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THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 22 1982

Dear Mr. Chairman:

This is to respond to your letter of January 13, 1982, relating to the cases of Bob Jones University and Goldsboro Christian Schools and the general issue of the tax-exempt status of private schools. In accordance with the agreement reached between your staff and the Internal Revenue Service, we are not enclosing any litigation material relating to the ongoing cases before the U.S. Tax Court and other federal courts.

I am pleased to enclose herewith the materials you have requested.

Sincerely,

R. T. McNamar

The Honorable
Dan Rostenkowski
Chairman, Committee on
Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Enclosures



THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

January 25, 1982

Dear Mr. Chairman:

This is to respond to your letter of January 22, 1982, relating to the cases of Bob Jones University and Goldsboro Christian Schools and the general issue of the tax-exempt status of private schools. In accordance with your letter, we are not forwarding any privileged material.

I am pleased to enclose herewith the materials you have requested.

Sincerely,

R. T. McNamar

The Honorable
Robert J. Dole
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Enclosures

CHRONOLOGICAL INDEX

- 1/13/82 Letter from Richard L. Neumeier urging reversal of Treasury decision to give tax-exempt status to segregated schools.
- 1/13/82 List of additional schools that are currently tax exempt--Given to Public Affairs by Commissioner Egger.
- 1/13/82 Copy of letter from Congressman Rostenkowski to Secretary Regan re: hearing on February 4, 1982.
- 1/13/82 William H. Green, et al., v. Donald T. Regan, et al., Civil Action No. 1355-69 - Motion to Vacate Stay of Proceedings, etc.
- 1/13/82 Call from John Bennett (833-9520).
- 1/13/82 Call from Congressman Ford's office re: schools.
- 1/12/82 Call from Connie Hillard (from Senator Power's office) re: segregated schools.
- 1/12/82 Call from John McGovern (224-4814).
- 1/12/82 Copy of letter from Robert L. Smith to Secretary Regan opposing administrative decision on denying tax exemption for private schools.
- 1/12/82 Questions and answers.
- 1/12/82 Copy of letter from Sheldon Cohen to Secretary Regan opposing action to grant tax exemptions to private schools that practice racial discrimination.
- 1/12/82 Memorandum - Background on Treasury Decision In Bob Jones University and Goldsboro Christian Schools Case.
- 1/11/82 Call from Ms. Chris Grubert of Congressman Jim Collins' office re: tax exempt status of church schools.

- 1/10/82 Letter from James E. Hamilton objecting to decision to allow tax-exempt status to schools that discriminate against blacks.
- 1/9/82 Letter from Tracey A. Oshaughnessy requesting explanation of decision to give tax-exempt status to schools which discriminate against blacks.
- 1/9/82 Letter from Jonathan Meigs objecting to decision to give tax-exempt status to schools who discriminate against blacks:
- 1/8/82 Treasury News Release - Treasury Establishes New Tax-Exempt Policy.
- 1/8/82 Memorandum from Deputy Secretary McNamar to Commissioner Egger re: tax exemption for Bob Jones University and Goldsboro Christian Schools.
- 1/8/82 Bob Jones University Case - Chronology of Events.
- 1/8/82 Goldsboro Christian Schools - Chronology of Events.
- 1/8/82 Memorandum for Press Briefing - Peter J. Wallison
- 1/7/82 Memorandum from Ann McLaughlin to Dave Gergen and Tom DeCair re: Bob Jones decision.
- 1/7/82 Memorandum from Kenneth Gideon to Margery Waxman.
- 1/7/82 41 Page Memorandum Marked Received from Justice 1/7/82.
- 1/7/82 Memorandum from Brad (Justice) to Margery Waxman.
- 1/5/82 Memorandum from Ann McLaughlin to Deputy Secretary McNamar.
- 12/28/81 Newspaper article from New York Times.
- 12/29/81 Memorandum from Kenneth Gideon to Deputy Secretary McNamar.
- 12/24/81 Letter from Justice Department Legal Counsel to Peter Wallison
- 12/22/81 Memorandum from Peter Wallison to Secretary Regan.
- 12/21/81 Letter from Congressman Lott to Secretary Regan.

12/17/81 Memorandum from Peter Wallison to Secretary Regan.
12/15/81 Letter from Edward Schmults to Congressman Lott.
12/15/81 Memorandum from Peter Wallison to Secretary Regan.
12/10/81 Letter from Peter Wallison to Office of Legal Counsel
12/3/81 Memorandum from Joel Gerber to Peter Wallison
11/30/81 Letter from Congressman Lott to Secretary Regan.
11/30/81 Letter from Congressman Smith to Secretary Regan.
11/19/81 Letter from John Murray to Kenneth Gideon.
11/6/81 Memorandum from David E. Pickford to Sally Kelley.
11/6/81 Letters from Secretary Regan to Senators Helms,
Armstrong and Thurmond.
11/5/81 Note from Renay France to Mark Yecies re: response to
Congressman Crane.
9/16/81 Memorandum from Mark Yecies to John Chapoton re:
church-related private schools.
9/9/81 Memorandum from Mark Yecies to John Chapoton re:
church-related private schools.
8/26/81 White House Referral Memorandum.
7-8/81 National Conference of Christians and Jews newsletter
on taxation and religion.
7/31/81 Letter from Secretary Regan to Congressman Lott.
7/27/81 Letter from Jerome Sebastian to John F. Murray.
7/17/81 Letter from Charles W. Wheeler to Congressman Lott.
7/14/81 Memorandum from Peter Wallison to Secretary Regan re:
Mississippi Schools matter.
7/13/81 Green v. Regan--Order (U.S. District Court for the
District of Columbia).
7/10/81 News article by James J. Kilpatrick--IRS Wants
Fundamentalists to Conform.

- 7/1/81 Memorandum from Mark Yecies to John Chapoton re: private schools.
- 6/26/81 Memorandum from John Chapoton to Mark Yecies re: private schools.
- 6/2/81 Memorandum from Mark Yecies to David Glickman re: private schools.
- 4/7/81 Letter from Congressman Lott to John Murray.
- 4/3/81 Memorandum from Dennis Thomas to Roscoe Egger and John Chapoton re: meeting with Mississippi Congressional delegation.
- 4/2/81 Memorandum from Mark Yecies to John Chapoton re meeting with Mississippi delegation.
- 3/13/81 Memorandum from Howard Schoenfeld to Allen Winborne re: private schools.
- 3/11/81 Memorandum from Executive Secretariat to Buck Chapoton re Regulatory Relief Task Force Review of Treasury Tax Regulations.
- 3/5/81 Letter from David Shakow to Pat Murphy with enclosures.
- 3/5/81 Memorandum from Assistant Commissioner (Employee Plans and Exempt Organizations, IRS) to Commissioner-Designate re private schools.
- 3/4/81 Copy of letter to Charles W. Glenn from Robert Miki re: excessive regulations by the IRS in the tax exemption of private schools.
- 2/26/81 Memorandum from Theodore Sims to John Chapoton attaching letter dated 1/26/81 from Mississippi Congressional Delegation.
- 2/25/81 Letter from Congressman Mollohan to Robert E. Moss with various correspondence controls.
- 2/25/81 Letter from Congressman Ashbrook to Roscoe Egger.
- 1/28/81 Letter from Congressman Crane to Secretary Regan.
- 1/26/81 Letter from Mississippi Congressional Delegation to Secretary Regan.

- Undated Paper entitled "Reagan & Bush on the Issues."
- Undated Unsigned letter form Lawrence G. Wallace to Trent Lott (Nov 81?).
- Undated Note from Jim Owens to Commissioner Egger attaching list of previously tax-exempt private schools.
- Undated Undated Court documents relating to Goldsboro Christian Schools, Inc. and Bob Jones University--Numbered 1 through 8.

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TREASURY DOCUMENT PROFILE

DOC		RECEIVED		
MO	DA	MO	DA	YR
1	13	1	20	82

ACTION

GENERAL COUNSEL

82-757

- TO
- PRESIDENT
 - SECRETARY (S)
 - D'SECRETARY (D)
 - U/SEC. (MA) (M)
 - OTHER (Specify)

FROM Neumeier, Richard L.

- CLASSIFICATION
- UNCLASSIFIED
 - SECRET
 - CONFIDENTIAL
 - TOP SECRET
 - OTHER (Specify)

REFS

SUBJECT

Urges reversal of Treasury decision to give tax exempt status to segregated schools

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	ACT	INFO		ACT	INFO		ACT	INFO
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4. U/SECRETARY T&E (U)			ENGRAVING & PRINTING			WHITE HOUSE FELLOW (S)		
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6. DOMESTIC FINANCE						COUNSELOR TO THE SECRETARY		
7. ECONOMIC POLICY (E)			GOVT FIN OPERATIONS			EXEC SEC (SE)		
8. ENFORCEMENT & OPS (O)			IRS		X	D'EXEC SEC (SE)		
9. FISCAL (F)						REVIEWERS (SE)		
10. GENERAL COUNSEL (G)	X		LEGISLATIVE COUNSEL (GL)			INTELLIGENCE SUPPORT (SE)		
11. INTERNAT'L AFFAIRS (I)			MINT			SPECIAL ASSISTANT		
12. OASIA SECRETARIAT			PUBLIC DEBT					
13. LEGISLATIVE AFFAIRS (L)			REVENUE SHARING (SR)			READ FILE		
14. PUBLIC AFFAIRS (P)		X	SECRET SERVICE					
15. PUBLIC LIAISON			SAVINGS BONDS					
16. TAX POLICY (X)			CORRESPONDENCE					
17. TREASURER (T)			DISCLOSURE BRANCH (AAL)					

DUE DATE

- APPROPRIATE ACTION
- DIRECT REPLY
- COME BACK COPY TO EXEC SEC (SE)

MEMO TO _____ REPLY FOR SIG. BY: _____

COMMENTS/SPECIAL INSTRUCTIONS

DATE	FROM	TO	SUBSEQUENT ACTION TAKEN/REQUIRED	DUE	COPY TO

DISPATCH TO: _____

SPECIAL DISPOSITION: _____

- WHITE HOUSE
- ALPHA
- TREASURY
- CONGRESS
- OTHER (Specify)

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Richard L. Neumeier, Esq.
2 Pitcairn Pl.
Lexington, MA 02173

January 13, 1981

The Honorable James Shannon
United States House of Representatives
Washington, D.C.

Re: Tax Exempt Status for Segregated Educational
Institutions

Dear Representative Shannon:

As one of your constituents I write to strongly request that you immediately introduce legislation to overturn the decision of the Administration to grant tax exempt status to segregated educational institutions.

As you are probably aware there have been news reports that Senators Moynihan and Hart intend to introduce such legislation in the Senate.

I would have thought that the doctrine of separate but equal was long since behind us but apparently this Administration seeks to resurrect it at least to the extent of affording tax subsidies to segregated private educational institutions. This change in long established government law and policy is ill-advised, probably unconstitutional, and cannot be condoned. As a member of the Ways and Means Committee I would hope that you could speak with a stronger voice than the ordinary representative. I look forward to hearing from you on this point in the near future.

Sincerely yours,

Richard L. Neumeier

RLN/qrs

cc: President Ronald Reagan
Representative Edward Markey
Senator Edward Kennedy
Secretary of Treasury Fegan
Senator Paul Tsongas

Given to Public Affairs by
I.R.S. Commissioner Egger on Jan. 13 '82

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Additional Schools that are Currently Tax Exempt:

Dorchester Academy, Inc.
St. George, South Carolina

Bowman Academy, Inc.
Bowman, South Carolina

Jefferson Davis Academy, Inc.
Blackville, South Carolina

The Beaufort Academy, Inc.
Beaufort, South Carolina

The Carolina Academy
Lake City, South Carolina

West Birmingham Christian School
Birmingham, Alabama

Nathanael Green Academy, Inc.
Siloam, Georgia

The Heritage School, Inc.
Newnan, Georgia

The Gaffney Day School
Gaffney, South Carolina

Desoto School, Inc.
Helena, Arkansas

Southeast Education, Inc.
Dothan, Alabama

1. Francis Marion Academy, Inc.
Pinewood, South Carolina
2. Private Educators, Inc.
St. Augustine, Florida
3. Macon Christian Academy, Inc.
Macon Georgia,
4. Crenshaw County Private School Foundation, d/b/a
Crenshaw Christian Academy
Luverne, Alabama
5. Bullock County Private School Foundation
Union Springs, Alabama
6. Dallas County Private School Foundation, Inc. d/b/a
John T. Morgan Academy,
Selma Alabama
7. Thomas Sumter Academy, Inc.
Dalzell, South Carolina
8. Wade Hampton Academy
Orangeburg, South Carolina
9. James F. Byrnes Academy
Florence, South Carolina
10. Francis Marion Academy of Hemingway
Hemingway, South Carolina
11. Roy E. Hudgens Academy, Inc.
Lynchburg, South Carolina
12. Dorchester Academy, Inc.
St. George, South Carolina
13. Allendale Academy, Inc.
Allendale, South Carolina
14. Wilson Hall Sumter, South Carolina
15. The Lord Berkeley Academy
Moncks Corner, South Carolina
16. Willington Academy f/k/a/ Stonewall Jackson Academy, Inc.
Orangeburg, South Carolina
17. Sillman Institute
Clinton, Louisiana

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18. Bowman Academy, Inc.
Bowman, South Carolina
19. Jefferson Davis Academy, Inc.
Blackville, South Carolina
20. James H. Hammond Academy
Columbia, South Carolina
21. James Butler Bonham Academy, Inc.
Batesburg, South Carolina
22. The Beaufort Academy, Inc.
Beaufort, South Carolina
23. Richard Winn Academy
Winnsboro, South Carolina
24. The Carolina Academy
Lake City, South Carolina
25. Patrick Henry Academy, Inc.
Estill, South Carolina
26. John C. Calhoun Academy, Incorporated
Walterboro, South Carolina
27. Dade Christian Schools, Inc.
Miami, Florida
28. Trinity Christian Academy, Inc.
Jacksonville, Florida
29. Indian River Academy, A Private School, Inc.
Fort Pierce, Florida
30. Jupiter Christian School, Inc.
Jupiter, Florida
31. Union Academy Private School Foundation
Dadeville, Alabama
32. West Birmingham Christian School
Birmingham, Alabama
33. Twelve Oaks Academy
Shelby, North Carolina
34. Pioneer Christian Academy
Nashville, Tennessee

35. North Street Day Nursery and Kindergarten
Raleigh, North Carolina
36. Palmer Memorial Institute, Incorporated
Dedalia, North Carolina
37. Temple Heights Christian Schools, Inc.
Tampa, Florida
38. Greystone Christian Grade School of Mobile, Alabama
Mobile, Alabama
39. Bainbridge Christian School, Inc.
Bainbridge, Georgia
40. Wilcox School Foundation, Inc.
Catherine, Alabama
41. Butler County Private School Foundation, Inc.
Greenville, Alabama
42. Howey Academy
Howey-In-The-Hills, Florida
43. Salt Springs Academy, Inc.
Jackson, Alabama
44. The Southern Academy Private School Foundation
(The Southern Academy)
Greensboro, Alabama
45. Stone Mountain Christian School, Inc.
Stone Mountain, Georgia
46. Wilson Christian School, Inc.
Wilson, North Carolina
47. Fayette Academy
Somerville, Tennessee
48. Adams County Private School System
Natchez, Mississippi
49. Benton County Educational Foundation, Inc.,
Ashland, Mississippi
50. Calhoun Education Foundation Corporation
Calhoun City, Mississippi
51. Canton Academic Foundation, Inc.
(Canton Academy)
Canton, Mississippi

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52. Central Holmes Academy
Lexington, Mississippi
53. Citizens' Educational Foundation
Vicksburg, Mississippi
54. Columbia Educational Foundation, Inc.
Columbus, Mississippi
55. Bay County School, Inc.
Arnold, Maryland
56. Clay County Educational Foundation, Inc.
West Point, Mississippi
57. Council School Foundation
Jackson, Mississippi
58. East Holmes Academy
Durant (West), Mississippi
59. Forest County School Foundation, Inc.
Hattiesburg, Mississippi
60. Greenwood-LeFlore Educational Foundation, Inc.
Greenwood, Mississippi
61. Grenada Educational Foundation, Inc.
Grenada, Mississippi
62. Harrison County Private School Foundation
Biloxi, Mississippi
63. Humphreys Academy Foundation
Belzoni, Mississippi
64. Jackson Academy, Inc.
Jackson, Mississippi
65. Lamar School Foundation, Inc.
Meridian, Mississippi
66. Lowndes County Private School Foundation, d/b/a/ Lowndes Academy
Hayneville, Alabama
67. North Sunflower County Educational Foundation, Inc.
Ruleville, Mississippi
68. Noxubee Educational Foundation
Macon, Mississippi

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69. Sharkey - Issaquena Academy Foundation
Rolling Fork, Mississippi,
70. Southwest Academy
Jackson, Mississippi
71. Southwest Mississippi Christian Academy
Summit, Mississippi
72. Colvington School Foundation, Inc.
Mount Olive, Mississippi
73. Cruger-Tchula Academy Foundation
Cruger, Mississippi
74. Parents Educational and Development Foundation, Inc.
Meridian (East), Mississippi
75. Paspoint Private School
Mosspoint, Mississippi
76. Pines Private School Foundation
Wiggins, Mississippi
77. Rebul Academy, Inc.
Learned, Mississippi
78. Shaw Educational Foundation
Shaw, Mississippi
79. The Tunica Institute of Learning, Inc.
Tunica, Mississippi
80. Oktibbeha Educational Foundation, Inc.
Starkville, Mississippi
81. Caliborne Educational Foundation
Mississippi
82. Nathanael Green Academy, Inc.
Siloam, Georgia
83. The Heritage School, Inc.
Newman, Georgia
84. The Gaffney Day School
Gaffney, South Carolina
85. Desoto School, Inc.
Helena, Arkansas

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86. Southeast Education, Inc.
Dothan, Alabama
87. Pamlico Community School
Washington, North Carolina
88. Barbour County Private School Foundation,
d/b/a Dixie Academy
Clayton, Alabama
89. Panama City Christian Private School
Panama City, Florida
90. Tipton Academy
Atoka, Tennessee (Formerly Munford, TN)
91. Hoover Academy, Inc.
Brighton, Alabama
92. Wilcox Educational Foundation, Inc.
Camden, Alabama
93. Providence Christian School, Inc
Riverview, Florida
94. Macon County Private School Foundation
Tuskegee, Alabama
95. Jefferson Academy, Inc.
Birmingham, Alabama
96. Blackstone Educational Foundation
Virginia
97. Huguenot Academy
Virginia
98. Amelia Educational Foundation
Virginia
99. Brunswick Academy Association
Virginia
100. Chickahominy Academy, Inc.
Virginia
101. Isle of Wight County Educational Foundation
Virginia

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102. Kenbridge Day School Foundation
Virginia
 103. Luneberg - Nottoway Educational Foundation
Virginia
 104. Prince Edward Academy
Virginia
 105. Bob Jones University
Greenville, South Carolina
 106. Southern Methodist Schools, Inc.
Orangeburg, South Carolina
-
107. Lula-Rich Educational Foundation, Inc.
P.O. Box 1027
Clarksdale, Mississippi 38614
 108. Deer Creek Educational Institute, Inc.
Hollandale, Mississippi 38748
 109. Marshall County Educational Foundation, Inc.
100 Academy Drive
Holly Springs, Mississippi 38635
 110. Quitman County Educational Foundation, Inc.
P.O. Box 56
Marks, Mississippi 38646
 111. Indianola Educational Foundation, Inc.
Dorsett Drive
Indianola, Mississippi 38751

NINETY-SEVENTH CONGRESS
DAN ROSTENKOWSKI, ILL., CHAIRMAN

W. M. CANNON, FLA.	BARNES B. CONABLE, JR., N.Y.
J. PICKLE, TEX.	JOHN J. DUNCAN, TENN.
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WYTHE H. (PETE) STARK, CALIF.	GUY VANDER HAEGT, MISS.
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RICHARD A. BOPHARDT, MS.	JOHN H. ROUSSELET, CALIF.
THOMAS J. DOWNNEY, N.Y.	W. HENSON MOORE, LA.
ERIC (CIC) NEFFEL, MAINE	
WYCHE FOWLER, JR., GA.	
FRANK J. SHARRS, ILL.	
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BERTL ANTHONY, JR., ARIZ.	

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20515

TELEPHONE (202) 225-3625

January 13, 1982

JOHN J. SALMON, CHIEF COUNSEL
 JOSEPH R. DOWLEY, ASSISTANT CHIEF COUNSEL
 ROBERT J. LEONARD, CHIEF TAX COUNSEL
 A. L. SIMBLETON, MINORITY CHIEF OF STAFF

The Honorable Donald T. Regan
 Secretary of the Treasury
 Department of the Treasury
 Washington, D.C. 20220

Dear Mr. Secretary:

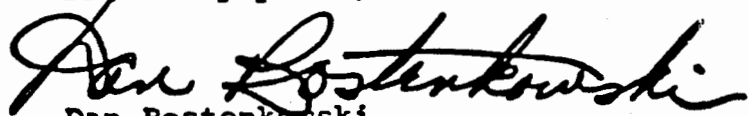
The Committee on Ways and Means has scheduled a hearing on February 4, 1982, on the Administration's recent actions regarding the tax-exempt status of racially discriminatory private schools. In connection with this hearing, please submit to the Committee, by the close of business on Friday, January 22, 1982, the following documents, indexed and in chronological order, relating to the court cases of Bob Jones University and Goldshoro Christian Schools and the general issue of the tax-exempt status of private schools:

- (1) All correspondence, including records of oral communications, from Members of Congress and the public and any response thereto received or sent since January 20, 1981.
- (2) All correspondence, memoranda, and other communications in the files of the Departments of Justice and Treasury, and the Internal Revenue Service (including but not limited to all legal briefs, opinions, memoranda, and other legal documents) prepared since January 20, 1981.

If you have any questions concerning this request, please contact John J. Salmon, Chief Counsel of the Committee on Ways and Means at 225-3625.

An identical letter is being sent to Commissioner Roscoe L. Egger, Jr. and Attorney General William F. Smith.

Sincerely yours,


 Dan Rostenkowski
 Chairman

TREASURY DOCUMENT PROFILE

DDC		RECEIVED		
MO	DA	MO	DA	YR
1	13	1	15	82

ACTION
General Counsel

32-563

SOURCE/SCRIPT

TO:

PRESIDENT

SECRETARY (S)

D/SECRETARY (D)

U/SEC. (MA) (M)

OTHER (Specify)

FROM: Rostenkowski, Dan

Chairman, Committee on Ways and Means

REFS _____

CLASSIFICATION

UNCLASSIFIED SECRET

CONFIDENTIAL TOP SECRET

OTHER (Specify)

SUBJECT: Request for Treasury records relating to court cases of Bob Jones University and Goldsboro Christian Schools

DISTRIBUTION/ACTION ASSIGNMENT

DISTRIBUTION	COPY		DISTRIBUTION	COPY		DISTRIBUTION	COPY	
	ACT	INFO		ACT	INFO		ACT	INFO
1. SECRETARY (S)		X	ATF			EXEC ASST/SEC (S)		X
2. D/SECRETARY (D)		X	CUSTOMS			CONF SEC/SEC (S)		X
3. U/SECRETARY (MA) (M)			COMPTROLLER CURRENCY			EXEC ASST/D/SEC (D)		
4. U/SECRETARY T&E (U)		X	ENGRAVING & PRINTING			WHITE HOUSE FELLOW (S)		
5. ADMINISTRATION (A)			FOREIGN ASSETS CONT (OF)			INSPECTOR GENERAL (SG)		
6. DOMESTIC FINANCE						COUNSELOR TO THE SECRETARY		
7. ECONOMIC POLICY (E)			GOVT FIN OPERATIONS			EXEC SEC (SE)		X
8. ENFORCEMENT & OPS (O)			IRS		X	D/EXEC SEC (SE)		
9. FISCAL (F)						REVIEWERS (SE)		X
10. GENERAL COUNSEL (G)	X		LEGISLATIVE COUNSEL (GL)			INTELLIGENCE SUPPORT (SE II)		
11. INTERNAT'L AFFAIRS (I)			MINT			SPECIAL ASSISTANT		X
12. OASIA SECRETARIAT			PUBLIC DEBT					
13. LEGISLATIVE AFFAIRS (LACK)		X	REVENUE SHARING (MR)			READ FILE		
14. PUBLIC AFFAIRS (P)		X	SECRET SERVICE					
15. PUBLIC LIAISON			SAVINGS BONDS					
16. TAX POLICY (X)		X	CORRESPONDENCE			Helen Hardy		X
17. TREASURER (T)			DISCLOSURE BRANCH (AAL)			MICRO KOSOVAVESHI		X

ACTION REQUIRED

DUE DATE: 1/21/81 COB

APPROPRIATE ACTION DIRECT REPLY COME BACK COPY TO EXEC SEC (SE)

MEMO TO: _____ REPLY FOR SIG. BY: _____

COMMENTS/SPECIAL INSTRUCTIONS

Letter of invitation to Secretary to testify will follow. General Counsel: Please coordinate material for transmission to the Committee for Secretary Regan's review prior to release.

SUBSEQUENT ROUTING/ACTION

DATE	FROM	TO	SUBSEQUENT ACTION TAKEN/REQUIRED	DUE	COPY TO

DISPATCH INSTRUCTION

DISPATCH TO: _____ NOTIFY: _____

SPECIAL DISPOSITION: _____

WHITE HOUSE ALPHA

TREASURY CONGRESS

OTHER (Specify)

1/13/82

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM H. GREEN, et al.,
Plaintiffs,
v.
DONALD T. REGAN, et al.,
Defendants.

CIVIL ACTION NO. 1355-69

MOTION TO VACATE STAY OF PROCEEDINGS,
TO SHORTEN TIME FOR RESPONSE HERETO, AND
FOR FURTHER INJUNCTIVE RELIEF TO ENFORCE
DECLARATORY JUDGMENT AND PRESERVE THE STATUS QUO

Plaintiffs, by their undersigned counsel, respectfully pray that this Court: (a) vacate the stay of all proceedings in this matter entered on January 6, 1982; (b) shorten the time for filing responses hereto; and (c) grant them further injunctive relief, to enforce the June 30, 1971 declaratory judgment and permanent injunction in this case and to preserve the status quo which has resulted from this Court's prior Orders.

In support of this motion, plaintiffs respectfully show the Court as follows:

1. This suit was originally instituted in 1969 by plaintiff black schoolchildren and their parents, challenging on statutory and constitutional grounds the then-effective policy of the Internal Revenue Service and the Department of the Treasury to grant federal tax exemptions to racially discriminatory private schools. On January 12, 1970, a three-judge district court granted preliminary injunctive relief on constitutional grounds to prevent the award of tax-exempt status to any Mississippi private school unless the defendants determined that the school was not racially discriminatory. Green v. Kennedy, 309 F. Supp. 1150 (D.D.C.), appeal dismissed sub nom. Cannon v. Green, 398 U.S.

956 (1970). ^{1/}

2. On June 30, 1971, the three-judge district court issued a declaratory judgment which provides as follows:

A. Section 501(c)(3) of the Internal Revenue Code of 1954 does not provide a tax exemption for, and Section 170(a)-(c) of the Code, does not provide a deduction for a contribution to, any organization that is operated for educational purposes unless the school or other educational institution involved has a racially nondiscriminatory policy as to students.

B. As used in this Order, the term "racially nondiscriminatory policy as to students" means that the school or other educational institution admits the students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school, and which includes, specifically but not exclusively, a policy of making no discrimination on the basis of race in administration of educational policies, applications for admission, of scholarship and loan programs, and athletic and extra-curricular programs.

Green v. Connally, 330 F. Supp. 1150, 1179 (D.D.C.), aff'd mem. sub nom. Coit v. Green, 404 U.S. 997 (1971).

3. This Court's declaratory judgment has never been modified; although they resisted its entry, the defendants neither appealed from it nor have ever sought its modification by this Court. Its substance was embodied in Rev. Rul. 71-447, 1971-2 Cum. Bull. 230, but the declaratory judgment was issued explicitly because, as the three-judge court put it:

We think plaintiffs are entitled to a declaration of relief on an enduring, permanent basis, not on a basis that could be withdrawn with a shift in the tides of administration, or changing perceptions of sound discretion.

Green v. Connally, supra, 330 F. Supp. at 1170-71.

4. The three-judge court also granted permanent injunctive relief, establishing procedures and standards which defendants must follow to ensure that no racially discriminatory

^{1/} The injunctive relief was limited to private schools in Mississippi because the named plaintiffs were all Mississippi residents. See Green v. Connally, 330 F. Supp. 1150, 1174 (D.D.C.), aff'd mem. sub nom. Coit v. Green, 404 U.S. 997 (1971).

Mississippi private school is granted, or retains, tax-exempt status. See 330 F. Supp. at 1179-80; id. at 1173-77.^{2/} Pursuant to the permanent injunction, defendants "revoked exemption letters of 106 schools that refused to adopt and publicize the required racially nondiscriminatory policy."^{3/}

5. On July 23, 1976, plaintiffs filed a "Motion for an Order Substituting Parties Defendant, to Enforce Decree and for Further Declaratory and Injunctive Relief." Plaintiffs alleged that the defendants had failed to carry out the declaratory judgment and injunctive decree because the standards applied to determine whether a private school followed a racially discriminatory policy were inadequate. On May 5, 1980 and June 2, 1980, this Court issued Orders supplementing the permanent injunctive decree of the three-judge court and delineating the general standards to be applied by defendants to determine whether a private school is truly nondiscriminatory. Defendants did not appeal those Orders, and as a result of their entry, five additional private schools' tax exemptions have already been withdrawn. See 1981-37 I.R.B. 102 (September 14, 1981).

6. Following entry of this Court's May 5 and June 2, 1980 Orders, the Clarksdale Baptist School successfully sought leave to intervene in this action to contest, on First Amendment grounds, the applicability of those Orders to a church-affiliated school. That First Amendment claim was being litigated in this matter when this Court on January 6, 1982 stayed all further proceedings pending the Supreme Court's ruling in Goldsboro Christian Schools, Inc. v. United States (No. 81-1) and Bob Jones University v. United States (No. 81-3), consolidated cases which involve a

^{2/} See note ^{1/} supra.

^{3/} Letter from IRS Commissioner Donald Alexander to Hon. Charles Rangel, attached as Exhibit H to "Memorandum in Support of Defendants' Opposition to Plaintiffs' Motion to Enforce Decree and for Further Declaratory and Injunctive Relief and in Support of Defendants' Motion to Dismiss Plaintiffs' Action," filed herein on or about October 1, 1976, at p. 1.

different First Amendment issue.

7. However, on January 8, 1982, in a "Memorandum for the United States" filed in the Goldsboro and Bob Jones cases (a copy of which is attached hereto as Exhibit "1"), the government requested that the Supreme Court vacate the judgments below as moot because, it informed the Court, the Treasury Department "has initiated the necessary steps to reinstate" the tax exemptions of the two schools involved, and has also "commenced" the process necessary to revoke forthwith the pertinent Revenue Rulings that were relied upon to deny petitioners tax exempt status under the Code." (In a footnote, the Memorandum identifies the Revenue Rulings and Revenue Procedures to be revoked, including Rev. Rul. 71-447, see ¶ 3 supra.)^{4/} On the same date, the Treasury Department announced that it would "no longer revoke or deny tax-exempt status for . . . educational . . . organizations" which have racially discriminatory policies. (A copy of the Treasury Department's News Release and the accompanying materials distributed at its press conference is attached hereto as Exhibit "2".)

8. Neither the government's submission to the Supreme Court in Bob Jones and Goldsboro nor the Treasury Department's News Release refers to this Court's outstanding declaratory judgment and permanent injunction in this case. The defendants have not sought relief from this Court's prior Orders. Instead, defendants have unilaterally determined to ignore those Orders, and to follow a construction of Section 501(c)(3) of the Internal Revenue Code which is contrary to the binding interpretation of that provision announced by the three-judge court in this case in 1971 and applied explicitly to defendants through the declaratory judgment.

9. The declaratory judgment was issued by this Court precisely to prevent defendants from doing what they purported to do

^{4/} By letter dated January 11, 1982, defendants informed this Court of their actions in the two cases.

on January 8, 1982. As Judge Leventhal wrote, that judgment was entered to afford plaintiffs "relief on an enduring, permanent basis, not on a basis that could be withdrawn with a shift in the tides of administration, or changing perceptions of sound discretion." 330 F. Supp. at 1170-71. Defendants' unilateral determination to recognize discriminatory private schools as tax exempt is a willful and contemptuous disregard of this Court's declaratory judgment.

10. Plaintiffs are entitled to further injunctive relief to enforce the declaratory judgment, as well as the outstanding permanent injunction. See 28 U.S.C. § 2202. Since this Court's prior rulings are the "law of the case," there are no complex issues to be tried and the Court should act promptly to preserve the integrity of its judgments, and to prevent defendants from restoring the tax-exempt status of, or granting additional applications for exemption to, racially discriminatory private schools.

11. While the declaratory judgment and permanent injunction rested upon this Court's interpretation of the Internal Revenue Code, the Court recognized the strength of plaintiffs' constitutional claims, Green v. Kennedy, supra, and its construction of Section 501(c)(3) had constitutional dimensions. See 330 F. Supp. at 1164-65. The relief requested, therefore, is necessary to protect plaintiffs' constitutional, as well as statutory, rights.

12. Further injunctive relief preventing defendants from revoking Rev. Rul. 71-447 and the related Revenue Rulings and Procedures identified in n.1 of Exhibit "1", and from restoring tax-exempt status to racially discriminatory private schools, will also serve the purpose of preserving the status quo.

WHEREFORE, for the foregoing reasons, plaintiffs respectfully pray that the Court grant them the following relief:

a. Enter its Order vacating the stay of all further proceedings in this case entered January 6, 1982 so that the issues raised in the instant motion may be considered and adjudicated by the Court;

b. Enter its Order shortening the time within which the defendants and the defendant-intervenors, if they so desire, may respond to this motion (to a period of three (3) days following the entry of the Order);

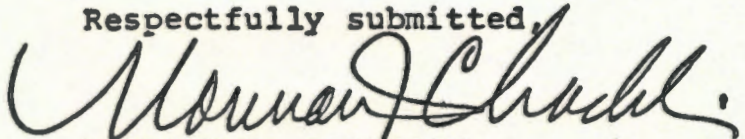
c. Schedule a hearing on this motion at the earliest practicable opportunity;

d. After hearing such oral argument as the Court deems appropriate, enter its Order enjoining the defendants from taking any steps to revoke, or from failing to enforce, Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Proc. 75-231, 1975-1 Cum. Bull. 158; and Rev. Proc. 75-50, 1975-2 Cum. Bull. 587, in order that the declaratory judgment previously issued by this Court shall be effective;

e. After hearing such oral argument as the Court deems appropriate, enter its Order enjoining the defendants from failing to enforce fully, or from taking any steps inconsistent with, the prior injunctive decrees of this Court respecting the tax-exempt status of private schools in Mississippi, including but not limited to any steps to restore the tax-exempt status of any private school in Mississippi which had its application for tax-exempt status denied or whose tax-exempt status was revoked by defendants or their predecessors in office on the basis of the declaratory judgment in this matter, or upon the basis of the Court's prior injunctive decrees in this matter.

f. Grant plaintiffs their costs herein, reasonable attorneys' fees as part of the costs, and such other and further relief as appears appropriate and just to the Court.

Respectfully submitted,



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Nos. 81-1 and 81-3

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981.

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

LAWRENCE G. WALLACE
Acting Solicitor General

Department of Justice
Washington, D. C. 20530

IN THE SUPREME COURT OF THE UNITED STATES . . .

OCTOBER TERM, 1981

No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

No. 81-3

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

This Court granted writs of certiorari in the above-captioned cases and ordered consolidation on October 13, 1981. Petitioners seek reversal of the court of appeals' decisions upholding Internal Revenue Service rulings that were applied to them, because of certain racially discriminatory practices, to deny tax-exempt status as "religious" or "educational" institutions under Section 501(c)(3) of the Internal Revenue Code of 1954 ("Code") and sister Code provisions regarding federal social security taxes (Section 3121(b)(8)(B) of the Code) and federal unemployment taxes (Section 3306(c)(8) of the Code), and to deny them status as eligible donees of charitable contributions under Section 170(a) and (c) of the Code.

- 2 -

Since the filing of our Brief acquiescing in the granting of certiorari in these cases, the Department of the Treasury has initiated the necessary steps to grant petitioner Goldsboro Christian Schools tax-exempt status under Section 501(c)(3) of the Code, and to refund to it federal social security and unemployment taxes in dispute. Similarly, the Treasury Department has initiated the necessary steps to reinstate tax-exempt status under Section 501(c)(3) of the Code to petitioner Bob Jones University, and will refund to it federal social security and unemployment taxes in dispute. Finally, the Treasury Department has commenced the process necessary to revoke forthwith the pertinent Revenue Rulings that were relied upon to deny petitioners tax exempt status under the Code. 1/

The United States therefore asks that the judgments of the court of appeals be vacated as moot.

Respectfully submitted.

LAWRENCE G. WALLACE
Acting Solicitor General

JANUARY 1982

TREASURY NEWS



Department of the Treasury • Washington, D.C. • Telephone 566-21

FOR IMMEDIATE RELEASE
Friday, January 8, 1982

Contact: Marlin Fitzwater
(202) 566-5252

TREASURY ESTABLISHES NEW TAX-EXEMPT POLICY

The Treasury Department announced today that without further guidance from Congress, the Internal Revenue Service will no longer revoke or deny tax-exempt status for religious, charitable, educational or scientific organizations on the grounds that they don't conform with certain fundamental public policies.

"In the past," said Deputy Treasury Secretary R. T. McNamar, "the IRS has revoked the tax exemptions of organizations which, did not adhere to certain fundamental national policies, such as those forbidding discrimination on the basis of race, even though this requirement is not explicitly stated in the Internal Revenue Code except in the case of social clubs."

"Whether or not the Treasury Department or this Administration agrees with the position of the IRS in particular cases is not the issue," McNamar stated. "The question is whether the IRS is required under the Code as enacted by Congress to decide -- as a condition to granting or continuing tax-exempt status -- whether private organizations conform with fundamental national policies. The Treasury Department has concluded that this kind of judgment -- which may mean life or death for certain organizations -- is fundamentally a question for Congress; and if the authority to make this judgment is given by Congress to an administrative agency it should be done in explicit terms and subject to specific guidelines."

As a consequence of this decision, the IRS will restore the tax exemption of certain organizations which had previously been revoked. In particular, the appeal of Bob Jones University, and the Goldsboro Schools, which are currently before the Supreme Court will be rendered moot.

CIV. NO. 1355-69
Exhibit "2" p. 1

"In taking this action," McNamar stated, "we are attempting to protect the independence of all private tax-exempt organizations -- many of which may follow practices and adhere to principles with which we disagree. But before the government gets into the business of deciding which organizations are worthy of tax exemption and which are not, we want Congress to fully consider the implications of such a course."

The Treasury Department decision reflects the advice of the Department of Justice that the authority which the IRS previously had been asserting as its basis for revoking the tax exemptions in question is not supported by the language of the Internal Revenue Code or its legislative history. The Internal Revenue Code provides tax exemptions for "Corporations (or other organizations) organized and operated exclusively for religious, charitable, scientific ... or educational ... purposes" IRC Section 501(c)(3), 26 U.S.C. Section 501(c)(3). The Justice Department has advised that both the language of Section 501(c)(3) and the statute's legislative history provide no support for the statutory interpretation adopted by the Commissioner in 1970. Thus the IRS is without legislative authority to deny tax-exempt status to otherwise eligible organizations on the grounds that their policies or practices do not conform to notions of national public policy.

This new policy is reflected in a motion filed with the Supreme Court today by the Justice Department to vacate a case in which the Internal Revenue Service revoked the tax-exempt status of Bob Jones University and Goldsboro Christian Schools. IRS revoked the Bob Jones University tax exemption in 1970 on the grounds that the school's racial policies violated Federal policies on racial discrimination. This decision was nullified by the U.S. District Court in South Carolina on June 30, 1971. However, the lower court's decision was reversed by the 4th Circuit Court of Appeals on December 30, 1980.

Similarly in 1974 the IRS determined that Goldsboro Christian Schools Inc. did not qualify for an exemption on the grounds that it maintained a racially discriminatory admissions policy. On May 7, 1980 the District Court for the Eastern district of North Carolina upheld the IRS decision. On February 24, 1981 the Court of Appeals for the 4th Circuit affirmed this judgement period.

Both schools appealed the Circuit Court decision to the Supreme Court which accepted their petitions for certiorari on October 13, 1981.

Bob Jones University Case
Chronology of Events

1. Until 1970, the Internal Revenue Service recognized Bob Jones University ("BJU") as a tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code.
2. On November 30, 1970, the Internal Revenue Service notified BJU and other private schools that it would no longer recognize organizations as legal, entitled to tax-exemption which maintained a racially discriminatory admissions policy.
3. BJU responded that it did not admit black students and that it did not intend to alter that policy in September of 1971.
4. BJU filed suit to enjoin revocation on September 9, 1971. In 1974, the Supreme Court ruled that such a suit was barred by the Anti-Injunction Act and the Declaratory Judgment Act.
5. The Internal Revenue Service began a formal audit/examination to determine payroll tax liability and to consider revocation of BJU's tax exemption during July, 1974.
6. In January, 1976, the Internal Revenue Service issued a final notice of revocation to BJU in January, 1976, effective from December 1, 1970.
7. On May 4, 1976, BJU filed suit in federal district court in South Carolina seeking a refund of \$21 in federal unemployment tax as a means of seeking reinstatement of its exemption. The United States counterclaimed for approximately \$490,000 in federal unemployment taxes for the years 1971 through 1975.

8. The District Court held BJU qualified for tax exemption on December 26, 1978 and entered judgment for BJU in the refund suit. In a separate suit decided the same date, the District Court ordered the Secretary of the Treasury and Commissioner of Internal Revenue Service to restore BJU tax exempt status.

9. The Court of Appeals for the Fourth Circuit , reversed both judgments in 2-1 decision and held that BJU was not entitled to tax exemption and entered judgment for the Government on December 30, 1980.

10. BJU filed a petition for a writ of certiorari to the Supreme Court on July 1, 1981. The petition for a writ was granted October 13, 1981.

11. The parties briefs were set for filing on December 31, 1981.

Goldsboro Christian Schools, Inc.

Chronology of Events

1. Goldsboro Christian Schools, Inc. ("Goldsboro") is a nonprofit organization incorporated in 1963; however, Goldsboro has never been granted tax-exempt status.
2. On July 10, 1970, the Internal Revenue Service announced that it would no longer recognize the tax-exempt status of private schools maintaining racially discriminatory admissions policies.
3. After audit in 1974, the Commissioner of Internal Revenue determined that Goldsboro did not qualify for exemption from federal unemployment and social security taxes and accordingly assessed those taxes against Goldsboro.
4. Goldsboro commenced a suit for refund of its partial payment of such taxes and the Government counter-claimed for the balance of the taxes assessed.
5. On May 7, 1980, the District Court for the Eastern District of North Carolina rendered judgment for the Government that Goldsboro's exemption was properly denied.
6. On February 24, 1981, the Court of Appeals for the Fourth Circuit in a 2-1 decision affirmed the judgment for the Government.
7. Goldsboro filed its petition for certiorari with the Supreme Court on July 2, 1981. The petition was granted October 13, 1981.
8. The parties' briefs were set for filing on December 31, 1981.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM H. GREEN, et al.,
Plaintiffs,

v.

DONALD T. REGAN, et al.,
Defendants.

CIVIL ACTION NO. 1355-69

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF
MOTION TO VACATE STAY OF PROCEEDINGS,
TO SHORTEN TIME FOR RESPONSE HERETO, AND
FOR FURTHER INJUNCTIVE RELIEF TO ENFORCE DECLARATORY
JUDGMENT AND PRESERVE THE STATUS QUO

The basis for plaintiffs' application to this Court is simple and straightforward, as set forth in their motion. In this litigation, which now stretches back more than a decade, the plaintiffs have obtained significant declaratory and injunctive relief against the defendants or their predecessors in office. Without any prior notice to either the plaintiffs or to the Court, defendants have publicly announced -- and have formally advised the United States Supreme Court in a Memorandum signed by the Acting Solicitor General -- that they will now follow an interpretation of Section 501 (c) (3) of the Internal Revenue Code in direct conflict with the declaratory judgment of this Court, and a policy of recognizing racially discriminatory private schools as tax exempt in direct conflict with the permanent injunction entered by this Court. The legal issues involved have long been settled by the prior decisions in this matter which are the "law of the case" binding upon the defendants. Hence, defendants' actions are willful and contemptuous conduct showing disrespect for this Court.

Plaintiffs do not, at this time, seek any adjudication of contempt, however. Instead, we ask that the Court grant further injunctive relief to protect plaintiffs' adjudicated rights and to preserve the integrity of the Court's judgments.

Because the principal authority upon which plaintiffs rely are the prior decisions in this very case, as cited in the body of their motion, this Memorandum will be brief.

Recent Events Giving Rise to
the Filing of this Motion

As described in ¶ 6 of the motion, after this Court entered Orders on May 5 and June 2, 1980 supplementing the permanent injunction issued in 1971, Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd mem. sub nom. Coit v. Green, 404 U.S. 997 (1971), the Clarksdale Baptist School was granted leave to intervene in order to litigate its claim that those Orders, as applied to it, violated the First Amendment. Plaintiffs filed a Motion for Summary Judgment in their favor on the school's claims on June 30, 1981 and by Order entered July 15, 1981 this Court established a schedule for completion of discovery and submission for decision in early 1982.

On October 13, 1981 the Supreme Court granted writs of certiorari to review two judgments of the Court of Appeals for the Fourth Circuit upholding the decision by the Internal Revenue Service to deny tax benefits to two schools which admittedly practice racial discrimination. Goldsburo Christian Schools, Inc. v. United States; Bob Jones Univ. v. United States, 50 U.S.L.W. 3278 (Oct. 13, 1981). Both schools argued in their Briefs on the merits in the Supreme Court that because their racially discriminatory practices reflected their religious beliefs, withholding of tax bene-

fits because of these practices violates their First Amendment rights. Both schools also asked the Supreme Court to reject this Court's interpretation of Section 501(c)(3) of the Internal Revenue Code as embodied in its declaratory judgment in this action.

Based upon the possibility that the anticipated Supreme Court ruling in the Goldsboro and Bob Jones cases (which were consolidated) would clarify the legal standards applicable to both Clarksdale Baptist School's First Amendment claim and also to its alternative argument that the declaratory judgment was an incorrect interpretation of Section 501(c)(3), the School on December 11, 1981 asked this Court to stay further proceedings in this case until Goldsboro and Bob Jones were decided. On December 15, 1981 the federal defendants (who had supported the granting of certiorari in order to "dispel the uncertainty surrounding the propriety of the Service's ruling position and foster greater compliance on the part of the affected institutions," Brief at 17) responded to this motion by endorsing it "strongly." This Court granted the requested stay on January 6, 1982.

Having taken the position that this litigation should be stayed so that the Goldsboro and Bob Jones cases might furnish guidance to this Court, it was inappropriate, at the very least, for the government on January 8, 1982 -- just two days after the stay was granted -- to take action preventing any Supreme Court decision in those two cases. Moreover, the basis upon which the government purports to justify this reversal of position is nothing less than shocking: in direct violation of this Court's judgment and Orders, the federal defendants have asserted before the Supreme Court, and have announced publicly, that they lack authority to deny

tax benefits to racially discriminatory private schools and that they will immediately begin to grant tax exemptions to such schools.

As described in the "Memorandum for the United States" filed with the Supreme Court on that date (a copy of which is attached to the motion as Exhibit "1"), the government has sought to moot those cases by restoring tax-exempt status to these admittedly discriminatory schools and refunding the taxes paid as the basis for the refund suits brought by the schools. The grounds upon which the Secretary of the Treasury and the Commissioner of Internal Revenue -- the named defendants in this action -- are acting to restore the exemptions are also described briefly in the government's Memorandum filed with the Supreme Court, and are elaborated upon in the documents issued by the Treasury Department on January 8 at a press conference held to announce the change. As stated in the Memorandum, the Treasury Department "has [already] commenced the process necessary to revoke forthwith the pertinent Revenue Rulings [identified in the footnote as including Rev. Rul. 71-447, which enunciates the fundamental principle that schools with racially discriminatory policies do not qualify for tax exemption] that were relied upon to deny [Goldsboro and Bob Jones] tax exempt status. . ." (emphasis added).

The News Release disseminated by the Treasury Department on January 8 (Exhibit "2" to the motion) makes crystal clear the intention of the defendants to flout the previous Orders and the declaratory judgment issued by the Court in this case. In the very first sentence of the release, defendants bluntly state that "the Internal Revenue Service will no longer revoke or deny tax-exempt status for . . . educational . . . organizations" which practice racial discrimination. Moreover, at p. 2 of the Release, defendants baldly demonstrate their disregard of the considered judgment

of this Court. Seeking to justify what they have described merely as a change in policy -- and not as the violation of an outstanding judgment -- defendants state:

The Treasury Department decision reflects the advice of the Department of Justice that the authority which the IRS previously had been asserting as its basis for revoking the tax exemptions in question is not supported by the language of the Internal Revenue Code or its legislative history. . . . The Justice Department has advised that both the language of Section 501(c)(3) and the statute's legislative history provide no support for the statutory interpretation adopted by the Commissioner in 1970.

Of course, the three-judge court in this case concluded in 1971 precisely to the contrary. See Green v. Connally, supra, 330 F. Supp. at 1156-64. But defendants' public statements make no reference to the holding of this Court nor to its declaratory judgment, which unquestionably remains binding upon them. This is particularly ironic since the three-judge court expressly entered its 1971 declaratory judgment in order to prevent defendants from doing precisely what they have now done -- reverse their construction of the Code so as to grant tax benefits to racially discriminatory private schools:

The July 1970 Press Release does not indicate whether the new construction is considered mandatory or merely within the sound discretion available to the IRS in construction of the Code. If defendants' construction were discretionary it could be changed in the future. We think plaintiffs are entitled to a declaration of relief on an enduring, permanent basis, not on a basis that could be withdrawn with a shift in the tides of administration, or changing perceptions of sound discretion.

Green v. Connally, supra, 330 F. Supp. at 1170-71.

The Need for Further Injunctive Relief

As the description of recent events above makes clear,

defendants have deliberately and unequivocally decided that they will no longer comply with the judgments of this Court. As reported widely in the news media in recent days, the Service admits that it will now recognize as tax exempt "more than 100" private schools which previously lost their exemptions because they practice racial discrimination. Under these circumstances the need for further relief to effectuate the judgments and Orders of this Court is manifest.

Plaintiffs have been deprived, by this unilateral action of the defendants, of the protection of this Court's judgments and of the relief they have secured through bitterly contested, adversary litigation before this Court. More important, the very significant time and effort expended in this matter by the three-judge court in 1970 and 1971, and by this Court since dissolution of the three-judge panel in 1976, in reviewing and weighing the extensive documentary and other evidence submitted in the case in order to reach the considered judgments which have been entered, and in order to frame the carefully delineated injunctive decrees which have been issued, will have been wasted if defendants are not restrained from their present course.

The relief which the plaintiffs seek in their accompanying motion is designed to prevent this result and to effectuate the prior judgments and Orders of this Court. Such relief would not bar the defendants from seeking, on proper application to the Court, a modification of the prior decrees.^{1/} Defendants have always been free to seek such a modification; but they are not now, and never have been, free to take unilateral action in patent disregard of this Court's Orders and judgments. The Court should, therefore, grant the relief plaintiffs seek to maintain

^{1/} Of course, on any such motion the defendants would bear a heavy burden of justification. See, e.g., United States v. Swift & Co., 286 U.S. 106 (1932).

the status quo which has resulted from its prior Orders. This relief would restrain the defendants from flouting the Court's Orders unless and until they present to the Court a compelling justification for modification of those Orders. (Because prior judgments and Orders in this case were fully litigated between the plaintiffs and the defendants, the relief now sought by the plaintiffs cannot in any way be viewed as an attempt to encroach upon the administrative discretion of the government; see also the quoted language from Green v. Connally at p. 5 supra.)

Plaintiffs seek further injunctive relief which will preserve and enforce both the declaratory judgment and the permanent injunction granted in this case (see ¶¶ d. and e. of the prayer for relief in the motion, at p. 6). See 28 U.S.C. § 2202.^{2/}

The declaratory judgment, quoted in full in ¶ 2 of the motion, authoritatively construes Section 501(c)(3) of the Internal Revenue Code to prohibit the grant of tax-exempt status to private schools which are not operated on a racially nondiscriminatory basis. This essential holding has repeatedly been approved by every court which has considered it. E.g., Norwood v. Harrison, 413 U.S. 455, 463 (1973); Bob Jones Univ. v. United States, 639 F.2d 147, 151 & n.4 (4th Cir. 1980), cert. granted, 50 U.S.L.W. 3278 (U.S., Oct. 13, 1981). It has also been adopted and approved by the Congress. See, e.g., S. Rep. No. 1318, 94th Cong., 2d Sess. 8 n.5 (1976), reprinted in [1976]

^{2/} A court has inherent power to protect and effectuate its prior judgments, see, e.g., Resident Advisory Bd. v. Rizzo, 503 F. Supp. 383, 388 (E.D. Pa. 1980) and cases cited, and the court's discretion to do so is at its broadest when, as here, the public interest and the rights of a large group of people are involved, see, e.g., United States v. Washington, 459 F. Supp. 1020, 1115 (W.D. Wash. 1978), aff'd 645 F.2d 749 (9th

U.S. CODE CON. & ADM. NEWS 6058; 125 CONG. REC. H 5883-85, 5982 (daily ed., July 13 and 15, 1979) (statements by opponents of proposed IRS Revenue Procedure endorsing denial of tax-exempt status to discriminatory schools).

This bedrock principle is the foundation not only of Rev. Rul. 71-447, see ¶ 3 of motion, but also of all other Revenue Rulings and Procedures in this area. As the government's Supreme Court submission recognizes in n.1, the IRS must revoke these rulings and procedures in order to complete implementation of the "policy change" announced on January 8 in contravention of the declaratory judgment. For this reason, plaintiffs seek injunctive relief restraining the defendants from revoking, or from failing to enforce, these applicable Revenue Rulings and Revenue Procedures without further Order of this Court.

This is clearly the minimum relief to which plaintiffs are entitled in order to effectuate the prior declaratory judgment. While this relief would have application to the actions of defendants respecting private schools outside Mississippi as well as within that state, this result is entirely consistent with the original relief granted in this case. Nothing in the wording of the declaratory judgment (see ¶ 2 of motion), and nothing in the three-judge court's description of the declaratory relief it was granting (see 330 F. Supp. at 1170-71) suggests that the legal principle underlying the Court's declaratory judgment was to be limited to Mississippi schools. The essential legal question decided in Green v. Connally did not turn upon the happenstance of the location of the particular discriminatory schools. Rather, the principle established by the declaratory judgment turned solely on the proper construction of Sections 501(c)(3) and 170(a)-(c) of the Internal Revenue Code. The holding was that the

racially discriminatory private schools.^{3/} That is the holding the government has now inexplicably chosen to ignore.

The second category of further injunctive relief sought in plaintiffs' motion will preserve and enforce the original permanent injunction and the supplementary Orders issued by this Court in 1980. It will ensure that plaintiffs are not denied the fruits of the decrees by IRS actions to restore or grant new tax exemptions to private schools in Mississippi without applying the procedures and standards contained in those decrees. This portion of the injunctive relief presently sought by the plaintiffs is limited to Mississippi schools just as were the original and supplementary injunctive decrees. There can be no question about plaintiffs' entitlement to effective compliance by the defendants with the prior decrees in this action.

3/ As the Court stated in the section of its opinion discussing its injunctive decree:

To obviate any possible confusion the court is not to be misunderstood as laying down a special [substantive] rule for schools located in Mississippi. The underlying principle is broader, and is applicable to schools outside Mississippi with the same or similar badge of doubt. Our [injunctive] decree is limited to schools in Mississippi because this is an action in behalf of black children and parents in Mississippi, and confinement of this aspect of our relief to schools in Mississippi applying for tax benefits defines a remedy proportionate to the injury threatened to plaintiffs and their class.

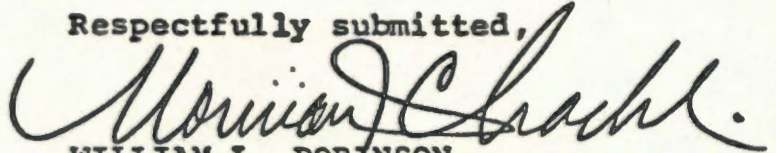
330 F. Supp. at 1174. In contradistinction, the injunctive relief granted in 1971 shaped special procedures for defendants to follow in light of "the conditions in Mississippi which have already led to denial of plaintiffs' rights in the past." 300 F. Supp. at 1171. The three-judge court "identified two areas that we conclude, on reflection, are appropriate for our final decree as a condition for advance assurances for Mississippi private schools in view of the 'badge of doubt' context already discussed." Id. at 1174.

Finally, plaintiffs emphasize again that they are not seeking to bar the government from applying to this Court for modification of its judgments and decrees -- although we are quick to add that we know of no adequate legal ground for modification. Under our constitutional scheme, however, a litigant must comply with judicial orders while seeking their alteration through the judicial process rather than acting unilaterally to ignore decrees with which it does not agree. E.g., Walker v. Birmingham, 388 U.S. 307 (1967). Because the defendants have ignored this fundamental principle, this Court should act promptly to protect the integrity of its judgments and proceedings. The injunctive relief which plaintiffs seek will serve to preserve the status quo pending a proper application to this Court by the defendants and the Court's determination on the merits of any such application.

Conclusion

For the foregoing reasons, plaintiffs respectfully submit that the Court should act promptly to vacate the January 6 stay and to grant them further injunctive relief necessary to enforce the declaratory judgment and prior injunctive decrees in this case. Because defendants have publicly announced their intentions to act quickly (for example, to revoke relevant Revenue Rulings and Procedures "forthwith"), we submit that the Court should also shorten the time for a response by defendants to the motion and schedule a hearing thereon at the earliest practicable opportunity.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM H. GREEN, et al.,)
)
 Plaintiffs,)
 v.)
)
 DONALD T. REGAN, et al.,)
)
 Defendants.)
 _____)

CIVIL ACTION NO. 1355-69

ORDER

AND NOW, this _____ day of January, 1982, upon consideration of the Plaintiffs' Motion to Vacate Stay of Proceedings, to Shorten Time for Response Hereto, and for Further Injunctive Relief to Enforce Declaratory Judgment and Preserve the Status Quo, and of the entire record in this case, and for good cause, it is hereby

ORDERED that the stay of all proceedings in this matter entered by Order of this Court dated January 6, 1982 (pending the Supreme Court's decisions in Goldsboro Christian Schools, Inc. v. United States and Bob Jones University v. United States) be and the same hereby is VACATED; and it is further

ORDERED that the defendants (and defendant-intervenors, if they so desire) shall respond to the plaintiffs' Motion within three (3) days of the entry of this Order; and the Clerk of this Court is directed to give counsel for the parties telephone notice of the provisions of this Order; and it is further

ORDERED that a hearing on this motion shall be held on January _____, 1982, at _____ .m. in open Court.

WILLIAM H. GREEN, et al.,
Plaintiffs,
v.
DONALD T. REGAN, et al.,
Defendants.

CIVIL ACTION NO. 1355-69

ORDER

AND NOW, this _____ day of January, 1982, upon consideration of the plaintiffs' Motion to Vacate Stay of Proceedings, to Shorten Time for Response Hereto, and for Further Injunctive Relief to Enforce Declaratory Judgment and Preserve the Status Quo, of the defendants' response thereto and the oral argument of the parties' counsel, and upon consideration of the entire record in this case, and it appearing to the Court that defendants have taken and publicly announced actions which violate the prior rulings in this case, and that further injunctive relief is necessary in order to preserve the integrity of the Court's judgments and to protect the plaintiffs' right to secure the relief previously awarded them by the Court, and that the ends of justice require such relief, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. Pending further Order of this Court after proper application by the defendants, the defendants are enjoined and restrained from taking any steps to revoke, or from failing to enforce Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Proc. 75-231, 1975-1 Cum. Bull. 158; and Rev. Proc. 75-50, 1975-2 Cum. Bull. 587;

2. Pending further Order of this Court after proper application by the defendants, the defendants are enjoined and restrained from failing to enforce fully, or from taking any steps inconsistent with, the permanent injunction entered by this Court on June 30, 1971, as supplemented by this Court's Orders of May 5, 1980 and June 2, 1980, including but not limited to, any steps to restore the tax-exempt status of any private school in Mississippi which had its application for tax-exempt status denied, or whose tax-exempt status was revoked, by defendants or their predecessors in office on the basis of the declaratory judgment or injunctive decrees of this Court.

Hon. George L. Hart, Jr.
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1982, I served a copy of the plaintiffs' Motion to Vacate Stay of Proceedings, to Shorten Time for Response Hereto, and for Further Injunctive Relief to Enforce Declaratory Judgment and Preserve the Status Quo, the Memorandum of Points and Authorities in Support Thereof, and the proposed Orders thereon, in Green v. Regan, Civ. No. 1355-69 (D.D.C.) upon counsel for the parties to that action, as follows:

By hand delivering a copy to the offices of:

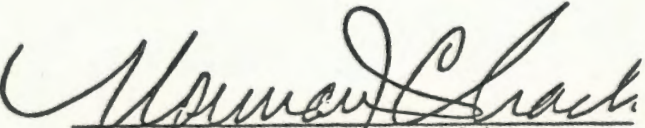
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