

/\* The church of Scientology has a long history in the courts. Here is the latest in that continuing series. This opinion discusses the case and controversy requirement of the U.S. constitution. The case also provides an interesting look into the attorney-client privilege. \*/

## SUPREME COURT OF THE UNITED STATES

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

### Syllabus

CHURCH OF SCIENTOLOGY OF CALIFORNIA v. UNITED STATES et al.  
certiorari to the united states court of appeals for the ninth circuit No. 91-946. Argued October 6, 1992; Decided November 16, 1992

Pursuant to its jurisdiction under 26 U.S.C. 402(b) and 7604(a), the District Court ordered a state-court Clerk to comply with a summons issued by the Internal Revenue Service (IRS) for the production of, inter alia, two tapes in the Clerk's custody recording conversations between officials of petitioner Church of Scientology (Church) and their attorneys. Although the Church filed a timely notice of appeal, its request for a stay of the summons enforcement order was unsuccessful, and copies of the tapes were delivered to the IRS while the appeal was pending. The Court of Appeals dismissed the appeal as moot, ruling that no controversy existed because the tapes had already been turned over to the IRS. Held: Compliance with the summons enforcement order did not moot the Church's appeal. Delivery of the tapes to the IRS did not mandate dismissal by making it impossible for the Court of Appeals to grant the Church "any effectual relief." See *Mills v. Green*, 159 U.S. 651, 653. Although it is now too late to prevent, or to provide a fully satisfactory remedy for, the invasion of privacy that occurred when the IRS obtained the information on the tapes, the Court of Appeals does have power to effectuate a partial remedy by ordering the Government to return or destroy any copies of the tapes that it may possess. Even if the Government is right that under 7402(b) and 7604(a) the jurisdiction of the district court

is limited to those matters directly related to whether or not the summons should be enforced, the question presented here is whether there was jurisdiction in the appellate court to review the allegedly unlawful summons enforcement order. There is nothing in the Internal Revenue Code to suggest that Congress sought to preclude such review, and, indeed, this Court has expressly held that IRS summons enforcement orders are subject to appellate review. See *Reisman v. Caplin*, 375 U.S. 440, 449. Although several Courts of Appeals have accepted the Government's argument in IRS enforcement proceedings, the force of that line of authority is matched by a similar array of decisions reaching a contrary conclusion in proceedings enforcing Federal Trade Commission discovery requests. There is no significant difference between the governing statutes that can explain the divergent interpretations, nor any reason to conclude that production of records relevant to a tax investigation should have mootness consequences that production of other business records does not have. Pp.3-9. Vacated and remanded.

Stevens, J., delivered the opinion for a unanimous Court.

[November 16, 1992]

Justice Stevens delivered the opinion of the Court.

Two tapes recording conversations between officials of the Church of Scientology (Church) and their attorneys in July 1980 have been the principal bone of contention in this, and two earlier, legal proceedings.

In an action filed in the Los Angeles County Superior Court, the Church contended that the defendant had unlawfully acquired possession of the tapes. Pending resolution of that action, the state court ordered its Clerk to take custody of the tapes and certain other documents.

In 1984, in connection with an investigation of the tax returns of L. Ron Hubbard, founder of the Church of Scientology, the Internal Revenue Service (IRS) sought access to the Church documents in the state-court Clerk's possession. After the Clerk was served with an IRS summons, he permitted IRS agents to examine and make copies of the tapes. Thereafter, in a federal action initiated by the Church in the Central District of California, the District Court entered a temporary restraining

order directing the IRS to file its copies of the tapes, and all related notes, with the federal court. Those copies were subsequently returned to the Clerk of the state court.

On January 18, 1985, the IRS commenced this proceeding by filing a petition to enforce the summons that had previously been served

on the state-court Clerk. The Church intervened and opposed production of the tapes on the ground that they were protected by

the attorney-client privilege. After protracted proceedings, including review in this Court, see *United States v. Zolin*, 491 U. S. 554 (1989), on April 15, 1991, the District Court entered an order enforcing compliance with the summons. The Church filed

a timely notice of appeal and unsuccessfully sought a stay of that order. While the appeal was pending, copies of the tapes were delivered to the IRS. Thereafter, the Court of Appeals ordered the Church to show cause why its appeal should not be dismissed as moot. After briefing on the mootness issue, the Court dismissed the appeal. It explained:

Because it is undisputed that the tapes have been turned over to the IRS in compliance with the summons enforcement order, no controversy exists presently and this appeal is moot. *United States v. Zolin*, No. CV 85-0440 (CA9, Sept. 10, 1991). We granted the Church's petition for certiorari to consider the narrow

question whether the appeal was properly dismissed as moot. 503 U. S. \_\_\_\_\_ (1992).

## I

It has long been settled that a federal court has no authority to give opinions upon moot questions or abstract propositions, or

to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Mills v. Green*, 159 U. S.

651, 653 (1895). See also *Preiser v. Newkirk*, 422 U. S. 395, 401

(1975); *North Carolina v. Rice*, 404 U. S. 244, 246 (1971). For that reason, if an event occurs while a case is pending on appeal

that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed. *Mills*, 159 U. S., at 653. In this case, after the Church took its appeal from the April 15 order, in compliance

with that order copies of the tapes were delivered to the IRS. The Government contends that it was thereafter impossible for the Court of Appeals to grant the Church any effectual relief. We disagree.

While a court may not be able to return the parties to the status quo ante " here is nothing a court can do to withdraw all knowledge or information that IRS agents may have acquired by examination of the tapes" a court can fashion some form of meaningful relief in circumstances such as these.

/\* That may not necessarily be true. The Court could order all of those persons who heard the tape be barred from working on the case. Like the exclusionary rule in criminal matters, the Court could also limit the use of information received by means of the "fruit of the poisonous tree. \*.

Taxpayers have an obvious possessory interest in their records. When the Government has obtained such materials as a result of an unlawful summons, that interest is violated and a court can effectuate relief by ordering the Government to return the records. Moreover, even if the Government retains only copies of the disputed materials, a taxpayer still suffers injury by the Government's continued possession of those materials, namely, the affront to the taxpayer's privacy. A person's interest in maintaining the privacy of his papers and effects is of sufficient importance to merit constitutional protection. Indeed, that the Church considers the information contained on the disputed tapes important is demonstrated by the long, contentious history of this litigation. Even though it is now too late to prevent, or to provide a fully satisfactory remedy for, the invasion of privacy that occurred when the IRS obtained the information on the tapes, a court does have power to effectuate a partial remedy by ordering the Government to destroy or return any and all copies it may have in its possession. The availability of this possible remedy is sufficient to prevent this case from being moot.

The Government argues, however, that these basic principles are inapplicable in IRS summons enforcement proceedings because of the particular nature of the statute governing such proceedings. Reasoning from the premise that federal courts are empowered to

consider only those matters within their jurisdiction, the Government argues that in IRS summons enforcement proceedings the subject-matter jurisdiction of the District Court is limited to determining only whether the court should compel ". . . production of the information requested by the summons." 26 U. S. C. 7402(b), 7604(a). See n. 4, supra. Once the court has answered that question and compliance has occurred, there is nothing more for the District Court to decide and the jurisdiction of the District Court evaporates.

We think the Government misconceives the inquiry in this case. The Government may or may not be right that under 7402(b) and 7604(a) the jurisdiction of the District Court is limited to those matters directly related to whether or not the summons should be enforced. Indeed, the scope of the District Court's jurisdiction under those provisions was the issue over which this Court deadlocked in *United States v. Zolin*, 491 U. S. 554 (1989). The question presented in the current incarnation of this case is whether there was jurisdiction in the appellate court to review the allegedly unlawful summons enforcement order. On that question, the Government's elaborate statutory argument is largely irrelevant. There is nothing in the statute to suggest that Congress sought to preclude appellate review of district court enforcement orders. To the contrary, we have expressly held that IRS summons enforcement orders are subject to appellate review. See *Reisman v. Caplin*, 375 U. S. 440, 449 (1964). Thus, whether or not there is jurisdiction in the appellate court to review the District Court's order turns not on the subject matter of Congress' jurisdictional grant to the district courts, but on traditional principles of justiciability, namely, whether an intervening event has rendered the controversy moot. And, as we have already explained, this case is not moot because if the summons were improperly issued or enforced a court could order that the IRS' copies of the tapes be either returned or destroyed.

/\* Since "some relief" could be granted, the court unanimously finds that the case remains a "case or controversy" subject to decision. \*/

## II

We recognize that several Courts of Appeals have accepted the

Government's argument in IRS enforcement proceedings, but the force of that line of authority is matched by a similar array of decisions reaching a contrary conclusion in proceedings enforcing

Federal Trade Commission discovery requests. There is no significant difference between the governing statutes that can explain the divergent interpretations. Nor is there any reason to conclude that production of records relevant to a tax investigation should have mootness consequences that production of other business records does not have. Moreover, in construing these provisions of the Internal Revenue Code, the Court has considered it appropriate to rely on its earlier cases involving other statutes, including the Federal Trade Commission Act. See *United States v. Powell*, 379 U. S. 48, 57 (1964) (citing *United States v. Morton Salt Co.*, 338 U. S. 632, 642!643 (1950)).

We therefore conclude that the appeal was improperly dismissed as

moot. In so concluding we express no opinion on the merits of the Church's argument that the Government did not establish an adequate evidentiary basis to support the District Court's determination that the tapes fell within the crime-fraud exception to the attorney-client privilege. Nor do we express any opinion about the *res judicata* contention advanced in the Government's brief in opposition to the petition for certiorari. Brief for United States in Opposition 13-14. We simply hold that

compliance with the summons enforcement order did not moot the Church's appeal. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.