"[T]he Government has a fundamental, overriding interest in eradicating racial discrimination in education ... [that] substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."—Chief Justice BURGER

"[T]his Court should not legislate for Congress."—Justice REHNQUIST

Bob Jones University v. United States

461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983).

In 1970 a special three-judge district court enjoined the Internal Revenue Service from according tax-exempt status to private schools in Mississippi that discriminated because of race in admitting students (Green v. Connally). The Supreme Court affirmed per curiam, without opinion (Coit v. Green [1971]). Following those decisions, IRS issued Revenue Bulletin 71–447 denying tax exempt status to all private schools practicing racial discrimination. This ruling denied exemption to the finances of the schools themselves under § 501(c)(3) of the Internal Revenue Code, making them liable to federal taxes, and also excluded donations by private individuals from tax deductions under § 170 of the Code. Neither section of the Code mentioned racial discrimination as a basis for denying exemption, but IRS and the three-judge district court reasoned that racial discrimination was so directly contrary to public policy as, even in the absence of explicit statutory language, to exclude its practitioners from claiming to be charitable organizations aiding the public welfare.

Bob Jones University, located in Greenville, SC, is a non-denominational, fundamentalist Christian institution whose purposes are both religious and educational. Its rules require all faculty to be devout Christians, and the Bible (as the University's administrators interprets it) to provide the guiding principles of education. The school's regulations carefully prescribe codes of conduct for students. Until 1975, BJU was open only to whites, but after the Court of Appeals for the Fourth Circuit held that a federal statute enacted pursuant to the Thirteenth Amendment outlawed racial exclusion practiced even by private schools—the Supreme Court affirmed in Runyon v. McCrary (1976)—BJU began to admit unmarried blacks, but with certain restrictions:

There is to be no interracial dating

1. Students who are partners in an interracial marriage will be expelled.

2. Students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be expelled.

3. Students who date outside their own race will be expelled.

4. Students who espouse, promote, or encourage others to violate the University's dating rules and regulations will be expelled.

This policy was based on a belief that God forbids racial intermarriage.

In 1970 IRS informed BJU it was losing its status as a tax exempt institution. The University then began a long series of legal actions that in 1980 resulted in a decision by the Court of Appeals for the Fourth Circuit that the University had no statutory or constitutional right to a tax exemption. BJU sought and obtained certiorari. Before oral argument, the Reagan administration announced that it agreed with Bob Jones University's interpretation of the Revenue Code, but the Supreme Court refused to dismiss the case. Instead, it appointed William T. Coleman, a prominent black attorney and former cabinet official under Richard M. Nixon, to argue the case as amicus curiae.

Chief Justice **BURGER** delivered the opinion of the Court. ...

II ...

B

We are bound to approach these questions with full awareness that determinations of public benefit and public policy are sensitive matters with serious implications for the institutions affected; a declaration that a given institution is not "charitable" should be made only where there can be no doubt that the activity involved is contrary to a fundamental public policy. But there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice. Prior to 1954, public education in many places still was conducted under the pall of Plessy v. Ferguson, (1896); racial segregation in primary and secondary education prevailed in many parts of the country. This Court's decision in Brown v. Bd. of Educ. (1954) signalled an end to that era. Over the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education.

An unbroken line of cases following *Brown* establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals. ... Congress, in Titles IV and VI of the Civil Rights Act of 1964, clearly expressed its agreement that racial discrimination in education violates a fundamental public policy. Other sections of that Act, and numerous enactments since then, testify to the public policy against racial discrimination. See, e.g., the Voting Rights Act of 1965; Title VIII of the Civil Rights Act of 1968; the Emergency School Aid Act of 1972 (repealed effective Sept. 30, 1979; replaced by similar provisions in the Emergency School Aid Act of 1978). The Executive Branch has consistently placed its support behind eradication of racial discrimination. ...

Few social or political issues in our history have been more vigorously debated and more extensively ventilated than the issue of racial discrimination, particularly in education. Given the stress and anguish of the history of efforts to escape from the shackles of the "separate but equal" doctrine of *Plessy*, it cannot be said that educational institutions that, for whatever reasons, practice racial discrimination, are institutions exercising "beneficial and stabilizing influences in community life," Walz v. Tax Comm'n (1970), or should be encouraged by having all taxpayers share in their support by way of special tax status.

There can thus be no question that the interpretation of § 170 and § 501(c)(3) announced by the IRS in 1970 was correct. ... It would be wholly incompatible with the concepts underlying tax exemption to grant the benefit of tax-exempt status to racially discriminatory educational entities, which "exer[t] a pervasive influence on the entire educational process." Norwood v. Harrison [1973]. Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy. Racially discriminatory educational institutions cannot be viewed as conferring a public benefit within the "charitable" concept discussed earlier, or within the Congressional intent underlying § 170 and § 501(c)(3). ...

D

The actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority. ... [F]or a dozen years Congress has been made aware—acutely aware—of the IRS rulings of 1970 and 1971. ... Failure of Congress to modify the IRS rulings of 1970 and 1971, of which Congress was, by its own studies and by public discourse, constantly reminded; and Congress' awareness of the denial of tax-exempt status for racially discriminatory schools when enacting other and related legislation make out an unusually strong case of legislative acquiescence in and ratification by implication of the 1970 and 1971 rulings.

Ordinarily, and quite appropriately, courts are slow to attribute significance to the failure of Congress to act on particular legislation. Here, however, we do not have an ordinary claim of legislative acquiescence. Only one month after the IRS announced its position in 1970, Congress held its first hearings on this precise issue. ... Exhaustive hearings have been held on the issue at various times since then. These include hearings in February 1982, after we granted review in this case. ...

... [T]he non-action here is significant. During the past 12 years there have been no fewer than 13 bills introduced to overturn the IRS interpretation of § 501(c)(3). Not one of these bills has emerged from any committee, although Congress has enacted numerous other amendments to § 501 during this same period. ... It is hardly conceivable that Congress ... was not abundantly aware of what was going on. In view of its prolonged and acute awareness of so important an issue, Congress' failure to act on the bills proposed on this subject provides added support for concluding that Congress acquiesced in the IRS rulings of 1970 and 1971. ...

The evidence of Congressional approval of the policy embodied in [the] Revenue Ruling goes well beyond the failure of Congress to act on legislative proposals. Congress affirmatively manifested its acquiescence in the IRS policy when it enacted the present § 501(i) of the Code. ... That provision denies tax-exempt status to social clubs whose charters or policy statements provide for "discrimination against any person on the basis of race, color, or religion." Both the House and Senate committee reports on that bill articulated the national policy against granting tax exemptions to racially discriminatory private clubs. Even more significant is the fact that both reports focus on this Court's affirmance of Green v. Connally [1971] as having established that "discrimination on account of race is inconsistent with an *educational institution's* tax exempt status." (Emphasis added.) ...

III

Petitioners contend that, even if the Commissioner's policy is valid as to nonreligious private schools, that policy cannot constitutionally be applied to schools that engage in racial discrimination on the basis of sincerely held religious beliefs. As to such schools, it is argued that the IRS construction of § 170 and § 501(c)(3) violates their free exercise rights under the Religion Clauses of the First Amendment. This contention presents claims not heretofore considered by this Court in precisely this context.

This Court has long held the Free Exercise Clause of the First Amendment an absolute prohibition against governmental regulation of religious beliefs, Wisconsin v. Yoder (1972); Sherbert v. Verner (1963); Cantwell v. Connecticut (1940). As interpreted by this Court, moreover, the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief, see *Yoder*, Thomas v. Review Bd. (1981). However, "[n]ot all burdens on religion are unconstitutional. ... The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." United States v. Lee (1982).

On occasion this Court has found certain governmental interests so compelling as to allow even regulations prohibiting religiously based conduct. In Prince v. Massachusetts (1944), for example, the Court held that neutrally cast child labor laws prohibiting sale of printed materials on public streets could be applied to prohibit children from dispensing religious literature. ... See also Reynolds v. United States (1878); *Lee*; Gillette v. United States (1971). 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 tenets.

The governmental interest at stake here is compelling. ... [T]he Government has a fundamental, overriding interest in eradicating racial discrimination in education. ... That governmental interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs. The interests asserted by petitioners cannot be accommodated with that compelling governmental interest, see *Lee*, and no "less restrictive means," see *Thomas*, are available to achieve the governmental interest.[1] ...

[*Affirmed.*]

Justice **POWELL,** concurring in part and concurring in the judgment. ...

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[1]Bob Jones University also contends that denial of tax exemption violates the Establishment Clause by preferring religions whose tenets do not require racial discrimination over those which believe racial intermixing is forbidden. ... [A] regulation does not violate the Establishment Clause merely because it "happens to coincide or harmonize with the tenets of some or all religions." McGowan v. Maryland (1961). See Harris v. McRae (1980). The IRS policy at issue here is founded on a "neutral, secular basis," *Gillette*, and does not violate the Establishment Clause. ... [Footnote by the Court.]

Justice **REHNQUIST**, dissenting. ...

I have no disagreement with the Court's finding that there is a strong national policy in this country opposed to racial discrimination. I agree with the Court that Congress has the power to further this policy by denying § 501(c)(3) status to organizations that practice racial discrimination. But as of yet Congress has failed to do so. Whatever the reasons for the failure, this Court should not legislate for Congress. ...

Editors' Notes

(1) **Query:** We return to a now familiar pair of questions: (a) Did Burger use an approach of *protecting fundamental rights* or did he follow a *balancing approach*? Is it necessary to choose between the two? Why or why not?

(2) **Query:** All the justices identified hostility toward racial discrimination as a prominent national public policy. Granted the correctness of this claim, was there also a prominent national public policy to the effect that people should be able, when neither public money nor violation of ordinary criminal law is involved, to practice their religion as their consciences direct? Did Burger make a convincing case that racial equality is a more important constitutional value than freedom of conscience? What shape would such an argument, to be convincing, take?

(3) **Query:** Can one make the case that public money is involved in Bob Jones' claim to be tax exempt? Even so, would that "fact" give constitutional preference to the value of racial equality over the value of freedom of conscience? See Mayer G. Freed and Daniel D. Polsby, "Race, Religion, and Public Policy: Bob Jones University v. United States," 1983 *Sup.Ct.Rev.* 1; also Paul B. Stephan III, "Bob Jones University v. United States: Public Policy in Search of Tax Policy," *ibid*. 33.

(4) Allen v. Wright (1984) held 5–3 that a group of African–American parents lacked standing to challenge IRS's decisions to give tax immune status to private schools practicing racial discrimination. In effect, the parents were claiming that the Reagan administration was not enforcing the law as interpreted by *Bob Jones*. Speaking through O'Connor, the Court held the "abstract stigmatic injury" the parents asserted their children suffered was insufficient to confer standing. Brennan, Blackmun, and Stevens dissented; Marshall did not participate.