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TELEPHONE
AREA CODE 717
232-8731

January 28, 1982

TO: Friends

RE: ENCLOSURES

1. Redrafted bill of Ball & Skelly (January 20, 1982).

2. Mr. Ball's testimony which was to have been presented before the Senate Finance Committee. It shows that the Administration Bill (H.R. 5313 (conable)) is flatly unconstitutional and otherwise defective.

3. Memorandum of Mr. Ball on the Hart Resolution. (Do not circulate to media).

A recipient of this note is free to give any or all of the above as wide circulation as may be desired.

W. B. B.

A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining racially segregative schools.

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

SECTION 1. FINDINGS.

(a) The Congress finds that -

(1) It is the policy of the United States that educational opportunity is to be available to all persons without limitations based upon a person's race, nationality or ethnic origin;

(2) Racially segregative institutions, as defined herein, should not enjoy tax-exempt status; the right of persons to equality before the law is a civil right;

(3) The liberty of individuals and institutions to observe and practice sincerely held religious beliefs is also a civil right, and no non-tax-funded educational institution which is religious in character and would not exist except for its religious mission should be denied tax-exempt status on the ground that any such observance or practice does not conform to governmental policy, it being contrary to the national tradition of liberty of mind and spirit to permit government to prescribe what shall be orthodox in matters of belief;

(4) The American constitutional principle of church-state separation requires that government be barred, in its taxing activities, from excessive entanglements with religious educational institutions;

(5) While the denial of tax-exempt status to private, non-tax-funded religious educational institutions can burden or destroy them, tax exemption does not constitute a subsidy to such institutions, nor does the tax exemption of such institutions constitute "financial assistance" to them within the meaning of such acts of Congress as title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972.

SEC. 2. DENIAL OF TAX EXEMPTION TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

"(j) ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such organization maintains a racially segregative school.

"(2) DEFINITION. -- For the purposes of this subsection the term "Racially segregative school" means a school which maintains a policy (whether written or as evidenced by a pattern of conduct) whereby it intentionally and deliberately denies admission to, expels, limits the availability of its programs to, or provides for separate treatment for, persons as students on the basis of their race, color, or national or ethnic origin. Such term shall not be construed to preclude the limitation, by a religious school, of admissions, or granting of preferences to students of the religious faith of that school."

SEC. 3. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(b) Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.-- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501 (j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

SEC. 4. DECLARATORY JUDGMENT PROCEDURE ESTABLISHED.

(a) IN GENERAL. -- Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by redesignating section 7408 as 7409, and by inserting after section 7407 the following new section:

"SEC. 7408. ACTION TO REVOKE OR DENY TAX-EXEMPT STATUS OF PRIVATE SCHOOL ON BASIS OF RACIAL SEGREGATION.

"(a) GENERAL RULE. -- The Secretary may not --

"(1) revoke or change the qualification or classification of a private school as an organization described in section 501(c)(3) which is exempt from taxation under section 501(a),

"(2) deny, withhold approval of, the initial qualification or classification of a private school as such an organization, or

"(3) condition acceptance or approval of an application for qualification or classification of a private school as such an organization, or

"(4) revoke the advance assurance of deductibility issued to a private school,

on the grounds that the school is racially segregative unless a court of the United States, in a civil action for a declaratory judgment brought by the Secretary in accordance with the provisions of this section, has found that the school is intentionally racially segregative.

"(b) PROCEDURE TO BE FOLLOWED BY THE SECRETARY.--Whenever the Secretary has reason to believe that a private school is racially segregative, the Secretary shall file a civil action for a declaratory judgment in the United States district court for the district in which the private school is located.

"(c) NO ADVERSE ACTION UNTIL SCHOOL HAS EXHAUSTED APPEALS. -- In the case of a private school with respect to which a court has found under subsection (a) that it is racially segregative, the Secretary shall not take any action with respect to the initial qualification or continued qualification of the school as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2)(B), section 642, section 2055, or section 2522, until the school has exhausted all appeals from the final order of the district court in the declaratory judgment action brought under this section.

"(d) RETENTION OF JURISDICTION; REINSTATEMENT OF STATUS. -- The district court before which an action is brought under this section which resulted in the denial of initial qualification or revocation of qualification of a private school as an organization described in section 501(c)(3) which is exempt from tax under section 501(a), or as an organization described in section 170(c)(2)(B), section 642, section 2055, or section 2522, shall retain jurisdiction of such case, and shall, upon a determination that such school has not been racially segregative for a period of not less than a full school year since such denial or revocation became final, and shall issue an order to such effect and vitiate such denial or revocation. Such an order may be appealed by the Secretary, but, unless vacated, be binding on the Secretary with respect to such qualification.

"(e) AWARD OF COST AND FEES TO PREVAILING SCHOOL. -- In any civil action brought under this section, the prevailing party, unless the prevailing party is the Secretary, may be awarded a judgment of costs and attorney's fees in such action.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions of the Secretary of the Treasury taken with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code, or which is described in section 170(c)(2)(B), section 642, section 2055, or section 2522 of such Code, after the date of enactment of this Act; Provided, however, that no school, and no donors thereto, shall be accorded retroactive recognition of tax-exempt status or deductibility of contributions on the basis of this Act.

STATEMENT OF *
WILLIAM B. BALL
ON BEHALF OF
ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL
AND
NATIONAL COMMITTEE FOR AMISH RELIGIOUS FREEDOM
BEFORE
SENATE FINANCE COMMITTEE
FEBRUARY 1, 1982

I speak on behalf of the Association of Christian Schools International and the National Committee For Amish Religious Freedom. The Association represents 1750 fundamentalist Christian schools in the United States, with an enrollment of 320,000 students. It is the largest organization of fundamentalist Christian schools in the United States. The National Committee For Amish Religious Freedom, since its founding in 1967, has attempted to assist Amish and other Plain People throughout the country in the defense of their constitutional liberties. It supported the successful defense of Amish parents in the landmark case of Wisconsin v. Yoder.

Both of these organizations respect the dignity and personhood of men of all races. The Association of Christian Schools International requires that each of its member schools affirm annually that it does not discriminate on account of race. The Amish people, though much separated from the mainstream of American society, are famous for their love of neighbor.

* Partner, Ball & Skelly, Harrisburg, PA.

It is my point to state clearly today that each of these groups has felt itself threatened by aggressive actions of the Internal Revenue Service these past several years which have been plainly hostile to religious liberty. They had strenuously contended at Congressional hearings in 1978 and 1979 that these actions were without a vestige of Congressional authorization and that - authorized or not - were in violation of the Constitution. Now we see that the Administration has fully agreed that the Revenue Rulings in question had no authorization and were nothing more than expressions of the personal and subjective views of unelected IRS officials.

In its draft bill, circulated on January 18th, the Administration, however, takes the astonishing step of asking Congress to give IRS the authority to carry on most of the unconstitutional activities which the IRS has formerly sought to carry out on its own authority. In fact, the draft Administration bill, as we shall see, goes, in some respects, beyond any constitutional violation dreamed up by IRS.

My following comments are not intended to harm an Administration which a majority of Americans believes to be sincerely dedicated to our country's well-being. My testimony will disclose, however, the serious need for our President and his associates - and the Congress - to slow down, quell the hysteria which they have permitted to overtake them, and to start to think seriously - and comprehensively - about civil rights. I mean: the whole of civil rights. That is to say, freedom from invidious racial discrimination and the civil right of religious liberty. The Administration's bill can only be described as a hasty contrivance, however well intended, which, if enacted, would be flatly unconstitutional. I now take up for analysis that bill:

(j)(1) IN GENERAL. Confusion will be created by the limitation, "other than an exclusively religious curriculum". A number of important recent decisions hold that fundamentalist and Catholic schools are exclusively religious and that nothing in them can actually be described as secular. See, e.g., Lemon v. Kurtzman, 403 U.S. 602 (1971); McCormick v. Hirsch, 460 F.Supp. 1337 (M.D.Pa. 1978); Catholic Bishop of Chicago v. NLRB, 559 F.2d 1112 (7th Cir. 1977), aff'd. 440 U.S. 490 (1979); State of Ohio v. Whisner, 351 N.E.2d 750 (1976). Fundamentalist Christians consistently testify that their curriculum (even in subjects such as mathematics) is taught from religious perspective and is religious in purpose. The trial records in these cases show this well. I believe that your draftsman did not intend this to create an exemption for religious schools, but that point is sure to result in litigation if left unattended to.

(j)(2) DEFINITIONS.

> "(i) An organization has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that organization. . ."

Here, again, a serious loophole has been left. Under that wording, an organization does not have a "racially discriminatory policy" if it refuses to admit to enrollment a child on account of that child's race. The only bar in the above quoted language is to the exclusion of "students" (people already enrolled).

Beyond this, instead of referring to the usual (and useful) phrasing in civil rights legislation, "on account of race", the above language employs a novel "all races" phrasing.

It is conceivable that a school could exclude a child of a particular race from some activity but not on account of that child's race. Suppose that a school, for health reasons, forbade the participation of all newly arrived Vietnamese children in a vaccination program; or that a Catholic school, for religious reasons, forbade Protestant black students to receive Communion; taken literally (and "literally" is the name of the game in much litigation today) the draft language would label either such school as having a "racially discriminatory policy".

Further: the draft language's term, "refuses", lands us in a quagmire. "Refuses" how often? Once? Frequently? Suppose a school of one of those many so-called "national" parishes (Catholic), so familiar in New York, Philadelphia, Los Angeles, etc., is an Italian national parish and always refuses to permit children of Slovak (or other non-Italian descent) permission to join in a Columbus Day pageant? I was harshly critical of the 1978-1979 IRS Proposed Revenue Procedures for their use of such very loose terms as "refuses". When you combine that with the myriad individual "rights, privileges, programs, and activities", you have a statute which is unmanageable - except through an all-embracing program of governmental surveillance. In a moment I will comment upon the constitutionally unique situation which such surveillance produces in the case of religious schools.

In fine, this first part of the bill, relating to admissions to programs, activities, etc., does not aid the black child who wants to get admitted, and is totally harmful to the religious school.

> ". . . or if the organizaton refuses to administer its educational policies, admissions policies, scholarships and loan program, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race."

This language is subject to the same major objection which is raised by the above part of the definition section insofar as it employs the vague term, "refuses". But in addition, this part of the definition embraces the extremely broad terms, "administer", "manner" and "discriminate". Who is to judge, and how will it be judged, whether a school shall be denied tax-exempt status under that language? We are again faced with the whole problem of myriad acts and omissions which someone may allege to be a discrimination in manner of administration.

Those religious schools which would become subject to IRS oversight by virtue of these requirements occupy a unique position constitutionally. They are, in the words of the First Amendment, an "exercise of religion", and have been so recognized on numerous occasions by the Supreme Court. See, e.g., Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) (the schools are "an integral part of the religious mission" of their sponsoring churches); Meek v. Pittenger, 421 U.S. 349, 366 (1975) (their religious mission is "the only reason for the schools' existence"); and NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 503 (1979) (wherein the Court pointed to "the admitted and obvious fact that the raison d'etre" of the schools is "the propagation of religious faith"). These religious organisms are not remotely analogous, for constitutional purposes, to any secular entity, whether that entity be business, industrial, educational or philanthropic.

This special constitutional status brings with it heightened protection for the schools from government direction, control or supervision, whether such direction is intended or not. As the Supreme Court has recognized, even a "regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement" for governmental respect for the free exercise of religion. Wisconsin v. Yoder, 406 U.S. 205, 220 (1972). No basis may be found in the First Amendment or in the holdings of the Supreme Court for the mistaken notion that the Religion Clauses protect religious "belief" but not religious "action". To begin with, the Clauses protect the "free exercise of religion", not the freedom merely to believe (it is on the basis of the belief/action dichotomy that the Soviet Union lays claim to being protective of religious freedom). Further, the courts

have always extended protection to actions of religious significance: the refusal to attend school beyond the 8th grade, Yoder, supra; the defrocking of a bishop, Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); the maintaining of schools, Catholic Bishop of Chicago v. NLRB, 559 F.2d 1112 (7th Cir. 1977).

Not only would free exercise violations necessarily attend IRS intervention into these church ministries, the very existence of the potentially entangling (and therefore illicit) relationship between church and state which the bill would create would violate express Supreme Court rulings. The Court has held that church-state separation must be certain, and that the introduction of any "element of governmental evaluation and standards", such as a "social welfare yardstick", into the government's relationship with a church or religious entity constitutes forbidden "excessive entanglement" between the two. Walz v. Tax Commission, 397 U.S. 664, 674 (1970). The Court has made plain its view that, in order to be violative of the "entanglement" prohibition, a government requirement need not even produce burdensome results:

> "It is not only the conclusions that may be reached. . . which may impinge on rights guaranteed by the Religion Clauses, but the very process of inquiry leading to findings and conclusions." NLRB v. Catholic Bishop, supra, at 502 (emphasis supplied).

Your bill, while laudably attempting to protect most religious schools, regrettably falls short of the mark. The regulatory scheme which the bill would authorize is far too invasive of areas of purely religious concern, and sweeps far too broadly to overcome either the Court's prohibition as to excessive entanglements, or its similar prohibition on legislative restrictions which are not drawn with "narrow specificity". Keyishian v. Board of Regents, 385 U.S. 589, 604 (1967).

It is not sufficient that the Congress, instead of IRS, be the party imposing the regulatory scheme. All along, we have complained of two things: (1) that Congress did not authorize IRS to impose its nondiscrimination regulations; and (2) that the very requirements which IRS has imposed are wrong. These requirements are not made right by simply transferring those loosely worded provisions into statute. The right statute is needed, or the schools will suffer.

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MEMORANDUM:

ABSENCE OF POWER IN IRS
TO MAKE CERTAIN REVENUE RULINGS
AFFECTING TAX EXEMPTION OF RELIGIOUS SCHOOLS

Over the past decade the Internal Revenue Service has issued a series of Revenue Rulings, and Revenue Procedures and has proposed certain Revenue Procedures (in 1978 and 1979) affecting the tax exemption of private, including religious, schools.[1]

The argument has been made, that these regulatory actions by IRS were mandated by the Congress. Irrespective of the question of whether, had they been mandated by the Congress, IRS enforcement of all or some of them as to religious schools would be constitutional under the First Amendment, it is clear that they were never authorized by the Congress nor mandated by any decision of any court.

The contention that they are mandated rests upon two points: (1) that by the decision known as Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd. per curiam sub nom. Coit v. Green, 404 U.S. 997 (1971), the Supreme Court gave IRS authority to impose and enforce the regulations in question; (2) that the Civil Rights Act of 1964, which prohibits denial to any person of the benefits of "any program receiving federal financial assistance".

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1. The adopted rulings are Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587.

While both of these points are being so frequently repeated at the present time, and so insistently repeated in releases to the media as to give them acceptance as virtual truisms, each is absolutely mistaken.

Green v. Connally

The first important fact about Green is that no religious school and no person claiming rights under the Religion Clauses of the First Amendment was a party to that case. Therefore no religious liberty issue under the Free Exercise Clause was raised as in contention. Further, also, no issue of church-state separation under the Establishment Clause was therefore raised. Questions, therefore, pertaining to the rights of churches, to the nature and rights of schools which are "an integral part of the religious mission of a church",[2] of the rights of parents to choose a religious education for their children,[3] and of the rights of teachers in religious schools to pursue a religious vocation were never aired. Therefore the Green decision has no precedent effect with respect to religious schools.

The second important fact about Green is that Judge Leventhal, in the course of the Green opinion, went out of his way to expressly state that the court declined to consider any issues pertaining to the tax exemption of religious schools. See the Green opinion at Pages 1168-1169.

Third, and most important is the fact that the Supreme Court itself, three years later, in Bob Jones University v. Simon, 416 U.S. 725 (1975) stated that its prior affirmance

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2. Lemon v. Kurtzman, 403 U.S. 602, 616 (1971).

3. Pierce v. Society of Sisters, 268 U.S. 510 (1925); Wisconsin v. Yoder, 406 U.S. 205 (1972).

in the Green case lacked weight as a precedent.[4]

Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination in programs which receive "Federal financial assistance". Section 602 of the Act defines "Federal financial assistance" as a "grant, loan, or contract". Tax exemption is not a government grant; it is not a loan; nor is it a contract. Title VI could not be any plainer in delineating what categories of aid shall be considered "financial assistance", and it is likewise plain that a mere act of non-taxation is not one of those categories.

At no time has the Internal Revenue Service ever claimed authority under Title VI for any of its attempts to subject religious or other schools to its nondiscrimination requirements. In fact, §3602 of Title VI prescribes a very precise procedure (including prior presidential approval) to be followed before a federal agency adopts regulations enforcing Title VI. IRS has never followed this procedure; thus acknowledging that Title VI is not a source of authority upon which it previously acted.

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4. The Court said: "The question of whether a segregative private school qualifies under §501(c)(3) has not received plenary review in this Court, and we do not reach that question today". Noting that such schools had been held not to qualify in Green, the Court went on to point out that the IRS had reversed its position, while that case was on appeal, of holding such schools tax-exempt. "Thus", said the Court, "the Court's affirmance in Green lacks the weight of a case involving a truly adversary controversy." Id. at 740 (fn.11). (Emphasis supplied.)

* * * * *

My attention has now been directed to the Concurrent Resolution introduced in the Senate on January 28, 1982, and I feel obligated to add two comments as to that:

The Concurrent Resolution would put an uncritical stamp of approval upon a hodge-podge of judicial decisions and IRS regualtions dating back 12 years or more. Looking at this from the point of view of resolving, rather than breeding, issues which can plague the courts, it would appear far preferable that the problems be examined in all of their facets, looking to a single, integrated and constitutional solution.

Secondly, adopting of the Concurrent Resolution would mean that the Congress would be taking upon itself what many more properly be considered a judicial task - the attempt to interpret the Constitution and decisions under it which the Supreme Court has thus far left open. We hear much about "judicial legislating", but I wonder if this would not be the reverse.

William B. Ball

January 28, 1982

Richmond Times-Dispatch

JOHN STEWART BRYAN III
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EDWARD GRIMSLEY
Editor of the Editorial Page

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Executive Editor

MARVIN E. GARRETTE
Managing Editor

Thursday, January 21, 1982

Patrick J. Buchanan

Pluralism In a Free Society

WASHINGTON — Within a single 24-hour period last weekend, no fewer than a dozen media heavies on just three programs — PBS' "Washington Week in Review," ABC's "Nightline" and "Agronsky & Co." — volunteered their respective embarrassment, anger and disgust over the White House decision to restore a tax exemption to Bob Jones University.

Not one defended the decision; not one among the "herd of independent minds" volunteered a word in defense of the fundamentalist school that prohibits interracial dating.

The episode is revealing. Revealing for what it tells us of the orthodoxy of our established secular-political church, and for what it tells us of a White House in which some of us invested too much hope.

Washington is still, in many ways, the most tolerant of capitals. It is yet permissible to praise Fidel Castro as a Cuban patriot, so affronted and alienated by Washington's rebuffs to his advances that, heartbroken, he rushed into Soviet arms. It is still permissible to speak of Mao's holocaust as an experiment noble in purpose that unfortunately miscarried. To have been called "soft on communism" in the 1940s is a badge of honor; to be "soft on segregation" in the 1980s is a visa to the social boondocks.

Those liberal politicians who fraternized with the tax-exempt Peoples Temple of Jim Jones will, I suspect, sooner be readmitted to grace than some Washington journalist who sent a check to Bob Jones.

Acutely aware of the gravity of their sin, White House aides who participated are frantically casting about for absolution. Friendly reporters are called, informed in confidence of the caller's innocence of all complicity, his utter horror on learning what was to be perpetrated.

Since somebody has to carry the can for a decision that went down, after all, *without dissent*, James Baker and Michael Deaver are described as being "furious" — while the finger of suspicion is pointed toward Edwin Meese III. With Richard Allen's assassination ancient history, Meese moves into the cross hairs.

★★★

THE POLITICAL LESSON the White House is ignoring is that the bleating of the lamb only excites the tiger. In the political-ideological struggle in which they are engaged, like it or not, whispered "Peccavi's" (I have sinned) only betray a lack of conviction to the Adversary Press, inviting contempt.

The Bob Jones decision is itself more defensible than the subsequent conduct of those who took it. Even E. B. Williams would be hard-pressed to defend a client who keeps blubbering apologies and throwing himself on the mercy of the court.

"Federal subsidies for segregation" is the parrot line of the president's critics. But if that were so, why would the Jewish Commission on Law and Public Policy have filed an *amicus* brief on behalf of Bob Jones? If tax exemption equals federal subsidy, should not tax exemptions for all churches be lifted as violative of the First Amendment?

The issue here is not whether we like the dating policy at Bob Jones. It is pluralism in a free society. How much diversity, reactionary or radical, in behavior and practice are we willing to accept in our private institutions?

Twenty years ago, the Black Muslims of the Honorable Elijah Muhammad were making prison converts out of the wretched of the Earth: pimps, prostitutes, rapists, killers, thieves. Clergy of several faiths, studying the alarming nation of Islam, concluded that this was a legitimate religion, entitled to the same constitutional protections and tax benefits as any other — even though its mosques and schools practiced a racial separation that makes Bob Jones look like Greenwich Village.

★★★

CONSIDER ALSO the "segregation academies," the private and religious schools that sprouted up during the court's busing binge in the 1970s. Should these be entitled to a tax exemption?

Why not? After all, the first segregation academics in America were parochial schools — set up by Catholic bishops in Northern cities to protect Catholic children from doctrinal contamination in Protestant-dominated public schools. Similarly, fundamentalist Protestants are attempting to escape the forced busing and secular humanist atmosphere of today's public schools.

Morally, where is the distinction between middle-class parents shifting their kids into newly established private schools to escape integration in Mississippi and wealthy parents shifting their children into already established private schools to escape integration in the District of Columbia?

If, however, the high priests of the prevailing orthodoxy are determined to destroy these private schools using the IRS, their noses should be rubbed in their own hypocrisy.

Fwd Bob Jones Case

WH - News Summary Jan 25

NETWORK NEWS SUMMARY FOR SUNDAY EVENING, January 24, 1982

REAGAN--ABC's Sam Donaldson: Ronald Reagan returned almost certainly having resolved his off-again, on-again feelings about excise taxes. Ann Compton reported he gave no sign of a decision. "Tune in Tuesday night," was all he would say. Senator Baker shown as one who argued for tax increases, but saying "I will carry any flag he hands me. But he is clearly in charge and he knows what he wants to do...some of his advisers, including this one, may be surprised." Compton reported a rejection of excise taxes by the President would be one of the few decisions that unhappy conservatives have to cheer about. Two leaders of the conservative right Sunday complained bitterly the President has surrounded himself with too many moderate voices giving bad advice. Show Phillips of the Conservative Caucus. Compton said some WH aides will not be surprised to hear the President say the way to a balanced budget is not higher taxes, but tax cuts. NBC's Don Porter reports upon returning from Camp David, President Reagan had nothing new to say on the issue of excise taxes. Sen. Baker still believes the President is against the proposed increase of excise taxes. (ABC-1,NBC-4)

CONGRESS--ABC's Charles Gibson reports on the session ahead, which will start with the battle of the budget. President Reagan will reportedly propose $30 to $40 billion in cuts. Shows Barber Conable saying excise taxes will raise only $6 - 10 billion, which he considers almost symbolic. Other issues facing Congress this year: decontrol of natural gas, expulsion of Harrison Williams, abortion, busing, school prayer. Baker is shown saying he will encourage early debate of these social issues. Social Security must be addressed, perhaps in a special lame duck session after the elections. NBC's Ken Bode shows Rep. Obey saying we have gone from Johnson's Great Society to Ronald Reagan's 'high society.' Derwinsky is shown saying Mr. Reagan may have to cut defense spending and the President must use his veto extensively. NBC's Tom Pettit reports the returning Congress is more skeptical than before and definately more skeptical about 'Reaganomics.' Sen. Baker will be hard pressed on issues that stir the 'new right.' Pettit concludes that since this is an election year, it will be a surprise if the Senate does anything. (ABC-2,NBC-5)

HAIG--Flew to Geneva Sunday to begin talks with Gromyko Monday. Haig is shown saying the discussions will provide an opportunity to express firsthand outrage felt over the crisis in Poland. NBC's Marvin Kalb: In Geneva, Secretary Haig may be facing a dialogue of the death, with both foreign ministers talking past each other. If Poland is at the top of the Secretary's agenda, then Cuba may be a close second. Haig wants to find out why the Soviets shipped more military supplies into Cuba last year than at any other time since the Cuban missile crisis. (ABC-3,NBC-8)

NBC POLL--An NBC News/AP poll asking the question: should private schools, practicing racial discrimination be entitled to tax exemptions? 75 percent polled said yes. 18 percent said no. And 7 percent of those polled were undecided. (NBC-6)

Pro and Con

Tax Breaks for "All-White Schools"?

YES—Schools founded on "sincere religious beliefs must be protected"

ALLIED PIX

Interview With William Bentley Ball

Constitutional Lawyer

Q. Mr. Ball, why should schools that discriminate against blacks be given federal tax exemptions?

A It comes down to a question of whether religious beliefs are involved. In a case where it is clearly established that a particular religious organization engaged in some form of discrimination based upon religious principle, that institution's tax exemption could not be denied without denying it its First Amendment liberties.

It is very clear under the Constitution that a citizen may not be required to recant a religious belief or practice because it conflicts with some kind of governmental idea of what is orthodox. Suppose that sex discrimination violates federal public policy and that a Catholic seminary refuses to admit women. To deny that institution a tax exemption would be denying it its religious liberty.

Incidentally, although I am representing Bob Jones University in litigation contesting a government action denying it tax-exempt status, I am speaking here in general terms and not specifically about that case.

Q. Aren't there limits to religious freedom? For example, a religious group would not be entitled to act on its belief in illegal practices such as polygamy or ritual murder—

A Yes, there are limits. The group could be criminally prosecuted for carrying out beliefs such as human sacrifice, which is indisputably illegal. But a church such as the Black Muslims could choose to limit its membership to one race on religious grounds.

Q. Civil-rights advocates charge that a school discriminates against blacks if it doesn't recruit them. Why shouldn't such institutions be denied tax benefits?

A Because to require schools to comply with affirmative-action requirements as proof of their nondiscriminatory character is to declare schools guilty until they prove themselves innocent. Imagine that an Amish school is told that to be tax-exempt it must go out and recruit students on the basis not of religion but of race. This is an extreme and unconstitutional requirement. If they recruit without regard to religion and only on the basis of race, they stand a great chance of ruining their school because they're bringing in unbelievers.

Q. Haven't the courts ruled that tax exemptions for discriminatory schools violate the law?

A No. The 1971 decision being cited by some people in this debate was later ruled by the Supreme Court not to be a precedent. Furthermore, the issue of free exercise of religion was not raised in the 1971 case.

Q. If the government granted a tax exemption to an all-white school, wouldn't it be aiding racism?

NO—"We do not use public funds to pay the bills for segregated education"

DARRYL HEIKES—USN&WR

Interview With Senator Charles McC. Mathias

Republican, Of Maryland

Q. Senator Mathias, why do you favor denying tax-exempt status to racially discriminatory schools and colleges?

A The basic principle on which our pluralistic society is founded rejects race as the criterion on which public decisions are made, and the decision to fund a particular institution with public funds is a public decision. So we have decided as a nation that we are not going to use race as the criterion.

Q. If racially exclusive admission policies in private schools are not unlawful, why should they be a basis for denying tax exemptions?

A Because we do not use public funds to pay the bills for segregated education. A tax exemption is an indirect use of public funds because, in effect, funds that would otherwise be paid in taxes are allocated for a particular purpose. We simply are not funding segregation in this country any more.

There is also a basic question of equity: If you allow some taxpayers to escape taxation on money used for prohibited purposes, then you increase the burden on all other taxpayers for supporting the permissible purposes.

Q. Wouldn't the government be violating the First Amendment's freedom-of-religion clause by withholding tax benefits from organizations that discriminate out of religious convictions?

A Absolutely not. The First Amendment has an absolute guarantee of religious belief, but it does not prohibit government regulation of religious practice. The historical example most often cited is the Mormon practice of polygamy, which had to be abandoned at the time that Utah was admitted to the Union.

Other examples come to mind. The Aztecs believed in ritual murder. Does anyone seriously think that the First Amendment would condone ritual murder, no matter how sincere the religious belief that encouraged it might be? There are some practices which could not be condoned under the First Amendment.

It may well be that something prohibited to a public institution—one funded by taxes or through the indirect method of tax exemptions—is not prohibited to a citizen who is paying his own bills. That would probably be the case here: A private educational institution might have rules that are in conflict with the general mores of society as long as it pays its own bills. But when it comes to the Treasury and says, "Either give me an appropriation or give me an exemption," then it has to abide by the general rules of society.

Q. If favored tax status is denied to schools that exclude

 2/8/82

Interview With Mr. Ball *(continued)*

A No. Most of the religious schools we're talking about have a racially nondiscriminatory policy. They may have no minority students because minority parents do not want their children brought up, say, in a strict Calvinist religious environment. Such schools have been established under sincere religious beliefs that must be protected. Throughout our history, we have refused to penalize people on account of beliefs that are unorthodox or not accepted by the majority.

Q. Wouldn't the awarding of tax exemptions to all-white schools encourage creation of similar institutions and thus further weaken the public-school system?

A That's a false argument. People should be able to exercise freedom of choice in education. Establishing many kinds of private schools does not necessarily weaken the public-school system.

The larger question is not whether the public-school system is weakened, but whether education is advanced and whether our freedoms are advanced. I don't know of anything in the law that says a school that turns out to have a white population or a black population should be barred from obtaining a tax exemption.

Q. Some argue that if these schools were given tax exemptions, blacks would be subsidizing all-white schools—

A That's an extreme argument in which words become totally changed from their true meanings. A tax exemption is certainly not a subsidy. There's an enormous difference between making an appropriation from the Treasury to a school and merely not taxing a school.

Q. Some contend that tax exemptions should not be a right but rather a benefit given to an institution that helps society in some way. Does that theory have a legal basis?

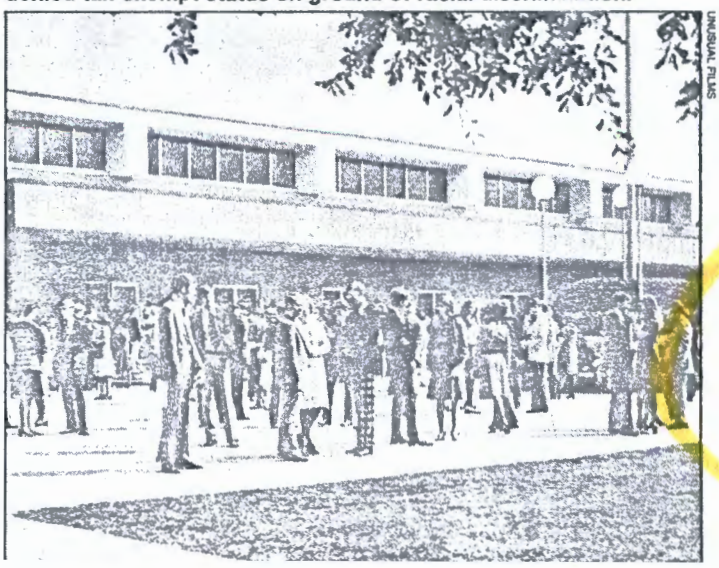
A Religious organizations generally receive tax exemptions because of the good purposes Congress deems them to serve. When one further qualifies that to say that religious purpose must serve certain stated governmental objectives, such as a better environment or racial equality and so on, freedom of religion is being corrupted. The government is saying, in effect, that religious groups must be in lock step with whatever is the dominant national policy at the moment or they cannot exist.

Q. Do you agree with critics who say that the Internal Revenue Service has been making social policy?

A Yes. The agency has done it wholesale and to an unbelievable extent. In the first place, IRS actions have not been authorized by the Congress. Also, many of the policies themselves are bad. I'm afraid that the legislation favored by the Reagan administration will simply give the IRS the authority to do the bad things it proposed in the past. I am talking about requiring a religious school to recruit students and faculty on the basis of race and not of religion and requiring that such schools consult with the local community on educational programs.

The bill would confer on tax authorities sweeping powers that would, in effect, turn religious private schools over to the discretionary power of the Internal Revenue Service. □

Bob Jones University in Greenville, S.C., is one of 111 schools denied tax-exempt status on ground of racial discrimination.



UNIVERSAL FILMS

Interview With Senator Mathias *(continued)*

blacks, shouldn't the U.S. also refuse exemptions to institutions that exclude members of one sex?

A I would agree that sex discrimination—like race discrimination—is prohibited in our society. When you focus on the question of racial discrimination, then it's going to raise questions of sex discrimination, of age discrimination, of discrimination of any sort. I don't think you can draw the line at race discrimination.

Q. Critics charge that the Internal Revenue Service was making social policy back in 1970 when it denied tax exemptions to discriminatory schools—

A I reject that. In fact, the IRS initially fought the change in court. It was as a result of the IRS losing the case that the agency changed its policy and President Nixon endorsed the change. So the IRS wasn't making social policy; it was dragged kicking and screaming into the process.

Q. Just whose responsibility is it to set policy on this subject—Congress, the Internal Revenue Service, the courts, the White House?

A As one of the original sponsors of the Civil Rights Act passed by Congress in 1964, I believe the law is broad enough to cover the subject of tax exemptions for discriminatory schools. Clearly, the courts felt so, including the Supreme Court of the United States, which in 1971 affirmed a lower-court ruling to that effect. And President Nixon approved IRS's 1970 action prohibiting tax exemptions for schools that discriminate against blacks. So all three branches of government have acted on this problem.

Perhaps Congress should be more explicit than it was in 1964. But we must consider how many examples of discrimination there are to cover—race, sex, religion, age or others. And when we start enumerating, we run into the danger that if something is overlooked or a whole new subject arises down the road, the courts will say: "Congress enumerated, and, since it left out a certain subject, it didn't intend to include this matter."

Q. You have doubts about the desirability of Congress's passing additional legislation—

A What we really need to do is get the law back to where it was on New Year's Day, before President Reagan revoked the IRS rule on the subject. We might be able to handle it by adopting a resolution, rather than a new law.

Q. What tests should the government use to determine whether an institution is engaging in discrimination?

A I favor looking at the results. The great philosophical issue in Congress today is whether or not there is a proven intent to discriminate, which is a very difficult thing to prove. But what affects people is the result of a policy. Have they been discriminated against? Are their opportunities in life limited?

Q. What if a school contends that it isn't discriminatory policies that are keeping blacks from entering but rather that no minorities apply for admission?

A That claim would have to be tested.

The government should ask: What was done to indicate that it would be worthwhile for a black to apply? Was there any effort to recruit blacks? □

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January 27, 1982

Edwin Meese, III, Esq.
Counsellor to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Meese:

I take the liberty of copying this letter to those of your staff people and counsel whom I can identify from recollection as having attended the meeting yesterday, and to thank both you and them for your courtesy in permitting me to meet with you and to discuss your tax-exemption bill.

At that meeting I represented no one except an old friend, Dr. Rushdoony, who had called me a few days ago and importuned me to attend. I had never before met most of the people there, and I did not speak for them, though I appreciated their concerns.

I mentioned to you that I had been a supporter of Mr. Reagan in his first campaign. I still am, and having any confrontation with him or with an administration which is struggling so greatly for the good of our nation is indeed not to my liking. Yet, as you may know, my first reaction to your bill - especially in the wake of developments following January 8 - was adverse, to say the least.

You said that you would be happy to receive comment from me upon your draft bill, plus any text which my firm could suggest. While we are sending a text separately which we feel protects both racial and religious civil rights, I would ask that you pause first to read the balance of this letter because it shows, I believe, serious deficiencies in your draft bill.

ADMINISTRATION DRAFT BILL OF JANUARY 18, 1982

(j)(1) IN GENERAL. Confusion will be created by the limitation, "other than an exclusively religious curriculum". A number of important recent decisions hold that fundamentalist and Catholic schools are exclusively religious and that nothing in them can actually be described as secular. See, e.g., Lemon v. Kurtzman, 403 U.S. 602 (1971); McCormick v. Hirsch, 460 F.Supp. 1337 (M.D.Pa. 1978); Catholic Bishop of Chicago v. NLRB, 559 F.2d 1112 (7th Cir. 1977), aff'd. 440 U.S. 490 (1979); State of Ohio v. Whisner, 351 N.E.2d 750 (1976). Fundamentalist Christians consistently testify that their curriculum (even in subjects such as mathematics) is taught from religious perspective and is religious in purpose. The trial records in these cases show this well. I believe that your draftsman did not intend this to create an exemption for religious schools, but that point is sure to result in litigation if left unattended to.

(j)(2) DEFINITIONS.

> "(i) An organization has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that organization. . ."

Here, again, a serious loophole has been left. Under that wording, an organization does not have a "racially discriminatory policy" if it refuses to admit to enrollment a child on account of that child's race. The only bar in the above quoted language is to the exclusion of "students" (people already enrolled).

Beyond this, instead of referring to the usual (and useful) phrasing in civil rights legislation, "on account of race", the above language employs a novel "all races" phrasing.

It is conceivable that a school could exclude a child of a particular race from some activity but not on account of that child's race. Suppose that a school, for health reasons, forbade the participation of all newly arrived Vietnamese children in a vaccination program; or that a Catholic school, for religious reasons, forbade Protestant black students to receive Communion; taken literally (and "literally" is the name of the game in much litigation today) the draft language would label either such school as having a "racially discriminatory policy".

Further: the draft language's term, "refuses", lands us in a quagmire. "Refuses" how often? Once? Frequently? Suppose a school of one of those many so-called "national" parishes (Catholic), so familiar in New York, Philadelphia, Los Angeles, etc., is an Italian national parish and always refuses to permit children of Slovak (or other non-Italian descent) permission to join in a Columbus Day pageant? I was harshly critical of the 1978-1979 IRS Proposed Revenue Procedures for their use of such very loose terms as "refuses". When you combine that with the myriad individual "rights, privileges, programs, and activities", you have a statute which is unmanageable - except through an all-embracing program of governmental surveillance. In a moment I will comment upon the constitutionally unique situation which such surveillance produces in the case of religious schools.

In fine, this first part of the bill, relating to admissions to programs, activities, etc., does not aid the black child who wants to get admitted, and is totally harmful to the religious school.

> ". . . or if the organizaton refuses to administer its educational policies, admissions policies, scholarships and loan program, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race."

This language is subject to the same major objection which is raised by the above part of the definition section insofar as it employs the vague term, "refuses". But in addition, this part of the definition embraces the extremely broad terms, "administer", "manner" and "discriminate". Who is to judge, and how will it be judged, whether a school shall be denied tax-exempt status under that language? We are again faced with the whole problem of myriad acts and omissions which someone may allege to be a discrimination in manner of administration.

Those religious schools which would become subject to IRS oversight by virtue of these requirements occupy a unique position constitutionally. They are, in the words of the First Amendment, an "exercise of religion", and have been so recognized on numerous occasions by the Supreme Court. See, e.g., Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) (the schools are "an integral part of the religious mission" of their sponsoring churches); Meek v. Pittenger, 421 U.S. 349, 366 (1975) (their religious mission is "the only reason for the schools' existence"); and NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 503 (1979) (wherein the Court pointed to "the admitted and obvious fact that the raison d'etre" of the schools is "the propagation of religious faith"). These religious organisms are not remotely analogous, for constitutional purposes, to any secular entity, whether that entity be business, industrial, educational or philanthropic.

This special constitutional status brings with it heightened protection for the schools from government direction, control or supervision, whether such direction is intended or not. As the Supreme Court has recognized, even a "regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement" for governmental respect for the free exercise of religion. Wisconsin v. Yoder, 406 U.S. 205, 220 (1972). No basis may be found in the First Amendment or in the holdings of the Supreme Court for the mistaken notion that the Religion Clauses protect religious "belief" but not religious "action". To begin with, the Clauses protect the "free exercise of religion", not the freedom merely to believe (it is on the basis of the belief/action dichotomy that the Soviet Union lays claim to being protective of religious freedom). Further, the courts

have always extended protection to actions of religious significance: the refusal to attend school beyond the 8th grade, Yoder, supra; the defrocking of a bishop, Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); the maintaining of schools, Catholic Bishop of Chicago v. NLRB, 559 F.2d 1112 (7th Cir. 1977).

Not only would free exercise violations necessarily attend IRS intervention into these church ministries, the very existence of the potentially entangling (and therefore illicit) relationship between church and state which the bill would create would violate express Supreme Court rulings. The Court has held that church-state separation must be certain, and that the introduction of any "element of governmental evaluation and standards", such as a "social welfare yardstick", into the government's relationship with a church or religious entity constitutes forbidden "excessive entanglement" between the two. Walz v. Tax Commission, 397 U.S. 664, 674 (1970). The Court has made plain its view that, in order to be violative of the "entanglement" prohibition, a government requirement need not even produce burdensome results:

> "It is not only the conclusions that may be reached. . . which may impinge on rights guaranteed by the Religion Clauses, but the very process of inquiry leading to findings and conclusions." NLRB v. Catholic Bishop, supra, at 502 (emphasis supplied).

Your bill, while laudably attempting to protect most religious schools, regrettably falls short of the mark. The regulatory scheme which the bill would authorize is far too invasive of areas of purely religious concern, and sweeps far too broadly to overcome either the Court's prohibition as to excessive entanglements, or its similar prohibition on legislative restrictions which are not drawn with "narrow specificity". Keyishian v. Board of Regents, 385 U.S. 589, 604 (1967).

It is not sufficient that the Congress, instead of IRS, be the party imposing the regulatory scheme. All along, we have complained of two things: (1) that Congress did not authorize IRS to impose its nondiscrimination regulations; and (2) that the very requirements which IRS has imposed are wrong. These requirements are not made right by simply transferring those loosely worded provisions into statute. The right statute is needed, or the schools will suffer.

I thank you most gratefully for your willingness to meet with me, as well as for your attention to what we know, from long experience, to be an especially grave matter.

Very truly yours,

William B. Ball

WBB:dh

cc: Mr. Morton C. Blackwell
Mr. John Chapoton

A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining racially segregative schools.

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

SECTION 1. FINDINGS.

(a) The Congress finds that -

(1) It is the policy of the United States that educational opportunity is to be available to all persons without limitations based upon a person's race, nationality or ethnic origin;

(2) Racially segregative institutions, as defined herein, should not enjoy tax-exempt status; the right of persons to equality before the law is a civil right;

(3) The liberty of individuals and institutions to observe and practice sincerely held religious beliefs is also a civil right, and no non-tax-funded educational institution which is religious in character and would not exist except for its religious mission should be denied tax-exempt status on the ground that any such observance or practice does not conform to governmental policy, it being contrary to the national tradition of liberty of mind and spirit to permit government to prescribe what shall be orthodox in matters of belief;

(4) The American constitutional principle of church-state separation requires that government be barred, in its taxing activities, from excessive entanglements with religious educational institutions;

(5) While the denial of tax-exempt status to private, non-tax-funded religious educational institutions can burden or destroy them, tax exemption does not constitute a subsidy to such institutions, nor does the tax exemption of such institutions constitute "financial assistance" to them within the meaning of such acts of Congress as title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972.

SEC. 2. DENIAL OF TAX EXEMPTION TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

"(j) ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such organization maintains a racially segregative school.

"(2) DEFINITION. -- For the purposes of this subsection the term "Racially segregative school" means a school which maintains a policy (whether written or as evidenced by a pattern of conduct) whereby it intentionally and deliberately denies admission to, expels, limits the availability of its programs to, or provides for separate treatment for, persons as students on the basis of their race, color, or national or ethnic origin. Such term shall not be construed to preclude the limitation, by a religious school, of admissions, or granting of preferences to students of the religious faith of that school."

SEC. 3. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(b) Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING RACIALLY SEGREGATIVE SCHOOLS.-- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501 (j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of an organization described in section 501(j)(1) which maintains a racially segregative school as defined in section 501(j)(2)."

SEC. 4. DECLARATORY JUDGMENT PROCEDURE ESTABLISHED.

(a) IN GENERAL. -- Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by redesignating section 7408 as 7409, and by inserting after section 7407 the following new section:

"SEC. 7408. ACTION TO REVOKE OR DENY TAX-EXEMPT STATUS OF PRIVATE SCHOOL ON BASIS OF RACIAL SEGREGATION.

"(a) GENERAL RULE. -- The Secretary may not --

"(1) revoke or change the qualification or classification of a private school as an organization described in section 501(c)(3) which is exempt from taxation under section 501(a),

"(2) deny, withhold approval of, the initial qualification or classification of a private school as such an organization, or

"(3) condition acceptance or approval of an application for qualification or classification of a private school as such an organization, or

"(4) revoke the advance assurance of deductibility issued to a private school,

on the grounds that the school is racially segregative unless a court of the United States, in a civil action for a declaratory judgment brought by the Secretary in accordance with the provisions of this section, has found that the school is intentionally racially segregative.

"(b) PROCEDURE TO BE FOLLOWED BY THE SECRETARY.--Whenever the Secretary has reason to believe that a private school is racially segregative, the Secretary shall file a civil action for a declaratory judgment in the United States district court for the district in which the private school is located.

"(c) NO ADVERSE ACTION UNTIL SCHOOL HAS EXHAUSTED APPEALS. -- In the case of a private school with respect to which a court has found under subsection (a) that it is racially segregative, the Secretary shall not take any action with respect to the initial qualification or continued qualification of the school as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2)(B), section 642, section 2055, or section 2522, until the school has exhausted all appeals from the final order of the district court in the declaratory judgment action brought under this section.

"(d) RETENTION OF JURISDICTION; REINSTATEMENT OF STATUS. -- The district court before which an action is brought under this section which resulted in the denial of initial qualification or revocation of qualification of a private school as an organization described in section 501(c)(3) which is exempt from tax under section 501(a), or as an organization described in section 170(c)(2)(3), section 642, section 2055, or section 2522, shall retain jurisdiction of such case, and shall, upon a determination that such school has not been racially segregative for a period of not less than a full school year since such denial or revocation became final, and shall issue an order to such effect and vitiate such denial or revocation. Such an order may be appealed by the Secretary, but, unless vacated, be binding on the Secretary with respect to such qualification.

"(e) AWARD OF COST AND FEES TO PREVAILING SCHOOL. -- In any civil action brought under this section, the prevailing party, unless the prevailing party is the Secretary, may be awarded a judgment of costs and attorney's fees in such action.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions of the Secretary of the Treasury taken with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code, or which is described in section 170(c)(2)(B), section 642, section 2055, or section 2522 of such Code, after the date of enactment of this Act; Provided, however, that no school, and no donors thereto, shall be accorded retroactive recognition of tax-exempt status or deductibility of contributions on the basis of this Act.

THE WHITE HOUSE

WASHINGTON

January 12, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO Diana

FROM: MORTON BLACKWELL MB

SUBJECT: REAGAN ADMINISTRATION ATTACK ON RELIGIOUS SCHOOLS

In my discussions with Diana Lozano today, which I believe were communicated to you, I emphasized the disaster that was impending in the decision about tax exempt status for private and religious schools.

One wonders which significant friends will next be betrayed.

I am reminded of the Aesop fable where the dog with the bone in his mouth grabs at the reflection of himself in the water for another bone and loses the bone that he had.

Will this decision win us the slightest increase in the black vote in the 1982 elections? No. Will this decision immensely anger the rapidly growing religious school community, which has been entirely supportive of the President? Yes. Could the President have issued a statement which would have left this decision up to the Congress? Yes.

It is as if this was a conspiracy designed to please our enemies and anger our allies.

We kicked the Right to Work Committee in the teeth on the Hobbs Act, and the AFL-CIO unions established for the first time a formal linkage with the Democratic party. What did we gain in that exchange other than one "nice" news item?

One of my oldest friends, a key organizer of grass-roots, conservative activity, has suggested that this is an appropriate time for me to resign from this Administration.

Here is what I suggest. The President should by any convenient means clarify his intentions as follows:

1. He should make it clear that any proposed legislation must require that the burden of proof of racial discrimination be on the government. Schools must be presumed innocent until proven guilty.

2. He must insist that proposed legislation impose no requirements on religious schools more restrictive than they were before August, 1978.

Prior to 1978, schools were self-certified as non-segregated. At that time, the Carter Administration proposed detailed, obnoxious guidelines which would greatly increase the power of the government to the detriment of private, largely religious schools.

The Congress overwhelmingly rejected these guidelines. There were a series of Ashbrook amendments to deny funding for implementation of these guidelines.

On July 13, 1979, the House voted 297-63 for one of these Ashbrook amendments. On August 20, 1980, the House voted 300-107 on the same issue. On July 30, 1981, the House voted 337-83 for a third time reaffirming the Ashbrook position.

On September 6, 1979, the Senate approved 47-43 a prohibition parallel to the Ashbrook amendment. There were no Senate roll call votes on this in 1980 and 1981.

The 1980 Republican platform specifically pledges an end to the IRS "regulatory vendetta" against Christian schools.

The possibility arises that the Reagan Administration will force through the Congress outrageous regulations which the Carter Administration attempted to impose. The conservative religious community rose up and defeated the liberal Carter scheme.

I am confident that the immense efforts which the conservative community and the Christian school movement will now devote in opposition to this Administration initiative will be extracted from the amount of efforts they would have put into the campaigns of candidates supportive of the President in the 1982 elections.

Bob Jones University is virtually the last hold out of fundamentalist Christians who believe that race-mixing is contrary to scripture. Virtually all of the President's supporters in the conservative religious community disagree with the Bob Jones policy, which is to prohibit interracial dating. But they are certain to rise to the defense of religious schools to practice their beliefs according to the First Amendment guarantees of religious freedom.

Those who do not actively oppose the Administration on this issue will at least tend to reassess the value of participating in the political process, inasmuch as none of them were seriously consulted prior to this basic decision by the Reagan Administration to intrude on how they run their institutions. They will view this as the camel's nose in their tent.

Now stand by for agitation from the feminists because the President did not include discrimination by sex, from the gay community because sexual orientation is not included, from the handicapped because they were not included. This is a Pandora's Box.

Religious Schools Ed Cavey
Tax Status

THE WHITE HOUSE
WASHINGTON

Feulner – Ed
Reynind – Winter – Rich
Jofton – D.G.
Kilpatrick – D.G.
Will – JAB
Phillips – Ed
Vigueric – DG
Wyrich – Ed
Stan Evans – Ed
Novak – JAB
Buchanan – Ed

Bob Dugan - National Association of Evangelicals

Ed McAteer - The Religious Roundtable

Pat Robertson - "700 Club"

Jerry Falwell - Moral Majority

James Robison - Minister

Ben Armstrong - Religious Broadcasters

THE WHITE HOUSE
WASHINGTON

To receive the
Religious schools
means
those marked with
☆

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

Attached memos sent to the following:

Jack Abramoff
College Republican National Committee
310 First St. S. E.
Washington D.C. 20003

Bill Anderson
Independent Petroleum Assoc.
1101 16th St. N. W. 2nd. Fl.
Washington, D. C. 20036

Dave Barron
Young Republican Natl. Fed.
310 First St. S.E.
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