

# The Burger Court Opinion Writing Database

## *Bob Jones University v. United States*

461 U.S. 574 (1983)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

August 25, 1982

Re: A-207 (Nos. 81-1 and 81-3) Goldsboro Christian  
Schools, Inc. and Bob Jones University v.  
United States

MEMORANDUM TO THE CONFERENCE:

William T. Coleman has filed his brief in this case, 69 pages in length and with it a motion "for leave to file brief in excess of page limit."

Let me have your views.

Regards,



HA  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

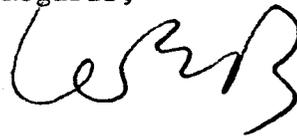
September 22, 1982

RE: Nos. 81-1 and 81-3 - Goldsboro Christian Schools, Inc. v. United States  
Bob Jones University v. United States

MEMORANDUM TO THE CONFERENCE:

Three Justices join my allocation of time, but Bill Brennan's allocation takes a middle ground to which I could readily agree. I will put it on the September 27 agenda for resolution.

OK  
Regards,



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 7, 1983

RE: No. 81-1 - Goldsboro Christian Schools v. U.S.  
81-3 - Bob Jones University v. U.S.

MEMORANDUM TO THE CONFERENCE:

Enclosed is a draft in the above cases. It will deserve some trimming and pruning in due course.

Regards,



To: Justice Brennan  
Justice White  
Justice Marshall ←  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**  
**MAR 7 1983**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-1 AND 81-3

**GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER**

81-1

*v.*

**UNITED STATES**

**BOB JONES UNIVERSITY, PETITIONER**

81-3

*v.*

**UNITED STATES**

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-profit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

I

A

Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, regardless of racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted charitable deduc-

<sup>1</sup>Section 501(c)(3) lists the following organizations, which, pursuant to

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

PERSONAL

March 16, 1983

Re: No. 81-1 - Goldsboro Christian Schools, Inc. v.  
United States  
No. 81-3 - Bob Jones University v. United States

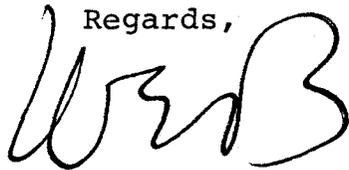
Dear Harry:

Re your memo

1. Of course Catholic Bishop will be in. It is already in Draft 2 which I am waiting to circulate. It got dropped through a "fluke" in being moved from text to a footnote.

2. I have not come to rest on the "title" problem and laid it aside until the substantive matters are resolved. I don't really anticipate much on the latter. Lewis will have no easy time making out his case.

Regards,



*never a doubt*

Justice Blackmun

To: Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **APR 1 1983**

Changes at: 16-20, 22, 25-28,  
and stylistic changes throughout.

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-1 AND 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER

81-1

v.  
UNITED STATES

BOB JONES UNIVERSITY, PETITIONER

81-3

v.  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-profit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

I

A

Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, without regard to their racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted charitable

<sup>1</sup>Section 501(c)(3) lists the following organizations, which, pursuant to

stylistic changes; and changes at 1, 10-12,  
16-17, 20-23, 25-27

To: Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **MAY 11 1983**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
v.  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
v.  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-  
profit private schools that prescribe and enforce racially dis-  
criminatory admissions standards on the basis of religious  
doctrine, qualify as tax-exempt organizations under § 501(c)  
(3) of the Internal Revenue Code of 1954.

I  
A

Until 1970, the Internal Revenue Service granted tax-  
exempt status to private schools, without regard to their  
racial admissions policies, under § 501(c)(3) of the Internal  
Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted chari-

<sup>1</sup>Section 501(c)(3) lists the following organizations, which, pursuant to

Order reversed and  
running heads  
changed throughout

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Change at: 23

To: Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

Circulated: \_\_\_\_\_

MAY 16 1983

Recirculated: \_\_\_\_\_

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
v.  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
v.  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-profit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

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Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, without regard to their racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted chari-

<sup>1</sup>Section 501(c)(3) lists the following organizations, which, pursuant to

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To: Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

**STYLISTIC CHANGES**

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **MAY 19 1983**

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
*v.*  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
*v.*  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-profit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

I

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Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, without regard to their racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted chari-

<sup>1</sup>Section 501(c)(3) lists the following organizations, which, pursuant to

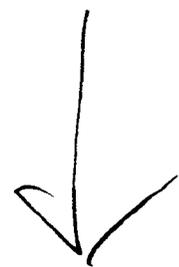
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Cite to Haig added at 25

Rec'd. May 20, 1983

✓

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.



**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

The Chief Justice

81-3 BOB JONES UNIVERSITY, PETITIONER  
v.  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
v.  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May 24, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether petitioners, non-profit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

I

A

Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, without regard to their racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3),<sup>1</sup> and granted chari-

<sup>1</sup> Section 501(c)(3) lists the following organizations, which, pursuant to

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41

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 14, 1983

Re: Cases Held for Nos. 81-3 & 81-1, Bob Jones Univ. v. United States, and Goldsboro Christian School v. United States.

(No. 81-757, Allen v. Wright, et al.  
(No. 81-970, Regan v. Wright, et al.

MEMORANDUM TO THE CONFERENCE:

The above two curve-lined cases present questions regarding the justiciability of a challenge by parents of black children attending public schools to the IRS' failure to deny tax-exempt status to allegedly racially discriminatory private schools.

Resps are the parents of black children attending public schools in eight states. They have identified 19 private schools located in their school districts which have insubstantial minority enrollments and which were founded when the local school district was desegregated. Resps sought declaratory and injunctive relief to force the Treasury Department and the Internal Revenue Service to disqualify these schools from receiving tax exemptions under §501(c)(3) of the Internal Revenue Code. It appears that the schools were entitled to retain their tax-exempt status under IRS procedures in effect as of 1978, but might have lost their tax exemptions if the IRS had put into effect new procedures that the IRS proposed in 1979. Those new procedures were never put into effect, however, since the Ashbrook and Dornan Amendments to the 1980 General Government Appropriations Act prohibited the IRS from using any funds for the "formulation or carrying out of those procedures.

The DC (DC, Hart) dismissed resps' attempt to compel the IRS to adopt procedures similar to those contained in the 1979 proposal, holding that (1) resps lacked standing, (2) the action was barred by the doctrine of nonreviewability because resps' claim would require the courts to run the administration of tax exemptions, and (3) granting the relief requested would thwart Congressional will as expressed in the Dornan and Ashbrook Amendments.

✓ The CADRC reversed, in an opinion written by Judge Ginsburg and joined by Judge Wright. On the standing issue, the CA distinguished Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976), which held that taxpayers lacked standing to challenge the tax-exempt status of a hospital which allegedly did not serve indigents. If resps were basing their challenge on a desire to enter the private schools, any harm would have been speculative and Eastern Kentucky would have controlled. Here, however, resps were seeking to prevent government conduct alleged to be inconsistent with an overriding national policy against racial discrimination in educational

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 30, 1983

Re: No. 81-3) Bob Jones University v. United States  
No. 81-1) Goldsboro Christian Schools, Inc. v.  
United States

MEMORANDUM TO THE CONFERENCE:

In this case a small matter arises out of the following statement:

"[T]he Government has a fundamental, overriding interest in eradicating racial discrimination in education--discrimination that prevailed with official approval, for the first 165 years of this Nation's history" (emphasis added),

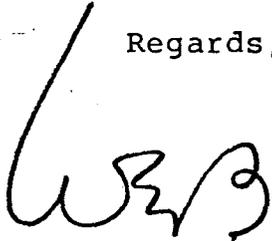
*He was  
challenged on  
the matter for this  
very reason*

Absent dissent I will instruct Henry Lind to insert "constitutional" after "Nation's" and before "history."

"for the first 165 years of this Nation's constitutional history"

This will make clear that I am counting from 1789; it also will avoid placing me in conflict with Abraham Lincoln who spoke in terms of "Four score and seven years ago". Who wants to take on Mr. Lincoln?

Regards,



76B

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

August 27, 1982

RE: No. A-207 (Nos. 81-1 and 81-3)  
Goldsboro Christian Schools, Inc. and Bob Jones  
University v. United States

Dear Chief:

I would grant the motion.

Sincerely,



The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 8, 1983

Re: No. 81-1--Goldsboro Christian Schools v. United States  
No. 81-3--Bob Jones University v. United States

Dear Chief:

Your opinion is on the whole persuasive and powerful. I am, however, concerned that your free exercise discussion in Part III, although absolutely correct in its thrust, might carry some unfortunate and unnecessary implications. The following represent a few relatively minor revisions that would go a long way toward alleviating those concerns, and that, I think, would actually strengthen the analysis.

(1) I fear that the opinion places undue focus on the fact that the IRS regulation imposes only an "indirect" burden on the schools. The direct/indirect distinction was largely repudiated in Sherbert v. Verner, and we have no need to rely upon it here. I would suggest (a) eliminating the two paragraphs beginning with "On occasion this Court" at the bottom of p.26, and (b) changing the last sentence of Part III, on p. 28, to read: "Here, the governmental interest substantially outweighs the burden imposed on

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petitioners' exercise of their religious beliefs by the denial of tax benefits." If citation to Prince and Reynolds is thought necessary, it might be accomplished, for example, by adding a "cf." to the string-cite at the end of the previous paragraph.

(2) Footnote 26 on p. 27 correctly points out that the government interest may be more compelling in the case of religious schools than in the case of churches, etc. I think it is incorrect, however, in suggesting that the religious interest is any less, or that churches are more "purely religious" than schools. I would therefore suggest revising footnote 26 to read roughly as follows:

We deal here only with religious schools--not with other religious institutions such as churches. The governmental interest in eliminating racial discrimination is at its greatest in the area of education. Indeed, we have previously recognized that racially discriminatory schools "exer[t] a pervasive influence on the entire educational process," outweighing any public benefit that they might otherwise provide. Norwood v. Harrison, 413 U.S. 455, 469 (1973). See Simon, supra, note 11, at 495-496.

(3) The opinion somewhat neglects the "less restrictive means" prong of Free Exercise Clause analysis. I would suggest revising the last paragraph of Part III, on pp. 27-28, to read roughly as follows:

The governmental interest at stake here is compelling. As discussed in Part II(B), supra, the

Government has a fundamental overriding interest in eradicating racial discrimination in education-- discrimination that prevailed, with official approval, for the first 165 years of this Nation's history. That governmental interest substantially outweighs the burden imposed on petitioners' exercise of their religious beliefs by the denial of tax benefits. Moreover, the interests asserted by petitioners cannot be accommodated with this compelling governmental interest. See United States v. Lee, supra, at 259-260. In particular no "less restrictive means," see Thomas v. Review Board, supra, at 718, could suffice to achieve the governmental interest; suits under 42 U.S.C. § 1981, for example, require an individual complainant, and cannot vindicate the Government's interest in eliminating the broader social harms created by racially discriminatory schools.

I am, of course, not wedded to any particular language, but I do hope you will find these suggestions acceptable. Like you, I think it is very important that we speak with a single voice in these cases.

Sincerely,

  
WJB, Jr.

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 4, 1983

Re: Nos. 81-1 and 81-3

Goldsboro Christian Schools,  
Inc. v. United States, et al.

Dear Chief,

I agree.

Sincerely,

*Bill*

The Chief Justice

Copies to the Conference

4118

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

August 26, 1982

Re: A-207, Goldsboro Christian  
& Bob Jones v. United States

Dear Chief:

My vote is to grant Mr. Coleman's  
motion.

Sincerely,

*B.R.W.*  
*by R.E.*

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 12, 1983

Re: 81-1 and 81-3 -  
Goldsboro Christian Schools, Inc.  
v. United States  
Bob Jones University v. United States

---

Dear Chief,

Please join me.

Sincerely,

*Byron*

The Chief Justice

Copies to the Conference

cpm

HAB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

August 26, 1982

Re: A-207 (Nos. 81-1 and 81-3) Goldsboro Christian  
Schools, Inc. and Bob Jones University v.  
United States

Dear Chief:

I have no objections to this brief being in  
excess of 50 pages.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 14, 1983

Re: Nos. 81-1 and 81-3 - Goldsboro Christian  
Schools v. U.S. and Bob Jones v. U.S.

Dear Chief:

Please join me.

Sincerely,

*T.M.*

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

August 26, 1982

Re: No. 81-1 - Goldsboro Christian Schools v. United States  
No. 81-3 - Bob Jones University v. United States

Dear Chief:

My inclination is to grant Mr. Coleman's motion.

Sincerely,

*H.A.B.*  
*/ by lrb*

The Chief Justice

cc: The Conference

March 16, 1983

Re: No. 81-1) - Goldsboro Christian Schools v. United States  
No. 81-3) - Bob Jones University v. United States

Dear Chief:

In a separate note, I am formally joining your opinion for these cases. The opinion, I feel, is well-written and well-documented. I have two suggestions for your consideration:

1. Perhaps you had some reason for not citing Catholic Bishop. That case was stressed by the petitioners but, in my view, definitely tilts against them and provides additional support for your conclusions. Should it be thrown back at them somewhere in the opinion?

2. We are slaves to numbers around here, and usually for good reason. As I stated at conference, however, I think this opinion should come out in the name of Bob Jones University rather than Goldsboro Christian Schools. The latter happened to catch a case number just two before the former, and if the heading is not changed, Bob Jones University will be relegated by the Reporter to a "together with" footnote. Bob Jones obviously is the primary case, and the other is a tagalong. Your opinion itself gives priority to Bob Jones. I therefore suggest that the caption be reversed and that the Reporter be specifically instructed to use Bob Jones as the title. This also ties in to the litigation reported in 416 U.S.

We have the same kind of problem with the abortion cases, and I have called it to Lewis' attention.

Sincerely,

HAB

The Chief Justice

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

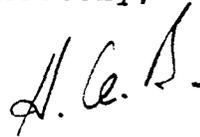
March 16, 1983

Re: No. 81-1) - Goldsboro Christian Schools v. United States  
No. 81-3) - Bob Jones University v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

August 26, 1982

A-207 Goldsboro Christian and Bob Jones v. U.S.

81-1 81-3

Dear Chief:

I have no objection to the motion of Mr. Coleman  
to file a brief in excess of 50 pages.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

HAB

81-1

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

September 23, 1982

Chambers Actions on Miscellaneous Motions

Dear Chief:

I agree with your proposed dispositions, with the exceptions noted below.

At first, I was inclined to agree with your allocation of time in the Bob Jones/Goldsboro cases. Now that I have read the briefs, I have some question as to whether the allocation you suggest for the two schools is adequate. As the cases are fully briefed, I do not suggest that additional oral argument will particularly benefit us. But the perception of fairness in these controversial cases is important. Moreover, Bob Jones argues that it falls within the "religion" rather than the "education" category, and to this extent its argument necessarily is somewhat different from Goldsboro's.

I therefore think John's suggestion of 30 minutes for the schools and the same time for Mr. Coleman is about the minimum. Although I do not feel strongly about it, I think the importance of the case - and the interest of the government - justify giving the Solicitor General 15 minutes.

I note some disagreement as to whether the SG should be granted leave to argue orally in 81-746. I prefer your suggestion that we grant 10 minutes to the SG. He may be more helpful than the more partisan counsel.

As to your Chambers Action Memorandum of September 22, your proposed dispositions are acceptable to me, though I do not feel strongly about the counterproposals from other Chambers.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 8, 1983

81-1 and 81-3 Goldsboro Christian/Bob Jones Cases

Dear Chief:

I will join the judgment in these cases, and probably will join some but not all of your opinion.

You may recall the views I expressed at Conference. I do not think the IRS has any general policy making authority, and I am afraid portions of your opinion will encourage it to make decisions that surely Congress itself should make. Perhaps I can agree that arguably §501(3) could have been construed as it was, but it would have been far more prudent - and consistent with its proper role - if the IRS had allowed Congress to make the decision.

I also have reservations as to the view that §501(c)(3) embraces the common law concept of "charity". If one looks at the enormous list of entities and organizations that have been accorded tax exempt status, it is not easy to view all of them - or indeed perhaps even most of them - as coming within any such common law concept. Nor, indeed, is it true by any means that all of the exempt organizations promote the public good as distinguished from some extremely narrow perception of it - a perception that hardly would measure up to the standard articulated in your opinion.

I am able to join the judgment only because of the strong case you make in II-D for full acceptance of the IRS ruling. Whether one calls it ratification or acquiescence, I do think it clear - certainly as of now - that Congress has accepted the original ruling that racially discriminatory schools do not qualify for tax exemptions.

Despite these negative comments, I add that certainly you have written a most thoughtful opinion, and despite reservations as to the IRS's authority (particularly at the time and in the circumstances of this case), you have persuaded me to join your judgment. I have not decided definitely whether to write, although my present inclination is to explain why I do not join all of your opinion.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
*v.*  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
*v.*  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

JUSTICE POWELL, concurring in part and concurring in the  
judgment.

I join the Court's judgment, along with part III of its opinion holding that the denial of tax exemptions to petitioners does not violate the First Amendment. I write separately because I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service (IRS) and its construction of §§ 170(c) and 501(c)(3) of the Internal Revenue Code.

I

Federal taxes are not imposed on organizations "operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. . . ." 26 U. S. C. § 501(c)(3). The Code also permits a tax deduction for contributions made to these organizations. § 170(c). It is clear that petitioners, organizations incorporated for edu-

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: \_\_\_\_\_

Recirculated: MAY 19 1983

MAY 19 1983

stylistic changes  
& p. 4

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
*v.*  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
*v.*  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

JUSTICE POWELL, concurring in part and concurring in the  
judgment.

I join the Court's judgment, along with part III of its opinion holding that the denial of tax exemptions to petitioners does not violate the First Amendment. I write separately because I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service (IRS) and its construction of §§ 170(c) and 501(c)(3) of the Internal Revenue Code.

I

Federal taxes are not imposed on organizations "operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. . . ." 26 U. S. C. § 501(c)(3). The Code also permits a tax deduction for contributions made to these organizations. § 170(c). It is clear that petitioners, organizations incorporated for edu- --

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HAB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

August-26, 1982

Re: A-207 (Nos. 81-1 and 81-3) Goldsboro Christian  
Schools, Inc. and Bob Jones University v.  
United States

Dear Chief:

I realize this is an important case, and briefing in excess of the page limit may be warranted. I have just this week, however, turned down applications from the government as amicus curiae, and from the petitioner, in No. 81-1945, Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission; in each case I allowed the applicants ten pages over the limit but no more. I would be inclined to treat Bill Coleman's request the same way if it had come to me initially.

Sincerely,

WHR/gb

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 9, 1983

Re: No. 81-1) Goldsboro Christian Schools v. United States  
                  )  
      81-3) Bob Jones University v. United States

Dear Chief,

In due course I will circulate a dissent.

Sincerely,

*WHR*

The Chief Justice

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: APR 11 1983

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-1 AND 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER

81-1

*v.*

UNITED STATES

BOB JONES UNIVERSITY, PETITIONER

81-3

*v.*

UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[April —, 1983]

JUSTICE REHNQUIST, dissenting.

The Court points out that there is a strong national policy in this country against racial discrimination. To the extent that the Court states that Congress in furtherance of this policy could deny tax-exempt status to educational institutions that promote racial discrimination, I readily agree. But, unlike the Court, I am convinced that Congress simply has failed to take this action and, as this Court has said over and over again, regardless of our view on the propriety of Congress' failure to legislate we are not constitutionally empowered to act for them.

In approaching this statutory construction question the Court quite adeptly avoids the statute it is construing. This I am sure is no accident, for there is nothing in the language of § 501(c)(3) that supports the result obtained by the Court. Section 501(c)(3) provides tax-exempt status for:

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Stylistic changes & pp. 6-8

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: \_\_\_\_\_

Recirculated: MAY 17 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-3 AND 81-1

81-3 BOB JONES UNIVERSITY, PETITIONER  
*v.*  
UNITED STATES

81-1 GOLDSBORO CHRISTIAN SCHOOLS, INC.,  
PETITIONER  
*v.*  
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[May —, 1983]

JUSTICE REHNQUIST, dissenting.

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In approaching this statutory construction question the Court quite adeptly avoids the statute it is construing. This I am sure is no accident, for there is nothing in the language of § 501(c)(3) that supports the result obtained by the Court. Section 501(c)(3) provides tax-exempt status for:

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

August 26, 1982

Re: A-207 (Nos. 81-1 and 81-3) - Goldsboro  
Christian Schools, Inc. and Bob Jones  
University v. United States

Dear Chief:

My vote is to allow the 69-page brief to be  
filed.

Respectfully,

*John / Jay*

The Chief Justice

Copies to the Conference

FMB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

September 21, 1982

Re: Chambers Actions on Miscellaneous  
Motions

Dear Chief:

With apologies for failing to respond more promptly to your September 1, 1982 Report on Chambers Actions, I have concluded that in 81-1 and 81-3 that the Schools should be given a little more time than you recommend because both the SG and the amicus disagree with at least a part of their position. I would be inclined to give the Schools 30 minutes, Mr. Coleman 30 minutes, and cut the SG back to 10 minutes. My second choice would be to follow Bill Brennan's suggestion in his letter of September 3.

I also am inclined to agree with Bill Brennan that we should deny the SG's motion for leave to argue orally in 81-746.

Otherwise, I agree with your proposed dispositions.

Sincerely,



The Chief Justice

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 7, 1983

Re: 81-1 - Goldsboro v. United States  
81-3 - Bob Jones v. United States

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 8, 1983

Re: 81-1 - Goldsboro Christian Schools v.  
United States; 81-3 - Bob Jones  
University v. United States

Dear Chief:

Although I have no objection to the second and third suggestions that Bill Brennan made in his letter of March 8, 1983, it does seem to me that the two paragraphs beginning at the bottom of page 26 and continuing onto page 27 should be retained. It does not seem to me that either Prince or Reynolds was overruled by Sherbert v. Verner and I think both of those cases support the result here. Perhaps you could eliminate the word "direct" by revising the first sentence of the second paragraph to read something like this: "Here, no such substantial burden on beliefs is involved."

Respectfully,



The Chief Justice

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

September 2, 1982

Re: A-207 (Nos. 81-1 and 81-3) Goldsboro  
Christian Schools, Inc. and Bob Jones  
University v. United States

Dear Chief,

I would vote to deny the motion to file brief in  
excess of page limit.

Sincerely,



The Chief Justice

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

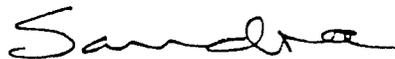
March 8, 1983

No. 81-1 Goldsboro Christian Schools, Inc.  
v. United States  
No. 81-3 Bob Jones University v. United States

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference