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TELEPHONE
AREA CODE 717
252-8731

A RATIONAL TUITION TAX CREDIT BILL

As we write, major national campaigns for "a tuition tax credit bill" have been initiated by the Reagan Administration, U.S. Catholic Conference, and by other groups. Further, the tuition tax credit concept is under furious attack by a large coalition of religious and educational groups.

What is fascinating, in this whole picture is this fact: "the" tuition tax credit bill does not exist. Several bills have been introduced, and many drafts are floating about. But there is no one measure which is the common subject of the Reagan and U.S. Catholic Conference campaigns, or the common object of attack.

On the side of proponents of tuition tax credit legislation is the following major division:

(a) U.S. Catholic Conference and CAPE apparently fear that, unless IRS is given broad powers under the legislation, the tuition tax credit legislation will end up as a support for segregationist academies.

(b) Those fundamentalist Christian organizations which favor tuition tax credits fear that the legislation may contain IRS, federal or state governmental controls which will far outweigh the benefit of any tax break for parents.

Politically, it is clear that passage of any tuition tax credit bill will be very difficult; secondly, that if fundamentalist Christians oppose a certain bill that bill will not pass. We think that there is no need, however, for conflict among any who support the tuition tax credit concept.

Two sorts of harmful provisions need pointing out: (a) provisions which would, expressly or impliedly, give the state educational bureaucracies any powers over private schools, (b) provisions which would, expressly or impliedly, give IRS powers of surveillance, investigation, or affirmative action impositions with respect to private schools (here, in particular, with respect to religious schools since religious schools are ministries with unique constitutional status). As to the state bureaucracies, this tax measure should in no sense be the occasion for awarding them any powers over private schools. As to IRS, the record of that agency's attempted transgressions against private education under its Proposed Revenue Procedures of 1978 and 1979, stands as a warning for all the future. A tax credit bill must not, and need not, be the occasion for any such powers being awarded to IRS.

The legislation which is needed must be protective of two kinds of civil rights: racial civil rights and religious civil rights. To accomplish these, it must assure that racial havens will not be conduits for tax credits, and that neither IRS or any other federal or state agency will be allowed powers to entangle themselves in the affairs of religious schools.

The enclosed bill fully responds to those concerns:

1. It requires every school (for payment of tuition to which a tax credit is claimed) to file with IRS a sworn statement that it does not discriminate on account of race. Enforcement: the signer is liable in a criminal perjury action for a knowingly false statement. This is not only a completely effective enforcement provision but one which has the needed deterrent effect. It can be expected that few if any school administrators will venture to submit a sworn statement which they know to be false.

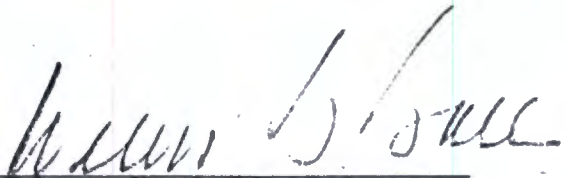
2. It provides administrative simplicity:

- (a) The taxpayer simply claims the tuition credit on his annual tax form (naming the school).
 - (b) If IRS finds that the school is not one which has filed the above sworn

statement, the credit is denied. If some complainant tells IRS that the statement is false, IRS is empowered to bring a declaratory judgment action in federal court against the school. This is infinitely preferable to imposing of the clumsy and complex IRS administrative machinery upon private schools - with interminable proceedings and all manner of surveillance, entanglement and other unconstitutional activity.

3. IRS is denied any power to require affirmative action programs or to conduct investigations of religious schools.

The above three features render the bill completely "safe" from the points of view both of non-racial discrimination and religious liberty. Further, it is easy to administer. And it gives the state public education bureaucracies no powers (as indeed it should not) in reference to this tax matter.



William B. Ball

May 18, 1982

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April 16, 1982

Mr. Morton C. Blackwell
Office of Public Liaison
Rm. 191 Old Executive Office Bldg.
The White House
Washington, DC 20500

In Re: Tuition Tax Credits

Dear Mr. Blackwell:

As we discussed by phone, we have had a continuing interest in tuition tax credit legislation, especially in various provisions of proposed bills which we viewed as bearing the potential for increased government control of religious schools.

Enclosed, as per your request, kindly find Mr. Ball's testimony re: Packwood-Moynihan, together with a draft of the Crane-Gephart bill, the latter of which contains critical language prepared by this firm.

We are now reconsidering the draft Crane-Gephart anti-discrimination language (pp. 9 and 12-13), in light of our recent efforts at drafting similar provisions with respect to the tax exemption of religious schools. We will keep you apprised of any developments in that regard.

Please do not hesitate to call on us should you wish to discuss any features of the bills, or any points of difference over the Administration bill.

Very truly yours,


Philip J. Murren

PJM/jr
Encs.

THE WHITE HOUSE

WASHINGTON

July 6, 1982

Mr. William Bentley Ball
Ball & Skelly
511 N. Second Street
Harrisburg, Pennsylvania 17108

Dear Mr. Ball:

Thank you very much for sending me a copy of your legal memorandum of June 30, 1982, on tuition tax credits.

This is an excellent analysis and statement. With your permission, I will undertake to distribute it where it will be helpful.

Thanks again for all your help.

Cordially,



Morton C. Blackwell
Special Assistant to the President
for Public Liaison

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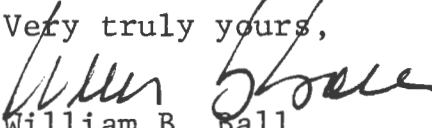
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July 1, 1982

Mr. Morton C. Blackwell
Office of Public Liaison
Old Executive Office Building
The White House
Washington, D.C. 20500

Dear Mr. Blackwell:

For some clients of ours who are interested, we
prepared the enclosed memorandum.

Very truly yours,

William B. Ball

WBB:dh

Enc.

BALL & SKELLY
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P. O. BOX 1108
HARRISBURG, PENNSYLVANIA 17108

*file to inform
Tax
Credits*

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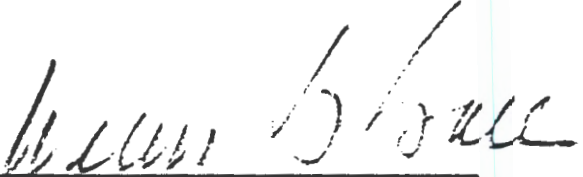
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William B. Ball

May 18, 1982

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February 25, 1982

Mr. Morton C. Blackwell
Office of Public Liaison
Old Executive Office Building
Room 191
The White House
Washington, D.C. 20500

Philly Murren
ves.
23
~~652-6878~~
234-0921

Dear Mr. Blackwell:

En route from San Francisco I have read your "Potential Results of the 1982 Elections". The discussion, plus current developments, serves to stir up in me a nightmare, so recurrent for decades that I now accept it as routine pain. It is, that our sunshine patriots will, in the end, always quail before media censure and take to their heels when their steadfast enemies get down to business.

I rather guess that, by Fall '82, the voices of Eastern Moderation will again have prevailed in the Republican Party. You are quite correct in saying that Pat Buchananimism is what is needed. But I see the future completely forecast in the present school tax exemption controversy - this in two respects: (1) the merits of the controversy, (2) the obscurantism of the Administration. I'll skip the merits (you know the issues) and go on to the second point (which would sicken one, if one cared - and, as I indicated in my last letter, though a 1980 and 1976 Reagan supporter, I now do not care).

When the tax controversy broke, I was (as I still am) chief counsel in the two cases in the courts, Bob Jones and Green v. Regan (the Mississippi) case. The Administration on January 8 went to the Supreme Court ex parte - not the courtesy of one prior phone call to me, as opposing counsel. I might have been able to suggest a better composition of the matter. Here, close by at Harrisburg, was a Reagan enthusiast, a friend, who was also the attorney responsible for the key national litigations in question. Furthermore, I had been widely identified as the chief litigator for the politically important fundamentalist Christian school movement in the nation and enjoyed extremely good rapport with all their leadership. Not only, however, did the Administration refuse a word of consultation prior to its January 8 action; it similarly failed to open discussion when the media fury exploded after January 8.

More importantly: there was no need to have suddenly buckled in the face of liberal fury following January 8. There was every reason not to have drafted that tatterdemalion bill which the Administration put in the House or conducted the "emergency" Senate hearings (from which - unbelievably - those most deeply concerned were excluded).

To the contrary, a firm and rational position could have been presented to the nation, supportive of civil rights, both racial and religious. The drafting of that position would have been a simple task had resort been had to the fortuitous circumstance that those most knowledgeable about the issues were then also pro-Administration enthusiasts - and readily available.

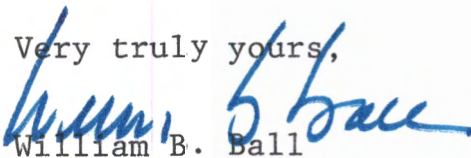
I see in the events of the past month a prototype of ills abundantly to come. This Administration will "moderate" declared principle whenever the heat - the real heat - is on. Once it was being savaged in the tax exemption controversy, it ran for cover, not even pausing to inquire whether some reason could be advanced for allowing Amish in Lancaster, PA, to exclude the Hispanics of Lancaster, PA, without loss of tax exemption! Following the Administration's total

Mr. Morton C. Blackwell

- 3 -

abandonment of Fundamentalists and Plain People, it is not difficult to forecast other abandonments of those very elements which were the special and indispensable propellants of the 1980 victory.

In the tax-exemption matter your pro-family support will not go crusading against you (at least not with unanimity) but it will most assuredly retreat into unresponsiveness. '82 has the potential of initiatives for '84, and you had best not find whole regiments wandering off at the very moment in '82 when you call on them to charge.

Very truly yours,

William B. Ball

WBB:dh

P.S.: To cap the climax, I see that the Administration is now doing a double reverse in the Supreme Court. On January 8 restoration of Bob Jones University's tax exemption was already in progress ("steps have been taken"). Now, using the false excuse of the D.C. Court of Appeals' February 18 decision, the commitment is abandoned - dishonorably indeed - and the Government is asking the Supreme Court to set up two opponents for me: themselves and a hostile amicus! So be it: I can't wait to take them on.

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February 12, 1982

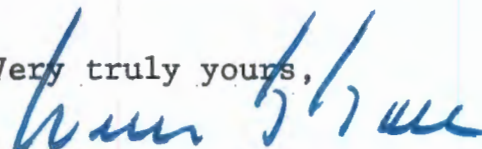
PERSONAL

Mr. Morton C. Blackwell
Office of Public Liaison
Old Executive Office Building
Room 191
The White House
Washington, D.C. 20500

Dear Mr. Blackwell:

I acknowledge, with gratitude, the copy of your memorandum of January 6 re "Potential Results of the 1982 Elections". I am leaving for a week at Napa, California, and shall read it en route. I am in the odd position of being in some dozen litigations, in various parts of the country, relating to "gut" issues in which people of your outlook should be interested, but I am without portfolio or party, and my sole forum is in the courts. I am quite discouraged (or properly chastened) after my little sally at Washington with you and with some other political people - all strangers, and I'll have no more of it!

Very truly yours,


William B. Ball

WBB:dh



NEWS & VIEWS

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March, 1980

How to Be a Loyal Citizen When Government Is Subversive

BY HONORABLE WILLIAM B. BALL, ESQ.



If words were divided into "good guys" and "bad guys" there is little doubt that three of them would wear white hats. I refer to *private*, *personal*, and *religious*. Yet these concepts are like defendants in the dock. They are accused. They are on trial.

Strangely, their adversary often is government, the very agency that should be most solicitous of their welfare. Their "case" confronts citizens with a dilemma: How shall they be loyal when government is subverting constitutional rights?

That anything in America today should be protected as "private" seems scandalous to some minds. Recently a prominent governmental official stated that there was no longer such a thing as a "private" hospital. Public school officials in a Midwest state recently contended that there can no longer really be such a thing as a "private" school. Even private cemeteries are being redefined into "public" enterprises.

That anything in America today should be protected as "personal" seems offensive to some minds. The integrity of individual personhood is widely being violated in the public education of children, where imposed explorations of family relationships, questions relating to the child's sexuality, techniques of personality testing, and programs aimed at behavior modification boldly invade the rights of personal, sexual, and familial privacy.

That anything in America today should be protected as "religious" seems offensive to many. If a religious body, for religious reasons, engages in an activity in which the public also engages—for example, child care or burial of the dead—the activity is promptly called a "public function" and therefore subject to public control. (That is odd: no one ever called the public activity "religious" because it is one in which religious groups also engage!) In a singularly bad decision a few years ago, the Supreme Court of Pennsylvania held that a Russian Orthodox Church cemetery was not to be allowed to exist under a zoning ordinance, which permitted the land to be used for religious purposes. The court said that the word "religious" is a "word of nebulous bounds." The Russian Orthodox Church had shown that the place of burial and burial rites were profoundly related to the Church's teachings. Nevertheless the Supreme Court concluded: "We believe that a cemetery is basically a secular use of land."* Here is a prime example of destruction of a religious right.

Now in most of these attacks on liberty and good sense, it is, unhappily,

government that is misbehaving. We need to understand why. Government in our country today is an industry—an employer of dependent millions. An entity that absorbs wealth but does not produce wealth, it grows more out of the necessities of politics than the necessities of the people. The proliferation of governmental agencies is encouraged by theorists whose highest level of thought brings them typically and uniformly to the brightly stated conclusion: "We must launch bold new programs to meet the challenges of our times."

Shorn of all tinsel, the paltry meaning is this: (1) create more government agencies (with their directors, assistants, deputies, consultants, staff persons, investigators, inspectors, ombudsmen, attorneys, secretarial personnel, janisaries, office equipment, pensions, tax-exempt real estate, entertainment, and travel), (2) fell more trees to keep up with the demand for paper, (3) create whole new areas of *power* for some people over other people, (4) tax more people worse in order to pay for the "bold new programs." As to private institutions, government increasingly says: "You pay for them; we will run them."

It was long believed that government should step in (for the sake of the common good) only where the private, voluntary effort was not adequate. This principle (which benefits the public) is now reversed: the private, voluntary effort may be availed of only where *government* cannot do the job. It is a fact of life (you have only to look at the decline of literacy in our public schools) that there are many areas in which government plainly *cannot* do the job, or does it badly—and always more expensively than the private effort. But politics—and the philosophy of statism—decree otherwise. The justification for the metastasis of government that we are now experiencing is the assumed need of the people to be regulated. The spread of government is resulting in a mass of regulations, rules, guidelines, directives, licenses, approvals, questionnaires, certificates, orders, audits, inquiries, informational returns, inspections, visitations, subpoenas, and other forms and interventions in which rights of privacy, personhood, and religion are beginning to be violated on a grand scale in our country.

Unhappily the public has been little interested in these violations. A revolutionist, or man of violence, will be noted in the prestige media as the advocate of an "unpopular cause"—a charismatic term connoting something dangerous but noble. Treason and hatemaking are sometimes very popular "unpopular" causes. But the people in whose defense I am speaking today—the people who have given themselves to voluntary works in the fields of education, religion,

and charity—~~are~~ without a press and without champions. They are indeed the advocates of *unpopular* "unpopular causes." And note this about them: when government, by unlawful and reckless uses of power, subverts constitutional liberties, it is those citizens who, by insistence upon constitutionality, are loyal. And the question I shall now try to answer is the how of it: *how* shall we be loyal when government is subversive of common right?

Kinds of Subversion

To find out that "how," we must first take a look at the kinds of acts of subversion in which our governments today are prone to engage. These may be classed as:

- (a) the "phony statute,"
- (b) the "bogus regulation,"
- (c) the "terror tactic."

The "phony statute" is an act of the legislature that is patently void under the Constitution. I am speaking here of regulatory statutes. They may cost you grief. They may cost you lawyers. But in the eye of the Constitution they do not exist; they are utterly void. Here, for example, is a state statute that licenses religious schools. To exist they must have a license. The granting or withholding of the license depends upon one word in the statute: "approval"—approval by the state education department. The statute doesn't define approval. "Approval" is whatever the department wants it to mean. That word is a blank check. The state can write anything on that check that it wants to. The statute is flatly unconstitutional.

It is the "bogus regulation," however, that is the great trouble-maker, the prime tool of subversion. "Bogus regulations" have all manner of solemn, impressive, and legalistic titles. We see them as: regulations, rules, rules and regulations, guidelines, directives, compliance directives and other terms designed to scare, cajole, or otherwise produce obedience. They are bogus when they are unauthorized by statute or, if authorized, violate constitutional liberties. Like the "phony statute," they are not law at all. Let me give you some examples:

Here is a regulation by a state health department governing private hospitals. It says that medication shall be administered only on the "signed orders of a physician." That is to say, a nurse may not be *told* by a doctor to give a patient a pill; he has to put that in writing. Preposterous. This is elevated from the preposterous to the humorous by the fact that, a little later on, this same set of regulations says: "Telephone orders for

* Russian Orthodox Church Appeal, 397 Pa. 126, 129 (1959).

medication are permitted." So, either the hurried doctor hands the nurse a written instruction or he says to her: "You get on this phone, and I'll get on that phone, and then I'll tell you, you can give Mrs. Jones that pill."

Or, take this marvel from Ohio's recent regulations of private schools. This batch of regulations, by the way, exemplifies one of the favorite frauds being practiced by government agencies today. It is the "minimum standards" gimmick. The term subtly conveys the idea of "minimal." "Surely," says the government, "anybody should be willing to comply with mere 'minimum' standards." The Ohio "minimum" standards took up a whole volume and were some 600 in number. The minimum standard in question read as follows:

"Educational facilities at the elementary level shall be comparable to those at the upper levels."

I asked one of the heads of the Ohio Department of Education, whom I had on the witness stand, question after question in an effort to find out what that meant. Did it mean that grade schools had to have labs and gyms such as high schools had? He couldn't answer. That is because he didn't know. He didn't know because nobody knew—or could know. Private schoolmasters were mandated to comply with language that was nonsense.

Not infrequently the regulators' imaginations are equaled only by their difficulties with English. I have just pondered a regulation in a Western state that deals with private cemeteries. It is one very long paragraph, taking up a full page of print. Entering into that print at the top of the page is a bit disturbing because when you scan ahead you notice that there is only one period in the thing—at the end. You at once lose yourself in this verbal jungle. I know of people who were lost in there for days. Now this text did convey some general impressions of do's and don'ts, and I found that people were playing safe and obeying what they guessed it to command. But in fact, it didn't command a thing. It only *looked* as if it did. If you had the patience to try to outline what it said, you came to the startling conclusion that the whole thing was one grand incomplete sentence! One may forgive our contemporary regulators for their inability to diagram sentences, but when they cannot *make* sentences, how can they command our obedience?

Some regulations can be characterized as illusory—pure fantasy, expressing the regulator's social vision—often in rhapsodic terms. The Pennsylvania Department of Education, for example, has evolved a "womb-to-tomb" program of life values for children. It is all couched in language, inspiring in tone and impenetrable as to meaning, but expressing a

governmental elite's effort to turn its wishful thinking into legal reality. Take this excerpt from a document called "Conceptual Guidelines for School Health Programs in Pennsylvania":

"... health education is ... a discipline which focuses on and strives for maximum physical, mental, and social efficiency for the individual, their family, and the community."

"The health education curriculum needs to be built around the biological and social facts which relate to the existence, survival, and adjustment of human beings."

"[It] aims at improving the quality of life [and enables humans] to make wise decisions and solve personal, family, and community health problems."

But, we must ask, what is meant by "social efficiency"—or "social efficiency for the individual"? What are the "biological and social facts" that relate to the "adjustment" of human beings? "Adjustment" to what? What are "wise" decisions, and according to whose norms?

The "terror tactic" is manifested in a variety of ways. For example, the unsolicited visit. I have seen examples of government agents, without appointments, showing up at private institutions and demanding to see files and conduct interviews—and even instances of these people (without permission) entering private premises and conducting interviews with employees or staff or students. A new-found bullying trespass on private institutions is seen in the "find yourself guilty" trick. Government "guidelines" require a private institution to make extensive investigations of its own policies and then to report whether it is meeting certain alleged requirements of law. Several major federal agencies have lately gone in for this kind of thing. You are told that you must extensively document your lack of violation of law and prove you are clean, or you will lose your vital tax exemption or be denied participation in particular federal programs. Now all this is in the absence of any charge that you are in violation of law. The documentation may prove to be extensive—and expensive. The imposed record-keeping is not paid for by the government. Nor often is it insubstantial. In this day of inflation secretarial costs are extremely high, but when added to these are costs of filing equipment, rented space, paper, and the occasional assistance of accountants and attorneys, the costs are substantial, but—unlike similar governmental costs—the resources out of which they must be paid are very limited. Government indulges extravagance. Voluntary institutions dare not.

But truculent governmental bodies push further in their aggressions against private institutions with such tactics as

actual investigations in order to find out whether institutions against which government makes no charge may be in violation of government directives of one sort or another. A given agency, for example, sends a randomly-selected private institution a questionnaire on its policies, though the agency has no grounds to believe that the institution in fact is out of line with the law. This prurient fishing is designed—like the iron-curtain technique of random police visits—to send waves of fear through all institutions. Whatever the regulatory requirement, and regardless of the expense involved, a small private entity will prefer to purchase peace through compliance, rather than encounter the greater costs of legal assistance and possible injury to its good name by being publicized as having a fight with the government. So the private entity buckles, fills out the forms, allows the inspectors into its premises to audit, interview, read records, and do other things that, in the first place, government has no business doing.

Having glanced at only a few examples (out of myriad examples that could be cited) of governmental subversion, we are now ready to talk about how we can best be loyal, in the face of it, to the idea of constitutional liberty.

The Loyalist as Victim

The loyalist surprisingly finds himself in a minority among those who are hurt, or potentially hurt, by the acts of subversion. He finds a majority going along. He sees attorneys telling clients who are faced with overbroad regulations: "It's the law. Nothing to do but comply." And he sees worse than that. When one government agency last year published certain education "guidelines," religious-private-school administrators in one of the states immediately got out directives to their schools telling them to comply and even embellishing the guidelines to create *more* compliance work for the schools! Our American sense of obedience to law is indeed becoming Prussianized: some of us seem to have a mindless zeal to be given orders and a blind passion in carrying them out. Some of us—not all, however.

In Ohio three years ago Fundamentalist Pastor Levi W. Whisner was told by the state that he and his flock must either obey a vast set of school regulations aimed at converting private schools into public schools, or go to jail. Pastor Whisner refused, risked jail, and after two years in the courts, the Supreme Court of Ohio said he was right. (See "State of Ohio v. Whisner, et al.," LIBERTY, March-April, 1976.)

In Maryland, state authorities told another redoubtable Christian leader, Donald McKnight, to shut down his Evangelical Methodist school because

he had refused to place it under state control. He refused to be mauled. He took his fight to the public and to the legislature and was springloaded for court action. He won his fight. His school continues to flourish.

In Erie, Pennsylvania, the National Labor Relations Board boldly sought to impose its jurisdiction on the cemeteries of the Catholic Diocese of Erie. Bishop Alfred M. Watson stood up and resisted. The government hearing examiner made a bald effort to establish that the Catholic cemeteries are simply secular in nature. He even tried to explore the whole financial structure of the Diocese. Bishop Watson won.

A year later the NLRB tried the same thing on the Philadelphia parochial schools. The pastors of those schools—with the strong approval of Cardinal Krol—took the NLRB to federal court and in March, received the seal of approval of the U.S. Supreme Court.

These examples of governmental intrusion may lead us to think of extreme remedies. It might be suggested that all government officials should be made to wear distinctive badges or uniforms in order that they might be more subject to constant and penetrating popular scrutiny. That might, however, lead to necessary further steps in this day of widespread corruption—for example, making those caught in unethical practices go about ringing bells and crying, "Unclean! Unclean!" We wouldn't want that. Most civil servants are decent people who want only to do their jobs. For the most part, the problem is not the servant but the job—the regulating, which he is made to impose. From the above examples of courage we can derive some basic principles for the guidance of all who administer private

charitable efforts.

1. Begin with a keen awareness of the worthwhileness of what you are doing and of your right to do it. Bear always in mind all the other people (including, in some cases, persons of past generations) who have sacrificed for the enterprise now in your trust. Couple those thoughts with renewed realization that, under the American system, government is your servant. Therefore your mindset, when regulation would limit the liberties of your institution or agency, is to place the burden squarely upon the government to show cause for its attempted imposition. *The burden of proof is on the government, not you.*

2. Examine, with a jeweler's eye, the attempted imposition. Find what it really means. What effect does it have on your institution?

3. If the regulation puts burdens or restrictions upon your institution, find whether it is actually authorized by any statute. You have no obligation to obey a regulation which is *ultra vires*.

4. "Render to Caesar." Administrators of religious institutions have duties toward government. One is simple honesty. If unlawful impositions are threatened, don't try to "make a deal," don't buy a government official's promise to "take it easy" with you, or that he will wink at less than your full compliance. You owe it to government to be candid. If the regulation is unlawful (whether in terms of lack of statutory authority or violation of your constitutional liberties), say so plainly. When, in a desire not to "make waves" or in hopes of easy treatment, we go along with bad laws, we debase the currency of everybody's freedom, we detract from the idea of a government of law, and we build up the totalitarian concept of a government of

men.

5. Be prepared, therefore, to responsibly and forcefully present your candid views to your governmental servants. That failing, be ready for court. Help will always be forthcoming if you do.

6. We should revise our state and federal laws to very broadly permit recovery of attorneys' fees and legal costs incurred by private institutions in defending against unwarranted governmental intrusions, where the institution is ultimately determined to have been right. The present situation, whereby private institutions can be bled into compliance (or out of existence) by the actions of government administrators and attorneys, is intolerable.

7. If that fails, then we should consider the idea of legislation to establish "citizen advocates"—lawyers of special competence in analyzing governmental regulations and knowledgeable in constitutional law who could be retained by private voluntary institutions which are threatened by undue governmental regulation or harassment tactics. They would be able to bill the particular regulatory agency for the reasonable fees and costs involved in successfully defending the rights of the private charitable entity in question.

How to be loyal when government is subversive? I have suggested some ways. Nothing that I have said is meant to contradict the idea that laws, clear and reasonably stated, are necessary to the common good. Our problem is laws that are unreasonable and unnecessary—and that are beginning to destroy all private charitable works. These need to be resisted, and they can be. □

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to
Tuition
Tax
Credit

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232-8731

THE EDUCATIONAL OPPORTUNITY
AND EQUITY ACT OF 1982
(Reagan Administration Tuition Tax Credit Bill)

THE ACT IS PART OF THE INTERNAL REVENUE CODE

This would be an amendment to the Internal Revenue Code, not an isolated statute.

THE REASONS FOR TUITION TAX CREDITS

Section 2. The Congressional findings contain a series of very important declarations, and anyone interested in freedom of choice in education should read these seven subsections carefully. They provide a very useful recital of rights and needs in private education.

HOW THE TAX CREDIT WORKS

Section 3 delivers the tax credit itself. The taxpayer is allowed a credit of 50 percent per annum of the tuition expenses paid to a private, nonprofit, tax-exempt, full-time elementary or secondary educational institution for any of his dependents who have not reached age 20. "Tuition expenses" means tuition and fees for full-time enrollment of a student; it does not include amounts paid for books, supplies, meals, lodging, transportation or for education below the first grade level. This credit is subject to a dollar limitation of \$100. (as to tuition during the first year after January 1, 1983), \$300. (during the first year after January 1, 1984)

and \$500. (after January 1, 1985). There is also a limitation with respect to the individual taxpayer's income level: the foregoing dollar amounts are lowered (by small percents) in case of a taxpayer whose gross income exceeds \$50,000. (or \$25,000. in the case of a married person filing a separate return).

Section 6 provides that tax credits claimed under the Act do not constitute "federal financial assistance" either to the schools or to the recipients of such credits.

RACIAL NONDISCRIMINATION:
REQUIRED ANNUAL STATEMENT

Section 3 also contains provisions barring tax credits for amounts paid to racially discriminatory schools. No credit is allowed unless the school in question signs (under penalties for perjury) a form and files it with the Secretary of the Treasury declaring that the institution has not followed a "racially discriminatory policy" during the calendar year and stating whether the Attorney General has brought a declaratory judgment action against the school on grounds of racial discrimination. (See discussion of this later in this memorandum.) A copy of the annual statement must be furnished to all persons who paid tuition expenses to the school in the calendar year. The taxpayer, in order to obtain the credit, must attach a copy of that statement to his tax return.

A school has a "racially discriminatory policy" if it refuses, on account of race (a) to admit applicants as students, (b) admit students to the rights, privileges, programs, and activities generally made available to students by the institution, or (c) to allow students to participate in its scholarship, loan, athletics, or other programs.

THE LEGAL "TEETH" IN THE RACIAL
NONDISCRIMINATION PROVISIONS

The "teeth" is disallowance of the tax credit. If the school in question has a "racially discriminatory policy", no tax credit is allowed for tuition expenses paid it. The Secretary of the Treasury will disallow the credit (a) if the school has not filed the annual statement, or (b) if the taxpayer has not followed the procedures prescribed for obtaining the credit, or (c) a final judgment has been entered against the school in the above noted declaratory judgment action.

The declaratory judgment action can be brought following the petition of a person who alleges that he has been discriminated against under a racially discriminatory policy of a school. If the Attorney General finds good cause for bringing the action he is authorized to bring an action against the school in the U.S. District Court in the district where the school is located, seeking a declaratory judgment that the school has followed a racially discriminatory policy and has, pursuant to that policy, discriminated against the person filing the petition.

The Attorney General must notify the accused school promptly of the filing of the petition, and give it an opportunity to show that the discriminatory policy does not exist or has been abandoned.

* * * * *

A BRIEF COMMENTARY

The tuition tax credit idea is a good one. Our chief concern, however, has been whether a tuition tax credit bill can be written which does not entail government controls of private education or governmental intrusion into religious schools. We think that the Administration bill does not entail these.

SIGNIFICANCE OF TAX CREDITS

The bill, if enacted, would constitute an historic change in national policy: the recognition of the right of free parental educational choice. Essentially, it would constitute, for the first time in our history, an accommodation of that choice - meaningful because it is financial. Opponents of tuition tax credits say that all parents are already perfectly free to choose private education if they want to. But that is not true.

Many parents who wish private education for their children are faced by the following situation: they are compelled by the compulsory attendance laws to have their children in a school; they are compelled by conscience (whether religious or otherwise) to have their children in a private school; they are compelled by the effects of inflation and taxation to enroll their children in a state school. For many, tuition tax credit legislation can help solve this problem. Thus, seen, it is an enabler of the realization of personal liberties. Admittedly, the credit in the first two years of the program would be small.

THE "GOVERNMENT CONTROL" PROBLEM

The Administration bill contains no government controls of private education. It is not "administered" by any government agency. The school files the annual statement; the taxpayer includes the credit (plus the statement) on his tax return. There is no "program". There is nothing to "administer". There is no monitoring or surveillance of schools, no inspections, no reporting (other than the simple declaration in the annual statement). No school must "qualify" as an "eligible" school by passing muster with any state or federal education bureaus. If a particular school - for whatever reason - prefers to stay away from tuition tax credits, it simply doesn't file the annual statement.

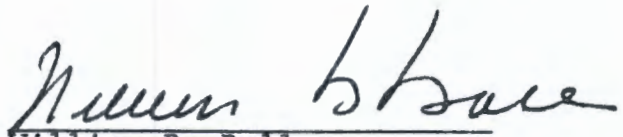
CIVIL RIGHTS: RACIAL AND RELIGIOUS

The bill well protects against racial discrimination by its two-pronged feature: (1) If a school files a knowingly false annual statement, its officials are subject to criminal prosecution for perjury. That is a very potent inhibitor. (2) If some person is the victim of racial discrimination by the school, that person can petition the Attorney General to bring the declaratory judgment action leading to disallowance of all tax credits for tuition expenses at that school for a 3-year period. The IRS is given no supervisory or enforcement powers.

But the bill also preserves religious civil rights, simply by its exclusion of all those governmental intrusions on religious schools which IRS and others have tried to impose in the past (affirmative action requirements of all sorts, the Packwood-Moynihan feature of allowing IRS full surveillance of religious schools, the requirement that a private school must qualify with the local state educational bureaucracy as an "eligible" school, etc.).

CHURCH-STATE SEPARATION

We do not regard this bill as violating the principle of church-state separation. It is essentially an aid to individual taxpayers, not to institutions. It involves no interlocking of government with religious organizations, or "entanglements" of any sort. It does not appear inconsistent with past decisions of the Supreme Court of the United States.


William B. Ball

June 30, 1982

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June 28, 1982
PERSONAL

Mr. Morton C. Blackwell
Office of Public Liaison
Old Executive Office Building
The White House
Washington, D.C. 20500

RE: The Educational Opportunity and
Equity Act of 1982

Morton
Dear Mr. Blackwell:

Again, congratulations on the splendid session
last Tuesday.

It seems to me that two areas of problems will
now be arising. First, it is possible that fundamental-
ists will raise questions concerning the reach of the
bill's enforcement provisions. To the extent that they
turn to us for answers, we will try our best to guide
them. (I expect, too, that there may be some minority
dissidence on the part of some people at USCC - although
I observed that USCC had a representative at the meeting.)
Mainly, however, will come the enormous opposition of the
declared opponents of the tuition tax credit principle
itself - emphasizing the "weaken the public schools"
issue, the cost issue, the racial discrimination issue,
and the church-state separation question. We have
litigated extensively in the last two areas, and if we
can be of help there, do not hesitate to let us know.

On the church-state point, I observed the President's
remark at the June 22nd meeting that, beyond its aiding
parents and children, he saw the bill as indirectly ben-
efiting schools themselves, quite possibly relieving them

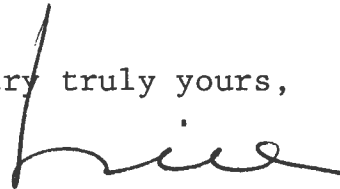
Mr. Morton C. Blackwell

- 2 -

of burdens they would otherwise have to carry. With all due respect, that point simply must not be made. It is the "release of funds" argument which has surfaced in case after case involving aid to parents of children in religious schools. Justice Blackmun spelled out that very point upon oral argument in Lemon v. Sloan (a state tuition grant program which was held unconstitutional).

Let's keep in touch.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'W. B. Ball', written in black ink.

William B. Ball

WBB:dh

Thomas J. White Foundation

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Research Director

PARENTS TAX RELIEF PROPOSAL: Tuition Tax Credits

(A Study Prepared by Dr. Daniel D. McGarry)

RESOURCE CENTERS

Thomas J. White Center for Law, Government and Human Rights

Notre Dame Law School
Notre Dame, Indiana 46556

St. Louis University Law School
St. Louis, Missouri 63103

PARENTS TAX RELIEF PROPOSAL: Tuition Tax Credits

Allowance of federal income tax credits for 50% of tuition paid for education, up to a ceiling of \$500 would be consistent with federal education policy set by our First Congress in 1787 in the Northwest Ordinance: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged."

CURRENT TAX POLICY - TAX CREDITS AS INCENTIVES

Tax credits today are being used to assist many socially beneficial programs such as allowances for the handicapped, care for the elderly, child care, energy conservation, charitable and educational enterprises, work jobs incentives, and many others. Education is a vital area in which tax credits could also be used to strengthen the family. Parents have the basic human right to choose the kind of education that shall be given to their children. This right should be protected - and can be by means of a Federal Income Tax Credit. A tuition tax credit would give all parents a more realistic ability to buy the brand of education that meets the needs of their family and their religious and moral values. Tuition tax credits would enable lower income parents to make choices in education that now are usually available only to the wealthy.

WOULD MAKE OUR TAX SYSTEM MORE CONSISTENT

Some inconsistencies would be removed from our tax system by allowing tuition tax credits. Tax deductions are allowed for other investments capable of producing income, for other expenditures that notably contribute to the public welfare, for payments for public school education, even by those who benefit from it, for outright contributions to church-related schools, which help them more than tuitions, and for much pre-school as well as post-employment education. Tax deductions are also allowed for voluntary payments made by participating members to churches, which advance religion 100%, but not for voluntary payments made by parents of participating children to church-related schools, which only partly advance religion. Tuition tax credits would make our tax system more consistent and equitable. (See Item 44F below.)

| | | | | | |
|---|--|------------|--------|----|----------------|
| Credits (See Instructions on page 12) | 38 Credit for contributions to candidates for public office . . . | 38 | | | |
| | 39 Credit for the elderly (attach Schedules R&RP) | 39 | | | |
| | 40 Credit for child and dependent care expenses (attach Form 2441) | 40 | | | 2000 00 |
| | 41 Investment credit (attach Form 3468) | 41 | | | 250 00 |
| | 42 Foreign tax credit (attach Form 1116) | 42 | | | |
| | 43 Work incentive (WIN) credit (attach Form 4874) | 43 | | | |
| | 44F. TUITION TAX CREDIT | 44F | 250.00 | | 1750 00 |
| | 45 Residential energy credits (attach Form 5695) | 45 | | | |
| 46 Total credits. Add lines 38 through 45 | | | | 46 | |
| 47 Balance. Subtract line 46 from line 37 and enter difference (but not less than zero) | | | | 47 | |

PRESERVATION OF ESSENTIAL FREEDOMS

Tuition tax credits would help preserve freedom in education, including freedom of personal choice among schools and colleges, as well as freedom of instruction. Tuition tax credits would also contribute to promote freedom of speech and communication (teaching), freedom of the press (textbooks), freedom of thought, free exercise (including transmission) of religion, freedom of parents to direct the education of their children, and freedom of citizens to differ and diverge from the prevalent preferences and mores of the majority. Educational freedom is one of our most essential freedoms, also necessary for other freedoms, which is one reason why it is not permitted in totalitarian countries.

A pluralistic society demands a cultural diversity of choice, especially in the area of education.

Children in these countries CAN study religious and moral values in non-public schools without loss of tax funds for the study of secular subjects.:

NORTH AMERICA:

Canada

EUROPE:

Austria
Belgium
Denmark
England
France
Finland
Holland
Ireland
North Ireland
Norway
Poland
Portugal
Scotland
Spain
Sweden
Switzerland
Wales
West Germany

NEAR EAST:

~~Iran~~
Iraq
Israel
Jordan
Lebanon
Syria

LATIN AMERICA:

Argentina
Bolivia
Brazil
Chile
Colombia
Costa Rica
Dominican Republic
Ecuador
Guatemala
Haiti
Honduras
Jamaica
Mexico
Panama
Peru
Salvador
Venezuela

ASIA AND OCEANIA:

Australia
India
Indonesia
Japan
Laos
New Zealand
Pakistan
Thailand
Taiwan

Children in these countries CANNOT study religious and moral values at all, or, if they do, they suffer loss of all tax funds for the study of secular subjects:

WORLD OVER:

Albania
Bulgaria
China
Ceylon
Cuba
East Germany
Hungary
Republic of South Africa
Russia
Turkey
UNITED STATES
Yugoslavia

PROTECT PARENTS RIGHTS IN EDUCATION

The Universal Declaration of Human Rights recognizes the sacred human right of parents concerning the education of their children. "Parents shall have a prior right to choose the kind of education that shall be given to their children." (Article 26, Section 3.) Tuition tax credits would protect this right of parents, as well as preserving freedom in education. To give credit where credit is due, tuition tax credits would help the hard-pressed parents of students in private educational institutions. In addition to paying high taxes for the support of public education, such parents must pay for the full cost of the education of their own children in private schools. This burden often becomes unbearable to the point of forcing them to surrender their children to the free public schools. Such parents are, for the most part, average parents with average family incomes. About half of them had average family incomes of less than \$20,000 a year in 1975-76, while 72% of those in inner cities had incomes of less than \$15,000 a year. Tuition tax credits would help these parents to exercise a constitutional right: the right to the free exercise of their choice of schools for their own children.

STRENGTHEN THE FAMILY

The family cannot be strong and responsible when it is deprived of the means to buy the kind of education that the parents judge best for their own children. By means of a tax credit for education, the free market forces of private enterprise and accountability competition will make the schools accountable to the consumer, the parents of students. Parents would take more interest in their childrens' education if the choice of a school was in their own hands by means of a tax incentive. The poor would benefit by being able to choose private schools that offer fine scholastic services in their own neighborhoods. Inner city neighborhoods would benefit by the influence of small, privately-owned and diverse educational institutions. Families would not be forced to seek quality education outside their own areas. The entire tax burden for education would be reduced by encouraging parents to pay for part of their childrens' education.

ACCOUNTABILITY TO CONSUMERS

The Tuition Tax Credit proposal is in perfect harmony with the new emphasis on consumerism. Consumers (parents and students) should have an alternative to shoddy products and poor performance. Educational Tax Credits offer the important factor of accountability to the consumer. The school must be accountable to parents for the quality of its educational services. At present the government monopoly makes it impossible for parents to make any choice. The tuition or educational income tax credit would give all parents, especially the poor, a more realistic ability to buy the brand of education that meets the needs of their family-moral values, religious and cultural, which are not now possible in public government-operated schools.

HELP TO KEEP PUBLIC EDUCATION HEALTHY AND EFFECTIVE

Private education provides invaluable help for public education by means of comparison and competition. It prevents education from becoming a complete government monopoly. It is a means of avoiding standardized thought control, such as exists in Communist countries. It also prevents educational stagnation. It provides educational alternatives so that if public education fails to satisfy the needs of citizens, they can use private schools and colleges. If public education deteriorates, it will eventually have to improve because of the coexistence of private education. Private education also preserves the advantages of private enterprise in education and the progress that this engenders. Private education was the original model and inspiration for public education and continues to

pioneer educational advances. As one public educator has said, "If private education did not exist, it would be necessary to invent it!" .

HELP PREVENT ESTABLISHMENT OF SECULARISM

Exclusive tax subsidization of public education, which must be limited to secular knowledge, concepts, and values, amounts to an inculcation of secularism which ignores traditional religious teachings, concepts, and values. Religious training requires day-to-day inculcation. Secularism is a "religion" as is acknowledged by several Supreme Court decisions. Our present policy accordingly amounts to an "establishment" of the "religion" of Secularism, as opposed to traditional religions, which cannot be granted "equal time" in public schools. De facto "establishment" of a national religion of Secularism can be avoided by allowing tuition tax credits for private schools an alternative choice for parents and students.

INSURE LARGE SAVINGS FOR THE PUBLIC

The comparatively small reduction of taxes represented by an allowance of tuition tax credits will insure large savings for taxpayers. The average per pupil cost of public elementary and secondary education, which has multiplied five (5) times in the last two decades (twice the rate of inflation), is currently estimated at about \$3,000 a year for 1982-83. Each student who attends a private school thus saves the public about \$2,500 per year. Even with a tax credit of \$500, this will still be a saving of about \$2,000 per student, per year, or a total of about \$11 billion or \$11,000 million a year. If only 5% of the public school population (currently 4 million) would attend private schools because of tuition tax credits, this would amount to an additional saving of about \$4.4 billion or \$4,400 million a year. Meanwhile, the cost of tuition tax credits for higher education which would include public higher education, would about equal the saving insured by a continuance of private higher education, a saving associated with no other form of public aid to higher education.

PRESERVE THE ALTERNATIVE OF PRIVATE EDUCATION

The very existence of private education is seriously threatened by ever-rising costs and taxes. In the decade from 1965 to 1976, enrollments in private elementary and secondary schools dropped by 24%. Meanwhile, private schools closed at a rate of about one every school day. In the same decade the percentage of students in private colleges and universities as compared to total enrollments in higher education fell from 33% to 21% of the total, of which it had been about 50% in 1950. Tuition tax credits would help private education to survive in this country. Some form of assistance to private education is provided in all other Western democracies.

Tuition tax credits would recognize the contributions of private education to the general good of the nation. Such tax credits would help to reduce the size of large, factory-type schools, and would allow more individualized instruction for students who could choose curriculums according to their needs with diversity of choice in schools.

ASSIST VOLUNTARY INTEGRATION

Current tuition tax credit bills would assist voluntary integration and help solve the forced busing controversy, while excluding segregationist schools. Many minority parents prefer private, especially church-related schools, for their children. About half of the students in religious schools in ten (10) metropolitan areas (including New York, Chicago, and San Francisco) in 1975-76 were minority children, and over half of the latter were Black. Tuition tax credits would help minority children attend schools of their parents' choice. At the same time, they would stem "white flight" to the suburbs by allowing tax deductions for urban private education similar to those obtainable for high taxes for quality public education in the suburbs.

98% COST EFFECTIVE TAX PROGRAM

Tuition tax credits would be almost 100% cost-effective. They would directly help parents pay for education, and in most cases would not even change hands, being simply credited against tax due. They would involve no observable increase in governmental bureaucracies or their operations. They would only require the routine spot-checking of income tax reports already in existence, and ascertainment of absence of racial segregation, already required for tax-exemption.

Money saved from the elimination of the Department of Education (an estimated 18 billion dollars) would easily pay for a parents' tax relief proposal.

WOULD OFFER EQUAL EDUCATIONAL OPPORTUNITY

The tuition tax credit plan would end the discrimination that exists in the present law that allows a generous tax credit to parents who put their very young children in some kind of pre-school or babysitting facility, but denies equal treatment to parents who care for their own children for the first five years of their lives and then send them to schools that cost tuition. The tax credit plan would offer the equal protection of the law, as guaranteed by the United States Constitution, to private school students, who are now deprived of any educational benefits derived from taxes. Thus, it would remove the stigma of "second-class citizenship" from millions of American students.

TUITION TAX CREDITS WOULD BE CONSTITUTIONAL

Tuition tax credits as currently proposed would be constitutional. They would be "true tax deductions", as they would be directly proportionate to tuition actually paid. They would also have a "broad base of beneficiaries" since the latter would include (a majority of) students in public educational institutions as well as those in church-related ones. They would be similar to the tax exemptions approved for churches in Walz (1970), rather than the "Hybrid tax benefits" mainly benefitting students in church-related schools disapproved in Nyquist (1973). Numerous constitutional authorities agree that tuition tax credits, as currently proposed, would be constitutional.

G.I. BILL MODEL LEGISLATION

The G.I. Bill of Rights is a model for tax credit assistance. This legislation, which granted the student an allowance for education, exemplifies true freedom of choice. The greatest education boom in American history resulted from this progressive Act of Congress.

Reference: Professor Antonin Scalia, Testimony on the Constitutionality of Tuition Tax Credits on S.2142 before the Senate Committee on Finance, U.S. Senate, January 19, 1978.

The foregoing summary of the Federal Income Tax Credit for Tuition Proposal has been prepared by Dr. Daniel D. McGarry, Professor Emeritus, History Department, St. Louis University, St. Louis, Missouri.

The complete text of the major article, "An In-Depth Study of Tuition Tax Credits" by Dr. McGarry will soon be published in the PUBLIC LAW FORUM, under the auspices of the Thomas J. White Family Center of Public Law and Government. Should you wish to have the entire article, it will be available on request from the Thomas J. White Foundation, 940 West Port Plaza, Suite 264, St. Louis, MO, 63141, (314) 878-0400.

97th CONGRESS

1st SESSION

(Original signature of Member)

H.R.

IN THE HOUSE OF REPRESENTATIVES

November , 1981

Mr. Philip Crane (for himself introduced the following bill; which was referred
and Mr. Gephardt.
to the Committee on

A BILL

(Insert title of bill here)

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

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

3 SECTION 1. SHORT TITLE; DECLARATION OF POLICY.

4 (a) SHORT TITLE.--This Act may be cited as the "Tuition
5 Tax Relief Act of 1981".

6 (b) DECLARATION OF POLICY.--The Congress hereby declares
7 it to be the policy of the United States to foster

educational opportunity, diversity, and choice for all Americans. Federal legislation--

(1) should recognize--

(A) the primary right of parents to direct the nurture, education and upbringing of their children, and

(B) the heavy financial burden now borne by individuals and families who must pay tuition to obtain the education that best serves their needs and aspirations--whether at the primary, secondary, or postsecondary level, and

(2) should provide some relief (as set forth in the amendments made by this Act).

The Congress finds that without such relief the personal liberty, diversity, and pluralism that constitute important strengths of education in America will be diminished. The Congress finds that this relief can appropriately be provided through the income tax structure with a minimum of complexity and governmental interference in the lives of individuals and families. The Congress finds that the provision of such relief to individuals or families in this manner is in accord with all provisions of the Constitution. The primary purpose of this Act is to enhance equality of

educational opportunity for all Americans at the schools and colleges of their choice.

SEC. 2. CREDIT FOR EDUCATIONAL EXPENSES.

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

"SEC. 44F. EDUCATIONAL EXPENSES.

"(a) GENERAL RULE.--In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the educational expenses paid by him during the taxable year to one or more educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) LIMITATIONS.--

"(1) MAXIMUM DOLLAR AMOUNT.--The amount of educational expenses taken into account under subsection (a) for any taxable year with respect to any individual may not exceed--

"(A) \$500, in the case of educational expenses allocable to education furnished after July 31, 1982, and before August 1, 1983, and

"(B) \$1,000, in the case of educational expenses allocable to education furnished after July 31, 1983.

The \$1,000 limitation contained in subparagraph (B) for any taxable year shall be reduced by the amount of educational expenses described in subparagraph (A) which are taken into account for that taxable year.

"(2) CERTAIN PAYMENTS EXCLUDED.--

"(A) SECONDARY AND ELEMENTARY SCHOOL EXPENSES.--Educational expenses attributable to education at a secondary school (including a vocational secondary school) or elementary school shall not be taken into account under subsection (a) to the extent that they are attributable to education at an elementary or secondary school (as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1981) of a State educational agency (as defined in section 1001(k) of such Act as so in effect) that is privately operated except for expenses attributable to education at a school or institution described in subparagraph (C) of subsection (c)(5).

"(B) PART-TIME AND GRADUATE STUDENTS.--

"(i) IN GENERAL.--Educational expenses allocable to education furnished before August 1, 1984, with respect to any individual who is not a full-time student or who is a graduate student shall not be taken into account under subsection (a).

"(ii) LESS THAN HALF-TIME STUDENTS.--Educational expenses allocable to education furnished after July 31, 1984, with respect to any individual who is not at least a half-time student shall not be taken into account under subsection (a).

"(C) CERTAIN PAYMENTS INCLUDED.--For purposes of subparagraph (B)(i), amounts paid before August 1, 1984, for educational expenses allocable to education which is furnished on or after such date shall be treated as having been paid on such date.

"(D) FULL-TIME STUDENT.--For purposes of this paragraph, the term 'full-time student' means any individual who, during any 4 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational institution.

"(E) HALF-TIME STUDENT.--For purposes of this paragraph, the term 'half-time student' means any individual who, during any 4 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a half-time student (determined in accordance with regulations prescribed by the Secretary which are not inconsistent with regulations prescribed by the Secretary of Education under section 411(a)(2)(A)(ii) of the Higher Education Act of 1965 for purposes of part A of title IV of that Act as such Act was in effect on January 1, 1981) at an educational institution.

"(F) GRADUATE STUDENT DEFINED.--A graduate student is a student with a baccalaureate degree awarded by an institution of higher education.

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

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

"(A) books, supplies, and equipment for courses of instruction at an educational institution,

"(B) meals, lodging, transportation, or similar personal, living, or family expenses, or

"(C) education below the first-grade level, or attendance at a kindergarten or nursery.

In the event an amount paid for tuition and fees includes an amount for any item described in subparagraph (A), (B), or (C) which is not separately stated, the taxpayer shall document the portion of such amount which is attributable to educational expenses.

"(2) EDUCATIONAL INSTITUTION.--The term 'educational institution' means--

"(A) an institution of higher education;

"(B) a vocational school;

"(C) a secondary school; or

"(D) an elementary school.

"(3) INSTITUTION OF HIGHER EDUCATION.--The term 'institution of higher education' means an institution described in section 1201(a) or 481(a) of the Higher Education Act of 1965 (as in effect on January 1, 1981).

"(4) VOCATIONAL SCHOOL.--The term "vocational school' means an area vocational education school (as defined in section 195(2) of the Vocational

Education Act of 1963, as in effect on January 1, 1981) which is located in any State.

"(5) ELEMENTARY AND SECONDARY SCHOOLS.--

"(A) ELEMENTARY SCHOOL.--The term 'elementary school' means a privately operated, not-for-profit, day or residential school which provides elementary education and which meets the requirements of subparagraph (D).

"(B) SECONDARY SCHOOL.--The term 'secondary school' means a privately operated, not-for-profit, day or residential school which provides secondary education that does not exceed grade 12, and which meets the requirements of subparagraph (D).

"(C) HANDICAPPED FACILITIES INCLUDED.--The terms 'elementary school' and 'secondary school' include facilities (whether or not privately operated) which offer education for individuals who are physically or mentally handicapped as a substitute for regular public elementary or secondary education.

"(D) REQUIREMENTS.--An elementary school or secondary school meets the requirements of this subparagraph if such school--

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

"(ii) has not, during the taxable year for which a credit, is claimed excluded any person from admission to such school, or participation in any school program, activity or benefit, on account of race, color, or national or ethnic origin.

"(6) MARITAL STATUS.--The determination of marital status shall be made under section 143.

"(d) SPECIAL RULES.--

"(1) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS
AND VETERANS BENEFITS.--

"(A) REDUCTION OF EXPENSES.--The amount otherwise taken into account under subsection (a) as educational expenses of any individual for any taxable year shall be reduced (before the application of subsection (b)) by any amounts attributable to the payment of educational expenses which were received with respect to such individual for the taxable year as--

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

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

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

"(B) REDUCTION FOR OTHER AMOUNTS.--

Under regulations prescribed by the Secretary, the amounts otherwise taken into account under subsection (a) as educational expenses of an individual for any taxable year shall be reduced by any amount attributable to the payment of educational expenses which is received with respect to any individual for the taxable year and is not described in subparagraph (A), and which--

"(1) is equal to the amount of the interest subsidy on any loan proceeds received by such individual during such taxable year, or

"(ii) constitutes any other form of financial assistance to such individual.

The provisions of this subparagraph shall apply with respect to amounts received after the date on which the final regulations are issued.

"(C) AMOUNTS NOT SEPARATELY

STATED.--If an amount received by an individual which is described in subparagraph (A) or (B) is not specifically limited to the payment of educational expenses, the portion of such amount which is attributable to payment of educational expenses shall be determined under regulations prescribed by the Secretary.

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

"(3) SPOUSE.--No credit shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses for the spouse of the taxpayer unless--

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(e) DISALLOWANCE OF CREDITED EXPENSES AS CREDIT OR DEDUCTION.--No deduction or credit shall be allowed under and other section of this chapter for any educational expense to the extent that such expense is taken into account (after the application of subsection (b)) in determining the amount of the credit allowed under subsection (a). The preceding sentence shall not apply to the educational expenses of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year."

"(f) Limitation on Examination of Religious Schools.

In determining whether a religious elementary or secondary school meets the requirements of subsection (c)(5)(d) of this section, the Secretary shall have authority solely to:

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

"(2) require that the school submit a statement, under oath or affirmation, and subject to penalties for perjury, that no person has been denied admission to the school or participation

in any school program, activity, or benefit, during the taxable year for which a credit is claimed under this section on account of that person's race, color, or national or ethnic origin."

(b)(1) CREDIT TO BE REFUNDABLE.--Subsection (b) of section 6401 of such Code (relating to amounts treated as overpayments) is amended--

(A) by striking out "and 43 (relating to earned income credit)" and inserting in lieu thereof "43 (relating to earned income credit), and 44F (relating to tuition tax credit)", and

(B) by striking out "39, and 43" and inserting in lieu thereof "39, 43, and 44F".

(2) Paragraph (2) of section 55(b) of such Code (defining regular tax) is amended by striking out "and 43" and inserting in lieu thereof", 43, and 44F".

(3) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "and 43" and inserting in lieu thereof "43, and 44F".

(c) SEPARABILITY.--If any provision of section 44F of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such section), or the application thereof to any person or circumstances, is held invalid, the remainder

of the provisions of such section and the application of such provisions to other persons or circumstances, shall not be affected.

(d) DISREGARD OF REFUND.--Any refund of Federal income taxes made to any individual, and any reduction in the income tax liability of any individual, by reason of section 44F of the Internal Revenue Code of 1954 (relating to credit for educational expenses) shall not be taken into account as income or receipts for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

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

(f) CONFORMING AMENDMENT.--The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item

relating to section 45 the following:

"Sec. 44F. Educational expenses."

SEC. 3. EFFECTIVE DATE

The amendments made by section 2 of this Act shall apply to taxable years ending after July 31, 1982, for amounts paid after such date for educational expenses incurred after such date.

THE WHITE HOUSE

WASHINGTON

March 30, 1982

Dear Mrs. Duggan:

Thank you for sending me a copy of Dr. McGarry's study on Tuition Tax Credits. I have passed it on to Ann Fairbanks of the Office of Policy Development.

I enjoyed meeting Joe's famous, activist mother. Next time let's get together with the patriarch as well.

If you have any other information you would like to share with me, please pass it along.

Sincerely,



Morton C. Blackwell
Special Assistant to the President

Mae Duggan
Citizens for Educational Freedom
2208 North Warson Road
St. Louis, MO 63114

cc: Ann Fairbanks



CITIZENS FOR EDUCATIONAL FREEDOM

PARENTS
RIGHTS
IN
EDUCATION

2208 NORTH WARSON ROAD
ST. LOUIS, MISSOURI 63114

(314) 423-0831 or (314) 434-4171

"A Fair Share For Every Child"

March 5, 1982

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Dear Morton:

It was so nice to meet you at last. Joe has told us so much about you and how he admires you.

The enclosed is a copy of the material we have sent to: Secretary Bell, Brock, Donovan, Vice-Pres. Bush, and Schweicker. I wanted you to see it. We would welcome your comments and suggestions.

With all best wishes for your endeavors,

Cordially yours,

Mae Duggan

*Write Dear Mrs Duggan
reponse
+ send copy of
enclosure + proposal to
Ann Fairbanks*