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Anti-Discrimination Issues] (5)

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1. What is the Administration's current policy and practice regarding the issuance and revocation of tax-exempt status for private schools not maintaining racially nondiscriminatory policies as to students?

ANSWER:

The IRS is following the injunction in the Wright case that it cannot grant or restore tax exemptions to schools that discriminate. It is requesting information about discrimination in the application for exemption. No school outside Mississippi has failed the tests under the revenue procedures for racial discrimination.

Because of the Wright injunction, the IRS has written Bob Jones University and Goldsboro Christian Schools stating that it cannot grant those schools exemptions. This removed the mootness issue from the cases before the Supreme Court.

Because this Administration does not believe that ^{the IRS has} ~~there is~~ authority under current law ~~for the IRS~~ to deny exemption, the IRS is not revoking any existing exemptions. If a school that applies for an initial exemption were to fail the standard for racial discrimination in the revenue procedures, the IRS would hold it in suspense until the Bob Jones decision provided guidance in this area. In this way the IRS is following the

Wright injunction by not granting an exemption, but it is also not denying or revoking an exemption.

~~Wright~~ *Wright*

Note:

Under section 7428, a school may bring a declaratory judgment proceeding in the Tax Court challenging the denial of an exemption. This same provision allows a proceeding to be brought if the Secretary has not acted on an application for exemption within 270 days. If a school's application were to be held in suspense long enough, the school could bring a declaratory judgment proceeding in the Tax Court asking to be declared tax-exempt. The IRS response would probably be to request a stay until the Bob Jones decision has been rendered, but the IRS has not made a final decision as to its position if this were to occur.

Wright

QUESTION (2):

Pending the Supreme Court decision in Bob Jones and Goldsboro, is the IRS granting tax exemption under Section 501(c)(3) for new schools applying for a tax exemption which discriminate based on race? Similarly, is the IRS now auditing the schools which are already exempt to determine if they discriminate based on race? Please give information about the level of enforcement effort in these areas.

ANSWER:

In accordance with the Wright injunction, the IRS is neither granting nor restoring the tax exemption under section 501(c)(3) for schools which discriminate based on race. The IRS is requesting information about racial policies in order to process exemption applications under existing Revenue Procedure 75-50. Since June, 1980, the Service has issued 130 favorable rulings to schools where there is no issue of racial discrimination. It is processing 520 other applications in accordance with Revenue Procedure 75-50.

Audits for schools which are already exempt have been curtailed pending the Bob Jones decision.

3. For the period between the enactment of this bill and a decision by the Supreme Court in Bob Jones, would tax credits be allowable for tuition payments to private schools failing to qualify for exemption because of failure to maintain and publicize a racially nondiscriminatory policy, as required in Rev. Proc. 75-50?

ANSWER:

After the bill is enacted, there would be two cases in which tuition tax credits would be disallowed because of racial discrimination. One would be a case in which the Attorney General is successful in seeking a declaratory judgment that the school has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition. This action does not depend upon the Bob Jones case and could be brought between the date of enactment and a decision by the Supreme Court. Obviously, tuition tax credits would not be allowable where a judgment had been won by the Attorney General.

The ultimate allowance of tuition tax credits for discriminatory schools where there is no declaratory judgment proceeding depends upon the Bob Jones decision. If these

schools are held to be tax-exempt under the Bob Jones decision *denying tax exemptions to such schools is not* and ~~there is no~~ legislation ~~that is~~ passed by the Congress,

tuition tax credits would be allowable in those cases,

in which tax credits would be disallowed during the
There are three situations ~~with possible disallowances in~~
~~the~~ interim before the Bob Jones decision:

1. The school applies for its initial exemption and fails to meet the standards of Revenue Procedure 75-50 for racial discrimination. ~~(No school outside Mississippi has failed to meet these standards to date.)~~ These cases would be held in suspense until a decision were rendered in Bob Jones. If a case is held in suspense for more than 270 days, the school could bring a declaratory judgment proceeding in the Tax Court asking the Court to declare it tax-exempt (section 7428). If the Tax Court rendered its opinion before the Bob Jones decision, the allowance or disallowance of tuition tax credits would depend upon the Tax Court decision.
2. A school that has already been given its exemption fails to meet the revenue procedures. The possible revocation of the exemption would be held in suspense until the Bob Jones decision, but in the interim the school continues to be exempt and credits may be claimed. If the Bob Jones decision would cause the school to lose its exemption,

presumably the credits could be disallowed retroactively for open years.

3. Unincorporated church schools do not have to apply for exemption; they are automatically tax-exempt as churches. These schools, like the schools in case 2, continue to be exempt and tuition tax credits could be claimed with respect to them. Again, if the Bob Jones decision were to render these schools nonexempt, tuition tax credits could be disallowed retroactively for open years.

4. Assuming that the Supreme Court affirms the Bob Jones and Goldsboro cases, and decides that federal tax-exemption cannot be granted to private schools maintaining racially discriminatory policies, would the enactment of this bill have any effect on the procedures and standards applicable in determining whether a school qualifies for tax-exemption?

ANSWER:

No. This bill has no effect on the law under section 501(c)(3).

5. Assuming that this bill is enacted, and that the Bob Jones and Goldsboro cases are affirmed, would the IRS be required to deny tax-exempt status, and thereby deny tuition tax credits, for a school that fails to maintain a racially nondiscriminatory policy as to students?

ANSWER:

Yes. If the Bob Jones case is affirmed and holds that the IRS is required to deny tax exemption to a school that racially discriminates, then the IRS will do so. Under the bill, no tax credits are allowable if a school is not exempt under section 501(c)(3).

6. S. 2673 vests exclusive enforcement responsibility for certain of the bill's nondiscrimination rules with the Attorney General. Will approval of this bill imply any Congressional view on the issue of whether a private individual has standing to challenge the tax-exempt status of an institution? This issue may be reviewed by the Supreme Court in the Wright case.

ANSWER:

We do not believe that the bill has any implications about private rights of action in challenging the tax-exempt status of an institution. The bill does not affect the law under section 501(c)(3). Further, the new proceeding by the Attorney General is not a suit to deny tax exemption, but rather is a suit ~~wholly~~ concerning ^{only} the disallowance of tuition tax credits on a ground separate and apart from tax exemption. ✓

The government's position in the Wright case is clear and a matter of public record in its ^{brief to the} ~~application for~~ Supreme Court ~~review~~ in this most important case. A private individual should not be able to challenge the tax-exempt status of an institution, ^{and this} ~~to the contrary.~~ ^{no} ~~any~~ If the bill contains ~~any~~ implications ~~about the result to be reached in that case, however, it is inadvertent.~~

7. Under the bill, if the Attorney General prevails in a declaratory judgment proceeding, credits are disallowed for three years beginning with the calendar year the lawsuit is commenced. If litigation lasts longer than three years, and the school's practices do not change, is it intended that credits would begin to be allowable merely because the three-year period has elapsed? (Question A.) Similarly, if the school continues to maintain a discriminatory policy, will the Attorney General be required to bring a new lawsuit every three years? (Question B.) If so, will the subsequent lawsuit be authorized only upon the receipt of a petition by a victim of discrimination? (Question C.)

ANSWER:

A. Yes. The three-year penalty is imposed for a proven act of discrimination and a proven racially discriminatory policy. For the penalty to extend for an indefinite period of years would discourage the school's use of the judicial process, i.e., its right to appeal. If the school persists in discriminating, it would be relatively easy for a complainant to file another complaint, considering that one has already been filed. The litigation burden will always fall on the Attorney General, not the complainant.

B. Yes. A new lawsuit must be filed in order to prove judicially that the school is still pursuing a racially discriminatory policy.

C. Yes.

8. The bill "authorizes" declaratory judgment proceedings when a petition is filed by an alleged victim of racial discrimination. If the Attorney General determines that the claim has merit, will he be required to bring a lawsuit, or is this enforcement procedure wholly discretionary?

ANSWER:

The Attorney General always has discretion in civil rights and other kinds of cases as to whether to bring a lawsuit. Also, under the bill the Attorney General must give a school the opportunity to settle a case before a complaint is filed.

*must have
it shall
be
the bill*
~~It is intended that~~ if the Attorney General ^{finds the requisite "good} believes that the ^{cause,"} ~~private complaint is meritorious~~ and he cannot settle the ^{claim} ~~case,~~ ₁ ^{it is intended that} he will bring a declaratory judgment proceeding against the school.

The declaratory judgment proceeding and the bill itself ^{are} ~~is~~ intended to force schools to abandon racially discriminatory policies. If the Attorney General can settle a suit by having a school revise its policy, we believe that that result is as desirable and as effective as a final court judgment.

10. When the Attorney General permits the school to comment on allegations of racial discrimination during the period before filing suit, will the individual petitioner also be permitted to participate?

ANSWER:

The individual petitioner will have the first opportunity to provide information to the Attorney General as to the substance of his complaint. During the course of the investigation, the Attorney General could be expected to talk to both the school and the petitioner numerous times, depending on the complexity of the complaint.

11. Will the Attorney General be permitted to maintain the confidentiality of the individual petitioner?

ANSWER:

No. The Attorney General must promptly give a school written notification of the petition and the allegations against the school. Since the Attorney General would seek a judgment that the school has discriminated against the person filing the petition, the school must know the specific instance of discrimination that is being alleged in order for it to defend itself.

12. If a school agrees to admit an individual, who petitioned claiming that he was refused admission on account of race, would the school's correction of the specific act alleged in the petition render the Attorney General's lawsuit moot, or could the Attorney General and the court proceed to review the school's racial policies generally?

ANSWER:

~~The Attorney General is authorized to discontinue the suit~~
~~the Attorney General~~
If he determines that the school has abandoned its racially discriminatory policy, ^{the suit would be discontinued.} However, if he determines that the school intends to maintain its racially discriminatory policy, and the specific act ^{of discrimination} ~~complained of~~ ^{was} reversed solely for the purpose of avoiding litigation, he would be ^{expected} ~~authorized~~ ^{required?} to continue the litigation. ^{Under such circumstances,} ~~Even under those facts,~~ the ^{elements} ~~requirements~~ of ^a Section 7408(a) ^{claim} ~~would be met, i.e., the Attorney General would allege~~ that the "educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition" -- ⁹⁰ would be met.

QUESTION (13):

If a school with a racially discriminatory policy under investigation by the Attorney General dropped the policy, would the Attorney General seek any sanction based on the period of time that the school had a racially discriminatory policy in effect?

ANSWER:

Accordingly,
If a school under investigation by the Attorney General drops its racially discriminatory policy, it is intended that the Attorney General would not seek any sanction based upon the time during which the school discriminated. The purpose of the declaratory judgment proceeding is to encourage schools to abandon discriminatory policies. In our view, a settlement by the school is as effective in this regard as a declaratory judgment.

QUESTION (14):

How will the IRS collect tuition tax benefits given in prior years to parents with children in a school with a racially discriminatory policy? Would an amount such as provided in Section 7428 be provided?

ANSWER:

If tuition tax credits are disallowed because a declaratory judgment against a school has become final, deficiencies with interest would be assessed against parents ~~who~~ who claimed tax credits with respect to tuition paid to the school during the three-year period of disallowance. The bill keeps the statute of limitations open with respect to these tuition tax credits, and the Internal Revenue Service may assess a deficiency with respect to them within three years after a judgment declaring a school to be discriminatory becomes final.

The bill does not amend section 7428 to allow a protected amount of credit to be claimed during the three year period. Upon a final adjudication of discrimination, tax credits for the three year period would be disallowed in full.

15. If a school is under investigation by the Attorney General, and makes a slight modification in its racially discriminatory policy, how would it affect action by the Attorney General?

ANSWER:

~~Again, whether and how to proceed is up to the discretion of the Attorney General. If there still is a racially discriminatory policy, in existence, the Attorney General may determine that it is advisable to continue investigating and filing a complaint against the school.~~

If the school under investigation continues to adhere to the ~~discriminatory~~ racially discriminatory policy, it is intended that the investigation, and subsequent litigation, will continue.

16. The bill requires a school's annual certification regarding its nondiscrimination policy to be made under penalty of perjury. What purpose does this requirement serve, and how will it be enforced?

ANSWER:

Initially, the statements will hopefully influence the schools, for pecuniary reasons, to abolish any discriminatory policies they may have previously maintained.

The annual statement is then a threshold test for claiming a tuition tax credit. Schools that cannot attest under the penalties of perjury that they have not discriminated during the calendar year will not ~~have tuition expenses for which a credit can be claimed~~ ^{qualify}.

Returns claiming the credit will be checked at IRS Service Centers for a copy of the statement. If the statement is not attached to the return, the return will be pulled and the credit will be disallowed.

The annual statement will also provide the Attorney General with additional weapons for prosecuting a discriminatory school. If the school has been filing annual statements, the Attorney General might have grounds for bringing a perjury prosecution, even if there has not been a private petition that

would allow him to bring a declaratory judgment proceeding. In addition, if there is a final court adjudication of discrimination by the school, the Attorney General may monitor the annual statements filed thereafter to see whether they are perjurious if the school has not changed its practices.

The Secretary of the Treasury can also alert the Justice Department to a statement that it has reason to believe is perjurious.

17. Will the school's annual statement regarding its nondiscriminatory policy be simply a conclusory statement, or would the Secretary, or the Attorney General, be authorized to require that the sworn statements describe the school's policies or practices in detail?

ANSWER:

It is intended that the annual statements track the language of the statute without further details. The school would declare that it has not followed a racially discriminatory policy during the calendar year and would indicate whether a declaratory judgment proceeding has been brought against it during that calendar year or either of the two preceding calendar years.

18. Will a school be required under this bill to publicize that it has a racially nondiscriminatory policy?

ANSWER:

The bill does not directly require a school to publicize that it has a nondiscriminatory policy in order for credits to be allowed, although the school will have to file an annual statement with the IRS and parents under the penalties of perjury that it has not followed a discriminatory policy during the calendar year.

Current IRS procedures in granting section 501(c)(3) exemptions to schools require schools to publicize annually that they do not have a discriminatory policy. Since a school must be exempt under section 501(c)(3) for a credit to be allowed, those schools that apply to the IRS for exemption must conform to IRS requirements.

Note:

Unincorporated church schools do not have to apply for exemption, so they do not have to publicize their policies as do separately incorporated schools, which must apply for exemption. However, they still must file the annual statement under this bill.

19. Under the bill, would religious schools be permitted to limit attendance to adherents of a particular religion? What sorts of religious limitations will be impermissible, if any?

ANSWER:

*the religion does not require
"adherents" to be of a particular race.*

Yes -- so long as ~~"adherents" to that particular religion~~
~~are not limited to a particular race.~~ In other words, a school may not use religion as a cover for discriminating on the basis of race.

QUESTION (20):

If a church school teaches a religious doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

ANSWER:

Yes.

~~The bill concerns schools, not churches. Unincorporated church schools, if they meet all the requirements of the bill concerning the definition of an educational institution, would qualify.~~

~~The Attorney General may bring a proceeding to disallow tax credits because a school follows a racially discriminatory policy. The bill provides an explicit definition of what it means to follow a discriminatory policy. If the church school does not follow a racially discriminatory policy as defined in the bill -- that is, if the church school does not refuse students on account of race, does not discriminate in its programs, etc. -- then presumably the Attorney General has no cause of action against the church school, no matter what it preaches or what its tenents are.~~

One of the requirements in the bill's definition of an educational institution is that the school (or the church in the case of an unincorporated church school) be tax exempt under section 501(c)(3). The extent to which a church school may discriminate and be exempt under section 501(c)(3) is one issue in the Bob Jones case. The bill does not affect the law under section 501(c)(3).

21. If a secular school teaches a secular doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

ANSWER:

~~See~~ ~~See~~ Yes. See answer to Question 20, which is the same whether or not the school is a church or secular school.

22. Will the Justice Department participate in the Bob Jones University and Goldsboro Christian Schools cases before the Supreme Court? What position will the Justice Department take?

ANSWER:

[IRS or DOJ must answer this.]

The United States is a party ^{to} the Bob Jones University and Goldsboro Christian Schools cases and ~~therefore~~ thus will participate in these cases before the Supreme Court. Briefly stated, the position of the United States in ^{the} Bob Jones and Goldsboro cases is (1) that the IRS is not statutorily authorized to deny tax-exempt status to racially discriminatory private schools, but (2) that ~~if the Supreme Court~~ such statutory authority, if it existed, would not contravene the Religion Clauses of the First Amendment to the United States Constitution.

RESPONSE TO QUESTIONS FROM NATIONAL OFFICE FOR BLACK CATHOLICS

The first question on racial quotas and the last question on refundability are assumed answered by Bill Barr.

Question 2. "Earlier this summer the Administration indicated it would propose further reductions in Title I of the Elementary and Secondary Education Act of 1965 over the next three years. These reductions will negatively affect both private and public school students.

"Does the Administration intend to implement these proposed reductions?"

Response. The proposed reduction in Chapter 1 funds (formerly Title I) is part of the Administration's economic recovery program that limits Federal expenditures. This limitation on Federal spending is a critical step for this nation if it is to maintain a sound economic base that strengthens both private and public sectors. The reduction in inflation last year retained some \$4 billion in elementary/secondary education "purchasing" power, an amount far greater than the reduction in Federal funds.

In addition to the general economic issue, Chapter 1 budget policy should be assessed in the context of the Federal role in education. First, proposed levels would provide nearly \$2 billion of Federal assistance and maintain a major Federal presence in compensatory education. The Administration also expects some savings to school districts in administrative costs and paperwork from recent legislative reforms to simplify excessive and burdensome requirements.

Second, many children who compose the Chapter 1 target population would benefit from tuition tax credits. Lower-income and middle-income families are the greatest users of nonpublic schools. In 1979, fully 54 percent of the students in private schools came from families with incomes below \$25,000.

Third, members of minority groups would also benefit significantly. A recent survey showed that 18.6 percent of the students in Catholic schools --the nation's largest private school system--were minority group members. Thus, tax credits would support Federal compensatory efforts, rather than conflict with them, by enabling less economically advantaged and minority families to provide the best quality education for their children.

Question 3. "Is the Administration committed to maintaining Federal support of public schools at levels comparable to previous Administrations?"

Response. No, but reductions in Federal education support must be considered in the larger context of the overall picture of elementary and secondary finance. These reductions--about 30 percent of Federal appropriations over two years--are only, on average, 3 percent of per

pupil spending in public schools. This percentage amount was exceeded by the purchasing power schools retained when inflation dropped 3.5 percent last year. That savings of purchasing power will be even greater this year. Income, sales, and property tax bases--the major sources of public school support--are also promoted through a sound economy.

Tax credits are not a "trade off" for education programs in the \$800 billion Federal budget any more than they are a substitute for other government activities in that budget. These credits are not a government "program" requiring grants, formulas, bureaucracies, and new Federal expenditures. Rather, tuition tax credits are a correction of an existing taxpayer inequity that supports the goal of a sound and equitable school finance system. All education--public as well as private--will benefit.

Question 4. "Allocation of Federal assistance to State and local governments is based upon per pupil cost formulas. While the Administration estimates that the loss of Federal revenues will approximate \$100 million during the first year, future losses in Federal taxes will dramatically rise after the first three years.

"Would the Administration be prepared to support additional allocations of impact funds to the States if a significant transfer of students from public to private schools should occur which would drastically reduce the public schools' ability to meet their administrative costs?"

Response. First, our major concern is with total educational resources for children, not solely administrative costs. Second, research does not indicate tuition tax credits would lead to a significant transfer of students from public to private schools. Third, tax credits would not place a financial burden on public school systems. Indeed, parents who send their children to private schools relieve the public schools of the costs of educating their children--without depriving the schools of the parents' local tax payments. Not only can this constrain the rise in taxes needed to finance public schools, but it can make more money per pupil available in the public system.

The savings can be significant. In Louisiana, for example, nonpublic schools educated 152,000 students in 1980-81, thereby reducing the cost of operating public schools in that State by \$300 million. Tax credits will ensure that these savings will continue and even increase.

In contrast, public schools would suffer if there were an influx of large numbers of former private school students. For instance, if only one-tenth of the private school population of nearly 5,000,000 students shifted to public schools, the cost to the public school system could increase by one billion dollars or more. It is doubtful whether most public schools could absorb such a cost increase and continue to maintain their current educational standards.

Question 5. "Would the Administration be prepared to issue a statement indicating its strong support for the maintenance of public education?"

Response. This Administration believes in a strong education system, both public and private. Americans have just reason for being proud of a public and private educational system unrivaled in the history of civilization. The enormous accomplishments of our people in their 206-year history as a nation is a tribute, in large measure, to the quality and diversity of educational opportunity available to them. The public schools have made a major contribution to these accomplishments.

But in recent years, many Americans--especially low-income and middle-income parents--could not afford to make a choice about their children's education. In particular, parents who prefer private alternatives to public education have been faced with a worsening double-burden of paying State and local taxes to support public schools in addition to the rising tuition payments required for their children who attend private schools.

Unless these problems are corrected, the quality and diversity which have been a hallmark of the American education system may further erode. To prevent that from happening, it is essential that we increase educational freedom of choice, improve tax equity, and provide greater competitive incentives for improving school quality. Tuition tax credits are an extremely effective means of helping achieve these objectives.

1. What is the Administration's current policy and practice regarding the issuance and revocation of tax-exempt status for private schools not maintaining racially nondiscriminatory policies as to students?

ANSWER:

The IRS is following the injunction in the Wright case that it cannot grant or restore tax exemptions to schools that discriminate. In accordance with Revenue Procedure 75-50, it is requesting information about discrimination in the application for exemption filed by schools.

If a school outside Mississippi that applies for an initial exemption were to fail the standard for racial discrimination in the revenue procedure, the IRS would hold it in suspense until the Bob Jones decision provided guidance in this area. Similarly, the IRS would hold a case in suspense where an existing exemption could be revoked on grounds of racial discrimination.

2. Pending the Supreme Court decision in Bob Jones and Goldsboro, is the IRS granting tax exemption under Section 501(c)(3) for new schools applying for tax exemption which discriminate based on race? Similarly, is the IRS now auditing schools which are already exempt to determine if they discriminate based on race? Please give information about the level of enforcement effort in these areas.

ANSWER:

The IRS is now both processing applications for exemption and auditing private elementary and secondary schools. In accordance with the Wright injunction, the IRS is neither granting nor restoring tax exemption under section 501(c)(3) for schools which discriminate based on race. Any case outside Mississippi, either on initial application for exemption or on audit, that might fail the standard for a racially nondiscriminatory policy under Revenue Procedure 75-50 would be held in suspense until the Bob Jones case is decided. Mississippi schools failing the standard would be processed in accordance with the injunction in Green v. Miller.

Applications for Tax Exemption

In January 1982, the IRS suspended all applications for exemption by private schools. That suspense was lifted in June 1982 in order to issue rulings to schools that did not discriminate.

Since June 1982, the IRS has issued 130 favorable rulings on applications for exemption by schools in cases which had been suspended since January and in which there was no issue of racial discrimination.

Audits

The IRS audited 303 private elementary and secondary schools in fiscal year 1977 and 230 schools in fiscal year 1978. From July 1978 until May 1980, the IRS suspended examinations of private elementary and secondary schools, initially because of the publication of the 1978 and 1979 proposed revenue procedures concerning racial discrimination and subsequently because of the effect of the Dornan and Ashbrook appropriation riders. In May 1980, a limited private school examination program was instituted primarily to audit schools, using standards permitted by the riders, in those situations where there were indications of noncompliance or where complaints were received. In January 1982, a suspense was reinstituted but was partially lifted in July 1982 so that cases of schools that do not discriminate could be closed. As of July 1982, the IRS had a total of 113 audits that had been suspended previously.

As a result of the 1980 court order in the case of Green v. Miller, the IRS undertook a survey of all tax-exempt private schools located in Mississippi. As a consequence, a number of examinations were conducted resulting in five revocations, all of which are now pending in declaratory judgment actions before the U.S. Tax Court.

3. For the period between the enactment of this bill and a decision by the Supreme Court in Bob Jones, would tax credits be allowable for tuition payments to private schools failing to qualify for exemption because of failure to maintain and publicize a racially nondiscriminatory policy, as required in Rev. Proc. 75-50?

ANSWER:

After the bill is enacted, there would be two cases in which tuition tax credits would be disallowed because of racial discrimination. One would be a case in which the Attorney General is successful in seeking a declaratory judgment that the school has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition. This action does not depend upon the Bob Jones case and could be brought between the date of enactment and a decision by the Supreme Court. Obviously, tuition tax credits would not be allowable where a judgment had been won by the Attorney General.

The ultimate allowance of tuition tax credits for discriminatory schools where there is no declaratory judgment proceeding depends upon the Bob Jones decision. If these

schools are held to be tax-exempt under the Bob Jones decision and legislation denying tax exemptions to such schools is not passed by Congress, tuition tax credits would be allowable in those cases.

There are three situations in which tax credits would be disallowed during the interim before the Bob Jones decision:

1. The school applies for its initial exemption and fails to meet the standards of Revenue Procedure 75-50 for racial discrimination. These cases would be held in suspense until a decision were rendered in Bob Jones. If a case is held in suspense for more than 270 days, the school could bring a declaratory judgment proceeding in the Tax Court asking the Court to declare it tax-exempt (section 7428). If the Tax Court rendered its opinion before the Bob Jones decision, the allowance or disallowance of tuition tax credits would depend upon the Tax Court decision.
2. A school that has already been given its exemption fails to meet the revenue procedures. The possible revocation of the exemption would be held in suspense until the Bob Jones decision, but in the interim the school continues to be exempt and credits may be claimed. If the Bob Jones decision would cause the school to lose its exemption,

presumably the credits could be disallowed retroactively for open years.

3. Unincorporated church schools do not have to apply for exemption; they are automatically tax-exempt as churches. These schools, like the schools in case 2, continue to be exempt and tuition tax credits could be claimed with respect to them. Again, if the Bob Jones decision were to render these schools nonexempt, tuition tax credits could be disallowed retroactively for open years.

4. Assuming that the Supreme Court affirms the Bob Jones and Goldsboro cases, and decides that federal tax-exemption cannot be granted to private schools maintaining racially discriminatory policies, would the enactment of this bill have any effect on the procedures and standards applicable in determining whether a school qualifies for tax-exemption?

ANSWER:

No. This bill has no effect on the law under section 501(c)(3).

5. Assuming that this bill is enacted, and that the Bob Jones and Goldsboro cases are affirmed, would the IRS be required to deny tax-exempt status, and thereby deny tuition tax credits, for a school that fails to maintain a racially nondiscriminatory policy as to students?

ANSWER:

Yes. If the Bob Jones case is affirmed and holds that the IRS is required to deny tax exemption to a school that racially discriminates, then the IRS will do so. Under the bill, no tax credits are allowable if a school is not exempt under section 501(c)(3).

6. S. 2673 vests exclusive enforcement responsibility for certain of the bill's nondiscrimination rules with the Attorney General. Will approval of this bill imply any Congressional view on the issue of whether a private individual has standing to challenge the tax-exempt status of an institution? This issue may be reviewed by the Supreme Court in the Wright case.

ANSWER:

We do not believe that the bill has any implications about private rights of action in challenging the tax-exempt status of an institution. The bill does not affect the law under section 501(c)(3). Further, the new proceeding by the Attorney General is not a suit to deny tax exemption, but rather is a suit concerning only the disallowance of tuition tax credits on a ground separate and apart from tax exemption.

The government's position in the Wright case is clear and a matter of public record in its brief to the Supreme Court in this most important case. A private individual should not be able to challenge the tax-exempt status of an institution, and this bill contains no implications to the contrary.

7. Under the bill, if the Attorney General prevails in a declaratory judgment proceeding, credits are disallowed for three years beginning with the calendar year the lawsuit is commenced. If litigation lasts longer than three years, and the school's practices do not change, is it intended that credits would begin to be allowable merely because the three-year period has elapsed? (Question A.) Similarly, if the school continues to maintain a discriminatory policy, will the Attorney General be required to bring a new lawsuit every three years? (Question B.) If so, will the subsequent lawsuit be authorized only upon the receipt of a petition by a victim of discrimination? (Question C.)

ANSWER:

A. Yes. The three-year penalty is imposed for a proven act of discrimination and a proven racially discriminatory policy. For the penalty to extend for an indefinite period of years would discourage the school's use of the judicial process, i.e., its right to appeal. If the school persists in discriminating, it would be relatively easy for a complainant to file another complaint, considering that one has already been filed. The litigation burden will always fall on the Attorney General, not the complainant.

B. Yes. A new lawsuit must be filed in order to prove judicially that the school is still pursuing a racially discriminatory policy.

C. Yes.

8. The bill "authorizes" declaratory judgment proceedings when a petition is filed by an alleged victim of racial discrimination. If the Attorney General determines that the claim has merit, will he be required to bring a lawsuit, or is this enforcement procedure wholly discretionary?

ANSWER:

If the Attorney General finds the requisite "good cause," and he cannot settle the claim, it is intended that he will bring a declaratory judgment proceeding against the school.

The declaratory judgment proceeding and the bill itself are intended to force schools to abandon racially discriminatory policies. If the Attorney General can settle a suit by having a school revise its policy, we believe that that result is as desirable and as effective as a final court judgment.

9. Will the Attorney General's lawsuit be concerned only with the specific act of discrimination alleged in the petition, or is the petition a triggering device, authorizing the Attorney General and the court to review the school's racial policies in general?

ANSWER:

The Attorney General must seek a declaratory judgment that the school has followed a racially discriminatory policy and that the school has, under that policy, discriminated against the person filing the petition. Although the Attorney General may investigate the school's policies after a petition has been filed with him, if the school's policies are discriminatory but the Attorney General concludes that no act of discrimination has in fact occurred, he cannot bring a declaratory judgment proceeding.

10. When the Attorney General permits the school to comment on allegations of racial discrimination during the period before filing suit, will the individual petitioner also be permitted to participate?

ANSWER:

The individual petitioner will have the first opportunity to provide information to the Attorney General as to the substance of his complaint. During the course of the investigation, the Attorney General could be expected to talk to both the school and the petitioner numerous times, depending on the complexity of the complaint.

11. Will the Attorney General be permitted to maintain the confidentiality of the individual petitioner?

ANSWER:

No. The Attorney General must promptly give a school written notification of the petition and the allegations against the school. Since the Attorney General would seek a judgment that the school has discriminated against the person filing the petition, the school must know the specific instance of discrimination that is being alleged in order for it to defend itself.

12. If a school agrees to admit an individual, who petitioned claiming that he was refused admission on account of race, would the school's correction of the specific act alleged in the petition render the Attorney General's lawsuit moot, or could the Attorney General and the court proceed to review the school's racial policies generally?

ANSWER:

If the Attorney General determines that the school has abandoned its racially discriminatory policy, the suit would be discontinued. However, if he determines that the school intends to maintain its racially discriminatory policy, and the specific act of discrimination was reversed solely for the purpose of avoiding litigation, he would be expected to continue the litigation. Under such circumstances, the elements of a Section 7408(a) claim -- that the "educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition" -- would be met.

13. If a school with a racially discriminatory policy under investigation by the Attorney General dropped the policy, would the Attorney General seek any sanction based on the period of time that the school had a racially discriminatory policy in effect?

ANSWER:

The purpose of the declaratory judgment proceeding is to encourage schools to abandon discriminatory policies. In our view, a settlement by the school is as effective in this regard as a declaratory judgment. Accordingly, if a school under investigation by the Attorney General drops its racially discriminatory policy, it is intended that the Attorney General would not seek any sanction based upon the time during which the school discriminated.

14. How will the IRS collect tuition tax benefits given in prior years to parents with children in a school with a racially discriminatory policy? Would an amount such as provided in section 7428 be provided?

ANSWER:

If tuition tax credits are disallowed because a declaratory judgment against a school has become final, deficiencies with interest would be assessed against parents who claimed tax credits with respect to tuition paid to the school during the three-year period of disallowance. The bill keeps the statute of limitations open with respect to these tuition tax credits, and the Internal Revenue Service may assess a deficiency with respect to them within three years after a judgment declaring a school to be discriminatory becomes final.

The bill does not amend section 7428 to allow a protected amount of credit to be claimed during the three-year period. Upon a final adjudication of discrimination, tax credits for the three-year period would be disallowed in full.

15. If a school is under investigation by the Attorney General, and makes a slight modification in its racially discriminatory policy, how would it affect action by the Attorney General?

ANSWER:

If the Attorney General determines that the school under investigation continues to adhere to the racially discriminatory policy, it is intended that the investigation, and subsequent litigation, will continue.

16. The bill requires a school's annual certification regarding its nondiscrimination policy to be made under penalty of perjury. What purpose does this requirement serve, and how will it be enforced?

ANSWER:

Initially, the statements will hopefully influence the schools, for pecuniary reasons, to abolish any discriminatory policies they may have previously maintained.

The annual statement is then a threshold test for claiming a tuition tax credit. Schools that cannot attest under the penalties of perjury that they have not discriminated during the calendar year will not qualify for credits.

Returns claiming the credit will be checked at IRS Service Centers for a copy of the statement. If the statement is not attached to the return, the return will be pulled and the credit will be disallowed.

The annual statement will also provide the Attorney General with additional weapons for prosecuting a discriminatory school. If the school has been filing annual statements, the Attorney General might have grounds for bringing a perjury prosecution, even if there has not been a private petition that

would allow him to bring a declaratory judgment proceeding. In addition, if there is a final court adjudication of discrimination by the school, the Attorney General may monitor the annual statements filed thereafter to see whether they are perjurious if the school has not changed its practices.

The Secretary of the Treasury can also alert the Justice Department to a statement that it has reason to believe is perjurious.

17. Will the school's annual statement regarding its nondiscriminatory policy be simply a conclusory statement, or would the Secretary, or the Attorney General, be authorized to require that the sworn statements describe the school's policies or practices in detail?

ANSWER:

It is intended that the annual statements track the language of the statute without further details. The school would declare that it has not followed a racially discriminatory policy during the calendar year and would indicate whether a declaratory judgment proceeding has been brought against it during that calendar year or either of the two preceding calendar years.

18. Will a school be required under this bill to publicize that it has a racially nondiscriminatory policy?

ANSWER:

The bill does not directly require a school to publicize that it has a nondiscriminatory policy in order for credits to be allowed, although the school will have to file an annual statement with the IRS and parents under the penalties of perjury that it has not followed a discriminatory policy during the calendar year.

Current IRS procedures in granting section 501(c)(3) exemptions to schools require schools to publicize annually that they do not have a discriminatory policy. Since a school must be exempt under section 501(c)(3) for a credit to be allowed, those schools that apply to the IRS for exemption must conform to IRS requirements.

Unincorporated church schools do not have to apply for exemption, so they do not have to publicize their policies as do separately incorporated schools, which must apply for exemption. However, they still must file the annual statement under this bill.

19. Under the bill, would religious schools be permitted to limit attendance to adherents of a particular religion? What sorts of religious limitations will be impermissible, if any?

ANSWER:

Yes -- so long as the religion does not require "adherents" to be of a particular race. In other words, a school may not use religion as a cover for discriminating on the basis of race.

20. If a church school teaches a religious doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

ANSWER:

Yes. If the church school does not follow a racially discriminatory policy as defined in the bill -- that is, if the church school does not refuse students on account of race, does not discriminate in its programs, etc. -- then the Attorney General has no cause of action against the church school, no matter what it preaches or what its tenets are.

21. If a secular school teaches a secular doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

ANSWER:

Yes. See answer to Question 20, which is the same whether or not the school is a church or secular school.

22. Will the Justice Department participate in the Bob Jones University and Goldsboro Christian Schools cases before the Supreme Court? What position will the Justice Department take?

ANSWER:

The United States is a party to the Bob Jones and Goldsboro cases and thus will participate in those cases before the Supreme Court. Briefly stated, the position of the United States in the Bob Jones and Goldsboro cases is (1) that the IRS is not statutorily authorized to deny tax-exempt status to racially discriminatory private schools, but (2) that such statutory authority, if it existed, would not contravene the Religion Clauses of the First Amendment to the United States Constitution.

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