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**INTERNAL REVENUE SERVICE**

**TO: Commissioner Egger**

There is a possibility that some of the schools reapplied, and we have approved their exemption and this list has not been updated. This application would have been made to the local office and approved by the local office.

Jim Owens

**Roscoe L. Egger, Jr.**  
COMMISSIONER

Attached is a list of previously tax-exempt private schools which the IRS has announced that assurance of deductibility of contributions is suspended because the schools failed to adopt a racially nondiscriminatory policy.

NOTE: Numbers 104, 105 and the following Mississippi schools are pending before the courts, therefore, revocation is a matter of public record.

- Marshall County Educational Foundation
- Quitman County Educational Foundation
- Indianola Educational Foundation
- Deer Creek Educational Institute
- Lula Rich Educational Foundation

1. Francis Marion Academy, Inc.  
Pinewood, South Carolina
2. Private Educators, Inc.  
St. Augustine, Florida
3. Macon Christian Academy, Inc.  
Macon Georgia,
4. Crenshaw County Private School Foundation, d/b/a  
Crenshaw Christian Academy  
Luverne, Alabama
5. Bullock County Private School Foundation  
Union Springs, Alabama
6. Dallas County Private School Foundation, Inc. d/b/a  
John T. Morgan Academy,  
Selma Alabama
7. Thomas Sumter Academy, Inc.  
Dalzell, South Carolina
8. Wade Hampton Academy  
Orangeburg, South Carolina
9. James F. Byrnes Academy  
Florence, South Carolina
10. Francis Marion Academy of Hemingway  
Hemingway, South Carolina
11. Roy E. Hudgens Academy, Inc.  
Lynchburg, South Carolina
12. Dorchester Academy, Inc.  
St. George, South Carolina
13. Allendale Academy, Inc.  
Allendale, South Carolina
14. Wilson Hall Sumter, South Carolina
15. The Lord Berkeley Academy  
Moncks Corner, South Carolina
16. Willington Academy f/k/a/ Stonewall Jackson Academy, Inc.  
Orangeburg, South Carolina
17. Sillman Institute  
Clinton, Louisiana

18. Bowman Academy, Inc.  
Bowman, South Carolina
19. Jefferson Davis Academy, Inc.  
Blackville, South Carolina
20. James H. Hammond Academy  
Columbia, South Carolina
21. James Butler Bonham Academy, Inc.  
Batesburg, South Carolina
22. The Beaufort Academy, Inc.  
Beaufort, South Carolina
23. Richard Winn Academy  
Winnsboro, South Carolina
24. The Carolina Academy  
Lake City, South Carolina
25. Patrick Henry Academy, Inc.  
Estill, South Carolina
26. John C. Calhoun Academy, Incorporated  
Walterboro, South Carolina
27. Dade Christian Schools, Inc.  
Miami, Florida
28. Trinity Christian Academy, Inc.  
Jacksonville, Florida
29. Indian River Academy, A Private School, Inc.  
Fort Pierce, Florida
30. Jupiter Christian School, Inc.  
Jupiter, Florida
31. Union Academy Private School Foundation  
Dadeville, Alabama
32. West Birmingham Christian School  
Birmingham, Alabama
33. Twelve Oaks Academy  
Shelby, North Carolina
34. Pioneer Christian Academy  
Nashville, Tennessee

35. North Street Day Nursery and Kindergarten  
Raleigh, North Carolina
36. Palmer Memorial Institute, Incorporated  
Dedalia, North Carolina
37. Temple Heights Christian Schools, Inc.  
Tampa, Florida
38. Greystone Christian Grade School of Mobile, Alabama  
Mobile, Alabama
39. Bainbridge Christian School, Inc.  
Bainbridge, Georgia
40. Wilcox School Foundation, Inc.  
Catherine, Alabama
41. Butler County Private School Foundation, Inc.  
Greenville, Alabama
42. Howey Academy  
Howey-In-The-Hills, Florida
43. Salt Springs Academy, Inc.  
Jackson, Alabama
44. The Southern Academy Private School Foundation  
(The Southern Academy)  
Greensboro, Alabama
45. Stone Mountain Christian School, Inc.  
Stone Mountain, Georgia
46. Wilson Christian School, Inc.  
Wilson, North Carolina
47. Fayette Academy  
Somerville, Tennessee
48. Adams County Private School System  
Natchez, Mississippi
49. Benton County Educational Foundation, Inc.,  
Ashland, Mississippi
50. Calhoun Education Foundation Corporation  
Calhoun City, Mississippi
51. Canton Academic Foundation, Inc.  
(Canton Academy)  
Canton, Mississippi

52. Central Holmes Academy  
Lexington, Mississippi
53. Citizens' Educational Foundation  
Vicksburg, Mississippi
54. Columbia Educational Foundation, Inc.  
Columbus, Mississippi
55. Bay County School, Inc.  
Arnold, Maryland
56. Clay County Educational Foundation, Inc.  
West Point, Mississippi
57. Council School Foundation  
Jackson, Mississippi
58. East Holmes Academy  
Durant (West), Mississippi
59. Forest County School Foundation, Inc.  
Hattiesburg, Mississippi
60. Greenwood-LeFlore Educational Foundation, Inc.  
Greenwood, Mississippi
61. Grenada Educational Foundation, Inc.  
Grenada, Mississippi
62. Harrison County Private School Foundation  
Biloxi, Mississippi
63. Humphreys Academy Foundation  
Belzoni, Mississippi
64. Jackson Academy, Inc.  
Jackson, Mississippi
65. Lamar School Foundation, Inc.  
Meridian, Mississippi
66. Lowndes County Private School Foundation, d/b/a/ Lowndes Academy  
Hayneville, Alabama
67. North Sunflower County Educational Foundation, Inc.  
Ruleville, Mississippi
68. Noxubee Educational Foundation  
Macon, Mississippi

69. Sharkey - Issaquena Academy Foundation  
Rolling Fork, Mississippi
70. Southwest Academy  
Jackson, Mississippi
71. Southwest Mississippi Christian Academy  
Summit, Mississippi
72. Colvington School Foundation, Inc.  
Mount Olive, Mississippi
73. Cruger-Tchula Academy Foundation  
Cruger, Mississippi
74. Parents Educational and Development Foundation, Inc.  
Meridian (East), Mississippi
75. Paspoint Private School  
Mosspoint, Mississippi
76. Pines Private School Foundation  
Wiggins, Mississippi
77. Rebul Academy, Inc.  
Learned, Mississippi
78. Shaw Educational Foundation  
Shaw, Mississippi
79. The Tunica Institute of Learning, Inc.  
Tunica, Mississippi
80. Oktibbeha Educational Foundation, Inc.  
Starkville, Mississippi
81. Caliborne Educational Foundation  
Mississippi
32. Nathanael Green Academy, Inc.  
Siloam, Georgia
83. The Heritage School, Inc.  
Newnan, Georgia
84. The Gaffney Day School  
Gaffney, South Carolina
35. Desoto School, Inc.  
Helena, Arkansas

86. Southeast Education, Inc.  
Dothan, Alabama
87. Pamlico Community School  
Washington, North Carolina
88. Barbour County Private School Foundation,  
d/b/a Dixie Academy  
Clayton, Alabama
89. Panama City Christian Private School  
Panama City, Florida
90. Tipton Academy  
Atoka, Tennessee (Formerly Munford, TN )
91. Hoover Academy, Inc.  
Brighton, Alabama
92. Wilcox Educational Foundation, Inc.  
Camden, Alabama
93. Providence Christian School, Inc  
Riverview, Florida
94. Macon County Private School Foundation  
Tuskegee, Alabama
95. Jefferson Academy, Inc.  
Birmingham, Alabama
96. Blackstone Educational Foundation  
Virginia
97. Huguenot Academy  
Virginia
98. Amelia Educational Foundation  
Virginia
99. Brunswick Academy Association  
Virginia
100. Chickahominy Academy, Inc.  
Virginia
101. Isle of Wight County Educational Foundation  
Virginia

- 102. Kenbridge Day School Foundation  
Virginia
- 103. Luneberg - Nottoway Educational Foundation  
Virginia
- 104.. Prince Edward Academy  
Virginia
- 105. Bob Jones University  
Greenville, South Carolina
- 106. Southern Methodist Schools, Inc.  
Orangeburg, South Carolina

Nos. 81-1 and 81-3

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IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1981

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GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

---

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

---

ON WRITS OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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LAWRENCE G. WALLACE  
Acting Solicitor General

Department of Justice  
Washington, D. C. 20530

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

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No. 81-3

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This Court granted writs of certiorari in the above-captioned cases and ordered consolidation on October 13, 1981. Petitioners seek reversal of the court of appeals' decisions upholding Internal Revenue Service rulings that were applied to them, because of certain racially discriminatory practices, to deny tax-exempt status as "religious" or "educational" institutions under Section 501(c)(3) of the Internal Revenue Code of 1954 ("Code") and sister Code provisions regarding federal social security taxes (Section 3121(b)(8)(B) of the Code) and federal unemployment taxes (Section 3306(c)(8) of the Code), and to deny them status as eligible donees of charitable contributions under Section 170(a) and (c) of the Code.

Since the filing of our Brief acquiescing in the granting of certiorari in these cases, the Department of the Treasury has initiated the necessary steps to grant petitioner Goldsboro Christian Schools tax-exempt status under Section 501(c)(3) of the Code, and to refund to it federal social security and unemployment taxes in dispute. Similarly, the Treasury Department has initiated the necessary steps to reinstate tax-exempt status under Section 501(c)(3) of the Code to petitioner Bob Jones University, and will refund to it federal social security and unemployment taxes in dispute. Finally, the Treasury Department has commenced the process necessary to revoke forthwith the pertinent Revenue Rulings that were relied upon to deny petitioners tax exempt status under the Code. 1/

The United States therefore asks that the judgments of the court of appeals be vacated as moot.

Respectfully submitted.

LAWRENCE G. WALLACE  
Acting Solicitor General

JANUARY 1982

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1/ The applicable rulings are Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587.

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Nos. 81-1 and 81-3

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MEMORANDUM FOR THE UNITED STATES

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Department of Justice  
Washington, D. C. 20530

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IN THE SUPREME COURT OF THE UNITED STATES

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to Ann McLaughlin

room 3124 date 1/12/82

Department  
of the Treasury

Office of the  
General Counsel

This is a draft statement of facts for  
public release as background to Bob Jones.  
Your comments will be appreciated today.



Margery Waxman  
Deputy General  
Counsel

room 3308  
phone 566-2977

**DRAFT**

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Nos. 81-1 and 81-3

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MEMORANDUM FOR THE UNITED STATES

## STATEMENT

This Court granted writs of certiorari in the above-captioned cases and ordered consolidation on October 13, 1981. Petitioners seek reversal of the Court of Appeals' decision upholding Internal Revenue Service regulations that were applied to them, because of certain racially discriminatory practices, tax-exempt status as "religious" or "educational" institutions under Section 501(c)(3) of the Internal Revenue Code of 1954 ("Code") and sister Code provisions regarding federal social security taxes (Section 3121(b)(8)(B) of the Code), federal unemployment taxes (Section 3306(c)(8) of the Code), and denying them status as eligible donees of charitable contributions under Section 170(a) and (c) of the Code.

In the courts below and in our Memorandum acquiescing in the petitioners writs of certiorari, the United States argued that the Commissioner of Internal Revenue acted within his statutory authority in determining that Congress intended to deny tax-exempt status under Section 501(c)(3) to nonprofit private educational institutions that maintain racially discriminatory admissions policies or other racially discriminatory practices. After closely reexamining the challenged regulations and the Code provisions on which the regulations are based, the United States has concluded that the statutory construction adopted by the Commissioner and the Court of Appeals below is in error.

INSERT IRS  
Language

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According to the Commissioner's 1970 ruling (see Rev. Rul. 71-447, 1971-2 Cum. Bull. 230), the statutory requirement of being "organized and operated exclusively for . . . charitable . . . purposes" was intended (1) to apply to all tax-exempt organizations and (2) to incorporate the common-law requirement that the "charitable" organization not adhere to policies contrary to public policy. Our examination of both the language of Section 501(c)(3), which joins the various purposes qualifying for tax exempt status in the disjunctive, and the statute's legislative history provides no support for the Commissioner's statutory interpretation. We are therefore persuaded that Congress intended to exempt from taxation "educational" organizations that are not also "charitable" as surely as it intended to exempt "charitable" organizations that are not also "educational."

Accordingly, the United States is compelled by the language and legislative history of Section 501(c) to confess error with respect to its previous interpretation of that statute. The Commissioner has initiated the necessary steps to grant petitioner Goldsboro tax-exempt status under Section 501(c)(3) of the Code, and to refund to it federal social security and unemployment taxes in dispute. Similarly, the Commissioner has initiated the necessary steps to reinstate

- 3 -

tax-exempt status under Section 501(c)(3) of the Code to petitioner Bob Jones, and will refund to it federal social security and unemployment taxes in dispute. Finally, the Commissioner has commenced the process necessary to revoke forthwith the pertinent Revenue Rulings that were relied upon to deny petitioners tax exempt status under the Code.<sup>\*/</sup>

The United States therefore asks that the cases in Nos. 81-1 and 81-3 be dismissed as moot and that the judgments of the Court of Appeals be vacated.

Respectfully submitted,

<sup>\*/</sup> The applicable rulings are Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587.

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Generally speaking, Congress employs the Internal Revenue Code for revenue raising or other fiscal purposes. On rare occasions, Congress has employed the Code to foster civil rights policies that it has established in a comprehensive network of civil rights laws. Congress has been unequivocal and explicit, however, when it has taken this course, as in denying tax-exempt status to social clubs that practice racial discrimination. (cite).

Congress has addressed problems of racial and other forms of discrimination in a networks of laws providing both public and private remedies for violations. For example, Congress has in various statutes invested private individuals with power to challenge acts of racial discrimination practiced by private institutions such as petitioners. See, for example, 42 U.S.C. §1981-1982; Jones v. Mayer; Runyon v. McCrary. The United States, however, has concluded that the absence of any civil rights purpose in the explicit language and legislative history of Section 501(c)(3) of the Internal Revenue Code demonstrates the lack of authority in the Commissioner to unilaterally impose nondiscrimination requirements on organizations that would otherwise qualify as tax-exempt under that statute. Whether or not such nondiscrimination requirements should be engrafted onto Section 501(c)(3) is a question entrusted by the Constitution to the Congress.

Accordingly, the United States hereby confesses error in its previous interpretation of the Internal Revenue Code as investing the Commissioner of Internal Revenue with authority to declare ineligible for tax-exempt status organizations that engage in racially discriminatory practices. The Commissioner intends to grant petitioner Goldsboro tax-exempt status under Section 501(c)(3) of the Code, and will refund to it federal social security and unemployment taxes in dispute. The Commissioner also intends to reinstate tax-exempt status under Section 501(c)(3) of the Code to petitioner Bob Jones, and will refund to it federal social security and unemployment taxes in dispute. Finally, the Commissioner has instituted procedures to revoke the regulations (26 C.F.R.) that were employed to deny petitioners tax exempt status under the Code. Accordingly, the United States suggests that the cases in Nos. 81-1 and 81-3 be dismissed as moot and that the judgments of the Court of Appeals be vacated.

Nos. 81-1 and 81-3

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TO BE FILED  
Wednesday (5)

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Generally speaking, Congress employs the Internal Revenue Code for revenue raising or other fiscal <sup>and economic</sup> purposes. On rare occasions, Congress has employed the Code to foster civil rights policies that it has established in a comprehensive network of civil rights laws. Congress has been unequivocal and explicit, however, when it has taken this course, as in denying tax-exempt status to social clubs that practice racial discrimination. (cite).

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ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BRIEF FOR THE RESPONDENTS

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LAWRENCE G. WALLACE  
Acting Solicitor General

JOHN F. MURRAY  
Acting Assistant Attorney General

STUART A. SMITH  
Assistant to the Solicitor General

ROBERT S. POMERANCE  
Attorney

Department of Justice  
Washington, D.C. 20530  
(202) 633-2217

## QUESTION PRESENTED

Whether nonprofit corporations operating private schools that, on the basis of religious doctrine, maintain racially discriminatory admissions policies and other racially discriminatory policies and practices qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, eligible to receive charitable contributions deductible under Section 170.

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BRIEF FOR THE RESPONDENTS

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OPINIONS BELOW

No. 81-1. The order of the district court (Pet. App. 5a-18a) is reported at 436 F. Supp. 1314. The opinion of the court of appeals (Pet. App. 1a-3a) is not reported.

No. 81-3. The Dec. 26, 1978, opinion and order of the district court (Pet. App. A38-A71) are reported at 468 F. Supp. 890. The May 14, 1979, opinion and order of the district court (Pet. App. A72-A86) are unreported. The opinion of the court of appeals (Pet. App. A1-A37) is reported at 639 F. 2d 147.

JURISDICTION

No. 81-1. The judgment of the court of appeals (Pet. App. 53a) was entered on February 24, 1981, and the court of appeals denied a timely petition for rehearing and suggestion for rehearing en banc on April 7, 1981 (Pet. App. 55a). The petition for a writ of certiorari was filed on July 2, 1981.

No. 81-3. The judgment of the court of appeals was entered on December 30, 1980. The order denying a petition for rehearing was entered on April 8, 1981 (Pet. App. A100-A101). The petition for a writ of certiorari was filed on July 1, 1981.

The petitions for writs of certiorari were granted and the cases consolidated on October 13, 1981. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 170(a), 170(c)(2), 501(a), 501(c)(3), 3121(b)(8)(B), and 3306(c)(8) of the Internal Revenue Code of 1954 (26 U.S.C.), and of Section 1.501(c)(3)-1(d) of the Treasury Regulations on Income Tax (26 C.F.R.) are set forth at Appendix, infra, 1a-5a.

STATEMENT

A. Goldsboro Christian Schools--No. 81-1

1. Petitioner Goldsboro Christian Schools, Inc. is a nonprofit organization incorporated in 1963 under the laws of North Carolina. Its articles of incorporation provide that its purpose is "'to conduct an institution or institutions of learning for the general education of Youth in the essentials of culture and its arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy scriptures \* \* \*'" (Pet. App. 6a). At least since 1969, petitioner has maintained a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body, for kindergarten and grades one through twelve (J.A. 6). During that period, petitioner has satisfied the requirements of North Carolina for secular education in private schools (Pet. App. 7a; J.A. 6-7). / For the school year 1973-1974, petitioner enrolled approximately 750 students (J.A. 6). Submissions to the State indicate that petitioner requires its high school students to take one Bible-related course during each semester. The remaining course requirements and offerings, as reflected in those submissions, are indicative of secular subjects. Whether the subject of the

/ Pursuant to N.C. Gen. Stat. §115-255 (1978 repl.), the State of North Carolina regulates and supervises all non-public schools within the State serving children of secondary-school age, or younger, "to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship." In accordance with that statute, all such non-public schools--

shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools \* \* \*.

course is secular or Bible-related, petitioner's practice is to begin each class with a prayer. This practice is in keeping with petitioner's overall purpose, and the desire of its founders, to provide a secular private school education in a religious setting (Pet. App. 6a-7a). \_/

Based upon an interpretation of the Bible that it purports to follow, petitioner has maintained a racially discriminatory admissions policy since the time of its incorporation. The policy reflects a belief that God intended a "separation of the nations and races" and that it is necessary to discourage "any kind of social intermingling by \* \* \* students that could eventually lead to intermarriage of the races and a corresponding breakdown of distinctives established by almighty God" (J.A. 10). Although the policy would seem to require the exclusion of all noncaucasians, petitioner has accepted noncaucasians. Its policy in practice requires the exclusion only of members of the Negro race (Pet. App. 7a). Petitioner's president and principal believe that black students would be disinclined to abide by its tenets and practices because of the racial climate prevailing in the country and the pressures exerted by the positions of certain "militant" organizations (J.A. 81-93).

Petitioner has never received recognition from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). On July 10, 1970, the Internal Revenue Service announced publicly that it could no longer legally justify its prior allowance of tax-exempt status to private schools maintaining racially discriminatory admissions policies nor could it continue to treat gifts to such schools as deductible charitable contributions for income tax

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\_/ Although the Second Baptist Church of Goldsboro figured prominently in petitioner's founding and operation, petitioner was incorporated as a separate legal entity (Pet. App. 6a-7a;

purposes (81-3 J.A. A235-236). \_/ On audit, the Commissioner of Internal Revenue thereafter determined that petitioner did not qualify for exemption from federal social security taxes (FICA) under Section 3121(b)(8)(B) of the Code, or for exemption from federal unemployment taxes (FUTA) under Section 3306(c)(8) of the Code. In 1974, the Commissioner accordingly assessed FICA and FUTA taxes against petitioner (J.A. 13-14). After making partial payment, petitioner instituted this action in the United States District Court for the Eastern District of North Carolina seeking a refund of \$3,459.93 in federal withholding, FICA, and FUTA taxes for 1969 through 1972. The government counterclaimed for \$160,073.96 in taxes for that period (Pet. App. 5a, 7a-8a).

2. On the parties' cross motions for summary judgment, the district court ruled that the Internal Revenue Service had properly denied petitioner exempt status under Section 501(c)(3), and the tax benefits associated with qualification as a Section 501(c)(3) organization, because petitioner's policy of racial discrimination violated the declared public policy of the United States (Pet. App. 14a). For purposes of adjudicating the motion, the court assumed that petitioner's racially discriminatory admissions policy was based upon a valid religious belief (Pet. App. 7a). It concluded, however, that denying petitioner the benefits of a Section 501(c)(3) tax exemption did not abridge any rights guaranteed petitioner under the Fifth Amendment to the

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\_/ As a result of its announced policy, which was formally published in Rev. Rul. 71-447, 1971-2 Cum. Bull. 230, the Internal Revenue Service did not appeal from the order of a three-judge district court in Green v. Connally, 330 F. Supp. 1150 (D.D.C.), prohibiting the issuance of tax-exempt status and deductibility of contributions with respect to private schools in Mississippi maintaining racially discriminatory admissions policies. That suit had been brought by a group of Mississippi parents and their children attending the public schools. In response to an appeal of that order by intervenors seeking to vindicate their asserted First Amendment right to freedom of association, the government filed a motion to dismiss or affirm, No. 820 (1970 Term). This Court affirmed without opinion. Coit v. Green, 404 U.S. 997 (1971)

Constitution or under the Establishment or Free Exercise Clauses of the First Amendment (Pet. App. 12a-13a). \_/

The court of appeals affirmed, with one judge dissenting. Treating the case as "identical" with Bob Jones University, infra, the court of appeals upheld the Internal Revenue Service's action on the authority of its decision in that case (Pet. App. 1a-3a). The court observed (Pet. App. 2a):

It is rare that any two cases are identical twins. Nevertheless, as it happens, there is identity for present purposes between the instant case and the case of Bob Jones University \* \* \* which has just been handed down. There the taxpayer was held not to be entitled to the §501(c)(3) exemption. In some respects, insofar as decision here is concerned, the resemblance of Goldsboro to Bob Jones University is stronger than would be the case the other way round. That is so since Goldsboro altogether prohibits admission of blacks. The University permits them to enter, but forbids certain interracial associations, especially dating and marriage.

The complete and impeccable treatment by Judge Hall in Bob Jones University makes it supererogatory for us to discuss the issue of tax exempt status under §501(c)(3). For that aspect we simply affirm the district court for the reasons advanced in the Bob Jones University case.

B. Bob Jones University--No. 81-3

1. Petitioner is a nonprofit organization incorporated in 1952 under the laws of South Carolina. As set forth in its certificate of incorporation, its purpose is "'to conduct an institution of learning for the general education of youth in the

\_/ During the pendency of the proceedings in the district court, the government agreed to abate all FUTA assessments against petitioner for periods ending on or before December 31, 1970, and to abate all FICA assessments against petitioner for periods ending before November 30, 1970 (J.A. 104, 111-112). The government made this concession because the Internal Revenue Services's announcement that it would no longer accord the benefits of tax exemption and deductibility of contributions to racially discriminatory private schools (81-3 J.A. A235-A239) was effective as of November 30, 1970 (J.A. 104, 111-112). See Internal Revenue Code of 1954, Section 7805(b) (26 U.S.C.). The government accordingly stipulated that it was entitled to recover only \$116,190.99 upon its counterclaim, and the district court entered judgment in its favor in that amount (J.A. 109-110, 115).

essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures \* \* \*'" (Pet. App. A2-A3, A40-A41). Petitioner provides instruction for students from kindergarten through college and graduate school (Pet. App. A3, A41; J.A. A63, A153, A211-A231). At the college level, it operates a school of education, a school of fine arts, a school of religion, a college of arts and sciences, and a school of business administration (J.A. A63, A127-A128). In its graduate schools, it offers courses in art, music, speech, radio and television, cinema, religion, and education (J.A. A227). It enrolls in excess of 5,000 students and offers more than 50 accredited degrees in secular subjects (Pet. App. A3, A41; J.A. A63, A127-A128). Its various degrees (including its teaching degree, which satisfies state law requirements) generally enable graduates to proceed into the professional world on the same basis as graduates from other recognized educational institutions (J.A. A76, A88-A89, A269-A271). / It also offers a separate nondegree, noncredit program, entitled Institute of Christian Service, for persons who do not wish to undergo the rigors of academic pursuit (J.A. A75). The purpose of that program is to teach the principles of the Bible and to train Christian character (Pet. App. A3, A41). All courses offered by petitioner are taught in accordance with the dictates of

/ Until 1972, the Veterans Administration recognized petitioner as an educational institution offering courses of study suitable for the education of veterans who were recipients of subsidies under the educational benefits program administered by the Veterans Administration. See Bob Jones University v. Johnson, 396 F. Supp. 597, 600-601 (D.S.C. 1974), aff'd without published opinion, 529 F. 2d 514 (4th Cir. 1975). During that period, petitioner's courses of study were certified to be suitable for the education of veterans by the South Carolina State Board of Education, using criteria prescribed by federal statute. Ibid. See 38 U.S.C. 1771 et seq. In November, 1972, the Veterans Administration terminated the right of otherwise eligible veterans to receive veterans' benefits for education at Bob Jones University based upon a determination by the Veterans Administration that petitioner had failed to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and with the Veterans Administration regulations implementing the statutory requirement of nondiscrimination in federally assisted programs. See Bob Jones University v. Johnson, supra, 396 F. Supp. at 598-599. Upon petitioner's complaint for review, the district court and the court of appeals sustained the administrative order of termination. Bob Jones University v. Johnson, supra.

Biblical Scripture. Teachers are required to be "born again" Christians. Students are screened as to their religious beliefs and their conduct is strictly regulated (Pet. App. A3-A4).

From its inception, petitioner has maintained a racially restrictive admissions policy and a policy forbidding interracial dating and interracial marriage. Those policies derive from a belief that God intended the various races to live apart, and that intermarriage of different races is contrary to God's will and to the Scriptures (Pet. App. A43). Prior to 1971, petitioner excluded blacks entirely from enrollment. From 1971 until 1975, married black persons and members of other minority races or ethnic groups were not excluded from enrollment, but petitioner continued to deny admission to unmarried blacks unless the applicant had been a staff member of petitioner for at least four years (Pet. App. A4, A43; J.A. A89-A90). See Bob Jones University v. Johnson, 396 F. Supp. 597, 600 & n.9 (D.S.C. 1974), aff'd without published opinion, 529 F. 2d 514 (4th Cir. 1975). During that latter period, petitioner's doctrinal policy did not specifically require the exclusion of blacks, but denying admission to unmarried blacks was, in petitioner's judgment, the best means of implementing its prohibition against interracial dating and marriage / (Pet. App. A43, J.A. A71-A72, A81-A82, A250; A.209-210, 212). /

/ Petitioner's president explained the connection between its racially discriminatory admissions policy and interracial dating and marriage, as follows (A. 210):

We accept a few Oriental students, but we do so with a definite understanding that they will not date outside of their own race. If we took Negro students here on this same basis today, they would resent that restriction and would cry that they were being discriminated against because they were not allowed to date Orientals or Caucasians. If we had to expel a black student today for the worst possible offense--stealing, attempted rape, or something of that sort--he would cry that he was being persecuted because he was black; and we would be picketed, annoyed, and harassed. The very attitude of the integrationist today makes it impossible for us to find any basis on which we can accept Negro students without violating Christian and Scriptural principles and without being put in a position where we could be harassed, annoyed, and threatened.

/ "A" refers to the separately bound record appendix filed in the court of appeals, Nos. 79-1215 and 79-1216.

In response to the court of appeals' decisions in April and May, 1975, in Bob Jones University v. Johnson, 529 F. 2d 514 (4th Cir. 1975), and in McCrary v. Runyon, 515 F. 2d 1082 (4th Cir. 1975), aff'd, 427 U.S. 160 (1976), petitioner once again revised its admissions policy (Pet. App. A4, A43-A44; J.A. A250-A253). After May 29, 1975, petitioner generally permitted unmarried blacks as well as married blacks to enroll as students. It continued to deny admission, however, to any applicant known to be a partner in an interracial marriage (Pet. App. A4, A43-A44). / It also established disciplinary rules requiring the denial of admission to, or expulsion of, any student (1) who was a partner in an interracial marriage, (2) who was affiliated with a group or organization advocating interracial marriage, (3) who engaged in interracial dating, or (4) who encouraged others to violate petitioner's rules and prohibitions against interracial dating (Pet. App. A4, A44; J.A. A53-A54, A77-A80, A197-A198, A208-A209, A277). Those rules adopted an inclusive concept of "dating" encompassing a broad range of associations (J.A. A155-A177, A197-A199). Petitioner required each student to attend a "rules meeting" at which the several disciplinary rules were reviewed, and to sign a statement that he or she would abide by those rules and regulations (Pet. App. A42-A43; J.A. A132-A133).

Until 1970, the Internal Revenue Service recognized petitioner as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.) that was eligible to receive charitable contributions deductible under Section 170(c)(2) of the Code. See Bob Jones University v. Simon, 416 U.S. 725, 735 (1974). On November 30, 1970, the Internal Revenue Service sent letters to approximately 5,000 organizations operating private schools, including petitioner, announcing that it would no longer recognize as legally entitled to

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/ Applicants to petitioner specified their race and marital status on their applications for admission (J.A. A122-A133). If an application form indicated that an applicant was black, but did not reveal the race of the applicant's spouse, petitioner requested that additional information (J.A. A89-A90).

tax exemption, or to receive deductible charitable contributions, any private school that maintained a racially discriminatory admissions policy. (J.A. A232-A234). See Green v. Connally, 330 F. Supp. 1150, 1173 (D.D.C.), aff'd, 404 U.S. 997 (1971). The letter requested proof of a nondiscriminatory admissions policy and advised that tax-exempt ruling letters would be reviewed in light of the information provided. At the end of 1970, petitioner responded that it did not admit black students, and, in September, 1971, further stated that it had no intention of altering that policy. The Internal Revenue Service therefore commenced administrative proceedings leading to the revocation of petitioner's exemption and of its advance assurance of deductibility. After petitioner's attempt to enjoin those proceedings had failed in the court of appeals and in this Court, / the Service in January, 1976, issued a final notice of revocation to petitioner, effective as of December 1, 1970 (Pet. App. A40, A87-A88, A89).

2. Seeking to reinstate its exemption and the deductibility of contributions to it, petitioner brought this action in the United States District Court for the District of South Carolina for refund of \$21 in federal unemployment taxes for the year 1975 (Pet. App. A3, A40). / The government counterclaimed for approximately \$490,000 in federal unemployment taxes for the years 1971 through 1975 (ibid.). Following a trial, the district court held that petitioner qualified for tax exemption under Section 501(c)(3) of the Code as an institution organized and

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/ While the administrative proceedings preliminary to the revocation of its exemption were pending, petitioner filed a suit for injunctive relief to prevent the Internal Revenue Service from taking final action on the revocation and from withdrawing advance assurance to donors that contributions to petitioner would constitute charitable deductions. Bob Jones University v. Simon, supra. This Court unanimously held that the action was barred by the Anti-Injunction Act (26 U.S.C. (& Supp. III) 7421(a)) and by the Declaratory Judgment Act (28 U.S.C. (& Supp. III) 2201), but suggested (416 U.S. at 746) the refund suit procedure ultimately employed by petitioner here.

/ Petitioner's qualification for an exemption from federal unemployment taxes (FUTA) under 26 U.S.C. 3306(c)(8) turns on its entitlement to status as a tax-exempt organization under Section 501(c)(3). See Bob Jones University v. Simon, supra, at 727-728.

operated exclusively for religious and educational purposes (Pet. App. A45-A71). In a separate suit against the Secretary of the Treasury and the Commissioner of Internal Revenue instituted by petitioner, the district court thereafter ordered those officials to restore petitioner's tax-exempt status and to publish advance assurances of deductibility of contributions to petitioner (Pet. App. A72-A86).

The court of appeals stayed the injunctive order of the District court (Pet. App. A97-A99), consolidated the appeals from the district court's decisions, and reversed (Pet. App. A1-A17), with one judge dissenting (Pet. App. A18-A37). It rejected the district Court's hypothesis that petitioner was entitled to tax exempt status because it is a "religious" institution and qualifies under the separately enumerated "religious" category of Section 501(c)(3). The court rejected "[t]his simplistic reading of the statute" as one that "tears section 501(c)(3) from its roots" (Pet. App. A7). Citing with approval the three-judge district court's decision in Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd per curiam, 404 U.S. 997 (1971), the court concluded that Section 501(c)(3) must be viewed against its background in the law of charitable trusts. Thus, the court of appeals agreed with the Green decision (330 F. Supp. at 1156-1160) that, to be eligible for tax exempt status, "an institution must be 'charitable' in the broad common law sense, and therefore must not violate public policy" (Pet. App. A7-A8; footnote omitted). It observed that "[t]his view finds additional support in the statutory framework itself: Section 170 of the Code, the companion provision to Section 501(c)(3), places the separately enumerated purposes in that section under the broad heading of 'charitable'" (Pet. App. A7-A8, n.6). Here, it stated, petitioner's racial policies violated clearly defined public policy, rooted in the Constitution, in federal statutes, and in the decisions of this Court condemning racial discrimination. In view of "the government policy against subsidizing racial

discrimination in education, public or private," the court of appeals held that "the Service acted within its statutory authority in revoking [petitioner's] tax exempt status \* \* \*" (Pet. App. A9-A10).

In so holding, the court rejected petitioner's argument that the application of the Service's nondiscrimination policy to petitioner violates the Free Exercise and Establishment Clauses of the First Amendment. Assuming that petitioner's racial discrimination is motivated by sincere religious beliefs, the court noted that the Internal Revenue Service's action would not prohibit petitioner from adhering to its policy. Abandonment of its discriminatory practices would not prevent the university from continuing its teachings or force any individual student to violate his beliefs (Pet. App. A13-A14). The court further concluded that "the uniform application of the [Service's] rule to all religiously operated schools avoids the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief" (Pet. App. A16; emphasis in original).

#### SUMMARY OF ARGUMENT

1. The court of appeals correctly held that the Internal Revenue Service acted within its statutory authority in determining that petitioners failed to qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 or as eligible donees of charitable contributions deductible under Section 170(a) and (c)(2) of the Code. Since 1970, the Service has uniformly ruled that a private school will not qualify for those federal tax benefits unless it establishes that its admissions and educational policies are operated on a racially nondiscriminatory basis. That position, and the court of appeals' holdings, are amply supported by the Constitution, by decisions of this Court, and by Acts of Congress evidencing a strong national commitment to the eradication of racial discrimination generally, and, in particular, racial discrimination by educational institutions, public and private.

See, e.g., Amendments XIII, XIV, XV; Runyon v. McCrary, 427 U.S. 160 (1976); Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Section 1 of the Civil Rights Act of 1866, 42 U.S.C. 1981. That commitment springs from the principle that "[d]istinctions between citizens solely because of their ancestry' [are] 'odious to a free people whose institutions are founded upon the doctrine of equality.'" Loving v. Virginia, 388 U.S. 1, 11 (1967) (quoting Hirabayashi v. United States, 320 U.S. 81, 100 (1943)). It reflects also the centrality of education to a democratic society and the peculiarly injurious effects of the stigma engendered by discrimination in the context of the classroom. Brown v. Board of Education, 347 U.S. 483, 493-495 (1954); Bolling v. Sharpe, 347 U.S. 497, 500 (1954). Indeed, petitioners' racially discriminatory practices violate not only the constitutional values that shape national and state action, as articulated in Brown and in succeeding cases, but also the specific mandate of 42 U.S.C. 1981 that all persons shall have the same right to make and enforce contracts as is enjoyed by white citizens. See Runyon v. McCrary, 427 U.S. 160 (1976).

The requirement of nondiscrimination sustained by the court of appeals derives force also from the congressional purpose underlying the charitable exemption provisions in the Internal Revenue Code. The origin, structure, and legislative history of those provisions demonstrate that Congress intended to grant the benefits of tax exemption and to permit deductibility of contributions only to those organizations whose operations further some public benefit. Trinidad v. Sagrada Orden, 263 U.S. 578, 581 (1924); H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). As the sponsor of a forerunner of the current exemption provision explained, the exemption was designed to aid institutions devoted exclusively to the relief of suffering and to all things which commend themselves to every charitable and just impulse. 44 Cong. Rec. 4150 (1909). Accordingly, both the Internal Revenue Service and the courts have viewed the statutes

against their background in the law of charitable trusts. See Treasury Regulations on Income Tax (1954 Code), Sec. 1.501(c)(3)-1(d)(2).

The Service has accordingly ruled that, since private schools which practice racial discrimination violate sharply defined public policies in this area, they provide no public benefit warranting the granting of a tax exemption and, indeed, may not be classified as charities under the law of charitable trusts. Thus, the Commissioner ruled that discriminatory schools do not qualify under Sections 501(c)(3) and 170 of the Internal Revenue Code as organizations exempt from federal income tax. Rev. Rul. 71-447, 1971-2 Cum. Bull. 230. That position received the specific endorsement not only of the court of appeals below, but also of the three-judge district court in Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd per curiam sub nom. Coit v. Green, 404 U.S. 997 (1971). There, the court found that there is a compelling as well as a reasonable government interest in the interdiction of racial discrimination which stands on highest constitutional ground. It accordingly held that exemptions under the Internal Revenue Code might properly be denied to any institution serving educational purposes that discriminates against students or applicants on the basis of race. That holding was followed in Prince Edward School Foundation v. United States, 478 F. Supp. 107 (D.D.C. 1979), aff'd, No. 79-1622 (D.C. Cir. June 30, 1980), cert. denied, 450 U.S. 944 (1981). These decisions accord with decisions of this Court sustaining the disallowance of tax deductions arising from conduct deemed contrary to sharply defined state or national policy. Tank Truck Rentals v. Commissioner, 356 U.S. 30, 33-34 (1958); Textile Mills Corp. v. Commissioner, 314 U.S. 326 (1941).

Furthermore, recent congressional actions confirm that the nondiscrimination principle comports with Congress' understanding of the Code's requirements. "In view of national policy," Congress added to the Code the provision now contained in Section 501(i), which explicitly denies exempt status to a social club if