APPENDIX

Background Brief: The Future of Tax Exemption and Homosexual Behavior

Question: Could the application of a new legal test, of "strict scrutiny" by the United States Supreme Court as proposed in various cases or other sex/gender case decisions relating to sodomy and sexual behavior, lead to the revocation of church and charitable organization tax exemptions by the Internal Revenue Service?

Answer: In 1983, the High Court found that an organization's tax exempt status and deductibility of gifts to that organization can be revoked for acts contrary to the "public interest" as determined by the IRS and federal courts— even when those acts are based on sincerely held religious beliefs.1

Discussion: Many major religious colleges, denominations, churches, ministries, and charitable organizations that are tax exempt today differentiate (or in the view of intolerant radical activists "discriminate") on the basis of sex/gender and sexual behavior in employment, position, ordination, performance of marriage and other ceremonies or sacraments, and many other matters based upon their genuinely held religious beliefs. In fact, most of those who engage in such practices believe they are acting upon and in conformity with "revealed truth" from Scripture and/or tradition. Their future tax exemption status is uncertain with the advance of the homosexual legal agenda.

If the Supreme Court, or a plethora of courts of appeal, adopts a new test—a new standard for Constitutional review—for all claims of sex/gender discrimination under the same rules and policies that racial discrimination is now viewed (i.e., "strict scrutiny"), or decides that the Constitution, public policy, or law of the United States protects or provides special privileges for sodomy and other homosexual behavior, it is only a matter of time, application of legal "logic," and litigation before it is claimed that sex/gender and sexual orientation/behavior "discrimination" is akin to racial discrimination and thus is in all instances contrary to public policy and therefore those who engage in such actions are not "entitled" to the public "benefit" of tax exemption.

To put it plainly, there is either a lawful basis to differentiate ("discriminate") between persons based upon sex/gender and/or their forms of sexual behavior or there is not. Present sex/gender and sexual behavior law, though dramatically changed from one hundred to two hundred years ago, uses an "intermediate level" of scrutiny for sex/gender issues, and courts still permit differentiation for many things.2

Bob Jones University's sponsors genuinely believed "that the Bible forbade interracial dating and marriage." As a result of those beliefs, the university engaged in various practices, finally forbidding interracial marriage or dating by enrolled students. The federal courts found Bob Jones's "policies violated the clearly defined public policy" and after years of litigation determined that it was proper for the IRS, exercising its discretion, to revoke the university's tax exempt status. The courts also rejected Bob Jones's arguments that revoking the tax exemption violated the Free Exercise of Religion and Establishment Clauses of the First Amendment.

Bob Jones was permitted to "practice its religious beliefs," though held by the government to be discriminatory, but it was prevented from receiving the "benefit" of tax exemption and receipt of tax deductible gifts.

Until 1970, the Internal Revenue Service recognized tax exempt status and allowed tax deductions to private schools without regard to their faith-based racial policies. In 1970, a federal court decision prohibited the IRS from allowing tax exempt status for certain private schools whose admission policies discriminated on the basis of race.3 As a result of that, and subsequent court decisions, the IRS revised its
policies to state, in part, “the statutory requirement of being ‘organized and operated exclusively for religious, charitable . . . or educational purposes’ was intended to express the basic common law concept [of ‘charity’] . . . [and] the purpose of the trust may not be illegal or contrary to public policy.”

The Supreme Court, analyzing the government’s grant of tax exemptions or allowance of deductions, stated: “History buttresses logic to make it clear that, to warrant exemption under 501 (c)(3), an institution must . . . be in harmony with the public interest. The institution’s purpose must not be so at odds with the common community conscience as to undermine any public interest that might otherwise be conferred.”

In its review of the national policy consensus on race, which led the courts to conclude that Bob Jones’s dating policy was offensive to that policy, the Supreme Court specifically noted various congressional acts concurred that racial discrimination violated public policy and further noted, “The Executive Branch has consistently placed its support behind the eradication of racial discrimination” and that “few social or political questions have been more vigorously debated.”

Radical and intolerant homosexual activists are working overtime to equate distinctions and differentiation based on sex/gender, sexual orientation, and various forms of sexual behavior with the public and thus legal public policy equivalent of racial discrimination, despite the dramatic differences. If these activists are successful, there is no reason that the IRS and federal courts could not make the same findings regarding sex/gender and sexual behavior and that such “discrimination” could require revocation of tax exempt status and prohibit tax deductible contributions. In the twenty years since this decision, the IRS has not expanded the Bob Jones ruling to other forms of “discrimination,” but this is no guarantee that it will not do so in the future.

Notes

Introduction
2. Ibid.

Chapter One—How Did We Get Here?
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
13. Ibid.