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Inter-Office Memorandum



ACTION



BRIEFING



INFORMATION

Date: December 22, 1981

For: SECRETARY REGAN

Thru: R. T. McNamar

From: Peter J. Wallison *PJW*
General Counsel*R.V.A.*Subject: Treasury Position on Bob Jones Case

In an earlier memorandum to you, I discussed in summary fashion the kinds of questions which Congressman Trent Lott would be likely to raise concerning the Bob Jones case and the related case of Green v. Regan. Further review of these issues within Treasury suggests that they are significant enough to raise at the White House level now, so that the Administration's position can be finally settled before the Justice Department's brief is filed in the Supreme Court on December 31.

The brief-filing requirement provides a good reason for raising this issue at the White House as soon as possible, and would also place us in a position to respond to Congressman Lott without substantial additional delay.

As noted in my earlier memo, the Service and the Justice Department have taken the position that a tax exempt religious school must be "charitable" in the broadest sense in order to be entitled to retain its tax exempt status. Thus, the mere fact that the school is a bona fide religious organization does not entitle it to a tax exemption, even though § 501(c)(3) of the Internal Revenue Code lists religious organizations as one of the categories of groups which are entitled to tax exempt status. The Service contends that in enacting Section 501(c)(3) of the Code, Congress intended to provide tax exemption only to those organizations which were "charitable" within the broad meaning of that word as used in common law. This means that the organization cannot pursue practices which are inconsistent with the most fundamental public policies of society, and in particular may not practice racial discrimination.

Surname	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
	WALLISON			ARNOLD	DPICKFORD
Initials/Date				A, 12/22	DP, 12/22

In its most general terms, the question here is whether any organization which is bona fide religious or educational is entitled to a tax exemption no matter what its practices.* Some people are very comfortable with the proposition; others believe that Congress could not have intended to provide the significant benefit of tax exemptions to organizations which practice racial discrimination.

In the Bob Jones case, the Service encountered an institution which, although tax exempt and bona fide religious, overtly practiced racial discrimination because of its fundamentalist reading of Scripture.

That the Service has the authority to revoke the tax exemption of organizations which practice racial discrimination has been upheld in the Bob Jones case by the United States Court of Appeals for the Fourth Circuit and, in another case, by a three-judge panel of the Federal District Court for the District of Columbia. Indeed, it does not seem unreasonable that an organization which discriminates on the basis of race is not "charitable" in the broadest sense and therefore should not be entitled to the benefits of tax exemption.

On the other hand, it must be recognized that once this principle is adopted it is difficult to find a stopping point. With a broad enough decision in Bob Jones, the Service could challenge a range of private schools for enforcing racially discriminatory policies de facto -- even though the distinctive feature of Bob Jones is that it established its discriminatory rules overtly. Moreover, a far-reaching decision of the Supreme Court could conceivably form the basis for other challenges to tax exempt organizations which are engaged in practices which arguably are not "charitable" -- e.g., churches which will not perform ceremonies in which members marry outside the faith. This, in my judgment, is the most serious objection to the principle articulated by the Service in the Bob Jones case.

However, given the current composition of the Supreme Court, I think it is possible that any endorsement of the Service's position will be based on narrow grounds. Such a decision would hold that the Service may revoke the tax exemption of a school

* It should be noted that the beliefs or ideas which are inculcated or taught at the school or other organization are not the issue; the issue is the school's practices. The tax exemption of Bob Jones University was revoked not because it teaches that Scripture requires separation of the races but because it implements that belief by discriminating on the basis of race.

which is not "charitable" because it practices racial discrimination, but the Court's opinion would emphasize that the Bob Jones case is unusual in that the school practiced racial discrimination openly and as a matter of policy. In the ordinary case, the Service must present some evidence of discrimination in order to prevail, and this is difficult to obtain without the unusual facts of Bob Jones.

Thus, even if the Service wins Bob Jones, the case is unlikely to lead to substantial litigation over the revocation of tax exemptions unless the organizations involved practice racial discrimination as a matter of policy. If Bob Jones is viewed in this way, it will still provide a useful Supreme Court determination as to whether schools which discriminate on racial grounds are entitled to tax exemption, but will not provide a rationale for aggressive IRS action against tax exempt organizations on other theories or on other fact patterns.

At the same time, one must consider the politics of a change in the Administration's policy with respect to Bob Jones at this point. The case was commenced during a Republican Administration in 1970 and carried through a successful appeal to the Fourth Circuit Court of Appeals. This suggests that the Service's position is neither frivolous nor the implementation of the social policies of the IRS bureaucracy. If the Administration were now to take the position that the case should not be pursued before the Supreme Court, that view would be read as a statement by the Administration that overtly discriminatory practices are not objectionable, and as a significant retreat from the past policies in this area of both Republican and Democratic Administrations. The explanation of the Administration's position -- that the tax laws are not the proper vehicle for pursuing racial discrimination -- would be lost in the ensuing outcry.

To summarize, then, the Bob Jones case is not in my view troublesome if it upholds the authority of the Service to challenge tax exemptions for private schools which discriminate -- as in Bob Jones -- as a matter of policy. At the same time, I believe in the Administration's support for the Service's position in the Bob Jones case could be very troublesome -- with the political benefits heavily outweighed by the political liabilities.

a change

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ACTION

LOG NUMBER

TAX POLICY

81- 19465

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TO:

- ☐ PRESIDENT
☒ SECRETARY (S)
☐ D/SECRETARY (D)
☐ U/SEC. (MA) (M)
☐ OTHER (Specify) _____

FROM: Lott, Trent (Cong)

REFS: _____

SUBJECT:

Taxation of church schools e-

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1229/81

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REPLY FOR SIG. BY: Asst. Secy. (L)

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TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

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DGC

December 21, 1981

The Honorable Donald T. Regan
Secretary
United States Department of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

I am delighted to learn that you are home from the hospital. I was of course disappointed that we were unable to speak last week, but the news of your recovery is especially gratifying.

In anticipation of our forthcoming conversation on the taxation of church schools, I thought you might be interested in the enclosed copy of the page from the President's log on which he responds to my letter to him on the subject. He appears to agree with me that the Administration should be helping these schools, which, of course, is not the position presently held by your Department.

This development makes it especially important that you review this matter before the brief is filed at the Supreme Court in the next few days. The President's platform promise and his apparent intention to stand by that pledge make it imperative that this matter be carefully considered before any position is expressed in public. In fact, I would think you might wish to discuss this matter personally with the President before the brief is filed.

Thank you for your continued attention, and I look forward to speaking with you soon.

With kind regards and best wishes, I am

Sincerely yours,


Trent Lott

TL/mbw

Encl.

12/21??
CNR New
for Trent Lott?

TRENT LOTT

WRITES REGARDING PENDING CASES CONCERNING
THE TAX EXEMPT STATUS OF CHURCH SCHOOLS.
INDICATES THAT THE SUPREME COURT HAS NOW
AGREED TO REVIEW THE CASE OF "BOB JONES
UNIVERSITY V. UNITED STATES," AND URGES
YOU TO INTERVENE IN THIS PARTICULAR CASE

I think we
should.



Inter-Office Memorandum



ACTION



BRIEFING



INFORMATION

Date: December 17, 1981

For: SECRETARY REGAN

From: Peter J. Wallison *PJW*
General Counsel

Subject: Response to Congressman Trent Lott

I have previously furnished you with a memorandum, dated December 15, discussing the issues which Trent Lott may raise with you during a meeting or phone call this week. Further discussions of these questions within Treasury suggest that the issues in the Bob Jones case -- discussed in that memo -- are significant enough to raise at the White House level. A brief in that case must be filed with the Supreme Court by December 31 and it is the consensus among those involved in this matter at the Service and at Treasury that the issue should be considered at the White House before the brief is filed and becomes Administration policy.

I am currently preparing a full briefing memorandum for you on the subject of the Bob Jones case, preparatory to your raising the issue with Jim Baker or Ed Meese. Until we have received some guidance from the White House, it would be best to avoid any comments in conversation with Congressman Lott which commit the Administration one way or the other.

As my earlier memo indicated, the case arose out of the Service's revocation in 1970 of the tax exemption of Bob Jones University. The Service's theory -- that an organization is not entitled to tax exemption merely because it is religious in character, but that it must also be charitable in the sense that it promotes fundamental public policies -- was rejected by a federal district court but upheld by the United States Court of Appeals for the Fourth Circuit. In its brief for certiorari before the Supreme Court, the Justice Department continued to advance this argument, and certiorari was granted.

Congressman Lott will express unhappiness that this Administration is continuing to pursue this case. In response,

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Surname	WALLISON	D. THOMAS			
Initials/Date					

I suggest that you tell Congressman Lott that you and your staff are currently reviewing the question -- as you would review all IRS policies which are of major significance -- and will have a response for him before the end of the year. To the extent possible, I think you should avoid suggesting to Congressman Lott that the issue will be raised in the White House -- since we may want to preserve the President's position of non-involvement in this matter, whichever way it goes.



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

The Deputy Attorney General

Washington, D.C. 20530

DEC 15 1981

Honorable Trent Lott
U. S. House of Representatives
Washington, D. C. 20515

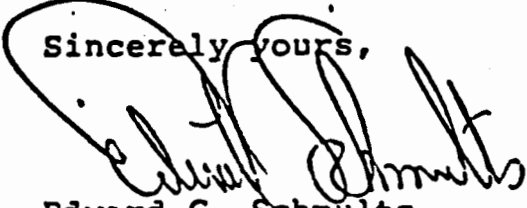
Dear Congressman Lott:

The Attorney General and the Solicitor General have requested me to answer your letters of October 30th concerning the cases of Goldsboro Christian Schools, Inc. v. United States, No. 81-1, and Bob Jones University v. United States, No. 81-3, now pending in the Supreme Court. As you have noted, the Solicitor General is disqualified in these cases.

When the status of private schools with reference to Sections 170 and 501(c)(3) of the Internal Revenue Code came into question around 1970, Commissioner of Internal Revenue, Randolph Thrower, after extensive study of the relevant statutory and constitutional provisions, and after review at the highest levels of the Government, announced the position of the Internal Revenue Service thereafter set forth in Revenue Ruling 71-447, 1971-2 Cumulative Bulletin 230. That position has been maintained by each of Commissioner Thrower's successors, including the current incumbent. The view of the Commissioner has been defended in litigation by the Department of Justice under the several Attorneys General then and thereafter in office. It has been approved by two United States Courts of Appeals in three separate lawsuits. The Department has been unable to conclude that abandonment of the legal position in defense of the Commissioner's regulations in Bob Jones and Goldsboro would be expedient.

We believe that the cases now pending in the Supreme Court will squarely present the substantive issues involved, and we look to the decision of that Court for authoritative answers to the questions presented. We shall of course be happy to keep you informed of any developments in the cases.

Sincerely yours,



Edward C. Schmults

to: SECRETARY REGAN

12/15/81

Department
of the Treasury

Executive Secretariat

Noted by DTR

Mr. Wallison may be adding other
information to this memo. Legislative
Affairs approves this portion of
the memo.



81-19081

Inter-Office Memorandum

ACTION



BRIEFING



INFORMATION

Date: December 15, 1981

For: SECRETARY REGAN

From: Peter J. Wallison *PJW*
General Counsel

Subject: Your Meeting With Congressman Trent Lott.

Congressman Lott will probably raise three matters with you:

1. The position of the Internal Revenue Service and the Administration in Bob Jones University v. United States. In 1970, the tax exemption of Bob Jones University, a fundamentalist religious school, was revoked by the Internal Revenue Service on the ground that the school practiced racial discrimination. The revocation was contested at the district court level and overturned, but the Service's position was upheld by the United States Court of Appeals for the Fourth Circuit. At the urging of the Service as well as the school, the case is now on appeal to the Supreme Court. Congressman Lott is distressed by the fact that the Administration is arguing in support of the position of the Service and the Court of Appeals decision.

2. Green v. Regan. This is the Mississippi schools case with which you are familiar. In August 1981 -- at the direction of the Federal District Court for the District of Columbia -- the IRS revoked the tax exemption of five Mississippi schools on the ground that these schools failed to demonstrate that they did not practice racial discrimination.

3. The Ashbrook Amendment, an amendment to the recent continuing resolution which forbids the Treasury Department and the Internal Revenue Service from using appropriated funds to carry out any court order which would cause the loss of tax exempt status to private, religious or church operated schools. As you know, the Ashbrook Amendment sets up a constitutional confrontation of potentially historic significance, in that it forbids you from using appropriated funds to comply with a court order and thus presents a stark conflict between the powers

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Surname	WALLISON	D. THOMAS			
Initials/Date	<i>PJW</i>	<i>DT</i>	<i>12/15</i>		

of Congress and the courts. On October 1, you requested an opinion of the Attorney General as to the course you should pursue in this matter, and although we have been in touch with the Justice Department regularly since that time, the Attorney General has not yet been able to make a determination.

A more complete description of each of these matters follows.

-- The Bob Jones case.

The issues in this case are simply stated but have significant ramifications. Bob Jones is an avowedly religious school with a fundamentalist philosophy which holds that mixing of the races is contrary to Scripture. The University asserts in this case that denying its tax exemption is tantamount to denying the validity of its fundamentalist beliefs and is thus an interference with the First Amendment rights of freedom of speech and religion.

The Service and the Justice Department argue that in order to be entitled to the benefits of a tax exemption an organization must be "charitable" in the broadest sense, and thus must serve and conform to the fundamental public policies of society. Since it is clearly a basic public policy of the United States to prohibit an element of discrimination based on race, any organization -- even a religious organization -- cannot be considered "charitable" if it practices racial discrimination.

This has been the position of the Service since 1970 and has many times been upheld by the courts. Congressman Lott will contend that section 501(c)(3) of the Internal Revenue Code speaks of "charitable" activities as only one of a number of activities which entitle an organization to tax exempt status (the others being, for example, religious, scientific or educational activities), and that there is no basis for asserting that a "charitable" purpose is more important than the others. He may also argue that the Ashbrook Amendment expresses a policy of Congress that the Service not deny tax exempt status to bona fide religious schools, and that this policy should overcome the public policy which opposes racial discrimination.

Congressman Lott has written to you and to Commissioner Egger concerning this matter. Commissioner Egger's draft reply is attached. In that reply, the Commissioner re-asserts the traditional position of the Service, and denies that the Ashbrook Amendment applies to the Bob Jones matter.

My own view is that you should support the Commissioner's position fully. It is one thing for government affirmatively to interfere with the rights of free speech or freedom of religion;

it is quite another for the government to grant a tax exemption which encourages activities which clearly violate the most fundamental precepts of our society. Bob Jones University may continue to pursue its religious convictions, but without tax exemption.

-- Green v. Regan.

This issue arose in June of 1981, when the Service proposed to send out letters to five Mississippi private schools revoking their tax exemptions because they had not demonstrated that they did not discriminate in their admissions policies on the basis of race. This affirmative standard to prove non-discrimination is contrary to the current position of the Service or the Administration, but was imposed by an order of the United States District Court for the District of Columbia, which held that the Service must revoke the tax exemption of any "white flight" school which was unable to establish that it did not discriminate.

Congressman Lott will express displeasure with the issuance of these letters of revocation, but he understands that the Service was acting under a court order which was put in place with the concurrence of the past Administration and with which Commissioner Egger and the current Administration are not in sympathy. Nevertheless, the five affected schools have now appealed to the Tax Court and the Service must defend its revocation actions within the next few months.

Because the Service's actions were taken pursuant to court order, Congressman Lott will not have much to complain about, but he may still assert that the Service was free to find that the five schools had demonstrated non-discrimination even though they could adduce no affirmative evidence in support of such a finding.

-- The Ashbrook Amendment.

The language of the Ashbrook Amendment purports to deny funds to the Treasury Department and the Internal Revenue Service for the purpose of formulating or carrying out "any rule, policy, procedure, regulation, standard, court order, or measure which would cause the loss of tax exempt status for private, religious or church operated schools under section 501(c)(3) of the IRC of 1954, unless in effect prior to August 22, 1978."

Congressman Lott will argue that the Ashbrook Amendment, which is now binding on the Department through its inclusion in the most recent continuing resolution, prohibits you and the Commissioner from carrying out the order in the Green case referred to above. As noted at the outset of this memo, this sets up a constitutional confrontation between Congress and

the courts, in which you and the Commissioner must choose between complying with the court order to complying with a Congressional enactment.

On October 1, you asked the Attorney General for an opinion as to the course you should adopt, but the difficulty of this question is such that Justice's Office of Legal Counsel has not yet been able to formulate a response.

Congressman Lott will certainly state that the Ashbrook Amendment binds you not to comply with the court order, but you should note the sensitivity of this matter from a constitutional point of view and say that you are awaiting advice from the Attorney General.

Congressman Lott may also state that the Ashbrook Amendment is a statement by Congress that the Administration should not be supporting the revocation of the tax exemption for Bob Jones University. This is not strictly correct. The Ashbrook Amendment by its terms applies only to actions by the Internal Revenue Service (in compliance with court orders or otherwise) after August 22, 1978. The revocation of the tax exemption for Bob Jones University occurred in 1970, and the Ashbrook Amendment does not prevent the Service or the Treasury Department from taking actions with respect to determinations made prior to August 22, 1978.

Attachment

ACTION

Date: DEC 8 1981

MEMORANDUM FOR: SECRETARY REGAN

From: Commissioner of Internal Revenue *W. J. [Signature]*

Subject: Private Schools - Correspondence From Representative Trent Lott

Attached is a letter I propose to send to Trent Lott responding to his letters to you, Solicitor General Lee and me. Representative Lott wants the Government to change its position in the Bob Jones case, now before the Supreme Court. In 1976, IRS revoked the tax exemption of Bob Jones University because of its racially discriminatory practices. The proposed letter declines to change position.

By way of background, in 1969 the Green case was filed challenging IRS action recognizing the tax exemption of racially discriminatory Mississippi private schools. In 1970, Commissioner Thrower announced that IRS would no longer recognize discriminatory schools as tax exempt. Also in 1970, the court in Green permanently enjoined IRS to follow this position in Mississippi. Green was appealed to the Supreme Court by a third party and affirmed. In 1971 and 1975, procedures and rulings were established by IRS to carry out this position. The legal basis for this position is that exempt organizations must be charitable in the broad legal sense. This legal position has been maintained by the IRS since at least the 1920's and has been expressly set forth in regulations since 1959. In 1976, IRS revoked the Bob Jones exemption because of its racially discriminatory policies.

Although Bob Jones prevailed before the District Court on its First Amendment arguments, the Fourth Circuit upheld the revocation. The only other circuit court to consider the issue has upheld the Service's nondiscrimination requirement in the context of a secular private school. The validity of the nondiscrimination rule applied by IRS since 1970 is squarely presented by Bob Jones. The Supreme Court should be allowed to decide the issue.

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname						
In / Date	/	/	/	/	/	12/9

Representative Lott's letter states that maintaining the Service's position in Bob Jones violates the Ashbrook Amendment. This is not so. The Amendment prohibits Treasury and IRS from enforcing rules proposed in 1978 and 1979 that would have imposed affirmative action requirements on some schools as a condition for exemption. Bob Jones was revoked under rules existing prior to the rules proposed in 1978 and 1979. In debates on the Ashbrook Amendment, many members of Congress stated that IRS can enforce the rules in effect before 1978.

IRS has consistently maintained a nondiscriminatory requirement since 1970 and has consistently interpreted the tax law for over 60 years to require that exempt organizations be charitable in the broad legal sense. The courts have held that organizations that violate a clearly defined public policy are not charitable in the broad sense of the word. At least since the 1954 Brown decision there has been a clear federal policy against racial discrimination in education.

IRS has supported church groups in getting their arguments before the courts. If IRS is wrong in its interpretation of the law, the Supreme Court is the proper forum to have the issue decided.

I would like an opportunity to discuss this matter with you at an early date.

Attachments

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

DRAFT

Honorable Trent Lott
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Lott:

I am responding to your letter about Bob Jones University v. United States and Internal Revenue Service rules to determine the tax exempt status of church related private schools. Your letter urges the Internal Revenue Service to reverse the position taken before the courts in Bob Jones.

In 1967 the Internal Revenue Service announced that it would no longer recognize as tax exempt a racially segregated private school if its involvement with the state or political subdivision would make the operation of the school unconstitutional or a violation of Federal law. In 1969, the Green case was filed by the parents of black children in Mississippi attending public schools to challenge the granting of tax exemptions to private schools in Mississippi which discriminated on the basis of race. The Internal Revenue Service in 1970 announced that it could no longer justify granting tax exemption to private schools which discriminated on the basis of race. Rules were subsequently adopted to implement this policy nationwide. In 1975 the Service published a ruling clarifying that church related schools must also be operated on a racially nondiscriminatory basis to be tax exempt. We continue to believe that all private schools, including church related schools, must be operated on a racially nondiscriminatory basis to be tax exempt.

The revocation of the tax exempt status of Bob Jones University results from the application of these principles. Prior to 1975, the University refused to admit unmarried black students. Although the University agreed to admit unmarried black students after 1975, the rules of the University, violation of which results in expulsion, place substantial restrictions on the social interaction of black and white students. Similar restrictions were invalidated by the Supreme Court for public education even prior to the 1954 Brown decision.

Some church groups argue that the rules applied by the Service infringe upon religious liberties guaranteed by the Constitution. Fundamental constitutional issues such as these should be resolved by the courts. This is why the Internal Revenue Service urged the Supreme Court to review the favorable decision in Bob Jones and why we supported intervention of Clarksdale Baptist Church in Green.

Your letter to Solicitor General Lee suggests that the Internal Revenue Service should abandon the position that organizations described in section 501(c)(3) must also be charitable in the broad legal sense to be tax exempt. This position reflects the intent of the Congress expressed from the 1894 tax laws to the present Internal Revenue Code. It has been applied over the years by the Service in a variety of contexts to deny tax exempt status or to deny charitable deductions. It has been expressly set forth in the regulations since 1959. We believe that the Service should continue to adhere to this position.

You also suggest that a failure to change position in Bob Jones will conflict with congressional intent as expressed in the Ashbrook and Dornan Amendments. I do not agree. The purpose of the Ashbrook and Dornan Amendments has been to prohibit the Internal Revenue Service from denying or revoking tax exempt status of a private school under rules similar to those proposed in 1978 and 1979. Bob Jones deals with a revocation of tax exempt status in 1976 based upon rules then in existence. Neither the language of the amendments nor the legislative history expresses any intent of the Congress to prohibit the Internal Revenue Service from enforcing the non-discrimination rules in effect prior to August 22, 1978.

Your suggestion that a legislative solution should be sought, within the limits of the Constitution, deserves consideration. Our understanding is that one of the original purposes of the Ashbrook and Dornan Amendments was to prohibit the Service from acting for one year until appropriate legislation could be passed.

Honorable Trent Lott

- 3 -

I realize that the views expressed in your letter reflect your sincere concern with the high place which freedom of religious expression occupies in our system of government. The issues involved are not capable of easy resolution. They have been squarely presented to the Supreme Court and should be decided by that body.

With kind personal regards,

Sincerely,

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

81-17016

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House of Representatives
Washington, D.C. 20515

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October 30, 1981

The Honorable Donald Regan
Secretary of the Treasury
United States Department of
the Treasury
Washington, D.C. 20220

Dear Mr. Secretary:

Enclosed please find copies of my correspondence with the Commissioner of Internal Revenue and the Solicitor General. As these letters indicate, I am deeply concerned about the Government's position in this litigation. It is a position which is both legally and politically indefensible. Furthermore, it disregards the Congress by ignoring the statute and Congressional intent as expressed in the Ashbrook amendment.

I would appreciate your working with the Service to reconsider its position.

With kind regards and best wishes, I am

Sincerely yours,



Trent Lott

418938

TL/mbw

Enclosures

TRENT LOTT
9TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

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October 30, 1981

The Honorable Roscoe Egger, Jr.
Commissioner of Internal Revenue
1111 Constitution Avenue NW
Washington, D. C. 20224

Dear Mr. Commissioner:

I enclose herewith a copy of my letter of today's date to Solicitor General Rex Lee regarding the position taken by the Service before the Supreme Court in Bob Jones University v. United States. I am delighted that the Service has persuaded the Court to hear the case, but I am deeply disturbed that the Service is urging a resolution completely contrary to the repeated declarations of the Congress.

I understand the difficult position in which you found yourself in Green v. Regan when you took office. The court had ordered the Service to perform certain acts contrary to the law, and the time for appeal had expired. I appreciated your efforts in securing intervention by interested parties to assert the positions which you felt the Service was barred from adopting.

Nevertheless, I cannot understand the Service's position in this case, the outcome of which will clearly control the result in the Green case. No court has ordered the Service to do anything, and you are free to urge your own construction of Section 501 (c) (3) before the Court. The Service is bound neither by the courts nor by the advice of its own lawyers, but you have nevertheless chosen a position clearly contrary to Congressional intent.

I do not wish to rehearse the legal arguments laid out in my letter to General Lee. Rather, I wish to point out the practical result of a Court decision in line with the Service's wishes. Your efforts in the future to enforce your interpretation will run squarely into the bar of the Ashbrook Amendment. The House and the Senate Committee have responded to your contention that the present language does not include court orders by adding that restriction to the Amendment. The seeds of a major confrontation among all three branches of government are plainly present in the Service's position.

Page 2

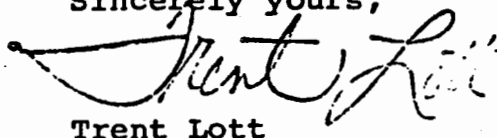
The Honorable Roscoe Egger, Jr.
October 30, 1981

It may be that you feel that you are somehow bound by the existing regulations. I should point out to you that the Ashbrook Amendment in no way binds you to the existing regulations. You are perfectly free to enforce any regulations antedating August 22, 1978, including those superseded as a result of the original Green ruling. If it is necessary to use the provisions of the Administrative Procedure Act to reinstate those former regulations which do comport with Congressional intent, then please do so immediately.

If the Supreme Court accepts the reading of the law which has been applied by your immediate predecessors, then the only possible cure is through legislation. Until that happens, you are certainly not bound by the lower courts or by your predecessors. If you do not intend to act to change the present practice, then I would appreciate your explanation in detail of your own reasons so that I can prepare the proper legislative remedies.

With kind regards and best wishes, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Trent Lott".

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. William French Smith

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

Congress of the United States
House of Representatives
Washington, D.C. 20515

2400 RAYBURN BUILDING
WASHINGTON, D.C. 20515
202-225-8772

DISTRICT OFFICES:
GULFPORT, MISSISSIPPI 39001
BN-664-3670
HATTIESBURG, MISSISSIPPI 39401
BN-662-3348
LAUREL, MISSISSIPPI 39002
BN-669-1231

October 30, 1981

The Honorable Rex Lee
Solicitor General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Solicitor General:

I am sure you are familiar with my correspondence earlier this year with the Attorney General and the Deputy Attorney General regarding the many pending cases concerning the tax exempt status of church schools. I was disappointed to learn that you will not be involved in Bob Jones University v. United States and, indeed, that no Reagan appointee will play a major role. Please pass my concerns along to whoever is handling these consolidated cases.

I am delighted that the Administration encouraged the Supreme Court to resolve these issues. However, I am more than a little disturbed that the United States has taken a position on the merits which plainly conflicts with Congressional intent and with a specific pledge of the President's platform. I strongly encourage your office to reconsider your position.

The Government's position ignores Congressional intent. Section 501(c)(3) of the Code plainly defines exempt organizations to include bodies "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." "Charitable" is merely one of those purposes, as are "religious" and "educational." Nowhere does the statute require a religious or educational organization to be "charitable" in order to qualify for a tax exemption. If the statute is read this way, then organizations must also be "scientific" and test for public safety. Since the plain language of the statute forecloses the construction urged by the Government, ordinary rules of construction preclude looking behind the language to the legislative history.

The Government does not even bother to look at the history of this particular section as it was adopted in 1938. Rather, the United States derives its construction from subsequent unrelated Congressional actions against racial discrimination. Ordinarily, committee reports and floor remarks made long after the fact are completely irrelevant in determining the intent of a previous Congress. Furthermore, these later Congressional actions were responsive to other problems and there is absolutely no

Page Two

The Honorable Rex Lee

October 30, 1981

indication that Congress intended these relatively recent actions to be read into an unrelated statute passed in 1938.

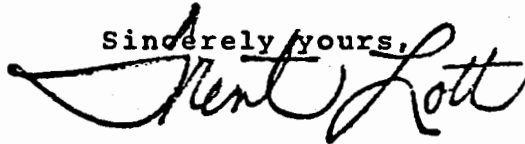
If subsequent actions are relevant, then the Government should focus upon expressions of Congressional intent on this very issue. The Ashbrook Amendment to successive Treasury appropriations prohibits absolutely the use of federal funds to "cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954." Congressional intent could not be clearer. Therefore, if the Government insists on defining Congressional intent by later actions, then certainly that intent is most clearly reflected by the Ashbrook amendment.

The Internal Revenue Service's action in revoking the tax exempt status of these schools is peculiarly reminiscent of the federal bureaucracy's activism and usurption of power during the previous Administration. Mississippians and many of their fellow citizens supported President Reagan simply to end this kind of unwarranted interference.

The last time I read the Constitution, it provided that the Congress is to make the laws--not appointed officials. The people across the country whose lives are directly affected are entitled to have the decision of their elected Representatives respected and followed by the Government. Congress has spoken, and its message is clear. It is up to the Government to enforce what Congress has done. I expect your office to reconsider its position and to report its decision to me.

With kind regards and best wishes, I am

Sincerely yours,

A handwritten signature in cursive script, reading "Trent Lott". The signature is written in dark ink and is positioned below the typed name.

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. Roscoe Egger, Jr.
Hon. William French Smith



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

DEC 10 1981

Dear Ted:

On October 1, Secretary Regan requested an opinion from the Attorney General on the legal options available to Treasury Department officials because of the passage of the Ashbrook Amendment to the Continuing Budget Resolution. The amendment prohibits Treasury from using appropriated funds to formulate or carry out a court order, not in effect in 1978, which would cause the loss of tax exempt status to a private or church related school. A legal memorandum to the Attorney General pointed out that in connection with the Green private school litigation, notices of revocation were sent out on August 17, 1981 to five Mississippi private schools. Recently these schools have petitioned the United States Tax Court to enter a declaratory judgment overturning the revocation action. The Chief Counsel's Office, Internal Revenue Service, which represents the Commissioner before the Tax Court, has until January 11, 1982 to answer the first case.

It is our understanding that your office is preparing a response to Secretary Regan's request. Because the Chief Counsel's attorneys must begin work shortly to prepare an Answer of these cases and a stipulation of the administrative record, we need a prompt answer to the following question. May the Internal Revenue Service and the Office of the Chief Counsel answer and prepare the defense of these cases before the United States Tax Court without violating the restrictions of the Ashbrook Amendment?

Because of the legal complexities of the issues raised by Secretary Regan's request, we understand that a detailed response to Secretary Regan may take some time to prepare. However, in view of the time required to prepare the defense of these declaratory judgment proceedings, we request a brief answer by December 21, 1981 to the question posed above.

Sincerely,

Peter J. Wallison

The Honorable Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

**Internal Revenue Service
memorandum**

date: December 3, 1981

to: General Counsel GC

from: Deputy Chief Counsel (Litigation) CC

subject: Private Schools - Secretary Regan's Request
for Attorney General Opinion

On October 1, Secretary Regan requested an opinion from the Attorney General on the legal options available to Treasury Department officials because of the passage of the Ashbrook Amendment to the Continuing Budget Resolution. The amendment prohibits Treasury from using appropriated funds to formulate or carry out any court order, not in effect in 1978, which would cause the loss of tax exempt status to a private or church related school. A legal memorandum to the Attorney General pointed out that in connection with the Green injunction notices of revocation of tax exemption had been sent to five Mississippi private schools. These schools have recently petitioned the Tax Court to review the revocations.

We pointed out in the legal memorandum that defending declaratory judgment actions could be construed as action to carry out a post-1978 court order to revoke tax exempt status in violation of the Ashbrook Amendment.

The Service has until January 11, 1982 to answer the first case. Under the rules of the Tax Court, the preparation of an Answer in these cases also involves a stipulation between counsel for the taxpayers and the Service of the administrative record. Chief Counsel attorneys also usually prepare and mail with the Answer informal discovery requests which are normally discussed at a conference with taxpayers' counsel within 45 days after the date of the filing of the Answer. Thus, our preparation of these cases requires that work be commenced shortly which may arguably result in violations of the Ashbrook spending restrictions.

Although we have informally advised the Office of Legal Counsel of the filing of these petitions and the dates to answer them, we have not as yet received a formal reply from the Department of Justice.

We have been told informally that the Justice Department will probably be unable to prepare a detailed response to the Secretary's request in time for filing Answers with the Tax Court. We have also been told that the Office of Legal Counsel, has tentatively concluded that the Service may proceed with defense of the cases in the Tax Court. They may be willing to issue a brief opinion to that effect.

In order to ensure our attorneys sufficient time to prepare Answers and defenses of these cases I have prepared a letter, for your signature, to the Office of Legal Counsel requesting a brief response.



JOEL GERBER

cc: Kenneth W. Gideon
Chief Counsel

Internal Revenue Service

Office of the Chief Counsel

to: Mr. Wallison:

date: 12-3-81

Since most recently
vetoed budget bill
contained identical
language to one that
took effect 10-1-81, I
forward our memo of law
and 2 pages from the
"Wright" Cert Petition which
provide comments and text
on Ashbrook amendment or
rider.

Joel Gerber

Deputy Chief Counsel (Litigation)

Joel

MEMORANDUM OF LAW

This memorandum is prepared in connection with the Department of the Treasury's request for your opinion on the legal options available respecting certain provisions of H.R. 4121 ("Treasury, Postal Service, and General Government Appropriations Act, 1982"), as passed by the House of Representatives on July 30, 1981 and approved by the Senate Committee on Appropriations on September 15, 1981.

Section 616 of H.R. 4121 provides:

None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, court order, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978.

Serious questions have arisen about the effect of this provision, if enacted into law, to the extent that it would prohibit officials of the Treasury Department from complying with court orders entered after August 22, 1978. In compliance with one court order the Internal Revenue Service has recently revoked the tax-exempt status of five private schools in Mississippi. It is also possible that similar action may need to be taken as a result of this court order or as a result of orders which might be entered in a companion case.

In Green v. Connally, 330 F. Supp. 1150 (D. D.C.) aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971), the court declared that neither I.R.C. § 501(c)(3) nor I.R.C. § 170 provide for tax-exempt status or deductible contributions to any organization operating a private school which discriminates in admissions on the basis of race. The court permanently enjoined the Secretary of the Treasury and the Commissioner of Internal Revenue from recognizing as exempt from taxation or allowing tax deductible contributions to be made to any organization operating a private school in Mississippi which failed to adopt, publish, and operate under a racially nondiscriminatory policy as to students and which failed to supply the Service with certain information to ensure operation on a nondiscriminatory basis. Although the Green injunction was limited to organizations operating private schools in Mississippi, the Service subsequently adopted nationwide procedures requiring that private schools be

operated on a racially nondiscriminatory basis in order to be recognized as tax exempt. Rev. Rul. 71-447, 1971-2 C.B. 202; Rev. Rul. 75-231, 1975-1 C.B. 158; Rev. Proc. 72-54; 1972-2 C.B. 834; Rev. Proc. 75-50, 1975-2 C.B. 587.

In 1976, plaintiffs reopened Green, alleging that the Service had failed to comply with the 1971 permanent injunction. They also alleged that the 1971 injunction needed to be modified to carry out the court's declaratory judgment.

At about the same time as the reopening of Green, Wright v. Simon, Civil No. 76-1426 (D. D.C.), was filed seeking to apply nationwide the standards sought by the plaintiffs in reopening Green. Plaintiffs in Wright are the parents of black school children attending public schools in districts undergoing desegregation. They allege that the rules administered by the Service are inadequate to insure that racially segregated private schools formed or substantially expanded at or about the time of public school desegregation are denied tax exempt status. This action was dismissed by the district court for lack of standing to sue. Wright v. Miller, 480 F. Supp. 790 (D. D.C. 1979). However, the Court of Appeals recently reversed the lower court holding that standing existed. Wright v. Regan, ___ F.2d ___, 81-2 U.S.T.C. ¶ 9504 (D.C. Cir. 1981) petition for rehearing denied on August 26, 1981. It is our current intention to request the Solicitor General to file a petition for certiorari in Wright.

In May and June of 1980, the district court entered revised injunctive orders in Green (copies enclosed) which require the Service to examine tax exempt organizations operating private schools in Mississippi and to revoke the tax-exempt status of any organizations failing to meet the standards set forth in the Court's orders. A detailed discussion of the history of the litigation of both Green and Wright as well as the I.R.S.'s administrative attempts to modify its rules for examining the tax status of private schools and the congressional reaction thereto is set forth in the Court of Appeals opinion in Wright.

In carrying out the court's revised injunction in Green, the Service notified five organizations operating private schools in Mississippi that their tax-exempt status was revoked. See Announcement 81-142, 1981-37 I.R.B. 102. Under I.R.C. § 7428, these organizations have until November 17, 1981 to petition an appropriate court for a declaratory judgment to overturn the Service's revocation action. The Service has also requested information from 29 churches operating private schools in Mississippi to determine

whether the schools are being operated in a racially nondiscriminatory manner. As a result of motions filed by plaintiffs, the Government, and an intervening church, proceedings are currently being undertaken before the district court to determine whether the revised injunctive orders should be modified to take into account First Amendment objections raised by the intervening church and the 29 churches from whom the Service has requested information. It is possible that as a result of these proceedings, the Service may be further enjoined to revoke the tax-exempt status of some churches.

As a result of the Court of Appeals finding of standing in Wright, it is also possible that the Service may be further enjoined to apply rules similar to those in Green which could result in the loss of tax-exempt status to organizations operating private schools in states other than Mississippi.

Serious problems are presented by Section 616 of the appropriations bill to the extent it prohibits compliance by Treasury officials with the revised Green injunction and any orders which may be entered in Wright.

Article I, § 9, cl. 7 of the Constitution provides that: "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." This provision forbids Government officials from expending any money in the absence of appropriations, Reeside v. Walker, 52 U.S. (11 How.) 272 (1850), and is embodied in the so-called Anti-deficiency Act, 31 U.S.C. § 665(a). However, congressional exercise of appropriations authority is subject to constitutional limitations. 37 Op. Atty. Gen. 56, 61; 41 Op. Atty. Gen. 230; 41 Op. Atty. Gen. 300. While it is arguable that Section 616 is an appropriate exercise of the congressional appropriation authority, Cong. Rec. July 30, 1981 pages H5392-3 (daily ed.) (remarks of Rep. Ashbrook), insofar as this section attempts to influence the outcome in a pending court case it may violate the separation of powers doctrine. United States v. Klein, 30 U.S. 128 (1872); See also, Kilbourn v. Thompson, 103 U.S. 168, 191 (1881); Springer v. Govt. of the Philippine Islands, 277 U.S. 189, 201-202 (1928).

This section may be viewed as a valid attempt by Congress to exercise its broad constitutional powers under Article III to control the jurisdiction of the lower federal courts. Lauf v. E.G. Skinner & Co., 303 U.S. 323 (1938) (Court sustained Norris-LaGuardia Act provision denying jurisdiction of courts to issue injunctions in labor disputes).

Because the 1971 Green opinion indicates that the holding is premised upon substantial constitutional impediments to granting tax-exempt status to discriminatory private schools, accord, Bob Jones University v. United States, 639 F.2d 147 (4th Cir. 1981), the congressional authority to effectively deprive the court of jurisdiction by denying funds to carry out injunctive orders may be limited by the due process clause of the Fifth Amendment. Battaglia v. General Motors Corp., 169 F.2d 254 (2nd Cir.) cert. denied 335 U.S. 887 (1948); See generally, Rotunda, Congressional Power to Restrict Jurisdiction of the Lower Federal Courts and the Problems of School Busing, 64 Georgetown L.J. 839 (1976).

In view of the conflicting principles set forth above, your formal opinion is requested regarding the legal options available to Treasury officials should section 616 be enacted into law.

TREASURY DOCUMENT PROFILE

DOC		RECEIVED		
MO	DA	MO	DA	YR
11	30	12	2	81

ACTION

LOG NUMBER

ANN LEA, IRS

81-18368

TO:

- ☐ PRESIDENT
☒ SECRETARY (S)
☐ D/SECRETARY (D)
☐ U/SEC. (MA) (M)
☐ OTHER (Specify) _____

FROM: Lott, Trent (Cong)

Republican Whip

REFS: _____

SUBJECT:

Request for a meeting with the Secretary concerning tax-exempt status of Bob Jones University

CLASSIFICATION

- ☐ UNCLASSIFIED ☐ SECRET
☐ CONFIDENTIAL ☐ TOP SECRET
☐ OTHER (Specify) _____

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5. ADMINISTRATION (A)			FOREIGN ASSETS CONT (OF)			INSPECTOR GENERAL (SG)		
6. DOMESTIC FINANCE						COUNSELOR TO THE SECRETARY		
7. ECONOMIC POLICY (E)			GOVT FIN OPERATIONS			EXEC SEC (SE)		X
8. ENFORCEMENT & OPS (O)			IRS	X		D/EXEC SEC (SE)		
9. FISCAL (F)						REVIEWERS (SE)		
10. GENERAL COUNSEL (G)		X	LEGISLATIVE COUNSEL (GL)			INTELLIGENCE SUPPORT (SEI)		
11. INTERNAT'L AFFAIRS (I)			MINT			SPECIAL ASSISTANT		X
12. OASIA SECRETARIAT			PUBLIC DEBT					
13. LEGISLATIVE AFFAIRS (L)		X	REVENUE SHARING (HR)			READ FILE		X
14. PUBLIC AFFAIRS (P)			SECRET SERVICE					
15. PUBLIC LIAISON			SAVINGS BONDS					
16. TAX POLICY (X)			CORRESPONDENCE					
17. TREASURER (T)			DISCLOSURE BRANCH (AAL)					

DUE DATE

☒ APPROPRIATE ACTION☐ DIRECT REPLY☐ COME BACK COPY TO EXEC SEC (SE)

MEMO TO: _____

REPLY FOR SIG. BY: _____

COMMENTS/SPECIAL INSTRUCTIONS

Cross Ref. 17016. Please call Nancy Fiester to see if a meeting will be set up

DATE

FROM

TO

SUBSEQUENT ACTION TAKEN/REQUIRED

DUE

COPY TO

DISPATCH TO: _____

NOTIFY: _____

SPECIAL DISPOSITION: _____

- ☐ WHITE HOUSE ☐ ALPHA
☐ TREASURY ☐ CONGRESS
☐ OTHER (Specify) _____

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

81-18368

2400 RAYBURN BUILDING
WASHINGTON, D.C. 20515
202-225-5772

Congress of the United States
House of Representatives
Washington, D.C. 20515

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601-464-7676
HATTIESBURG, MISSISSIPPI 39401
601-362-3246
LAUREL, MISSISSIPPI 39400
601-640-1231

November 30, 1981

The Honorable Donald T. Regan
Secretary
United States Department of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

Thank you for your Assistant's letter of November 9, 1981, in reply to my letter of October 30, 1981, concerning the tax-exempt status of Bob Jones University. I am sorry not to have responded earlier, but I know you have been as involved as I have been in the process of securing continuing funding for the government.

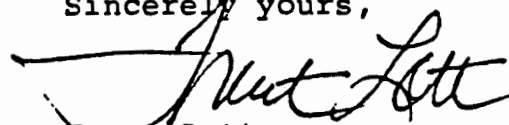
I am glad to know that the Service is in the process of preparing an answer. However, it has been my experience that events in this area sometimes develop a momentum of their own. I believe, therefore, that it is essential for the two of us to meet after the Service has had an opportunity to study my complaint, but before they have reached a decision.

I would propose that you and I meet early during the week of December 7, 1981. The University's brief has already been filed with the Supreme Court, and your lawyers are undoubtedly already in the process of preparing their reply. We need to resolve this matter before they get too far along.

Thank you for your cooperation, and I look forward to hearing from you at your earliest convenience.

With kind regards and best wishes, I am

Sincerely yours,


Trent Lott

TL/mbw



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

November 9, 1981

Dear Mr. Lott:

For the Secretary, I wish to acknowledge your letter of October 30 enclosing copies of letters to the Commissioner of Internal Revenue and the Solicitor General concerning the case of Bob Jones University v. the United States, dealing with the tax-exempt status of church schools.

You will have a further response as soon as possible.

Sincerely,

(Signed)

W. Dennis Thomas
Assistant Secretary
(Legislative Affairs)

The Honorable
Trent Lott
House of Representatives
Washington, D. C. 20515

TREASURY DOCUMENT PROFILE

DOC		RECEIVED		
MO	DA	MO	DA	YR
10	30	11	6	81

ACTION
ANN LEA, IRS

LOG NUMBER

81-17016

SOURCE/DESCRIPTION

TO:

- ☐ PRESIDENT
☒ SECRETARY (S)
☐ D/SECRETARY (D)
☐ U/SEC. (MA) (M)
☐ OTHER (Specify)

FROM: Lott, Trent (Cong)

REFS:

SUBJECT:

Encloses copy of letter to Commissioner of IRS — re: Bob Jones Univ. vs. U.S.

CLASSIFICATION

- ☐ UNCLASSIFIED ☐ SECRET
☐ CONFIDENTIAL ☐ TOP SECRET
☐ OTHER (Specify)

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6. DOMESTIC FINANCE								COUNSELOR TO THE SECRETARY			
7. ECONOMIC POLICY	(E)			GOVT FIN OPERATIONS				EXEC SEC	(SE)		X
8. ENFORCEMENT & OPS	(O)			IRS		X		D/EXEC SEC	(SE)		
9. FISCAL	(F)							REVIEWERS	(SE)		
10. GENERAL COUNSEL	(G)		X	LEGISLATIVE COUNSEL (GL)				INTELLIGENCE SUPPORT	(SEI)		
11. INTERNAT'L AFFAIRS	(I)			MINT				SPECIAL ASSISTANT			X
12. OASIA SECRETARIAT				PUBLIC DEBT							
13. LEGISLATIVE AFFAIRS	(L)	(Ack)	X	REVENUE SHARING (HR)				READ FILE			
14. PUBLIC AFFAIRS	(P)			SECRET SERVICE							
15. PUBLIC LIAISON				SAVINGS BONDS							
16. TAX POLICY	(X)			CORRESPONDENCE				Mrs. H. Hardy			X
17. TREASURER	(T)			DISCLOSURE BRANCH (AAL)							

DUE DATE

11/16

- ☐ APPROPRIATE ACTION ☐ DIRECT REPLY ☐ COME BACK COPY TO EXEC SEC (SE)

MEMO TO:

REPLY FOR SIG. BY: Commissioner Egger

COMMENTS/SPECIAL INSTRUCTIONS

Please note log number and due date on comeback copy. If due date cannot be met, please notify EX. SEC. on 566-2398

SUBSEQUENT ROUTING/ACTION

DATE	FROM	TO	SUBSEQUENT ACTION TAKEN/REQUIRED	DUE	COPY TO

DISPATCH/INSTRUCTION

DISPATCH TO: _____ NOTIFY: _____

SPECIAL DISPOSITION: _____

- ☐ WHITE HOUSE ☐ ALPHA
☐ TREASURY ☐ CONGRESS
☐ OTHER (Specify) _____

TRENT LOTT
9TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

2400 RAYBURN BUILDING
WASHINGTON, D.C. 20515
202-225-3772

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601-862-3346
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601-444-1121

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 30, 1981

The Honorable Donald Regan
Secretary of the Treasury
United States Department of
the Treasury
Washington, D.C. 20220

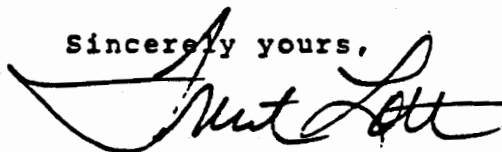
Dear Mr. Secretary:

Enclosed please find copies of my correspondence with the Commissioner of Internal Revenue and the Solicitor General. As these letters indicate, I am deeply concerned about the Government's position in this litigation. It is a position which is both legally and politically indefensible. Furthermore, it disregards the Congress by ignoring the statute and Congressional intent as expressed in the Ashbrook amendment.

I would appreciate your working with the Service to reconsider its position.

With kind regards and best wishes, I am

Sincerely yours,



Trent Lott

TL/mbw

Enclosures

TRENT LOTT
5TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
ADMINISTRATIVE ASSISTANT
TOM H. ANDERSON, JR.

Congress of the United States
House of Representatives
Washington, D.C. 20515

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DISTRICT OFFICES:
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801-664-7676
HATTIESBURG, MISSISSIPPI 394
801-821-6346
LAUREL, MISSISSIPPI 39007
801-666-1231

October 30, 1981

The Honorable Roscoe Egger, Jr.
Commissioner of Internal Revenue
1111 Constitution Avenue NW
Washington, D. C. 20224

Dear Mr. Commissioner:

I enclose herewith a copy of my letter of today's date to Solicitor General Rex Lee regarding the position taken by the Service before the Supreme Court in Bob Jones University v. United States. I am delighted that the Service has persuaded the Court to hear the case, but I am deeply disturbed that the Service is urging a resolution completely contrary to the repeated declarations of the Congress.

I understand the difficult position in which you found yourself in Green v. Regan when you took office. The court had ordered the Service to perform certain acts contrary to the law, and the time for appeal had expired. I appreciated your efforts in securing intervention by interested parties to assert the positions which you felt the Service was barred from adopting.

Nevertheless, I cannot understand the Service's position in this case, the outcome of which will clearly control the result in the Green case. No court has ordered the Service to do anything, and you are free to urge your own construction of Section 501 (c) (3) before the Court. The Service is bound neither by the courts nor by the advice of its own lawyers, but you have nevertheless chosen a position clearly contrary to Congressional intent.

I do not wish to rehearse the legal arguments laid out in my letter to General Lee. Rather, I wish to point out the practical result of a Court decision in line with the Service's wishes. Your efforts in the future to enforce your interpretation will run squarely into the bar of the Ashbrook Amendment. The House and the Senate Committee have responded to your contention that the present language does not include court orders by adding that restriction to the Amendment. The seeds of a major confrontation among all three branches of government are plainly present in the Service's position.

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The Honorable Roscoe Egger, Jr.
October 30, 1981

It may be that you feel that you are somehow bound by the existing regulations. I should point out to you that the Ashbrook Amendment in no way binds you to the existing regulations. You are perfectly free to enforce any regulations antedating August 22, 1978, including those superseded as a result of the original Green ruling. If it is necessary to use the provisions of the Administrative Procedure Act to reinstate those former regulations which do comport with Congressional intent, then please do so immediately.

If the Supreme Court accepts the reading of the law which has been applied by your immediate predecessors, then the only possible cure is through legislation. Until that happens, you are certainly not bound by the lower courts or by your predecessors. If you do not intend to act to change the present practice, then I would appreciate your explanation in detail of your own reasons so that I can prepare the proper legislative remedies.

With kind regards and best wishes, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Trent Lott". The signature is fluid and stylized, with the first and last names being clearly legible.

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. William French Smith

TRENT LOTT
9TH DISTRICT, MISSISSIPPI
REPUBLICAN WHIP
RULES COMMITTEE
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October 30, 1981

The Honorable Rex Lee
Solicitor General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Solicitor General:

I am sure you are familiar with my correspondence earlier this year with the Attorney General and the Deputy Attorney General regarding the many pending cases concerning the tax exempt status of church schools. I was disappointed to learn that you will not be involved in Bob Jones University v. United States and, indeed, that no Reagan appointee will play a major role. Please pass my concerns along to whoever is handling these consolidated cases.

I am delighted that the Administration encouraged the Supreme Court to resolve these issues. However, I am more than a little disturbed that the United States has taken a position on the merits which plainly conflicts with Congressional intent and with a specific pledge of the President's platform. I strongly encourage your office to reconsider your position.

The Government's position ignores Congressional intent. Section 501(c)(3) of the Code plainly defines exempt organizations to include bodies "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." "Charitable" is merely one of those purposes, as are "religious" and "educational." Nowhere does the statute require a religious or educational organization to be "charitable" in order to qualify for a tax exemption. If the statute is read this way, then organizations must also be "scientific" and test for public safety. Since the plain language of the statute forecloses the construction urged by the Government, ordinary rules of construction preclude looking behind the language to the legislative history.

The Government does not even bother to look at the history of this particular section as it was adopted in 1938. Rather, the United States derives its construction from subsequent unrelated Congressional actions against racial discrimination. Ordinarily, committee reports and floor remarks made long after the fact are completely irrelevant in determining the intent of a previous Congress. Furthermore, these later Congressional actions were responsive to other problems and there is absolutely no

Page Two

The Honorable Rex Lee

October 30, 1981

indication that Congress intended these relatively recent actions to be read into an unrelated statute passed in 1938.

If subsequent actions are relevant, then the Government should focus upon expressions of Congressional intent on this very issue. The Ashbrook Amendment to successive Treasury appropriations prohibits absolutely the use of federal funds to "cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954." Congressional intent could not be clearer. Therefore, if the Government insists on defining Congressional intent by later actions, then certainly that intent is most clearly reflected by the Ashbrook amendment.

The Internal Revenue Service's action in revoking the tax exempt status of these schools is peculiarly reminiscent of the federal bureaucracy's activism and usurption of power during the previous Administration. Mississippians and many of their fellow citizens supported President Reagan simply to end this kind of unwarranted interference.

The last time I read the Constitution, it provided that the Congress is to make the laws--not appointed officials. The people across the country whose lives are directly affected are entitled to have the decision of their elected Representatives respected and followed by the Government. Congress has spoken, and its message is clear. It is up to the Government to enforce what Congress has done. I expect your office to reconsider its position and to report its decision to me.

With kind regards and best wishes, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Trent Lott", with a stylized, flowing script.

Trent Lott

TL/mbw

cc: Hon. Ronald Reagan
Hon. Donald Regan
Hon. Roscoe Egger, Jr.
Hon. William French Smith

DENNY SMITH
2D DISTRICT, OREGON

81-18272

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November 30, 1981

The Honorable Donald T. Regan
Secretary of the Treasury
U. S. Department of the Treasury
Fifteenth Street & Pennsylvania Ave., N.W.
Washington, D. C. 20220

Dear Mr. Secretary:

A very disturbing matter involving the Internal Revenue Service has been brought to my attention. It involves a determination by the IRS that the Clackamas Community College Foundation lose its tax exempt status and, in fact, be required to pay back taxes from 1977 to the present.

Without going into all of the details, it appears to me that the IRS has taken a very hard line in the interpretation of a nebulous regulation, an action which jeopardizes the future of a worthwhile volunteer program. This is precisely what the voters spoke out against last year.

The Clackamas Community College Foundation has provided over 130 full tuition scholarships to worthy students since 1970. Additionally, they have awarded a number of partial scholarships and have been involved in several productive programs.

The IRS maintains that their involvement, which I believe to be peripheral at best, in a budget election for the college removes them from consideration under Section 501(c) (3) of the Code. The agency, I believe is being entirely too harsh in their treatment of the foundation. Any potential violation which might have occurred was, I am sure, unintentional and would not be repeated.

In closing Mr. Secretary, I am certain that you share my disdain for any government agency that uses its power to the detriment of a worthy private program. The spirit of volunteerism that such a foundation engenders must not be thwarted.

I sincerely hope you will agree with me and intervene on behalf of the Clackamas Community College Foundation.

Best regards,


Denny Smith
Member of Congress

DS:kp
cc: The Vice President
Commissioner Roscoe Egger