

FIU LAW REVIEW

RELIGION AND THE LAW SYMPOSIUM

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Abstracts



SECOND SESSION: GENDER AND RELIGION

MARIE FAILINGER

Interim Dean and Professor of Law
Hamline University School of Law

Women and the Free Exercise Clause: Some Thoughts about a Feminist Reading

The Supreme Court's interpretation of the Free Exercise Clause to the United States Constitution has been the continuous subject of trenchant criticism. While women plaintiffs in the Free Exercise cases that have come before the Supreme Court have been largely invisible, a review of the few cases involving women plaintiffs suggests that they may share values with modern feminist theory. Similarly, although there is no definitive "women's voice" among the female justices, feminist themes such as inclusivity, contextuality, practical reason and relationality consistently arise in their religious freedom opinions. This paper reviews some of the Court's religious freedom opinions, asking how a religious feminist approach to the Free Exercise Clause, which embraces values such as gratitude, humility, compassion, generosity, and integrity, might fruitfully add to existing discussions of the law of religious freedom.

TIMOTHY J. TRACEY

Associate Professor of Law
Ave Maria School of Law

Bob Jonesing: Same-Sex Marriage and the Hankering to Strip Religious Institutions of Their Tax-Exempt Status

In the wake of *Obergefell v. Hodges*, scholars and commentators have called for the Internal Revenue Service to strip religious schools of their tax-exempt status if they maintain opposition to same-sex marriage. These calls have uniformly assumed that a tax exemption is a government subsidy. But when the federal government exempts religious organizations from paying income tax, it is not choosing to bankroll religion. Rather the government is recognizing that the Establishment Clause of the First Amendment mandates a separation of church and state.

Bob Jones v. United States represents the lone exception. There, the U.S. Supreme Court upheld the IRS's revocation of the tax exemptions of two religious schools, because of their racially discriminatory admission policies. But eradicating race discrimination is the only "fundamental public policy" the Court has held overrides the First Amendment mandate of separation of church and state. *Bob Jones* is a historical anomaly. Private, segregated schools had sprung up across the South as a way to dodge integrated public education. States were fostering the expansion of these schools, according to Professor Olatunde Johnson, "by enacting legislation mandating or allowing the closing of public schools to resist desegregation or providing state tax

credits and tuition grants to students attending private schools.” Denying tax-exempt status was the only way to curb the growth of these schools.

Bob Jones, thus, sits alongside the myriad of other court decisions from the civil rights era where the Supreme Court was willing to go to extraordinary lengths to eradicate race discrimination. The case cannot be parlayed into a general rule that separation of church and state can be breached any time something smells mildly of discrimination.

SHAWN M. CRINCOLI

Associate Professor of Law

Touro College Jacob D. Fuchsberg Law Center

Judeo-Christian Conceptions of Sex Status and the Implications for Transgender and Gender Non-Conforming People

This Article explores conceptions of sex status within Judeo-Christian law, philosophy, and theology as it applies to the lives of transgender and gender non-conforming people. Relying on a comparative legal approach, the Article contrasts religious denominations with one another in how they treat the issue of assigning and reassigning sex. It also compares these conceptions of religious sex status with how sex assignment and status is treated within the American legal system. At the root of this inquiry lies the tension that exists between modern understandings of gender identity and traditional religious understandings of sex status. The Article examines how various religious groups have either reconciled this tension or have yet to adopt a position on the recognition of sex or gender. It provides an overview of the questions that arise from the participation of transgender or gender non-conforming people within Judeo-Christian based religious communities.

MARY ANNE CASE

Arnold L. Shure Professor of Law

University of Chicago Law School

Kim Davis and the Metaphysics of RFRA

This paper will use a close examination of the litigation strategy of Kentucky county clerk Kim Davis, held in contempt by a federal judge for refusing to allow her office to issue civil marriage licenses when same-sex couples became eligible for them, to illustrate difficulties in the conception and application of RFRA and of civil marriage licenses.