Collection: Blackwell, Morton: Files
Folder Title: Religious Schools – Tax Status
(3 of 3)
Box: 23

RADIO SCRIPT JA FE MR AP MY JE 1 2 3 (4) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
JY AG SP OC NV (DC) 76 77 (A) (1) 2 3 4 (78) 79 B 5 6 7 8

(IRS Commissioner Jerome Kurtz)

With Congress not in session, he has decided to issue an edict which will deny the tax exempt, tax deductible status to private schools that fail to meet an arbitrary quota of minority enrollment and hiring. Private and church supported schools will have to institute minority recruitment, minority hiring programs and provide minority scholarships to increase minority enrollment.

~~to destroy."~~ The I.R.S. threatens the destruction of religious freedom itself with this action. ~~The Commissioner and your Congressman should be hearing from you~~

Education — IRS Rules

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 12, 1982

STATEMENT BY THE PRESIDENT

This issue of whether to deny tax exemptions to non-profit, private, educational institutions raises important questions and sensitive policy considerations.

My administration is committed to certain fundamental views which must be considered in addressing this matter:

-- I am unalterably opposed to racial discrimination in any form. I would not knowingly contribute to any organization that supports racial discrimination. My record and the record of this administration are clear on this point.

-- I am also opposed to administrative agencies exercising powers that the Constitution assigns to the Congress. Such agencies, no matter how well intentioned, cannot be allowed to govern by administrative fiat. That was the sole basis of the decision announced by the Treasury Department last Friday. I regret that there has been a misunderstanding of the purpose of the decision.

I believe the right thing to do on this issue is to enact legislation which will prohibit tax exemptions for organizations that discriminate on the basis of race.

Therefore, I will submit legislation and will work with the Congress to accomplish this purpose.

###

Copies to EHD
Red
Diana Lozano
Thelma Duggin File

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/12/82 ACTION/CONCURRENCE/COMMENT DUE BY: IMMEDIATE

SUBJECT: DRAFT PRESIDENTIAL STATEMENT ON TAX EXEMPTIONS FOR PRIVATE INSITUTIONS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	GERGEN	☑	☐
MEESE	☑	☐	HARPER	☐	☐
BAKER	☑	☐	JAMES	☐	☐
DEAVER	☑	☐	JENKINS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
ANDERSON	☑	☐	ROLLINS	☑	☐
CANZERI	☐	☐	WILLIAMSON	☑	☐
CLARK	☐	☐	WEIDENBAUM	☐	☐
DARMAN	☐P	☐SS	BRADY/SPEAKES	☐	☐
DOLE	☑	☐	ROGERS	☐	☐
DUBERSTEIN	☑	☐	_____	☐	☐
FIELDING	☑	☐	_____	☐	☐
FULLER	☑	☐	_____	☐	☐

Remarks:

Attached is the latest draft. Please provide comments immediately. This must go to the President by 12:55 today. Thank you.

Richard G. Darman
Assistant to the President
and
Deputy to the Chief of Staff
(x-2702)

DRAFT OF PRESIDENTIAL STATEMENT ON TAX EXEMPTIONS FOR PRIVATE INSTITUTIONS

The issue of whether to deny tax exemptions to non-profit, private, educational institutions raises difficult questions.

This administration is committed to certain fundamental views which must be considered in addressing this matter:

-- We are unalterably opposed to racial discrimination in any form. My record, and the record of this administration, are clear on this point. The action taken by the Treasury Department last Friday should not be construed to suggest otherwise.

-- In dealing with private non-profit institutions, we are determined to be sensitive to the protection of all individual rights involved -- including the protection of individuals from improper discrimination and the protection of individuals from restraints upon their exercise of personal freedoms of belief and expression.

-- We are also opposed to the exercise of discretion by the IRS in the pursuit of what it unilaterally takes to be social objectives. Administrative agencies, no matter how well intentioned,

should not take it upon themselves to decide what is national policy without the explicit guidance of Congress. This should be the case regardless of the social purpose involved and even if private, tax exempt institutions engage in practices with which many -- including this administration -- disagree. Where objectionable practices exist, the appropriate way to proceed is for the Congress to determine that such practices merit specific remedies. That was the sole bais of the decision announced by the Treasury Department last Friday.

In order to assure that the government is not associated with objectionable discriminatory practices, we believe the right way to proceed is to enact legislation which will require the denial or revocation of tax exemptions for organizations which discriminate on the basis of race. We will submit legislation and will work with the Congress to accomplish this purpose. In developing the legislation, we will be sensitive to the several important policy considerations that are necessarily involved.

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 academics," 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.

Richmond Times-Dispatch

JOHN STEWART BRYAN III
Publisher

EDWARD GRIMSLEY
Editor of the Editorial Page

ALF GOODYKOONTZ
Executive Editor

MARVIN E. GARRETTE
Managing Editor

Thursday, January 21, 1982

Votes of U.S. House of Reps for Ashbrook Amendment rollcall.

July 13, 1979

297 for

63 agin

Aug 20, 1980

300 yes

107 no

July 30, 1981

337 - yes

83 - no

U.S Senate

Sept 6, 1979

47 yes

43 no

1980 + 1981 no senate rollcall vote

1980 Rep platform specifically pledges an end to the IRS "regulatory vendetta" against Christian schools

See Comments

755-2900 Letter was very clear

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 19, 1982

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Edwin Gray
White House

MEMORANDUM

THE WHITE HOUSE

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MEMORANDUM

THE WHITE HOUSE

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MEMORANDUM

THE WHITE HOUSE

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MEMORANDUM

THE WHITE HOUSE

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MEMORANDUM

THE WHITE HOUSE

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U.S. Department of Justice
Office of the Deputy
Attorney General

Sally: (file)

I imagine the attached came directly to you & never has appeared on the late list.

Mary Lawton

CRT
WHL
2/11/82
on 5/24 list

THE WHITE HOUSE OFFICE

REFERRAL

FEBRUARY 11, 1982

TO: DEPARTMENT OF JUSTICE

ACTION REQUESTED:
DRAFT REPLY FOR SIGNATURE OF MORTON BLACKWELL

REMARKS: ALSO REFERRED TO TREASURY
WE NEED TO USE THIS DRAFT TO RESPOND TO SEVERAL OTHER LETTERS REGARDING THIS SUBJECT

DESCRIPTION OF INCOMING:

ID: 059782

MEDIA: LETTER, DATED FEBRUARY 1, 1982

TO: MORTON BLACKWELL

FROM: MR. AND MRS. JEFF BERG
190 EDWARDS FERRY ROAD
LEESBURG VA 22075

SUBJECT: REAGAN ADMINISTRATION'S LEGISLATION TO CONGRESS IN ORDER TO REMOVE TAX EXEMPTION FROM SEGREGATED PRIVATE SCHOOLS

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO:
AGENCY LIAISON, ROOM 62, THE WHITE HOUSE

6/10
6/28

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

✓

4418

DJ 169-01

JUL 8 1982

Ms. Sally Kelley
Director of Agency Liaison
Presidential Correspondence
The White House
Washington, D.C. 20500

Dear Ms. Kelley:

Enclosed is a draft response for the signature of Mr. Morton Blackwell to correspondence from Mr. and Mrs. Jeff Berg on the Administration's legislation to bar tax exemptions for segregated private schools. I apologize for the delay in getting this draft response to you.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

bcc: Records
Chrono
Landsberg
Cooper
Morisey
✓Executive Secretariat

Mr. and Mrs. Jeff Berg
190 Edwards Ferry Road
Leesburg, Virginia 22075

Dear Mr. and Mrs. Berg:

This is in response to your letter of February 1, 1982 regarding the Administration's decision to submit to Congress legislation to prohibit tax exemptions for segregated private schools. I apologize for the delay in responding.

The President certainly agrees with you that all of our laws must be completely consistent with our First Amendment guarantee of religious freedom. For that reason the Administration took great care in developing this legislation (H.R. 5313 and S. 2024) so that it protects the religious rights of those affected by it. For example, the legislation permits tax-exempt status for a church-affiliated private school with admissions preferences for church members so long as such preferences are not based upon race or upon a belief that requires discrimination on the basis of race.

The Supreme Court has stated that racially discriminatory admissions policies violate federal law (42 U.S.C. 1981). Runyon v. McCrary, 427 U.S. 160 (1976). The Court also has determined that the implementation of a neutral, secular governmental interest may permissibly impose certain burdens on the free exercise of religion when the burden on First Amendment values is justifiable in terms of the Government's valid aims. Gillette v. United States, 401 U.S. 437 (1971); Wisconsin v. Yoder, 406 U.S. 205 (1972); United States v. Lee, 50 U.S.L.W. 4201 (U.S. Feb. 23, 1982). Therefore, we do not believe that the denial of tax-exemptions for those church-affiliated schools which violate federal anti-discrimination laws is an unconstitutional infringement on First Amendment rights.

Please be assured that the Administration's decision to submit legislation on this matter does not indicate any diminished regard for the right to religious freedom embodied in the Constitution.

Sincerely,

Morton Blackwell
Special Assistant to the President

CRT
WHL

0523
W.H. Ref
APP

THE WHITE HOUSE OFFICE

REFERRAL

FEBRUARY 11, 1982

TO: DEPARTMENT OF JUSTICE

ACTION REQUESTED:
DRAFT REPLY FOR SIGNATURE OF MORTON BLACKWELL

REMARKS: ALSO REFERRED TO TREASURY
WE NEED TO USE THIS DRAFT TO RESPOND TO SEVERAL OTHER LETTERS REGARDING THIS SUBJECT

DESCRIPTION OF INCOMING:

ID: 059782

MEDIA: LETTER, DATED FEBRUARY 1, 1982

TO: MORTON BLACKWELL

FROM: MR. AND MRS. JEFF BERG
190 EDWARDS FERRY ROAD
LEESBURG VA 22075

SUBJECT: REAGAN ADMINISTRATION'S LEGISLATION TO CONGRESS IN ORDER TO REMOVE TAX EXEMPTION FROM SEGREGATED PRIVATE SCHOOLS

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO:
AGENCY LIAISON, ROOM 62, THE WHITE HOUSE

169-019-79

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

47

CIVIL RIGHTS

059782

ID # FI010-02

Dg

File
Bob Jones U.

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING

Date Correspondence Received (YY/MM/DD) 82/02/08

Name of Correspondent: Jeff + Ellen Berg

☐ **MI Mail Report** **User Codes:** (A) ____ (B) ____ (C) ____

Subject: Reagan Administration's legislation to Congress in order to remove tax exemption from segregated private schools

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
PLBLAC	ORIGINATOR	82/02/10			/ /
	Referral Note:				
Treasury	D	82/02/11 DR		C	82/03/26
	Referral Note:	for Blackwell sig / Pls expedite DR			
✓ DOJ / Ed Schmults	D	82/02/11 DR		C	82/07/08
	Referral Note:	for Blackwell sig / Pls Expedite DR			
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: We need to use this draft to respond to several other letters regarding this subject. DR

Keep this worksheet attached to the original incoming letter.
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5/81

170 Edwards Ferry Rd.
Leesburg, VA 22075
February 1, 1982

Mr. Morton Blackwell
Special Assistant to the President
The White House
Washington, D.C. 20500

05978[illegible]2

Dear Mr. Blackwell:

The Reagan Administration has announced plans to submit legislation to Congress in order to remove tax exemptions from segregated private schools. While I do not endorse racial discrimination, I do oppose legislation which would ultimately bring about government interference in the practice of our religious liberties. Please consider the following, Mr. President + Mr. Blackwell:

1. No legislation, regardless of the banner it heralds, should be passed unless complete protection for religious groups is included.

2. If tax exemptions are denied [illegible]-79 some religious groups while they are not granted to others, the result would be the establishment of two classes of religion;

those that are favored and those that are not favored. The First Amendment prohibits the establishment of religion.

3. The bill would cause churches to lose tax exemption also because no protection is provided against decisions resulting from the unethical sweetheart suit such as Green vs. Connally. This suit, by the way, should be brought to a complete investigation.

4. The bill is vague and inadequate concerning enforcement. This would allow the IRS and the Federal courts to write arbitrary rules for religious institutions.

5. Tax exemptions are not Federal subsidies. If tax exemption is deemed to be a proper tool for regulating what some consider to be morally objectional conduct, the race issue is not the only issue which must be considered. Many tax exempt organizations now espouse or practice homosexuality, witchcraft and

abortion. Some also use the courts to attack the civil rights of religious minorities.

Please advise the President that I, along with others, would like to see him reconsider this proposed legislation which has come about through a wave of hysteria that some activist groups are trying to create.

Thank you so very much.

Sincerely,

Jeff + Ellen Berg

file IRS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner,

v.

UNITED STATES,
Respondent.

No. 81-3

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writs of Certiorari to the United States
Court of Appeals for the Fourth Circuit

MOTION OF PETITIONER BOB JONES UNIVERSITY
FOR ORDER DIRECTING RESPONDENT TO ACT WITH
RESPECT TO RESPONDENT'S MEMORANDUM OF JANUARY 8, 1982

Movant, the petitioner Bob Jones University, hereby moves the Court to issue an appropriate order directing that the respondent inform the Court forthwith of the date upon which it will reinstate the tax-exempt status of Bob Jones University and the date upon which it will make refund of the taxes in dispute herein, or, in the alternative, notify the Court that it will seasonably file its brief in order that the case may proceed in regular course.

On October 13, 1981, the Supreme Court granted certiorari herein, thus apparently recognizing that the case presents issues of extreme weight nationally. Both the University and the Government, prior to the granting of certiorari, had urged that the case presents, in the words of the Government, "First Amendment questions of substantial importance", involving "the sensitivity of the claims that the Internal Revenue Service's administration of the tax laws violates the First Amendment right of schools to the free exercise of religion." (Brief For The United States, 16-17). The University's subsequent brief not only argued undeniably important Free Exercise claims, but contended that the application to its ministry of the Fourth Circuit's construction of Section 501(c)(3) was plainly violative of the Establishment Clause. At the threshold, however, the University made known to the Court that that construction misread the plain meaning of the statute, was completely contradicted by the legislative history, and actually excluded by the opinion of the district court in Green v. Connally. (Brief For Petitioner, Bob Jones University, 10-23).

With respect to the last-mentioned matter - lack of Congressional authority for the actions of IRS in the premises - the United States, on January 8, 1982, apprised the Court of a changed position. The Government's Memorandum of that date recited that the Department of the Treasury "has initiated the necessary steps" to reinstate the tax-exempt status of the University; that it "will refund. . . the. . . taxes in dispute"; and that it "has commenced the process necessary to revoke forthwith" the Revenue Rulings which had been relied on to deny the University tax-exempt status. The

Government asked that the judgments below be vacated as moot. In a White House news release of January 18, 1982, the Government's reason was stated: namely, that the IRS was without legislative authority for its actions (Supplemental Memorandum For The United States, 10a).

As of February 24, 1982 (44 days after January 8, 1982) the University's tax-exempt status has not been reinstated, no taxes refunded it, no communication sent it by the Government with respect to these obviously important matters, nor, so far as the University can ascertain, have any steps whatever been to taken in fulfillment of the Government's commitment. Thus the situation as of today is that, technically the case is not moot. Yet the United States has made a formal and public commitment to this Court that it is accomplishing the steps necessary to render it moot. There can be no doubt whatever, under the most familiar law respecting the "case or controversy" requirement of Article III, that the actual restoration of the University's tax-exempt status and refund of the taxes in dispute would render this case moot. Princeton University v. Schmid, ___ U.S. ___, 50 U.S.L.W. 4159 (January 13, 1982). The Government, having opened a question of mootness in this Court, should now be required to pursue the matter to conclusion forthwith, or to abandon it forthwith.

The orderly processes of this Court, as well as the rights of Bob Jones University, are severely prejudiced by the Government's continued delay in taking the steps which it pledged the Court to take. The University has been in litigation continuously, for a decade, in an effort to get a final answer to the question: Must a completely religious institution, which would not exist except for its religious mission, which receives no subsidy from government, which is

charged with the violation of no law, which poses no threat to the public safety, peace or order, and which is not charged with causing harm to any individual, be denied tax-exempt status solely because it follows a religious command (established upon the record, P A42) which requires it to forbid interracial dating and marriage?

Nothing has changed in the relative positions of the parties since the Court granted certiorari on October 13, 1981, and the extreme threat to Bob Jones University, posed by the decision of the Fourth Circuit, is as live as it was at that time. If the Government does not intend to take action to render this case moot, then this case is certainly ripe for determination and for that clear declaration of the rights involved which is needed for the avoidance of an endless vista, for this small school, of the anxieties and the drain of stewardship funds attendant upon further protraction of the litigation.*

---

* Comment to the press by attorneys for amici curiae herein has claimed that an order entered February 18, 1982, of the U.S. Court of Appeals for the District of Columbia Circuit in cases there pending known as Wright v. Regan (Ct. App. No. 80-1124 and Green v. Regan, (Ct. App. No. 82-1134) is applicable to Bob Jones University and would bar reinstatement of its tax-exempt status. (See Associated Press article, Philadelphia Inquirer, February 20, 1982, p. 1A and 4A). This claim is insupportable. Bob Jones University is not a party in either of the cases mentioned, and it would be a denial of fundamental due process for the Court of Appeals to adjudicate its rights in its absence. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327, n. 7 (1979). More importantly, the Court of Appeals relies upon Runyon v. McCrary 427 U.S. 160 (1976) as its authority. But in Runyon the Court stated that that case presented, no "question of the right of a private school to limit its student body to. . . adherents of a particular religious faith. . .", nor any question of the application of 42 U.S.C. §1981 "to private sectarian schools that practice racial discrimination on religious grounds." Id. at 167. (Emphasis by the Court). The Court noted that the Free

CONCLUSION

For all of the foregoing reasons, it is requested that this motion be granted.

Respectfully submitted,

William Bentley Ball
William Bentley Ball

Philip J. Murren
Philip J. Murren

Richard E. Connell
Richard E. Connell

Kathleen A. O'Malley
Kathleen A. O'Malley

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Attorneys for Petitioner
Bob Jones University

FEBRUARY 24, 1982

Footnote continued from previous page:

> Exercise Clause of the First Amendment was in no way involved. Ibid. fn. 6. Additionally, the Court of Appeals order cites Green v. Connally, 330 F. Supp. 1150, 1179 (D.D.C.), aff'd. mem. sub nom. Coit v. Green, 404 U.S. 997 (1971) as the source of its definition of "racially discriminatory policy as to students", but the Green opinion, as petitioner has pointed out, expressly disclaimed any application to religious schools. (Green, at 1169, and see Brief For Petitioner, Bob Jones University, 17). The Court of Appeals' order of February 18, 1982, can therefore be no bar to reinstatement of the University's exemption.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner,

v.

UNITED STATES,
Respondent.

No. 81-3

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

MEMORANDUM:
RESPONDENT'S MOTION FOR DIVIDED ARGUMENT

At 11:40 a.m. today (February 24, 1982) through a third party, counsel for Bob Jones University became informed that the United States intends to file on February 24, 1982, a Motion For Divided Argument. Being unable to confirm this by a telephone call to the Department of Justice, and having received no copy of any such motion, or any communication concerning it, Bob Jones University feels it inappropriate to file a "Response to Motion", in that no such motion may have been made. It is nonetheless respectfully requested that this memorandum be treated as a response in opposition to that motion, should the motion have been filed, and

assuming that it contains the following two points:

1. That special counsel be appointed to present a brief and/or oral argument in this case.

2. That the time for oral argument be divided so as to allow twenty minutes for Bob Jones University and Goldsboro Christian Schools, twenty minutes for the United States, and twenty minutes for counsel to be appointed.

Bob Jones University would vigorously oppose the appointment of special counsel and the related division of oral argument.

I. THE APPOINTMENT OF SPECIAL COUNSEL WOULD BE UNWARRANTED AND IS PREJUDICIAL TO THE PETITIONERS HEREIN.

If, by its motion, the Government would support the conferring of intervenor status upon a non-party (whose attorney would then be permitted to present a brief and oral argument), by the general rule, intervention will not be granted a non-party at the Supreme Court level. Plainly, no non-party should be granted intervention here.

While, on rare occasions non-party intervention has been granted where loss of that party's rights have been threatened, no non-party in the present case has come forward whose own rights are threatened. Certainly the Court would not designate an individual or any organization to stand in the stead of the Government, as a private attorney general, purporting to represent a public interest in civil rights (which would, of absolute necessity, include religious civil rights). Essential would be a determination, based upon a record, that the non-party had standing to litigate the tax liability of a third party. Eastern Kentucky Welfare Rights Organization v. Simon, 426 U.S. 26 (1976). In the

absence of such a record, the Court would be asked to adjudicate the unsubstantiated claims of one, having no injury in fact to show, but merely ideological views, upon which to claim standing. See Valley Forge Christian College v. Americans United For Separation of Church and State, Inc., ___ U.S. ___, 50 U.S.L.W. 4103 (January 12, 1982).

Further, no precedent in the decisions of this Court exists to support non-party intervention. NAACP, in its Motion to Intervene, cites several cases to support its contention that intervention is necessary to protect its rights. Yet each case cited involves the significant difference that those parties granted intervention therein could all demonstrate concrete injury to themselves, rather than merely express "generalized grievances", Valley Forge Christian College, supra, 50 U.S.L.W. at 4106, about the matter in dispute. NAACP, et al., cannot demonstrate that denial of tax exemption to Bob Jones University will result in redress of any specific "injury in fact" which has occurred to it or its allied parties.

Certainly, too, the Court should not be asked to manufacture a case or controversy by choosing a party to advocate a particular point of view - most especially any individual or group which had not the remotest connection with the matter in question at any time heretofore. This case was, and remains, a challenge by two religious ministries to the United States for what those ministries believe to be an unfounded and unconstitutional application to them of a federal statute. The United States has conceded that indeed that application was unfounded, that is, without Congressional authorization or intendment. If the United States is now of the view that, if the application were well founded, that application would

not contravene the First Amendment, then the United States is quite capable of presenting that constitutional argument.

In the foregoing connection, two facts are obvious: (1) That if the opponent of Bob Jones University now concedes that it has no argument to make to oppose the University's contentions respecting lack of Congressional authority, a judgment of reversal is in order, and the Court ought not give ear to pleas that obstacles be devised to delay or impede the granting of that judgment. (2) That though the Congress did not authorize the actions taken by IRS herein (as the parties now agree), the matter is still one which the Congress is free to address.

For much the same reasons as appear above, no oral argument by counsel for an amicus curiae is warranted. Should, however, counsel for an amicus on one side of the issues in this case be heard, certainly counsel for amici such as the National Jewish Commission on Law and Public Affairs, the General Mennonite Conference, the Church of Jesus Christ of Latter-Day Saints, the United Presbyterian Church, American Baptist Churches, U.S.A., or other religious amici, should likewise be heard. These organizations, with their distinctive and deeply held commitments to religious principle as well as to religious liberty in a pluralistic society, have already informed this Court that they regard the Bob Jones University case as critically important religious civil rights litigation.

II. DIVIDED ARGUMENT IS NOT PROPER

Division of argument along the lines sought by the Government would severely prejudice the petitioner Bob Jones University. The United States seeks a total of 40 minutes

of time for presentation of argumentation adverse to the University, while allotting only half that amount to petitioners. It cannot be presumed that the United States will equally divide its time so as to devote identical portions in favor of petitioners' statutory position and opposed to petitioners' constitutional positions. The United States seeks an ultimate result unfavorable to the rights of petitioners, and should therefore not be permitted to take up time which should be reserved to the petitioners for defense of their rights. If one hour is to be set aside for argument, then petitioners should be granted one-half hour to argue.

Petitioner Bob Jones University has been informed by counsel for petitioner Goldsboro Christian Schools, Inc., that he will renew his previous motion (filed December 3, 1981) for additional time or, in the alternative, for divided argument. As before, petitioner Bob Jones University supports the granting of additional time - even though divided (counsel for Goldsboro Christian Schools being alloted fifteen minutes) - but opposes granting of division of the time already allotted.

Respectfully submitted,

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Attorneys for Petitioner
Bob Jones University

FEBRUARY 25, 1982

Specific objections to the "Church Regulation Bill"

A

The bill refers not just to the school, but the organization (i.e., the church) that sponsors the school.

B

The bill would require constant supervision by IRS of every administrative decision made by church schools - including selection of cheerleaders, curriculum, textbooks, and affirmative action programs. It clearly fosters excessive entanglement between government and religious schools.

C

Discriminates between religions, clearly establishing a preference for non-"discriminating" religious beliefs. This is a horrible precedent in violation of historical law which holds that "government" knows no heresy and prefers no orthodoxy." It does not accommodate sincerely held religious belief relating to race.

D

Denies First Amendment right of association to contributor, even though the taxpayer does not subscribe to the "offensive" policy of the non-tax exempt institution.

E

The use of the word "policy" is fraught with a multitude of meanings and is unconstitutionally vague.

F

This ex post facto law is retroactive; that is, churches could be required to pay taxes for the last twelve years. Contributions made to the church over the last twelve years could be disallowed, and the individual held responsible for back taxes.

A BILL

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

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

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

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 SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. --

A **"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious 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 has a racially discriminatory policy.**

"(2) DEFINITIONS. -- For the purposes of this subsection --

B **"(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, or if the organization refuses to administer its educational policies, admissions policies, scholarships and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or a program of religious training or worship of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, provided, that no such policy, program, preference, or priority is based upon race or upon belief that requires discrimination on the basis of race.**

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

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowances 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:

D **"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- 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) that has a racially discriminatory policy 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 SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- 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) that has a racially discriminatory policy 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:

E **"(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) that has a racially discriminatory policy 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) that has a racially discriminatory policy as defined in section 501(j) (2)."

F **SEC. 4 EFFECTIVE DATE.**

The amendments made by this Act shall apply after July 9, 1970.

Further objections to the "Church Regulation Bill"

This bill flatly denies free exercise of religion.

●

This bill provides insufficient safeguards against arbitrary government action through later bureaucratic law-making because of burden of proof problem and because it is replete with vague, ambiguous, overbroad and standardless terms.

●

This bill presumes guilt until proven innocent. It would require the accused church school to go to court to protect constitutional rights.

●

This bill is ambiguous as to whether the IRS is to use an "effects" test which excludes any evidence of intent, or whether they should use "intent" test.

This material was prepared by the

National Christian Action Coalition
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NCAC wishes to express our thanks to Attorney Orrin Briggs for assisting in outlining the problems with this legislation.

Washington Post January 19, 1982

Reagan Submits Bill Denying Tax Breaks To Segregated Schools

By Lee Lescaze
Washington Post Staff Writer

President Reagan, wrestling with what perhaps has become the most embarrassing action of his first year as president, took a second step yesterday toward undoing his 10-day-old decision to grant tax exemptions to private schools that discriminate racially.

The president sent a bill to Congress that would deny all such tax subsidies and ordered the Internal Revenue Service to grant only two exemptions pending congressional action on the proposed legislation.

The result leaves the administration in the position of saying its policy is to oppose tax breaks for segregated private schools, but granting Bob Jones University of South Carolina and Goldsboro Christian Schools of North Carolina tax exemptions at least until Congress acts. The federal government has charged the two schools with being racially discriminatory.

At the cost of a barrage of criticism that the president has taken a racist action, the administration has gone through the following policy changes with dizzying speed.

As of Jan. 7, the Reagan administration policy, as expressed in a brief to the Supreme Court, was the same as the policies of its three predecessors dating back to 1970: that it was a violation of the law to grant tax exemptions to schools that practice discrimination. No such schools could qualify and about 100 had been denied subsidies.

The next day, officials of the Justice and Treasury departments announced that it was wrong for the IRS to rule on exemptions in the absence of a bill passed by Congress. Suddenly, the policy had changed to grant all tax exemptions applied for by avowedly segregated schools until

See PRESIDENT, A7, Col. 2

Reagan's 2 p.m. news conference to be televised by major networks.

Reagan Submits Bill on Schools

PRESIDENT, From A1

told not to by Congress. The officials, who declined to allow their names to be used in connection with their explanations of the policy switch, said the administration had no intention to submit legislation to Congress.

Reagan, prodded into action by the public outcry, took his first remedial step four days later. He declared that "I am unalterably opposed to racial discrimination in any form," and said that he would submit legislation to bar tax exemptions for schools that discriminate. The policy at that point had become to deplore granting such exemptions, but to allow them to be granted anyway until Congress acted.

With yesterday's action, the policy now is to deny all such exemptions except for the Bob Jones and Goldsboro Christian schools, which were in litigation before the Supreme Court when the administration made its first policy change Jan. 8, and to work for passage of a bill that would later retroactively strip the schools of their benefits.

The Reagan bill would apply retroactively to 1970 when the Nixon administration, under pressure from federal courts, stopped granting exemptions to segregated schools, many of which were founded in reaction to federal efforts to desegregate public schools.

If Congress were to pass a bill, but not make it retroactive, Bob Jones and Goldsboro would realize a windfall. Some lawyers, including Goldsboro's attorney, William G. McNairy, immediately raised the question whether making a tax bill retroactive is constitutional.

If the bill passes with the retroactive provision, administration officials said, anyone who has made a tax-deductible donation to either of these schools would then owe the Treasury additional tax money.

White House communications director David Gergen introduced two other officials to explain the latest move to reporters in the White House press room, but stipulated that they could not be identified by name.

He would not explain why officials are unwilling to stand publicly behind their latest action on tax exemptions.

The issue has triggered public criticism of each other by some of the president's top three advisers. Deputy chief of staff Michael K. Deaver has

By Frank Johnston—The Washington Post
Reagan: A bill "sensitive to legitimate special needs."

expressed concern that the initial move was taken Jan. 8 with only presidential counselor Edwin Meese III having had more than brief advance notice.

Meese told United Press International that the White House is making no "attempt to assess the blame" for the backing and filling over the tax exemptions.

"I think we're all concerned about the way it came out," Meese added. He said "I didn't have any recommendation at all," but that chief of staff James A. Baker III had taken the recommendation to the president "and I was along with him."

The right wing of the Republican Party strongly favors granting tax exemptions to the schools in question, many of which are religious schools.

The president described his bill as "sensitive to the legitimate special needs of private religious schools." It would permit schools to give preference or priority to members of a particular religious group, but would bar an exemption for any school if its "policy, program, preference or priority is based upon race or a belief that requires discrimination on the basis of race."

For Goldsboro, the Reagan bill would be a fatal blow, according to McNairy. Goldsboro would owe more than $1 million which it does not have and would have to close down, McNairy said.

Bob Jones would owe even more, but has greater resources and would not be forced to close, according to people familiar with its financial situation.

Staff writer Charles R. Babcock contributed to this article.

Washington Post 1/18/82

Fight Looms On Tax Break For Schools

By Paul Taylor
Washington Post Staff Writer

Civil rights lawyers said yesterday they will fight in court a Reagan administration decision to stop denying tax-exempt status to schools that discriminate against blacks.

At the same time, Democratic leaders roundly denounced the Reagan administration policy shift and called for Congress block it.

The decision, announced Friday, "sets the country back many years," Rep. James R. Jones (D-Okla.), chairman of the House Budget Committee, said yesterday on the television show "Face the Nation" (CBS, WDVM). He said Congress should make sure the 12-year-old ban remains in force.

Meanwhile yesterday, Sen. Charles McC. Mathias (R-Md.) became the third senator to say he will propose a bill "to make the law crystal clear" against tax exemptions for private schools that practice race discrimination. Sens. Daniel P. Moynihan (D-N.Y.) and Gary Hart (D-Colo.) made similar statements Saturday.

Nonetheless, several civil rights lawyers said they felt the courts would be a more promising forum for battling the new policy.

"We've been notoriously unsuccessful in Congress making sure the existing ban is effectively enforced," said E. Richard Larson, an American Civil Liberties Union lawyer. "We've been out-lobbied by the Moral Majority types," he said, who have persuaded Congress over the years to attach riders on Treasury Department appropriations bills that kept the Internal Revenue Service from enforcing the ban.

Under a policy adopted by the Nixon administration in 1970, no private school or college was eligible for tax-exempt status unless it submitted a statement to the IRS that it did not discriminate on the basis of race.

Since then, some 100 schools have refused to submit such a statement, and have been denied tax-exempt status. Two, Bob Jones University in South Carolina and Goldsboro Christian Schools Inc. in North Carolina, challenged the ban in court.

Until Friday, the Reagan administration had fought them. But in a policy reversal, it announced Friday it would ask the Supreme Court to throw out the case and nullify lower court rulings affirming the ban.

Larson said that since the Jones-Goldsboro case is likely now to become moot, another judicial vehicle will have to be found to challenge the new policy.

The most likely, according to Norman Chachkin, of the Lawyers Committee for Civil Rights Under Law, is a still-active class action suit the committee brought in 1969 against the government on behalf of black school children in Mississippi.

The case, Green v. Connally, led the Nixon administration to impose the ban in 1970. Since then, however, the committee has been back in court on a number of occasions, arguing that the mere filing of a statement of non-discrimination does not guarantee that schools are, in fact, not discriminating.

It has asked for other criterion to be set. The matter is still pending before U.S. District Court here.

IRS

12 THE WALL STREET JOURNAL, Monday, January 11, 1982

UAW Will Open Contract Talks With Ford, GM

Layoff Fears Prompt Union To Discuss Pacts Months Before Their Expiration

By Robert L. Simison And Douglas R. Sease
Staff Reporters of The Wall Street Journal

DETROIT — The United Auto Workers union opens negotiations today that could lead to tentative new labor agreements with General Motors Corp. and Ford Motor Co. by Jan. 23, nearly nine months before existing contracts expire.

Delegates representing 445,000 auto workers at GM and Ford last Friday authorized the UAW's leaders to open negotiations with the companies immediately. By entering early talks the UAW hopes to stem the rising tide of unemployment among its members. Already more than 200,000 workers have been thrown out of work and the situation promises to worsen significantly over the next several weeks. While it isn't clear what the union may have to surrender in return for increased job security, UAW leaders believe it must move rapidly.

"If you don't do something reasonably quickly, what's the point?" said Douglas A. Fraser, president of the 1.2 million-member union.

Proposed Concessions

For the past year GM and Ford have been arguing that their U.S. labor costs are so high that they can't compete effectively against foreign auto makers. Specifically, the industry maintains that at $20 an hour, including wages and fringe benefits, its worker costs are $8 an hour higher than those of its Japanese competitors. To back up those claims the U.S. industry has been steadily moving production and parts-buying abroad at the cost of thousands of jobs in new or existing domestic plants.

When Mr. Fraser leads union bargaining teams into talks at Ford this morning and at GM this afternoon, it will be in an unaccustomed role. Instead of presenting a lengthy list of their own demands, the union negotiators will be listening to an unappetizing menu of proposed concessions accompanied by a grim review of the industry's problems.

GM and Ford officials welcomed the union's decision to enter negotiations. Although they haven't disclosed what specific revisions they will seek, the companies have singled out auto workers' extensive paid time off and generous cost-of-living allowances. At the same time, they have avoided the threat of direct wage cuts and have expressed an interest in developing profit-sharing plans.

Mr. Fraser declined to describe the union's likely bargaining objectives beyond job security. "I don't know where this is going to lead," he said. In return for $1.07 billion of contract concessions to Chrysler Corp., however, the union obtained a board seat, profit sharing ...

union uses the threat of a strike to set a deadline for reaching an agreement. But it couldn't legally call a strike now because its contracts don't expire until September. Even then it would be in a poor position to stage a strike because of the industry's condition and its members' extensive layoffs.

The UAW's rush to open talks with the car companies set off protests by a vocal group of dissenters. Opponents of new talks stormed out after the meeting of GM worker delegates Friday in Chicago and held their own news conference to denounce the decision. While the dissidents seemed to represent a small minority, they threatened to organize an effort to defeat any contract concessions in a ratification vote.

"I think the leadership of this union is out of touch with the rank and file," charged Peter Kelly, one of the dissident leaders.

Race Bias Won't Bar Tax-Exempt Status For Private, Religious Schools, U.S. Says

By Stephen Wermiel
Staff Reporter of The Wall Street Journal

WASHINGTON—The Reagan administration said it will no longer deny tax-exempt status to private and religious schools that practice racial discrimination.

Treasury and Justice Department officials reversed an 11-year-old Internal Revenue Service practice, saying it isn't authorized by Congress. The action was a switch for the Reagan administration, which previously defended the practice in papers filed with the Supreme Court.

The officials conceded the move will permit schools that openly engage in the most blatant forms of racial bias to enjoy tax-exempt status. Included would be parochial schools that cite religious reasons for barring blacks, as well as private academies formed to circumvent public school desegregation orders.

At the same time, the Justice Department moved to halt a pending Supreme Court test of government authority to use the tax-exempt status as a weapon against discriminatory schools.

The actions, announced Friday, were a boon to the religious right wing, which has coalesced around the issue of tax exemptions. The moves outraged civil-rights groups, which were expected to decide soon what legal course they would take to try to block the government's action.

The immediate winners of the administration's decision were Bob Jones University in Greenville, S.C., which restricts black enrollment in its kindergarten-through-college program, and Goldsboro Christian Schools in Goldsboro, N.C., which accepts no blacks in kindergarten through 12th grade.

Both Bob Jones and Goldsboro schools sued the IRS to obtain tax exemptions as private, religious schools. They lost in a federal appeals court in Richmond, Va., and appealed to the Supreme Court. In October, the Supreme Court agreed to hear appeals by the schools. The Justice Department acquiesced in that move because it wanted a "definitive decision" from the high court "to dispel uncertainty" about the authority of the IRS.

On Friday, the Justice Department did a turnabout, asking the high court to simply throw out the appeals court ruling and dismiss the case without a definitive ruling.

Department officials said they had reread congressional debates from the time Congress passed the tax law creating an exemption for nonprofit institutions engaged in educational, religious, scientific or charitable activities. "There was nothing in the legislative history to permit denial of tax exemptions because of racial discrimination," said an official who briefed reporters only on the condition that his name be omitted.

In a late summer Supreme Court filing urging the court to hear the case, the Justice Department had defended the IRS practice which, it said, derives its force from the congressional purpose underlying the tax-exempt status.

At the heart of the dispute is a 1970 ruling by the IRS that the purpose of the tax-free benefit was to reward or aid nonprofit institutions that were furthering public policy. A school that discriminates on the basis of race, the 1970 ruling concluded, is acting against public policy and, therefore, isn't truly charitable.

Reagan administration officials say the IRS shouldn't be deciding what constitutes good public policy. "These are fundamental questions that have to be addressed by Congress," a Treasury official said.

The officials insisted that "racial discrimination is deplored by the Reagan administration." But they said the administration hasn't decided whether it will ask Congress to pass legislation authorizing use of the tax exemption weapon for racial bias.

Meanwhile, they expect many of the estimated 100 schools that have been denied tax-free status in the past decade to apply for and be granted a tax exemption in the future.

Welcoming the administration's action, Connaught Marshner, chairman of the National Pro-Family Coalition, said "This is a real victory. This is the issue that made the religious right more than any other."

But Norman Chachkin of the Lawyers' Committee for Civil Rights Under Law said, "There is no justification for this. This is just the administration reflecting its true beliefs." He and Richard Larson of the American Civil Liberties Union said a three-judge federal court ruled in 1971 in a suit challenging the IRS practice that private schools that discriminate can't be considered charitable for tax purposes. The same court issued an injunction requiring the IRS to withhold tax-exempt status, they said.

Administration officials said they didn't see the injunction as an obstacle to their action. They declined to elaborate.

The civil-rights lawyers also say that the issue doesn't simply involve the intent of Congress. They argued in friend-of-the-court briefs in the Supreme Court that the Constitution prohibits the federal government from aiding organizations that discriminate by race. Tax-free status, they say, is unconstitutional government aid to such schools.

Rep. James R. Jones, chairman of the House Budget Committee, termed "terrible" the Reagan administration's decision to grant tax-exempt status to schools that discriminate against blacks. The Oklahoma Democrat added that "it sets back this country many years; it reverses the policies of Democratic and Republican Presidents alike. If the law isn't there already, then Congress should step in and reassert that this nation's commitment to nondiscrimination is there," he said yesterday on CBS-TV's "Face the Nation."

TREASURY NEWS
Department of the Treasury • Washington, D.C. • Telephone 566-2041

FOR IMMEDIATE RELEASE
Monday, January 18, 1982

Contact: Marlin Fitzwater
(202) 566-5252

TREASURY - IRS TO HOLD ACTION ON TAX EXEMPTIONS

Recognizing the President's desire to have legislation introduced to prohibit the granting of tax exemptions to certain educational institutions that engage in racially discriminatory practices, the Secretary of Treasury has instructed the Commissioner of Internal Revenue not to act on any applications for tax exemptions filed in response to the Internal Revenue Service's policy announced on Friday, January 8, 1982, until Congress has acted on the proposed legislation (except as required by the memorandum in support of the motion to vacate as filed in the Supreme Court on January 8, 1982).

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 18, 1982

FACT SHEET

Tax Exemption Bill Summary

The proposed legislation being submitted by the President to the Congress will, for the first time, give the Secretary of the Treasury and the Internal Revenue Service express authority to deny tax-exempt status to private, non-profit educational organizations with racially discriminatory policies. The legislation recognizes and is sensitive to the legitimate special needs of private religious schools.

Section 1 of the bill adds to section 501 of the Internal Revenue Code a new subsection that expressly prohibits granting tax exemptions to private schools with racially discriminatory policies, notwithstanding that such schools otherwise meet the tests for exemption presently listed in section 501(c)(3).

Religious schools of all faiths are permitted to limit, or give preferences and priorities, to members of a particular religious organization or belief in their admissions policies or religious training and worship programs. However, the bill expressly provides that a tax exemption will not be granted if any such policy, program, preference or priority is based upon race or a belief that requires discrimination on the basis of race.

Section 2 of the bill amends several sections of the Internal Revenue Code dealing with deductions to provide, consistent with the exemption provisions of the new law, that no deductions will be allowed for contributions to a school with a racially discriminatory policy.

A BILL

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

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

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

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 SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious 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 has a racially discriminatory policy.

"(2) DEFINITIONS. -- For the purposes of this subsection --

"(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, or if the organization refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or a program of religious training or worship of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, provided, that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.

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

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

(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 SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- 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) that has a racially discriminatory policy 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 SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- 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) that has a

racially discriminatory policy 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) that has a racially discriminatory policy 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 or an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply after July 9, 1970.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 18, 1982

TEXT OF LETTER SENT TO
THE PRESIDENT OF THE SENATE AND
THE SPEAKER OF THE HOUSE

Dear Mr. President/Mr. Speaker:

As you are aware, the Department of the Treasury announced on January 8 that the Internal Revenue Service would no longer deny tax-exempt status to private, non-profit educational organizations that engage in racially discriminatory practices but otherwise qualify for such status under the present Internal Revenue Code. That decision reflects my belief that agencies such as the IRS should not be permitted, even with the best of intentions and to further goals that I strongly endorse, to govern by administrative fiat by exercising powers that the Constitution assigns to the Congress.

I share with you and your colleagues an unalterable opposition to racial discrimination in any form. Such practices are repugnant to all that our Nation and its citizens hold dear, and I believe this repugnance should be plainly reflected in our laws. To that end, I am herewith submitting to the Congress proposed legislation that would prohibit tax exemptions for any schools that discriminate on the basis of race. This proposed legislation is sensitive to the legitimate special needs of private religious schools.

I pledge my fullest cooperation in working with you to enact such legislation as rapidly as possible, and urge that you give this matter the very highest priority.

I have been advised by the Secretary of the Treasury that he will not act on any applications for tax exemptions filed in response to the IRS policy announced on January 8, until the Congress has acted on this proposed legislation.

I believe the course I have outlined is the one most consistent both with our mutual determination to eradicate all vestiges of racial discrimination in American society, and with a proper view of the powers vested in the Congress under our constitutional system.

I feel this legislative action is important to and desired by all citizens of this great Nation; I am confident that you will give this issue the prompt attention it deserves.

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