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PRESS RELEASE

FOR IMMEDIATE RELEASE
September 28, 1981

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Taxation
and Debt Management
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON SIX MISCELLANEOUS TAX BILLS

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on October 16, 1981, on six miscellaneous tax bills.

The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

The following legislative proposals will be considered at the hearing:

S.425 --Introduced by Senator Packwood. S. 425 would exempt from the coverage of the Mortgage Subsidy Bond Tax Act of 1980 certain general obligation mortgage bond issues of the State of Oregon.

S.608 -- Introduced by Senator Baucus. S. 608 would allow individuals a deduction for certain expenses paid or incurred in connection with the adoption of a child.

S.1348 -- Introduced by Senator Sasser. S. 1348 would amend or clarify certain provisions of the Mortgage Subsidy Bond Tax Act of 1980 to facilitate the issuance and marketing of tax-exempt mortgage subsidy bonds.

S.1479 -- Introduced by Senator Metzenbaum. S. 1479 would exclude from income certain adoption expenses paid by an employer and provide a deduction for certain adoption expenses paid by an individual.

S.1580 -- Introduced by Senator Jepsen. S. 1580 would provide a personal exemption for childbirth or adoption and permit the taxpayer to choose a deduction or tax credit for certain adoption expenses.

S.1656 -- Introduced by Senator Durenberger. S. 1656 would amend or clarify certain provisions of the Mortgage Subsidy Bond Tax Act of 1980 to facilitate the issuance and marketing of tax-exempt mortgage subsidy bonds.

Requests to testify.--Witnesses who desire to testify at the hearing must submit a written request to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, to be received no later than noon on Friday, October 9, 1981. Witnesses will be notified as soon as practicable thereafter whether it has been

possible to schedule them to present oral testimony. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such a case, a witness should notify the Committee of his inability to appear as soon as possible.

Consolidated testimony.--Senator Packwood urges all witnesses who have a common position or who have the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Senator Packwood urges that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.--Senator Packwood stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) All witnesses must submit written statements of their testimony.

(2) Written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be delivered not later than noon on Thursday, October 15,1981.

(3) All witnesses must include with their written statements a summary of the principal points included in the statement.

(4) Witnesses should not read their written statements to the Subcommittee,but ought instead to confine their oral presentations to a summary of the points included in the statement.

(5) Not more than five minutes will be allowed for the oral summary.

Written statements.--Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C 20510, not later than Friday, October 30, 1981. On the first page of your written statement please indicate the date and subject of the hearing.

Congressional Quarterly Weekly Report

Family Protection Act: Dear To New Right, But Unlikely To Get Out of Committees

The Family Protection Act is a tidy wish list for the New Right. As a comprehensive piece of legislation, though, it appears to be going nowhere.

The controversial measure covers a broad range of moral and family issues, from legalizing school prayer to providing tax breaks for adoptions. It is called a high priority by the various groups that label themselves "pro-family" and are best known for their anti-abortion efforts. The National Pro-Family Coalition, the Moral Majority and other organizations frequently herald the bill in their publications and mailings.

But the American Civil Liberties Union (ACLU), the National Organization for Women and many other groups oppose the measure. "Instead of being protection for the family, it represents more federal intrusion into decisions usually made by the family," said Laura Murphy, ACLU legislative director.

Only a strong endorsement from the Reagan administration is likely to spring the bill (S 1378, HR 3955) from any of the five Senate and House committees to which it has been referred. None has any plans at present for hearings or other action, according to committee aides. So far, the administration has been silent on the proposal.

One reason for the lack of interest is that many of the bill's provisions are tax breaks — for care of elderly relatives, retirement funds for non-salaried spouses and other activities that supporters believe strengthen the family as an institution. Since Congress is trying to find new ways to balance the federal budget, it is not likely to agree to a new list of tax cuts.

There is no firm estimate yet of what the Family Protection Act would cost the Treasury in terms of lost revenues, but the figure would be in the billions.

But supporters such as Connaught Marshner, chairman of the National Pro-Family Coalition, argue that the bill would "take other costs off of the government." Tax incentives for adoption, for example, would mean "less welfare money spent on homeless children," while tax breaks for education savings accounts would reduce demand for federal education loans, she said.

Marshner also challenged the notion that the bill would "cost" the government. "We like to think the money belongs to the people — that the government shouldn't have it in the first place," she said.

Chief sponsors of the bill are Sens. Roger W. Jepsen, R-Iowa, and Paul Laxalt, R-Nev., and Rep. Albert Lee Smith Jr., R-Ala. The bill was referred to the Senate Finance Committee and the House Armed Services, Education and Labor, Judiciary, and Ways and Means committees. Some provisions also have been introduced as separate bills.

Provisions

The Family Protection Act would:

- Establish a legal presumption in favor of a broad interpretation of parental rights to supervise a child's religious or moral formation; exempt disciplinary or corporal punishment actions taken by a parent or person authorized by the parent from the definition of "child abuse and neglect."
- Prohibit any program receiving federal funds from providing services or counseling on contraceptives or abortion to an unmarried minor without first notifying the minor's parents.
- Prohibit the federal government from pre-empting or interfering with state laws on juvenile delinquency, child abuse or spouse abuse; prohibit the use of federal funds for any child abuse program not specifically authorized and established by a state's legislature.
- Bar attorneys funded through the Legal Services Corporation from taking part in any litigation involving abortion, busing, divorce or homosexual rights.
- Prohibit federal funding of any group or individual advocating homosexuality as a lifestyle.
- Authorize the secretary of defense to send a portion of a military employee's pay directly to dependents living separately from the employee.

Tax Provisions. The bill authorizes:

- A $250 tax credit or a $1,000 exemption if a dependent person age 65 or older lives in a household.
- A deduction of up to $2,500 a year for parents or others who establish an education savings account for themselves or their children.
- A deduction of up to $3,000 a year for contributions by an individual to a trust account, similar to the Individual Retirement Account, established to provide care for a parent age 65 or older or a handicapped relative.
- A deduction of up to $1,500 a year for contributions by an individual to a retirement account for a spouse with no earned income ($3,000 if the spouse was handicapped).
- A deduction for contributions made by corporations to joint employer-employee day care facilities.
- A new tax exemption of $1,000 for each child born to or adopted by a married taxpayer during a year ($3,000 if a child was handicapped or if an adopted child was biracial or over 6 years of age).
- A deduction of up to $3,500 for adoption expenses.

Education. The bill prohibits federal funding of any agency or institution that: does not permit parental participation in decisions relating to study of religion; limit parental classroom visits or examination of educational records; requires forced payment of dues or fees as a condition of employment for teachers or prohibits parental review of textbooks prior to their use.

- Prohibits use of federal funds for educational materials that "do not reflect a balance between the status role of men and women, do not reflect different ways in which women and men live and do not contribute to the American way of life as it has been historically understood."
- Clarifies states' rights to set teacher qualifications and attendance requirements; authorizes local education agencies to limit or prohibit the "intermingling" of the sexes in sports or other school-related activities.
- Exempts private schools from the jurisdiction of the National Labor Relations Board.
- Repeals Titles I, II, III, IV, VII and IX of the Elementary and Secondary Education Act of 1965, and instead authorizes federal education aid of $4.5 billion in each of fiscal years 1982 through 1985, in the form of a block grant.
- Guarantees the right of individuals to pray or meditate in any school or other public building; prohibits federal regulation of church-affiliated activities such as schools, foster homes or emergency shelters. The prohibition would not apply to civil rights laws. ■

—By Ann Pelham

Family Protection Act Q's and A's

Q: HOW CAN YOU JUSTIFY THE TAX EXPENDITURES CONTAINED IN THE FPA WHEN YOU HAVE ALWAYS SUPPORTED THE PRESIDENT'S ECONOMIC PACKAGE?

The revenues which would be deducted from the treasury because of the tax exemptions and credits would be more than compensated for by the decrease in need for federal assistance in many areas. For example, it would be less expensive and more humane for a family to have an exemption for caring for an aging parent at home than to place them in a federally-subsidized nursing home.

Tax provisions in the Family Protection Act are supportive of family unity and individual initiative. This, in turn, will create strong and more viable social and economic communities; hence, a stronger America.

Q: WHAT IS THE ADMINISTRATION'S POSITION ON THIS LEGISLATION?

The FPA embodies many of the concepts included in the 1980 Republican platform. The FPA strongly reflects the President's philosophy which is to take government out of the personal and family lives of individuals and to limit the role of the federal government in effecting social change. Senator Laxalt, President Reagan's representative in the Senate, is also chief cosponsor of this legislation.

Q: DEFINE FOR ME THE "ROLE OF THE WOMAN AS IT HAS BEEN HISTORICALLY UNDERSTOOD.

Traditionally, the role of the woman has been that of mother and homemaker just as the role of the man has been that of father and provider. Over the last decade, for reasons not

the least of which are economic, women have joined the work force in increasing numbers and recent estimates indicate that 50 percent of all women are employed outside the home.

The FPA does not promote the role of the woman as mother and homemaker to the exclusion of the woman's role as a professional. The only reference to the traditional role of the woman is a provision that guarantees that federal funds shall not be used for educational material that does not reflect a balance between the differing roles of women in today's society. In recent years the federal government has spent millions of dollars annually to remove all references to women in the traditional role as homemaker and mother because they felt it "did not allow a young girl to grow into a woman of her own right." As a result, pictures of women in aprons or little girls buying dresses have been removed from our children's textbooks and the role of homemaker has not been presented as a choice.

Q: DOESN'T THE FAMILY PROTECTION ACT ACTUALLY BRING THE FEDERAL GOVERNMENT INTO FAMILY LIFE MORE THAN IT EVER HAS BEFORE?

No. the Family Protection Act is designed to do just what it's name implies -- protect the family, and in many areas protect it from interference by the federal government.

The Christian Science Monitor summed up the intent of the bill quite well when they said, "It says, in essence, that Uncle Sam is just that -- an uncle who can observe and perhaps offer advice, but not a parent who has the final say on disciplinary or family matters."

The federal government over recent years has become increasingly involved in family life, in many cases usurping the responsibilities of parents. The responsibility for the educational, moral, and religious upbringing of children should be safeguarded from government interference and brought back home where it belongs.

Q: WHY WOULD YOU DENY LEGAL SERVICES IN THE AREA OF DIVORCE LITIGATION?

There are two documented facts with which no one can argue. First of all, that the structure of the American family as it has been understood is weakening. Secondly, statistics show that 50 percent of the marriages in this country today end in divorce. These are appalling facts, but nonetheless they are true.

The Family is the basic unit and strength in our society. If the family unit crumbles our government and country will also crumble. Therefore, I believe that it is of paramount importance that government in no way encourages or supports the breakdown of the family unit. Government must take a neutral stand in the area of divorce. The government, with taxpayer's dollars, should not pay for divorce -- in essence this would condone and assist in divorce.

Q: THIS BILL WOULD DENY THE POOR THE RIGHT TO GET A DIVORCE, IS THAT FAIR?

I realize that included in that 50 percent divorce statistic are many poor and needy people who find themselves in situations where they see divorce as the only answer. This bill in no way denies them the right to a divorce. The local communities are just going to have to assist the needy in their area in this regard. Many local bar associations in the past have assigned attorneys to aid those who could not personally afford the legal costs of a divorce.

Many civic groups and individuals will also become involved. This is a way in which these citizens can serve their community. This is not an easy answer, I know. Sometimes life isn't easy, but government cannot solve all social ills -- anymore than we can legislate away all pain and hurt and suffering. It just isn't possible.

Q: OUR COMMUNITY DOES NOT OFFER ANY LEGAL SERVICES THROUGH BAR ASSOCIATIONS OR CIVIC GROUPS.

Well, perhaps they need to create one. Many services which were taken care of at the community level in the past have been laid aside because the federal government has stepped in and taken over. The government has usurped the responsibilities of the local communities in many areas -- and has done an inferior job in most cases. I might add -- and increased our taxes to pay for them.

Q: WON'T THE NURSES AND NURSING HOME OWNERS LOBBY STRONGLY AGAINST THE PROVISION OF THE BILL WHICH PROVIDES TAX INCENTIVES FOR FAMILIES TO KEEP THEIR ELDERLY AT HOME, SINCE IT WOULD TAKE AWAY THEIR BUSINESS?

Certainly, nursing professionals and those who care for the elderly in nursing homes would not oppose this section of the bill. They of all people are compassionate and caring. That is the one reason that they are involved in the caring of the needs of the elderly. I am sure that they would be very supportive of families being encouraged to keep their elderly members at a home which could give the elderly individual quality care and love. Love is something which we cannot legislate and government cannot provide.

Q: WOULD YOU ACKNOWLEDGE THAT THIS BILL SETS UP ONE VIEW OF MORALITY?

All legislation is based upon some set of values -- civil rights laws, truth in advertising laws, environmental protection laws.

This bill promotes the principles of family indepedence, personal responsibility, individual liberty, and economic growth.

Q: THIS LEGISLATION GIVES LOCAL SCHOOL BOARDS A NEW SET OF MARCHING ORDERS. CAN THE LOCAL DISTRICT HANDLE THE EXTRA LIBERTY AND RESPONSIBILITY THAT WILL BE PLACED UPON THEM?

Of course local school districts can handle the liberty and responsibility that will be placed upon them. The best government is that government closest to the home. Working with parents, the local school boards know best the educational needs of our young people. Presently, the federal government provides 8 percent of local educational costs, and 90 percent of their regulations.

Q: WHAT IS THE GREATEST CAUSE OF FAMILY PROBLEMS TODAY -- IS IT THE FEDERAL GOVERNMENT?

The Federal government has contributed to family problems by usurping responsibilities once handled by the family unit. The most basic problem, however, stems from the eroding away of our basic system of values where there is no basis for right or wrong.

Q: WHAT ARE YOU REFERRING TO WHEN YOU REFER TO A CHANGE IN OUR VALUES?

****IN THE HUMANIST'S APPROACH TO LIFE, ALL MAN'S EFFORTS REVOLVE AROUND SELFISH GOALS, WITH THE MEASURE OF RIGHT OR WRONG VARYING TO SUIT MAN'S CURRENT WHIM.

Secular Humanism, or situation ethics, represents man's best effort to shape his society and his system of values apart from God. Therefore, there is no right and no wrong because there is no constant system of values to make judgments upon.

A humanistic approach has crept into all aspects of life in our society today and is often accepted by man, almost unconsciously, without thinking through its philosophy. Since government is structured by man and the authority in our society, it becomes man's source of supply for all his needs. Government therefore becomes the god.

Q: WHAT IS YOUR EVIDENCE THAT THE AMERICAN PEOPLE REALLY WANT A RETURN TO "TRADITIONAL" VALUES?

Recent surveys done by READER'S DIGEST support the fact that the majority of American families believe in traditional values and also have a strong belief in God.

Also, the recent study done by Connecticut Mutual showed that the major social issues of the day (Abortion, Homosexuality, Pornography) were of moral concern to about 2/3 of the general public while they were moral concerns for only about 1/3 of government officials.

Perhaps the best show in town, however, was the last election when the American people demonstrated at the polls with geographic unanimity a growing concern for the direction this country is heading both socially and economically.

Q: CAN YOU SIGHT A FEDERAL LAW OR REGULATION THAT HAS DIRECTLY CHANGED THE LIVES AND THE STRUCTURE OF THE AMERICAN FAMILY?

a) The graduated tax system: this system has gradually but relentlessly put many American households in a position where both the father and the mother are forced into the working force for economic reasons. Of course, inflation has been the worst villain in this regard.

b) Under the Aid to families with dependent children program, low-income families deprived of a father's support are granted cash assistance while intact families in the same

financial bracket do not meet eligibility requirements. This system encourages low income married couples to live apart and provides no reason for an unmarried couple with children to be married.

c) Family Planning programs where parents are not included in decisions relative their their children's sexual development. An unemancipated minor needs her parent's signed permission to be absent from school or to get her ears pierced, yet she may be treated for VD, get a prescription for birth control pills, or obtain an abortion without her parents being informed.

d) Decisions of the Supreme Court

Busing: Compulsory Busing disrupts family and neighborhood life and heightens racial tensions without improving the quality of education for children of any race or ethnic background. By forcing children to seek their education away from the local school, it removes the responsibility from parents for directing their children's education.

Q: WHAT KIND OF SUPPORT DO YOU EXPECT FOR THIS BILL?

Widespread. Already our office has received a positive response to the revised bill from a cross section of individuals at the grassroots level who have had an opportunity to review the new language. I firmly believe that all Americans who daily see the influence that the policies of the federal government has upon their personal and family lives will be interested in knowing more about this legislation.

Q: YOUR BILL INCLUDES SEVERAL REFERENCES TO HOMOSEXUALS. ARE YOU TRYING TO TELL THE AMERICAN PEOPLE THAT HOMOSEXUALS DO NOT HAVE CIVIL RIGHTS?

No. The FPA in no way interferes with the civil rights of homosexuals. It does, however, prevent federal funds from being used for the express purpose of promoting homosexuality as an alternate lifestyle. It also prevents the Legal Services Corporation from litigation solely for the purpose of adjudicating the issue of homosexual rights. These are the only two provisions in the FPA that affect homosexuals.

Q: HOW CAN YOU JUSTIFY RETURNING TO THE STATES THE JURISDICTION OVER FAMILY ABUSE CENTERS WHEN THE STATES HAVE TAKEN LITTLE OR NO INITIATIVE IN THIS AREA?

It is a false premise to say that states have taken no initiative in the area of spouse and child abuse. 44 states have recently passed legislation dealing with the problems of spouse abuse and have set up domestic violence shelters and counseling programs. Many states have also drastically revised their criminal codes to provide for easier arrest and persecution of the abuser; and civil remedies have been implemented to evict the abuser from the residence rather than leaving it up to the victim to flee.

Here again, the federal govenrment has been all too willing to promote programs in this area, thus making it unnecessary for state and local efforts to develop programs which effectively combat the very real problems of domestic violence.

Government oversight is no substitute for active participation by the community, the church, and the extended family unit.

Q: ARE YOU FEARFUL THAT THE NUMBER OF ILLEGITIMATE CHILDREN WILL INCREASE IF PARENTS ARE TO BE NOTIFIED THAT THEIR CHILDREN ARE RECEIVING CONTRACEPTIVE DEVICES?

No. The Federal government has usurped the responsibility for supervising our children's sexual development and education and are keeping the parents uninformed. It is indeed a paradox that parents are paying for this service with their tax dollars.

What has occurred has been a marked increase in the number of teenage pregnancies and abortions, a growing independence on the part of our young people to develop their moral character apart from their parent's values, and an increased acceptance of a value free approach to pre-marital sex.

PRELIMINARY

ESTIMATED REVENUE EFFECTS OF TAX PROVISIONS CONTAINED IN THE FAMILY PROTECTION ACT

(In Millions of Dollars)

Item	Fiscal Year 1982	1983	1984	1985	1986
1. Education savings accounts ($2,500 contribution per year).	940	3,330	3,910	4,450	5,060
2. Optional $250 tax credit or $1,000 exemption for each household which includes a dependent person age 65 or older.	460	440	450	480	490
3. Tax exempt trust accounts for aged parents or handicapped relatives ($3,000 contribution per year).	50	180	200	210	210
4. Retirement savings accounts for spouses deductible up to $1,500 per year.	70	280	320	360	380
5. Exemptions for childbirth and adoptions ($1,000 tax exemption, $3,000 if child is handicapped). In addition, allow deduction for amount of adoption expenses.	970	840	800	810	820

The Des Moines Register
THE NEWSPAPER IOWA DEPENDS UPON ■ Des Moines, Iowa, Thursday Morning, August 13, 1981 ■

Kind words for Family Protection Act

By IAN BINNIE

SENATOR Roger Jepsen's Family Protection Act has received a universally bad press, but, considering the media's love affair with the now-discredited liberal intelligentsia, this is hardly surprising.

Having had an opportunity to read the act and to discuss it with the senator, I wonder how many of its critics have bothered to do likewise. The ones who claim to have read it, finding little in it that any normal person would object to, are reduced to cautioning us to read between the lines (and no doubt look under the bed) to find the wild-eyed right-wingers lurking there.

The average American will have no problem defining the family or identifying with it; it consists of parents, children and sundry other individuals related by blood, marriage or adoption. It does not include loose and temporary associations whose only bond is the economic advantage of sharing food stamps, pad and pot.

The very word "family," of course, sets up a kneejerk disapproval reaction in the radical homosexual-feminist coalition; the former with their sterile dead-end relationships regard the family with a mixture of envy and hatred, and the latter regard it as a form of slavery for women.

The act doesn't force anything on anyone; much of it simply gets the federal government out of areas that properly belong to the states. The argument that the federal government must act whenever the states won't is the argument that the Tenth Amendment to the Constitution was designed to guard against.

Requiring that the parents of a 14-year-old girl be consulted before she is given counseling in contraceptive techniques or abortion doesn't seem unreasonable to those who believe that parents should have at least some say in their children's upbringing. Allowing a tax break for those who keep their elderly parents at home instead of shunting them off to the present-day equivalent of the county poor farm makes both economic and humanitarian sense.

The extra tax break for those who would now like to, but cannot afford to, adopt a handicapped, older or bi-racial child could mean a good life for some children who might otherwise never have a decent chance. Allowing parents to set up a limited tax-free savings fund for their children's education merely extends the freedom of educational choice now available only to the rich.

The right of parents to have some say in what textbooks their children use cannot logically be criticized by those who have demanded and received the right to censor textbooks that minorities and feminists find offensive to them. And surely no liberal who regards a career as the right of every woman can object to allowing a company to write off the cost of operating a day-care center that makes that career possible.

The move to get tax-supported legal-services attorneys back to their proper jobs and out of the advocacy business is timely. Outgoing president John Adams tried to perpetuate his philosophy of government and thwart the will of the people by using the courts, which he had stacked in his favor, to oppose the programs of incoming president Thomas Jefferson. Our outgoing liberals, with the courts and the bureaucracies stacked in their favor, are trying similar tactics to thwart the program that Ronald Reagan campaigned and won on.

The problem of prayer in schools, which wasn't a problem until the Supreme Court made it one with its rather bizarre interpretation of the First Amendment, is a problem that simply has to be faced, and the act chooses to face it now. In any event, the Supreme Court will have to recognize sooner or later that the First Amendment not only forbids the establishment of religion but protects the free exercise of it as well.

The act does not attack homosexuals, but merely requires that any proselytizing they do be done at their own expense, not at the expense of the federal taxpayer. The $371,000 spent recently to relocate Cuban and Haitian homosexuals was a favor granted to no other special-interest group.

The traditional role of women has been denigrated by the radical feminist movement; these strident viragos have trumpeted their opinion in tax-supported forums that raising children is degrading and that only a "career" will properly "fulfill" a woman.

That it is always a "career" and not just a job is an indication of the upper-middle-class elitism of this well-dressed movement. In this scenario, women are to trade the living room for the operating room or the courtroom, not the factory floor or other less desirable tasks that most women will have to accept, as do most men. We need take this group seriously only when Aigner and Pappagallo start making steel-toed safety shoes.

What are the chances of the Family Protection Act's passage? Given the climate of the times, they have to be rated good to excellent. Senator Paul Laxalt (Rep., Nev.) is the co-sponsor, which usually indicates White House approval, and anyone who underrates that fact simply hasn't been paying attention.

But the question may be moot; much of what is in the act probably will be passed in other acts before the Family Protection Act itself comes up. However, the act is valuable as a statement of principle for America's new beginning.

The traditional role of women has been denigrated by the radical feminist movement; these strident viragos have trumpeted their opinion in tax-supported forums that raising children is degrading and that only a 'career' will properly 'fulfill' a woman.

Ian Binnie is a member of the Des Moines School Board.

Education Update

Vol. 5, No. 2 September 1981

THE FAMILY PROTECTION ACT: SYMBOL AND SUBSTANCE

The Social Issues: A New American Consensus?

Since the November election there has been continuous discussion of the importance of the economic agenda versus the social issues agenda. President Reagan, speaking at a gathering of conservatives last March, said:

> We do not have a separate social agenda, we have one agenda. Just as surely as we seek to put our financial house in order and rebuild our nation's defenses, so too, we seek to protect the unborn, to end the manipulation of schoolchildren by utopian planners, and permit the acknowledgement of a supreme being in our classrooms.

This was interpreted in some journalistic quarters as massaging the faithful. In the meantime, liberal commentators are warning Reagan and the Republicans that the social issues agenda is devisive and detrimental to their long range electoral interests.

Could it be that liberals perceive the social issues to be deadly to their own political interests? Especially devastating to the liberal Democrats has been the departure from their ranks of the troops who did not agree with their views on social issues but who share, by family ties, habit and sentiment, their party affiliation. Surveying these departing troops and their reasons for leaving most liberals would rightly conclude that for them, the social issues are indeed a disaster.

The master political scientist V. O. Key summed it up twenty years ago in his definitive work, *Public Opinion and American Democracy*, in which he analyzed public opinion, its intensity and "attentive publics." For some time it has been apparent that intense and widely dispersed "attentive publics" deeply oppose abortion on demand, busing, and overweening government regulation, and favor voluntary prayer. On the intensity scales of pollsters like Richard Wirthlin and V. Lance Tarrance, for example, for every two or two-and-a-half voters who will change their political behavior because of their pro-life stand, there is one voter who will alter his political behavior because of a pro-abortion position.

The Gallup and *Better Homes and Gardens* polls released in 1980 in connection with the White House Conference on Families confirmed the decided belief among the American people in all walks of life at all income levels that an erosion of traditional values has occurred and that this erosion has had a negative effect on family life and the fabric of American society.

More recently a study by Research and Forecasts, Inc. was commissioned by the Connecticut Mutual Life Insurance Company to explore American values in the 1980s and the extent to which they are shared by leaders in American society. The study revealed a marked contrast in the affirmation of traditional values by Americans as a whole when compared to the positions of leaders. For example, in answer to the question, "Do you regard abortion as immoral?" only 36 percent of the leaders said yes, as compared to 65 percent of the public.

The project's research director, John C. Pollock, concluded that the religious thread unexpectedly showed up in all the analyses. "It's more than a movement," he said. "It's something running through the whole culture." Although there was no intent to focus on religion, according to the report, it emerged as "the one factor that consistently and dramatically affects the values and behavior of Americans."

If, therefore, one is measuring general public opinion trends, or the activity of attentive publics, it becomes quite clear that the liberal philosophy on social questions is without significant grass roots support. There are no significant constituencies in the Reagan coalition for busing, and abortion on demand, or strongly opposed to voluntary prayer. The pollsters may show that for the general public, economic concerns are paramount; they cannot show that carrying out conservative principles on the social agenda is contrary to the convictions of any significant group other than liberal ideologues.

Congressman Robert Michel, Republican leader of the House of Representatives, made the point in a widely-publicized essay, "Social Issues *Won't* Go Away":

> Contrary to the myth that social issues activists are single-minded fanatics, those who oppose abortion on demand or who favor school prayer are, I have found, as deeply concerned as the rest of us over traditional political issues such as the economy and national security. But they feel that Supreme Court decisions and bureaucratic actions in areas of traditional values have robbed them of their right to participate in shaping (not, as some say "imposing") policy in matters they are convinced be left in the hands of the people. . . . The pro-life, anti-busing and school prayer movements transcend party and ideological lines.

The Heritage Foundation 513 C Street, N.E., Washington, D.C. 20002, *Editor,* Onalee McGraw

One thing is clear, and that is that the liberals have not concentrated on persuading a majority of the American public on the social issues but have simply relied on the courts and bureaucracies to carry out their agenda by fiat. Now that they are confronted with a clear repudiation of their policy objectives, the liberal response on the social issues appears to be that government should not regulate private behavior.

It is only logical that liberal commentators would make every attempt to isolate and defeat the social issues constituency whose values they deeply oppose. Apparently the liberal line is going to be as follows: conservative attempts to rectify previous judicial and governmental policies that have had a widespread impact on American society are unjustified attempts to use government to interfere in people's lives.

For example, David Broder, writing in *The Washington Post*, attempts to frame the issue as one in which "moral majority" types will move to "expand government efforts to prescribe and regulate individual behavior." He warns that such attempts are likely to result in future electoral losses by Republicans.

This line of argument has been most pronounced with regard to commentary on the Family Protection Act recently introduced in Congress by Senators Roger Jepsen and Paul Laxalt, Rep. Albert Lee Smith and others. Syndicated columnist Paul Greenberg says the Family Protection Act "represents another intrusion of government in the name of fighting government intrusion." He accuses the bill's proponents of seeking to find political solutions to all the problems of society. He does not tell us what his position is on the government policies that the Family Protection Act seeks to reverse. Rhonda Brown, writing in *The Nation*, states that in the Family Protection Act the "new right" proposes a "reconstruction of a society according to 'traditional values' based on an America that doesn't exist today, if it ever existed at all."

In short, faced with a new majority not to their liking, the liberal fall-back position is that conservative attempts to deal with the social issues are repudiations of the Reagan mandate to reduce government interference in people's lives.

This overlooks the fact that Americans have had almost two decades of government doing just that, not only in the economic area, but precisely in the widespread use of federal funds and programs to effect changes in cultural, moral and familial values. Perhaps it should be emphasized that judges appointed by politicians are as much a part of the government as are the politicians themselves.

It is natural enough that liberals would want to confine the domestic political agenda they no longer determine to economic issues. If the President and the now clearly evident bi-partisan majority in the Congress fail to produce on the economic issues, or badly stumble on the social issues, the socially conservative voters who by habit and tradition vote Democrat may return in significant numbers to their ancestral party home.

It is within this framework that the determination of radical feminists, leftists, federally-funded interest groups, liberal politicians and media pundits to put the conservative social issues constituency into an "extremist right wing religious fanatic" box comes into focus. It is in their interest to isolate this constituency from the mainstream, quarantine it and label it "dangerous," "embarassing," "devisive," and "kooky." The President and the legislators must be persuaded that this constituency is really "excess baggage" that will somehow hinder the economic agenda and alienate the majority of American voters.

By attempting to separate the conservative social issues constituency from the mainstream, the fact is obscured that it is in reality the liberal propositions on these issues that are now out of the mainstream, if indeed they were ever in it. As Representative John Ashbrook recently put it, all the labeling of issues as "single issues" cannot disguise the fact that "there is a political revolution underway all over America against the liberal establishment and throwing labels on it isn't going to make it go away."

It is true that the social issues are volatile. They provoke strong feelings in "attentive publics" because they raise squarely the question of what American society is all about; they go to the heart of what every individual thinks and believes about himself, his family and others in the social order.

But the question must be raised: why are issues such as when human life begins, and the authority of the state to protect it, religious freedom, the sexual activity of minors, and pornography political issues in the first place? These issues became political because liberal ideologues insisted on using the mechanisms of the state to impose their own values and policy goals on American society without regard to the deliberate consensus of the American people.

When the subject is framed as the examination of the proper and popularly supported usage of federal funds and power, how does the social issues agenda intrude and detract from the economic agenda? Are they not both integral parts of the same set of propositions that were ratified by the electorate last November?

It is therefore not surprising in the least that the Family Protection Act has been interpreted as an omnibus legislative monster containing measures that will turn the federal government into an oppressive engine driven by the "new right" and "moral majority types" that will prosecute homosexuals, force prayer down the throat of every school child in America, provide a federal mandate for censorship of textbooks and send all women back into the kitchen barefoot and pregnant. In short, those who viewed with favor the use of federal power to establish their policy preferences now accuse those whose views they abhor of perpetrating a totalitarian piece of legislation.

Political columnists Germond and Witcover in a recent column fussed over how the President was going to deal with the social issues without associating himself with the "crazies." Yet contrary signs abound as to who in the eighties the "crazies" are *vis-à-vis* the mainstream.

The signs appear at many levels. There are press reports that motherhood, the flag and the boy scouts are coming

back in style. Conservative academics are coming out of the closet in universities where it has been unfashionable to project conservative ideas.

Authority figures in various social science disciplines are saying the most refreshing things. In a recent issue of *Psychology Today*, Dr. Bruno Bettelheim says that a society whose members lack a strong sense of morality may be an endangered species, that sex education in the schools may do more harm than good. He strongly recommends traditional fairy tales as a means to expose youngsters to the conflict between good and evil.

None of these signs points to specific support for measures in the Family Protection Act, but they do tell us what the new political and cultural trends are. However, the Family Protection Act should be judged on its merits, rather than the manipulation of symbols and emotions.

The Family Protection Act: Background & History

In June 1981, the new Family Protection Act (S. 1378, H.R. 3955) was introduced by Senator Roger Jepsen (R-Iowa) along with Senator Paul Laxalt (R-Nevada), the last session's chief sponsor, and Representative Albert Lee Smith (R-Alabama) for the House version.

The purpose of the Family Protection Act, according to Senator Jepsen, is "to redress the balance in favor of the family, to restore to the family its essential functions. Government policies interfering with the family have increased over the past decade under the guise of 'solving' human problems in the areas of health, education and social services. Government oversight is no substitute for active participation by the community, the church, and in the final analysis, the family unit."

Senator Laxalt remarked, "I believe the policies of President Reagan will strengthen the family. I do not expect a continuation of the social tinkering that we saw in the last four years under the Carter Administration, advocated by appointees openly hostile to traditional values."

Representative Albert Lee Smith underscored the renewed appreciation that Americans are demonstrating for the importance of the family and its values: "Self-government rests on the wise judgment and virtue of its citizens achieved through strong family life."

Since the introduction of the new Family Protection Act, Senators Jake Garn (R-Utah) and Orrin G. Hatch (R-Utah) have joined Senators Jepsen and Laxalt in co-sponsorship. On the House side, Representative Smith is joined by Congressmen Mark Siljander (R-Mich.), William Dannemeyer (R-Calif.), James Jeffries (R-Kans.), Philip Crane (R-Ill.), George Hansen (R-Idaho), Larry McDonald (D-Ga.), and Dan Crane (R-Ill.).

An earlier version of the Family Protection Act was introduced by Senator Paul Laxalt during the previous Congress. The measures in it touched not only on the strengthening of family resources, but also on the social issues of abortion, school prayer, and the giving of federally-funded contraception to minors without parental knowledge and consent. Therefore, the Family Protection Act in both symbol and substance is a reflection of the new intensive involvement of grassroots citizens in politics via the social issues.

The November election brought with it a number of surprises. One was the demonstrated power of the social issues to generate, not only grassroots political involvement on the part of previously passive citizens, but also significant changes in voting behavior. People who had previously voted for liberal democrats, and shared their party heritage but not their social agenda, were now shifting their voting patterns in sufficient numbers to make the crucial difference in congressional elections.

Since the introduction of the revised Family Protection Act, commentary on the bill has frequently focused on the question of the "social issues agenda" rather than the specific proposals contained in the bill. Examination of the substantive proposals in the Family Protection Act reveals a surprisingly low-key, procedurally-oriented approach toward the stated goal of the bill: "to restore the balance in favor of the family."

The substance of the proposals does not measure up to the often hysterical and shrill rhetoric emanating from certain quarters on the left. Senator Jepsen's office, for example, reports that some of the media commentary is critical of provisions that are not even contained in the bill. Accordingly, a discussion of the substantive proposals in the Family Protection Act would appear to be in order.

The Family Protection Act introduced in June 1981 is, for all intents and purposes, a brand new bill. Its sponsors describe it as "the first major legislative effort to return the balance in favor of the family in key areas such as education, taxation, religion and domestic relations."

The proposals reflect a refinement of analysis in response to criticism of the earlier version, which came from the bill's supporters and opponents alike. In addition, the Family Protection Act proposals are more realistic and less ideologically oriented, reflecting the new opportunities for passage presented by a conservative majority in the Senate and a bi-partisan potential majority in the House. It is not without significance that the majority of conservative Democrats in the House tend to be conservative on social issues.

One of the important changes made in the new version is on the question of the role of the federal government in relation to the states in matters concerning family rights. Grassroots supporters of the Family Protection Act were bothered about the contradiction in conservative principles that appeared in the old version. It had provided for the removal of federal funds from states that did not adopt state provisions fostering parental and family rights. Opponents and objective observers had commented on this contradiction, whereby the element of federal coercion by withdrawal of funds would be relied upon at the same time that the overweening influence of government is decried.

In the new Family Protection Act, there are instead provisions for "cause of action" for individuals who would have standing in the courts to enter into litigation in defense of their rights against institutions receiving federal funds.

For example, the old bill provided that federal education

funds be withheld if schools attempted to exclude parents from visiting public school classrooms or school functions, or if schools failed to establish procedures whereby parents in the community may review textbooks prior to their use in public schools.

Few would disagree that in a democratic society simple justice should favor the right of taxpayers and parents to review textbooks prior to their use in public schools. Yet, as a matter of practical application, parents in most jurisdictions are not encouraged to exercise this right. However, the consistent conservative view is that the federal government should not be in the business of forcing the states to adopt such policies.

The new Family Protection Act resolves this dilemma by providing individuals with the means to pursue their rights through the courts. The burden of litigation rests with the individuals, not the states or the federal government. (See Title III, Education; the details of jurisdiction in these areas of cause of action are provided under Title VI.)

Examination of litigation in recent years reveals a pattern in which various groups have gone into court to demand that government owes them "services" as a civil right under federal law. Indeed, the notion of "private attorney generals" is now abroad whereby public service attorneys can recover fees from the federal government and the client becomes a mere conduit for the collection of lucrative legal fees at taxpayer expense.

By contrast, the Family Protection Act simply provides an avenue through the courts for individuals to pursue their claims. The claims are not for government services, but for procedures sought by those who wish to have government-funded institutions respond to their primary rights as parents in the education of their children. For example, one measure provides cause for action if an educational institution receiving federal funds denies them the right to review textbooks prior to their use in public schools. A similar provision under the Education section provides that teachers have a cause of action if they are forced by institutions receiving federal funds to pay union dues as a condition of employment.

What the Bill Contains

The Family Protection Act has six titles, including Family Preservation, Taxation, Education, Voluntary Prayer, and Rights of Religious Institutions and Educational Affiliates. A final section deals with technical details of implementation.

Section 2 of the Family Protection Act highlights its purpose:

> The purpose of this Act is to preserve the integrity of the American family, to foster and protect the viability of American family life by emphasizing family responsibilities in education, tax assistance, religion, and other areas related to the family.
>
> In accordance with the purposes of this Act, the Congress finds that
>
> (1) a stable and healthy family is the foundation of a society and its culture;
>
> (2) the family in America is the lifeline of America's continued existence and the cornerstone of America's growth and future development;
>
> (3) certain Government policies have directly or benignly undermined and diminished the viability of the American family; and
>
> (4) the policy of the Government of the United States, should, on and after the date of the enactment of this Act, be directed and limited to the strengthening of the American family and to changing or eliminating any Federal governmental policy which diminishes the strength and prosperity of the American family.

Title I: *Family Preservation*

1. Rights of Parents—"in any action brought under the provisions of this title (in the U.S. Code), involving the parental role in supervising and determining the religious or moral formation of a child, there is a legal presumption in favor of an expansive interpretation of that role." (Section 101)
2. Parental Notification—Provides that parents be notified when an unmarried minor receives contraceptive devices or abortion-related services from a federally-funded organization. (Section 102)
3. Juvenile Delinquency—Prohibits the federal government from pre-empting or interfering with state statutes pertaining to juvenile delinquency. Interstate compacts will be maintained. (Section 103)
4. Child Abuse—Restricts the federal govenment from pre-empting or interfering with state statutes pertaining to child abuse. Revises the definition of child abuse to exclude corporal punishment (spanking) "applied by a parent or individual explicitly authorized by a parent to perform such function." Federal funds for operating a child abuse program are subject to specific authorization from state legislatures. (Section 104)
5. Spouse Abuse—Restricts the federal government from pre-empting or interfering with state statutes pertaining to spouse abuse. (Section 105)
6. Legal Services: Abortion—Prohibits any funds under the Legal Services Corporation from being used in litigation seeking to compel abortions, assistance, or compliance with abortion, or funding for abortion. (Section 106)
7. Legal Services: Divorce—Prohibits any funds under the Legal Services Corporation from being used in litigation involving divorce. (Section 106)
8. Legal Services: Homosexual rights—Prohibits any funds under the Legal Services Corporation from being used in litigation involving homosexual rights. (Section 106)
9. Spouse Allowance—Reinstates Department of Defense provision that service personnel living separately from their families automatically send home the predetermined "dependent's allowance" for family support. (Section 107)
10. Homosexual Organizations—Denies federal funds to any organization which uses the funds for the express purpose of advocating homosexuality as a lifestyle. (Section 108)

The Family Preservation section carries a number of affirmations: (1) that parents have the primary right and re-

sponsibility in the character and moral development of their children; (2) that parents must be notified regarding federally-funded contraception given to their minor children; (3) reinforcement of the primary role that states have traditionally held in the formulation of family-related law in areas such as spouse abuse, child abuse, and juvenile delinquency; (4) protection of military families by reinstatement of the automatic "dependent's allowance"; and (5) prohibitions on federally-funded legal services from entering into family-related fields such as abortion, advocacy of homosexual rights and divorce.

Contrary to some media reports, the Family Protection Act does not, in intent or in substance, seek to deny homosexuals benefits they now have under existing law. The clear intent is to deny federal funds to organizations engaged in the *advocacy* of homosexuality as an alternative lifestyle.

The measures reinforcing state prerogatives in family-related areas such as child abuse and spouse abuse are a response to excessive regulation by federal bureaucrats who have broadly interpreted congressional laws through regulations and informal communication networks with state officials.

Title II: *Taxation*

11. Education Savings Account—Establishes a saving plan whereby relatives may deposit up to $2,500 tax-exempt per year to save for a child's education. (Section 201)
12. Tax-exempt Schools—Schools operated by parents are granted tax exemption if they fulfill certain requirements, and are granted accreditation for all purposes of federal education law. (Section 202)
13. Multi-generational Household—Allows a tax credit of $250 or a tax exemption of $1,000 for each household which includes a dependent person aged 65 or older. This provision allows either the tax credit or the tax exemption—not both. (Section 203)
14. Parental Care Trust—Establishes a trust account procedure similar to the Individual Retirement Account, under which taxpayers can save $3,000 a year for the support of an aged parent or a handicapped relative. (Section 204)
15. Retirement Savings Account for Spouses—Contributions by an employed person to a savings account for the non-salaried spouse are tax-deductible up to $3,000 a year. (Section 205)
16. Day Care—A corporation may deduct from taxes its contributions to a joint employee-employer day care facility. (Section 206)
17. Exemptions for Childbirth or Adoption—Married couples filing jointly are granted an additional $1,000 tax exemption for the year in which a child is either born or adopted. The exemption increases to $3,000 if the child is born handicapped or if the adopted child is handicapped, over the age of 6, or bi-racial. Additionally, this provision allows the individual to deduct the amount of adoption expenses paid during the taxable year. (Section 207)

These provisions encourage families to provide for the needs of family members with their own resources. Note number 17 which encourages the adoption of hard to place children.

Title III: *Education*

18. Religion Courses—Provides a cause of action for parents if an educational institution receiving federal funds prohibits them from participating in decisions regarding their child's enrollment in religion courses. (Section 301)
19. Visitation of Classrooms—Provides a cause of action for parents if an educational institution receiving federal funds prohibits them from visiting their child's classroom. (Section 301)
20. Teacher Unionization—Provides a cause of action for individuals if an educational institution receiving federal funds requires forced payment of dues as a condition for the employment of teachers. (Section 301)
21. Reviewing Textbooks—Provides a cause of action for parents if an educational institution receiving federal funds prohibits parents from reviewing textbooks prior to their use in public schools. (Section 301)
22. Sexism in Textbooks—Prevents federal funds from being used to promote educational material that denigrates the role of women as it has been historically understood. (Section 301)
23. Teacher Qualifications—States are ensured the right to determine teacher qualifications unhampered by federal regulations. (Section 302)
24. Attendance Requirements—States are ensured the right and authority to regulate attendance requirements at public schools without interference from the federal government. (Section 302)
25. Sex-intermingling—Local schools are given back the authority over sex-intermingling in sports and other school activities. (Section 302)
26. National Labor Relations Board Jurisdiction—Private schools are exempted from National Labor Relations Board jurisdiction. (Section 302)
27. Block Grants—Most titles of the Elementary and Secondary Education Act are repealed and replaced with block grants of money to states as they deem necessary. (Section 303)
28. Release Time for Parenthood Education—If schools *require* a course on parenting, parents may arrange for their children to be taught the course by a church or by the parents on a release time basis. (Section 304)
29. Legal Services: Busing—Prohibits any funds under the Legal Services Corporation from being used in litigation involving busing solely for the achievement of racial quotas or for desegregation purposes. (Section 305)

Comment: As previously noted, provisions in the education section provide opportunities to defend a right that is widely acknowledged in theory but often ignored or vio-

lated in practice: the primary right of parents to direct the education of their children.

For example, Provision 28 states that if schools require a course in parenting, parents may arrange for their children to be taught the course by a church or by the parents on a release time basis. As many parents are well aware, policy-makers in public schools have frequently elected to depart from basic education and have injected value-laden, ideologically-biased courses such as "parenting," which by definition center directly on personal, family and religious values. Frequently, such courses are installed without authentic consultation with the community or extensive reflection on what the purpose of the course is or what it is designed to accomplish.

Provision 22, which prohibits federal funds from being used to promote educational material that denigrates the role of women as it has been historically understood (Section 304) has predictably provoked charges that the measure is a "sexist" attempt to mandate that women may only be portrayed in traditional roles in textbooks. The *Detroit Free Press* editorialized that the Family Protection Act would "cut off federal funds to schools using books that offend parents, especially books that 'denigrate the role of women as it has been historically understood'." The editorial questions whether this provision means that references to such women as "Marie Curie, co-discoverer of polonium and radium would be deleted from texts."

It would be interesting to know what the *Detroit Free Press* would say about the fact that over the past decade, through such programs as the Women's Educational Equity Act and "sex desegregation assistance centers," federal funds have been used to promote educational materials that present the radical feminist view as the only correct view on women's roles.

This view embodies the propositions that (1) there are no sex-related distinctions between men and women that can be legitimately recognized, historically or any other way (except that biology does determine that women can give birth to children while men can not); and (2) any recognition of distinctions, historical or otherwise, constitutes discriminatory barriers to achievement by women as individuals.

The phrase "role of women as it has been historically understood" as used in the bill means that our society has always understood women in the sociological and historical sense, as having a role which is naturally and organically connected to the family, its purposes and functions.

Moreover, it is clear that society has always recognized the achievements of individual women in such roles as rulers, artists, authors, nurses, doctors and scientists. These accomplishments and many others are understood as having been made by individual women and have been so treated in any serious textbook.

Most people have no difficulty distinguishing between an understanding in the sociological or historical sense of the natural connection between women and their roles in the family and women living out their lives as individuals in whatever form or manner they might choose. What is at issue is whether that historical understanding of the connection between women and the family as natural is really a means by which society and men in particular have oppressed women and kept them in positions of inferiority.

The larger question is, of course, whether it is the proper function of the federal government to finance educational materials that promote anyone's opinion of what women's roles were, are or should be. But the question at hand is, if such programs continue to be funded, can they legitimately continue to promulgate as definitive the radical women's liberation viewpoint which holds that the historical connection between women and the family is obsolete and a tool used by men to oppress women?

A lengthy analysis of this one provision is necessary if only because it is one of the provisions that have been blown out of proportion in the bill and derided as an absolutely "crazy" and "sexist" provision that will require the federal government to sanction only textbooks that treat women in traditional roles.

Like other provisions touching on controversial areas, it really is addressing in another way the crucial policy questions which the landslide election of November has reopened: what are the proper functions of the federal government? Is there popular support for federally-funded programs intended to effect attitudinal and programmatic social change in family-related areas?

The question is all too relevant since very recently, in the reconciliation measure—despite the recommendations of the Office of Management and Budget, a very tight budget, and the repeated concern expressed by the liberals about maintaining a safety net for the poor—the Women's Educational Equity Act was extended as a categorical program with a $8 million authorization.

Title IV: *Voluntary Prayer*

Section 401. The Voluntary Prayer and Religious Act of 1981. This section is designed to reverse the last nineteen years of Supreme Court decisions and subsequent case law regarding the constitutionality of state-sponsored religious exercise in the public schools.

The fact sheet from Senator Jepsen's office states:

> The First Amendment states that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof;
>
> The Supreme Court has prohibited state involvement in school prayer or other religious activity strictly on the establishment clause.
>
> The "Exercise Clause" has taken a secondary role to the "establishment clause" in determining the constitutionality of state-sponsored religion. At best, the "Free Exercise Clause" should be given equal balance and authority with the establishment clause.
>
> A strong case must be made for the free exercise of religious expression whether public or private. Such expression is a fundamental freedom which should not be benignly denied in order to protect other freedoms equally fundamental.

This section directly confronts the religious freedom and establishment clauses through congressional statutory law. The section provides that parents or guardians representing a student who is being denied the opportunity (right) to

participate in religious exercises would have standing to bring a civil action in federal or state district court.

Comment: A recent fundraising letter of the American Civil Liberties Union charged that the Family Protection Act would "restore prayer in the public schools." This is one example of the distortions of the actual provisions of the Act that are occurring. What the Family Protection Act actually provides is that individuals who wish to claim that their right to the free exercise of religion under that clause of the Constitution has been abridged have a legitimate place in the courts to commence litigation.

Title V: *Rights of Religious Institutions and Educational Affiliates*

Section 401 would bar the federal government from imposing "any legal obligation or condition" with respect to curriculum, religious activities, licensure, conditions of employment, and operating procedures on a variety of social service organizations, if the organizations are "directly or indirectly operated by a church or religious organization." Types of organizations and programs covered by this exemption from federal regulation would be church-operated child care centers, orphanages, foster homes, social action training programs, emergency shelters for abused children or spouses, schools, juvenile delinquency or drug abuse treatment centers of homes, and similar programs. This section would permit reasonable health and fire regulations.

Section 401(b)(1) is designed to ensure that religious organizations (under the section) whether directly or indirectly affiliated with a church, are not exempt from the provisions of the Civil Rights Act of 1964 with respect to race, creed, color, or national origin. And 501(b)(2) provides that these church or religious organizations are exempt from any rules or regulations relating to affirmative action, quotas, guidelines, or actions designed to overcome racial imbalance.

Comment: The previously mentioned ACLU fundraising letter interprets this section to mean that "efforts to end tax subsidies of segregationist academies would be stopped." Yet the American consensus, forged at a very high price over the past two decades, strongly affirms equality of treatment under the law for all persons regardless of race, creed, color or national origin. Just as there is a small minority of people who continue to view others as inferior because of their race, there is a small minority that wishes to stand this unjust proposition on its head with a coercive federal apparatus to enforce affirmative action.

Title VI contains miscellaneous provisions relating to jurisdiction for causes of action, limitations on actions, provisions for violation reports to Congress and effect on other laws.

Additional Information on the Family Protection Act

- On June 17, 1981, the bill was referred to the Senate Committee on Finance. On June 23, the Committee requested executive comment from OMB and the Treasury Department.
- Senator Jepsen's office reports that a number of provisions of the Family Protection Act have been referred to Senate committees as private bills.

S. 1577—A bill to secure the right of individuals to the free exercise of religion guaranteed by the first amendment of the Constitution. Referred to Judiciary. (FPA Sec. 501)

S. 1578—A bill to restrict the federal government from preempting or interfering with State statutes pertaining to spousal abuse. Referred to Finance. (FPA Sec. 105)

S. 1579—A bill to amend the Internal Revenue Code of 1954 to allow corporations to deduct all contributions made to a joint employee-employer day care facility. Referred to Finance. (FPA Sec. 206)

S. 1580—A bill to amend the IRC of 1954 to provide a personal exemption for childbirth or adoption and to permit the taxpayer to choose a deduction or a tax credit for adoption expenses. Referred to Finance. (FPA Sec. 207)

S. 1581—A bill to amend the IRC of 1954 to allow the taxpayer the choice of a tax credit or a deduction for each household which includes a dependent person who is at least 65 years old. Referred to Finance. (FPA Sec. 203)

S. 1582—A bill to amend the IRC of 1954 to exempt from taxation certain trusts established for the benefit of parents or handicapped relatives, and to provide a deduction for contribution to such trusts. Referred to Finance. (FPA Sec. 204)

S. 1583—A bill to amend the IRC of 1954 to provide a deduction for contributions made by a taxpayer to an individual retirement plan for the benefit of a nonsalaried spouse. Referred to Finance. (FPA Sec. 205)

- Hearings on the tax provisions of the Family Protection Act will be held by the Senate Finance Committee during the fall of 1981.
- A revised version of the adoption provision in the Family Protection Act recently was enacted in the Economic Recovery Tax Act of 1981.

The bill has also been referred to various related House committees. However, in view of the likely hostility from the liberal Democratic leadership there, the bill's supporters are looking to passage of provisions of the bill as they relate to other measures moving through the House and Senate.

Moreover, there is a feeling that in view of the media hostility, strong grassroots support is necessary for provisions of the Family Protection Act to achieve final passage in both houses of Congress.

For additional information on the Family Protection Act, contact Senator Roger Jepsen, U.S. Senate, Washington, D.C. 20510.

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Continued on following page

A new pro-family group really belongs on the left

By Michael P. Lerner

GREG CALVERT MISUNderstands the major points made by those who are attempting to take the issue of the family out of the hands of the right.

The growth of support for the right among working people is in part the result of its recognition of the crisis in family life and of people's desire for safety and stability in their lives. But while the right is correct in identifying a major source of people's anxieties and fears, it is dead wrong in its analysis and proposed solutions.

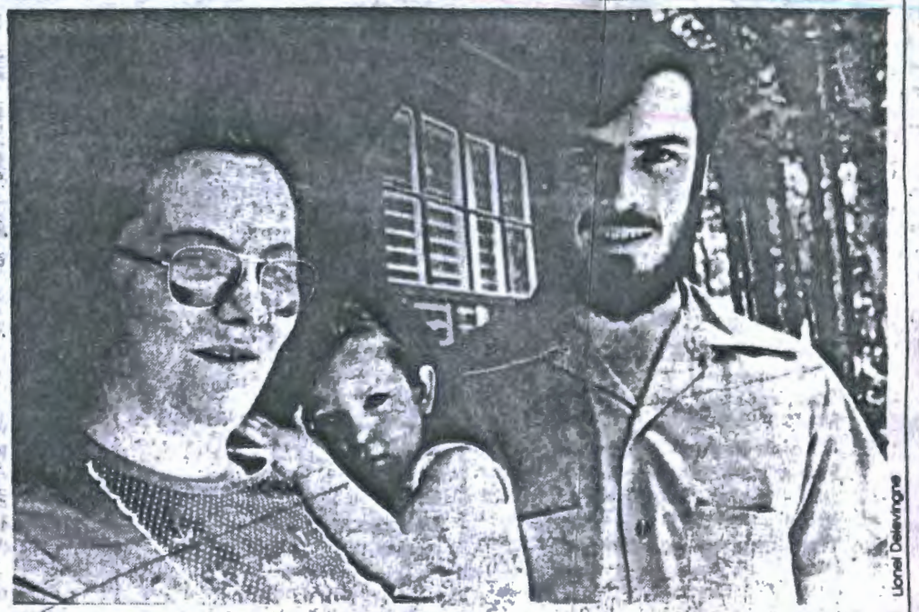
The family's crisis is a function of a society that has not assimilated feminist values.

The right blames the problems on gays, the women's movement and "government interference" and calls for a return to a traditional male-dominated family. People listen to these solutions because of the pain they feel about family life, and because the right is the only force that speaks to the problem.

Family life is indeed in crisis, and the difficulties in building long-term relationships are increasing. But this is a function of the organization of corporate capitalist society that has not assimilated feminist values. In fact, the social order that the right is committed to defending is the source of the problem.

A real pro-family coalition, with a strategy for reclaiming family support, belongs on the left. I propose three parts for a left campaign:

1) A coalition to defeat the Family Protection Act, and to put forward in its place a Family Bill of Rights. The Family Protection Act is a motley assortment of New Right programs aimed at stabilizing an oppressive family system. Our response must be the creation of a national Bill of Rights for families that would give real support for families in all their varieties (including gay families, single parent families, extended families). Some of the tenets of a Bill of Rights for Families: Full employment, adequate health care, free community controlled child care, extended maternity and paternity leaves, safety and health committees at the workplace with power to enforce changes in working conditions to make them less stressful (which stress is typically brought home and causes much of the tensions in family life), a 35-hour workweek with no loss of pay and full equality for women.



Lionel Delevingne

2) A National Family Day—a series of community celebrations of support for those who are engaged in building families of every sort. Family Day is a way to capture public attention, to put forward our Family Bill of Rights and to promote the message that the real way to strengthen families is to build a community of support for them. Community is the key to family life, but it has been undermined by corporate capitalist society.

Family Day acknowledges that everyone faces problems in family life. Unfortunately, most people internalize these problems and blame themselves for their personal difficulties and tensions. This feeling immobilizes people, makes them feel powerless and opens them to false solutions promoted by the right. Our message is that many of these problems have been caused by a society that constantly encourages us to be distrustful of each other, and that inflicts daily oppression at work and demeaning oppression of women.

3) Family support networks can be a forum for taking the messages of feminism to the sectors of the population who have not yet been reached. In these groups, we can begin to stimulate re-understanding of our personal lives in social terms. Of course, to get these to be used by sectors of the population who normally would think of any discussion of their personal lives with others as a potential indication that they are identifying themselves as "sick" or "crazy" we need to legitimize this activity. Family Day can begin to do that, but ultimately participation of the trade unions and the churches in building a national pro-family coalition will be required.

Continued on following page

Lerner

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Hard-core New Rightists have visions of a patriarchal family when they talk of "defense of the family," but most people who respond to them have something different in mind. The word "family" is a code word for most people that conjures up images of long-lasting intimate relationships, and the place in which one generation nurtures the next. Even when our actual experience does not correspond to our expectations, most people do not reject the ideal of family life, but are upset that the ideal has not been realized. We can help people understand what stands in the way of that realization—but not if we appear to be rejecting the deepest hopes and desires of the people by suggesting that "family" is reactionary.

To support family life in this way is not to idealize the family. Our message is that what people really want in family life—long-term committed, loving relationships—can be realized only through a transformation of this society along socialist and feminist lines. In that, we acknowledge the pains that people experience in family life, while also acknowledging that "family" is the only institution that provides caring and love for its members. This ideal provides the basis for the critique of patriarchal families and capitalist social relations.

One of the main impediments to building stable long-term relationships today is the continued oppression of women, both in the marketplace and in family relationships. These inequalities are destabilizing and lead to the tensions in family life. We support women leaving oppressive relationships and see the development of communities of support for single people as a crucial part of the process by which we build a society that can give meaningful support to family life. Only when families are built on free choice, not on coercion of any sort, can they provide the basis for long-lasting loving relationships.

The pro-family approach outlined here can get people to listen to a socialist and a feminist analysis. It is also the best and most effective way to defend the women's movement and the gay movement from attack. And it is the most likely way that leftists in the labor movement, women's movement, civil rights movement and environmental movement could move off the defensive in the period ahead.

Our demand is: Create a society that is safe for love and intimacy. This is the kind of pro-family program that offers a possibility for rejuvenation of liberal and left forces in 1982. Without this, there will be no stopping the right in the next three years. ■

Michael P. Lerner heads the Institute for Labor and Mental Health in Oakland, Calif.

A national conference to develop the Family Bill of Rights and form this coalition will be held in January 1982. For details, write to: Friends of the Family, 3137 Telegraph Ave., Oakland, CA 94609.

A "defense from attack" or a "reaction of fear in the face of change"?

Calvert

Continued from preceding page

Among the gay men and lesbians we studied, relationships often resembled best friendships."

In rushing to the "defense of the family" we are falling prey to the same kind of fear that is manipulated by the New Right for its reactionary political purposes. As socialists, we ought to be the first to point out that all the talk about defending the family is a reaction of fear in the face of change. The deep changes taking place in the structure of human Mama's apron strings and Daddy's lunch pail.

Of course the changes are scary. Change always produces anxiety. But if we want to be part of a liberating future, we must have the courage to grasp the creative potential in the process of which we are a part. The impulse to romanticize the past in the face of changing social structures is a reactionary impulse. The "good old days" are never more than the same old pile of political horseshit served up by the same "good old boys" down at the county courthouse every time the job of re-electing the incumbent sheriff comes around. ■

Greg Calvert is a gay activist and writer who served as National Secretary of Stu

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Senate

SUMMARY OF PROVISIONS CONTAINED IN THE FAMILY PROTECTION ACT OF 1981

RIGHTS OF PARENTS

Section 101. This section would amend Chapter 111 of Title 28 of the U.S. Code (28 U.S.C. 1651 *et seq.*) by adding at the end thereof a provision providing for a "legal presumption in favor of an expansive interpretation" of the parent's role "in supervising and determining the religious or moral formation of his child" in federal cases involving that role.

Although the legal presumption that would be stated by this section is not now codified in federal statutes, it would appear to conform to existing case law determinations regarding the parent's role in the religious and moral formation of his child as protected by the free exercise and due process clauses of the Constitution. In *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534–35 (1925), the Supreme Court struck down a State statute requiring parents to send their children to public, but not private, school, stating:

. . . we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with high duty, to recognize and prepare him for additional obligations.

In *Wisconsin* v. *Yoder*, *supra*, the Court upheld the right of Amish parents to withdraw their children from public school after the eighth grade, stating:

. . . this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. . . . The duty to prepare the child for "additional obligations," referred to by the Court (in *Pierce*), must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship. . . . However read, the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. 406 U.S. at 3232–233.

More recently, in *Parham* v. *J.R.*, 442 U.S. 584, 602–03 (1979) the Court reaffirmed this presumption in rejecting the argument that a parent's decision to commit his child to a mental institution must be reviewed by the government in a formal, adversary pre-admission hearing:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course . . . The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.

See also *H. L.* v. *Matheson*, —— U.S. ——, 49 USLW 4255 (1981); *Quilloin* v. *Walcott*, 434 U.S. 246 (1978); *Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Ginsberg* v. *New York*, 390 U.S. 629 (1968).

This expansive view of parental authority over children is not without limit, of course. The Court has affirmed the right of government to intervene in instances in which parents' decisions threaten significant harm to the health or safety of the child or create a social burden. See, *e.g.*, *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976); *Parham* v. *J. R.*, *supra*; *Application of President and Directors of Georgetown College, Inc.* 118 U.S. App. D.C. 80, 331 F. 2d 1000, *cert. den.* 377 U.S. 978 (1964). But absent proof of such significant threats to the child or society, the presumption is in favor of parental authority.

It is my opinion that this section is consistent with existing interpretations of that presumption, and thus would not alter existing law, but simply seek to codify existing case law which presumptively favors parental rights.

This section would appear to be within Congress' power, and therefore, poses no apparent constitutional implication.

PARENTAL NOTIFICATION

Section 102(a). This section would provide that no program may receive federal funds unless, prior to providing a contraceptive device, abortion, counseling, or an abortion to an unmarried minor, the agency notifies the minor's parents or guardian.

Federal law does not now require parental notification as a condition of federal funding of programs relating to family planning. For instance, family planning services specifically targeted to adolescents are funded through discretionary grants awarded by the Office of Adolescent Pregnancy Programs, authorized under titles VI of P.L. 95–626. The law requires that a grantee's family planning services be limited to counseling and referral unless other services are not available in the community. The grantee is required to inform any pregnant adolescent of the availability of counseling on all options regarding her pregnancy, which appears to include abortion counseling. However, the law specifically prohibits expenditure of any funds under the Act for the performance of an abortion. The law presently mandates grantees to "encourage" uneman-

cipated minors receiving services to consult with their parents, but grantees are not required to make any services contingent on parental notification. Therefore, this section would mandate any services be contingent on parental notification.

Family planning services are also funded under title XIX of the Social Security Act (the Medicaid program), under title XX of the Social Security Act (social services), under title III-D of the Public Health Service Act (primary health care), and under title X of the Public Health Service Act (family planning). None of these programs requires parental notification, as follows:

"Title XIX of the Social Security Act specifically requires States to offer family planning services and supplies, including services and supplies to minors, in order to qualify for matching funds under the Medicaid program. There is no parental notification requirement. The law is silent on whether family planning services include abortion counseling or the provision of abortions.

"Under title XX of the Social Security Act, States are authorized to use their matched federal funds to offer family planning services, including medical care related to family planning, to anyone. There is no parental notification requirement. The law is silent on whether family planning services include abortion counseling or abortion, but, instead, appears to leave the matter to the States' discretion.

"Subpart I of title III-D of the Public Health Service Act authorizes grants to community hospitals (section 328), migrant health centers (section 329), and community health centers (section 330) for the provision of medical services including primary health services. Primary health services are defined to include family planning services, which, in turn, are left undefined. There are no provisions relating to family planning services specifically for minors, and no parental notification requirement.

"Title X of the Public Health Service Act authorizes direct grants and contracts to public and private nonprofit agencies (section 1001), formula grants to States (section 1002), and training grants to organizations and individuals (section 1003) to establish and operate family planning projects. Section 1001 specifically mentions family planning services for adolescents, and the other two sections do not exclude adolescents. There is no parental notification requirement in any of the three sections. Section 1008 of this title specifies that no funds may be used in programs where abortion is a form of family planning."

In addition to the above funded programs, title IV-A of the Social Security Act (Aid to Families with Dependent Children—AFDC) requires (but does not fund States to ensure that family planning services are available to AFDC recipients, including sexually active minors). There is no parental notification requirement.

Section 102 (b). This section would amend part C of the General Education Provisions Act (20 U.S.C. 1232 *et seq.*) by adding a new section stipulating that no programs under the Act may receive federal funds unless, prior to providing a contraceptive device, abortion counseling, or an abortion to an unmarried minor, the minor's parents or guardian have been notified.

JUVENILE DELINQUENCY

Section 103. This section would amend the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5601 *et seq.*) by adding a new section. Subsection (a) of the new section would stipulate that no federal program, directive, guideline, or grant may be construed to override any existing State law relating to juvenile delinquency. Subsection (b) of the new section states that nothing in this new section should be construed to permit a State to fail to participate or cooperate in any program for the return on runaway youths, whether by interstate compact or otherwise.

The Juvenile Justice and Delinquency Prevention Act currently contains no provisions comparable to those in section 103.

CHILD ABUSE

Section 104.

Section 104(a) would provide that no federal program, directive, guideline, or grant be construed to override any existing State law relating to child abuse. Section 104(b) would provide that no federal funds for any program related to child abuse may be spent in any State unless that State's legislature specifically authorizes such a program. Section 104(c) would, for the purposes of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5010 *et seq.*), qualify the definition of "child abuse" to exclude discipline or corporal punishment by a parent or any persons designated by a parent.

There is no comparable provision to section 104(a) in current federal law, although federal law does not now appear to override State laws relating to child abuse. Section 104(b) adds a new condition to State programs on child abuse which seek federal funding under either the Child Abuse Prevention and Treatment Act of titles IV or XX of the Social Security Act, namely, that such program be "specifically authorized and established" by their State legislature(s). It would also bar direct grants from the federal government to child abuse programs that are privately operated in any State, (as is now possible under the Child Abuse Prevention and Treatment Act), and require that such grants be limited to, or channeled through, State programs that have been specifically authorized by the State legislature(s).

Section 104(c) takes the entire existing definition of "child abuse" in the Child Abuse Prevention and Treatment Act and adds a qualifying phrase at the end that would exclude from the definition corporal punishment administered by a parent or an agent of the parent. This latter change would not materially alter eisting law: in virtually every State, reasonable corporal punishment administered by a parent or a person standing *in loco parentis* is privileged. See *Baker* v. *Owen*, 423 U.S. 907, *aff'g* 395 F. Supp. 294 (M.D. N.C., 1975); *Ingraham* v. *Wright*, 430 U.S. 651 (1977).

SPOUSE ABUSE

Section 105. This section would provide that no federal program, directive, guideline, or grant shall be construed to override any existing State law "relating to spousal abuse or domestic relations."

There is no comparable provision to section 105 in current federal law.

LEGAL ASSISTANCE RESTRICTIONS

Section 103. This section would impose restrictions on the kinds of legal representation that could be offered by legal aid programs funded by the Legal Services Corporation (LSC). The section would amend section 1007(b) of the Legal Services Corporation Act (42 U.S.C. 1996f(b)) to bar funding under that Act to entities which provide legal assistance:

"(1) which seeks to procure an abortion or to compel any individual or institution to perform an abortion or assist in the performance of an abortion, or provide facilities for the performance of an abortion, or to compel State or federal government funding for an abortion, or

"(2) in any case relating to a divorce, and

"(3) in any case seeking to adjudicate the issue of gay rights."

The restriction with respect to abortions is broader than existing law: Existing law bars such representation where the performance of the abortion or provision of facilities is "contrary to the religious beliefs or moral convictions of such individual or institution". Thas section would eliminate that proviso, and would further extend the bar on representation to include suits which seek "to compel State or federal government funding for an abortion." See 42 U.S.C. 2996f(b)(8).

The restriction with respect to divorce and gay rights would be new.

Finally, it should be noted that existing law imposes restrictions only on the use of federal funds made available through the Legal Services Corporation. This new section would place these restrictions on *all* activities of LSC grantees, whether paid for out of LSC funds or not.

ARMED FORCES DEPENDENTS' ASSISTANCE ALLOTMENTS

Section 107. This section would provide for the mandatory direct payment of an amount equal to a military member's basic allowance for quarters (BAQ) to the member's dependents, when those dependents are living separate from the member. The allotment would be deducted from the pay and allowances received by the member.

Subsection (a) of section 107 would add a new section 708 to chapter 13 of title 37, U.S. Code, Pay and Allowances of the Uniformed Services, entitled "Allotment for dependents of members of the armed forces." "Armed forces" are defined in 37 USC 101 as meaning the Army, Navy, Marine Corps, Air Force, and Coast Guard.

Subsection 708(a)(1) provides that subject to such regulations as may be prescribed by the Secretary of Defense, the Secretary concerned (defined in 37 USC 101 as the secretaries of the military departments or the Secretary of Transportation, in the case of the Coast Guard when it is not operating as part of the Navy) shall pay a monthly dependents' assistance allotment to the dependents of any member of the armed forces when such dependents are living separate from the member. All officers (commissioned and warrant) and enlisted personnel of all grades are included. The amount paid to the dependents of a member shall be deducted from the pay and allowances received directly by the member.

Subsection 708(a)(2) specifies that the amount of dependents' assistance allotment to be paid shall be equal to the BAQ to which the member is entitled. A member may, however, increase the amount of allotment to be paid to his dependents by requesting the Secretary concerned, in writing, to deduct an additional amount from the member's pay and allowances to be sent to the member's dependents. Such an additional allotment may be in any multiple of $10.00.

Subsection 708(c) defines the term "dependent," with respect to a member of the armed forces, as meaning (1) a member's spouse; and (2) a member's unmarried child (including the following categories of children if they are dependent on a member: a stepchild, an adopted child; and illegitimate child whose alleged father—if a member of the armed forces—has been judicially decreed to be the childs father or ordered to contribute to the child's support, or whose parentage has been admitted in writing by the military member. Such unmarried children must be either under 21 years of age or both (a) incapable of self-support because of mental or physical incapacity, and (b) in fact dependent on the military member for over one half of their support.) The relationship between a stepparent and a stepchild is deemed to be terminated—for purposes of eligibility for dependents' assistance allotments—if the stepparent is divorced from the parent by blood.

Subsection (b) of the proposed section 107 of the Family Protection Act would amend the table of sections of chapter 13 of title 37, U.S. Code, to add at the end a reference to the new section 708 of title 37.

Comparison with current law

Current law provides for no mandatory allotments of any portion of a military member's pay to his dependents when he is separated from them.[1]

No such allotments have ever been required for either commissioned or warrent officers. However, from 1950 through 1973 certain enlisted personnel were required to establish an allotment payable directly to their dependents in order to qualify for basic allowance for quarters (BAQ) rates specified for persons with dependents.

The Dependents' Assistance Act of 1950 (ch. 622, 64 Stat. 794; Act of September 8, 1950), required that all enlisted personnel make allotments such as those described to be eligible for BAQ as "with dependents" rates. It further authorized (in section 8 of the Act) that the Secretary concerned could, without the consent of an enlisted member, direct that a payment of BAQ with dependents be made, and the requisite allotment to a member's dependents be established, if the enlisted member had dependents and did not voluntarily make an allotment and thereby qualify for BAQ with dependents.

The Act of July 10, 1962 (76 Stat. 152) modified the system, in effect leaving the mandatory allotment requirement only for junior enlisted personnel (grades E–1 through E–3 and grade E–4 with less than four years of service). Rather than extending the allotment requirement (it had always been a temporary provision requiring extension every few years since its enactment in 1950) it was allowed to expire as of July 1, 1973. Since then, there has been no requirement of any sort for military personnel to directly allot any of their pay to their dependents.

[1] A family separation allowance is authorized by 37 USC 427 to equitably reimburse members of the uniformed services involuntarily separated from their dependents for the average extra expenses that result from the separation, and to reimburse members who must maintain a home in the United States for their dependents and another home overseas for themselves for the average expenses of maintaining the overseas home. The family separation allowance, however, is payable in addition to any other allowance or per diem to which the member may be entitled. It is not deducted from the member's pay and allowances and allotted directly to dependents.

There are several major differences between the old Dependents' Assistance Act (DAA) allotments and those which would be required by section 107 of the Family Protection Act:

"The DAA applied only to enlisted personnel and after 1962 only to junior enlisted personnel. Section 107 would apply to commissioned and warrant officers in all grades as well as all enlisted personnel.

"The DAA allotment procedure required the member to allot not only his monthly BAQ, but an additional amount deducted from his basic pay, to his dependents. The proposed statute requires only an amount equal to the BAQ to be allotted (although the member may voluntarily allot more).

"Under DAA, a direct allotment to dependents was made regardless of whether or not the member and his dependents were living separately. Section 107 would require such an allotment only if the member was living separate from his dependents.

"The DAA included dependent parents in its definition of dependents coming under its purview. Section 107 would apply only to spouses and unmarried children."

FEDERAL FUNDS FOR HOMOSEXUAL ADVOCACY

Sec. 108. This section would bar any federal funds from being made available to any individual or organization for the purpose of "advocating, promoting, or suggesting homosexuality, male or female, as a life style."

Changes from existing law

This condition on federal funding does not now exist in this form in federal law but would not appear to alter the existing situation. In 1981 Congress added to the continuing resolution for the fiscal 1981 appropriations for the Legal Services Corporation a prohibition on the use of federal funds "to provide legal assistance for any litigation which seeks to adjudicate the legality of homosexuality." P.L. 96-536 (Dec. 16, 1980) (incorporating by reference the restrictions contained in H.R. 7584 as enacted prior to its veto by the President). This section would not affect that prohibition. In addition, it might be noted that existing law does not appear to provide funds for the purpose of promoting homosexuality. Thus, this section would not appear to materially affect existing grant programs.

The section nevertheless is designed to codify into statutory law a prohibition of any federal funds which are used solely for the purpose of "advocating, promoting, or suggesting homosexuality, male or female, as a life style."

It is not the intention of this section to prohibit or deny social security benefits, welfare, veterans benefits, student assistance or other federal assistance to any individual who may suggest or intimate homosexuality as a life style.

TITLE II—TAXATION

Section 201.

Section 201 adds two new sections to the Internal Revenue Code to provide for education savings accounts which are similar in theory to individual retirement accounts which exist in present law for retirement savings.

Proposed new section 221 would allow individuals a deduction for contributions of cash or readily tradeable stocks, bonds, or other securities to an education savings account for an eligible individual. Each education savings account could only be established for one individual and an individual could not be the beneficiary of more than one account. (Proposed Code sections 221(a) and 221(b)(1) and (2)).

There would be a $2,500 limit on the amount which could be contributed to each account each year, but beginning in 1983 that amount would be adjusted annually for inflation. The Secretary of Treasury would determine and publish by October 1 of each year the inflation adjustment factor for the preceding 12-month period ending on July 31. The inflation adjustment factor would be determined by dividing the Consumer Price Index for all items—United States city average for the most 12-month period ending on July 31 by the same index for the 12-month period ending on July 31, 1980. This result would be multiplied by $2,500 to determine the inflation-adjusted amount. (Proposed Code section 221(b)(3), (5)).

If more than one person contributed to the same account during the year, the $2,500 or the inflation-adjusted amount deduction would be allocated proportionately among all individuals contributing to the account. (Proposed Code section 221(b)(4)).

Providing that the eligible individual was under age 21 during the year the contribution was made and was not enrolled as a full-time student at an eligible institution for more than four weeks during a calendar year, an education savings account could be set up for the taxpayer, a child or stepchild of the taxpayer, or any of the following relatives of the taxpayer: grandchildren or their descendants, brothers, sisters, stepbrothers, stepsisters, fathers, mothers, grandparents, nieces, nephews, aunts, uncles, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law. (Proposed Code section 221(c)(1)). This definition prohibits contributions to an education savings account once the beneficiary enters an eligible institution. Since a private elementary school can be an eligible institution, this provision may not facilitate saving for secondary or higher education.

An education savings account would be a United States trust for the purpose of paying the eligible expenses of an eligible individual. (Proposed Code section 221(c)(2)). Custodial accounts where the assets were held by a bank or other person satisfactory to the Secretary of the Treasury could constitute education savings accounts if they would qualify as education savings accounts but for the fact that they were not trusts. The custodian would be treated as trustee. (Proposed Code section 221(h)).

The governing instrument of the trust or custodianship would have to meet these requirements:

(1) Contributions could not be accepted unless they were in cash, stocks, bonds, or other readily tradeable securities.

(2) Contributions could not exceed $2,500 per year.

(3) The trustee would have to be a bank or another person acceptable to the Secretary of the Treasury.

(4) The trust assets could not be invested in life insurance contracts unless the trust was the beneficiary of the contracts and the insured is the grantor of the trust. The face amount of the contracts must not exceed an amount equal to $2,500 times the potential life of the trust i.e. (the number of years from the establishment of the trust until the beneficiary of the trust reaches age 25).

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of the individual(s) contributing to the account, but if more than one individual has made contributions to the account, the consent of all the contributing individuals would be required.

(6) The assets of the trust would not be commingled with other property except in a common trust fund or common investment fund.

(7) The assets in the trust on the date that the beneficiary attains age 26 are required to be distributed to each of the trust's contributors in the proportion to their contributions to the trust. (Proposed Code section 221(c)(2)).

Contributions to the trust would be deemed made during the preceding calendar year if the contribution is made on account of that calendar year and is made by the time prescribed by law for filing the return for the taxable year which covers December 31, of the preceding year. (Proposed Code section 221(c)(3)).

Contributions of stocks, bonds, and the like will be valued at market value on the date of contribution or the last preceding day on which they could have been traded on an established securities market. (Proposed Code section 221(c)(4)).

Eligible expenses would mean tuition and fees required for enrollment and attendance of a student at an eligible educational institution, fees, books, supplies, and equipment required for courses, and reasonable allowance for meals and lodging and any income due because the beneficiary must include the distributions in his or her income.

Eligible educational institutions would include an institution of higher education, a vocational school, a secondary school, or an elementary school. Institution of higher education means institutions described in section 1201(a) or 491(b) of the Higher Education Act of 1965. (See 20 U.S.C. §§ 1141 and 1088). According to those sections an institution of higher education is one which has high school graduates or holders of an equivalency certificate as regular students, which is legally authorized to provide a postsecondary school education, which provides a program of education leading to a bachelor's degree or provides at least a two-year program which is acceptable for full credit to a bachelor's degree, which is a public or nonprofit institution, and is accredited or, if not accredited, meets certain alternative criteria. Schools of nursing, post secondary vocational institutions, and certain other proprietary institutions of higher education are also included in this definition. (Proposed Code section 221(c) (6) and (7)).

A vocational school would mean an area vocational education school, as defined in section 195(2) of the Vocational Education Act of 1963, which is in any State. (See 20 U.S.C. §§ 2461(2) and (8)). The term area vocational educational school is defined in that act to mean a specialized high school, the department of a high school, a technical or vocational school, or the department or division of a junior college, community college or university used exclusively or principally to provide vocational education to persons who are available for study in preparation for entering the labor market. Some of those types of schools have to meet additional requirements. A State is defined to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (Proposed Code section 221(c)(8)).

Elementary school would mean a privately operated, not-for-profit, day or residential school which provides elementary education. Secondary school would mean a privately operated, not-for-profit, day or residential school which provides education that does not exceed grade 12. Both elementary and secondary schools would be required to be exempt from Federal income taxes under Code section 501(a) and (c)(3) and they could not exclude persons from admission to, or participation in, the school on account of race, color, or national or ethnic origin. Facilities which offer education for individuals who are physically or mentally handicapped as a substitute for regular public elementary or secondary education are included within the definitions of elementary and secondary schools; however, the handicapped facilities do not have to be privately operated. (Proposed Code section 221(c)(9)).

Proposed section 221(d) outlines the tax treatment of distributions from the education savings account. First, the general rule is that unless the distribution is used exclusively to pay the education expenses incurred by the beneficiary of the account, any distribution from the account will be included in the gross income of the contributors to the account in the same proportion as the amounts which they have contributed to the account over the years.

Second, distributions which are the result of corrections of excess contributions do not fall within the general rule, providing the correction is made within the time for filing the return for the year involved, that no deduction was taken for the excess contribution, and that any interest or dividends attributable to the excess contribution is also returned. The person to whom the excess contribution is returned must report the income earned on the excess contribution.

Third, the beneficiary of the savings account may elect to be taxed on distributions from the savings account which are spent on eligible expenses. First, he or she may elect to include the distribution of the gross income in the years the distributions are made. Second, he or she may elect to defer the taxes until the taxable year in which the individual turns age 25. In that year, and for the nine succeeding taxable years, the beneficiary will include in his or her gross income 10 percent of the amounts paid or distributed from the account which are used to pay that individual's educational expenses.

If a distribution from the account is not used for educational expenses of the beneficiary, the contributors to the account will be taxed on the amount not used properly plus an additional 10 percent of the deemed distribution. (Proposed Code section 221(f)(1)).

Although paragraph (f)(2) is entitled "Disqualification cases," the proposed statutory language states that if an amount is includable in the gross income of an individual under subsection (d), his tax shall be increased by an amount equal to 10 percent of the amount required to be included in his gross income. There is no reference to disqualification in the statutory language. Subsection (d) covers the tax treatment of almost all distributions. If paragraph (f)(2) is intended to describe a penalty provision, the reference to susbection (d) is too broad. If disqualification because of prohibited transactions is the object of the penalty, paragrarph (e)(2) might be referenced. If distribution of unused funds under paragraph (d)(1) is intended to be penalized, that paragraph should be mentioned.

Proposed Code section 221(e) outlines the tax treatment of the education savings accounts. Basically they would be exempt from taxation, but they would be subject to the unrelated business income taxes imposed by Code section 511. The tax exemption could be lost, however, if a contributor to the account engages in a transaction prohibited by Code section 4975. The account would retroactively lose its exemption as of the first of the year in which the prohibited transaction occurred. This would mean that the assets of the account would be treated as if they had been distributed to the contributors as of the first day of the year.

Prohibited transactions would include such transactions between the account and contributors as selling or leasing any property to each other; lending money to each other; furnishing goods, services or facilities to each other; dealing with the account assets as if they belonged to the contributor; or receiving kickbacks because of transactions involving the account.

If the beneficiary of the account were to pledge the account as security for a loan, the portion of the account which is pledged would be treated as if it had been distributed to the beneficiary. (Proposed Code section 221(e)).

There is no penalty for distributions made to the taxpayer after the taxpayer becomes disabled, even if the distribution is not used to pay educational expenses. (Proposed Code section 221(f)(3)).

Community property laws would not apply to this section.

Proposed Code subsection 221(i) requires the trustee of an education savings account to file reports with the Treasury and with the beneficiary of the account. The actual requirements would be established by regulations.

Bill section 201(b) would amend paragraph 10 of Code section 62 (which defines adjusted gross income) to provide that the deduction allowed by proposed Code section 221 would be used in arriving at adjusted gross income. In other words, taxpayers would be entitled to deduct contributions to education savings accounts whether or not they itemized deductions on their returns.

Bill section 201(c) would amend Code section 4973 to impose a tax of six percent on any excess contributions to an education savings account. The tax would not be imposed, however, if the excess contributions were timely corrected as provided in proposed Code section 221(d)(2).

Bill section 201(d) would amend Code section 2503 to provide that payment to an education savings account would not be considered a gift of a future interest in property to the extent that the payment is allowed as a deduction under section 221.

Bill section 201(e) would amend Code section 4975 by adding a new paragraph (c)(4) exempting the beneficiary of an education savings account from the tax on prohibited transactions imposed by Code section 4975 if the account ceases to be an education savings account by reason of a prohibited transaction.

Bill section 201(f) would amend Code section 6693 to provide penalties for failure to file the reports required by proposed Code section 221(i). There would be a $10 penalty for each failure unless the failure were due to reasonable cause.

Bill section 201(g) provides for amending the appropriate tables of contents of sections of the Code to take into account the changes that would be made by the bill.

Bill section 201(h) would redesignate Code "sections 128 and 129" (this appears to be a typographical error which should read "redesignate section 128 as 129") and insert a new section 128. New section 128 would provide that gross income does not include distributions from an individual higher education account used exclusively for the payment of educational expenses of that individual. Appropriate changes would be made in the table of sections.

Bill section 201(i) provides that payments made to an education savings account do not count for purposes of determining how much support is provided a dependent under Code section 152.

Bill section 201(j) provides for a December 31, 1981 effective date.

Nothing in the present Internal Revenue Code allows taxpayers to set aside money tax-free for the education of their children. The format of the education savings account appears to be modeled on the present Code provisions for individual retirement accounts.

Section 202.

Bill section 202(a), entitled "tax exempt schools," would create a new Code subsection 501(j). (Present subsection 501(j) would become 501(k)). Proposed subsection (j) outlines a sort of "safe harbor" for organizations qualifying as tax-exempt educational organizations. Under proposed subsection (j) an organization described in Code section 501(c)(2) would be treated as organized and operated exclusively for educational purposes if it met six requirements:

(1) It must be organized and operated exclusively for the purpose of providing preschool, grammar school, high school or college education;

(2) It must be incorporated as a nonprofit corporation in the District of Columbia, any State, territory, or possession of the United States;

(3) Its bylaws must prohibit discrimination in the hiring of teachers or admission of students on the grounds of race, nationality or ethnic background;

(4) It must require attendance for at least the same number of days as are required in public schools of the State in which it is located;

(5) A majority of its board of directors must be parents of students attending the school operated by the organization; and

(6) The school cannot be operating under a judicial order entered under section 202(b) of the Family Protection Act.

Section 202(b) provides a method whereby the Attorney General could obtain a judicial order barring a tax exemption for a school which had violated any provision of sections 1977, 1978, or 1979 of the Revised Statutes (i.e. 42 U.S.C. §§ 1981, 1982, or 1983) or of the Civil Rights Act of 1964. If the Attorney General has reasonable grounds to believe that a school has violated any of those provisions, the Attorney General is required to file a civil suit for a declaratory judgment in the Federal district court for the district where the school is located. If the Attorney General can establish by a preponderance of the evidence that the school has engaged in deliberate and intentional discrimination for at least four consecutive years prior to the filing of the suit, the court would be required to issue a judicial order barring a tax exemption for the school.

If the court found that the Attorney General brought the suit out of malice, bias against the religious or ethnic composition of the school's supporters, or any other improper motive, the court could assess damages against the Attorney General and against the Internal Revenue Service agents and officers responsible for bringing the action.

The judicial order barring tax exemption would not take effect until the beginning of the first taxable year after the school had exhausted its rights of judicial review. The court would be required to retain jurisdiction over the case and revoke its order when the school demonstrated, by a preponderance of the evidence, that its discriminatory policies had been discontinued and would not be renewed.

Proposed section 501(j) is narrower than existing interpretations of what educational institutions are covered by Code section 501(c)(3), because that section is not limited to preschools, grammar schools, high schools, or colleges. According to Treasury Regulation 1.501(c)(3)-1(d)(3) "educational" relates to instruction or training of the individual for the purpose of improving or developing his capabilities or instruction of the public on subjects useful to the individual and beneficial to the community.

Present law does not require that an exempt organization be incorporated. Present statutory law does not explicitly require that an educational institution's bylaws prohibit discrimination in the hiring of teachers or the admission of students. However, the courts and the Internal Revenue Service have interpreted section 501(c)(3) to require that educational organizations have a nondiscriminatory policy as to students. They require the organization's governing instruments and its brochures to contain a statement that the school has a racially nondiscriminatory policy as to students. In addition the school must publicize this policy. Rev. Rul. 71-447, 1971-2 C.B. 230 and Rev. Proc. 75-50, 1975-2 C.B. 587. The requirements as to number of days of required attendance and composition of the board of directors would be new.

Under existing law the Internal Revenue Service may revoke the tax exempt status of an organization without resorting to litigation. If the Service does so, the organization has the right under Code section 7428 to bring an action for a declaratory judgment for a determination as to its continuing qualification.

Under existing law, unless a school has received some Federal financial assistance, it is unlikely that the United States would be able to bring an action to affect the school's policies of racial discrimination. A private party may bring an action under 42 U.S.C. § 1981 (alleging violation of equal rights to make and enforce contracts), § 1982 (alleging violation of equal rights in dealing with property), or § 1983 (alleging deprivation of rights secured by the Constitution and laws of the United States under color of State law), but the United States may not bring such actions. If the school has received some Federal financial assistance, the United States could bring an action under Title VI of the Civil Rights Act of 1964. It is unlikely that many private elementary or secondary schools receive Federal financial assistance.

Under existing law a court may award reasonable fees and expenses of attorneys to the prevailing party in any civil action brought by or against the United States or any agency and any official of the United States acting in his or her official capacity in any court having jurisdiction over the action, to the same extent that any other party would be liable under common law or under the terms of any statute which provides for an award. 28 U.S.C. § 2412.

Section 203.

Section 203 is entitled "multigenerational households." Section 203(a) would create a new Code section 44F. Proposed section 44F would permit a taxpayer who maintains a household which includes a dependent who is at least 65 years old at the end of the taxable year to take a $250 credit against income tax. The credit would be non-refundable and would be applied after certain other credits such as the credit for the elderly, the general tax credit, the investment tax credit, the child care credit, and residential energy credit.

Certain special rules would be applied. An individual would be treated as maintaining a household only if the individual (or the married couple) furnished over half the cost of maintaining the household. Married couples would have to file a joint return to take advantage of the credit. Legally separated couples and divorced couples would not be considered married. In addition certain married individuals who file separate returns would be permitted to claim the credit if they maintained a home for a qualifying individual for more than one-half of the year, furnished over half the cost of maintaining the household during the year, and if their spouses did not live in the household during the last six months of the taxable year.

Bill section 203(b) would create a new Code section 222 (after moving section 222 to section 223). Proposed section 222 would be an alternative provision to the proposed section 44F credit. Proposed section 222 would permit a taxpayer to take a deduction of $1,000 per year for each year during which the taxpayer maintained a household for a dependent at least 65 years of age at the close of the taxable year. The same special rules regarding marital status and claiming the reduction discussed in connection with the credit would apply. The remainder of the proposed section would conform the Code to the changes made by this section of the bill. It provides for an effective date of taxable years beginning after December 31, 1980.

Both the credit and the deduction for maintaining an elderly dependent in a household would be new provisions. In certain aspects they resemble the section 44A household and dependent care credit and/or dependency exemption.

Section 204.

Bill section 204 is captioned "parental support accounts." Bill section 204(a) would create a new Code section 223 which would allow a deduction of up to $3,000 per year for contributions to a trust established to care for a qualified beneficiary.

Bill section 204(b) would create a new Code section 645 which would describe a qualified parental or handicapped relative care trust. Under proposed Code section 645(a) the trust would be exempt from income tax, with certain exceptions. Amounts distributed by a qualified trust for the purpose of providing care for a beneficiary would not be taxable to the distributee unless the distributions were received by a spouse or relative of the grantor of the trust.

The trust would be taxable on amounts distributed to the extent that the distributions were not included in the income of a beneficiary during the year. There would be

exceptions to this rule in the case of mandatory distributions. Proposed Code section 645(b) describes two kinds of mandatory distributions. First, if the trust is for the benefit of the grantor's parents, the amount in the trust must be distributed to the beneficiary not earlier than the close of the taxable year in which the beneficiary attains age 64. There is no deadline for mandatory distribution. Second, if the beneficiary of a qualified parental or handicapped relative care trust dies, the amount in the trust must be distributed to specified relatives.

Proposed Code section 645(c) contains definitions. Qualified parental or handicapped relative care trust would be defined as any trust which is created and governed by written instrument which meets the following requirements. It must be impossible for any part of the trust to be used for any purpose other than providing care for any qualified beneficiary, paying administrative expenses of the trust, or making a mandatory distribution. In addition, the grantor of the trust can have no reversionary interest in any portion of the trust which might take effect before the death of all qualified beneficiaries of the trust or before all beneficiaries of the trust cease to be qualified beneficiaries of the trust. The trustee of the trust must be a bank or similar institution or a person satisfactory to the Secretary of the Treasury. No beneficiary of the trust can be a beneficiary of any other qualified parental or handicapped relative care trust.

The term qualified beneficiary means a parent of the grantor or a relative of the grantor who is unable to engage in any substantial gainful activity because of a medically determinable mental or physical impairment which can be expected to be of long-continued and indefinite duration. (The term relative is described by the list of dependents in Code section 152(a)(1) through (8), i.e. children of the grantor or their decendents, stepchildren, siblings, or stepsiblings, parents or their ancestors, nieces, nephews, aunts, uncles, and parents-in-law, children-in-law, and brothers- and sisters-in-law.)

There are provisions to conform the Code to the changes proposed by section 223, and the proposed effective date is taxable years beginning after December 31, 1980.

Proposed sections 223 and 645 are new.

Section 205.

Bill section 205 would amend Code section 219 to allow an individual to make contributions to an individual retirement plan on behalf of the individual's spouse. In order to take advantage of this provision the spouse could not have any earned income of his or her own; however, for purposes of computing the amount of the spouse's contribution to the individual retirement account, the spouse would be deemed to have compensation equal to the compensation included in the working spouse's gross income for the taxable year.

The maximum deduction (the lesser of 15% of compensation or $1,500) would be computed separately for each spouse. If the spouse were handicapped, the maximum deduction would be $3,000. Handicapped would be defined in section 190(b)(3), i.e. a person who has a physical or mental disability (including, but not limited to blindness or deafness) which results in a functional limitation to employment or who has a physical or mental impairment which substantially limits one or more major life activities of such individual. The couple would be required to file a joint return. No contribution or deduction would be permited if the spouse had earned income includible in gross income or if a deduction would be disallowed if the spouse were the individual making the contributions.

Section 219 would be applied without regard to any community property laws. Whether or not a couple is considered married would be determined on the last day of the taxable year. The effective date would be taxable years beginning after December 31, 1980.

Under existing law, Code section 219 permits a deduction for contributions to an individual retirement plan; however, if both husband and wife contribute to such plans, each must have compensation included in gross income and each must meet the requirement for setting up a plan. If only one spouse has compensation, only that spouse may make a deductible contribution to his or her own plan under section 210. Couples are not required to file a joint return in order for the person making the contribution to claim the deduction. There is no special additional contribution for a handicapped spouse.

The proposed amendment of Code section 219(c)(2) would eliminate the current language which clarifies the fact that if both husband and wife have their own compensation incomes and each meets the requirements for setting up an individual retirement account, each may make his or her own contributions to his or her own plan. The language may have been unnecessary, but its elimination does raise a question as to the intended result.

Under current Code section 220, an individual with a non-earning spouse may make a contribution for both of them. Under this provision, however, the maximum contribution is $1,750, which is only $250 more than the individual could have contributed on his or her own behalf under current section 219. (Sections 219 and 220 are alternative provisions.) Section 220 does not require filing a joint return. In order for the non-earning spouse to benefit from section 220 the working spouse must be eligible to set up an individual retirement plan. If the working spouse is ineligible (perhaps as a result of participating in a plan at work), then the non-earning spouse receives no benefit from the existence of section 220. The proposed section 219 may change this result.

Section 206.

Section 206(a) is entitled "corporate day care—charitable contributions." It would amend Code section 162(b) to provide that taxpayers may take an ordinary and necessary business expense deduction for amounts paid to a day care center which meets the requirements of proposed Code section 501(c)(23).

Section 206(b) creates a new type of tax-exempt organization. The organization would be organized and operated in the United States for the purpose of providing day care for children. No part of the net earnings could inure to the benefit of any private individual. The day care center could not lobby, participate in political campaigns or spread propaganda. It must have or have not been rejected for any necessary certificates or licenses required by States law.

The Internal Revenue Service and other government agencies are prohibited from promulgating any other criteria for eligibility for the proposed section 501(c)(23) exemption.

[illegible] corporation to de-

Current law permits a corporation to deduct payments to a day care center to provide care for preschool children of its employees as an ordinary and necessary business expense deductible under section 162 of the Code. (See Rev. Rul. 73-348, 1973-2 C.B. 31). Under present law day care centers which are primarily educational or primarily charitable may qualify as tax-exempt organizations. See Rev. Rul. 68-166, 1968-1 C.B. 253; Rev. Rul. 70-533, 1970-2 C.B. 112. Under present law, however, these organizations must apply for exemption in order to have their exempt status recognized by the Internal Revenue Service.

Section 207.

Section 207 would amend Code section 151 to allow an additional $1,000 personal exemption for a taxpayer in the year that a child is born to or adopted by the taxpayer. An additional personal exemption of $3,000 would be allowed in the case of a child born to the taxpayer, which child is handicapped. In the case of the adoption of a child whose parents were not members of the same race or a child who is over age six, or a handicapped child an extra $3,000 exemption would be allowed under the section. The additional exemption would be allowed only to married individuals filing joint returns. If the exemption reduces a taxpayer's tax liability to zero, the extra amount could be carried over to the following year.

In addition section 207 would add a new Code section 221 which would allow the deduction of adoption expenses greater than $500 but not more than $3,500 or $4,500 in the case of an international adoption. Adoption expenses would include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses directly related to the legal adoption of a child. Illegal expenses could not be deducted. International adoptions include adoptions in foreign countries, or involving a child who is a citizen of a foreign country who was brought to the United States to be adopted or whose placement for adoption was reasonably foreseeable. Reimbursed expenses or otherwise deductible expenses could not be deducted under this section.

These provisions are new. There are no special exemptions for childbirth or adoption in the year they occur.

TITLE III—EDUCATION

Section 301. This section would amend Part C of the General Education Provisions Act (20 USC 1230 et seq.) to make it unlawful for any educational agency which receives federal funds to: (1) bar "parents or representatives of the community from participating in decisions relating to the establishment or continuation of courses relating to the study of religion," (2) bar or unnecessarily limit the right of parents to visit the public schools or to inspect their children's education records, (3) require teachers to pay dues or fees as a condition of employment, or (4) bar parents from reviewing textbooks prior to their use in the classroom.

This section would further prohibit the use of federal funds to "secure or promote" educational materials which "do not reflect a balance between the status role of men and women, do not reflect different ways in which women and men live and do not contribute to the American way of life as it has been historically understood."

Finally, this section would authorize personal aggrieved by a violation of any of the above to seek judicial redress in state or federal court, would require the court in which such suit is brought to provide an expedited hearing on the matter, and would authorize the award of attorneys fees and costs to such persons if they prevail.

Section 301 would alter, and add to, existing law in a number of respects. The "Family Educational Rights and Privacy Act of 1974" (20 USC 1232g (a)(1)(A)) requires educational agencies receiving federal funds to give parents "the right to inspect and review the education records of their children," but that requirement is enforceable only administratively, not by private suit, as would be provided by this section. Section 14(b) of the "Labor Management Relations Act, 1947" permits states to allow collective bargaining agreements which require membership in a labor union as a condition of employment, a grant of discretion which twelve states now exercise. The section would bar such union security provisions with respect to teachers. 20 USC 1232a bars the federal government from exercising "any direction, supervision, or control over the curriculum, program of instruction, . . . or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system. . . ." and thus might be modified by this section. The remaining provisions of this section would appear to be new to federal law.

Section 302 (a). This section would provide that "federal funds shall not be withheld under any provision of federal law nor shall any provision of federal law be construed to prohibit" (1) the right of any state or local educational agency to determine the requisite qualifications of teachers within their jurisdictions (including the right not to require a certificate), (2) the right of any state to set or not to set attendance requirements at public or private schools within their jurisdiction, and (3) the right of any local educational agency, in consultation with parents, to limit or prohibit the "intermingling of the sexes in any sports or other school-related" activity.

The language of this section providing that "federal funds shall not be withheld under any provision of federal law" to affect (generally) every provision of federal law authorizing the withholding of federal funds under specified circumstances, such as Title VI of the Civil Rights Act of 1964 (42 U.S.C. 1000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

But the specific and narrow intent of this section is to link the limitation on withholding to the exercise of the three rights enumerated. In that sense the effect of the section on existing law would be considerably narrower.

Federal law at present does not authorize the withholding of funds or otherwise prohibit the exercise of discretion by the States in setting attendance requirements and determining the qualifications of teachers; such matters are now wholly prerogatives controlled by State law.

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), however, does bar discrimination in federally assisted education programs on the basis of sex, and regulations issued pursuant to Title IX bar schools receiving federal assistance from offering athletic programs that are segregated on the basis of sex. (45 CFR Part 86.41(a))

The only exception to this requirement provided by the regulations is for athletic teams "where selection for such teams is based upon competitive skill or the activity involved is a contact sport." Id., at 86.41(b)) Thus, the first two "rights" summarized above would not appear to change existing law, but the third would appear to alter this aspect of Title IX.

It must be emphasized that the overall intent of this section is to codify protection from unnecessary federal intrusion in the rights enumerated.

Section 302(b). This section would amend the National Labor Relations Act (29 U.S.C. 151 *et seq.*) to add a new exemption for nonprofit private schools. The section would amend Section 2(2) of the NLRA (29 U.S.C. 151(2)) to exclude from the definition of employer "any corporation or association operating a school, if no part of the net earnings inures to the benefit of any private shareholder or individual."

With one exception, each of these proposed amendments to the NLRA concerns amendments to the Act that were adopted by Congress in 1974.

The provision outlined above would add a new exemption to the NLRA for "any corporation or association operating a . . . school, if no part of the net earnings inures to the benefit of any private shareholder or individual." The extent to which such institutions are presently covered by the NLRA is not entirely clear. Not until 1970 did the National Labor Relations Board interpret the Act to cover private universities,[2] overruling in that case a contrary ruling it had made in 1951.[3] In subsequent cases it extended this ruling to private elementary and secondary schools, both sectarian and non-sectarian.[4] In *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), however, the Supreme Court held that the NLRA does not cover teachers in private sectarian schools. More recently, in *NLRB* v. *Yeshiva University*, 444 U.S. 672 (1980) the Court held that the NLRA similarly does not extend to full-time faculty members in private universities who perform extensive managerial functions. These decisions leave open the possibility that the NLRA still covers efforts to organize nonteaching personnel at private schools, including those religiously affiliated, as well as efforts to organize faculty at private nonreligious schools who do not perform extensive managerial functions. The exclusion of private schools from the definition of "employer" in the NLRA that would be made by this section would eliminate that possibility.

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[2] *Cornell University*, 183 N.L.R.B. 424 (1970).

[3] *Trustees of Columbia University in the City of New York*, 97 N.L.R.B. 424 (1951).

[4] *Shattuck School*, 189 N.L.R.B. 886 (1971); *Roman Catholic Archdiocese of Baltimore*, 216 N.L.R.B. 249 (1975).

EDUCATION BLOCK GRANTS

Section 303. Specifically, this section would amend the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) by repealing Titles I, II, III, IV, VII, and IX of that Act and substituting in their stead a new Title XI. The states would have broad discretion in allocating funds at the local level.

This section was prepared prior to the time the Administration's block grant proposal was introduced. However, the section in many respects is similar to the Administration's block grant proposals.

It is my recommendation to the appropriate committee that this section be amended to reflect the Administration's elementary and secondary education block grant proposals.

Section 304.

Summary

This section provides that no provision of federal law "shall be construed to prohibit released time for parenthood education to be conducted by churches."

The Supreme Court has interpreted the establishment of religion clause of the First Amendment to prohibit "shared time" programs between schools to teach religion to consenting students. *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203 (1948). The Court has further held, however, that it is constitutionally permissible under the First Amendment for the public schools to "release" consenting school children during the school day so that they can repair the nearby churches for purposes of religious instruction. *Zorach* v. *Clauson*, 343 U.S. 306 (1952). Thus, released time programs in themselves do not violate the First Amendment. But if the state becomes excessively implicated in such programs by such means as giving course credit for the religious instruction, the First Amendment likely is transgressed. *Lanner* v. *Wimmer*, 463 F. Supp. 867 (D. Utah 1978).

Thus, existing law does not prohibit released time programs of parenthood education conducted by churches, and this section would not change that situation.

Section 305. Legal Services: Busing. This section would amend section 1007 (b) of the Legal Services Corporation Act (42 U.S.C. 2996f(b)) to prohibit funds received by LSC grantees from being used for legal assistance or litigation relating solely to achieve racial quotas or the desegregation of any elementary or secondary school or school system.

This restriction is broader than existing law. Existing law also bans legal services representation in proceedings related to desegregation, but does permit "the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities" in connection with such proceedings. This section would eliminate that exception from the bar. See: 42 U.S.C. 2996f (b)(9).

TITLE IV—VOLUNTARY PRAYER AND RELIGIOUS MEDITATION

Section 402. This section, entitled the "Voluntary Prayer and Religious Meditation Act of 1981", states that every individual "shall have the right to participate in the free exercise of voluntary prayer or religious meditation" in any building supported in whole or in part with federal funds, and bars any governmental agency from abridging that "right of free exercise of voluntary prayer or religious meditation." The section further provides a cause of action for individuals aggrieved by violations of this right, and requires the courts to give expedited review to such claims. The section defines "voluntary prayer or religious meditation" as "individual prayer and devotional reading from religious literature initiated by members of the group, and prayer and devotional reading from religious literature, provided that any person so desiring is excused from participating . . ."

In *Engel* v. *Vitale*, 370 U.S. 421 (1964) and *Abington School District* v. *Schempp*, 374 U.S. 203 (1963) the Supreme Court held unconstitutional as an establishment of religion, state sponsorship of prayer and devotional Bible reading in the public schools. A number of state and lower federal courts have extended these rulings to bar as well student-initiated prayer and Bible study groups in public elementary and secondary schools. *Brandon* v. *Board of Education of the Guilderland Central School District*, 635 F. 2d 971 (2d Cir. 1980); *Johnson* v. *Huntington Beach Union High School District*, 137 Cal. Rptr. 43, 68 Cal. App. 3d 1 (Ct. App.), *cert. den.* 434 U.S. 877 (1977); *Trietley* v. *Board of Education of the City of Buffalo*, 65 A. 2d 1, 409 N.Y.S. 2d 912 (App. Div. 1978).

Because a basic canon of statutory construction is to so construe statutes to avoid constitutional questions, this section has been deliberately designed to statutorily reverse the above rulings. The right stated by the section is a right of *individual* prayer or religious meditation although it is not designed to exclude some element of group devotional reading as well.

TITLE V—RIGHTS OF RELIGIOUS INSTITUTIONS AND EDUCATIONAL AFFILIATES

Section 501. This section would bar the federal government from imposing on a variety of church-related organizations any requirements with respect to admissions policies, instructional or training materials, instruction or methodological[5] hiring or selecting of employees and staff, contractual relationships with employees and staff, or operating procedures. The only exceptions would be "reasonable health and fire regulations", when promulgated by a federal instrumentality exercising the authority of a local government, and requirements imposed pursuant to the Civil Rights Act of 1964.

The latter would be limited to requirements with respect to race, creed, color, national origin, (i.e., not sex) and would include requirements "relating to affirmative action, quotas, guidelines, or actions designed to overcome racial imbalance." The church-related organizations covered by the section would be child care centers, orphanages, foster homes, social action training programs, emergency shelters for abused children or spouses, schools, juvenile delinquency or drug abuse treatment centers or homes, and "similar" programs or institutions.

Most government regulation of the above named types of organizations would be State and local in nature rather than federal. But the federal government does regulate conditions of employment and does impose a variety of conditions on organizations receiving or desiring to receive federal financial assistance.

For instance, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) bars discrimination on the basis of race, color, and national origin in programs and activities receiving federal assistance; Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) bars discrimination on the basis of sex in federally assisted education programs; Section 504 of the Rehabilitation Act 1973 (29 U.S.C. 794) bars discrimination in federally assisted programs on the basis of handicap. None except church-operated programs receiving federal assistance from these obligations.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 200e *et seq.*) bars discrimination in employment on the basis of race, color, national origin, sex, and religion, and does exempt church-operated schools and colleges with respect to discrimination on the basis of religion. But no such exemption attaches to such institutions for discrimination on the other prohibited basis, or for any prohibited discrimination by non-academic church programs. Similarly, the minimum wage and maximum hour provisions of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*) make no exception for religious organizations as such.

Particular grant-in-aid programs may impose additional requirements on the operating procedures of recipient organizations, without exception for church-operated programs. Title XX of the Social Security Act (42 U.S.C. *et seq.*), for instance, authorizes grants to the States for a variety of social services, such as day care, prevention of child abuse, and foster care. For at least some of these programs, the statute and/or the implementing regulations impose detailed requirements on the ultimate recipients with respect to staffing ratios, educational requirements for personnel, etc. See, *e.g.*, 42 U.S.C. 1397a(a)(9)(A) and 45 CFR Part 71, 45 Fed. Reg. 17881–85 (March 19, 1980) (day care requirements).

Section 301 is intended to eliminate the applicability of virtually all such Federal regulations and conditions to the named church-operated programs and organizations with the exception of certain aspects of the Civil Rights Act of 1964, and thus would substantially alter existing law.

TITLE VI—MISCELLANEOUS

Section 601. Jurisdiction.

Section 601(a) would provide jurisdiction in the United States district courts or any territorial court which has the powers of a district court for suits brought under the Act, without regard to the amount in controversy. Section 601(a) would also provide for venue in any district in which the defendant is an inhabitant, transacts business, or is found, and provides for similar service of process.

Section 601(b) would bar any action brought in State court under the Act from being removed to Federal court except when a Federal official or the United States is a party. The section would further provide that no costs may be assessed against the United States.

Jurisdiction: Under existing law the Federal courts would have jurisdiction of suits brought under the Act pursuant to the general Federal question jurisdiction statute (29 U.S.C. 1131). However, except when a Federal official or the United States is a party or another statute specifically waives the requirement, general Federal question jurisdiction requires a minimum amount in controversy of $10,000. Section 601(a) would remove that amount in controversy requirement for suits between private parties brought under this Act.

Venue and Service: The venue and service provisons appear to expand present law for suits brought under the Act. 28 U.S.C. 1391 (b) provides that venue lies in the district where all defendants reside, or where the

[5] This phrase may be intended to state "instruction or methodology."

claim arose. In the instance of an individual, section 601(a) of the Act would create liability to suit in any district where the individual transacts business or is found, even if only transiently. In the instance of a corporation, section 601(a) of the bill does not appear to alter venue (although the change in linguistic style may subject the proposed subsection to a different interpretation than current law).

In the instance of a government official of the United States as a defendant, 28 U.S.C. 1391(e) provides for venue (1) where the defendant resides, (2) where the cause arose, (3) where real property that is the subject of the action is situated, or (4) where the plaintiff resides if no real property is involved. Section 601(a) of the bill would appear to limit venue to the residence of the officer being sued and eliminate venue where the cause arose, where any real property may exist, or where the plaintiff resides.

Section 601(a) of the bill provides for service of process in any district in which the defendant may be found. Initial process is essential to personal jurisdiction over the defendant, and, accordingly, in the sense of service of the complaint, this subsection provides for nationwide service of process. This is not uncommon in terms of asserting jurisdiction.

Removal: Existing law permits the removal from State court of all civil actions over which the federal district courts have original jurisdiction. *See* 28 U.S.C. 1441. Existing law further permits the removal from State court to federal district court of all civil and criminal actions in which a federal official or the United States is the respondent. *See* 28 U.S.C. 1442. Thus, for suits brought under this Act, the removal authority granted by Section 601(b) would be generally consistent with the latter statute but substantially narrower than the former one.

Costs: Rule 54(d) of the Federal Rules of Civil Procedure states the general rule that costs may not be taxed against the United States unless specifically provided for by law. Section 601(b) of the bill restates that general rule.

Congress has the constitutional authority to set affirmatively the jurisdiction of the district courts and to provide for procedure in the courts. *Wayman* v. *Southard*, 23 U.S. (10 Wheat.) 1 (1825).

Section 602. Limitation on Actions. This section would provide that a civil action must be brought within six years after the cause of action arises.

This section further provides a common limitation in the law. The determination of a six year limitation is not unusual.

Congress possesses the authority to limit liability to a given period of time. *Wayman* v. *Southard*, *supra*.

Section 603. Enforcement.

Section 603(a) provides that any person who violates any provision of the bill or regulations thereunder may be subject to a civil fine not to exceed $5,000. The subsection provides that an offense is newly committed each day of the violation. The subsection also provides that the fine may only be imposed after a hearing.

Subsection 603(b) provides that hearings shall be conducted pursuant to the adjudication provisions of the Administrative Procedure Act (5 U.S.C. 554).

Subsection 603(c) provides that the Attorney General or a delegee may collect the civil fines, payable to the United States, in the district courts. The subsection limits review on the collection matters to exclude the validity and appropriateness of the final determination.

Subsection 603(d) provides that a person aggrieved by a final determination under subsection (b) may seek review in a United States Court of Appeals within twenty days after the determination. Review is to be in accordance with the Administrative Procedure Act (5 U.S.C. 706).

The imposition of a civil fine is common to federal regulatory schemes, usually subsequent to some form of proceedings as outlined above.

Thus, the provision, while new to federal law as part of this bill, would not be unusual. The authority of the Attorney General to collect the fine is a restatement of the Attorney General's authority under 28 U.S.C. 509, 514, 517, and 547.

The authority to delegate the collection function is a restatement of the Attorney General's authority under 28 U.S.C. 510. The provision requiring filing of an appeal from a determination within twenty days and the restriction on review of collection matters are not uncommon.

It is my opinion that Congress has the authority to enact these provisions.

Section 604. Contrary Stipulations Void. This section would provide that any agreement contrary to the provisions of the bill is void.

This provision is new, and therefore, would not directly affect existing law.

As long as this provision is applied prospectively, there would not appear to be any constitutional infirmity. However, should the provision be applied retroactively (to agreements made prior to the enactment of the bill), the Impairment of Contracts clause of Article 1, section 10, clause 1 of the Constitution or the due process clauses of the Fifth and Fourteenth Amendments (under a taking without just compensation theory), may be implicated. It is not possible to analyze in detail whether the provision, as applied, would violate these constitutional strictures, but the provision does not, on its face, appear to be unconstitutional.

Section 605. Report to Congress. The section requires the Secretary (what Secretary is not specified) to file a report with Congress within thirty months on the implementation of the bill.

Section 606. Effect on Other Laws. This section provides a rule of construction that the bill does not limit, but is in addition to, any other private right provided in federal or state law.

This section is new, and it is my view that Congress has authority to require such an interpretation.

Section 607. Authorization of Appropriations. This section authorizes appropriations to carry out the provisions of the bill and does not specify a limitation on the amount. The open limitation on the amount is not intended to imply "open-ended" or otherwise unlimited funding to carry out the provisions of the bill.

Section 608. Separability. This section provides for the separability of the provisions of the bill, if any provision is found invalid.

Such separability provisions are common, and it is my view that Congress has the authority to enact this provision.