Case No. 26-1779

IN THE

Supreme Court of the United States

FEBRUARY TERM 2026

Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, ET AL.,

Petitioners,

-versus-

Covenant Truth Church,

Respondent.

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

BRIEF FOR RESPONDENT

ORAL ARGUMENT REQUESTED

Team No. 8
Counsel for Respondent

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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

Respondent, who was Plaintiff-Appellee below, is Covenant Truth Church. Petitioners, who were Defendants-Appellants below, are the Internal Revenue Service and Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service.

OPINIONS BELOW

The United States District Court of Wythe's opinion granting Respondent's motion for summary judgment and its request for a permanent injunction, finding that Respondent has standing to challenge the Johnson Amendment, and determining that the Johnson Amendment violates the Establishment Clause of the First Amendment, is unreported. R. at 2, 5-6. The opinion for the panel of the United States Court of Appeals for the Fourteenth Circuit affirming the District Court's decision is reported at *Scott Bessent, In His Official Capacity as Acting Commissioner of the Internal Revenue Service, et al. v. Covenant Truth Church,* 345 F.4th 1 (14th Cir. 2025).

JURISDICTIONAL STATEMENT

The Fourteenth Circuit entered judgment on August 1, 2025. Petitioners filed their timely petition for writ of certiorari, which the Court granted on November 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the United States Constitution are relevant to this case: U.S. CONST. art. III, § 2, cl. 1; U.S. CONST. amend I. The following provisions of the Internal Revenue Code are relevant to this case: 26 U.S.C. § 501(c)(3); 26 U.S.C. § 7421(a); 26 U.S.C. § 7428.

STATEMENT OF THE CASE

Factual Background

The Church. The Everlight Dominion is a centuries-old religion with a devoted following. R. at 3. The religion embraces a wide variety of progressive social values and, as a fundamental part of its teachings, requires its churches and their leaders to "participate in political campaigns and support candidates" who align with those values. R. at 3. This requirement includes endorsing candidates who share The Everlight Dominion's values as well as encouraging citizens to donate to and volunteer for political campaigns. R. at 3. Any church or religious leader who fails to follow this requirement is subject to banishment from the religion. R. at 3.

The Everlight Dominion experienced rapid growth in recent years, and Covenant Truth Church ("the Church") is the largest congregation within The Everlight Dominion. R. at 3. This can be attributed to the Church's devout leader, Pastor Gideon Vale, whose efforts have expanded the Church's membership from a few hundred in 2018 to nearly 15,000 in 2024, significantly increasing participation among younger generations as well. R. at 3-4. Pastor Vale leads the Church's regular weekly worship services offered both in-person and by livestream. R. at 4. Pastor Vale also hosts a weekly podcast where he delivers sermons, provides spiritual guidance, and educates members on The Everlight Dominion's teachings. R. at 3-4.

As a result of Pastor Vale's efforts, the Church experienced increased worship service attendance, and his podcast is now the "fourth-most listened to podcast in the State of Wythe and the nineteenth most listened to podcast nationwide" with millions of downloads. R. at 4. Consistent with The Everlight Dominion's requirements, Pastor Vale began to use his podcast as a forum to deliver political messages and encourage members to participate in political campaigns. R. at 4.

Pastor Vale specifically endorses candidates and encourages political participation on behalf of the Church. R. at 4.

The Audit. In January 2024, a special election occurred in the State of Wythe to fill a United States Senate vacancy. R. at 4. Acting on behalf of the Church and in accordance with The Everlight Dominion's requirements, Pastor Vale used his podcast to endorse Congressman Samuel Davis, a political candidate who embraces similar progressive social values as the Church. R. at 4. Pastor Vale used his sermons to explain how Congressman Davis's values aligned with The Everlight Dominion's teachings, and Pastor Vale further announced plans to continue those sermons on the podcast and at the Church's worship services later that year. R. at 4-5.

On May 1, 2024, the Internal Revenue Service ("the IRS") notified the Church that it had been selected for a random audit to ensure its compliance with Section 501(c)(3) and the Johnson Amendment requirements of the Internal Revenue Code. R. at 5. Part of the Internal Revenue Code since 1954, the Johnson Amendment mandates 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; 26 U.S.C. § 501(c)(3). Aware of the Johnson Amendment, Pastor Vale became concerned that the IRS would revoke the Church's Section 501(c)(3) tax-exempt status because of his and the Church's political involvement.

Procedural History

District of Wythe. Because of the impending IRS audit and the potential revocation of the Church's Section 501(c)(3) tax-exempt status, the Church filed a lawsuit in the United States District Court for the District of Wythe on May 15, 2024. The Church sought a permanent injunction against the enforcement of the Johnson Amendment, claiming it violated the

Establishment Clause of the First Amendment because it prohibited "religious organizations and their leaders from adhering to their deeply held religious beliefs," which requires the Church and its members to actively support political candidates whose values align with their faith. R. at 2, 5-6. The District Court granted the Church's motion for summary judgment and its permanent injunction against enforcement of the Johnson Amendment, determining that the Church had standing to challenge it and that the Johnson Amendment was unconstitutional. R. at 2, 6. Acting Commissioner of the Internal Revenue Service Scott Bessent and the IRS appealed. R. at 6.

Fourteenth Circuit. On appeal, the Fourteenth Circuit Court of Appeals affirmed the decision of the United States District Court for the District of Wythe in full. R. at 11. In support of this decision, the Fourteenth Circuit found that the Tax Anti-Injunction Act ("the AIA") did not bar the Church's suit because the Church had no alternative remedy to challenge the Johnson Amendment since the audit had not yet commenced. R. at 6-7. The court further found that the Church satisfied Article III standing because the impending IRS audit created a "substantial risk" of enforcement, which would result in the revocation of the Church's tax-exempt status. R. at 7-8. The court affirmed that the Johnson Amendment violates the Establishment Clause because it mandates the government to prefer religions that do not require political involvement over those that do. R. at 8-11. It reasoned that the Johnson Amendment disregards the history and tradition of the United States, in which religion and politics are intertwined, and that it does not maintain the separation of church and state. R. at 8-10. Petitioners followed with this appeal.

SUMMARY OF THE ARGUMENT

I.

The AIA does not bar the Church's pre-enforcement suit against the IRS because the Church has no alternative legal remedy to challenge the unconstitutional conditions placed upon its religious exercise and speech. The AIA focuses on suits initiated for the purpose of restraining the collection of taxes and will generally bar suits of aggrieved parties that have access to alternative remedies. However, the AIA does not bar suits brought to contest unconstitutional actions by a government agency. Here, the purpose of the Church's suit is to contest the unconstitutionality of the Johnson Amendment, not to restrain the collection of taxes. Additionally, the Church does not have access to an alternative remedy. The Church cannot use the normal appeals process available after the IRS proposes an adverse tax classification of an organization because the audit of the Church has not commenced as of this suit. Therefore, because the Church's only remedy to contest the unconstitutionality of the Johnson Amendment is the present suit against the IRS, the AIA does not bar this suit.

II.

The Church satisfies Article III standing requirements to bring a pre-enforcement challenge against the IRS. The Church presently faces an imminent and concrete future injury that is not speculative; that injury is directly caused by an impending IRS audit, and the grant of a permanent injunction prohibiting enforcement of the Johnson Amendment would redress the Church's imminent injury. Because the Church can demonstrate a realistic danger of a direct, imminent injury resulting from the IRS's impending enforcement of the Johnson Amendment against it, the Church's suit is ripe. There is a substantial risk that harm will occur, which allows the Church to proceed with its pre-enforcement suit. The Church satisfies the requirements for a pre-enforcement suit because it intends to engage in conduct with an affected constitutional interest, that conduct is

directly proscribed by the Johnson Amendment, and the threat of enforcement of the Johnson Amendment against the Church is substantial. Furthermore, the IRS's consent decree does not defeat the Church's standing because consent decrees are not binding on nonparties to the original suit, the consent decree's scope is too narrow, and consent decrees cannot override federal law. Thus, the Church satisfies the requirements of Article III standing to bring this pre-enforcement suit.

Therefore, this Court should affirm the decision of the Fourteenth Circuit because the AIA does not bar Respondent's suit and because Respondent satisfies the standard for Article III standing.

III.

The Johnson Amendment is unconstitutional because it violates the Establishment Clause of the First Amendment. The Johnson Amendment disregards the history and tradition of the intertwining of politics and religion in the United States, such as through legislative prayers, and instead mandates a total separation between the two. The Johnson Amendment also causes excessive government entanglement with religion by allowing the IRS to micromanage nonprofit organizations to determine whether they engage in politics, thereby risking the revocation of their tax-exempt status. Furthermore, the Johnson Amendment is an unconstitutional condition that forces the Church to choose between following its religion and retaining its tax-exempt status, thereby violating both the Establishment and Free Exercise Clauses because of its hostility toward religion and its unequal application as applied to the Church.

Therefore, this Court should affirm the decision of the Fourteenth Circuit that the Johnson Amendment is unconstitutional and a violation of the Establishment Clause.

ARGUMENT

I. THE AIA DOES NOT BAR THE CHURCH'S SUIT.

The AIA does not bar the Church's suit because the Church has no alternative legal remedy to challenge the unconstitutional restrictions placed upon its religious speech. The AIA generally 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). Normally, when the IRS proposes an adverse tax classification of an organization following an audit or during an initial review, the aggrieved party's recourse is to file an appeal with the IRS. 26 U.S.C. § 7428. Under the Internal Revenue Code, if that appeal is unsuccessful, then the aggrieved party may seek declaratory relief in federal court. 26 U.S.C. § 7428. However, that declaratory judgment regarding an aggrieved party's tax status requires an "actual controversy," typically triggered by a proposed or final adverse IRS determination. 26 U.S.C. § 7428.

In *South Carolina v. Regan*, the Supreme Court held that "Congress did not intend the [AIA] to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." 465 U.S. 367, 378 (1984). The Court ultimately ruled in *Regan* that the AIA did not bar the plaintiff's suit because the plaintiff was "unable to utilize any statutory procedure to contest the constitutionality" of the tax law. *Id.* at 380. Only if an alternative remedy for the plaintiff exists will the AIA bar the plaintiff's suit. As such, the AIA does not bar suits where the primary purpose is to contest unconstitutional agency conduct or "unconstitutional delay" rather than the assessment or collection of a tax. *Z St. v. Koskinen*, 791 F.3d 24, 32 (D.C. Cir. 2015). Rather, the AIA only applies when Congress has provided an avenue for an aggrieved party to litigate its claims. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 747 (1974) (holding that because alternative avenues of review procedures existed for the petitioner to litigate its claim, the petitioner's claim was barred from judicial litigation by the AIA). Furthermore, in *Z St. v. Koskinen*, the D.C. Circuit

held that a First Amendment challenge to IRS procedures was not barred by the AIA, and that the AIA is not a hurdle when the purpose of a case is to prevent unconstitutional treatment, such as viewpoint discrimination, rather than to restrain the collection of money. 791 F.3d at 32.

In the present case, the Church does not have an alternative remedy to challenge the Johnson Amendment, and the Church's suit is for unconstitutional treatment, not restraining the collection of money; therefore, the AIA does not bar the Church's suit. Because the Church filed this suit in response to a proposed IRS audit of the organization, the Church's classification as a Section 501(c)(3) organization currently remains intact. R. at 7. As such, the Church cannot seek a declaratory judgment regarding its Section 501(c)(3) status by invoking 26 U.S.C. § 7428 because there is no "actual controversy" regarding its classification for the statute to recognize. 26 U.S.C. § 7428. The Church is not seeking to stop the collection of an assessed tax; rather, it is seeking to enjoin the enforcement of an unconstitutional policy that requires it to choose between retaining its tax-exempt status and adhering to its deeply held religious obligations. *Z. St.*, 791 F.3d at 32. The explicit purpose of the Church's suit is to challenge the Johnson Amendment's unconstitutional limitation barring the Church from following its religious beliefs and engaging in politics. R. at 2. Interpreting the AIA too broadly would prevent the Court from reviewing claims of the government attempting to suppress "dangerous ideas" by enforcing the tax code. *Id.* at 30.

Furthermore, the IRS's argument that the AIA bars the Church's present suit against it will fail because the Church has no alternative legal remedy to challenge the Johnson Amendment's unconstitutional restrictions. A pre-enforcement challenge to tax provisions is permitted when the plaintiff demonstrates that its claim is (1) guaranteed success on the merits and (2) that it will suffer irreparable harm absent an injunction. *Alexander v. "Ams. United," Inc.*, 416 U.S. 752 (1974). Citing *Branch Ministries v. Rossotti*, which found that the Johnson Amendment does not

violate the First Amendment, the petitioner may claim that the Church cannot prove it will succeed on the merits of its Establishment Clause claim. 211 F.3d 137, 144 (D.C. Cir. 2000).

However, the Church can satisfy the requirements for the AIA not to bar its pre-enforcement suit. First, the decision in *Branch Ministries* is not binding on this Court and is factually distinct from the present case. *Branch Ministries*, 211 F.3d at 144. As will be discussed in subsection III, the Church can demonstrate the guaranteed success of its suit on the merits that the Johnson Amendment violates the Establishment Clause. Second, the Church's case can be distinguished from others where the suit was precluded by the AIA because alternative legal remedies were available. *See Bob Jones Univ.*, 416 U.S. at 746 ("Alternatively, petitioner may pay income taxes . . . exhaust the Service's internal refund procedures, and then bring suit for a refund. These review procedures offer petitioner a full . . . opportunity to litigate the legality of the Service's revocation of tax-exempt status"). These potential options are not available for the Church because its classification as a Section 501(c)(3) organization remains intact. R. at 7. Presently, the Church is in a remediless position, with no option except to suffer an adverse IRS determination and later appeal it.

Ultimately, the AIA does not bar the Church's suit against the IRS because the Church does not have access to an alternative remedy, and the Church's suit challenges the unconstitutionality of the Johnson Amendment, not the collection of money. Therefore, this Court maintains jurisdiction to hear the merits of the case.

II. RESPONDENT SATISFIES THE STANDARD FOR ARTICLE III STANDING TO BRING THIS PRE-ENFORCEMENT SUIT, ITS INJURY IS NOT SPECULATIVE, AND THE IRS CONSENT DECREE DOES NOT DEFEAT ITS STANDING.

The Church satisfies the requirements of Article III standing to bring its suit against the IRS. Under Article III of the United States Constitution, federal courts can only exercise "judicial Power" for "Cases" and "Controversies." U.S. CONST. art. III, § 2, cl. 1.

A. Article III Standing.

For a lawsuit to constitute a case within the meaning of Article III, the plaintiff must have standing to sue. In demonstrating standing, a plaintiff must answer a basic question: "What's it to you?" Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 882 (1983). Essentially, a plaintiff must show that he or she possesses a personal stake in the dispute and is not a mere bystander. Supreme Court cases have established that the "irreducible constitutional minimum of standing contains three elements[:]" (1) an injury in fact suffered by the plaintiff, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Once a plaintiff satisfies these three elements, they have the requisite standing under Article III to bring a suit. *Id.*

First, "the plaintiff must have suffered an 'injury in fact[,]'" which is "an invasion of a legally protected interest" that is both "(a) concrete and particularized" as well as "(b) 'actual or imminent, not 'conjectural' or 'hypothetical'[.]" *Id.* at 560 (citations omitted). In other words, the plaintiff must be specifically and individually affected by the injury, and that injury must have actually occurred or be sufficiently certain to occur in the future. *Id.* at 560. An injury in fact is not limited to physical harm as "[m]onetary costs are of course an injury" that qualify as an injury in fact. *United States v. Texas*, 599 U.S. 670, 676 (2023).

Here, the potential loss of the Church's tax-exempt status because of the Johnson Amendment qualifies as an injury in fact that is imminent, concrete, and particularized. The religious doctrine of The Everlight Dominion mandates political participation as a core component of faith, and noncompliance with that command results in banishment of the nonconforming member. R. at 3. Following this command, Pastor Vale and the Church actively endorsed Congressman Davis, thereby violating the Johnson Amendment. R. at 4. Because the Church

participated in politics in violation of the Johnson Amendment, it now faces the potential revocation of its tax-exempt status in the impending IRS audit.

As a result, the Johnson Amendment presents the Church with an ultimatum: either comply with its religious obligations by participating in politics or forgo those requirements to preserve its tax-exempt status. R. at 2. The injury the Church suffers is that it must choose between following its religion and engaging in politics or rejecting that core component of its religion to preserve its tax-exempt status. R. at 2. That injury is imminent because the IRS notified the Church on May 1, 2024, that it was selected for a random audit to review its compliance with the Johnson Amendment. R. at 5. Although the District Court of Wythe and the Fourteenth Circuit granted a permanent injunction against enforcement of the Johnson Amendment, an IRS audit remains possible unless this Court also grants the injunction. R. at 5, 11. Therefore, the constitutionally impermissible choice that the Johnson Amendment forces the Church to make qualifies as an imminent, concrete, and particularized injury in fact. *Lujan*, 504 U.S. at 560 (citations omitted).

In addition to an injury in fact, Article III standing also requires the plaintiff to establish causation and redressability. *Lujan*, 504 U.S. at 560-61 (citations omitted). Causation requires showing that "the injury was likely caused by the defendant." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). Redressability requires showing that the injury would likely be redressed by judicial relief. *FDA v. All. for Hippocratic Medicine*, 602 U.S. 367, 381 (2024). Causation and redressability are "often flip sides of the same coin[;]" therefore, if the defendant's action causes an injury, then "enjoining the action or awarding damages for the action will typically redress that injury." *Id.*

In this case, causation is satisfied because the IRS directly caused the Church's imminent and ongoing injury by notifying the Church of the impending audit and initiating the audit process.

See Diamond Alt. Energy, LLC v. EPA, 606 U.S. 100, 114 (2025) ("When a plaintiff is the 'object' of a government regulation, there should 'ordinarily' be 'little question' that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff's injuries."). Only after the IRS selected and notified the Church of the upcoming audit was the Church's tax-exempt status threatened because of the Johnson Amendment. R. at 5. Without the potential IRS audit of its Section 501(c)(3) compliance, the Church's tax-exempt status would not be threatened. R. at 5. Therefore, the causation requirement is satisfied because the Church's injury was directly caused by the IRS's conduct.

Furthermore, redressability is satisfied because a favorable decision by this Court would eliminate the imminent threat of the injury posed by the Johnson Amendment. First, enjoining enforcement would prevent the IRS from proceeding with its audit, thereby removing the Church from its dilemma of either following its religion or disregarding it to preserve its tax-exempt status. R. at 3. Second, invalidating the Johnson Amendment would eliminate the statutory basis for revoking the Church's tax-exempt status by removing the threat of enforcement of the Johnson Amendment by the IRS against the Church. R. at 5. Third, a declaration that the Johnson Amendment is unconstitutional would protect the Church's religious exercise by removing the legal prohibition on political participation. R. at 2. Thus, the redressability is satisfied because the Church's imminent injury would be directly eliminated by a favorable decision from this Court granting the permanent injunction the Church requested. R. at 5.

Therefore, causation and redressability are both satisfied because the IRS's audit and potential enforcement of the Johnson Amendment directly caused the Church's imminent injury, and enjoining the enforcement would redress the Church's injury by allowing it to fulfill its religious obligations without risking loss of tax-exempt status.

B. Pre-Enforcement Review.

Aside from core Article III standing, a plaintiff's suit must also be "ripe[,]" meaning it is not dependent on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Trump v. New York*, 592 U.S. 125, 131 (2020) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). The doctrines of "standing and ripeness 'originate' from the same Article III limitation" on judicial power to only extend to cases and controversies. *Susan B. Anthony List v. Driehaus* 573 U.S. 149, 157 n.5 (citation omitted). In some cases, such as the present one, Article III standing and ripeness issues "boil down to the same question[;]" therefore, the two issues can be analyzed together because of the substantial overlap between them. *Id.* (citations omitted). Here, the overlap between standing and ripeness centers on whether the Church's injury is "actual or imminent, not 'conjectural' or 'hypothetical'" because the Church's injury is the imminent threat of future harm, not present harm. *Lujan*, 504 U.S. at 560 (citations omitted).

When a plaintiff "demonstrate[s] a realistic danger of sustaining a direct injury as a result of [a policy's] operation or enforcement," he or she need not await "consummation of threatened injury to obtain preventive relief." *Trump*, 592 U.S. at 136. However, a plaintiff must show that the "threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur" to pursue a pre-enforcement challenge. *Susan B. Anthony List*, 573 U.S. at 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013)). Therefore, a party can challenge a statute before enforcement when it demonstrates: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) its intended future conduct is arguably proscribed by the policy in question, and (3) the "threat of future enforcement of the [challenged policies] is substantial." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citing *Susan B. Anthony List*, 573 U.S. at 161-64).

1. The Church intends to engage in conduct with an affected constitutional interest.

The Church satisfies the first requirement for a pre-enforcement challenge because it intends to engage in ongoing religious expression protected by the First Amendment, a paramount constitutional interest. When the deprivation of a plaintiff's First Amendment rights is at stake, the plaintiff "need not wait for the damage to occur before filing suit." *Mahmoud v. Taylor*, 606 U.S. 522, 560 (2025). Furthermore, this Court previously held that chilled speech alone is a sufficient injury for standing. *Dombrowski v. Pfister*, 380 U.S. 479, 486-87 (1965). A plaintiff satisfies injury in fact where he or she "allege[s] an intention to engage in a course of conduct arguably affected with a constitutional interest, but [which is] proscribed by a statute[,]" and a credible threat of enforcement exists. *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979).

In this case, the conduct that the Church intended to engage in, as required by The Everlight Dominion, involves multiple core constitutional interests: the free exercise of religious teachings and obligations, free speech over religious and political expression, and church autonomy in controlling its own doctrine and ministry. R. at 3-5. The Church demonstrated a concrete and sincere intention to engage in conduct that falls under First Amendment protection, both presently and in the future. First, Pastor Vale endorsed a political candidate, Congressman Davis, on behalf of the Church and publicly announced his intention to continue delivering sermons on his podcast and at worship services, explaining why Congressman Davis's ideals aligned with the Church's. R. at 4-5. Pastor Vale's endorsement of Congressman Davis and the further explanations of why his values align with the faith's teachings are not just a choice, but a requirement of The Everlight Dominion that will subject Pastor Vale to banishment if he disregards it. R. at 3.

Second, the Church's religious obligation to engage in political advocacy creates an ongoing injury that forces the Church between a rock and a hard place. The Everlight Dominion

religion "requires its leaders and churches to participate in political campaigns and endorse political candidates that align with The Everlight Dominion's" values; however, failure to abide by this requirement results in banishment from the faith. R. at 3. For the Church and Pastor Vale, political advocacy is a matter of religious exercise and adherence to the faith, not optional conduct. R. at 3. Thus, there is sufficient evidence that the Church intends to engage in conduct affected by a constitutional interest.

2. The Church's intended conduct is proscribed by the Johnson Amendment.

The second element for pre-enforcement challenges is also satisfied because the Johnson Amendment directly and unambiguously prohibits the religious conduct that the Church intends to engage in. The Johnson Amendment prohibits non-profit organizations from "participating in, or intervening in … any political campaign on behalf of (or in opposition to) any candidate for public office[,]" lest that organization lose its tax-exempt status. 26 U.S.C. § 501(c)(3). Here, Pastor Vale engaged in an activity that is directly prohibited by the Johnson Amendment, threatening the Church's Section 501(c)(3) status because of the impending IRS audit. R. at 5.

Pastor Vale explicitly endorsed Congressman Davis on behalf of the Church during his podcast and encouraged his listeners to vote for, volunteer with, and donate to Congressman Davis's campaign. R. at 4-5. Pastor Vale further announced his intention to give sermons at the Church, explaining "why Congressman Davis's political stances aligned with the teachings of The Everlight Dominion." R. at 5. These sermons, which contain political endorsements, are delivered on behalf of the Church to a national audience through official Church platforms and Pastor Vale's podcast. R. at 5. The Johnson Amendment's limitations force the Church to choose between violating its religious doctrine and incurring serious financial penalties. Therefore, the Church's

conduct falls squarely within the plain text of the Johnson Amendment, satisfying the second pre-enforcement suit element.

3. The threat of future enforcement of the Johnson Amendment against the Church is substantial.

In pre-enforcement challenges, the plaintiff must demonstrate that there is a "substantial risk" that its tax classification will be revoked by the government. *Susan B. Anthony List*, 573 U.S. at 158. Here, the threat of the IRS enforcing the Johnson Amendment against the Church, thereby causing the Church to lose its tax-exempt status, is substantial. The IRS notified the Church of the impending audit, the Church has already violated the Johnson Amendment, and it intends to continue doing so in compliance with its religious obligations. R. at 5. The IRS previously enforced the Johnson Amendment against churches, and, as the Fourteenth Circuit noted, the IRS's consent decree does not reduce the concrete and imminent risk of enforcement. R. at 7 n.2. These threats amount to a real, imminent risk of injury, not a speculative fear of one.

The Church's present pre-enforcement challenge is similar to the challenge in *Susan B. Anthony List*. In that case, this Court held that a plaintiff has standing when a state commission finds probable cause that the plaintiff violated a statute, even when no enforcement action has been undertaken. *Id.* at 159-61. The Court explained that the prospect of enforcement proceedings satisfies the imminence requirement because the plaintiff will incur costs of litigating the proceeding and faces the risk of an adverse order. *Id.* at 165-66. Finding that the risk of enforcement was "substantial," because the State had enforced the statute in the past and did not disavow enforcement in the future, the Court held that those injuries were sufficiently imminent to satisfy Article III. *Id.* at 164-165.

In the present case, the IRS specifically selected the Church for an audit and notified it of the impending audit to review its compliance with the Johnson Amendment. R. at 5. This audit

represents the first step in an enforcement proceeding that may result in revocation of the Church's tax-exempt status. While similar to the facts of *Susan B. Anthony List*, the threat is even more serious here. In *Susan B. Anthony List*, the plaintiff planned future prohibited speech but had not yet engaged in the speech at the time of the pre-enforcement challenge. *Id.* at 164-65. Here, the Church has already engaged in the challenged speech as required by its religion, intends to continue doing so, and is currently under active government investigation. R. at 4-5. Pastor Vale's endorsement of Congressman Davis on behalf of the Church directly conflicts with the prohibition mandated by the Johnson Amendment. R. at 4-5.

Furthermore, the impending IRS audit alone establishes the Church's injury, and past enforcement demonstrates the threat is not speculative. When a federal agency threatens to file an enforcement suit, the regulated party faces at least two concrete and imminent injuries. First, there is a substantial risk that the party will bear the burdens of an enforcement action against it. This Court has recognized that the threatened initiation of enforcement proceedings itself constitutes an actionable injury, even if the injury has not yet occurred. *See Ex parte Young*, 209 U.S. 123, 158 (1908) (holding that the threat of enforcement of a statute against a plaintiff is equivalent to other threatened injuries, such as a trespass to property). Second, there is a substantial risk that enforcement will result in an adverse order, which this Court has established is sufficient to satisfy Article III. *See Babbitt*, 442 U.S. at 318 n.13 ("We think that the prospect of issuance of an administrative cease-and-desist order . . . or a court-ordered injunction . . . against such prohibited conduct provides substantial additional support for the conclusion that appellees' challenge to the publicity provision is justiciable."). In pre-enforcement challenges, this Court has recognized standing when a statute, aimed directly at a plaintiff, requires costly compliance and imposes severe penalties for noncompliance. *See Virginia v. Am. Booksellers Ass'n,* 484 U.S. 383, 393

(1988) (holding that the plaintiffs had standing because they had "alleged an actual and well-founded fear that the law will be enforced against them.").

Here, enforcement of the Johnson Amendment against the Church would result in the revocation of its tax-exempt status, causing significant concrete monetary harm. *See United States*, 599 U.S. at 676 ("Monetary costs are of course an injury."). The IRS has enforced the Johnson Amendment against churches before, resulting in the loss of their tax-exempt status. *See Branch Ministries*, 211 F.3d at 145 (holding that "the revocation of the Church's tax-exempt status" through the IRS's enforcement of the Johnson Amendment "neither violated the Constitution nor exceeded the IRS's statutory authority."). Thus, the prior enforcement of the Johnson Amendment against religious organizations engaged in similar conduct as the Church proves the "substantial risk" of future enforcement facing the Church. *Susan B. Anthony List*, 573 U.S. at 164-65.

C. The Church's Injury Is Not Speculative.

The IRS may argue that the Church's injury is speculative and does not satisfy the requirement of an injury in fact to be "actual or imminent[;]" therefore, the Church does not have standing to initiate the pre-enforcement suit. *Lujan*, 504 U.S. at 560 (citations omitted). However, the Church's injury is not speculative because the IRS already initiated enforcement against the Church through the impending audit, the Church has already engaged in conduct prohibited by the Johnson Amendment, and the continued enforcement of the Johnson Amendment against the Church violates the Constitution. A plaintiff does not need to "demonstrate that it is literally certain that the harms they identify will come about" to establish standing. *Clapper*, 568 U.S. at 441 n.5 (2013). Additionally, when First Amendment rights are at stake, courts apply this standard with heightened sensitivity because the threat of enforcement alone can chill protected expression. *Dombrowski*, 380 U.S. at 486–87.

The present case does not involve hypothetical or speculative future enforcement against the Church. The IRS notified the Church that it was selected for a random audit, which includes a review of its compliance with the Johnson Amendment. R. at 5. This audit is the first step in a formal enforcement process that will require the Church to cease compliance with religious obligations or suffer the revocation of its tax-exempt status. R. at 2. This Court has previously recognized that the threatened initiation of enforcement proceedings itself constitutes a concrete injury. *See Ex parte Young*, 209 U.S. at 158 (holding that the threat of enforcement of a statute against a plaintiff is equivalent to other threatened injuries, such as a trespass to property). The burdens of responding to an investigation, ceasing religious exercise, and facing possible revocation of its tax-exempt status are concrete, immediate, and substantial harms facing the Church. The IRS cannot simultaneously argue that enforcement is unlikely while actively investigating the Church's conduct to determine whether to enforce the Johnson Amendment against it. R. at 5. The IRS's decision not to enforce a rule in certain circumstances is different from stating that the rule will not be enforced in other circumstances. So long as the Johnson Amendment remains enforceable, the threat of IRS enforcement against the Church is substantial.

Similarly, the IRS might argue that the lack of past enforcement of the Johnson Amendment minimizes the potential threat, echoing Judge Marshall's dissent from the Fourteenth Circuit's opinion. R. at 14. However, the IRS enforced the Johnson Amendment against churches before, including revoking tax-exempt status for political advocacy. *See Branch Ministries*, 211 F.3d at 145 (holding that "the revocation of the Church's tax-exempt status" through the IRS's enforcement of the Johnson Amendment "neither violated the Constitution nor exceeded the IRS's statutory authority."). When a statute has been enforced in the past, and the government does not disavow future enforcement, the risk of injury is substantial rather than speculative. *See Susan B.*

Anthony List, 573 U.S. at 165-66 (holding that the prospect of enforcement proceedings satisfied the imminence requirement for standing because the plaintiff would incur costs litigating the proceeding and faced the risk of an adverse order). The present case does not involve purely conjectural harm because the IRS has already initiated an audit, and even if the IRS disavowed enforcement, it would not do so because of the Church's specific conduct in this case. R. at 5. Therefore, because the IRS already initiated an audit and the Johnson Amendment remains enforceable, the threat of enforcement against the Church is not a speculative injury.

D. The IRS's Consent Decree Does Not Defeat Standing.

Additionally, the IRS will likely argue that, as Judge Marshall did in his dissenting opinion from the Fourteenth Circuit's decision, the IRS's consent decree minimizes the threat of enforcement of the Johnson Amendment and defeats the Church's standing to bring its suit. R. at 14. However, the consent decree does not minimize the threat of enforcement sufficiently to defeat the Church's standing or limit the Johnson Amendment's reach. It also does not bind future IRS officers, amend Section 501(c)(3), or preclude audits outside of its narrow terms. Instead, the consent decree encompasses a fact-specific, limited settlement that cannot bind future enforcement decisions or override a federal statute. When analyzing a consent decree, its scope "must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971). Consent decrees may not be enforced in a manner that overrides statutory protections absent clear authorization. *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 585 (1984).

1. The existing IRS consent decree is not binding on nonparties to the original consent decree.

The primary argument the petitioners will make is that the IRS consent decree defeats the Church's standing because the Church cannot have a "concrete and particularized" injury if the

threat of enforcement of the Johnson Amendment against the Church is not "actual or imminent." *Susan B. Anthony List*, 573 U.S. at 148. The consent decree states that the IRS 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." *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). The dissent in the Fourteenth Circuit's opinion relied upon this consent decree to claim that the Church cannot not satisfy Article III standing. R. at 14.

However, the mere existence of this consent decree does not defeat the Church's standing. This Court previously held that "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." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975). Consent decrees are, in and of themselves, agreements between the parties to the specific decree; therefore, "consent decrees draw their force from 'the agreement of the parties, rather than the force of the law upon which [a] complaint was originally based.'" *Mi Familia Vota v. Fontes*, 152 F.4th 1153, 1159 (9th Cir. 2025) (quoting *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 522 (1986)). Because consent decrees draw their power from agreements between parties, applying a consent decree made by a government agency "beyond the case in which [it was] entered violates the strictures of Article III and raises grave separation of powers concerns." *Id.* at 1160.

Here, the petitioners' argument would do exactly that: apply a pre-existing IRS consent decree to a nonparty of the original consent decree. The Church was neither a party to nor involved in the case in which the IRS consent decree against enforcement of the Johnson Amendment originated. The Church's suit is a new, separate lawsuit against the IRS, distinct from the original suit, in which the IRS stated it would not enforce the Johnson Amendment against houses of

worship that speak "in good faith" to their congregations on "matters of faith." *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad.*, 2025 WL 2555876. As this Court established in *Blue Chip*, consent decrees are not enforceable by nonparties to the original suit. 421 U.S. at 750. Therefore, the IRS consent decree is not enforceable against the Church because the Church was not a party to the original suit in which it was issued. *See Antonelli v. New Jersey*, 419 F.3d 267, 273 (3d Cir. 2005) (finding the government lacked standing to enforce a prior consent decree because it was not a party to the consent decree).

Moreover, "consent decrees are 'not intended to operate in perpetuity'" because "case-by-case resolution and accountability is the norm from the perspective" of the Constitution. *Chisom v. Louisiana ex rel. Landry*, 116 F.4th 309, 316 (5th Cir. 2024) (citations omitted). The Ninth Circuit held that enforcing consent decrees beyond the original agreement violates the Constitution and that "consent decrees subvert" the "strictly republican" model of government the founders envisioned. *Mi Familia*, 152 F.4th at 1159 (quoting *The Federalist No. 39* (James Madison)). This standard for consent decrees has been reflected by the Fifth Circuit as well. *See Chisom*, 116 F.4th at 319 ("Interpreting a fully-fulfilled consent decree to operate in perpetuity violates the rule . . . that control of core legislative functions must be returned to the State as soon as possible."). In the present case, applying the existing IRS consent decree to the Church's suit would violate the case-by-case standard articulated by the circuit courts. *Id.* at 316. As the Fourteenth Circuit rightly noted, "[b]ased on the facts of *this* case, [petitioners] cannot be certain that there is a presumption against enforcement" because of the prior consent decree. R. at 7 n.2 (emphasis added). Therefore, the pre-existing IRS consent decree regarding enforcement of the Johnson Amendment is not binding on the Church in its present lawsuit because the Church was not a party to the original suit in which the consent decree was announced.

2. The consent decree is narrow and does not cover the Church's conduct.

Furthermore, as the Fourteenth Circuit noted, the language of the IRS consent decree is narrow, ambiguous, and would likely not affect the Church for several reasons. R. at 7; *See e.g.*, *Mi Familia*, 152 F.4th at 1160 (holding that applying consent decrees to future cases falls outside judicial power because the decree is limited to resolving the specific dispute between the parties); *Aiken v. City of Memphis*, 37 F.3d 1155, 1168 (6th Cir. 1994) (same). First, Pastor Vale's podcast reaches millions of listeners across the country, not just the Church's congregation. R. at 4. Second, the sermons include explicit endorsements and campaign advocacy for Congressman Davis, which may exceed the scope of the existing consent decree as beyond "matters of faith." R. at 4-5; *See* U.S. Opp. to Mot. to Intervene, *Nat'l Religious Broad.*, 2025 WL 2555876. Third, the pending IRS audit further underscores the ambiguity of the consent decree, as the audit remains possible if this Court does not grant the permanent injunction sought by the Church. R. at 5.

For these reasons, the existence of the consent decree does not eliminate the substantial risk of enforcement of the Johnson Amendment against the Church. Rather, the uncertainty surrounding potential enforcement confirms the substantial risk, as the only true elimination of the risk would be the cancellation of the audit. The Fourteenth Circuit noted that the dissent interpreted the consent decree "too broadly" to claim it eliminated the risk of enforcement against the Church. R. at 7 n.2. The IRS plans to conduct the audit if not prohibited by this Court's ruling, confirming the remaining uncertainty surrounding the substantial risk of enforcement of the Johnson Amendment. *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 156 (1967) (holding that the object of a government inquiry may bring a pre-enforcement suit seeking prospective relief against the government when it threatens or is about to commence proceedings against them); *see also Babbitt*, 442 U.S. at 312 (same). Accepting the IRS's argument that the consent decree defeats the

Church's standing would create unconstitutional uncertainty and permit constitutional rights to depend upon formal agreements rather than codified laws.

3. A consent decree cannot override a federal law.

Moreover, consent decrees may not be enforced in a manner that overrides statutory protections absent clear authorization. *Firefighters Local Union No. 1784*, 467 U.S. at 585. The IRS's reliance on the consent decree asks the Court to treat a negotiated settlement as if it were statutory law. Despite the existence of the consent decree, the Johnson Amendment remains codified at 26 U.S.C. § 501(c)(3) and remains operative law. Because the IRS's consent decree is a settlement and not a statutory law, there is no assurance to the Church that the IRS would not disregard the consent decree and enforce the Johnson Amendment against the Church anyway. *See Texas v. New Mexico*, 602 U.S. 943, 965 (2024) (holding that a consent decree resolving a dispute under a statutory law cannot preclude the government from pursuing its claims against a party because it would cut off remedies to which the government might be entitled).

The Fourteenth Circuit highlighted that although Congress had multiple opportunities to create an exception to the Johnson Amendment that would "allow religious organizations to actively participate in political campaigns[,]" Congress repeatedly declined to create one. R. at 2-3. The IRS cannot, through a settlement agreement, create exceptions that Congress itself refused to incorporate into a statutory law. The consent decree reflects a current IRS enforcement policy, but that policy is not binding on nonparties to the original agreement.

Ultimately, the Church satisfies the requirements of Article III standing to bring its pre-enforcement suit against the IRS, and the existence of the IRS consent decree does not defeat the Church's standing or make its injury speculative. Therefore, this Court should affirm the decision of the Fourteenth Circuit and find that the Church satisfies Article III standing to bring this suit.

III. THE JOHNSON AMENDMENT IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The Religion Clauses of the First Amendment state that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. Throughout United States history, the interpretation of these clauses has been a subject of constant debate, and the Court itself has oscillated on the clauses' meanings. However, the current jurisprudence on the First Amendment Religion Clauses is that the Clauses work in tandem and serve "'complementary' purposes, not warring ones where one Clause is always sure to prevail" against the other. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022). Therefore, the Establishment Clause can be understood in the context of the Free Exercise Clause.

The "clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). Furthermore, the government "must be neutral when it comes to competition between sects" of religion. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). However, since the ratification of the Constitution and the Bill of Rights, there has been constant debate over what the language "respecting an establishment of religion" means. Some scholars believe this was intended to prevent the establishment of a State-sponsored religion like the Church of England, while others adhered to the doctrine of a separation of Church and State, requiring no governmental influence over religious institutions.[1] Regardless, the Court has established that the current standard is "whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so." *Walz v. Tax Com. of New York*, 397 U.S. 664, 669.

[1]The common position on this debate today is that "because government cannot possibly be evenhanded in its distribution of respect, endorsement, and support, the only sensible constitutional solution for the twenty-first century is some form of separationist principle designed to keep government from taking positions on matters of religious faith, celebration, and observance." Ira C. Lupu, *Government Messages and Government Money: Santa Fe, Mitchell v. Helms, and the Arc of the Establishment Clause*, 42 Wm. & Mary 771, 818 (2001) (discussing the modern doctrine on separation of church and state).

The Court attempted multiple times to synthesize the Establishment Clause analysis into a single test, the culmination of which was the *Lemon* Test, outlining three factors for whether the Establishment Clause was violated: "[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster 'an excessive government entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (citations omitted). However, the *Lemon* Test was problematic, and the Court later stated in *Kennedy* that because of the "'shortcomings' associated with this 'ambitiou[s],' abstract, and ahistorical approach to the Establishment Clause . . . this Court long ago abandoned *Lemon* and its endorsement test offshoot." *Kennedy*, 597 U.S. at 534 (quoting *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 49 (2019)). Alternatively, the Court in *Kennedy* stated that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Id.* at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). The test outlined in *Kennedy* is the modern Establishment Clause test used by the Court to determine whether a law "respect[s] an establishment of religion." *Id.* At 535; U.S. CONST. amend. I.

A. The Johnson Amendment Violates the Establishment Clause Because It Disregards the Intertwined History and Tradition of Politics and Religion in the United States.

As this Court stated in *Kennedy*, "[a]n analysis focused on original meaning and history . . . has long represented the rule rather than some 'exception' within the Court's Establishment Clause jurisprudence." *Kennedy*, 597 U.S. at 510 (quoting *Town of Greece*, 572 U.S at 575). Throughout United States history, there has always been a close, intertwined connection between religion and politics, which was a core component of the Founders' beliefs. George Washington stated that "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and

citizens." President George Washington, *Washington's Farewell Address: To the People of the United States* (Sept. 19, 1796), in S. Doc. No. 106–21, 2000.

One specific example of a traditional intersection between politics and religion in United States history is legislative prayers. "As practiced by Congress since the framing of the Constitution, legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society." *Town of Greece*, 572 U.S. at 575. This practice reflects the deep tradition and historical ties between religion and politics in the United States, which the Johnson Amendment's demand for no political involvement by religious organizations completely disregards.

Legislative prayers are an example of religion and politics being intertwined throughout the history and tradition of the United States; therefore, the Johnson Amendment's requirement of separation violates a long-established practice deemed permissible under the Establishment Clause. First in *Marsh v. Chambers* and later in *Town of Greece v. Galloway*, a legislative prayer was challenged as being a violation of the Establishment Clause because it amounted to an establishment of religion. *Marsh v. Chambers*, 463 U.S. 783, 785 (1983); *Town of Greece*, 572 U.S. at 573-74. However, in both cases, the Court stressed the historical importance of legislative prayers and how the practice of "opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country." *Marsh*, 463 U.S. at 787; *Town of Greece*, 572 U.S at 578. Emphasizing that "[f]rom colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom[,]" the Court held in both cases that legislative prayers complied with the Establishment Clause and did not amount to an establishment of religion. *Marsh*, 463 U.S. at 787; *Town of Greece*, 572 U.S at 591-92. Thus, legislative prayers

are a clear example that religion and politics are uniquely intertwined in the history and tradition of the United States. *Marsh*, 463 U.S. at 787; *Town of Greece*, 572 U.S at 591-92.

As a result, the Johnson Amendment's command of absolute separation between religion and politics disregards over two hundred years of history and tradition regarding the relationship between religion and politics. Many political figures in American history stated that their religions obligated them to be involved in the political process, and the Fourteenth Circuit acknowledged this through quotes by Charles Finney and Martin Luther King, Jr. *See* Charles Finney, *Systematic Theology*, Lecture XX: Human Government (1878) ("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"); *see also* Martin Luther King, Jr., *Message for the National Council of Churches* (1957) ("every Christian is confronted with the basic responsibility of working courageously for a non-segregated society . . . [t]he churches are called upon to recognize the urgent necessity of taking a forthright stand on this crucial issue").

In *Lemon*, the Court itself acknowledged this aspect of American politics, commenting that "'adherents of particular faiths and individual churches frequently take strong positions on public issues.' We could not expect otherwise, for religious values pervade the fabric of our national life." *Lemon*, 403 U.S. at 623 (quoting *Walz*, 397 U.S. at 670). Therefore, the Johnson Amendment's prohibition of a religious organization engaging in politics ignores over two hundred years of a deeply connected history between religion and politics in the United States.

B. The Johnson Amendment Causes Excessive Government Entanglement with Religion in Violation of the Establishment Clause.

Although *Kennedy* instructed that the *Lemon* Test is no longer the dominant Establishment Clause test, *Lemon* was not officially overruled. *Kennedy*, 597 U.S. at 534. Instead, the Court has "either expressly declined to apply the [*Lemon*] test or has simply ignored it." *Am. Legion*, 588

U.S. at 49. Despite the *Lemon* Test seemingly being sidelined by the Court, many lower courts, and occasionally the Supreme Court itself, still use its factors in Establishment Clause case analyses, especially the third factor of excessive government entanglement with religion. *See St. Dominic Acad. v. Makin*, 744 F. Supp. 3d 43, 81 (Dist. Ct. Me. 2024) (using the entanglement prong from the *Lemon* Test to determine whether there was an Establishment Clause violation); s*ee also JLF v. Tenn. State Bd. of Educ.*, No. 3:21-cv-00621, 2022 U.S. Dist. LEXIS 89379, at 21 (M. Dist. Tenn. 2022) (using the *Lemon* Test for an Establishment Clause analysis); *see also Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 253-54 (2025) (discussing entanglement with religion as a factor for whether a Wisconsin law violated the Establishment Clause). Thus, although *Lemon* is no longer the primary Establishment Clause case, the *Lemon* Test can still be used to determine whether a law violates the Establishment Clause, especially the third prong of entanglement with religion.

The IRS would likely be able to satisfy the first two prongs of the *Lemon* Test to argue that the Johnson Amendment does not violate the Establishment Clause. First, the IRS would argue that the Johnson Amendment serves a "secular legislative purpose" of preventing all non-profit organizations, whether religious or secular, from engaging in political activities. R. at 15; *Lemon*, 403 U.S. at 612. Regardless of whether the non-profit is religious or not, the Johnson Amendment applies to any organization that claims Section 501(c)(3) tax-exempt status. Because the Johnson Amendment applies equally to religious and secular non-profit organizations, the IRS could further argue that the second prong of the *Lemon* Test, that the "principal or primary effect must be one that neither advances nor inhibits religion," is satisfied as well. *Id.* Although it might have a disparate impact on religious non-profit organizations over secular ones, the Johnson Amendment applies equal requirements for all organizations claiming Section 501(c)(3) tax-exempt status.

However, the IRS's argument that the Johnson Amendment is constitutional will fail under the third prong of the *Lemon* Test, government entanglement with religion. *Id.* at 613. The Johnson Amendment permits the IRS to micromanage religious organizations to determine whether they are participating in political campaigns, which "foster[s] 'an excessive government entanglement with religion.'" *Id.* at 613 (citations omitted). Such micromanagement and entanglement violate the Establishment Clause's order that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend I.

The government creates excessive entanglement with religion if it specifically analyzes the conduct and services of a religious organization to determine whether they qualify for an otherwise available exemption. *Cath. Charities*, 605 U.S. at 254. In *Cath. Charities*, the State of Wisconsin offered exemptions from paying taxes into its unemployment compensation system, and one specific exemption covered nonprofits "'operated primarily for religious purposes' and controlled, supervised, or principally supported by a church." *Id.* at 241. The petitioners sought a determination of their qualification for the exemption; however, their request was denied, and the state "reasoned that petitioners [were] not 'operated primarily for religious purposes' because petitioners' 'provision of charitable social services . . . are neither inherently or primarily religious activities.'" *Id.* at 245. However, the Court determined that Wisconsin's law encouraged "the government [to] distinguish among religions based on theological differences in their provision of services," thereby imposing "a denominational preference." *Id.* Therefore, the government becomes entangled with religion when it analyzes a religious organization's conduct and services to determine whether it qualifies for an exemption. *Id.* at 254.

Additionally, a law that is applied unequally or with express hostility toward religious organizations creates excessive entanglement with religion as the government becomes biased

against one religious organization. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 545 (1993). In *Church of Lukumi*, the city enacted a law specifically designed to prevent a certain religious organization from operating in the city because a core component of that religion was animal sacrifices. *Id.* at 527-28. While reviewing the constitutionality of law, the Court stated that in the context of both the Establishment and Free Exercise Clauses, "neutrality in [a law's] application requires an equal protection mode of analysis." *Id.* at 540 (quoting *Walz*, 397 U.S. at 696). Ultimately, the Court ruled the law unconstitutional under both the Establishment and Free Exercise Clauses because relevant evidence, including "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question," and statements made during "the legislative or administrative history," showed the purpose behind the law was expressly hostile toward the specific religion at issue. *Id.* at 540. Therefore, when a law purposely disparages certain religions through unequal or hostile treatment, that law creates excessive entanglement with religion in violation of the Establishment Clause. *Id*.

Here, the Johnson Amendment, like the law in *Cath. Charities*, creates excessive government entanglement with religion because it permits the IRS to micromanage the services and conduct of religious organizations to determine whether they retain their tax-exempt status. *Cath. Charities*, 605 U.S. at 245. In *Cath. Charities*, the Court determined that because the state law could not survive strict scrutiny review, it violated the Establishment Clause because it allowed the state to closely scrutinize the activities and services of the petitioning religious organization to determine if they qualified for an exemption. *Id.* Here, the Johnson Amendment allows the IRS to conduct a similar micromanagement of any religious organization's activities to determine if they are participating in any political campaign. R. at 2. For the IRS to determine whether a religious organization is participating or intervening in any political campaign, it must conduct an in-depth

analysis of the organization's messages, services, and instructions to followers. R. at 2. Pastor Vale uses his "weekly podcast as a forum to deliver political messages[,]" implying the IRS would have to listen to multiple installments of Pastor Vale's podcast while also scrutinizing the activities of prominent members of the Church, such as Pastor Vale, to determine if the Church is participating in a political campaign. R. at 4. Therefore, like in *Cath. Charities*, the Johnson Amendment encourages micromanagement of religious organizations, creating excessive entanglement with religion that violates the Establishment Clause. *Id.*

Furthermore, the Johnson Amendment, like the city ordinance in *Church of Lukumi*, creates excessive entanglement with religion because it is not neutral and allows the IRS to be biased against certain religious organizations. *Church of Lukumi*, 508 U.S. at 545. In *Church of Lukumi*, the Court held that the city ordinance violated the Establishment and Free Exercise Clauses because it targeted a specific religion and applied it unequally to that religion compared to others. *Id.* Here, the Johnson Amendment disparages religious organizations that engage in politics and revokes their tax-exempt status, while allowing those that refrain from such involvement to retain their tax-exempt status. R. at 2.

A core component of The Everlight Dominion is that it "requires its leaders and churches to participate in political campaigns and support candidates that align with The Everlight Dominion's progressive stances[;]" however, the Johnson Amendment permits the IRS to revoke the Church's tax-exempt status solely because it engaged in politics. R. at 3. This inevitably results in government entanglement with religion as the IRS allows religious organizations that are not involved in politics to retain their tax-exempt status, yet it revokes that status for religious organizations that are involved in politics, even if such involvement is a core tenet of a specific religion. R. at 2. As a result, the Johnson Amendment is not neutral toward religion because it

disparages religious organizations that engage in politics but does not affect those that do not. R. at 2. Therefore, as in *Church of Lukumi*, the Johnson Amendment creates excessive entanglement with religion by allowing the IRS to be biased against certain religious organizations. *Id.*

However, the IRS might claim that it is not engaged in religious discrimination and that the Johnson Amendment is not a law respecting an establishment of religion; rather, the tax-exempt status afforded to non-profit organizations under 26 U.S.C. § 501(c)(3) is simply government speech and the government's decision to provide a benefit to religious organizations that are not engaged in politics. R. at 1-2. The IRS might rely on *Regan v. Tax'n With Representation of Wash.*, where the Court held that "[b]oth tax exemptions and tax deductibility" are subsidies which are "administered through the tax system[;]" therefore, a tax exemption "has much the same effect as a cash grant to the organization." 461 U.S. 540, 544 (1983).

Additionally, relying on the Free Speech Clause, the IRS might argue that the First Amendment "does not prevent the government from declining to express a view" and that "[w]hen the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say." *Shurtleff v. City of Boston*, 596 U.S. 243, 251 (2022). The IRS might mirror the city's argument in *Shurtleff*, where the city of Boston claimed that the city-approved flags "reflect[ed] particular city-approved values or views[,]" not intentional discrimination against religion. *Id.* at 256. The IRS could thereby claim that the tax-exempt status granted to non-profit organizations not engaged in politics reflects the government-approved view that religion and politics should remain separate. R. at 2.

However, this argument fails to account for the central component of the Establishment Clause that the Johnson Amendment violates: "that one religious denomination cannot be officially preferred over another." *Larson*, 456 U.S. at 244. The government "must be neutral in matters of

religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another." *Epperson v. Arkansas*, 393 U.S. 97, 103-104 (1968). Even if the government strongly agrees with the message or practices of a specific religion, it cannot officially promote or prefer one religion over another. *Larson*, 456 U.S at 244. Here, the Johnson Amendment allows the government to do exactly that: religions that are not involved in politics retain their tax-exempt status, while such status is stripped from religions that are involved in politics. R. at 2. As the Fourteenth Circuit rightly acknowledged, "tax exemptions cannot be used as a tool to prevent religious organizations from weighing in on political issues." R. at 10.

Furthermore, the Court in *Walz* stated that "[f]ew concepts are more deeply embedded in the fabric of our national life . . . than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." *Walz*, 397 U.S. at 676-77. By authorizing government regulation of religious activity to determine whether a religious organization retains its tax-exempt status, the Johnson Amendment ignores "benevolent neutrality" and violates the Establishment Clause. *Id.* Therefore, the IRS's counterargument that Section 501(c)(3) tax-exempt status is government speech will fail because the Johnson Amendment allows the government to violate the Establishment Clause's command of neutrality between religious sects.

C. The Johnson Amendment is an Unconstitutional Condition that Violates the Establishment and Free Exercise Clauses.

As this Court stated in *Kennedy*, because the Establishment Clause and the Free Exercise "appear in the same sentence of the same Amendment: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[,]" the "natural reading of that sentence would seem to suggest the Clauses have 'complementary' purposes, not warring ones

where one Clause is always sure to prevail over the other[].” *Kennedy*, 597 U.S. at 533 (quoting U.S. CONST. amend. I). Therefore, when the Establishment Clause is violated, the Free Exercise Clause can be implicated as well.

Here, the Johnson Amendment is an unconstitutional condition that violates both the Establishment and Free Exercise Clauses. Under the unconstitutional conditions doctrine, the government “may not place a condition on the receipt of a benefit or subsidy that infringes upon the recipient’s constitutionally protected rights, even if the government has no obligation to offer the benefit in the first instance.” *Agency for Int’l Dev. v. All. for Open Soc'y Int’l, Inc.*, 570 U.S. 205, 212 (2013) (citations omitted). Conditioning a benefit on a recipient forgoing their Free Exercise rights is a prime example of an unconstitutional condition. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (“It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.”).

The Everlight Dominion religion “requires its leaders and churches to participate in political campaigns and support candidates that align with The Everlight Dominion’s progressive stances.” R. at 3. This is an official requirement of The Everlight Dominion religion; however, the Johnson Amendment forces the Church and other members of the religion to choose between complying with their religion’s political involvement requirement and retaining their tax-exempt status under Section 501(c)(3). R. at 5. The ultimatum imposed by the Johnson Amendment on the Church is an unconstitutional condition because the Church must choose either to give up its Free Exercise rights or to receive a benefit otherwise generally available to other non-profit organizations. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017) (“[Trinity Lutheran] may participate in an otherwise available benefit program or remain a religious institution . . . [it] is free to continue operating as a church . . . But that freedom comes at

the cost of automatic and absolute exclusion from the benefits of a public program"); *see also Everson v. Bd. of Edu.*, 330 U.S. 1, 16 (1947) (holding that the government "cannot exclude individual[s] . . . *because of their faith, or lack of it*, from receiving the benefits of public welfare legislation.") (emphasis in original). Thus, the choice that the Johnson Amendment forces the Church to make represents a quintessential unconstitutional condition.

Although the Johnson Amendment does not directly prevent a religious organization from exercising its religion, it does amount to a coercive penalty if such organizations exercise their religion in violation of the Johnson Amendment, as the Church does here. This Court has held that such coercion, while not an outright prohibition on religious exercise, still amounts to an unconstitutional condition because "[t]he Free Exercise Clause of the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" *Carson v. Makin*, 596 U.S. 767, 768 (2022) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)). The Fourteenth Circuit highlighted the coercive nature of the Johnson Amendment, stating that "the Johnson Amendment penalizes those whose religion requires them to speak on political issues. Meanwhile, other religious and non-profit organizations do not feel the same burden." R. at 10.

Furthermore, the IRS itself does not attempt to downplay the inherent coerciveness of the Johnson Amendment. An article on the IRS website explaining the restrictions on political campaign intervention by section 501(c)(3) organizations states that "section 501(c)(3) organizations are absolutely prohibited" from participating or intervening in political campaigns, and that "[c]ontributions to political campaign funds or public statements of position . . . made on

behalf of the organization . . . clearly violate the prohibition against political campaign activity."[2] The use of strong language in this explanation, such as "absolutely prohibited" and "clearly violate[,]" expresses the coercive nature of the Johnson Amendment, further illustrating the unconstitutional condition it imposes on religious organizations.[3] Moreover, the inherently coercive nature of the Johnson Amendment supports the concreteness of the imminent injury to be suffered by the Church and discredits the IRS's claim that the Church's injury is speculative.

However, the IRS may argue, as Judge Marshall did in his dissent from the Fourteenth Circuit's opinion, that the Johnson Amendment is constitutional because it applies to religious and secular organizations equally. R. at 15-16; *see Branch Ministries*, 211 F.3d at 143-44 (holding that the Johnson Amendment is constitutional because the Section 501(c)(3) requirements are viewpoint neutral). Furthermore, the IRS may argue that the Johnson Amendment is both neutral and generally applicable toward religion, which is permissible under the Free Exercise Clause. *See Employment Division v. Smith*, 494 U.S. 872, 881-83 (1990) (holding that laws which are neutral toward religion and generally applicable do not violate the Free Exercise Clause). However, these arguments fail to address the fact that, as applied to the Church specifically, the Johnson Amendment is inherently coercive and hostile toward religion.

First, as applied to the Church, the Johnson Amendment is incredibly coercive and forces the Church into an ultimatum: either follow its religious command to participate in politics or keep its tax-exempt status. R. at 5. Regardless of whether the Johnson Amendment is generally viewpoint-neutral, this amounts to an unconstitutional condition. This Court previously held that the government "must be neutral in matters of religious theory, doctrine, and practice. It may not

[2] *Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, IRS, https://www.irs.gov/charities-non-profits/charitable-organizations/restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations (Accessed: 17 January 2026).
[3] *Id.*

be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another." *Epperson*, 393 U.S. at 103-104. The Church and Pastor Vale are mandated by The Everlight Dominion to participate in politics, with failure to do so punished by banishment from The Everlight Dominion. R. at 3. By coercing certain religious organizations to choose between following their religion and retaining their tax-exempt status, the Johnson Amendment reveals itself to be expressly hostile toward religion. Second, the express hostility of the Johnson Amendment as applied to the Church undermines the IRS's argument that the Johnson Amendment is permissible under the Free Exercise Clause because it is neutral toward religion and generally applicable. *Smith*, 494 U.S. at 881-883. Even laws that are facially neutral toward religion can become hostile toward religion if applied in a targeted manner. *See Church of Lukumi*, 508 U.S. at 546 (holding that the city ordinances were unconstitutional because they were applied against a specific religion in a deliberate, hostile manner).

Unequal treatment of religion is impermissible under the Free Exercise Clause, and "inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." *Id.* at 542-43. As applied to the Church, the Johnson Amendment's hostility toward and unequal treatment of religion causes it to violate the clearest commands of the Establishment Clause: that "[t]he government must be neutral when it comes to competition between sects[,]" and that "one religious denomination cannot be officially preferred over another." *Zorach*, 343 U.S. at 314; *Larson*, 456 U.S. at 244 (1982). Therefore, the Johnson Amendment is an unconstitutional condition that violates both the Establishment and Free Exercise Clauses because of its hostility toward religion.

Ultimately, the Johnson Amendment violates the Establishment Clause because it disregards the important role religion has played in United States politics throughout the country's

history, and it fosters excessive entanglement with religion in violation of the third prong of the *Lemon* Test. Additionally, the Johnson Amendment violates the Free Exercise Clause because it is an unconstitutional condition that forces the Church to choose between following its religion and retaining its tax-exempt status. Therefore, this Court should affirm the decision of the Fourteenth Circuit and find that the Johnson Amendment is unconstitutional.

CONCLUSION

For the reasons stated above, this Court should affirm the grant of the permanent injunction of the IRS's enforcement of the Johnson Amendment against Respondent. The AIA does not bar Respondent's lawsuit because it has no alternative legal remedy to challenge the unconstitutional restrictions placed upon its religious speech and exercise. Respondent also satisfies Article III standing to bring this suit because it suffered an injury in fact that was imminent and concrete, and Respondent faces a substantial risk of future enforcement of the Johnson Amendment against it. The existence of the IRS consent decree does not make the Church's injury speculative.

Additionally, the Johnson Amendment violates the Establishment Clause because it disregards the history and tradition of the intertwining of politics and religion in the United States and causes excessive government entanglement with religion. The Johnson Amendment is also an unconstitutional condition that violates both the Establishment and Free Exercise Clauses.

Accordingly, Respondent respectfully requests this Court affirm the decision of the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted this 18th day of January 2026.

/s/ Team 8
Team 8
Counsel for Respondent