

**Notes* from phone call with Mark Stern, American Jewish Congress
Regarding talk he gave on October 24, 2007
“Debate over gay rights about more than same-sex marriage”**

Mr. Stern is of the opinion that the most likely path gay rights activists will take to diminish religious objection to “equal treatment” for gays—including unions and marriage—will be the removal of tax exemptions.

The case he discussed in his talk was the denial by the Ocean Grove, N.J. Methodist Church of a gay couple’s use of their gazebo on the beach—a venue which had been used by the public for marriage ceremonies for years. Interestingly, the gazebo was exempt from property taxes under the “Green Acres” law in New Jersey—not because it was property of a Church. Within two weeks of the incident, the New Jersey Department of the Environment, which is ordinarily notable for its slowness of action, had removed the tax exemption for the gazebo.

Mr. Stern saw this incident as a cautionary tale. He also pointed to the Boy Scouts in San Diego losing their access to city grounds because they had refused membership to gays. He referenced the Bob Jones cases—which ruled that the University’s ban on interracial dating would result in the removal of their tax-exemption:

Bob Jones University was dedicated to “fundamentalist Christian beliefs” which included prohibitions against interracial dating and marriage. Such behavior would lead to expulsion. In 1970, the Internal Revenue Service (IRS) changed its formal policy to adopt a district court decision that prohibited the IRS from giving tax-exempt status to private schools engaging in racial discrimination. The IRS believed that the University’s policies amounted to racism and revoked its tax-exempt status.

Question

Can the government prohibit race discrimination at the expense of the First Amendment’s Free Exercise Clauses?

Conclusion

The Court found that the IRS was correct in its decision to revoke the tax-exempt status of Bob Jones University. The institution did not meet the requirement by providing “beneficial and stabilizing influences in community life” to be supported by taxpayers with a special tax status. The school could not meet this requirement due to its discriminatory policies. The Court declared that racial discrimination in education violated a “fundamental national public policy.” The government may justify a limitation on religious liberties by showing it is necessary to accomplish an “overriding governmental interest.” Prohibiting racial discrimination was such a governmental interest. Hence, the Court found that “not all burdens on religion are unconstitutional.”

http://www.oyez.org/cases/1980-1989/1982/1982_81_3/

Mr. Stern pointed out that most of the advances made by gay activists have come by asserting a parallel between discrimination on the basis of race and discrimination on the basis of sexuality. They claim that acceptance into all society’s institutions is their civil right—and that denial of their “rights” on the basis of sexuality is the same (prohibited) denial of them based on race.

Mr. Stern is of the opinion that religious organizations ought to be proactive in securing assurances that their beliefs will not jeopardize their tax-exempt status—as it appears certain gay marriage will become legal and accepted in the near future. When that is *fait accompli*, to deny the use of Church facilities for gay union or gay marriage ceremonies will be cause for harsh tax penalties.

* October 29, 2007: *Mr. Stern did not have a written copy of his talk. He called and asked me to take notes! Carol Hogan*