THE BOMB AND ITS FALLOUT

Bob Jones University

v.

United States

U. S. Supreme Court Decision

MAY 24, 1983

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INTRODUCTION

This booklet attempts to help the reader make sense out of the Supreme Court decision that makes no sense. The *Bob Jones University v. United States* Supreme Court decision of May 24, 1983, will be among the most discussed by legal scholars. It will be among the most despised and feared by freedom-loving citizens.

Shock waves from the bomb dropped on Bob Jones University by the Supreme Court will eventually reach all Christian schools, parochial schools, churches, and other American religious institutions. This same bomb has exploded the constitutional provision of religious freedom and left only toleration for religion that government can control. It has exploded the myth of the separation of powers between court and Congress and has revealed the court as usurper of power to make law, heretofore belonging only to Congress. It has exploded the myth that we are a nation governed by laws and has revealed that we are a nation governed by the whims of jurists who have abandoned all regard for the Constitution, choosing instead decisions designed to please the liberal media whose wrath would have exploded upon the court had the court ruled differently.

BRIEF BACKGROUND OF THE CASE

This court battle began over twelve years ago and, for Bob Jones University, $800,000 ago. In July 1970 the Internal Revenue Service announced that it was going to withdraw the tax exemption of any religious institution that discriminated on the basis of race. In a congressional hearing on the matter, an IRS spokesman reported that the agency received more mail about this decision than it had received on any other single issue in its history. Though religious organizations of all types protested the move, the IRS continued its policy. In November of that year, the agency informed Bob Jones University that its exemption was to be withdrawn. The university had a policy, based on its understanding of the Bible, that forbade interracial dating and marriage among its students. In order to make that policy easier to enforce, the university did not admit blacks. This "racial discrimination" brought the IRS action.

In 1971 the university asked the courts to issue an injunction preventing the IRS from removing the tax exemption. The case, called *Bob Jones University v. Simon,* worked its slow way through the courts, and in 1974 the U. S. Supreme Court ruled that the IRS could not be ordered not to do something it had not yet done; one section of the Internal Revenue Code, called the Anti-Injunction Act, prevented the courts from issuing the requested injunction.

In January 1976 the IRS formally revoked the university's tax-exempt status, though by that time the university had changed its admissions policy and accepted all students, regardless of race. The admissions policy was not a part of the institution's religious convictions; the marriage policy was, however, and it was retained.

Following the Supreme Court's instructions, the university paid a small portion of its unemployment tax ($21) in 1976 and then sued the IRS to get it back. This procedure bypassed the Anti-Injunction Act, since the IRS was being sued for something it had actually done, rather than for something it merely threatened to do. On December 26, 1978, a federal district court ruled that the university was indeed entitled to its tax exemption as a religious organization and that the IRS should refund the $21.

Of course the IRS appealed the decision, and almost exactly two years later, in a split decision, the Fourth Circuit Court of Appeals reversed the district court's decision, claiming that even institutions holding sincere religious convictions cannot be tax-exempt unless those convictions are approved by what is called "public policy." This time Bob Jones University appealed the decision, asking the U. S. Supreme Court to decide the case. In October 1981 the court agreed to hear the case early in 1982.

Up to this point the story is rather uninteresting except to those involved; it sounds like simply another court case. In 1982, however, things began to get interesting. One event after another was described as "unprecedented," "unique," or "extraordinary." January 8, on the eve of the hearing, the Justice Department, which was pursuing the case on behalf of the IRS, dropped the charges. It admitted that the IRS had acted without congressional permission—illegally—in withdrawing the university's exemption and that the university had been right all along. In the wake of this surprise move, the university's president, Dr. Bob Jones III, commented, "No court forced the IRS to be at peace with Bob Jones University—God did, through a turn of events that our attorney tells us has never happened before in the history of jurisprudence, so far as he knows." It was inconceivable that a contest in which one side had simply no case could have gotten as far as the Supreme Court before being dropped.

On January 10, the legal committee of the NAACP recommended that that organization enter the case in the place of the Justice Department, which, it alleged, had failed to do its job in prosecuting the university. On April 19 the Supreme Court finally announced that it had reached a decision on the NAACP's request. Rather than allowing the NAACP to become the prosecutor, the court appointed a

prosecutor of its own, former transportation secretary William Coleman. The court's reasoning was that the Justice Department had failed in its responsibilities by dropping the case, even if it saw no chance of winning or no justification for its arguments. Coleman, an experienced black attorney and civil rights activist, seemed ideal to serve as prosecutor.

Dr. Jones called this action "unprecedented." He commented, "This puts the court in the position of creating an issue to be litigated and insisting that an issue be heard when one of the two litigants declares 'no contest.' "

The court heard the case October 12, 1982, and rendered an 8-1 decision against Bob Jones University on May 24, 1983.

THE DECISION AND WHAT IT MEANS

The fallout from this decision is immediately apparent when one understands what the decision has said. Key paragraphs from the decision and their meaning are succinctly stated as follows:

Court opinion:

"... entitlement to tax exemption depends on meeting certain common law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy" (Bob Jones University v. United States, *May 24, 1983, p. 11).*

Conclusion:

The tax exemption granted by congressional law, Section 501(C)(3) of the Internal Revenue Code, lists seven categories of institutions entitled to tax exemption. Three of the categories are religious, educational, or charitable. The disjunctive word "or" makes charity a separate category. The court has presumed to tell Congress that it really meant to include charity with religion and education. It has concluded that if a religious or educational institution is out of step with public policy, it cannot be charitable and is therefore taxable.

Conclusion:

Religious organizations that do not serve a public purpose will be penalized. To serve a public purpose, they cannot be "contrary to established public policy." This means that religious organizations must be in lockstep with government policy, must exist to further government policy, must worship the *state* as supreme god. Such churches and religious organizations will be tolerated; others will be punished by taxation.

One hundred years ago, August 22, 1883, the following warning was sounded before the American Bar Association: "Nowadays the more a judge dilates upon a subject so vague and indeterminate, and so obviously unsuited to the judicial function as *public policy,* the greater cause he gives for the

just suspicion that he is merely 'praising those things he is inclined to and damning those he's no mind to' " (Robert G. Street, "How Far Questions of Public Policy May Enter into Judicial Decisions," 6 *ABA Reports,* 1883).

Conclusion:

This establishes some churches as favored and others as unfavored. The favored churches are establishment churches, and the Constitution clearly forbids government establishment of religion.

Conclusion:

Diversity of religious thought and practice is no longer the American way. Religious conformity to public policy is now a supreme national goal. Religious freedom is secondary to the promotion of government social policy.

Court opinion:

"The governmental interest at stake here is compelling. . . the Government has a fundamental, overriding interest in eradicating racial discrimination in education . . .'"[29] (Bob Jones University v. United States, *May 24, 1983, p. 29).*

[29]*". . . the governmental interest is in denying public support to racial discrimination in of [sic] education."*

Conclusion:

In spite of the lengthy finding of fact in the District Court that Bob Jones University was "like a church" and "pervasively religious," the Supreme Court saw fit to separate its religious purpose from its educational function.

Conclusion:

All church schools are now subject to be dealt with under the same court rulings that apply to public secular education. Institutions that are not clearly religious—those that teach subjects other than Bible—are no longer thought of as religious in terms of the law. No longer can they be considered weekday extensions of the church's Sunday ministry. They are "educational" in the court's eyes. IRS guidelines regulating enrollment and hiring practices will be imposed upon them.

Conclusion:

Religious schools (and eventually churches) will have to yield whenever the government interest (federal public policy) seems "compelling" or "overriding" or "fundamental," or they will lose their tax exemption. Our religious institutions have become pawns of the state which has imposed its creed upon us.

Court opinion:

"Clearly an educational institution engaging in practices affirmatively at odds with this declared position of the whole government cannot be seen as exercising a 'beneficial and stabilizing influence in community life,' Walz v. Tax Commission, *supra, 397 U. S., at 673, and is not 'charitable' "* (Bob Jones University v. United States, *May 24, 1983, p. 23).*

Conclusion:

Minority opinion (that which is contrary to the declared position of the whole government) is not charitable. Religious institutions whose doctrine is "at odds with the public opinion of the whole government" will be penalized through taxation for holding an unauthorized, minority opinion.

Conclusion:

Doctrine that is not stabilizing to the community is not charitable. This places in peril such preaching as would divide men between heaven and hell, saved or lost, etc. Such teachings are definitely not stabilizing in the community but trouble people. Doctrines that go contrary to those the government declares to be beneficial and stabilizing are henceforth the subject of attack and punishment.

Court opinion:

"When the Government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors'. . . " (Bob Jones University v. United States, *May 24, 1983, p. 16).*

Conclusion:

This decision places an entirely new and radical interpretation on the meaning of tax exemption. Heretofore the courts have concluded that tax exemption is not a subsidy *(Walz v. Tax Commission,* U. S. Supreme Court, 1970).

Conclusion:

Now that Bob Jones University is a taxable institution, we are declared to be donors to the National Council of Churches, the Church of Satan, B'nai B'rith, abortion clinics, Planned Parenthood, etc. This violates our Christian conscience, as surely it must violate the conscience of every Bible-believing Christian taxpayer.

Conclusion:

By taxing unfavored religious belief, the courts will determine which causes, religious and secular, qualify for tax-deductible donations and which do not.

Court opinion:

"Denial of tax benefits will inevitably have a substantial impact on the operation of private religious schools, but will not prevent those schools from observing their religious