Collection: Barr, William: Files
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File Folder: [Tuition Tax ~~Credits]~~ ~~[4 of 14]~~ OA ~~9094~~ BOX 8 Bill (9) **Date:** 9/18/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
~~1. memo~~	~~Morton Blackwell to Elizabeth Dole thru Diana Lozano re tuition tax credit bill testimony 2 p.~~	~~7/12/82~~	~~P5~~ RDB 10/5/00
2. memo	Blackwell to Dole thru Lozano re testimony before Senate Finance Committee for the School Prayer Amendment 2 p.	7/16/82	~~P5~~

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO Bob Carleson/Ann Fairbanks
✓Mike Uhlmann/Bill Barr

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Naomi Sweeney DATE 7/14/82

REMARKS

SUBJECT: Tuition Tax Credit testimony - Education Department

Attached is ED's proposed testimony for the Friday Senate Finance Committee hearing. As in the case of the Treasury testimony I sent you this morning, I would appreciate it if you would make sure that any other White House offices that need to see this testimony get copies.

OMB FORM 4
REV AUG 70

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

July 14, 1982

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice
Department of the Treasury

SUBJECT: Education draft testimony on S. 2673, the Administration's tuition tax credit proposal -- for a Senate Finance Committee hearing on Friday, July 16, 1982.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Wednesday, July 14, - 4:00 p.m.

Questions should be referred to Barry White (395-4532) or to Naomi Sweeney (395-3881), the legislative analyst in this office.

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

cc: Ken Clarkson
Mike Uhlmann/Bill Barr, OPD
Bob Carleson/Ann Fairbanks, OPD
Bernie Martin
Larry Kudlow
Mike McConnell/Mike Horowitz
Mike Esposito
Greg Jones

N—

TESTIMONY OF HONORABLE T. H. BELL, SECRETARY OF THE DEPARTMENT OF EDUCATION BEFORE THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE

July 16, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before you this morning to present the views of the Education Department on S.2673, "The Educational Opportunity and Equity Act of 1982."

A year ago I appeared before this Subcommittee to present the Reagan Administration's hearty endorsement of the concept of tuition tax credits. Today, I am pleased to discuss the President's fulfillment of his commitment to this concept in the form of S.2673, which the President sees as an important expansion of educational opportunities for all Americans.

The President's bill would permit individual taxpayers to receive a credit against their income taxes of 50 percent of the cost of tuition and fees for each child in eligible nonpublic elementary and secondary schools up to a maximum credit per child. The maximum credit would be phased in over a three-year period, rising from $100 in 1983 to $300 in 1984, and ultimately to $500 in 1985.

This legislation is intended to meet the needs of lower- and middle-income working families. These families are the ones who need assistance in meeting their growing educational expenses. A full credit would be available only to those families with adjusted gross incomes up to $50,000 and benefits would decline to zero above $75,000 income.

Parents would be eligible for the credit only if they send their children to a not-for-profit tax exempt institution which provides a full-time elementary or secondary school program and which does not discriminate on the basis of race, color, or national origin. A school follows a discriminatory policy if it refuses, on account of any of these characteristics, either to admit student applicants or to allow students full participation in the school and its programs.

Our proposal is an integral part of the President's education program. We have our deregulation efforts and our new block grant legislation to amend existing policies that are wrong in concept and approach. We have our "New Federalism" and foundation proposals to limit Departmental authority over the schools. We have our National Commission on Excellence in Education to address the matter of vigor and quality in American schools. And now the President has proposed enlarging options for schooling through tuition tax credits, a crucial incentive to vitality in American education of which private schools are an integral part.

As you know, the Federal government provides students and their families with financial assistance to enable students to enroll in either public or private colleges and universities. Federal aid for higher education supports students who choose to attend high tuition private institutions. Our proposal offers similar assistance to parents and students who prefer private elementary and secondary schools.

Americans do have good reason to be proud of a public and private educational system unrivaled in the history of civilization. The enormous accomplishments of our people in their 206-year history as a nation are a tribute, in large measure, to the quality and diversity of educational opportunity available to them. Moreover, our higher education system has prospered under the diversity and competition of both public and private institutions. We believe that the freedom to choose, the diversity, and the healthy competition of both public and private elementary and secondary schools will be similarly enhanced through this legislation.

Growing numbers of Americans want greater choice in education, but many middle-income as well as low-income families cannot afford to choose. The cost of education, both public and private, has risen dramatically in recent years. This additional cost has always severely limited the ability of lower-income families to choose the nonpublic educational alternative for their children. Rising costs are now putting private schools beyond the reach of a growing number of middle-income Americans as well.

This private school tuition barrier to enrollment can be demonstrated with a few numbers. In 1979, the median private elementary school tuition was $360 per year--$315 for church-related schools and $1,222 for non-church-related schools. Secondary school tuition was higher with a median of $925 per year--$900 for church-related high schools and $1,400 for non-church-related schools. These sums are substantial, especially for families with many school-age children. For example, a family with four children, two in elementary and two in high school, would have paid $2,430 in church-related schools and $5,244 in non-church-related schools.

A tuition tax credit would provide the greatest benefit to those who need it most--low-and middle-income families. These families constitute the largest users of the private schools even with financial constraints. In 1979, fully 54 percent of the students in private schools came from families with incomes below $25,000.

Members of minority groups would also benefit significantly. A recent survey, for instance, showed that 18.6 percent of the students in Catholic schools--the nation's largest private school sector--were minority group members. The minority group percentage is even higher in private schools in many cities. Considering just blacks, the Bureau of Census reports that in the central cities of metropolitan areas in 1979, 12 percent of private school enrollees were black. The Census Bureau also reports that Hispanic students constituted over 8 percent of the private school enrollment in these central city areas that year.

Increased diversity in education will also be fostered by a tuition tax credit. This diversity stimulates a healthy competition between public and private schools that promotes higher standards in both systems.

The vital role competition has played in our society, in providing quality goods and services at affordable prices, is well known. This economic principle applies in the provision of education as forcefully as it does to any other product or service. If a school has little or no competition, it may lack the incentive to improve its educational quality.

This improvement in quality through competition is of special importance to low income and minority youth. Since these youth face considerable barriers in their quest for upward financial mobility, the better education that competition will produce will be an important step in helping them to secure a job after they leave school.

Private schools do offer alternatives. Private schools are often smaller than public schools. For instance, the average student enrollment in public high schools is 758 students compared to 215 students in private high schools. Because of their size, public schools tend to offer a broader range of courses. However, many parents prefer private schools' smaller size and more individualized attention.

While there are many excellent public schools, it is difficult for any one school system to meet all the needs of its students or to be consistent with the values of all parents. There will always be many parents whose educational values differ from those of the public school system. The views of such parents should be respected and their freedom to choose should be supported, especially when this choice might increase the achievement of their children.

Some opponents of tuition tax credits have expressed fear that this legislation will weaken public schools by attracting more and better students to the private schools. We believe that the public schools--like the public universities--will benefit from the diversity and wholesome competition. The more diversity and options we can offer, the richer will be our learning opportunities for all children. The public school will grow stronger and more competitive.

S. 2673 is important to working Americans in another way: it would promote greater equity in taxation. We all bear the burden of the costs of public education through State and local taxation, directly or indirectly. But those parents whose children attend nonpublic schools must also bear the additional burden of paying private school tuition. Tax credits will go a long way toward reducing the unfairness inherent in this double-burden faced by parents who send their children to private schools.

We must also bear in mind that private schools do more than offer alternative educational choices to students and their parents. Nonpublic schools also carry a significant part of the burden of providing elementary and secondary education in this country. If it becomes financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance will place large and unwelcomed new tax burdens on State and local taxpayers. For instance, if only one-tenth of the private school population of nearly five million students shifted to public schools, the costs to the public school system could increase by over one billion dollars, based on current per pupil expenditures in public schools.

In closing, the President has proposed tuition tax credit legislation in order to promote diversity in education and the freedom of individuals to take advantage of it, and to nurture the pluralism in American society which this diversity fosters.

I will be happy to answer any questions.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO: Bill Barr

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM: Mike M.

DATE:

REMARKS

Naomi Sweeny predicts major resistance to the Treasury changes. Regan was briefed last night on the then-current version (which included revised 501(c)(3) language and some changes proposed by DOEd). I instructed her to tell Treasury these are "clearance issues" -- which means mandatory changes. You should: (1) be prepared to provide muscle; (2) make sure Mike Uhlman is on board.

FYI: Dick Darman requested, and received, the testimonies for wide WH distribution.)

OMB FORM 4
REV AUG 70

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

July 14, 1982

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice
Department of the Treasury

SUBJECT: Education draft testimony on S. 2673, the Administration's tuition tax credit proposal -- for a Senate Finance Committee hearing on Friday, July 16, 1982.

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Naomi R. Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

cc: Ken Clarkson
Mike Uhlmann/Bill Barr, OPD
Bob Carleson/Ann Fairbanks, OPD
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N

TESTIMONY OF HONORABLE T. H. BELL, SECRETARY OF THE DEPARTMENT OF EDUCATION BEFORE THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE

July 16, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

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The President's bill would permit individual taxpayers to receive a credit against their income taxes of 50 percent of the cost of tuition and fees for each child in eligible nonpublic elementary and secondary schools up to a maximum credit per child. The maximum credit would be phased in over a three-year period, rising from $100 in 1983 to $300 in 1984, and ultimately to $500 in 1985.

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Parents would be eligible for the credit only if they send their children to a not-for-profit tax exempt institution which provides a full-time elementary or secondary school program and which does not discriminate on the basis of race, color, or national origin. A school follows a discriminatory policy if it refuses, on account of any of these characteristics, either to admit student applicants or to allow students full participation in the school and its programs.

Our proposal is an integral part of the President's education program. We have our deregulation efforts and our new block grant legislation to amend existing policies that are wrong in concept and approach. We have our "New Federalism" and foundation proposals to limit Departmental authority over the schools. We have our National Commission on Excellence in Education to address the matter of vigor and quality in American schools. And now the President has proposed enlarging options for schooling through tuition tax credits, a crucial incentive to vitality in American education of which private schools are an integral part.

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- INSERT A -

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I will be happy to answer any questions.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO
Ken Clarkson
✓~~Mike Uhlmann/Bill Barr~~
Bob Carleson/Ann Fairbanks
~~Bernie Martin~~
Lary Kudlow
~~Mike McConnell/Mike Horowitz~~
Mike Esposito
Greg Jones
Barry White

Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

FROM Naomi Sweeney

DATE July 14, 1982

REMARKS

Attached are pages 5 and 6 of Education draft testimony on S. 2673, the Administration's tuition tax credit proposal -- for a Senate Finance Committee hearing on Friday, July 16.

OMB FORM 4
REV AUG 70

U.S. Department of Justice
Office of Legal Counsel

file
TTC

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

July 15, 1982

William P. Barr, Esq.
Deputy Assistant Director of Legal Policy
The White House

Dear Bill:

As we discussed, Mike Uhlmann telephoned Ted Olson to request that we draft a brief statement for Secretary Regan's testimony in the event that he is questioned tomorrow with respect to the constitutionality of the tuition tax credit bill. We have prepared the following statement:

> While I am not a lawyer, I recognize that the constitutionality of this legislation might be challenged in court, and that the constitutional question will have to be resolved by the Supreme Court. There are Supreme Court precedents which will be cited to support such a challenge, but cases that will be cited for the contrary position as well.
>
> The Supreme Court has itself recognized that its decisions in the area of tax relief to the parents of nonpublic schoolchildren are not entirely clear or uniform. It is therefore impossible to predict the outcome with a high degree of certainty.
>
> We do allow income tax deductions for direct gifts to churches. In many religions which have tithing as a part of their faith, substantial tax deductions are taken

by members for their contributions. The Supreme Court has upheld property tax exemptions for churches. Churches themselves enjoy tax exempt status. The Attorney General is prepared to argue that the tuition tax credits provided by this bill should be upheld, as were property tax exemptions in 1970.

Please advise Ted or me if you wish to make any changes in this statement and do not hesitate to call if we can be of further assistance.

Sincerely,

Robert B. Shanks

Robert B. Shanks
Deputy Assistant Attorney General
Office of Legal Counsel

I anticipate that some of the witnesses testifying against this bill will argue that is not constitutional.

I am not a lawyer, but I am told that the Supreme has itself recognized that its decisions in the area of tax relief to the parents of non-public school children are not entirely clear or uniform.

As a layman, I know that we do allow income tax deductions for direct gifts to churches. In many religions which have tithing as a part of their faith, substantial tax deductions are taken by members for their contributions. The Supreme Court has upheld property tax exemptions for churches. Churches themselves enjoy tax exempt status.

~~If the Committee wants a legal judgment on this issue, obviously it will have to solicit the views of the Attorney General. I understand he is prepared to argue that, if challenged, this bill should be upheld.~~

¶ This is obviously a legal question for D.O.J.

¶ I understand the Attorney General is prepared to argue that, if challenged, this bill should be upheld.

INSERT A

The Administration's adoption of this proposal reflects our thoughtful consideration of the best means for bolstering variety and choice in primary and secondary education without creating the possibility -- or even the appearance -- that any federal interference with the independence of private schools may occur, so long as they

One of the great strengths of the private schools of this country, many of them affiliated with religious institutions, is their independence of governmental direction and concomitant ability to provide an atmosphere compatible with the values and beliefs of the families of those who attend. Many have feared that governmental assistance to such schools would eventually detract from their independence. I am happy to say that this proposal cannot and will not do so. No ~~funds~~ federal financial assistance will pass from federal officials to schools or even to students, no choices will be made at the federal level concerning the content or program of the schools, and all decisions regarding education for which tax credits are granted under this proposal will be made by the families and schools directly involved.

INSERT B

The existence and vitality of the private school sector acts to support and strengthen the public schools, both by relieving the public schools of the burden of educating some children thereby freeing up resources for improved programs for the public school population, and also by providing a competitive forum for educational innovation.

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As a layman, I ~~do~~ know that

~~While I am not a lawyer, I recognize that the constitutionality of this legislation might be challenged in court, and that the constitutional question will have to be resolved by the Supreme Court. There are Supreme Court precedents which will be sited to support such a challenge, but cases that will be sited for the contrary position as well.~~

~~The Supreme Court has itself~~ recognized that its decisions in the area of tax relief to the parents of non-public school children are not entirely clear or uniform. ~~It is, therefore, impossible to predict the outcome with a high degree of certainty.~~

~~And~~ We do allow income tax deductions for direct gifts to churches. In many religions which have tithing as a part of their faith, substantial tax deductions are taken by members for their contributions. The Supreme Court hgas upheld property tax exemptions for churches. Churches themselves enjoy tax exempt status. ~~The Attorney General is prepared to argue that the tuition tax credits provided by this bill should be upheld, as were property tax exemptions in 1970.~~

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THE WHITE HOUSE

WASHINGTON

July 16, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANA

FROM: MORTON C. BLACKWELL MCB/cbs

SUBJECT: Testimony Before Senate Finance Committee for the School Prayer Amendment

I have been called by Eric Hultman of Senator Thurmond's staff on the Judiciary Committee regarding witnesses for the hearings on the Voluntary School Prayer Amendment on July 29.

I am making the appropriate suggestions from among the religious leaders and leaders of other interested organizations.

I understand from Diana that the action officer at the Department of Justice on this testimony is Ted Olson, Assistant Attorney General, Office of Legal Counsel. Gary Bauer, whom you will remember was appointed with me to develop language for this amendment, and I agree that Ted Olson is the wrong person in the Justice Department to have to do with this controversial issue.

Repeatedly, at every step of the process, Olson and his office were obstructive and non-cooperative. Unable to come up with any significant arguments against the working draft approved by Mr. Meese and Attorney General Smith, Olson and his staff fell back on simply counseling delay, delay, delay. If we had relied on him for a green light, there would never have been a green light for this amendment.

University of Texas Law Professor Grover Rees III, who worked with us and outside groups on developing the best possible school prayer amendment language, had a great deal of contact with Ted Olson's shop as well as with Jonathan Rose, Assistant Attorney General, Office of Legal Policy.

From the outset Rose and his people were enthusiastic about this project. They made helpful suggestions. They wrote a very excellent legal memorandum which, under your cover note, we sent to all the religious denomination heads and to activists in behalf of voluntary school prayer. We should insist that Jonathan Rose, not Ted Olson, give testiony before the Senate Judicial Committee on the voluntary school prayer amendment. There is no possibility, in my judgment, that there will be enthusiastic and helpful testimony from Ted Olson. On the other hand, past experience indicates that Jonathan Rose not only understands this issue but wants to help the President work toward getting this amendment through.

Because the outside groups were involved in the process by which the amendment itself was drafted, they are aware of the contrasting views of Rose and Olson. It would be exactly the wrong signal to send to pro-school prayer groups for us to have Ted Olson give the testimony.

This situation is closely analogous to the problems we would have had if Buck Chapotin had been allowed to deliver the "pro-tuition tax credit" testimony to the Senate Finance Committee today.

There is no reason for us to reward Ted Olson for his poor job on this by allowing him to represent the Administration on this important and controversial issue.

bcc Ken Cribb
Bob Thompson
Gary Bauer
Dan Oliver
Kevin Hopkins
Bill Barr

File - TTC

THE WHITE HOUSE

WASHINGTON

September 1, 1982

MEMORANDUM FOR ROBERT B. CARLESON

FROM: PETER J. FERRARA

SUBJECT: Tuition Tax Credits

The attached article from the New York Times (8/31/82) makes an increasingly common, but invalid, argument against the Administration's tuition tax credit proposal. The President and others have argued that the proposal promotes basic equity because it eliminates part of the double payment for school services which patrons of private schools now have to bear, paying the private school's tuition in addition to their taxes for the public schools. The liberals counterargue that this implies that taxpayers should receive a tax rebate whenever they choose a private service over a public one, which they contend is a dangerous principle that would undermine all public services. Thus, the liberals argue, under this principle the rich would get a tax credit whenever they choose care at a private hospital insted of a public facility frequented by low income persons, or when they choose recreation at a country club rather than a public park. It is important that we all recognize exactly how the President's argument on this issue is consistent with Administration policies on other relevant issues, and with basic, widely-recognized principles of public finance.

These basic principles, and general Administration policy as I understand it, indicate that the government should provide services paid for by everyone in only two fundamental circumstances.* One is where the service is targeted to help the poor. The second is where the service is necessary but cannot be pro vided by the market because it has the qualities of a public good -- the benefits of the service cannot be denied to those who refuse to pay for it (e.g., national defense, police protection, fire protection, etc.). In other cases, the government should either

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* (Other forms of government action not involving the provision of a service, such as regulation, may be justified in other circumstances. Moreover, government provision of a service does not necessarily mean the government itself has to produce the service; it could contract out to others for production.)

leave the service to the private market or finance it on the basis of user fees. Thus a park whose amenities everyone enjoys and which cannot be closed off to nonpayers should be publicly financed by all, even those who also partake of country clubs. But certain facilities such as tennis courts, where nonpayers can be excluded from playing, should be left to the private market or financed by user charges on the particular users of the facility, and not those who play exclusively on country club courts (unless the cost is so minimal it is not worth the administrative expenses of user fees). Similarly, public hospital services for the poor should be supported by all, but when the non-poor use a public hospital they should be charged an unsubsidized user fee.

Public school services are not targeted towards the poor. Nor is schooling a public good, strictly defined, for students can be excluded if they do not pay. Allowing tuition tax credits for users of private schools is merely a way of implementing a user fee system for public schools -- in effect only those who use the public schools pay. Our stand on tuition tax credits is thus perfectly consistent with the public finance principles outlined above.

One might argue that education in a sense is a public good since everyone benefits somewhat from participating in a society of educated people, and nonpayers cannot be excluded from enjoying this benefit. Even if we accept this argument as valid, it does not justify charging private school patrons twice and public school patrons once. Quite to the contrary, since everyone benefits from learned people educated in private schools as well as those educated in public schools, this argument suggests that we should provide social subsidies to private schools <u>in addition to</u> allowing patrons thereof out of the double payment inequity. The lack of such an additional subsidy for private schools, while providing it to public schools, is in fact a further inequity, if such a subsidy for public schools can be justified on these grounds in the first place. As a practical matter, however, private school patrons will be perfectly satisfied to carry their own weight without any such social subsidy as long as we end the double payment discrimination. In advancing tuition tax credits, the Administration has merely adopted this moderate, middle-of-the-road view.

We can distinguish education services from other publicly provided services in other ways to justify tuition tax credits, and our proposal can be defended on other grounds besides equity.

But the double payment argument is quite powerful, appeals broadly to the public, and is soundly rooted in fundamental principles of public finance. As these principles are widely taught and accepted, I find the liberal counterargument, as faithfully reflected in the attached article, to be thoughtless and uneducated.

cc: Ed Harper
Michael Uhlmann
Kevin Hopkins
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Steve Savas
Gary Bauer
William Keyes

Against Tuition Credits

By Harold Howe 2d

CAMBRIDGE, Mass. — The Administration's bill to give tax credits of up to $500 a year to parents of children attending private schools is firmly based on the quicksand of dubious reasoning.

President Reagan and his supporters argue that it's only fair to reimburse with Federal tax funds any citizen who pays state and local taxes to support public schools and then pays tuition to send his or her kids to private school. This principle — that tax rebates are deserved by anyone who chooses a private service in place of a public one — will find many enthusiastic supporters. Among them will be patrons of private hospitals and mental-health centers who wouldn't be seen dead in a tax-supported facility and members of country clubs who would prefer to avoid the pressures and problems of the public recreation their taxes support. These and numerous other people have the same problem of double costs as the 12 percent of Americans who choose to use private schools. Why do Reaganites argue that tuition is a special burden requiring billions for fairness to parents and leave out others who choose private facilities?

A second inconsistency arises from Mr. Reagan's oft-stated desire to eliminate most of the Federal role in education and return it to the states and localities, where he says it belongs. If this is so, why not let those states and localities pay the bill for private-school tuition rather than laying it on the Federal Government by reducing its tax income and increasing its deficit?

A third dubious argument is a sanctimonious enthusiasm for giving poor people the same option of choosing private schools that rich people have. But what rich people have is really much more than that option. They can spend their money on anything they want. Poor people would like the same privilege, and what they really want is money to spend on what they choose, rather than money they can't get hold of at all unless they send their kids to private schools — something most of them don't want to do.

When an Administration behaves so illogically, it's worth trying to discover why it advocates this policy rather than believing what it says about it. On that trail, one finds the following:

- Many of the small minority of parents using private schools are rich and support Mr. Reagan. He'd like to give them a little boost to go with their tax shelters and tax reductions.
- Many others aren't rich but rather average Americans who find it hard to send their kids to private school and hang on to the amenities to which they are accustomed. They like the President's argument and don't want to lose out on lower taxes just because the principle involved is open to abuse.
- Some parents are poor. If they are really poor and pay no taxes, then Mr. Reagan's plan won't help them at all. Senator Daniel Patrick Moynihan is trying to repair the President's plan by making payments to people with no tax liability.
- Eighty percent or more of potential beneficiaries of tuition tax credits send their kids to church-related schools. These schools have had a tough time getting any money from the Government because the courts say the Constitution forbids it. Here, at last, is a way around the Constitution, at least until the Supreme Court can rule on the matter. Some religious groups hoping for these benefits are strong supporters of Mr. Reagan's policies. Some are not but they're willing to go along for the ride, even in questionable company.

Private schools' general enthusiasm for this proposed legislation is a clear message that they expect to benefit from it — even though the sponsors argue that it's for fairness to parents, not to help schools. Will schools benefit? Not unless they raise tuitions, which is what they are planning to do. The list of private schools willing to pledge to maintain present tuition levels is not long, despite Administration testimony in the Senate that no tuition increases are expected. The Administration witnesses are not naïve; they are just bluffing because they know that the tuition hikes will wipe out parents' benefits.

Will this legislation hurt the public schools? Probably not as much as the shouting about it suggests, although it will to some degree help private education compete with public eduction more effectively, and it holds the danger of expansion to the point that the competition may become damaging.

Tuition tax credits will place in the law of the land a general principle that we'd do well to avoid: the doctrine that the choice of a private service gives the taxpayer a claim for a rebate on his or her payments for public services. In addition, these credits would use our tax system in two undesirable ways: to give special help to the affluent and as a political payoff. Both constitute questionable policy although both have been done before by our political parties. The tax system is in enough trouble without using it to support private schools that most Americans are happy to have around as long as they don't have to pay for them.

Harold Howe 2d, a senior lecturer at the Harvard Graduate School of Education, was United States Commissioner of Education from 1965 to 1968.

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

(1) Racial Discrimination Prohibited. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution that is found, pursuant to the procedures set forth in this sub-section, to follow a racially discriminatory policy.

"(2) Definition. -- For purposes of this subsection, an educational institution follows a 'racially discriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy shall not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(3) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, and such declaratory judgment is not stayed, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year in which the declaratory judgment under section 7408 was entered against the educational institution, and

"(B) in succeeding calendar years until such time as an order modifying the declaratory judgment and reinstating credits is entered pursuant to subsection (f) of section 7408.

"(4) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) a statement, subject to the penalties for perjury, that

(A) attests that such institution has complied with the requirements of sub-section (e)(1)(iv) during such calendar year;

(B) declares that such institution has not followed a racially discriminatory policy during such calendar year; and

(C) indicates whether a declaratory judgment has been entered against such institution under section 7408 and has not been vacated pursuant to sub-section (f) of section 7408.

On or before January 31 of the calendar year following the calendar year to which the statement relates, the institution shall furnish a copy of the statement to all persons who paid tuition expenses to the institution in the calendar year to which the statement relates. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in this paragraph.

(5) Enforcement Responsibility. -- Under this section, the Attorney General has exclusive authority to investigate and to determine whether an educational institution is following a racially discriminatory policy and to commence a declaratory judgment action under section 7408. Upon request of the Attorney General or upon his own motion, the Secretary shall supply the Attorney General with all information in the possession of the Secretary relevant to such investigation, determination, or action.

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. -- The term 'educational institution' means a school that

"(i) provides a full-time program of elementary or secondary education;

"(ii) is a privately operated, not-for-profit, day or residential school;

"(iii) is exempt from taxation under section 501(a) as an organization described in section

501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply; and

"(iv) to the extent it otherwise publishes by-laws, advertisements, admission application forms and other such publications, includes therein (as the Secretary shall by regulation prescribe) a statement that it does not discriminate against student applicants or students on the basis of race.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

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

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

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

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

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

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

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

"(a) In General. -- Whenever the Attorney General receives a petition in accordance with paragraph (b), the Attorney General is authorized and directed, upon finding good cause to believe that an educational institution is following a racially discriminatory policy, to bring an action against the educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the educational institution has followed a racially discriminatory policy.

"(b) Petition. -- Any person may file a petition under sub-section (a). The petition must allege with specificity that

(1) a named educational institution has, pursuant to a racially discriminatory policy, discriminated against a named student applicant or student within one year preceding the filing of the petition; or

(2) the educational institution made a statement, within one year preceding the filing of the petition, communicating an intent to follow a racially discriminatory policy.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before filing an action, the Attorney General shall give the institution a fair opportunity to comment on allegations made against it and to show that a racially discriminatory policy does not exist or has been abandoned. Prior to and in lieu of filing an action, the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution if he finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy. No petition need be filed for the Attorney General to initiate action to enforce the terms of such settlement agreement.

"(d) Required Showing. -- In an action under this section, no finding that a school is following a racially discriminatory policy shall be made unless the Attorney General establishes

(1) that the institution has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of the action; or

(2) that the institution has, within the two years preceding commencement of the action, made a statement communicating an intent to follow a racially discriminatory policy against student applicants or students; or

(3) that the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

"(e) Reinstatement of Credits. --

(1) If a district court enters a declaratory judgment against an educational institution under this section, the district court shall retain jurisdiction of the case. After

one (1) year has elapsed from the date of judgment, and at any time thereafter, the educational institution may file with the district court a motion to reinstate credits. Such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has changed its previous racially discriminatory policy;

(B) describing with specificity the ways in which the educational institution has taken reasonable steps to communicate its policy of non-discrimination to students, to faculty, and school administrators, and to the public in the area it serves;

(C) averring that the educational institution has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and

(D) averring that the educational institution has complied with the requirements of section 44 H(e)(1)(iv).

(2) When an educational institution has filed a motion complying with paragraph (1), the court shall enter an order modifying the prior judgment against the institution and reinstating credits for tuition payments to the educational institution, unless the Attorney General establishes that

(A) the institution has not in fact stopped following its previous discriminatory policy;

(B) the institution has discriminated against an applicant or student pursuant to a racially discriminatory policy within the preceding year;

(C) the institution has made statements communicating an intent to follow a racially discriminatory policy within the preceding year; or

(D) the institution has not, in fact, complied with the publications requirements of sub-paragraphs (B) and (D) of paragraph (1).

"(f) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court shall award the institution costs and attorney's fees in such action.

"(g) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H."

"(h) Statute of Limitations. -- If, for any reason, a judgment of the district court against an educational institution is stayed and is subsequently affirmed on appeal, credits allowed for tuition payments to such institution for taxable years dating back to the year in which the district court judgment was entered shall be disallowed.

"(1) The period for assessing a deficiency attributable to such disallowance of a credit shall not expire before the expiration of 3 years from the date of the appellate decision affirming the district court judgment. Any such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) If a district court judgment against an educational institution is reversed on appeal, taxpayers for whom credits have been precluded by such judgment shall be entitled to file amended returns for tax years dating back to and including the year in which the district court judgment was entered.