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TAX EXEMPTION AND FEDERAL SUBSIDIES

The oft-told story about the advice the old lawyer gave the young lawyer, "When you are weak on the law, argue the facts; when you are weak on the facts, argue the law; when you are weak on both the law and the facts, abuse your opponent," has acquired a new wrinkle. It could be expressed like this: "When your briefs are weak on the law and the facts, try your case in the media."

That's what is going on in the sensitive case now before the U.S. Supreme Court called Bob Jones University v. United States.

The impression has been conveyed that there is only one legitimate side to the case, which is ridiculous, since cases don't get to the Supreme Court unless there are two sides that make a real controversy. Of the four lower federal court judges who ruled on this case, two sided with Bob Jones University and two against.

The case has been falsely portrayed in the media as a case about federal subsidies to segregationist schools and colleges. On the contrary, the real issue is religious civil rights and whether all religions, in order to be tax-exempt, must conform their doctrinal practices to "federal public policy" as defined by the Internal Revenue Service (but not by Congress).

The Internal Revenue Service (IRS) claimed the power to deny income tax exemption to Bob Jones University because BJU's regulation forbidding interracial dating on campus does not conform to "federal public policy." (BJU does not discriminate in its admissions policy, but BJU believes that the Bible forbids interracial dating).

All sorts of questions come to mind. Do we have a "federal public policy" about dating? If so, when did it come about? Should dating be a federal matter? Does IRS have the power to create and define "federal public policy" in general, or a federal dating policy in particular? Should our alleged federal dating policy be allowed to override First Amendment freedom-of-religion rights?

The crux of the case is the question of whether a governmental agency (without

Congressional authorization) may require that the exercise of a long-held and sincerely-held religious belief by a private, religious institution (which receives no governmental funds and is not charged with the violation of any law) may be denied its tax-exempt status on the ground that its religious practice conficts with "federal public policy."

Federal public policy should not be created, defined, or changed by IRS. Its function is to collect taxes, not to indulge in creative social engineering. Our Constitution gives "all" legislative power to the Congress.

Quite apart from the emotional civil rights issues of religion and race are the wide-reaching consequences of the "subsidy" issue. The liberals assert that Bob Jones University's income tax exemption amounts to a federal "subsidy" which gives IRS rights of surveillance, supervision and control in order to compel conformity to "federal public policy."

This is an ominous legal theory. When you take your child's exemption on your income tax return, do you think you are getting a federal subsidy that entitles IRS to make your child-rearing practices conform to federal public policy? Do you think your church is getting a federal subsidy because it enjoys income tax exemption, and that therefore IRS should be allowed to compel your church to conform to federal public policy?

When you claim an income tax deduction for the interest payments on your mortgage, do you look upon that as a federal subsidy to your home? Do you think that deduction should give IRS the power to compel your choice of a home, or its location, to conform to federal public policy on housing?

The theory that tax exemption is really a subsidy has already been asserted by those who are trying to pressure IRS into denying income tax deductions for business dues to private clubs that discriminate on account of sex. The Washington Post and other liberals assert this "subsidy" argument even though the right to join and maintain private discriminatory clubs was upheld by the U.S. Supreme Court in the name of First Amendment freedom of association.

If the Supreme Court upholds the notion that tax exemption is a subsidy and that IRS can deny tax exemption based on its own creation or definition of federal public policy, IRS's policy- making and rule-making functions could transform it into the most powerful arm of the federal government.