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COMMITTEE ON FINANCE

Public Hearing on
Tuition Tax Credits

Thursday, April 28, 1983, 10 a.m.
SD-215, Dirksen Senate Office Building

WITNESS LIST

The Honorable Terrel H. Bell, Secretary of Education, Department of Education, Washington, D.C.

The Honorable John E. Chapoton, Assistant Secretary for Tax Policy, Department of the Treasury, Washington, D.C.

The Honorable William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C.

A panel consisting of:

Mrs. Wallie Simpson, principal, Lower East Side Community School, New York, N.Y., on behalf of Council for American Private Education, Washington, D.C.

Dr. Thomas Vitullo-Martin, director of research, Metroconomy, Inc., New York, N.Y.

Richard B. Dingman, legislative director, The Moral Majority, Washington, D.C.

A panel consisting of:

Althea T. L. Simmons, director, National Association for the Advancement of Colored People (NAACP), Washington, D.C.

James M. Dunn, executive director, Baptist Joint Committee on Public Affairs, Washington, D.C.; also appearing on behalf of Americans United for Separation of Church and State, Silver Spring, Md.

Nathan Dershowitz, director, American Jewish Congress, New York, N.Y.

A panel consisting of:

Rev. Thomas Gallagher, secretary for education, U.S. Catholic Conference, Washington, D.C.

SUMMARY OF DAV TESTIMONY ON S. 825

The principle source of revenue for the Disabled American Veterans (DAV) is achieved through direct solicitations to the general public. The DAV's donor list suffers from an attrition rate (loss of names) of approximately 12% per year. Donor list maintenance is achieved by the DAV through the renting and exchanging of names from its donor list to and with other groups and organizations, primarily nonprofit groups.

By virtue of an IRS ruling and Court of Claims decision, it has been determined that the list rental income of DAV is Unrelated Business Taxable Income (UBTI) and therefore subject to taxation. IRS, through a later ruling, has also expanded this decision to encompass DAV list exchange activity and also render it subject to UBTI.

The DAV believes these decisions subvert the original intent of Congress with regard to the UBTI statute. We believe the Congress intended this statute to prevent tax exempt organiza-tions from conducting business operations with an unfair competitive edge over taxable businesses engaged in similar activity.

The DAV maintains:

1. The exchanging and renting of donor names by nonprofit groups is not competitive with the private sector (this point was conceded in the Court of Claims decision);
2. List rental/exchange activity (donor list maintenance) is very much related to the purposes which constitute the basis for the tax exempt status of nonprofit organizations; and
3. The charitable programs of nonprofit groups fill a vital need for many categories of deserving and needy Americans. In many cases, they supplement and/or take the place of similar local, state and federal efforts. Promotion and support of these charitable efforts and the value derived from them far outweigh the relatively modest impact of S. 825 on federal revenues.

Testimony Before

United States Senate

Finance Committee

April 28, 1983

Washington, D. C.



Archdiocese of New Orleans • Department of Education
7887 Walmsley Avenue, New Orleans, Louisiana 70125 / Phone (504) 861-9521

Senator Dole, Chairman, and Members of the Committee:

I am Leonard Fine, Assistant Superintendent of Schools for the Archdiocese of New Orleans. I am representing The Louisiana Catholic Conference, and the Catholic school superintendents from six Catholic dioceses of Louisiana. These six dioceses have a total student enrollment of one hundred and fifteen thousand students.

Today providing educational opportunities for all on an equal basis is perhaps the most important function of our government. Education is required in the performance of our most basic public responsibilities, even service in the armed forces. Education provides the very foundation of good citizenship. Education today is a principle instrument in awakening the child to cultural values, in preparing the student for later professional training and helping the student to adjust normally to his/her environment. In today's society, it is doubtful that any child may reasonably be expected to succeed in life if he/she is denied the opportunity of an education. Because nonpublic as well as public schools contribute in building the "foundation of good citizenship", they too merit consideration when congress makes available a benefit in the educational area.

It is in this regard that I appear before you and ask for enactment of the proposed Tuition Tax Credit Legislation. In support of my request, I offer the following points of testimonial fact. Just as parents choose for their children, their food, their clothing, vacation, or home, so should these parents be able to choose for their children the proper school. Having this choice provides the family with dignity and self worth. The denial of this choice is one of the greatest degradations of poverty. Poor families are still denied a choice of schools. Most are imprisoned in ghetto public schools and for many, this means a life of functional illiteracy, unemployment and poverty. Poor families must have the right to choose schools of high quality, public or nonpublic. Poor families must demand that government emancipate them from inferior ghetto schools and give them a choice of quality

public and nonpublic schools. All parents must have the right to choose for their dependents the best possible educational alternatives. Tuition Tax Credits would have the direct effect of enabling the tax-payer to exercise broader selection in the way his/her dependents are educated. I am also here representing the sixty thousand Catholic school students from the Archdiocese of New Orleans. In the city of New Orleans fifty-two percent of the children attending our schools are of various minority groups, and this number is growing each school year. Black children in the inner-city nonpublic schools are doing exceptionally well. Hundreds of thousands of other black children would do equally well if given the chance to choose quality schools. Tuition Tax Credits would serve all students on an equal basis, and would help provide education to all parents.

We in the Archdiocese of New Orleans, and in the other five dioceses of Louisiana, believe very strongly that as a general proposition and as a matter of public policy, parochial school students are entitled to the same benefits and services as public school students are. It is simply wrong that because the government has decided to go into the education business and directly sponsor schools, those schools are the only acceptable vehicle for the government to meet the responsibilities to all children. Tuition Tax Credits would continue to provide other avenues for parents to choose.

In summation, the Tuition Tax Credit Legislation must be passed so education opportunities can be provided for all students on an equal basis. Parents must be allowed to make choices as regards the education of their children, and poor families must have an alternative to ghetto based inferior schools.

For Release Upon Delivery
Expected at 10 a.m. EDT
April 28, 1983

STATEMENT OF
THE HONORABLE JOHN E. CHAPOTON
ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Committee:

I am pleased to appear before you this morning in support of S. 528, which would provide an income tax credit for 50 percent of certain elementary and secondary school tuition expenses. The tax credit is intended to enhance equality and diversity of educational opportunity for all Americans at the elementary and secondary schools of their choice.

S. 528 addresses an extremely important area of public policy. As you know, the President has taken considerable personal interest in its development. The Administration believes that enactment of tuition tax credit legislation is essential to maintain the excellence of the American educational system and to protect the right of American parents to determine how and where their children will be educated. We appreciate the action of this Committee last year in reporting out a similar bill (H.R. 1635) and we urge you to act favorably on S. 528.

This bill would establish a tuition tax credit system that will fulfill this Administration's commitment to parental responsibility, educational excellence, and fiscal and administrative restraint. The bill will further the educational diversity that is the hallmark of our educational

system. It will make educational freedom of choice a reality to more American families. It will target relief to those families that need it most. Finally, it will neither interfere with the operation of private schools nor impose costly administrative and regulatory burdens on them.

Equality of educational opportunity clearly requires that a diverse range of schools -- public and private -- be available to all American families, and that all American families have the financial ability to permit meaningful freedom of choice among schools. As Secretary Regan testified last year, we believe that parents have a fundamental right, and responsibility, to direct the education of their children in a way which best serves their individual needs and aspirations. Moreover, we believe that parental involvement in the decision-making process enhances the quality of education provided.

Private schools are essential to fulfilling our national educational needs. They provide a healthy diversity of approach, and are often a significant source of innovation and experimentation. But tuition at a private school is an additional expense for parents, and inflation has increased this burden. At the same time, higher taxes caused by bracket creep have made it more difficult for families to afford private education. Tuition tax credits offer a simple means to expand the opportunities of private school students by permitting families to spend the money that they have earned for the education they themselves select. It also guarantees the continued independence of private schools, since no Federal agency will be involved in a funding capacity.

This proposal addresses the double burden placed upon parents who pay taxes to support the children of others in public schools but who also pay full tuition for their own children in private schools. Sending their children to the public schools instead would increase the burden on the public schools and further strain scarce financial resources for public education. It is only fair that the burden on parents now suffering this double expense be relieved. This will also avert the possibility that they might be forced through economic circumstance to return their children to the public schools, which would have trouble accommodating them.

Tax credits for tuition expenses have the advantage of providing the same dollar benefit to all taxpayers. In contrast, a deduction would provide a greater benefit for individuals in higher tax brackets.

S. 528 would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year. Qualifying tuition expenses are expenses paid

for tuition and fees to send certain dependents under the age of 20 to private elementary or secondary schools on a full-time basis. Qualifying tuition expenses do not include amounts paid for books, supplies, equipment, meals, lodging, transportation, or personal expenses, or for education below the first-grade level or above the twelfth-grade level.

The credit is allowed only for expenses paid with respect to students for whom the taxpayer is allowed a dependency exemption and who bear any of the following relationships to the taxpayer: children (including adopted children) and descendants; stepchildren; siblings, stepbrothers and stepsisters; nieces and nephews; and members of the taxpayer's household, other than the taxpayer's spouse, whose principal place of abode is the taxpayer's home. To be allowed a dependency exemption, the taxpayer must provide more than half of the student's support for the calendar year in which the taxpayer's taxable year begins and, except for the taxpayer's children and stepchildren, the student must have less gross income than the amount of the exemption.

The amount of the credit that is allowable for the taxable year with respect to a student is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is \$100 for expenditures made after July 31, 1983 in taxable years beginning in 1983, \$200 for expenditures made in taxable years beginning in 1984, and \$300 for expenditures made in taxable years beginning in 1985 and thereafter. These ceiling amounts limit the relative benefit that the credit will provide to parents whose children attend more expensive private schools. Beginning in 1985, parents who send their children to private schools with tuition of \$600 or less per year will receive a credit for a full 50 percent of tuition expenses. Parents who send their children to more expensive schools will not be able to claim a credit for additional tuition expenses.

The second limit contained in S. 528 directs the benefit of tuition tax credits to less wealthy families by a phase-out of the credit for higher-income families. The maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over \$40,000 and is phased out entirely for taxpayers with adjusted gross incomes of \$60,000 or over. For taxable years beginning in 1983, the \$100 per student maximum credit is reduced by 0.5 percent of the taxpayer's adjusted gross income over \$40,000; for taxable years beginning in 1984, the \$200 per student maximum credit is reduced by 1 percent of the taxpayer's adjusted gross income over \$40,000; and for taxable years beginning in 1985 and thereafter, the \$300 per student maximum credit is reduced by 1.5 percent of the taxpayer's adjusted gross income over \$40,000.

The amount of tuition expense for which a taxpayer is allowed a credit does not include expenses that are paid by scholarships and other educational aid which are not includible in the taxpayer's or the student's income. If the scholarship is provided directly by or to the school and the school sends a tuition bill to the taxpayer that is net of the amount of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense altogether.

A school with respect to which credits are allowable must provide a full-time elementary or secondary school program and must be a private, not-for-profit, day or residential school. In addition, the school must be exempt from taxation under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code, and must include in any published materials a statement that it does not discriminate against student applicants or students on the basis of race. Church-operated schools will continue to be exempt, pursuant to section 508(c), from the provisions of section 508(a) and (b), that generally require an organization to apply to the Secretary of the Treasury to be recognized as a section 501(c)(3) organization that is not a private foundation. The fact that credits are claimed for payments to a church-operated school shall not serve as a basis for imposing any new requirements on the school in this regard.

S. 528 contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. A racially discriminatory policy is a policy under which a school refuses, on account of race, to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic or other programs. A racially discriminatory policy does not include the failure by a school to pursue or achieve any racial quota, proportion, or representation among its students.

Three anti-discrimination enforcement mechanisms have been written into the bill.

First, a tax credit cannot be claimed unless the school is a tax-exempt organization described in section 501(c)(3). As you are aware, litigation now before the Supreme Court will determine whether the Internal Revenue Service has authority to deny tax-exempt status to schools that discriminate on the basis of race. The provisions of S. 528 will not become effective until either a final decision of

the Supreme Court or explicit legislation prohibits the granting of tax exemption on the basis of section 501(c)(3) to a school that maintains a racially discriminatory policy or practice as to students.

Second, in order for tuition expenses to be eligible for the credit, the school must file annually with the Treasury a statement under the penalties of perjury that it has not followed a racially discriminatory policy during that calendar year. The school also must include a statement of nondiscrimination in all materials it publishes.

Third, the Attorney General of the United States, upon receipt from any person of an allegation of discrimination by a school, is authorized and directed to seek a declaratory judgment, in the United States district court for the district in which the school is located, that the school follows a racially discriminatory policy. An allegation of discrimination must allege with specificity that, within one year preceding the date on which the allegation is made, a named school has committed a racially discriminatory act against a named student applicant or student or the named school has made a communication expressing that the school follows a racially discriminatory policy. If the Attorney General decides not to bring an action for declaratory judgment or to enter into a settlement agreement before such action is brought, the Attorney General must make the information on which such decision is based available to the person who filed the allegation of discrimination. A settlement agreement may be entered into prior to filing a declaratory judgment action if the Attorney General finds that the school has been acting in good faith and has abandoned its racially discriminatory policy.

A court may declare that a school follows a racially discriminatory policy only if the Attorney General establishes that within 2 years preceding the declaratory judgment action the school, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student, made a communication expressing that it follows a racially discriminatory policy against student applicants or students, or engaged in a pattern of conduct intended to implement a racially discriminatory policy and committed some act in furtherance of this pattern of conduct. If a district court judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed beginning in the year in which the judgment is entered. If the district court judgment is reversed after all appeals procedures are completed, tuition tax credits are allowed retroactively. If the district court judgment is not appealed or is upheld on appeal, no tuition tax credits are

allowed until the year in which the judgment is modified to state that the school no longer follows a racially discriminatory policy. A motion for such modification of the judgment may be filed with the district court at any time that is more than one year after the date on which the judgment was entered. Any such motion must contain affidavits describing the ways in which the school has abandoned its previous racially discriminatory policy, describing the ways in which the school has taken reasonable steps to communicate its policy of nondiscrimination to students, faculty, administrators, and the public in the area it serves, stating that the school has not, during the preceding year, committed an act, made a communication, or engaged in a pattern of conduct that would be the basis for a declaration that the school follows a racially discriminatory policy, and stating that the school has included the required statement of nondiscrimination in all of its published materials.

This triple enforcement mechanism, which reflects the enforcement mechanism in H.R. 1635 as reported out by this Committee last year, will prevent use of tuition tax credits to pay expenses at racially discriminatory schools without interfering in the operation of private schools and without subjecting private schools to costly administrative burdens.

Finally, S. 528 will assist American families to educate their children at the schools of their choice without significant fiscal impact. Our revenue estimates indicate that the cost of this tuition tax credit program will be \$245 million in fiscal year in 1984; \$526 million in fiscal year 1985; \$753 million in fiscal year 1986; and \$779 million in fiscal year 1987.

S. 528 is a bill that provides substantive tax relief to the families of nonpublic school students, thereby broadening and enriching educational opportunities and promoting excellence in our schools. The bill recognizes the value of our private schools and will strengthen the right of parents to decide how and where to educate their children. The Administration strongly supports S. 528.

This concludes my prepared testimony. I would be happy to answer any questions you may have at this time.

**The National
Coalition for
Public Education**

1201 16th Street, N.W. / Suite 621 / Washington, D.C. 20036 / Phone: 202-822-7878

TESTIMONY OF THE

NATIONAL COALITION FOR PUBLIC
EDUCATION

IN REGARD TO TUITION TAX CREDITS

BEFORE THE

SENATE FINANCE COMMITTEE

U.S. SENATE

APRIL 28, 1983

In the short time this morning, permit me first of all to reinforce our prior testimony which was presented to this Committee over the past two years. Secondly, I ask you to focus your attention on new developments and several recent studies that corroborate our belief that tuition tax credits would represent a radical shift in current public education policy.

THE ECONOMIC ARGUMENTS

● Tuition Tax Credits Would Be An Economic Disaster

When the National Coalition testified before this Committee on June 4, 1981, the projected federal deficit was in excess of \$60 billion. When we next testified on July 16, 1982, the projected deficit was in excess of \$100 billion. Today, the projected deficit is in excess of \$200 billion and several weeks ago, the Senate Budget Committee heard testimony that predicted another \$900 billion in federal deficits through 1988. Since tuition tax credits are a multi-billion tax expenditure, an uncontrollable entitlement program, and an incentive that will reduce the pool of income that a government can draw on for taxes, just what do the sponsors of S.528 propose to recommend to reduce spiraling deficits? Certainly, tuition tax credits would open the door to even greater spending in future years as the private school interests push for larger and larger credits. This is best exemplified by House bill 404 in the Minnesota State Legislature advocated by a number of private school organizations which would increase the Minnesota state

2. Non-profit schools pay no income, use or sales tax.
3. Individuals and corporations may deduct voluntary private school contributions from federal income taxes.
4. In many states, students of private schools receive publicly supported services and equipment such as testing, textbooks, handicapped services and transportation. Released time and dual enrollments are also common.
5. Federal funds are also allocated to private schools through numerous programs some of which provide funds directly to schools and others of which flow through states. A large portion of federal funds are restricted in use, such as those provided through Chapter I, which are subject to regulations regarding their use. On the other hand, other funds such as Impact Aid and ECIA are unrestricted in how they can be used. Money from the Department of Education for private schools amounted to approximately \$43 per student in the school year 1981-82.
6. Starting in the school year 1982-1983, non-public schools have the opportunity to participate in a new federal program, Chapter II of the Educational Consolidation and Improvement Act (ECIA). ECIA provides \$437.5 million for use by state and local districts. Of that amount, public school districts must hand over approximately \$48 million based on the present national private school

PTA provides a breakdown of that state's expenditures for non-public schools during the school year 1981-1982:

STATE AID

1. Transportation \$95,400,000
2. Textbook Aid \$ 8,414,000
3. School Lunch 900,000
4. Handicapped Students
 12,405,000.
5. Breakfast Program 900,000
6. Mandated Services
 (i.e. testing, program evaluation,
 and reporting) 14,274,000
7. Aid to public schools
 for handicapped students
 who are enrolled in private
 schools 27,867,000

Total state aid spent on private schools in New York totaled over \$160,160,000 last year. Other auxilliary services from other states for private schools may include: subsidies for private school teachers of secular subjects, tax deductions, diagnostic health services and building maintenance and repair. The critical policy questions are: how many more programs for private schools will the states and federal government add, how much will they cost, are they constitutional, and how much more money will they take from the support of public schools?

would be a major shift away from the high-cost, more difficult to educate and needy students to those in better circumstances in the urban areas. Secondly, the report suggests a trend that tuition tax credits (even at the \$300 maximum level) will eventually equalize support for public and private schools which represents a major policy shift by itself. Thirdly, for urban districts, this report presents conclusive evidence that even at the \$528 credit levels, private schools will be receiving more federal support on a per pupil basis than will public schools.

In another study by the Education Commission of the States² released in October of 1982, it was concluded that under the original Reagan tuition tax credit proposal, "in some states, there would be a significant flow of tuition tax credits, resulting in an average tax credit that would exceed the per pupil amount of federal aid currently flowing to the state. In addition, if the revenue loss due to tax credits were made up by reducing federal aid to public schools, the average value of the credit would equal or exceed the average value of federal aid to public school pupils in almost every state."

For instance, with a \$500 maximum credit, the ECS study concludes that in 18 states the average value of this tax credit would be less than the average amount of per pupil federal support. In 12 states, the average tax credit would be between

²"Tuition Tax Credits: Their Impact on the States,"
Education Commission of the States, October, 1982

CONSTITUTIONAL ARGUMENTS

- Tax credits violate the Constitutional principles of separation of church and state because religious schools would be recipients of federal aid.
- Since religious schools or parishes would be beneficiaries of tax credits, federal monies would tend to advance and foster religion at public expense.
- In order to assure tuition tax credits are used for a non-sectarian purpose, and do not advance or inhibit religion, public surveillance and monitoring on schools grounds would be necessary thereby leading to excessive entanglements.

It is our judgment that under well-established Supreme Court precedent, S.528 would be a law respecting an establishment of religion and would therefore violate the First Amendment.

S.528 proposes a special tax benefit for parents who send their children to private sectarian schools. We believe the First Amendment was designed to prohibit the government from aiding and advancing religion in this way. Just as the government may not prohibit the free exercise of religion including sending children to private religious schools, (Pierce v. Society of the Sisters, 268 U.S. 510 (1925)), it also may not advance any particular religion or religion in general. School District of Abington Township v. Schempp, 374 U.S. 203 (1963). The government must remain neutral on the issue of religion. Because over 85 % of private elementary

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TUITION TAX CREDITS FACT SHEET

The National Coalition for Public Education (more than 50 affiliated organizations with more than 40,000,000 combined members) strongly opposes tuition tax credits. The Coalition members believe tuition tax credits would be bad educational and economic policy and would violate both the letter and the spirit of the Constitution of the United States.

Tuition tax credits are designed to remove support for the public schools—which serve nearly 90% of all U.S. students—and to redirect that support to the non-public (church-connected and private) schools.

- The Reagan Administration proposed Fiscal 1984 budget calls for a tuition tax credits program that would cost upwards of \$2.5 billion over the first three years and costs would escalate yearly thereafter. At the same time the Administration is seeking a corresponding REDUCTION of \$2 billion for FY 1984 alone in support for existing education programs.

- Non-public schools already receive significant federal and state aid for services they may provide—for example, education programs for the disadvantaged and funds for textbooks and transportation.

Tuition tax credits would discriminate against the majority of Americans, especially the less affluent and poor.

- The Reagan Administration opposes including a REFUNDABILITY provision in tuition tax credits proposals. Without such a provision, the full tax credits would be available ONLY to those whose taxes-due exceed the amount of the proposal tax credit. Others would be ineligible.

- Lack of refundability would disproportionately discriminate against minorities—according to the 1980 United States Census, 37% of Hispanic and 46% of Black families with school age children earn \$10,000 or less annually and would, therefore, be automatically denied the proposed tuition tax credits even at the proposed figure of \$300 per credit.

- The vast majority of non-public schools that are NOT church-connected charge so much for tuition that the overwhelming majority of Americans could not afford to pay the full tuition over and above the amount of the tax credit.

- Nearly 90% of all American students attend public schools. The proposed tuition tax credits would be of no benefit whatever to the vast majority of Americans including those with children in the public schools, those without children of school age and those who have no children.

- Average income of families of all non-public school students is 37% higher than the average income of families of public school students—the proposed tuition tax credits program is an attempt to benefit a small minority of Americans who are significantly more affluent than the majority.

- There are approximately 40,949,100 public school students in America compared to just about 5,028,865 private school students—89.1% of all students seek their education through the public schools.

- Citizens who choose to employ private security guards instead of relying on the public police forces, to use private as opposed to public transportation, or to build private pools in their back yards, do NOT receive federal tax credits or other payments to support their private choice in these matters. Citizens who may oppose some aspect of our national policy, such as construction of atomic weapons or engaging in a military conflict, are not allowed to take back the portion of their taxes that go to support such matters of national policy. Nor should such payments as tax credits be made to those who do not want to make use of the public schools.

#

There are even more facts and arguments in support of the strong case AGAINST the proposed tuition tax credits. Here are a few of them:

- Tax credits undermine America's traditional system of universal public education.
- Private schools can refuse to offer services that public schools must provide and can be more selective with regard to whom they admit.
- Studies comparing college prep students show little if any difference between public and private school students.
- Tax credits would induce an educational caste system by drawing children from middle- and high-income families into private schools and leaving difficult and more expensive-to-educate children behind.
- Tax credits would further erode public school support by working to decrease public school attendance, causing a decrease in state support under state funding procedures.
- Tax credits will increase paperwork and red tape by imposing increased recordkeeping on the schools and the federal government to monitor and audit tax credits.
- Tuition tax credits would disproportionately distribute tax funds because:
 - private school enrollment remains highest in the Northeastern and Northcentral states and lowest in the South and West, and
 - private school enrollment is highest among northern, white, wealthy families. Further,
 - students in the South and West pay more to attend private schools than do their counterparts in the Northcentral and Northeastern regions.
- In urban school districts, non-public school students would receive up to 5 times as much federal support as would public school students.
- Parents of public school students would in effect pay taxes twice; once for public schools and a second time through the tax credits provided for parents of non-public school students.
- Tuition tax credits are a "reverse Robin Hood" approach, taking from the poor and giving to the rich.
- Enactment of tuition tax credits would create per-pupil allocations for non-public school students of at least four times the amount of federal aid for each student in public schools.

The following is a partial list of Coalition members

AMERICAN ALLIANCE FOR HEALTH, PHYSICAL EDUCATION, RECREATION & DANCE (AAHPERD)
AMERICAN ASSOCIATION OF CLASSIFIED SCHOOL EMPLOYEES (AACSE)
AMERICAN ASSOCIATION OF COLLEGES FOR TEACHERS EDUCATION (AACTE)
AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS (AASA)
AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES (AASCU)
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW)
AMERICAN CIVIL LIBERTIES UNION (ACLU)
AMERICANS FOR DEMOCRATIC ACTION (ADA)
AMERICAN ETHICAL UNION (AEU)
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS/PUBLIC EMPLOYEES (AFL-CIO)
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME)
AMERICAN FEDERATION OF TEACHERS (AFT)
AMERICAN HUMANIST ASSOCIATION (AHA)
THE AMERICAN JEWISH COMMITTEE (The AJC)
AMERICAN JEWISH CONGRESS (AJC)
A. PHILIP RANDOLPH (APR)
AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE (AUSCS)
AMERICAN VOCATIONAL ASSOCIATION (AVA)
BAPTIST JOINT COMMITTEE FOR PUBLIC AFFAIRS (BJCPA)
BOARD OF CHURCH & SOCIETY/UNITED METHODIST CHURCH (UMC)
CHILDREN'S DEFENSE FUND (CDF)
COUNCIL FOR EDUCATIONAL DEVELOPMENT AND RESEARCH (CEDAR)
COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO)
COUNCIL OF GREAT CITY SCHOOLS (CGCS)
LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT (LCLAA)
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES (LWV/US)
MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND (MALDEF)
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP)
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
NATIONAL ASSOCIATION OF ADMINISTRATORS FOR STATE & FEDERAL EDUCATION PROGRAMS (NAASFEP)
NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS (NASP)
NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION (NASBE)
NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE, INC. (NBCDI)
NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION (NCCE)
NATIONAL CONGRESS OF PARENTS AND TEACHERS (National PTA)
NATIONAL COUNCIL OF JEWISH WOMEN (NCJW)
NATIONAL COUNCIL OF SENIOR CITIZENS (NCSC)
NATIONAL EDUCATION ASSOCIATION (NEA)
NATIONAL PUBLIC EDUCATION AND RELIGIOUS LIBERTY (National Pearl)
NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA)
NATIONAL SCHOOL PUBLIC RELATIONS ASSOCIATION (NSPRA)
NATIONAL SCHOOL VOLUNTEER PROGRAM (NSVP)
NATIONAL URBAN LEAGUE (NUL)
NEW YORK CITY BOARD OF EDUCATION (NYC Bd. of Ed.)
PEOPLE FOR THE AMERICAN WAY (PAW)
STUDENT NEA (SNEA)
UNION OF AMERICAN HEBREW CONGREGATION (UAHC)
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
UNITED STATES STUDENT ASSOCIATION (USSA)
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VOICE OF REASON (VOR)

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

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JAMES M. DUNN
EXECUTIVE DIRECTOR

Summary of the Points Made in the Testimony of James M. Dunn, Executive Director Baptist Joint Committee on Public Affairs

on S. 528

before the Senate Committee on Finance
April 28, 1983

1. The failure to meet the public policy test is the greatest fault of tuition tax credit plans.
2. Several cooperating Baptist conventions have spoken strongly against tuition tax credit legislation.
3. Baptist opposition to tax credit legislation stems from a variety of concerns: such legislation is

unconstitutional -- according to the U.S. Supreme Court's interpretation of the no establishment clause of the First Amendment

regressive -- offering aid to wealthier families who pay substantial income taxes

expensive -- costing nearly \$1 billion annually -

inflationary -- constituting a new uncontrollable entitlement

unfair -- favoring large, established schools and Northeastern children

divisive -- engendering dangerous political divisions along religious lines

destructive of the public schools -- diverting much needed funds and community support

undemocratic -- funneling tax money where taxpayer control is less effective

dishonest -- accomplishing indirectly what cannot be done directly

intrusive -- necessitating government intervention in religious institutions.

Testimony of James M. Dunn
Executive Director, Baptist Joint Committee
on Public Affairs

at the Hearing on S. 528

before
Senate Committee on Finance
April 28, 1983

Mr. Chairman, distinguished members of the Committee. I am James M. Dunn and I welcome the opportunity to share with you some insights that are the often-stated views of a large segment of the religious community. The enactment of a tuition tax credit plan would be a giant step toward guaranteeing a dual system of pauper schools and private schools in this country.

"Public money for public purposes" is a good motto. The failure to meet the public policy test is the greatest fault of tuition tax credit plans. Elitists have always been cool to the idea that poor children should have the same teaching as children of privilege. One Rhode Island farmer physically threatened Henry Barnard, the state's chief spokesman for common schools, for "preaching such a horrible heresy as the partial confiscation of one man's property to educate another man's children."¹

Gradually the common school concept prevailed. Thousands of dedicated average Americans have paid the price to give us the public schools of today. "They believed that public education

¹Vivian T. Thayer, The Rise of the School in American Society (New York: Dodd, Mead, 1969), p. 10.

conducted in the context of the community as a whole rather than in a sanitized and separated part of it was an essential ingredient in teaching the give-and-take of democracy."²

The Baptist Joint Committee which I represent works for the 27 million Baptists who are members of the eight major Baptist conventions and conferences in the United States. Because of the democratic structure of individual Baptist churches and conventions, we do not purport to speak for all Baptists; however, several of our cooperating conventions have spoken strongly against tuition tax credit legislation.

For example, the Southern Baptist Convention, the largest non-Roman Catholic religious body in the United States, passed a resolution in June 1982 restating its opposition to tuition tax credits.

WHEREAS, The Congress of the United States is considering legislation to give taxpayers a tax credit (that is, a direct subtraction from one's tax bill) for tuition payments, and

WHEREAS, The effect of such legislation would be of most benefit to those who could afford to finance their children's attendance at private schools including elite schools, and

WHEREAS, Most private elementary and secondary schools are related to churches and exist to serve the religious mission of sponsoring churches, and

WHEREAS, Tuition tax credit legislation carries the potential of financing private education at the expense of public education, and

²Penrose St. Amant, "The Christian and Public Education," Therefore . . ., Christian Life Commission of the Baptist General Convention of Texas, Spring, 1982, p. 2.

WHEREAS, The attorney general of the United States has issued an advisory opinion that such legislation is of doubtful constitutionality under the First Amendment, especially with regard to tuition paid to elementary and secondary schools, and

WHEREAS, The Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state.

Therefore, be it Resolved, That we call upon President Ronald Reagan to reconsider his support of the tax credit legislation now under consideration by Congress.

Be it further Resolved, That we, messengers to the Southern Baptist Convention, meeting in New Orleans, Louisiana, on June 17, 1982, register our opposition to all tuition tax credit legislation pending in Congress, urge the Baptist Joint Committee on Public Affairs to continue to oppose such legislation, and express our concern over such legislation's threat to the First Amendment guarantees of non-establishment of religion and the free exercise of religion.

The American Baptist Churches in the U.S.A. have also voted to "actively oppose tuition tax credits for all non-public and church-sponsored schools and colleges" (American Baptist resolution by the General Board in 1980).

Baptist opposition to tax credit legislation is so widespread because it stems from a variety of concerns. What are these concerns?

It's unconstitutional. Senator Ernest F. Hollings says, "in 1973 the U. S. Supreme Court's Nyquist decision reaffirmed the position of our Founding Fathers by striking down a New York State tuition tax credit plan because it violated the First Amendment's 'establishment clause.'"

No one can escape the conclusion that public funds benefit

the sponsoring church. The net result is that the taxpayer is forced to subsidize religion, overwhelmingly one brand of religion at that. Thomas Jefferson wrote, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

It's regressive. It would offer aid to people who need it least. The poor who may want their children in available church schools will not be able to afford them, even with tax aid, and must fall back on public schools. Dr. James Coleman, author of a report praising parochial schools, "fears that tuition tax credits would mostly aid wealthier families, who pay substantial income taxes, and do little or nothing for disadvantaged minority students."

Such welfare for the well-off would offer a choice only for those with money.

It's expensive. Estimates vary depending on the exact plan. Even the current plan approved by the Senate Finance Committee last year would cost almost \$1 billion annually once it became operative.

It's inflationary. Such an incentive from federal policy would make for wild escalation in the cost of private education. The New York Times predicts that the "cost of this uncontrollable entitlement could rise spectacularly."

It's unfair. Larger rather than smaller church schools would be favored. The parochial systems already in place would

have a distinct advantage. There is even a regional warp for the Northeast quarter of the country. The largest percentages of school children in church schools are in Cleveland, Chicago, Milwaukee, Philadelphia, New York and Boston.

To appeal for fairness because "parents of private and parochial school children pay both taxes and tuition" is to advance an odd principle of tax equity. The elderly, singles, and couples without children support public services in general and don't whimper for tax credits to evade supporting public education.

It's divisive. This sort of state support for church schools would arouse the competitive worst in church folks. They would root for tax credit advantage like an overlarge brood of hungry piglets.

Americans are already sharply divided on the issue. ~~Every~~ state referendum for tuition tax credits has failed. Just last November voters in Massachusetts and California overwhelmingly rejected tuition tax credits.

It's destructive of the public schools. The future of public education is at stake. As the report released this week reveals, our nation without a greatly improved system of public education is in serious danger. This reinforces once again the fundamental concept that we dare not divert public education dollars, dollars which come from the public and for which the public at large has a responsibility. With the education of all

children in crisis, we cannot afford the luxury of allowing tax dollars to be misappropriated for private and parochial education.

A government subsidy would place a bounty on the head of school children for withdrawal from the public schools. Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare, described tuition tax credits as a "devastating blow to public school education in this country," a proposal that "stands the American tradition of public education on its head."

Private schools also remove from the common schools "the interest of the most influential segment of the community....The common school ceases to be visited by those whose children are in private schools. Such parents decline to serve on committees. They have no personal motive to vote for or advocate any increase of the town's annual appropriation for schools; to say nothing of the temptation to discourage such increase in indirect ways, or even to vote directly against it." This is a self-aggravating process. As public interest declines so will school quality, and more children will be withdrawn by parents who can purchase better education elsewhere. "Thus would the cycle continue until the public schools were pauper schools." Horace Mann (1796-1859) of Massachusetts wrote these words in 1857; they could have been written in 1983.³

It's undemocratic. There would be a sort of taxation

³Quoted by St. Amant, Ibid., p. 3.

without representation if tax credit maneuvering prevailed. Decisions regarding private and parochial schools would be made beyond the reach or influence of the taxpayer. Public schools have their problems responding to the 16,000 local school boards. But, that is democracy.

It's dishonest. To use the parents' tax credit for a conduit to get tax monies into schools which are permeated with religion is a tad shady. Constitutional tests have made it clear that it is not legal to do something indirectly that is directly forbidden. Such a subterfuge is unworthy of Congress.

It's intrusive. Government regulations would inevitably and legitimately follow an alternate school system in which the public had such a vested interest. T. A. Shannon, National School Boards Association, contends that, "without strict regulation, there would be no way to prevent the subsidies provided through tax credits from helping schools that endorsed values of communists, the Ku Klux Klan or other groups."

One great strength of private and parochial education is found in the freedom from government intervention. It would be sad to see that freedom swapped for a mess of tax credit pottage. Although the proposed bill seeks to preclude supervision of church-related schools, there is no escape from the fact that, when the federal government legislates tax benefits, it also imposes obligations. See the bill's provisions barring benefits to students attending schools which are not non-profit

or which discriminate on the basis of race, color or national origin. The Internal Revenue Service would be obliged to monitor each institution named in income tax returns to make certain it was non-profit, and the U. S. Attorney General would have to undertake enforcement of the anti-bias provision, a task which will involve government agencies in extensive supervision of institutions receiving government aid.

President John F. Kennedy understood the perils of public support for church-related schools. He said, on Sept. 15, 1960, "I believe in an America where the separation of church and state is absolute . . . where no church or church school is granted any public funds or political preference."

Conclusion

We urge this panel to oppose President Reagan's tuition tax credit proposal.

BAPTIST JOINT COMMITTEE ON
PUBLIC AFFAIRS
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**STATEMENT OF DOROTHY SHIELDS, DIRECTOR, DEPARTMENT OF EDUCATION,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SENATE FINANCE COMMITTEE ON THE
"EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983" (S. 528)**

April 28, 1983

SUMMARY

We thank you for the opportunity to testify on behalf of the AFL-CIO in opposition to S. 528. The current tuition tax credit bill (S. 528) does not advance education. Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to shortchange public schools even further, thereby diminishing their capacity to fulfill their public purpose.

Supreme Court Justice Brennan defined this public purpose well in the majority opinion he wrote in a recent decision of the court. "...We have recognized the public school as a most vital civic institution for the preservation of a democratic system of government...and as the primary vehicle for transmitting the values on which our society rests.... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society."

This two-fold public purpose -- transmitting the values of our society and producing an educated and productive citizenry -- will continue to be the primary purpose of public education in the future. If we are to compete on the world market, we must not only continue to support education, we must commit our resources to improve the quality of education.

If S. 528 was enacted:

- * The United States Treasury would lose hundreds of millions of dollars. Another open ended tax expenditure, which is not subject to the legislative process of authorization and appropriation would be created, ultimately forcing reductions in direct educational aid at all levels.

* Tax credits would in many states provide more federal aid per pupil for nonpublic school education than is currently provided for public schools. The Education Commission of the States in 1982 stated that a \$300 tax credit would give 32 states more federal aid per pupil for private schools than they would receive for public schools. In 11 of those states the average credit would be more than 50 percent higher than federal public school support. ECS also estimated that a \$300 tax credit, even with an income cap, would cost over one billion dollars annually.

("Tuition Tax Credits: Their Impact on the States", October 1982, Education Commission of the States)

* The revenue lost because of S. 528 we believe, would only be the tip of the iceberg. It would not be long before demands to increase credit allowances would increase the drain on the federal treasury many times the initial outlays. This would probably be followed by similar action at the state and local level.

We believe it is an obligation of the federal government to support the nation's public schools and secure the future of public education. Tuition tax credits divert vital funds for financing schools and represent an inequitable and inappropriate use of the tax structure.

We see no reason to abandon the concept of federal aid to education, for both public and private school students, as described in legislation such as the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act. The AFL-CIO believes the existing structure of federal aid which allows participation of nonpublic school students on the same basis as students in public schools is the appropriate way to provide for the special needs for all children. We urge rejection of S. 528 and all other similar tuition tax credit bills.

**STATEMENT OF DOROTHY SHIELDS, DIRECTOR, DEPARTMENT OF EDUCATION,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SENATE FINANCE COMMITTEE ON THE
"EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983" (S. 528)**

April 28, 1983

We thank you for the opportunity to testify on behalf of the AFL-CIO in opposition to S. 528. This bill would provide a credit equal to 50 percent of private school educational expenses up to a maximum of \$100 in the first year, \$200 in the second year and \$300 per year thereafter.

The working people of America believe now as they believed in the early days of this country that quality public education for their children and for themselves is a key to an improved quality of life. For more than a decade, tuition tax credits have been proposed and rejected by the Congress. The current tuition tax credit bill (S. 528) does not advance education. Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to shortchange public schools even further, thereby diminishing their capacity to fulfill their public purpose.

Supreme Court Justice Brennan defined this public purpose well in the majority opinion he wrote in the recent decision of the court that the children of illegal aliens have the same right to free public education as other children in a school district. Citing earlier Court decisions, Justice Brennan said: "The American people have always regarded education and the acquisition of knowledge as matters of supreme importance.... We have recognized the public school as a most vital civic institution for the preservation of a democratic system of government...and as the primary vehicle for transmitting the values on which our society rests.... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society."

This two-fold public purpose -- transmitting the values of our society and producing an educated and productive citizenry -- will continue to be the primary purpose of public education in the future. If we are to compete on the world market, we must not only continue to support education, we must commit our resources to improve the quality of education. Although education in the United States has traditionally been a local concern, in certain areas the federal government has the responsibility to promote national concerns. In science, mathematics, and foreign languages in particular, the federal government has a legitimate interest in improving the quality of instruction in the schools and in preparing teachers to teach in these fields. Without increased federal assistance in these areas, our national priorities cannot be met, and we cannot hope to compete economically with nations who are willing to invest in education.

The AFL-CIO therefore reaffirms its long standing opposition to tuition tax credits. If S. 528 was enacted:

- * The United States Treasury would lose hundreds of millions of dollars. Another open ended tax expenditure, which is not subject to the legislative process of authorization and appropriation would be created, ultimately forcing reductions in direct educational aid at all levels.

- * Tax credits would in many states provide more federal aid per pupil for nonpublic school education than is currently provided for public schools. The Education Commission of the States in 1982 stated that a \$300 tax credit would give 32 states more federal aid per pupil for private schools than they would receive for public schools. In 11 of those states the average credit would be more than 50 percent higher than federal public school support. ECS also estimated that a \$300 tax credit, even with an income cap, would cost over one billion dollars annually.

("Tuition Tax Credits: Their Impact on the States", October 1982, Education Commission of the States)

* The revenue lost because of S. 528 we believe, would only be the tip of the iceberg. It would not be long before demands to increase credit allowances would increase the drain on the federal treasury many times the initial outlays. This would probably be followed by similar action at the state and local level.

The American public school has played a major role in sustaining our democratic government -- as much as any other single institution in the history of our nation. Today, we take for granted that public schools will always be there to provide a comprehensive education for all children, regardless of their race; religion, academic ability, physical handicap or the economic status of their parents. We are proud of our egalitarian universal education system. We continually look to public education to solve some of our most urgent social problems.

We believe it is an obligation of the federal government to support the nation's public schools and secure the future of public education. Tuition tax credits divert vital funds for financing schools and represent an inequitable and inappropriate use of the tax structure.

Section 2 of S. 528 states three policy goals: "...to foster educational opportunity, diversity and choice for all Americans." In our judgment tuition tax credits will set up a situation where these three goals compete rather than complement each other.

The Office of the Assistant Secretary for Planning and Evaluation of the Department of HEW issued a report in 1979 that a \$500 tax credit would not significantly lower the price of private schools for most families. It would, however, according to the report, offer a significant opportunity for private schools to raise tuition thereby preventing any lowering of actual costs to parents.

In its February 1981 report the Congressional Budget Office reached the same conclusion that schools could use the taxpayers as a conduit by increasing their

charges in order to capture a portion or all of the benefit. There is little reason to believe that the \$300 maximum tax credit in S. 528 would have a different impact on tuition.

The Reagan Administration has opposed including a refundability provision in this bill. Refundability provisions at least blunt some of the inequities resulting from tax credits. S. 528 thus has a particularly disproportionate adverse affect on the poor and minorities. The 1980 United States Census indicates that 37 percent of Hispanic and 46 percent of Black families with school age children earn \$10,000 or less annually and would, therefore, be automatically ineligible for the proposed tax credits even at the \$300 tax credit level.

S. 528 bases its proposal for tax credits for private elementary and secondary education on a declaration of policy that "tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the elementary and secondary levels." We disagree. The AFL-CIO believes that federal aid to education should not be restructured in order to advantage private schools over the public school system. We believe that federal aid to private schools as was provided in the formula embodied in the Elementary and Secondary Education Act was fair and appropriate.

Under the old ESEA provisions that the AFL-CIO supported, private school students benefited from federal assistance for such things as instructional materials, library resources, guidance and testing programs. During 1981 in New York, for example, more than \$21 million in Title I funds, or 8 percent of the state's Title I money, went to private school students. In addition to such federal programs New York private school students were entitled to state funds for transportation, health services and could enroll in State funded occupational and vocational programs. In Worcester, Massachusetts, 21 percent of Title I funds, 26 percent of Title IV-B funds and 17 percent of special educational money went to private school students.

Additionally the three federal programs that serve the largest number of private school students included those for disadvantaged students, to assist schools to buy books and instructional materials and to improve local education practice. Title I, Title IV-B and Title IV-C of the Elementary and Secondary Education Act provided the greatest dollar allocations and served the largest number of nonpublic school children. Private schools also benefited from many other federal programs, including aid for bilingual education, desegregation assistance, gifted and talented students, metric education and others.

The AFL-CIO believes that tuition tax credits are a wide departure from the concept of the federal government's role as spelled out in the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act which target federal aid through specific programs.

There also continue to be questions about the constitutionality of tuition tax credits for students who attend private schools. Since the overwhelming majority of students in nonpublic schools attend church-affiliated institutions, federal dollars through tuition tax credits would in effect be supporting religious education. This raises serious constitutional questions relating to the separation of church and state. Because of the issue several state tuition tax credit proposals have already been held unconstitutional by state and federal courts. The Supreme Court's Nyquist decision finding New York State's tuition tax credit law unconstitutional is clear on this question. Other examples of states whose tuition tax credit laws have been declared unconstitutional include New Jersey, California and Ohio.

Accordingly, we see no reason to abandon the concept of federal aid to education, for both public and private school students, as described in legislation such as the Elementary and Secondary Education Act and Chapter I of the Education Improvement and Consolidation Act. The AFL-CIO believes the existing structure of federal aid which allows participation of nonpublic school students on the same basis

as students in public schools is the appropriate way to provide for the special needs for all children. We urge rejection of S. 528 and all other similar tuition tax credit bills.

In 1977, the AFL-CIO in convention adopted a position of opposition to tuition tax credits and in May, 1978, expanded on its position in a statement by the AFL-CIO Executive Council. In 1981, the AFL-CIO Executive Council Report, adopted at the AFL-CIO Convention in November of that year, "firmly rejected such proposals as educational vouchers and tuition tax credits as detrimental to the continued strength and growth of the public school system." Most recently, the AFL-CIO Executive Council at its February 1983 meeting approved a statement on Education in which it rejected tuition tax credits "which drain revenues needed for public education institutions." These statements are attached.

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Statement by the AFL-CIO Executive Council

on

Education

February 28, 1983
Bal Harbour, Fla.

The AFL-CIO rejects the Reagan Administration's education budget proposals because they rest on tax gimmicks, rhetorical fluff and pious platitudes instead of a substantive leadership program to enable the nation's public education system to educate and re-train America's current and future workforce.

The AFL-CIO continues to reject education vouchers, tuition tax credits and education savings accounts which drain revenues needed for public education institutions. The voucher proposal for compensatory education services for the disadvantaged could destroy a successful and effective public school program.

The AFL-CIO opposes cuts that eliminate or reduce student aid programs and so-called self-help grants which further diminish equitable education opportunities, penalize low tuition community colleges and state institutions and demean the dignity of workers' families striving to offer their children the opportunities of higher education. The AFL-CIO considers education to be a right and not a privilege. The Reagan Administration's proposals, by requiring greater payments by individuals, would severely restrict access to higher education for most Americans, especially those in low-income groups.

In the conviction that America's commitment to quality education for all should be broadened and strengthened, rather than reduced, we call on the Congress to reject proposed rescissions in the categorical funding for bilingual education, Indian education and special programs to assist elementary and secondary schools.

The President's budget proposals of the last two years included no money for mathematics and science teaching. While this year's proposal does address the real need

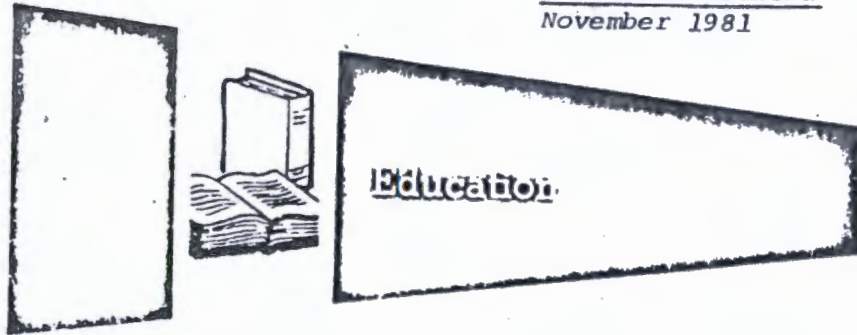
to train more teachers in these subjects, a far greater effort is needed to help raise the national level of technical knowledge and training. Vocational education programs being considered for renewal this year are especially important because of the recession and high unemployment. Putting America back to work will often depend on our ability to send America back to school.

Education and training related to job opportunities should be easily and freely available to young people and to adult workers, especially to those who are unemployed. To achieve this goal, the public vocational education system must be adequately funded.

The AFL-CIO calls upon Congress to authorize realistic levels of funding to enable public vocational education to train students in high technology, using modern equipment. To maintain the federal leadership role, Congress should reject Administration efforts to reduce support by consolidating vocational education grants into broader education block grants.

We also urge the Congress to explore new initiatives for the retraining of adult workers through the vocational education system, to provide incentives and support for the training, retention and upgrading of teachers, and to continue and strengthen the requirements for labor representation on local advisory councils.

We recognize that the joint cooperation of labor, management, local government and local education agencies and institutions is essential for the effective operation of vocational programs to meet the needs of workers, their employers and local communities. We urge all AFL-CIO affiliates to support such cooperative efforts in every possible way.



Education

Since the AFL-CIO last met in convention the goals for achieving quality education for workers and their families have received an unprecedented challenge from the Reagan Administration. At a time when education in America was beginning to reflect the benefits of the categorical programs funded in the last two decades, this Administration has misread an election victory as an overwhelming mandate to ease federal responsibility for educational services to workers and their children. In the massive shift of national resources through budget cuts and tax expenditures public education has taken an unfair share of the burden. Even more discouraging for those who would hope to achieve the American dream of a quality education program from kindergarten through college for themselves and for their children is the knowledge that this first round is just the beginning.

The labor movement, which has been in the forefront of education battles in local communities, state legislatures and the Congress, must be prepared to marshal its forces to sustain the gains achieved over the last 100 years and move forward with a program that addresses the crucial needs of our public education system.

The AFL-CIO celebrates its centennial year within the framework of an Administration that eloquently professes empathy for workers' problems, yet stridently proposes programs that contradict the rhetoric. The AFL-CIO again reaffirms its commitment to the goals enunciated by Samuel Gompers: "We want more schoolhouses and less jails, more books and less arsenals, more leisure and less greed, more justice and less revenge."

Elementary and Secondary Education

The AFL-CIO reasserts its commitment to building a strong public education system from kindergarten through college. In

pursuit of that goal we firmly reject such proposals as educational vouchers and tuition tax credits as detrimental to the continued strength and growth of the public school system. We will continue to work for the full funding of education programs on every level of government to assure that sufficient resources may be available to address the critical needs of the public schools.

We continue to believe that leadership at the federal level is crucial to addressing the needs of special populations that were not attended to until the advent of federal aid. Quality programs and equal educational opportunity for all citizens continues to be our priority.

The Elementary and Secondary Education Act of 1965 was essentially repealed with the passage of the Education Consolidation and Improvement Act of 1981. Twenty-eight separate programs were folded into one block grant. However, the largest categorical programs such as Title I, grants to school districts, Handicapped Aid, and Adult Education were authorized separately. In addition, Impact Aid, Bilingual and Vocational Education will continue as separate programs.

We support the concept embodied in Title I as it was originally written in 1965, a program to address the critical education needs of children who were economically disadvantaged. This concept though under attack from several quarters survived in the new Education Consolidation and Improvement Act of 1981. New research indicates that Title I services have made an impact on achievement levels of youngsters receiving these services as compared to those who have not. We believe that this program illustrates the beneficial role that federal leadership programs in education can provide. The AFL-CIO opposes any further efforts to dilute Title I services through conversion to block grants or diminished funding.

Impact Aid, one of the largest programs of general assistance to school districts, was reduced by nearly 50 percent. The new legislation calls for a three-year phase out of the program for children whose parents live or work, but not both, on federal property. Schools on military property which have been supported by Education Department monies will be picked up by the Department of Defense. Elimination and reduction of Impact Aid will add to the burden of local school districts in financing educational services with inadequate tax revenues.

Career Education

The Career Education program which acquaints students with the many options available to them in the world of work lost 50 percent of federal funding and was folded into the block grant of 28 programs in the education legislation of 1981. We expect, however, that career education efforts will continue in the state and local education agencies.

We urge our affiliates to cooperate with teachers seeking to

give their students additional information about the labor movement in their career education projects. We reiterate our concern that career education not be used to circumvent appropriate labor laws in the guise of providing work experience for students.

Labor in the Schools

Through renewed efforts with state federations and affiliates the department has been working to advance a balanced program of education about the labor movement in the nation's classrooms. The department has cooperated with efforts in Maryland, Michigan, California and Wyoming which are currently underway to introduce information about the labor movement into the school curricula. Conferences to assist teachers and educators working with this program have been held in the same states. Special emphasis has been given to the preparation and distribution of material and films to augment these programs.

Packets of information designed for students and teachers have been distributed by the department. A new publication, *How Schools Are Teaching About Labor*, provides teachers with curriculum that has been successfully introduced into the public schools. Supplemental to this effort are the materials prepared for labor's centennial and described in another section of this report and the department publication, *Guide to Union Sponsored Scholarships*.

Vocational Education

The AFL-CIO reaffirms its historic concern with the development of the vocational education system. At present, approximately three million young people complete vocational education programs that enable them to be successful in finding employment related to their training. At a period when it is most necessary to direct vocational education programs to specific populations to alleviate youth unemployment, the Administration has cut \$49 million from the program and is asking for \$553 million in 1982, a 30 percent cut in funding from 1980.

As the Congress prepares to reauthorize the Vocational Education Act of 1976, we call upon them to:

- address the particular needs of minority and inner-city youngsters for equal access to vocational education institutions.
- consider the resources needed for guidance counselling, teacher preparation and research.
- appropriate and authorize adequate funding levels for the purchase of new equipment and upgrading due to technological changes.
- address the questions of sex equity in all vocational education programs.
- maintain the federal leadership role by rejecting the block grant proposals.

We ask that the same resources that are allotted to college-bound students be allocated to those students in the vocational education system. For too long this system has been considered inferior to the general education offerings. We continue to believe a vocational education system that offers a quality program of basic education and general skills will make a significant contribution to alleviating youth unemployment.

Higher Education

The Reagan Administration budget critically curtails student aid funds for workers and their children. The budget cuts affect virtually every student aid program:

- Student assistance under the Social Security program was reduced by 25 percent and will be gradually phased out over a four-year period. This program was for the children of retired or disabled. It is estimated that approximately 200,000 students a year will be adversely affected by the elimination of these benefits.
- Guaranteed loans for college students were reduced with a means test imposed for families with annual incomes exceeding \$30,000, eliminating 450 million from the loan program. In addition, a 5 percent origination fee will be required for all loans.
- The interest rate was raised from 9 to 14 percent for loans to parents of college students, with the interest rate tied to the Treasury bill rate.
- The maximum amount of the Pell grants to needy students was reduced for this year with further reductions due next year.
- The interest rate was raised by 1 percent (from 4 to 5 percent) on the National Direct Student Loans, a program for particularly needy students.

These reductions in aid must be examined in combination with a general reduction of support for higher education on the state and local level due to special tax initiatives and loss of revenue. We ask our affiliates to continue their efforts to convince the Congress and the state legislatures that higher education be an attainable goal for every American regardless of race, color, creed, sex or economic background.

Access to higher education is as important for workers as it is for their children. The Education Department has been cooperating with universities and unions to increase the availability of general liberal arts degree programs geared to the interest of workers. These programs provide access to higher education for trade unionists, still fully employed, and at the same time forge a new and binding relationship between higher education and trade unionists.

A growing number of union members want to return to school or complete work on a degree. The AFL-CIO recognizes that the current crisis in social and economic policy requires that the labor movement educate its members in a broad range of subjects

including economics, international affairs, technology, and urban studies. Liberal education programs designed for and delivered to working people will enable large numbers of unorganized students to become familiar with the history of work and the role of the labor movement. Faculty who staff these programs will develop a better understanding of trade unions.

The AFL-CIO supports and encourages this new development in higher education and sees it as offering a balance for students to the growing proliferation of business-oriented higher education programs. We urge union affiliates to encourage their members to take advantage of negotiated tuition aid benefits and union scholarships to continue their higher education.

Adult and Worker Education

Workers and their unions face increasingly complex legislation, new technology, and health and safety problems that make it mandatory that they have access to education programs that will help them effectively fulfill their duties to administer their unions and represent their members. State universities and community colleges that cooperate with unions to offer these educational services are now in the midst of a struggle for public funding to continue these programs. We call upon our affiliates to sustain their efforts in support of these institutions serving labor's needs and we ask their assistance as we seek to convince legislators on the state and national level that programs for workers are just as valid as programs for farmers and businessmen. We urge all affiliates to continue their special education efforts on behalf of minorities and women so that their preparation will enable them to move forward in leadership roles in the trade union movement.

The Education Department assists affiliates in worker education programs by maintaining close liaison with the universities and community colleges in the University College Labor Education Association. Through a cooperative conference in San Francisco in March 1981, 200 union and university labor educators were able to exchange information and programs impacting on trade union members.

Special programs for women trade unionists have been sponsored by the department. For the past six years the department has cooperated with the University and College Labor Education Association in sponsoring three week-long summer schools for trade union women. These regional schools concentrate on building skills and developing a greater knowledge of the history, structure and policies of the trade union movement to encourage women to take a more active role in their unions. A national conference on comparable worth was co-sponsored by the department, Cornell University, and the Coalition of Labor Union Women. The department staff also works with the Southern Advanced Labor School, the Rocky Mountain Labor School and

is available for planning and staffing state federation summer schools, and other programs sponsored by the affiliates. A special one-day conference on critical TV viewing was co-sponsored with the Connecticut State AFL-CIO.

Department staff worked closely in assisting grantees of the New Directions program of the Occupational Safety and Health Administration. The Education Department and the OSHA Department of the AFL-CIO have joined with several affiliates and state federations in a cooperative project with the Workers Institute for Safety and Health.

The Department of Education prepares basic materials which are widely used by international and local unions throughout the country. The most widely used publications include: AFL-CIO Manual for Shop Stewards and Teaching Guide, How to Run a Union Meeting, Films for Labor catalogue, Use Films in Education Programs, and Your Local Needs an Education Committee.

Each spring the department prepares a Leadership Training Manual which is designed to educate local union leaders on key legislative and economic issues of concern to labor. Almost 5,000 copies of this manual have been ordered for use in summer schools conducted by international unions, state federations, and university labor education seminars. In 1981 the manual was used by 38 international unions, 24 state federations, 21 central labor bodies, the AFL-CIO Southern Staff Training program and three summer schools for union women.

The AFL-CIO Film Library houses the largest collection of films on labor and legislative subjects in the country. New films are continuously added to the collection which is used by unions, universities, public schools, church and other social service groups throughout the nation. Film discussion guides are prepared on most films. Education Update, a bimonthly newsletter about labor education programs and resources is distributed to union and university educators.

Council Recommendation

Elementary and Secondary Education

The AFL-CIO affirms its commitment to building a strong public school system to serve all our citizens. Therefore

1. We continue to reject tuition tax credit proposals and educational vouchers as detrimental to the advancement of the public schools.

2. We urge Congress to fully fund education programs designed to serve all students with special needs, i.e., Title I, handicapped aid, and bilingual programs. We further urge Congress to resist any new initiatives to dilute federal aid through budget cuts or conversion to block grants.

3. We ask all our affiliates to assist the schools in teaching about the labor movement. Films, materials and speakers from the labor movement are an invaluable tool for the classroom

teacher's efforts to introduce the study of labor into the school program.

Vocational Education

We call upon Congress not to shortchange the students in vocational education and to authorize a program that will enable the system to respond to the problems of youth unemployment. We ask that the reauthorization of Vocational Education continue the federal leadership role; target programs for inner-city residents; provide for teacher training and resources; authorize realistic levels of funding for new equipment and new technologies; and address the question of sex equity for both men and women.

Higher Education

Tuition for higher education should not be prohibitive for workers and their families. We renew our call to Congress to fully fund programs of student aid so that the goal of equal opportunity in education may be available to all students.

The AFL-CIO supports and encourages the development of worker-oriented liberal arts degree programs sponsored by community colleges and universities.

We specifically urge our members to begin or continue their higher education in programs designed and sponsored by unionized faculty.

Adult and Worker Education

We call upon our affiliates to increase their efforts in providing education programs for their members. We urge affiliates to work cooperatively to assure that programs for workers receive public support consistent with the funding for programs for farmers and businesses.

Statement by the AFL-CIO Executive Council

on

TUITION TAX CREDITS

Washington, D.C.

May 10, 1978

As national debate winds down on the question of education tuition tax credits, the AFL-CIO remains convinced that this form of student aid is inappropriate and that the aid package put forward by the Carter Administration for both elementary and secondary education and higher education is the proper approach.

The Administration proposals would increase college student assistance through the Basic Education Opportunity Grants by \$1.2 billion. This would move the level of spending for this important program to \$3.3 billion -- 3.1 million additional students would benefit as student participation moves from 2.2 million to approximately 5.3 million. We strongly support H.R. 15 and companion bill S. 1753, bills to extend the present Elementary-Secondary Act, which should be promptly passed by the Congress.

Much of the current debate centers on the question of extending tax credits to those parents who choose to send their children to private schools at the elementary-secondary level. We categorically reject this idea. It is a wide departure from the original concept of the Elementary and Secondary Education Act which targets federal aid to specific programs. In fiscal year 1979 the Carter proposals would channel \$100 million to \$250 million to private schools at the elementary-secondary level from the \$6.9 billion budgeted for elementary-secondary education. Furthermore, it is estimated that aid to private schools could double in fiscal year 1980. Accordingly, we see no compelling argument to abandon the original concept of federal aid to education, for both public and private school students, established by the Elementary-Secondary Education Act.

The tax credit approach, as we have noted in the past, would reduce federal revenues by some \$4.7 billion depriving other deserving federal programs of the necessary funds for their implementation.

Of the several bills introduced in the U.S. House of Representatives, H.R. 12050 reported by the House Ways and Means Committee is the most likely to reach the House floor. It is currently awaiting a rule from the Rules Committee. During the mark-up of the bill in Ways and Means, Rep. Waggoner (D-LA.) succeeded in removing tax credits from elementary-secondary education. This action, however, left intact the tax credit approach for student aid at the higher education levels and we oppose that result.

We call upon the Congress to reject all tuition tax credit bills and to adopt the Administration's proposals to increase tuition grants to college students as an alternative to tax credits. This approach will insure that federal funds provide maximum tuition assistance to those worker-families who truly need that assistance, while protecting the college students right to choose either a public or private institution.

We urge the passage of H.R. 15 and S. 1753. We believe these policies to be in the national interest.

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TUITION TAX CREDIT TESTIMONY

OF THE

NATIONAL EDUCATION ASSOCIATION

ON

S. 528, THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

BEFORE THE

SENATE FINANCE COMMITTEE

PRESENTED BY

BERNIE FREITAG

VICE PRESIDENT

APRIL 28, 1983

Mr. Chairman and Members of the Committee:

The National Education Association—the nation's largest organization of teachers and others in the field of education—appreciates the opportunity to testify in total opposition to S.528, the Educational Opportunity and Equity Act of 1983. I am Bernie Freitag, Vice-President of the NEA.

NEA's policy positions on tuition tax credits and other schemes to provide public assistance to private schools are attached. These policies have been adopted by the annual NEA Representative Assembly, the organization's policy-making body of 7,000 delegates elected in each local and state affiliate in all 50 states, D.C., the overseas dependent schools, and Puerto Rico.

The National Education Association is unalterably opposed to, and will combat with all the resources at our command, tuition tax credits for any level of education, kindergarten through graduate school. NEA believes that tax subsidies for nonpublic schools through tax credits are bad public policy, unconstitutional and bad economic policy. We particularly object to the proposal before this Committee and the maliciousness of entitling a special interest piece of legislation for a very few of our better-off citizens a piece of "equity legislation." We object to legislation in Congress which speaks of "equal opportunity" and aids 10 percent of America's school children in private school while 90 percent of her children—the disadvantaged, language deficient,

handicapped, and others wanting a quality education—are denied the funding necessary to fulfill a dream of equity and equality.

We believe that America must have high quality tuition-free public schools which allow all children to reach their full potential. The Reagan Administration has shown disregard for public education as it has proposed massive cuts in programs. The only initiatives have been to further undermine public education through tuition tax credit and voucher schemes to underwrite a private selective school system. Through this legislation the Administration proposes a new and costly tax burden on the elderly, single persons, and the vast number of citizens who have no children in school—public or private. They must pay taxes for a public school system and for a system of private schools to provide public subsidies for private choices.

We presume that this Committee will see further Administration proposals to undercut vital public services and add to the tax burden of citizens by providing public dollars for private purposes—perhaps a swimming pool tax credit for those who don't wish to go to public pools; or perhaps a transportation tax credit for those who use their car rather than public transportation.

NEA believes that choice and diversity must exist in education as in other sectors of the life of citizens. Government should, of course, raise public funds for public purposes. But we disagree fundamentally and completely with proposals to raise public funds and use them for private purposes outside of the purview of elected officials.

The mislabelled "Educational Opportunity and Equity Act" is cleverly described in Section 5 of the bill as not constituting financial assistance to education institutions or recipients. Yet it

will cost billions of dollars in lost revenues from the U.S. Treasury. And by not calling it financial assistance, it keeps the legislation exempt from the provisions of the 1964 Civil Rights Act. The intention and effect of such designation is transparent.

ECONOMIC POLICY ISSUES

The Administration proposal for tuition tax credits must be viewed against the current climate for education. Is this program costing \$2.5 billion over the next three years an investment in our economic growth? Will it stimulate the economy, decrease inflation, increase productivity, or aid the national defense? The answers are clearly no.

A Boost for Private Schools While Public Schools Are Out:

The Administration is proposing this legislation as a boost to private education at the same time that it relentlessly attempts to chop federal aid to the nation's public education institutions. Because of strong public reaction and Congressional leadership, the Administration has been unsuccessful in reaching its goal of substantially diminishing federal aid to our public schools. But even though we have been able to resist the efforts of the Reagan Administration to make educational cuts in the past several years, if we look at the overall picture (See Appendix A) and factor in inflation, education funding has lost out. Education appropriations under the FY '83 Continuing Resolution for school year 1983-84 totalled \$15.1 billion—\$5.2 billion higher than the Reagan Administration called for; yet, to have kept up with 1980 funding levels, these appropriations need to be \$20.1 billion. It is clear, than, looking at this reality, that there are hundreds of thousands of children who are hurting because of these cuts.

This shrinkage of federal assistance has hit especially hard at schools enrolling substantial numbers of children from impoverished families, but the cuts have been across-the-board, affecting adversely every kind of student, every school district, and most teachers. There is insufficient money at the state and local levels to make up the slack. Targeted federal education programs were enacted to meet national goals of equality of opportunity when the states were unable, or perhaps unwilling, to start or sustain them.

The Reagan Administration's tuition tax credit proposal provides a substantial subsidy for those parents who already have children in private schools and does not improve the quality of educational services in either public or private schools.

At the same time, the Administration is proposing legislation to introduce voucher payments as a substitute for Chapter I programs of the Education Consolidation and Improvement Act (ECIA), and to extend voucher payments to children attending private schools, further diluting federal support to public education.

These measures will force the federal government to forego billions of dollars in revenue, and the American society will receive absolutely nothing in return—hardly sound economic policy.

Non-stimulating credits: A Poor Procedure

The \$2.5 billion in tuition tax credits over the next three years would be automatically lost to the Treasury. They would be non-stimulating credits which would not generate one dollar's worth of new revenues. In future years we can expect the cost to escalate as pressure builds to extend the benefits to college students and additional parents claim the credit and clamor to increase the amount.

NEA views the tuition tax credit scheme as totally inimical to the goal of the President, the Congress, and the public to reduce inflation. Any tax credit subsidy of private schools is an ironic contrast to the Administration's continuing call for fiscal restraint.

Double Taxation for Every Taxpayer:

Proponents of tuition tax credits for private schools claim that these subsidies are necessary to relieve them of the burden of "double taxation." NEA supports the right of these parents to choose—and to pay for—their children's education in nonpublic schools. The "double taxation" argument is a red herring. All citizens pay taxes to the local, state, and federal governments to finance programs which promote the general welfare—whether or not an individual taxpayer is in need of or eligible to receive the services. We pay for the construction and maintenance of streets and highways whether or not we drive. We pay taxes to support the American system of tuition-free public education, whether or not we are the parents of school-age children—and we all benefit from having an educated, employable citizenry as a result.

In fact, it is enactment of tuition tax credit subsidies for nonpublic schools that would represent dual taxation. Especially for the elderly, and single, childless people—both growing segments of our society—it would be a grossly unfair requirement for them to subsidize education for the children of largely high income families.

Geographic Discrimination

In addition to undue tax burdens on certain parts of our population who would not benefit in any way from tuition tax credits, the benefits from these subsidies would also be unevenly distributed geographically. For example, a study prepared by the National Coalition for Public

education, "Tuition Tax Credits: A State by State Analysis", shows that the majority of all private school enrollment is concentrated in twenty states and the District of Columbia. Only eight of these—Pennsylvania, Hawaii, Delaware, New York, District of Columbia, Louisiana, Wisconsin and Rhode Island—have more than fifteen percent of their total elementary and secondary enrollment in non-public schools. Yet, these areas would receive almost all the benefits from tuition tax credits.

Meanwhile, another seventeen states—largely in the West and Southwest—would receive only a minute portion of the tuition tax subsidies, although taxpayers in these states would bear the expense for the program.

PUBLIC POLICY ISSUES

Economically, the tax credit proposal would be a disaster that is matched by its effects on education. Under S. 528, students in private schools would in effect receive a \$300 subsidy from the federal government—nearly twice the current average per pupil public school federal expenditure of \$152. It would also be five times more than the current \$60 average per pupil assistance from the federal government to private students.

Through revisions in federal legislation, private schools are already receiving increasing amounts from federal sources. This year alone, they have gained some \$48 million tax dollars under the Education Consolidation and Improvement Act (ECIA) block grant. This means, for example, that in New York City, private schools will receive some \$3 million of the \$11 million total federal school aid targeted for the city under the Chapter II program.

And there is no telling where this inflationary spiral because of federal aid to private education would end as more parents will take advantage of tuition tax credits, the credits are extended for higher education costs, or private schools edge up their tuition.

A study prepared by the Education Commission of the States in 1982, "Tuition Tax Credits: Their Impact on the States", cited an analysis prepared by the Congressional Budget Office in that same year of the potential revenue loss to the federal treasury of various tuition tax credit schemes. This is what they projected:

"The CBO estimates that a plan allowing a tax credit of 50 percent of tuition paid up to \$250 would reduce federal income tax revenues each year by approximately \$1.3 billion in 1982 dollars.¹ The CBO then estimates the impact of changing specific features of this basic plan. For example, by changing eligibility requirements to allow families with children enrolled in postsecondary schools to participate, the estimated costs to the federal government would increase to about \$2.3 billion. Increasing the maximum amount of the credit from \$250 to \$500 would increase costs to \$1.9 billion. Making the tax credit refundable would add an additional \$.1 billion to the cost of the basic program. On the other hand, reducing the proportion of costs covered by the credit from 50 to 25 percent would reduce the cost of the program by about \$.8 billion. Thus, key policy decisions with respect to eligibility, refundability, the proportion of costs covered and the maximum amount of the tax credit can dramatically affect the total cost and benefits of any tuition tax credit program.

Another consideration concerning the cost and benefits of a tuition tax credit program is the response of parents and schools to the tax credit. If the credit is set high enough to induce a significant number of parents to transfer their children to nonpublic schools, the cost of the program would increase considerably with a concomitant increase in benefits to the new consumers of a private education. For example, if private school enrollments increased by 20 percent, the cost and benefits of the program could increase by about the same amount, depending on the structure of the tax credit. However, it is not known whether

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These estimates are based on the Census Bureau's 1976 Survey of Income and Education, which has been updated to reflect current and projected economic, demographic and enrollment conditions.

a tuition tax credit will lead to a significant increase in private school enrollments. The CBO report moreover, argues that tuition tax credits would produce strong incentives for existing private schools to raise tuition levels. It speculates that the larger the tax credit, the larger would be the price response of private schools, since these schools would be able to raise tuitions without adversely affecting the net tuition cost to parents. In this case, the benefit from the tax credit would be absorbed - completely or partially, depending on the price-response by schools instead of parents."

The effect of tuition tax credits on public school financing is clear: private schools would become the prime beneficiaries of federal funds. This would be a gross distortion of the American dream, especially if it results in Congressional support of privileged children at the expense of all children, and fiscally undermines public education. Tuition tax credit subsidies for private schools would have this effect. To pay for the revenue loss of at least \$2.5 billion over the first three years, Congress will surely be forced to cut back on its contribution to public education.

In fact, the harsh reality of this "robbing Peter to pay Paul" philosophy of education was openly expressed by Assistant Treasury Secretary John E. Chapoton before the House Education and Labor Committee in the last session in Congress, when he said in response to a question from the Chairman:

"First, tuition tax credits have a significant revenue impact, therefore, they must be considered together with other budget matters...Thus, Congress may wish to consider any tax credit in the context of direct education expenditures, so that the two types of programs complement one another and so that the total budgetary cost is at a desirable level."

In addition to the federal government's eight percent contribution, the states now contribute half the total cost of public education; local governments absorb the remaining 42 percent of the total cost. For those who argue that education is a state and local responsibility, the reality facing state and local governments today makes it extremely difficult for them to assume additional fiscal responsibility because of decreasing federal support for public education. The enactment of non-stimulating tuition tax credits for private schools will further erode the fiscal support of the public school systems. Ninety percent of American parents depend on that system for the education of their children. (See Appendix B.)

Credits Benefit the Well-to-Do

While proponents of tuition tax credits have stressed that the credits would not only be for the rich and well-to-do, statistics show otherwise. For example, a 1982 study, "Tuition Tax Credits: Issues of Equity", by James Catterall of Stanford University, stated that private school families with annual incomes exceeding \$20,000 will reap at least two-thirds of the tuition tax credit benefits. These relatively well-to-do families are 60 percent of all private school parents. By comparison, families at the low end of the income ladder—those earning less than \$10,000 are only about 8 percent of all private school families.

So, to say, as proponents of tuition tax credits do, that all parents would have the option of tuition tax credits, and therefore would be eligible to receive the same tax break, is a specious argument. The "choice" provided by tax subsidies for private schools would not be available and accessible to the majority since the actual cost of

private school tuition is prohibitive to many. The real tax break will be for the middle and upper income parents who can afford to pay the balance of the tuition bill—that not subsidized by the tax credit. Most private schools require "up front" tuition payments in the fall. A tax credit applied to an April tax bill will not assist lower and middle income parents to participate.

There is another feature of S. 528 which will also prevent it from aiding those with low incomes: its lack of refundability. The vast majority of low income families who pay little or no tax because their income is so low cannot benefit. For example, according to the Census Bureau, forty-six percent of all Black and thirty-seven percent of all Hispanic families with school age children earned only \$10,000 in 1980. On the average, these families paid taxes of \$300 or less.

That means, for example, that one of these low income families with three children in a local parochial school would not be eligible for a credit, while a family with ample income — up to \$40,000 — with three children in an expensive private school would be able to claim a \$900 tax credit in 1985 under the Reagan plan. Even with refundability, tuition tax credits for private education is bad public policy. Without refundability it is plainly discriminatory.

The Competitive Edge—Are the Stakes Equal?

The Reagan Administration has stressed the need for competition in education—supposedly to keep the public schools 'on their toes' lest private education far overtake them.

But important factors are being kept out of the Administration's calculations.

* The public schools are obligated to enroll and to educate all comers regardless of innate ability, handicap, proficiency or deficiency in English. The argument of proponents that fair and healthy "competition" would result from tax credits ignores public policy of long standing. The public schools must educate all.

They have never been designed, nor should they be, to compete on an equal footing with schools with discriminatory enrollment policies.

* Private schools are not mandated to accept children who are handicapped, have discipline problems or are otherwise difficult to educate. In fact, less than 3 percent of all religious schools provide programs for the handicapped and only three percent of all nonpublic schools offer vocational education.

Tax credits, as a federal policy, would promote the success of private schools, allow special benefits through taxes for wealthier families, and undermine the support of public schools through an unfair and unwise competition. The result would be an educational caste system. It is not inconceivable that the elite private schools and the disadvantaged public schools will increasingly amount to a separate and unequal dual education system in the United States.

Tuition Tax Credits: More Regulations

Ironically, at a time of considerable conservative clamor for less federal involvement in education, tuition tax credit subsidies for private schools will force the federal government to evaluate and regulate private schools. For example, Section 3 of the bill calls for the Secretary of Education to prescribe the non-discrimination forms to be used to assuring compliance with the legislation. The NEA strongly believes that since tax credits would be given for private school

tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made. And the NEA will vigorously pursue strong regulations to ensure public accountability.

The federal government cannot launch a new multi-billion dollar subsidy program without accompanying regulations and minimum standards. Probably through the IRS, the federal government will have to judge the legitimacy of a school benefiting from this new indirect subsidy. Anything less than a careful scrutiny and regulation of recipient private schools would leave the federal government open to legitimate complaints regarding the utilization of the taxpayers' tax dollars. To ensure that carelessly granted tax credits not become an additional burden on those paying taxes, the federal government will have to empower an agency to prevent fraud and abuse of the tax credit.

Certain fringe groups which have the Constitutional right to free speech and freedom of association would acquire the funding base to set up schools. Never before have they been eligible to operate a school and receive a federal subsidy. Nor should they become so.

Local taxpayers and their local school boards are held accountable for how tax dollars are spent in the public schools. Taxpayers would have the right to demand the same accountability from private schools benefiting from the federal subsidy provided by tuition tax credits. We view such scrutiny as inevitably running afoul of the "excessive entanglement" test in the Supreme Court's Lemon v. Kurtzman decision.

CIVIL RIGHTS IN JEOPARDY

Civil rights protections are placed in jeopardy under this bill. Almost one-half of the Administration's tuition tax credit bill is devoted to trying to provide assurances that the tax relief afforded

would not be used to promote racial discrimination. But on close examination we believe these assurances are far less than warranties.

In addition, the Administration's wavering stand on civil rights issues raises a great many concerns about its actual intentions of enforcing whatever civil rights measures are included in this bill. Afterall, it is this Administration which supported a change in IRS regulations to allow avowedly discriminatory private schools, Bob Jones University and the Goldsboro Christian Schools, to maintain their tax exempt status. Only after much public outcry did it reverse itself. And one has to wonder how sincere the Administration's pledge to maintain and enforce civil rights laws is when its tuition tax credit legislation has these features:

- Under Section 3 on "Racially Discriminatory Policy", it includes the wording "The term 'racially discriminatory policy' shall not include failure of any educational institution to pursue or achieve any racial quota, proportion, or representation in the student body." With this vagueness of language, a school admitting one 'token' minority student would be complying with the law. NEA believes this was not the intent of the nation's civil rights statutes.
- The bill permits a tuition tax credit only for portions of amounts paid as tuition to one or more educational institutions which are exempt from taxation under Sec. 501(c)3 of the IRS code. Yet nothing in the bill permits IRS to take action against a school that does, in fact, practice racial discrimination; under the bill, only the Attorney General may undertake enforcement activity. The Administration's response

to the Bob Jones University and Goldsboro Christian Schools case (cited above) as brought before the U.S. Supreme Court caused the Court to appoint a private attorney, former Secretary of Transportation William T. Coleman, to intervene in the Court case on behalf of the government.

- Under the bill, a school seeking to have the parents of its students enabled to claim a tuition tax credit for payments made to it must file a sworn statement to certify it has not followed a discriminatory policy during the preceding year. And in turn, taxpayers must also submit such statement to their tax form before they can be allowed to take the credit. This impotent stipulation will do nothing to guarantee a non-discriminatory policy.
- Under the bill, the Attorney General would be authorized to bring declaratory judgment suits to establish that a school in fact follows racially discriminatory policies. But the provisions establish a highly complex set of circumstances with little promise of effective relief. Given the current Attorney General's track record of non-intervention in civil rights cases, a tuition tax credit measure such as S. 528, that does not have strong civil rights enforcement mechanisms written into the legislation offers few, if any, guarantees.
- In addition to ambiguity with regard to the federal government's policing responsibilities, the Administration's bill also includes no provisions against private school discrimination on other grounds, such as sex, physical or mental handicap, or English language proficiency.

Public Opinion: Decidedly Against Tuition Tax Credits

There is one more important point in determining public policy and that is what the voters think. When state aid for nonpublic schools has been put before the voters in statewide referenda conducted over the last fifteen years, such schemes were overwhelmingly rejected, as detailed below.

STATE	YEAR	VOTE	VOTE
		AGAINST AID	FOR AID
New York	1967	72.5%	27.5%
Michigan	1970	57 %	43 %
Nebraska	1970	57 %	43 %
Maryland	1972	55 %	45 %
Oregon	1972	61 %	39 %
Idaho	1972	57 %	43 %
Maryland	1974	56.5%	43.5%
Washington State	1975	60.5%	39.5%
Missouri	1976	60 %	40 %
Alaska	1976	54 %	46 %
D. C.	1981	88 %	12 %
Massachusetts	1982	62 %	38 %
California	1982	61 %	39 %

CONSTITUTIONAL ISSUES

NEA has long fought to protect the First Amendment's guarantees regarding the exercise of religion free from governmental intrusion.

We were a founding member of the National Coalition for Public Education and Religious Liberty (National PEARL) and believe that subsidizing at federal expense certain groups of individuals so that they may exercise their religious preferences would have the effect of advancing religion in violation of the First Amendment.

A long line of Supreme Court cases in recent years has dealt with the constitutionality of various methods of providing aid to nonpublic elementary and secondary schools. The court has consistently struck down provisions which either directly or indirectly have the effect of advancing religion and offsetting the constitutional provisions for separation of church and state.

The only forms of "aid" which the Court has found to be consistent with the First Amendment are those which provide general welfare and health services, textbooks, and transportation to all children. In a recent opinion, Wolman v. Walter, 97 S. Ct. 2593 (1977), the Supreme Court was careful not to extend this doctrine beyond its previous decisions and indicated that when faced with the question of expanding nonpublic aid or of prohibiting it, prohibition should be the favored course.

One case pending before the 1983 session of the Supreme Court, Mueler v. Allen, (676 F. 2d 1195 (8th Cir. 1982)), deals with a Minnesota statute that authorizes certain deductions from state income tax for taxpayers who incur expenses for tuition, books and instructional materials and transportation in sending a child to public or private

elementary or secondary school. While the statute does allow for deductions for expenses for children attending public schools, it is clear that the bulk of the benefit of any such statute would be to the parents who pay tuition to the mostly sectarian private schools. NEA believes it is therefore unconstitutional.

We believe that the unconstitutionality of the Reagan Administration's tuition tax credit scheme for elementary and secondary nonpublic schools is without question in light of the Supreme Court's ruling in Committee for Public Education and Religious Liberty v Nyquist, 413 U.S. 756 (1973). The Court in Nyquist found that a New York statute providing income tax benefits to parents of children attending nonpublic schools is a violation of the First Amendment since it would have the "impermissible effect of advancing the sectarian activities of religious schools."

Although the New York statute was perpetrated under the guise of a "tax deduction," rather than a tax credit, the Court saw no distinction in the labels and indicated that regardless of the name, its effect was unconstitutional. Whether you call it a tax credit, tuition reimbursement, or tax deduction, the account books look the same and the effect is the same.

Supporters of tuition tax credits contend that the First Amendment is not violated since the tax benefits adhere to the parent of the nonpublic school child, not to the private school itself. But the Supreme Court in Nyquist specifically rejected this argument and found that the effect of the aid is "unmistakably to provide desired financial support for nonpublic, sectarian institutions."

For these reasons, the National Education Association urges the Finance Committee to reject S. 528 and any other similar tuition tax credit proposal. In our view, the needs and promises of public elementary and secondary education are of primary importance, and the energies of government are best used in broadening the scope of opportunity.

BUDGET AND APPROPRIATIONS

	Appro. FY '80 <u>Sch.Yr. '80-81</u>	Continuing Resolution FY '81 <u>Sch.Yr. '81-82</u>	Continuing Resolution & Supplemental FY '82 <u>Sch.Yr. '82-83</u>	Continuing Resolution FY '83 <u>Sch.Yr. '83-84</u>
ESEA (Title I) (ECIA Chapter 1) (Basic Grants)	3,215,600,000	3,111,620,000	3,040,980,000 -(2,562,754,000)	3,167,894,000 -(2,687,754,000)
State Block Grant (ECIA Chapter 2)	731,896,000 (combined programs)	614,471,000	483,840,000	479,420,000
Impact Aid (Not forward funded)	825,000,000	756,750,000	456,200,000	480,000,000
Education for the Handicapped, Gifted & Talented	1,049,000,000	1,025,231,000	1,068,580,000	1,110,252,000
Vocational Ed. (Adult Ed.)	779,241,000	681,639,000 +(100,000,000)	648,625,000 +(86,400,000)	721,500,000 +(95,000,000)
Guaranteed Student Loan Program (GSL) (Entitlement)	1,609,344,000	2,535,470,000	3,073,846,000	3,100,500,000
Bilingual Education	191,463,000	161,427,000	138,057,000	138,057,000
Education Total	15,600,000,000	15,200,000,000	14,600,000,000	15,100,000,000
Education Total *	15,600,000,000	17,400,000,000	19,200,000,000	20,100,000,000

* Figures for FY 81 through FY 84 represent amounts required to maintain FY 1980 funding levels after accounting for inflation. Inflation measure used = CPI - U for the fiscal year running from October 1 through September 30.

Fiscal Plight of the States

States are facing fiscal problems for a variety of reasons, but mainly due to the recession. In recent years, most states have been forced to reduce deficits. With the exception of Vermont, all states are bound either constitutionally or by state statute to maintain or approve a balanced budget. Some states budget for two years at a time and are required to balance the budget only at the end of each two-year period, not each fiscal year. Some state laws allow a deficit if unforeseen events occur.

Figures in the ending balance columns are in millions of dollars and are current as of Jan. 31, 1983. The X denotes that a state has taken the action indicated. A denotes that a state increased sales tax, B indicates an increase in income tax and C indicates an increase in other revenue, such as severance, gasoline or cigarette taxes.

	Ending Balance		Steps Taken in Fiscal 1982 and 1983 To Reduce Deficits		
	Fiscal 1980	Fiscal 1983 Projected	Increase Revenues	Budget Cuts	Reduce State Work Force
Alabama	18	18.9		X	
Alaska	2,194	39.4			
Arizona	234	-212	C	X	X
Arkansas	1	0		X	
California	2,541	-1,651		X	
Colorado	261	-102	C	X	X
Connecticut	0	-60		X	
Delaware	40	36.6			
Florida	654	0	A	X	
Georgia	159	0		X	X
Hawaii	179	52			
Idaho	7	-70.9	C	X	X
Illinois	390	-129	C	X	X
Indiana	217	58	A,B,C	X	X
Iowa	28	-50	C	X	
Kansas	183	90.6		X	
Kentucky	14	15	C	X	X
Louisiana	550	-149.6		X	
Maine	19	1.2	C		
Maryland	293	28.5	C	X	
Massachusetts	44	32.6			X
Michigan	0	-660 to -900	B,C	X	X
Minnesota	121	0	A,B	X	X
Mississippi	60	4	A,B	X	X
Missouri	240	74.9	A,C	X	X
Montana	42	14			X
Nebraska	116	18.9	A,B,C	X	X
Nevada	66	16.8		X	X
New Hampshire	10	-16.5		X	X
New Jersey	281	69.1	A,B,C	X	X
New Mexico	140	-117.9	C		
New York	11	-579	C		
North Carolina	285	.9		X	
North Dakota	157	10		X	
Ohio	142	0	B,C	X	X
Oklahoma	56	69.6		X	
Oregon	96	7.8	B,C	X	X
Pennsylvania	68	-164		X	X
Rhode Island	35	-35	C	X	X
South Carolina	49	.8	A,C	X	
South Dakota	16	6.6			X
Tennessee	84	34.8	A,C	X	X
Texas	439	956.6			
Utah	9	-6	C	X	X
Vermont	-7	-8	A,B,C	X	X
Virginia	351	-130	C	X	X
Washington	125	-140.2	A,C	X	X
West Virginia	83	18.3		X	X
Wisconsin	73	-315.5	A,C	X	
Wyoming	140	49.5			

Source: Congressional
Daily, March 15, 1983

NEW BUSINESS ADOPTED BY
1982 REPRESENTATIVE ASSEMBLY

Tuition Tax Credits

The National Education Association continues to oppose tuition tax credits and voucher plans because they constitute bad educational policy, bad economic policy, and bad public policy. NEA will continue to do all that is possible to defeat tuition tax credit proposals in the Congress. NEA will intensify its efforts to work cooperatively with all individuals and groups in support of the public schools and in opposition to tuition tax credits and voucher plans wherever and whenever they are proposed.

NEA urges all members and affiliates to utilize the Association's many community action activities and community contacts and relationships to give all Americans the facts about these proposals that threaten the future of our American public schools.

NEA calls on all members and affiliates to participate in the fall petition drive against tuition tax credits, helping the National Coalition for Public Education make this effort a resounding success. (1982-F)

Court Challenges to Tuition Tax Credit and Voucher Plans

The NEA shall initiate a court challenge of the constitutionality of any tuition tax credit or voucher plan adopted as law. This intent shall be made known to Congress. (1982-60)

STATEMENT OF
ALBERT SHANKER, PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
BEFORE THE U.S. SENATE COMMITTEE ON FINANCE
April 28, 1983

Mr. Chairman and Members of the Committee:

I am Albert Shanker, president of the American Federation of Teachers AFL-CIO. The AFT represents more than 580,000 teachers, paraprofessionals and other educational employees who strongly oppose the enactment of any Tuition Tax Credit bill. Tuition Tax Credits would cause irreparable harm to our system of free public education. They would encourage divisive forces in our society and lead to a system of educational finance that would work to the detriment of the vast majority of American children and their parents.

Tuition Tax Credits will eventually result in a massive expenditure of public funds on behalf of 10% of the school age population whose families are on the whole, better-off economically than the population in general.

No one should be lulled by the fact that the initial credit has been down-sized. If the President's Tuition Tax Credit bill becomes law, it will represent only the first installment of a massive open-ended entitlement program of the type the President otherwise finds so objectionable. It will also become the vehicle for causing irreparable damage to the public schools.

Three hundred dollars from the federal government will be quickly matched by a number of states who have in the past enacted similar legislation. In addition, it would only be a short time before the demand for tax credits was extended to the local level as it already has been in the District of Columbia where a plan to provide a \$1200 tuition tax credit was voted on two years ago. In short, a \$300 federal tax credit would blossom into a complete financing package for private elementary and secondary education. This method of finance

would undermine the financial base for our public school system and radically change our existing system of school finance for the worst. Tuition Tax Credits would finally result in an erosion of support for public schools.

Tuition Tax Credits would create an unfair and one-sided "competition" between private and public education. The "competition" that would be fostered between public and private education would be patently unequal since private schools observe none of the mandates placed on public schools. The admission policies of private schools for the handicapped, non-English speaking or other students with special needs are a private matter. Children with expensive educational or behavioral problems usually never make it past the first screening in most private schools. With tax credits paving the way, a creaming process would begin which would allow private schools to attract those students easiest to serve. The public schools would then have the problem of serving higher and higher concentrations of students with the most difficult and expensive educational and behavioral problems. In the public mind the public schools would increasingly be seen as a dumping ground to be avoided with the aid of tax credits.

Another issue that must be addressed is that of equity. How can our federal government even think of spending \$300 per private school child when programs serving children with the greatest economic and educational needs are being slashed and eliminated by the Reagan Administration? ESEA Chapter I, the Education For All Handicapped Children Act, and aid programs for needy college students have all come under the Reagan knife. It is unfair to even consider spending more for each student in private schools than is being spent for children in public schools.

We believe the facts clearly establish that there will never be a time when it is justified to pass a Tuition Tax Credit bill, but the current

slashing and elimination of on-going education programs being attempted by the Reagan Administration highlights the unfairness of this proposal. To gouge public education to pay for Tuition Tax Credits is simply too much, we hope, for this Congress to bear. It is interesting to note that after dealing with Tuition Tax Credits the Finance Committee will find it necessary to raise over \$30 billion in taxes to meet the revenue targets of the Senate Budget Committee for Fiscal Year 1984. I wonder what taxes will be raised to pay for the additional \$1.2 billion in costs needed to pay for this bill when it is fully implemented.

Another simple test that this Tuition Tax Credit bill fails to pass is that of need. In 1981 the Congress passed and the President signed into law the largest tax cut in our Nation's history. More than \$750 billion in taxes are projected to be cut through Fiscal Year 1986. In addition, Congress has changed the rules for charitable contributions and will now allow those using the short tax form to make tax deductible gifts to non-public schools. Given the tax changes already made, there is no need to provide additional tax relief to those who use non-public schools.

Non-public school enrollments have been stable recently (some indicators are that they are actually increasing). Clearly, the survival of non-public schools are not at issue now, if in fact they ever were. There is no established need for Tuition Tax Credits to "save private and parochial schools" as some claim.

You should also consider the divisive effects Tuition Tax Credits will have on our society. Tuition Tax Credits will lead to some schools organized on ideological rather than educational principle as well as schools based on race, class and ethnic background. Tuition Tax Credits will foster or support the creation of schools run by extremists. We can expect our tax dollars will be used to pay for schools run by cults such as the Moonies or by political



Louisiana Federation
CITIZENS FOR EDUCATIONAL FREEDOM

P.O. Box 53244 • New Orleans, La. 70153 • (504) 522-7469

TESTIMONY BEFORE THE UNITED STATES SENATE FINANCE COMMITTEE

April 28, 1983 -- Washington, D.C.

Senator Dole, chairman, members of the committee.

I am Kirby J. Ducote, Executive Director, Louisiana Federation, Citizens for Educational Freedom (CEF), New Orleans, La., and I am accompanied by Mr. Leonard Fine, Assistant Superintendent of Schools, Archdiocese of New Orleans, representing the Louisiana Catholic Conference and the Catholic school superintendents of the six dioceses of Louisiana, with schools enrolling 115,000 students.

I asked to be heard today in support of S. 528 because I am firmly convinced that the passage of this legislation will encourage parents of children attending nongovernment schools to keep their children in those schools, continuing to pay tuitions AND the necessary taxes for the operation of the government schools. All taxpayers should be eternally grateful.

The taxpayers will thank you because each time a child leaves the non-government school to attend a government school additional taxpayer monies are needed to educate that child. In Louisiana, the cost of educating a child in the government schools costs taxpayers an average of \$2436 annually. The national average, as I understand, is considerably higher.

We have been fortunate in Louisiana because the State has recognized the importance of private education. The Louisiana Legislature has

provided assistance to the non-government schools, as well as parents and children. The happy co-existence of government and non-government schools in Louisiana has enriched parental choice and saves taxpayers \$350 million annually.

The assistance provided by the Legislature has encouraged parents of non-public school children in Louisiana to keep their children in those schools. As a result of the actions of the Louisiana Legislature, enrollment figures in the non-government schools have remained almost static over the past five years while other states have witnessed declines in nonpublic school enrollment -- thus contributing to the ever-spiraling increase in the costs to taxpayers for public education.

In 1973-74, CEF and the Louisiana Catholic Conference were successful in changing the Louisiana Constitution, which had contained a Blaine-type amendment prohibiting aid, directly or indirectly, to any church-related institution which performed a public service such as education. We not only struck the Blaine language but inserted this:

"The (Louisiana) legislature shall provide for the education of the people of the state AND (emphasis added) shall establish and maintain a public educational system."

We urge Congress to take the same approach -- providing for the education of all the children of the nation AND for a public school system. Parents -- having different values, visions and educational desires for their children -- are demanding rights and choice in education. In passing tuition tax credits, you will help to preserve diversity, and flexibility, as well as competition and freedom in education. You also will help prevent an advent of monolithic uniformity, universal standardization, complete secularization and probable stagnation in education.

Government rightly encourages constructive activities and non-profit institutions which contribute to the public welfare as well as serve the interests of voluntary groups of private citizens. Private education definitely falls in this category and public policy should accordingly encourage it.

Granted, there's controversy in S. 528. But it represents thinking men's suggestions as to how to stimulate education in this country. At the same time it provides the opportunity to the taxpayer to choose to have some of his tax dollars for the purpose of assuring diversity, competitive spirit and freedom in education.

I urge that we should all be thinking along the lines of cooperation between government and nongovernment education, for without that cooperation all of our efforts move forward at half steam rather than full speed ahead.

Before that cooperation can begin, those who oppose any aid to children in nongovernment schools must realize this: Blind opposition to any aid only angers a large segment of taxpayers. Those are the taxpayers who pay tuitions for children at nongovernment schools as well as taxes to support a government school system which local and national publications, in growing numbers, condemn as sick at best, as terminally ill, at worst.

At the same time that the government schools come under scrutiny as never before in my lifetime, there is a growing library of studies and statistics showing that nongovernment schools are doing a good job, with far less money, and are serving the inner cities as well as the suburbs.

We declare that those of us who are fighting for tuition tax credits are not competing with the government and its schools. Rather, we are working to assure parental rights in the field of education and seek to assure quality education in both government and nongovernment schools.

In closing, may I point out that former President Nixon, in a statement to the National Catholic Educational Association, had raised the hopes of parents with children in nongovernment schools by promising to help them. Former President Carter -- just before his election -- held out similar hope to parents when he promised assistance in a message to the Chief Administrators of Catholic Education.

This administration likewise is on record -- and firmly on record -- in support of parental rights in education, through tuition tax credits. We remind the administration of this support and urge strong, up-front actions on their part IMMEDIATELY to guide the tuition tax credits to success.

Parents, forgotten by Nixon and openly turned upon by Carter, are saying over and over again that they want the choice in education which is offered by this administration's approach. The hopes of these parents should not be dashed again.

FOR IMMEDIATE RELEASE

Contact: 504-522-7469

Kirby J. Ducote, Executive Director
Citizens for Educational Freedom
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With public school costs in Louisiana topping \$2 billion annually for the first time and revenues of the state on the decline, it is time to appreciate anew the near \$400 million a year "bonus" contribution made to the state by nonpublic school parents, governmental representatives of the parents said today.

Kirby J. Ducote, executive director of the Louisiana Federation, Citizens for Educational Freedom (CEF), released CEF's annual analysis of statewide enrollment figures.

The analysis shows, he said, that nonpublic schools and their supporters make a contribution equaling \$373,173,000 to the annual cost of educating Louisiana's elementary and high school students.

That is the amount, he said, that it would cost to educate Louisiana's 148,266 nonpublic school students in public schools.

Civil parish educational profiles -- for the 1981-82 school year -- are soon to be published by the State Department of Education. They reflect a decline in both public and nonpublic school students from the last report, for 1980-81.

According to the department's figures, public school enrollment stood at 762,471 in 1981-82 as compared with 773,549 in 1980-81. Nonpublic school enrollment was 148,266 in 1981-82 as compared with 152,455 in 1980-81.

Emile Comar, executive director for government programs for the Louisiana Catholic Conference and a vice-president of CEF, said the "continuing support of the state administration and the Legislature for both public and nonpublic education creates a harmonious educational environment which benefits Louisiana taxpayers."

"We believe there is recognition on the part of public officials of the bonus contribution which nonpublic school parents make through payment of both taxes and tuitions," Comar said, adding:

"Can you imagine the turmoil which would be created if nonpublic schools -- most of them under Catholic sponsorship -- could not continue to finance schools which educate some 150,000 students."

The growing need for public/private cooperation in the field of education, he said, is seen in the increasing cost of educating students in the government schools.

In 1980-81, he said, the State Department of Education showed the per pupil cost at \$2085 as compared with \$2436 in 1981-82.

(over)

"Nonpublic schools," said Ducote, "must be looked upon as a blessing by Louisiana taxpayers, particularly now that a new OPEC fight has decreased the price of oil and impacted Louisiana's revenue.

"We have a cushion which softens the impact of reduced revenues in Louisiana and that cushion is the fact that parents of nonpublic schools are supporting public education while at the same time keeping open the doors of nonpublic schools."

He said that each year when the figures are published critics say that the CEF compilation does not take into account "all that money" that comes from the state to nonpublic school parents and students.

"All the aids from the state to nonpublic school children," Ducote said, "average out to \$173.04 per child. The total is less than \$20 million."

This compares, he said, with the \$2436 it cost in 1981-82 to educate a child in a public school and the total \$2 billion public school tab.

"That's why we say that the state, with a little bit of sugar, is getting back its money more than tenfold while at the same time preserving parents' right to choose among schools which, naturally, have varying value systems," Ducote said.

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March 3, 1983

1981-82 LOUISIANA SCHOOL FIGURES
(Source: Louisiana State Department of Education, March 1983)

PARISH	PUBLIC SCHOOL STUDENTS	PER PUPIL COST PUBLIC SCHOOLS	NONPUBLIC SCHOOL STUDENTS	TAX SAVINGS EFFECTED BY NON- PUBLIC SCHOOLS
Acadia	10,602	\$2,077	2,041	\$4,239,157
Allen	4,843	2,138	---	---
Ascension	10,828	2,473	1,064	2,631,272
Assumption	5,252	2,106	504	1,061,424
Avoyelles	8,215	2,226	1,220	2,715,720
Beauregard	7,036	2,174	---	---
Bienville	4,052	2,209	205	452,845
Bossier	17,883	2,139	774	1,655,586
Caddo	44,496	2,468	7,957	19,637,876
Calcasieu	33,157	2,475	3,690	9,132,750
Caldwell	2,300	2,316	---	---
Cameron	2,106	3,511	---	---
Catahoula	2,701	2,660	---	---
Claiborne	3,361	2,323	316	734,068
Concordia	4,682	2,381	505	1,202,405
DeSoto	5,465	2,339	286	668,954
E. Baton Rouge	59,349	2,652	8,974*	23,799,048
E. Carroll	2,629	2,252	429	966,108
E. Feliciana	3,365	2,234	631	1,409,654
Evangeline	7,353	2,055	896	1,841,280
Franklin	5,439	2,393	234	559,962
Grant	3,816	2,129	---	---
Iberia	15,576	2,175	1,965	4,273,875
Iberville	6,262	2,928	1,022	2,992,416
Jackson	3,265	2,548	---	---
Jefferson	58,334	2,661	30,754	81,836,394
Jefferson Davis	7,014	2,173	502	1,090,846
Lafayette	25,971	3,205	5,213	16,707,665
Lafourche	17,797	2,025	2,596	5,256,900
LaSalle	3,431	2,247	---	---
Lincoln	5,896	2,173	910	1,977,430
Livingston	14,400	1,767	160	282,720
Madison	3,467	2,201	405	891,405
Morehouse	6,624	2,425	979	2,374,075
Natchitoches	7,393	2,727	1,192	3,250,584
Orleans	82,049	2,525	38,364	96,869,100
Ouachita	16,636	2,018	1,422	2,869,596
Plaquemines	5,223	2,375	551	1,308,625
Pointe Coupee	4,020	2,973	1,629	4,843,017
Rapides	23,727	2,306	3,563	8,216,278
Red River	1,902	2,365	327	773,355
Richland	3,854	2,739	378	1,035,342
Sabine	5,019	2,060	---	---
St. Bernard	10,083	2,512	2,591	6,508,592
St. Charles	8,002	4,467	601	2,684,667
St. Helena	2,382	2,316	---	---
St. James	4,591	2,697	385	1,038,345
St. John	5,858	2,516	2,478	6,234,648
St. Landry	18,965	2,358	3,808	8,979,264
St. Martin	8,990	2,250	853	1,919,250
St. Mary	12,783	2,705	2,237	6,051,085
St. Tammany	22,024	1,996	3,875	7,734,500
Tangipahoa	15,602	2,136	2,924	6,245,664
Tensas	1,636	2,479	346	857,734
Terrebonne	20,989	2,339	2,856	6,686,184
Union	4,083	2,156	132	284,592
Vermilion	9,239	2,652	1,172	3,108,144
Vernon	10,162	2,123	---	---
Washington	4,946	2,324	---	---
Webster	8,703	2,025	334	676,350
W. Baton Rouge	3,801	2,737	479	1,311,023
West Carroll	2,857	2,332	116	270,512
West Feliciana	1,777	3,111	---	---
Winn	3,796	2,455	---	---
City of Monroe	10,293	2,100	1,028	2,158,800
City of Bogalusa	4,120	2,214	394	872,316
	762,471	2,436 (Avg.)	148,266	\$373,173,402

* This is the figure for Catholic schools alone. Other nonpublic school figures not supplied by East Baton Rouge Parish.

+ The total figure on the state tabulation was 139,272, but that was compiled before the 8,974 students in Catholic schools of Baton Rouge were added. Because of non-reporting of other independent schools as noted in (*) above, the actual 1981-82 total figures for nonpublics probably stood near 151,000.

TESTIMONY OF

REVEREND THOMAS G. GALLAGHER

SECRETARY OF EDUCATION

ON BEHALF OF THE

UNITED STATES CATHOLIC CONFERENCE

BEFORE THE

SENATE COMMITTEE ON FINANCE

UNITED STATES SENATE

ON

TUITION TAX CREDITS

WASHINGTON, D.C.

APRIL 28, 1983

Mr. Chairman, members of the Committee, I am Father Thomas Gallagher, the Secretary of Education for the United States Catholic Conference. This is the third time in as many years that a representative of the U.S. Catholic Bishops has testified before this Senate Committee in support of tuition tax credit legislation. Although it is not my desire to restate the testimony previously given on two separate occasions by Bishop James Lyke, I would like to briefly reaffirm the reasons underlying the Catholic Bishops' support for this legislation. And further, I would like to touch upon the issue of tuition tax credits as good public policy, an approach which I believe has not been adequately emphasized in previous testimony before this Committee.

Rationale for Support

Simply stated, the support by the Catholic community for tuition tax credits is predicated on the belief that this is a matter of human rights and social justice for millions of America's school-age children and their parents. The United States Catholic Conference has testified numerous times on numerous issues facing Congress, and each time for each issue the motivation has been the protection of the dignity of the human being. In this issue, too, the very dignity of the child and his or her

parents is at stake. If a child, any child, is denied access to the kind of education best suited to his needs, then our public policy is errant in its philosophy and its practice. If a child, any child, is restricted in educational opportunity merely due to his or her parents' inability to pay, then government is remiss in fulfilling its duty to uphold the dignity of all citizens by enabling them to reach their fullest potential. As Bishop Lyke has previously stated to this Committee, the dignity of the individual "must be the cornerstone of all public policy in this country."

Tuition Tax Credits — Good Public Policy

Mr. Chairman, this brings me to the second and major thrust of my discussion — the recognition of tuition tax credits as a just and essential public policy, well within the purview of Congress.

I have closely followed this issue over the years, as a teacher, as the superintendent of Catholic schools in the diocese of Rockville Centre, New York, and, more recently, as Secretary of Education at USCC. I am saddened by much of the debate over tuition tax credits — saddened by the frequent and indiscriminate use of arguments which state that this legislation represents poor public policy because it would contribute to an enterprise which is somehow less than "public" or less than "American." The argument to which I refer implies that any assistance to nonpublic school children is, in effect, a diminishing of support for children in public schools.

I must reiterate that fully two thirds of the Catholic school age children in the United States attend our public schools. Neither the American Catholic bishops nor I would be here supporting this legislation today if we felt that it would in any way hinder support for the public schools of our nation. When public schools began and grew in numbers in the 1800's, most of the nonpublic schools already in existence accepted as full partners this relatively new enterprise called public education. We must continue that partnership through the strengthening of both the public and nonpublic sectors.

This fact — that public support for nonpublic school children does not represent a "trade-off" with public education — deserves more attention. As Mr. Dennis Doyle, writing a few years ago for the Brookings Institute, has so aptly stated:

The conventional wisdom in much of the public and private sector holds that a major change in the way we finance education— adding private schools to the public expense ledger -- is essentially a zero sum game... The zero sum fear is based on a false assumption that the education pie is finite, and that even a small slice for private education will diminish public education.

Mr. Doyle goes on to state, significantly, in my opinion:

...rather than viewing private education with suspicion and hostility, supporters of the public school system might gain, both financially and politically, by looking to the private sector for allies in the effort to adopt a strategy of support for education as a whole.

The writer continues:

...The strongest evidence comes from Australia, where one third of the students are enrolled in private schools supported by public funds. Every indication suggests that there is now a much more broadly-based coalition of support for education in general and that the levels of support for education in the public sector alone are higher now than they would have been absent general support for education generally, both public and private.

Mr. Chairman, although the author is here talking about support for schools, not necessarily direct assistance to parents as would be provided by tuition tax credits, I think my point has been made. I might add that other evidence exists here in the United States which supports this author's view. The city of New York has a strong nonpublic school community, with over one-fourth of the children attending nonpublic schools. And yet New York city has one of the most outstanding records of support for public education.

The public policy of support for nonpublic school children, therefore, does not bespeak a policy of diminished support for public education. In fact, just the opposite appears to be true.

But what of another aspect of the public policy question, the burden of education on the taxpayer, including many taxpayers who do not themselves have children in school? It costs the taxpayer approximately \$2,169 annually to educate a child in the public schools. If the current economic difficulties continue to plague our nation, prolonging high unemployment, particularly in our urban areas and industrial centers, there can be little doubt that more and more children currently attending nonpublic schools will be forced to leave those schools. This will place increasing burdens on the taxpayers, because they will have to pay for the education of those children at a cost much higher than the costs involved in this tuition tax credit legislation. I might add that the existing investment in the education of children in nonpublic schools is enormous, and that tuition tax credits can also be viewed as good public policy because they would encourage and maintain that investment in this important sector of our economy.

Mr. Chairman, Members of the Committee, I am not indulging here in unsubstantiated rhetoric. In 1982-83 Catholic school enrollment declined 2.2% or 68,000 students. Although a more careful analysis must be done to determine exact reasons for that decline, it is a matter of fact that most Catholic schools are located in our nation's inner-cities and urban areas. These are the very

areas which have been hit by high unemployment, forcing many parents to reconsider even the smallest tuition expense to keep their children in nonpublic schools. If we were to assume, for comparative purposes, that every one of those 68,000 children was now in the public sector, taxpayers would be paying approximately \$147,492,000 to educate them. If, on the other hand, we could assume that a \$300 tuition tax credit would have helped those parents keep their children in the Catholic schools, the cost would have only been \$20,400,000. Although my assumptions carry the example to the extreme, I think the point is clear: Tuition tax credits, particularly in a time of difficult economic conditions and budget deficits, make long term economic sense. A relatively small investment in the youth of our nation through tuition tax credits can save billions of tax dollars later on.

Finally, Mr. Chairman, I would like to make the point that this legislation is good public policy because it has the often overlooked benefit of being family-centered. Apart from the potential to help strengthen public and private schools, and apart from the long term fiscal benefits I have already mentioned, this legislation reaches beyond the sometimes muddled debate to a fundamental principle upon which this country was founded and to which Americans have always subscribed.

The family is the most basic element of our society and should be supported through the public policies adopted by our governments. Over the years there have been presidential commissions on the family, state legislatures repeatedly deal with issues involving family rights and obligations, and this Congress is constantly voting on measures affecting family life. Tuition tax credits must also be analyzed as legislation which will strengthen the family in America by giving families, especially middle- and low-income families, more of a voice in the education of their children. It is a hollow promise to tell families they have a constitutional right to educate their child in the school of their choice, if the public policy of the nation does not empower them to exercise that right. If you believe, as I am sure that you do, that parents are the primary educators of their children, then you, as government officials, must be willing to act on measures establishing public policy that helps parents exercise their responsibilities.

In this sense, Mr. Chairman, the issue of tuition tax credits transcends the issues of support for schools and fiscal considerations. We are discussing an issue which will empower the basic unit of our society to make choices in performing its duties and responsibilities. In the long run, this legislation will strengthen families by giving them choices which they may not have now. I argue, Mr. Chairman, Members of the Committee, that this is good public policy, and one which this Congress should not hesitate to act upon.



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STATEMENT OF RABBI MENACHEM LUBINSKY
DIRECTOR OF GOVERNMENT AND PUBLIC AFFAIRS OF
AGUDATH ISRAEL OF AMERICA
BEFORE THE SENATE FINANCE COMMITTEE
THURSDAY, APRIL 28TH, 1983

Mr. Chairman and members of the Committee: My name is Rabbi Menachem Lubinsky and I am the Director of Government and Public Affairs of Agudath Israel of America, a 61 year old national Orthodox Jewish movement headed by the nation's most eminent scholars. Our Campaign to Relieve Independent Education consists of a network of committees of parents and grassroots Jews in 31 states in support of tuition tax credits.

On August 15th, 1972, the President of Agudath Israel of America, Rabbi Morris Sherer, first testified in support of tuition tax credits before the House Ways and Means Committee. Since that time, our organization has on numerous occasions appeared before this committee and the subcommittee to address tuition tax credits. Rather than to review the overall merits, I would just like to address my remarks to some brief points about the most recent bill which was introduced by the chairman on February 17th (S. 528).

Our attorneys are convinced that this bill is constitutionally sound. To be over-zealous in the constitutional interpretation of tuition tax credits is not to protect our traditional separation of church and state. It is, in fact, to deny the rights of

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DIVISIONS: National Youth Commission Zeirei Agudath Israel, Bnos Agudath Israel, Pirchei Agudath Israel, Bachurei Agudath Israel/Agudist Women's Organization, N'shei Agudath Israel/Camp Agudah/Camp Bnos/ The Jewish Observer/Dos Yiddishe Wort/Commission on Legislation and Civic Action/Commission on Israel, Commission on Overseas Rescue and Relief/Commission on Social Services/Commission on Senior Citizens, Project COPE (Career Opportunities and Preparation for Employment)/COPE Vocational Institute/ Commission on Latin American Jewry/National Commission on Jewish Ethnic Affairs (Judaicope, Southern Brooklyn Community Organization)/Commission on Branch Service and Development/ Commission on Adult Torah Education, Daf Yomi, Jewish Education Program (JEP)/Torah Education Network (Reshet Shiurei Torah)/Torah Action Program (TAP) /Project RISE (Russian Immigrant Services and Education) /Russian Immigrant Rescue Fund/Project YAD for Russian Jewry/Agudist Benevolent Society/Chevre Oseh Chesed

parents to select the school of their choice. In the very least, since there are apparently differences of opinion, we should give this concept a chance by letting the United States Supreme Court decide the issue. Our lawyers are unanimous in the feeling that various previous state cases cannot be used as a precedent in deciding the constitutionality of this tuition tax credit bill.

We believe that the Administration's bill is not a boondoggle for the rich, as some have charged. Its modest cap of \$300 when the bill is fully effective in 1985 and its income ceiling assures that the bill would go mainly to poor middle and working class parents. In Jewish sponsored schools, which number over 500 representing 110,000, the vast majority of parents fall into these categories. Other educational systems, most notably Catholic schools, by and large cater to lower and middle income parents.

It is ludicrous to believe that a \$300 tuition tax credit will destroy our nation's public schools, which we firmly support. \$300 will not make the difference for parents who will have to decide between a free education and a relatively expensive education, even with a \$300 tax credit. None of the other federal programs over the last decade and a half have had the effect of eroding the base of public schools. Neither Title I nor state mandated services or any other financial aid programs have in any way shifted the population from public schools.

The same is true incidentally in higher education as well. There are those who argue that tax credits is but a foot in the door and that eventually the credit would be raised. Even if this were to be true, an increased credit will not keep pace with the mounting cost of operating a private school. Tuition by lower and middle income families will certainly not keep pace.

The average cost of educating a child in a Jewish elementary school is \$2,403.56. The average cost in high schools is \$3,440.56. Both figures are well below the cost in

most major cities for educating a child in a public school. But even as the cost for elementary schools, for example, is \$2,403, the average tuition is \$1,317.08, leaving the school with the task to somehow make up the difference of \$1,086.48, and for high schools where the average cost per student was \$3,440, the average tuition is \$1,498, leaving the school to make up \$1,942. That is the average, which certainly does not factor in those youngsters who are on full or partial scholarship. No child as far as I know, is ever turned away because they cannot pay or, for that matter, on any other basis.

This bill goes a long way in guaranteeing that the measure would in no way assist schools that racially discriminate. The language in the bill which this committee passed last year goes beyond any previous anti-discrimination provisions. In fact, its language is even stronger than any previous anti-discrimination language in any measure that was designed to help both public and non-public schools.

What other reason then can there be to prevent this bill from passage? Parents of children in private schools look to tuition tax credits as somewhat of a relief in their overwhelming burden. The case which they often make is that they are forced to shoulder a double burden of financing public schools as well as their own children's education. If one considers the multiple child family in the Jewish community where six and eight children in a family is not uncommon, the cost can be staggering. I think of grandchildren of Holocaust survivors who came to this country because they truly wanted to benefit from a land of opportunity and choice. Yet they were being told that this country only sanctions one form of education. The very same people that argue that a competing postal system would speed mail delivery cannot see their way in sanctioning a dual educational system.

This debate on tuition tax credits has at times escaped logic. I have heard and

read arguments that on the day after tuition tax credits was passed, mass layoffs of teachers in the public school system could be expected. I have heard that the traditional barriers of church-state would be removed, when in fact religion already plays such an important role in our life, from the G-d we trust on our dollar bills to the tax deductions we grant to taxpayers who make contributions to their synagogues and churches. I have heard of those who fear the discrimination academies but for some reason no longer trust government to enforce its own regulations as this bill does.

In addition to my capacity as representative of Agudath Israel of America, which has served as the legislative spokesman for Jewish day schools for so many years, I am here also to represent the National Society of Hebrew Day Schools, which is the educational arm of most of the Jewish sponsored schools. We know that our schools are not elitist academies, that in New York State, for example, of 200 schools and 66,000 students nearly half come from poverty or near poverty backgrounds. We must also consider that these are the same parents who also have considerably higher living costs because of the large expense incurred to meet such religious requirements as kosher food. Tuition tax credits, in fact, is a question of survival for a large number of Jewish parents, particularly those with large families.

It seems odd at times that we should have given recognition to people who insulated their homes because we wanted them to conserve energy, or for child care because we recognize that two parents in a home may have to work, but that we cannot somehow find it in our hearts to tell parents, yes, you do have the right to educate your child in whatever school you choose. No, we will not pay for the cost of educating your child, but in recognition of your burden and in recognition of the priority we place in education, we will grant you a small tax credit. That is what this issue is all about. Let us pass Senate Bill 528 now.

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SUMMARY OF STATEMENT OF THE
COMMITTEE FOR PRIVATE EDUCATION,
NEW, HAVEN, CONNECTICUT BEFORE
THE SENATE FINANCE COMMITTEE, ON
THE SUBJECT OF TUITION TAX CREDITS

- I. THE COMMITTEE FOR PRIVATE EDUCATION REPRESENTS 15.5 MILLION PARENTS, STUDENTS, AND TEACHERS NATIONWIDE.
- II. DURING THE PAST SEVERAL YEARS, CONGRESS HAS GREATLY INCREASED THE FEDERAL TAX BURDENS OF PRIVATE SCHOOLS.
 - A. THE NEW SOCIAL SECURITY STATUTE IS PROBABLY THE LARGEST FEDERAL TAX ON PRIVATE SCHOOLS EVER, ADDING COSTS OF OVER \$100 PER PUPIL.
 - B. THE 1976 FEDERAL REQUIREMENT THAT PRIVATE SCHOOLS (EXCEPT SCHOOLS CONTROLLED BY A CHURCH) BE INCLUDED IN THE UNEMPLOYMENT TAX SYSTEM, ADDED ANOTHER APPROXIMATELY \$10-15 PER PUPIL TO PRIVATE SCHOOL COSTS.
 - C. IN 1969, THE UNRELATED BUSINESS TAX WAS EXTENDED TO CHURCHES AND CHURCH-OWNED SCHOOLS.
 - D. FINANCING OF PRIVATE SCHOOLS HAS INCREASINGLY BEEN THROUGH TUITION, RATHER THAN GIFTS, WHICH INCREASES THE TAX BURDEN ON SCHOOL SUPPORTERS.
- III. EFFECT OF PRIVATE SCHOOL COST INCREASES.
 - A. TAX INCREASES, AND OTHER EXTRAORDINARY COST INFLATION, ARE DRIVING STUDENTS FROM PRIVATE SCHOOLS AND FORCING SCHOOL CLOSURES.
 - B. FEDERAL, STATE AND LOCAL PUBLIC SCHOOL EXPENDITURES WILL HAVE TO RISE IF MODEST FEDERAL TAX ADJUSTMENT IS NOT MADE FOR PRIVATE SCHOOLS.
 - C. TUITION TAX CREDIT IS FAIREST, BECAUSE IT GIVES MORE RELIEF TO LOWER INCOME FAMILIES.

IV. FEDERAL TAX BENEFITS FOR VARIOUS CLASSES OF PRIVATE OR PUBLIC SCHOOLS ARE ROUTINE AND LONGSTANDING.

- A. FOR EXAMPLE, GIFTS TO PRIVATE SCHOOLS HAVE BEEN DEDUCTIBLE GOING BACK TO 1898.
- B. SPECIAL TAXES AND TAX BENEFITS EXIST FOR MANY CLASSES OF SCHOOLS; ALL PRIVATE SCHOOLS; ALL RELIGIOUS PRIVATE SCHOOLS; PUBLIC SCHOOLS; PRIVATE AND PUBLIC UNIVERSITIES; AND PRIVATE AND PUBLIC ELEMENTARY SCHOOLS.
- C. THESE LONGSTANDING SPECIAL TAX PROVISIONS ARE ROUTINE AND NECESSARY IN THE COMPLEX FEDERAL TAX CODE, AND HAVE ALWAYS BEEN UPHELD BY THE FEDERAL COURTS.

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STATEMENT OF THE
COMMITTEE FOR PRIVATE EDUCATION
NEW HAVEN, CONNECTICUT
BEFORE THE SENATE FINANCE COMMITTEE,
ON THE SUBJECT OF
TUITION TAX CREDITS

APRIL 28, 1983

MR. CHAIRMAN, MEMBERS OF THE SENATE FINANCE COMMITTEE.
MY NAME IS WILLIAM J. LEHRFELD, ^{1/} ONE OF THE TAX COUNSEL FOR
THE COMMITTEE FOR PRIVATE EDUCATION, NEW HAVEN, CONNECTICUT.

THIS ORGANIZATION IS COMPOSED OF SEVERAL CONSTITUENT
GROUPS REPRESENTING A TOTAL OF 15.5 MILLION PARENTS, STUDENTS,
AND TEACHERS NATIONWIDE. AMONG ITS MEMBERS ARE THE KNIGHTS OF
COLUMBUS (MEMBERSHIP 1.37 MILLION); THE CATHOLIC DAUGHTERS OF
AMERICA (MEMBERSHIP 170,000); THE DAUGHTERS OF ISABELLA
(MEMBERSHIP 130,000); THE NATIONAL COUNCIL OF CATHOLIC WOMEN
(10 MILLION AFFILIATE MEMBERS); THE NATIONAL CATHOLIC EDUCATION
ASSOCIATION (200,000 CATHOLIC SCHOOL TEACHERS AND ADMINISTRATORS,
AND 3.5 MILLION STUDENTS); AND CITIZENS FOR EDUCATIONAL
FREEDOM, A NONSECTARIAN ORGANIZATION WITH BRANCHES THROUGHOUT
THE UNITED STATES. THE COMMITTEE HAS BEEN FOUNDED FOR THE
EXPRESS PURPOSE OF SUPPORTING THIS ADMINISTRATION'S TUITION
TAX PROPOSALS.

LAST YEAR, A STATEMENT ON BEHALF OF THE COMMITTEE
FOR PRIVATE EDUCATION WAS PRESENTED BEFORE THE FINANCE COMMITTEE

1/PRINCIPAL, LEHRFELD & HENZKE, P.C., WASHINGTON, D.C.

ON JUNE 16, 1982, IN SUPPORT OF THE EDUCATIONAL OPPORTUNITY AND AND EQUITY ACT OF 1982, SENATE BILL 2673. ARGUMENTS IN FAVOR OF THE CONSTITUTIONALITY OF THAT BILL WERE PRESENTED, AND THE DISCUSSION THERE IS EQUALLY APPLICABLE TO CURRENT S. 528. I WILL NOT REPEAT THAT DISCUSSION, BUT RATHER APPEND THE STATEMENT TO THE END OF MY STATEMENT HERE.

TODAY I WOULD LIKE TO FOCUS MY ATTENTION ON TWO POINTS WHICH WE BELIEVE ARE PARTICULARLY PERTINENT TO THE DELIBERATIONS OF THIS COMMITTEE, WITH ITS SPECIAL EXPERTISE IN FEDERAL TAX AND FISCAL MATTERS. I MIGHT ADD THAT THESE POINTS ARE ALSO WITHIN THE SPECIAL EXPERTISE OF OUR FIRM, WHOSE TWO PRINCIPALS HAVE OVER 30 YEARS OF SPECIALIZATION AND EXPERIENCE WITH THE PECULIAR TAX PROBLEMS OF NONPROFIT RELIGIOUS AND EDUCATIONAL ORGANIZATIONS.

I

OVER THE PAST 15 YEARS, THE CONGRESS, GUIDED IN LARGE PART BY THIS COMMITTEE, HAS STEADILY INCREASED THE FEDERAL TAX BURDEN OF PRIVATE NONPROFIT SCHOOLS, WHICH OF COURSE DIRECTLY INCREASES THE BURDEN ON PARENTS WHO ARE THE PRINCIPAL FINANCIAL SUPPORTERS OF THESE SCHOOLS. THE UNINITIATED OBSERVER MIGHT BE SURPRISED TO HEAR THIS FACT, BECAUSE MOST PEOPLE PROBABLY BELIEVE THAT CHURCHES AND NONPROFIT PRIVATE SCHOOLS PAY NO FEDERAL TAXES. WHILE THAT WAS ONCE THE CASE, IT IS NO LONGER SO.

BY FAR THE MOST SUBSTANTIAL FEDERAL TAX BURDEN IMPOSED ON CHURCHES AND PRIVATE SCHOOLS IS CONTAINED IN THE

SOCIAL SECURITY AMENDMENTS OF 1983, SIGNED LAST WEEK BY PRESIDENT REAGAN. BEGINNING JANUARY 1, 1984, THIS STATUTE WILL IMPOSE A COMBINED 14 PERCENT TAX BURDEN ON THE WAGES OF ALL EMPLOYEES OF CHURCHES, CHURCH SCHOOLS, AND OTHER PRIVATE NONPROFIT SCHOOLS. OUR FIRM HAS MANY SUCH SCHOOLS AS CLIENTS, AND MANY OF THEM ARE IN DESPERATE STRAITS TRYING TO FIND FUNDS TO PAY THIS SUDDEN, UNEXPECTED FINANCIAL BURDEN.

A FEW STATISTICS WILL REVEAL THE ENORMITY OF THE NEW FINANCIAL BURDEN IMPOSED UPON PRIVATE SCHOOLS BY THIS STATUTE. ASSUMING AVERAGE ANNUAL WAGES OF \$10,000-\$15,000 PER FULL-TIME TEACHER, AND APPROXIMATELY 20 STUDENTS PER TEACHER, NEXT YEAR'S INCREASE IN SOCIAL SECURITY TAXES WILL IMPOSE AN ADDITIONAL FINANCIAL BURDEN OF \$70-\$105 PER PRIVATE SCHOOL PUPIL FOR FICA TAXES ON TEACHER SALARIES ALONE.^{2/} FICA TAXES ON WAGES OF OTHER EMPLOYEES WILL MAKE THIS BURDEN EVEN GREATER.

BUT THIS IS NOT THE ONLY INCREASE IN THE FEDERAL TAX BURDEN RECENTLY IMPOSED UPON PRIVATE SCHOOLS BY THE FEDERAL TAX CODE. IN 1976, THE FEDERAL UNEMPLOYMENT TAX ACT WAS AMENDED TO REQUIRE TAXATION FOR THE FIRST TIME OF NON-PROFIT

^{2/}PRECISE FIGURES ON AVERAGE WAGES OF PRIVATE SCHOOL TEACHERS ARE NOT AVAILABLE. AVERAGE WAGES OF PUBLIC SCHOOL TEACHERS ARE \$17,602 IN 1980-81. DIGEST OF EDUCATION STATISTICS 1982, TABLE 49 (NATIONAL CENTER FOR EDUCATION STATISTICS). WE ARE ALSO UNAWARE OF ANY STATISTICS ON THE PERCENTAGE OF PRIVATE SCHOOLS WHICH PREVIOUSLY ELECTED TO PARTICIPATE IN SOCIAL SECURITY. OUR FIRM'S EXPERIENCE IS THAT THE SCHOOLS WITH THE MOST PRECARIOUS FINANCIAL BASE HAVE NOT PARTICIPATED.

PRIVATE SCHOOLS, EXCEPT FOR SCHOOLS OF CERTAIN CHURCH-CONTROLLED PRIVATE SCHOOLS.^{3/} IN 1983, THIS TAX IS EQUIVALENT TO ABOUT 3 PERCENT OF THE FIRST \$7,000 OF AN EMPLOYEE'S WAGES, OR A MAXIMUM OF ABOUT \$200 PER EMPLOYEE PER YEAR.

FINALLY, IN 1969 CONGRESS EXTENDED THE UNRELATED BUSINESS TAX (I.R.C. §§ 511-514) FOR THE FIRST TIME TO CHURCHES AND CHURCH-OWNED SCHOOLS. THE TAX HAD BEEN IMPOSED ON NON-RELIGIOUS PRIVATE SCHOOLS IN 1951. NO STATISTICS APPEAR TO BE AVAILABLE SHOWING THE AMOUNT OF TAXES COLLECTED FROM SUCH PRIVATE SCHOOLS. HOWEVER, THE MAIN IMPACT OF THE TAX IS NOT IN THE TOTAL AMOUNTS COLLECTED, BUT ITS PARTICULARIZED BURDEN ON THOSE SCHOOLS WHICH TRADITIONALLY RELIED ON A CONTROLLED BUSINESS TO SUPPLEMENT REVENUES.^{4/}

OF COURSE, SOME -- BUT NOT ALL -- OF THESE TAXES WERE ALSO IMPOSED UPON PUBLIC SCHOOLS. BUT SUCH TAXES, LIKE OTHER INCREASES IN COSTS, ARE BORNE BY THE CITIZENRY AT LARGE -- INCLUDING PARENTS OF PRIVATE SCHOOL PARENTS. BY CONTRAST, TAXES ON PRIVATE SCHOOLS ARE BORNE ALMOST EXCLUSIVELY BY PARENTS OF PRIVATE SCHOOL PUPILS.

THESE INCREASES IN THE FEDERAL TAX BURDENS OF PRIVATE SCHOOLS -- COMBINED WITH THE EXTRAORDINARY COSTS INCREASES IN RECENT YEARS FOR FUEL, INTEREST, MEDICAL INSURANCE AND THE LIKE -- HAVE DRIVEN MANY SCHOOLS TO THE BRICK OF FINANCIAL

^{3/}SEE ST. MARTIN LUTHERAN CHURCH V. SOUTH DAKOTA, 451 U.S. 772.

^{4/}"I.R.C." AND "CODE" REFER TO THE INTERNAL REVENUE CODE OF 1954.

COLLAPSE, OR HAVE REQUIRED THEM TO CLOSE THEIR DOORS. THE POINT HAS BEEN REACHED WHEN CONGRESS MUST GIVE TAX RELIEF FOR PRIVATE SCHOOLS TUITION, SO THAT STUDENTS ARE NOT DRIVEN FROM THESE SCHOOLS INTO THE PUBLIC SCHOOLS. APART FROM THE DELETERIOUS EFFECTS ON INDIVIDUAL FREEDOM INVOLVED IN SUCH A FORCED DEPARTURE FROM PRIVATE SCHOOLS, ANY SUCH SHIFT OF STUDENTS WILL RESULT IN AN INCREASE IN NEEDED FEDERAL, STATE AND LOCAL TAX FUNDS TO PROVIDE PUBLIC SCHOOL EDUCATIONS FOR SUCH NEW STUDENTS.

THE INCREASED COSTS TO GOVERNMENTS OF EDUCATING CHILDREN WHO LEAVE PRIVATE SCHOOLS WOULD BE ENORMOUS. IN 1983, IT IS ESTIMATED THAT THERE ARE ABOUT ⁵ MILLION STUDENTS IN PRIVATE SCHOOLS IN THE UNITED STATES. ^{5/} OF THESE, OVER HALF ^{6/} COME FROM FAMILIES WITH LESS THAN \$25,000 ANNUAL INCOME. IF ONLY ONE PERCENT OF PRIVATE SCHOOL PUPILS CHANGED TO PUBLIC SCHOOLS BECAUSE OF INCREASED TUITION COSTS, FEDERAL AID TO PUBLIC SCHOOLS WOULD HAVE TO BE INCREASED BY ABOUT ~~\$23 MILLION~~ ^{7/} PER YEAR. TOTAL SUPPORT BY ALL GOVERNMENTS TO PUBLIC SCHOOLS WOULD HAVE TO INCREASE BY OVER \$105 MILLION PER YEAR. OF COURSE, IF STUDENTS LEAVE THE PRIVATE SCHOOLS IN GREATER NUMBERS, THE INCREASE IN GOVERNMENT OUTLAYS FOR PUBLIC SCHOOLS WOULD BE PROPORTIONATELY GREATER.

5/PROJECTION OF EDUCATION STATISTICS TO 1990-91, P.32 (NATIONAL CENTER FOR EDUCATION STATISTICS).

6/SEE HEARINGS BEFORE THE S. FINANCE COMM. ON TUITION TAX CREDIT PROPOSALS, 97TH CONG., 2D SESS. 55.

7/IBID.

AS IS USUALLY THE CASE, MOREOVER, THE EFFECT OF HIGHER PRIVATE TUITION COSTS WILL NOT BE EQUALLY DISTRIBUTED AMONG PRIVATE SCHOOLS OR PUBLIC SCHOOL DISTRICTS. SUCH COSTS HAVE ALREADY HAD A DISPROPORTIONATE EFFECT ON CATHOLIC SCHOOL ENROLLMENT, WHICH HAS A GREATER PRESENCE AMONG THE POOR OF THE INNER CITIES. LAST YEAR CATHOLIC SCHOOL ENROLLMENT DROPPED 68,000, OR 2.3 PERCENT OF TOTAL ENROLLMENT, AND 62 FEWER SCHOOLS REMAINED IN OPERATION.^{8/} THE DEPARTURE OF THESE CATHOLIC SCHOOL STUDENTS IS PARTICULARLY DISRUPTIVE FOR THE PUBLIC SCHOOLS, BECAUSE THEY TYPICALLY OCCUR IN LOW-INCOME INNER CITY AREAS OF THE NORTHEAST, WHOSE PUBLIC SCHOOL FINANCING HAS BEEN ERODED BY THE RECESSION AND DEINDUSTRIALIZATION.

IN VIEW OF THE EXTRAORDINARY INCREASES IN FEDERAL TAX BURDENS ALREADY IMPOSED ON PRIVATE SCHOOLS, AND THE SUBSIDY TO THE COMMONWEAL INHERENTLY PROVIDED BY SUCH SCHOOLS, SOME SORT OF FEDERAL TAX RELIEF IS APPROPRIATE. THE TUITION TAX CREDIT IS PARTICULARLY SUITED TO THIS PURPOSE, BECAUSE IT FOCUSES TAX RELIEF ON THE LOWER-INCOME PARENTS WHO ARE MOST LIKELY TO SWITCH TO THE PUBLIC SCHOOLS IF PRIVATE SCHOOL TUITIONS INCREASE.

FROM THE STANDPOINT OF TAX EQUITY, SOME SORT OF TUI-
TION TAX CREDIT IS ALSO JUSTIFIED. IN 1965, MOST PRIVATE SCHOOLS WERE FINANCED BY GIFTS TO THE SCHOOL ITSELF OR THE SPONSORING

8/UNITED STATES CATHOLIC ELEMENTARY AND SECONDARY SCHOOLS 1982-1983,
P.7 (NATIONAL CATHOLIC EDUCATION ASS'N).

CHURCH.^{9/} AS A RESULT, LITTLE SCHOOL SUPPORT WAS SUBJECT TO FEDERAL OR STATE INCOME TAXES. TODAY, TUITION REPRESENTS A MUCH LARGER PORTION OF PRIVATE SCHOOL SUPPORT. WITH THE MEDIAN TUITION CURRENTLY AT \$360 FOR PRIVATE ELEMENTARY SCHOOLS AND \$900 FOR PRIVATE SECONDARY SCHOOLS,^{10/} THE FEDERAL GOVERNMENT IS OBVIOUSLY COLLECTING SUBSTANTIAL INCOME TAXES ON FUNDS USED TO PAY PRIVATE SCHOOL TUITION. BY CONTRAST, ALL OF THE STATE AND LOCAL TAXES PAID TO FUND PUBLIC SCHOOL ARE DEDUCTIBLE. IN ADDITION, STATE AND LOCAL GOVERNMENTS CAN AVAIL THEMSELVES OF CAPITAL AT LOW INTEREST RATES, SUBSIDIZED BY THE FEDERAL EXEMPTION OF INTEREST ON STATE AND LOCAL BONDS. BY CONTRAST PRIVATE SCHOOLS MUST NORMALLY BORROW FUNDS AT PREVAILING UNSUBSIDIZED INTEREST RATES. WITH THE ENORMOUS INCREASES IN PREVAILING INTEREST RATES IN THE PAST FEW YEARS. THIS INEQUITY HAS INCREASED DRAMATICALLY. THE ADMINISTRATION'S TAX BILL WOULD HELP REDRESS THESE FUNDAMENTAL TAX INEQUITIES.

II

AS THE ABOVE DISCUSSION SUGGESTS, FEDERAL TAXES AND TAX RELIEF FOR PRIVATE SCHOOLS ARE FIRMLY ROOTED IN THE HISTORY AND STRUCTURE OF THE FEDERAL TAX CODE. FEDERAL TAX PROVISIONS IMPOSING TAXES, ADJUSTING TAX BURDENS, AND PROVIDING

^{9/}STATEMENT OF DR. THOMAS VITULLO-MARTIN, HEARINGS BEFORE THE SUBCOMM. ON TAXATION AND DEBT MANAGEMENT, S. COMM. ON FINANCE, 97TH CONG., 1ST SESS. (PT. 2), 87, 97.

^{10/}STATEMENT OF SECRETARY OF EDUCATION J.H. BELL, ID. AT 9.

CREDITS, DEDUCTIONS OR EXEMPTIONS WITH RESPECT TO PRIVATE SCHOOLS AND THEIR SUPPORTERS ARE INHERENTLY NECESSARY IN SUCH A COMPLEX CODE. SUCH PROVISIONS HAVE BEEN ROUTINELY ENACTED AND ADMINISTERED IN PAST YEARS, WITH RELATIVELY LITTLE ADMINISTRATIVE OR JUDICIAL PROBLEMS. THERE IS NO REASON TO CONCLUDE THAT THE SUPREME COURT WILL TAKE THE TOTALLY UNPRECEDENTED STEP OF HOLDING A TUITION TAX CREDIT TO BE AN ESTABLISHMENT OF RELIGION.

A SUMMARY OF THE PRINCIPAL FEDERAL TAX STATUTES RELATING TO PRIVATE OR PUBLIC SCHOOLS MAY BE HELPFUL IN UNDERSTANDING THEIR HISTORY AND PERVASIVENESS. WE SUBMIT THAT THIS ANALYSIS WILL SHOW THE ADMINISTRATION'S TUITION TAX CREDIT BILL IS ROUTINE IN CHARACTER AND FULLY PRECEDENTED.

THE EXEMPTION FOR NONPROFIT RELIGIOUS OR EDUCATIONAL ORGANIZATIONS -- PRIVATE SCHOOLS -- GOES ALL THE WAY BACK TO THE FIRST INCOME TAX STATUTE, WHICH WAS ENACTED IN 1862, DURING THE CIVIL WAR. ACT OF JULY 1, 1862, CH. 119, § 89-93, 12 STAT. 432, 473. THIS PROVISION HAS BEEN CARRIED DOWN THROUGH THE NUMEROUS INCOME TAX STATUTES AND NOW APPEARS AS CODE SECTION 501(c)(3). GIFTS TO SUCH RELIGIOUS OR EDUCATIONAL ORGANIZATIONS WERE EXEMPTED FROM TAX AS EARLY AS THE SPANISH-AMERICAN WAR, IN THE WAR REVENUE ACT OF 1898, CH. 448, § 29, 30 STAT. 448, WHICH WAS THE PREDECESSOR OF THE TAX DEDUCTIONS FOR RELIGIOUS OR EDUCATIONAL ORGANIZATIONS NOW CONTAINED IN (INTER ALIA) CODE SECTIONS 170(c)(2)(INDIVIDUAL AND CORPORATE INCOME TAX DEDUCTIONS), 642(c)(DEDUCTIONS BY TRUSTS); 2055(A)(2)

(DEDUCTIONS BY ESTATES); 2522(A) AND (B)(GIFT TAX DEDUCTIONS), AND 4942(G)(1)(A) AND 4945(D)(4) (GRANTS BY PRIVATE FOUNDATIONS).

IN WALZ V. TAX COMMISSION, 397 U.S. 664, 669 (1970), THE SUPREME COURT RELIED ON THESE AND OTHER FEDERAL TAX EXEMPTION STATUTES, HOLDING THAT THE NEW YORK REAL ESTATE TAX EXEMPTION STATUTE WAS CONSTITUTIONAL BECAUSE IT WAS SIMILAR TO THE FEDERAL STATUTES AND WAS NOT "INTENDED TO ESTABLISH OR INTERFERE WITH RELIGIOUS BELIEFS AND PRACTICES OR HAVE THE EFFECT OF DOING SO."

OVER THE YEARS, THE PURPOSE UNDERLYING THESE BASIC FEDERAL PROVISIONS HAS BEEN INCORPORATED IN A LARGE VARIETY OF TAX STATUTES WHICH RELATE TO THE TAX BENEFITS AND BURDENS OF SCHOOLS, THEIR SUPPORTERS AND THEIR STUDENTS. SOME OF THESE PROVISIONS APPLY TO ALL SCHOOLS, SOME TO NONPROFIT PRIVATE SCHOOLS ONLY, AND OTHERS SOLELY TO RELIGIOUS SCHOOLS. THESE PROVISIONS HAVE, FOR THE MOST PART, BEEN ROUTINELY ENACTED BY THE CONGRESS, INTERPRETED BY THE COURTS, AND ADMINISTERED BY THE TREASURY DEPARTMENT. TO THE BEST OF OUR KNOWLEDGE, NO FEDERAL APPELLATE COURT HAS EVER HELD ANY OF THESE STATUTES UNCONSTITUTIONAL. INDEED, IT IS AN ACCEPTED PROPOSITION AMONG CONGRESS, THE TREASURY DEPARTMENT, COURTS AND TAX PRACTITIONERS THAT FEDERAL TAX LEGISLATION MUST DEAL WITH THE BURDENS AND BENEFITS APPLICABLE TO ALL CLASSES OF SCHOOLS, AND TO PARTICULAR SUBCLASSES OF SCHOOLS.

FOR EXAMPLE, CODE SECTION 151(E)(4) ALLOWS A SPECIAL DEPENDENCY DEDUCTION FOR NONDEPENDENT CHILDREN, IF THE CHILD

ATTENDS A PRIVATE OR STATE SCHOOL. CODE SECTION 117(A)(1) ALLOWS A STUDENT TO EXCLUDE FROM INCOME SCHOLARSHIPS AWARDED BY PRIVATE OR STATE SCHOOLS. SECTION 44A ALLOWS A TAX CREDIT FOR DAY CARE PROVIDED BY A KINDERGARTEN OR NURSERY SCHOOL, TO ENABLE THE PARENT TO WORK. (OF COURSE, MOST OF THE LATTER SCHOOLS ARE PRIVATE RATHER THAN PUBLIC.)

NOT ALL PROVISIONS OF THE FEDERAL TAX CODE TREAT PRIVATE AND STATE SCHOOLS ALIKE, HOWEVER. FOR EXAMPLE, CODE SECTION 511 IMPOSES THE UNRELATED BUSINESS TAX ON ALL PRIVATE NONPROFIT SCHOOLS, AND ON PRIVATE OR PUBLIC COLLEGES AND UNIVERSITIES, BUT NOT ON PUBLIC ELEMENTARY AND SECONDARY SCHOOLS. TAX EXEMPT PRIVATE NONPROFIT RELIGIOUS AND SECULAR SCHOOLS, UNLIKE MOST OTHER TAX EXEMPT ORGANIZATIONS, ARE EXCUSED FROM FILING AN APPLICATION FOR A RULING AND FROM FILING YEARLY TAX RETURNS. (I.R.C. § 508(c); § 6033(A)(2). OF COURSE, THE IRS RULING PROVISIONS DO NOT APPLY AT ALL TO PUBLIC SCHOOLS. SECTIONS 4041(G)(4), 4221(D)(5) AND 4253(J) PROVIDED EXEMPTIONS TO PRIVATE NONPROFIT SCHOOLS, FROM FEDERAL EXCISE TAXES ON AUTOMOBILES, BUSES, AUTO PARTS, TIRES AND TUBES, CERTAIN SPORTS EQUIPMENT AND FIREARMS, DIESEL FUEL AND SPECIAL MOTOR OILS AND TELEPHONE SERVICE. AND FROM 1943 TO 1958, ONLY TEACHERS IN TAX-EXEMPT PRIVATE SCHOOLS WERE ALLOWED TO HAVE SECTION 403(B) ANNUITY PENSION BENEFITS. (REVENUE ACT OF 1942, c.619, 56 STAT. 798, § 162(c); ACT OF OCT. 4, 1961, P.C. 87-370, 75 STAT. 796, § 3(A).

CERTAIN OTHER PROVISIONS PROVIDE BENEFITS TO PUBLIC AND TAX-EXEMPT COLLEGES AND UNIVERSITIES, BUT NOT TO ANY

ELEMENTARY OR SECONDARY SCHOOLS. E.g., I.R.C. § 170(E)(4)
(INCREASED DEDUCTIONS FOR CONTRIBUTIONS OF INVENTORY TO COLLEGE
OR UNIVERSITY); § 44F (SPECIAL INVESTMENT CREDIT FOR RESEARCH
GRANT TO COLLEGE OR UNIVERSITY.)

MOREOVER, MANY STATUTES AND REGULATIONS PROVIDE
SPECIAL TAX BENEFITS TO RELIGIOUS SCHOOLS, AS DISTINCT FROM ALL
OTHER SCHOOLS. MOST IMPORTANTLY, CONGRESS IN 1976 EXTENDED
THE UNEMPLOYMENT TAXES TO ALL NONPROFIT SCHOOLS AND OTHER INSTI-
TUTIONS, BUT EXPRESSLY EXEMPTED FROM UNEMPLOYMENT TAXES SERVICES
PERFORMED --

(1) IN THE EMPLOY OF (A) A CHURCH
OR CONVENTION OR ASSOCIATION OF CHURCHES,
OR (B) AN ORGANIZATION WHICH IS OPERATED
PRIMARILY FOR RELIGIOUS PURPOSES AND
WHICH IS OPERATED, SUPERVISED, CONTROLLED,
OR PRINCIPALLY SUPPORTED BY A CHURCH
OR CONVENTION OR ASSOCIATION OF
CHURCHES * * * [I.R.C. § 3309(A)(1)(A).]

IN ST. MARTIN LUTHERAN CHURCH V. SOUTH DAKOTA, SUPRA,
THE SUPREME COURT HELD THAT THIS STATUTE EXEMPTED ALL WAGES OF
ALL CHURCH-CONTROLLED SCHOOL EMPLOYEES, NOT JUST THAT PART OF
WAGES PAID FOR STRICTLY RELIGIOUS DUTIES. PUBLIC SCHOOLS, AND
NONRELIGIOUS PRIVATE SCHOOLS, MUST PAY THE FULL TAX, HOWEVER.
THE COURT NOTED THAT ANY OTHER INTERPRETATION WOULD RAISE SERIOUS
CONSTITUTIONAL QUESTIONS. (451 U.S. AT 780.) THUS THE COURT
HAS VERY RECENTLY APPROVED THE PREFERENTIAL TAX TREATMENT OF
RELIGIOUS SCHOOLS IN THE FEDERAL TAX CODE. UNDER CODE SECTION
3309 AS INTERPRETED BY THE SUPREME COURT, PRIVATE SCHOOLS CON-
TROLLED BY A CHURCH ARE EXEMPT FROM THE UNEMPLOYMENT TAXES,
WHILE ALL PUBLIC SCHOOLS AND NONRELIGIOUS PRIVATE SCHOOLS MUST

PAY UNEMPLOYMENT TAX (OR PROVIDE SUBSTITUTE UNEMPLOYMENT INSURANCE REIMBURSEMENTS).

SIMILARLY, MINISTERS, AND MEMBERS OF RELIGIOUS ORDERS WHO TEACH IN SCHOOLS CONTROLLED BY THEIR CHURCH, ARE EXEMPT FROM FICA AND UNEMPLOYMENT TAX, EVEN THOUGH ALL PUBLIC AND PRIVATE SCHOOLS MUST PAY FICA AND UNEMPLOYMENT TAX RESPECTING NON-CLERICAL TEACHERS.^{11/} (I.R.C. § 3121(B), 3309(A).) SUCH MINISTERS AND RELIGIOUS ORDER MEMBERS MAY ALSO ELECT NOT TO PAY SELF-EMPLOYMENT TAXES. (I.R.C. § 1402(E)).

GIVEN THE LONG HISTORY OF THIS PANOPLY OF FEDERAL STATUTES GRANTING TAX EXEMPTIONS AND DEDUCTIONS FOR THE FINANCIAL BENEFIT OF NONPROFIT SCHOOLS, IT IS NOT SURPRISING THAT THE CONGRESS, THE TREASURY DEPARTMENT, AND THE COURTS HAVE COME TO ASSUME THEIR VALIDITY UNDER THE FIRST AMENDMENT. INDEED, IN THE BOB JONES-GOLDSBORO CASES^{12/} NOW BEFORE THE SUPREME COURT, THE CONSTITUTIONALITY OF THESE PRIVATE SCHOOL FINANCIAL BENEFIT STATUTES IS ASSUMED BY ALL THE PARTICIPANTS; INDEED, THE ISSUE IS WHETHER RELIGIOUS SCHOOLS ARE ENTITLED TO FINANCIAL BENEFITS PROVIDED BY CODE SECTION 170 WITHOUT COMPLYING WITH THE RACIAL DISCRIMINATION LIMITATIONS IMPOSED ON NONRELIGIOUS NONPROFIT SCHOOLS GENERALLY,

IN SUM, IT IS CLEAR THAT A COMPLEX STATUTORY SYSTEM FOR FAIRLY TAXING NET INCOME DEMANDS CONSIDERABLE SPECIAL

11/IN STATES WHICH HAVE WITHDRAWN FROM THE SOCIAL SECURITY SYSTEM, NO FICA TAXES NEED BE PAID.

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ACCOMMODATIONS FOR ALL TYPES OF SCHOOLS, AND FOR MONEY SPENT TO SUPPORT AND ATTEND THEM. FROM THE EARLIEST DAYS, CONGRESS HAS RECOGNIZED THE NEED TO ENACT SUCH ACCOMMODATIONS INTO THE INTERNAL REVENUE CODE AND ITS PREDECESSORS. THE BILL UNDER CONSIDERATION HERE IS NECESSARY TO OFFSET OTHER RECENTLY ENACTED FEDERAL BURDENS ON PRIVATE SCHOOLS, AND TO ASSIST SUCH ELEEMOSYNARY INSTITUTIONS TO COPE WITH OTHER EXTRAORDINARY FINANCIAL BURDENS.

WE SUGGEST THAT THE PROPOSED TAX CREDIT FOR SCHOOL TUITION IS WELL WITHIN THE PRECEDENT AND TRADITION OF THE ABOVE TAX BENEFITS FOR CLASSES OF PRIVATE AND/OR PUBLIC SCHOOLS. INDEED, THE PROPOSED TAX CREDIT FOR TUITION IS LESS OF A BENEFIT TO SUCH SCHOOLS THAN THE VARIOUS DEDUCTIONS FOR CHARITABLE GIFTS TO SUCH SCHOOLS, SINCE A GIFT GIVES MORE FINANCIAL BENEFIT TO THE SCHOOL THAN TUITION PAID FOR SERVICES.

THE SUPREME COURT HAS ALWAYS RECOGNIZED THE BREADTH OF CONGRESS' TAXING POWER, AND ITS NEED FOR MAXIMUM FLEXIBILITY IN ESTABLISHING EXEMPTIONS, DEDUCTIONS, CREDITS AND THE LIKE FOR VARIOUS TYPES OF INCOME AND TAXPAYERS. FOR THIS REASON, THE SUPREME COURT HAS NEVER HELD AN INCOME TAX STATUTE INVALID OR UNCONSTITUTIONAL SINCE THE PASSAGE OF THE SIXTEENTH AMENDMENT IN 1913. BY CONTRAST, STATE STATUTES -- WHICH ARE INHERENTLY SUBJECT TO INFLUENCE FROM NARROWER PAROCHIAL CONSENSUS -- HAVE FREQUENTLY BEEN HELD UNCONSTITUTIONAL. CONGRESS SHOULD EXERCISE ITS TAXING POWER HERE, UNDETERRED BY UNSUPPORTED FEARS OF ESTABLISHMENT-OF-RELIGION OR UNCONTROLLED FISCAL EXCESSES.