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ALEXANDER H. STEWART, JR.

No. 81-3

IN THE
Supreme Court of the United States

October Term, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF OF *AMICUS CURIAE* IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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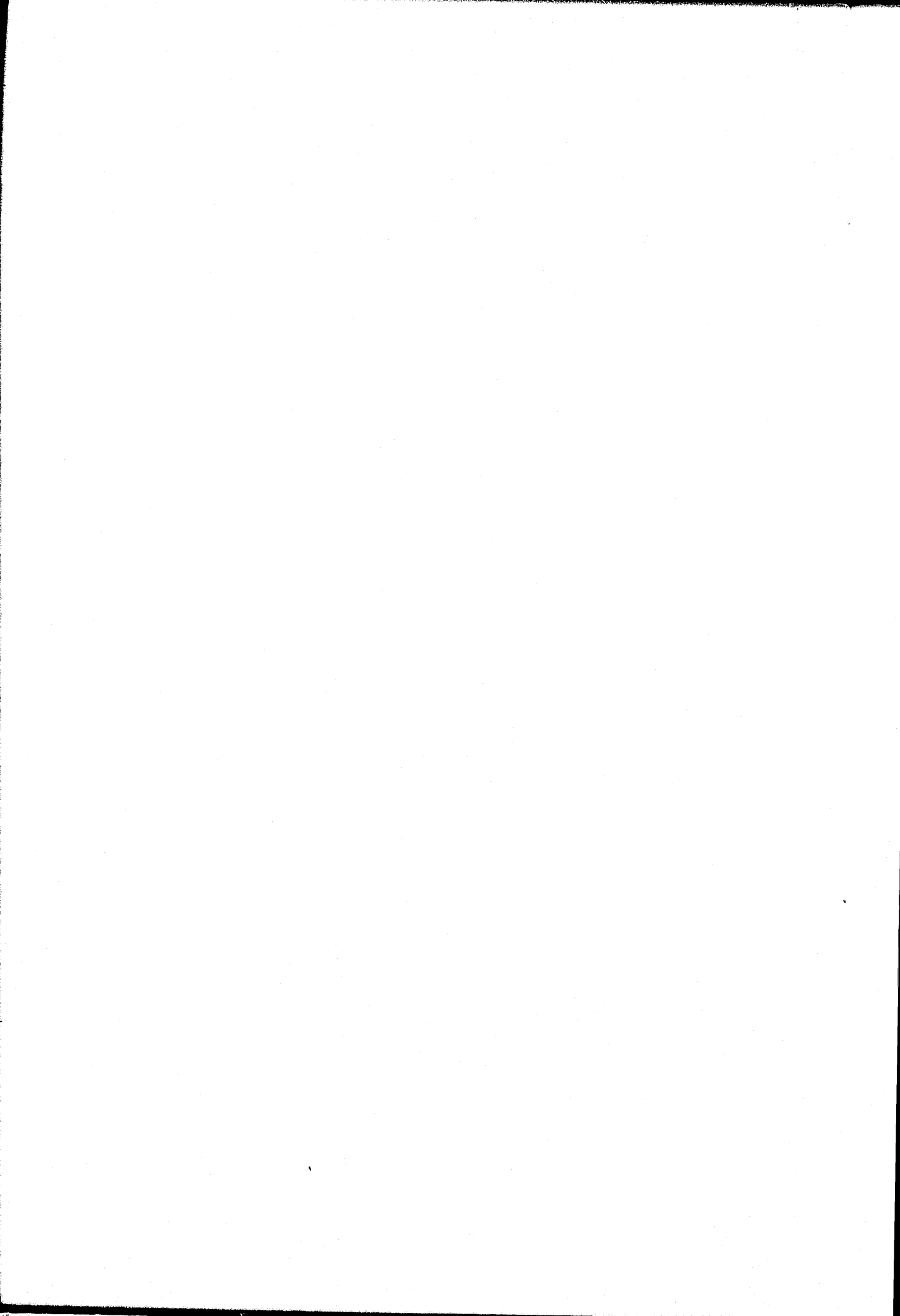
TABLE OF CITATIONS

Statutes:

IRC Section 501(c)(3)3, 4, 5

United States Constitution:

First Amendment 4



INTEREST OF *AMICUS CURIAE*

This brief is submitted on behalf of General Conference Mennonite Church.

The General Conference Mennonite Church is a denomination composed of approximately 325 Mennonite congregations and 60,000 individual members and is one of the Historic Peace Churches along with other Mennonite and Friends groups. The General Conference Mennonite Church exists primarily to give expression of the individual congregations' mission and outreach goals. As such it is active throughout the world in missionary and relief efforts, primarily in the Third World.

The General Conference Mennonite Church is a member of the Mennonite World Conference, a confederation of most Mennonite groups throughout the world, which has a total membership of over 600,000 persons. The Mennonite World Conference constituency is less than 50% Caucasian.

The General Conference Mennonite Church has historically been active in its support for victims of oppression and bigotry whether the oppression is motivated by class, racial, or religious beliefs. General Conference Mennonite Church members are currently active as volunteers working in inner city situations where racial discrimination is a major impediment to the persons being helped.

A statement, "The Christian and Race Relations", adopted by the General Conference Mennonite Church in 1959 clearly opposes racial discrimination of any kind. The Conference does not agree with Bob Jones University's interpretation of Scripture on race nor does it agree with the policy of forbidding inter-racial dating. The General

Conference admonishes the faculty, staff and students to reconsider their stand on racial issues and dialogue with the larger Christian community regarding those beliefs.

The General Conference Mennonite Church submits this brief in the belief that they may serve this Honorable Court in its determination of this case by bringing to the attention of the court questions which they believe are involved herein, each of which poses an important issue relating to the personal liberties of citizens of the United States and issues which override the disagreement which General Conference Mennonite Church has with the racial policies of Bob Jones University.

ARGUMENT

I

**Withdrawal By the Internal Revenue Service of IRC
Section 501(c)(3) Status on the Basis of Failure
to Conform to "Public Policy" Threatens all
Religious Institutions.**

"Public policy" is not defined in the law, and as such is subject to arbitrary definition by the Internal Revenue Service. The General Conference Mennonite Church as one of the Historic Peace Churches knows full well the mischief which can be done to a religious institution by well-meaning public servants who believe that a particular group violates "public policy".

"Public policy" has been used against Mennonites since their predecessors came into existence in 1525 as a means of eradicating non-conforming viewpoints. Mennonites are religious pacifists who refuse to bear arms or to be in any way involved in the killing of other human beings no matter how righteous their government believes the cause to be. Because of their beliefs they have been hounded from their homes, tortured and murdered for centuries. Mennonites have been imprisoned in this country in every war since the Revolutionary War for refusal to bear arms.

In this enlightened day and age a religious organization can be more easily destroyed by taxation than by burning at the stake. While donors of tithes may not be affected by the loss of tax exempt status of an organization, large donors including foundations and estates are simply unable to afford donations which are not tax deductible. Any modern religious organization with a substantial relief and missionary program can only exist if the regular gifts of its members are also supplemented by these larger

gifts. Imposition of the normal corporation tax structure on any religious organization would quickly reduce its program to a shadow of its former self and prevent many of the worthwhile relief efforts which it undertakes.

The threat of revocation of IRC 501(c)(3) status is therefore enough to cause any religious organization to pause before performing acts which will displease the Internal Revenue Service and its guardians of "public policy". The General Conference Mennonite Church for its support of persons who resist induction into the armed forces alone could easily be seen by the IRS as violating "public policy", without even mentioning its efforts on behalf of the oppressed who are as often oppressed by their own government through thoughtless bureaucracy as by bigotry.

The General Conference Mennonite Church knows full well the cost by bringing an appeal all the way from the District Court to the Supreme Court, and the mere fact that arbitrary acts of the Internal Revenue Service can be reviewed in that manner does not make up for the fact that the money expended in that effort can result in a group's program in entire countries being closed down.

Your Amicus requests that the ability of the IRS to unilaterally withdraw IRC 501(c)(3) status on "public policy" grounds be severely limited and subject to automatic judicial review.

II

Religious Liberty Must Transcend Administrative Views of "Public Policy".

The learned Judge Widener laid out in some detail in his dissent to the majority Fourth Circuit opinion below the status of religion under the First Amendment. Your Amicus agrees that the status of religious liberty in this

country is and should be very high. This Court has refused repeatedly to meddle in religious affairs and has regularly rejected any entanglement of government in religion. The power to tax and to deny exemption from tax has become a tremendous power by which religious liberty may be snuffed out while a stance of neutrality towards religion is maintained. The case at bar involves a small religious group on the fringe of Christian beliefs as generally held by mainline denominations in this country. It is a perfect example of hard cases making *bad* law. The decision of the Fourth Circuit, however, has an effect upon all religious groups which your Amicus submits is an intolerable one. That effect is to simply allow an administrative bureaucracy to snuff out a religious group's program by withdrawing its tax exemption. Your Amicus suggests that a group meeting the requirement of IRC Section 501(c)(3) on its face is simply entitled to exemption and that the current popularity of the religious views or policies of the exempt organization should be irrelevant to the determination of exempt status.

The power to tax is the power to destroy when modern religious administrative structures are involved. In the case of the General Conference Mennonite Church the sudden diminution in receipts which would be occasioned by a loss of exempt status would bring many programs to a screeching halt and would require the immediate recall of missionaries and service workers from all over the world. Your Amicus would submit that that sort of effect can hardly be described as neutrality towards religion.

CONCLUSION

For all of the foregoing reasons your Amicus believes a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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