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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 81-3

BOB JONES UNIVERSITY, - - - - *Petitioner*

v.

UNITED STATES OF AMERICA, - - *Respondent*

**BRIEF AMICUS CURIAE IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI ON BEHALF
OF THE NATIONAL COMMITTEE FOR
AMISH RELIGIOUS FREEDOM**

INTEREST OF THE AMICUS CURIAE

The National Committee for Amish Religious Freedom is a nonprofit association founded in 1967 for the purpose of protecting the religious liberty of the Old Order Amish and similar "plain people" throughout the United States. The Committee is made up of professors, lawyers, clergymen, and citizens of many religious faiths, all non-Amish, who work to preserve the rights of the Amish to practice their traditional, religiously-based lifestyle. The National Committee is interested in this case, as *amicus curiae*, due to the serious issues of religious liberty which it presents.

The Amish people, found in nineteen states in America today, descend from the Swiss Anabaptists

of 1525 who had sought to return to a Golden Age of Christianity.¹ To be "First Century Christians" demanded nonconformity to all things worldly and therefore a lifestyle of austerity and a separated community of believers.² "The separated community" implied not only separation from the world but also the *separation of church and state* as a safeguard of religious liberty. It has been said of the Anabaptists:

"They were the means of preserving what, in the nature of things, would seem to be the aim and the first justification of Luther, Calvin, and of all the other successful Reformers who were their deadliest foes: the principle . . . that men have the right to form their own religious groups, to join a group or not to join, to leave it when they choose; that these groups are equal in their rights and subject to no authority but what they themselves choose; that the groups are free to choose the way they shall worship; that every individual is free to choose what he shall believe. Whatever the theologians may need to say—or the philosophers—about the value of these principles, they have had a great history (thanks, first, to the Anabaptists) in the last three hundred years, nor is that history at an end." P. HUGHES, *A POPULAR HISTORY OF THE REFORMATION*, 142 (Image Books ed., (1960).

¹See generally, F. LITTELL, *Sectarian Protestantism and the Pursuit of Wisdom*, PUBLIC CONTROL OF NONPUBLIC SCHOOLS (Erickson ed.) 61-82 (1969).

²See J. HOSSETLER, *AMISH SOCIETY*, 77-79 (1980).

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the Fourth Circuit in *Bob Jones University v. United States* presents questions of law which are of national importance. The decision is in conflict with constitutionally protected principles of religious liberty.

ARGUMENT

The questions presented by Petitioner are of major importance to the Old Order Amish. The Amish are an insular, religious society. Their way of life has remained unchanged for centuries, and this Court has acknowledged that their religion "pervades and determines the entire mode of life of its adherents." *Wisconsin v. Yoder*, 406 U. S. 205, 210 (1972).

The Old Order Amish will not send their children to public schools, or to schools operated by other religious denominations. Instead, they operate their own schools, which are sufficient for their children. The right to choose those schools has long been vindicated by this Court. *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Wisconsin v. Yoder*, *supra*.

Their schools would doubtless be harmed by loss of tax exemption, and that loss could result from conscientious refusal of the Amish to conform to requirements respecting race which the IRS would seek to justify in the name of "public policy". For example, Amish schools may not accept pupils or teachers pur-

suant to governmentally determined racial criteria which are in conflict with religious obligations of the Amish in the conducting of the education of their children.

Even more important to the Amish, however, is the basic principle upon which the decision of the Fourth Circuit rests—namely, that religious bodies must conform the exercise of convictions to governmentally defined “public policy.” This rightly raises in the Amish mind memories of decrees of many another sovereign, in their long and difficult history, seeking to force, under penalty, conformity to the will of the state.

The Old Order Amish have lived in this country and have followed the dictates of their religion for over two and a half centuries. They exist in a modernity of their own, which is separate and apart from mainstream American culture. The “public policy” doctrine as delineated by the Court of Appeals poses a substantial threat to the Amish faith community and is plainly violative of the Religion Clauses of the First Amendment.

CONCLUSION

For all of the foregoing reasons, the National Committee for Amish Religious Freedom respectfully urges this Court to grant the Petition for Writ of Certiorari brought by Petitioner Bob Jones University.

Respectfully submitted,

THEODORE H. AMSHOFF, JR.
AMSHOFF & AMSHOFF
1445 Starks Building
455 Fourth Avenue
Louisville, Kentucky 40202
(502) 582-3500

*Counsel for the National Com-
mittee for Amish Religious
Freedom, as Amicus Curiae*