



THE UNITED STATES SUPREME COURT'S SAME-SEX MARRIAGE RULING

In 1983 the Supreme Court ruled that the IRS had properly revoked the tax-exempt status of Bob Jones University on the basis of its racially discriminatory practices, even though the University based its practices on its interpretation of the Bible clearly articulated in its governing documents.

The Supreme Court's ruling in the Bob Jones University case suggests that doctrinal provisions in the governing documents of religious schools that are viewed by the IRS or the courts as incompatible with the fundamental right of same-sex couples to marry may not be enough to fend off IRS challenges to tax-exempt status.

During the oral arguments before the Supreme Court prior to the same-sex marriage ruling in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), the following exchange occurred between Justice Alito and Solicitor General Verrilli (who was asking the Court to recognize same-sex marriage as a constitutional right):

Justice Alito: Well, in the Bob Jones case, the Court held that a college was not entitled to tax-exempt status if it opposed interracial marriage or interracial dating. So would the same apply to a university or a college if it opposed same-sex marriage?

Solicitor General Verrilli: You know, I don't think I can answer that question without knowing more specifics, but it's certainly going to be an issue. I don't deny that. I don't deny that, Justice Alito. It is—it is going to be an issue.

This same logic could apply to *churches* based on the Supreme Court's recognition of same-sex marriage as a fundamental right enshrined in the Constitution. Some are advocating this position, urging the IRS to revoke the tax-exempt status of any church or other religious organization that engages in any discriminatory practices involving sex, sexual identity, or sexual orientation. This would include the Roman Catholic Church, based on its refusal to ordain female priests, and any church that discriminates against persons based on sexual orientation or sexual identity. Like Bob Jones University, they would be free to continue their discriminatory practices, but at the cost of losing the privilege of tax-exempt status. Chief Justice Roberts addressed this issue in his dissenting opinion in the *Obergefell* case:

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

In a letter dated July 30, 2015, to the Oklahoma Attorney General, IRS Commissioner John Koskinen stated:

The [Supreme Court] in *Obergefell* held that the Constitution does not permit a state to “bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.” The IRS does not intend to change the standards that apply to section 501(c)(3) organizations by reason of the *Obergefell* decision. . . . The IRS does not view *Obergefell* as having changed the law applicable to section 501(c)(3) determinations or examinations. Therefore, the IRS will not, because of this decision, change existing standards in reviewing applications for recognition of exemption under section 501(c)(3) or in examining the qualification of section 501(c)(3) organizations.