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NO. A -

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WILLIAM H. GREEN, et al.

v.

DONALD T. REGAN, Secretary of the
Treasury of the United States, et al.

CLARKSDALE BAPTIST CHURCH, Applicant

D.C. Circuit Docket No. 83-1831

APPLICATION FOR STAY PENDING APPEAL

September , 1983

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APPLICATION FOR STAY PENDING APPEAL

TO THE HONORABLE LEWIS F. POWELL, JUSTICE OF THE UNITED STATES
SUPREME COURT:

COMES NOW the Applicant, Clarksdale Baptist Church, Clarksdale, Mississippi, and applies to the Honorable Lewis F. Powell, Justice of the United States Supreme Court, for a stay of an order of the United States District Court for the District of Columbia, pending an appeal now docketed in this matter in the United States Court of Appeals for the District of Columbia Circuit, and in support thereof states as follows:

On September 2, 1983, the Applicant, Clarksdale Baptist Church, submitted the attached Application for Stay Pending Appeal to the Clerk of this Court. The application was addressed to Chief Justice Burger in his capacity as Circuit Justice for

Brennan in Chief Justice Burger's absence. Justice Brennan denied the application on September 7, 1983.

Clarksdale Baptist Church is resubmitting its application because it believes it fundamentally unjust to require church-operated schools, identical in doctrine and practice to Christian schools situated everywhere else in the United States, to be subjected to a presumption that they are guilty of racial discrimination and forced to engage in activities which offend their religious beliefs in order to retain tax exemption, simply because they are located in the State of Mississippi. Clarksdale Baptist Church, and its school, are emphatically non-discriminatory, such discrimination being contrary to their religious doctrine. Not a shred of Congressional authorization for the requirements ordered in this case can be shown to exist, Congress having gone to the extraordinary length of blocking funding for IRS adoption of such requirements by means of the "Ashbrook" and "Dornan" amendments to the Treasury, Postal Service, and General Government Appropriations Act of 1980, P.L. 96-74, 93 Stat. 559, §§103 and 615 (1979).

Not only do these presumption of guilt-affirmative action requirements offend fundamental notions of American justice, they are imposed in a lawsuit in which the constitutional standing of the plaintiffs to maintain this action is far from certain. In 1976, this Court, in Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, ruled that a group of indigent plaintiffs lacked standing to bring suit against the Secretary of the Treasury and the Commissioner of Internal Revenue (the very defendants herein) for failure to deny tax exemption to certain hospitals which had denied non-emergency service to them. Simon is directly applicable to this case, Simon v. Eastern Kentucky Welfare Rights Organization (not even claiming refusal by any

church-school to admit any of their number to enrollment) seek to compel the IRS to implement burdensome requirements upon church-schools not heretofore adopted. Should any church-school refuse, on grounds of religious principle, to offer full compliance at any step along the path charted by the plaintiffs, the church-school is to suffer the loss of federal tax exemption. When the U.S. Court of Appeals for the D.C. Circuit decided that Simon was inapplicable in a case identical to this (Wright v. Regan, 656 F.2d 820 (1981)); a case which had been consolidated with this one), this Court granted certiorari to review that judgment (Allen v. Wright, No. 81-757; Regan v. Wright, No. 81-970).

Fairness to small innocent worthwhile religious enterprises, such as Clarksdale Baptist Church, would seem to dictate that these church institutions not suffer imposition of severe government strictures, overriding preferred First Amendment freedoms, during the time in which this Court is deciding whether the plaintiffs even have the right to demand, in court, that such strictures be considered.

The centrality of these presumption of guilt-affirmative action requirements make this a fundamentally different case from Bob Jones University v. United States, 103 S. Ct. 2017 (1983). Too, Bob Jones University's acknowledged beliefs about racial separation were expressly found by this Court to be discriminatory. Here, Clarksdale Baptist Church sincerely believes (and the sincerity for this belief cannot be open to question on a motion for summary judgment, the procedure invoked by the plaintiffs against the Church in this action) that racial discrimination in any form is contrary to the Word of God. This case cannot be said to be controlled by Bob Jones.

Because of the importance of this case to Clarksdale Baptist Church and other churches in Mississippi and elsewhere throughout the country, oral argument on this Application is most urgently requested.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I have this ____ day of September, 1983 served the foregoing Application for Stay, by hand delivering a copy to Glenn L. Archer, Jr, Assistant Attorney General, Tax Division, United States Justice Department; and to Michael Paup, Chief, Appellate Section, Tax Division, United States Department of Justice, Main Justice Building, Washington D.C. 20530; and Norman J. Chachkin, Esquire, 733 15th Street, N.W., Suite 520, Washington, D.C. 20005.

James Edward Ablard