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meeting on IRS Bob Jameson
File

THE WHITE HOUSE
WASHINGTON

Fred Fielding
Peter Rustoven
Mike Uhlman
Marty Anderson
Morton Blackwell
Ed Rollins
Shirley Cooks
Brad Reynolds
Ken Cribb
Buch Chapoton
Ed Meese
Ed Schmitt

Rousas Ruskdaeng
Ron Godwin
Howie Phillips
Bob Baldwin
Paul Weyrich
Connie Marshner
Jack Clayton
Furber Fiori
Bill Billings
Wm. Ball

Jan 8th action

THE WHITE HOUSE
WASHINGTON

Invitation to IRS
to go in 4m

May not never survive ^{supreme} court
NLRB cases
- 3 courts
- Supreme court

Ball final point
1. No restraint on IRS
administration

2. National Policy
~~is~~ mandating
preference of particular
religious belief

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/12/82 ACTION/CONCURRENCE/COMMENT DUE BY: ASAP

SUBJECT: DRAFT PRESS RELEASE RE GROVE CITY

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☒	GERGEN	☒	☐
MEESE	☐	☒	HARPER	☒	☐
BAKER	☐	☒	JAMES	☐	☐
DEAVER	☐	☒	JENKINS	☐	☐
STOCKMAN	☐	☐	MURPHY	☒	☐
CLARK	☒	☐	ROLLINS	☒	☐
DARMAN	☐ P	☒ SS	WILLIAMSON	☒	☐
DOLE	☒	☐	WEIDENBAUM	☐	☐
DUBERSTEIN	☒	☐	BRADY/SPEAKES	☐	☐
FIELDING	☒	☐	ROGERS	☐	☐
FULLER	☐	☒		☐	☐

Remarks:

Richard G. Darman
Assistant to the President
(x2702)

Response:



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

To: Craig Fuller
Dan Oliver

From: Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Subject: Grove City

Here is a draft press release regarding the Grove City case. Please advise me of any suggested revisions you may have.

cc: Ken Cribb

DRAFT

The Department of Justice today filed in the United States Court of Appeals for the Third Circuit its brief on behalf of the Department of Education in Grove City College, et al. v. Terrell H. Bell, et al., a case challenging the application of Title IX of the Education Amendments of 1972.

Title IX forbids sex discrimination in educational programs receiving federal financial assistance. Grove City College receives no direct federal grants, but enrolls students who receive Basic Educational Opportunity Grants (BEOGs) and Guaranteed Student Loans (GSLs). In a suit brought by Grove City College the federal district court agreed with the government that BEOGs were covered by Title IX, but held that GSLs fell within an exemption from fund termination which Title IX provides for contracts of guaranty. The court also enjoined the Department from requiring Grove City College to sign the Assurance Of Compliance then in use before receiving federal financial assistance.

The brief maintains the position of the Department of Education in the lower court that institutions enrolling students who receive BEOGs are covered by Title IX. It also maintains the Department's position that under current regulations covered institutions must sign the Assurance Of Compliance. In addition, the government's brief argues that current regulations for fund termination are valid.

The government no longer argues that guaranteed student loans are alone sufficient to subject private institutions to the termination requirements of Title IX and its implementing regulations.

DRAFT

DRAFT

- 2 -

It, therefore, is not appealing the district court's decision holding that GSLs fall with the statute's exemption for contracts of guaranty. The Department of Education plans to amend the pertinent regulations so as to reflect its current position with regard to coverage of private educational institutions which do not receive federal grants directly but enroll students who receive GSLs.

DRAFT

THE WHITE HOUSE

WASHINGTON

March 10, 1982

Dear Dr. Jones:

Thank you for your kind letter of March 1. I will do my best to keep you informed of matters that relate to the University.

Thank you for sending me a copy of "Biblical Answers to Bothersome Questions". I enjoyed reading it.

If I can be of further assistance, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Morton C. Blackwell".

Morton C. Blackwell
Special Assistant to the President

Dr. Bob Jones III
President
Bob Jones University
Greenville, S.C. 29614

BOB JONES *University* GREENVILLE, SOUTH CAROLINA 29614

EXECUTIVE OFFICES

TELEPHONE (803) 242-5100

March 1, 1982

Mr. Morton Blackwell
Old Executive Office Building
Room 191
The White House
Washington, DC 20500

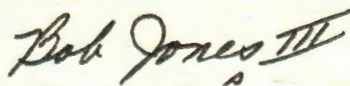
Dear Mr. Blackwell:

Thank you for being so kind to us Tuesday. It was gracious indeed of you to spend so much time. You have shown sincere interest in our cause from the very beginning, and we owe you a great deal. I hope you will communicate with me if you see any sudden shift in mood or purpose there as it relates to the University. It is comforting to have a friend and ally in a place of influence, and I want you to know that we want to help you if we can ever do so.

Under separate cover I am sending a little book that I prepared recently which I hope you will find to be a blessing.

Kind regards.

Sincerely yours,



Bob Jones III
President

BJIII: se

THE WHITE HOUSE

WASHINGTON

March 11, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO
FROM: MORTON BLACKWELL
SUBJECT: GROVE CITY COLLEGE DECISION

We must not be panicked into making a politically disastrous decision.

When Thelma raised the issue this morning on how an anti-Grove City College decision would help save embattled Southern Republican Congressmen, I was confident that her political reading on this was badly in error. She mentioned the Alabama Congressmen and specifically Albert Lee Smith of Birmingham.

I very discreetly called my friend, Congressman Smith, swore him to secrecy, and asked him his opinion of the political effect of decisions either way on the Grove City College matter.

His response was that a decision against Grove City College would be disastrous with his hard core supporters. He said that if he thought the President would decide against Grove City College, he would urgently try to personally convince the President to support the College.

It is true that he supported the Voting Rights Act, but he said that this was a very different situation. He reminded me that he has repeatedly made public statements critical of the I.R.S. tax exemption bill which the Administration sent to Congress in the Bob Jones matter.

He said that if the Justice Department files a brief against Grove City College, he would not be alone among Southern Republican Congressmen in publically condemning the Administration on this issue.

This was the foremost example of a member whom Thelma thought would be helped by siding against Grove City College. My conviction is strengthened that this move would damage our Southern Congressmen.

THE WHITE HOUSE
Office of the Press Secretary

IRS - Bob
Jones
File

For Immediate Release

January 18, 1982.

FACT SHEET

Tax Exemption Bill Summary

The proposed legislation being submitted by the President to the Congress will, for the first time, give the Secretary of the Treasury and the Internal Revenue Service express authority to deny tax-exempt status to private, non-profit educational organizations with racially discriminatory policies. The legislation recognizes and is sensitive to the legitimate special needs of private religious schools.

Section 1 of the bill adds to section 501 of the Internal Revenue Code a new subsection that expressly prohibits granting tax exemptions to private schools with racially discriminatory policies, notwithstanding that such schools otherwise meet the tests for exemption presently listed in section 501(c)(3).

Religious schools of all faiths are permitted to limit, or give preferences and priorities, to members of a particular religious organization or belief in their admissions policies or religious training and worship programs. However, the bill expressly provides that a tax exemption will not be granted if any such policy, program, preference or priority is based upon race or a belief that requires discrimination on the basis of race.

Section 2 of the bill amends several sections of the Internal Revenue Code dealing with deductions to provide, consistent with the exemption provisions of the new law, that no deductions will be allowed for contributions to a school with a racially discriminatory policy.

A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining schools with racially discriminatory policies.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING
SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

"(j) ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious curriculum) and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such organization has a racially discriminatory policy.

"(2) DEFINITIONS. -- For the purposes of this subsection --

"(i) An organization has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that organization, or if the organization refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or 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.

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

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS
MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY
POLICIES.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

(b) Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a

racially discriminatory policy as defined in section 501(j)(2)."

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply after July 9, 1970.

Orin G. Briggs
James B. Carraway

Law Office

Orin G. Briggs
1804 Bull Street

Columbia, South Carolina 29201

February 5, 1982

IRS &
private schools
803-252-1700

SHORT SUMMARY OF LEGAL ISSUES WITH PROPOSED
TAX-EXEMPT LEGISLATION

In 1970, the Internal Revenue Service (IRS) began the enforcement of a policy which was not authorized by Congress, which policy had the effect of conditioning the granting of tax-exempt status upon compliance with federal public policy, even though that public policy was in conflict with religious belief.

In 1978, IRS proposed a new revenue procedure for granting tax-exempt status which would have mandated a 20% minority enrollment as a condition to tax exemption. Congress has for three consecutive years prohibited the enforcement of the new revenue procedure by means of the Ashbrook and Dornan Amendments to the Treasury Department Appropriations Act.

In testimony before the Senate Finance Committee, Deputy Secretary of the Treasury Department, R. T. McNamar addressed the question of whether IRS had the authority to add to the statutory provision on tax exemption found in Section 501(c)(3) in the Internal Revenue Code. In his testimony he said:

The Justice Department memo makes clear that there is no statutory language or Congressional direction, no legislative history, and no definitive Supreme Court opinion, that authorizes or requires the IRS to revoke the tax exemptions of schools that do not comply with Federal public policy or otherwise violate the civil rights laws.

What is the law? The U. S. Supreme Court has not ruled on the question of whether the federal government, through IRS, can condition the granting of tax-exempt status to a religious school on the condition that the religious school conform all of its beliefs and practices to government policy.

There is indeed a legitimate and critical First Amendment religious liberty question which is raised by any legislative proposal which is aimed at the laudable goal of denying tax-exempt status to white-flight schools.

Those who would advocate the passage of legislation without resolving the First Amendment question can cite only four Federal Court cases in 200 years of American jurisprudence in support of their cause. The first two cases, Green v. Connally and Norwood v. Harrison have absolutely nothing to do with church schools and the cases specifically did not address the protections afforded to religious schools by the religion clauses of the First Amendment to the U. S. Constitution. The other two cases, Goldsboro Christian Schools v. United States and Bob Jones University v. United States, failed completely to discuss the First Amendment constraints on governmental regulation of religious institutions. The only authorities cited by the Circuit Court in the Bob Jones decision for the infringement of religious liberty were Green v. Connally, Norwood v. Harrison and four law review articles.

The proponents of legislation designed to regulate the beliefs of tax-exempt church schools have made three erroneous assumptions - (1) that tax exemption amounts to government aid, (2) that because of tax exemption, taxpayers are required to subsidize the unacceptable beliefs and practices of the offending tax-exempt organization, (3) that the "law" authorizes IRS to regulate the beliefs of churches and their schools. On the first point the U. S. Supreme Court made it clear in Walz v. Tax Commission that the granting of tax exemption is an act of neutrality and does not amount to granting aid or a subsidy to tax-exempt organizations. On the second point it is a total fabrication to suggest that the small savings to taxpayers that contribute to a tax-exempt organization amounts to a subsidy, because, in fact, tax-exempt church schools are saving state and federal governments approximately Two Thousand (\$2,000.00) Dollars per student per year because these students are not participating in the public school program which is supported by the taxpayers. On the third point, the Administration's announcement on the repeal of the illegal regulations which had been promulgated by the IRS to justify its regulation of church beliefs made it very clear that IRS was never authorized to promulgate the intrusive regulations which were such a threat to the foundation freedom of free exercise of religion.

Two other critical points need to be raised before we summarize this short summary of legal issues. The dissenting judge in the Fourth Circuit Court opinion in the Bob Jones case said that these issues touch at the very right of a church to be free from government control; on this point Judge Widener said:

February 5, 1982

" . . . we are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself." (Emphasis added)

The most critical issue in all of this discussion is the very clear statement of the U. S. Supreme Court that holds in a number of cases that government cannot condition government benefits upon compliance with government policy which forces a religious institution to violate its basic tenants of faith unless there is a very clear showing of a "compelling state interest", a showing of specific harm to the governmental policy caused by an exemption for the religious institution from the governmental policy and a showing that the government cannot accomplish its goal with a less onerous regulatory scheme. On the specific point of conditioning government "benefits" upon compliance with government policy, the U. S. Supreme Court in Thomas v. Review Board, 49 U.S.L.W. 4341 (1981) said:

Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. (Emphasis added)

In summary it should be evident to every reader of this memorandum that legislation cannot be passed by the Congress which would have the effect of denying tax-exempt status to church schools upon their compliance with government policy in violation of sincerely-held religious belief unless Congress makes a very detailed inquiry into all of the First Amendment cases of the U. S. Supreme Court and makes a very detailed analysis of the compelling state interest issue.

Any legislation addressing the question of tax-exempt status for religious schools that do not conform with governmental policy should have as a minimum the following six basic concepts:

1. The definition of a "racial discriminatory policy" must be written so as to proscribe specific kinds of conduct.

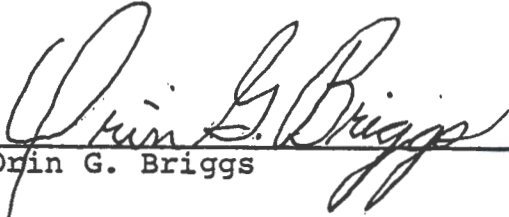
2. The legislation should require proof of intentional discrimination rather than make the determination on what we call an "effects" test.

3. The burden of proof should be on IRS to prove discrimination rather than embodying the usual tax law presumption of guilt until proven innocent.

4. There should be a due process determination of discrimination on the record, preferably a determination in the U. S. District Court.

5. The legislation should specifically protect policies which are based upon sincerely-held religious belief.

6. The legislation should not contain a retroactive provision which would have the effect of condoning twelve years of illegal bureaucratic IRS law.


Orin G. Briggs

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1124

September Term, 1981

Inez Wright, individually and on
behalf of her minor children,
Oscar Clay Renfro, Anthony Lee
Renfro, Lisa Marie Wright, and
Ephron Antoni Wright, Jr., et al.,
Appellants

Civil Action No. ~~80-1125~~

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 18 1982

v.

Donald T. Regan, Secretary of
the Treasury, et al.

GEORGE A. FISHER
CLERK

No. 82-1134

William H. Green, on his own behalf
and on behalf of his minor children,
et al.,

Civil Action No. 69-01355

Appellants

FILED

v.

FEB 18 1982

Donald T. Regan, as Secretary of
the Treasury of the United States,
et al.

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

BEFORE: Wright, Tamm and Ginsburg, Circuit Judges

O R D E R

On consideration of movants' request for an injunction pending appeal in No. 82-1134, for an injunction under the "All Writs Act" to preserve the status quo and protect the potential effectiveness of this court's decision in No. 80-1124, and for consolidation of Nos. 82-1134 and 80-1124, it is hereby ORDERED that the application to consolidate Nos. 82-1134 and 80-1124 is denied; and it is further

ORDERED that the motion for an injunction pending appeal in No. 82-1134 be referred forthwith to the motions panel for expeditious consideration; and it is further

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1124
82-1134

September Term, 19 81

-2-

ORDERED that the motion for relief under the "All Writs Act" in No. 80-1124 be filed and that a response thereto by the Secretary of the Treasury and the Commissioner of Internal Revenue be filed within fifteen days of the date of this order; and it is further

ORDERED, that to preserve the status quo pending response to the motion in No. 80-1124 and, thereafter, the court's determination of its authority to consider and decide the issues presented, see United States v. United Mine Workers, 330 U.S. 258 (1947), the Secretary of the Treasury and Commissioner of Internal Revenue are directed not to grant or restore federal tax-exempt status pursuant to 26 U.S.C. § 501(c)(3) to any school that unlawfully discriminates on the basis of race, see Runyon v. McCrary, 427 U.S. 160 (1976), by failing to maintain a "racially nondiscriminatory policy as to students," as that term is defined in the declaratory judgment in Green v. Connally, 330 F.Supp. 1150, 1179 (D.D.C.), aff'd mem. sub nom. Coit v. Green, 404 U.S. 997 (1971).

Per Curiam

Submitted
to EKD
3/10/82

It is universally conceded that the IRS-school-tax-exemption initiative was damaging to the Administration. The Grove City case gives us a chance to recover some of the lost ground with supportive groups.

There is little doubt that loans to students is a very slender argument for bringing colleges under Federal regulation applicable only to schools receiving Federal aid. A major thrust of the Reagan Administration is deregulation. On strictly legal grounds, a decision that there is no statutory authority for such regulation would be defensible.

The political impact would be excellent. We could call in pro-family and private education leaders, most of whom are still in shock at the IRS mess, and renew their faith in the ability of this administration to do them some good.

These groups learned an important lesson in the IRS matter. It is safe to say that they would now jump at the opportunity to praise loudly a clear Administration decision which would end harassment of Grove City College. Moreover, this would be a clear sign to 1980 campaign activists who care about this that further campaign work in 1982 would be worthwhile. Right now, they have serious doubts that their former work did any good.

Opponents of such an Administration move would have an almost impossible task of stirring up emotion against us on this. This is much firmer ground for us to stand on. Unlike the Bob Jones case, there are no charges that Grove City discriminates. This is a clean, anti-big-government, deregulation issue.

One caveat, though. We must be prepared to go the whole course when we move on this or any other issue important to social issue conservatives. Another retreat after a forward step will earn withering contempt from private sector conservatives. Many already suspect we are gutless and that our idea of a disaster is criticism in the Washington Post. They know the President cannot achieve much of what he ran to accomplish without the will to persevere in the face of media criticism. One column by Carl Rowan does not a groundswell make.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ATTENDEES - January 26, 1982 IRS MEETING

Fred Fielding - 2nd FL WW/WH
Peter Rusthoven - 106
Mike Uhlmann - 228
Marty Anderson - 2nd FL WW/WH
Morton Blackwell
Ed Rollins - 175
Sherrie Cooks - 107 E/W/WH
Brad Reynolds - Justice
Ken Cribb - 127
Buck Chapoton - Training Asst Sec.
Ed Meese - 1st FL WW/WH
Ed Schmultz - Dep A.G. Justice

dr R.J.

Rousas Rushdoony - Box 158 - Vallejo Calif 95251
Ron Godwin
Howard Phillips
Bob Baldwin
Paul Weyrich
Connie Marshner
Jack Clayton
Father Fiora
Bill Billings
William Ball

Louise Ropog -

Fairfax Christian School
273-3040

Sent - U.S. News & World Report 2/8/82
Ball - Mathias interview

LAW OFFICES
BALL & SKELLY
511 N. SECOND STREET
P O BOX 1108
HARRISBURG, PENNSYLVANIA 17108

WILLIAM BENTLEY BALL
JOSEPH G. SKELLY
PHILIP J. MURREN
RICHARD E. CONNELL
KATHLEEN A. O'MALLEY

TELEPHONE
AREA CODE 717
232-8731

January 19, 1982

TO: FRIENDS OF RELIGIOUS LIBERTY

IRS-RELIGIOUS SCHOOLS CRISIS;
BOB JONES UNIVERSITY CASE

Please give this memorandum your immediate attention.

As of Thursday, January 7, the prospects for removal of IRS threats to religious liberty seemed, not indeed perfect, but very good. In Green v. Regan (the Mississippi case in the U.S. District Court for the District of Columbia) we had at last secured intervention on behalf of a religious school, and the Government in that case had announced that it would suspend all further action against religious schools in Mississippi pending the outcome of that case. At the U.S. Supreme Court level, the Bob Jones University case was now in place. Our brief, filed November 27, rebutted, we felt, every possible justification for denial of tax exemption to a religious institution merely on the ground that it sincerely held a religious belief which was unacceptable to Government. We looked forward eagerly to oral argument in February or early March and to a favorable decision.

Had the Supreme Court handed down a favorable decision in Bob Jones, civil rights and secular groups would have complained, but no national explosion would have resulted. That is because the Supreme Court is not ordinarily a political target, and because Americans tend to abide by decisions - even unpopular decisions - of the Supreme Court. Further, this decision would have been backed by extensive reasoning, and the decision might have won wide public acclaim.

On Friday, January 8, the situation was dramatically changed when, at 4 p.m., the Government suddenly went before the Supreme Court and announced that it was revoking all the illegal IRS rulings, restoring tax exemption to Bob Jones University, and asked the Supreme Court to vacate the Fourth Circuit judgments in the Bob Jones and Goldsboro Christian Schools cases as moot. Lawrence Wallace, Esq., of the Solicitor General's Office, having informed me of this, we then warned Christian school representatives that a nationwide explosion was sure to ensue.

In this we have also now witnessed an awesome triumph of media distortion. The avalanche of telecasts, editorials and cartoons have almost totally omitted any reference to: (a) whether Congress gave IRS the power it has asserted, (b) whether religious institutions must lock-step their practices to "federal public policy" as the price of their tax exemption (and thus their existence). Among writers and journals friendly to human liberty, only James J. Kilpatrick has aired the real issue in this crisis which is: must a religious institution which practices an unpopular doctrine give up that practice because it conflicts with "federal public policy"?

The Administration's action, though ostensibly favoring Bob Jones and Goldsboro, has resulted in imminent and extreme danger to the whole Christian school movement. The action appeared as an exercise of raw political power, on the very eve of oral argument in a case long since lodged in the Supreme Court. The Government, in its earlier brief to the Supreme Court in Bob Jones, had taken the exact opposite position. This sudden, last-minute reversal looked like an attempt to "throw" the case. We did not need that kind of "help".

Now the Christian school movement faces the worst: an Administration bill which loosely employs the term "discrimination", which authorizes IRS to invade and exercise supervision over wholly religious institutions down to the last detail of their operation, and creates oppressive compliance and enforcement procedures. The media and pressure group "explosion" of the past ten days has provided exactly the right climate to bring such legislation about, and we now see, in the Administration's bill, a political solution to a sensitive constitutional problem.

Now a bill has been set before the Congress which, if enacted, would become the worst expression of insensitivity to church-state concerns ever adopted. The bill is flatly unconstitutional:

1. It is, because it is to be retroactive to 1970, an ex post facto (i.e., "after the fact") law which would violate express constitutional provisions prohibiting such legislation.

2. Because it permits IRS to investigate and influence all of the "policies", "programs", "rights", "privileges", and "activities" of religious schools, it violates constitutional proscriptions against excessive church-state entanglement. It is worth noting that the complete envelopment of religious ministries by a tax collection agency which is here authorized, far exceeds that which would have been possible, had the Supreme Court not intervened, under the plan by NLRB, during the Carter years, to exercise jurisdiction over labor relations in church-schools.

3. The bill singles out for express disapproval (and consequent penalty) any religious "belief that requires discrimination on the basis of race." It is absolutely incredible - and completely without valid precedent - that an Act of Congress would so specify a sincerely held point of religious conviction for secular punishment. The precedent such a provision would set, in the hands of future legislators, courts, and Government officials, is frightening to consider. "Free exercise of religion" would become, instead of a preferred freedom, a mere privilege, to be enjoyed only at the sufferance of Government.

4. The effect of the bill is to establish an official preference for belief systems which accord with Government policy respecting race. This is but the beginning of a fully established religion, consisting of a minimum floor of church doctrines which Government does not find offensive. Further, protection of unpopular religious beliefs is now to be relegated to shifting legislative majorities and unelected, as well as elected, executive officials.

A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining schools with racially discriminatory policies.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING
SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

"(j) ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious curriculum) and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such organization has a racially discriminatory policy.

"(2) DEFINITIONS. -- For the purposes of this subsection --

"(i) An organization has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that organization, or if the organization refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or 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.

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

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS
MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY
POLICIES.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

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racially discriminatory policy as defined in section 501(j)(2)."

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply after July 9, 1970.

THE WHITE HOUSE

WASHINGTON

January 12, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO *Diana*
FROM: MORTON BLACKWELL *MB*
SUBJECT: REAGAN ADMINISTRATION ATTACK ON RELIGIOUS SCHOOLS

In my discussions with Diana Lozano today, which I believe were communicated to you, I emphasized the disaster that was impending in the decision about tax exempt status for private and religious schools.

One wonders which significant friends will next be betrayed.

I am reminded of the Aesop fable where the dog with the bone in his mouth grabs at the reflection of himself in the water for another bone and loses the bone that he had.

Will this decision win us the slightest increase in the black vote in the 1982 elections? No. Will this decision immensely anger the rapidly growing religious school community, which has been entirely supportive of the President? Yes. Could the President have issued a statement which would have left this decision up to the Congress? Yes.

It is as if this was a conspiracy designed to please our enemies and anger our allies.

We kicked the Right to Work Committee in the teeth on the Hobbs Act, and the AFL-CIO unions established for the first time a formal linkage with the Democratic party. What did we gain in that exchange other than one "nice" news item?

One of my oldest friends, a key organizer of grass-roots, conservative activity, has suggested that this is an appropriate time for me to resign from this Administration.

Here is what I suggest. The President should by any convenient means clarify his intentions as follows:

1. He should make it clear that any proposed legislation must require that the burden of proof of racial discrimination be on the government. Schools must be presumed innocent until proven guilty.
2. He must insist that proposed legislation impose no requirements on religious schools more restrictive than they were before August, 1978.

Prior to 1978, schools were self-certified as non-segregated. At that time, the Carter Administration proposed detailed, obnoxious guidelines which would greatly increase the power of the government to the detriment of private, largely religious schools.

The Congress overwhelmingly rejected these guidelines. There were a series of Ashbrook amendments to deny funding for implementation of these guidelines.

On July 13, 1979, the House voted 297-63 for one of these Ashbrook amendments. On August 20, 1980, the House voted 300-107 on the same issue. On July 30, 1981, the House voted 337-83 for a third time reaffirming the Ashbrook position.

On September 6, 1979, the Senate approved 47-43 a prohibition parallel to the Ashbrook amendment. There were no Senate roll call votes on this in 1980 and 1981.

The 1980 Republican platform specifically pledges an end to the IRS "regulatory vendetta" against Christian schools.

The possibility arises that the Reagan Administration will force through the Congress outrageous regulations which the Carter Administration attempted to impose. The conservative religious community rose up and defeated the liberal Carter scheme.

I am confident that the immense efforts which the conservative community and the Christian school movement will now devote in opposition to this Administration initiative will be extracted from the amount of efforts they would have put into the campaigns of candidates supportive of the President in the 1982 elections.

Bob Jones University is virtually the last hold out of fundamentalist Christians who believe that race-mixing is contrary to scripture. Virtually all of the President's supporters in the conservative religious community disagree with the Bob Jones policy, which is to prohibit interracial dating. But they are certain to rise to the defense of religious schools to practice their beliefs according to the First Amendment guarantees of religious freedom.

Those who do not actively oppose the Administration on this issue will at least tend to reassess the value of participating in the political process, inasmuch as none of them were seriously consulted prior to this basic decision by the Reagan Administration to intrude on how they run their institutions. They will view this as the camel's nose in their tent.

Now stand by for agitation from the feminists because the President did not include discrimination by sex, from the gay community because sexual orientation is not included, from the handicapped because they were not included. This is a Pandora's Box.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 18, 1982

FACT SHEET

Tax Exemption Bill Summary

The proposed legislation being submitted by the President to the Congress will, for the first time, give the Secretary of the Treasury and the Internal Revenue Service express authority to deny tax-exempt status to private, non-profit educational organizations with racially discriminatory policies. The legislation recognizes and is sensitive to the legitimate special needs of private religious schools.

Section 1 of the bill adds to section 501 of the Internal Revenue Code a new subsection that expressly prohibits granting tax exemptions to private schools with racially discriminatory policies, notwithstanding that such schools otherwise meet the tests for exemption presently listed in section 501(c)(3).

Religious schools of all faiths are permitted to limit, or give preferences and priorities, to members of a particular religious organization or belief in their admissions policies or religious training and worship programs. However, the bill expressly provides that a tax exemption will not be granted if any such policy, program, preference or priority is based upon race or a belief that requires discrimination on the basis of race.

Section 2 of the bill amends several sections of the Internal Revenue Code dealing with deductions to provide, consistent with the exemption provisions of the new law, that no deductions will be allowed for contributions to a school with a racially discriminatory policy.

A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining schools with racially discriminatory policies.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING
SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

"(j) ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. --

"(1) IN GENERAL. -- An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious curriculum) and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such organization has a racially discriminatory policy.

"(2) DEFINITIONS. -- For the purposes of this subsection --

"(i) An organization has a 'racially discriminatory policy' if it refuses to admit students of all races to the rights, privileges, programs, and activities generally accorded or made available to students by that organization, or if the organization refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or 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.

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

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS
MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY
POLICIES.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. -- No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

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racially discriminatory policy as defined in section 501(j)(2)."

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply after July 9, 1970.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 18, 1982

TEXT OF LETTER SENT TO
THE PRESIDENT OF THE SENATE AND
THE SPEAKER OF THE HOUSE

Dear Mr. President/Mr. Speaker:

As you are aware, the Department of the Treasury announced on January 8 that the Internal Revenue Service would no longer deny tax-exempt status to private, non-profit educational organizations that engage in racially discriminatory practices but otherwise qualify for such status under the present Internal Revenue Code. That decision reflects my belief that agencies such as the IRS should not be permitted, even with the best of intentions and to further goals that I strongly endorse, to govern by administrative fiat by exercising powers that the Constitution assigns to the Congress.

I share with you and your colleagues an unalterable opposition to racial discrimination in any form. Such practices are repugnant to all that our Nation and its citizens hold dear, and I believe this repugnance should be plainly reflected in our laws. To that end, I am herewith submitting to the Congress proposed legislation that would prohibit tax exemptions for any schools that discriminate on the basis of race. This proposed legislation is sensitive to the legitimate special needs of private religious schools.

I pledge my fullest cooperation in working with you to enact such legislation as rapidly as possible, and urge that you give this matter the very highest priority.

I have been advised by the Secretary of the Treasury that he will not act on any applications for tax exemptions filed in response to the IRS policy announced on January 8, until the Congress has acted on this proposed legislation.

I believe the course I have outlined is the one most consistent both with our mutual determination to eradicate all vestiges of racial discrimination in American society, and with a proper view of the powers vested in the Congress under our constitutional system.

I feel this legislative action is important to and desired by all citizens of this great Nation; I am confident that you will give this issue the prompt attention it deserves.

Sincerely,

/s/ Ronald Reagan

TREASURY NEWS



Department of the Treasury • Washington, D.C. • Telephone 566-2041

FOR IMMEDIATE RELEASE
Monday, January 18, 1982

Contact: Marlin Fitzwater
(202) 566-5252

TREASURY - IRS TO HOLD ACTION ON TAX EXEMPTIONS

Recognizing the President's desire to have legislation introduced to prohibit the granting of tax exemptions to certain educational institutions that engage in racially discriminatory practices, the Secretary of Treasury has instructed the Commissioner of Internal Revenue not to act on any applications for tax exemptions filed in response to the Internal Revenue Service's policy announced on Friday, January 8, 1982, until Congress has acted on the proposed legislation (except as required by the memorandum in support of the motion to vacate as filed in the Supreme Court on January 8, 1982).

XXX

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 18, 1982

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 18, 1982

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THE PRESIDENT OF THE SENATE AND
THE SPEAKER OF THE HOUSE

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I feel this legislative action is important to and desired by all citizens of this great Nation; I am confident that you will give this issue the prompt attention it deserves.

Sincerely,

THE WHITE HOUSE
WASHINGTON

February 24, 1982

to Mr. [unclear]

*File/IAS
Bob Jones*

2/24

Jim

*Fyi, JAB has
not seen*

MEMORANDUM FOR EDWIN MEESE III

→ JAMES A. BAKER III
MICHAEL K. DEEVER

FROM: FRED F. FIELDING

SUBJECT: BOB JONES/GOLDSBORO LITIGATION
(TAX EXEMPTION FOR PRIVATE SCHOOLS)

Attached please find the memorandum from the Department of Justice setting forth the Department's course of action it will follow in handling the pending Supreme Court litigation.

This should also be brought to the President's attention at the appropriate time.

/Enclosure

FEB 23 1982



Office of the Attorney General
Washington, D. C. 20530

February 23, 1982

MEMORANDUM FOR: Fred Fielding
Counsel to the President

FROM: Kenneth W. Starr *KWS*
Counselor to the Attorney General

I am attaching an original and one photocopy of the memorandum which we discussed yesterday. The memorandum, as you will see, sets forth the Department's course of action in handling the pending Supreme Court litigation.

Attachments

MEMORANDUM

On February 18, a panel of the Court of Appeals for the District of Columbia Circuit entered an order in Wright v. Regan, Civ. No. 76-1426, enjoining for the present the Department of Treasury and the Internal Revenue Service from granting tax exemptions to private schools engaged in racial discrimination. The injunction is temporary in nature, and not a final appealable order. It is intended to preserve the status quo pending further action by the appellate court in Wright on plaintiffs' motion for permanent injunctive relief.

As a result of the February 18 order, the Department of Treasury and IRS cannot complete the processing of tax exemptions to Bob Jones University and Goldsboro Christian School. This means that the Bob Jones/Goldsboro cases currently pending on writs of certiorari in the U.S. Supreme Court are not now likely to become moot (contrary to the Government's January 8 filing with the Court suggesting mootness).

In light of these legal developments, the Department of Justice will make an additional Supreme Court filing in Bob Jones/Goldsboro before the week's end. This filing (1) will be in the nature of a brief of the United States; (2) will suggest to the Court that, in light of the Wright injunctive order, our earlier suggestion of mootness may well no longer be applicable; (3) will seek leave to make a filing on the merits "out of time," and (4) will address specifically both the issue of statutory construction and the issues of First Amendment rights. The brief will argue, first, that the IRS lacks statutory authority to deny the tax exemptions in question and, second, that if (contrary to the Government's position) Congressional authorization is found to exist, no First Amendment protections are available.

This filing will signal no new change in the Government's position in these cases. As maintained on January 8, the Treasury and Justice Departments will continue to assert that the IRS lacks authority to deny these two schools tax exemptions, thereby supporting the position of Bob Jones and Goldsboro on the statutory question. This is the stand that has drawn strong criticism from the civil rights community. At the same time, the Government will be arguing that there is no First Amendment impediment to prevent Congress from denying tax exemptions to private schools that practice racial discrimination. That is the same position reflected in the legislation that

the President sent to Congress on January 12, a position that has received criticism from certain religious groups.

It is believed likely that the Court will appoint an amicus or permit an intervenor to argue the other side of the statutory construction issues, seeking to uphold the Fourth Circuit's holdings. The Bob Jones/Goldsboro cases would likely be set for oral argument by the Supreme Court in April and a decision rendered by the close of the Court's Term on or about June 30, 1982.



NATIONAL ASSOCIATION OF
EVANGELICALS

OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/[202] 628-7911

February 12, 1982

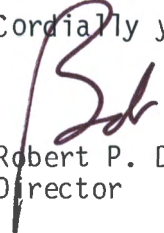
Mr. Morton Blackwell
Special Assistant to the President
for Public Liaison
The White House
Washington, D.C. 20500

Dear Morton:

I wanted you to have a copy of my letter to Elizabeth Dole and of our effort on behalf of the President to achieve a satisfactory result concerning the racial discrimination issue.

If you read our proposed bill, the result of several days of intense work and hard debate among evangelicals, you will discover that religious liberty is protected but that our first emphasis is on eliminating racial discrimination.

Cordially yours,


Robert P. Dugan, Jr.
Director

RPDJr:pasl
Enclosures



OFFICE OF PUBLIC AFFAIRS/1430 K STREET, N.W. WASHINGTON DC 20005/(202) 628-7911

February 12, 1982

The Honorable Elizabeth H. Dole
Assistant to the President for Public Liaison
The White House
Washington, D.C. 20500

Dear Elizabeth:

Is there any possibility that you might be able to attend the Annual Convention of the National Association of Evangelicals, even though our invitation comes at this late date? Your genuine, personal expressions of interest in evangelical concerns emboldens me to make this request. We are meeting in Arlington Heights, Illinois, March 2-4.

The enclosed outline of the convention plenary sessions and workshops reveals a full program. Nevertheless, we would be delighted to make time for you to bring a significant message to the convention in the opening plenary session on Tuesday evening. You will note the convention theme of "Save The Family," but we would be honored to have you speak on other crucial issues with which the Reagan Administration is dealing if you desire to do so.

If you are able to accept this warm invitation, you might wish to discuss the possibility of enhancing the impact of your visit with us by one or two additional opportunities the next day. We could discuss those on the telephone.

This letter comes with my most cordial greetings.

Faithfully yours,

Robert P. Dugan, Jr.
Director

RPDJr:jdk

Enclosures



NATIONAL ASSOCIATION OF
EVANGELICALS

OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

PRESS RELEASE: INTERNATIONAL MEDIA SERVICES
FEBRUARY 8, 1982

CONTACT: Robert P. Dugan, Jr., Director
Forest Montgomery, Counsel

Members of Congress are complaining about being flooded with phone calls from fearful Christians who have been led to believe that the sky is falling on religious freedom. We understand. Our phones have been ringing off the hook too. We've heard what alarmists are saying.

Triggering the anxiety is the Reagan Administration bill to deny tax-exempt status to private schools which practice racial discrimination. The bill was quickly devised to protect the President from political harm, after the Justice Department asked the Supreme Court to vacate the Bob Jones University case. The adverse public reaction, charging the President with upholding discrimination, was incredibly unforeseen by the President's advisors. A cynic dubbed handling of the matter "botchulism" -that's b-o-t-c-h-u-l-i-s-m." The matter was handled terribly.

The new bill does have problems, but a word of caution is in order. We are not -- repeat, not -- facing the worst persecution of the church since the days of the Roman Empire.

There's a storm of criticism from the right. The bill is depicted as "an attack on all Christian schools." It isn't -- unless those schools discriminate racially. Research shows, however, that the overwhelming majority of Christian schools do not discriminate.

Another storm of criticism is moving in from the left. Liberals contend that no such legislation is needed, since federal law already authorizes the IRS to deny tax-exempt status to discriminatory schools. They're wrong too. The Civil Rights Act is silent on the question of denying tax-exemption to a school that is racially discriminatory and the Supreme Court has never ruled on that issue.

In putting the worst possible interpretation on the Administration bill, and in conjuring up the spectre of a hostile government battering down the doors of defenseless Christian schools, some religious leaders have done a disservice to evangelicals. We are made to appear to be defenders of segregation and discrimination when we are not.

What to do? NAE and others are working on a legislative proposal which would deny tax-exempt status to private schools practicing racial discrimination, while affording ample safeguards for private religious schools against excessive government regulation. Several Senators have asked for our help. We are optimistic about our proposal.



NATIONAL ASSOCIATION OF
EVANGELICALS

OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

PRESS RELEASE

January 11, 1982

NATIONAL ASSOCIATION OF EVANGELICALS

CONTACT: MR. FOREST MONTGOMERY, COUNSEL

A significant Supreme Court suit which pitted religious freedom against public policy has apparently been settled without a decision by the Court.

At this point it looks as if the fundamentalist Bob Jones University has won its case against withdrawal of its tax exempt status. The Reagan Administration recently revoked a federal policy of denying tax exemption to private schools that discriminate against blacks.

Was this a victory for religious freedom? Yes. And no. The discretionary power of the IRS to define legitimate charitable tax exempt activity, on public policy grounds, has been curbed. Good. Congress alone has that responsibility. Bob Jones University's religious freedom had been violated in the name of public policy.

But the administration went too far. Dropping the case before the Supreme Court decided it unfortunately means that even an avowedly segregationist school can enjoy the benefits of tax exempt status. In prohibiting inter-racial marriage, Bob Jones University was practicing a sincerely held religious belief--not invidious racial discrimination. The distinction is crucial and was the focus of NAE's brief in the Supreme Court on behalf of Bob Jones. Many segregationist academies are indeed practicing blatant racial discrimination. Such racism deserves no protection.

So, the National Association of Evangelicals finds the government's decision to drop this important case a mixed bag. The Supreme Court should have been allowed to hear the case and we believe it would have ruled in favor of Bob Jones. NAE would welcome congressional action denying tax exemption to schools guilty of racial discrimination.

This is Bob Dugan, in Washington.



NATIONAL ASSOCIATION OF
EVANGELICALS

OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

EXPLANATORY STATEMENT

WORKING DRAFT

of

LEGISLATIVE PROPOSAL

(This draft is for discussion purposes only;
it does not have official NAE approval.)

There is a pressing need for Congress to address difficult and complex issues which have arisen in the implementation of provisions of tax law which affect both the national public policy against racial discrimination and the preservation of religious liberty. It is believed that the attached proposal reflects a reasonable balance of these competing considerations. The proposed bill would afford Congress an opportunity to act responsibly in resolving those issues.

The bill has two major purposes:

- (1) To deny tax-exempt status to racially discriminatory private schools.
- (2) To prevent excessive entanglement of government with religious schools by prescribing appropriate guidelines for rules and regulations so that the regulatory process will not be burdensome.

The bill is an amalgam of the Administration's bill, S. 2024, introduced by Senator Dole on January 28, 1982; Revenue Procedure 75-50, 1975-2 Cum. Bull. 587; section 5 of S. 2029, introduced by Senator Helms on January 28, 1982; and additional provisions, such as the findings and purposes stated in sections 2 and 3 of the proposed bill.

The proposal closely follows the Administration's bill in denying tax exemption to private schools that are racially discriminatory. The proposal would remove present uncertainties occasioned by the administration's policy change, as well as uncertainties in the case law which existed before that policy change.

The proposal essentially enacts Revenue Procedure 75-50, with changes designed to insure that the regulatory process will be the minimum necessary for the IRS to determine if a school operates in a racially discriminatory manner. The proposal explicitly prohibits the kind of affirmative action contained in the IRS revenue procedures and revised procedures published in the Federal Register of August 22, 1978, and February 13, 1980, respectively.

From section 5 of the Helms' bill, S. 2029, the proposal establishes a declaratory judgment procedure, but expands that provision to afford an aggrieved party basically the same cause of action that the Secretary could bring under that section.

While adhering philosophically to much of the source materials, constructive modifications have been made in an effort to respond to the legitimate concerns of all groups following this matter.

A BILL

To amend the Internal Revenue Code of 1954 to deny tax exempt status to racially discriminatory private schools, to protect religious freedom in the promulgation of rules, regulations, and procedures affecting private schools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1, This Act may be cited as the "Racial Justice and Religious Freedom Tax Act of 1982".

FINDINGS

Sec. 2. The Congress makes the following findings:

- (1) People of all races are entitled to equal dignity and respect before the law as a basic constitutional right.
- (2) It is the national public policy that educational opportunity should be available to all persons without regard to their race, color, or national or ethnic origin.
- (3) Invidious racial discrimination in education is contrary to national public policy.
- (4) The liberty of individuals and institutions to observe and practice their religious beliefs is a basic constitutional right.
- (5) There is a pressing need to address difficult and complex issues which have arisen in the implementation of provisions of tax law which affect both the national public policy against invidious racial discrimination and the preservation of religious liberty.

(6) The granting of tax exemption to private schools and the allowance of charitable contribution deductions thereto should be denied where such schools are operated in a racially discriminatory manner and thus frustrate national public policy.

(7) Regulatory requirements imposed on national public policy grounds should be based upon a clear expression of the intent of Congress rather than left to the discretion of the Internal Revenue Service.

(8) The involvement of religious organizations in the operation of many private schools necessitates appropriate limitations on regulatory and compliance activity by the Internal Revenue Service to prevent excessive entanglement of government with religious institutions.

STATEMENT OF PURPOSES

Sec. 3. The primary purposes of this Act are as follows:

(1) To deny tax-exempt status to private schools that practice invidious racial discrimination.

(2) To prevent excessive entanglement of government with religious schools by prescribing limited guidelines for rules and regulations so that the regulatory process will not be burdensome to private schools.

DENIAL OF TAX EXEMPTIONS TO SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES

Sec. 4. Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection

(j) as subsection (k) and inserting a new subsection (j) as follows:

"(j) schools with racially discriminatory policies.-

(1) In general -- A school shall not be deemed to be described in subsection (c)(3), and shall not be exempt from tax under subsection (a), if such school has a racially discriminatory policy.

"(2) Definitions -- For the purposes of this subsection -

(i) A school has a 'racially discriminatory policy' if it does not extend to students of all races on an equal basis the rights, privileges, programs, and activities generally accorded or made available to students by that school, or if the school discriminates on the basis of race in administration of its admissions policies, educational policies, scholarship and loan programs, athletic programs, or other programs. The term 'racially discriminatory policy' does not include an admissions policy of a school, or 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 if membership in the religious organization is open to all on a racially nondiscriminatory basis.

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

(iii) The term 'school' shall have the same meaning it has in section 170(b)(1)(A)(ii) of the Code."

Sec. 5. Denial of deductions for contributions to schools with racially discriminatory policies.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) Denial of deductions for contributions to schools with racially discriminatory policies.--No deduction shall be allowed under this section for any contribution to or for the use of a

school described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).".

(b) Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) a new paragraph (7) reading as follows:

"(7) Denial of deductions for contributions to schools with racially discriminatory policies.--No deduction shall be allowed under this section for any contribution to or for the use of a school described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).".

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

"(4) No deduction shall be allowed under this section for any transfer to or for the use of a school described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).".

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

"(3) No deduction shall be allowed under this section for any gift to or for the use of a school described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).".

RULES AND REGULATIONS

Sec. 6. (a) In promulgating rules and regulations implementing the amendments to the Code made by section 4 of this Act, the Secretary

shall prescribe the minimum guidelines and recordkeeping requirements appropriate for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) of the Code, or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students.

(b) The guidelines of subsection (a) of this section shall prescribe the following general requirements --

(1) That a school include a statement in its charter, bylaws, or other governing instruments, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, or national or ethnic origin.

(2) That a school include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs and scholarships, as well as its other written advertising that it uses as a means of informing prospective students of its programs.

(3) That a school make its racially nondiscriminatory policy generally known to minorities in the community served by the school.

(4) That a school must be able to show that its programs and facilities are operated in a racially nondiscriminatory manner.

(5) That, as a general rule, all scholarship or other comparable benefits procurable for use at the school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be generally known to minorities in the community being served by the school and must be referred to in the publicity required by this section.

(6) That an individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as

to students must certify annually, under penalties of perjury, that to the best of his knowledge and belief the school has satisfied the requirements of this section and implementing rules and regulations.

(7) That a school filing an application for exemption under section 501(c)(3) of the Code must supply the Internal Revenue Service with the following information --

(A) the racial composition for the current academic year and the projected composition for the next academic year in terms of students, faculty, and administrative staff,

(B) the amount of scholarships and loan funds, if any, awarded to students enrolled and the racial composition of students who have received such awards,

(C) a listing of incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations, and

(D) a statement whether any of the organizations described in subparagraph (C) of this paragraph have at the time the application is filed an objective of maintaining segregated public or private school education and, if so, a statement whether any of the individuals described in subparagraph (C) of this paragraph are officers or active members of such organizations at the time the application is filed.

(8) That an exempt school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, the following records for the use of the Internal Revenue Service upon proper request --

(A) records indicating the racial composition of the student body, faculty, and staff for each academic year,

(B) records sufficient to document that scholarships and other financial assistance is awarded on a racially nondiscriminatory basis, and

(C) copies of all brochures, catalogues, and advertising dealing with student admissions, programs and scholarships.

(c) Nothing in this section shall be construed as preventing the Secretary from accepting estimates, alternative information sources, or making other reasonable accommodation to the recordkeeping requirements imposed by this section where substantially the same information may be obtained thereby. Further, nothing in this section shall be construed as authorizing the Secretary to prescribe by regulation or otherwise any affirmative action other than that prescribed in this section.

(d) Failure to maintain or to produce upon a proper request the records required by subsection (b)(8) of this section will create a presumption that the school has failed to comply with the guidelines of paragraphs (1) through (7) of subsection (b) of this section, or the implementing rules and regulations.

RULES OF CONSTRUCTION

Sec. 7(a) Nothing in this Act shall be construed as authorizing the Secretary to promulgate any rules and regulations creating presumptions of racial discrimination or requiring affirmative action such as the procedures published by the Internal Revenue Service in the Federal Register on August 22, 1978, or the revised procedures published in the Federal Register on February 13, 1980.

(b) The absence of any credible evidence that a qualified person has been denied admission to a school because of race, color, or national or ethnic origin shall create a presumption that the school does not have a racially discriminatory policy. This presumption shall be inoperative if the presumption of section (6)(d) of this Act is applicable.

(c) Any affirmative action program initiated by a school shall be taken into account by the Secretary as evidence of a racially nondiscriminatory policy.

DECLARATORY JUDGMENT PROCEDURE

Sec. 8(a). Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by redesignating section 7408 as section 7409, and by inserting after section 7407 the following new section:

"Section 7408. ACTION TO REVOKE TAX-EXEMPT STATUS OF SCHOOL ON BASIS OF RACIAL DISCRIMINATION

"(a) Notwithstanding technical compliance by a school with rules and regulations promulgated by the Secretary, a civil action for declaratory judgment may be brought by the Secretary, in the United States district court for the district in which the school is located, if the Secretary has reason to believe such school is operated in a racially discriminatory manner. The Secretary shall bear the burden of proof in any such civil action -

"(b) LIMITATIONS. --

(1) No adverse action until school has exhausted appeals. --
The Secretary shall not deny or revoke the exempt status of a school under section 501(c)(3) or deny deductions for contributions to such school under section 170 until the school has exhausted all appeals from the final adverse order of the district court in the declaratory judgment action brought under this section.

(2) The date of revocation of exemption shall be made retroactive to the date of the district court decision declaring the school to be operated in a racially discriminatory manner.

"(c) RETENTION OF JURISDICTION; REINSTATEMENT OF STATUS.--
The district court before which an action is brought under this section which results in the denial or revocation of exempt status under section 501(c)(3) shall retain jurisdiction of such case, and shall, upon a determination that such school has not operated in a

racially discriminatory manner for a period of at least a full academic year since the initial declaratory judgment, issue an order to such effect and vacate the revocation of exemption. Such an order may be appealed by the Secretary, but unless vacated, shall be binding on the Secretary with respect to qualification for exemption under section 501(c)(3).

"(D) DISCRETIONARY AWARD OF COSTS AND FEES TO PREVAILING SCHOOL.

--In any civil action brought under this section, the prevailing party, unless the prevailing party is the Secretary, may be awarded a judgment of costs and reasonable attorney's fees in such action."

(b) The table of sections for such subchapter is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 7408. Action to revoke tax-exempt status of school on basis of race discrimination.

"Sec. 7409. Cross references."

(c) Civil actions by private party. --

(1) An action for declaratory judgment that a school operates in a racially discriminatory manner may be brought by any aggrieved party, in the United States district court for the district in which the school is located.

(2) Costs and attorney's fees. -- The prevailing party may be awarded a judgment of costs and reasonable attorney's fees.

(3) Retention of jurisdiction. -- The district court in which such a civil action for declaratory judgment is filed shall retain jurisdiction in the same manner as provided in section 7408(c) of the Code as added by section 8(a) of this Act.

(4) Limitations. -- If the court finds that the school operates in a racially discriminatory manner, the limitations provided in section 7408(b) of the Code as added by section 8(a) of this Act

shall apply as if the prevailing party in such civil action were the Secretary.

SAVINGS PROVISIONS

Sec. 9(a). The tax-exempt status of schools for the period July 10, 1970, through the day preceding the effective date of this act is unaffected by this Act.

(b) Any grant of tax exemption to a school prior to the effective date of this Act to settle litigation without a final decision on the merits is unaffected by this Act.

EFFECTIVE DATE

Sec. 10. This Act shall take effect on the day of its enactment.