

## APPENDIX B

MEMORANDUM DECISION BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAY 23 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL EDWARD BOWMAN,

Defendant-Appellant.

No. 20-30175

D.C. No. 17-cr-00068-MO

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Michael W. Mosman, District Judge, Presiding

Submitted May 12, 2022\*\*  
Portland, Oregon

Before: BERZON and CHRISTEN, Circuit Judges, and BLOCK, \*\*\* District Judge.

Appellant Michael Bowman appeals his conviction on four counts of willful failure to file a tax return, in violation of 26 U.S.C. § 7203. Bowman argues that the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq. (“RFRA”), required

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

the dismissal of the operative indictment against him because of his religious belief that he must not contribute money used to facilitate abortions. In the alternative, Bowman argues that the district court should have considered a good faith defense, because he subjectively believed RFRA exempted him from payment of his taxes until an accommodation was provided to him. Both claims are reviewed *de novo*. We presume familiarity with the factual and procedural history of this case, and we affirm the district court.

#### 1. Dismissal of Bowman's Indictment

Both this Circuit and the United States Supreme Court have repeatedly rejected the proposition that a taxpayer may withhold tax money owed because taxes support expenditures the taxpayer finds objectionable: “Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.” *United States v. Lee*, 455 U.S. 252, 260 (1982); *Hernandez v. Comm'r*, 490 U.S. 680, 699-700 (1989) (“[E]ven a substantial burden would be justified by the ‘broad public interest in maintaining a sound tax system,’ free of ‘myriad exceptions flowing from a wide variety of religious beliefs.’”) (citing *Lee*, 455 U.S. at 260).

Bowman argues that *Lee* and *Hernandez* are preempted by RFRA, and that in any event, they are inapposite. He is mistaken on both counts. First, RFRA did not supersede *Lee* and *Hernandez*; to the contrary, it restored those cases. RFRA

legislatively overturned *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), which itself overturned the balancing test at the heart of *Lee* and *Hernandez*. In so doing, RFRA reinstated the balancing test—and the vitality of *Lee* and *Hernandez*.

Bowman's attempt to distinguish *Lee* and *Hernandez* fares no better. He asserts that they are distinguishable because the expenditures objected to by the taxpayers in those cases—social security and national defense—are more compelling interests than that of abortion funding. He argues that because funding for abortion providers is a less compelling interest, taxation on that account fails the RFRA balancing test. Bowman's arguments are off the mark. The compelling government interest at issue here is not the funding of abortion providers; it is the administration of a manageable tax system, an interest that clears the balancing test's hurdle. *Hernandez*, 490 U.S. at 699-700.

RFRA does not exempt Bowman from the payment of taxes nor require accommodation. The district court properly denied Bowman's motion to dismiss the indictment.

## 2. Bowman's Good Faith Defense

Willful failure to file a tax return is a specific-intent offense, and thus good faith is a defense. However, the law distinguishes between innocent mistakes made in an effort to comply with the tax code and noncompliance that “reveal[s] full

knowledge of the provisions at issue and a studied conclusion, however wrong, that those provisions are invalid and unenforceable.” *Cheek v. United States*, 498 U.S. 192, 205 (1991). Failure to comply with the tax laws is not excused by a defendant’s “belief in their invalidity.” *United States v. Hanson*, 2 F.3d 942, 946 (9th Cir. 1993).

Bowman admits that he “read the tax code, and that he knows the tax code.” He acknowledges that the code requires him to file a tax return. He stipulates that from 1990 onward, he “knew that federal tax laws imposed a duty on him to file his personal income taxes.” And he acknowledges that “[s]ince at least 2003, [he] has intentionally failed to file any U.S. Individual Tax Return.”

Bowman does not argue that he haplessly attempted to comply with the tax code. Rather, he argues that portions of the tax code are rendered unenforceable as to him by the application of RFRA. This argument is one about the validity of the code, at least as applied to him, and it is therefore foreclosed by *Cheek*.

“[W]here the evidence, even if believed, does not establish all of the elements of a defense, . . . the trial judge need not submit the defense to the jury.” *United States v. Perdomo-Espana*, 522 F.3d 983, 987 (9th Cir. 2008) (internal citation omitted). Because Bowman has failed to establish the good faith defense as a matter of law, the district court did not err in precluding its presentation.

Accordingly, the judgment of the district court is **AFFIRMED**.

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings****Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)****Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
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  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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