Nos. 81-1 & 81-3

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

BOB JONES UNIVERSITY,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND BRIEF OF LAWRENCE E. LEWY IN SUPPORT OF AFFIRMANCE

LAWRENCE E. LEWY
4841 Randolph Drive
Annandale, Virginia 22003
(703) 354-0847
Attorney Pro Se

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Nos. 81-1 & 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to the Rules of this Court, Lawrence E. Lewy hereby moves to file the attached brief amicus curiae with respect to affirmance of the judgments of the court of appeals in these cases. Consent of petitioners has not been obtained, although sought by telephone and letter on behalf of a client. Consent was indicated orally by the Solicitor General and William T. Coleman, Jr., Esquire, invitee of the Court to brief and argue for affirmance.

Amicus is a member of the Bar of this Court, and the Bars of Virginia and Illinois, formerly served in Chief Counsel's office of Internal Revenue Service, a veteran of World War II and a member of the Board of Directors of American Veterans Committee Inc, an organization of veterans that has filed many amicus curiae briefs in landmark civil rights cases in this Court.

Amicus appears *pro se* and not as an authorized representative of any organization or government because of time constraints concerning official approval for submission of a brief.

The concern that impels the filing of this motion is the presenting of an argument on which no other party, as far as amicus is aware, has material made available to the undersigned for submission to this Court by officials of the Commonwealth of Virginia, or is prepared to advance these particular points.

Respectfully submitted,

LAWRENCE E. LEWY
4841 Randolph Drive
Annandale, Virginia 22003
(703) 354-0847

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Nos. 81-1 & 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF OF LAWRENCE E. LEWY AMICUS CURIAE

THE ISSUE IN THIS CASE

This case raises the issue whether nonprofit corporations operating private schools that, on the basis of religious doctrine, maintain racially discriminatory admissions policies or other racially discriminatory practices, qualify as tax exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, eligible to receive charitable contributions deductible by the donor under Section 170 of the Code.

THE INTEREST OF AMICUS IN THIS CASE

Amicus has been an active member of an organization of veterans who associated together to promote democratic principles for which they fought. Amicus believes that allowing tax exemption under Section 501(c)(3) of the Internal Revenue Code and deductibility of gifts under Section 170 to nonprofit corporations that discriminate on the basis of race constitutes affirmative goverment sanction of such discrimination contrary to the law and express policy of the United States and such states as have expressed their policy and procedure on the matter and constitutes subsidization of such discrimination by any government that sanctions such exemption and deductibility. Amicus further believes that adopting such a policy by the Federal Government contrary to the policy of such states which have decided themselves on the subject engenders confusion and inefficiency in the income tax cooperation between federal and state governments to the ultimate expense to all taxpayers of every state and the United States.

ARGUMENT

Amicus agrees with the major arguments advanced as stated in the draft brief transmitted for lodging by the Solicitor General on the request of the Clerk of this Court that:

> Nonprofit private schools that, on the basis of religious doctrine, practice racial discrimination, do not qualify as tax-exempt organizations under the Internal Revenue Code
>
> A. The Commissioner of Internal Revenue acted within his statutory authority in ruling that racially discriminatory private schools are not tax-exempt under Section 501(c)(3) and are therefore not eligible for charitable contributions deductible under Section 170

B. Congress intended to limit tax-exempt status under Section 501(c)(3) and eligibility to receive deductible charitable contributions under Section 170 to those organizations that are "charitable" at common law and therefore benefit society as a whole

C. A private school that practices racial discrimination does not qualify for tax exempt status under Section 501(c)(3) and eligibility for deductible charitable contributions under Section 170 because it is not organized and operated for "charitable" purposes as that term is understood at common law

D. Congress has repeatedly considered the Commissioner's statutory interpretation that racially discriminatory private schools are not tax exempt and has refused to alter it and, indeed, has made other statutory changes premised on the validity of that interpretation

E. The Commissioner's denial of petitioners' tax exemption because of their racially restrictive policies does not violate their right to free religious belief and exercise under the First Amendment

However, since able counsel for other *amici* as well as counsel invited by the Court will present such arguments in their briefs and oral argument, Amicus submits that it will serve the Court better by presenting a phase of the problem to the knowledge of Amicus, not considered by others in the case, and not reiterating the detailed arguments and authorities made by the others.

Amicus is a veteran who is a citizen of the United States, resident of the State of Virginia and member of the Bar of that state. Virginia, like many other states, cooperates very closely with the Internal Revenue Service with regard to coordination of the state income tax assessment and collection system with the federal system. The device has been called "piggy backing". There are

several agreements between the Internal Revenue Service and the state involving exchange of information between the state's tax agency and the Internal Revenue Service. Virginia depends on the Internal Revenue Service procedures, interpretations and rulings on such matters as charitable exemptions and deductibility of charitable donations.

Because of the problems involved, Virginia issued an Emergency Regulation effective April 15, 1982, reproduced here verbatim which speaks for itself:

[SEAL]

COMMONWEALTH OF VIRGINIA
Department of Taxation
Richmond, Virginia 23282

EMERGENCY REGULATION

Effective date:	April 15, 1982
Expiration date:	Upon adoption of permanent regulations, or upon the finding that an emergency no longer exists or April 14, 1983, whichever is the earliest.
Supersedes:	All previous documents and any oral directives in conflict herewith.
References:	Sections 58-151.03(c), 58-151.013 (d)(1), Code of Virginia
Authority:	Sections 58-48.6, 9-6.14:6, Code of Virginia
Scope:	Applicable to all taxpayers subject to Virginia income tax.
Purpose:	This emergency regulation sets forth the standard which the Virginia Department of Taxation has applied since January 1, 1972 and will continue to apply to determine

Purpose—cont'd

the tax exempt status of schools having a racially discriminatory policy and the deductibility of contributions to such schools.

Background:

Until recently the Internal Revenue Service and the Virginia Department of Taxation applied the same standard in determining whether a school having a racially discriminatory policy qualified as a charitable institution exempt from income tax. This standard was set forth in I.R.S. Revenue Ruling 71-447, 1971-2, C.B. 230 and Revenue Procedure 75-50, 1975-2, C.B. 587.

On January 8, 1982 the U.S. Treasury announced that it was suspending enforcement of Revenue Ruling 71-447 and Revenue Procedure 75-50 in requests for exempt status made by schools having a racially discriminatory policy. However, Virginia continues to enforce the standard set forth in Revenue Ruling 71-447 and Revenue Procedure 75-50, until such time as they may be revoked. This emergency regulation incorporates that standard and the procedures which will be used by the Department of Taxation to enforce the standard.

Section 58-151.01(a) of the Code of Virginia provides: "Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a dif-

Background—cont'd

ferent meaning is clearly required."

The Commissioner has determined that certain terms used in Sections 58-151.03(c) and 58-151.013 (d)(1) clearly require meanings different from those in the laws, regulations, rulings and procedures of the United States as applied by the Internal Revenue Service after January 8, 1982.

The Commissioner has also determined that an emergency exists because the Internal Revenue Service may issue exemption letters at any time to schools having a racially discriminatory policy. The fact that a school may be exempt from federal income tax may mislead it and its contributors to assume that similar tax treatment will be granted under Virginia law. Accordingly, this emergency regulation is issued pursuant to the emergency procedures prescribed by the Administrative Process Act and shall be effective until a permanent regulation on this subject is adopted, until the Commissioner finds that the emergency no longer exists, or until April 14, 1983, whichever is the earliest. The Department of Taxation will receive, consider, and respond to petitions by any interested person at any time for the reconsideration or revision of this emergency regulation.*

---

* Amicus has been advised by the Attorney General of Virginia that no person has asked for reconsideration or revision of the Emergency Regulation.

Regulation:

The term "religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit which by reason of their purposes or activities are exempt from income tax under the laws of the United States" in Section 58-151.03(c) shall not include schools having a racially discriminatory policy even though such schools may not be subject to federal income tax.

In addition, the term "the amount allowable for itemized deductions for federal income tax purposes," as used in Section 58-151.013 (d)(1) shall not include the amount of contributions to schools having a racially discriminatory policy even though such amount may have been deducted and allowed for federal income tax purposes.

A school has a racially discriminatory policy if it fails or refuses to admit the students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school or if the school discriminates on the basis of race in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs. The term "racially discriminatory policy" shall not include an admissions policy at a school, or a program of religious training or

Regulation—cont'd

worship of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, provided that no such policy, program, preference or priority is based upon race or upon a belief that requires discrimination on the basis of race.

If the Commissioner, upon hearing, determines that a school has a racially discriminatory policy such school shall not be exempt from Virginia income tax and, in addition, no contributions to such school shall be allowed as a deduction in computing Virginia taxable income. The Commissioner may, in his discretion, allow the deduction of contributions to such school which were made prior to the date of determination that the school has a racially discriminatory policy, or such other date he may determine to be equitable.

Approved for issuance under the emergency procedures prescribed by Section 9-6.14:6(iii) of the Code of Virginia (1950), as amended, of the Administrative Process Act this 15 day of April, 1982.

/s/ Charles S. Robb

CHARLES S. ROBB
Governor

Adopted this 15 day of April, 1982

/s/ W. H. Forst

W. H. FORST
State Tax Commissioner

As Virginia's Emergency Regulation states, the Virginia Department of Taxation followed the same standard as the Internal Revenue Service to determine whether a school's racially discriminatory policy prohibited it from qualifying as a charitable institution exempt from income tax and one which had gifts to it considered deductible as charitable contributions. The Commonwealth had interpreted the law consistently with the way the Internal Revenue Service had.

For over ten years the Service had denied exemption and eligibility to receive gifts counted as charitable deductions to organizations like the petitioners herein. The Service position and the background for it is explained by former Commissioner Randolph Thrower. See *Statement By Randolph W. Thrower before the Ways and Means Committee on the Tax Exempt Status of Racially Discriminatory Private Schools, The Tax Lawyer*, Vol. 35, No. 3., pp. 701-713.

Virginia issued the Emergency Regulation because of the problems of inconsistent interpretation engendered by reversal of the Internal Revenue Service position and to make sure that its citizens and taxpayers would understand its position that permitting tax exemption or tax exemption for gifts to racially discriminatory schools was contrary to its policy. Virginia, once a bastion of "massive resistance", is now completely consistent with the teachings of this Court, and announced this policy so it would be clear to all. No person has asked the state to reconsider its policy as provided in its regulations.

Government subsidization by a state or the United States through tax exemption to schools that deny equality of education opportunity on the basis of race denies the principles for which citizens have served this country.

CONCLUSION

The judgments of the court of appeals should be affirmed.

Respectfully submitted:

LAWRENCE E. LEWY
4841 Randolph Drive
Annandale, Virginia 22003
(703) 354-0847
Attorney Pro Se