Collection: Barr, William Files
Folder Title: [Tuition Tax Credit Bill: Anit-Discrimination Issues] (6)
Box: 13

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Tuition Tax Credit Update

Tomorrow the Senate Finance Committee will have what is hoped will be its "final" markup on the tuition tax credit bill.

Senators Moynihan and Bradley, and to a lesser extent Packwood, have expressed concern over the anti-discrimination provision. I spent about 20 hours toward the end of last week and over the weekend explaining the provision to various Senate staffers and preparing Administration witnesses who will be required to defend the provision.

Tomorrow Brad Reynolds, Dan Oliver, and Buck Chapoton will appear before the committee to explain and defend the anti-discrimination provision.

The Senate committee appears to be considering three amendments to the anti-discrimination provision:

1. Senator Moynihan has suggested that his concerns would be allayed if a new provision was added authorizing the GAO (or some other entity) to conduct a study of the effectiveness of the anti-discrimination provision after it has been in place for a period of time (e.g. 4 years). Even without this provision, Congress could order a study at any time; so it is really cosmetic.

2. As now written, the bill provides that, if the Attorney General finds "good cause", he is "authorized" to bring suit against the school. Senators Bradley and Packwood would like to change the word "authorized" to "shall" or "authorized and directed". This would be in line with other civil rights statutes, and Justice says that it will still preserve the inherent discretion of the Attorney General, which is embodied in the threshold requirement that he "find good cause".

3. A number of Senate staffers would like to make it clear that the annual statements under oath that are filed with the Secretary of the Treasury can be made available to the Attorney General either on the Secretary's own motion or upon request by the Attorney General. This was our intent all along,

and we have no objection to making it explicit.

All of these changes have been discussed with representatives of the pro-credit coalition and with Bill Ball, one of their leading lawyers. No objections have been raised. In addition, the suggested amendments have been reviewed by Brad Reynolds, Dan Oliver, and Buck Chapoton, and they have no problem with them. So far, we have not agreed to any of these changes. It is my judgment, however, that we should do so if they will satisfy Senators Moynihan and Bradley. None of them are substantive.

8/17/82

BRADLEY AMENDMENTS TO S.2673,
THE TUITION TAX CREDIT BILL.

A majority of Finance Committee members have raised concerns about S.2673's anti-discrimination provisions. The amendments I propose to offer are directly responsive to the Committee's desire to ensure that those provisions are ironclad.

Specifically, I propose the following:

1. The Internal Revenue Service shall have concurrent authority with the Attorney General to enforce the bill's prohibition against allowing tuition tax credits to schools that follow a racially discriminatory policy and to undertake activities connected with enforcement.

2. The Secretary of the Treasury is authorized and directed to establish procedures for (1) auditing schools that participate in the tuition tax credit program, and (2) disallowing the credit where there is a final determination that a school follows a racially discriminatory policy. Such procedures shall be established within six months of the date of enactment of this legislation.

3. The Committee Report accompanying S.2673 shall state that the Committee intends the IRS to design and implement its audit procedures in a manner that maximizes compliance with the legislation's anti-discrimination provisions.

4. The Secretary is authorized and directed to prescribe procedures and standards whereby a school that has become ineligible for tuition tax credits because it has been determined to follow a racially discriminatory policy may reestablish eligibility for the tax credit.

5. Such standards shall include a requirement that a school demonstrate clearly and convincingly that it is not racially discriminatory in its educational policies, admissions policies, scholarship and loan programs, athletic programs, extra-curricular programs, or other programs administered by the school.

6. The Committee Report shall state that the Committee intends that a clear and convincing demonstration that a school is not discriminating shall include such evidence as: proof of active and vigorous recruitment programs to secure black and other minority

stressing the school's open admissions policy; proof of meaningful communication between the school and minority groups and leaders within the community; and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are open to students of all races upon the same standard of admission.

7. In the event a school is determined, in an administrative or judicial proceeding, to follow a racially discriminatory policy, no credit shall be allowed in the year in which the action was commenced and in all subsequent years until such time as the school clearly and convincingly demonstrates that it has ceased discriminating.

8. The legislation shall authorize and direct the Attorney General upon petition by a third party alleging that a school follows a racially discriminatory policy and upon finding good cause to bring an action seeking declaratory judgment that the school is discriminating.

9. The legislation shall authorize a private right of action to seek a declaratory judgment that a school has followed a racially discriminatory policy by persons alleging they are harmed by the school's participation in the tuition tax credit program.

10. Finally, the Committee Report shall state that the Committee intends that the petitioner shall be notified of (1) the school's comments on his or her allegations regarding its racially discriminatory policies, and (2) the school's arguments showing that the discrimination does not exist or has been abandoned.

SUMMARY

-- Gives IRS and the AG concurrent authority to enforce the legislation's anti-discrimination provisions.

-- Requires that the IRS prescribe standards and procedures so schools that have abandoned their discriminatory policies can reestablish eligibility for tuition tax credits.

-- Disallows the credit, upon a final determination that a school has discriminated, from the year in which the action was commenced until the time a school demonstrates it has ceased discriminating.

-- Authorizes the AG to act on petitions by third parties as well as those alleging they have been discriminated against

-- Creates a private right of action to enforce the legislation's anti-discrimination provisions by allowing those alleging harm from a school's eligibility for tuition tax credits to seek a declaratory judgment that the school has followed a racially discriminatory policy.

Dornan + Ashbrook amendments

8/17/82

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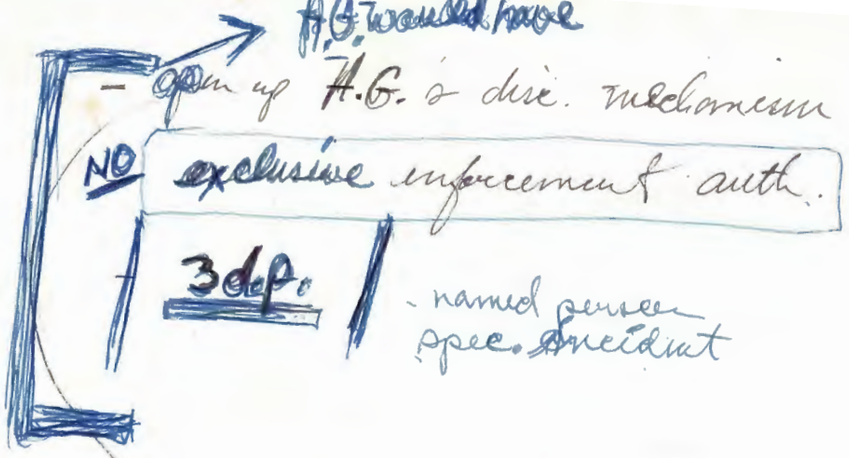
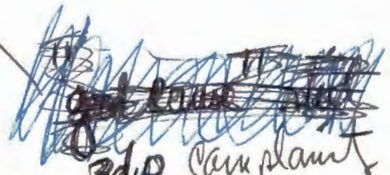
S. 2024





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Chuck Cooper -

Gary Jones -

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8/17/82

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OFFICE OF
THE UNDER SECRETARY OF EDUCATION

July 9, 1982

NOTE FOR BILL BARR

Attached are the answers on tuition tax credits you requested. We have omitted answering the first and last question per your note.

Sorry we couldn't get back to you by July 6 but as you know, some of the language was still in the process of being cleared by your folks over there.

Call if we can be of further assistance.

Gary L. Jones

Attachment

file

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM H. GREEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 69-1355
	)	
G. WILLIAM MILLER, et al.,	)	
	)	
Defendants.	)	

ORDER CLARIFYING AND AMENDING COURT'S ORDER AND PERMANENT INJUNCTION OF MAY 5, 1980

Upon consideration of defendants' motion for clarification of this Court's Order and Permanent Injunction of May 5, 1980, and it now appearing that such clarification is appropriate, this Court states that it was its intention that the Order and Permanent Injunction should apply only to Mississippi private schools or the organizations that operate them, which have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating. It was not this Court's intention to include in its Order Mississippi private schools which had not been determined in adversary or administrative proceedings to be racially discriminatory, or which were established or expanded prior to the time the public school districts in which they are located or which they serve were desegregating. In order to make clear the Court's intention paragraphs (1), (3), (4), (6), (7) and (8) are amended to read as follows:

> (1) which have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs.
>
> (3) Provision II(A)(2) of the Permanent Injunction is amended to require that as to schools set forth in paragraph (1) printed notices must be published on a regular basis no less than four (4) times annually for a period of three (3) years in a newspaper of general circulation serving the area from which the school draws its student body.

(4) Provision II(A)(2)(a) is further amended to require that as to schools set forth in paragraph (1) any radio advertisements used by a school to publicize its policy of nondiscrimination must be broadcast with sufficient frequency to be reasonably designed to reach its intended audience in the minority community. A school employing this method of publicizing its nondiscriminatory policy must supply the IRS with the dates and times of transmission; the radio station used; the tape and a written transcript of the announcement; and both the number of times the message was broadcast on a particular day and the number of times it was broadcast during the year.

(6) Provisions II(B)(1)-(3) are further amended to require that as to schools set forth in paragraph (1) the following information be supplied on an annual basis for a period of three (3) years:

(a) the race of board members;

(b) the grades served by the school from its inception to the present;

(c) the date the school opened for the first time and grades served upon opening;

(d) the dates additional grades were added;

(e) whether the school is presently recognized as exempt from federal income taxes;

(1) the date on which the exemption was granted;

(f) whether the school received textbooks from the State of Mississippi under the State's textbook program;

(1) whether the school ever withdrew from such program or whether it was held ineligible to receive textbooks in any judicial or administrative proceeding;

(g) whether any tuition due the school has been waived;

(1) if so, the number of students, by race, granted such waiver during each school year.

(7) The defendants are enjoined from continuing in effect any ruling recognizing tax-exempt status of any Mississippi private school as set forth in paragraph (1) herein unless the showing and information required by the Permanent Injunction as amended shall be made and supplied within 120 days from the date of this Clarification Order, or such additional period, not to exceed 120 days, as defendants may provide on cause shown in order for the school to make the showing or supply the information required hereunder.

(8) The defendants are further enjoined to conduct a survey of all Mississippi private schools as set forth in paragraph (1) herein, including all such church-related schools which come under said paragraph, obtaining the information required by the permanent injunction, as amended, described herein, which shall be collected and maintained on an annual basis for each school for a period of three (3) years.

UNITED STATES DISTRICT JUDGE

DATED: JUN 2 - 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 5 1980

JAMES F. DAVEY, Clerk

WILLIAM H. GREEN, et al.,

Plaintiffs,

v.

G. WILLIAM MILLER, et al.,

Defendants.

Civil Action No. 69-1355

ORDER AND PERMANENT INJUNCTION

This matter having come before this Court on plaintiffs' motion for an order to enforce the decree in Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971), and for further declaratory and injunctive relief, and the plaintiffs having moved for summary judgment, and the defendants having moved for summary judgment, and this Court having considered the entire record including depositions, answers to interrogatories, requests for admissions. pleadings and other documents submitted by the parties, and oral argument thereon, and it appearing to this Court that there is no genuine issue of material fact, and it further appearing to this Court that the defendants have not violated the order of June 30, 1971, but that said order requires supplementation and modification, it is hereby

ORDERED, that the permanent injunction entered by this Court on June 30, 1971 remains fully in effect but is supplemented and modified as follows:

Defendants G. William Miller, as Secretary of Treasury, and Jerome Kurtz, as Commissioner of Internal Revenue, their agents, servants, employees, attorneys, and successors, are enjoined and restrained from according tax-exempt status to, and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that that operate them, which:

(1) which have been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs.

(2) The existence of conditions set forth in Paragraph (1) herein raises an inference of present discrimination against blacks. Such inference may be overcome by evidence which clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by such school's policies and practices. Such evidence might include, but is not limited to, proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of continued, meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community concerning the school's nondiscrimination policies, and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

In order to ensure that defendants have information upon which they can make a preliminary judgment as to whether a private school is actually practicing racial discrimination, the following modifications are made to this Court's 1971 Permanent Injunction:

(3) Provision II(A)(2) of the Permanent Injunction is amended to require that printed notices must be published on a regular basis no less than four (4) times annually for a period of three (3) years in a newspaper of general circulation serving the area from which the school draws its student body.

(4) Provision II(A)(2)(a) is further amended to require that any radio advertisements used by a school to publicize its policy of nondiscrimination must be broadcast with sufficient frequency to be reasonably designed to reach its intended audience in the minority community. A school employing this method of publicizing its nondiscriminatory policy must supply the IRS with the dates and times of transmission; the radio station used; the tape and a written transcript of the announcement; and both the number of times the message was broadcast on a particular day and the number of times it was broadcast during the year.

(5) Provisions (II)(B)(1)-(3) are amended to require that the information required must be supplied by each school as set forth in Paragraph (1) herein on an annual basis for a period of three (3) years. The IRS shall not approve or continue the tax-exempt status of any such Mississippi private school which fails to supply any of the required data or other information.

(6) Provisions II(B)(1)-(3) are further amended to require that the following information be supplied on an annual basis for a period of three (3) years:

(a) the race of board members;

(b) the grades served by the school from its inception to the present;

(c) the date the school opened for the first time and grades served upon opening;

(d) the dates additional grades were added;

(e) whether the school is presently recognized as exempt from federal income taxes;

(1) the date on which the exemption was granted;

(f) whether the school received textbooks from the State of Mississippi under the State's textbook program;

(1) whether the school ever withdrew from such program or whether it was held ineligible to receive textbooks in any judicial or administrative proceeding;

(g) whether any tuition due the school has been waived;

(1) if so, the number of students by race, granted such waiver during each school year.

(7) The defendants are enjoined from continuing in effect any ruling recognizing tax-exempt status of any Mississippi private school as set forth in Paragraph (1) herein unless the showing and information required by the Permanent Injunction as amended shall be made and supplied within 120 days from the date of this Order, or such additional period, not to exceed 120 days, as defendants may provide on cause shown in order for the school to make the showing or supply the information required hereunder.

(8) The defendants are further enjoined to conduct a survey of all Mississippi private schools as set forth in Paragraph (1) herein, including all such church-related schools, obtaining the information required by the permanent injunction, as amended, described herein, which shall be collected and maintained on an annual basis for each school for a period of three (3) years.

(9) The defendants are enjoined to take all reasonable steps to determine which, if any, church-related schools in Mississippi would come under Paragraph (1) herein.

(10) The defendants are further enjoined to make annual reports to this Court specifying the steps taken to implement the injunctive decree. The first report is to be made at the expiration of six (6) months from the date of this order, and thereafter on July 1 of each succeeding year for a period of three (3) years. It is further,

ORDERED, that, except for the modifications herein, the plaintiffs' motion for summary judgment be, and the same hereby is, denied; and that the defendants' motion for summary judgment be, and the same hereby is, denied.

George L. Hart, Jr.
UNITED STATES DISTRICT JUDGE

Dated: MAY 5- 1980

DOCUMENT NO. 090716 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/18/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Changes Agreed to in the Non-discrimination Provisions of S. 2673, The President's Tuition Tax Credit Bill

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☒	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☒	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

/

Xc Bill Barr
Bob Carleson

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 16, 1982

TO: Ed Harper
Ed Meese

FROM: Ken Duberstein Ken D.
Pam Turner

SUBJECT: Changes Agreed to in the Non-discrimination Provisions of S. 2673, the President's Tuition Tax Credit Bill

After consultation with representatives of the Tuition Tax Credit Coalition, we have agreed to one language change in the bill and two additional provisions. None of these changes the policy of the non-discrimination provisions as drafted by the Administration.

The language change occurs on page 11 of S. 2673, line 24, after the word "authorized" add the clause "and is directed". Department of Justice lawyers indicated that this language change has no real impact on the responsibilities of the Attorney General. The critical finding by the Attorney General is "good cause". Adding the language "directing" him to bring an action comports with existing civil rights statutes, some of which "direct" the Attorney General to bring certain cases after he has made a finding of "good cause". Both Senators Dole and Bradley share an interest in this particular change.

In addition, we have agreed in principal to a study of the effectiveness of these non-discrimination provisions at some point in the future. Senator Moynihan has suggested such a study. The specifics of who will conduct the study, etc. have not been finalized, although Moynihan has suggested the General Accounting Office conduct the study. Again, Coalition representatives do not have a problem with adding this provision.

Finally, we have agreed to add language which clarifies that the Departments of Treasury and Justice should exchange information regarding evidence of discriminatory activities by schools where parents claim tuition tax credits. Both Departments advise that they would exchange this information anyway and, therefore, have no problem with adding this provision.

enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses;

"(C) education below the first-grade level, such as attendance at a kindgergarten, nursery school, or similar institution; or

"(D) education above the twelfth-grade level.".

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

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

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) IN GENERAL.—Upon petition by a person who alleges that he has been discriminated against under a racially discriminatory policy of an educational institution, the Attorney General is authorized, and is directed upon finding good cause, to bring an action against the educational institution in the United

CEF

Louisiana Federation
CITIZENS FOR EDUCATIONAL FREEDOM
P. O. Box 53244 • New Orleans, La. 70153-3244 • (504) 522-7469

file
TTC

August 23, 1982

Mr. Jack Burgess
Office of Public Liaison
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear Jack:

Enclosed is an analysis which will appear in the Clarion Herald, archdiocesan newspaper, this week. It was done by Emile Comar, whom you met at the White Hosue briefing for editors on tuition tax credits.

The "Bradley-Moynihan" amendments are more onerous than the 1978 rules and regulations which were proposed by the IRS. Not only are they oppressive, but from a non-lawyer, appear to fly into the face of the entanglement edict set down by the U. S. Supreme Court.

It doesn't make too much sense to me that not one supporter of tuition tax credits requested the "Bradley-Moynihan" amendments,yet these two "strong advocates" to tuition tax credits are pushing their amendments which will most certainly kill the legislation.

Hope you find the analysis interesting reading.

With best wishes, I am

Sincerely,

Kirby J. Ducote
Executive Director

KJD:js

cc: Len DeFiore

Comar
Analysis

By Emile Comar
Executive Editor

If Sen. Bill Bradley of New Jersey is -- as he claims -- a supporter of tuition tax credits, he has a strange way of showing it.

Bradley, the ex-basketball great turned Democratic senator, has offered a long series of amendments to the tuition tax credit plan of Republican President Reagan.

If the amendments were to be adopted, the Internal Revenue Service would take over control of Catholic and other nonpublic schools.

As a result of Bradley's proposed amendments and the implications in them, the Senate Finance Committee called off a meeting Aug. 18 at which time the tuition tax credit plan -- according to our best count -- had a good chance of getting out of the committee to the Senate floor.

All that's been changed, and the Finance Committee will be faced with a delay until after the Congressional Labor Day recess ends Sept. 8. After then, only four or five weeks remain before Congress quits for the Fall elections.

Under the heading of "strengthening" the already tight anti-discrimination language in the Republican administration bill calling for tuition tax credits at the elementary and high school level, Bradley has, thus far, successfully sidetracked the plan.

We know not whether Bradley is a naive freshman Senator or a Democratic loyalist who does not want Republicans to get credit for passing tuition tax credits.

What we do know is that the tax credit plan will fail -- and should fail -- if Bradley is successful on his 10 proposals.

Among other things, Bradley would:

1. Give the IRS concurrent authority iwth the U. S. Attorney General to enforce the bill's prohibition against schools which have a racially discriminatory policy.

2. Authorize the secretary of the treasury to establish procedures for auditing schools in which students using tax credits are enrolled.

3. Direct IRS to design and implement its audit procedures in order to maximize compliance with the legislation's anti-discriminatory provisions.

4. Direct that schools at which tuition-tax-credit users are enrolled shall provide "proof of active and vigorous recruitment programs to secure Black and other minority students; proof of continued, meaningful public advertisements stressing the school's open admissions policies; proof of meaningful communication between the school and minority groups and leaders within the community; and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are open to students of all races upon the state standard of admission." (Let the bureaucrats get ahold of that.)

There are six other provisions but the above four give you the idea -- that Bradley wants to do now with his amendments what IRS tried unsuccessfully to do on its own in 1978.

At that time, in a move strongly opposed by the Education Committee of the Louisiana Catholic Conference, IRS attempted by administrative procedures to set racial quotas for Catholic and other nonpublic schools,no matter the religious affiliation of the

students, Further, the IRS regulations would have placed racial quotas on teachers, no matter whether the teachers were of the same faith as the school in which he or she taught or whether that teacher was acceptable to the school.

Then as now, the proposals to bind IRS to the day-to-day operation of Catholic and other nonpublic schools is a slick method of eliminating pluralism in education by making "big brother" in Washington the monitor of all schools.

Then as now, the proposals have nothing to do with anti-discrimination, for the Reagan proposal as written and as approved by many religious faiths -- including the United States Catholic Conference -- has strong anti-discrimination language.

Sen. Bob Packwood, R-Ore., a strong liberal, told the Senate Finance Committee the bill's three-tiered anti-discrimination language is at least as strong as in other federal statutes.

Sen. Bradley must know that his proposals would render the tuition tax credit proposal unconstitutional on its face since it would involve the government in the everyday operation of Catholic schools in violation of the impermissible "entanglement provisions of previous U.S. Supreme Court rulings.

The opposition groups to tuition tax credits and to the rights of parents to feely choose the value system under which children are to be taught will cheer Bradley, support his amendments, and sign the death knell of credits this session.

The supporters of tuition tax credits must beware of disastrous amendments which come forth in the guise of "anti-discrimination" language.

Catholic schools of the Archdiocese of New Orleans have nothing to hang their heads about when it comes to admission or education policies.

More than half the Catholic elementary school population in New Orleans is Black.

We don't need the IRS, Sen. Bradley, or a horde of Washington bureaucrats to tell us what's right. We were integrating schools two years before the Congress got around to adopting the civil rights act.

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