Collection: Barr, William: Files
Folder Title: [Bob Jones & Goldsboro] (9)
Box: 2

FROM	DOCUMENT	DATE OF DOCUMENT	DATE RECEIVED	CONTROL NUMBER
[illegible]		[illegible]	1/2?/81	[illegible]
		CLASSIFICATION	DATE DISPATCHED	DUE DATE
			[illegible]	[illegible]

TO	INTERNAL ROUTING	TO	DATE	TO	DATE
		[illegible]	2/3		

REFERENCE/SUBJECT	ACTION	
...of private and religious schools [illegible]		Appropriate Action Direct Reply Copy of Reply or Memo to Files Provide Information Other (Specify)

REMARKS

REPLY SIGNED BY	DATE OF REPLY

OS F [illegible] REV [illegible]

CORRESPONDENCE CONTROL

Hold for options

TREASURY DOCUMENT PROFILE

DOC MO	DOC DA	RECEIVED MO	RECEIVED DA	RECEIVED YR	ACTION	LOG NUMBER
1	26	1	29	81	TAX POLICY	81- 1086

SOURCE/DESCRIPTION

TO: ☐ PRESIDENT ☒ SECRETARY (S) ☐ D/SECRETARY (D) ☐ U/SEC. (MA) (M) ☐ OTHER (Specify)

FROM: Cochran, Thad(Sen);Stennis, John(Sen.) ~~Whitten, Jamie(Sen.); Montgomery, G.V.(Sen)~~ Lott, Trent (Sen); Hinson, Jon(Sen); ~~Bowen, David(Sen)~~

REFS

CLASSIFICATION: ☐ UNCLASSIFIED ☐ SECRET ☐ CONFIDENTIAL ☐ TOP SECRET ☐ OTHER (Specify)

SUBJECT: Re: recent action by IRS to revoke the tax-exempt status of private a religious schools in Mississippi

DISTRIBUTION/ACTION ASSIGNMENT

DISTRIBUTION	COPY ACT	COPY INFO	DISTRIBUTION	COPY ACT	COPY INFO	DISTRIBUTION	COPY ACT	COPY INFO
1. SECRETARY (S)			ATF			EXEC ASST/SEC (S)		
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3. U/SECRETARY (MA) (M)			COMPTROLLER CURRENCY			EXEC ASST/D/SEC (D)		
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6. DOMESTIC POLICY (H)			FLETC					
7. ECONOMIC POLICY (E)			GOVT FIN OPERATIONS			EXEC SEC (SE)		
8. ENFORCEMENT & OPS (O)			IRS			D/EXEC SEC (SE)		
9. FISCAL (F)						REVIEWERS (SE)		
10. GENERAL COUNSEL (G)			LEGISLATIVE COUNSEL (GL)			INTELLIGENCE SUPPORT (SE)		
11. INTERNAT'L AFFAIRS (I)			MINT					
12. OASIA SECRETARIAT			PUBLIC DEBT					
13. LEGISLATIVE AFFAIRS (L)	(Ack)	X	REVENUE SHARING (RS)			READ FILE		
14. PUBLIC AFFAIRS (P)			SECRET SERVICE					
15. CORRESPONDENCE			SAVINGS BONDS			Mrs. H. Hardy		X
16. TAX POLICY (X)	X							
17. TREASURER (T)			DISCLOSURE BRANCH (AAL)					

ACTION REQUIRED

DUE DATE: 2/5/81

☐ APPROPRIATE ACTION ☐ DIRECT REPLY ☐ COME BACK COPY TO EXEC SEC (SE)

MEMO TO

REPLY FOR SIG. BY: Asst. Secy. (X)

COMMENTS/SPECIAL INSTRUCTIONS: Please note log number and due date on comeback copy. If due date cannot be me please notify EX. SEC. on 566-2398

[...]ENT ROUTING/ACTION

DATE	FROM	TO	SUBSEQUENT ACTION TAKEN/REQUIRED	DUE	COPY TO
			[illegible]		
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TO STAY WITH ORIGINAL DOCUMENT

words, in the case of a church-related school, the church itself stands to lose its tax-exemption. And not only would the church be taxed on any unexpended income, the congregation members--many of whom do not send children to the school--would no longer be able to deduct their contributions to the church since it would no longer be a qualified organization.

The historic tax-exemption for churches and for their members has been consistently, unwaveringly maintained under the first amendment principle of separation of church and state. The revocation involved here is absolutely unprecedented. Its significance cannot be overstated.

2 The second issue involved here is that, in considering the Fiscal Year 1980 appropriations for the Department of Treasury, Congress specifically withheld appropriations from the IRS which it might have used to:

> formulate or carry out any rule, policy, procedure, guideline, regulation, standard or measure which would cause the loss of tax-exempt status to private, religious or church-operated schools.

The constitutional propriety of agency action which flies in the face of congressional intent remains to be resolved. Underscoring the uncertainty about this issue is the fact that in Wright v. Miller, a virtually identical suit which was dismissed only six months before Green, Judge Hart ruled that the IRS was precluded by the 1980 Treasury Appropriations from such action as is involved here.

Another significant issue is that if the IRS should persist in this effort, one law will be applicable in Mississippi and another law applicable in the other 49 states. This must be avoided in the interest of fairness and uniformity, especially in a matter so significant and sensitive as this.

Finally, this case was brought by a private litigant against the Treasury Department. At no time has any affected school been given an opportunity to be heard. This "sweetheart" case was decided with complete absence of representation for the schools and churches involved.

In Judge Hart's earlier decision in Wright v. Miller, in addition to ruling that the plaintiffs lacked standing for failure to show injury traceable to IRS that would be remedied by a ruling in their favor, it was ruled that the case lacked an "adversary context."

In Green, as in Wright, there was no "adversary context." The Treasury Department utterly failed to represent the interests of the schools. This failure of representation is clearly reflected by the department's refusal to appeal the lower court's decision and by their supine acceptance of an order which places the burden of proof on the schools to demonstrate their lack of unlawful discrimination.

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, two church-related schools have moved to intervene in Green. These motions are on appeal in the D.C. Circuit Court of Appeals, and a third motion to intervene is expected to be filed in the near future.

Given the extremely important constitutional implications of this case, given the fact that the affected schools have been denied due representation, and given the conflict between the instructions of the court and the refusal of Congress to permit the expenditures of funds to carry out those instructions, we strongly urge that the department immediately reexamine its previous position in this matter. Toward this end we would appreciate a meeting with you at your earliest convenience.

Thank you for your consideration of this important matter.

Sincerely,

JOHN STENNIS

THAD COCHRAN

JAMIE WHITTEN
1st Dist. Mississippi

DAVID BOWEN

G. V. MONTGOMERY

JON HINSON

TRENT LOTT
5th Dist. Mississippi

TC/cbp

Enclosures

FOR THE DISTRICT OF COLUMBIA

FILED

MAY 5 1980

JAMES F. DAVEY, Clerk

WILLIAM H. GREEN, et al.,

Plaintiffs,

v.

G. WILLIAM MILLER, et al.,

Defendants.

Civil Action No. 69-1355

ORDER AND PERMANENT INJUNCTION

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

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

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

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

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

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

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

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

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

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

(a) the race of board members;

(b) the grades served by the school from its incepti[on to] the present;

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

(d) the dates additional grades were added,

(e) whether the school is presently recognized as exe[mpt] from federal income taxes;

(1) the date on which the exemption was grante[d];

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

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

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

(1) if so, the number of students by race, gra[de] such waiver during each school year.

(7) The defendants are enjoined from continuing in effect any ruling recognizing tax-exempt status of any Mississippi private scho[ol] as set forth in Paragraph (1) herein unless the showing and informati[on] required by the Permanent Injunction as amended shall be made and supplied within 120 days from the date of this Order, or such a[dditional] period, not to exceed 120 days, as defendants may provide on ca[use] in order for the school to make the showing or [illegible]

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

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

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

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

George L. Hart, Jr.
UNITED STATES DISTRICT JUDGE

Dated MAY 5 - 1980

QUESTIONNAIRE FOR PRIVATE SCHOOLS EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(c)(3) LOCATED IN MISSISSIPPI

Please furnish the following information. If additional space is needed attach additional sheets. Please send the completed Questionnaire to: Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: E:EO:T:R:2:4-PS, using the enclosed envelope.

If you have any questions, contact Jay Rotz or Charles Barrett at (202) 566-3839 or 566-4754, collect.

If the name or address used in the accompanying letter is incorrect, please provide the correct name and address.

(1)(a) Name of tax-exempt entity ______________________

(b) Address ______________________

(c) Date of IRS exemption letter (if any) ______________________

(d) School's name if different from (a) ______________________

(e) If you are exempt under a group ruling, give the Group Exemption Number ______________________

(f) If you are exempt because you are an activity of a tax exempt organization, give the full legal name of that organizaion and the date of its exemption letter (if any). ______________________

____

(g) County in which school is located ______________________

(h) Counties from which students are drawn ______________________

(2)(a) The date your school first opened and the grades served upon opening.

Date ______________________ Grades ______________________

(b) The dates additional grades were added.

Dates Grades

(c) Annual student enrollment since the school opened or 1964, whichever is later.

1964 - 65	1972 - 73
1965 - 66	1973 - 74
1966 - 67	1974 - 75
1967 - 68	1975 - 76
1968 - 69	1976 - 77
1969 - 70	1977 - 78
1970 - 71	1978 - 79
1971 - 72	1979 - 80

(3)(a) Has your school ever been determined by any Federal, state, or county judicial or administrative proceeding to be racially discriminatory? YES [ ] NO [ ]

If yes, explain and furnish all relevant information.

(b) Was the school established or expanded at or about the time the public school districts in which the school is located or which it serves were desegregating? YES [ ] NO [ ]

Under the penalties of perjury, I declare that I am authorized to sign this questionnaire on behalf of the above organization and I have examined the information contained herein, and to the best of my knowledge and belief it is true, correct and complete.

(Signature) (Title or authority of signer) (Date)

Signature Requirements - A principal officer or trustee of the organization must sign this questionnaire. If it is signed by an employee specifically authorized to do so by the organization's governing instrument or by valid board resolution, it will be regarded as signed by a principal officer or trustee. An attorney or agent specifically appointed to sign the questionnaire by a valid power of attorney may sign it instead. If authority to sign is based upon a board resolution, send a conformed copy of the resolution with the questionnaire. If the authority to sign is based upon a power of attorney, the original power must accompany the questionnaire. Any power of attorney must be signed by the person or persons having authority to sign the questionnaire.

QUESTIONNAIRE FOR PRIVATE SCHOOLS EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(c)(3) LOCATED IN MISSISSIPPI AS REQUIRED BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN GREEN v. MILLER, MAY 5, AND JUNE 2, 1980.

The following information must be furnished. If additional space is needed attach additional sheets. Please send the completed Questionnaire to: Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: E:EO:T:R:2:4-PS, using the enclosed envelope.

If you have any questions, contact Jay Rotz or Charles Barrett at (202) 566-3839 or 566-4756, collect.

If the name or address used in the accompanying letter is incorrect, please provide the correct name and address.

(1)(a) Has your school ever received textbooks from the State of Mississippi under the State's textbook program?
YES [ ] NO [ ]

(b) If not, explain and furnish all relevant information.

(c) If yes, has your school ever withdrawn from such program, or been held ineligible to receive textbooks in any judicial or administrative proceeding? YES [ ] NO [ ]

(d) If yes, explain and furnish all relevant information.

(2) Racial composition for the current academic year (1979-80) and the projection of the racial composition for next year (1980-81) of your:

	1979/80 (actual)	1980/81 (projected)
(a) Student Body:		
White:	______	______
Black:	______	______
Other:	______	______
(b) Applicants for admission:		
White:	______	______
Black:	______	______
Other:	______	______

(c) Faculty:

White: ______ ______
Black: ______ ______
Other: ______ ______

(d) Administrative Staff:

White: ______ ______
Black: ______ ______
Other: ______ ______

(3) If any scholarships, loans, or grants-in-aid have ever been awarded, or if any tuition has ever been waived, please provide the dates, amounts and race of the recipients.

(4) The names of your:

(a) Incorporators

(b) Founders

(c) Donors of land or buildings, whether individuals or organizations

(d) Current board members and their race

Do any of the above have an announced identification as an organization having as a primary objective the maintenance of segregated school education, or have announced identification as officers of or active members of such an organization?
Yes [ ] NO [ ]

(5) Provide any evidence of active and vigorous recruitment programs to secure black students or teachers.

(6) Provide any evidence of continued meaningful public advertisements stressing the school's open admissions policy. Enclose copies or transcripts.

(7) Describe any meaningful communication between the school and black groups and black leaders within the community concerning the school's nondiscrimination policies.

(8) Provide any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

(9) Provide any other information that you feel demonstrates that you do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs.

(10) If, despite your school's stated policy of racial nondiscrimination, you have still been unable to enroll significant numbers of black students, describe any facts and circumstances you feel would explain your inability to attract these students.

Under the penalties of perjury, I declare that I am authorized to sign this questionnaire on behalf of the above organization and I have examined the information contained herein, and to the best of my knowledge and belief it is true, correct and complete.

(Signature)	(Title or authority of signer)	(Date)

<u>Signature Requirements</u> - A principal officer or trustee of the organization must sign this questionnaire. If it is signed by an employee specifically authorized to do so by the organization's governing instrument or by valid board resolution, it will be regarded as signed by a principal officer or trustee. An attorney or agent specifically appointed to sign the questionnaire by a valid power of attorney may sign it instead. If authority to

Department
of the Treasury

Office of the
Secretary

n: ________ date 4/8

Deputy
Assistant Secretary

room 3122
phone 566-8248

MEMORANDUM: Mississippi Private Schools

The following is a description of schools operated by churches in which the church may lose its tax exempt status as a result of implemention of the Green order.

1. The school was formed during the year that attendance zones for public schools were redrawn, resulting in massive public school desegregation. The school has approximately 400 students, all of which are white. The school has not engaged in any recruitment programs nor has had any public advertisements stressing an open admissions policy.

2. The school was formed during the year of a massive geographical zoning plan. Student body has ranged from 200 to 500 students, all of which are white. The only publicity that this school has is a sign in front indicating that the church operates a school. There has been no recruitment program or public advertisements stressing the school's open admissions policy.

3. The school was formed during the year of implementation of a voluntary desegregation plan. This is a small school with enrollment averaging about 50 white students. This school has not recruited nor advertised.

PRIVATE SCHOOL QUESTIONNAIRE SUMMARY

3/31/81

Schools with Individual Rulings		
Not Paragraph (1)		11
Paragraph (1):		
Proposed Revocation in National Office for Technical Advice (4 conferences held, 1 to be scheduled, and 1 tentative no-change)	6	
No change in National Office for pre-closing Review	1	7
District Counsel for Summons Enforcement		1
		19
Schools Covered by Church Group Rulings		
Not Paragraph (1)		56
Church Operated Schools Without Rulings		
Not Paragraph (1)		13
Summonses with District Counsel for Enforcement		12
Paragraph (1):		
Under Examination	11	
With Region for issuance of R.C. 7605(c) letter	4	15
Inference Overcome		1
Total		41
		116

Status of Mississippi Private Schools with Individual

Rulings and Coming Within Paragraph One of Green Order

1. Quitman County Educational Foundation:

   Conference held 3/4/81. Post conference information received 3/30/81. Recommendation to revoke being drafted by Conferee.

2. Deer Creek Educational Institute.

   Conference held 3/5/81. Post conference information due 3/26/81. Conferee following up.

3. Marshall County Educational Foundation.
   Conference held 3/31/81. Post conference information due April 21.

4. Lula Rich Educational Foundation.

   Conference held 3-21-81. /Post conference information to be submitted.

5. Indianola Educational Foundation.

   Technical Advice request received 3/31. School to be contacted soon for conference.

6. North Delta Schools.

   N.O. Tentative conclusion is that exemption should not be revoked.

7. Copiah Education Foundation.

   No-change in National Office for pre-closing review. Tentative conclusion is to agree with no-change.

NOV '81 ?

Honorable Trent Lott
Member of Congress
United States House of Representatives
Washington, D. C. 20515

Re: Bob Jones University v. United States
(Oct. Term, 1981 - Nos. 81-1, 81-3)

Dear Congressman Lott:

Because he has disqualified himself from participating in Bob Jones University v. United States, Solicitor General Lee has asked me, in my capacity as Acting Solicitor General in the case, to respond to your letter of October 30, concerning the government's position.

We share your pleasure that the Supreme Court will resolve the question whether nonprofit corporations, operating private schools that, on the basis of religious doctrine, maintain racially discriminatory admissions policies and other racially discriminatory practices, qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954.

The position that such schools are not entitled to tax-exempt status has been taken by the Internal Revenue Service continuously since 1970, and has been upheld by the only two courts of appeals that have decided the question. Moreover, it has been endorsed by the current Commissioner of Internal Revenue and the Chief Counsel of the Internal Revenue. Both of these officials fully participated in formulating our response to the petitions and have strongly recommended that we seek affirmance of the decision of the court of appeals. The Deputy Attorney

General also took an interest in these cases and was kept fully informed of the position we were taking. Accordingly, while we agreed to the petitioners' request for certiorari, we believe that the Internal Revenue Service's position has substantial merit and, in accordance with the Commissioner's request, deserves to be presented to the Supreme Court. The presence of two petitioners, Bob Jones University and Goldsboro Christian Schools, and the many amici curiae, insures that the Court will be aided by a full and fair presentation of both sides of the question.

We appreciate your interest in this matter.

Sincerely,

Lawrence G. Wallace
Deputy Solicitor General

F — Bob Jones University

Reagan & Bush

On

The Issues

Prepared by
The Policy and Research Development Division
Reagan & Bush Committee
National Headquarters
901 South Highland Street
Arlington, Virginia 22204
(703) 685-3400

Reagan Bush Committee
901 South Highland Street, Arlington, Virginia 22204 (703) 685-3400

EDUCATION

As Governor, Ronald Reagan worked to increase both the quality of and access to education by boosting:

--the number of college and university scholarships from 6,000 to 31,000;

--state loans and scholarships from $4.7 million to $43.0 million;

--expenditures for state universities, and for primary and secondary schools by 105%, for state colleges 164% and community colleges by 323%, while controlling overall state spending.

As President, he would work diligently to further expand the quality of and access to America's schools.

The first step is to return control of the schools to the local level--parents, teachers, and school boards. Governor Reagan's ultimate objective is to transfer federal educational programs, along with the tax sources to pay for them, back to the state and local level. In the meantime, he favors consolidation of most federal education programs into education block grants which would give localities the widest flexibility in using federal financial support for schools.

He would instruct the federal departments to strictly limit their interference in state and local school system. In particular, he opposes the IRS's attempt to remove the tax-exempt status of private schools by administrative fiat.

Governor Reagan would attempt to expand educational opportunities by supporting eventual enactment of a tuition tax credit plan, which would permit parents to take a credit on their income tax for each child they have in private school; increased federal experimentation with education vouchers, which would increase parents' choice of which schools to which they could send their children; and restoration of the integrity of the student loan program.

He also believes that education policy should ensure equality of educational opportunity. To this end, Governor Reagan would rigorously enforce laws which prohibit intentional racial segregation, and would support voluntary integration plans such as magnet schools. However, he opposes forced busing, because it diverts both money and attention from increasing the quality of education in individual schools.

Finally, Ronald Reagan believes increased educational opportunities can best be promoted by a sound economic policy, which reduces the inflation which forces private schools and colleges into a cost-price squeeze and which reduces the federal deficits which co-opt credit necessary for state and local school systems to raise adequate revenues.

U.S. brief - Certiorari

Nos. 81-1 and 81-3

In the Supreme Court of the United States

OCTOBER TERM, 1980

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

LAWRENCE G. WALLACE
Acting Solicitor General

JOHN F. MURRAY
Acting Assistant Attorney General

ERNEST J. BROWN
ROBERT S. POMERANCE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether petitioners, nonprofit corporations operating private schools that, on the basis of religious doctrine, maintain racially discriminatory admissions policies and other racially discriminatory practices qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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GOLDSBORO CHRIS

UNITE

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OP

No. 81-1. The c
App. 5a-18a) is rep
opinion of the court
not reported.

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

No. 81-3

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No. 81-1. The order of the district court (Pet. App. 5a-18a) is reported at 436 F. Supp. 1314. The opinion of the court of appeals (Pet. App. 1a-3a) is not reported.

No. 81-3. The opinion and order of the district court (Pet. App. A38-A71) are reported at 468 F. Supp. 890. The opinion of the court of appeals (Pet. App. A1-A37) is reported at 639 F.2d 147.

JURISDICTION

No. 81-1. The judgment of the court of appeals (Pet. App. 53a) was entered on February 24, 1981, and the court of appeals denied a timely petition for rehearing and suggestion for rehearing en banc on April 7, 1981 (Pet. App. 55a). The petition for a writ of certiorari was filed on July 2, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

No. 81-3. The judgment of the court of appeals was entered on December 30, 1980 (Pet. App. A1). The order denying a petition for rehearing was entered on April 8, 1981 (Pet. App. A100-A101). The petition for a writ of certiorari was filed on July 1, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 501(a), 501(c)(3), and 3306(c)(8) of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth at Pet. 3 (No. 81-3). The relevant provisions of Section 170(a) and (c)(2) of the Internal Revenue Code of 1954 (26 U.S.C.) and of Section 1.501(c)(3)-1(d) of the Treasury Regulations on Income Tax (26 C.F.R.) are set forth at Appendix, *infra*, 1a-3a.

STATEMENT

Although the petition in *Goldsboro Christian Schools, Inc.* was docketed first in this Court, we begin with the statement of facts in *Bob Jones University* because, on the question presented here, the court of appeals rendered its principal opinion in that case and decided *Goldsboro Christian Schools* on the authority of *Bob Jones University.*

A. Bob Jones University—No. 81-3

1. Petitioner is a nonprofit organization incorporated in 1952 under the laws of South Carolina. As set forth in its certificate of incorporation, its purpose is " 'to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures * * *' " (Pet. App. A2-A3, A40-A41). Petitioner provides instruction for students from kindergarten through college and graduate school (Pet. App. A3, A41; A. 68-69, 136, 200).[1] At the college level, it operates a school of education, a school of fine arts, a school of religion, a college of arts and sciences, and a school of business (A. 69). In its graduate schools, it offers courses in art, music, speech, radio and television, cinema, religion, and education (A. 200). It enrolls about 5,000 students and offers approximately 50 accredited degrees.[2] It

[1] "A." refers to the separately bound record appendix filed in the court of appeals.

[2] Until 1972, the Veterans Administration recognized petitioner as an educational institution offering courses of study suitable for the education of veterans who were recipients of subsidies under the educational benefits program administered by the Veterans Administration. See *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 600-601 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975). During this period, petitioner's courses of study were certified to be suitable for the education of veterans by the South Carolina State Board of Education, using criteria prescribed by federal statute. *Ibid.* See 38 U.S.C. 1771 *et seq.* In November

also offers a nondegree, noncredit program entitled Institute of Christian Service. The purpose of that program is to teach the principles of the Bible and to train Christian character (Pet. App. A3, A41). All courses are taught in accordance with the dictates of Biblical Scripture. Teachers are required to be "born again" Christians. Students are screened as to their religious beliefs and their conduct is strictly regulated (Pet. App. A3-A4).

From its inception, petitioner has, based upon religious doctrine, maintained a racially restrictive admissions policy and a policy forbidding interracial dating and interracial marriage. Prior to 1971, petitioner excluded blacks entirely from enrollment. From 1971 until 1975, married black persons and members of other minority races or ethnic groups were not excluded from enrollment, but petitioner continued to deny admission to unmarried blacks unless the applicant had been a staff member of petitioner for at least four years (Pet. App. A4, A43). See *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 600 & n.9 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975). During this latter period, petitioner's doctrinal policy did not specifically require the exclusion of blacks,

1972, the Veterans Administration terminated the right of otherwise eligible veterans to receive veterans' benefits for education at Bob Jones University based upon a determination by the Veterans Administration that petitioner had failed to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and with the Veterans Administration regulations implementing the statutory requirement of nondiscrimination in federally assisted programs. See *Bob Jones University* v. *Johnson*, *supra*, 396 F. Supp. at 598-599. Upon petitioner's complaint for review, the district court and the court of appeals sustained the administrative order of termination. *Bob Jones University* v. *Johnson*, *supra*.

but denying admission to unmarried blacks was, in petitioner's judgment, the best means of implementing its prohibition against interracial dating and marriage (Pet. App. A43).

Following the court of appeals' decisions in April and May 1975, in *Bob Jones University* v. *Johnson*, 529 F.2d 514 (4th Cir. 1975), and in *McCrary* v. *Runyon*, 515 F.2d 1082 (4th Cir. 1975), aff'd, 427 U.S. 160 (1976), petitioner once again revised its admissions policy. After May 29, 1975, petitioner generally permitted unmarried blacks as well as married blacks to enroll as students. It continued to deny admission, however, to any applicant known to be a partner in an interracial marriage (Pet. App. A4, A43-A44). It also established disciplinary rules requiring the expulsion of any student (1) who was a partner in an interracial marriage, (2) who was affiliated with a group or organization advocating interracial marriage, (3) who engaged in interracial dating, or (4) who encouraged others to violate petitioner's rules and prohibitions against interracial dating (Pet. App. A4, A44).

Until 1970, the Internal Revenue Service recognized petitioner as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). See *Bob Jones University* v. *Simon*, 416 U.S. 725, 735 (1974). By letter dated November 30, 1970, the Internal Revenue Service advised petitioner that thereafter it would not recognize as exempt, or allow deductibility of contributions to, any private school maintaining a racially discriminatory admissions policy (Pet. App. A39, A87). Petitioner responded that it did not admit black students and that it had no intention of altering that policy. The Internal Revenue Service therefore commenced administrative proceedings leading to the revocation of petitioner's exemption.[3] See *Bob Jones University* v. *Simon, supra,* 416 U.S. at 735. In January 1976, the Service issued a final notice of revocation to petitioner, effective as of December 1, 1970 (Pet. App. A40, A87-A88, A89).

2. Seeking to reinstate its exemption, petitioner brought this action in the United States District Court for the District of South Carolina for refund of $21 in federal unemployment taxes for the year 1975 (Pet. App. A3, A40).[4] The government counterclaimed for approximately $490,000 in federal unemployment taxes for the years 1971 through 1975 (*ibid.*). Following a trial, the district court held that petitioner qualified for tax exemption under Section 501(c)(3) of the Code as an institution organized and operated exclusively for religious and educational purposes (Pet. App. A45, A71), and that petitioner was not required to demonstrate a nondiscriminatory policy in order so to qualify (Pet. App. A45-A71).

The court of appeals reversed (Pet. App. A1-A17), with one judge dissenting (Pet. App. A18-A37). It rejected the district court's hypothesis that petitioner

[3] While the administrative proceedings preliminary to the revocation of its exemption were pending, petitioner filed a suit for injunctive relief to prevent the Internal Revenue Service from taking final action on the revocation. *Bob Jones University* v. *Simon, supra.* This Court unanimously held that the action was barred by the Anti-Injunction Act (26 U.S.C. (& Supp. III) 7421(a)) and by the Declaratory Judgment Act (28 U.S.C. (& Supp. III) 2201), but suggested (416 U.S. at 746) the refund suit procedure ultimately employed by petitioner here.

[4] Petitioner's qualification for an exemption from federal unemployment taxes (FUTA) under 26 U.S.C. 3306(c)(8) turns on its entitlement to status as a tax-exempt organization under Section 501(c)(3).

was entitled to tax exempt status because it is a "religious" institution and qualifies under the separately enumerated "religious" category of Section 501(c)(3). The court rejected "[t]his simplistic reading of the statute" as one that "tears section 501(c)(3) from its roots" (Pet. App. A7). Citing with approval the three-judge district court's decision in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C.), aff'd per curiam, 404 U.S. 997 (1971), the court concluded that Section 501(c)(3) must be viewed against its background in the law of charitable trusts. Thus, the court of appeals agreed with the *Green* decision (330 F. Supp. at 1156-1160) that, to be eligible for tax exempt status, "an institution must be 'charitable' in the broad common law sense, and therefore must not violate public policy" (Pet. App. A7-A8; footnote omitted). Here, it stated, petitioner's racial policies violated clearly defined public policy, rooted in the Constitution and the decisions of this Court condemning racial discrimination. Since there is a government policy against subsidizing racial discrimination in education, public or private, the court of appeals held that "the Service acted within its statutory authority in revoking [petitioner's] tax exempt status * * *" (Pet. App. A10).

In so holding, the court rejected petitioner's argument that the application of the Service's nondiscrimination policy to petitioner violates the Free Exercise and Establishment Clauses of the First Amendment. Assuming that petitioner's racial discrimination is motivated by sincere religious beliefs, the court noted that the Internal Revenue Service's policy would not prohibit petitioner from adhering to its teachings or force any individual student to violate his beliefs (Pet. App. A13-A14). The court further concluded that "the uniform application of the [Service's] rule to all religiously operated schools *avoids* the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief" (Pet. App. A16; emphasis in original).

B. Goldsboro Christian Schools—No. 81-1

1. Petitioner Goldsboro Christian Schools, Inc. is a nonprofit organization incorporated in 1963 under the laws of North Carolina. Its articles of incorporation provide that its purpose is " 'to conduct an institution or institutions of learning for the general education of Youth in the essentials of culture and its arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy scriptures * * *' " (Pet. App. 6a). At least since 1969, petitioner has maintained a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body for kindergarten and grades one through twelve (A. 10).[5] During that period, petitioner has satisfied the requirements of North Carolina for secular education in private schools.[6]

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[5] "A." refers to the separately bound record appendix filed in the court of appeals.

[6] Pursuant to N.C. Gen. Stat. § 115-255 (1978 repl.), the State of North Carolina regulates and supervises all nonpublic schools within the State serving children of secondary-school age, or younger, "to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship." In accordance with that statute, all such nonpublic schools—

> shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools * * *.

Submissions to the State indicate that petitioner requires its high school students to take one Bible-related course during each semester. The remaining course requirements and offerings, as reflected in those submissions, are indicative of secular subjects. Whether the subject of the course is secular or Bible-related, petitioner's practice is to begin each class with a prayer. This practice is in keeping with petitioner's overall purpose, and the desire of its founders, to provide a secular private school education in a religious setting. Based upon an interpretation of the Bible that it purports to follow, petitioner has maintained a racially discriminatory admissions policy since the time of its incorporation. It has occasionally admitted some noncaucasian, but no black, students (Pet. App. 6a-7a).

Petitioner has never received recognition from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). On audit, the Commissioner of Internal Revenue determined that petitioner did not qualify as a Section 501(c)(3) organization, and therefore did not qualify for exemption from federal social security taxes (FICA) under Section 3121(b)(8)(B) of the Code, or for exemption from federal unemployment taxes (FUTA) under Section 3306(c)(8) of the Code. The Commissioner accordingly assessed FICA and FUTA taxes against petitioner. After making partial payment, petitioner instituted this action in the United States District Court for the Eastern District of North Carolina seeking a refund of $3,459.93 in federal witholding, FICA, and FUTA taxes for 1969 through 1972. The government counterclaimed for $160,073.96 in taxes for that period (Pet. App. 5a, 7a-8a).

2. On the parties' cross motions for summary judgment, the district court ruled that the Internal Revenue Service had properly denied petitioner exempt status under Section 501(c)(3), and the tax benefits associated with qualification as a Section 501(c)(3) organization because petitioner's policy of racial discrimination violated the declared public policy of the United States (Pet. App. 14a). For purposes of adjudicating the motion, the court assumed that petitioner's racially discriminatory admissions policy was based upon a valid religious belief (Pet. App. 7a). It concluded, however, that denying petitioner the benefits of a Section 501(c)(3) tax exemption did not abridge any rights guaranteed petitioner under the Fifth Amendment to the Constitution or under the Establishment or Free Exercise Clauses of the First Amendment (Pet. App. 12a-13a).[7] The court of appeals affirmed, with one judge dissenting. Treating the case as "identical" with *Bob Jones University*, the court of appeals upheld

[7] During the pendency of the proceedings in the district court, the government agreed to abate all FUTA assessments against petitioner for periods ending on or before December 31, 1970, and to abate all FICA assessments against petitioner for periods ending before November 30, 1970 (A. 123). The government made this concession because the Internal Revenue Service's announcement that it would no longer accord the benefits of tax exemption and deductibility of contributions to racially discriminatory private schools (I.R.S. News Releases of July 10, 1970, & July 19, 1970, *reprinted in* 7 Stand. Fed. Tax Rep. (CCH) ¶¶ 6790, 6814 (1970)), was effective as of November 30, 1970 (A. 116-117). See Internal Revenue Code of 1954, Section 7805(b) (26 U.S.C.). The government accordingly stipulated that it was entitled to recover only $116,190.99 upon its counterclaim, and the district court entered judgment in its favor in that amount (A. 122, 141).

the Internal Revenue Service's action on the authority of its decision in that case (Pet. App. 1a-3a).

The court observed (Pet. App. 2a):

> It is rare that any two cases are identical twins. Nevertheless, as it happens, there is identity for present purposes between the instant case and the case of *Bob Jones University* * * * which has just been handed down. There the taxpayer was held not to be entitled to the § 501(c)(3) exemption. In some respects, insofar as decision here is concerned, the resemblance of Goldsboro to Bob Jones University is stronger than would be the case the other way round. That is so since Goldsboro altogether prohibits admission of blacks. The University permits them to enter, but forbids certain interracial associations, especially dating and marriage.
>
> The complete and impeccable treatment by Judge Hall in *Bob Jones University* makes it supererogatory for us to discuss the issue of tax exempt status under § 501(c)(3). For that aspect we simply affirm the district court for the reasons advanced in the Bob Jones University case.

ARGUMENT

1. The decisions below correctly held that the Internal Revenue Service acted within its statutory authority in revoking petitioners' tax-exempt status under Section 501(c)(3) of the Code.

The Internal Revenue Service since 1970, the District of Columbia Circuit, and the court of appeals below have uniformly ruled that a private school does not qualify as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, or as an eligible donee of charitable contributions deductible under Section 170(c)(2) of the Code, unless it establishes that its admissions and educational policies are operated on a nondiscriminatory basis. This position derives its force from the congressional purpose underlying the charitable exemption provisions in the Internal Revenue Code. That purpose, to aid organizations that further some public benefit, is served by the nondiscrimination requirement. See H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). It derives also from the federal government's commitment to the eradication of racial discrimination in education manifested both in the Constitution and in many federal statutes and the national policy prohibiting public subsidy of racially discriminatory educational institutions, whether public or private. See, *e.g.*, *Runyon* v. *McCrary*, 427 U.S. 160 (1976); Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Section 1 of the Civil Rights Act of 1866, 42 U.S.C. 1981; *Brown* v. *Dade Christian Schools, Inc.*, 556 F.2d 310, 323-324 (5th Cir. 1977) (en banc) (Goldberg, J., concurring), cert. denied, 434 U.S. 1063 (1978).

Given that public policy and national commitment, the Internal Revenue Service acted well within its statutory authority in concluding that a "religious" organization such as petitioners must satisfy the "charitable" requirement of Section 501(c)(3) in order to qualify for tax exemption. Educational institutions such as petitioners that engage in racially discriminatory practices are not "charitable" as that term is understood at common law. *Green* v. *Connally*, 330 F. Supp. 1150, 1156-1160 (D.D.C.), aff'd, 404 U.S. 997 (1971). Accordingly, the charitable exemption provisions do not countenance federal tax benefits to organizations operated for educational purposes that discriminate against students or appli-

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cants on the basis of race. *Green* v. *Connally, supra*, 330 F. Supp. at 1179; *Prince Edward School Foundation* v. *United States*, 478 F. Supp. 107 (D.D.C. 1979), aff'd by unpublished order, No. 79-1622 (D.C. Cir. June 30, 1980), cert. denied, No. 80-484 (Feb. 23, 1981) (nonreligious private school denied tax-exempt status for failure to make requisite showing that it maintained a racially nondiscriminatory admissions policy where no black child had been admitted for a period of almost 20 years; directors' religious belief in the value of segregated education does not excuse failure to make requisite showing of nondiscriminatory policy).

2. Contrary to petitioner Bob Jones University's argument (Pet. 9), the nondiscrimination principle applied to private schools by the courts and by the Internal Revenue Service does not conflict with Congress' understanding of the requirements imposed by the Internal Revenue Code with respect to racial discrimination. By the Act of Oct. 20, 1976, Pub. L. No. 94-658, Section 2(a), 90 Stat. 2697, Congress added to the Code, "in view of national policy," the provision now contained in Section 501(i), which explicitly denies exempt status to a social club if its charter or any of its written policy statements provides for "discrimination against any person on the basis of race, color, or religion." The accompanying S. Rep. No. 94-1318, 94th Cong., 2d Sess. 7-8 & n.5 (1976), reflects Congress' intent to apply to social clubs the same antidiscrimination rule involved here. Congress was well aware of the Service's policy implemented six years earlier that discrimination on account of race is inconsistent with an educational institution's tax-exempt status under Section 501(c)(3) and also with its status as a donee of deductible charitable contributions under Section 170(c)(2). Though, as

noted, *infra*, the Congress has temporarily barred the employment of proposed new procedures to enforce the policy of the Internal Revenue Service, it has at the same time sanctioned the continuation of the substantive and procedural policies set forth in Rev. Proc. 75-50, 1975-2 Cum. Bull. 587.

3. Both Bob Jones University (Pet. 11-15) and Goldsboro Christian Schools (Pet. 23-28) seek to excuse their failure to satisfy the nondiscrimination principle on the ground that their discriminatory practices are the outgrowth of sincere religious faith. But, as the court of appeals correctly concluded, the unquestioned First Amendment right to free religious belief and exercise does not carry with it a guarantee of any person's or corporation's entitlement to tax-exempt status. As the court below pointed out in *Bob Jones University* (81-3 Pet. App. A15-A16), the Service's policy avoids excessive entanglement with religion by applying its policy to all religiously operated schools (as well as nonreligious schools). Moreover, the Service's policy does not compel petitioners or any other religious institution to alter their religious teachings, or compel their students to violate their beliefs. By requiring petitioners to show, as a condition to retaining the benefits of tax exemption, that they are operating under a racially nondiscriminatory policy, the Internal Revenue Service therefore did not encroach upon any activity entitled to affirmative constitutional protection.[8] See *Norwood* v. *Harrison*, 413 U.S. 455,

[8] Petitioner Bob Jones University's 1975 revision of its admissions and disciplinary rules rendered it no more eligible for the benefits of federal tax exemption. As the court of appeals correctly pointed out (81-3 Pet. App. A9-A10), petitioner's policy of denying admission to partners in an interracial marriage and of expelling students who date or marry

464 n.7, 468-470 (1973); *Runyon* v. *McCrary*, 427 U.S. 160, 175-179 (1976); cf. *Green* v. *Connally*, *supra*, 330 F. Supp. at 1165-1169; *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 604-608 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975).

4. Although there is no conflict of appellate decisions and we believe that the decisions of the court of appeals are correct, we do not oppose the petitions in these cases. The Internal Revenue Service is currently meeting substantial resistance from church-related and religious schools to enforcement of its position that such institutions are not entitled to tax-exempt status under Section 501(c)(3) if they engage in racially discriminatory practices. This resistance is premised on the argument raised by petitioners in these cases that the Service's revocation or denial of tax-exempt status violates the First Amendment rights of such institutions. For example, in *Green* v. *Regan*, No. 1355-69 (D.D.C.), the Service is under an injunctive order to investigate certain private schools in Mississippi to determine whether they are entitled to tax exemption. There are 29 church-operated schools which have been identified as potentially subject to the court's order, and 12 of those schools have invoked the First Amendment as a bar to compliance with the Service's request for the

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outside of their race rests, as did its prior policies, upon an invidious distinction drawn according to race. See *Loving* v. *Virginia*, 388 U.S. 1, 11-12 (1967); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964). Moreover, petitioner Goldsboro Christian Schools concedes (Pet. 6) that it "has maintained a racially discriminatory admissions policy since its founding." Thus, the fact of petitioners' racially discriminatory policies is beyond dispute. Cf. *Prince Edward School Foundation* v. *United States*, cert. denied, No. 80-484 (Feb. 23, 1981) (Rehnquist, J., dissenting).

information necessary to complete its investigation. Pursuant to the government's motion in *Green*, the court has suspended its injunctive order as it relates to the church schools pending resolution of the First Amendment claims.

Because of the sensitivity of claims that the Internal Revenue Service's administration of the tax laws violates the First Amendment right of schools to the free exercise of religion, and because of the strong conviction with such claims are often asserted and adhered to, the Service has been impeded in its efforts to achieve even-handed enforcement in this area against religious institutions. Reliance on the authority of its published rulings or even on the decisions below of a single court of appeals has been inadequate to avoid unseemly confrontations with religious claims in the Service's investigations. Moreover, as petitioner Goldsboro Christian Schools observes (Pet. 18-19), Congress has introduced an element of uncertainty into enforcement procedures by prohibiting the Service from using any funds appropriated to implement or enforce any rule or procedure "which would cause the loss of tax-exempt status to private, religious, or church operated schools under Section 501(c)(3) * * * unless in effect prior to August 22, 1978." See Ashbrook Amendment (Section 103) to the Treasury, Postal Service, and General Government Appropriations Act, 1980, Pub. L. No. 96-74, 93 Stat. 559. While the Ashbrook Amendment does not apply to the instant cases because the Internal Revenue Service acted here in accordance with policies and procedures established long before August 22, 1978 (see, *e.g.*, Rev. Proc. 75-50, 1975-2 Cum. Bull. 587), it necessarily raises some questions concerning the scope of the Service's pres-

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ent authority in this area and further complicates the problem of achieving even-handedness in enforcement.

The Service accordingly doubts that denial of certiorari in these cases would substantially enhance compliance with its investigative efforts in this area. Since there is no likelihood of a ruling by another court of appeals in the near future on these First Amendment questions of substantial public importance to both the Service and the institutions involved, we believe that a definitive decision by this Court will dispel the uncertainty surrounding the propriety of the Service's ruling position and foster greater compliance on the part of the affected institutions.

CONCLUSION

The petitions for writs of certiorari should be granted. The Court may wish to consolidate the cases for argument.

Respectfully submitted.

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* The Solicitor General is disqualified in these cases.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C. (1970 ed.)):

Section 170. Charitable, etc., contributions and gifts.

(a) *Allowance of deduction.*—

(1) *General rule.*—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * * * *

(c) [as amended by Section 201, Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487] *Charitable Contribution Defined.*—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of——

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the laws of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

* * * * *

Treasury Regulations on Income Tax (26 C.F.R.)

§ 1.501(c)(3)-1 *Organizations organized and operated for religious, charitable, scientific testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

* * * * *

(d) *Exempt purposes*—(1) *In general.* (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

(a) Religious,
(b) Charitable,

(c) Scientific,
(d) Testing for public safety,
(e) Literary,
(f) Educational, or
(g) Prevention of cruelty to children or animals.

* * * * *

(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization, regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational," exemption will not be denied, if, in fact, it is "charitable."

(2) *Charitable defined.*—The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social

welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

* * * * *

(3) *Educational defined.*—(i) In general.—The term "educational", as used in section 501(c)(3), relates to—

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

* * * * *

(ii) Examples of educational organizations.—The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

* * * * *

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