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MEMORANDUM

THE WHITE HOUSE
WASHINGTON

April 27, 1982

TO: Bob Kabel
John Scruggs
Tom Melady
Gary Jones
Anne Graham
Gary Bauer ✓
Charles O'Malley
Bruce Thompson

FROM: Bob Thompson *BT*

Attached is the Tuition Tax Credit draft Bill.

A BILL

To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.
SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SECTION 2. FINDINGS AND DECLARATION OF POLICY.

"(a) The Congress finds that--

"(1) diversity and freedom of choice have been major strengths of the American educational system;

"(2) families should have the opportunity to select for their children the formal education which they deem most beneficial to their children and which best reflects the intellectual, moral and cultural values that they wish to instill in their children;

"(3) lower income families are increasingly denied the ability to choose among diverse educational opportunities for their children;

"(4) diversity and personal choice in American education can be enhanced through the income tax structure with a minimum of governmental interference in the lives of individuals and in the operation of private educational institutions.

(b) It is therefore declared to be the policy of this Act to enhance equality of educational opportunity for all American families through facilitating the attendance of

their children at the elementary and secondary schools of their choice.

SECTION 3. CREDIT FOR TUITION EXPENSES.

(a) IN GENERAL. Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44H. TUITION EXPENSES.

"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by him during the taxable year to one or more eligible educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6) or (9)) who has not yet attained the age of 20 at the close of the taxable year in which the tuition expenses are paid.

"(b) LIMITATIONS.

(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit is claimed shall not exceed--

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses

paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provision of this section, the credit allowable under this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return).

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(2) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(3) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an eligible educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEDUCTION. No deduction or credit shall be allowed under any other section of this chapter for any tuition

expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(d) DEFINITIONS. For purposes of this section--

"(1) ELIGIBLE EDUCATIONAL INSTITUTION. The term 'eligible educational institution' means an elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

"(A) is exempt from taxation under section 501(a) as an organization described in section 501(c)(3), and

"(B) since its designation as an organization described in section 501(c)(3), has not pursued a racially discriminatory policy.

DRAFT

"(i) An eligible educational institution has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that institution, or if the institution refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such institution in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of an eligible educational institution or a program of religious training or worship of an eligible educational institution, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, provided, that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.

"(ii) The term 'race' shall include color or national or ethnic origin."

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the

enrollment or attendance of a student at an eligible educational institution, including required fees for courses, and does not include any amount paid for

(A) books, supplies, and equipment for courses of instruction at the eligible educational institution;

(B) meals, lodging, transportation, or personal living expenses; or

(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL FINANCIAL ASSISTANCE TO INSTITUTION. No eligible educational institution which enrolls a student for whom a tax credit is claimed under the amendments made by this Act shall be considered to be a recipient of Federal financial assistance solely because a tax credit is claimed for such student under this Act.

"(f) CONFORMING AMENDMENT. The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following: "Sec. 44H. Tuition expenses."

SEC. 4. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses incurred after that date.

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term "legislative days" means any calendar day on which either House of Congress is in session.

42 USC 1997a.

Civil action by
Attorney
General for
equitable
relief of
institutionalized
persons.

USC prec. title 1.

SEC. 3. INITIATION OF ACTIONS.

(a) Whenever the Attorney General has reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 2, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this Act to persons residing in or confined to an institution as defined in section 2(1)(B)(ii) only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

Attorney's fee,
allowance.

(b) In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs.

(c) Any complaint filed by the Attorney General pursuant to this section shall be personally signed by him.

42 USC 1997b.

SEC. 4. CERTIFICATION REQUIREMENTS.

(a) At the time of the commencement of an action under section 2 the Attorney General shall certify to the court—

(1) that at least 49 calendar days previously he has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(B) the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and



(C) the minimum measures which he believes may remedy the alleged conditions and the alleged pattern or practice of resistance;

THE WHITE HOUSE
WASHINGTON

OFFICE OF
POLICY DEVELOPMENT
1982 MAY 12 P 7:13

May 12, 1982

MEMORANDUM FOR EDWIN L. HARPER

VIA: ELIZABETH H. DOLE 
FROM: MORTON C. BLACKWELL 
SUBJECT: Tuition Tax Credit Bill

I appreciate the opportunity to serve on the working group you established to discuss the tuition tax credit options available to us.

This group had one meeting last week. Another was scheduled for May 10 but was cancelled by Mike Uhlmann. No other meetings of this group have been held.

Since you asked for our suggestions by May 12, I have worked to establish a consensus on bill provisions among outside groups which support tuition tax credit. Attached is a memorandum I prepared for Mrs. Dole May 10 on this topic. Discussion at a meeting of supportive groups held this morning in my office confirmed the points made in my May 10 memo.

Some Protestant activists will oppose any tuition tax credit legislation on the ground that it must necessarily subject church activities to greater government intrusion.

The Catholic school groups want to have clear anti-discrimination provisions in the bill; most of the Protestant groups will work hard for a bill, provided there are sufficient safeguards against I.R.S. harassment and provided their schools are not subjected to requirements of racial goals, quotas, timetables or other devices by which they would have to use race as a criterion.

It is clear that any exact repeat in this bill of the so-called Bob Jones Tax exempt status bill's anti-discrimination language will doom this bill to the same fate as the tax exempt status bill. This futile approach would be viewed as a betrayal by the tuition tax credit supporters who were enthusiastic at the President's announced intention to introduce such legislation.

Therefore, in cooperation with legal advisors to Christian school activists and after meetings with Mel Bradley, Jack Burgess, Gary Bauer and others, I submit two alternative bills.

One of these bills (Option A) would be supported by the major outside groups which strongly support the idea of tuition tax credits. This bill should also be acceptable to those who are concerned with eliminating any benefits to racially discriminatory schools.

The second bill (Option B) goes even further in an effort to accommodate those who want strong antidiscrimination language. It incorporates the language of the Bob Jones tax-exemption act, but adds a section that prohibits any requirement of racial quotas. Option B will not be as attractive to the President's supporters on the tuition tax credits issue as Option A, but can probably be sold to most of them if it is thought absolutely necessary to use the Bob Jones language.

In considering these two bills, it should be kept in mind that two elements will not be happy with any strongly-supported bill this Administration could conceivably introduce. First are the small but impassioned minority of the Protestant community who believe that church affiliation should be an absolute bar to anti-discrimination enforcement. Second are the professional civil rights activists who themselves are organizationally biased against private schools.

If the latter group is given a veto over all tuition tax credit bill language, we will have a repeat of the tax exempt status impasse.

This subject, however, is vastly different politically from the tax status issue. At issue in the former case is the tax status of a handful of schools which really do discriminate.

In this case, major elements of the President's core support are vitally interested in success for tuition tax credits. And liberals in the Catholic hierarchy will be quick to blast the President if he proposes a bill which is clearly doomed from the outset.

The two attached, alternative bills each would prevent discriminatory schools from benefits and would limit the harassing power of the I.R.S. The appended Questions and Answers would apply equally to both draft bills.

TUITION TAX CREDIT BILL

OPTION A

A BILL

To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SECTION 2. FINDINGS AND DECLARATION OF POLICY.

"(a) The Congress finds that --

"(1) diversity and freedom of choice have been major strengths of the American educational system;

"(2) families should have the opportunity to select for their children the formal education which they deem most beneficial to their children and which best reflects the intellectual, moral, and cultural values that they wish to instill in their children;

"(3) lower income families are increasingly denied the ability to choose among diverse educational opportunities for their children;

"(4) diversity and personal choice in American education can be enhanced through the income tax structure with a minimum of governmental interference in the lives of individuals and in the operation of private educational institutions.

(b) It is therefore declared to be the policy of this Act to enhance equality of educational opportunity for all American families through facilitating the attendance of their children at the elementary and secondary schools of their choice.

SECTION 3. CREDIT FOR TUITION EXPENSES.

(a) IN GENERAL. Subpart A of Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44H. TUITION EXPENSES.

"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by him during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152 (a) (1), (2), (3), (6), or (9)) who has not yet attained the age of 20 at the close of the taxable year in which the tuition expenses are paid.

"(b) LIMITATIONS.

(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit claimed shall not exceed --

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under Section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provisions of this section, the credit allowable under this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(C) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an eligible educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant (within the meaning of section 117 (a) (1)) which is not includible

in gross income under section 117;

(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102 (a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEPRECIATION.

No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(4) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY ORGANIZATIONS. No credit shall be allowed under this section for amounts paid to any organization that has been determined in accordance with the procedures prescribed in subsection (f) of this section, to use race as a criterion in any of its policies or programs; provided that neither the use by an organization of race

as a criterion in connection with an affirmative action program on behalf of members of racial minority groups, nor the failure of an organization to undertake such a program, shall be a basis for denying a credit that would otherwise be allowed under this section. No credit shall be denied for payments to an organization that does not classify individuals according to race. Notwithstanding anything in this section or in any other provision of law, no organization shall be required to take account of the race of any individual, or to use any racial quota, goal, timetable or other device that takes account of the race of any individual or of the proportional racial composition of any group, as a prerequisite or condition to eligibility for payments for which credits will be allowed under this section. For the purposes of this section the term 'race' shall include color or national or ethnic origin.

"(d) DEFINITIONS. For purposes of this section --

"(1) EDUCATIONAL INSTITUTION. The term 'educational institution' means an elementary or secondary school as defined in section 198 (a) (7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which is exempt from taxation under section 501 (a) as an organization described in section 501 (c) (3).

"(2) TUITION EXPENSES. The term 'tuition expense' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

(A) books, supplies, and equipment for courses of instruction at the educational institution;

(B) meals, lodging, transportation, or personal living expenses; or

(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL FINANCIAL ASSISTANCE TO INSTITUTION. No educational institution which enrolls a student for whom a tax credit is claimed under the amendments made by this Act shall be considered to be a recipient of Federal financial assistance solely because a tax credit is claimed for such student under this Act.

"(f) LIMITATION ON EXAMINATION OF SCHOOLS. In determining whether payment to a particular elementary or secondary school qualifies for the credit allowed by this section, the Secretary shall have authority solely:

(1) to ascertain whether the school is operated or controlled by a church, or by a convention or association of churches, and, if not, to ascertain whether the school has applied for and been accorded recognition of exemption under section 501(a) as an organization described in section 501(c) (3);

(2) to require that the school submit annually a statement, under oath or affirmation, and subject to penalties for perjury, that the school has not, within the year for which a credit is claimed, used race as a criterion within the meaning of subsection (c) (4) of this section; and

(3) to institute an action for declaratory judgment in the federal district court for the district in which the school is located. Where a school has finally been determined in such an action to have used race as a criterion within the meaning of

subsection (c) (4) of this section, no credit shall be allowed under this section for amounts paid to such school for three years thereafter or until the school demonstrates to the same court that it no longer uses race as a criterion within the meaning of this section.

The Secretary is not authorized to conduct any audit or investigation of school policies or programs in order to determine whether the school has engaged in any acts which would disqualify any person, under the provisions of subsection (c) (4) of this section, from claiming the credit allowed by this section.

No credit claimed by any taxpayer under this section shall be disallowed unless, prior to the beginning of the taxable year for which a credit is claimed, the school for payment to which the credit is claimed has either (a) failed to file a statement in accordance with section (2) of this subsection after such statement has been demanded by the Secretary, or (b) been finally determined to have used race as a criterion in accordance with section (3) of this subsection."

SECTION 4. CONFORMING AMENDMENT. The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following: "Sec. 44H. Tuition expenses."

SECTION 5. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses incurred after that date.

TUITION TAX CREDIT BILL

OPTION B

A BILL

To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SECTION 2. FINDINGS AND DECLARATION OF POLICY.

"(a) The Congress finds that --

"(1) diversity and freedom of choice have been major strengths of the American educational system;

"(2) families should have the opportunity to select for their children the formal education which they deem most beneficial to their children and which best reflects the intellectual, moral, and cultural values that they wish to instill in their children;

"(3) lower income families are increasingly denied the ability to choose among diverse educational opportunities for their children

"(4) diversity and personal choice in American education can be enhanced through the income tax structure with a minimum of governmental interference in the lives of individuals and in the operation of private educational institutions.

(b) It is therefore declared to be the policy of this Act to enhance equality of educational opportunity for all American families through facilitating the attendance of their children at the elementary and secondary schools of their choice.

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(a) IN GENERAL. Subpart A of Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

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"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by him during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152 (a) (1), (2), (3), (6), or (9)) who has not yet attained the age of 20 at the close of the taxable year in which the tuition expenses are paid.

"(b) LIMITATIONS.

(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit claimed shall not exceed --

"(A) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

"(B) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

"(C) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under Section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provision of this section, the credit allowable under this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return).

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(C) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an eligible educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant (within the meaning of section 117 (a) (1)) which is not includible

in gross income under section 117;

(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102 (a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEPRECIATION.

No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(d) DEFINITIONS. For purposes of this section —

"(1) EDUCATIONAL INSTITUTION. The term 'educational institution' means an elementary or secondary school as defined in section 198 (a) (7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

"(A) is exempt from taxation under section 501(a) as an organization described in section 501 (c) (3), and

"(B) has not been determined in accordance with subsection (f) of this section to pursue a racially discriminatory policy.

"(i) An educational institution has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that institution, or if the institution refuses to administer its educational policies, admissions policies, scholarship and loan program, athletic programs, or other programs administered by such institution in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of an educational institution or a program of religious training or worship of an educational institution, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, provided, that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.

"(ii) The term 'race' shall include color or national or ethnic origin.

"(iii) AFFIRMATIVE ACTION PROGRAMS NEITHER REQUIRED NOR PROHIBITED. Within the meaning of this section, the terms 'refuse to admit students of all races' and 'administer in a manner that discriminates on the basis of race' mean to use race as a criterion in the admission of students or in the administration of policies or programs. An organization does not 'refuse to admit students of all races' or 'administer in a manner that discriminates on the basis of race' within the meaning of this section if it does not classify students according to race. Notwithstanding anything in this section or in any other provision of law, neither the use by an organization of race as a criterion in connection with an affirmative action program on behalf of members of racial minority groups, nor the failure of an organization to undertake such a program, shall be a basis for denying a credit that would otherwise be allowed under this section; and no organization shall be required to take account of the race of any individual, or to use any racial quota, goal, timetable, or other device that takes account of the race of any individual or of the proportional racial composition of any group, as a prerequisite or condition to eligibility for payments for which credits will be allowed under this section. For the purposes of this section the term 'race' shall include color or national or ethnic origin.

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

(A) books, supplies, and equipment for courses of instruction at the educational institution;

(B) meals, lodging, transportation, or personal living expenses; or

(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL FINANCIAL ASSISTANCE TO INSTITUTION. No educational institution which enrolls a student for whom a tax credit is claimed under the amendments made by this Act shall be considered to be a recipient of Federal financial assistance solely because a tax credit is claimed for such student under this Act.

"(f) LIMITATION ON EXAMINATION OF SCHOOLS. In determining whether payment to a particular elementary or secondary school qualifies for the credit allowed by this section, the Secretary shall have authority solely:

(1) to ascertain whether the school is operated or controlled by a church, or by a convention or association of churches, and, if not, to ascertain whether the school has applied for and been accorded recognition of exemption under section 501 (a) as an organization described in section 501 (c) (3);

(2) to require that the school submit annually a statement under oath or affirmation, and subject to penalties for perjury, that the school has not, within the year for which a credit is claimed, pursued a racially discriminatory policy within the meaning of subsection (d) (1) (B) of this section; and

(3) to institute an action for declaratory judgment in the federal district court for the district in which the school is located. Where a school has finally been determined in such an action to have pursued a racially discriminatory policy within the meaning of subsection (d) (1) (B) of this section, no credit shall be allowed under

this section for amounts paid to such school for three years thereafter or until the school demonstrates to the same court that it no longer pursues such a policy, whichever period is greater.

The Secretary is not authorized to conduct any audit or investigation of school policies or programs in order to determine whether the school has engaged in any acts which would disqualify any person, under the provisions of subsection (d) (1) (B) of this section, from claiming the credit allowed by this section.

No credit claimed by any taxpayer under this section shall be disallowed unless, prior to the beginning of the taxable year for which a credit is claimed, the school for payment to which the credit is claimed has either (a) failed to file a statement in accordance with section (2) of this subsection after such statement has been demanded by the Secretary, or (b) been finally determined to have pursued a racially discriminatory policy in accordance with section (3) of this subsection."

SECTION 4. CONFORMING AMENDMENT.

The table of sections for subpart A of Part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 the following: "Sec. 44H. Tuition expenses."

SECTION 5. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses incurred after that date.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

*Rees
File*

May 24, 1982

FOR: MICHAEL UHLMANN
FROM: GARY L. BAUER
SUBJECT: Evangelical Input re: Tuition Tax Credits

As you know, on Friday, May 21, Morton Blackwell in the Office of Public Liaison initiated a conference call to discuss some of the options we have been considering on tuition tax credits. Participants were Morton Blackwell, Phillip J. Murren, a partner in the firm of Ball and Skelly, and Grover Rees, Assistant Law Professor at the University of Texas, and myself.

I made clear during the conversation that we were discussing only unofficial options and that no decisions had been made on final language. We urged the participants to keep in mind the delicate political problems the Administration faced in crafting the final legislative language.

Phillip Murren made clear he would like to have another opportunity to talk about the language before we officially send it to Congress.

Of the three options we discussed, they were decidedly unenthusiastic about a private enforcement option or the use of a civil right statute already on the books -- 42 U.S.C. 1981. They felt very good about the proposed government right of action but did suggest some changes in our approach.

I have attached a new version of the government right of action reflecting the suggestions made on Friday. Of all the suggestions, four seemed to be of most concern. They are:

1. Drop the use of the word "eligible" in front of educational institution since it indicates that it is institutions rather than individuals who are receiving the aid.
2. Do not refer to the Elementary and Secondary Education Act of 1965 in defining education institution. Too many of the new private schools are having accreditation fights with state authorities. We don't want this bill to be a factor in those conflicts.
3. Make sure IRS had no implied authority to enforce the act.

4. Make sure that the legislation contemplates that something more than just one act of discrimination is needed to stop the credits from going to parents. In this case that "something more" is a "racially discriminatory policy."

I believe we can acquiese in these changes without adding to the criticism we will receive from opponents of tuition tax credits.

cc: Edwin L. Harper
Bill Barr

GOVERNMENT ENFORCEMENT OPTION

(d) DEFINITIONS.

(1) ~~ELIGIBLE~~ EDUCATIONAL INSTITUTION.

(A) The term '~~eligible~~ educational institution' means an elementary or secondary school ~~as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983,~~ which is a privately operated, not-for-profit, day or residential school which

(i) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(ii) has not during the calendar year for which a tax credit is claimed or the two immediately preceding calendar years been declared, in an action brought by the United States pursuant to this section, to follow a 'racially discriminatory policy'.

(B) (i) For purposes of this Act, an institution follows a 'racially discriminatory policy' if: (a) it refuses to admit applicants as students on account of race; (b) it excludes students, on account of race, from the rights, privileges, programs, and activities generally made available to students by that institution; or (c) ~~it discriminates against students, on account of race, in administering its scholarship, loan, athletic or other programs.~~

redundant

(ii) A 'racially discriminatory policy' does not include: (a) using a bona fide plan to increase enrollment of a disadvantaged minority group, provided that no institution shall

be required to use such a plan to be eligible under this section;
~~(b) granting any privilege, preference or priority to members of,
or adherents to, a particular religious organization or belief,
or limiting admission to such members or adherents, provided that
no such privilege, preference, priority or limitation is based
upon race or upon a belief that requires discrimination on the
basis of race;~~ (b) failing to pursue or achieve any racial quota,
proportion or representation in the student body.

(iii) The term 'race' shall include color or
national origin.

*Notwithstanding any other section provision of this act, the
section shall be enforced only by*

(C) (i) ~~To enforce this section,~~ the Attorney
General, ^{who shall} upon petition by a person who has been discriminated
against under a policy as described in paragraph (B)(i) of this
subsection, ~~is authorized,~~ ^{and} upon finding good cause, ~~to~~ bring an
action against an institution in the federal district court in
the district in which such institution is located, seeking
declaratory judgment that the institution is ^(a) following a
'racially discriminatory policy' and ^(b) has discriminated against
the person filing the petition under such policy.

(ii) The petition must be filed with the Attorney
General within one year of the act of racial discrimination
alleged to have been committed against the person filing the
petition. Upon receipt of the petition, the Attorney General
shall promptly notify the affected institution of such petition
and the allegations contained therein. Before any action may be
filed, the Attorney General shall give the institution a fair
opportunity to comment on all allegations made against it. An

— action may be filed by the Attorney General no later than two years after receiving the petition.

(iii) An institution is ineligible during the entire calendar year in which a judicial judgment that the institution follows a 'racially discriminatory policy' becomes final and during the two immediately succeeding calendar years.

(iv) A judicial judgment that an institution follows a 'racially discriminatory policy' as described in paragraph (B)(i) of this subsection shall not become final until all parties to the action have exhausted all appellate review.