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File - TTC Post 8/27/82

Tuition Tax Credits in Trouble

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That has troubled some senators who strongly back tuition tax credits, such as Sens. Bill Bradley (D-N.J.) and Daniel Patrick Moynihan (D-N.Y.). Sen. Bradley has proposed an amendment, which seems to have majority support on the Finance Committee, to give the IRS enforcement authority. But Bob Baldwin, a lobbyist representing several groups on the religious right, opposes this as a "killer amendment," and says Christian school groups "are not going to give the IRS or any other government bureaucracy an iron boot that allows them to tramp over schools and parents."

The "iron boot" he is talking about is the authority the IRS had by virtue of congressional legislation and a regulation passed in the Nixon administration denying tax exemptions for Jim Crow schools. That was settled policy, widely accepted across the nation, until Jan. 8 of this year, when President Reagan, acting at the behest of support-

ers of institutions such as Bob Jones University, rescinded the regulation. After the furor (which almost anyone but the administration officials responsible might have predicted) did in fact break out, the president publicly regretted his action and asked Congress to overturn it.

There is, of course, no good reason why the government, through tax exemptions or tax credits, should subsidize segregated schools. If some groups on the religious right prefer no tuition tax credits at all to a tuition tax credit proposal that does not aid segregated schools, that tells us just about everything we need to know about their priorities: they care more about promoting segregation than about helping private schools generally. Such motives stand in vivid contrast to those, for example, of many members of the Catholic hierarchy, who have worked hard to make sure that their schools do not serve as all-white havens for parents who wish to avoid school integration.

The Reagan administration now has to choose which it wants more: a tuition tax credit bill or an endorsement of segregated private schools. A bill without an IRS enforcement provision is certain to be defeated in Congress; a bill with such a provision has some chance of passage. Does the administration genuinely support the tuition tax credit idea? Or has it just embraced this proposal to win political points with two disparate groups—Catholics and others who run integrated private schools and those who want to promote racial segregation—whose interests are suddenly in conflict? We shall see when the administration responds to Sen. Bradley's amendment.

Reply to Washington Post editorial on tuition tax credits,

8/27/82

The Post editorial against President Reagan's tuition tax credit bill grossly distorts the facts. Because the bill "does not provide for enforcement by the IRS," the Post concludes, the bill constitutes "an endorsement of segregated private schools."

What the editorial never mentions is that the President's bill does provide for enforcement by the Justice Department. The bill gives the Attorney General every tool he needs to bring suit against a racially discriminatory school so that it cannot benefit from the credits.

The editorial also never mentions the IRS enforcement role that is contained in the President's bill. Only if children attend tax-exempt private schools can parents benefit from tuition tax credits.

President Reagan has clearly stated his policy that no racially discriminatory school shall receive tax-exempt status.

The Post may dislike the President's view that this policy should be implemented by Congressional statute rather than by IRS fiat, but that is a separate issue now pending before the Supreme Court in the Bob Jones case.

If the Supreme Court decides against Bob Jones University,

that will mean the IRS has full authority under existing law to deny tax-exempt status to discriminatory schools. If the Supreme Court decides in favor of Bob Jones University, the President will press Congress to enact appropriate legislation to ensure continuing enforcement.

The simple fact, in any event, is that racially discriminatory schools will reap no benefits from the President's bill. That is why longtime opponents of racial discrimination such as the United States Catholic Conference have firmly endorsed President Reagan's bill.

The Post's distortion of President Reagan's bill should not be allowed to distract from the pressing issue of educational justice today for both whites and minorities -- whether parents who lack great wealth will enjoy any measure of choice over the schools their children attend. Tuition tax credits will give many parents a real choice for the first time. A dose of competition will harm neither our public schools nor our Constitution. Let's not have this important debate derailed by overblown editorials that ignore basic facts.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 30, 1982

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Post Editorial (8/27) on Tuition Tax Credits

Last Friday, the Post weighed in with a Jeremiad against our tuition tax credit bill, suggesting among other things that those who support it are racists. Even by Post standards, it is clearly beyond the pale, and our supporters are mightily annoyed. Various groups in our coalition have written or will write strong rebuttals.

I attach for your consideration a draft reply to the Post suitable for submission by the Administration. As a possible signatory, I would suggest Ed Meese or Ted Bell. As a way of "showing the flag" to the troops, one could even make a case for the President's signing a modified version of the draft. When was the last time a sitting President sent a letter to the editor? The drama of the event would ensure, I think, maximum attention. What do you think?

High Tech in Charlottesville

IN VERY HIGH technologies there's an established pattern of industrial development, and you can see it at work in Charlottesville. Several big companies in electronics and communications have been there for some time. But over the past year, General Electric has greatly expanded its plant there, turning it into the base from which it is going into robots and computer-controlled manufacturing equipment. One very big operation like that attracts, in turn, a host of smaller ones—contractors, suppliers and competitors.

It's the kind of development for which every city yearns. The GE plant alone will employ some 2,800 people. Why Charlottesville? In the electronics industry, plant location begins with a climate and physical surroundings capable of attracting research scientists and technicians. Charlottesville, at the edge of the

Blue Ridge, qualifies handsomely. But there's another indispensable requirement: a strong university. Despite the fine view, it's unlikely that GE would have brought its industrial electronics group to Charlottesville if the University of Virginia were not there.

People sometimes ask why, in times of great budgetary constriction, a state should spend all that money on the quality of a university—particularly since, as those same people usually argue, the monetary value of a college degree is declining. But as the newcomers to Charlottesville demonstrate, even in purely economic terms the contributions of the university are not necessarily measured by the beginning salaries of its most recent graduates. Industrial development is not the best reason for building a fine university, as Thomas Jefferson would have reminded you. But neither is it the worst reason.

8/27/82

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The "iron boot" he is talking about is the authority the IRS had by virtue of congressional legislation and a regulation passed in the Nixon administration denying tax exemptions for Jim Crow schools. That was settled policy, widely accepted across the nation, until Jan. '8 of this year, when President Reagan, acting at the behest of support-

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OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/30/82 ACTION/CONCURRENCE/COMMENT DUE BY: 9/4/82
 SUBJECT: "Tuition Tax Credits in Trouble"

	ACTION	FYI		ACTION	FYI
✓ HARPER	☐	☒	DRUG POLICY	☐	☐
PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BOGGS	☐	☐	OFFICE OF POLICY INFORMATION		
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	COBB	☐	☐
DENEND	☐	☐	PROPERTY REVIEW BOARD	☐	☐
FAIRBANKS	☐	☐	OTHER		
FERRARA	☐	☐		☐	☐
GALEBACH	☐	☐		☐	☐
GARFINKEL	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
LI	☐	☐		☐	☐
MONTOYA	☐	☐		☐	☐
SMITH	☒	☐		☐	☐
✓ UHLMANN	☒	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

REMARKS:

Status? Details/Analysis of Bradley Amendment

Please return this tracking
sheet with your response

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

THE WHITE HOUSE
WASHINGTON

Date/ #

8/26

TO: R. Porter
D. Boggs
R. Carleson
D. Kass
M. Uhlmann

FROM: Edwin L. Harper

ACTION: ☒

FYI: ☐

Comment:

Background:

Draft response for:

For your handling:

File:

Set up meeting:

With:

REMARKS:

Status?

Details / Analysis of

Bradley Kinnel

Due Date:

Action Completed:

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U.S. Rejects Desegregation Plans For University Systems of 5 States

WASHINGTON, July 7 (UPI) — The Department of Education has rejected desegregation plans submitted by five states for their public college and university systems, a department spokesman said today.

The states were given until Aug. 15 to revise their plans or face a possible cut-off of Federal education funds.

One of those states, Georgia, refuses to overhaul its college graduation examination, which has been called discriminatory by civil rights groups, and says it may go to court over the matter.

An Education Department spokesman said Georgia, Oklahoma, North Carolina, Florida and Arkansas were notified in letters dated June 30 that the Government had turned down their court-ordered plans. The rejection of North Carolina's plan applied only to the state's community college system.

Need to Improve Plans

The letters, addressed to the states' governors or top education officials, were signed by Harry Singleton, Assistant Secretary of Education for civil rights. Mr. Singleton wrote that the plans contained many good features but that, over all, each was unacceptable and needed improvements.

The plans were required when Federal District Judge John Pratt in Washington ruled March 24 that the states had failed to meet earlier court-ordered full desegregation.

Judge Pratt had ordered the Education Department to decide on the new plans by June 30. He told the department to begin enforcement procedures by Sept. 15, either through civil action or cutting off education funds, unless proposals were suitable. In order to give the states another chance to comply, the department gave them until the middle of next month to submit revisions.

Gov. Joe Frank Harris of Georgia held a news conference in Atlanta

Wednesday and said he would submit an amended plan for the state's 33 colleges and universities by Aug. 1. But he said any attempt by Federal officials to remove a controversial Regents test as a requirement for graduation "is not negotiable" and "is grounds for us to go to court." The test has been criticized by Georgia civil rights leaders as being racially discriminatory.

In rejecting Georgia's overall plan, the Education Department asked the Governor to provide specific measures to assure the recruitment and retention of blacks at predominantly white-attended universities and colleges.

DRAFT

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The Post's editorial last Friday against the President's tuition tax credit bill was irresponsible. Its charge that the President's bill would allow credits to go to racially discriminatory schools was utterly false and was based on a distortion of the facts. This false accusation must be put to rest so that Congress and the American people can proceed to consider the real issue at stake in tuition tax credits.

The Post concludes that the President's bill constitutes "an endorsement of segregated private schools" because the bill "does not provide for enforcement by the IRS." What the Post never mentions, however, is that the bill contains explicit, strong, and unequivocal prohibitions against racial discrimination; that it specifically confers enforcement authority on the Department of Justice, the agency generally charged with enforcing anti-discrimination laws; and that it provides the Attorney General with all the tools he needs to enforce the non-discrimination requirements, including civil and criminal penalties. Surely these provisions, which are modeled after numerous civil rights laws, deserve analysis in any editorial that seeks to condemn the President's bill as an attempt to benefit segregated schools.

These provisions have in fact been analyzed closely by a variety of Protestant, Catholic, Jewish, and non-sectarian groups

which have been staunch opponents of racial discrimination for many years. These groups have not only endorsed the bill, but have applauded its anti-discrimination provisions. In short, those with sincere concerns about racial discrimination are fully satisfied by the President's bill.

But these same groups also have a legitimate concern that government regulation not become an excessive intrusion and burden upon racially fair-minded schools. People understandably want to protect against regulations, such as those proposed by the IRS in 1978 and retracted under massive protest, which would have imposed presumptions of guilt and quota requirements on many private schools totally innocent of racial discrimination.

Senator Bradley's proposed amendment would establish intrusive and unfettered IRS regulation of schools, with no safeguards against abuse. They go well beyond what is needed to police against discrimination, and could open the way to severe administrative burdens on schools that have never been unfair toward racial minorities. The President's bill achieves a balance, ensuring that discriminatory schools do not benefit, and that fair-minded schools do not suffer. Those who oppose the whole idea of tuition tax credits know that to move the discrimination provisions away from this balance will ensure defeat for the bill.

The Post's editorial conceals the facts that readers need in

order to judge for themselves whether the President's bill is a balanced approach. The distortion of facts also obscures the issue that our citizens and representatives most need to address in the tuition tax credit debate.

That issue concerns the continued vitality, diversity, and pluralism of our educational system. It concerns meaningful choice for parents between public education and the many forms of private education that are available. Parents have a fundamental right to send their children to schools that reflect their own moral values and educational preferences. The rising costs of education, however, are threatening to put this freedom of choice beyond the reach of many low- and middle-income families who cannot afford the "double burden" of paying private school tuitions and State and local taxes that support the public school system. The issue is whether freedom of choice in education is going to exist only for the wealthy or whether that freedom will be preserved and extended to low- and middle-income families.

The President's bill will help preserve educational freedom and will provide the greatest benefit to those who need it most -- low- and middle-income families. The President will support a proposal by Senators Packwood and Moynihan to make credits "refundable" so that even the poorest families who do not pay taxes will be benefited by the legislation. Middle- and low-income families are the largest users of private schools. In 1979 fully 54 percent of the students in private schools came

from families with incomes below \$25,000.

It is sad that opponents of tuition tax credits have cynically chosen to manipulate the issue of racial discrimination in their efforts to scuttle this bill.

Minorities will be among the chief beneficiaries of the President's bill. Minority parents want a choice between public and private schools. Fully 19 percent of the students in Catholic schools are members of a racial minority. Recent studies show that in many urban areas 70-80 percent of parochial school children are members of racial minorities. One-third of the families with children in these schools are Protestant.

There are already hundreds of thousands of minority families making heroic sacrifices so that their children can attend private schools. The President's bill will help these families and bring a real choice to many more who presently do not have it. The bill will greatly enrich and expand the educational opportunities of minorities. That is why economists Thomas Sowell and E. G. West agree that tuition tax credits have "a revolutionary potential for low-income groups."

"(B) the taxpayer files a joint return
spouse under section 6013 for the taxable year.

"(e) DISALLOWANCE OF CREDITED EXPENSES AS

CREDIT OR DEDUCTION.--No deduction or credit shall be allowed under
and other section of this chapter for any educational expense to the
extent that such expense is taken into account (after the application
of subsection (b)) in determining the amount of the credit allowed
under subsection (a). The preceding sentence shall not apply to the
educational expenses of any taxpayer who, under regulations prescribed
by the Secretary, elects not to apply the provisions of this section
with respect to such expenses for the taxable year."

"(f) Limitation on Examination of Religious Schools.

In determining whether a religious elementary or secondary school meets
the requirements of subsection (c)(5)(d) of this section, the Secretary
shall have authority solely to:

"(1) ascertain whether the school is operated or controlled
by a church or convention or association of churches, and, if not
so operated or controlled, ascertain whether the school has applied
for and been accorded recognition of exemption under section 501(a)
as an organization described in section 501(c)(3); and

"(2) require that the school submit a statement, under
oath or affirmation, and subject to penalties for perjury, that
no person has been denied admission to the school or participation

>
certification

in any school program, activity, or benefit, during the taxable year for which a credit is claimed under this section on account of that person's race, color, or national or ethnic origin."

(b)(1) CREDIT TO BE REFUNDABLE.--Subsection (b) of section 6401 of such Code (relating to amounts treated as overpayments) is amended--

(A) by striking out "and 43 (relating to earned income credit)" and inserting in lieu thereof "43 (relating to earned income credit), and 44F (relating to tuition tax credit)", and

(B) by striking out "39, and 43" and inserting in lieu thereof "39, 43, and 44F".

(2) Paragraph (2) of section 55(b) of such Code (defining regular tax) is amended by striking out "and 43" and inserting in lieu thereof", 43, and 44F".

(3) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "and 43" and inserting in lieu thereof "43, and 44F".

(c) SEPARABILITY.--If any provision of section 44F of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such section), or the application thereof to any person or circumstances, is held invalid, the remainder

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EXHIBIT "A"

"(f) Limitation on Examination of Religious Schools.

In order to determine whether a religious elementary or secondary school is an 'educational institution' within the meaning of this section, the Secretary shall have authority solely to:

"(1) ascertain whether the school is operated or controlled by a church or convention or association of churches, and, if not so operated or controlled, ascertain whether the school has applied for and been accorded recognition of exemption under section 501(a) as an organization described in section 501(c)(3); and

"(2) require that the school submit a statement, under oath or affirmation, and subject to penalties for perjury, that no person has been denied admission to the school or participation in any school program, activity, or benefit, during the taxable year for which a credit is claimed under this section, solely on account of that person's race, color, or national or ethnic origin."

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"(f) Limitation on Examination of Religious Schools.

In ~~order to determine~~ ^{determining} whether a religious elementary or secondary school ~~is an educational institution within the~~ ^{meets the requirements of subsection, c 5 D of} ~~this section,~~ ^{meaning of this section,} the Secretary shall have authority solely to:

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DRAFT LANGUAGE VERSION #1: BILL BALL WITH MODIFICATIONS:

school not defined as religious
no clause regarding penalty for perjury
requirement regarding who certifies
express penalty for false certification
applicable to the signator

IN DETERMINING WHETHER AN ELEMENTARY OR SECONDARY SCHOOL MEETS THE
REQUIREMENTS OF THIS BILL, THE FOLLOWING WILL APPLY:

- 1..THE SCHOOL HAS APPLIED FOR AND BEEN ACCORDED
RECOGNITION FOR EXEMPTION UNDER SECTION 501 (a)
AS AN ORGANIZATION DESCRIBED IN SECTION 501(c) (3); and
2. THE SCHOOL HAS SUBMITTED A STATEMENT UNDER OATH OR
AFFIRMATION THAT NO PERSON HAS BEEN DENIED ADMISSION
TO THE SCHOOL OR PARTICIPATION IN ANY SCHOOL PROGRAM,
ACTIVITY, OR BENEFIT DURING THE TAXABLE YEAR FOR WHICH
A CREDIT IS CLAIMED UNDER THIS SECTION ON ACCOUNT OF
THAT PERSON'S RACE, COLOR, OR NATIONAL ORIGIN.
3. CERTIFICATION UNDER THIS SECTION MUST BE EXECUTED BY THE
SENIOR ADMINISTRATIVE OFFICER OF THE INSTITUTION
4. A FALSE STATEMENT SHALL SUBJECT AN INDIVIDUAL SIGNATOR
TO LIABILITY UNDER SECTION 1001, TITLE 18 USC

EFFECTIVE DATE AMENDMENT

The amendments made by this act shall not become effective until the Attorney General certifies to the Secretary of the Treasury that, pursuant to an act of Congress or a final decision of the United States Supreme Court, the Internal Revenue Code of 1954 prohibits granting of tax exemption under Section 501(c)(3) to private educational institutions ~~not~~ maintaining a racially ~~non~~discriminatory policy ^(or practices) as to students.

Don Oliver

"(d) DEFINITIONS. For purposes of this section--

"(1) ELIGIBLE EDUCATIONAL INSTITUTION. The term 'eligible educational institution' means an elementary or secondary school as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, as in effect on January 1, 1983, which is a privately operated, not-for-profit, day or residential school which

"(A) is exempt from taxation under section 501(a) as an organization described in section 501(c)(3), and

"(B) has not during the calendar year for which a tax credit is claimed or the two immediately preceeding calendar years been declared to be an ineligible institution in accordance with subsection (d)(2).

"(2) INELIGIBLE EDUCATIONAL INSTITUTION. (A) an institution is an ineligible institution if it has been declared, in an action brought against the institution pursuant to this section, to have pursued a racially discriminatory policy.

"(B)(i) An action brought pursuant to this section may be brought, under rules established by the Secretary, in the U.S. Tax Court, by the Commissioner.

(ii) In any such action

"(a) the burden of persuasion that the institution is ineligible shall remain with the plaintiff;

"(b) the decision of the Tax Court shall be subject to appeal to the U.S. Court of Appeals for the circuit in which the institution is located; and

"(c) the decision shall not become final until all parties to the action shall have exhausted all appellate review.

"(C)(i) An organization pursues a racially discriminatory policy if its policy is to refuse to administer without regard to race, color, or national origin, its admission, scholarship, loan, athletic, or other programs or activities.

"(ii)(a) A racially discriminatory policy includes neither an admissions policy nor a program of religious training or worship of an eligible educational institution that is limited to or grants preferences or priorities to members of a particular religious organization or belief, provided that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.

"(b) A racially discriminatory policy does not include the employment practice of an institution, but nothing in this Act shall add to or detract from existing authority with respect to employment practices of eligible institutions under Title VII of the Civil Rights Act of 1964 or other Federal or State law.

"(c) A racially discriminatory policy does not include any policy respecting curriculum, program of instruction, or the selection of library resources, textbooks, or other printed or published instructional or reference material.

"(d) Notwithstanding anything in this section or in any other provision of law, a racially discriminatory policy does not include the failure of an organization to take account of the race of any individual, to undertake any affirmative action program, or to use any racial quota, goal, timetable, or other device that takes account of the race of any individual, or of the proportional racial composition of any group, as a prerequisite or condition to eligibility under this section.

"(D) An institution is ineligible during the entire calendar year in which a decision that the institution is an ineligible institution becomes final and during the two immediately succeeding calendar years.

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"(i) An organization has a 'racially discriminatory policy' if it uses race as a criterion in refusing to admit students to the rights, privileges, programs, and activities generally made available to the students by that organization, or uses race as a criterion in the administration of its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs. No organization has a 'racially discriminatory policy' if it does not classify individuals according to race. Notwithstanding anything in this section or in any other provision of law, no organization shall be required to take account of the race of any individual, or to undertake any affirmative action program, or to use any racial quota, goal, timetable or other device that takes account of the race of any individual or of the proportional racial composition of any group, as a prerequisite or condition to eligibility for contributions that are deductible under this section.

"(ii) The term 'race' shall include color or national or ethnic origin.

"(iii) The term 'racially discriminatory policy' includes neither an admissions policy of a school, nor a program of religious training or worship of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief: Provided, that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race."

* * * * *

After an action under this section has been commenced, and while such action is pending, the Court, upon request of the Attorney General, may require ^{in discovery} the defendant educational institution to produce, the names and addresses of persons to whom the ~~tax~~ educational institution ~~mailed~~ furnished copies of the statement specified in Section 44 H (d)(1) ~~during the~~ for any of the calendar years specified in Section 44 H (d)(2)(A) and (B).

B

(d) DEFINITIONS.

(1) ELIGIBLE EDUCATIONAL INSTITUTION.

(A) An institution is eligible if it:

(i) is exempt from taxation under 501(a) as an organization described in section 501(c)(3), and

(ii) has not during the calendar year for which a tax credit is claimed or the two immediately preceding calendar years been declared, in an action brought pursuant to subsection (C) of this section, to have engaged in an 'act of racial discrimination'.

(B) (i) For purposes of this Act, an institution ^{has} engaged in an 'act of racial discrimination' if: (a) it has refused to admit as a student an applicant on account of race; (b) it has excluded a student, on account of race, from the rights, privileges, programs, and activities generally made available to students by that institution; or (c) it has discriminated against a student, on account of race, in administering its scholarship, loan, athletic or other programs.

(ii) The term 'race' shall include color or national origin.

(C) A person who has been discriminated against as described in paragraph (B)(i) of this section may file suit against an institution in the federal district court in the district in which such institution is located, seeking declaratory judgment that such institution has engaged in an 'act of racial discrimination'. Such suit must be filed within one year of the act of racial discrimination alleged therein.

No person may receive a tuition tax credit under this Act for any taxable year, if during such taxable year, the school denied any individual admission to or participation in any program or activity of the school, on the basis of race, color, or national origin. Any individual denied admission to or participation in any program or activity of the school on the basis of race, color, or national origin may file suit against the Commissioner of Internal Revenue in federal district court in the district in which the school is located to challenge the availability of tax credits for tuition at such school. In any such action, the school and any person receiving tax credits for tuition at such school shall be given reasonable notice and the right to intervene in the action. The Commissioner's authority to enforce this paragraph is limited to participation in such action, and compliance with the final judgment of the court.

No person may receive a tuition tax credit under this Act for any taxable year if a Federal district court, in a suit filed by an individual denied admission to or participation in any program or activity of the school on the basis of race, color, or national origin, finds that during such taxable year the school denied such individual admission to or participation in any program or activity of the school on the basis of race, color, or national origin. Any such action shall be filed in the Federal district court in the district in which the school is located, against the Commissioner of Internal Revenue. In any such action, the school and any person receiving tax credits for tuition at such school shall be given reasonable notice and the right to intervene in the action.