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IRS Acted within Its Authority in Determining That Racially Discriminatory Non-Profit Private Schools are Not Charitable Institutions Entitled to Tax-Exempt Status.

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INTERNAL REVENUE SERVICE—TAX EXEMPTIONS—IRS Acted Within Its Authority in Determining That Racially Discriminatory Non-Profit Private Schools Are Not "Charitable" Institutions Entitled to Tax-Exempt Status

Bob Jones University v. United States,
__ U.S. __, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983).

Bob Jones University, a non-profit private school, denied blacks admission based upon a sincerely held religious belief.[1] On November 30, 1970, the Internal Revenue Service (IRS) notified the University of its revised policy on tax-exemption[2] and announced its decision to challenge the tax-exempt status of racially discriminatory private schools.[3] In 1971 the IRS issued a revenue ruling which denied federal income tax-exemption to private schools that do not maintain a nondiscriminatory policy.[4] Although

1. *See* Bob Jones Univ. v. United States, __U.S.__, __, 103 S. Ct. 2017, 2022, 76 L. Ed. 2d 157, 166 (1983). Bob Jones University, located in Greenville, South Carolina, genuinely believes that the Bible forbids interracial dating and interracial marriage and based upon such belief, the school denies admission to applicants who engage in or are known to advocate such practices. *See id.* at __, 103 S. Ct. at 2022-23, 76 L. Ed. 2d at 165-66.

2. *See id.* at __, 103 S. Ct. at 2023, 76 L. Ed. 2d at 166. The IRS' revised policy followed a preliminary injunction issued by the District Court for the District of Columbia in Green v. Kennedy, 309 F. Supp. 1127 (D.D.C. 1970), *app. dismissed sub nom.* Cannon v. Green, 398 U.S. 956 (1970), in which the court prohibited the IRS from according tax-exempt status to discriminatory private schools in Mississippi. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2021, 76 L. Ed. 2d 157, 165 (1983).

3. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2023, 76 L. Ed. 2d 157, 166-67 (1983). In a related case, the IRS determined that Goldsboro Christian Schools were not an organization fulfilling a charitable purpose under section 501(c)(3) of the Internal Revenue Code and therefore were denied tax-exempt status. *See id.* at __, 103 S. Ct. at 2024, 76 L. Ed. 2d at 168. Goldsboro Christian Schools, a group of non-profit private schools which maintain racially discriminatory admission policies, filed suit in the District Court for the Eastern District of North Carolina. *See id.* at __, 103 S. Ct. at 2024, 76 L. Ed. 2d at 168. The district court upheld the IRS determination in Goldsboro Christian Schools, Inc. v. United States, 436 F. Supp. 1314, 1320 (E.D.N.C. 1977). The Court of Appeals for the Fourth Circuit affirmed the district court in Goldsboro Christian Schools, Inc. v. United States, 644 F.2d 879 (4th Cir. 1981) (per curiam). The United States Supreme Court granted certiorari in both cases, Bob Jones University and Goldsboro Christian Schools. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2025, 76 L. Ed. 2d 157, 169 (1983).

4. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2022, 76 L. Ed. 2d 157, 165 (1983). The Revenue Ruling 71-447, 1971-2 C.B. 230, was encouraged by the national commitment to halt discrimination. *See* Bob Jones Univ. v. United States, __ U.S.

the University's revised admissions policy, enacted May 29, 1975, permitted enrollment of blacks, the University continued to deny admission to applicants who engaged in or advocated interracial dating or marriage.[5] On January 19, 1976, the IRS revoked the University's tax-exempt status,[6] effective as of December 1, 1970, and the University responded by bringing suit to recover taxes paid to the IRS.[7] The United States District Court for the District of South Carolina ruled that the IRS had exceeded the scope of its authority and had violated the University's constitutional rights under the first amendment.[8] On appeal, the Court of Appeals for the Fourth Circuit ruled that the IRS acted within the scope of its authority in revoking the tax-exempt status of the University because, under section 501(c)(3) of the Internal Revenue Code, the University was not acting as a "charitable institution."[9] The United States Supreme Court granted certiorari.[10] Held—*Affirmed.* The Internal Revenue Service acted within its authority in determining that racially discriminatory non-profit private schools are not "charitable" institutions entitled to tax-exempt status.[11]

__, __, 103 S. Ct. 2017, 2022, 76 L. Ed. 2d 157, 165 (1983). Based upon the Revenue Ruling, the IRS concluded that racially discrimintory non-profit private schools cannot qualify for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. *See id.* at __, 103 S. Ct. at 2022, 76 L. Ed. 2d at 165. Furthermore, those who make contributions to such discriminatory institutions will no longer be afforded federal income tax deductions under section 170 of the Internal Revenue Code. *See id.* at __, 103 S. Ct. at 2022, 76 L. Ed. 2d at 165.

5. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2023, 76 L. Ed. 2d 157, 167 (1983).

6. *See id.* at __, 103 S. Ct. at 2023, 76 L. Ed. 2d at 167. Prior to the date of formal revocation, the University brought an action in 1971 to enjoin the IRS. *See id.* at __, 103 S. Ct. at 2023, 76 L. Ed. 2d at 167. This action culminated in the case of Bob Jones Univ. v. Simon, 416 U.S. 725 (1974), in which the Supreme Court held that the Anti-Injunction Act of the Internal Revenue Code, 26 U.S.C. § 7421(a) (1970), denied the University any judicial review before the payment of taxes. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2023, 76 L. Ed. 2d 157, 167 (1983).

7. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2023, 76 L. Ed. 2d 157, 167 (1983).

8. *See* Bob Jones Univ. v. United States, 468 F. Supp. 890, 907 (D.S.C. 1978). The Court ordered the IRS to reimburse the $21 refund per employee claimed by the University. *See id.* at 907.

9. *See* Bob Jones Univ. v. United States, 639 F.2d 147, 151-55 (1981). The court of appeals also rejected petitioner's claim that revocation of its tax-exempt status violated the establishment clause and the free exercise clause of the first amendment. *See id.* 153-55.

10. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2025, 76 L. Ed. 2d 157, 169 (1983).

11. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 182. The Court limited the effect of its decision to religious schools and did not specifically decide whether there should be a distinction between public and private schools. *See id.* at __, 103 S. Ct. at 2035 n.29, 76 L. Ed. 2d at 182 n.29. Furthermore, the Court declared that its decision did not deal with the issue of denial of tax-exempt status to "churches or other purely religious institutions." *See id.* at __, 103 S. Ct. at 2035 n.29, 76 L. Ed. 2d at 181 n.29.

Congress has created numerous administrative agencies to interpret, implement, and enforce the laws which it has enacted.[12] The statutes which establish such administrative agencies also define the parameters of the agency's authority.[13] When an agency exceeds the scope of its authority, certain constitutional mandates are threatened.[14] Administrative agencies cannot act in any manner which would divest the legislative and judicial branches of their constitutional powers.[15] With regard to Congress, an agency violates the Constitution if it attempts to create the laws, since only Congress is vested with such authority.[16] Courts thus are concerned with limiting an agency's authority to those areas in which the agency has statutory power.[17]

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12. *See* Barfield v. Byrd, 320 F.2d 455, 457 (5th Cir. 1963) (Congress vested with authority to create agencies to "administer and enforce" laws which it creates), *cert. denied,* 376 U.S. 928 (1964). *See generally* PRESIDENTIAL DOCUMENTS UNIT, OFFICE OF FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1982/83 (1982) (comprehensive list of all governmental administrative agencies created by Congress).

13. *See* Hampton v. Mow Sun Wong, 456 U.S. 88, 113 (1976) (statutory directive creating agency is subject of court's inquiry); *see also* D. NELSON, ADMINISTRATIVE AGENCIES OF THE USA 173 (1964) (agencies dependent on courts which look to statutes to determine enforcement of agency's order).

14. *See* Schechter Poultry Corp. v. United States, 295 U.S. 495, 529 (1935) (Constitution prohibits Congress from delegating essential legislative functions); Humphrey's Ex'r v. United States, 295 U.S. 602, 629 (1935) (Congress has authority to establish "quasi-legislative or quasi-judicial agencies" but Constitution demands each branch of government remain free from control or influence); *see also* F. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS 31-32 (1982) (violation of "essential constitutional precept" for agency to act in manner depriving legislature or courts of "their constitutional prerogatives").

15. *See* F. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS 31-32 (1982) (administrative agencies cannot exercise constitutional powers reserved to legislative and judicial branches).

16. *See, e.g.,* Schechter Poultry Corp. v. United States, 295 U.S. 495, 529 (1935) (only Congress can exercise legislative functions); Panama Ref. Co. v. Ryan, 293 U.S. 388, 421 (1935) (certain legislative functions vested in Congress cannot be transferred); Hampton & Co. v. United States, 276 U.S. 394, 407 (1928) (important distinction between authority to execute laws and authority to make the laws); *see also* Manhattan Gen. Equip. Co. v. Comm'r, 297 U.S. 129, 134-35 (1936) ("the power to make law" cannot be exercised by administrative agency nor delegated by Congress to administrative agency).

17. *See* Village of Silver Lake v. Wisconsin Dep't of Revenue, 275 N.W.2d 119, 122 (Wis. Ct. App. 1978) (administrative agencies have "no common law power," only powers possessed "are either expressly conferred or necessarily implied from the four corners of the statute under which it operates"); *see also* Community Television v. Gottfried, __ U.S. __, __, 103 S. Ct. 885, 893 n.17, 74 L. Ed. 2d 705, 717 n.17 (1983) (general duty of agency "to enforce the public interest" does not dictate that agency attempt to enforce legislation outside agency's authority); NAACP v. Federal Power Comm'n, 425 U.S. 662, 670 (1976) (Congress' intent in directing Federal Power Commission to be guided by "public interest" did not encompass commissioner's taking original jurisdiction of processing charges of unfair labor practices on part of regulatees). *See generally* Schwartz, *Administrative Law Cases During 1979,* 32 AD. L. REV. 411, 413 (1980) (limiting agencies to statutory limits is "princi-

Courts also scrutinize agency actions justified under the guise of promotion of the general welfare.[18] With respect to the Federal Power Commission (FPC), the Supreme Court decided that Congress, in stipulating that the FPC is to be guided by the "public interest,"[19] did not intend the commission to eliminate discrimination.[20] This holding reflects the rule consistently enumerated by the Supreme Court that the use of the words "public interest" in regulatory statutes does not authorize the agency to embark on a mission to promote the general public welfare.[21]

In the area of taxation, the Internal Revenue Service, like other administrative agencies, must act within the scope of its authority.[22] Congress, by statute, delegated to the Secretary of the Treasury the power to enforce and administer the tax laws[23] and created a Commissioner of the Internal

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ple administrative law function" of courts). In *Hampton v. Mow Sun Wong,* the Supreme Court of the United States reviewed the authority of the Civil Service Commission. *See Hampton v. Mow Sun Wong,* 426 U.S. 88, 91 (1976). The question presented was whether the Commission could bar noncitizens, including lawfully admitted resident aliens, from participating in federal civil service employment. *See id.* at 98-99. The Court stated that the Commission, like other administrative agencies, must utilize its expertise and explain the reasoning for its decision. *See id.* at 115. The Court declared that the Commission, or any agency, exceeds its scope of authority when it acts in "foreign affairs, for treaty negotiations, for establishing immigration quotas or conditions of entry, or for naturalization policies." *Id.* at 114. The Court concluded that only Congress and the President may have the constitutional power to act as the Commission had done, since the maintenance of efficient federal service is the Commission's only concern. *See id.* at 114. Furthermore, actions of the Commission are under the supervision of the President, as dictated by statute. *See id.* at 114 n.47; 5 U.S.C. §§ 1302(a), 3301(1) (1976 & Supp. V 1982).

18. *See* NAACP v. Federal Power Comm'n, 425 U.S. 662, 665 (1976).

19. *See, e.g.,* NAACP v. Federal Power Comm'n, 425 U.S. 662, 671 (1976) (FPC to establish "just and reasonable rates in the public interest"); 15 U.S.C. § 717(a) (1976) ("the business of transporting natural gas for ultimate distribution to the public is affected with a public interest"); 16 U.S.C. § 824(a) (1976) ("the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest").

20. *See* NAACP v. Federal Power Comm'n, 425 U.S. 662, 670 (1976) (Court declared that Congress gave FPC authority to promote just and reasonable rates in the public interest, but not to eradicate discrimination).

21. *See, e.g.,* NAACP v. Federal Power Comm'n, 425 U.S. 662, 670 (1976) ("public interest" in statute does not give power to FPC to create or promote general welfare); New Haven Inclusion Cases, 399 U.S. 392, 432 (1970) (Commission does not have responsibility of "public interest" apart from maintenance of adequate rail transportation system in "public interest"); United States v. Lowden, 308 U.S. 225, 230 (1939) (Commissioner charged with efficient maintenance of rail transportation system not public interest); *see also* Texas v. United States, 292 U.S. 522, 531 (1934) (statute's reference to "public interest" does not dictate that Commission advance general public welfare).

22. *See* 26 U.S.C. §§ 7801-7810 (1976 & Supp. V. 1982) (statutes define scope of authority of officers of Internal Revenue Service).

23. *See* 26 U.S.C. § 7801(a) (1976 & Supp. V. 1982). The Constitution confers on Congress the power to tax. *See* U.S. CONST. art. I, § 8, cl. 1. The sixteenth amendment to the Constitution establishes the power of Congress "to lay and collect taxes on incomes." *See*

Revenue to perform "such duties and [exercise such] powers as may be prescribed by the Secretary."[24] Important duties and powers of the IRS include the issuance of regulations,[25] revenue rulings,[26] and letter rulings.[27] Although treasury regulations have the force of law,[28] courts will not enforce the regulations if they are inconsistent with the Internal Revenue Code.[29] Treasury regulations carry more authority than revenue rulings because the regulations are promulgated under the guidance of the Secretary of the Treasury.[30] Courts, however, do accord weight to revenue

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U.S. CONST. amend. XVI. Taxation is ultimately a legislative function. *See* National Cable Television Ass'n, Inc. v. United States, 415 U.S. 336, 340 (1974). Congress cannot delegate legislative functions vested in it by the Constitution. *See* Schechter Poultry Corp. v. United States, 295 U.S. 495, 529 (1935); Panama Ref. Co. v. Ryan, 293 U.S. 388, 421 (1935) (Congress vested with certain legislative functions which it cannot transfer). Congress may, however, delegate authority or discretion as to the administration of the laws which it creates. *See* Hampton & Co. v. United States, 276 U.S. 394, 407 (1928) (important distinction between delegation of authority to make laws and conferring authority as to the execution of law).

24. 26 U.S.C. § 7802 (1976). The IRS is divided into three parts: a national office located in Washington, D.C.; seven regional offices, each with its own commissioner; and 60 district offices, each with its own director. *See* PRESIDENTIAL DOCUMENTS UNIT, OFFICE OF THE FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1982/83 (434-35) (1982).

25. *See* 26 C.F.R. § 601.601(a)(1) (1983) (regulations are "prescribed by the Commissioner and approved by the Secretary or his delegate"). The purpose of publication of regulations is to effectuate a "uniform application" of the tax laws. *See id.* § 601.601(d)(1) (1983). If a treasury regulation changes congressional intent, it will be held void. *See* World Serv. Life Ins. Co. v. Unted States, 471 F.2d 247, 250 (8th Cir. 1983).

26. *See* Tax Analysts & Advocates v. IRS, 362 F. Supp. 1292, 1302 (D.D.C. 1973) (revenue rulings "are formal, published interpretations of the tax laws and are issued by the IRS"). Revenue rulings are published in the Internal Revenue Bulletin for the purpose of informing and guiding the taxpayer and are issued only by the National Office of the IRS. *See id.* at 1302. The purpose of publication of revenue rulings is to "assist taxpayers in maintaining maximum voluntary compliance" with the nation's tax laws. *See* 26 C.F.R. § 601.601(d)(2)(iii) (1982).

27. *See* United States v. Weber Paper Co., 320 F.2d 199, 201 (8th Cir. 1963). When a taxpayer requests a particular interpretation of a secton of the Internal Revenue Code, the IRS will issue a letter ruling interpreting or explaining that section. *See id.* at 201.

28. *See* Estate of J. O. Willett v. Comm'r, 365 F.2d 760, 761 (5th Cir. 1966) (treasury regulations ordinarily have force of law).

29. *See* Comm'r v. South Tex. Lumber Co., 333 U.S. 496, 501 (1948) (unless unreasonable, treasury regulations will be sustained). Treasury regulations will be overruled only for significant reasons, since such regulations represent the construction of the revenue statutes by those charged with interpreting the Code. *See id.* at 501; Fawcus Machine Co. v. United States, 282 U.S 375, 378 (1931) (important reason needed to overturn treasury regulation). A treasury regulation which alters congressional intent will be held void. *See* World Serv. Life Ins. Co. v. United States, 471 F.2d 247, 250 (8th Cir. 1983).

30. *See* PRESIDENTIAL DOCUMENTS UNIT, OFFICE OF THE FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1982/83 424 (1982). The Office of the Assistant

rulings, which are published interpretations of the tax laws, as an expression of the expertise of the agency empowered to administer the tax laws, i.e., the IRS.[31] Nevertheless, neither the courts nor the Secretary of the Treasury are bound by revenue rulings because such rulings do not have the force of law,[32] and a revenue ruling will have no effect if it alters the congressional intent of a statute[33] or conflicts with a court's interpretation of a statute.[34]

Even though the courts can disregard a revenue ruling, many cases uphold the authority of the IRS to interpret the Internal Revenue Code.[35]

Secretary "assists the Secretary and Deputy Secretary in the formulation and execution" of the tax policies. *See id.* at 427. Revenue rulings do not have the "force and effect of treasury regulations". *See* 26 C.F.R. § 601.601(d)(2)(v)(d)(1982); *see also* Sims v. United States, 252 F.2d 434, 438 (4th Cir. 1958) (revenue rulings are not "formally approved or promulgated by Secretary of Treasury"), *aff'd.,* 359 U.S. 108 (1959).

31. *See, e.g.,* Carle Found. v. United States, 611 F.2d 1193, 1195 (7th Cir. 1979) (revenue rulings accorded weight), *cert. denied,* 449 U.S. 824 (1980); McMartin Indus., Inc. v. Vinal, 441 F.2d 1274, 1275-76 (8th Cir. 1971) (revenue rulings entitled to great weight in interpretive process); United States v. Hall, 398 F.2d 383, 387 (8th Cir. 1968) (much weight given to revenue ruling in interpretive process); *see also* Whittemore v. United States, 383 F.2d 824, 830 n.9 (8th Cir. 1967) (regulations enacted under "legislative authority, 26 U.S.C. § 7805 (1964)," and are therefore entitled to substantial weight in "interpretive process"); Economy Sav. & Loan Co. v. Comm'r, 158 F.2d 472, 474 (6th Cir. 1946) (great weight). The Court of Appeals for the Fifth Circuit stated that rulings express the studied view of the agency whose duty is to carry out the tax statute. *See* Miami Beach First Nat'l Bank v. United States, 443 F.2d 475, 478 (5th Cir.), *cert. denied,* 404 U.S. 984 (1971). The Fifth Circuit, moreover, stated that revenue rulings are the official interpretations of our tax statutes and should be accorded weight. *See* Maccy's Jewelry Corp. v. United States, 387 F.2d 70, 72 (5th Cir. 1967). *But see* Biddle v. Comm'r, 302 U.S. 573, 582 (1938) (when interpreting a tax statute a ruling is of limited help).

32. *See* Stubbs, Overbeck & Assocs., Inc. v. United States, 445 F.2d 1142, 1146 (5th Cir. 1971) (rulings have interpretive value but not binding on courts or Secretary); Sims v. United States, 252 F.2d 434, 438 (4th Cir. 1958) (rulings not promulgated by Secretary of Treasury, not binding on Secretary or the courts), *aff'd.,* 359 U.S. 108 (1959); United States v. Bennett, 186 F.2d 407, 410 (5th Cir. 1951) (rulings have no more binding or legal effect than opinion of any lawyer).

33. *See* Neuberger v. Comm'r, 311 U.S. 83, 89 (1940) (ruling cannot conflict with congressional intent); Conway County Farmers Ass'n v. United States, 588 F.2d 592, 600 (8th Cir. 1978) (ruling cannot alter scope of statute).

34. *See* Manhattan Gen. Equip. Co. v. Comm'r, 297 U.S. 129, 134 (1936) (under statutory authority administrative agency may possess power to "prescribe rules and regulations" to effectuate intent of Congress, but regulation which attempts to invade exclusive congressional power by creating laws "merely nullity"); *see also* United States v. Martin, 337 F.2d 171, 175-76 (8th Cir. 1964) (revenue ruling conflicting with statute is nullity); First Ky. Co. v. Gray, 190 F. Supp. 824, 825 (W.D. Ky. 1960) (ruling entitled to respect but fails if conflicts with law as interpreted by courts).

35. *See, e.g.,* Comm'r v. Portland Cement Co., 450 U.S. 156, 169 (1981) (Secretary of Treasury, not courts, vested with such authority); United States v. Cartwright, 411 U.S. 546, 550 (1973) (not business of courts to administer tax laws since Congress vested such author-

The Supreme Court in *United States v. Correll,*[36] for example, declared that Congress delegated to the Commissioner and not to the courts the authority to prescribe "all needful rules and regulations" for the administration and enforcement of the Internal Revenue Code.[37] The judiciary's duty, according to the Court is to insure that the Commissioner of Internal Revenue acted within the limits of his authority and reasonably construed the tax laws.[38]

Courts have also upheld the Commissioner's interpretations of tax-exemptions on the basis that such tax benefits must conform to public policy.[39] The Supreme Court has emphasized that Congress, in allowing deductions of business expenses, did not intend to allow the business to circumvent public policy.[40] Charitable tax-exemptions, like other tax-exemptions, have been subject to public policy limitations.[41] Courts have denied tax-exempt status to various private trusts which were determied by the IRS to provide a private, rather than a public, benefit.[42] Furthermore,

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ity in Secretary of Treasury); Comm'r v. South Tex. Lumber Co., 333 U.S. 496, 501 (1948) (Commissioner charged with administration of statutes).

36. 389 U.S. 299 (1967). The Commissioner of the Internal Revenue ruled that a taxpayer can deduct "traveling expenses" incurred on a business trip only if the trip requires the taxpayer to stop and sleep. *See id.* at 299.

37. *See id.* at 307. The Court stated that the tax-exemption statute, section 162(a)(2) of the Internal Revenue Code, did not encompass every business expense incurred in traveling. *See id.* at 302. The Court also declared that the Commissioner achieved substantial fairness in construing the statute. *See id.* at 303.

38. *See id.* at 307.

39. *See* Tank Truck Rentals v. Comm'r, 356 U.S. 30, 35 (1958) (judicial action requires that, when possible, public policy of state is not thwarted).

40. *See id.* at 31-32 (Court upheld IRS revised policy founded upon public policy interpretation of tax-exemption statute). Courts have consistently held that deductions of fines and penalties will contravene public policy because to allow such deductions would thwart the intent of the legislature. *See, e.g.,* United States v. Jaffray, 97 F.2d 488, 493 (8th Cir. 1938) (Commissioner disallowed deduction from ordinary business expenses and his ruling presumed correct), *aff'd on other grounds sub nom.* United States v. Bertelsen & Petersen Eng'g Co., 306 U.S. 276 (1939); Tunnel R. Co. v. Comm'r, 61 F. 2d 166, 174 (8th Cir. 1932) (not congressional intent that carrier should have any advantage, by way of deduction of imposed penalties); Chicago, R.I. & P. Ry. v. Comm'r, 47 F.2d 990, 991 (7th Cir. 1931) (would be unjustifiable to allow business expense deductions for fines imposed for violation of public policy); *see also* Burroughs Bldg. Material Co. v. Comm'r, 47 F.2d 178, 180 (2nd Cir. 1931) (only "ordinary and necessary business expenses" may be deducted; fines paid by taxpayer not such expenses); Great N. Ry. v. Comm'r, 40 F.2d 372, 373 (8th Cir. 1930) (expenses are not of type that fall within "statutory definition of deductible operating expenses"). In *Great Northern Ry.,* the court declared that it was not the congressional intent that the petitioner "should have any advantage" or reduction of the penalties which were incurred. *See id.* at 373.

41. *See* Kain v. Gibboney, 101 U.S. 362, 358 (1870). "Charity is generally defined as a gift for a public use. Such is its legal meaning." *Id.* at 358.

42. *See* Crellin v. Comm'r, 46 B.T.A. 1152, 1156 (1942) (petitioner had created private

in 1924 the Supreme Court recognized the requirement that "charitable institutions" must provide a benefit to the public before receiving tax-exempt status.[43] Congress reinforced this public benefit theory and declared that the exemptions granted to charitable organizations are justified by the theory that the government is relieved of certain public financial burdens and the general welfare is benefited by the activities of such organizations; thus, the government receives "compensation for the loss in revenues."[44]

In *Bob Jones University v. United States,*[45] the Supreme Court confronted the issue of whether the IRS exceeded its statutory authority by issuing a revenue ruling denying petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code.[46] The Reagan Administration had placed the Court in a sensitive position by maintaining that the IRS

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trust and sought tax-exemption); James Sprunt Benevolent Trust v. Comm'r, 20 B.T.A. 19, 24-25 (1930) (must give benefit which is not private). In *Crellin,* the court declared that the purpose of the trust was not charitable and thus no deduction was allowed. *See* Crellin v. Comm'r, 46 B.T.A. 1152, 1156 (1942).

43. *See* Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) (exemption is made for benefit given to public). The Court stated that the exemption is not afforded when an organization conducts itself for a merely private gain. *See id.* at 581.

44. *See* H.R. Rep. No. 1860, 75th Cong., 3rd Sess. 19 (1938) (tax-exemptions based on public policy).

45. __ U.S. __, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983). Although the University revised its admissions policy in 1975, the University still practiced racial discrimination. *See id.* at __, 103 S. Ct. at 2023, 76 L. Ed. 2d at 166. The University argued that, after revising its policy, it allowed all races to enroll, subject only to certain restrictions. *See id.* at __, 103 S. Ct. 2036, 76 L. Ed. 2d at 182. The Court stated that any ban on admission founded upon a racially discriminatory motive was still discrimination and thus contravened established public policy and court precedent. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 182.

46. *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. at 169; *see also* 26 U.S.C. § 501(c)(3) (1976 & Supp. V 1982) (categories of tax-exempt status given). The Court concluded that the IRS' interpretation was within the statutory powers of the IRS. *See id.* at __, 103 S. Ct. at 2030, 76 L. Ed. 2d at 175-76. The University's first point of attack against the action of the IRS was that the IRS erroneously determined that racially discriminatory admission policies of private schools violated public policy. *See id.* at __, 103 S. Ct. at 2031, 76 L. Ed. 2d at 176. The Court stated that institutions which racially discriminate confer no public benefit within the legislative meaning behind section 501(c)(3). *See id.* at __, 103 S. Ct. at 2031, 76 L. Ed. 2d at 176. The University also argued that the IRS had exceeded its statutory authority in issuing the revenue ruling, regardless of whether racial discrimination violates public policy. See id. at __, 103 S. Ct. at 2031, 76 L. Ed. 2d at 176. The Court declared that the IRS had acted within its authority when it issued the revenue ruling interpreting sections 501(c)(3) and 170. *See id.* at __, 103 S. Ct. at 2032, 76 L. Ed. 2d at 178. The University made the additional argument that the IRS policy cannot apply when the racial discrimination is supported by a sincerely held religious belief. *See id.* at __, 103 S. Ct. at 2034, 76 L. Ed. 2d at 180. The free exercise clause of the first amendment, the Court stated, is not absolute. *See id.* at __, 103 S. Ct. at 2034, 76 L. Ed. 2d at 180. Furthermore, according to the Court, although denial of tax-exempt status will have an impact on the University, such denial will not prevent the school from "observing their religious tenets." *See id.* at __, 103 S. Ct. at 2035, 76 L. Ed. 2d at 181.

was without authority to issue Revenue Ruling 71-447.[47] Nevertheless, Chief Justice Burger, writing for the majority, declared that the IRS had not exceeded its authority and thus adopted the IRS' view that to qualify for tax-exemption under section 501(c)(3), an entity must come within one of the eight categories enumerated by section 501(c)(3) and must not act contrary to public policy.[48] In arriving at its decision, the Court looked to the congressional purposes surrounding the Internal Revenue Code's tax-exemptions and also to the origins of tax-exemptions.[49] Charitable tax-exemptions, the Court declared, affect all taxpayers and such exemptions are justified by the public benefit which such entities confer on society.[50] Therefore, according to the Court, when an entity fails to confer a public benefit or contravenes public policy, the reasons for affording the entity

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47. *See* Rev. Rul. 71-447, 1971-2 C.B. 230. Revenue Ruling 71-447 provides in pertinent part: "[A] school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common law concepts reflected in sections 170 and 501(c)(3) of the Code and in other relevant Federal statutes and accordingly does not qualify as an organization exempt from Federal income tax. *See* Rev. Rul. 71-447, 1971-2 C.B. 230, 231.

48. *See* Bob Jones Univ. v. United States, — U.S. —, —, 103 S. Ct. 2017, 2030-31, 76 L. Ed. 2d 157, 175-76 (1983). Under section 501 (c) (3) the eight enumerated categories entitled to tax-exempt status are: religious, charitable, scientific, literary, and educational institutions, institutions fostering national or international amateur sporting events, institutions which perform tests for public safety, and institutions which operate for the prevention of cruelty to children and animals. *See* 26 U.S.C. § 501(c)(3) (1976 & Supp. V 1982). The University argued that the only requirement of any organization is that it fall within one of the eight categories. *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. 2d at 169. The Court declared, however, that section 501(c)(3) must be analyzed within the framework of the Code and read in light of congressional intent. *See id.* at __, 103 S. Ct. at 2026, 76 L. Ed. 2d at 170. The Court declared that a reading of section 170 of the Internal Revenue Code reveals that congressional intent was to afford tax-exemption only to institutions performing "charitable purposes." *See id.* at __, 103 S. Ct. at 2026 n.11, 76 L. Ed. 2d at 170 n.11. Such a reading, the Court found, leads to the conclusion that institutions which violate public policy are not entitled to tax-exempt status. *See id.* at __, 103 S. Ct. at 2026, 76 L. Ed. 2d at 171. The opinion in *Bob Jones University,* written by Chief Justice Burger, was joined by Associate Justices William J. Brennan Jr., Thurgood Marshall, Byron R. White, Harry A. Blackmun, John Paul Stevens, and Sandra Day O'Connor. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 182. Associate Justice Lewis F. Powell, Jr., wrote a separate concurring opinion. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 182. A dissenting opinion was written by Associate Justice William H. Rehnquist. *See id.* at __, 103 S. Ct. at 2039, 76 L. Ed. 2d at 186.

49. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 171 (must look at congressional intent in analyzing sections of Internal Revenue Code). The Court found that tax-exemptions were originally afforded to institutions "beneficial to the social order of the country." *See id.* at __, 103 S. Ct. at 2026, 76 L. Ed. 2d at 171.

50. *See id.* at __, 103 S. Ct. at 2028, 76 L. Ed. 2d at 173. When such exemptions are given, other taxpayers are indirect donors. *See id.* at __, 103 S. Ct. at 2028, 76 L. Ed. 2d at 173.

tax-exempt status are abrogated.[51] The Court stated that the IRS should not be expected to ignore sound public policy and blindly grant tax-exemptions.[52] Furthermore, the Court concluded, the IRS must first look to the Internal Revenue Code to determine whether the entity qualifies under section 501(c)(3); it then becomes the duty of the IRS to determine whether that entity violates public policy.[53] The Court held that petitioner violated established public policy and the IRS acted within its authority in revoking petitioner's tax-exempt status.[54]

Justice Powell, in his concurring opinion, did not adopt the majority's conclusion that entitlement to tax-exemption should rest on a "public benefit" theory.[55] According to Justice Powell, the IRS is empowered to administer tax laws and collect revenue and should not act to promote public policy.[56] Justice Powell concluded that the language of the tax-exempt statute does not require refusal of tax-exempt status to private schools that discriminate.[57]

In his dissenting opinion, Justice Rehnquist declared that the majority vested the IRS with broad powers which Congress had reserved for itself.[58]

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51. *See id.* at __, 103 S. Ct. at 2031, 76 L. Ed. 2d at 176. The Court stated that racially discriminatory educational institutions confer no public benefit. *See id.* at __, 103 S Ct. at 2031, 76 L. Ed. 2d at 176. Furthermore, according to the Court, the organizations' activities and purposes cannot go against the "common community conscience." *See id.* at __, 103 S. Ct. at 2029, 76 L. Ed. 2d at 174.

52. *See id.* at __, 103 S. Ct. at 2032, 76 L. Ed. 2d at 177-78.

53. *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. 2d at 169. To qualify for tax-exemption, according to the IRS and the Court, the institution must first fall within one of the categories enumerated by section 501(c)(3). *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. 2d at 169. The Court adopted the position of the IRS that, after an institution comes within one of the eight categories of section 501(c)(3), it must also prove to be an institution not contrary to public policy before it can be accorded tax-exempt status. *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. 2d at 169.

54. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 182 (IRS properly applied Revenue Ruling 71-447 to Bob Jones University).

55. *See id.* at __, 103 S. Ct. at 2037, 76 L. Ed. 2d at 184 (1983) (Powell, J., concurring in part, concurring in judgment).

56. *See id.* at __, 103 S. Ct. at 2039, 76 L. Ed. 2d at 186 (Powell, J., concurring in part, concurring in judgment). The Court, Justice Powell concluded, has often agreed with limiting the authority of an agency to areas in which they possess expertise. *See id.* at __, 103 S. Ct. 2039, 76 L. Ed. 2d at 186 (Powell, J., concurring in part, concurring in judgment).

57. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 183 (Powell, J., concurring in part, concurring in judgment). According to Justice Powell, the petitioners came within the language of the tax-exemption statute. *See id.* at __, 103 S. Ct. at 2036, 76 L. Ed. 2d at 183 (Powell, J., concurring in part, concurring in judgment). Furthermore, Justice Powell declared that the "contours of public policy" should not be established by the judges or the courts, but by Congress. *See id.* at __, 103 S. Ct. at 2039, 76 L. Ed. 2d at 186.

58. *See id.* at __, 103 S. Ct. at 2044, 76 L. Ed. 2d at 193 (Rehnquist, J., dissenting). Justice Rehnquist declared that the interpretation given section 501(c)(3) by the IRS and

In addition, Justice Rehnquist disagreed with the construction given to section 501(c)(3) by the IRS and the majority.[59] Finding that Congress had set forth the requirements of section 501(c)(3) tax-exempt status, Justice Rehnquist professed that nowhere does there exist an additional public policy requirement.[60]

The fact that the Reagan Administration did not support the action taken by the IRS and refused to send counsel to the Supreme Court to defend the IRS' position made the decision in *Bob Jones University* a politically sensitive question.[61] The Court, however, was presented with a question of constitutional importance,[62] specifically, whether the adminis-

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adopted by the Court is unsupported by "statutory language and legislative history." *See id.* at __, 103 S. Ct. at 2044, 76 L. Ed. 2d at 193 (Rehnquist, J., dissenting). Moreover, Justice Rehnquist refused to adopt the Court's conclusion that Congress had acquiesced to the IRS interpretation. *See id.* at __, 103 S. Ct. at 2043-44, 76 L. Ed. 2d at 192 (Rehnquist, J., dissenting). The majority acknowledged that the courts are reluctant to interpret inaction on the part of Congress as acquiescence. *See id.* at __, 103 S. Ct. at 2033, 76 L. Ed. 2d at 178. The majority, however, found that Congress had affirmatively acquiesced in the IRS interpretation of section 501(c)(3) when Congress enacted section 501(i) of the Internal Revenue Code. Act of October 20, 1976, Pub. L. 94-568, 90 Stat. 2697 (1976); *see* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2033, 76 L. Ed. 2d 157, 179 (1983).

59. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2040, 76 L. Ed. 2d 157, 188 (1983) (Rehnquist, J., dissenting). Justice Rehnquist declared that Congress defined the requirements for tax-exemption under section 501(c)(3). *See id.* at __, 103 S. Ct. at 2040, 76 L. Ed. 2d at 188. Justice Rehnquist also disagreed with the majority's proposition that section 170 of the Internal Revenue Code is helpful in interpreting section 501(c)(3). *See id.* at __, 103 S. Ct. at 2040, 76 L. Ed. 2d at 188 (Rehnquist, J., dissenting).

60. *See id.* at __, 103 S. Ct. at 2024, 76 L. Ed. 2d at 187 (Rehnquist, J., dissenting).

61. *See* Flygare, *Supreme Court Hears Arguments on Tax Breaks for Racially Discriminatory Private Schools,* 64 PHI DELTA KAPPA 369, (1983) (due to refusal of Reagan Administration to send counsel, court appointed special counsel). William T. Coleman, who was appointed by the Court stated that an institution which violates "fundamental public policy" does not qualify for tax-exemption under the Code. *See id.* at 369. In 1982, President Reagan endeavored to revoke the position taken by the IRS with regard to tax-exemption. *See* N.Y. TIMES, May 25, 1983, at Al, col. 4. The action of the Reagan Administration in response to the policy position taken by the IRS became symbolic of the Administration's departure from "civil rights policies of the recent past." *See* N.Y. TIMES, May 25, 1983, at Al, col. 4; *see also* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2025 n.9, 76 L. Ed. 2d 157, 169 n.9 (1983) (government continued to maintain that IRS had no authority to issue revenue ruling); Flygare, *Supreme Court Hears Arguments on Tax Breaks for Racially Discriminatory Private Schools,* 64 PHI DELTA KAPPA 369 (1983) (Reagan Administration declared IRS had no congressional authority to deny "tax-exemptions to racially discriminatory schools").

62. *See* U.S. CONST. art. I, § 8, cl. 1. Taxation is purely a legislative function. *See* National Cable Television Ass'n Inc. v. United States, 415 U.S. 336, 340 (1974). Under the Constitution, Congress is prohibited from delegating essential legislative functions. *See* Schechter Poultry Corp. v. Unied States, 295 U.S. 495, 529 (1935). Congress can delegate authority as to execution of the law, but such authority must be "exercised under and in pursuance of the law." *See* Hampton & Co. v. United States, 276 U.S. 394, 407 (1928). The

trative agency empowered to administer the tax laws had attempted to shape public policy and thus had exceeded its bounds of authority.[63] As pointed out by Justice Powell in his concurring opinion, the courts have consistently limited an agency's authority to those areas in which the agency has statutory power.[64] There can be no dispute that the IRS is empowered to administer and interpret the Internal Revenue Code.[65] Any dispute lies in the fine line to be drawn between interpretation of the Internal Revenue Code and enactment of the nation's tax laws.[66] As to the latter, the IRS is without authority because no administrative agency can exercise the legislative power of creating our nation's law.[67]

The courts have also consistently estopped agencies that seek to promote public policy.[68] Justice Rehnquist, dissenting in *Bob Jones University,* rec-

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Constitution demands, however, that the three branches of government remain free from control or influence. *See* Humphrey's Ex'r v. United States, 295 U.S. 602, 629 (1935); *see also* F. COPPER, ADMINISTRATIVE AGENCIES AND THE COURTS 31-32 (1982) (administrative agencies which claim authority vested in legislature or courts violate essentials of Constitution).

63. *See* Bob Jones Univ. v. United States, __ U.S __, __, 103 S. Ct. 2017, 2021, 76 L. Ed. 2d 157, 164 (1983). The sensitivity of the issues involved in *Bob Jones University* is further revealed by the statement made by Reverend Bob Jones, Jr., immediately following the date of the decision, that we are "in a bad fix when eight evil old men and one vain and foolish woman can speak a verdict on American liberties." *See* N.Y. TIMES, May 25, 1983, at A22, col. 4. Furthermore, Reverend Jones reiterated that his school's policies are based upon the Bible which does not permit racial mixing. *See* N.Y. TIMES, May 25, 1983, at A22, col. 4.

64. *See id.* at __, 103 S. Ct. at 2039, 76 L. Ed. 2d at 186 (Powell, J., concurring). An agency's duty to enforce legislation is limited to enforcement of only those statutes directed at the agency. See Community Television v. Gottfried, __ U.S. __, __, 103 S. Ct. 885, 893 n.17, 74 L. Ed. 2d 705, 717 n.17 (1983). *See generally* Schwartz, *Administrative Law Cases During 1979,* 32 AD.L. REV. 411, 413 (1980) (limiting agencies to statutory limits is the "principle administrative law function" of courts).

65. *See* 26 U.S.C. §§ 7801-7810 (1976) (statutes define scope of authority of officers of IRS); *see also* 26 U.S.C. § 7802 (1976) (Commissioner of the Internal Revenue vested with power to perform "such duties and powers as may be prescribed by the Secretary"). *See generally* PRESIDENTIAL DOCUMENTS UNIT, OFFICE OF THE FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1982/83 435 (1982) (sets out divisions of IRS).

66. *See* Schechter Poultry Corp. v. United States, 295 U.S. 495, 529 (1935) (essential legislative functions vested in Congress cannot be delegated); *see also* F. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS 31-32 (1982) (administrative agencies cannot deprive Congress of its constitutional authority).

67. *See* Manhattan Gen. Equip. Co. v. Comm'r, 297 U.S. 129, 134 (1936). "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law. . . ." *Id.* at 134; *see also* Hampton & Co. v. United States, 276 U.S. 394, 407 (1928) (important distinction exists between delegation of authority to make laws and giving authority to execute the laws); 26 U.S.C. §§ 7801-7810 (1976) (statutes establish scope of authority of IRS which does not include authority to create laws).

68. *See, e.g.,* NAACP v. Federal Power Comm'n, 425 U.S. 662, 670 (1976) (FPC not

ognized the importance of prohibiting an agency from creating "fundamental public policy."[69] As pointed out by the majority, however, Justice Rehnquist failed to take notice of section 170(c) of the Internal Revenue Code which indicates that the congressional intent was to afford tax-exemptions only to those who perform "charitable" functions.[70] Furhermore, it has been recognized by Congress and declared by the courts, in a long line of cases, that tax-exemptions are burdened with a "public benefit" theory.[71] Congressional intent and court precedent, therefore, preclude the rejection of the "public benefit" theory, which, if disregarded, would result in the determination that the IRS had exceeded its scope of authority in *Bob Jones University* as well as in numerous cases upholding IRS determinations based on "public benefit."[72]

Some of the disagreement in *Bob Jones University* stems from the majority's statement that the IRS has denied tax-exemptions to other organizations due to a failure to fulfill a "public benefit."[73] The problem lies in the fact that the majority uses as support cases involving treasury regula-

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empowered to create public policy); New Haven Inclusion Cases, 399 U.S. 392, 432 (1970) (Commissioner of rail transportation system cannot create public policy); United States v. Lowden, 308 U.S. 225, 230 (1938) (Commissioner's authority does not involve public interest).

69. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2044, 76 L. Ed. 2d 157, 193 (1983) (Rehnquist, J., dissenting). Justice Rehnquist emphasized the statement by Congressman Ashbrook that "[T]he IRS has no authority to create public policy." *See id.* at __, 103 S. Ct. at 2044, 76 L. Ed. 2d at 192 (Rehnquist, J., dissenting).

70. *See id.* at __, 103 S. Ct. at 2026 n.11, 76 L. Ed. 2d at 170 n.11. The majority in *Bob Jones University* concluded that Justice Rehnquist's argument failed to recognize the fact that section 170(c) of the Internal Revenue Code clearly defines the term "charitable contribution" which is the basis of section 501(c)(3) of the Code. *See id.* at __, 103 S. Ct. at 2026 n.11, 76 L. Ed. 2d at 170 n.11.

71. *See, e.g.,* Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) (exemption not available when organization acts for private gain; must afford public benefit); Crellin v. Comm'r, 46 B.T.A. 1152, 1156 (1942) (trust must be "charitable"); James Sprunt Benevolent Trust v. Comm'r, 20 B.T.A. 19, 24-25 (1930) (court found no benefit given to public thus no entitlement to tax-exemption); *see also* H.R. REP. No. 1860, 75th Cong., 3rd Sess. 19 (1938) (compensation given to government when tax-exemptions are granted because government displaces certain financial burdens and public is benefited).

72. *See, e.g.,* Tank Truck Rentals v. Comm'r, 356 U.S. 30, 35 (1958) (Court concluded public policy of state should not be thwarted); Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) (exemption denied because not "public benefit"); Crellin v., Comm'r, 46 B.T.A. 1152, 1156 (1942) (exemption denied by IRS due to no "public benefit" and upheld by court); *see also* James Sprunt Benevolent Trust v. Comm'r, 20 B.T.A. 19, 24-25 (1930) (court upheld IRS determination that only private benefit was conferred). *See generally* Kain v. Gibboney, 101 U.S. 362, 365 (1879) (charity is gift for public benefit).

73. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2031, 76 L. Ed. 2d 157, 177 (1983) (Court stated there are "other instances [where] the IRS had denied charitable exemptions" due to failure to provide "public benefit").

tions,[74] while *Bob Jones University* resulted from an IRS revenue ruling.[75] Although the courts give treasury regulations more weight than revenue rulings,[76] the question remains the same, i.e., did the agency exceed its authority?[77]

The authority of the IRS, derived from Congress, includes interpretation of the nation's tax laws.[78] Even though the IRS is not empowered with authority to create "public policy,"[79] the majority concluded that the IRS was not acting to create public policy; it was simply recognizing congressional intent as required.[80] Moreover, it cannot be doubted that racial discrimination contravenes public policy.[81] To grant tax-exemptions to institutions that practice such discrimination would ignore a broad but

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74. *See id.* at __, 103 S. Ct. at 2031, 76 L. Ed. 2d at 177.

75. *See id.* at __, 103 S. Ct. at 2025, 76 L. Ed. 2d at 169.

76. *See, e.g.,* Comm'r v. South Tex. Lumber Co., 333 U.S. 496, 501 (1948) (weighty reason needed to overrule treasury regulation; unless unreasonable will be sustained); Fawcus Mach. Co. v. United States, 282 U.S. 375, 378 (1931) (treasury regulation overturned only for weighty reason); Sims v. United States, 252 F.2d 434, 438 (4th Cir. 1958) (revenue rulings not formally approved or promulgated by Secretary of Treasury), *aff'd,* 359 U.S. 108 (1959). *See generally* PRESIDENTIAL DOCUMENTS UNIT, OFFICE OF THE FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1982/83 427 (1982) (Secretary of Treasury and Deputy Secretary formulate tax policies). Revenue rulings do not have the "force and effect of treasury regulations." *See* 26 C.F.R. § 601.601(d)(2)(v)(d) (1982).

77. *See, e.g.,* Carle Found. v. United States, 611 F.2d 1192, 1195 (7th Cir. 1979) (weight given revenue rulings), *cert. denied,* 449 U.S. 824 (1980); McMartin Indus., Inc. v. Vinal, 441 F.2d 1274, 1275-76 (8th Cir. 1971) (weight given to revenue ruling); Whittemore v. United States, 383 F.2d 824, 830 n.9 (8th Cir. 1967) (regulation promulgated under 26 U.S.C. § 7805 (1964), and is given great weight); *see also* Maccey's Jewelry Corp. v. United States, 387 F.2d 70, 72 (5th Cir. 1967) (weight accorded ruling since "official interpretation by service"). A ruling cannot abrogate the Congressional intent of a tax statute. *See* Neuberger v. Comm'r, 311 U.S. 83, 89 (1940). A ruling cannot alter the scope of a statute. *See* Conway County Farmers Ass'n v. United States, 588 F.2d 592, 600 (8th Cir. 1978). A regulation must do no more than interpret and apply Congressional intent. *See* Manhattan Gen. Equip. Co. v. Comm'r, 297 U.S. 129, 134-35 (1936) (power of administrative agency is not "power to make law" but power to administer intent of Congress as "expressed by the statute").

78. *See, e.g.,* World Serv. Life Ins. Co. v. United States, 471 F.2d 247, 250 (8th Cir. 1973) (IRS vested with authority to issue regulations); United States v. Weber Paper Co., 302 F.2d 199, 201 (8th Cir. 1963) (IRS vested with authority to issue letter rulings); Tax Analysts & Advocates v. Internal Revenue Serv., 362 F. Supp. 1298, 1302 (D.D.C. 1973) (IRS vested with authority to issue revenue rulings).

79. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2039, 76 L. Ed. 2d 157, 185-86 (1983) (Powell, J., concurring in part, concurring in judgment) (business of the IRS is to produce revenues).

80. *See id.* at __, 103 S. Ct. at 2032, 76 L. Ed. 2d at 177. The IRS, according to the majority, is guided by the Code. *See id.* at __, 103 S. Ct. at 2032, 76 L. Ed. 2d at 177.

81. *See id.* at __, 103 S. Ct. at 2029, 76 L. Ed. 2d at 174. Each individual has the right "not to be segregated on racial grounds." *See* Copper v. Aaron, 358 U.S. 1, 19 (1958). Discriminatory private schools, though exercising an educational function, contravene pub-

overriding reason behind tax-exemptions, specifically, that such groups or individuals should receive no advantage from a violation of public policy.[82]

Although the majority's decision in *Bob Jones University,*[83] written by Chief Justice Burger, did not address the question of whether there should be a distinction between public and private religious institutions,[84] the majority's reasoning and the public policy theory behind granting tax-exemptions indicate that no line should be drawn and no distinction made between such organizations.[85] Whether the IRS can deny tax-exempt status to purely religious institutions which maintain racially discriminatory policies is a question which remains unanswered after the decision in *Bob Jones University.*[86] The majority's adoption of the IRS position, that an institution must fall within one of the eight enumerated categories of section 501(c)(3) and not act contrary to public policy, would indicate that the IRS is empowered to deny tax-exempt status to purely religious institutions which racially discriminate.[87] The first amendment to the Constitution, however, dictates that freedom of religion cannot be impaired.[88] Furthermore, even though the granting of tax-exemptions to purely reli-

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lic policy since the educational function cannot be isolated from the discrimination. *See* Norwood v. Harrison, 413 U.S. 455, 468-69 (1973).

82. *See, e.g.,* Tunnel R.R. v. Comm'r, 61 F.2d 166, 174 (8th Cir. 1932) (no advantage by way of tax-deduction is afforded when one violates statute); Chicago R. I. & P. Ry. v. Comm'r, 47 F.2d 990, 991 (7th Cir.1931) (fines imposed for violation of public policy are not deductible, since no advantage afforded for such violation); Burroughs Bldg. Material Co. v. Comm'r, 47 F.2d 178, 179 (2nd Cir. 1931) (fines paid by taxpayer not deductible); *see also* Great N. Ry. v. Comm'r, 40 F.2d 372, 373 (8th Cir. 1930) (Congress never intended that taxpayer should have any advantage from unlawful activities).

83. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983).

84. *See id.* at __, 103 S. Ct. at 2035 n.29, 76 L. Ed. 2d at 181 n.29.

85. *See id.* at __, 103 S. Ct. at 2029-30, 76 L. Ed. 2d at 174-75. The Court, without making a distinction between public and private religious institutions, declared that "racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals." *See id.* at __, 103 S. Ct. at 2029, 76 L. Ed. 2d at 174. The Court in *Norwood,* without drawing a distinction between public and private educational institutions, declared that racially discriminatory educational practices exert "a pervasive influence on the entire educational process." *See* Norwood v. Harrison, 413 U.S. 455, 469 (1973); *see also* H.R. REP. NO. 1860, 75th Cong., 3rd Sess. 19 (1938) (tax-exemptions based on public policy); Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) (exemption made for benefit given to public).

86. *See* Bob Jones Univ. v. United States, __ U.S. __, __, 103 S. Ct. 2017, 2035 n.29, 76 L. Ed. 2d 157, 181 n.29 (1983).

87. *See id.* at __, 103 S. Ct. at 2032, 76 L. Ed. 2d at 177. Religious institutions "operated exclusively for religious" purposes fall within one of the eight categories specifically enumerated in section 501(c)(3). *See id.* at __, 103 S. Ct. at 2021 n.1, 76 L. Ed. 2d at 164 n.1.

88. *See* U.S. CONST. amend. I.

gious organizations does not contravene the establishment clause of the first amendment,[89] it has been held that no tax-exemption can differentiate between "types of religious belief."[90] With respect to the agency's authority to make decisions which embrace public policy, the courts can draw no arbitrary line but must examine the congressional intent surrounding the statute interpreted by the agency and look to the statute which established the agency's authority.[91]

Since the IRS is the administrative agency empowered to administer and interpret our nation's tax laws, the interpretation process requires the IRS to take notice of established congressional intent. While the IRS cannot make laws aimed at eliminating a particular group from the purview of a tax-exemption statute, the IRS can deny tax-exemptions to a group which does not fulfill the congressional intent of a particular tax statute. In order to inform taxpayers of its determinations, the IRS is empowered to issue treasury regulations, revenue rulings, and letter rulings. The revenue ruling issued by the IRS regarding Bob Jones University was supported by congressional intent and by established court precedent. Therefore, the determination of the Internal Revenue Service that the University failed to confer a "public benefit" and the subsequent revocation of its tax-exempt status were actions within the statutory authority of the IRS.

William Chamblee

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89. *See* Swallow v. United States, 325 F.2d 97, 98 (10th Cir. 1963) (per curiam) (first amendment not contravened by allowing tax-exemptions for religious purposes), *cert. denied,* 377 U.S. 951 (1964).

90. *See* Fellowship of Humanity v. County of Alameda, 315 P.2d 394, 406 (Cal. Dist. Ct. App. 1957) (violation of Constitution to grant tax-exemptions which discriminate on basis of religious belief).

91. *See, e.g.,* Community Television v. Gottfried, __ U.S. __, __, 103 S. Ct. 885, 893 n.17, 74 L. Ed. 2d 705, 717 n.17 (1983) (agency not empowered to enforce legislation outside agency's authority); Hampton v. Mow Sun Wong, 426 U.S. 88, 114-15 (1976) (limited function performed by Civil Service Commission); NAACP v. Federal Power Comm'n, 425 U.S. 662, 665 (1976) (question is what authority Congress granted to agency). *See generally* Village of Silverlake v. Wisconsin Dep't of Revenue, 375 N.W. 2d 119, 112 (Wis. Ct. App. 1978) (administrative agencies have only statutory powers); 26 U.S.C. §§ 7801-7810 (1976) (statutes define scope of authority of officers of the Internal Revenue Service).