict scrutiny because it is not narrowly tailored to further a compelling government interest. *See id.* Thus, the Amendment violates the Establishment Clause.

A. The Johnson Amendment prefers some religious denominations over others because the Amendment facially differentiates based on religious doctrine.

Churches typically qualify for tax-exempt status under 26 U.S.C. § 501(c)(3). However, the Johnson Amendment requires that churches "not participate in, or intervene in (including the

[1] For example, this Court recently stated in *Kennedy* that the long-standing "*Lemon* test," a test used to identify Establishment Clause violations, no longer applies. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). *Kennedy* did not offer a clear replacement test governing Establishment issues.

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). This requirement facially differentiates between religious denominations, singling out denominations with doctrinal obligations to participate in political campaigns and categorically excluding them from Section 501(c)(3) benefits. Here, Everlight Dominion doctrine, bolstered by church history and tradition, supports the Church's claim of an Establishment Clause violation.

1. The Johnson Amendment denies Covenant Truth Church tax-exempt status solely because Everlight Dominion doctrine requires political campaign participation.

This Court has avowed that "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice." *Gillette v. United States*, 401 U.S. 437, 469 (1971) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 103–04 (1968)). The Everlight Dominion's centuries-old religious theory, doctrine, and practice require its member churches and leaders to participate in political campaigns, supporting candidates whose platforms align with The Everlight Dominion's progressive stances. R. at 3. These requirements include encouraging members to vote for these candidates and encouraging donations and campaign volunteering. R. at 3. The Everlight Dominion takes the doctrine so seriously that it banishes any individual church or leader who does not adhere to the requirement. R. at 3.

The Johnson Amendment explicitly distinguishes the Everlight Dominion from other religious denominations using this doctrinal requirement of political campaign participation. R. at 2. Then, based solely on that doctrinal requirement, the Amendment disqualifies any Everlight Dominion church from the tax-exempt status that many other denominations' churches enjoy. R. at 2. The Amendment thus favors any religious denomination that rejects or is indifferent towards

political campaign participation.[2] As a result, Congress has created a law respecting an establishment of religion—it (1) prefers some religions over the Everlight Dominion, (2) subsidizes only preferred religions' organizations through tax exemptions, and (3) persuades citizens to support preferred religions by making citizens' contributions to preferred religious organizations tax-deductible. *Cf. Bob Jones Univ. v. Unites States*, 461 U.S. 574, 591–92 (1983) (holding that the Government need not support racial discrimination in education by granting discriminatory institutions tax-exemption and explaining that "[w]hen the Government grants exemptions or allows deductions . . . the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors'").

Just last year, this Court struck down a Wisconsin tax law on nearly identical grounds. In *Catholic Charities*, this Court found that Wisconsin's denial of unemployment tax exemption to the Catholic Charities Bureau violated the Establishment Clause. *Cath. Charities*, 605 U.S. 238. The Catholic Charities Bureau operated as a non-profit social ministry arm of the Roman Catholic Diocese. Wisconsin law exempts non-profit organizations from paying unemployment taxes if the organizations are "operated primarily for religious purposes" and "operated, supervised, controlled, or principally supported by a church or convention or association of churches." WIS. STAT. § 108.02(15)(h)(2). The Catholic Charities Bureau applied for the exemption as a nonprofit organization controlled by the Diocese, but the Wisconsin Supreme Court ultimately denied the exemption, finding that the Catholic Charities Bureau was not operating primarily for religious

[2] Examples of religious denominations that are favored because they outright reject political campaign participation include Jehovah's Witnesses, most Amish denominations, quietist Salafism, Anabaptism, and the Bahá'í Faith. *See* Ken Chitwood, *Why Some People of Faith Refrain From Voting in the US*, NEW LINES MAG. (Oct. 31, 2024), https://newlinesmag.com/reportage/why-some-people-of-faith-refrain-from-voting-in-the-us/ [https://perma.cc/KK66-VS64].

purposes because its services were not limited to Catholics and it did not actively engage in proselytization. *Catholic Charities*, 605 U.S. at 238.

This Court held that the Wisconsin statute, as interpreted, violated the Establishment Clause because it "imposed a denominational preference by differentiating between religions based on theological lines." *Id.* at 241–42. Justice Sotomayor explained:

> The [Wisconsin] court . . . deemed petitioners ineligible for the exemption under §108.02(15)(h)(2) because they do not "attempt to imbue program participants with the Catholic faith," "supply any religious materials to program participants or employees," or limit their charitable services to members of the Catholic Church. Put simply, petitioners could qualify for the exemption while providing their current charitable services if they engaged in proselytization or limited their services to fellow Catholics.
>
> Petitioners' Catholic faith, however, bars them from satisfying those criteria. Catholic teaching . . . forbids "'misus[ing] works of charity for purposes of proselytism.'"

Id. at 249–50 (citations omitted). This Court unanimously found an Establishment Clause violation; this was not a "hard call[]." *Id.* at 254.

The Johnson Amendment's denominational preference closely resembles the "textbook denominational discrimination" in *Catholic Charities*. *Id.* at 248. In both cases, the Government attempts to deny a tax exemption to a religious organization based on denomination-specific religious doctrine. For the Catholic Charities Bureau, it was Catholicism's prohibition against proselytizing through charity; for Covenant Truth Church, it is the Everlight Dominion's requirement of political campaign participation. Ultimately, the Government *pre*scribed a religious belief in *Catholic Charities*. Here, the Government attempts to *pro*scribe doctrine—merely the flipside of the same unconstitutional coin. *See Lee v. Weisman*, 505 U.S. 577, 589 (1992) ("The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.").

2. Churches have a rich history of political participation, including campaign involvement.

The IRS may argue, as the dissent below did, that the Amendment's prohibition against political campaign participation is a secular requirement that applies to religious and non-religious organizations equally. R. at 15. But this Court should not follow their misstep—this is not a secular requirement. That ignores not only the history of churches' political campaign participation generally, but also the history of religious doctrine *requiring* participation. In 2022, this Court officially abandoned the *Lemon* test.[3] *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (clarifying that this Court has abandoned the test established by *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and its progeny). Rather than employ a formal test, this Court instructs that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). Historically, many denominations and churches actively participated in politics in the same way that the Everlight Dominion and Covenant Truth Church participate today. For many, it was—and is—a doctrinal requirement. Thus, by explicitly prohibiting political campaign participation, the Johnson Amendment facially differentiates and prefers certain religious denominations based on their doctrine.

While the Everlight Dominion provides an excellent example of a centuries-old religion that requires political participation, it is far from the only example. The Fourteenth Circuit below correctly notes that New School Presbyterianism, championed by figures like "the Father of Old

[3] *Lemon v. Kurtzman*, 403 U.S. 602 (1971), established a three-part test to identify Establishment Clause violations. Under the "*Lemon* test," courts would uphold a challenged law only if it (1) had a secular legislative purpose, (2) its principal or primary effect neither promoted nor inhibited religion, and (3) it did not foster "excessive government entanglement with religion." *Id.* at 612–13.

Revivalism" Charles Finney, taught that "all men are under a perpetual and unalterable moral obligation to . . . . exert their influence to secure a legislation that is in accordance with the law of God." R. at 9 (quoting Charles G. Finney, Lecture XX: Human Government (1878), *in* LECTURES ON SYSTEMATIC THEOLOGY 207, 209, 211 (J. H. Fairchild, ed., Colporter Kemp 2d ed. 1946) (1878)). Consider Finney's answer to a common objection in the same lecture:

> Objection: 6. It is asserted, that Christians have something else to do besides meddling with politics.
>
> Answer: In a popular government, politics are an important part of religion. No man can possibly be benevolent or religious, to the full extent of his obligations, without concerning himself . . . with the affairs of human government. [Christians] . . . are bound to meddle with politics in popular governments, because they are bound to seek the universal good of all men; and this is one department of human interests, materially affecting all their higher interests.

Id. (emphasis added). Eighty years later, Baptist minister Dr. Martin Luther King, Jr., similarly urged Christian churches across the nation that *as* Christian churches they have a responsibility to "work[] courageously for a non-segregated society" and "recognize the urgent necessity of taking a forthright stand on this crucial issue." Martin Luther King, Jr., *"For All . . . A Non-Segregated Society," A Message for Race Relations Sunday*, STANFORD: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST. (Feb. 10, 1957), https://kinginstitute.stanford.edu/king-papers/documents/all-non-segregated-society-message-race-relations-sunday [https://perma.cc/9LHX-B7ML]. In doing so, he merely restated a doctrinal position that the Federal Council of Churches (later named the National Council of Churches) had adopted in 1908. *See The Social Creed of the Churches*, NAT'L COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A. (Dec. 4, 1908), https://nationalcouncilofchurches.us/common-witness/the-social-creed-of-the-churches/ [https://perma.cc/XT6V-JZNL] (listing fifteen political stances that the Churches "deem it the duty of all Christian people to concern themselves directly with"). This age-old trend of religious

political activism continues to this day, spreading across faiths as adherents of religions like Islam grow in America. *See* Aubrey Westfall, *Mosque Involvement and Political Engagement in the United States*, 12 POLITICS & RELIGION 679, 684, 686 (2019) (finding that Mosque involvement mobilizes political activities like "making contributions to political candidates" and that "the current political and social crisis has started to forge common interest through necessity, and mosque leaders have taken a leadership role in promoting outward-facing activism.").

Further, American churches have a centuries-long tradition of publicly endorsing or opposing individual candidates for political office. For example, in the 1800 presidential election between Thomas Jefferson and John Adams, several churches publicly opposed Jefferson for his Deism, including through print, much in the same way that the pastor in *Branch Ministries* attacked Bill Clinton's candidacy in 1992. *See* Shawn A. Voyles, *Choosing between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*, 9 REGENT U. L. REV. 219, 227 (1997). Sermons circulated warning against voting for John F. Kennedy in 1960. *Id.* at 228. Catholic leaders openly "urged Catholics not to vote for pro-choice congressional candidates" in 1980. *Id.*

This Court has not been blind to the historical evidence that "individual churches frequently take strong positions on public issues." *Walz v. Comm'r*, 397 U.S. 664, 670. Moreover, historical evidence reveals a long-standing practice of churches publicly supporting or opposing political candidates. The Johnson Amendment, on its face, identifies a historically doctrine-based practice and uses it deny favorable tax treatment to faithful adherents of denominations like the Everlight Dominion. In doing so, it violates the Establishment Clause.

B. The Johnson Amendment's denominational preference triggers strict scrutiny, which the Amendment does not survive because it is not narrowly tailored to further a compelling government interest.

This Court has repeatedly held that whenever a law "establishes a denominational preference, courts must 'treat the law as suspect' and apply 'strict scrutiny in adjudging its constitutionality.'" *Cath. Charities*, 605 U.S. at 248 (quoting *Larson*, 456 U.S. at 246). Strict scrutiny requires that a law be narrowly tailored to further a compelling government interest. *See Cath. Charities*, 605 U.S. at 239. Importantly, the Government—not the challenger—carries the burden. *Id.* Following this Court's analysis in *Catholic Charities*, the Government must demonstrate that "the theological lines drawn by the statute are narrowly tailored to advance their interest." *Id.* Here, that means the Government must show that the Amendment's drawing a line at political campaign involvement is narrowly tailored to advance a compelling interest.

1. The Johnson Amendment implicates government interests in raising revenue and avoiding religious entanglement.

The interests at stake here are not new or controversial. Certainly, the Government has an interest in not granting an income-tax exemption to all organizations—it must raise revenue. This Court has recognized that "[o]f course that interest is critical to any government." *Minneapolis Star & Trib. Co. v. Comm'r*, 460 U.S. 575, 586 (1983). Thus, the Government can likely show that the Amendment implicates a compelling interest in raising revenue.

The Government may also argue that the Amendment implicates its interest in avoiding religious entanglement. Professor Goldfeder and Terry explain that supporters of the Amendment claim it aims to "keep the holy separate from the mundane." Mark A. Goldfeder & Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEMPHIS L. REV. 209, 236 (2017). In *Catholic Charities*, Wisconsin raised a similar anti-entanglement interest. This Court did not

question the compelling nature of that interest there; instead, it focused on whether the statute in question was narrowly tailored to further the interest. *See Cath. Charities*, 605 U.S. at 253–54. This Court should similarly focus on the narrow tailoring requirement here.

2. The Johnson Amendment is not narrowly tailored to achieve either interest because it is both overinclusive and underinclusive.

The Johnson Amendment cannot pass strict scrutiny's narrow tailoring requirement. Even if this Court accepts that both interests are compelling, the Government cannot show that the Amendment is narrowly tailored to achieve either interest. Narrow tailoring requires a close fit between the law and the interest it furthers. *See Cath. Charities*, 605 U.S. at 253. Underinclusiveness and overinclusiveness are used by courts in evaluating that fit. *See* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 688 (6th ed. 2020). "A law is overinclusive if it applies to those who need not be included in order for the government to achieve its purpose," and "underinclusive if it does not apply to individuals who are similar to those to whom the law applies." *Id.* at 687–88. A poor fit cannot satisfy strict scrutiny. *See Cath. Charities*, 605 U.S. at 254. In this case, the Government desperately needs a tailor.

a. If the government interest is raising revenue, the Johnson Amendment is both overinclusive and underinclusive.

If the Government's goal is to raise revenue by limiting the scope of federal income tax exemptions through the Johnson Amendment, the Amendment suffers from overinclusiveness and underinclusiveness. The Government's own actions demonstrate that the Amendment is overinclusive: the Government claims it will not enforce the Amendment against two religious organizations to which the law clearly applies. *See* IRS Consent Decree, 2025 WL 2555876. If the Government truly needed to target religious non-profits for revenue, it would consistently enforce the Johnson Amendment and collect its revenue. If it does not need the revenue, why limit tax

exemptions through the Amendment in the first place? For these reasons, the Amendment applies to those it need not apply to. At the same time, the Amendment is hopelessly underinclusive, granting and denying tax exemptions to virtually identical religious non-profits. Take, for example, Covenant Truth Church and a Jehovah's Witness Kingdom Hall identical in size, employees, assets, income, and expenses. Covenant Truth adheres to the Everlight Dominion, which commands direct involvement in politics. R. at 3. Jehovah's Witness doctrine strictly prohibits such involvement. *See Why Do Jehovah's Witnesses Maintain Political Neutrality?*, JW.ORG, https://www.jw.org/en/jehovahs-witnesses/faq/political-neutrality/ [https://perma.cc/CKN3-D6CK] (last visited Jan. 16, 2026). The Government advances its interest in raising revenue no differently by taxing one church as opposed to the other. Yet, because the Amendment draws a theological line at campaign participation, these two churches, identical in size, employees, assets, income, and expenses, are treated differently under the law.

b. If the government interest is avoiding religious entanglement, the Johnson Amendment is both overinclusive and underinclusive.

Supporters of the Amendment argue that it avoids entanglement by "ensur[ing] that citizens of all faith traditions (or no faith tradition) are not inadvertently financially supporting church-based politicking." Mark A. Goldfeder & Michelle K. Terry, *To Repeal or Not Repeal: The Johnson Amendment*, 48 U. MEMPHIS L. REV. 209, 236 (2017). But if the Government aims to keep church and state separate through the Amendment, it applies too broadly. Categorically excluding any non-profit organization from campaign involvement casts far too wide a net—it captures totally secular organizations and churches just the same. Excluding secular organizations makes no progress towards the government's goal of avoiding religious entanglement. Thus, the Amendment applies to those it need not apply to. Further, considering the Amendment only as it applies to

religious organizations exposes an underinclusiveness issue here. The Amendment prohibits only *some* forms of "church-based politicking." *Id.* It permits a pastor to give an hours-long, impassioned sermon on why the tenets of the faith align only with pro-life politics the day before an election. But it prohibits the pastor across the street from spending a few minutes endorsing the pro-life candidate a year before the election. Further, the Amendment supports the taxpayer emptying his wallet—inadvertently or not—in support of the first pastor, but not the second. In this regard, the Amendment is underinclusive.

Because the Amendment is both overinclusive and underinclusive, the "fit" between the Government's ends and its means is poor at best. Thus, the Amendment is not narrowly tailored to further the Government's interest, and it does not survive strict scrutiny.

This Court should find that the Johnson Amendment violates the Establishment Clause. In prohibiting religious organizations from participating in political campaigns, the Amendment does not prohibit merely secular conduct; rather, it draws a doctrinal line that excludes religions like the Everlight Dominion from enjoying the Section 501(c)(3) tax benefits provided to other religions. Consistent with this Court's guidance in *Kennedy*, we should also consider the long-standing historical practice of church involvement in politics, including campaigns. The Amendment's denominational preference triggers strict scrutiny, but the Amendment's overinclusive and underinclusive nature means that it is not narrowly tailored to further any government interest. Thus, the Amendment fails strict scrutiny, and it violates the Establishment Clause.

CONCLUSION

This Court should affirm the Fourteenth Circuit's decision and hold that (1) the Church has standing to challenge the Johnson Amendment under the Tax Anti-Injunction Act and Article III and (2) the Johnson Amendment is unconstitutional under the Establishment Clause of the First

Amendment. The Government may not declare what theology or religious doctrine is worthy of tax exemption. As the Fourteenth Circuit below recognized, doing so destroys the "neutrality between religion and religion, and between religion and non-religion" that the Establishment Clause demands. R. at 9 (quoting *Epperson*, 393 U.S. at 104).

Respectfully submitted,

Team 6

ATTORNEYS FOR RESPONDENT