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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 9, 1983

FOR: JAY WILKINSON
SUE JEWETT
DAN OLIVER
PETER RUSTHOVEN
MIKE McCONNELL

FROM: BILL BARR WPB

SUBJECT: Second Draft of Bob Jones Bill

Attached is a second draft of the "Bob Jones Bill II" -- legislation we could propose in the event we win in the pending lawsuit.

My secretary will be calling you today to try to arrange a meeting for Wednesday to discuss this draft.

I would like to see if we can, at least at the staff level, reach an agreement on draft language by the end of this week. So, when we meet, be prepared to make specific comments on the draft.

Thank you.

May 6, 1983

BOB JONES BILL II (Draft 2)

SECTION 1. 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) Schools With Racially Discriminatory Policies. --

(1) In General. -- An educational institution shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), ~~if such~~

~~educational institution~~

for any period with respect to which a determination, made
(A) ~~has been determined~~ pursuant to Section 7408, *that such educational institution follows* ~~to be following a~~ racially discriminatory policy *is effective*

or

if such educational institution

(B) ~~fails~~ to include in any published by-laws, advertisements, admission application forms and other such published materials, a statement (in such form and manner as the Secretary may by regulation prescribe) that it does not discriminate against student applicants or students on the basis of race.

(2) Racially Discriminatory Policy. -- For purposes of this subsection --

(A) In general. -- An educational institution is following a racially discriminatory policy if such institution refuses, on the basis of race, to --

(i) admit applicants as students;

(ii) admit students to ~~the~~ other rights, privileges, programs, and activities generally made available to students by the educational institution; or

(iii) allow students to participate in its scholarship, athletic, or other programs.

(B) Quotas, etc. -- The term 'racially discriminatory policy' shall not include failure of an educational institution to pursue or achieve any racial quota, proportion or representation in the student

body. No educational institution shall be required to use any racial quota or other device that takes account of race of any individual or of the proportional racial composition of any group as a prerequisite or condition to eligibility for tax exempt status under subsection (a).

What does
this add to
the
preceding
sentence?

(C) Race. -- The term 'race' shall include color or ^{ethnic} national origin.

(3) Educational Institution. -- For purposes of this subsection, the term 'educational institution' means an ^{organization} ~~school~~ 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.

SECTION 2.

(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an educational institution ^{that is denied exemption} ~~not exempt~~ from taxation ^{by reason of} ~~pursuant to~~ section 501(j)."

(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an educational institution ^{that is denied exemption from} ~~not exempt from~~ taxation ^{by reason of} ~~pursuant to~~ section 501(j)."

(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 (3) 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 educational institution ^{that is denied exemption} ~~not exempt~~ from taxation ^{by reason of} ~~pursuant to~~ section 501(j)."

(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 educational institution ^{that is denied exemption} ~~not exempt~~ from taxation ^{by reason of} ~~pursuant to~~ section 501(j)."

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF EDUCATIONAL INSTITUTIONS.

(a) In General. -- Under this section, an educational institution has been determined to be following a racially discriminatory policy if --

(1) a judgment has been entered by a district court of the United States under subsection (b) declaring that such educational institution follows a racially discriminatory policy; and

(2) no court order staying or negating such judgment has been entered, or no order modifying such judgment has been entered under subsection (c).

(b) Declaratory Judgment Action. --

(1) In General. -- Whenever the Secretary has good reason to believe that an educational institution is following a racially discriminatory policy, the Secretary shall refer such matter to the Attorney General. ^{and shall publish notice of such} Upon ^{referral.} finding probable cause to believe that such educational institution is following a racially discriminatory policy,

substitute
insert
A

the Attorney General shall initiate against such institution in the district court of the United States for the district in which such institution is located an action seeking a declaratory judgment that such institution is following a racially discriminatory policy. Upon filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution is following a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Required Showing. -- The district court may enter a judgment declaring that the educational institution is following a racially discriminatory policy only if the Attorney General has established that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the action;

(B) the institution has, within the two years preceding commencement of the action made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

Any district court which makes a declaration under this subsection that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case to consider changes in circumstances and motions filed under subsection (c).

What will
be considered
other than
motions?

(c) Discontinuance of Racially Discriminatory Policies. --

(1) Motion and Affidavits. -- At any time after the date which is one year after the date on which a judgment is entered against an educational institution under subsection (b), such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy. Any such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not,
during the preceding year --

(i) committed a racially discriminatory act
against a student applicant or student pursuant to
a racially discriminatory policy;

(ii) made a communication expressing that it
follows a racially discriminatory policy against
student applicants or students; or

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intended to implement a racially discriminatory
policy, and committed some act in furtherance of
this pattern of conduct.

(2) Modification Order. -- In a motion under paragraph
(1), the district court shall issue an order modifying the
judgment unless the Attorney General establishes that any
affidavit provided by the institution under paragraph (1) ~~or~~
~~assertion made therein, is false.~~ Any order of the district
court granting or denying a motion made under paragraph (1)
shall be reviewable.

(d) Special Rule. -- Any educational institution that, on
the effective date of this act, is ~~pursuant to court order,~~
being denied tax exempt status under section 501 on the grounds
that such institution follows a racially discriminatory policy
shall be treated as if a judgment under subsection (b) has been
entered against ^(such judgment being effective) such institution on the effective date of this
act.

is false or that the actions taken by the institution, as described in
the affidavits, are insufficient to justify a finding that the institution
has abandoned its previously racially discriminatory policy and that
it has ~~effectively~~ communicated its policy of nondiscrimination to
its students, faculty, administrators and to the public in the area

(e) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

(f) Definitions. -- For purposes of this section --

(1) Racially Discriminatory Policy. -- The term 'racially discriminatory policy' has the same meaning given to such term by section 501(j)(2).

(2) Racially Discriminatory Act. -- An educational institution commits a racially discriminatory act if such institution refuses, on the basis of race, to --

(A) admit any applicant as a student;

(B) admit any student to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) allow any student to participate in its scholarship, loan, athletic, or other programs.

The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 9, 1983

FOR: JAY WILKINSON
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May 6, 1983

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"(j) Schools With Racially Discriminatory Policies. --

(1) In General. -- An educational institution shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such educational institution

(A) has been determined, pursuant to Section 7408, to be following a racially discriminatory policy; or

(B) fails to include in any published by-laws, advertisements, admission application forms and other such published materials, a statement (in such form and manner as the Secretary may by regulation prescribe) that it does not discriminate against student applicants or students on the basis of race.

(2) Racially Discriminatory Policy. -- For purposes of this subsection --

(A) In general. -- An educational institution is following a racially discriminatory policy if such institution refuses, on the basis of race, to --

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(ii) admit students to ~~the~~ the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(iii) allow students to participate in its scholarship, athletic, or other programs.

[A] (B) Quotas, etc. -- The term 'racially discriminatory policy' shall not include failure of an educational institution to pursue or achieve any racial quota, proportion or representation in ^{its faculty} ~~the~~ student body. [No educational institution shall be required to use any racial quota or other device that takes account of race of any individual or of the proportional racial composition of any group as a prerequisite or condition to eligibility for tax exempt status under subsection (a),

(C) Race. -- The term 'race' shall include color or national origin.

(3) Educational Institution. -- For purposes of this subsection, the term 'educational institution' means an ^{organization} ~~school~~ 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.

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(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an educational institution *that has been determined to* not exempt from taxation pursuant to section 501(j)."

*change
format*

(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:

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(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 (3) 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 educational institution not exempt from taxation pursuant to section 501(j)."

(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 educational institution not exempt from taxation pursuant to section 501(j)."

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF EDUCATIONAL INSTITUTIONS.

(a) In General. -- Under this section, an educational institution has been determined to be following a racially discriminatory policy if --

(1) a judgment has been entered by a district court of the United States under subsection (b) declaring that such educational institution follows a racially discriminatory policy; and

(2) no court order staying or negating such judgment has been entered, or no order modifying such judgment has been entered under subsection (c).

(b) Declaratory Judgment Action. --

(1) In General. -- Whenever the Secretary has good reason to believe that an educational institution is following a racially discriminatory policy, the Secretary shall refer such matter to the Attorney General. Upon finding probable cause to believe that ^{an} ~~such~~ educational institution is following a racially discriminatory policy,

the Attorney General shall initiate against such institution in the district court of the United States for the district in which such institution is located an action seeking a declaratory judgment that such institution is following a racially discriminatory policy. Upon filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution is following a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Required Showing. -- The district court may enter a judgment declaring that the educational institution is following a racially discriminatory policy only if the Attorney General has established that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the action;

(B) the institution has, within the two years preceding commencement of the action made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

Any district court which makes a declaration under this subsection that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case [to consider changes in circumstances] and motions filed under subsection (c).

(c) Discontinuance of Racially Discriminatory Policies. --

(1) Motion and Affidavits. -- At any time after the date which is one year after the date on which a judgment is entered against an educational institution under subsection (b), such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy. Any such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not,
during the preceding year --

(i) committed a racially discriminatory act
against a student applicant or student pursuant to
a racially discriminatory policy;

(ii) made a communication expressing that it
follows a racially discriminatory policy against
student applicants or students; or

(iii) engaged in a pattern of conduct
intended to implement a racially discriminatory
policy, and committed some act in furtherance of
this pattern of conduct.

(2) Modification Order. -- In a motion under paragraph
(1), the district court shall issue an order modifying the
judgment unless the Attorney General establishes that any
affidavit provided by the institution under paragraph (1), or
assertion made therein, is false. Any order of the district
court granting or denying a motion made under paragraph (1)
shall be reviewable. *insert*

(d) Special Rule. -- Any educational institution that, on
the effective date of this act, is, pursuant to court order,
being denied tax exempt status under section 501 on the grounds
that such institution follows a racially discriminatory policy
shall be treated as if a judgment under subsection (b) has been
entered against such institution on the effective date of this
act.

(e) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

(f) Definitions. -- For purposes of this section --

(1) Racially Discriminatory Policy. -- The term 'racially discriminatory policy' has the same meaning given to such term by section 501(j)(2).

(2) Racially Discriminatory Act. -- An educational institution commits a racially discriminatory act if such institution refuses, on the basis of race, to --

(A) admit any applicant as a student;

(B) admit any student to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) allow any student to participate in its scholarship, loan, athletic, or other programs.

The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

Version A
Enforcement Through Court Action Brought
by Department of Justice

SECTION 1. 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) Schools With Racially Discriminatory Policies. --

(1) In General. -- An educational institution shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a),

(A) for any period with respect to which a determination, made pursuant to section 7408, that such educational institution follows a racially discriminatory policy is effective; or

(B) fails to include in any published by-laws, advertisements, admission application forms and other such published materials, a statement (in such form and manner as the Secretary may by regulation prescribe) that it does not discriminate against student applicants or students on the basis of race.

(2) Racially Discriminatory Policy. -- For purposes of this subsection --

(A) In general. -- An educational institution follows a racially discriminatory policy if such institution refuses, on the basis of race, to --

(i) admit applicants as students;

(ii) admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(iii) allow students to participate in its scholarship, athletic, or other programs.

(B) Quotas, etc. -- The term 'racially discriminatory policy' shall not include failure of an educational institution to pursue or achieve any racial quota, proportion or representation in its faculty or student body.

(C) Race. -- The term 'race' shall include color or national origin.

(3) Educational Institution. -- For purposes of this subsection, the term 'educational institution' means 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.

SECTION 2.

(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an educational institution that is denied exemption from taxation by reason of section 501(j)."

(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an educational institution that is denied exemption from taxation by reason of section 501(j)."

(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 (3) 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 educational institution that is denied exemption from taxation by reason of section 501(j)."

(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 educational institution that is denied exemption from taxation by reason of section 501(j)."

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF EDUCATIONAL INSTITUTIONS.

(a) Determination. --

(1) In general. -- Under this section, it has been determined that an educational institution follows a racially discriminatory policy if a final judgment has been entered by a district court of the United States under subsection (b) declaring that such educational institution follows a racially discriminatory policy, no order staying such judgment is in effect, and such judgment is not reversed.

(2) Effective period. -- A determination that an educational institution follows a racially discriminatory policy shall be effective beginning with the first day of the calendar year in which occurred the first act or communication that

(A) occurred within the two-year period referred to in subsection (b)(2), and

(B) upon which the judgment was based.

Such a determination shall cease to be effective on the first day of the calendar year in which a motion is filed pursuant to subsection (c)(1) if such motion results in a modification of the judgment to include a declaration that the institution no longer follows a racially discriminatory policy, no stay of such modification is in effect, and such modification is not reversed.

(3) Validation of certain contributions. -- If a judgment is entered under this section that results in no deduction being allowed under section 170 for contributions to an educational institution by reason of section 170(f)(7), then notwithstanding such judgment, the educational institution shall not be treated as described in section 170(f)(7) for the period beginning on the date on which the Attorney General filed the action under subsection (b) which resulted in such judgment and ending on the date on which such judgment was first entered under subsection (b). The preceding sentence shall apply only subject to limitations that are the same as those provided in section 7428(c)(2).

(b) Declaratory Judgment Action. --

(1) In General. -- Whenever the Secretary has good reason to believe that an educational institution is following a racially discriminatory policy, the Secretary shall refer such matter to the Attorney General. Whenever, based upon information referred by the Secretary or otherwise, the Attorney General finds probable cause to

believe that such educational institution is following a racially discriminatory policy, the Attorney General shall initiate against such institution in the district court of the United States for the district in which such institution is located an action seeking a declaratory judgment that such institution is following a racially discriminatory policy. Upon filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution is following a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Required Showing. -- The district court may enter a judgment declaring that the educational institution is following a racially discriminatory policy only if the Attorney General has established that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the action;

(B) the institution has, within the two years preceding commencement of the action made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act calculated to further this pattern of conduct was committed within two years preceding commencement of the action.

Any district court which makes a declaration under this subsection that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case to consider motions filed under subsection (c).

(c) Discontinuance of Racially Discriminatory Policies. --

(1) Motion and Affidavits. -- At any time after the date which is one year after the date on which a judgment is entered against an educational institution under subsection (b), such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy. Any such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not,
during the preceding year --

(i) committed a racially discriminatory act
against a student applicant or student pursuant to
a racially discriminatory policy;

(ii) made a communication expressing that it
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(2) Modification Order. -- In a motion under paragraph
(1), the district court shall issue an order modifying the
judgment unless the Attorney General establishes that any
affidavit provided by the institution under paragraph (1), is
false or that the actions taken by the institution, as
described in the affidavits, are not sufficient to justify a
finding that the institution

(A) has abandoned its previous racially
discriminatory policy, and

(B) has taken reasonable steps to communicate its
policy of nondiscrimination to students, to faculty, to
school administrators, and to the public in the area it
serves.

No educational institution shall be required, as a prerequisite or condition to eligibility for tax exempt status under section 501(a), to use any racial quota or other device that takes account of race of any individual or of the proportional racial composition of any group. Any order of the district court granting or denying a motion made under paragraph (1) shall be reviewable.

(d) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

(e) Definitions. -- For purposes of this section --

(1) Racially Discriminatory Policy. -- The term 'racially discriminatory policy' has the same meaning given to such term by section 501(j)(2).

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(C) allow any student to participate in its scholarship, loan, athletic, or other programs.

The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

Version B
Enforcement by IRS Administrative Procedure
With De Novo Review in the Courts

SECTION 1. 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) Schools With Racially Discriminatory Policies. --

(1) In General. -- An educational institution shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a),

(A) for any period with respect to which a final administration determination, made pursuant to section 7408, that such educational institution follows a racially discriminatory policy is effective; or

(B) fails to include in any published by-laws, advertisements, admission application forms and other such published materials, a statement (in such form and manner as the Secretary may by regulation prescribe) that it does not discriminate against student applicants or students on the basis of race.

(2) Racially Discriminatory Policy. -- For purposes of this subsection --

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(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization that has been denied exemption from taxation by reason of section 501(j)."

(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 EDUCATIONAL INSTITUTIONS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization that has been denied exemption from taxation by reason of section 501(j)."

(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 (3) 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 that has been denied exemption from taxation by reason of section 501(j)."

(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 that has been denied exemption from taxation by reason of section 501(j)."

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

(a) Administrative Determination of Racially Discriminatory Policy. --

(1) In general. -- To deny tax exempt status to an educational institution (or to revoke such status), pursuant to section 501(j), on the grounds that such institution follows a racially discriminatory policy, the Secretary must make a determination that such institution follows a racially discriminatory policy. The Secretary may not determine that an educational institution is following a racially discriminatory policy unless the Secretary finds that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years of the date on which the Secretary first notifies such institution that a

determination may be made against it under this subsection;

(B) the institution has, within the two years of the date on which the Secretary first notifies such institution that a determination may be made against it under this subsection, made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act calculated to further this pattern of conduct was committed within two years of the date on which the Secretary first notifies such institution that a determination may be made against it under this subsection.

(2) Effective period. -- An administrative determination under this subsection that an educational institution is following a racially discriminatory policy shall be effective beginning with the first day of the calendar year in which occurred the first act or communication that

(A) occurred within the two-year period referred to in paragraph (1), and

(B) upon which the Secretary's determination is based.

Such determination shall cease to be effective on the date on which the educational institution files a notice with the

Secretary under subsection (b) if such notice ultimately results in the issuance of an order that such institution has ceased following a racially discriminatory policy.

Provided, however, that if, after all appeals have been exhausted, a final judicial judgment under subsection (d) reverses or negates the Secretary's administrative determination, then the tax exempt status of such educational institution shall be determined as if no such administrative determination were made.

(b) Administrative Determination of Cessation of Racially Discriminatory Policy. --

(1) In general. -- At any time after the date which is 1 year after the date on which the final administrative determination is made under subsection (a), an educational institution may file with the Secretary a notice that such institution has ceased its racially discriminatory policy.

(2) Affidavit. -- Any notice filed under paragraph (1) shall be accompanied by affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not, during the preceding year --

(i) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy;

(ii) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

(iii) engaged in a pattern of conduct intended to implement a racially discriminatory policy, and committed some act calculated to further this pattern of conduct.

(3) Order. -- If a notice is filed as provided under paragraph (1), the Secretary shall, within 180 days of such filing, issue an order declaring that such institution no longer has a racially discriminatory policy and is no longer ineligible by virtue of section 501(j) to receive tax exempt status, unless the Secretary within such 180 days determines that such institution has not ceased following a racially discriminatory policy. The Secretary may not determine that such educational institution has not ceased to follow a racially discriminatory policy unless he determines that any affidavit provided by the institution under paragraph (2) is false or that the actions taken by the institution, as described in the affidavits, are not sufficient to justify a finding that the institution

(A) has abandoned its previous racially discriminatory policy, and

(B) has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves.

No educational institution shall be required, as a prerequisite or condition to eligibility for tax exempt status under section 501(a), to use any racial quota or other device that takes account of race of any individual or of the proportional racial composition of any group.

(c) Administrative Procedures. -- Before making a final determination under subsection (a) that an educational institution is following a racially discriminatory policy, or a final determination under subsection (b) that an educational institution has not ceased following a racially discriminatory policy, the Secretary shall provide such institution with notice of the proposed determination and an opportunity to file a written protest and orally present its case in conference.

(d) Judicial Review. --

(1) In general. -- An educational institution may obtain judicial review of the final administrative determination made under subsections (a) or (b) by filing, within 60 days of such determination, an action for declaratory judgment in the district court of the United States for the district in which an educational institution

is located. Upon the filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution has a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Judgment. -- The district court shall review de novo all issues of law and fact and shall declare whether the educational institution follows a racially discriminatory policy. The United States shall have the burden of proof of establishing, in accordance with the standards set forth in paragraph (1) of subsection (a), that an educational institution follows a racially discriminatory policy, and of establishing, in accordance with the standards set forth in paragraph (3) of subsection (b), that an educational institution has not ceased following a racially discriminatory policy.

(3) Special Rules. --

(A) Retention of Jurisdiction. -- If, upon reviewing a final administrative determination under subsection (a), the district court declares that the educational institution has a racially discriminatory policy, the court shall retain jurisdiction of such case and shall consider any subsequent action to review a determination under subsection (b).

(B) Consolidation. -- If an action for review of a determination under subsection (b) is filed before judgment has been rendered on an action for review of a final administrative determination under subsection (a) involving the same educational institution, the court may make such orders concerning proceedings as may promote justice and tend to avoid unnecessary costs or delays.

(C) Validation of Certain Contributions. --
If --

(i) a final administrative determination is made against an educational institution under subsection (a); and

(ii) in a subsequent action under subsection (d) to review such determination, a judgment is entered declaring that such institution follows a racially discriminatory policy,
then, notwithstanding such judgment, for the period during which such action was pending in the district court, and in such additional period as the court may provide, such institution shall not be treated as described in section 170(f)(7).

(e) Definitions. -- For purposes of this section, the terms 'racially discriminatory policy' and 'educational institution' have the same meaning given to such terms by section 501(j).