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THE WHITE HOUSE
WASHINGTON

January 19, 1982

*hold
for meeting
next week*

MEMORANDUM TO: Ed Meese
FROM: Ken Duberstein *Ken D.*
SUBJECT: Senator Strom Thurmond

Attached is a list of Senator Thurmond's objections to the
tax exempt status legislation, which the senator talked
to the Attorney General about this morning.

Attachment

cc: Jim Baker
Mike Deaver
Fred Fielding

Major Objections to Department of Treasury Bill to Remove Tax
Exempt Status of Certain Religious Schools

1. Allows IRS to pull exemption without going to court and puts burden on religious school [school must sue].
2. Uses an "effects" text so that even if school does not intend to discriminate, it loses exemption.
3. Does not protect sincerely held religious belief relating to race.
4. Is unconstitutionally retroactive to 1970 -- thus depriving religious schools of their property without due process of law.
5. Infringes right of association of contributors even though contributor may not agree with offending practice of religious school.
6. Addresses "religious belief" in what would become a law of Congress, thereby on its face violating both the establishment and the free exercise clauses of the First Amendment.

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 of 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.

Counsel's Office Dr.
1/13/82 - 1:30 p

Dear Mr. Chairman:

Tax Exempt

As you are aware, last Friday the Department of the Treasury announced 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 nonetheless qualify for such status under the existing Internal Revenue Code. I support that decision because I firmly believe 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.

As I stated yesterday, 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 tax laws. To that end, I will be promptly submitting to the Congress proposed legislation that will prohibit tax exemptions for private, non-profit educational organizations that discriminate on the basis of race.

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 also strongly urge

that, as will be set forth in the proposed legislation I will submit, the legislation finally enacted by Congress expressly direct the Commissioner to immediately review existing tax exemptions to insure continuance of such exemptions is consistent with the new law.

I believe the course I have outlined is the one most consistent both with our mutual determination to eradicate all vestiges of racism in American society and with a proper view of the powers vested in the Congress under our constitutional system. I am confident that you will give this issue the prompt attention it deserves.

Sincerely,

THE WHITE HOUSE

WASHINGTON

NOTE ON DRAFT BILL FROM TREASURY

first page: "An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious curriculum)"

This language is a declaration of war against religious America. It betrays a militantly secularist mentality, and is inherently offensive, on both constitutional and ethical grounds.

In recent years, various federal regulatory bodies have attempted to regulate those aspects of church-related schools which are not inherently religious. The NLRB tried to exert jurisdiction over employees in church-related schools who do not teach religion. The Department of Labor attempted to force church-related schools to pay unemployment comp for employees who are not engaged in religious activities.

They have failed. In the case of the NLRB, the Supreme Court stopped them. Virtually all of religious America -- from evangelical academies to Catholic parochial schools to Hassidic schools in Brooklyn to Black Muslim schools in D.C. -- is united in the principle that ALL their educational endeavors are, at essence, religious. They refuse to distinguished between a catechism class and math, english, biology, or history.

Anti-clerical France at the turn of the century tried to force such distinctions upon the schools, as did Bismark's Germany. Today, that totalitarian effort -- totalitarian because it requires the

THE WHITE HOUSE

WASHINGTON

STATE to decide what is and is not religious teaching, and requires STATE monitoring and investigation of classroom practices, and sets up STATE officials as the ultimate arbiters of religious faith -- that effort is confined to Eastern Europe, assorted Marxist backwaters in the Third World, and the legislation that is proposed to be submitted in the name of Ronald Reagan.

THE WHITE HOUSE

WASHINGTON

The test for non-discrimination should be admissions policy, nothing else. This is especially important regarding schools. The Supreme Court has -- in deciding cases involving state assistance to schools -- been most wary of anything that involves "intermingling" of government and church-related institutions -- like inspecting school financial records, and so forth.

The proposed language at the top of page 2 -- "educational policies"-- God only knows what that means -- "admissions policies, scholarship and loan programs, athletic programs, or any other programs...." That is an invitation to IRS monitoring and take-over of church-related schools, and any other private institution. It sets, for religious schools, a much more far reaching standard of subordination to the IRS than other private institutions have to meet. It singles out religious America for onerous inspection by federal officials, and again demonstrates a curious malignancy toward Christian America on the part of this Administration,.

Before we go any farther, we should attempt to define "Educational policies." Just what ARE non-discriminatory "educational policies," if they involve more than admissions?

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

The proposed legislation is supposed to accomplish a simple policy objective: to ensure that institutions -- and especially schools -- which discriminate on the grounds of race do not enjoy tax exemption under the Internal Revenue Code. No more than that is intended, and no more should be offered to any group interested in the outcome.

Institutions which the IRS believes are discriminatory (as to race) -- because their tax exempt status in most cases is a matter of life or death, not just a financial convenience -- should have due process in a federal district court.

*The IRS, through the Secretary of the Treasury, should have the responsibility for securing a declaratory judgment from the federal district court.

*That court should be in the district in which the school is located -- not because the judge there is likely to be biased, but to prevent the IRS from shopping around for judges favorable to the federal Government.

*The district court should be required to base a finding of discrimination on a clear and convincing preponderance of the evidence.

*Because the loss of tax exempt status would probably force the school out of business, the school should be given the opportunity to appeal, before its status is revoked. NOT TO DO SO would be equivalent to assuring a condemned man the right to an appeal, but without postponing his death sentence.

The family of the murder victim might be aggrieved by the delay, but we do not implement life-or-death penalties until all appeals are exhausted. The same should hold true for the life-and-death withdrawal of tax exempt status.

*In fairness, there should be a provision for reinstatement to tax exempt status for an institution which demonstrates reform.

*There must be a First Amendment provision: to protect the exercise of religious belief, even when that involves racial distinctions. Yes, that might protect some white seggies, but it also protects Hebrew schools and Black Muslim academies. Better that one guilty should escape....

We should avoid deceptive parallels to the way the I.R.S. treats individual taxpayers. For private schools, loss of tax exemption is not just a financial setback -- so you have to take out a credit union loan to pay up back taxes -- but a fatal blow. It is qualitatively different from slapping a private taxpayer on the wrist for insufficient payment.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION

January 4, 1982

THE ASSISTANT SECRETARY

BKFAST

PERSONAL

TO : The Honorable George Bush
The Vice President of the United States
The White House
Washington, D.C.

FROM : Thomas Patrick Melady

SUBJECT: Some Goals for the Catholic-Ethnic Community in 1982 (No. 27)

1. In order to consolidate our gains with the Catholic-ethnic community in 1982, I recommend the following as our targets:

A. Introduction of legislation for Tuition Tax Credits.

B. Additional small but meaningful tax incentives designed to strengthen the middle class family. (We want to make this Administration very popular with middle class families.)

C. Maintaining (and reinforcing when necessary) the new, clear, tough position of this Administration with the Soviet Union. Our position on Poland has been very well received in the Polish and Eastern European communities. The image is excellent. Tough and straight forward but not arrogant and devious.

D. Expanding the contacts and identification with the Catholic-ethnic communities by:

- (1) Addressing their national Congresses (for example: the annual Slovak Congress and the annual Knights of Columbus Convention).
- (2) Visiting their Universities (list already given to Chase).
- (3) Inviting their leaders (when appropriate) to visit the President and/or you.
- (4) Visiting, when in their city, the key Church and ethnic leaders (also phoning them when a specific issue comes up).
- (5) Sending regularly on a select basis, news releases on your ethnic-Catholic related activities to the Catholic-ethnic media.

1/14/82

Mike S.

Our move into Catholic - Ethnic voters gave us our wide margin in '80. This is "where it's at" in '82

elections are coming

We should

consider the scheduling requests

H I D.

PS

PS. I'm sure

that

have been

continuing

thinking

then lines +

scheduling according to calls to Pope, visits w/ Cardinals, etc, etc.

Page 2 - The Honorable George Bush

2. Other issues of importance to this community:
 - A. Actions against the drug trade.
 - B. Helping the FBI and local public to carry out their missions of protecting the family.
3. I remain convinced that we can consolidate the gains with Catholic-ethnic Americans made in 1980, if we take a few steps now. Catholic-ethnic voters gave us the margin of victory in many areas from Boston to Chicago in 1980. They can do it again for us in 1982.

cc: Mr. C. Untermeyer
Mr. James Baker, III

SENSITIVE

THE WHITE HOUSE

WASHINGTON

January 14, 1982

MEMORANDUM FOR EDWIN MEESE III
JAMES BAKER III
MICHAEL K. DEEVER ✓
MARTIN ANDERSON
FRED FIELDING
EDWIN J. GRAY

FROM: MICHAEL M. UHLMANN

SUBJECT: Legislation Affecting Private Tax-Exempt Schools

In April of 1979, Senators Helms, Ford, Schweiker, Stevens, and Zorinsky introduced a bill which sought to prevent racial discrimination by private tax-exempt schools while at the same time protecting the First Amendment rights of religious schools. It is a clever piece of work, both politically and legally, and deserves our close attention as a possible vehicle for Administration support.

Very briefly, the bill would authorize the Secretary to deny or revoke tax-exempt status for private schools by means of a declaratory judgement action. Jurisdiction would lie in the federal district court where the school was located, and the evidentiary standard would be intentional discrimination shown by "a clear and convincing preponderance of the evidence."

No adverse action could be taken until all appeals had been exhausted. The court would retain continuing jurisdiction once a school had its tax-exempt status denied or revoked, and such a school could be reinstated upon showing that the discriminatory practices were no longer in force and had not been for at least a year.

Finally, the bill contains a religious school exemption clause, which would permit a religiously affiliated institution to grant admissions preference to students of a particular faith.

The principal virtues of the bill are these:

- (1) It declares a national policy that private schools which discriminate on account of race should not be entitled to tax-exempt status. Congress has not previously declared such a policy, and its explicit presence in statute can be sold to civil rights advocates as a positive step forward.

- (2) By detailing in the statute itself both substantive and procedural standards, it greatly diminishes the potential for arbitrariness on the part of I.R.S. Further, it places the burden of proof on the government. As you know, these issues have been major bones of contention for the religious schools movement.
- (3) The standard of intentional discrimination is consistent with the standard that DOJ is pursuing in other classes of racial discrimination cases. As the controversy over the "results" test in the Voting Rights Act demonstrates, civil rights advocates consider intentionality to be too stringent a test, but the Administration has already committed itself on the point.
- (4) The religious institution exemption clause is both politically and legally necessary. Having offended blacks by the rescission of the I.R.S. revenue procedure, we must be careful not to make an equal and opposite error by offending the religious school movement.

Treasury and Justice have both been alerted to the bill. Treasury has been working on a draft of its own, which should be provided to us this afternoon.

96TH CONGRESS
1ST SESSION

S. 995

To amend the Internal Revenue Code of 1954 to require the Secretary of the Treasury to obtain a judicial finding of racial discrimination before terminating or denying tax-exempt status to a private school on the grounds of racial discrimination.

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 9), 1979

Mr. HELMS (for himself, Mr. FORD, Mr. SCHWEIKER, Mr. STEVENS, and Mr. ZORINSKY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1954 to require the Secretary of the Treasury to obtain a judicial finding of racial discrimination before terminating or denying tax-exempt status to a private school on the grounds of racial discrimination.

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

3 SECTION 1. FINDINGS; DECLARATION OF CONGRESSIONAL
4 POLICY.

5 (a) The Congress finds that—

(1) discrimination based on race in the public schools violates the Constitution and Acts of Congress, including title VI of the Civil Rights Act of 1964, and the elimination of discrimination based on race in all educational opportunities is a fundamental national goal;

(2) the Supreme Court has held under the Civil Rights Act of 1866 that a private elementary school may not discriminate on the basis of race in the admission of students, but the Congress has failed to provide guidance as to the tax-exempt status of such schools;

(3) revenue rulings and procedures adopted by the Internal Revenue Service which deny tax-exempt status to private schools that discriminate on the basis of race are not based on a specific statute but rest on broad grounds of fundamental public policy as determined by the Service;

(4) the financial viability of many private schools, including scholarship programs, rests on the assurance that contributions to the school are deductible under the Internal Revenue Code, and any action by the Internal Revenue Service affecting the tax-exempt status of a school threatens its existence;

(5) revenue rulings and procedures adopted by the Internal Revenue Service have not been sensitive to

private schools which limit, prefer or grant priorities in admissions to students which are members of religious organizations;

(6) many private schools operated by a particular religion or religious association form an integral part in carrying out the religious mission of the affiliated churches or associations in the free exercise of religion by their members;

(7) various Acts of Congress which condition Federal financial assistance to grantees, such as title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972, do not apply to organizations simply because they are tax-exempt;

(8) the Congress has provided in title VI of the Civil Rights Act of 1964 that a public elementary and secondary school system is entitled to notice and a full evidentiary hearing on allegations of racial discrimination including the right to appeal an adverse decision to the Federal courts, prior to the termination of Federal funds; and

(9) neither the Congress nor the Internal Revenue Service has provided for impartial adjudication of allegations of racial discrimination prior to withdrawal of the advance notice of deductibility with respect to con-

1 tributions to, and the determination of the tax-exempt
2 status of, a private school.

3 (b) Therefore, the Congress determines that a private
4 school which in fact racially discriminates as to students
5 should not be entitled to tax-exempt status, and contributions
6 to such schools should not be deductible under the Internal
7 Revenue Code of 1954, and further determines that the Sec-
8 retary of the Treasury should be required to bring a declara-
9 tory action in the Federal courts to adjudicate whether a pri-
10 vate school in fact racially discriminates as to students prior
11 to any action which affects the tax-exempt status of, or de-
12 ductibility of contributions to, such school.

13 SEC. 2. SHORT TITLE.

14 This Act may be cited as the "Private School Non-Dis-
15 crimination and Due Process Act of 1979".

16 SEC. 3. DECLARATORY JUDGMENT PROCEDURE ESTAB- 17 LISHED.

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

1 "SEC. 7408. ACTION TO REVOKE OR DENY TAX-EXEMPT
2 STATUS OF PRIVATE SCHOOL ON BASIS OF
3 RACIAL DISCRIMINATION.

4 "(a) GENERAL RULE.—The Secretary may not—

5 "(1) revoke or change the qualification or classifi-
6 cation of a private school as an organization described
7 in section 501(c)(3) which is exempt from taxation
8 under section 501(a),

9 "(2) deny, withhold approval of, the initial qualifi-
10 cation or classification of a private school as such an
11 organization, or

12 "(3) condition acceptance or approval of an appli-
13 cation for qualification or classification of a private
14 school as such an organization, or

15 "(4) revoke the advance assurance of deductibility
16 issued to a private school,
17 on the grounds that the school discriminates on the basis of
18 race as to students unless a court of the United States, in a
19 civil action for a declaratory judgment brought by the Secre-
20 tary in accordance with the provisions of this section, has
21 found that the school has a racially discriminatory policy as
22 to students.

23 "(b) PROCEDURE TO BE FOLLOWED BY THE SECRE-
24 TARY.—Whenever the Secretary has reason to believe that a
25 private school has a racially discriminatory policy as to stu-
26 dents, the Secretary shall file a civil action for a declaratory
S. -----995

1 judgment in the United States district court for the district in
2 which the private school is located.

3 “(c) LIMITATIONS.—

4 “(1) EVIDENTIARY STANDARD.—No finding that
5 a private school has a racially discriminatory policy as
6 to students shall be made unless the Secretary, by a
7 clear and convincing preponderance of the evidence,
8 shows that the school has had a practice of deliberate
9 and intentional racial discrimination in fact.

10 “(2) NO ADVERSE ACTION UNTIL SCHOOL HAS
11 EXHAUSTED APPEALS.—In the case of a private
12 school with respect to which a court has found under
13 subsection (a) that it has a racially discriminatory
14 policy as to students, the Secretary shall not take any
15 action with respect to the initial qualification or contin-
16 ued qualification of the school as an organization de-
17 scribed in section 501(c)(3) which is exempt from tax
18 under section 501(a) or as an organization described in
19 section 170(c)(2)(B) until the school has exhausted all
20 appeals from the final order of the district court in the
21 declaratory judgment action brought under this section.
22 “(d) RETENTION OF JURISDICTION; REINSTATEMENT
23 OF STATUS.—The district court before which an action is
24 brought under this section which resulted in the denial of
25 initial qualification or revocation of qualification of a private

1 school as an organization described in section 501(c)(3) which
2 is exempt from tax under section 501(a), or as an organiza-
3 tion described in section 170(c)(2)(B), shall retain jurisdiction
4 of such case, and shall, upon a determination that such
5 school—

6 “(1) has not had a racially discriminatory policy
7 as to students for a period of not less than a full school
8 year since such denial or revocation became final, and

9 “(2) does not have a racially discriminatory policy
10 as to students,

11 shall issue an order to such effect and vitiate such denial or
12 revocation. Such an order may be appealed by the Secretary,
13 but, unless vacated, be binding on the Secretary with respect
14 to such qualification.

15 “(e) AWARD OF COST AND FEES TO PREVAILING
16 SCHOOL.—In any civil action brought under this section, the
17 prevailing party, unless the prevailing party is the Secretary,
18 may be awarded a judgment of costs and attorney’s fees in
19 such action.

20 “(f) DEFINITIONS.—For purposes of this section—

21 “(1) PRIVATE SCHOOL.—The term ‘private
22 school’ means any privately-operated school which
23 meets the requirements of State law relating to com-
24 pulsory school attendance other than a school offering
25 care or instruction for students solely below the first

1 grade, nursery schools, schools for the blind or deaf, or
2 schools operated solely for the handicapped or emotion-
3 ally disturbed.

4 “(2) RACIALLY DISCRIMINATORY POLICY AS TO
5 STUDENTS.—The term ‘racially discriminatory policy
6 as to students’ means that a school does not admit stu-
7 dents of all races to all the rights, privileges, pro-
8 grams, and activities generally accorded to or made
9 available to students at that school, and that the school
10 discriminates on the basis of race in administration of
11 its educational policies, admissions policies, scholarship
12 and loan programs, athletic program, or other school-
13 administered programs. Such term does not include an
14 admissions policy of a school which limits, or grants
15 preferences or priorities to, its students to members of
16 a particular religious organization or belief and does
17 not include any policy or program of a school which is
18 limited to, or required of, members of a particular reli-
19 gious organization or belief.

20 “(g) SECTION TO APPLY ONLY TO SCHOOLS WITH
21 PUBLICLY NOUNCED POLICY OF NONDISCRIMINA-
22 TION.—Subsection (a) shall not apply with respect to any
23 private school unless that school has adopted a policy of non-
24 discrimination on the basis of race as to students and has

1 published, in such manner as the Secretary may require,
2 public notice of that policy.”

3 “(b) The table of sections for such subchapter is amended
4 by striking out the last item and inserting in lieu thereof the
5 following:

“Sec. 7408. Action to revoke or deny tax-exempt status of private school on basis
of racial discrimination.”

“Sec. 7409. Cross references.”

6 SEC. 4. EFFECTIVE DATE.

7 The amendments made by section 3 of this Act shall
8 apply to actions of the Secretary of the Treasury taken with
9 respect to the initial qualification or continuing qualification
10 of an organization as an organization described in section
11 501(c)(3) of the Internal Revenue Code of 1954 which is
12 exempt from taxation under section 501(a) of such Code, or
13 which is described in section 170(c)(2)(B) of such Code, after
14 the date of enactment of this Act.

Dear Mr. Chairman:

As you are aware, last Friday the Department of the Treasury announced 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 nonetheless qualify for such status under the existing Internal Revenue Code. I support that decision because I firmly believe 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 exemption for any schools that discriminate on the basis of race.

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. Your urgent action is required, ~~since in the normal course of its~~

activities, the Internal Revenue may have no alternative but to grant exemptions in due course to organizations that qualify under existing law but might otherwise be subject to the type of legislation I am requesting. In this regard, anticipating that we will be able to quickly obtain this needed legislation, I am directing the Secretary of the Treasury to advise any school obtaining an exemption under existing law after this date of the fact that this Administration is seeking legislation that will preclude the continuance of exemptions to such organizations engaging in racially discriminatory practices. *Anticipating the* With passage of satisfactory legislation, I will also expressly direct the Secretary of the Treasury to immediately review existing tax exemptions to insure that they are in compliance with the new law.

I believe the course I have outlined is the one most consistent both with our mutual determination to eradicate all vestiges of racism 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.

Sincerely,

Date: 14 JAN 1982

MEMORANDUM FOR: SECRETARY REGAN

From: John E. Chapoton
Assistant Secretary (Tax Policy)

Subject: Legislative Proposal to Deny Tax Exemption
to Racially Discriminatory Private Schools

I. Summary of Proposal

Section 501 of the Internal Revenue Code will be amended to provide specifically that an organization which conducts a school that teaches secular subjects as more than an insubstantial part of its activities will not qualify for exemption if the organization discriminates on the basis of race, color or national or ethnic origin in its educational programs or activities. The correlative income, estate, and gift tax deduction provisions (sections 170, 642, 2055, and 2522, respectively) will be similarly amended to provide that such organizations will not be eligible recipients of deductible contributions.

II. Detailed Analysis

There are three major issues involved in determining the scope of the proposal. First, the proposal only applies to schools, as opposed to all "educational" organizations, in order to target its application to situations in which the public interest in nondiscrimination is clear. "Educational" organizations include groups that present lectures, panels, and similar programs, as well as museums, zoos, and symphony orchestras. Since the racial discrimination controversy has centered around schools, the proposal is limited to educational organizations which maintain a regular faculty and curriculum and normally have a regularly enrolled body of students.

Second, church schools which are substitutes for secular schools may not discriminate.

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname						
Initials / Date						

However, if the school only educates church members about religion, such as a Sunday school, the proposal is inapplicable. Further, a church school which only accepts students of a particular religious denomination will not be deemed discriminatory as long as membership in that religious denomination is not racially discriminatory.

Separately incorporated church schools are clearly subject to the legislation, since the proposal does not differentiate between these schools and non-church schools. If the church school is not separately incorporated, but is merely a part of the church itself, the legislation applies if the school is more than an insubstantial part of the church's activities. These standards are consistent with prior administrative positions. If combination church-school organizations were exempted from the proposal, many racially discriminatory schools could be expected to merge with churches in order to gain tax exempt status, and the impact of the legislation would be substantially diluted.

An alternative approach to the combination church-school problem is to deny deductions to a donor to such an organization to the extent that the contribution is intended to be used for the discriminatory school. This approach was rejected both because it would be difficult to administer and because it could be criticised as a retreat from a prior administrative position.

The proposal would deny tax exempt status to Bob Jones University, since it denies tax exemption to any school that discriminates regardless of the basis for the exemption. Bob Jones University, and similar organizations, will undoubtedly litigate the constitutionality of the legislation.

Third, the proposal defines racially discriminatory policy to include discrimination on the basis of national or ethnic origin. Again, this is consistent with the published position of the Internal Revenue Service, and any retreat from this position will be controversial. In addition, the legislation on its face does not permit reverse discrimination, which is contrary to the IRS's published position. This issue can be addressed in the committee reports.

Attachment: Legislative Proposal

A BILL

To amend the Internal Revenue Code of 1954 to clarify the tax exempt status of certain organizations that conduct educational activities.

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

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

"(j) RACIALLY DISCRIMINATORY SCHOOLS. --

"(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 be deemed to be not described in subsection (c)(3), and shall not be exempt under subsection (a), if such organization has a racially discriminatory policy as to students.

"(2) DEFINITION. -- For purposes of this subsection, an organization has a racially discriminatory policy as to students if it does not admit students of all races to all the rights, privileges, programs, and activities generally

accorded or made available to students by that organization, or if the organization discriminates on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, athletic programs, or any other programs administered by such organization. For purposes of this subsection, the term 'race' shall include color, national origin, and ethnic origin."

SEC. 2. Section 170 of such Code (relating to allowance of deduction for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) thereof the following new paragraph (7):

"(7) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WITH RACIALLY DISCRIMINATORY POLICIES AS TO STUDENTS. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)".

SEC. 3. Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) thereof the following new paragraph (7):

"(7) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WITH RACIALLY DISCRIMINATORY POLICIES AS TO STUDENTS. -- No deduction shall be allowed under this section for any

contribution to or for the use of an organization described in section 501(j).".

SEC. 4. Section 2055 of such Code (relating to the allowance of estate tax deduction for transfers for public, charitable and religious uses) is amended by adding at the end of subsection (e) thereof the following new paragraph (4):

"(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).".

SEC. 5. Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) thereof the following new paragraph (3):

"(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).".

SEC. 6. EFFECTIVE DATE.

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