

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual
collections.

Collection: Barr, William Files
Folder Title: [Tuition Tax Credit] (3)
Box: 12

To see more digitized collections visit:
<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library
inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at:

reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: BARR, WILLIAM: Files

Archivist: cas

File Folder: [Tuition Tax Credits] [~~3 of 14~~ ^{3 of 6} ~~GA 9994~~ Box 7]

Date: 9/18/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Morton Blackwell to Elizabeth Dole re tuition tax credits 4 p.	7/20/82	PS/CS 10/5/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: BARR, WILLIAM L.: Files

Archivist: mjd

File Folder: Tuition Tax Credits - *(2016) File II OA 9096 Box 7*

Date: 5/7/99

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Gary Bauer to Edwin Harper re: Tuition Tax Credits Strategy, 1p	7/23/82	<i>P5/CS 10/5/00</i>

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

TUITION TAX CREDITS

Background

- o On June 22, 1982, President Reagan submitted to the Congress legislation to provide tuition tax credits to parents whose children attend private elementary and second schools.
- o The President's bill would allow taxpayers a tax credit against income taxes of 50% of the cost of tuition and fees for each child, up to a phased-in maximum credit of \$100 in 1983, \$300 in 1984 and \$500 in 1985.

Talking Points

- o Tuition tax credits, which have been promised by every President since 1969 but acted upon only by President Reagan, will result in increased educational choice for children and improved tax equity for taxpayers who choose private education.
- o This legislation primarily benefits lower and middle-income families. More than 80% of the parents of children enrolled in private schools earn less than \$30,000 a year. Indeed, taxpayers earning more than \$50,000 receive proportionally less of a credit, and families with incomes over \$75,000 receive no credit at all.
- o These tax credits would not result in a significant loss to the Treasury. In FY '83 the estimated loss would be only \$100 million, \$600 million in '84 and in 1985 approximately \$1 billion. These revenue losses are insignificant in the context of a Federal budget in the neighborhood of \$700 billion.
- o The President's bill provides strong measures to assure that such tax credits will not be provided to taxpayers who enroll children in schools which discriminate on the basis of race or national origin.

Tuition Tax Credits

- o In December 1980 the U.S. Department of Education published data which indicates 27% of private school parents earn less than \$15,000 a year (30% in the national average) and 80% earned less than \$30,000 a year.
- o A study of 81 private schools done by the Catholic League for Religious and Civil Rights in eight cities across the country showed that 77% of the families reported incomes of less than \$15,000 with 50% below \$10,000. More than half the students in these schools were black.
- o Private schools are wrongly pictured as "havens" for whites fleeing integration. For example, only 2% of American Catholics are black, 7.7% of Catholic school students are black.
- o California Catholic schools enroll a higher percentage of minorities than do the public schools. (Newsweek, April 20, 1981)
- o Because tuition tax credits increase parental choice, they are of particular value to low income taxpayers and to families with "special need" children such as the handicapped.
- o Public education is important but remember that there were no tax supported public schools in the United States until 1818 or 1819. Before that most grade schools and high schools were church run.
- o During extensive hearings held in 1978 in Congress, Constitutional experts testified that a broadly based program of federal tuition tax credits would withstand any Court challenge because credits aid parents, not religious institutions.
- o Supreme Court decisions to date dealing with the Establishment Clause are notable for their inconsistency. For example, the government can provide bus transportation to and from school but not for field trips; it can provide textbooks but not other educational materials. Obviously with this sort of confusion, it is anyone's guess how the Court will react to the Administration's tuition tax credit program.
- o Since our tuition tax credit proposal would cover 50% of the tuition costs up to \$500, it is unlikely to result in increased private school tuitions. If a school raised tuition in an effort to "capture" the credit, the credit would cover at most only half of the increase with parents paying the other half. This should act as a major disincentive for schools to take that action.
- o Tuition tax credits are not a radical idea. In fact, the origin of the idea for tax credits to enable people to purchase education in private schools can be found at the end of Tom Paine's The Rights of Man published in 1792.

TALKING POINTS

- o Administration approach developed through 2 1/2 months of consultations with all interested parties, including private school community, government agencies and Congress, and civil rights organizations.
- o We have quite an accomplishment.
 - At this stage, everyone agrees that Administration bill has a strong, effective anti-discrimination provision and is fair and reasonable.
 - At the same time, all the groups supporting tuition tax credits are behind our approach, including such diverse groups as the U.S.C.C. and A Gudath Israel.
 - In short, after much consultation and negotiation, we have achieved a good but delicate balance.
- o Senator Bradley's amendment will destroy that balance.
- o Bradley's amendment was hatched hurriedly within his own office overnight. He had no consultations with the major pro-credit groups in developing his approach.
- o IRS enforcement mechanism must be carefully developed and thoroughly considered. This can only be done when the dust settles on 501(c)(3).
- o We should not adopt an IRS enforcement provision that was slapped together overnight.
 - If we later have to set up a 501(c)(3) enforcement mechanism, whatever IRS provision we adopt now would serve as model. This would affect broad range of institutions.
 - This is why Administration would like to go with a strong DOJ provision now, and address IRS' enforcement role when it can be done comprehensively and thoughtfully.

①

Catholic Health Ass'n
Annual Mtg Denver in June
Headq. in St Louis
Ex. Dir. Jack Curley
Sister Gene Krass
Chief Ad Providence

②

Catholic Daughters
Meet in July

Out
Scotland
9/6/45 - 6/31

5845

THE WHITE HOUSE
WASHINGTON
July 20, 1982

file
TTC

MEMORANDUM FOR ELIZABETH H. DOLE

FROM: MORTON C. BLACKWELL *McB/c*

SUBJECT: Tuition Tax Credits

Per our discussion this morning, here is a summary of our situation and a suggested course of action.

Jack Burgess and I have been working closely with all elements of the coalition of organizations supporting tuition tax credits. Without exception, these organizations have had their confidence in this administration shaken by the way in which we have handled the tuition tax credit bill.

During the drafting of the President's bill, all of these groups were consulted on numerous occasions. As a result, the bill is one of which the Administration can be proud and which enjoys the determined support of all of the major organizations in favor of tuition tax credits.

Here are the principal sources of the growing lack of confidence in us on this issue:

1. At the Roosevelt Room meeting with the President and Vice President and leaders supporting tuition tax credits, Bob Thompson announced that the principal sponsors of the President's bill would be Senator Dole and Congressmen Gradison and Biaggi. For more than twenty-four hours after this meeting, all reports coming from the offices of these announced co-sponsors contradicted Bob Thompson's information that they would be co-sponsors. Many supporters called their offices to coordinate tuition tax credit activities only to be shocked by denials. Word spread through the coalition like wildfire.

2. Eventually the "principal sponsors" and their staffs were locked into sponsorship. However, despite Administration announcements to the contrary, and despite the news conference in which the President indicated his personal support of this bill, our effective support is questioned. Virtually every single supportive organization reports a prevailing view among members and staff on Capitol Hill that the Administration is not interested in fighting or bleeding in behalf of this bill.

3. On July 13 we had a meeting of leaders of the tuition tax credits coalition here. A dispute arose over the testimony Assistant Secretary for Tax Policy (Treasury) Buck Chapotin had given before the Senate Finance Committee on July 2. Bob Baldwin of Citizens for Educational Freedom insisted that Chapotin had specifically said the Administration does not favor placing tuition tax credits on the pending revenue bill. Bob Thompson, Legislative Affairs, just as stoutly insisted that Chapotin in fact said the Administration did want to have the tuition tax credit bill attached to the revenue bill. For some minutes the meeting degenerated into a "Yes he did" - "No he didn't" exchange. Subsequently Father Hoye of the U. S. Catholic Conference obtained an unofficial transcript of Chapotin's testimony which showed that Thompson was mistaken and Baldwin was correct.

4. Despite the dispute over the content of Chapotin's testimony, our July 13 meeting strove to reach an understanding of what the Administration's position was to be on this bill in the future. Thompson clearly and emphatically stated that our position is that we want this bill, if possible, in the revenue bill. Because Senator Dole clearly does not want it on the revenue bill in its initial passage battle in the Senate, Thompson's statement of our position came down to this:

(a) If it would be possible to attach the tuition tax credit bill to the revenue bill in the Senate, the Administration would favor it, but Dole's opposition makes this course unlikely.

(b) The Administration will fight hard to get tuition tax credits attached to the revenue bill in the House and to grease the way for Senator Dole to accept tuition tax credits from the House Bill during the conference negotiations.

Everyone left with this understanding of Administration policy. Bob Thompson gave everyone the clear impression that he was simply revealing our strategy to them.

5. Despite our assurance to the contrary, response to a question at the Finance Committee hearing July 16, Treasury Secretary Regan specifically said that the Administration does not favor adding tuition tax credits to the revenue bill.

The attached memorandum of July 20 from Bob Baldwin reports that "At this juncture leaders of the coalition are fearful that there is no White House strategy or that tuition tax credits is deliberately being sabotaged."

Surely these fears are warranted.

I suggest the following action:

1. SENATE BILL STRATEGY:

a. Get Secretary Regan to write the Finance Committee members a letter suggesting that the Administration would strongly support attaching the tuition tax credit bill to the revenue bill either in the Senate or from the House bill in conference.

b. Send Bill Barr of OPD, Dan Oliver of Department of Education, and Brad Reynolds of the Civil Rights Division of the Justice Department to meet separately with Packwood and Moynihan to assuage their concerns about the anti-discrimination provisions in our bill.

c. Have the President recruit either Senator Armstrong or Senator Grassley to move to attach the tuition tax credit bill on the upcoming debt limit bill. The President should also write to Senator Baker that he wants this accomplished. If we have lost this chance on the revenue bill, due to Senator Dole's opposition and/or our inability to communicate our position to the Finance Committee, we have only the debt limit bill option left to get tuition tax credits through the Senate on a piece of "must" legislation.

2. SIMULTANEOUS HOUSE STRATEGY WITH SENATE STRATEGY

a. There are two ways the tuition tax credits could be tied to the revenue bill in the House. First, Congressman Rostenkowski could be convinced to insert it in committee. Second, the tuition tax credits could be added to the revenue bill on the floor of the House through a bi-partisan coalition led by Congressman Michel.

b. The President should call Congressman Rostenkowski, urging him to put tuition tax credits on the revenue bill in the House. We should pass the word to all supportive groups that the President has urged Rostenkowski to take this step.

c. The President should contact Bob Michel, who will very likely be given a modified open rule on the revenue bill which would allow him a vote on one substitute to the forthcoming committee bill. The President should ask Congressman Michel to be sure to have tuition tax credits in his proposed substitute.

d. The President should contact Senator Dole to get him to agree specifically to support tuition tax credits in the House-Senate conference if it comes over in a House bill but is not in the parallel Senate bill.

3. WHITE HOUSE MEETING

We should schedule the meeting requested in Bob Baldwin's attached memo and explain to the tuition tax credit coalition that we have decided on the above strategies in both Houses.

We are very close to disaster on tuition tax credits. This disaster is entirely our own fault because we have given either mixed signals or no signals or late signals to outside groups, Republican congressional leaders, and tuition tax credits supporters in the rank and file of both houses of Congress.

Because both the revenue bill and the debt limit bill are so far advanced, we do not have much time to decide on a course of action. There are literally millions of people who if properly approached on this subject would communicate with their elected representatives in its behalf. These grassroots supporters will not move unless their leaders give them marching orders. Their leaders will not issue marching orders to their troops unless they see us seriously employing a strategy which can win.

Citizens for Educational Freedom

Suite 854 • Washington Bldg. • 15th and New York Ave., N.W. • Washington, D.C. 20005

Telephone (202) 638-6423

July 20, 1982

MEMORANDUM

TO : MORTON BLACKWELL
FROM : ROBERT BALDWIN *RB*
RE : TUITION TAX CREDITS

The testimony of Secretary Regan before the Senate Finance Committee on Friday, July 16 indicates to the members of the tuition tax credits coalition that there are two voices coming from the White House : one to strongly support tuition tax credits and attach it to the revenue bill and another to waffle for now and to let it work its own way through Congress - if possible. At this juncture leaders of the coalition are fearful that there is no White House strategy or that tuition tax credits is deliberately being sabotaged.

Regardless, we are convinced that unless key Congressmen are contacted personally and assured that the White House is indeed serious about passage of this legislation in this session, the coalition will explode.

For these reasons it is imperative that members of the coalition meet Ken Duberstein, James Baker and Edwin Meese today, July 20 before the House Ways & Means Committee begins discussing the revenue reconciliation bill. We are more than willing to consider strategy other than attaching tuition tax credits to the revenue bill, but we must know what that strategy is. However, it is the feeling of the coalition that the revenue bill is the last best hope.

Representatives of the coalition - Msg. Edward Spiers, Dr. Leonard Di Fiore, Sister Renee Oliver and I - will be willing to meet with you at your convenience.

copy to Mr. Robert Thompson.

BRIEFING PAPER ON
TUITION TAX CREDITS

I. The Bill

On June 22, 1982, President transmitted his tuition tax credit proposal to the Congress.

The Bill:

- o Covers elementary and secondary schools.
- o Allows credits for 50% of tuition paid up to ceiling of \$100 in 1983, \$300 in 1984, and \$500 in 1985.
- o Starts phasing out the credit for taxpayers making \$50,000 or more. The credit is completely eliminated for taxpayers making \$75,000 or more.
- o Contains a strong three-pronged anti-discrimination provisions:
 - a school must be a tax exempt organization under 501(c)(3);
 - a school must file annual statement under penalties of perjury that it does not discriminate;
 - the Attorney General is authorized, upon complaint of someone who has been discriminated against, to bring court actions to cut off credits.

The Bill, particularly the anti-discrimination provisions, were worked out in close consultation with all interested groups. It enjoys broad support among all elements of the coalition.

II. Administration Action to Gain Passage

The Administration is aggressively pushing the legislation.

The President has declared that it is one of his top five legislative priorities this session of Congress.

Senate Action:

- o Senator Dole has introduced Bill.
- o President has asked Senator Dole to move expeditiously.
- o At Senate Finance Committee hearings last month, we sent up Secretaries Regan and Bell to show the importance of this bill.

- o President sent letter to Senator Dole and key Senators urging favorable action this session. (Copy attached.)
- o On August 9 (yesterday) President met with key Senators and Representatives. (See attached list.)
- o On August 9 (yesterday) Senate Finance Committee held initial mark-up session.
- o Strategy: have a Senate bill ready to tack onto House-passed revenue bill (other than tax bill).

House Action:

- o Representatives Gradison and Biaggi have introduced Bill. So far, about 25 co-sponsors.
- o President is sending letter to key House members.
- o President has met with Representative Rostenkowski and other key House members.
- o Coalition is starting drive to get more co-sponsors. We are trying to help.

We are holding regular legislative strategy meetings with people from coalition and people from Hill.

III. Possible Amendments and Our Position on Them

- A. Refundability: Senate Finance Committee has made it clear that it would like to add a refundability provision.

We would prefer to go one step at a time. Refundability should be addressed after we have established the principle of tuition tax credits.

- Refundability would add to "cost" of bill -- revenue losses would be 5% higher or more.
- Administration is proposing regulations that would make Title I funds available to underprivileged private school students. This could moot the need for refundability. (These funds were theoretically available to private school students in the past but not in practice.)
- Refundability could make our legal defense a little more difficult. We want to defend the Bill in large part as a tax equity measure. Refundability would cloud this argument.

- B. Reduction of Credit: Some on Senate Finance Committee

are considering reducing the credits from a maximum of \$500 to a maximum of \$300.

We have not taken a position on this yet. Some coalition members say they would accept this to get the Bill passed this session.

- C. Lower Eligibility Ceiling: Some on Senate Finance Committee are proposing lowering the phase-out for the wealthy to \$40,000 to \$60,000 instead of from \$50,000 to \$75,000.

We have not taken a position on this. However, many middle-class urban families are now two-income families, and we are concerned that if the ceiling is lowered too much, it will exclude many deserving families.

IV. Possible Questions:

- A. Refundability: You should expect question on this.
(See above discussion)
- B. Prospects for Passage: There is a good chance we can get the Bill passed this session. It will be touch-and-go. Some Senators have suggested that, if the tax bill is defeated, this Bill is doomed. We are doing everything we can to move this Bill.

Yesterday a member of the Finance Committee staff said privately that the kind of quick action the President is managing to get on this legislation is "unprecedented".

- C. Senator Chafee's Remarks: You should be aware that today's Washington Times reports Senator Chafee as saying that Senator Dole has confided in him that he is just going through the motions and intends to drag out the mark-up process until it is too late to get action on the Bill.

V. Attachments:

- A. President's recent letter to Senator Dole.
- B. Issue Update on Tuition Tax Credits.
- C. Detailed Explanation of Bill's Anti-Discrimination Provisions.
- D. Fact Sheet on Bill.
- E. Copy of Bill, Transmittal Letter, and Explanation.
- F. List of Senators and Representatives who met with President.

TUITION TAX CREDIT MEETING
WITH THE PRESIDENT

Senators: Baker
Packwood
Roth
D'Amato
Long
Dole
Moynihan (Invited, but could not attend.)

Congressmen: Michael
Conable
Gradison
Frenze
Coughlin
Dougherty
Solomon
Livingston
Hyde
Gephardt
Russo
Biaggi

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 23, 1982

FOR: EDWIN L. HARPER
FROM: GARY L. BAUER
SUBJECT: Tuition Tax Credits Strategy Perception - FYI

Over the last several weeks, incredible strains have been placed on our tuition tax credit coalition due to the growing perception that the Administration is not serious about pushing for passage of the bill this year.

This perception has grown out of a series of incidents, large and small, which, taken together, present a disturbing pattern. For example, when Secretary Regan testified before the Senate Finance Committee, he specifically stated that the Administration did not favor adding tuition tax credits to the revenue bill. Yet the revenue bill is probably the only real vehicle that could guarantee passage of our tuition tax credit proposal. In addition, the various coalition groups have been unable to find one member of the Senate or House that has received word from our legislative affairs operation that tuition tax credits are a high priority.

The situation had degenerated enough this week so that the major groups in the coalition were threatening to go public with a press conference and charge the President with political expediency. The political implications of such an event would be staggering.

Today, July 23, I understand a decision was reached in the senior staff meeting to hold a legislative strategy meeting on this matter. I believe it is imperative that we move quickly to revive our credibility. I am not making specific suggestions at this time -- legislative affairs certainly knows the course to follow to win acceptance of an Administration proposal. The important thing to remember is that the coalition we are working with is not composed of novices. They are able to tell the difference between a serious effort and mere rhetoric. Since some of them, most notably the United States Catholic Conference, are not friends of this Administration, they will not hesitate to embarrass us publicly.

cc: Roger Porter
Michael Uhlmann
Bill Barr

THE WHITE HOUSE

WASHINGTON

August 6, 1982

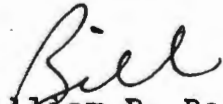
Dear Father Blum:

Thank you for sending me the report on Inner City Private Education.

It was nice hearing from you. You may recall we last talked in my law office when you raised the possibility of my becoming general counsel of the League.

Please feel free to call me any time and, next time you're in Washington, I hope you will stop by.

Sincerely,


William P. Barr
Deputy Assistant
Director for
Legal Policy

(Rev.) Virgil C. Blum, S.J.
President
Catholic League for Religious
and Civil Rights
1100 West Wells Street
Milwaukee, Wisconsin 53233



CATHOLIC LEAGUE for Religious and Civil Rights

1100 WEST WELLS STREET · MILWAUKEE, WISCONSIN 53233
414/289-0170

July 19th, 1982

OFFICERS

- PRESIDENT**
Reverend Virgil C. Blum, S.J.
Professor Emeritus, Political Science, Marquette University
- CHAIRMAN**
James Hitchcock
Professor of History, St. Louis University
- VICE PRESIDENT**
Emile Comar
Executive Director, Louisiana Catholic Conference
- TREASURER**
John Hansen
Director of Finance, Marquette University
- SECRETARY**
Miss Ann Brosnan
International Economist, Washington, D.C.
- ASSISTANT SECRETARY**
Walter S. Stumpf
Assistant Professor, Accounting and Finance, Marquette University

BOARD OF DIRECTORS

- James G. Ahler**
Associate Professor of Sociology, College of St. Thomas
- John E. Coons, Esq.**
Professor of Law, University of California at Berkeley
- Frank J. Delany, Esq.**
Attorney at Law, Washington, D.C.
- McCarthy DeMere, M.D., J.D.**
Professor of Law, Memphis State U.; Professor of Surgery, University of Tennessee Medical Center
- Dale Francis**
Editor, *The Catholic Standard*
- Most Reverend Joseph Abel Francis, S.V.D.**
Auxiliary Bishop of Newark, N.J.
- John F. Henning**
Executive Secretary-Treasurer, California Labor Federation
- Dennis J. Horan, Esq.**
Attorney at Law, Chicago, Ill. Chairman, Americans United for Life
- Sister Monica Kostielney, R.S.M.**
Public Affairs Assistant, Education, Michigan Catholic Conference
- Mrs. C. Bradford Lundy, Jr.**
President, League of Catholic Women of Detroit
- Timothy Cardinal Manning, D.D., J.C.D.**
Archbishop of Los Angeles, CA
- Most Reverend Edward A. McCarthy**
Archbishop of Miami, FL
- Michael Novak**
Resident Scholar, American Enterprise Institute, Washington, D.C.
- Rev. Msgr. Edward J. O'Donnell**
Vicar General, Archdiocese of St. Louis
- Rev. Msgr. Patrick J. O'Neill**
Pastor, Sts. Peter & Paul Parish, Fall River, MA
- James M. Osborne**
Retired Industrial Relations Manager, Stamping Division, Ford Motor Co.
- Ada B. Ryan, M.D.**
Flushing (N.Y.) Hospital Emergency
- Frank D. Salas, P.E., Agrupacion**
Catolica Universitaria, Chief Engineer, Fuller Const. Co., Miami, FL
- Most Reverend Robert F. Sanchez**
Archbishop of Sante Fe, N.M.
- Joseph Sobran**
An Editor of *National Review* and *Human Life Review*
- David J. Young, Esq.**
Attorney at Law, Columbus, Ohio
- Hon. Clement J. Zablocki**
U.S. House of Representatives

Mr. Billy Baer
White House
Washington, D.C. 20013

Dear Mr. Barr:

Mrs. Marilyn Lundy, a very dear friend of mine, gave me your name and suggested that I write to you and send you a copy of the summary report on our study of 54 inner city private elementary schools, Inner City Private Education: A Study.

Although President Reagan's tuition tax credit bill will not help a large percentage of inner city private school parents since it does not have a refund provision, I think you will find the book of interest.

What we need in addition to the President's tax credit bill is a Junior GI Bill of Rights for poor families to help them pay tuition in inner city private schools.

Commendations on your great work in hammering out support for the President's bill. That was no easy task.

With appreciation.

Sincerely,

(Rev.) Virgil C. Blum, S.J.
President

vcb:emk
enc.

Michael Schwartz
Director of Public Affairs

Thomas Patrick Monaghan, Esq.
General Counsel

Orlan R. Love
Director of Publications

Reverend Henry W. Casper, S.J.
Director of Development

Reverend Peter M.J. Stravinkas
Regional Director of Development

William J. Sweeney
Associate Regional Director of Development



Inner City Private Elementary Education

by (Rev.) Virgil C. Blum, S.J. and
(Rev.) Timothy J. O'Brien, Ph.D.

***Inner city private education is truly
a great educational phenomenon in America today.
It is in fact the Catholic Church's greatest
apostolate to the poor of every religious belief.***

Inner city private education is truly a great educational phenomenon in America today. It is in fact the Catholic Church's greatest apostolate to the poor of every religious belief.

Low-income minority families, discriminated against by state and federal legislatures, by state and federal courts, make tremendous sacrifices to send their children to inner city private schools.

Several years ago the Catholic League for Religious and Civil Rights initiated a study to ascertain who these families are and why they make the sacrifices entailed in sending their children to private schools.

Eight-City Sample

The study was made in 64 randomly selected inner city schools in Los Angeles, New Orleans, Chicago, Milwaukee, Detroit, New York, Newark and Washington, D.C. The 55 elementary schools that responded, all of which qualify to receive federal aid for low-income students, serve a total enrollment of 15,312, of whom at least 70 percent are members of racial minorities.

The elementary schools, which have an average enrollment of 278 children, are heavily dependent on lay teachers, with

only 30 percent of their teachers being nuns and brothers. The schools operate under open admission policies. The expulsion of children is rare but sometimes students are advised to transfer to a school where more adequate counselling is available.

The Catholic League study examines the attitudes of about 4,000 elementary school parents, 339 teachers and 55 principals who responded to our survey. The information provided by the parents reveals, first, who they are—their religion and ethnicity, their economic status, their family structure,—and, secondly, how they perceive the education their children are receiving in inner city private schools.

One-Third Protestant

Although nine of 10 inner city private schools are Catholic or ex-parochial schools, almost one-third of the families with children in these schools are Protestant; 21 percent are Baptists, 4 percent are Methodist and 6 percent are members of other Protestant denominations.

Of the black families, which make up slightly more than 55 percent of the sample schools' population, 53 percent are Protestant and 44 percent Catholic. Of the Hispanic families, which comprise

32 percent of the sample schools' enrollment, 98 percent are Catholic and 2 percent Protestant. Of the white families, which make up about 8 percent of the sample schools' populations, 92 percent are Catholic and 6 percent Protestant.

Financial Sacrifices

The deep commitment of minority families to inner city private education is clearly demonstrated by the financial sacrifices entailed in their choice of inner city private schools. Fifteen percent of the responding families report annual incomes of less than \$5,000; another 35 percent report incomes of from \$5,000 to \$10,000; 22 percent report incomes of from \$10,000 to \$15,000; 14 percent report incomes from \$15,000 to \$20,000; and another 14 percent report incomes over \$20,000.

It is noteworthy that 72 percent of families with children in inner city private schools report annual incomes of less than \$15,000. This constitutes an over-representation of low income families, since only 36 percent of all U.S. families have incomes of less than \$15,000. More remarkable still is the fact that 50 percent of inner city private school families live on less than \$10,000 a year, in contrast to 27 percent of all U.S. families.

All but 14 percent of the respondents are members of families whose annual income was below the median income of U.S. families, which was just under \$20,000 in 1978.

It should be noted that of the 15 percent of all inner city private school families with an annual income of less than \$5,000, 35 percent are unemployed and receiving welfare payments. Of the 35 percent of the families with an annual income between \$5,000 and \$10,000, 4 percent are unemployed and on welfare.

An examination of the family structures of children in inner city private schools reveals that 60 percent are two-parent families with both mother and father present, 35 percent are one-parent families with only the mother present, 1 percent are one-parent families with only the father present and 4 percent are families headed by one or both grandparents.

Poorest of the Poor

Why do these minority parents — poor, powerless, discriminated against by lawmakers and courts — why do they send their children at great personal sacrifice to inner city private schools? Why do they pay an average of about \$450 a year in tuition charges, when, down the street at a government school, the taxpayer will spend an average of \$2,500 a year for their child's education?

The greatest degradation of poverty is the unavailability of choice. Most poor parents in America are suffering that degradation. In the education of their children they have no choice of religious and moral values, no choice of educational environment, no choice of dedicated and committed teachers, no choice of personal involvement in the education of their children. The state through discriminatory laws compels them to send their children to monopoly government schools, in which their parental rights are suppressed.

Why Private Schools?

Why, then, do black and Hispanic inner city parents send their children to private schools in old delapidated buildings, to schools with totally inadequate facilities and equipment, to schools with teachers grossly underpaid, and in which they themselves are expected to contribute labor and services?

In our Catholic League study, minority parents answered that question in a voice that was virtually unanimous: They send their children to inner city private schools because they want a better education, a quality education for their children. And by quality education they mean an education that includes religious and moral values as well as rules and discipli-

"The greatest degradation of poverty is the unavailability of choice. Most poor parents in America are suffering that degradation."

pline, an education which instills in their children a sense of self-respect, self-worth and high expectations in their ability to achieve, an education in which they themselves can contribute labor and services.

St. Leo School

A better education, a quality education is what parents get for their children. Such is the case, for example, at St. Leo in Milwaukee, of which we have much firsthand knowledge. St. Leo closed as a Catholic school in 1970, became the Leo Community School, declined to 70 students, and was forced to close its doors. Under the leadership of team pastors Fathers Robert Schneider and Thomas LeMieux, St. Leo reopened in 1977 with 280 students, 98 percent black, 90 percent Protestant, 85 percent qualified for free meals under the government-funded breakfast and hot lunch programs, and with a waiting list of some 500 hopeful families.

Remarkable Progress

Families with children at St. Leo found what they wanted — quality education, as demonstrated by the performance of transfer students in the Iowa Test of Basic Skills and other tests, which were administered both at the beginning and end of the school year. Records show that in the first year 27 of 30 first-graders progressed to reading level six — a second-grade level. Two finished the year at the expected level five and only one was deficient — and that child read at level four. The fourth-graders entered the school academically at an average two years below grade level. Tests at the end of the year indicated that the children had progressed to within three months of their expected reading level and four months of their expected levels in math and study skills. The sixth graders came to the school more than two years behind on the average, yet they finished the year only nine months back. The seventh graders lagged two-and-a-half to three years back, yet within 10 months, they were performing at a level only one year below the expected achievement level for seventh graders.

Like St. Leo, most inner city private schools live a precarious existence. About 30 percent of their teachers are nuns and brothers receiving very low salaries. It is these teachers who, because of years of experience in the schools, are the administrators and provide the stability and continuity so essential to a school. Most lay teachers, especially male teachers, cannot long continue at a salary that is only half of what they could get at a local public school. Many lay teachers do in fact transfer to public schools or take other employment, thus leaving the burden of administration and continuity in the hands of a dwindling number of nuns and brothers, many of whom are rapidly reaching retirement age.

Job Satisfaction

On the other hand, many highly qualified lay teachers do continue in inner city private schools at great sacrifice because of their care for minority students, their feeling of efficacy, their expectations of success, and their sense of community with minority parents who contribute labor and services to make the school a success. This is job satisfaction.

The teachers' training and experience also contribute to the quality education sought by inner city parents.

First, teachers in private inner city schools have credentials virtually identical to those of teachers in public schools. About 90 percent of the teachers we surveyed have either bachelor's or master's degrees (71 percent BA or BS, 19 percent MA or MS), and 10 percent reported that they have "other" degrees; nearly all the teachers are state certified or could be if they so requested.

Second, the teachers' experience in the classroom shows a healthy balance between veterans (those with 10 or more years), those at a middle level (five to 10 years experience), and newcomers (those with less than five years). In fact the two ends of the scale, those under five years and those over 10 years, account for 83 percent of the teachers, while the remaining 17 percent fit the middle-level of five to 10 years. It can be assumed that the blend of vigor and idealism associated with freshly trained teachers, when combined with the maturity and wisdom of

the veterans, produces a healthy educational environment. And this seems to be the case, since the teachers, when asked in an open-ended question why they taught in their particular school, ranked "harmonious working relationships with administration, faculty, parents and students" as the second most important reason; the reason drawing the most responses was "to provide religious education."

A Warning

However, one caveat must be noted here: We find that of the 30 percent of all private school teachers who are members of religious communities, three-fourths are veteran educators, while only one-fourth of the lay teachers (27 percent) fit the veteran category. In fact, over half of the lay teachers (56 percent) have less than five years of teaching experience, with one-fourth of them (27 percent) being in their first year of teaching. So, while the blend of young and old does contribute to quality educational experiences for minority children, our study shows that the stable cores of the teaching staffs are teachers who are members of religious communities, and it is the lay teachers who supply the new faces, fresh ideas, and the idealism of youth. It also shows that single lay teachers are more likely to be in the category of least experience.

Dr. Thomas Vitullo-Martin, in his 1979 study of inner city Catholic schools, has indicated that there is a strong likelihood that many inner city Catholic schools will disappear because "the church appears to have reached its organizational limits for their support." Using data provided by the National Catholic



In cities across the nation, children such as these students at St. Malachy's in Chicago are finding quality education in inner city private schools.

"... minority families give virtually unanimous support to government programs that would provide education vouchers or refundable tuition tax credits to help them pay tuition in the private schools of their choice."

Educational Association, he states that during the 1967-73 period Catholic urban schools declined at a 10 percent rate, while Catholic inner city schools declined at a 20 percent rate. But when he takes into account various problems in definitions of "urban" and "inner city," he presents an adjusted percentage which shows that inner city Catholic schools closed at a rate five times faster than did urban Catholic schools — from a 1967 high of 1,490 schools to a 1973 low of 1,052.

Dreary Forecast

Dr. Vitullo-Martin's dreary forecast appears to be corroborated by Catholic League data. A major finding of our study is the emphasis it places on the precarious future of inner city private schools. In the Catholic school system as a whole, Catholic inner city schools have the highest tuition rates; that is, parents least able to pay must pay the most. As Vitullo-Martin has noted, tuition payments for inner city parents frequently amount to as much as 10 percent of the average family income.

Our examination of the faculty composition in inner city private schools underscores the problems faced by these schools in their struggle to survive. We have said that 30 percent of the teachers are nuns or brothers, that 75 percent of them have had more than 10 years of teaching experience and only 11 percent have taught less than five years. So age becomes an important factor. Moreover, we know that fewer and fewer men and women are entering religious life and that many teaching religious are leaving or have left the teaching profession. Today there are less than half as many teaching religious as there were a decade ago. So the sources for such highly committed individuals who draw subsistence pay are drying up. And because of the schools' inability to offer financial incentives to attract and retain top-level lay faculty, it appears that inner city private schools are in a bind. Of all the teachers we questioned, nearly one-third had annual salaries in 1977-78 of less than \$5,500 (80 percent religious) and only 13 percent had salaries of more than \$9,500. When we considered only the salaries of lay teachers, we found that 41 percent fit the range of \$5,500 to \$7,999, and 30 percent were in the \$8,000 to \$9,500 range.

Teacher Turnover

Retention of lay teachers is a serious problem for private schools because of the great disparity between the salaries of private and public elementary teachers. In inner city private schools, the average annual salary in 1977-78 was about half that of public school teachers, \$7,654 compared with public school teachers' annual average of \$14,617. The problem is made more acute by the fact that the teachers in the inner city private schools generally have the credentials to move into the public schools.

A closer look at the salaries of the lay teachers reveals that private schools rely greatly upon single lay teachers who are beginning their careers — 75 percent of them earn less than \$8,000 and the average annual salary is \$6,423. Although the salaries of married teachers are better, they still do not offer much of an incen-



Johnny Windham is a student at St. Malachy's in Chicago.

tive; the salaries of two-thirds of the married teachers cluster in the \$5,500 to \$9,999 income bracket.

In trying to explain how lay teachers can work for such low salaries, we hypothesized that their income from teaching was not the sole or primary means of their support. The hypothesis did not hold up. We found that 70 percent of the lay teachers depended upon their teaching income as their sole or primary means of support.

What this all means is that these inner city private schools, while offering sorely needed quality education for poor minority children and while they are seen by parents who use them as being the "only" hope they have for a decent future for their children, will be forced to close their doors because the church has reached its limits of support, and poor parents cannot stretch their few dollars any further.

Closings Are Painful

The continued closing of inner city private schools becomes even more painful when one senses the meaning such a loss has on the lives of the children in these schools, on the dreams of parents who are already making incredible sacrifices to better the lot their offspring might inherit, on the missionary-like lives of principals and teachers in these schools, indeed, on the very quality of life in the neighborhoods of America's inner cities. But there is a more terrible loss, and that loss is intangible as far as the statistics of our study is concerned; it is the loss of a unique spirit of joy and hope that permeates the atmosphere in these schools — an atmosphere that draws parents to a personal involvement in their children's education, that binds in a spirit of family-like commitment teachers, parents and children. It is that loss of belonging to and living in a community that is most painful. In our study of teachers we

call that spirit job satisfaction, and we find that for most teachers it is the reason that low salaries can be tolerated. But it is naive to think that there is not a financial breaking point, that these schools can continue without additional sources of revenue.

Poor Are Powerless

It has been said that the greatest degradation of poverty is the unavailability of choice. The poor are virtually powerless to make choices in the education of their children. But self-sacrificing teachers and self-sacrificing parents, working in close cooperation, do develop a sense of "powerfulness" that makes choice of a private school possible, translates into job satisfaction, and creates the very conditions of quality education in inner city private schools. This parent-teacher relationship, in adversity, creates a sense of pride in minority students and their parents — a precondition of the better education minority parents want for their children. Such job satisfaction does not support a growing family, but it does explain, in part at least, why so many highly qualified lay teachers persevere in their jobs in inner city private schools.

Enrollment Declines

From 1972 to 1977 black and Hispanic enrollment in inner city private schools decreased by 9 and 11 percent, respectively. Even while the number of minority children in these schools decreases, state and federal policies, and a host of economic, technological, social and legal pressures combine to induce middle-income parents to leave the inner city for the suburbs, thus eroding further the basis of parish support of inner city parochial schools. Left largely with pensioners and poor families, a substantial percentage of whom are Protestant and therefore non-contributors to the parish church, inner city parish schools will find it increasingly difficult to meet operating costs.

Is higher tuition the answer? Recall, if you will, that 50 percent of inner city private school families have an annual income of less than \$10,000, and that 36 percent of the families are single-parent. What potential do they have for paying sharply higher tuition charges? Very limited, to say the least.

Most families with children in inner city private schools are making great sacrifices to pay tuition out of meager incomes. How much more can they sacrifice to provide quality education for their children? In view of the precarious conditions of most inner city private schools, the answer to that question may well



Anthony Sierra goes to school at Our Lady Queen of Angels in New York's Spanish Harlem.

determine whether these schools will survive to serve inner city minorities.

Minority parents rightly feel that they have been discriminated against because of their color or ethnicity. They have been denied equal rights in virtually every phase of human existence. Although the battle for civil rights for minorities in the 60s has changed much of that, the education rights of minorities are still to be won. State and federal tax policies have severely damaged the inner cities, thus leaving minority families with government schools that provide inferior education. Moreover, governments have persistently denied education tax funds to parents who choose high quality private schools for their children's education.

Parents Want Help

In defense of the fundamental rights in education, minority parents are today beginning to protest this denial of education tax funds. In our inner city study, minority families give virtually unanimous support to government programs that would provide education vouchers or refundable tuition tax credits to help them pay tuition in the private schools of their choice.

Father Blum is Professor Emeritus of Political Science at Marquette University and President of the Catholic League for Religious and Civil Rights.

Father O'Brien is Lecturer in Political Science at Marquette University and Director of Communications of the Catholic League for Religious and Civil Rights.

terport work to buy the same food?
(Answer below)

Study of Schools Omits Tax-Credit Survey

By Felicity Barringer
Washington Post Staff Writer

The Education Department this week sent Congress a study of private schools, including survey data showing that 5.6 percent public-school children's parents who knew about tuition tax credits said they would be "very likely" to put their children in private schools if the federal government provided a \$250 credit.

Missing from the study, however, were assumptions—based on the survey data—that tax credits would prompt 1.9 million public school children to enroll in private school, significantly increasing the price tag put on the Reagan administration's tuition tax credit legislation.

According to Education Department officials and Dr. Joel Sherman, who headed the congressionally mandated School Finance Project study, the data were deleted because some officials questioned whether it was fair to calculate cost on the assumption that people will do what they tell a pollster they intend to do.

However, Gary L. Bauer, one of the education officials who reviewed the draft report, wrote a memo to Sherman's boss recommending that the section be deleted, saying: "My fundamental concern is that the secretary not be asked to send material to the Congress that contradicts the administration's position (especially with respect to tuition tax credits) and is not technically defensible on professional grounds."



GARY L. BAUER

... data were "technically suspicious"

In an interview yesterday, Bauer pointed out that he was not in charge of the study and was one of several officials in other divisions of the department who quarreled with some of the report's conclusions.

"It raised the costs [of the legislation] with data that was highly suspicious from a technical point of view," Bauer said.

"Certainly any Cabinet member would be remiss to send something to the Hill that contradicted administration policy, particularly when the technical information supporting it was inadequate," he added.

The Congressional Budget Office

has estimated that the administration's bill—which would phase in over three years a maximum credit of \$300 for families with incomes under \$40,000—would come to \$2.8 billion in its first five years, based on the number of children who would be eligible among the 5 million now attending private school.

The CBO did not estimate the number of children who might switch from public to private schools if credits were put in place. A Treasury Department cost figure, which roughly paralleled the CBO's, did include estimates of switchovers, but at a rate far below that indicated in the Education Department survey.

The push for tuition tax credits, which has been a centerpiece of the administration's educational policies, apparently was helped last month when the Supreme Court upheld the constitutionality of a Minnesota law allowing income tax deductions of up to \$700 for elementary and secondary educational expenses.

That deduction applied equally to parents of children in both public and private schools; the administration's tax credit bill applies only to private school expenses.

The legislation, which offers reduced credits to those with incomes between \$40,000 and \$50,000 and nothing to families with incomes above \$50,000, is pending before the Senate Finance Committee.

According to Education Week, a private publication that first reported the changes in the study, the

draft version was completed in March and the revised version in early June. Bauer's memo—officially designated a memo of "nonconcurrency"—was dated April 21.

The final report was sent Monday to Rep. Carl D. Perkins (D-Ky.), chairman of the House Education and Labor Committee. Perkins' staff provided a copy to The Washington Post.

Among the study's conclusions:

- Parents most likely to switch to private schools, according to the survey data, "tended to be blacks, Hispanics, children from lower-income and less-educated families, and residents of central cities." But these parents, according to the report, tended to know less about tax credits than the other people surveyed.

- About one-fourth of public-school parents surveyed had considered switching their children to private school. The main reasons cited for not making the switch were "cost and logistical considerations . . ."

A factor that the researchers tried to take into account in making their calculations, Sherman said, was the availability of private schools.

Sherman said yesterday that while his research group originally "did not think it unreasonable to set hypothetical examples" and extrapolate from them, "there were some legitimate methodological questions raised. I guess that, on balance, given the limitations of an extrapolation, the methodological concerns were not ungrounded."

INSIDE: LABOR DEPARTMENT

The Reagan administration has caught a burst of flak from Sen. Sam Nunn (D-Ga.) and others for its moves to embrace labor unions with a history of corruption. The most recent instance was the president's July 18 address to a gathering of the International Longshoremen's Association (ILA), where he praised its president for "integrity and loyalty" to friends and country.

Days before, in a continuing Labor Department investigation into an embezzlement scheme in Cleveland, the uncle of Teamsters union President Jackie Presser was indicted. The uncle, Allen Friedman, later told NBC News that he is ready to testify against his nephew.

"Jackie Presser should have been in jail dozens of times, going back 30 years," Friedman said. Earlier, Friedman had refused to testify against Presser. Meanwhile, the administration has been courting Teamsters political support.

Nunn, ranking minority member of the Senate's Permanent Subcommittee on Investigations, issued a statement noting these developments and listing 10 ILA officials who hold union office despite criminal convictions. He is pushing for legislation that would require union officials to step down if they are convicted of a crime.

Labor Secretary Raymond J. Donovan said in an interview yesterday that the administra-



RAYMOND J. DONOVAN

... "open-door policy" will continue

Commenting on the furor through a spokesman, Presser said, "... It's the political season again. Beyond that, I have nothing to discuss."

☆☆☆

OMB vs. LABOR . . . Department officials, in an unusual alliance with Rep. Barney Frank (D-Mass.), chairman of the House Government Operations subcommittee on manpower and housing, are trying to get the Office of Management and Budget to get back off its opposition to the department's performance standards for the new Job Training Partnership Act.

Albert A. Angrisani, the assistant secretary in charge of th

ELSEWHERE

77C

THE WHITE HOUSE

WASHINGTON

August 6, 1982

Dear Mr. Henderson:

I am writing to respond to the questions you raised in your letter to Thelma Duggin concerning the President's tuition tax credit proposal. We appreciate your explanation of NOBC's position on this legislation. We hope the following answers to your questions are helpful.

Question 1: "The proposed legislation specifically excludes racial quotas from the definition of any racially discriminatory policies in private elementary and secondary schools. Given the experience of token enrollments at Bob Jones University, how would the Administration set standards to assess the institutions' commitment to a multiracial enrollment?"

Response: The bill contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies.

A tax credit cannot be claimed unless the school is a tax exempt organization under section 501(c)(3). The bill also creates a new layer of protections above and beyond the 501(c)(3) requirement. In order for tuition expenses to be eligible for the credit, the school must annually file with the Secretary a statement under the penalties of perjury that it has not followed a racially discriminatory policy. In addition, the Attorney General of the United States, upon petition by an individual who claims to have been discriminated against by a school under a racially discriminatory policy, may seek a declaratory judgment in a United States district court in which the school is located that the school follows a racially discriminatory policy. If a final judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed for the year in which the complaint is filed by the Attorney General and the two succeeding calendar years.

Because of the unique characteristics of private schools, it would be misleading and unfair to rely on numerical standards. Whereas public schools can reasonably be expected to reflect the racial composition of the community in which they are located, no such presumption can attach to private schools. Most private schools are church-affiliated. Most parents who send their children to non-public schools do so because they want their

children to have an education based on religious values. Private school student bodies, therefore, generally do not reflect the racial composition of the community as a whole. One would not expect, for example, to find many Black or Hispanic children in a Greek Orthodox or a Mormon school. On the other hand, the proportion of Black children in many Catholic schools is higher than in the population as a whole. Any standard that could be applied to one school system (e.g., the Catholic schools) could not be fairly applied to another school system (e.g., Orthodox Jewish schools).

Question 2: "Earlier this summer the Administration indicated it would propose further reductions in Title I of the Elementary and Secondary Education Act of 1965 over the next three years. These reductions will negatively affect both private and public school students.

"Does the Administration intend to implement these proposed reductions?"

Response: The proposed reduction in Chapter 1 funds (formerly Title I) is part of the Administration's economic recovery program that limits Federal expenditures. Cutting spending is essential to win the war against inflation. Indeed, as a direct result of our spending cuts and other economic measures this past year, inflation has been substantially reduced and elementary and secondary education was able to retain \$4 billion in spending power that otherwise would have been eroded by spiraling inflation. This extra \$4 billion in spending power is far greater than the reduction in Federal funds.

In addition to the general economic issue, Chapter 1 budget policy should be assessed in the context of the Federal role in education. Proposed levels would provide nearly \$2 billion of Federal assistance and maintain a major Federal presence in compensatory education. The Administration also expects some savings to school districts in administrative costs and paperwork from recent legislative reforms to simplify excessive and burdensome requirements.

Members of minority groups would benefit significantly from tuition tax credits. A recent survey showed that 18.6 percent of the students in Catholic schools -- the nation's largest private school system -- were minority group members. Thus, tax credits would support Federal compensatory efforts, rather than conflict with them, by enabling less economically advantaged and minority families to provide quality education for their children.

Question 3: "Is the Administration committed to maintaining Federal support of public schools at levels comparable to previous Administrations?"

Response: No, but reductions in Federal education support must be considered in the larger context of elementary and secondary finance. These reductions -- about 30 percent of Federal appropriations over two years -- are only, on the average, 3 percent of per pupil spending in public schools. This percentage amount was exceeded by the purchasing power schools retained when inflation dropped 3.5 percent last year. That savings of purchasing power will be even greater this year. Income, sales, and property tax bases -- the major sources of public school support -- are also promoted through a sound economy.

Tax credits are not a "trade off" for education programs in the \$800 billion Federal budget any more than they are a substitute for other government activities in that budget. These credits are not a government "program" requiring grants, formulas, bureaucracies, and new Federal expenditures. Rather, tuition tax credits are a correction of an existing taxpayer inequity that supports the goal of a sound and equitable school finance system. All education -- public as well as private -- will benefit.

Question 4: "Allocation of Federal assistance to State and local governments is based upon per pupil cost formulas. While the Administration estimates that the loss of Federal revenues will approximate \$100 million during the first year, future losses in Federal taxes will dramatically rise after the first three years.

"Would the Administration be prepared to support additional allocations of impact funds to the States if a significant transfer of students from public to private schools should occur which would drastically reduce the public schools' ability to meet their administrative costs?"

Response: First, our major concern is with total educational resources for children, not solely administrative costs. Second, there is no evidence that tuition tax credits would lead to a significant transfer of students from public to private schools. Third, tax credits would not place a financial burden on public school systems. Indeed, parents who send their children to private schools relieve the public schools of the costs of educating their children -- without depriving the schools of the parents' local tax payments. Preserving the ability of parents to send their children to private schools thus helps to constrain the rise in taxes needed to finance public schools and can make more money per pupil available in the public system.

The savings can be significant. In Louisiana, for example, nonpublic schools educated 152,000 students in 1980-81, thereby reducing the cost of operating public schools in that State by \$300 million. Tax credits will ensure that these savings will continue and even increase.

In contrast, public schools would suffer if there were an influx of large numbers of former private school students. For instance, if only one-tenth of the private school population of nearly 5,000,000 students shifted to public schools, the cost to the public school system could increase by one billion dollars or more. It is doubtful whether most public schools could absorb such a cost increase and continue to maintain their current educational standards.

Question 5: "Would the Administration be prepared to issue a statement indicating its strong support for the maintenance of public education?"

Response: This Administration believes in a strong education system, both public and private. Americans have just reason for being proud of a public and private educational system unrivaled in the history of civilization. The enormous accomplishments of our people in their 206-year history is a tribute, in large measure, to the quality and diversity of educational opportunity available to them. The public schools have made a major contribution to these accomplishments.

But in recent years, many Americans -- especially low-income and middle-income parents -- could not afford to make a choice about their children's education. In particular, parents who prefer private alternatives to public education have been faced with a worsening double-burden of paying State and local taxes to support public schools in addition to the rising tuition payments required for their children who attend private schools.

Unless these problems are corrected, the quality and diversity which have been a hallmark of the American education system may further erode. To prevent that from happening, it is essential that we increase educational freedom of choice, improve tax equity, and provide greater competitive incentives for improving school quality. Tuition tax credits are an extremely effective means of helping achieve these objectives.

Question 6: "Would the Administration support amendments providing 'refundability' or negative tax benefits in the proposed legislation?"

Response: In light of present economic, political and legal considerations, the Administration believes it would be unwise to include "refundability" in this legislation. After the proposed tuition tax program is in place, we believe that the important issue of refundability should be addressed. In short, we would recommend proceeding one step at a time.

Sincerely,



William P. Barr
Deputy Assistant Director
for Legal Policy

Mr. James R. Henderson
Executive Director
National Office for Black Catholics
1234 Massachusetts Avenue, N.W.
Suite 1004
Washington, D.C. 20005

THE WHITE HOUSE
WASHINGTON

June 29, 1982

Hon. Gary Jones
Deputy Secretary
Dept. of Education

Dear Gary:

Attached are the questions on tuition tax credits that have been propounded by black Catholic groups. I can answer the first question (racial quotas) and the last question (refundability), but I need some help with the others (reductions in Title I, allocations of impact funds, etc.). Is there someone in your department who could take a rough cut at drafting answers to these questions? I would like to try to get back to Henderson by July 6.

Thanks for your help.

Bill Barr

cc: Dan Oliver



NATIONAL OFFICE for BLACK CATHOLICS

1234 Massachusetts Avenue, N.W. • Suite 1004 • Washington, D.C. 20005 • (202) 347-4618

June 24, 1982

Ms. Thelma Duggan
Special Assistant to the President
Old Executive Office Building
17th & Pennsylvania Avenue, N.W.
Room 128
Washington, D.C. 20006

Dear Ms. Duggan:

I apologize for the delay in forwarding this letter to you. As promised, we have developed questions related to the President's proposed legislation on Tuition Tax Credits. We believe that an Administration response to these questions will enable us to better assess the impact of the proposal on our constituencies. Furthermore, strong statements of policy from the Administration which reflect a sensitivity and concern for the education of minorities and the poor in this country would strengthen our ability to garner support for the bill within Black Catholic communities nationwide.

I would like to summarize the position of the National Office for Black Catholics at this time. During our Tenth Anniversary Conference in Chicago in 1980, approximately two thousands delegates approved the following resolution:

That NOBC urge support for measures which will ensure the right of parents to choose educational alternatives for their children, particularly in light of rising unemployment and the inability of all parents to choose alternative schools. Such measures might include federal assistance programs for non-government schools, foundations and development places, tuition tax credits and other proposals which provide benefits for low-income families, and diocesan assistance programs that distribute the burden of support for Catholic education ministry.

The previous resolution was developed by participants in the Education Workshop during the 1980 Conference, and approved during the final plenary session. However, an amendment was also approved and attached to the list of recommendations on education as follows:

AMENDMENT

Whereas, A majority of black children attend the public schools;
Be it Resolved, That black Catholics provide the support and
encouragement for efforts at improving public education;

The Conference endorsed the principle of tuition tax credits. However, it recognized that for the majority of Black children the public schools will continue to be the only viable educational option. Since we are committed to the long-term advancement of all Black children in this nation, we are compelled to examine the long-range effect of the proposed legislation on the public schools.

We believe that the following questions essentially deal with the policy positions of the Administration on issues affecting "The Educational Opportunity and Equity Act of 1982":

QUESTIONS:

The proposed legislation specifically excludes racial quotas from the definition of any racially discriminatory policies in private elementary and secondary schools. Given the experience of token enrollments at Bob Jones University, how would the administration set standards to assess the institutions' commitment to a multiracial enrollment?

Earlier this summer the Administration indicated it would propose further reductions in Title I of the Elementary and Secondary Education Act of 1965 over the next three years. These reductions will negatively affect both private and public school students.

Does the Administration intend to implement these proposed reductions?

Is the Administration committed to maintaining federal support of public schools at levels comparable to previous administrations?

Allocation of federal assistance to state and local governments is based upon per pupil cost formulas. While the Administration estimates that the loss of federal revenues will approximate \$100 million during the first year, future losses in federal taxes will dramatically rise after the first three years.

Would the Administration be prepared to support additional allocations of impact funds to the states if a significant transfer of students from public to private schools should occur which would drastically reduce the public schools' ability to meet their administrative costs?

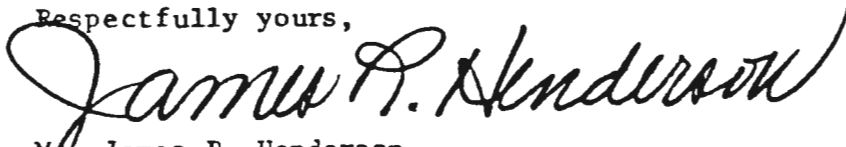
Ms. Thelma Duggan
June 24, 1982
Page 3.

Would the Administration be prepared to issue a statement indicating its strong support for the maintenance of public education?

6. Would the Administration support amendments providing "refundability" or negative tax benefits in the proposed legislation?

To repeat our purpose, it is our hope that a favorable response from the Administration to each of the above questions will strengthen our ability to support "The Education and Equity Act of 1982." We appreciate your interest in Black Catholic organizations and the constituencies they represent. As soon as we receive a response, we will indicate the specific nature of our support for the bill.

Respectfully yours,



Mr. James R. Henderson
Executive Director

JFH/bdw

cc: James B. McConduit -- President-NOBC
Robert L. Robinson -- Coordinator-Lay Caucus
Bro. Cyprian Rowe -- Clergy Caucus
Sr. Elizabeth Harris -- Sisters' Conference
Herbert Johnson -- Coordinator-NABCA
Jacqueline Wilson -- Office of Black Catholics
Katherine Cole -- Secretary for Education
Sr. Barbara Spears -- Sts. Paul & Augustine

*Free
Tuition
Tax
Credits*



REPRINT No 84

March 1978

Bill GIBBIN
335 Russell

Testimony on the Constitutionality of Tuition Tax Credits

Antonin Scalia

Testimony of
Antonin Scalia
on S. 2142
before the
Committee on Finance
United States Senate
January 19, 1978

This is one of a series of occasional reprints published by the American Enterprise Institute for Public Policy Research. The series is intended to provide wider circulation within policy making and academic circles for selected papers and speeches by scholars and others associated with the institute. The views herein are those of the authors and do not necessarily reflect the views of the staff, officers, or trustees of AEI.

Copies of this and other reprints (35¢ each) are available from:

AMERICAN ENTERPRISE INSTITUTE
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Testimony on the Constitutionality of Tuition Tax Credits

Antonin Scalia

I appreciate the opportunity of appearing before you today, to address the constitutional aspects of the proposals for tuition tax credits. I will not take much of your time—partly because you have wisely not agreed to give me much of it, and partly because the message I have to convey is brief.

It is my understanding that this committee has not often had to grapple, as others have, with the possible impediments to legislation posed by the freedom of religion clause and the establishment clause of the First Amendment. If that is so, you will be surprised, I expect, by the barrage of categorical assertions you receive on both sides of the issue—that the proposal before you, insofar as it provides tax relief for tuition payments to sectarian schools, clearly should be, or clearly should not be, regarded as constitutional. I side with the former camp myself, but that is not primarily what I want to talk to you about. The principal point I want to make is that, regardless of how one feels about the “shoulds” of the matter, the issue has not been resolved by any holding, or even by any consistent line of dictum, from the Supreme Court. And for that reason, the respon-

Antonin Scalia, professor of law at the University of Chicago and adjunct scholar of the American Enterprise Institute, has served in the federal government as assistant attorney general, Office of Legal Counsel, and as chairman of the Administrative Conference of the United States.

sibility which rests upon you is all the greater. In approving or disapproving the present proposal on constitutional grounds, you will not be following- and cannot pretend to be following- any dictate of the Supreme Court, but will rather be expressing your sense, and the sense of the society, as to what our most profound national convictions require. Your expression, in turn, can be expected to influence the course which the Supreme Court will steer in the future.

It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area, but a few examples may bring home the point. The Court has not been consistent even on the fundamental question of whether the constitutional prohibition against establishment of religion forbids merely the preference of one religion over another, or rather prevents any special governmental favors to religion in general. In 1947, the Court said that the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; . . . State power is no more to be used so as to handicap religions than it is to favor them." *Everson v. Board of Education*, 330 U.S. 1, 14-15 (1947). Five years later it had changed its mind, and wrote the following oft-quoted passage:

We are a religious people whose institutions presuppose a Supreme Being. . . . When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. . . . The government must be neutral when it comes to competition between sects. . . . But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952).

Since then, the Court's expression of basic First Amendment philosophy has changed yet again, reverting to the principle that religion in general can be neither favored nor disfavored. See, for example, *Abington School District v. Schempp*, 374 U.S. 203 (1963). These dicta, however, are impossible to square with the Court's decisions- which have, for example, prevented the State of Wisconsin from compelling Amish parents to send their children to school beyond eighth grade (an exemption which the State would not be compelled to grant those who demand it for nonreligious reasons) *Wisconsin v. Yoder*, 406 U.S. 205 (1972); and prevented the State of South Carolina from withholding unemployment compensation from a Seventh Day Adventist who refused to accept employment that required Saturday work (again a special privilege accorded only to religion) *Sherbert v. Verner*, 374 U.S. 398 (1963). Of course even the "neutral-

ity" principle would support (indeed, require) the inclusion of sectarian school tuition payments in the benefits accorded by the present bill- but I raise the issue merely to demonstrate how inconclusive the Supreme Court's pronouncements are, even with regard to the fundamental philosophy of the First Amendment.

If one wishes to examine the specifics of Supreme Court holdings, confusion still abounds. The Court has, for example, approved state provision of bus transportation to and from school for parochial school students, *Everson v. Board of Education*, 330 U.S. 1 (1947), but has disapproved provision of transportation to and from field trips, *Wolman v. Walter*, 97 S. Ct. 2593 (1977); it has approved state provision of textbooks for use in sectarian schools, *Board of Education v. Allen*, 392 U.S. 236 (1968), and *Meek v. Pittenger*, 421 U.S. 349 (1975), but has disapproved provision of other instructional materials and equipment, *Wolman v. Walter, supra*; it has sustained state exemption of churches and places of worship from property taxes, *Walz v. Tax Commission*, 397 U.S. 664 (1970), but has, in certain circumstances, stricken down state income tax remission for tuition payments to sectarian schools, *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973). (I will have more to say of that case shortly.)

There is, to be sure, no dearth of Supreme Court expressions of the principles which are to govern the decision in cases of this sort. And the principles sound fine in the abstract. The currently favored formulation is the so-called three-pronged test enunciated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion. . . . ; finally, the statute must not foster "an excessive government entanglement with religion."

The trouble is that, when held next to the bewildering diversity of results which the Court has reached, these tests, like those that preceded them, are revealed to be less tools of analysis than convenient bases for rationalizing results reached in some other fashion- convenient, because they may be applied strictly or liberally, rigidly adhered to or virtually ignored, in order to support the outcome. The situation has not changed since 1963, when Mr. Justice Stewart bemoaned as follows the sorry state of First Amendment case law:

[S]o long as the resounding but fallacious fundamentalist rhetoric of some of our establishment clause opinions remains on our books, to be disregarded at will as in the present case, or to be indiscriminately invoked as in [*Abington School District v. Schempp, supra*], so long will the possibility of consistent and perceptive decision in

this most difficult and delicate area of constitutional law be impeded and impaired. And so long, I fear, will the guarantee of true religious freedom in our pluralistic society be uncertain and insecure. *Sherbert v. Verner, supra*, at 416-17 (concurring opinion).

I want to say a few words in particular about two Supreme Court cases, *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973) and *Sloan v. Lemon*, 413 U.S. 825 (1973), because they are the opinions most likely to be cited by the opponents of this legislation as demonstrating its unconstitutionality. These cases involved (and struck down) tuition tax reimbursement programs, by New York and Pennsylvania, respectively, similar in their technical structure to the present bill. But there the similarity ends. Both New York and Pennsylvania had a history, prior to enactment of the laws in question, of unsuccessful attempts to subsidize directly their extensive sectarian (overwhelmingly Catholic) school systems; the legislative histories and even the texts of the tax provisions indicated that this was still their purpose; and the vast majority of the funds involved would in fact reimburse only sectarian (and primarily Catholic) school tuitions. That is a far cry from the state of facts underlying the present bill, whose benefits will not be conferred almost entirely upon those who attend sectarian schools, but will be spread broadly over the entire population. The very opinion in *Nyquist* suggests that incidental aid to those attending sectarian schools, in connection with a more broadly based program, may occupy a different constitutional status (413 U.S. at 794). Nor is the present bill designed to perpetuate particular school systems. Many of the senators who support it have in fact no extensive private school systems, sectarian or nonsectarian, within their states.

What motivates them and what will motivate the Congress if it passes this bill is not a commitment to the preservation of a particular school system, but belief in the fairness and desirability of providing tax relief and financial assistance to those whose real incomes are reduced by educational expenses, wherever paid; and a conviction that, unless such relief is provided, the treasured freedom to obtain the education of one's choice--outside the state schools if one wishes--will for most Americans be an illusion. And a final distinction, perhaps the most critical, between the present bill and the laws struck down in *Nyquist* and *Sloan*, is that here we are talking about a federal law. It is unquestionable that the Supreme Court--in this field even more than in most--is more disposed to accord validity to the acts of this Congress than to those of state legislatures. Compare *Lemon v. Kurtzman*, 403 U.S. 602 (1971), with *Tilton v. Richardson*, 403 U.S. 672 (1971). To my knowledge, only one minor feature of any federal aid-to-education provision has been invalidated on establishment clause grounds. The reasons for that are sound--and much more understandable than such elastic abstractions as the "three-pronged test" which pass for the "principles" of First

Amendment adjudication. In the individual states, where, not infrequently, a single denomination accounts for a majority or a near majority of the electorate, the danger that the legislature will aid a particular religion under the guise of pursuing purely secular governmental ends is sometimes acute, and justifies particularly rigorous application of antiestablishment principles, even at the expense of other constitutional values which might otherwise predominate. In the national legislature, by contrast, no single religious sect predominates, and the danger of sectarian action in favor of a particular group is negligible.

But this detailed discussion of *Nyquist* and *Sloan* is in digression from (and even in disregard of) my principal point--which is that the decisions of the Supreme Court in this area of governmental aid to religion in general and to sectarian education in particular have little to tell you. However neat their formulation of principles may appear (and even this changes every decade), their decisions conform neither to any consistent interpretation of those principles nor to one another. Now, there is a large body of men and women to which I belong, called lawyers, who, for our sins, must analyze and seek to reconcile, however artificially, all the decisions and all the pronouncements of the Supreme Court and even to identify the particular constitutional philosophies of the individual justices, so that we can predict (in an area such as this, where the Court frequently splits into two, or three, or even four groups of varying composition) how many votes will be for affirmance and how many for reversal in the next case. That is fine, I suggest, for us lawyers; it keeps us, perhaps, from greater mischief. But for the representatives of the people to proceed in this fashion in determining whether or not a particular proposal before them is in accord with the fundamental principles of our nation; for the Senate of the United States to dissect cases and hang on every stray judicial dictum in a body of opinions which is notoriously unclear and indeed contradictory; that, I suggest, would be grotesque. And it would display, I think, not so much a fine regard for the Constitution as a failure to appreciate the role of this body in the development of constitutional law. This area of church-state relations in an era when the government has become deeply involved in every aspect of human life--and when many activities, including education, can no longer feasibly be conducted without governmental assistance in some form--this area resembles in many respects that of civil rights, where the Court has taken guidance from the Congress as to what the fundamental beliefs and aspirations of our people require.

I urge you, then, to approach this issue as a question of what the constitutional law "should be," rather than vainly seeking to determine what it "is" under the decisions of the Court. For me, the answer to that question seems quite clear. There is no doubt, of course, that the tuition tax relief provided by this legislation is constitutional as applied to parents and students paying tuition

to *nonreligious* private schools. Is it conceivable that in this country—as opposed, let us say, to Hungary—it is not only proper, but *necessary* to single out for special discrimination those parents who choose to follow the long American tradition of religious schooling? Must the income tax deduction for charitable contributions be similarly limited, so that only contributions to religious organizations do not qualify? You must ask yourselves whether the special solicitude for religion contained in the Constitution was meant to produce such a distinctively antireligious result.